A COMMISSION REPORT

# LABOR-MANAGEMENT POLICIES FOR STATE AND LOCAL GOVERNMENT

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS
WASHINGTON, D. C. 20575
SEPTEMBER 1969
A–35

A C I R

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September 1969

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# Preface

The Advisory Commission on Intergovernmental Relations was established by Public Law 380, passed by the first session of the 86th Congress and approved by the President September 24, 1959. Section 2 of the act sets forth the following declaration of purpose and specific responsibilities for the Commission:

> "Sec. 2. Because the complexity of modern life intensifies the need in a federal form of government for the fullest cooperation and coordination of activities between the levels of government, and because population growth and scientific developments portend an increasingly complex society in future years, it is essential that an appropriate agency be established to give continuing attention to intergovernmental problems.
>
> "It is intended that the Commission, in the performance of its duties, will—
>
> "(1) bring together representatives of the Federal, State, and local governments for the consideration of common problems;
>
> "(2) provide a forum for discussing the administration and coordination of Federal grant and other programs requiring intergovernmental cooperation;
>
> "(3) give critical attention to the conditions and controls involved in the administration of Federal grant programs;
>
> "(4) make available technical assistance to the executive and legislative branches of the Federal Government in the review of proposed legislation to determine its overall effect on the Federal system;
>
> "(5) encourage discussion and study at an early stage of emerging public problems that are likely to require intergovernmental cooperation;
>
> "(6) recommend, within the framework of the Constitution, the most desirable allocation of governmental functions, responsibilities, and revenues among the several levels of government; and
>
> "(7) recommend methods of coordinating and simplifying tax laws and administrative practices to achieve a more orderly and less competitive fiscal relationship between the levels of government and to reduce the burden of compliance for taxpayers."

Pursuant to its statutory responsibilities, the Commission from time to time singles out for study and recommendation particular problems the amelioration of which, in the Commission's view, would enhance cooperation among the different levels of government and thereby improve the effectiveness of the Federal system of government as established by the Constitution. One subject so identified by the Commission concerns the responsibilities of State and local governments for labor-management relations in the public service.

In the following report, the Commission examines the dimensions of recent trends in the organization of public employees, State legal and administrative authorization for dealing with employee organizations, the status of public employer-employee labor relations at the city and county level, and major issues in labor-management relations in State and local employment. The report concludes with recommendations concerning these relations.

The report was approved at a meeting of the Commission on September 19, 1969.

Farris Bryant
Chairman

# Acknowledgements

Responsibility for the staff work on this report was shared by James H. Pickford, and Carl W. Stenberg. Library research and reference services were provided throughout the course of the study by Sandra S. Osbourn. Steven L. Goldstein, a summer intern with the Commission, also provided assistance. Clerical tasks in readying the report for publication were provided chiefly by Carolyn LeVere, Betty Waugh, Vicki Watts, Ronald L. Ross and Bernard C. Evans.

In a special effort to analyze the character of current policies affecting public labor-management relations in State and local governments, three separate surveys were conducted. Questionnaires were sent to all cities over 10,000 population, to all counties located in standard metropolitan statistical areas, and to all executive directors of State municipal leagues and county associations, and directors of State personnel agencies. The surveys were undertaken in collaboration with the International City Management Association, the National Association of Counties, the National League of Cities, and the State Personnel Administrators Association. Individuals assisting in the survey included: J. Robert Havlick (ICMA), Allan H. Moore (NACO), John Garvey, Jr. (NLC) and Carl K. Wettengel (SPAA).

The Commission and its staff benefited from an informal review of an early draft of the report by a number of individuals, including: Willoughby Abner, George Basich, Eugene F. Berrodin, William E. Besuden, Millard Cass, Merrill J. Collett, Carole Cooper, Jean J. Couturier, Winston W. Crouch, William L. Day, Thomas R. Donahue, Ronald Donovan, Clinton W. Fair, John A. Grimes, Peter B. Harkins, Robert D. Helsby, Mary L. Hennessy, Lewis B. Kaden, I. M. Labovitz, Janet Kohn, Douglas I. McIntyre, Kenneth A. Meiklejohn, John Schmid, Clayton A. Seeber, Carlton F. Sharpe, David T. Stanley, Harold X. Summers, Donald S. Wasserman, Carl K. Wettengel, and Ralph Vatalaro.

The participation of those named in the review of the draft in no way implies an endorsement of the final report.

The Commission found most helpful the presentations of the following persons at its public hearing on public labor-management relations in Washington, D.C., on June 12, 1969: Arvid Anderson, Chairman, New York City Office of Collective Bargaining; Richard Carpenter, Executive Director and General Counsel, California League of Municipalities; Robert H. Chanin, General Counsel, National Education Association; Thomas R. Donahue, Executive Secretary, Service Employees International Union, AFL-CIO; John R. Doyle, National President, Assembly of Governmental Employees; Thomas C. Enright, Past National President, Assembly of Governmental Employees; Clinton W. Fair, Legislative Representative, AFL-CIO; Samuel Lambert, Executive Director, National Education Association; Morris Slavney, Chairman, Wisconsin Employment Relations Commission; and Donald S. Wasserman, Research Director, American Federation of State, County, and Municipal Employees, AFL-CIO. Special acknowledgment is made of Felix A. Nigro,

Professor of Public Administration, University of Georgia, who in addition to presenting testimony, summarized the hearing proceedings before the Commission at its June 13, 1969 meeting.

The Commission records its appreciation for the contribution of all of those individuals and organizations. Full responsibility for content and accuracy rests, of course, with the Commission and its staff.

Wm. G. Colman
Executive Director

David B. Walker
Assistant Director
(Governmental Structure & Functions)

# The Commission and Its Working Procedures

This statement of the procedures followed by the Advisory Commission on Intergovernmental Relations is intended to assist the reader's consideration of this report. The Commission, made up of busy public officials and private persons occupying positions of major responsibility, must deal with diverse and specialized subjects. It is important, therefore, in evaluating reports and recommendations of the Commission to know the processes of consultation, criticism, and review to which particular reports are subjected.

The duty of the Advisory Commission, under Public Law 86–380, is to give continuing attention to intergovernmental problems in Federal-State, Federal-local, and State-local, as well as interstate and interlocal relations. The Commission's approach to this broad area of responsibility is to select specific intergovernmental problems for analysis and policy recommendation. In some cases, matters proposed for study are introduced by individual members of the Commission; in other cases, public officials, professional organizations, or scholars propose projects. In still others, possible subjects are suggested by the staff. Frequently, two or more subjects compete for a single "slot" on the Commission's work program. In such instances selection is by majority vote.

Once a subject is placed on the work program, staff is assigned to it. In limited instances the study is contracted for with an expert in the field or a research organization. The staff's job is to assemble and analyze the facts, identify the differing points of view involved, and develop a range of possible, frequently alternative, policy considerations and recommendations which the Commission might wish to consider. This is all developed and set forth in a preliminary draft report containing (a) historical and factual background, (b) analysis of the issues, and (c) alternative solutions.

The preliminary draft is reviewed within the staff of the Commission and after revision is placed before an informal group of "critics" for searching review and criticism. In assembling these reviewers, care is taken to provide (a) expert knowledge and (b) a diversity of substantive and philosophical viewpoints. Additionally, representatives of the National League of Cities, Council of State Governments, National Association of Counties, U.S. Conference of Mayors, U.S. Bureau of the Budget and any Federal agencies directly concerned with the subject matter participate, along with the other "critics" in reviewing the draft. It should be emphasized that participation by an individual or organization in the review process does not imply in any way endorsement of the draft report. Criticisms and suggestions are presented; some may be adopted, others rejected by the Commission staff.

The draft report is then revised by the staff in light of criticisms and comments received and transmitted to the members of the Commission at least three weeks in advance of the meeting at which it is to be considered.

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# *Chapter 1*

# INTRODUCTION

The public service, especially at the State and local levels, is in a period of major upheaval.

- State and local employee rolls now are nearly two and one-half times (9,358,000) what they were in 1947 and are expected to pass the 12 million mark by 1975.
- Government employee unions at all levels now constitute the fastest growing sector of organized labor and represent approximately one-tenth of total union membership (about 18.3 million), in contrast to only five percent a short thirteen years ago.
- Independent public employee associations have now passed the half million mark and professional associations involving State and local personnel are approaching a one and one-half million figure.
- Though no State sanctions strikes, a seventeen-fold increase of work stoppages occurred between 1958 and 1968, passing the 250 mark in the latter year.
- The growth of labor-management relations in the State and local public service has been a pivotal development in the field of public administration during this same period, with 20 States enacting, or significantly amending, comprehensive public employee-management labor relations legislation in the past four years alone.

Sound, stable, and successful public employer-employee relations at the State and local level clearly have become a major item on the nation's crowded agenda of unfinished business. They also have become a top priority item on federalism's list of unresolved challenges.

From one historical vantage point, the issue appears as but one more chapter in the history of the American trade union movement. From another historical perspective, it looks like a new phase in the ongoing struggle between those dedicated to barring personal, political, and pressure group encroachments on the public service and those who find merit-based personnel systems a rigid, impersonal, and arbitrary barrier to effective public management, to social mobility, or to meaningful employer-employee relations. From a third historical position, the entire question of public labor-management relations is quite new, hardly a decade old, and with many precedents from the private sector providing irrelevant or—even worse—misleading guideposts. From a philosophic vantage point, this question becomes a broad theoretical contest between opposing principles—between legitimate authority vs. illegitimate power, government as sovereign vs. government as servant, majority rule vs. minority rights and the like. Others tend to view the question in more sociological terms and describe it as but one more manifestation of the current widespread rebellion against established institutions. The rebellion here is against one of the most bureaucratized, slowest moving of all modern institutions—government itself—and is carried on by those who have a tough, day-to-day task of keeping up with burgeoning public service demands.

Regardless of one's perspective on public employer-employee relations, it clearly is a prime and pressing policy question with major intergovernmental implications. For this reason, the Commission voted to undertake this study.

This report focuses mainly on the responsibilities of State and local governments for labor-management relations in their vast portion of the public sector. The Federal role, with but a few exceptions, is not explored. Valuable insights into the character of and current policies affecting management-labor relations at the State and local levels were gained from three separate questionnaires: a municipal survey was conducted by the ACIR staff in conjunction with the International City Management Association (ICMA); a county poll was assisted by the National Association of Counties

(NACO) and the ICMA; and a survey of State mandating of local salaries and working conditions was undertaken with the direct assistance of Executive Directors of State Municipal Leagues and State Associations of Counties and in collaboration with the National League of Cities (NLC), NACO, and the State Personnel Administrators Association.

Chapter 2 of this report presents a short history of the growth of public employee organizations and probes the factors contributing to their heady drive for recognition and representation and to their recently acquired reliance on direct action tactics. A brief summary of State legal and administrative provisions relating to public employer-employee relations at the State and local levels is also presented. This portion of the study concludes with a capsuled treatment of recent strikes and other "work stoppages."

Chapter 3 examines the current status of public labor-management relations at the local level, drawing heavily on the information procured from the three questionnaire surveys. The data from replies of cities having a population over 10,000 are initially analyzed. The results of the county survey are assessed subsequently and an examination of the extent and nature of State mandating of the conditions and terms of local governmental employment rounds out this phase of the study.

Chapter 4 probes the major problems and issues confronting public employer-employee relations at the State and local levels. The controversial topic of what are basic rights and responsibilities of public employees is assessed at the outset. The question raised by current State practice with reference to the coverage and administrative machinery of their respective public employee labor relations laws are analyzed next. The pros and cons of various procedural provisions designed to achieve effective discussions or negotiations are then weighed. Analysis of the impact of State as well as Federal mandating on the collective bargaining process completes this chapter on critical problems.

Chapter 5 summarizes the report's major findings and presents the Commission's sixteen recommendations under three major headings:

- The Rights and Privileges of Public Employees;
- The Essentials of Proper Public Employer-Employee Relations;
- State and Federal Mandating of Employment Conditions.

On June 12, 1969, the Commission held a public hearing on public employer-employee labor relations. The views of participants are presented in Appendix A. Finally, a complete compendium of the 21 (as of September 1969) State comprehensive labor relations statutes is provided in Appendix B.

The following is a glossary of public sector labor-management relations terms found in this report.[1]

**Agency Shop.** An arrangement which requires all employees who do not join the union to pay a fixed monthly sum, usually the equivalent of union dues and fees, as a condition of employment, to help defray the union's expenses in acting as bargaining agent for the group. Some arrangements provide that payments be allocated to the union's welfare fund or a charity, rather than to the union's treasury.

**Agreement, Collective Negotiations.** Written contract between an employer and an employee organization, usually for a definite term, defining the conditions of employment (wages, hours, vacations, holidays, overtime payments, etc.), and the procedures to be followed in settling disputes or handling issues that arise during the term of the contract.

**Appropriate Agent.** The employee organization designated by an appropriate government agency, or recognized voluntarily by the employer as the exclusive representative of all employees in the appropriate unit for purposes of collective bargaining, negotiations, and discussions.

**Appropriate Unit.** A group of employees recognized by the employer, or designated by an agency, as appropriate for representation by an employee organization for purposes of collective bargaining, negotiations, or discussions.

**Arbitration.** A method of settling disputes through recourse to an impartial third party whose decision is usually final and binding. Arbitration is resorted to in the interpretation of *existing* contract terms or provisions of memorandums of understanding, but it is not as frequently used in settling disputes over the negotiation of the provisions of a *new* contract. Arbitration is *voluntary* when both parties, of their own volition, agree to submit a disputed issue to arbitration, and *compulsory* if required by law to prevent a work stoppage.

**Association, Independent.** An independent association of public employees is not affiliated with a national labor union. Membership is often open to management as well as to employees.

**Association, Professional.** A group of public employees including both supervisory and rank-and-file personnel who belong to the same profession, and which may or may not be affiliated with a national organization. In no instances are these associations affiliated with a labor union.

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[1]The definitions used here are adapted from the National Governors' Conference, 1967 Executive Committee, *Report of Task Force on State and Local Government Labor Relations*, Chapter 6, pp. 65-69.

**Certification.** Formal designation, by a government agency, of the employee organization selected by the majority of employees to act as exclusive agent or formally recognized representative for all employees in the unit.

**Checkoff.** The deduction by the employer of union or association dues and fees from the pay of members, based on written authorization of the employees.

**Collective Bargaining or Negotiations.** A method of determining conditions of employment through bilateral negotiations between representatives of the employer and employee organizations. These parties are required by law to reach a settlement which is set forth in writing and which is mutually binding. The National Labor Relations Act defines the process as "the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or 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 does not compel either party to agree to a proposal or require the making of a concession . . ."

**Confidential Employee.** Refers to one whose responsibilities or knowledge in connection with the labor-management issues involved in bargaining, negotiations, or discussions would make his membership in the same organization of rank-and-file employees incompatible with his official duties.

**Employer Representative.** Duly authorized person to speak in behalf of a governmental agency or jurisdiction in dealings with employee organizations and who has the authority to recommend proposed settlements to the appropriate executive or legislative body.

**Exclusive Representative.** The employee organization recognized by the employer as the only organization to represent all employees in collective bargaining, negotiations, discussions, in an appropriate unit.

**Fact-Finding.** Investigation of a labor dispute by an individual, panel, or board. The fact-finder issues a report which describes the issues involved and may make recommendations for settlement.

**Fringe Benefits.** Benefits and payments received by or credited to workers in addition to wages, often for nonworking time. Examples are: supplemental unemployment benefits, pensions, travel pay, vacation and holiday pay, and health insurance.

**Grievance.** A statement of dissatisfaction, usually by an individual, but sometimes by the employee organization or management, concerning interpretation of an agreement or traditional work practices. In industry the grievance machinery (i.e., the method of dealing with individual grievances) is nearly always spelled out in the memorandum of understanding or contract. If a grievance cannot be handled at the shop level (where most of them are settled), and if the grievance arises out of an interpretation of the agreement, it is usually resolved by arbitration in collective negotiation statutes.

Many merit systems have grievance procedures in law or policy which usually prevail under meet and confer arrangements.

**Injunction.** A court order restraining individuals or groups from committing acts which, in the court's opinion, will do irreparable harm.

**Jurisidictional Dispute.** Conflict between two or more employee organizations over the right of their members to perform certain types of work. The term may also refer to disagreement between rival organizations over organizing or representing groups of workers.

**Maintenance of Membership.** An arrangement providing that those who are members of the employee organization at the time the agreement is negotiated, or who voluntarily join it subsequently, must maintain their membership for the duration of the agreement as a condition of employment.

**Management Rights.** Rights that management feels are exclusively their own and hence not subject to collective bargaining, negotiations, or discussions. These rights are often expressly reserved to management in statute, agreements, or memoranda of understanding. They often include the right to determine the services to be performed, to maintain efficiency and order, to hire, and so on. There is, however, no generally accepted definition of which rights should be non-negotiable.

**Mandating.** When a higher jurisdiction imposes terms and conditions of employment on a lower level jurisdiction.

**Mediation.** Effort by third party, often a government official, to reconcile the parties in a labor dispute so that settlement can be reached. The mediator has no power to force a settlement. He merely interprets, suggests, and advises, but does not make recommendations. "Mediation" is usually used interchangeably with "conciliation."

**Meet and Confer.** A method of determining conditions of public employment through discussions between representatives of the employer and employee organizations. These parties are required by law to endeavor to reach an agreement on matters within the scope of representation. If agreement is reached, it is reduced to a memorandum of understanding and presented to a jurisdiction's governing body or its statutory representative for final determination.

**Memorandum of Understanding, Meet and Confer.** A written, non-binding, record of recommendations

mutually agreed upon by an employer and employee organization concerning the conditions of employment (wages, hours, vacations, holidays, overtime, etc.), and the procedures to be followed in settling disputes or handling issues that arise during the terms of the memorandum. Such memoranda are prepared for submission to the executive or legislative body and shall become effective when such executive or legislature takes the necessary implementary action.

**Professional Employee.** Any employee whose work is: predominantly intellectual and varied in character; requires consistent exercise of discretion and judgment; requires knowledge of an advanced nature in a field of science or learning customarily acquired by prolonged study in an institution of higher learning; is of such character that the output or result accomplished cannot be standardized in relation to a given period of time. A professional employee is compensated for his services on a salary or fee basis.

**Recognition.** Formal acknowledgment by the employer that a particular employee organization has the right to represent all of the employees or a portion thereof. *Informal* recognition is given to any employee organization regardless of what status may have been accorded to any other and is merely an extension of the right of a public employee to be heard. *Formal* recognition is accorded to any employee organization chosen by a majority of employees in an appropriate unit; in dealings with management, the organization speaks for all employees in the unit. *Exclusive* recognition is given to an employee organization chosen by a majority of employees in an appropriate unit; in dealings with management, it speaks for all employees of the unit and in management's dealings with other employee organizations, it enjoys the privilege of attending all sessions. Any settlements reached in such sessions must be consistent with existing agreements or memoranda of understanding between the exclusive representative and management.

**Strike.** Any concerted stoppage of work by employees (including a stoppage by reason of the expiration of an agreement) and any concerted slowdown or other concerted interruption of operations by employees.

**Supervisor.** 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, the exercise of such authority is not merely routine or clerical in nature but calls for the use of independent judgment.

**Unfair Labor Practice.** A practice on the part of either union or management that violates provisions of State or local labor relations acts.

**Union or Organizational Security.** Protection of union status by provisions in an agreement establishing closed shop, union shop, agency shop, or maintenance-of-membership.

# *Chapter 2*

# THE EVOLUTION OF COLLECTIVE NEGOTIATIONS IN STATE AND LOCAL GOVERNMENT

Before examining current employer-employee practices at the State and local levels of government, a brief historical look should be taken at the growth of public employee organizations and the factors contributing to their drive for recognition and a voice in matters affecting the terms and conditions of work. The wisdom of according public employees a participatory role is accepted today by a large segment of public officials and administrators. The real question is not whether but how much participation. How and why has this come about?

## Public Employee Organizations

While the growth of public employee organizations at local, State, and national levels has not been commensurate with the growth of government itself, the organizations affiliated with national unions nevertheless comprise the most rapidly expanding sector of unionized labor. In 1956, the 915,000 organized government employees constituted approximately 5 percent of the total AFL-CIO membership; by 1964, 1.45 million such employees represented 8 percent of the total. The unionized public sector reached the 1.7 million mark in 1966 (the latest year for reliable figures) or 9 percent of all union members.[1] In addition, while the proportion of unionized workers in relation to the entire labor force had dropped in recent years, the proportion of government employees—unionized and nonunionized—in the country's labor force rose from 12 percent in 1956 to 16 percent in 1964, but dipped to 15.4 percent in 1966 and 15.0 percent in 1968.

Unionization efforts, however, have scored differing records at the various levels of government, with the greatest success occurring at the Federal level. Fifty two percent, or 1.4 million members, of all Federal executive branch employees in 1968 belonged to unions recognized for discussion purposes. Only 8 percent, or 644,000 members, of all State and local government workers belonged to affiliates of national unions in 1966. Two years later the figure edged up to 9.6 percent or approximately 890,000 members. These figures, of course, do not include professional associations such as those affiliated with the National Educational Association (NEA) or independent unions. Of the 1,026 organized cities over 10,000 population responding to a 1969 Advisory Commission survey made in cooperation with the International City Management Association (ICMA) and the National Association of Counties (NACO), 38 percent of the reporting jurisdictions with organized employees indicated that some of their employees were members of national unions, while 48 percent reported that organized employees belonged only to nationally affiliated local unions. Of the 117 organized metropolitan counties participating in the survey, 48 percent stated that some of their employees were members of national unions and 38 percent replied that their organized personnel were wholly in the unionized sector.

Yet unions constitute only one portion of the organized sector. Independent State and local employee associations loom large in the overall organized personnel picture with more than one-fifth of the total. For the municipalities participating in the ACIR-ICMA survey, 38 percent reported that some of their personnel were members of such associations and 14 percent indicated that their organized employees were exclusively associational members. Of the organized counties participating in the ACIR-NACO poll, 48 percent had some of their

[1] Everett M. Kassalow, "Trade Unionism Goes Public," *The Public Interest*, No. 14, Winter 1969 p. 122. Three public unions have been at the forefront of this general advance: the American Federation of Government Employees, the American Federation of State, County and Municipal Employees, and the American Federation of Teachers.

organized employees belonging to local associations and 14 percent had all such personnel in these organizations. Finally, professional associations with or without national organizations account for over 45 percent of the total organized State and local public sector.

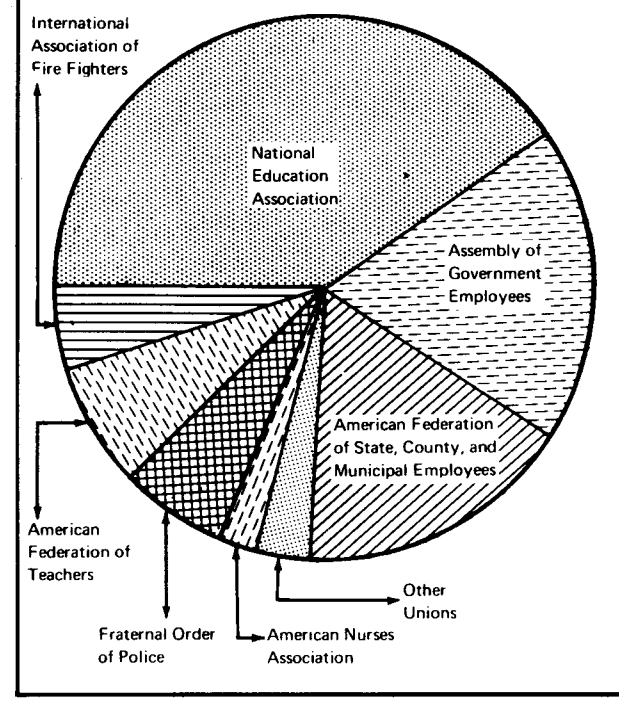
Most public employee organizations at the State, county, and municipal levels may be divided into three major categories.[2] The professional associations include–among others–employee groups for teachers and school administrators, nurses, and social and welfare workers. The craft unions primarily consist of single occupational groups of employees–while the industrial type of union or association cuts across broad occupational categories in various departments and sometimes in whole governmental jurisdictions.

**Professional Associations.** Professional associations represent a great variety of professional and semi-professional public employees at the State and local levels. All of them, however, are concerned with certification, training, codes of ethics, the right to exclude nonprofessionals from their organization, and the economic and social welfare of their members. Some of them are hardly distinguishable from unions with respect to employer relations and other related activities.

Among the largest is the National Education Association (NEA) with approximately one million members. Public school teachers constitute approximately 85 percent of the total membership of NEA with supervisors, principals, administrators and other school specialists accounting for the remaining 15 percent. This policy underscores a major difference between the NEA and the American Federation of Teachers, which limits its membership only to classroom teachers. Members of each of the 50 NEA State affiliates and most of the 8,000 local associations include teachers, supervisors, and administrators.[3] At the same time, the State affiliates enjoy a relatively high degree of autonomy in membership policies as well as in other matters.

The NEA in its early history emphasized activities centering on better schools and improved professional status of teachers. It frowned upon any overt activity of State and local affiliates lobbying for higher teachers' salaries and displayed a singular lack of interest in affiliating with the labor movement. Salary discussions and other "bread and butter" concerns were deemed unprofessional and labor unions were considered special interest groups.

Figure 1
Distribution of the 2,550,000 "Organized" State-Local Public Service Employees 1969




In the 1960's the NEA affiliates in large cities across the country began what has since amounted to a complete about-face. Prompted in part by classroom teacher gains of the AFL-CIO American Federation of Teachers in the large urban systems, NEA's doctrine of passive professionalism came under mounting criticism. At its 1961 convention, the Association for the first time called for discussions between local boards of education and the teaching profession for the purpose of achieving common consent on matters of interest to its members. While the word negotiation was not used, the resolution declared that a board of review should be established to resolve differences arising between local affiliates and boards of education. By 1962, however, the NEA began to use the term "professional negotiations" and in that year passed a landmark resolution establishing a system of "professional sanctions." A year later, the NEA issued guidelines for "professional negotiations" in an effort to distinguish its negotiating procedures from the traditional bargaining approaches of the private sector labor movement. Third party intervention in the forms of mediation and fact finding were

[2] Benjamin Werne, *Unit Report: Structure of Unions in the Public Employment Sector* (Washington, D.C.: National City-County Services on Management-Labor Relations, a joint service of the National League of Cities and the National Association of Counties, August 1967), p. 2.

[3] However, an increasing number of bargaining agreements involving NEA locals divide representation into two categories–teachers and supervisors–thereby avoiding the issue of "divided loyalty."

advocated, but the guidelines opposed the use of a State labor relations or mediation agency to settle disputes, asserting that this mechanism would remove bargaining from "education channels."

The NEA went on record in favor of exclusive recognition in 1965 and issued a revised edition of the guidelines. Until 1967, the Association maintained its traditional disdain for strikes even though prior to that time forms of work stoppages were not uncommon in many local jurisdictions. Professional holidays, for example, were organized in Utah, Oklahoma, and New Jersey during 1964 and 1965. The 1967 NEA convention resolved to support affiliates that strike school systems. Today the Association will provide affiliates with substantial legal and technical services and financial support when strikes occur.

During the past two years, the NEA has assembled and published comparative data on two national surveys of teacher-school board written negotiation agreements. Both surveys covered school systems with an enrollment of 1,000 or more. The results of the later survey are summarized in Table 1. A comparison of these figures with those for the 1966-1967 school year shows that the NEA increased its share of teacher representation during this period by 201,844, up from 77.7 percent to 79.3 percent of total national organized teacher membership.[4] In addition, the table indicates that of school districts over 1,000 enrollment, 93 percent had exclusive representation for negotiation or discussional purposes with NEA affiliates. However, in the really big school systems, the AFT has made significant gains in recent years at the expense of the NEA.

Another professional association, the National Association of Social Workers (NASW), was established in 1955 with the merger of several professional groups. As of December 1968, it had an overall membership of slightly over 50,000 including student and private sector worker members. "Bread-and-butter" economic activities are carried on only in a limited way by NASW, but they are a focal point of concern of separate, local social worker unions. The Association, however, has never viewed the latter as a threat to its existence, probably because less than 15 percent of all social welfare workers are unionized. The American Nurses Association is another such professional group with 204,000 members (1967) or 31 percent of all nurses working in public and private institutions. The ANA is concerned with more than just professional standards. It actively engages in employer discussions and collective bargaining, seeks exclusive recognition, negotiates contracts and agreements, and has, on a few occasions, engaged in walkouts. In the summer of 1968, the ANA removed the clause from its constitution prohibiting strikes.

Another national organization, the Fraternal Order of Police, is independent of labor movement organizations and is the principal professional organization for policemen. FOP does not consider itself a union, although local lodges in some communities engage in collective bargaining, handle grievances and represent the interests of their members to their employer. In general, however, the FOP concentrates on police pension matters and improvement in police working conditions. The Grand Lodge of FOP was organized in 1915 and today claims to have over 620 lodges in 18 States, with a total of 62,600 members.

**Craft-Type Unions.** One of the largest among the craft-type unions is the International Association of Firefighters (IAFF), an affiliate of the AFL-CIO. The organization had its origins in the fraternal and social clubs of the 1880's and today claims that better than 90 percent of the nation's uniformed firemen are enrolled within its membership. In 1935, Association members numbered approximately 26,000. Nearly three decades later, the union claimed 115,000 members. Last year (1968), the total came to 131,356. The Association has operated traditionally without written contracts or agreements and adhered loyally to its constitutional ban on strikes. At its 1968 convention, however, the membership removed the fifty-year-old no-strike pledge from its constitution. The union's international president, William Buck, stated:[5]

> . . . certain arbitrary public officials, knowing that we cannot and will not strike—because we voluntarily gave up this right when we were founded—have certainly taken advantage of the professional firefighters across the negotiating table.

Another major public employee "craft" union is the American Federation of Teachers, which affiliated with the old American Federation of Labor in 1919. Their greatest success has been in the large cities (see Table 1) with about 80 percent of the Federation's members employed in school systems with an enrollment of 100,000 or more. In terms of size, the AFT has a membership of 175,000 or about 20 percent of the country's organized teachers. For collective negotiation

[4] National Education Association, *Negotiation Research Digest*, Vol. 1, No. 10 (Washington, D.C.: June 1968), Table 4, p. B-5.

[5] Andrew W. J. Thompson, *Strikes and Strike Penalties in Public Employment*, (Ithaca: New York State School of Industrial and Labor Relations, Cornell University, Public Employee Relations Report No. 2, 1967), p. 9.



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Table 1
SCHOOL SYSTEMS WITH EXCLUSIVE REPRESENTATION IN NEGOTIATION BY NATIONAL AFFILIATION OF LOCAL ORGANIZATION: 1967-1968

| Stratum and Enrollment | Systems With Organizational Representation | National Education Association | | American Federation of Teachers | | Independent | | Mixed Affiliation | |
|---|---|---|---|---|---|---|---|---|---|
| | | Number | Percent | Number | Percent | Number | Percent | Number | Percent |
| 100,000 or more | 18 | 10 | 55.6 | 6 | 33.3 | 0 | 0.0 | 2 | 11.1 |
| 50,000 - 99,999 | 32 | 30 | 93.8 | 1 | 3.1 | 0 | 0.0 | 1 | 3.1 |
| 25,000 - 49,999 | 44 | 35 | 79.5 | 4 | 9.1 | 0 | 0.0 | 5 | 11.4 |
| 12,000 - 24,999 | 162 | 137 | 84.6 | 10 | 6.2 | 0 | 0.0 | 15 | 9.3 |
| 6,000 - 11,999 | 344 | 304 | 88.4 | 15 | 4.4 | 1 | 0.3 | 24 | 7.0 |
| 3,000 - 5,999 | 562 | 523 | 93.1 | 18 | 3.2 | 1 | 0.2 | 20 | 3.6 |
| 1,200 - 2,999 | 818 | 797 | 97.4 | 11 | 1.3 | 1 | 0.1 | 9 | 1.1 |
| 1,000 - 1,199 | 136 | 132 | 97.1 | 2 | 1.5 | 1 | 0.7 | 1 | 0.7 |
| TOTAL | 2,116 | 1,968 | 93.0 | 67 | 3.2 | 4 | 0.2 | 77 | 3.6 |

Source: National Education Association, Negotiation Research Digest, Vol. 1, No. 10, June 1968, Table 5 (parts A and B), pp B-5, B-6.

and discussion purposes, the AFT claims that their locals, in effect, serve as the representatives of approximately a quarter of a million school teachers.

Blue collar craft unions also are found frequently at national, State, county and municipal levels. Organization of some of these governmental employees has kept pace with the unionization of the counterpart trades in private industry. International unions active at the State, county, and municipal levels include the International Association of Machinists and Aerospace Workers; International Brotherhood of Teamsters, Chauffeurs, Warehousemen; Service Employees' International Union; United Brotherhood of Carpenters and Joiners of America; United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada; International Union of Operating Engineers; International Brotherhood of Electrical Workers; International Hod Carriers, Building and Common Laborers' Union; and United Mine Workers. No accurate count, however, is available concerning the number of State and local employees belonging to these craft unions.

Finally, establishment of a national police union has been announced with the goal of enrolling 325,000 law enforcement officers.

**Industrial-Type Unions.** The dominant "industrial-type" union at these levels is the American Federation of State, County, and Municipal Employees (AFSCME), an affiliate of the AFL-CIO. AFSCME traces its ancestry back to 1932 when a small group of Wisconsin State employees formed the Wisconsin State Employees Association and received an AFL charter. A month later, the local had 53 members. Within a year, the organization was exploring the possibility of establishing a national union, but this effort soon generated jurisdictional problems with the American Federation of Government Employees, another AFL affiliate. AFGE's charter from the AFL gave it ill-defined jurisdiction over all government employees, but its organizational activity had been confined almost exclusively to the Federal service. With the emerging threat of a rival national organization, the union's leadership decided to clarify AFGE's position and in 1935 amended its constitution to claim jurisdiction over State and local employees as well as those in the Federal sector.

At that time, the AFL leadership generally was indifferent to the unionization of public employees. Some heads of the older craft unions wanted no part of the public employee field. Yet, the AFL faced another far more difficult problem in 1935: the withdrawal of industrial unions to form the Congress of Industrial Organizations under the leadership of the Mineworker's President, John L. Lewis. The AFL leadership realized that unless the jurisdictional disputes between AFGE and the new organization of State and local employees were resolved, the newly organized CIO might issue a national charter to the ambitious newcomers.

Consequently, the AFL Executive Council promoted an agreement whereby the State and local group would become a semi-autonomous affiliate of AFGE, with its own convention and leadership. In effect, the AFGE would be merely the channel of communication with the parent AFL. The new group then held its first national convention in December 1935 and ratified the agreement. The organization thus formally became the American Federation of State, County, and Municipal Employees, adopted a constitution and elected its own officers.

But the AFGE-AFSCME relationship continued to be competitive. AFGE sought to limit AFSCME organizing to white-collar workers in State and local agencies—a restriction AFSCME would not accept. When AFGE voted in new leadership in 1936, the matter again was placed before the AFL Executive Council, and it finally decided to grant AFSCME independent status.

While the early growth of AFSCME was not impressive, its membership, as of July 1969, had soared to 425,000. It claims—with good reason—to be the fastest growing union in the country. Although two-thirds of its members hold blue collar jobs, its occupational categories range from garbage collectors to zoo keepers, from architects to psychologists, from laborers to lawyers. The Federation's chief aim is to achieve establishment of a system of collective bargaining which produces written agreements. Its basic procedural concerns then center on recognition, bargaining, union security, checkoff, and the use of signed contracts. In recent years, the union's members have not hesitated to strike even in jurisdictions where walk-outs are not permitted. In December 1968, the Federation reported that of its 700 local agreements 16 percent provided for a union shop, 12 percent for a modified union shop, and 10 percent contained a maintenance of membership provision. Five percent of the total stipulated an "agency shop" arrangement and half of the 700 agreements, concluded with jurisdictions in at least 24 States, call for binding arbitration of grievance disputes.

AFSCME reports that to date more than 1,850 local affiliates have been organized. Locals may represent an entire city or county, or alternatively a particular department, part of a department, or a group of employers in a particular occupational classification which cuts across many departments.

In addition to AFSCME, independent unaffiliated associations of public employees exist in at least 37 State governments and an indeterminate number of local governments. Their membership is drawn from all departments and agencies of these jurisdictions. Nearly all have non-selective enrollment policies and may count as members elected and appointive officials, department heads, supervisors, as well as rank and file workers. At least 14 States have two or more statewide public employee organizations and several associations have local unit affiliates organized on a substate regional basis.

These associations in the past generally have been satisfied with informal recognition by employers, and membership has never been required as a condition of employment. They usually have relied on lobbying to achieve better working conditions and have depended upon civil service procedures rather than on collective negotiations to settle disputes. Their affiliated competitors have frequently referred to them as "company unions."

With the recent passage of public labor-management legislation, however, a good deal of competition has been generated between these independent associations and the affiliated unions, both for membership and exclusive recognition rights. In California, Connecticut, Michigan, New Jersey, New York, Ohio, Oregon, and Rhode Island, State employee associations are now considered strong competitors with AFSCME affiliates. A number of associations at both the State and local levels now are beginning to scrap their traditional passive practices and are adopting a fairly militant stance. For example, the New York State Civil Service Employees Association—representing over 170,000 public workers—by a unanimous vote of its convention delegates dropped its 19-year-old no-strike pledge in March 1967 claiming that, "... while strikes may be abhorrent to the public and damage the image of public employees generally, they have proven a benefit to the employees and organizations involved."[6] Similarly, in October 1969 the 111,000-member California State Employees' Association abandoned the no-strike pledge it had adopted in 1959. The attitude of the Oregon State Employees' Association toward collective bargaining also shows signs of change. The Association now asserts that collective bargaining is another tool to represent their membership better, and written and enforceable agreements on employment matters presently are among its goals.

Published material on these unaffiliated organizations is limited and detailed analysis of the scope and nature of their membership and activities is virtually nonexistent.[7] What evidence there is, however, suggests

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[6] *New York Times*, March 16, 1967; cited by Eric Polisar, "Public Employees and the Right to Strike," a paper delivered before the Public Personnel Association, Ottawa, Canada, May 9, 1967.

[7] For a brief overview of the general characteristics of independent public employee organizations, see Kenneth O. Warner and Mary L. Hennessy, *Public Management at the Bargaining Table*, (Chicago: Public Personnel Association, 1967), pp. 28-31, 220-224.

that some of them are more than holding their own against unions in representation elections, partly because of their own increased militance and concern with establishing viable discussion and negotiation procedures.[8] In the most recent instance, for example, the 1969 representation election for New York State employees was won overwhelmingly by the independent employees' association. In 1969, the 32 State affiliates of the Assembly of Governmental Employees (AGE)–a loose confederation of State and local public employees associations–reported a total paid membership of approximately 500,000 State employees, a 41 percent increase since 1964.

## Factors Contributing to the Growth and Militancy of Public Employee Organization

Historically, professional and white-collar public employees have been reluctant to join labor unions. Nor have they displayed a high degree of interest in independent employee organizations. Today, however, dramatic changes are taking place. Not only have more government workers been joining public employee organizations and unions, but they have become more and more militant in their relationships with their employers. A number of factors have contributed to this trend, including the greater need for certain occupational groups to make themselves heard by employers, the new interest of the labor movement in organizing public personnel, the rivalry for recognition between public employee professional organizations and unions, the experience of several pioneering cities, the promulgation of Federal Executive Order 10988, and the reluctance of many public employers to face up to new personnel administration problems.

**The Pressures of the Non-PAT Sector.** The percentage of governmental employees that possesses considerable formal education, and has close ties with professional associations concerned with standards of work performance, is steadily increasing.[9] At the same time, the proportion of skilled and specialized technical employees also is rising in the public sector work force. The demand for these professional, administrative, and technical (PAT) personnel has created a shortage of persons possessing these skills. Hence, these persons are able to bargain individually and effectively with potential and actual employers and usually are able to secure quite favorable salaries and working conditions. If not satisfied with their present work assignment, they can move from one employer to another, from one part of the country to another, and still remain committed to one type of career employment in today's job market.

The semi-skilled, clerical, and even unskilled workers (the non-PAT sector), on the other hand, still make up a considerable part of the public personnel work force. Unlike their better-paid counterparts, they do not have the individual advantage of possessing skills in short supply or of having job mobility. In short, they do not possess, as individuals, a good bargaining position concerning their wages, hours of work, or working conditions. In the past, many governments have induced such persons to accept employment with the assurance that tenure and certain fringe benefits would be provided, possibly for the entire span of the individual's productive work career. But as the cost and standards of living have risen, especially during the past decade, this group of employees has become much more dependent on employee associations or unions to increase their earning power by dealing collectively with their employers.

**Union Effectiveness in Private Industry.** The effectiveness of labor unions in the private sector, notably in salary and fringe benefit matters, has also influenced public employee organizations at the State and local levels. As a result, the value of the collective bargaining technique in private industry was and is appreciated and public employees have begun to be more receptive to organizing efforts. Hence, public employee organizations, in relatively short order, have been able to organize, present their demands to management, and, in some instances, when it was deemed necessary, to use the outlawed weapon of work stoppage.

**Changes in Labor Movement Membership Strategies.** In addition to the above factors, the recent drives of the labor movement to organize public employees also can be attributed partly to the failure of unions to increase their membership in proportion to the number of workers in the rapidly growing total labor force. The total civilian labor force has now reached a new high of approximately 80 million, but labor union membership (18,325,000) has not risen proportionately–with only somewhat more than 2 million added to the membership rolls between 1955 and 1967. Put another way, two out of every five workers eligible for union membership in 1955 carried union cards; now only two out of every six do.

Labor traditionally has been strong in organizing blue collar workers, especially those working in production and maintenance jobs in the industrial plants, and in the skilled and semiskilled trades. But opportunities for expansion in the blue collar work force have been

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[8] Everett M. Kassalow, "Canadian and U.S. White-Collar Union Increases," *Monthly Labor Review*, Vol. 91, No. 7, (July 1968), p. 43.

[9] Winston W. Crouch, *Employer-Employee Relations in Council-Manager Cities*, (Washington, D.C.: International City Managers' Association, 1968), pp. 1-2.

shrinking. Automation and other technological changes have eliminated many production jobs. At the same time, the "service" industry (retail and wholesale trade, finance, insurance, and government) has been expanding. Moreover, white collar workers are now more numerous than is the blue collar sector. Yet, the former generally has been much more difficult to organize. No wonder labor has turned its attention to government, particularly when total employment in the public sector now is only about one million less than the total membership of the AFL-CIO.

**Professional Employee Association and Union Rivalry.** The emerging aggressiveness of the union movement in the public sector has come about in part as a result of confrontations between long-established public employee professional organizations and labor unions. As these groups fight for recognition and control, each often finds itself attempting to outdo the other in obtaining benefits for its members. Some observers feel that this is a primary cause of the militance now found in the education field.

**Pioneering Labor Relations Experience.** Certain authorities also claim that the earlier experience in the cities of New York, Philadelphia, and Cincinnati also has played a part in setting the stage of today's activity. New York's former Mayor Robert F. Wagner issued an executive order in 1958 permitting city employees limited use of collective negotiations; Philadelphia since 1939 has had labor agreements containing provisions for union security and exclusive recognition; and employee organizations in Cincinnati have enjoyed *de facto* recognition since 1951. These early agreements served as examples for other cities. As the 1967 Task Force Report of the National Governors' Conference points out:[10]

> Neither the pillars of city halls nor the foundations of the civil service crumbled when conditions of employment were negotiated instead of being fixed unilaterally. But it took a bit of adjustment. The spontaneous reaction of many personnel directors was: "It's against civil service regulations. We can't agree to this." But they somehow managed to work things out.

In a like fashion, some contend that recent State labor relations legislation has served to generate organizational militance, even in small and rural local jurisdictions.

**Federal Labor-Management Policy.** Executive Order 10988, issued by President Kennedy in 1962 to establish a uniform policy on employee-management relations in the Federal service, also helped to stimulate organizational growth at the State and local levels. The Order, considered by many a landmark in the public labor relations field, was unequivocal in its support for union recognition and for establishing a meet and confer system in the public sector. In terms of its State and local impact, Jerry Wurf, President of the AFSCME, stated:[11]

> His (President Kennedy's) action, which gave federal employees the right to organize and set an example that has been followed by many states, counties, and cities, probably was a major contributing factor in the rapid growth of the American Federation of State, County, and Municipal Employees.

Other observers in and out of government, however, deplored the Kennedy Order since they felt that it opened a Pandora's box.

Nevertheless, on October 29, 1969 President Nixon moved to revamp the 1962 Order. His Executive Order 11491, "Labor-Management Relations in the Federal Service," made significant changes in the membership rights of certain types of personnel; in the status accorded to employee organizations in the negotiations process; and in the machinery available to administer and supervise the Federal employer-employee relations program, to settle policy issues, and to handle disputes and grievances. Despite these modifications, wages and salaries and related "bread and butter" issues remained outside of the scope of negotiable items. Agencies and employee organizations were required to meet and negotiate "in good faith" only with respect to grievances, personnel practices and policies, and other matters affecting conditions of work.

**A Matter of Mood?** Still others explain public employee aggressiveness as an extension of the contemporary revolt against authority and as a spill-over from the civil rights movement and protest groups involved in direct confrontation with governmental power. From this vantage point, organizational militance becomes a matter of mood, of questioning traditional procedures for seeking redress, of emulating direct action tactics that appear to produce results. Moreover, in this instance, the aggressiveness is displayed by persons charged with the difficult task on a day-to-day basis of carrying on the many public services demanded by the electorate. At the same time, so the reasoning runs, this sector of the work force is most victimized by

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[10] National Governors' Conference, *Report of Task Force on State and Local Government Labor Relations*, (Chicago, Ill.: Public Personnel Association for the 1967 Executive Committee of the National Governors' Conference, 1967), p. 32.

[11] Jerry Wurf, "Unions Enter City Hall," *Public Management, Journal of the International City Managers' Association*, (September 1966), p. 245.

the distance, impersonality, and inflexible procedures of government and most subject to abusive and annoying treatment from the press and the public-at-large. Group militance thus becomes a matter of building vocational esteem, of asserting the members' individual worth, of forcing the impersonal "them" to recognize their existence and role in society and in the "system."

**Management Lethargy**. Finally, the "head-in-the-sand" attitude of many public administrators has forced increasing militancy on the part of public employees.[12] For example, many government employers fail, either through carelessness or by design, to consult with their employees about procedures and policies that affect them. Many are wedded to an absolutist management ethic, which has long since been modified by governing bodies in other jurisdictions. Some governmental employers still refuse to have anything to do with unions or employee organizations, despite court decisions upholding the employee's right to join such organizations. These practices are frustrating to employees and do nothing to generate positive labor-management relations. In such cases, it is not surprising that unions attempt to reach beyond the administrator's authority to legislative bodies, the courts, and even the public to achieve their objectives. It is an unfortunate fact that this route is the only one for public employees in some jurisdictions to follow, if they are to be heard.

## State Legal and Administrative Authorization

Until 1959, when Wisconsin enacted a labor relations law for the public sector, there was no State statutory obligation on public management to deal collectively with its employees.[13] But action on this front has accelerated with each legislative session during the past decade. Witness the fact that in 1967 alone new legislation covering some aspect of labor relations in the public sector was adopted by 17 states.[14] In the 1968 and 1969 legislative sessions, ten States enacted new or significantly amended statutes affecting local and State public employees. At the present time, wide variations exist in State legal and administrative authorizations regarding labor relations in the public service. Current experience is summarized in Table 2. (See Appendix B for a compilation of selected labor relations laws covering State and local employees.)

**Meet and Confer and Collective Negotiations.** Two general approaches characterize State legislation dealing with public employer-employee relations: meet and confer or collective negotiations. The basic and most significant difference between the two types of laws is the status accorded to the public employer in discussions over wages, hours, and conditions of work with employee organizations. The employer, under a meet and confer system, is given authority to make the final decision on most of the issues. This system is rooted in the assumption that there are basic differences between public and private employment, and that the distinctive features of the former require a significantly different approach in public labor management relations, one that is somewhat more protective of management's prerogatives. Under a collective negotiation system the public employer and representatives of an employee organization meet more nearly as equals. To put it another way, management's rights are less broad than under meet and confer and employee participation is somewhat better protected. As a result this system tends to resemble the labor relations pattern found in business and industry, although the right to strike is prohibited.

Table 3 provides a checklist of provisions of selected public labor relations laws of 21 States and highlights some essential differences between the meet and confer and collective negotiations approaches. The laws of the five meet and confer States (California, Hawaii, Minnesota, Missouri, South Dakota)[15] generally differ from those of the 16 collective negotiation States in the requirements for reaching a binding agreement, procedures for representation and dispute settlement, authorization for dues checkoff, and specification of unfair practices. Of the meet and confer States, only the Missouri law requires the parties to reach a binding written agreement and establishes procedures permitting exclusive representation. Unlike the collective negotiation statutes which provide for mediation, fact-finding and arbitration procedures to settle disputes, the meet and confer statutes are much more limited. The Hawaii and Missouri laws make no provision for settlement. The California act provides for mediation, but only if both parties consent, while either party may request mediation in Minnesota and South Dakota. Dues checkoff is authorized in none of the meet and confer

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[12] Felix A. Nigro, "Collective Negotiations in the Public Service," *Public Administration Review*, (March-April 1968), pp. 115-117.

[13] The following discussion is based partly on *Report of Task Force on State and Local Government Labor Relations, op cit.*

[14] Richard S. Rubin, *A Summary of State Collective Bargaining Law in Public Employment*, Public Employee Relations Report, No. 3, (Ithaca, N.Y.: New York State School of Industrial and Labor Relations, 1968), p. i.

[15] The Michigan meet and confer system for State employees was established by the Civil Service Commissioner pursuant to a constitutional authorization which precludes legislative action over State civil service rules and regulations.

TABLE 2
Tabular Summary of Legal and Administrative Authorizations
August 1969

Abbreviations:
STATE-State employees
LOCAL-Political subdivision employees
ALL-All State and political subdivision employees
L-Law
A-Attorney general opinion
C-Court decision
EO-Executive order

| State | Right to Organize | Right to Present Proposals | Right to Meet & Confer | | Right to Bargain Collectively | | Detailed Recognition Procedures (Elections, Certification Etc.) | Union Security | Dispute Settlement Provisions | Strike Prohibition |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | Permissive | Mandatory | Permissive | Mandatory | | | | |
| Ala. | Fire (L) | Fire (L) | | | Water Works Board (A) | | | | All (A)<br>Fire (L) | |
| Alaska | | | | | All (L) | | | | | |
| Ariz. | All (L) | | | | | | | | | |
| Ark. | All (L) | | | | State (A) | | | | | State (A) |
| Calif. | All (L) | Fire (L) | | State and Local (L) Teachers (L) | Hospital District (A) | | Teachers (L) | Right to Refrain (L) | | City (C)<br>Fire (L)<br>Pub. Util (C) |
| Colo. | | | State Univ. (A) | | | | | | | |
| Conn. | Local (L)<br>Teachers (L) | | | | | Local (L)<br>Teachers (L) | | | Local (L)<br>Teachers (L) | Local (L)<br>Teachers (L)<br>All (C) |
| Del. | All except Teachers (L) | | | | Municipal (L) | State and County (L)<br>Transit (L) | State and County (L) | | State & County (L) | All (L) |
| Fla. | All (L) | County (A)<br>Teachers (A)<br>All (L) | Teachers (L) | | | County Fire (L) | | Right to Refrain, State & Local (L) | County Fire (L)<br>Public Utils. (L) | All (L) |

TABLE 2 (Continued)

| State | Right to Organize | Right to Present Proposals | Right to Meet & Confer | | Right to Bargain Collectively | | Detailed Recognition Procedures (Elections, Certification Etc.) | Union Security | Dispute Settlement Provisions | Strike Prohibition |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | Permissive | Mandatory | Permissive | Mandatory | | | | |
| Ga. | | | | | School Boards (A) | | | | | State (L)<br>Teachers (A) |
| Hawaii | All (L) | All (L) | | State & County (L) | | | | Right to Refrain, State & County (L) | | All (L) |
| Idaho | All (A) | | | | City (A) | | | | | |
| Ill. | Fire (L)<br>State (L)<br>Teachers (C) | | | | Transit Authority (L)<br>Univ. (L)<br>Bd. of Ed. (C)<br>State (L) | | | | Fire (L)<br>Transit Auth. (L) | All (C) |
| Ind. | Teachers (L) | | All (A)<br>Univ. of Ind. (A) | | | | | | Public Utility (L) | |
| Iowa | All (C)<br>State (A) | All (L) | | | All (C) | | | | Fire (L) | All (C)<br>State (A) |
| Kansas | All (L, A) | | | | | | | | Public Utility (L) | |
| Ky. | State (L)<br>All (A)<br>Teachers (A) | | City (A)<br>Teachers (A)<br>State (L, A) | | | | | | | State (L) |
| La. | Public Transportation (L)<br>Fire, Police (A) | | | | | Public Transportation (L) | | | Public Transportation (L) | |

TABLE 2 (Continued)

| State | Right to Organize | Right to Present Proposals | Right to Meet & Confer | | Right to Bargain Collectively | | Detailed Recognition Procedures (Elections, Certification Etc.) | Union Security | Dispute Settlement Provisions | Strike Prohibition |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | Permissive | Mandatory | Permissive | Mandatory | | | | |
| Maine | All (A)<br>Local (L) | All (A)<br>Local (L) | | | | Fire (L)<br>Local (L) | Fire (L)<br>Local (L) | | Fire (L)<br>Local (L) | Fire (L)<br>Local (L) |
| Md. | Teachers (L) | | Sanitary Comm. (A) | | | Teachers (L) | Teachers (L) | | Teachers (L) | Teachers (L) |
| Mass. | Local (L)<br>State (L) | | | | | Local (L)<br>State (L) | Local (L)<br>State (L) | Right to Refrain, State, Local (L) | Local (L)<br>State (L) | Local (L)<br>State (L) |
| Mich. | Local (L)<br>State (L) | | State (L) | | | Local (L) | Local (L) | Agency Shop, Local (C) | Local (L) | All (L) |
| Minn. | All (L)<br>Teachers (L)<br>Nonprofit Hospitals (L) | | | State & Local (L) Teachers (L) | | Nonprofit (L) Hospital | State & Local (L) Teachers (L) | Right to Refrain, State, Local (L) | State & Local (L) Teachers (L) Nonprofit Hospitals (L) | All (L) |
| Miss. | | | | | | | | | | |
| Mo. | All except Police and Teachers (L) | | | All except Police and Teachers (L) | | | | Right to Refrain, All except Police, Teachers (L) | All (L)<br>Fire (L) | All (L) |

TABLE 2 (Continued)

| State | Right to Organize | Right to Present Proposals | Right to Meet & Confer | | Right to Bargain Collectively | | Detailed Recognition Procedures (Elections, Certification Etc.) | Union Security | Dispute Settlement Provisions | Strike Prohibition |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | Permissive | Mandatory | Permissive | Mandatory | | | | |
| Mont. | Nurses (L)<br>County (A) | | | | County (A) | Nurses (L) | Nurses (L) | | | |
| Nebr. | Fire (L)<br>Teachers (L)<br>Local (L)<br>All (L) | | Teachers (L) | | All (L)<br>Local (L) | | All (L)<br>Teachers (L) | Right to Refrain (L) | All (L)<br>Fire (L)<br>Teachers (L)<br>Public Utils. (L)<br>Local (L) | Public Util. (L) |
| Nev. | Local (L) | | | | | Local (L) | Local (L) | Right to Refrain (L) | Local (L) | All (A)<br>Local (L) |
| N. H. | City (L)<br>State (L) | | | | City (L) | State (L) | State (L) | Agency Shop, Local (C)<br>Right to Refrain State (L) | State (L) | All (C)<br>State (L) |
| N. J. | All (L) | | | | | All (L) | All (L) | Right to Refrain (L) | Public Util. (L)<br>(All (L) | All (C)<br>Public Util. (L) |
| N. M. | Mass Transportation (L)<br>All (A) | | All (A) | | Mass Transportation (L)<br>City (C) | | | | | All (A)<br>Teachers (L)<br>Mass Trans. (L) |
| N. Y. | All (L) | | | | | All (L) | All (L) | Right to Refrain, All (L) | All (L) | All (L) |
| N.C. | | | | | | | | | | |
| N.D. | All (L) | | | | All (A) | | | | All (L) | City (C) |
| Ohio | | | | | | | | | | All (L) |

TABLE 2 (Continued)

| State | Right to Organize | Right to Present Proposals | Right to Meet & Confer | | Right to Bargain Collectively | | Detailed Recognition Procedures (Elections, Certification Etc.) | Union Security | Dispute Settlement Provisions | Strike Prohibition |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | Permissive | Mandatory | Permissive | Mandatory | | | | |
| Okla. | State (A) | | | | | | | | | State (A, C) |
| Ore. | State & Local (L) Teachers (L) Nurses (L) | | | Teachers (L) | | State & Local (L) Nurses (L) | Teachers (L) Nurses (L) | Right to Refrain, State (L) | State & Local (L) Teachers (L) Nurses (L) | All (L) |
| Pa. | All (C) State (EO) | All (L) | State (EO) | | | Fire Police (L) | | | Fire Police (L) Public Util. (L) All (L) | All (L) |
| R.I. | Local, Fire, Police, State Teachers (L) | | | | | Local, Fire, Police, State Teachers (L) | Local (L) Teachers (L) | | Fire, Police Local Teachers (L) | All (L) |
| S. C. | | | | | | | | | | All (A) |
| S. D. | All (L) | | | All (L) | | | All (L) | Right to Refrain (L) | | All (L) |
| Tenn. | | | | | | | | | | All (C) |
| Texas | All (L) | | | | | | | | | All (L) |
| Utah | All (L) | | | | Local (A) State (A) | | | | | All (A) |

TABLE 2 (Continued)

| State | Right to Organize | Right to Present Proposals | Right to Meet & Confer | | Right to Bargain Collectively | | Detailed Recognition Procedures (Elections, Certification Etc.) | Union Security | Dispute Settlement Provisions | Strike Prohibition |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | Permissive | Mandatory | Permissive | Mandatory | | | | |
| Vt. | State except Police (L)<br>City except Professionals (L)<br>State (L) | | | | City except Professionals (L) | State (L) | State (L) | Right to Refrain<br>State (L)<br>City, except Professionals (L) | State (L)<br>City (L) | State (L)<br>City (L) |
| Va. | All (L) | All (L) | | | City (A) | | | | | All (L) |
| Wash. | State, Local Teachers (L) | | | | Public Util. (L) | State, Local (L)<br>Teachers (L) | State, Teachers, Local (L) | | State Teachers, Local (L) | All (L) |
| W. Va. | All (A) | All (A) | | | | | | | | All (A) |
| Wisc. | Local, except Police (L)<br>State (L) | | | | | Local (L)<br>State (L) | Local (L)<br>State (L) | Right to Refrain, State (L)<br>Local (L) | Local (L)<br>State (L)<br>Public Util. (L) | All (L) |
| Wyo. | Fire (L) | | | | | Fire (L) | | | Fire (L) | |

Source: National Governors' Conference, Task Force Report on State and Local Government Labor Relations, (Chicago: 1967), pp 85-88. Updated January 1969 by the research staff of the Public Personnel Association. Data on union security obtained from AFL-CIO Maritime Trades Department, Executive Board, Collective Bargaining in the Public Sector: An Interim Report, Washington, D. C. (February 13, 1969), pp. 52-61. Supplemented by data received through August 1969.

States and in only five of the collective negotiation jurisdictions. Unfair practices provisions are either not provided for, or consist of a simple non-interference clause in the meet and confer laws. A detailed specification of unfair acts for both employers and employees, however, is provided in eight of the collective negotiation statutes. The table would indicate that the laws of most of the meet and confer as well as most of the collective negotiation States hardly differ at all. Detailed analysis of these various provisions, however (see Appendix B), shows greater detail, more responsibilities assigned, and a wider range of dispute settlement procedures, provided in the collective negotiations statutes. Finally, no special differences between the two systems appear in the statutory treatment of the scope of subjects to be discussed or negotiated.

**Statutory Provisions Affecting Local Public Employees.** Generally, four broad approaches characterize the various State policies relating to the obligations of *local* officials with their employees in the field of labor relations.

- Avoidance of any recognition of employee organizations and silence concerning methods for resolving labor-management disputes at the local government level. (In some States where no such legislation exists, however, local jurisdictions have established their own negotiating procedures either by ordinance, executive order, or on a more informal basis.)
- Strengthening the hand of city officials who may wish to seek injunctions against striking public employees. The statutes here deal almost exclusively with controlling strikes, and ignore other facets of labor relations.
- Legislation giving certain local government occupational groups special consideration regarding organizing, presenting grievances, and negotiations. The groups frequently singled out include teachers, firemen, law enforcement officers, and utility and transit workers.
- A broad comprehensive statute setting forth policies and procedures, based on the meet and confer or collective negotiation concepts and covering all local employees and sometimes State personnel as well. These statutes usually offer the services of a State administrative agency as a third party to settle disputes.

**Statutory Provisions Affecting State Employees.** State employee organizations in 26 States have been accorded meet and confer or collective negotiation rights by law, attorneys general opinions, executive orders, or court decisions. These legal and administrative actions cover State employees separately from local employees in 12 of the States. Of the 26 States, ten have laws or rules permitting or requiring administrators to meet and confer with State employee groups; 16 permit or require employers to establish collective negotiations with such groups. Employers in five States (California, Hawaii, Minnesota, Missouri, and South Dakota) are required to meet and confer with employees while in ten States (Delaware, Massachusetts, New Hampshire, New Jersey, New York, Oregon, Rhode Island, Vermont, Washington, and Wisconsin) they are required to bargain collectively with employee organizations.

On the other hand, Texas and Virginia forbid their officials to negotiate with unions and Alabama and North Carolina prohibit their employees from joining unions. In general, State practice tends to be more restrictive in collective bargaining matters for their own employees than for local government personnel.[16]

**Permitting or Mandating Discussions or Negotiations for Local and State Employees.** In terms of *mandating* collective negotiations, 14 States–Connecticut, Delaware, Maine, Massachusetts, Michigan, Nevada, New Hampshire, New Jersey, New York, Oregon, Rhode Island, Vermont, Washington, and Wisconsin–have enacted a labor relations law requiring this for either local or State employees, or both (see Table 3).[17] Alaska, Nebraska, and North Dakota statutes *permit* collective bargaining. Moreover, seven others, Arkansas, Idaho, Iowa, Montana, North Dakota, Utah and Virginia permit the State, localities, or both, but at their discretion, to undertake collective negotiations as a result of attorneys general opinions.

Five States–California, Hawaii, Minnesota, Missouri and South Dakota–have statutes that require management to meet and confer with public employees concerning wages and conditions of work. In three States, Indiana, Kentucky, and New Mexico, local public employees may, as a result of attorneys general opinions, be accorded meet and confer rights. The Pennsylvania attorney general has ruled that State employers *may* estabish meet and confer procedures with their employees.

Finally, a number of States have enacted statutes requiring management to bargain collectively only with certain occupational categories, such as teachers, policemen, and firemen.

**Legal Bases of the Right to Organize.** While nearly two-fifths of the States have enacted legislation requiring negotiations or discussions, the right to organize is

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[16] *Report of Task Force on State and Local Government, op. cit.*, p. 30.

[17] Opinions vary as to whether Minnesota and Missouri should be included within this group of States. See Rubin, *op cit.*, p. i.

Table 3. A CHECKLIST OF PROVISIONS OF SELECTED STATE PUBLIC LABOR RELATIONS STATUTES
October 1969

| State | The Statute's Coverage | | | | | Negotiations - Discussions | | | | Type Agreement | Scope of Negotiations |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | State | Local | Public School Teachers | Local Police | Fire | Collective Negotiations Mandatory | Collective Negotiations Permissive | Meet & Confer Mandatory | Meet & Confer Permissive | Required to Reach Binding Written Agreement | Detailed Restriction |
| Alaska (1959) | x | x | x | x | x | | x | | | | |
| California (1961, 1968) | x | x | | x | | | | x | | | x[2] |
| Connecticut (1965, 1967) | | x | | x | x | x | | | | x | x[3] |
| Delaware (1965) | x | x | | x | x | x | | | | x | |
| Hawaii (1967) | x | x | x | x | x | | | x[1] | | | |
| Maine (1969) | | x | x | x | x | x | | | | x | x[3, 4] |
| Massachusetts (1962, 1965) | | x | x | x | x | x | | | | x | |
| Michigan (1947, 1965) | | x | x | x | x | x | | | | x | |
| Minnesota (1965) | x | x | | x | x | | | x | | | |
| Missouri (1967) | x | x | | | x | | | x | | x | |
| Nebraska (1969) | | x | | x | x | | x | | | | |
| Nevada (1969) | | x | x | x | x | x | | | | | |
| New Hampshire (1969) | x | | | | | x | | | | x | x |
| New Jersey (1968) | x | x | x | x | x | x | | | | x | |
| New York (1967, 1969) | x | x | x | x | x | x | | | | x | |
| Oregon (1965, 1969) | x | x | | x | x | x | | | | | |
| Rhode Island (1967) | | x | | | | x | | | | x | |
| South Dakota (1969) | x | x | x | x | x | | | x | | | |
| Vermont (1969) | x | | | | | x | | | | x | |
| Washington (1961, 1967) | x | x | | x | x | x | | | | x | x[4] |
| Wisconsin (1966) | x | | | | | x | | | | x | x |

[1] A 1968 constitutional amendment provides that the Legislature may authorize public employees to organize and bargain collectively.
[2] Excludes mission of the agency only from scope of discussions.
[3] Only those matters delegated to the civil service commission are not negotiable.
[4] The only real restriction is that educational policies do not have to be negotiated with teachers.

Table 3 (Continued)

| State | Representation | | | | | Dispute Settlement | | | | | Dues Checkoff |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | Procedures Set Forth | | | Parties Establish Their Own Procedures | No Provision | Mediation | Fact-Finding | Arbitration | Parties Establish Their Own Procedures | No Provision | Authorized |
| | Exclusive | Formal | Informal | | | | | | | | |
| Alaska | | | | | x | x | | | | | |
| California | | | | x | | | | | | | |
| Connecticut | x | | | | | x | x | x | | | x |
| Delaware | x | | | | | x | | x | | | x |
| Hawaii | | | | | x | | | | | | |
| Maine | x | | | | | x | x | x | | | |
| Massachusetts | x | | | | | x | x | x | | | |
| Michigan | x | | | | | x | x | | | | |
| Minnesota | | x | x | | | | | | | | |
| Missouri | x | | | | | x[3] | | | | | |
| Nebraska | x[1] | | | | | x | x | | | | |
| Nevada | x | | | | | x | x | | | | |
| New Hampshire | x | | | | | x | x | x | x | | x |
| New Jersey | x | | | | | x | x | | | | |
| New York | x[2] | | | | | x | x | x | x | | x |
| Oregon | x | | | x | | x | x | x | | | |
| Rhode Island | x | | | | | x | | x | | | |
| South Dakota | | x | x | | | x[3] | | | | | |
| Vermont | x | | | | | x | x | x | | | |
| Washington | x | | | | | x | | | | | x |
| Wisconsin | x | | | | | x | x | | | | x |

[1] Subject to study by Court of Industrial Relations.

[2] Subject to study by Public Employment Relations Board.

[3] Representation and recognition disputes only.

Table 3 (Continued)

| State | Unfair Practices | | | Administrative Machinery | | | |
|---|---|---|---|---|---|---|---|
| | Detailed Specification for Both Employees & Employers | Simple non-Interference Clause | No Provision | Existing State Agency | New Independent State Agency | Local Agency Employer | No Provision |
| Alaska | | | x | x | | | |
| California | | x | | | | x[1] | |
| Connecticut | x | | | x | | | |
| Delaware | | x | | x | | | |
| Hawaii | | | x | | | | x |
| Maine | x | | | x | | | |
| Massachusetts | x | | | x | | | |
| Michigan | | | | x | | | |
| Minnesota | | x | | x | | | |
| Missouri | | x | | x | | | |
| Nebraska | | | x | x | | | |
| Nevada | | x | | | x | | |
| New Hampshire | | x | | | x | | |
| New Jersey | | x | | | x | | |
| New York | x | | | | x | | |
| Oregon | | x | | | x | | |
| Rhode Island | x | | | x | | | |
| South Dakota | | x | | x | | | |
| Vermont | x | | | | x | | |
| Washington | x | | | x | | | |
| Wisconsin | x | | | x | | | |

[1] Employing agency for State employees.
Source: State statutes.

protected for substantially all public employees in 33 States either by law, attorneys general opinions, court decisions, or executive orders. In two other States (Illinois and Oklahoma), this right is given only to State employees, while in three others (Connecticut, Nebraska, and Nevada) only local employees are permitted to organize.

In 12 States no legal or administrative authorization is provided for public employees—either at the State or local levels—to organize. Some of these jurisdictions, however, have made exceptions in that certain occupational groups, such as teachers, policemen, and firemen, are allowed to establish public employee organizations.

**Coverage, Administrative Machinery, Dispute Settlement, and Unfair Practices.** The other basic provisions of these State laws sometimes highlight and sometimes reveal no differences between the States adopting the meet and confer or collective negotiation system.[18] A single law may cover all State and local public employees as is the case in 11 States, or legislation may be enacted separately for State and local employees—Massachusetts, Michigan, Rhode Island, Vermont, and Wisconsin. Four States—Minnesota, Nebraska, Oregon, and Washington—have single legislation for State and local employees, but have enacted separate laws covering negotiations between teachers and their employers. Coverage clearly does not serve as a differentiating factor between the meet and confer and collective negotiations systems.

A new independent State-level agency may be established to settle representation disputes, investigate unfair labor practices, determine bargaining units, and conduct elections as in Connecticut, Massachusetts, Michigan, New Hampshire, Rhode Island, New Jersey, New York, Vermont, and Wisconsin. On the other hand, a civil service board or commission, as in California, may be assigned responsibility for administering the act. Statutes covering school personnel in Connecticut, Minnesota, and Oregon designate an *ad hoc* committee or local school boards as the administering unit to settle disputes. Here again no clear differences emerge as between the two contrasting systems.

Analysis of the various provisions covering settlement of disputes indicates that all of the 16 collective negotiation statutes, save for Alaska's, have one feature in common. Although there are differences of terminology and detail, these laws call for fact-finding and binding or non-binding arbitration to resolve bargaining or negotiating impasses. By way of contrast, dispute settlement provisions of the five meet and confer States are limited to mediation of recognition and representation disputes. Fact-finding and arbitration procedures can be used but only with the concurrence of the employer.

Finally, the fourth area of comparison—unfair labor practices—the laws are uneven in dealing with actions of employers and employees harmful to the discussion or negotiating process. All five meet and confer States include a non-interference clause in their laws. Two of these State laws (California's and Minnesota's) deal with the refusal of either party to meet and confer "in good faith," thus affording employee organizations legal recourse if management is obstructionist. The collective negotiation States, as in Connecticut, Maine, Massachusetts, New York, Rhode Island, Vermont, Washington, and Wisconsin, set forth in detail actions that are prohibited on the part of either the employer or employee. The procedures for handling charges of unfair labor practices are in the general public employee relations acts of all of these States, save for Wisconsin, where they are in the laws covering private industry. The provisions concerning prohibited practices in the remaining collective bargaining States are much more general. Most of them merely provide for the right of a public employee to join or not to join a labor or employee organization. Procedural provisions for investigating and hearing complaints concerning unfair practices and assessing penalties, for the most part, are lacking.

**Public Employer-Employee Labor Relations Legislation for Teachers.** Since public employee unionism has accelerated rapidly among teachers, a brief examination of State legislation applicable to this sector of the public service is in order. By the end of 1968, 16 of the 50 States had enacted legislation either permitting or mandating the right of teachers to meet or bargain collectively with boards of education. Nine of these statutes deal exclusively with teaching personnel, while the other seven cover other personnel as well. Sixteen States then have enacted legislation that deals either with teachers separately or all government employees with respect to collective bargaining (see Table 4).

The nine States having separate legislation for teachers restrict coverage to certified personnel and usually exempt the chief school official. *Ad hoc* agencies or committees, or educational agencies are designated to determine bargaining units, establish election procedures, and overcome impasses. These statutes also imply or specify that professional issues (curriculum revision,

[18] In addition to material in the *Report of Task Force on State and Local Government Labor Relations, Ibid.*, pp. 50-61, see also Kurt L. Hanslowe, *The Emerging Law of Labor Relations in Public Employment*, New York State School of Industrial and Labor Relations, Cornell University, Ithaca, New York, 1967, pp. 59-70; AFL-CIO Maritime Trades Department, Executive Board, *Collective Bargaining in the Public Sector*, An Interim Report (Washington, D.C.: February 13, 1969), pp. 33-43, pp. 52-61.



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TABLE 4
LEGISLATION PERMITTING OR MANDATING THE RIGHT TO MEET AND CONFER OR BARGAIN COLLECTIVELY BETWEEN TEACHERS AND BOARDS OF EDUCATION BY STATES
1968

| | Right to Meet & Confer | Right to Bargain Collectively |
|---|---|---|
| | Permissive - Mandatory | Permissive - Mandatory |
| Alaska | | X |
| California | X | |
| Connecticut | | X |
| Florida | X | |
| Maryland | | X |
| Massachusetts | | X |
| Michigan | | X |
| Minnesota | X | |
| Nebraska | X | |
| New Hampshire | X | |
| New Jersey | | X |
| New York | | X |
| Oregon | X | |
| Rhode Island | | X |
| Washington | | X |
| Wisconsin | | X |

Source: Education Commission of the States, Background Materials on Collective Bargaining for Teachers, prepared for Annual Meeting (June 26-28, 1968), p. 18. Updated by ACIR to include 1968 acts enacted in Maryland and New Jersey.

text book selection, in-service training rules, and student-teacher relationships) are bargainable.

The seven States that have included teachers along with other groups in their collective bargaining legislation have utilized State labor boards to determine bargaining units, to set up election procedures, and to resolve impasses. Usually the statute contains a statement of unfair labor practices and penalties for violations may be provided.

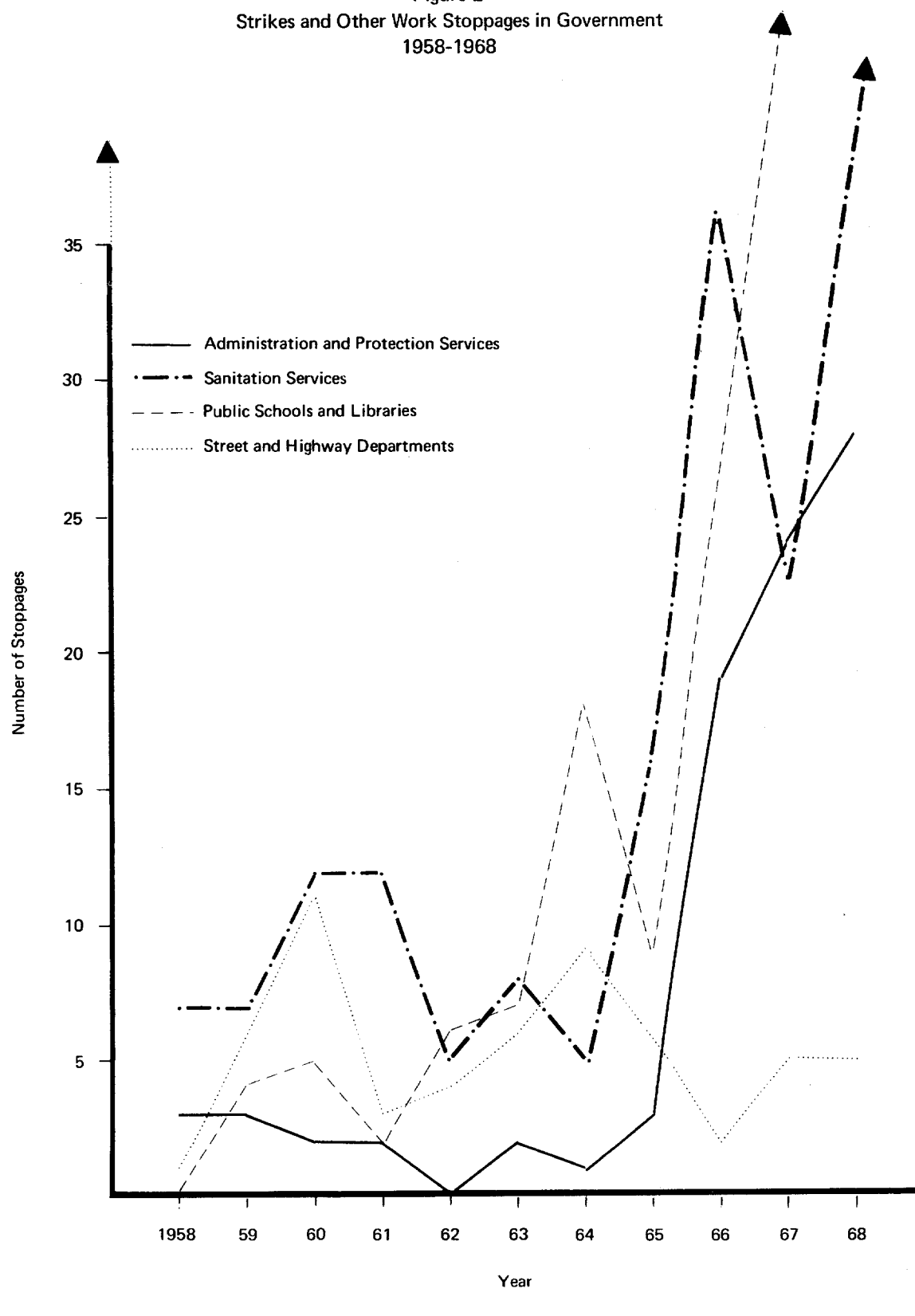
## Strikes and Other "Work Stoppages" in Government

In 1958, as indicated in Figure 2, there were only 15 work stoppages. This involved 1,720 public employees and a loss of 7,520 man-days (see Table C-1). In 1966, there were 142 strikes, a nine-fold increase, involving 105,000 workers and the loss of 455,000 man-days. In 1968, the number of stoppages was almost double the 1966 figure; 254 strikes took place involving nearly 202,000 workers and causing a loss of over two and one-half million man-days.

The U.S. Bureau of Labor Statistics reported that public schools were the most frequently struck government service in 1968.[19] Teachers were involved in 112 school strikes. The sanitation services category was the

[19] U.S. Department of Labor, Bureau of Labor Statistics, "Work Stoppages in Government," *Monthly Labor Review*, Vol. 91 no. 7, July 1968, p. 53. Unpublished data for 1968 provided by the Bureau of Labor Statistics.

Figure 2
Strikes and Other Work Stoppages in Government
1958-1968



governmental function next most frequently affected by work stoppages. Until 1966, sanitation was the prime arena for strike action.

Approximately 70 percent of the 1967 stoppages, involving 90 percent of the striking workers, centered around disputes over salaries and fringe benefits or over professional standards. In that year, union recognition or security was the second most frequent cause of work stoppages. In 1968 only 45 percent of the stoppages, involving 54 percent of the striking workers, were over salaries and fringe benefit disputes. Approximately 25 percent of the 1968 work stoppages were over recognition and union security issues.

Finding solutions to the strike issue in the public sector is just about the most difficult issue to resolve in the field of public employee relations. In spite of the increasing incidence of work stoppages, the laws, court decisions, and attorneys general opinions in at least 32 States specifically prohibit strikes by all government workers, as Table 5 indicates. In four others, the ban applies to State employees only. Employees of government-run public utilities and mass transportation systems consitute one of the most notable exceptions to these bans, especially where the facilities were privately owned prior to being run by the government.

Table 5 summarizes by State the status of strike prohibitions for types of public employees.

## Summary Observations

The growth of public employee organizations and the development over the past decade of State legislative and administrative authorizations for direct discussions on collective bargaining are highlighted in the following summary findings.

- Government has become a major source of employment within the total labor force. While government employee unions and associations at

TABLE 5
States Prohibiting Strikes by Public Employees
(May 1969)

| EMPLOYEES COVERED | LAW | ATTORNEY GENERAL OPINION | COURT DECISION |
|---|---|---|---|
| All Public Employees (state and political subdivisions) | Connecticut, Delaware, Florida, Hawaii, Massachusetts, Michigan, Minnesota, Missouri, New York, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Texas, Virginia, Washington, Wisconsin | Alabama, Arkansas, Florida, Nevada, South Carolina, Utah, West Virginia | Connecticut, Illinois, Iowa, New Jersey, Tennessee |
| State Employees | Georgia, Kentucky, New Hampshire, Vermont | Iowa, Oklahoma | California, Connecticut, New Mexico, Oklahoma |
| Political Subdivision Employees | Maine, Nevada, Vermont | New Mexico | California New Hampshire |
| Policemen | Massachusetts, Rhode Island | | California, North Dakota |
| Firemen | California, Rhode Island | | |
| Teachers | Connecticut, Maryland, New Mexico, Rhode Island | Georgia, Michigan, New Mexico | |

Source: National Governors' Conference, Task Force Report on State and Local Government Labor Relations (Chicago, Illinois: Public Personnel Association for the 1967 Executive Committee of the National Governors' Conference, 1967), p. 89; as revised by ACIR staff.

the Federal, State and local levels have not kept pace with this rapid rise, their membership still constitutes the fastest-growing sector of organized labor, jumping from slightly over five percent of total trade union membership in 1955 to nine percent or 1.7 million members by the end of 1966.

- In terms of the public sector, 52 percent of all Federal employees (1.4 million workers) belonged to unions in 1968 and 8.6 percent of all State and local public employees (770,000 workers) were union members in that year. When the estimated membership of the independent State and local employee associations and the figures for NEA and other professional associations are added to the unionized sector, the "organized" portion of State and local employees rises to over one-fourth of the total.
- While public employee organizations affiliated with national unions, such as the American Federation of State, County, and Municipal Employees (AFL-CIO), the American Federation of Teachers (AFL-CIO), and the International Associaton of Firefighters (AFL-CIO), have always sought exclusive recognition and collective bargaining, only fairly recently have the large national professional associations, such as the National Education Association, become activist and endorsed exclusive representation for dealings with employers. Increased militancy among the local or State independent associations is also becoming more evident, although many still depend on lobbying and the establishment of favorable civil service rules rather than on collective negotiations or discussions to achieve better wages, working conditions, and satisfactory procedures to settle disputes.
- While the causes for the increased militancy among public employees are many, some of the basic factors include: the inability of individual employees in a large bureaucracy to be "heard" by his employers unless he speaks in a collective voice; a growing appreciation by public employee organizations of the effectiveness of collective bargaining techniques in the private sector; the financial resources and expertise of national unions in assisting public employee organizations to organize and present their demands to management; and the aggressiveness of public employee unions which caused many long-established professional and independent unaffiliated associations to adopt a more belligerent stance.
- The right of both State and local public employees to organize is either sanctioned by law, attorneys general opinions, court decisions, or executive orders in 33 States. Two other States recognize this right for State employees only and another three for local employees only. Fourteen of these 38 States have gone further and enacted a labor relations law which mandates collective negotiations for either State or local public employees, or both, while two States permit their local governments to adopt such procedures. Five States have mandated the meet and confer approach and require local public employers to discuss the terms and conditions of employment with employee organizations. In 12 States there is no statutory, judicial or administrative authorization permitting public employees at the State or local levels to organize, although special occupational groups (teachers, firemen, law enforcement) in many instances are given special consideration.
- Most of the State legislative and administrative activity in the field of collective bargaining for public employees has taken place since 1964. With the exception of the 1959 Wisconsin act, the passage by 15 States of broad comprehensive statutes or major amendments based on the collective negotiation concept occurred between 1965 and August 1969. All five meet and confer statutes were either enacted or signficantly changed during the past four years. These recent enactments suggest a trend toward State establishment of positive procedures for handling public employee-management relations at both the State and local levels.
- Despite the fact that no State gives public employees at the State or local levels an unqualified right to strike, there were 254 strikes or other work stoppages in 1968—a seventeen-fold increase since 1958 with public school systems carrying the major burden. Forty-five percent of the work stoppages in 1968 involved disputes over wages or over professional standards. Surprisingly, even though almost four-fifths of the States give public employees the right to organize, the second most frequent cause of stoppages (25 percent) centered on the refusal of employers to recognize an employee union or provide security.

# *Chapter 3*

# PUBLIC LABOR-MANAGEMENT RELATIONS AT THE LOCAL LEVEL: THEIR CURRENT STATUS

The general nature and extent of public employee organizations was explored in the previous chapter. The growing attention to this problem by State governments through the enactment of comprehensive statutes recognizing the right of public employees to organize and requiring or permitting management to meet and confer or to bargain or negotiate collectively with employee organizations was emphasized. Our focus now shifts from the State House to the Courthouse and City Hall for an examination of the current status of public labor-management relations in local governments.

First will be presented the results of a questionnaire survey of all cities in the United States having a population of over 10,000 that was conducted by the ACIR in cooperation with the International City Management Association (ICMA). Next, these data will be compared with replies to a similar questionnaire distributed by the Commission, in cooperation with the National Association of Counties (NACO) and ICMA, to 429 counties located within standard metropolitan statistical areas (SMSA's). Finally, the issue of State mandating of the terms and conditions of local public employment will be considered. In addition to the above surveys, this analysis will be based on the replies from Executive Directors of State Municipal Leagues and Associations of Counties and from State Personnel Directors to a questionnaire on this subject developed by the ACIR in cooperation with the National League of Cities (NLC), the State Personnel Administrators Association (SPAA), and NACO.

The data have been interpreted with a degree of caution since they reflect a substantial but incomplete representation of all cities and counties canvassed. This caveat is particularly applicable to totals which concern characteristics showing material differences among various city and county population size or type-of-city categories. In such instances, the aggregates are likely to be somewhat unrepresentative of overall conditions because of "extra" reflection of the more responsive types of jurisdiction. Moreover, the findings occasionally are based upon relatively small numbers of reporting units, especially in the county poll. The survey results, then, should generally be regarded as offering potentially useful indicators, rather than highly precise measures, of municipal and county practices in this complex and controversial field.

## Municipal Labor-Management Relations

To explore the nature of current municipal labor-management relations, the Commission in December 1968 cooperated with the International City Management Association in distributing a questionnaire on "Public Employee-Employer Relations in Local Governments" to officials of all the 2,072 cities having a population of over 10,000. This questionnaire was quite similar to one sent in 1966 to 914 council-manager cities by Professor Winston W. Crouch.[1] Some of the findings reported here also draw upon a September 1968 ICMA survey of all cities of 10,000 and over to gather up-to-date information on "Employee Organizations."[2]

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[1]The results of the 1966 questionnaire are presented in Winston W. Crouch, *Employer-Employee Relations in Council-Manager Cities*, (Washington, D.C.: The International City Managers' Association 1968). The preliminary results of the 1969 survey are contained in Winston W. Crouch, "The American City and Its Organized Public Employees," in International City Managers' Association, *Urban Data Service*, March 1969.

[2]Tables 6, 7, 11, 12, 13, and 14 were developed from data collected in the ACIR-ICMA survey. All other tables were derived from the ICMA "Employee Organizations" questionnaire. Tables 7, 8, 9, and 14 show data from the earlier Crouch questionnaire, which was sent to only council-manager cities, as well as from a follow-up to this survey by ICMA covering all mayor-council cities over 10,000.

The ACIR-ICMA survey obtained an overall response rate of 66 percent, and the ICMA "Employee Organizations" poll achieved a 74 percent response. In each instance, there was a somewhat higher-than-average rate of reporting by the more populous municipalities, those located in the West, SMSA-central cities, and council-manager jurisdictions. Municipalities in the Northeast, however, were noticeably less responsive than the average (see Appendix Table C-2).

## Extent of Municipal Employee Organizations

Table 6 shows the responses of officials to questions on whether public employee organizations were present in their city and, if so, whether they were affiliated with national unions or were independent local associations. Only one-fourth of the cities reported their labor force was unorganized.

As might be expected, the table reveals a close association between decreasing population and the tendency not to have any unions or associations. No cities over 500,000 and only four percent of those from 100,000 to 500,000 lacked public employee organizations. On the other hand, one-third of the municipalities in the 10,000-25,000 category were not organized.

Nearly one-half of the cities in the South had no organized public employees. Yet, only one-fifth or less of those in the Northeastern, North Central, and Western regions were unorganized.

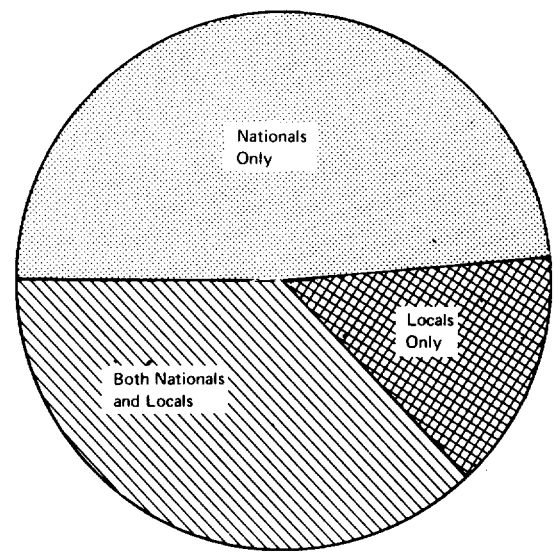
SMSA-central cities appear to be the major organizational bulwarks in the public sector, with suburban jurisdictions being far less likely to have their workers organized. Non-SMSA-independent cities, however, were most inclined to be without public employee unions and associations.

The table shows no significant relationship between the form of city government and the tendency to have public employee organizations. Mayor-council jurisdictions were only slightly more likely to have organized public employees than council-manager muncipalities.

With respect to the nature and extent of this organizational activity, three-fourths of the cities reported some type of public employee organization, with nearly one-half having only nationally affiliated unions and more than one-third with both nationals and independent local associations. Only slightly over one-eighth of the organized municipalities had locals solely (see Figure 3).

A breakdown of these cities by population group indicates that the probability of having some type of public employee organization was somewhat associated with size. In terms of the national affiliates-local associations division, jurisdictions over 250,000 had a strong tendency to contain both kinds of organization. At the same time, none of these cities, and only a relatively small percentage of those in the remaining population categories, had local associations exclusively. As might be expected, municipalities from 10,000 to 25,000 population were least likely to have both nationals and locals. A relatively large proportion of those under 50,000, however, had only nationally-affiliated unions.

Figure 3
Type and Incidence of Municipal Employee Organizations

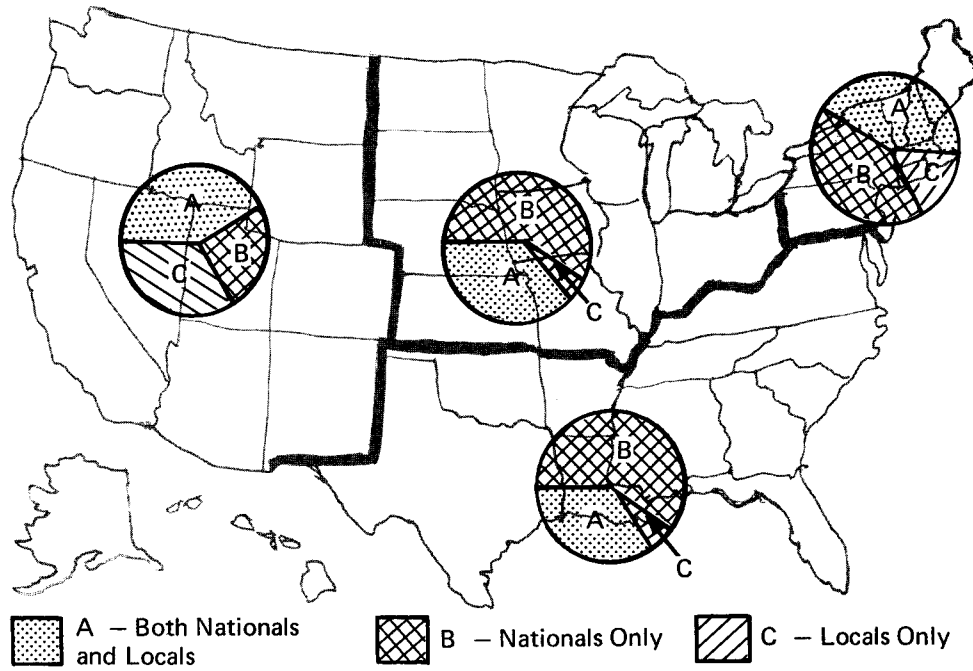



Most of the reporting Northeastern cities had either a combination of nationals and locals or only the former. Most of those located in the North Central region and the South had just nationally-affiliated public employee organizations, while a fairly large number of Western municipalities had only locals or both nationals and locals (see Figure 4).

Although independent local associations were found alone in hardly any of the responding central cities, in a majority of these jurisdictions they co-existed with national affiliates. While most of the suburban municipalities had only nationals, they also were more inclined to have only locals than the other city types. Independent municipalities were most likely to have national organizations exclusively.

The table shows a somewhat even distribution of replies between cities operating under the mayor-council

Figure 4
Regional Distribution of Municipal
Employee Organizations




or the council-manager system. One noteworthy finding, however, is that almost one-fifth of the council-manager cities indicated they had local associations solely.

To summarize, Table 6 demonstrates that large, central cities, and those located in the Northeast and the North Central regions, were more likely to have public employee organizations than were smaller, suburban, independent, and Southern municipalities. History and economics largely explain these findings. Many large, Northern cities have long been heavily industrialized and consequently have had extensive experience with unionism in private enterprise. To these jurisdictions, bold unions, tough bargaining, and threatened work disruptions are not new or necessarily fearful phenomena. These developments in the private sector often have generated sympathetic and supportive attitudes among elected officials toward municipal employee unions and associations.

## Number of National Employee Organizations

Tables 7 and 8 present trend data on the number of nationally affiliated employee organizations in cities responding to both the 1967 and 1969 questionnaire surveys. A marked growth of unionization in the public sector occurred over this brief period, with the number of cities indicating they had no public employee unions in 1969 being 53 percent less than the 1967 figure. The greatest relative hike occurred in the "three unions" column, in which the number of reporting municipalities increased by 65 percent over the three-year period surveyed, while a 32 percent rise took place in the "four or more unions" category.

Unionization of public employees has not accelerated on an across-the-board basis. Instead, Table 8 underscores the fact that the growth in the number of national affiliates in reporting cities has been strongly influenced by jurisdictional size, region, type and, to a lesser extent, form of government.

In general, while the percentage of cities over 50,000 with one or more unions increased only slightly or remained constant between 1967 and 1969, many smaller municipalities "crossed the Rubicon" to unionized status (see Figure 5). Cities under 50,000 population, and especially those less than 25,000, then, have been the major recent participants in the union movement in the public service. This finding is mainly a reflection of the fact that many large jurisdictions

TABLE 6
EXTENT OF MUNICIPAL EMPLOYEE ORGANIZATIONS

| Distribution | Number of Cities Reporting (A) | Cities with Organizations No. (B) | Cities with Organizations % of (A) | Cities with: Both Nationals and Locals % of (B) | Cities with: Nationals Only % of (B) | Cities with: Locals Only % of (B) |
|---|---|---|---|---|---|---|
| Total, all cities | 1,358 | 1,026 | 75 | 38 | 48 | 14 |
| Population group | | | | | | |
| over 500,000 | 26 | 26 | 100 | 73 | 27 | 0 |
| 250,000-500,000 | 25 | 24 | 96 | 71 | 29 | 0 |
| 100,000-250,000 | 77 | 74 | 96 | 42 | 50 | 8 |
| 50,000-100,000 | 166 | 151 | 90 | 52 | 35 | 13 |
| 25,000- 50,000 | 319 | 263 | 82 | 41 | 46 | 13 |
| 10,000- 25,000 | 745 | 488 | 66 | 27 | 56 | 17 |
| Geographic region | | | | | | |
| Northeast | 313 | 268 | 86 | 41 | 42 | 17 |
| North Central | 430 | 354 | 82 | 34 | 63 | 3 |
| South | 315 | 163 | 52 | 28 | 66 | 6 |
| West | 300 | 241 | 80 | 45 | 24 | 31 |
| City type | | | | | | |
| SMSA–central | 224 | 206 | 91 | 54 | 44 | 2 |
| SMSA–suburban | 675 | 520 | 77 | 35 | 44 | 21 |
| non-SMSA–independent | 459 | 300 | 65 | 31 | 58 | 10 |
| Form of government | | | | | | |
| Mayor-council | 452 | 362 | 80 | 37 | 54 | 10 |
| Council-manager | 833 | 600 | 72 | 37 | 45 | 17 |
| Other[1] | 73 | 64 | 88 | 44 | 49 | 9 |

[1] Includes 49 cities with commission government, 14 with town meeting, and 10 with representative town meeting.

Table 7
NUMBER OF NATIONAL EMPLOYEE ORGANIZATIONS PER CITY, 1967 AND 1969
(by Number of Unions)

| Distribution | Number of Cities | | Percent Reporting this Information | | Percent Increase or Decrease (–) |
|---|---|---|---|---|---|
| | 1967 | 1969 | 1967 | 1969 | |
| Total, all cities | 568 | 568 | 100 | 100 | – |
| With no unions | 128 | 60 | 23 | 11 | (53) |
| One union | 177 | 173 | 31 | 30 | ( 2) |
| Two unions | 141 | 153 | 25 | 27 | 9 |
| Three unions | 65 | 107 | 11 | 19 | 65 |
| Four or more unions | 57 | 75 | 10 | 13 | 32 |

employing sizeable numbers of people were confronted by the rise of public employee organizations well before the time period under examination. Conversely, most small municipalities were not exposed to the union movement among their employees until quite recently.

Interpretation of the survey results in terms of geographic region suggests that the South might be becoming more receptive to public employee unions. Northeastern cities with one or more such organizations also registered sharp gains over the time period examined. On the other hand, unionization in the Western States appears to be comparatively less advanced.

Major inroads for unions occurred in non-SMSA-independent and in SMSA-suburban jurisdictions. Expansion of teacher organizations might well be the chief cause of these developments. Few significant changes were apparent in the responses from central and council-manager cities. Marked increases, however, were shown for mayor-council municipalities.

Table 8
NUMBER OF NATIONAL EMPLOYEE ORGANIZATIONS PER CITY, 1967 AND 1969
(by Population Group, Region, City Type, and Form of Government)

| Distribution | Percent of Cities Reporting One or More Unions* | |
|---|---|---|
| | 1967 | 1969 |
| Total, all cities | 77 | 89 |
| Population group | | |
| Over 500,000 | 100 | 100 |
| 250,000-500,000 | 100 | 100 |
| 100,000-250,000 | 94 | 96 |
| 50,000-100,000 | 83 | 86 |
| 25,000- 50,000 | 77 | 89 |
| 10,000- 25,000 | 67 | 89 |
| Geographic region | | |
| Northeast | 67 | 86 |
| North Central | 86 | 97 |
| South | 79 | 97 |
| West | 72 | 78 |
| City type | | |
| SMSA-central | 94 | 99 |
| SMSA-suburban | 67 | 82 |
| non-SMSA-independent | 79 | 93 |
| Form of government | | |
| Mayor-council | 69 | 89 |
| Council-manager | 82 | 89 |
| Other | 75 | 94 |

*Percent of the 568 reporting cities that specifically answered this item.

## Citywide Associations of Public Employees

Table 9 presents trend data on the extent to which citywide associations represent public employees. The survey results suggest that national affiliates may be making some inroads in cities where organized public employees belonged exclusively to locals.

In terms of the proportion of the municipal labor force with membership in these organizations, the greatest increase occurred in the "40 percent" line, while a lesser rise was evident in the "60 percent" group. In the "20 percent," the "80 percent," and especially the "100 percent" lines, however, the 1969 figure declined.

## Representation of Municipal Employees by Unions or Associations

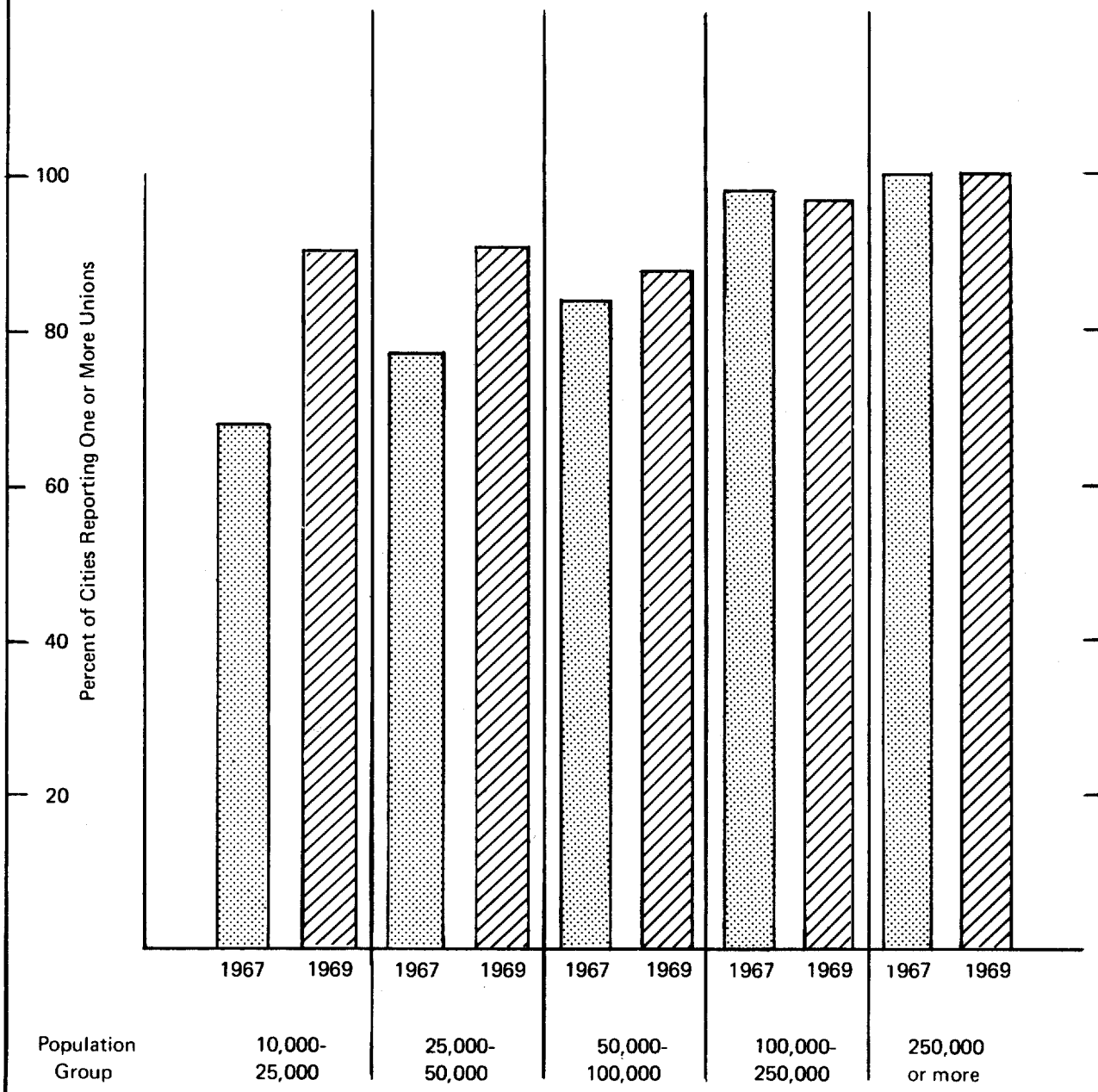
Nearly two-thirds of the aggregate 1,186,549 employees of the 1,533 cities participating in the 1968 ICMA survey were represented by either national affiliates or local associations. Yet, almost one-half of all jurisdictions responding had none or less than one-fourth of their labor force represented by such organizations. A fairly steady rate of decrease in the total number of cities reporting occurred as the proportion of employees represented expanded (see Table 10).

The overall percentage of municipal employees represented by unions or associations declined with city size; while this figure was 80 percent for jurisdictions over 500,000, it fell to only 25 percent for those from 10,000 to 25,000. With respect to the degree of representation, a somewhat similar pattern of response was evident; only four percent of the cities over 250,000 had all of their employees unrepresented, in comparison with 46 percent of those under 25,000.

Despite recent advances, the South lagged far behind the other regions in the percent of municipal employees represented by nationals or locals. The extent of such representation in this area was practically one-half that in the West and North Central regions and nearly one-third that in the Northeast. As might be expected, the Northeast surpassed all other regions, with only 18 percent of its cities having all their employees unrepresented, a finding standing in sharp contrast to the 60 percent figure for the South. On the other hand, no significant difference was shown among any of the regions in the number of organized cities with less than one-fourth of their public labor force represented by employee organizations.

Central cities had the greatest number and the largest proportion of represented public employees. Only 16 percent of these municipalities had no such

Figure 5
Municipalities with National Employee Organizations, 1967 and 1969
(By Population Group)




personnel, while one-half had 50 percent or more of their employees represented by unions or associations.

Employees of mayor-council cities were far more likely to be represented than those of council-manager jurisdictions. At the same time, municipalities operating under either system did not differ greatly in the degree to which their personnel were represented by employee organizations.

Overall, then, large, central, mayor-council cities, and those situated in the Northeast were far ahead of

other jurisdictions in the extent of representation of their labor force by nationally-affiliated unions or independent local associations. At the other extreme, independent and, to some extent, suburban cities, particularly those located in the South and those operating under the council-manager plan, had the smallest proportions of represented public employees.

## Representation of Various Occupations by Unions or Associations

In Appendix Tables C-3 through C-11, data are presented concerning the degree to which various categories of municipal employees are represented by unions or associations. These occupations include police, fire, public works, public utilities, public health and hospitals, parks and recreation, public welfare, and noninstructional education. Fire protection employees were the most organized (82%), followed by police (73%) and public welfare (69%) personnel. For all of the remaining occupational categories, except parks and recreation (46%), slightly more than half of the employees engaged in these service areas were organized.

Breakdown of the appendix tables by population group, geographic region, city type, and form of government produces response patterns which roughly parallel those in Table 10. The percentage of public employees represented in the various occupational categories was a function of size, being greatest in cities over 500,000 and least in municipalities under 50,000, particularly in those between 10,000 and 25,000. This figure was greatest in the Northeast and least in the South; greatest in central cities and least in independent municipalities; and greatest in mayor-council cities and least in those operating under the council-manager plan.

From about two-fifths to three-fourths of the responding jurisdictions indicated that none of their employees in the occupations surveyed were represented by unions or associations. This organizational reluctance was especially prominent with welfare, health and hospital, parks and recreation, and utilities personnel. In other cases, however—especially fire and police employees—a fairly large number of municipalities fell in the "90-99% represented" and the "100% represented" columns.

## Membership Affiliation of Municipal Employees

Appendix Tables C-12 through C-20 contain breakdowns of the types of nationally-affiliated unions or independent local associations with which various occupational categories of municipal employees are associated. The strength of locals was demonstrated in all but three of the functional areas surveyed—fire protection, public works, and public utilities—with roughly between 41 percent and 51 percent of the respondents having this type of employee organization. While the IAFF and FOP, of course, showed high percentages of fire and police personnel membership, in the other occupations the strong position of AFSCME was revealed. Between 38 percent and 50 percent of the organized cities reported they had educational, public works, utilities, parks and recreation, health and hospital, and welfare employees who belonged to this AFL-CIO affiliate.

Table 9
NUMBER OF CITYWIDE EMPLOYEE ASSOCIATIONS, 1967 AND 1969
(by Percent of Membership)

| Distribution | 1967 | 1969 | Percent Increase or Decrease (–) |
|---|---|---|---|
| Number of cities with citywide employee associations | 147 | 147 | – |
| Percent of cities having citywide employee associations where membership represents: | | | |
| 100 percent of employees | 32 | 17 | (47) |
| At least 80 percent of employees | 40 | 38 | ( 5) |
| At least 60 percent of employees | 26 | 34 | 31 |
| At least 40 percent of employees | 26 | 36 | 38 |
| Approximately 20 percent of employees | 23 | 22 | ( 4) |

Table 10
REPRESENTATION OF MUNICIPAL EMPLOYEES BY UNIONS OR ASSOCIATIONS

| Distribution | Number of Cities Reporting (A) | Total Number of Employees | Percent of Employees Represented | Proportion of Municipal Labor Force Represented | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | 0% Represented % of (A) | 1-24% Represented % of (A) | 24-49% Represented % of (A) | 50-74% Represented % of (A) | 75-89% Represented % of (A) | 90-99% Represented % of (A) | 100% Represented % of (A) |
| Total, all cities | 1,533 | 1,186,549 | 63 | 34 | 13 | 19 | 16 | 10 | 5 | 3 |
| Population group | | | | | | | | | | |
| Over 500,000 | 23 | 620,705 | 80 | 0 | 13 | 35 | 17 | 31 | 0 | 4 |
| 250,000-500,000 | 24 | 86,949 | 63 | 4 | 4 | 21 | 37 | 4 | 17 | 13 |
| 100,000-250,000 | 78 | 142,873 | 47 | 19 | 9 | 18 | 26 | 19 | 8 | 1 |
| 50,000-100,000 | 194 | 118,676 | 53 | 14 | 11 | 18 | 20 | 19 | 10 | 8 |
| 25,000- 50,000 | 365 | 110,849 | 42 | 22 | 13 | 21 | 20 | 12 | 8 | 4 |
| 10,000- 25,000 | 849 | 106,497 | 25 | 46 | 14 | 19 | 12 | 5 | 2 | 2 |
| Geographic region | | | | | | | | | | |
| Northeast | 370 | 501,852 | 87 | 18 | 13 | 25 | 19 | 13 | 7 | 5 |
| North Central | 487 | 215,533 | 57 | 30 | 12 | 23 | 20 | 10 | 4 | 1 |
| South | 373 | 275,393 | 30 | 60 | 16 | 14 | 7 | 1 | 1 | 1 |
| West | 303 | 193,771 | 58 | 25 | 13 | 13 | 16 | 17 | 8 | 8 |
| City type | | | | | | | | | | |
| SMSA-central | 239 | 905,505 | 71 | 16 | 11 | 23 | 24 | 16 | 6 | 4 |
| SMSA-suburban | 757 | 167,803 | 50 | 31 | 12 | 20 | 17 | 10 | 6 | 4 |
| non-SMSA-independent | 537 | 113,241 | 27 | 45 | 15 | 18 | 12 | 6 | 2 | 2 |
| Form of government | | | | | | | | | | |
| Mayor-council | 540 | 797,471 | 74 | 30 | 12 | 23 | 18 | 10 | 4 | 3 |
| Council-manager | 888 | 350,295 | 42 | 37 | 13 | 17 | 15 | 9 | 5 | 4 |
| Commission | 69 | 28,965 | 44 | 24 | 22 | 22 | 16 | 6 | 7 | 3 |
| Town meeting | 23 | 4,304 | 45 | 9 | 26 | 22 | 30 | 13 | 0 | 0 |
| Representative town meeting | 13 | 5,514 | 51 | 15 | 31 | 24 | 0 | 15 | 15 | 0 |

## Municipal Laws Regarding Public Employee Organizations

Table 11 summarizes the replies of officials to a series of questions concerning various types of municipal laws–including city charter provisions, ordinances, city council resolutions, personnel rules, and other written directives rather than State law–dealing with public employee organizations and the conduct of negotiations.[3] Nearly two-thirds of all municipalities reporting lacked any laws on whether general employees were allowed to organize as nationally-affiliated unions or independent local associations. In most of the remainder, they were permitted to join such organizations. Division of the responses according to whether cities were organized or unorganized (and if the former whether they had locals only, nationals only, or a mixture of both) reveals for the most part a clear majority with no official position on general employee organizational membership. The only deviations from this pattern were municipalities having a combination of nationals and locals, about one-half of which had a formally stated policy position.

Turning to public safety personnel, in view of their "essential" status it might be expected that cities would be reluctant to authorize these employees to organize, especially as nationals affiliated with organizations which espouse the right to strike for their membership. This assumption was partially confirmed by the data, since nearly two-thirds of the replying jurisdictions preferred to take no legal stand on this matter or to

[3] See Appendix Table C-21 for a breakdown of responses in terms of "no answer," "yes," "no," and "no policy."

Table 11
MUNICIPAL LAWS REGARDING PUBLIC EMPLOYEE ORGANIZATIONS

| Municipal Law | Cities Reporting | Organized Cities | Cities Without Organizations | Cities with: | | |
|---|---|---|---|---|---|---|
| | | | | Both Nationals and Locals | Nationals Only | Locals Only |
| Total, all cities | 1,357 | 1,026 | 331 | 386 | 497 | 143 |
| Percent of cities reporting "no formally stated policy" as to the following: | | | | | | |
| Permit general employees to join nationally affiliated organizations | 64 | 58 | 84 | 46 | 63 | 69 |
| Permit general employees to join local associations | 65 | 58 | 84 | 48 | 66 | 59 |
| Forbid public safety personnel to join nationally affiliated organizations | 62 | 55 | 82 | 47 | 59 | 66 |
| Permit public safety personnel to join local associations | 64 | 57 | 84 | 51 | 66 | 54 |
| Permit management to dismiss or severely punish general employees for organization activity | 61 | 55 | 80 | 42 | 61 | 67 |
| Permit management to dismiss or severely punish public safety employees for organization activity | 59 | 53 | 80 | 42 | 58 | 64 |
| Permit recognition of single negotiating representative for general employees | 63 | 60 | 76 | 52 | 65 | 61 |
| Permit recognition of single negotiating representative for public safety employees | 65 | 61 | 76 | 53 | 66 | 66 |
| Permit signing negotiated agreements | 63 | 56 | 82 | 47 | 60 | 69 |
| Authorize arbitration of disputes involving general employees | 63 | 58 | 80 | 49 | 63 | 64 |
| Authorize arbitration of disputes involving public safety employees | 64 | 59 | 80 | 51 | 64 | 64 |

leave it to State statute. Most of those municipalities which had enacted laws allowed public safety personnel to join both nationally-affiliated organizations and independent local associations.

With respect to whether management was authorized to dismiss or to severely punish general or public safety employees for participating in union activities, three-fifths to two-thirds of the cities with either nationals or locals, in contrast with two-fifths of those with a mixture of nationals and locals, indicated an absence of laws dealing with this matter. Where municipal laws existed, an overwhelming majority prohibited management from enforcing sanctions against either general employees or public safety personnel for their union involvement.

Almost two-thirds of the respondents had failed to enact laws concerning recognition of an organization as the single negotiating representative for general or public safety employees. Most of the cities with formally stated policies on this subject indicated recognition was extended to the majority representative.

Nearly two-thirds of all jurisdictions reporting, however, had no official basis for signing agreements negotiated with employee organizations. Of special concern here are the responses of organized cities. Since their representatives may engage in collective bargaining or negotiations with public employee unions or associations, it might be expected that local laws would have been passed authorizing the signing of agreements. For the most part, however, such was not the case, since almost three-fifths of the organized cities reported not having taken any action along these lines. By practically a two-to-one margin, municipalities with laws permitted the signing of negotiated agreements. State statutes covering this subject may partially explain the widespread local silence. Moreover, adoption of a "meet and confer" approach, which precludes management from signing a binding written contract or agreement, also may be responsible for this city inaction.

Finally, nearly two-thirds of all reporting municipalities and almost three-fifths of the organized jurisdictions stated they had no legal position regarding arbitration of disputes with general or public safety employees. By a fairly substantial margin, cities having laws in this area—particularly those with a combination of nationals and locals—authorized arbitration.

To sum up, data presented in this table show that about two-thirds of the 1,357 municipalities participating in the questionnaire survey had not enacted laws dealing with the membership of their employees in nationally-affiliated unions or independent local associations, penalties for participation in union activities, exclusive recognition, signing of negotiated agreements, or arbitration of disputes. This finding applies across-the-board to both general employees and public safety personnel. As expected, cities without organizations were far less likely to have laws on these various labor-management relations issues than were jurisdictions with nationals and/or locals. At the same time, the data dramatize the "head-in-the-sand" attitude on the part of many organized municipalities with respect to formalizing their relationships with public employee organizations. Regardless of whether these cities had a mixture of national unions and local associations, nationals only, or locals only, from one-half to two-thirds of the respondents to each item indicated no local laws existed to guide the interaction between these jurisdictions and their organized public employees. Overall, then, the table reveals a strong preference on the part of many of the municipalities reporting to keep their dealings with public employee organizations on an informal, *ad hoc*, or nonexisting basis, and a tendency of others to have State law serve as their own.

## Municipal Management Practices: Recognition and Negotiation Procedures

Information on management practices relating to recognition of and discussions or negotiations with public employee organizations is contained in Table 12. More than one-third of the organized cities indicated having no specific procedure for recognizing employee organizations for purposes of discussing wages and hours or working conditions. Three-tenths of the jurisdictions with both nationals and locals, almost one-half of those with only nationals, and nearly two-fifths of those with locals exclusively lacked any such procedures. In a majority of the cities with an established practice, recognition was dependent upon a union's or association's officers requesting an appointment with the chief administrative officer.

In over 40 percent of all organized cities responding, the city manager conducted negotiations with public employee organizations on salary and wage matters. A majority of the municipalities with nationals and/or locals reported that the manager served as their representative at the negotiating table.

With respect to the conduct of discussions or negotiations on salaries and wages, most cities with only nationals indicated that such proceedings occurred in informal get-togethers in the chief administrator's office prior to his submission of the budget to the council. Organized municipalities having both nationals and locals, however, revealed a preference for formal negotiating sessions conducted by the chief administrative officer. Replies from jurisdictions with locals only were distributed somewhat evenly between formal sessions and informal meetings with the chief administrative

TABLE 12
MUNICIPAL MANAGEMENT PRACTICES: RECOGNITION AND NEGOTIATION PROCEDURES

| Practice | Organized Cities Responding | | Cities with: | | | | | |
|---|---|---|---|---|---|---|---|---|
| | | | Nationals Only | | Locals Only | | Both Nationals and Locals | |
| | No. (A) | % of (A) | No. (B) | % of (B) | No. (C) | % of (C) | No. (D) | % of (D) |
| Recognition procedure | | | | | | | | |
| No. of organized cities reporting | 874 | 100 | 128 | 100 | 403 | 100 | 343 | 100 |
| Submit by laws and list of officers to specified city officer | 94 | 11 | 16 | 13 | 32 | 8 | 46 | 13 |
| Organization officers request appointment with chief administrative officer | 354 | 41 | 41 | 32 | 152 | 38 | 161 | 47 |
| Request for representatives to be heard at public meeting of the council | 107 | 12 | 9 | 7 | 63 | 15 | 35 | 10 |
| No particular formal action on the part of organizations | 319 | 36 | 62 | 48 | 156 | 39 | 101 | 30 |
| City representative in negotiations | | | | | | | | |
| No. of organized cities reporting | 978 | 100 | 133 | 100 | 468 | 100 | 377 | 100 |
| City manager | 409 | 42 | 72 | 54 | 172 | 37 | 165 | 44 |
| Council committee | 111 | 11 | 13 | 10 | 63 | 13 | 35 | 9 |
| Entire city council | 77 | 8 | 8 | 6 | 45 | 10 | 24 | 6 |
| Personnel director | 60 | 6 | 4 | 3 | 20 | 4 | 36 | 10 |
| Civil service commission | 12 | 1 | 3 | 2 | 4 | 1 | 5 | 1 |
| Mayor | 107 | 11 | 12 | 9 | 60 | 13 | 35 | 9 |
| Chief appointed administrative officer | 57 | 6 | 7 | 5 | 24 | 5 | 26 | 7 |
| City employed arbitrator | 27 | 3 | 0 | 0 | 6 | 1 | 21 | 6 |
| Department heads | 34 | 3 | 6 | 5 | 21 | 4 | 7 | 2 |
| No negotiations | 84 | 9 | 8 | 6 | 53 | 12 | 23 | 6 |
| Conduct of negotiations | | | | | | | | |
| No. of organized cities responding | 921 | 100 | 127 | 100 | 429 | 100 | 365 | 100 |
| Public hearings before council | 48 | 5 | 4 | 3 | 21 | 5 | 23 | 6 |
| Council committee negotiation sessions | 157 | 17 | 17 | 13 | 92 | 22 | 48 | 13 |
| Chief administrative officer-negotiation sessions | 271 | 29 | 30 | 24 | 108 | 25 | 133 | 37 |
| Chief administrative officer-informal meetings prior to submission of budget to council | 255 | 28 | 54 | 43 | 122 | 29 | 79 | 22 |
| Hearings before personnel board and also before the council | 37 | 4 | 9 | 7 | 9 | 2 | 19 | 5 |
| Negotiation sessions conducted by mayor | 80 | 9 | 5 | 4 | 45 | 10 | 30 | 8 |
| Other procedures | 73 | 8 | 8 | 6 | 32 | 7 | 33 | 9 |

officer or negotiation sessions with a city council committee.

## Binding Agreements, Arbitration, and Grievance Procedures

Table 13 shows that nearly two-thirds of the total organized cities responding had established formal grievance procedures. Yet, only two-fifths authorized the signing of binding agreements, and only slightly over one-eighth had submitted wage and salary or working conditions matters to an arbitrator in the past four years.

Few significant variations were evident in the pattern of replies by population group or city type to a question on whether the management representative was authorized to enter into binding agreements with employee organizations regarding the terms and conditions of municipal employment. With respect to region and form of government, however, Northeastern cities and jurisdictions operating under the mayor-council system were most likely to have signed binding agreements.

A breakdown of the responses in the arbitration and grievance procedure columns reveals that population size was not significantly associated with the tendency of cities between 50,000 and 500,000 to have such practices and procedures. Regionally, however, Northeastern municipalities and, to a lesser extent, those in the North Central region have made greatest use of the arbitration device since 1964. Yet, with the exception of

Table 13
MUNICIPAL BINDING AGREEMENTS, ARBITRATION, AND GRIEVANCE PROCEDURES

| Distribution | Number of Organized Cities Responding (A) | Binding Agreement % of (A) | Arbitration % of (A) | Grievance Procedure % of (A) |
|---|---|---|---|---|
| Total, all cities | 1,005 | 41 | 14 | 64 |
| Population group | | | | |
| Over 500,000 | 26 | 38 | 31 | 81 |
| 250,000-500,000 | 24 | 33 | 17 | 71 |
| 100,000-250,000 | 74 | 36 | 18 | 74 |
| 50,000-100,000 | 151 | 39 | 17 | 74 |
| 25,000- 50,000 | 260 | 42 | 12 | 63 |
| 10,000- 25,000 | 470 | 42 | 13 | 58 |
| Geographic region | | | | |
| Northeast | 259 | 73 | 25 | 68 |
| North Central | 341 | 48 | 18 | 63 |
| South | 160 | 11 | 4 | 55 |
| West | 245 | 20 | 3 | 66 |
| City type | | | | |
| SMSA-central | 207 | 40 | 22 | 73 |
| SMSA-suburban | 504 | 41 | 13 | 62 |
| non-SMSA-independent | 294 | 41 | 11 | 60 |
| Form of government | | | | |
| Mayor-council | 348 | 54 | 21 | 58 |
| Council-manager | 595 | 32 | 9 | 68 |
| Other[1] | 62 | 53 | 21 | 52 |

[1] Includes 40 cities with commission government, 13 with town meeting, and 9 with representative town meeting.

the South, no major geographic differences were apparent in the tendency to have established written rules and procedures for handling employee grievances.

By almost a two-to-one margin, central cities were more inclined than suburban and independent municipalities to have submitted wage and salary or working conditions issues to an arbitrator. A majority of all jurisdictional types had grievance procedures, but these were most common in central cities. Finally, while far more mayor-council cities than council-manager municipalities had been involved in the arbitration of employer-employee disputes, the reverse was true in the case of the establishment of grievance procedures.

## Municipal Work Disruptions

The growing activism of public employees is reflected in the mushrooming number of work stoppages in the public sector in recent years. Table 14 shows trends in the incidence of work disruptions resulting from a strike, walk-out, slow-down, or picketing of a public building by municipal employees. A staggering increase of 271 percent occurred in the total number of cities reporting they had experienced at least one work disruption during the two years prior to the 1967 and 1969 surveys.

Significant percentage rises are shown in each population group. The greatest advance took place in municipalities under 100,000, while that in cities over 100,000 was only half as great (see Figure 6).

Examination of the geographic locale of the respondents reveals dramatic gains for Northeastern jurisdictions. Yet, Western cities experienced relatively few increases in work disruptions over the time period examined.

Significant percentage gains between 1965-1967 and 1967-1969 appear in all three city type categories. Rises are most apparent in the case of suburban municipalities. Combining their responses with those from independent jurisdictions reveals a total increase of 361 percent in the number of non-central cities reporting strikes or slowdowns.



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The galloping rate of disruptions in suburban and independent cities was also somewhat confirmed by data relating to form of government. A 306 percent upsurge over the 1967 figure is evident for municipalities operating under the council-manager plan, in contrast to a 244 percent expansion for the mayor-council cities.

## County Labor-Management Relations

In January 1969, the Commission cooperated with the National Association of Counties in distributing a slightly modified version of the ACIR-ICMA questionnaire on "Public Employee-Employer Relations in Local Governments" to officials of 429 counties with a population of over 10,000 located in 45 States.[4] The overall response to the ACIR-NACO survey was 49 percent, with a close association between jurisdictional size and tendency to reply. The highest rate of return came from the West, while only about one-half of the urban counties in the other three regions were as responsive (see Appendix Table C-22).

As with the ACIR-ICMA poll, the findings here have been interpreted with some degree of caution. The representation of counties is adequate, but it is by no means all-inclusive. Some of the generalizations based on totals which show significant differences among various population size or regional groups should be viewed carefully since aggregates may be unrepresentative of overall conditions. The findings, then, point up subtle trends rather than definitive patterns.

[4] States not surveyed include Alaska, Connecticut, Rhode Island, Vermont, and Wyoming.

Table 14
MUNICIPAL WORK DISRUPTIONS, 1967-1969

| Distribution | Total Number of Cities Reporting Work Disruptions in 2 Years Prior to– | | |
|---|---|---|---|
| | 1967 | 1969 | Percent Increase or Decrease (–) |
| Total, all cities | 38 | 141 | 271 |
| Population group | | | |
| 100,000 or more | 16 | 40 | 150 |
| 50,000-100,000 | 7 | 32 | 357 |
| 25,000- 50,000 | 6 | 27 | 350 |
| 10,000- 25,000 | 9 | 42 | 367 |
| Geographic region | | | |
| Northeast | 4 | 41 | 925 |
| North Central | 19 | 62 | 226 |
| South | 9 | 28 | 211 |
| West | 6 | 10 | 67 |
| City type | | | |
| SMSA-central | 20 | 58 | 190 |
| SMSA-suburban | 12 | 56 | 367 |
| non-SMSA-independent | 6 | 27 | 350 |
| Form of government | | | |
| Mayor-council | 18 | 62 | 244 |
| Council-manager | 18 | 73 | 306 |
| Commission | 2 | 4 | 100 |

## Extent of County Employee Organizations

County officials were asked whether public employee organizations were present in their jurisdiction and, if so, whether all such organizations were affiliated with national unions or were independent local associations, or whether there was a combination of these types. Table 15 shows that 56 percent of all reporting counties had at least one employee organization. The public labor force in many large counties was organized, while only relatively few small units (under 50,000 population) had unions or associations. Urban counties in the South were least likely to be organized, a finding that parallels the fairly low degree of private sector unionism in this area. On the other hand, the West–rather than the Northeastern or North Central regions as might be expected–had the highest proportion of counties with some kind of employee organization.

About one-half of the organized counties reported having both national affiliates and local associations. Over one-third of the jurisdictions had nationals only, and slightly more than one-eighth had locals exclusively. Most counties over 250,000 contained both nationals and locals, while those with less than 50,000 population lacked a mixture of these types of organization. For counties over 50,000, the likelihood of having only national organizations was not closely linked with size. Locals alone clearly predominated in jurisdictions between 25,000 and 50,000 population.

A relatively large percentage of Western counties had both nationals and locals, while more than two-fifths of those in the Northeast indicated having the latter exclusively. Nearly three-fifths of the organized counties in the South had only nationally affiliated unions (see Figure 7).

To summarize, the survey data point up a definite absence of only local associations in most organized urban counties. Large counties were most inclined to have employee organizations, and this was usually a combination of nationals and locals. Regionally, the Northeast had a fairly even distribution of the various types of organizations, while a mixture of nationals and

Figure 6
Municipalities Reporting Work Disruptions in the Two-Year Period
Prior to 1967 and 1969

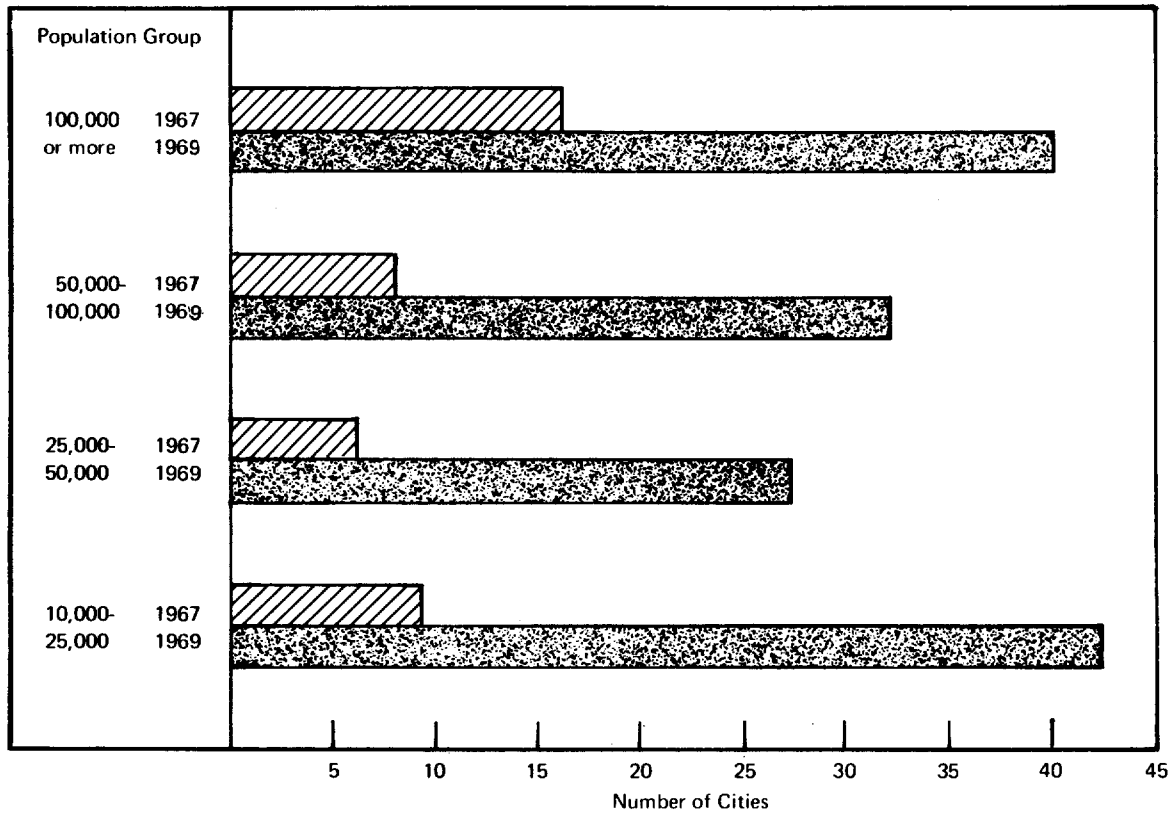
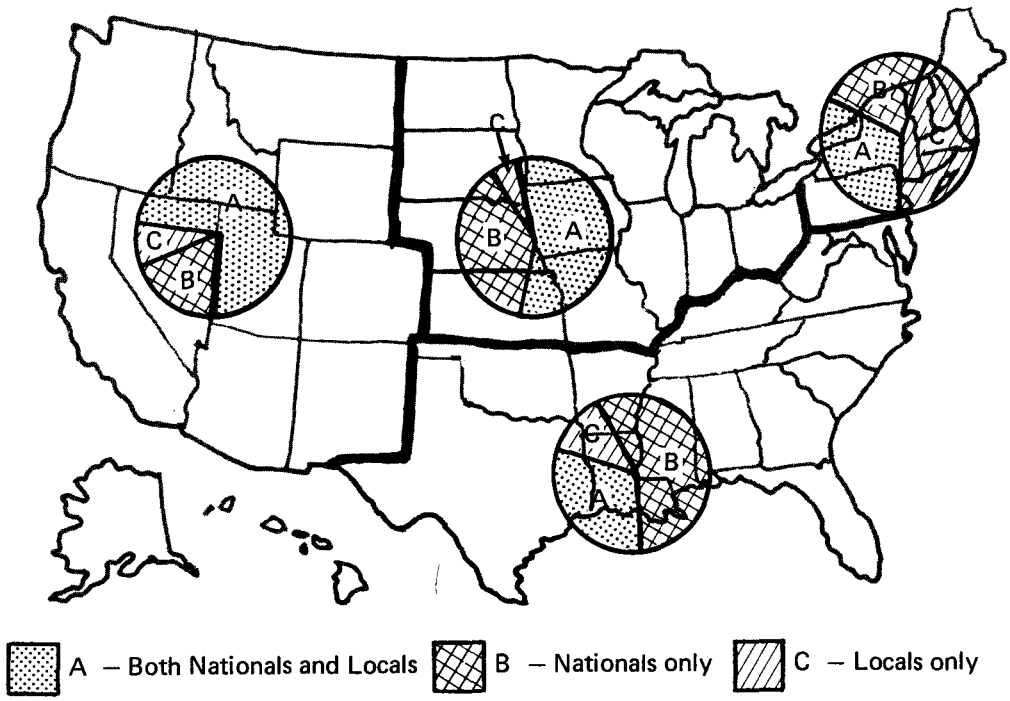



TABLE 15
EXTENT OF COUNTY EMPLOYEE ORGANIZATIONS

| Distribution | Number of Counties Reporting (A) | Counties with Employee Organizations | | Counties with: | | |
|---|---|---|---|---|---|---|
| | | (B) | % of (A) | Both Nationals and Locals % of (B) | Nationals Only % of (B) | Locals Only % of (B) |
| Total, all counties | 209 | 117 | 56 | 48 | 38 | 14 |
| Population group | | | | | | |
| Over 500,000 | 45 | 37 | 82 | 54 | 32 | 14 |
| 250,000-500,000 | 40 | 26 | 65 | 62 | 31 | 7 |
| 100,000-250,000 | 66 | 32 | 49 | 44 | 44 | 12 |
| 50,000-100,000 | 28 | 15 | 54 | 40 | 33 | 27 |
| 25,000- 50,000 | 22 | 5 | 23 | 0 | 25 | 75 |
| 10,000- 25,000 | 8 | 2 | 25 | 0 | 0 | 0 |
| Geographic region | | | | | | |
| Northeast | 40 | 26 | 65 | 31 | 27 | 42 |
| North Central | 53 | 32 | 60 | 53 | 44 | 3 |
| South | 74 | 27 | 37 | 30 | 59 | 11 |
| West | 42 | 32 | 76 | 72 | 22 | 6 |

Figure 7
Regional Distribution of County Employee Organizations




locals or just the former predominated in the other areas. Overall, a wide gap was apparent between large and small and between Northern and Southern counties with respect to the tendency of their public labor force to be organized.

## Number of National Employee Organizations

Turning to the number of national employee organizations found in urban counties of various sizes and locations, the largest percentage of respondents had one union (see Figure 8 and Tables 16 and 17). Adding this figure to the "no unions" replies shows slightly over one-half of the reporting counties as unorganized or with only a single union. With the exception of jurisdictions under 25,000 population (only two of which responded to this question), a direct relationship existed between population and tendency to have one or more unions. Surprisingly, almost one-half the unorganized counties were located in the Northeast. Western counties again showed considerable and somewhat unexpected organizational strength. Jurisdictions in the North Central region were most likely to have at least one public employee union, while Southern counties appeared to be markedly less inclined to have any national organizations.

## Countywide Associations of Public Employees

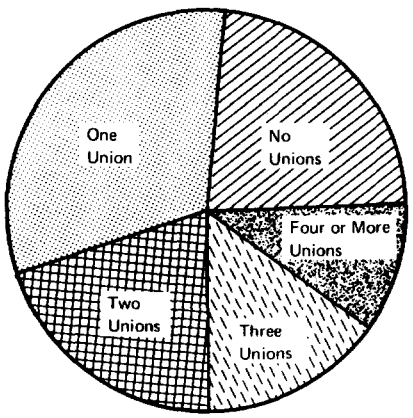
Figure 9 and Table 18 indicate the extent of countywide employee associations in terms of the proportion of the total public labor force belonging to such organizations. Fifty-six, or 27 percent, of the respondents had all-county associations, but in only a handful of jurisdictions did they represent all of the departmental employees.

In two-thirds of the counties with independent associations, 60 percent or less of the public labor force was represented by such organizations.

## County Laws Regarding Public Employee Organizations

Responses to survey questions on county laws dealing with public employee organizations and the conduct of negotiations were basically similar to those

Figure 8
Number of National Employee Organizations
Per County, 1969




to the municipal poll. As can be seen from Table 19, more than one-half of all urban counties reporting had no formally stated policy applicable to either general employees or public safety personnel in connection with permitting membership in nationally-affiliated organizations or independent local associations, punishing employees for their union activities, recognizing organizations as the single negotiating representative, signing negotiated agreements, or authorizing arbitration of disputes. From over one-third to one-half of the organized counties lacked any official policy position on these issues.[5]

With respect to organizational membership, more than 60 percent of all responding organized counties, especially those with both nationals and locals, permitted their general employees to join national affiliates, while over one-half authorized them to join local associations. Jurisdictions with only nationals or locals were most likely to have no laws on this matter.

Public safety personnel were allowed to join either national organizations or independent locals in about one-half of the organized counties reporting. Again, jurisdictions having a mixture of both types of organizations were most inclined to have taken formal action.

A majority of the urban counties with some type of employee organization had enacted laws prohibiting management from dismissing or punishing severely general and public safety employees for participating in union activities. A similar response pattern was evident for those having both nationals and locals, or the latter type exclusively.

Although in most cases the management representative was authorized to sign negotiated agreements, on the question of recognizing a single negotiating representative for general and public safety personnel, the laws of about one-half of the responding organized counties were silent. Jurisdictions with only national affiliates were least likely to have such provisions.

Finally, only one-third of the organized counties authorized arbitration of disputes over personnel matters involving general employees, and one-fourth permitted arbitration in the case of public safety personnel. Counties having locals only were most inclined to allow use of this device, while those with just nationals were at the other extreme. Replies from jurisdictions having both types of employee organization were divided fairly evenly among the "yes," "no," and "no policy" categories.

In summary, it is clear that unorganized counties find little need to have laws dealing with the various employer-employee relations subjects under consideration. Yet, the fact that about two-fifths of the organized counties lacked their own laws and formally stated policies in connection with membership, sanctions, recognition, agreements, and arbitration strongly suggests that many of these jurisdictions have little concern with establishing the necessary machinery to handle relations with their employees, or that they prefer to let the State take the initiative.

Table 16
NUMBER OF NATIONAL EMPLOYEE ORGANIZATIONS
PER COUNTY, 1969
(by Number of Unions)

| Distribution | Number of Counties (A) 1969 | Percent of (A) |
|---|---|---|
| Total, all counties | 209 | 100 |
| Counties reporting this information | 120 | 100 |
| With no unions | 27 | 23 |
| One union | 35 | 29 |
| Two unions | 28 | 23 |
| Three unions | 11 | 9 |
| Four or more unions | 19 | 16 |

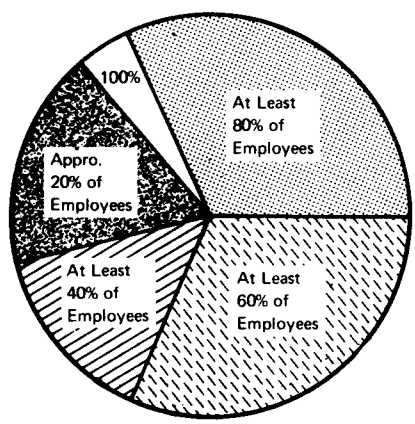
[5] See Appendix Table C-23 for a breakdown of responses in terms of "no answer," "yes," "no," and "no policy."

Table 17
NUMBER OF NATIONAL EMPLOYEE ORGANIZATIONS PER COUNTY, 1969
(by Population Group and Region)

| Distribution | Percent of Counties Reporting One or More Unions* 1969 |
|---|---|
| Total, all counties | 77 |
| Over 500,000 | 85 |
| 250,000-500,000 | 79 |
| 100,000-250,000 | 78 |
| 50,000-100,000 | 71 |
| 25,000- 50,000 | 44 |
| 10,000- 25,000 | 100 |
| Geographic region | |
| Northeast | 52 |
| North Central | 97 |
| South | 67 |
| West | 91 |

*Percent of the 120 reporting counties that specifically answered this item.

Figure 9
Representation of Public Employees by Countywide Associations




## County Management Practices: Recognition and Negotiation Procedures

Appendix Table C-24 shows that more than one-fourth of the urban counties participating in the survey lacked a formal recognition procedure. Approximately two-fifths of the jurisdictions with national affiliates exclusively, one-fifth of those with both locals and nationals, and one-eighth of those with locals only indicated having no official procedure for dealing with this matter. In most counties, however, recognition of an employee organization for purposes of discussing wages and salaries, hours of work, paid vacation policies, and other personnel matters with management was dependent upon its officers requesting an appointment with the chief appointed or elected administrative officer.

Once negotiations commenced, in counties with some type of public employee organization the personnel director, the entire governing board, or a committee thereof usually served as the management representative in these sessions. Jurisdictions with national affiliates only were represented by the entire governing board, counties with just local associations by a committee of the board, and those with a mixture of nationals and locals by the personnel director.

Table 18
NUMBER OF COUNTYWIDE EMPLOYEE ASSOCIATIONS, 1969
(by Percent of Membership)

| Distribution | |
|---|---|
| Number of counties with countywide employee associations | 56 |
| Percent of counties having employee associations where membership represents: | |
| 100 percent of employees | 4 |
| At least 80 percent of employees | 30 |
| At least 60 percent of employees | 30 |
| At least 40 percent of employees | 16 |
| Approximately 20 percent of employees | 20 |

In a majority of the organized counties responding, negotiation sessions took place before a committee of the governing board. In jurisdictions with both nationals and locals, however, negotiations with public employee organizations were conducted at hearings before the personnel board and before the governing board.

## Binding Agreements, Arbitration, and Grievance Procedures

Nearly two-thirds of the organized counties reported they had established grievance procedures (see Appendix Table C-25). While two-fifths authorized the

signing of a binding agreement, only about one-twentieth had submitted a dispute over wages and salaries or working conditions to an arbitrator during the past four years.

A breakdown of the replies by population groups shows that large counties were most likely to have formal machinery for resolving employee grievances and small ones were least likely to have such procedures. Little significant correlation was apparent, however, between jurisdictional size and use of binding agreements and arbitration.

Regionally, the Northeast and North Central areas dominated the binding agreement category, while all regions appear to have avoided arbitration. Western counties were most inclined to have established grievance mechanisms.

## County Work Disruptions

Data presented in Table 20 suggest that the overall number of work disruptions resulting from a strike, walkout, slow-down, or picketing by county employees is not in itself critical. When considered within a time frame, however, it gives sufficient cause for alarm.

Approximately 14 percent of all urban counties reporting experienced a work disruption at one time or another. More than three-fourths of these stoppages occurred within the last two years, and 93 percent took place within the last five years. In fact, only one disruption was reported before then, and this was more than 10 years ago.

A general trend is evident in the population groups, where the largest counties were most likely to have

Table 19
COUNTY LAWS REGARDING EMPLOYEE ORGANIZATIONS

| County Laws and Policies | Counties Reporting | Organized Counties | Counties Without Organizations | Counties with: | | |
|---|---|---|---|---|---|---|
| | | | | Both Nationals and Locals | Nationals Only | Locals Only |
| Total, all counties | 209 | 117 | 92 | 56 | 44 | 17 |
| Percent of counties reporting "no formally stated policy" as to the following: | | | | | | |
| Permit general employees to join nationally affiliated organizations | 53 | 37 | 74 | 27 | 45 | 47 |
| Permit general employees to join local associations | 57 | 41 | 76 | 30 | 57 | 35 |
| Forbid public safety personnel to join nationally affiliated organizations | 59 | 46 | 75 | 38 | 52 | 59 |
| Permit public safety personnel to join local associations | 57 | 42 | 77 | 32 | 57 | 35 |
| Permit management to dismiss or severely punish general employees for organization activity | 56 | 38 | 79 | 20 | 52 | 29 |
| Permit management to dismiss or severely punish public safety employees for organization activity | 54 | 37 | 75 | 30 | 46 | 35 |
| Permit recognition of single negotiating representative for general employees | 57 | 47 | 70 | 39 | 59 | 41 |
| Permit recognition of single negotiating representative for public safety employees | 57 | 52 | 63 | 41 | 66 | 53 |
| Permit signing negotiated agreements | 56 | 40 | 75 | 36 | 50 | 29 |
| Authorize arbitration of disputes involving general employees | 54 | 41 | 71 | 32 | 55 | 35 |
| Authorize arbitration of disputes involving public safety employees | 56 | 44 | 72 | 32 | 61 | 35 |

Table 20
COUNTY WORK DISRUPTIONS

| Distribution | Total Number of Counties Reporting Disruptions (A) | Counties Reporting Work Disruptions: Within the Last 2 Years No. | % of (A) | Between 2 and 5 Years Ago No. | % of (A) | More than 10 Years Ago No. | % of (A) |
|---|---|---|---|---|---|---|---|
| Total, all counties | 29 | 22 | 76 | 5 | 17 | 1 | 3 |
| Population group | | | | | | | |
| Over 500,000 | 13 | 9 | 69 | 4 | 31 | 0 | – |
| 250,000-500,000 | 5 | 5 | 100 | 0 | – | 0 | – |
| 100,000-250,000 | 6 | 5 | 83 | 0 | – | 1 | 17 |
| 50,000-100,000 | 3 | 3 | 100 | 0 | – | 0 | – |
| 25,000- 50,000 | 1 | 0 | – | 1 | 100 | 0 | – |
| 10,000- 25,000 | 1 | 0 | – | 0 | – | 0 | – |
| Geographic region | | | | | | | |
| Northeast | 6 | 4 | 67 | 2 | 33 | 0 | – |
| North Central | 9 | 4 | 44 | 3 | 33 | 1 | 11 |
| South | 6 | 6 | 100 | 0 | – | 0 | – |
| West | 8 | 8 | 100 | 0 | – | 0 | – |

undergone work disruptions, especially during the last two years. As might be expected, almost no strikes or slowdowns occurred in jurisdictions under 50,000 population. The "history" of work disruptions was longest in the Northeast and North Central regions, while the West and the South—areas where organizations are just now beginning to make serious inroads in the public labor force—experienced most of the recent disruptions.

## State Mandating of Salaries, Wages, and Working Conditions

All States have constitutional and statutory provisions covering the election, term of office, duties, and compensation of elected local officials. In addition, many have enacted legislation governing local personnel policies for non-elective officials and employees. Some have adopted statutes directing local governments to recognize and to negotiate or meet and confer with employee organizations. At the same time, some States in effect have circumscribed local discretion and the scope of negotiations or discussions by enacting special legislation prescribing specific methods and qualifications for appointment, compensation, fringe benefits and working conditions, and hours of work for certain categories of local public personnel.

To determine the extent of this more restrictive form of mandating, State municipal league and county association executive directors as well as State personnel administrators were polled on the mandating policies of their respective States. For the purposes of the survey, "State mandating" was defined as requirements established by legislatures which bypass normal, locally-determined procedures affecting local public employee relations in the areas of (a) salaries and wages, (b) hours of work, (c) working conditions and fringe benefits, and (d) employee qualifications.[6] Such mandating can result from direct legislative efforts or from administrative actions authorized by the legislature.

Most of the data presented in the following tables have never before been assembled systematically on a nationwide basis. This material, however, should be treated as a preliminary inquiry into mandating legislation and practices. Analysis of State statutes on this subject is a tough assignment that is made even more difficult by the numerous special State enactments covering public employees in one occupation or type of local jurisdiction. The authority of some State civil service boards or commissions over certain local personnel practices makes the mandating issue still more complicated.

[6]The survey did not cover State imposed requirements affecting public school personnel. State specification of minimum salaries for teachers is fairly widespread, but working conditions are relatively untouched except in laws governing professional negotiations.

Information was received from respondents in 46 States.[7] In 14, no legislative mandating covering local public personnel was reported.[8] Seven of these States were located in the South, four in the West, two in the Northeast, and one in the North Central region. One reason for the high incidence of Southern States indicating no mandating legislation might be the relatively modest extent of lobbying activity on the part of their organized local public employees. It should be noted that Alaska reported coverage of employees of most local units under its State personnel system. This coverage, however, was at the option of the local jurisdiction.

Of the 32 States engaging in mandating, Appendix Table C-26 shows that 21 have enacted special legislation affecting the compensation of a certain group of local public employees; 20 have imposed requirements in connection with employee qualifications; 19 with hours of work; 13 with working conditions; and 11 with fringe benefits.

The survey data indicate that 13 States have provided some financial aid when mandated conditions resulted in an increase in local personnel costs. Requirements affecting welfare personnel were most frequently compensated by these States. California, New York, Ohio, Virginia, and Wisconsin reimburse or share in some of the local salary costs, while North Carolina, Oregon, and Pennsylvania provide some financial assistance for administrative and salary costs. All local government personnel in Hawaii serve under a statewide personnel system in which the hours, working conditions, and qualifications of employees are mandated by the State. Additional local costs resulting from mandating are assumed by the State government for periods ranging from six months to one year. Alabama occasionally has taken on the burden of additional local personnel costs. Finally, some States–including Utah and Washington–have financed the State mandated firemen's pension fund from fire insurance premiums.

Tables 21 and 22 show the results of the ACIR-ICMA and ACIR-NACO surveys of cities and counties on the extent of State mandating policies and practices. The city data generally corroborate the findings based on Appendix Table C-26. Again, the largest number of cities were affected by requirements covering police and fire personnel. To a far lesser extent, the respondents indicated mandating in the sewage and water supply functions. Working conditions and fringe benefits, followed by hours of work, were the most commonly cited requirements.

The corresponding table for urban counties shows that police personnel most often were subject to State mandating. Unlike the cities, county firemen were not in the forefront of the occupational categories affected by State imposed requirements, largely because fire protection usually is a municipal function. At the same time, the table reveals highways as the second most frequently mentioned mandated function, and this probably is attributable to the important role that many counties play in highway construction and maintenance. As with the cities, most State mandating involved the working conditions and fringe benefits of county employees.

To summarize, the survey results on the extent of State mandating affecting counties generally paralleled those for cities, with the exception of the county-oriented highway function and the city-oriented fire protection function. The nature of State mandating may be summarized as follows:

- More than two-thirds of the States have enacted special legislation circumscribing the discretion of local government officials over personnel matters, with a consequent narrowing of the scope of discussions or negotiations.
- Of the 14 States reporting no mandating, seven are in the South, four in the West, two in the Northeast, and one is in the North Central region.
- Twenty-one States have mandated salaries and wages of certain local employees; 20 have imposed requirements dealing with employee qualifications; 19 with hours; 13 with working conditions; and 11 with fringe benefits.
- In general, programs of State financial aid to compensate for increased costs generated by mandating are quite limited, often amounting to only token assistance.
- State imposed requirements for police, fire, and highway personnel were cited most frequently; the predominant type of requirement involved working conditions and fringe benefits, followed by hours of work.

## Concluding Observations

Recent years have witnessed dramatic changes in employer-employee relations at the local level. Some of these changes are quite obvious. There are the swelling numbers of public employees accompanying the expansion of governmental services. There are the insistent

[7] No replies were received from respondents in North Dakota, Rhode Island, West Virginia, and Wyoming.

[8] States reporting no mandating of local personnel policies for special groups of employees included Connecticut, Delaware, Florida, Georgia, Idaho, Maryland, Mississippi, Montana, Nevada, New Mexico, South Carolina, South Dakota, Tennessee, and Vermont.

Table 21
CITIES AFFECTED BY STATE MANDATING
(by Occupational Category and Type of Requirement)

| Occupational Category by Municipal Function | Total Number of Cities Responding (A) | Salaries and Wages % of (A) | Hours of Work % of (A) | Working Conditions and Fringe Benefits % of (A) | Employee Qualifications % of (A) | Information Not Available % of (A) |
|---|---|---|---|---|---|---|
| Highways | 115 | 32 | 44 | 62 | 27 | 11 |
| Police | 446 | 50 | 45 | 50 | 45 | 1 |
| Fire | 414 | 43 | 63 | 52 | 30 | 1 |
| Sewage | 154 | 27 | 33 | 45 | 51 | 5 |
| Sanitation | 121 | 32 | 44 | 55 | 32 | 9 |
| Parks & recreation | 123 | 35 | 44 | 60 | 27 | 11 |
| Libraries | 105 | 30 | 37 | 53 | 31 | 10 |
| Water supply | 140 | 24 | 33 | 46 | 51 | 5 |
| Other | 59 | 37 | 20 | 54 | 41 | 5 |

Table 22
COUNTIES AFFECTED BY STATE MANDATING
(by Occupational Category and Type of Requirement)

| Occupational Category by County Function | Total Number of Counties Responding (A) | Salaries and Wages % of (A) | Hours of Work % of (A) | Working Conditions and Fringe Benefits % of (A) | Employee Qualifications % of (A) | Information Not Available % of (A) |
|---|---|---|---|---|---|---|
| Highways | 20 | 40 | 60 | 65 | 25 | 5 |
| Police | 25 | 32 | 48 | 52 | 44 | 4 |
| Fire | 10 | 60 | 50 | 70 | 40 | 10 |
| Sewage | 12 | 25 | 33 | 58 | 42 | 8 |
| Sanitation | 14 | 36 | 23 | 46 | 57 | 7 |
| Parks & recreation | 9 | 33 | 56 | 67 | 22 | 11 |
| Libraries | 10 | 30 | 40 | 60 | 40 | 10 |
| Water supply | 7 | 29 | 29 | 71 | 43 | 14 |
| Other | 32 | 81 | 38 | 34 | 56 | 6 |

demands of employee unions and professional associations for recognition and for a real "piece of the action" in arriving at the terms and conditions of public employment. There is the increasing willingness of public employees to engage in work disruptions. What has been unclear until now, however, is the nature and extent of these and related changes on a nationwide basis.

The questionnaire data presented here shed new light on the crucial question of "what is the current status of public labor-management relations in local government?" The foregoing analysis, while based largely on a representative sample of local jurisdictions, raises serious doubts concerning some of the "conventional wisdom" in this area. For example, the data indicate that many counties and cities have been reluctant to adopt laws, formally stated policies, and procedures to cope with the challenge of mounting public employee militancy; the widely held assumption that local governments on their own have begun to respond to employee unrest and unionism, then, is only partly accurate. Another common belief is that public employee organizations are making significant inroads in virtually all occupations and all local jurisdictions; the survey results reveal this as but a half-truth.

What, then, are the hard facts of contemporary public labor-management relations at the local level as pointed up by the surveys?

- About three-fourths of the cities, including practically all over 100,000, and nearly one-half of the urban counties have some type of public employee organization. One-third of the municipalities with less than 25,000 population and almost one-fifth of those in the 25,000-50,000 range lack public employee unions or associations. Nearly one-half of the counties under 50,000 are unorganized.
- Southern cities and counties are least likely to have public employee organizations, although recently unions and associations have made some inroads in this region. Municipalities in the Northeast and North Central regions and counties in the West continue to surpass jurisdictions in other regions in the extent to which their labor force is organized.
- Independent and suburban muncipalities, many of which operate under the council-manager plan, have experienced a rapid expansion in the number of organized public employees. When all is said and done, however, central cities and those with the mayor-council system are still the major strongholds of unionization in the public sector.
- Independent local associations are gaining some momentum, as evidenced by the 38 percent increase that occurred between 1967 and 1969 in the number of municipalities reporting "at least 40 percent" and the 31 percent rise in those indicating "at least 60 percent" of their work force belonged to such organizations. Yet, these advances might be offset by the growth of national affiliates in cities where organized public employees formerly were members of only locals. Almost one-half of the municipalities have unions exclusively, and another one-third have national organizations as well as citywide associations.
- In the last three years, an overall 53 percent decrease has occurred in the number of unorganized cities. The majority of these were suburban and independent, mayor-council municipalities located in the Northeast and the South. Large, central cities experienced marked rises in the number of public employee organizations, particularly in the "three unions" sector.
- Over one-half of the urban counties have one or no unions. Those from 25,000 to 50,000 and those situated in the Northeast and the South are least likely to have one or more such organizations. Large counties and those in the North Central and Western regions tend to have a number of unions.
- Almost one-half of the municipalities have none or under 25 percent of their public employees represented by unions or associations. But 80 percent of the employees of cities over 500,000 are organized in contrast to only 25 percent of those of municipalities under 25,000.
- Fire, police, and public welfare personnel, in descending order, are the most organized municipal occupational categories, with many cities having well over 90 percent of their employees in these functional areas represented by unions or associations. Welfare, health and hospital, parks and recreation, and utilities employees tend to be the least organized, although AFSCME members, for the most part, are grouped in these vocations.
- In the last three years, a 271 percent overall hike has occurred in the number of work disruptions involving city cmployees, especially in Northeastern, in suburban and independent, and in council-manager jurisdictions. Yet, little overall relationship exists between the increasing incidence of these disturbances and city size. On the other hand, more than three-fourths of the work disruptions by county employees took place during the last two years, chiefly in large jurisdictions.
- Due in part to State statutes and in part to lethargy, nearly two-thirds of the cities and more

than one-half of the urban counties have no laws on whether general and public safety personnel may join unions or associations; whether they can be punished by management for participating in union activities; whether a single negotiating representative for these employees may be recognized by management; whether management may sign negotiated agreements; and whether disputes involving these personnel may be submitted to an arbitrator. Existing laws and formally stated policies in the remaining jurisdictions generally permit such practices, except that punishment of employees for their organizational activities is barred.

- State mandating of the terms and conditions of local public employment has occurred most frequently in the area of compensation, followed by employee qualifications, hours of work, working conditions, and fringe benefits. City firemen and policemen and county police and highway personnel are the occupational categories most commonly subjected to such requirements. While mandating is practiced in almost two-thirds of the States, only slightly over one-eighth have provided any compensatory financial aid when State imposed requirements resulted in increased local personnel costs.

# *Chapter 4*

# PROBLEMS AND ISSUES IN PUBLIC EMPLOYER-EMPLOYEE RELATIONS

The militancy of public employees, while not a new phenomenon, is rapidly increasing in its intensity. The sharp rise in the number and types of public employee unions and associations, the burgeoning membership rolls of these organizations, and the aggressive tactics which they employ to achieve their objectives are major indicators of this boldness. In keeping with this mood, public employees increasingly have turned to dealing collectively with employers as the means for improving their wages, hours, and working conditions. The broader, noneconomic significance of determining the terms and conditions of public employment through employer-employee discussions and negotiations has been explained, from the union point of view, by Jerry Wurf, International President of AFSCME:[1]

> Collective bargaining is more than simply an additional holiday, or a pay increase, or an improved pension plan, or a grievance procedure. It is, of course, all of these, and their importance can hardly be overestimated. But it is, in its most profound sense, a process.
>
> It is a process which transforms pleading to negotiation. It is a process which permits employees dignity as they participate in the formulation of their terms and conditions of employment. It is a process which embraces the democratic ideal and applies it concretely, specifically, effectively, at the place of work.
>
> Public employees and collective bargaining have engaged in sporadic flirtations with each other for decades. It is no longer a flirtation. It is a marriage. And it will endure.

[1]Speech by Jerry Wurf, International President, AFSCME, before the 1967 U.S. Conference of Mayors, Honolulu, Hawaii, June 19, 1967.

Most State and local governments, however, have been largely unprepared for, and basically reluctant to face the implications of rising public employee organization. A majority of the States have not enacted comprehensive public employee labor relations statutes and relatively few counties and municipalities have laws or formal policies dealing with employer-employee relations procedures. Professor George W. Taylor has argued that the reluctance of many State and local governments to confront the challenge of organized public employees may be attributed to the growing use of the strike weapon in the public sector.[2] Another reason for this reluctance—especially at the State level—has been the continuing deadlock over whether collective negotiation is compatible with or a threat to governmental sovereignty.[3]

[2]According to George W. Taylor, "A substantial and long overdue overhaul of public employment relations is underway in numerous states and municipalities despite the persistence of many doubts about the changes being made. In most states and municipalities, however, a staunch adherence to the status quo is being maintained. To a considerable extent, these doubts and this adherence arise because of concern about the serious infringement of strike action upon vital public interest." See his "Impasse Procedures–The Finality Question," speech before the National Conference on Public Employment Relations, New York City, October 15, 1968.

[3]See Kenneth O. Warner and Mary L. Hennessy, *Public Management at the Bargaining Table* (Chicago: Public Personnel Association, 1967), p. 74, which pointed out that, "In the three levels of government–federal, state, and municipal–the least structured and most nebulous condition of employee-management relationships exists in state governments. State legislatures have been relatively active in legislating for employee-management relationships for municipalities and other local governments, but they were slower to legislate for their own state employees. Some observers believe this is because legislatures have not yet resolved the issue of whether collective bargaining impairs the sovereignty of the state itself."

Besides the strike and sovereignty issues, critical differences between the public and private sectors constitute added explanations for the unwillingness or inability of State and local governments to negotiate with their employees. The system of separation of powers and checks and balances in a representative democracy limits and diffuses authority and leadership and this often complicates the identification of a source of final answers to questions arising in the course of employer-employee negotiations. This fragmentation of the public employer's authority makes it difficult to talk of contracts that are contracts or binding agreements that are binding for the public sector. This problem of determining "who is the public employer" is magnified by statutory restrictions upon the immediate employer's authority, particularly those resulting from the role of civil service commissions in establishing public personnel policy and the controls legislative bodies exert over the source and expenditure of funds and over various components of the personnel system. The need for public managers to balance the divergent interests of citizen groups and to guard the relationship between personnel administration and broad policy questions which ultimately must be decided by legislative bodies, establish other basic dissimilarities between public and private employment. John W. Macy, Jr., former Chairman of the U. S. Civil Service Commission, believes that these differences are of transcending significance:[4]

> . . . the greatest obstacle to the search for effective solutions in public service labor relations is disagreement on the question of whether government service is essentially different from private employment, so different that the usual labor relations policies have to be modified. In any governmental jurisdiction, unless the parties can agree on an affirmative answer to this question, the road of labor-management relations will be too rocky to travel. The government involved, and the public which supports it, will be too suspicious of unionism to permit it to flourish. Conversely, if the government and its public believe that the union recognizes and accepts the essential differences, then all the problems of equality of status and methods of operation in particular aspects of the relationship have a good chance of resolution. I would not want these views to be misinterpreted as indicating that the role of labor unions in public service is or should be more *limited* than it is in private employment. Rather, it is a plea for dropping a Maginot Line attitude that measures success in public labor relations only in terms of how nearly it matches private industry practice. I submit that the test of labor's success should not be whether you achieve the *forms* and *techniques* of collective bargaining in the private sector, but whether you achieve similar *results* for the worker, through whatever form of representation is best suited to the public jurisdiction involved.

Regardless of the underlying reasons, the clash of employee militance and employer intransigence has precipitated serious and immediate questions concerning the prerogatives and responsibilities of each party. The two basic statutory approaches with respect to public employer-employee relations at the State and local levels, collective negotiations and meet and confer, in part reflect different responses in providing answers to these questions. Collective negotiations, after all, supposedly involves bargaining between equals and meet and confer ostensibly involves strong protection of management rights and far fewer rights for labor. As we shall see, however, the real differences between the two approaches are not all this clear. In this portion of the report, the Commission identifies and considers some of the more significant of these critical issues in public employer-employee relations. These are treated under three broad headings. First, within the framework of the "Basic Rights and Responsibilities of Public Employees," the doctrine of sovereignty, the right of public employees to organize, employer recognition of public employee organizations, *de facto* bargaining, and strikes by public employees are considered. The second section—"Statutory Coverage and Administrative Machinery"—deals with the levels of government and occupational categories covered by State public employee labor relations laws, and with the agencies responsible for administration of these statutes. In the final part—"Procedural Issues in Public Labor-Management Relations"—such topics as representation and unit determination, the scope of bargaining, the merit principle and the merit system, unfair labor practices, budgetary procedures and fiscal administration, union security, compulsory arbitration, and State and Federal mandating are probed.

## BASIC RIGHTS AND RESPONSIBILITIES OF PUBLIC EMPLOYEES

Recent years have witnessed a marked rise in the frequency and intensity of the demands made by public

[4] John W. Macy, Jr., "Public Employee Labor Relations in a Changing Society," address at the Joint Conference of the American Federation of Labor-Congress of Industrial Organizations and the Canadian Labour Congress, Niagara Falls, Ontario, November 20, 1968, pp. 2-3.

employees for recognition of certain "rights," many of which were won long ago by private sector workers. Chief among these are the freedom to organize; to be represented in the determinations of the public employer concerning wages, hours, and working conditions; to present views collectively; to permit one's employee organization to be recognized by the employer; to have such unions and associations participate in meaningful negotiations or discussions, including voicing grievances and executing a written agreement; to have a dues checkoff and such union security provisions as an "agency shop"; and to engage in strikes.

A majority of governmental jurisdictions obviously have refused to recognize some or all of the above employee "rights." At the Federal level, not until President Kennedy signed Executive Order No. 10988 on January 17, 1962, did all Federal employees have the right to form or participate in employee organizations, or were Federal agencies authorized to recognize employee organizations as exclusive representatives of an appropriate bargaining unit and to negotiate agreements covering employees in the unit. This action represented the first uniform Executive Branch policy dealing with relationships between agencies and employee organizations. The only previous effort at the national level had been the Lloyd-LaFollette Act of 1912, which protected the right of postal employees to join unions and guaranteed the right of all Federal civil service personnel to petition Congress.

Despite the provisions of Executive Order No. 10988, employee organization participation in the determination of Federal employment conditions remained at a stage considerably removed from the private sector. The Order in no sense established a bilateral or reciprocal relationship. It was, in effect, a somewhat rudimentary version of "meet and confer" legislation found in five States. When hired, Federal employees had to sign an affidavit pledging that they would refrain from striking, and recognition was limited to employee organizations which did not assert the right to strike against the government. Wages and hours continued to be determined unilaterally by Congress and the President. The scope of negotiations was not expanded to include such areas as hiring, promotions, transfers, job assignments, or any other matters which could conflict with unilaterally-imposed agency regulations.[5] As a result, Federal employee organizations were confined to discussing with agencies such working conditions as overtime, leaves, and shifts. The more substantive aspects of public employment were determined by the government and this strengthened the case of those who argued that lobbying was the best way to get a Federal pay hike, better fringe benefits, and the like.

The reactions of organized labor to these limitations upon the bargaining rights of Federal employees and to the attitudes of public managers when dealing with unions have been summarized as follows: [6]

> The honest intent of Executive Order 10988 was to drag the management of the federal establishment into the 20th Century, so far as relationships with labor were concerned. The collective experience of unions representing federal employees, however, shows that in far too many cases, management has refused to be dragged–and it still has not lived up to its obligations under the Executive Order, much less to the philosophical ground on which this directive was founded.
>
> The facts of life are that, inside the federal establishment–at the work places in both shops and offices–federal employees still are living under what can best be described as 'benevolent despotism,' when the goal was to achieve some measure of 'industrial democracy,' which is the goal of the Labor Management Relations Act under which unions in the private sector operate.

President Nixon's Executive Order 11491 has fallen far short of the sweeping changes in Federal labor-management relations policies and practices advocated by organized labor. At best, it gives them only "half a loaf."

On the one hand, the new Order does not expand the scope of negotiations to include "bread and butter" matters. It does not remove the proviso that in order to be recognized, an employee organization must refrain from asserting a right to strike for its membership. It does not establish a bilateral collective bargaining relationship which will culminate in a written agreement that is binding upon both parties. It does not permit official time for organization representatives when they are engaged in negotiations with management. It does not authorize such types of union security as the union shop, agency shop, or maintenance of membership. It

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[5] Benjamin Werne, "Unit Report: The Rights of Public Employees," *National City-County Services on Management-Labor Relations,"* November 1967.

[6] Executive Board, Maritime Trades Department, AFL-CIO, *Collective Bargaining in the Public Sector:* An Interim Report, February 13, 1969, p. 7. (Hereinafter cited as AFL-CIO Maritime Trades Department Interim Report.) The MTD Committee which drafted this report included representatives of various AFL-CIO affiliates having an interest in the public employee sector: AFSCME; IAFF; Textile Workers, Retail Clerks, Communications Workers, Plumbers, Carpenters, Machinists, etc.

does not allow agencies to extend formal or informal recognition to minority organizations.

On the other hand, the Order does prohibit supervisors from participating in the management or representation of a "labor" organization, and it does establish a separate system in which agencies are required to consult with supervisors' associations. It does require organizations to file financial and other reports and to meet certain bonding, trusteeship, and election standards. It does establish a Federal Labor Relations Council—consisting of the Civil Service Commission Chairman, the Secretary of Labor, an official of the Executive Office of the President, and such other officials as the President may designate—to administer the Order. It does set up a Federal Service Impasse Panel consisting of three Presidential appointees to settle negotiation impasses, and authorizes the Federal Mediation and Conciliation Service to help the parties settle disputes. It does provide that the Panel may authorize arbitration or third-party fact finding to break deadlocks. It does accord exclusive recognition to the organization selected in a secret ballot by a majority of the employees in an appropriate unit. It does accord other labor organizations national consultation rights, including the right to comment on and suggest modifications in proposed substantive changes in personnel policies, to confer with management in person in connection with such policies, and to present written views. It does establish procedures for handling grievances and disputes arising over the administration of agreements. Finally, it does require the parties to negotiate "in good faith," and makes formal discussions subject to pertinent laws and regulations, agency policies and procedures, national agreements on those at a higher level in the agency, and provisions of the Order.

## The Sovereignty Issue—Can the King Do No Wrong?

Even though President Kennedy's Executive Order had some spillover effect in encouraging employee organization in State and local government, the status of employer-employee relations in many jurisdictions at these levels is not much better and is often more confused than those at the Federal level. While experience varies widely, it is clear that many States and localities have not been willing to accede to demands made by public employees for full collective negotiating "rights." A major explanation for this reluctance is the view that public and private employment are essentially different and a major argument of those stressing the separation is that government possesses sovereign authority which cannot be surrendered or delegated to others.

**The "Traditionalist" View.** Rooted in the old common law precept that "the King can do no wrong" and in the principle that the individual cannot sue the State without its consent, the doctrine of sovereignty has been used in twentieth century United States by some public employers to justify their refusal to deal with employee organizations.[7] These "traditionalists" claim that the sovereignty of government precludes the public employer from entering into any commitment under compulsion or, even if agreed to, from respecting such commitments at a later time. (The same argument is not used to justify refusal to honor procurement contracts, however.) Since sovereignty requires public managers to make unilateral determinations rather than to engage in bilateral discussions and negotiations of public employment conditions, they argue that the history and implications of collective bargaining and the union movement in private industry are for the most part irrelevant to the public sector. A statement made by President Franklin D. Roosevelt in 1937 is often quoted today by proponents of this position:[8]

> The process of collective bargaining as usually understood, cannot be transplanted into the public service. It has its distinct and unsurmountable limitations when applied to public personnel management. The very nature and purposes of government make it impossible for administrative officials to represent fully or to bind the employer in mutual discussions with government employee organizations. The employer is the whole people who speak by means of laws enacted by their representative in Congress. Accordingly, administrative officials and employees alike are governed and guided, and in many cases restricted, by laws which establish policies, procedures or rules in personnel matters. Particularly, I want to emphasize my conviction that militant tactics have no place in the functions of any organization of government employees.

All earlier and nearly all recent judicial decisions and legal opinions have endorsed this viewpoint. They have held that signing a collective agreement would limit

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[7] For an example of the changes which have occurred in the application of sovereignty doctrine to collective negotiations see: Felix A. Nigro, "The Implications for Public Administration," *Public Administration Review,* XXVIII, No. 2 (March-April 1968), pp. 137-42, and Kurt L. Hanslowe, *The Emerging Law of Labor Relations in Public Employment* (Ithaca, New York: New York State School of Industrial and Labor Relations, Oct. 1967), Chapter 2.

[8] Myron Lieberman and Michael H. Moskow, *Collective Negotiations for Teachers* (Chicago: Rand McNally, 1966), p.4. Quoted in Eric Polisar, "Public Employees and the Right to Strike," paper prepared for delivery before the Public Personnel Association, Ottawa, Canada, May 9, 1967, p. 6.

the discretionary authority of the public employer, and that thereby the government would be circumscribing its sovereignty. As a New York Court held in 1943:[9]

> To tolerate or recognize any combination of Civil Service employees of the Government as a labor organization or union is not only incompatible with the spirit of democracy, but inconsistent with every principle upon which our Government is founded. Nothing is more dangerous to public welfare than to admit that hired servants of the state can dictate to the Government the hours, the wages, and conditions under which they will carry on essential services vital to the welfare, safety, and security of the citizen. To admit as true that Government employees have power to halt or check the functions of Government, unless their demands are satisfied, is to transfer to them all legislative, executive, and judicial power. Nothing would be more ridiculous.
>
> . . . Much as we all recognize the value and the necessity of collective bargaining in industrial and social life, nonetheless, such bargaining is impossible between the Government and its employees, by reason of the very nature of Government itself . . . .
>
> Collective bargaining has no place in Government service. The employer is the whole people. It is impossible for administrative officials to bind the Government of the United States or the State of New York by any agreement made between them and representatives of any union.

Under a democratic system of government, sovereignty, of course, ultimately resides with the people. At the same time, the implications of the representational principle have prompted most courts to establish that the terms and conditions of public employment are basically matters suitable for legislative determination. In consequence, allowing administrative agencies to sign labor relations agreements with public employees would constitute an illegal delegation of legislative power.

Some "traditionalists" have asserted that acceptance of a labor relations system where the public employer and employees would meet, confer, and negotiate as equals would lead ultimately to recognition of the employees' right to strike, which in turn would represent an attack upon government and its sovereignty. Even if the right to strike were not recognized, so their argument runs, this system could still lead to binding arbitration of employee disputes and this, too, would challenge the sovereign authority of the public employer.

These conventional interpretations of the sovereignty doctrine have served to bolster public agency unilateralism and to inhibit joint or partially joint determination of the conditions of employment by public employees and public employers. Moreover, in some jurisdictions where employee organizations exist, it has been claimed that such practices as exclusive recognition, the checkoff of union dues, fact-finding, arbitration, and certainly the strike have threatened the governmental unit's sovereign position. To summarize, the orthodox position holds:[10]

> . . . that governmental power includes the power, through law, to fix the terms and conditions of government employment, that this power reposes in the sovereign's hand, that this is a unique power which cannot be given or taken away or shared, and that any organized effort to interfere with this power through a process such as collective bargaining is irreconcilable with the ideal of sovereignty and is hence unlawful.

**The "Revisionist" Critique.** In actual practice, however, the traditional interpretation has been refined in such a way as to make public employer-employee negotiations more compatible with the doctrine of sovereignty. Four counter-arguments to the older theory have facilitated this accommodation. One such argument holds that the sovereign, in effect, admitted that "the King could do wrong" when government allowed itself to be sued by private individuals through tort or contract claims for redress of alleged injuries. If this concession did not compromise governmental sovereignty, then acceptance by a jurisdiction of certain restrictions upon its discretion in dealing with public employees similarly would not jeopardize it.

Another line of reasoning maintains that when a public employer signs an agreement, rather than surrendering or delegating discretionary powers, it merely has agreed to limit such powers in certain areas for a given period in pursuit of its own proper concern—improving relations with its employees. Furthermore, if absolutely necessary, the public employer could repudiate agreements entered into on a voluntary basis and the affected employees would lack legal recourse.

A third view holds that since some of the contracts which governmental units have signed with private contractors have contained provisions calling for binding arbitration to settle disputes over contract performance, sufficient precedent exists for public employers to enter

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[9] *Railway Mail Ass'n. v. Murphy,* 44 N.Y. Supp. (2) 601.

[10] Hanslowe, *op. cit.*, pp 14-15.



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into labor relations agreements with their own employees.

Another basis on which the orthodox interpretation of sovereignty is challenged relates to the tenet that in a democracy sovereign authority ultimately reposes with the people. Therefore, when the peoples' representatives in Federal, State, and local legislative bodies authorize consultation, discussion and negotiation between public employers and their employees, this cannot be considered an abdication of sovereignty.

**The "Pragmatic" Synthesis.** The strength of the "traditionalist" position in many quarters and the growing acceptance of the "revisionist" view in others indicate that no real consensus now exists concerning the proper relationship between governmental sovereignty and public employer-employee negotiations. This inconclusiveness is in the two basic legislative approaches to public employer-employee relations, collective negotiations or meet and confer. Each differs in the status accorded the public employer in the negotiation process. In the collective negotiation approach, the two parties meet "ostensibly" as equals while in the usual meet and confer approach the employer is accorded a preferred position in the discussional process.

A third approach to the sovereignty issue, which might be labeled as "pragmatic," seems to be emerging from the heat of debate. This view seeks to reconcile the conflict involved in the theoretical and practical applications of this doctrine. Its proponents hold that the sovereign authority of government encompasses the power to engage voluntarily in collective bargaining or discussions as a matter of "enlightened" public personnel policy. According to Wilson R. Hart:[11]

> . . . the sovereignty doctrine is a clear and effective bar to any action on the part of government employees to compel the government to enter involuntarily into any type of collective bargaining relationship, . . . the doctrine does not preclude the enactment of legislation specifically authorizing the government to enter into collective bargaining relationships with its employees.

## Membership and Recognition: Right or Privilege?

The "traditionalist" interpretation of the sovereignty doctrine precludes the existence of a fundamental "right" on the part of public employees to organize and to be recognized by their employer. Hence, public employees are exercising a privilege rather than a "right" when they organize for the purpose of negotiating with employing agencies on the terms and conditions of employment. The National Governors' Conference Report explained the difference this way.[12]

> To petition the government is one thing. It is quite another to demand a share in decision-making in the domain of wages and employment, or to insist that decisions must have the consent of employee organizations. Some states have enacted laws that give bargaining rights to employee organizations. This action, however, can be interpreted as a privilege conferred by the legislature on employee organizations, and as such it can conceivably be revoked.

Public employee organizations, however, have been adamant in their opposition to this position. They view the formation of unions and associations in the public service to deal with employers over the terms and conditions of work basically an extension of the constitutional right of citizens to petition the government. These organizations also point to the National Labor Relations Act, which established in the private sector the right of employees to join and form unions of their own choosing and to have such unions represent them in collective bargaining, in support of their contention that this right should be extended to public employment. They also assert that if private employees have certain rights which cannot be granted to public employees, this relegates the public worker to "second-class citizenship" status. In rejecting the "privilege position," the recently published interim report of the Executive Board of the AFL-CIO Maritime Trades Department, composed of various affiliates having an interest in public sector employees, relied basically on this argument:[13]

> As long as public employees must operate in an area where their 'rights' are denied, and their organizational and collective bargaining activities are reduced to the level of 'a privilege' that 'can conceivably be revoked,' they are at the mercy of the employer whose benevolence can be terminated on more than a whim.

On the other hand, the view that public employment is a privilege rather than a right has received generally consistent judicial support. Until quite recently, practically all courts upheld and other authorities sanctioned the legality of prohibitions against employees

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[11] Wilson R. Hart, *Collective Bargaining in the Federal Civil Service* (New York: Harper & Row, 1961), p. 44. Cited in Hanslowe, *Ibid*, p. 20.

[12] National Governors' Conference, 1967 Executive Committee, *Report of Task Force Report on State and Local Government Labor Relations* (Chicago, 1967), p. 6.

[13] Executive Board, Maritime Trades Department, *op. cit.*, p. 4.

joining unions as a condition of public employment, for reasons pointed out by Kurt L. Hanslowe: [14]

> To the assertion that this interferes with the constitutional right of freedom of association, government has responded that, there being no constitutional right to government employment, it may insist on non-membership as a condition of such employment because of the governmental right and need to maintain operations without interference and interruption.

Where public employee membership is authorized, the courts have ruled that government employers may restrict the type of organizations to those which are either unaffiliated with the general labor movement or, if affiliated, do not assert the right to strike. In October 1969, however, a three judge Federal Court in the District of Columbia ruled that the nation's postal employees may not be barred from affirming their right to strike or from joining associations or unions that assert this right. The court also overturned the requirement that postal workers sign no strike pledges as a precondition of employment. This landmark First Amendment case obviously will have a significant spill-over effect on other workers subjected to similar requirements.

Denial of the right of union affiliation in part has been an outgrowth of the fears of public management that without this safeguard the size and resources of employee organizations would expand greatly and they then could exercise unchecked political and economic power. A stronger union position, so the argument runs, also would increase their proclivity to strike in order to win employer agreement to their demands and this, in turn, would produce hardships for the rest of society and undermine governmental stability.

**Emerging Judicial Opinion.** Prior to the 1960's, nearly all court decisions constituted a variation of the theme that the government as sovereign justifiably may establish such terms and conditions of public employment as it sees fit. Further, from the viewpoint of the individual employee, public employment is not a constitutional right but simply a privilege, which carries with it implied (or explicit) limitations on the freedom to organize. Oliver Wendell Holmes, when a judge on the Supreme Judicial Court of Massachusetts, enunciated the classic defense of this viewpoint in a decision upholding the firing of a policeman who had violated a ban on soliciting political contributions. [15]

> . . . there is nothing in the constitution . . . to prevent the city from attaching obedience to this rule as a condition to the office of policeman, and making it part of the good conduct required. The petitioner may have a constitutional right to talk politics, but he has no constitutional right to be a policeman. There are few employments for hire in which the servant does not agree to suspend his constitutional rights of free speech as well as of idleness by the implied terms of the contract . . . . The city may impose any reasonable condition upon the holding office within its control. This condition seems to be reasonable.

On January 17, 1969, the Eighth U.S. Court of Appeals in St. Louis, Missouri, handed down a ruling that could well establish a new judicial precedent on the issue of whether belonging to unions and associations is a right or a privilege for public employees. The case was an appeal from the U.S. District Court in Nebraska brought by the AFSCME on behalf of two employees of the North Platte, Nebraska, street department who alleged that they had been fired as a result of their union membership. The principal issue in *Gage* v. *Woodward* was whether in light of their dismissal the appellants had a right of action for damages and injunctive relief under Section 1 of the Civil Rights Act of 1871.[16] This question in turn involved the issue of whether public employees have a constitutional right to belong to a labor union. Based upon decisions in two earlier cases—*Thomas* v. *Collins,* 323 U.S. 516 (1945) and *McLaughlin* v. *Tilendis,* 398 F. 2d 287 (7th Cir. 1968)—the court held unanimously that the First Amendment right of association, made applicable to the States under the Fourteenth Amendment, protected the right of union membership. In the *Tilendis* case, which involved a complaint alleging that a non-tenure teacher was fired because of his union membership, the United States Supreme Court had ruled that:

> It is settled that teachers have the right of free association, and unjustified interference with teachers' associational freedom violates the Due Process clause of the Fourteenth Amendment . . . . Public employment may not be subjected to unreasonable conditions, and

[14] Hanslowe, *op. cit.* p. 11.

[15] *Ibid.*

[16] Section 1, Civil Rights Act of 1871, 42 U.S.C. 1983, provides: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

> the assertion of First Amendment rights by teachers will usually not warrant their dismissal . . . . Unless there is some illegal intent, an individual's right to form and join a union is protected by the First Amendment.

In the *Gage* case, the Appellate Court concluded:

> No paramount public interest of the State of Nebraska or the City of North Platte warranted limiting the plaintiffs' right to freedom of association. To the contrary, it is the public policy of Nebraska that employment should not be denied on the basis of union membership. The Constitution of the State of Nebraska, Article XV, Section 13, and the laws of Nebraska, Reissue Revised Statutes of 1943, Section 48-217, specifically provide that 'no person shall be denied employment because of membership in or affiliation with . . . a labor organization.' Neither the Constitution nor the statute is limited by its terms to private employment and, in our view, it is not so limited.

More recently, on February 25, 1969, a Federal court in North Carolina ruled that the State's law prohibiting union activities by policemen and firemen was unconstitutional. The court reasoned that this ban abridged the First and Fourteenth Amendment guarantees of freedom of association. At the same time, however, a different State law which prohibited State or local governmental units from doing business with public employee organizations was upheld by the court on grounds that, "There is nothing in the United States Constitution which entitles one to have a contract with another who does not want it." Apparently, the court felt that while individual public employees should be free to join organizations, governmental jurisdictions should be free to choose those with whom they wish to deal.

**The Reaction of Public Management.** The real significance of the debate over the right or privilege of public employees to join unions or associations lies mainly in the degree to which public management is actually responsive to these employee organizations. As the AFL-CIO Maritime Trades Department has stated:[17]

> The legal right of an employee to join a union can be made effective . . . only if there also are laws requiring recognition of the union as the employees' representative, and requiring that public officials participate in good-faith collective bargaining with the organization chosen by employees as their representative.

Public employers often distinguish sharply between the membership rights of their employees and the rights of employee organizations to present proposals, to meet and confer, and to negotiate collectively. The fact that the issue of recognition was the cause of one out of four strikes by public employees in 1968, even though strikes of this kind are virtually unknown in the private sector, highlights both the militancy of public employee organizations and the failure of much of management to grapple with the fact that such groups exist.

The tragedy that occurred in Memphis, Tennessee, in April 1968 in which a strike by garbage collectors for union recognition was exposed to national attention as a result of the assassination of Dr. Martin Luther King, Jr., is instructive of a certain type of traditional management attitude toward public employee organizations. After steadfastly refusing to recognize the garbage collectors' union, the City of Memphis, obviously in response to the pressures of national public opinion after Dr. King's death, reversed its position and signed an agreement with the striking sanitation men. Yet, the city still refuses to recognize or to negotiate with representatives of its policemen and firemen. One critical observer has noted with respect to this situation:[18]

> How a local government, which depended upon those same policemen and firemen to protect its citizens and non-striking employees during the garbage strike, can fail to see the importance of recognizing and bargaining collectively with representatives of its protective services is hard to understand.

**De Facto Bargaining.** Statutory authorization is not always necessary in order for public employers to negotiate with employee organizations. In some of the States that have not enacted statutes mandating or permitting collective negotiation or meet and confer for either State or local employees, the courts have held that as a precondition for such dealings an express legal authorization must exist, and that the absence of such a grant does not confer authority upon the employer to bargain with public employee organizations. In other States, however, even without an express authorization, public agencies can still negotiate collectively on the terms and conditions of employment, provided no State law prohibits such action.

In 1951, a Connecticut court held that a school board could negotiate with a teachers' association since no law barred such action. Following this decision, more and more counties, cities, and school districts assumed

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[17] Executive Board, Maritime Trades Department, *op. cit.*, p. 10.

[18] Arvid Anderson, "Public Collective Bargaining and Social Change," remarks before the Labor Law Section of the American Bar Association, Philadelphia, Pa., August 6, 1968, p. 2.

that negotiating with employee unions or associations was within their discretionary authority. This interpretation has been supported by attorneys' general opinions and court decisions in many States, including recent court rulings in Iowa, Illinois, and New Mexico, even though it is contrary to the strict interpretation of the sovereignty doctrine. Mayor Wagner's 1958 Executive Order authorizing collective negotiations between New York City and its employees, for example, was not declared illegal even though collective bargaining had been previously interpreted as being applicable only to the private sector and bills to extend this coverage had been defeated in the New York State Legislature. *De facto* bargaining also has been in practice in the City of Philadelphia for over twenty years. The principal explanation for this attitude is "... that employee organizations and public officials sympathetic to the principle of bilateralism have taken the bull by the horns. They have gone ahead with collective negotiations despite the absence of a statute specifically telling them that they could do so, because they considered it important to act to prevent a complete breakdown in management-employee relations."[19]

## Public Employee Strikes and the Search for Alternatives

The right of employees to strike is the ultimate question in contemporary public labor-management relations. Although public administration literature has paid some attention to the issue, more often it has been dismissed as moot. A major reason for this cursory treatment is that no governmental jurisdiction in the United States has ever vested its workers with this right, nor have the courts retreated from their stance rooted in common law principles and sanctioned public employee strikes. Further, until recently the public employee has been rather docile, and employers, as well as the general public, often mistakenly equated this passivity with satisfaction.

**The Current Scene.** Since 1965, however, the situation has changed markedly. Whether public employees should be allowed to strike is no longer an academic question. Instead, and despite the fact that legislative bodies and the courts have maintained their previous posture, the strike has become a real issue. The subject has generated increasingly heated polemics between the direct participants in the collective bargaining arena—labor and management—as well as among others somewhat further removed from the conference table, including attorneys general, legislators, administrators, academicians, and the average citizen.

[19] Nigro, *op. cit.*, p. 139.

The growing attention now being given to devising and revising discussion, negotiating, and impasse procedures reflects in part a realization that the public employee has legitimate grievances that should be aired and resolved. Yet, nothing has done more to hasten the development of this procedural machinery than the increasing tendency of public employees to strike in order to obtain redress of their grievances. In resorting to this tactic, the intention of these workers is not to permanently sever their employment. Instead, they view the concerted withholding of labor as a means of exerting collective pressure on the government in order to better the terms and conditions of their employment.[20]

These developments, however, have not been accompanied by any significant legislative or judicial steps to liberalize strike prohibitions in the public sector. None of the meet and confer or collective bargaining statutes permit strikes of any kind, strike bans are found in all of the comprehensive acts. Some observers contend that this fixed posture on the part of legislative bodies and courts reflects a general popular unwillingness to move in the direction of repealing strike bans in the public sector. In fact, it is argued that even in private industry public toleration of strikes is at a low ebb since they:[21]

> ... cause more inconvenience and hardship to the public than to those directly involved, frequently do not expeditiously induce a private agreement, and result in terms of employment which constitute preferred treatment for a few to the disadvantage of the many.
>
> It is ironic that public employees are asserting a right to strike which has never been accorded them at the very time when many doubts have arisen about the advisability of continuing to permit the right to strike in the private sector, where it has been so long established.

The hesitancy of the general public to sanction the removal of anti-strike legal safeguards has been confirmed by a recent Gallup poll.[22] A January 1969 survey showed that six out of every ten persons questioned in a nationwide representative sample indicated that teachers, policemen, and firemen should be allowed to join unions. But a like proportion believed that they should not be permitted to strike. In response

[20] Hanslowe, *op. cit.*, p. 29.

[21] George W. Taylor, "Public Employment: Strikes or Procedures?" *Industrial and Labor Relations Review* (July 1967), p. 623.

[22] *New York Times*, January 12, 1969.

to another question, two out of three persons interviewed asserted that they believed 1969 would be a year characterized by strikes and industrial disputes, a prediction reflecting the previously cited trend data on the incidence of work stoppages in public employment.

These findings do not necessarily suggest what is proper, but only what the public thinks. Many organizational spokesmen contend that strikes by all or some public employees are justifiable. Such groups as teachers, policemen, firemen, sanitation men, social workers, and nurses no longer are hesitant to resort to stoppages, slowdowns, mass resignations, absenteeism, and other disruptive tactics in order to register their grievances and to dramatize what has been described as their "... exasperation with the failure of the public and its political representatives to provide what was construed as elementary justice."[23] George W. Taylor has sought to explain the ways in which popular reaction varies in accordance with the circumstances which engender such drastic actions on the part of public employees: [24]

> ...a qualitative analysis of the strikes which have occurred suggests that a sharp distinction is drawn by the public between strikes as an expression of civil protest against patently unfair treatment and assertion of the right to strike as a regular way of life, that is, as a recognized institutional form for establishing employment terms. Despite the seriousness of the stoppages, the public has been understanding about the withdrawal by nurses of their services. It was believed they had legitimate reasons for their protest.
>
> Public reaction has been entirely different in respect to the year-after-year stoppages by public transit employees who walk off the job in order to improve conditions of employment which, at each settlement, have been enthusiastically declared 'the best ever.' Use of strikes by school teachers as a form of flash protest is doubtlessly placed in a different category than employing the strike, or its threat, as an integral part of periodic negotiations. In other words, some strikes are deemed to be more intolerable than others.

Contrary to the impressions of some, there appears to be no direct relationship between the number of strikes and the legislative approach to public employee relations. In 1967, New York under its collective bargaining law had 15 strikes, Ohio and Illinois with no basic legislation in this area had 28 and 18, respectively (see Appendix Table C-1 (B)). Michigan, on the other hand, with collective bargaining for local jurisdictions had 34 work stoppages that year, while California with meet and confer had 8. In 1968, Ohio and Illinois again passed the 20 mark and New York joined them. California reached 18, while Michigan soared to 42. Meanwhile States with no general legislation began to enter the lists with Florida having 6; Indiana, 9; Tennessee, 7; and West Virginia, 7.

**The Limited Right to Strike.** Recent reports by study commissions in Pennsylvania and Colorado have contained recommendations for removal of the strike ban for certain categories of public employees. In its June 1968 report, the Governor's Commission to Revise the Public Employee Law of Pennsylvania (Hickman Commission) recommended that, except for policemen and firemen, the right to strike should be accorded to public employees. This right would be limited by provisions that all collective bargaining procedures—including face-to-face bargaining, utilization of the State Mediation Service, fact-finding by a tribunal of three arbitrators appointed by the Labor Board and publication of its recommendations—must have been exhausted before a strike could be permitted. The strike could not commence or persist if the health, safety, or welfare of the general public was thereby endangered, and unlawful strikes would be subject to court injunctions. Severe penalties in the form of fines, imprisonment, or both of the bargaining agent and/or individual employees would be enforced for violations of an injunction.[25] On the other hand, compulsory arbitration would be utilized to resolve impasses involving policemen and firemen. The Hickman Commission presented this rationale in support of these recommendations: [26]

> The collective bargaining process will be strengthened if this qualified right to strike is recognized. It will be some curb on the possible intransigence of an employer; and the limitations on the right to strike will serve notice on the employee that there are limits to the hardships that he can impose.
>
> We also believe that the limitations on the right to strike which we propose ... will appeal to the general public as so much fairer than a general ban on strikes that the public will be less likely to tolerate strikes beyond these boundaries. Strikes can only be effective so long as they have public support. In short, we

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[23] Taylor, "Public Employment: Strikes or Procedures?" p. 629.

[24] *Ibid.*

[25] State of Pennsylvania, *Report and Recommendations of the Governor's Commission to Revise the Public Employee Law of Pennsylvania*, pp. 4-5.

[26] *Ibid*, pp. 13-14.

look upon the limited and carefully defined right to strike as a safety valve that will in fact prevent strikes.

It should be emphasized, however, that these features of the report were not endorsed by either the governor or the legislature. A bill based on the Committee's recommendations was introduced in the legislature and did not include provisions for a limited right to strike.

On December 9, 1968, the Committee on Public Employee Negotiations of the Colorado Legislative Council submitted a report to the General Assembly. Based upon its study, the Committee proposed a bill establishing for the first time procedures to guide collective negotiations between public employers and employees in the State and its political subdivisions. The bill did not contain a blanket ban on work stoppages. Instead, it distinguished between "lawful" and "unlawful" strikes in the public sector. This differentiation was a product of the Committee's conclusion that:[27]

> . . . the experience with strike prohibitions in other States indicated that strikes in the public sector cannot effectively be prohibited by legislation. Strikes are a part of the collective bargaining process and if collective bargaining fails, laws against strikes cannot prevent strikes.

The Committee defined "unlawful" strikes by public employees as those that (a) are called in support of or sympathy with issues beyond the control of the negotiating parties, such as secondary boycotts or strikes against a third party, (b) occur during the life of a collective bargaining agreement, or (c) commence prior to the exhaustion of all impasse procedures. Although the Committee did not explicitly define what it considered to be a "lawful" strike, apparently any work stoppage by any group of public employees except policemen and firemen that failed to meet any of the three preceding conditions would fall into this category.

The bill provided that if the bargaining parties could not reach an agreement and if available impasse procedures, including submission of the fact finder's recommendations to an appropriate legislative body, were unsuccessful, then the employee organization representative would be required to file with the State industrial commission a notice of intent to strike twenty days prior to the date of the actual stoppage. The commission then would notify the affected public employer and determine whether the strike would endanger public health or safety. This finding would be transmitted to the governor, the public employer, and the exclusive bargaining agent. The governor then would be empowered to issue an executive order postponing for a forty-day period any strike that presented a danger to public health or safety.

Severe penalties would be imposed on individuals and unions violating the executive order. The industrial commission, for example, could place violating individuals on probation for two years and bar increases in their compensation and benefits for one year. Further, if the employee was in the State classified civil service, charges involving disciplinary action and possible dismissal could be filed with the State Civil Service Commission. Penalties which the Commission could impose on violating labor organizations could include heavy fines and loss of dues checkoff privileges.

**Arguments Against the Right to Strike.** Old-style proponents of no-strike provisions in public employee labor relations laws believe that work stoppages challenge the sovereignty of government. In a democracy, it is argued, sovereign authority resides with the people and an employee organization striking against a public employer attacks the system of delegated authority that serves as the basis of representative government.

A second line of argument underscores certain basic differences between the public and private sectors. In private enterprise, relative economic power ultimately determines the nature of the bargaining agreement. Criteria for guiding employer decision-making are pertinent to the market place; the company must decide whether it will maximize its profits by opposing employee demands and thereby face the possibility of having production reduced or stopped, or whether it will limit its profits or hike prices by agreeing to employee demands. These economic criteria, according to this line of reasoning, are irrelevant in the public sector where a price tag is not often attached to individual governmental services, where the taxpayer usually is unable to pick and choose between those services he desires or does not desire to pay for. Criteria relating to the scope and cost of public services are more an expression of political power, and decisions concerning priorities to be attached to the allocation of services—"who gets what, when, and how?"—are determined through the electoral process. Because the strike is an economic weapon, then, it is inappropriate in the public sphere where final decisions are determined by the exercise of relative political power. As the Taylor Committee concluded:[28]

> The fact of the matter is that collective bargaining in the private enterprise context is markedly different in many respects, from

[27] State of Colorado, Colorado Legislative Council, *Public Employee Negotiations: Report to the General Assembly,* Research Publication No. 142, December 1968, p. XIX.

[28] State of New York, *Governor's Committee on Public Employee Relations: Final Report* (Albany: March 31, 1966), pp. 18-19.

collective regulation in the governmental context. One difference is in the lack of appropriateness of the strike in the public sector . . . .

> Careful thought about the matter shows conclusively, we believe, that while the right to strike normally performs a useful function in the private enterprise sector (where relative economic power is the final determinant in the making of private agreements), it is not compatible with the orderly functioning of our democratic form of representative government (in which relative political power is the final determinant).

A third argument stresses another basic public-private sector difference. Unlike his counterpart in private enterprise, a public employer cannot counter the employees' economic weapon—the strike—with his own economic power—the lockout. It is difficult if not impossible for government to eliminate or to restrict services merely as a means of exerting power over its workers. As the countervailing effect of possible unemployment is eliminated, it is argued that the strike weapon gives employees an unfair advantage over the employer, an advantage not enjoyed by private sector workers.

A fourth view maintains that the consequences of public employee strikes precludes their legalization. In private industry, the people who are adversely affected by a work stoppage are usually only those directly concerned—labor and management. On the other hand, in the public sector a strike against a government employer is in effect a strike against the public as a whole.

Proponents of legislation prohibiting strikes by public employees also assert that due to the indispensibility of virtually all public services, work stoppages can bring government to a virtual standstill. They note that the elaborate public decision-making process whereby jurisdictions assume, retain, or relinquish functions in itself provides a kind of test of "indispensibility" and this test makes irrelevant claims that workers performing similar or like functions—whether in the private or public sectors—should have equal access to the strike weapon. This position, in effect, constitutes a fifth line of "anti-strike" argument and is used against proponents of the limited right to strike. These critics further contend that definitions of "essential" and "non-essential" public services would be difficult to develop and impossible to implement. They point out that: the absence of legal restraints would encourage unions to strike and that, as a practical matter, it is difficult if not impossible to differentiate between strikes that endanger the public health, safety, and welfare, and those that do not. The injunction device, it is pointed out, is only a temporary source of relief as it does not assure agreement or even a coming together at the negotiating table.

A sixth line of argument draws upon experience in private enterprise where strikes occurring in industries providing essential services have been declared illegal. Under the national emergency provisions of the Taft-Hartley Act temporary injunctions have been granted against strikes, such as those by railroad and public utility workers, which the President of the United States and the courts determined would be threats to the national health and safety.[29] Since all government services fall in the "essential" category, they too are essential to health and safety and should not be disrupted by strikes.

**Arguments in Favor of the Right to Strike.** On the other side of the coin, supporters of the right of public employees to strike contend that the strict interpretation of the sovereignty doctrine clearly has been modified by the government allowing itself to be sued, entering into binding contracts, and agreeing to compulsory arbitration of disputes and grievances. Thus, the traditional view of public employee strikes can be modified in light of modern interpretations of the sovereignty doctrine.

These critics also question the validity of certain alleged basic differences between public and private employment. They argue that only policemen and firemen really perform essential services, and practically all of them concede that these two groups should not be allowed to strike. At the other extreme, such occupational categories as clerks, maintenance men, park attendants, and museum guards are viewed as being generally nonessential in terms of their work stoppages posing potential threats to public health and safety. Therefore it is asserted that these "nonessential" groups should not be prohibited from striking.[30] For occupations in the middle zone—such as transportation, public utility, hospital, and sanitation workers—it is pointed out that since similar or identical services may be performed by public agencies in one city and by private agencies in another, it would be discriminatory to prohibit employees in only those service areas under

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[29] Hanslowe, *op. cit.*, p. 30.

[30] As the Hickman Commission stated in support of its recommendation for a limited right to strike for Pennsylvania public employees: "The period that a strike can be permitted will vary from situation to situation. A strike of gardeners in a public park could be tolerated longer than a strike of garbage collectors. And a garbage strike might be permissible for a few days but not indefinitely, and for longer in one community than another, or in one season than another." State of Pennsylvania, *op. cit.* p. 13.

public ownership from engaging in work stoppages. (It should be noted, however, that some States require compulsory arbitration of strikes by employees of private utilities.)

A third basic position maintains that even though legislative bodies and the courts have not struck down anti-strike provisions, the incidence of strikes by public employees nevertheless has increased at a rapid rate. Some claim that State legislation prohibiting strikes and imposing severe penalties on violators has not only been singularly ineffective in preventing work stoppages, but actually has been responsible for hindering the settlement of some strikes. In many instances, these penalties must be waived as a condition of unions being willing to resume public services. As the New York Times commented during the January 1965 strike against the New York City Welfare Department: "The major stumbling block to a settlement has been Mayor Wagner's refusal to guarantee a waiver of legal penalties . . . of the State's Condin-Wadlin Act.[31] Another attack on such provisions is rooted in the fact that because of their power position large unions and associations may break these legal provisions with impunity while smaller organizations are often subjected to severe sanctions for failure to obey them. Critics of anti-strike provisions point to a further irony in this situation. In the absence of penalties to deter employees from striking, any outlawing of strikes becomes an uncertain matter or meaningless. Yet, to impose light penalties upon violators reduces their deterrent effect while, as demonstrated by the experience under New York State's former Condin-Wadlin Act, severe penalties often cannot be enforced. The problem, then, is attaining a proper balance, and whether this is possible remains problematic. In light of these factors, it is contended that the most feasible approach would be simply to repeal strike bans in the public sector.

A fourth line of argument holds that removal of strike prohibitions would not necessarily increase the number of strikes in the public sector. Instead, the real effect of razing the legal barriers to strikes by some or all occupational categories would be to force public employers to engage in genuine negotiations with employee organizations. One union spokesman put the case this way:[32]

> Strike prohibitions are not simply ineffectual, though they are undeniably that. What is far more serious, they warp this vital process of genuine collective bargaining among equals. They bring employees to the bargaining table, but as inferiors. Simultaneously they provide false reassurance to management representatives and induce less than genuine negotiations. Ironically, they create the very tensions, exacerbate the very situations, provoke the very strikes they were allegedly formulated to prevent.

The AFSCME's position on the essentiality question is firmly rooted in the principle that successful collective bargaining can only occur among equals:[33]

> This union has said repeatedly that it does not believe in the right to strike merely for the sake of striking. Certain government employees—policemen, firefighters, prison guards, and other similar categories—should not and must not strike. We believe, however, that when management adamantly refuses to negotiate or to meet the legitimate requests of most public employees, those employees have the right to stop work as a last resort toward the end that the action will bring about resolution of the problem for the ultimate good of all concerned, including the public.

Therefore, the lifting of strike bans is viewed as a safety-valve for releasing the pressure to strike generated by the frustrations resulting from employer reluctance to bargain in good faith. Some proponents of this position point to foreign countries where the right to strike has been accorded to public employees—such as Britain, Canada, and Sweden—as exemplifying that protracted breakdowns in public services will not occur.

## STATUTORY COVERAGE AND ADMINISTRATIVE MACHINERY

State approaches to providing coverage of public employees under their labor relations laws vary widely. The same diverse pattern characterizes the establishment of administrative machinery to implement statutory provisions. The Commission now examines the issues raised by current State practice in these two areas.

### Statutory Coverage: Levels of Government and Occupational Categories

The problem of whom shall be covered by a public employee relations statute is a controversial and complex issue of major importance to labor-management

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[31] *New York Times,* January 19, 1965, cited by Polisar, *op. cit.* p. 15.

[32] Jerry Wurf, address before the 1967 United States Conference of Mayors, p. 16.

[33] Jerry Wurf, "Unions Enter City Hall: Union Responsibilities," *Public Management,* XIVIII, No. 9 (September 1966), p. 249.

relations in the State and local public service. For example, should a single law apply to all employees of State and local government or should State employees be treated differently than employees of other levels of government? Should certificated public school employees be covered in a single law for their profession or in a statute which encompasses all governmental employees within the State. Should firemen and law enforcement officers be included or excluded from a general public employee relations law? Some of the underlying reasons for multiple or comprehensive statutes in these areas of coverage will be examined at this point.

**Current Practice.** Of the 19 States that *require* public employees to deal with public employee organizations, Massachusetts, Rhode Island, Vermont, and Wisconsin have enacted separate legislation, one of which covers employees at the State level and the other, employees at the local level. Michigan's single law applies to all public employees except those in the classified State civil service who have been excluded by constitutional provisions. Connecticut, Maine, and Nevada on the other hand, have enacted mandatory comprehensive laws covering all public employees at the municipal level but not at the State level; New Hampshire recently enacted legislation for State employees but not for local employees. Both State and local employees then are covered by single acts in ten States. The New York law applies to both State and local employees, with an option to localities wishing to establish their own dispute settlement machinery within the general requirements prescribed by the State administrative agency.

Twenty-one States, as Table 23 indicates, have accorded special treatment to such occupations as teachers, firefighters, policemen, public utility and public transportation employees, nurses, hospital workers, and university personnel. Three States (Florida, Illinois, and Rhode Island) have adopted separate legislation for three different public employment occupational categories, but neither Florida nor Illinois have enacted laws giving bargaining rights to general public employees. A few States have adopted comprehensive laws covering general employees while still providing special legislative treatment for certain groups of employees, as in Connecticut, Maine, Michigan, Oregon, Rhode Island, Washington, and Wisconsin. It should be noted that legislation affecting public utility employees generally is limited to establishing dispute settlement procedures; these statutes contain no provisions setting forth collective bargaining or discussion rights and machinery (recognition, representation, unfair practices, organizational security, and so on).

**A Single State Law for State and Local Employees?** Most of the arguments advanced by those favoring enactment of a single law to cover both State and local government employees are based on the assumption that employee relations at either level are not essentially different. For this reason, advocates insist that, at the very least, uniform standards should be established on a statewide basis for determining issues, enforcing fair labor practices, and settling disputes. Proponents of this approach also point out that the assignment of administrative responsibility to a single agency will assure

TABLE 23

STATES ENACTING SPECIAL LEGISLATION PROVIDING FOR COLLECTIVE BARGAINING RIGHTS OF CERTAIN TYPES OF GOVERNMENT EMPLOYEES

1969

| | | | |
|---|---|---|---|
| **Teachers–** | | | |
| California | (1965) | Minnesota | (1967) |
| Connecticut | (1965) | Nebraska | (1967) |
| Florida | (1965) | Oregon | (1965) |
| Maryland | (1968) | Rhode Island | (1966) |
| | Washington (1964) | | |
| **Firefighters–** | | | |
| Alabama | (1967) | Maine | (1965) |
| California | (1963) | Michigan | (1969) |
| Florida | (1967) | Nebraska | (1965) |
| Illinois | (1965) | Pennsylvania | (1968) |
| Iowa | (1959) | Rhode Island | (1961) |
| | Wyoming (1965) | | |
| **Public Utilities Employees–** | | | |
| Florida | (1947) | New Jersey | (1947) |
| Indiana | (1947) | Pennsylvania | (1947) |
| Kansas | (constitution) | Wisconsin | (1949) |
| Nebraska | (1967) | Washington | (1963) |
| **Public Transportation Employees–** | | | |
| Illinois | (1965) | New Mexico | (1965) |
| Louisiana | (1964) | | |
| **Nurses** | | | |
| Montana | (1967) | Oregon | (1961) |
| Minnesota | (1947–including non-professional employees) | | |
| **Policemen** | | | |
| Michigan | (1969) | | |
| Pennsylvania | (1968) | Rhode Island | (1963) |
| **University Employees** | | | |
| Illinois | (1965) | | |

Source: National Governors' Conference, Task Force Report on State and Local Government Labor Relations, (Chicago: 1967), pp. 85-88; updated by ACIR staff.

uniformity of policy in the application and interpretation of the law and will provide a far more economical implementation of the law. Supporters of the single law approach also claim that in many instances the functions and personnel systems of State and local governments are or should be interrelated and that a close community of interest exists between State and local employees.

The 1967 *Task Force Report on State and Local Government Labor Relations* of the National Governors' Conference ably summed up the position of those who argue that separate legislation should be enacted for local and State employees:[34]

> . . . the State is, for the most part, a single system with a unitary civil service program and a single administrative and legislative structure and should, therefore, be treated as a separate jurisdiction with its own law. Moreover, state civil service systems are usually more highly developed than those of local governments. It is argued further that because there are many problems of adjustment between civil service and collective bargaining, it is wise to develop a policy for state employee relations separately from that for local government. Local units of government are not fiscally independent but are limited in their revenue sources by state actions. Therefore, their budget-making and appropriation processes are different. The close connection between collective bargaining and the raising and distribution of revenue would seem to indicate that state employee relations should be treated differently from local government employee relations. An additional argument is that a state employment relations agency may find it easier to deal with local disputes than with the disputes of other state agencies.

Yet, the Task Force concluded that the arguments in favor of a single law ". . . seem to outweigh the reasons for separate laws. In cases where separate treatment of local government appears advantageous, a statutory provision for local option may be desirable."[35]

Most of the States that have probed this issue during the past three years have favored the comprehensive approach.[36] An Illinois study commission appointed by Governor Otto Kerner recommended a single law to ". . . cover all governmental bodies including the state government, municipalities, counties, school districts, and special districts and authorities . . ."[37]

The June 1968 report of the Hickman Commission (Pennsylvania) also recommended a single statute for all public employees in the Commonwealth:[38]

> . . . we favor a single statute governing relations between all public bodies and their employees. Only in this way can we insure the consistent application of basic employment policies to everyone in the public service. While such an Act will cover many types of public instrumentalities and a great variety of occupations, the principles that we would recommend for the resolution of employment relationships apply equally to all. At the same time the provisions assure enough flexibility to apply realistically to a variety of specific situations.

This approach was embodied in the bill proposed by Governor Shafer and introduced in the Legislature on October 10, 1968.

New Jersey Public and School Employees' Grievance Procedure Study Commission also endorsed the single statute approach for all public personnel. The Commission's January 1968 report to the New Jersey Legislature noted that its recommendation for a single law:[39]

> . . . has sought to provide stability in negotiating arrangements; and for efficiency and equity, to devise a single system for settling disputes which would accord the same services and privileges to all State and local public employees in New Jersey with flexibility to accommodate occupational and institutional differences. As a practical matter, wide variations among levels, units, and functions of government make it difficult to provide separate arrangements for a major group of employers or employees without providing similar arrangements for other groups.

One of the most recent studies concerning the problem of single or separate legislation was issued by the Committee on Public Employee Negotiations of the Colorado Legislative Council. In its December 1968

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[34] National Governors' Conference, *op. cit.*, p. 9.

[35] *Ibid.*

[36] The Tennessee Governor's Committee on Public Employee Organization (1968) confined its study to collective bargaining legislation for State employees. Legislation for local jurisdictions was not considered by the committee.

[37] Report of Governor's Advisory Commission on Labor-Management Policy for Public Employees, March 1967; in Warner and Hennessy, *op. cit.*, p. 428.

[38] State of Pennsylvania, *op. cit.* p. 8.

[39] State of New Jersey Public and School Employees' Grievance Procedure Study Commission, *Final Report to the Governor* (Trenton, New Jersey: January 9, 1968), p. 16.

report to the General Assembly, the Committee recommended a single measure that would cover all employees of the State and its political subdivisions. In justifying its proposal, the Committee observed that ". . . labor problems in any area of the state or local government would have an impact on the entire state and would be a matter of state-wide concern."[40]

In contrast to this position, the legislators of New Hampshire and Maine this year rejected the single system approach and enacted single level legislation. These and other State decision-makers who have grappled with the issue have found that differing personnel systems at the two levels, differing civil service rules and regulations, the issue of home rule, and the touchy topic of State mandating can provide strong arguments for separate legislation.

**A Middleground Approach—The Local Option.** New York State's Taylor Law attempts to bridge the "single or separate" argument. While the statute requires local governments to bargain collectively with public employee organizations, counties, cities, towns, villages, school districts, or any other political subdivision of the State are provided with essentially three options.

First, the local government may choose to do nothing by way of adopting procedures. If a dispute arises as to the appropriateness of a negotiation unit or the determination of which organization represents employees in the unit, the State Public Employment Relations Board (PERB) would assume jurisdiction upon petition of either the employer or the employee organization and would resolve the dispute under its own procedures. If no dispute arises, the public employer, of course, can extend recognition without developing any formal procedures.

The second option permits local governments to adopt by resolution or ordinance their own procedures for resolving representation disputes. The PERB is not required to review such local procedures in advance of their enactment. The local jurisdiction may provide for resolution of disputes by an impartial agency—a local board, a neutral individual, or an organization such as the American Arbitration Association. If either the employer or employee organization petitions the PERB to review a local decision, the Board bases its findings only on whether the local procedures have been followed and whether they are consistent with the representation requirements of the State act. If no impartial agency has been established under local procedures, the scope of review by the State Board will extend to the merits of the dispute, including the local government's decision.

The third option available under the Taylor Law permits local government adoption of a complete set of procedures for resolving representation disputes and for settling impasses. These procedures must be submitted to the State Board for approval before being placed in full force and effect. The local impartial agency then takes the place of the State administrative unit. Its actions are reviewable by PERB, but only to ensure that continuing implementation of the local procedures is substantially equivalent to State rules and laws.

The Taylor Law contains special provisions giving New York City wider latitude than that accorded any other local jurisdiction in developing its own procedures. This special treatment recognizes that the City has been engaged in collective bargaining with its employees since 1958 and, therefore, is far more experienced in these matters than other jurisdictions of the State.

Robert D. Helsby, PERB Chairman, has pointed out some of the factors that a local government should take into consideration in selecting which of the three options it chooses to follow:[41]

> It is fairly obvious, for instance, that a local government needs to give careful consideration as to how complex its employee relations are likely to become: the number of its potential negotiating units, the number of present and potential employees. By adopting its own procedures, either under . . . (the second or third option) . . . a local government can keep determinations closer to home and, perhaps, expedite the whole process. They also have greater latitude in resolving their own employee relations problems.

Mr. Helsby adds that potential administrative costs also may be a significant consideration. The entire cost of representation proceedings under the first two options and of the impasse procedures under the second option is borne by the State PERB. Local governments proceeding under the third option, however, must bear all administrative costs themselves.

Under the first full year of operation, 31 units of local government adopted local procedures approved by PERB. Subsequently, two repealed their procedures and two other jurisdictions did not implement them by failing to appoint a board or to adopt rules, thus reducing the total to 27 approved "mini-PERBS." These

[40] Colorado Legislative Council, Committee on Public Employee Negotiations, *Public Employee Negotiations, Report to the Colorado General Assembly,* Research Publication No. 142 (Denver: December 1968), p. XV.

[41] Robert Helsby, "New York Public Employment Labor Relations: A Second Look," speech delivered November 15, 1967, in *New York State Public Employment Relations,* conference proceedings edited and compiled by Edward Levin, New York State School Industrial and Labor Relations, Cornell University (Ithaca, New York: April 1968), p. 3.

27 jurisdictions covered a total of approximately 70,000 public employees.

If acceptance of the Taylor Law's local option approach can be measured by remarks of participants in Governor Rockefeller's October 1968 National Conference on Public Employment Relations, this distinctive feature of the Act appears to satisfy public employee organization leaders as well as State and local officials. Some 31 speakers offered a variety of ideas and suggestions regarding how best to handle problems occurring under the Taylor Law, but not one participant suggested needed changes in the local option provisions.

**Special Occupational Categories: Should They be Treated Differently?** As reflected in Table 23, more than two-fifths of the States have enacted separate labor relations legislation for particular groups of public employees. Whether or not these occupational categories should be included in legislation for all public employees raises another problem concerning statutory coverage—one that has been handled differently by the States. Some of this diversity can be explained in terms of the differing perspectives, problems, and power positions of certain public employee groups. Teachers, firefighters, and policemen provide three case studies that merit examination.

**Teachers.** As was noted in Chapter 2, nine States now have separate legislation for teachers. In nine others, however, teachers have been included in statutes covering all public personnel.

The principle arguments of those supporting separate legislative treatment for teachers are founded basically on the special nature of the work performed. These proponents argue that:[42]

- The employee-employer relationship in public education is markedly different from that of other types of public employment and warrants separate treatment in the law; the relationship between teachers and administrators usually is close, hence supervisors and middle management should not be excluded from teacher bargaining units, as would be expected under general public employee labor relations statutes; salary schedules of teachers should be considered in conjunction with those of supervisory personnel;
- Teachers are professionals, with entry requirements based on a long period of preparation and on strict state licensing procedures; the role of the teacher at his place of work then should be autonomous and in line with his professional competency;
- The influence that the teacher has, or hopes to have, in setting broad policy objectives is vastly different from that played of most other public employees;
- General legislation establishing meet and confer or collective bargaining at all levels of public employment cannot help but reflect the concerns of the largest classification of covered employees—the non-professional sector; yet a law which suits the purpose of this group is not necessarily one that conforms to the rather unique needs and goals of public school teachers;
- School boards possess unique powers, with many having separate budget and taxing authority;
- Teachers should not wait to be included in legislation covering all public employees if immediate support exists for enactment of separate statutory authority to engage in collective negotiations or discussions;
- Education traditionally has been handled as a special legislative area; and
- The State education agency, in any event, should administer a law affecting teacher rights; hence separate legislation is desirable.

No unanimity exists among experts regarding separate legislation for teachers, however, and opponents of this approach have had no difficulty in developing their own cluster of counter-arguments:

- Teachers are not actually paid as "professionals" and, therefore, should not seek separate legislation on this basis;
- Collective bargaining and professional negotiations are merely different terms for the same thing (especially in this period of teacher activism);
- Under a separate law, teacher organizations will want to discuss and negotiate on all matters affecting the life of the teacher in the classroom, but many of these issues belong outside the realm of collective negotiations or meet and confer;
- Work stoppages certainly are not unique to teachers alone, and thus do not justify special procedures for dealing with teacher-school board relationships;
- The way to settle some of the conflicts in this field is to forbid affiliation of supervisors with any appropriate unit which they supervise; separate statutes often lump together all certificated personnel below the rank of superintendent into a single unit; furthermore, the problem of supervisory personnel membership is not unique to teaching alone, since supervisors usually are

[42] See, for example, Education Commission of the States, *Background Materials on Collective Bargaining for Teachers,* prepared for the annual meeting of the Commission, Denver, Colorado, June 26-28, 1968, pp. 33-35.

excluded from organization affiliation in general legislation covering policemen, firemen, nurses and the like;

- Establishing an educational agency to administer an act may prove self-defeating, since it may not exercise independent judgment due to its close functional ties with local counterparts; and
- Greater economy and uniformity can be achieved in the administration of a single act, while varying interpretations and duplicative efforts can result with multiple legislation.

**Firefighters and Policemen.** Public employee relations legislation affecting firefighters and policemen has increased significantly in recent years. While a number of these enactments provide bargaining rights to all public employees, a number of States have chosen to single out protective services personnel for special treatment. A state-by-state breakdown of this special legislation in Table 24 shows that eight have excluded policemen from the right to organize and bargain, but have granted these rights to firefighters. Missouri prohibits organization of police personnel and Wisconsin grants limited rights to such employees. Firefighters and policemen in North Carolina are barred from membership in unions, while only law enforcement personnel in Georgia are prevented from joining employee organizations. Compulsory arbitration laws covering firefighters and policemen recently have been enacted in Michigan and Pennyslvania.

Police chiefs are often outspoken in their opposition to unionization of employees in their departments. Yet, they frequently make a distinction between a "union" and a "police employee organization," such as a local lodge of the Fraternal Order of Police (FOP). Two years ago, the Police Commissioner of Baltimore stated:[43]

> . . . It is the opinion of professional police administrators that a police union is not compatible with police responsibilities . . . . While I do not feel that an affiliated union is necessary or proper for members of law enforcement agencies, I do recognize the need for a professional association made up and governed by police officers which can both serve a social purpose and as a means of bringing grievances and other pertinent matters to the attention of management.

At the same time, police representatives from 11 cities gathered early in November 1969 to form a new AFL-CIO affiliate.

Employer opposition to unionization of police departments is usually based on four principal arguments: (1) a policeman joining a union will be serving two masters and will be unable to serve the public impartially; (2) the presence of an employee organization compromises the necessity to operate a police department on a para-military basis; (3) the existence of an employee organization is an indictment of the department's management; and (4) police personnel are society's first line of defense for a community's security.[44]

Fire department administrators, many of whom have been or are still members of the AFL-CIO affiliated International Association of Fire Fighters (IAFF), generally do not oppose unionization of employees in their agencies. Moreover, the International Association of Fire Chiefs endorses collective negotiations for firefighters. A 1966 comparative survey of municipal practices relating to union membership of public safety personnel showed that many more cities prohibit such membership for policemen than for firemen. One out of every seven cities then surveyed prohibited law enforcement personnel from belonging to a union or an association while only one of every 18 cities prohibited firefighters from joining a national union.[45]

There is a fairly general agreement that the nature of the work of many public employees often is different from that of their counterparts in the private sector. Moreover, certain public occupational categories present employee problems that are not found in private labor-management relations. Nevertheless, several recent studies conclude that separate legislation for special types of public employees will not strengthen labor-management relations in the public service. The National Governors' Conference Task Force Report favored adoption of a single law to cover all public employees:[46]

> Although arguments can be advanced for separate treatment of these different employee categories, it is difficult to justify such special treatment and not extend it to many other categories such as social workers, nurses, architects, engineers, or university personnel. Therefore, many experts argue that regardless of the

[43] Statement of Commissioner Donald D. Pomerleon concerning a proposal to recognize a union within the Baltimore City Police Department, State House, Annapolis, Maryland, March 16, 1967, I.A.C.P. Abstract 67-1.

[44] J. Joseph Loewenberg, "Emerging Sectors of Collective Bargaining," paper prepared for seminar on Labor Relations for Policemen and Firefighters, Temple University, February 29, 1968, p. 28 (mimeo).

[45] International City Managers' Association, *Municipal Yearbook 1966* (Chicago: 1966), pp. 377 and 442.

[46] National Governors' Conference, *op. cit.*, p. 10.

TABLE 24

SPECIAL STATE LEGISLATION AFFECTING RIGHT TO ORGANIZE BY POLICEMEN AND FIREFIGHTERS
1969

A. States with legislation giving all municipal employees right to organize and bargain except law enforcement personnel:

Missouri (1967)

Wisconsin (1959)

B. States with legislation giving State employees except State law enforcement personnel right to organize and bargain:

Rhode Island (1966)

C. States with legislation for collective bargaining for both policemen and firefighters:

Michigan (1969)

Pennsylvania (1968)

Rhode Island (1963, 1961)

D. States with legislation for either organizing or collective bargaining, or both, for firefighters only:

Alabama (1967)

California (1963)

Florida (county) (1967)

Illinois (1965)

Iowa (1959)

Maine (1965)

Nebraska (1965)

Wyoming (1965)

E. States with legislation prohibiting union membership:

Firefighters – North Carolina (1959)

Police – Georgia (1953) – North Carolina (1959)

Source: National Governors' Conference, Task Force Report on State and Local Government Labor Relations (Chicago: 1967), pp. 85-88; J. Joseph Lowenberg, "Labor Relations for Policemen and Firefighters", paper prepared for Seminar on Emerging Sectors of Collective Bargaining, Temple University, February 29, 1968, (mimeo.) p. 26; updated by ACIR staff.

nature of the work performed, a basic, uniform employee relations principle should prevail, and if some limited special treatment is justified it could be provided within the single law and single administrative structure.

Study committees recently appointed in two States where no comprehensive public employee labor relations law exists also have urged adoption of a single statute. The Illinois Governors' Advisory Commission on Labor-Management Relations recommended:[47]

> The statute should cover all public employees except elected officials, the heads of departments and agencies, the members of boards and commissions, managerial employees,

[47] In Warner and Hennessy, *op. cit.*, p. 428.

magistrates, individuals acting as negotiating representatives for employing authorities, the immediate personal or confidential assistants and aides of the foregoing persons, and supervisors.

Separate legislation should not be enacted for any special occupational or professional group. However, policemen including those non-uniformed members of police forces who have police authority, should be represented only by organizations which do not admit employees other than policemen to membership and which are not affiliated with organizations admitting such other employees to membership.

The Committee on Public Employee Negotiations of the Colorado Legislative Council recommended a single law to cover all public employees, including teachers. However, the report noted that one of the most difficult questions the Committee had to resolve was whether legislation should separate teachers from other public employees:[48]

> . . . some educational interests advocated separate legislation for teachers, while other educational organizations recommended coverage of all public employees in one bill. School board representatives generally were favorable toward legislation which would establish collective bargaining guidelines and which would clarify present questions in the negotiation procedures. Organizations representing the classroom teachers generally favored unlimited scope of negotiations on school matters, including school policy matters, while representatives of school boards rejected the idea of unlimited negotiations, favoring negotiations on only economic matters and conditions of employment.

The statement of legislative policy in the act covering teachers in Oregon (Chapter 390, Laws of 1965) provides a good summation of the viewpoint favoring adoption of separate legislation:

> Section 1. The Legislative Assembly, recognizing that teaching is a profession, declares that in matters arising between district school boards and certificated school personnel with reference to professional services rendered or to be rendered by such personnel, it is in the best interest of public education in this state to establish a procedure for the orderly, equitable and expeditious resolution of such matters.

**Summary**. Three public employee groups—teachers, firefighters, and policemen—have had a longer period of organized involvement with public management than most other groups of public employees. Much of the concern of teacher organizations has centered on broad professional concerns dealing with educational policy, while the public safety organizations have tended to direct their activities to the more limited objective of improvements in benefits and working conditions applicable only to their groups. The effectiveness of all these public employee groups can be measured by the enactment in many States of separate collective bargaining legislation and by special acts mandating certain conditions of their employment.

The lobbying activities of teachers, firefighters, and policemen at the State level began long before the advent of public employee labor relations statutes in the public sector. In the past, these occupational groups have often succeeded by resorting to political pressure in order to improve the terms and conditions of employment. In the future then, they may well hesitate to rely exclusively on the meet and confer or collective negotiation process to achieve their objectives. In the long run, however, continued recourse to lobbying with local or State legislators can easily weaken the direct discussional relationship. The "special pleading" approach versus establishment of a meaningful public employee labor relations system, then, is still a major problem to be resolved in many States.

## State Administrative Machinery

The agencies responsible for the administration of public employee relations at the State and local levels fall into two basic patterns—one approach utilizes existing State agencies, while the other involves creation of an entirely new unit. Within the first category, however, a number of variations appear. This diversity, highlighted in Table 25, indicates that no clear agreement has emerged among those States relying on the "existing agency approach" as to which unit should be given the responsibility for administering the legislation. Despite support from some of the experts, only six States—Nevada, New Hampshire, New Jersey, New York, Oregon, and Vermont—have opted for the second approach and created a new independent agency.

The study committees in Colorado, Illinois, and Pennsylvania differed in their recommendations concerning administrative agency responsibility. The Colorado and Pennsylvania reports called for this function to be lodged within the existing labor relations agencies while the Illinois report urged creation of a new separate three-member full-time board. The Tennessee study committee, although dealing only with State employee collective bargaining, suggested establishment of a Division of Employee Relations in the Department of

[48] Colorado Legislative Council, *op. cit.*, p. XII.

Table 25

STATUTORY AGENCY RESPONSIBLE FOR ADMINISTRATION OF PUBLIC EMPLOYEE COLLECTIVE BARGAINING AT STATE AND LOCAL LEVEL*

September 1969

State Employees

| State Civil Service Agency | Existing State Agency | New Independent State Agency | Statute Makes No Provision |
|---|---|---|---|
| California | Alaska | New Hampshire | Florida |
| Massachusetts | Delaware | New Jersey | Hawaii |
| Washington | Minnesota | New York | North Dakota |
| | Missouri | Oregon | |
| | Nebraska | Vermont | |
| | Rhode Island | | |
| | South Dakota | | |
| | Wisconsin | | |

Municipal Employees

| Local Agency Employer | Existing State Agency | New Independent State Agency | Statute Makes No Provision |
|---|---|---|---|
| California | Alaska | Nevada | Florida |
| | Connecticut | New Jersey | Hawaii |
| | Delaware | New York | North Dakota |
| | Maine | Oregon | |
| | Massachusetts | | |
| | Michigan | | |
| | Minnesota | | |
| | Missouri | | |
| | Rhode Island | | |
| | South Dakota | | |
| | Vermont | | |
| | Washington | | |
| | Wisconsin | | |

Teachers

| Local School Board | State Board of Education | Existing State Agency | New Independent State Agency | Statute Makes No Provision |
|---|---|---|---|---|
| California | Connecticut | Alaska | New York | Hawaii |
| Florida | Maryland | Massachusetts | | North Dakota |
| Minnesota | | Michigan | | |
| Nebraska | | New Jersey | | |
| North Dakota | | Rhode Island | | |
| Vermont | | Wisconsin | | |
| Washington | | | | |

*This table covers the comprehensive and noncomprehensive statutes in some 24 States.

Personnel to serve as the administrative unit.[49] Hawaii's "meet and confer" legislation, on the other hand, as well as the simple "right to organize" statutes of North Dakota and Florida, have no provision for administrative implementation.

Overall, the State administrative unit may be one of five types:

- An existing line agency such as Delaware's

[49] State of Tennessee, *Report of the Governor's Committee on Public Employee Organization* (Nashville, Tennessee: November 13, 1968) (mimeo).



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Department of Labor and Industrial Relations and Washington's Department of Labor and Industries–for local personnel; a special office (Minnesota's State Labor Conciliator), or a board (Rhode Island's State Labor Relations Board) within a department;

- A civil service agency, commission, or personnel officer for State employees (California, Massachusetts, Washington);
- An independent labor relations board or court of industrial relations (Nebraska), which serves similar functions for both the private and public sectors (Connecticut, Massachusetts, and Vermont for the local level; Missouri and Wisconsin for both levels);
- Where only teachers are affected, the State board of education (Connecticut and Maryland) or the local school board (California, Florida, Minnesota, Oregon, and Washington); and
- Creation of a new independent agency solely concerned with public sector collective bargaining (Nevada for its local law; New Hampshire and Vermont for their State level acts; and New Jersey, New York, and Oregon for all public employees).

Proponents of the "existing agency approach," base their arguments on the availability of existing administrative agency machinery, as illustrated in the first four types cited above.[50] The Colorado study committee report, for example, considered establishing a separate independent agency but concluded that "... the (existing) industrial commission should administer the proposed act since the machinery for labor-management relations in the private sector already existed within the commission, and the commission is experienced in labor management relations."[51] Vesting authority in the existing State labor agency, it is argued, would be more economical in terms of personnel and overhead and would facilitate administration since some employee organizations would be already familiar with its procedures.

Proponents of the new agency approach, however, base their recommendations on the strength of the argument that labor relations in the public sector bear little resemblence to those in the private, hence the need for avoiding the existing State labor relations agency. The problems of unit determination, dispute settlement, and merit systems in the public labor-management field, among other issues, require solutions different than those generally applied to private industry. Moreover, a new agency, according to this argument, would be less likely to be bound by past practice and precedent in searching for solutions to these unique problems. Proponents of the new agency approach also point out that confidence in discussions and negotiations by public employers and professional public employee organizations would be aided if both parties feel that administrative jurisdiction will be in the hands of persons thoroughly familiar with the public sector problems.

Divisions over still another topic have also prompted differing State approaches to this administrative agency issue. Opinion is divided on whether to place quasi-judicial responsibilities (deciding representation and unfair practice cases) in the same agency charged with mediation responsibilities (conciliation, mediation, and fact-finding). State statutes differ on this issue. The laws of 18 States provide for both judicial and mediation procedures to help end deadlocks. In nine of these States (Michigan, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New York, Oregon, and Wisconsin), a single agency is responsible for determining bargaining representatives, appropriate units, unfair practices, as well as for resolving negotiation impasses. In the other nine States (Alaska, Connecticut, Delaware, Maine, Massachusetts, New Jersey, Rhode Island, Vermont, and Washington), however, the two broad functions have been separated for the most part and assigned to different agencies.[52]

Finally, the manner in which the State law provides for selection of labor relations board members is a procedural issue that divides public employee organizations and public management. The problem here in the opinion of one union official, is to ensure the "neutrality" of the board. Jerry Wurf, International President of

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[50] See National Governors' Conference, *op. cit.*, p. 11 and Jean T. McKelvey, "The Role of State Agencies in Public Employee Labor Relations," *Industrial and Labor Relations Review*, Vol. 20, No. 2, January 1967, pp. 179-197.

[51] State of Colorado, *op. cit.*, p. XVII.

[52] The National Governors' Conference task force report summarized these two views this way: "The ... (separate agency) ... position is based on the notation that the function of judge and that of mediator should not be confused, and that activity in one area will have a prejudicial effect in the other. The ... (single agency) ... position notes that board members, because of their judicial role and reputation, have the stature in the eyes of the parties concerned to arrive at settlements which others might not as easily accomplish. In addition, since the agencies invariably have multiple functions within their jurisdiction, board members would do well to participate to some extent in all of them. This interaction strengthens the relationship between board members and staff." National Governors' Conference, *op. cit.*, pp. 11-12.

AFSCME, has voiced concern with the agency administering New York State's public employee relations law.[53]

> Our first concern is basic to all the others. The New York State Public Employees' Fair Employment Act is administered by a Board appointed by, and beholden to, the Governor. The Board's budget is developed by the Governor's budget director. And the Governor is the boss, so far as New York State employees are concerned.
>
> No matter from what angle we approach the situation, we find a Board that by its very constitution lacks independent authority. It is not a separate, neutral agency counterposed between labor and management; it is, I repeat, an agency of the State government, an adjunct of the office of the Governor.

The AFSCME argues that establishment of a tripartite system for public sector labor relations is the only way to ensure neutrality. The seven-man Office of Collective Bargaining (OCB) in New York City, according to AFSCME, is exemplary of the kind of system that should be established at the State or local levels. Two members of the OCB are appointed by the mayor; two by the employee organizations involved; and the remaining three public members of the Board, one of whom is to be designated its chairman, must be unanimously selected by the four members already appointed.

Many public administrators, however, point out that strong precedents exist for retaining the prevailing method of appointment. They point out that there is a tradition in most States for gubernatorial appointment of such boards in the personnel field. Moreover, it is argued that while all members of civil service commissions and boards are appointed by the governor, such agencies have exhibited a neutral and independent posture in most of the States and command the respect of both labor and management. A third line of argument holds that ultimate responsibility for appointments must be in the hands of the State's chief executive in order to ensure accountability. The final responsibility for executing a public employee relations program, according to this view, has to be in the hands of the public employer.

## PROCEDURAL ISSUES IN PUBLIC-LABOR-MANAGEMENT RELATIONS

As indicated earlier, regardless of the problem of whether public employees should be authorized to strike, at present neither legislative bodies, the courts, nor the general public appear ready to move in this direction. Most States and localities are still adjusting to the fact that public employees are becoming more aggressive in the expression of their grievances. The union, the slowdown, and the strike have become the watchwords of this new militancy.

Yet, it is all too easy to become preoccupied with both relevant and abstract arguments over the strike issue and to lose sight of the fact that the strike is a means rather than an end in itself. By focusing only on the strike question, the procedural mechanisms set forth in State laws which provide for effective participation by public employees and management in negotiations, which seek to expedite the settling of grievances, and which are geared to facilitating the resolution of impasses may be overlooked. Such procedures, however, are far from insignificant and certainly are not free from controversy. Since they pose a number of critical problems in public employer-employee relations, they require careful consideration in the development of collective negotiations and meet and confer legislation.

### Representation and Unit Determination

Procedural arrangements for assuring collective representation are geared generally to permitting public employees to associate with their co-workers in organizations of their own choosing and to use such organizations as vehicles through which the terms of their employment may be discussed and negotiated collectively. In devising the necessary procedural mechanisms, however, certain basic questions must be considered. What constitutes an appropriate unit? How shall employees be represented in the unit? Should a particular employee organization be recognized as the bargaining agent for only its members or for all employees in the unit? Should union security provisions be included in collective agreements? All of these questions, save perhaps for the last, would apply with equal force to a meet and confer as well as a collective negotiations system.

**The Appropriate Unit.** The representational status of employee organizations is one of the most perplexing questions in public labor-management relations. The definition of the constituency within which bargaining may occur is not only a necessary precondition to negotiations but also effects their course and outcome. Employees, employers, and employee organizations, then, all have a vested interest in the determination of the appropriate unit, but for quite different reasons.[54]

[53] Jerry Wurf, speech before the *Governors' Conference on Public Employment Relations*, A Summary of Proceedings (Albany: State of New York, October 15, 1968), p. 22.

[54] See Andrew W. J. Thompson, *Unit Determination in Public Employment* (Ithaca: New York State School of Industrial and Labor Relations, Cornell University Public Employee Relations Report No. 1), pp. 2-3.

The employee's main concern is with having a representational unit that will provide him with the maximum amount of self-determination and economic power. The size of this unit usually will vary in accordance with his skills, occupation, or profession; the employee with any of these specialties may well prefer to be included in a narrow bargaining unit rather than being mixed with his less qualified co-workers in a wide unit. The decision of the employee organization usually is conditioned by the number of employees which it believes it can organize in a unit. Another factor influencing its decision is whether certain types of employees–such as supervisors or unskilled workers–are excluded from membership by the constitution. A third consideration is whether competition exists between the union or association and a rival organization for organizing the same group of workers; one group may believe that its relative power can be maximized through establishment of a small unit, while the opposite situation may apply to its rival. The employer generally prefers creation of a relatively large unit since excessive fragmentation makes it difficult to establish negotiating patterns applicable to a majority of the employees. The proliferation of small units also is usually accompanied by organizational rivalry, which may subject the employer to whipsawing by competing unions.

The major criterion used in determining the appropriate unit is "community of interest." Yet, a number of difficulties are involved in defining and applying this somewhat elusive concept.[55] An employee, for example, may share a "community of interest" with other employees who are subject to the same wages, hours, working rules, personnel policies, and other conditions of employment. But this kind of "community of interest" may exist among employees in an occupational group, in a department or installation, in a political or functional unit, or even in the classified State or municipal civil service.

Another definition of this concept focuses on the interest of employees, especially those having a common history, in maintaining their negotiating pattern. These employees frequently include the personnel of regional public authorities, policemen, firemen, school teachers, and State executive department personnel.

A "community of interest" also may emerge from vocational specialization along craft or professional lines. This type assumes an identity of interest on the part of employees and their supervisors in maintaining and promoting the status of their craft or profession. School teachers, State and local policemen, firemen, social workers, and nurses generally fall into this category.

A fourth definition of the term "community of interest" involves the manner in which employees exercise their representational rights. This raises the issue of whether supervisors or professional employees should have the right to be included in the same unit as non-supervisory or non-professional personnel. For example, since supervisors by definition include those having authority "... to effectively recommend hiring, transfer, suspension, promotion, discharge or discipline, and ... to assign and direct work as well as to adjust grievances,"[56] their inclusion in a unit has been opposed by some on grounds that it makes for a conflict rather than community of interest. This problem occurs frequently in the determination of appropriate units for policemen, firemen, and teachers.

Aside from "community of interest," several other criteria for determining the appropriate bargaining unit exist. These include the scope of the employer's discretionary authority with respect to negotiable items and the degree to which employee-employer determination of the appropriate unit will not adversely affect the quality of public services.

**Representation.** Once the appropriate unit has been determined, questions concerning the representation of employees must be resolved. Where the representational status of an employee organization is in question, the presentation of petitions and membership cards or the authorization of dues deductions may indicate whether the employees in a unit desire to be represented by a particular union or association. If these procedures are unsuccessful, an election may be held. However, a number of unique problems are involved in the timing of elections in the public sector. These have been described by the National Governors' Conference as follows:[57]

> Under private employment labor law, a valid collective bargaining agreement bars an election during its term. The issue of contract bar is not as easily dealt with in public employment because of the necessity of adopting annual budgets. The budget deadline may be more important in determining the timing for a representation election than any other factor. The early filing of a petition for representation may unnecessarily disturb a collective bargaining relationship in the public sector, but if the bargaining petition can only be filed in the last sixty to ninety days prior to the expiration of the contract, as is the case in the private sector, there may not be time enough to select a bargaining representative and also to negotiate and execute a collective

[55] See State of New York, *op. cit.*, pp. 26-36.

[56] National Governors' Conference, *op. cit.*, p. 13.

[57] *Ibid.*

bargaining agreement prior to the budget deadline. Timing problems must also be considered in decertification proceedings and proceedings allowing for the choice of an intervenor.

A related difficulty in representation proceedings is whether a showing of interest is necessary. In private industry, for example, the NLRB requires a thirty percent showing of interest before a representation election can be held.

A major question affecting the representational status of an employee organization is whether it will be recognized as the negotiating agent for only its members or whether it will be recognized as the exclusive bargaining agent for all employees in the unit. In both private industry and the public sector, there has been an emerging trend toward the exclusivity principle.

Sixteen of the 21 States with comprehensive public employee labor relations laws provide for exclusive recognition (see Table 8). The meet and confer laws of Minnesota and South Dakota, however, provide for two forms of recognition—informal and formal, the former gives minority organizations the right to consult with management on personnel matters while the latter gives the majority representative the sole right to represent employees in an appropriate unit for the purposes of discussing the terms and conditions of employment with the public employer. The Alaska and Hawaii laws make no provision for representation procedures and the California and Oregon statutes leave such procedures to the determination of local public employers. The model California ordinance, drafted by the League of California Municipalities and adopted by at least 40 localities provides the two-level approach, however.

A November 1968 U.S. Civil Service Commission survey revealed that 1.4 million, or 52 percent, Federal employees subject to union or association organizing work in units covered by exclusive recognition rights.[58] Most of the 16 States which have enacted comprehensive laws incorporating the exclusive recognition principle have relied upon the NLRB's definition of the term. Hence, an employee organization will be recognized as having the exclusive right to negotiate collectively on behalf of all members of an appropriate unit if it can demonstrate by secret ballot election or other means that it represents a majority of the employees in the unit. Having an exclusive bargaining agent, however, does not preclude individual employees or minority unions or associations in a unit from presenting grievances to and having them adjusted by the public employer, provided that the exclusive bargaining agent may be present at such adjustments and that they do not conflict with the terms of the collective agreement.

[58] *Federal Times,* May 14, 1969, pp. 1-28.

Although the Taylor Committee hesitated to take a position on this matter, it indicated that exclusive recognition of public employee organizations offered a number of possible advantages over approaches which do not seek to reduce the number of direct participants in the negotiating process:[59]

- management would not play one employee organization off against another.
- interorganizational rivalries would be eliminated for a time.
- "splitting off" of functional groups in an employees' organization would be discouraged.
- administration of personnel relations would be simplified.
- closer control over the actions of public employees would be achieved, particularly in the maintenance of a no-strike policy.

**Union Security.** An issue closely related to exclusive recognition is whether public employee organizations should be authorized to negotiate agreements with their employer that contain various types of union security ranging from an agency shop to dues checkoff.[60] In private enterprise, the traditional justification for union security agreements has been three-fold: (1) unions could play a more responsible role since they would be assured of a steady income and would not have to pursue an aggressive campaign to recruit and retain members; (2) with security provisions written into the collective bargaining agreement, unions would have more effective control over the actions of employees in a bargaining unit and could, when necessary, discipline those members who violated agreements and rules; and (3) security provisions for employee organizations would eliminate the inequitable situation in which nonmembers could enjoy the same benefits that members received from a union's negotiations and yet would not be required to pay for these services.

Existing practice suggests that no general consensus exists concerning the status of union security provisions within the public sector. Executive Order 10988 did not authorize Federal agencies to negotiate organization security agreements and the same holds true for its successor, Executive Order 11491. Nearly all collective bargaining statutes resemble meet and confer acts in their silence on this issue. Only one State, Vermont, has moved to authorize such agreements. Its statute covering private industry was made equally applicable to local public employees, with exception of the right to strike. It automatically grants municipal employee organizations the right to negotiate union security agreements. In

[59] State of New York, *op. cit.,* pp. 38-39.

[60] National Governors' Conference, *op. cit.,* p. 21.

addition, the New Hampshire State Supreme Court, the Michigan Circuit Court, and the Michigan Labor Mediation Board have recently ruled that in particular circumstances the agency shop is legal in their States.[61]

On the other hand, in 1966 the Governor of Wisconsin vetoed a bill passed by the Legislature authorizing agency shop agreements between a municipal employer and local government unit upon the favorable vote of two-thirds of the eligible employees. This proposal was identical to provisions applicable to private employment under the State's Employment Peace Act. By a two-to-one margin, the Wisconsin Senate failed to override the Governor's veto even though the Attorney General had previously issued an opinion upholding the proposed agency shop bill as constitutional and serving a proper public purpose.[62] To the extent then that union security provisions exist in the public sector, they are found in jurisdictions that neither specifically authorize nor prohibit this device.

One reason for the reluctance to include union security provisions in public employer-employee agreements is their possible conflict with the "merit principle." Some opponents of security provisions for employee organizations maintain that public employment should be determined solely on the basis of merit; that it should not be a matter of membership or nonmembership. They reject compulsory employee membership in a union or association, and contend that an organization should on its own merits be able to attract members. Moreover, some observers argue that security provisions tend to freeze out rival employee organizations, and to make those with majority status less responsive to their membership. Critics also focus on the related issue of the use of union dues. If employees, they contend, are required to join employee organizations and to pay membership dues, then restrictions should be placed on the use of these funds for political purposes.[63]

On the other hand, public employee organizations and other observers maintain that union security can serve as a safety valve to relieve the pressures generated by strike prohibitions in public employment. This argument becomes one of *quid pro quo:* if public employee organizations do not have the right to strike and if, as in some jurisdictions, they may have signed no-strike pledges, then some type of organizational security should be granted by the public employer. Unions and associations concede that dues checkoffs by the public employer on a voluntary, written authorization of the employee may facilitate organization. They assert, however, that management should make a more substantial commitment to encouraging membership in employee organizations through the inclusion of union security provisions in negotiated agreements. For example, the recently revised AFSCME model "Public Sector Collective Bargaining Act" contains a section authorizing a union security agreement which requires all employees in a bargaining unit either to join a union representing a unit or to pay the equivalent amount of dues as a service fee.

## The Scope of Negotiations

The scope of negotiations, which involves the number and types of items that may be subject to employer-employee discussions and negotiations, is one of the most crucial issues in contemporary labor-management relations in the public sector. Such dealings traditionally have focused on so-called "bread-and-butter" issues—wages, hours, fringe benefits, and working conditions. Yet, the interaction of labor and management potentially injects a more far-reaching, flexible "give and take" element into determining what items may be subjected to negotiation.

Under the usual meet and confer system of public employer-employee labor relations, questions of the scope of negotiations generally are not critical. Under this approach, management retains much of its right to act when and how it chooses. Moreover, civil service rules and regulations frequently serve as another "management" force curbing the scope of discussions.

A number of pertinent questions, however, may be legitimately raised concerning this matter of scope where the collective negotiation approach is used. Hence, the two parties usually will be negotiating on a more open basis to determine items and subjects suitable for negotiation. How can the merit principle, for example, be reconciled with collective negotiation? How can collective negotiation be accommodated within a merit system? In the case of conflict between agreements and civil service rules and regulations, which should prevail? To what extent should independent civil service commissions have control over negotiable subjects beyond the merit principle? Should independent civil service commissions serve as bargaining agents on non-merit personnel matters? To what degree should the scope of negotiation be extended beyond "bread-and-butter" issues to include professional and program concerns which have been traditionally decided unilaterally by

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[61] Executive Board, Maritime Trades Department, *op. cit.*, p. 41.

[62] Arvid Anderson, "The U.S. Experience in Collective Bargaining and Public Employment," in Kenneth O. Warner, ed. *Collective Bargaining in the Public Service: Theory and Practice,* (Chicago: Public Personnel Association, 1967) p. 32.

[63] Anderson, "Public Collective Bargaining and Social Change," *op. cit.*, p. 17.

management? Does collective negotiation encroach on the "management rights" of the public employer?

**The Merit Principle, Merit System, and Collective Negotiations: A Compatible or Incompatible Mixture?** A critical area of public employer-employee relations of particular concern to public administrators is the relationship between the collective negotiations and meet and confer systems on the one hand, and the merit principle and the merit system on the other. In brief, the "merit principle" is a concept of public personnel administration which holds that an employee's selection, assignment, promotion, and retention should be based upon his ability to perform his duties satisfactorily rather than upon his political affiliation, race, religion, or other considerations extraneous to ability to perform. The "merit system" seeks to implement this concept typically through the establishment of a civil service commission having rule-making authority over such personnel matters as recruitment, examination, selection, position classification, promotion, and discipline. Frequently, these commissions also perform personnel management functions not directly relevant to the merit principle, such as grievance resolution, training, salary administration, attendance control, safety, and morale. Various facets of employer-employee relations then fall within the Commission's responsibility.[64]

The point at which the merit principle and the merit system clash with collective negotiations is the determination of the scope of items that should be subject to employer-employee negotiations. Most proponents of the merit principle argue that such personnel matters as examination, hiring, assignment, and promotion are essential components of a merit system and as such should not be subject to negotiations. On the other hand, union leaders generally claim that all aspects of employment should be negotiable, including compensation, position classification, grievance resolution, and discipline and discharge procedures.

In large part, this dichotomy is a reflection of the ways in which management and labor define the term "merit." As indicated previously, public personnel administrators equate merit with ability to perform, as measured by such objective criteria as examinations and ranking procedures. With respect to the labor view, Felix Nigro pointed out that: "The merit principle is so widely identified with virtue that sophisticated employee leaders are quick to state their support for it." [65] But "merit" has a somewhat different meaning for these leaders; most tend to define it as the ability of an employee to perform his duties, as measured by his years of satisfactory performance and service. In other words, labor organizations tend to equate partially the terms "merit" with "seniority," a linkage rejected adamantly by management.[66]

> The whole "science" of modern personnel administration is based on the conviction, supported by research evidence, that really good workers perform far better than those who simply meet minimum standards. No matter how unimaginative in the past, the public personnel administrator usually has not equated "merit" with years of service. Although they contradict the principle of equal opportunity for public employment, the union and agency shops can be justified as benefiting the merit system in the long run—provided the employee organizations gaining strength from the increased membership use their influence in the right way. The definition of seniority as "merit" is what makes it difficult to believe the employee leaders' protestations that they are for "merit." Instead of arguing for better tests and more rigorous ranking of candidates for appointment and promotion, some of them imply that "civil service" has been a flat failure and that nothing would be lost and a great deal gained if it were replaced by personnel systems based on collective contracts. They greatly exaggerate the past weaknessess of civil service at the same time that they brush aside the evidences of damage to good personnel policies in some of their points of view.

The failure of labor and management to reconcile these opposing views has resulted in a polarization of their positions. On one hand, some advocates of merit principles argue that it is impossible to have both a viable merit system and meaningful negotiations. The merit principles of equal opportunity to compete, of salaries based on prevailing wages, and of promotion resting on merit and competition, it is contended, are negated by mandating organizational membership, establishing salary levels through negotiations, and adhering to the seniority system. In view of these conflicts, one observer has asserted:[67]

> The decision is not where to draw the line; the decision is about two kinds of personnel

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[64] See National Governors' Conference, *op. cit.*, p. 18; Warner and Hennessy, *op. cit.*, p. 284.

[65] Nigro, *op. cit.*, p. 144.

[66] *Ibid.*, pp. 144-145.

[67] Muriel M. Morse, "Shall We Bargain Away the Merit System?" in Warner, Kenneth O., ed., *Developments in Public Employee Relations: Legislative, Judicial, Administrative* (Chicago: Public Personnel Association, 1965), p. 160. Cited in Warner and Hennessy, *op. cit.*, p. 185.

systems. Which are we going to have? They are different. They employ different principles, and they have different principles, and they have different concerns. We can no longer believe that we can be half collective bargaining and half merit system.

Union and some association leaders claim that the growth of public employee organizations is evidence of worker dissatisfaction with the capacity of the merit system to provide equitable working conditions and adequate remuneration in the public service through such techniques as periodically-reviewed pay plans, merit increases, and position classification. Labor representatives also argue that the merit system is but one more symbol of unilateralism and paternalism in public labor-management relations. Like some personnel administrators, they view the "independent" civil service commission as an arm of management, and seriously question whether it can serve as an impartial third party. Heads of public employee organizations usually maintain that the range of responsibilities of civil service commissions should be confined to recruitment, hiring, and protection of employees from patronage. In order to have a meaningful employer-employee relations system, however, these leaders contend that they should be able to negotiate with management on all aspects of work which may affect their members. One union spokesman has highlighted the basis of labor's antagonistic position toward the merit system this way:[68]

> The uncomprising objectivity of the system is rendered questionable when, as in one major city, the Civil System Commissioner is simultaneously the Director of the City Department of Labor and wears both hats at the pleasure of the Mayor.
>
> Scientifically constructed job classifications and career and salary plans are at best dubious in a free market economy. No one has yet defined that weary cliche—a fair day's work for a fair day's pay. What we are dealing with is nowhere near as precise as it appears, but, rather, rough approximations rationalized by an internal logic.
>
> But the integrity of even this more modest approach is relentlessly undermined by those who accommodate the pressures of the market, but who persist in accomplishing this through under the counter deals, thus maintaining the fiction of the plans' validity.
>
> Easily the most significant source of incompatibility, however, is that, even under the best of circumstances, even with the most dedicated and competent personnel, even in the greatest absence of political pressures, civil service continues to represent unilateralism in labor-management relations in the public service. This is something we have difficulty communicating to executives and commissioners who characteristically respond as if they had been personally attacked.
>
> There is, I submit, a legitimate—and critical—difference between my requesting something of you, but leaving the final determination in your hands and my insistence that we sit together at the negotiating table as equals.

This statement is a significant departure from the general position of public employee organizations during the pre-World War II period when they were strong supporters of merit systems. The AFSCME constitution at that time, for example, stated that one of the union's objectives was, "to promote civil service legislation and career service in government."[69] Since the mid-1940's, however, unions and associations in the public sector have increasingly turned to the style of collective bargaining developed in private enterprise.

Little agreement exists, therefore, concerning whether a collective negotiation or a full-fledged "meet and confer in good faith" system can be reconciled with the merit principle or the merit system. Where they are obliged to co-exist, harmony usually is at a premium. But this does not mean necessarily that they are mutually exclusive. Arvid Anderson has concluded that experience in such States as Connecticut, Michigan, and Wisconsin, as well as under Executive Order No. 10988 demonstrates that consultation, discussion, and negotiation can occur without destroying the merit principle:[70]

> Our experience in Wisconsin, and our observations of the administration of the Federal Executive Order, persuades us that although certain conflicts do exist with respect to the scope of bargaining in civil service, the essential functions of the merit system to recruit and appoint qualified candidates and to appoint qualified persons to the public service have not been impaired by the collective bargaining process.

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[68] Jerry Wurf, speech before the 1967 United States Conference of Mayors, p. 10.

[69] Eugene F. Berrodin, "By Merit or Union," *National Civic Review*, LVII, No. 11 (December 1968), p. 557.

[70] "The U.S. Experience in Collective Bargaining and Public Employment," *op. cit.*, pp. 40-41.

## WHO REPRESENTS THE PUBLIC EMPLOYEE AT THE BARGAINING TABLE?

A common hurdle in public labor-management collective negotiations is the extent to which the public employer's representative possesses meaningful authority to deal directly with employees and to recommend agreements to the chief executive or legislative body for validation. Public managers who negotiate with employee representatives often lack or must share this authority. Typically, their ability to make authoritative decisions is severely constrained by the fact that others must approve agreements. This hierarchical chain of authority may extend from the negotiator to the affected department head, to the chief executive, and to the legislative body. If the agreement pertains to items mandated by State law or to State and local civil service provisions still another layer of approval authority is added. In light of this multi-tiered pattern, the Taylor Committee concluded that the nature and implications of the "retained rights" issue in the public sector are obviously quite different from the private sphere:[71]

> . . . the governmental employing agency lacks the power directly to negotiate with its employees or to have effective means for securing necessary consent to an agreement from higher levels of authority (from the executive officers of government and ultimately from the appropriate law-making body). As compared to the private sector, the authority to negotiate is less likely either to be granted in advance or to be promptly obtained when desired. Such restraints are a concomitant of operations in a democratic political context. Unlike the private business organization, government is more directly responsive to the demands of its constituency.

One possible consequence of this splintering of official bargaining authority is that the scope of bargainable items will be unduly limited. This may be the result when an independent civil service commission rather than a department under the chief executive, has authority over negotiable items, or when the unit responsible for personnel matters has not been designated as the bargaining agent.

One approach to resolving this problem of divided negotiating authority would be to transfer non-merit personnel functions to a personnel agency within the executive department. This would give management negotiators sufficient authority to conclude an agreement and would not unnecessarily restrict the scope of negotiations. Recent Canadian legislation along these lines, for example, provided for the designation of the Treasury Board as the managerial representative in employer-employee negotiations. The Board assumed responsibility for the determination of salaries, position classification, and working conditions, and was designated the employer representative in negotiating. On the other hand, the Public Service Commission, formerly the Civil Service Commission, retained its authority over such traditional merit system items as examinations, promotions, staffing, and career development programs. Previously, responsibility for public personnel management had been divided among the Cabinet, Treasury Board, Civil Service Commission, and various executive departments.[72]

**Management "Rights."** As indicated previously, there is an increasing tendency for some public employee organizations to seek to extend the scope of collective negotiations beyond "bread-and-butter" issues into areas traditionally considered to be management "prerogatives," that is to topics traditionally considered subject to unilateral determination. Many unions and associations have sought to define broadly "conditions of employment" to include program and professional matters, and have argued that these should be negotiable items. Their basic intent here is to utilize the collective negotiations rather than the legislative process to achieve fundamental program changes. Teachers' organizations, for example, commonly claim that as professionals they have an interest in and a responsibility for all factors affecting the nature and quality of the educational system; hence questions of educational policy should be subject to codetermination. Nurses' and social workers' organizations have recently advanced similar arguments.

As one alternative to collective negotiations on program matters, the "mission" of an agency, public managers in some jurisdictions have advocated the practice of consultation with committees of professional employees. In this way, management seeks to preserve its "rights" by distinguishing between informal discussions and bargaining, while at the same time obviating potential conflict by giving employee organizations a voice—albeit a weak one—in policy-making. From the employees' standpoint, however, a number of difficulties are inherent in this consultative approach:[73]

- consultation is only a thinly-disguised form of governmental unilateralism.

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[71] State of New York, *op. cit.*, pp. 16-17.

[72] See Roch Boduc, "The Framework for Collective Bargaining in the Public Service: The Canadian Experience," in Warner, ed., *Collective Bargaining in the Public Service: Theory and Practice*, pp. 17-18.

[73] Thomas J. Plunkett, "Rethinking Management Relations in the Public Service," in Warner, ed., *Collective Bargaining in the Public Service: Theory and Practice*, pp. 4-5.

- consultation is wholly optional; it can be withdrawn at management's whim.
- consultation may not include substantive items of interest to employee groups.
- consultation does not produce results which are binding on management, and as such they can be easily challenged or ignored.
- consultation is no substitute for collective bargaining, both in terms of participant attitudes and results.

Another employer approach to reducing the scope of negotiations is to insert within the basic legislation a management rights section which spells out a series of employer prerogatives. Such listings are found more frequently in collective bargaining legislation since the need for this type of security is less pronounced in most meet and confer statutes where management has greater leeway in determining the subject matter of discussions.

These usually include the right to direct employees; to hire, classify, promote, train, transfer, assign, and retain employees; to suspend, demote, discharge, or take other disciplinary action against employees for just cause; and to relieve employees from duties due to lack of work or funds.

Finally, provisions in State employer-employee relations law which reserve the authority of civil service commissions and give precedence to their rules and regulations also serve as constraints on the scope of discussions. While much of modern public management is not altogether sympathetic with merit systems, from labor's vantage point civil service commissions look very much like an absent member of the team on the opposite side of the conference table.

## Unfair Labor Practices

Where the rights to organize and to discuss or negotiate collectively have been granted to public employees, State legislation usually includes provisions to protect these rights. These are called unfair labor practices, or prohibited practices, and consist of obligations imposed upon employers, employees, and employee organizations.

While recent comprehensive State legislation presents a diverse pattern, a majority of the 14 jurisdictions mandating collective negotiations for public employees have specified unfair practices in their law. Connecticut, Maine, Massachusetts, New York, Rhode Island, Vermont, Washington, and Wisconsin have chosen to specify a relatively extensive listing of such prohibited practices in their statutes rather than to leave the definition to administrative determination. The Michigan law takes still another approach and imposes obligations only on public agencies, apparently on the assumption that if an employee organization acts unfairly, the employers may exercise their disciplinary authority.[74] The Delaware, Oregon, Nevada, and New Hampshire collective negotiation statutes contain simple non-interference provisions while the New Jersey law is silent on this subject. In addition to these 14 States, statutory unfair practice provisions are provided in the permissive collective negotiation legislation of Alaska and Nebraska.

The five meet and confer statutes (California, Hawaii, Minnesota, Missouri, and South Dakota) contain simple non-interference clauses. The California and Minnesota laws, however, also deal with the refusal of either party to meet and confer in good faith, thus affording legal recourse if one of the parties is uncooperative.

With the exception of making strikes expressly illegal, many of the substantive State statutory obligations upon public employee organizations or employing agencies tend to parallel those of the National Labor Relations Act code of unfair practices and those of Federal Executive Orders 10988 and 11491. The total range of obligations imposed by State law, however, generally are less extensive than those under the NLRA.[75]

The two most common statutory obligations found in all the mandatory public employee labor relations laws are preventing interference with the right of employees to organize and requiring both the employee organization and the public employer to meet and confer or bargain in good faith. Where unfair practices are listed in the statutes of States following the collective negotiation route, they may include the following items.

For Employers:

- Interference with employee rights under the law (13 States);
- Domination of employees by organizations (8 States);
- Discrimination against employees for union or concerted activities (12 States);
- Retaliation against employees for invoking their rights to participate in organizational affairs (4 States);
- Refusing to bargain in good faith with a majority representative of the employees (10 States); and
- Blacklisting any employee organization or its members to deny them employment (1 State).

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[74] National Governors' Conference, *op. cit,* p. 15.

[75] Russell A. Smith, "Unfair Labor Practices in Public Employment," *Governors' Conference on Public Employment Relations, A Summary of Proceedings* (Albany: State of New York, October 14-16, 1968), p. 32.

For Employees:

- Refusing to bargain with the employer (10 States);
- Striking, or inducing others to strike (1 State);
- Inducing the employer to perform an unfair practice (1 State);
- Interfering with, restraining, or coercing public employees in the exercise of any rights granted to them under the terms of the law (11 States);
- Discriminating against an employee who has filed an unfair labor practice charge (1 State);
- Violating the provisions of any collective bargaining agreement to which the organization is a signatory party (1 State); and
- Blacklisting any public employer to prevent the filling of employee vacancies (1 State).

In none of the five meet and confer States, but in eight of the 14 States which mandate collective bargaining, detailed provision is made for enforcement of employee-employer unfair labor practice provisions. These contrasting approaches tend to highlight a basic difference between the two systems. This responsibility in the latter jurisdictions, (Connecticut, Maine, Massachusetts, New York, Rhode Island, Vermont, Washington, and Wisconsin), is assigned to the State agency administering the act.

While the other States have given the administrative agency the power of hearing and ruling on a charge, they have not given it powers to enforce its decisions on unfair labor practice charges. While this procedure forces the complainant to litigate at his own expense if one of the parties fails to obey a decision of the State agency, it is argued that the judicial functions should be separated from the investigatory and prosecuting functions.[76] This approach, it should be noted, is an important deviation from that of the National Labor Relations Board, where the judicial, investigatory and prosecuting functions, although separated administratively, are performed by a single agency.

The right to court appeal of any decisions of the administering agency is recognized in all of these States. A court's review of the law, however, is limited to only those facts which have been introduced during the administrative proceedings. *De novo* review by the courts, following Federal procedure, is not practiced in any of the States.

Current State legislative treatment of unfair labor practices indicates that several basic problem areas exist. According to the report of the National Governors' Conference three main issues are involved:[77]

The first is whether the law should explicitly enumerate unfair practices and allocate responsibility to an administrative agency for enforcing them, or avoid the subject altogether.

Assuming that the statute enumerates unfair practices, the second issue is whether these practices should be limited to managerial behavior or whether they should also include employer and employee organization behavior.

The third is whether the administrative agency should have the responsibility for investigating and prosecuting charges of unfair practices or whether its role should be merely judicial—hearing the evidence, making appropriate findings and issuing appropriate orders.

## Budgetary Procedures and Financial Administration

Dealings with employee organizations can have a major and often complicating impact upon the fiscal practices of governmental jurisdictions. State and local governments annually formulate their budgets at a time prescribed by law, and their legislative bodies subsequently enact appropriations measures implementing these financial requests. The State and local budgetary process has traditionally operated on the assumption that the cost of items contained in the budget document will not exceed the revenues available during the fiscal year.

Employer-employee discussions, however, often are geared to mandated agency budgetary deadlines. Contracts or memoranda of understanding with employee organizations expire at different times during the year, and many months may be consumed by meeting, discussing and negotiating. Sometimes it is necessary to call for mediation, fact-finding and arbitration, all of which require time to reach a new agreement satisfactory to both parties. This difficulty is particularly acute for larger jurisdictions having numerous employees and bargaining units. Since discussions and negotiations do not necessarily cease when a budget deadline is reached, a number of serious difficulties may result.

In large part, these problems are at the local level. Since State budgets are the product of joint legislative and gubernatorial action, the State has relatively wider latitude in establishing budget deadlines, exceeding its own fiscal authority, and providing for supplementary appropriations. On the other hand, local units derive their fiscal powers from the State and must meet State imposed budget deadlines. Heavy dependence on the property tax severely limits the capacity of local authorities to absorb additional fiscal requirements that often attend public employer labor relations.

The budgetary process, then, can clearly exert a

[76] See the report of the Illinois Governor's Advisory Commission.

[77] National Governors' Conference, *op. cit.*, p. 14.

major impact upon the scope of negotiations. In some jurisdictions, the amounts of funds available in the budget are determined in advance, and these set the financial parameters within which bargaining may occur. In other cases, negotiations concerning wages and sources of funds may proceed simultaneously. A third pattern involves understandings whereby agencies will attempt to secure the additional funds necessary to fulfill the terms of an agreement. If the budgetary deadline is not met, labor and management representatives also must face the thorny problem of whether it is desirable and feasible to make the terms of the agreement retroactive. Legal and fiscal obstacles may then arise which could further extend negotiations.

In order to obviate these problems, most recent State collective negotiation laws have contained provisions defining an impasse and requiring employer and employee representatives to coordinate their negotiations with the budget-making process.[78] Under New York State's Taylor Act, a technical impasse exists sixty days prior to the budget submission date and a fact-finding board must act fifteen days before this deadline. The Connecticut Municipal Employee Relations Act and the Rhode Island Teachers' Arbitration Act also are illustrative of this approach. In some States and municipalities, requests for collective negotiations must be submitted within a specified number of days—such as 120 in Rhode Island—in advance of the last date on which funds may be appropriated.

Despite these procedural safeguards, it is highly uncertain whether discussions can be scheduled so precisely as to dove-tail with the budgetary timetable. Experience demonstrates that when the scope of negotiations includes salary and compensation items, traditional budgetary practices often are inadequate. For example, despite the above procedural safeguards contained in the Taylor Act, it is occasionally necessary for agencies to request legislative bodies for additional funds required by the terms of collective agreement. The National Governors' Conference has suggested ways of overcoming this hurdle. Possible components of a more flexible approach to government budgeting include establishing open-ended budgets; providing contingency funds; projecting the costs of settlement pending agreement and then borrowing funds internally or in the money market to cover these expenditures; and extending the life of contract agreements over more than a one-year period.[79]

## Compulsory Arbitration: The Road to the Promised Land?

In recent years, increasing attention has been given to compulsory arbitration—the automatic referral of unresolved differences to a third party for a final binding determination—as a device for resolving public employer-employee bargaining disputes. Supporters of this procedure feel that employees are more likely to receive fair and impartial consideration of their grievances and thereby reduce the need for workers to resort to strikes to achieve their demands. Proponents of this approach point to the experience of certain foreign countries, such as Australia, Sweden, and Great Britain (prior to 1959), as illustrative of the impact of compulsory arbitration upon reducing both the amount of time lost through strikes and the economic costs of work stoppages. An example of the use of compulsory arbitration somewhat closer to home is the Canadian experience under a Federal public policy which authorizes strikes by public employees, except those work stoppages affecting public safety and security. Unions representing so-called "non-essential" employees may elect to utilize arbitration to resolve disputes or they may choose to exercise the right to strike. Compulsory arbitration is substituted as a terminal point in disputes involving occupational categories for which the right to strike is prohibited.

In the United States, this device recently has been gaining popularity in some quarters. The 1968 strike by New York City sanitation workers, for example, was finally settled by mutual agreement of the parties to utilize voluntary and binding arbitration, even though neither State nor City law contained express authorization for this procedure. Not long ago, the Wyoming Supreme Court upheld a statute authorizing binding arbitration for disputes over the terms of a new agreement with firemen. The New Jersey labor relations law provides for binding arbitration of employee grievances. A Rhode Island law provides for compulsory arbitration of disputes affecting firemen, while laws recently enacted in Pennsylvania and Michigan apply to disputes involving both policemen and firemen. In addition, the Public Employees Relations Act proposed by Governor Shafer and introduced in the Pennsylvania Legislature in October 1968 provides for compulsory

[78] For example, the Taylor Committee stated: "... an impasse is typically identified by the failure to have achieved an understanding or agreement before the approach of budgeting deadlines established by law. It is a fundamental principle in government employment that collective negotiations and the resort to procedures to resolve an impasse be appropriately related to the legislative and budget-making process. An impasse may be defined in terms of the failure to achieve agreement sixty days, or some longer period, prior to the budget submission date established by law for the agency or unit of government." State of New York, *op. cit.*, p. 46.

[79] National Governors' Conference, *op. cit.*, p. 17.

arbitration of all disputes between labor and management that involve establishing the terms and conditions of an employment agreement and have not been settled by fact-finding. Unlike the Hickman Commission recommendation, the proposed Act expressly prohibits any strikes by public employees.[80]

Compulsory arbitration of negotiation disputes has been used in the United States mainly for "essential" occupational categories, particularly policemen and firemen. The principal justification for this approach is that following a breakdown of mediation and fact-finding, additional machinery should be available to bring the disagreeing parties together to reach a compromise solution which would be dictated by an independent arbitration panel. There is more universal agreement among virtually all leaders of public employee organizations and many public administrators and elected officials that binding arbitration should be the final stage in settling grievance over the interpretation or administration of contracts.

On the other side of the coin, strong opposition has been voiced against the use of binding arbitration, particularly to resolve negotiation disputes. These critics include both employee and employer representatives. Many who support the arbitration of grievances strongly object to the use of this device in dispute settlement. Their reasoning is threefold. First, it is contended that governmental bodies delegating governmental responsibilities to members of an arbitration panel constitutes an erosion of sovereign authority and employer prerogatives. The legislative body, so the argument runs, would be assigning to "outside experts" authority that was entrusted by citizens to elected officials. In this situation, public officials would be bound by the decision reached by a panel of essentially unaccountable private individuals. Panel decisions could cause serious political problems for elected State and local officials, and could even jeopardize their year-round relationships with public employee organizations. Moreover, some argue that this delegation of legislative power to arbitrators would be unconstitutional. This argument, however, is countered by the fact that most decisions of arbitration panels are not self-implementing and require execution by a legislative body or the executive. If more funds need to be appropriated in order to comply with an arbitration award, for example, the legislature or the executive—not the arbitration panel—has the final decision.[81]

A second line of argument used against the compulsory arbitration device is that it would encourage negotiators to present and maintain extreme positions since they would know that an unresolved dispute would be presented ultimately to a third party panel for a final decision. This strategy if adopted would seriously undermine the negotiations process, by reducing the importance of direct discussions between public employers and employee organizations in favor of decisions by a third party. Finally, some spokesmen for both labor and management maintain that the entire concept of compulsory arbitration rests on a myth that arbitrators can be broad-gauged, unbiased, technically competent, and detached. These traits have been difficult enough to develop even in our judiciary, and would be almost impossible to sustain in the pressurized, political, and polemical arena of public labor-management relations.

## State Mandating of Local Personnel Standards

The emergence of collective negotiations in the public sector has tended to underscore the troublesome political question of State legislative mandating of various components of local personnel policy. Requirements enacted at the State level dealing with local employees' salaries and wages, hours, working conditions, fringe benefits, and personnel qualifications in many instances could be items subject to negotiations between representatives of the public employer and employee organizations. Nevertheless, as we have seen in Chapter 3, nearly two-thirds of the States have enacted legislation that to varying degrees tie the hands of local officials on personnel matters which are usually negotiable in the private sector.

The reasons for State mandating are several. In a number of instances, the States have established minimum standards for special personnel categories in an effort to up-grade certain personnel employed by local governments. Mandatory training programs for public safety personnel and the licensing or certification of sewer treatment operators are examples of this type of mandating. Local governments have been subjected to some State mandating of personnel requirements under State assistance programs where they must conform in order to receive financial aid. State-aided education and welfare programs, for example, frequently specify minimum qualifications for local professional employees to ensure a reasonable level of competence.

Another type of mandating is aimed at upgrading the statewide public service. Public employees of all political subdivisions of some States are covered by a single retirement system. Numerous small public employee retirement systems have been consolidated to

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[80] See Daniel B. Michie, Jr., "Constructive Relationship," *Pennsylvanian*, January 1969, pp. 8-9, 37.

[81] Anderson, "Public Collective Bargaining and Social Change," *op. cit.*, p. 12.

avoid the risks of employees losing pension dollars and governments losing competent personnel.

State mandating has also resulted from the inability of local employee organizations to obtain an adequate response to their demands from local officials and from the feeling that they would have a greater chance for success at the State capitol. Some employee organizations then have substituted lobbying at the State level for collective bargaining at the local level, and have fought for passage of State legislation providing improved benefits and working conditions. In some States with a weak home-rule tradition, this approach has been the only recourse open to public employees because of State-imposed restrictions on their rights to organize and to bargain collectively. State mandating in these cases has served as a "safety valve" in providing a means to gain employee organization objectives.

On the other hand, nearly all State municipal league officials responding to an Advisory Commission-National League of Cities survey condemned State mandating. The basis for this opposition was indicated by a respondent who stated: ". . . it violates the principles of constitutional and statutory home rule and interferes with the collective bargaining process at the local level."

Closely related to the question of home-rule infringement is the problem of the fiscal impact of State mandating. For example, in most States where employee pension amounts and eligibility requirements are set at the State level, funding nearly always is left to local jurisdictions. The financial burden which State mandating may impose upon localities has generated some heated debate over whether States should provide compensatory aid to accompany such local personnel requirements. As might be expected, organizations representing State, county, and municipal officials are virtually unanimous in their opposition to any State legislative effort to furnish benefits to local employees without supplying increased State funds or providing additional sources of local revenue to meet the increased costs.

Another basic problem is the impact of State mandating on *bona fide* collective bargaining or discussions at the local level. Mandating matters dealing with employee benefits and working conditions, it is contended, can limit the scope of items which should be resolved at the bargaining table. It is argued further that special State legislation for one group of employees tends to impede the development of a rational system for all public personnel. Some critics also claim that circumvention of the employer-employee relations process to achieve "results" from State legislators which can not be realized from negotiations with local officials can only weaken direct negotiations in the long run.

## Impact of Federal Mandating of Personnel Standards

When Congress enacted the Social Security Act in 1935, it prohibited any Federal requirements affecting personnel of recipient governments administering the public assistance, unemployment insurance, and health programs. After three years of difficulties due in large part to personnel problems, Congress amended the Act to require that State plans for these programs meet Federal standards of personnel administration on a merit basis. In this fashion, Federal mandating of merit requirements in certain grant-aided sectors of the State and local public service began. Subsequently, Congress and, in a few instances, the Executive branch extended these merits provisions to other grant programs, administered by the Department of Health, Education and Welfare, the Department of Labor, and the Department of Defense's Office of Civil Defense. At present, some 30 grants-in-aid require personnel standards on a merit basis as a condition for receipt of Federal funds.

Defenders of this mandating cite the fact that the number of state-wide merit systems increased from nine in 1939 to 30 today. They also point out that more than half of the 22 State merit systems set up initially to cover only federally-aided program personnel have been extended by the States to serve one or more additional agencies and that the administrative position of the civil service commissions or boards has been determined wholly by the States. They cite the basic conclusion reached in 1968 by an HEW Advisory Committee, composed of personnel administrators from Federal, State and local government, in its study of Federal Merit System Standards: "The Standards, while prescribing certain essentials, allow the States wide latitude and have been interpreted with some flexibility over the years."[82]

Proponents claim that the administration of these intergovernmental programs has been strengthened as a consequence of the merit requirements. As Wilbur J. Cohen, former Secretary of HEW, stated during testimony on the Intergovernmental Personnel Act of 1966, "We conclude from our experience in administering these merit system provisions that they are a significant factor in economy and efficiency in administration and in attaining program goals." Others point out that the overall monitoring of these regulations for all the programs involved has been sensibly and sensitively handled by HEW's Office of State Merit Systems.

Some maintain there is a national interest in the

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[82] U.S. Department of Health, Education and Welfare, *Progress in Inter-governmental Personnel Relations,* Report of the Advisory Committee on Merit System Standards (Washington, D.C., Superintendent of Documents, U.S. Government Printing Office, 1968), p. 19.

development of a professional, nonpartisan public service at the State and local levels and merit requirements, with but few exceptions, have helped to further this goal. John W. Gardner, in testifying before the Muskie Subcommittee during its "Creative Federalism" hearings maintained that the intergovernmental merit system program "has played an enormously effective role, as you know, in upgrading State governments, and has done so for many years, and this is widely recognized."[83]

Defenders of the merit requirements also are careful to point out that the critics rarely distinguish between strictures that relate to State and local personnel administration and those that pertain to Federal standards. The latter frequently should be directed at the former, they argue. In addition, they underscore the fact that the merit system standards as administered by HEW do not prescribe forms of organization where States or localities have established their own civil service systems. In short, advocates of merit requirements in Federal grants feel that State and local personnel systems, program goals and efficiency, and the professionalism of the personnel affected have been enhanced, State and local administrative discretion has been preserved, and patronage and unprofessional conduct reduced by mandating standards in this field.

Old style opponents of this mandating claim that the States and localities should have primary control over their personnel systems, especially with reference to procedures involving hiring and firing, and that this type of grant requirement constitutes an unconscionable infringement on this prerogative. New style opponents go beyond this argument to claim that these merit requirements are helping to buttress the independence and unresponsive behavior of State and local civil service commissions and boards which, in turn, are unsympathetic to the needs of both modern management and a modern system of employer-employee relations.

As noted earlier, employee organizations no longer are enamored of civil service commissions. Moreover, with respect to the mandating question, union leaders now fear that any extension of Federal merit system requirements might reduce the scope of negotiable items, nullify existing contracts that cover such issues, and generally hinder the emergence of effective collective bargaining at the State and local levels. As one union official testified before the Senate Subcommittee on Intergovernmental Relations regarding the proposed Intergovernmental Manpower Act (S. 1485, 90th Congress):[84]

> . . . the growth of trade unionism in the public sector has been substantial in recent years. At the State, county, and municipal levels, this has resulted in the negotiation of numerous contracts between unions representing employees and appropriate government officials.
>
> Many non-Federal governmental units have enacted laws authorizing execution of such contracts. Among the items available for bargaining in public service can usually be found grievance and appeals procedures and promotion plans.
>
> Unions representing these non-Federal employees have included such provisions in their agreements. We are concerned, therefore, that enactment of section 202 [which authorized Presidential extension of merit standards to additional State and local personnel whose salary in whole or in part is federally funded] in its present form could result in nullification of such contract clauses. In addition, it could result in inhibiting future collective bargaining in governmental jurisdictions by preempting the fields of personnel management noted in section 202 through Federal policy controls.

Equally significant, numerous elected chief executives at the State and local levels also find fault with civil service commissions and merit requirements. But their criticisms differ from those of labor. The assignment to these commissions of non-merit functional responsibilities, their continuing adherence to an outmoded "policing" approach, and their rigidity in administering merit rules and regulations are commonly cited by many top management public employers as failures of the commissions.

These officials and their representatives in Washington have opposed efforts to extend the existing type of merit requirements to additional grant-in-aid programs. One facet of their case against this form of mandating and, in effect, against existing personnel systems in many States and localities was advanced by Allen E. Pritchard, Jr., Assistant Executive Director of the National League of Cities, in testimony on intergovernmental personnel legislation before the Muskie Subcommittee:[85]

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[83] U.S. Congress, Senate, *Creative Federalism*, Hearings before the Subcommittee on Intergovernmental Relations, Committee on Government Operations, 89th Congress, 2nd Session, Part 1, Washington, D.C., 1966, p. 269.

[84] John A. McCart, Statement at Hearings before the Subcommittee on Intergovernmental Relations, Committee on Government Operations, United States Senate, 90th Congress, 1st Session on S.699 and S.1485, Washington, D. C., 1967.

[85] *Ibid.*, Statement of Allen E. Pritchard, Jr.

. . . The most crucial question with which we must deal in these proposals is the extension of Federal personnel standards to local personnel systems. No number of advisory commissions, no reassuring rhetoric can hide the fact that the product of the language of these bills which authorizes the President to require the existence of a federally approved personnel system to qualify for Federal aid from substantive programs will lead to a detailed prescription of how States and local governments must exercise personnel management, including the qualification of personnel.

We simply cannot accept the thesis that this approach will guarantee the achievement of our mutual objective—quality personnel . . . I would like to make three points:

1. A personnel system is a management tool. Its forms, its method of operation, cannot be prescribed by interests foreign to those responsible for program performance. This is clearly the message of the Municipal Manpower Commission study. It specifically condemned the independent civil service commission administration of personnel and called for personnel systems responsive to responsible leadership.

2. The entire field of public personnel management is undergoing drastic change. Most noticeable is the rapid expansion of collective bargaining. Some will contend, and do contend, that we must build strong so-called merit systems to frustrate the expansion of collective bargaining in the public service.

To attempt to lock all units of government into a personnel pattern which interferes with the capacity of responsible management to constructively negotiate with employees flies in the face of reality.

For too long civil service systems have been designated to function as defensive tools. In that capacity, they will never satisfy our need for quality personnel.

3. The Federal Government has a logical and legitimate interest in the standard of performance stemming from Federal investments in local programs and projects. But that concern should be focused on performance and not upon systems. Numerous reports are available to document the fact that high standards for qualification for Federal grants-in-aid have been major stimulants to the upgrading of local government personnel. I would contend that attention to the performance standards of Federal programs will do more to encourage use of quality personnel than any other single action the Federal Government can design.

The staff of the National Governors' Conference put their case this way:[86]

> . . . problem associated with these two legislative proposals is a presumption that the Federal Government can, in fact, develop a workable 'national merit system' and then impose it as a prerequisite minimum national standard for States and local governments. We believe that most Governors will strongly object to any Federal policy in this direction. As Prof. Stephen Bailey has said, it would be a 'triumph of technique over purpose.' Our goal is the performance of personnel, not their adherence to a rigid set of rules, procedures, and regulations at the Federal, State, and local levels of government. The standard ideas, procedures, and results of a so-called merit system have often resulted in rewards of mediocrity rather than performance; preference for tenure and security at the expense of dismissal and adequate promotion procedures; and a burden rather than a tool for better management practices.
>
> The term 'merit system' may need a new definition, not an 'as is' blanket extension to all Federal assistance programs. It needs to provide for a variety of innovations and alternative choices for action. Even the Federal Government chooses to ignore some of its own merit system requirements through devices such as the 'unassembled exam' which is an interview procedure rather than an examination.
>
> We are convinced that the development of a system of personnel administration and management should progress rapidly at the State and local levels of government.
>
> However, we believe that the variety of needs and circumstances in each State should preclude any specific Federal intervention at this time, except in the development of broad, general principles and periodic reviews . . .

To sum up, spokesmen for public employers and employees at the State and local levels question the wisdom of extending the merit mandate to cover additional grant programs and express serious reservations about the nature and administration of existing requirements.

The enactment of the proposed Intergovernmental Personnel Act (S. 11, 91st Congress), would pave the

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[86] *Ibid.*, Statement of Charles A. Byrley.

way for a thorough review of this form of Federal mandating. Under Title I of the bill, an Advisory Council on Intergovernmental Personnel Policy is established for the purpose of studying and making recommendations regarding personnel policies and programs that are geared to improving the "quality of public administration at State and local levels of government," to aiding these jurisdictions "in training their professional, administrative, and technical employees," to assisting them in developing responsive personnel management systems, and to facilitating interlocal transfers of personnel. An initial report is required not later than 18 months after the Council is established. In this report, the Council would present its views and proposals regarding the feasibility and desirability of extending merit standards to additional Federal-State programs as well as to Federal-local grants and of using financial aid and other incentives to encourage the development by States and localities of comprehensive personnel systems based on merit principles. The topic of appropriate standards for merit personnel administration—including those now required under certain grants-in-aid, would also be covered in the report.

It should be noted at this point that personnel administrators are not oblivious to the exigencies of the times. The HEW Advisory Committee on Merit System Standards, for example, stated in its 1968 report:[87]

> Trends toward growing unionization of the public service and continuing professionalization, with their values, may nevertheless foster closed systems for employees or for the credentialed, as against open merit assessment of individual abilities and performance . . . . State and local policy on employee-management relations applicable to the grant-aided programs should provide for: (1) maintenance of merit principles; (2) development of affirmative employee-management relations; and (3) development of methods for settlement of impasses which will avoid work stoppages. Federal technical assistance should be provided in these areas as they relate to personnel administration on a merit basis in grant-aided programs.

A different form of Federal mandating involves the extension of the Fair Labor Standards Act to cover certain categories of State and local personnel. The Act, as originally enacted, required every employer to pay each of his employees engaged in commerce or in the production of goods for commerce a certain minimum hourly wage and to pay at a higher wage for work in excess of a certain maximum number of hours a week.[88] The term "employer," however, was defined in a way to exempt the "United States or any State or political subdivision of a State."

The basis of employee coverage was shifted by Congress in 1961. Rather than providing protection to individual employees included directly or indirectly in interstate commerce, the new approach extended the Act's coverage to all employees of any enterprise involved in commerce or production for commerce, but only if the enterprise fell within certain specified categories. The 1966 amendments to the Act added to the list hospitals, schools, institutions of higher education, special training and rehabilitative institutions—whether they were public, private, non-profit or profit-making. Congress also amended the definition of employer to remove the exclusion of States and their political subdivisions with reference to employees of such institutions

These amendments triggered opposing legal steps by the State of Maryland, 27 other States, and a school district, who joined in bringing action against the Secretary of Labor to enjoin enforcement of the new provisions of the Act applying to schools and hospitals run by States or their subdivisions.

The legal arguments advanced by the plantiffs in the resulting case of *Maryland v. Wirtz* constitute, in effect, one body of criticism of this form of Federal mandating. One argument held that expansion of the Act's coverage by means of the "enterprise concept" exceeded the power of Congress under the commerce clause and infringed on activities that were essentially within the scope of intrastate commerce. Another contention was that coverage of hospitals and schools operated by States or localities, in any event, was beyond the purview of the commerce clause. A third point advanced by the plaintiffs was the assertion that the Act's remedial provisions involving the manner by which protected individual employees might seek redress, if applied to the States, would conflict with the Eleventh Amendment. Finally, Maryland and its co-plaintiffs stressed that even if their constitutional arguments were denied, the court should declare that schools and hospitals, as enterprises, do not have the statutorily required relationship to interstate commerce.

One of the members of the three-judge District Court, which was convened initially to hear the case, dissented from the majority's decision not to issue a declaratory judgment or an injunction. Judge Northrup held that the 1966 amendments exceeded the commerce power because they transgressed upon the sovereignty of the States and pointed out:[89]

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[87] U.S. Department of Health, Education and Welfare, *op. cit.*, pp. 1, 4.

[88] 52 Stat. 1060 (1938).

[89] 269 F. Supp. 826, 853-854.



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By this Act, Congress is forcing, under threat of civil liability and criminal penalties, the state legislature or the responsible political subdivision of the state:

1. to increase taxes (an impossibility in some of the political subdivisions without a state constitutional amendment); or

2. to curtail the extent and calibre of service in the public hospitals and educational and related institutions of the state; or

3. to reduce indispensable services in other governmental activities to meet the budgets of those activities favored by the United States Congress; or

4. to refrain from entering new fields of governmental activity necessitated by changing social conditions.

On the appeal to the Supreme Court of the United States, Justice Douglas, with Justice Stewart concurring, dissented from the majority opinion of the Supreme Court, which upheld the District Court's judgment. In taking issue with the majority, Douglas contended that "what is done here is . . . such a serious invasion of state sovereignty protected by the Tenth Amendment that it is in my view not consistent with our constitutional federalism."[90] Focusing on the economic and police power implications of the amendments, he warned that they would "disrupt the fiscal policy of the States and threaten their autonomy in the regulation of health and safety." While conceding that the States are far from immune from Federal regulation under the commerce power, in none of the previous cases that upheld such congressional action, he argued, was it a matter of overwhelming State fiscal policy. The dissenting Justice also emphasized that the vast scope of the commerce power is highlighted by the Court's approval of the Act's "enterprise concept" of regulation, but that this approach is only proper when the regulated businesses are not essential functions carried on by the States. Since State government itself is an "enterprise" having a significant effect on interstate commerce and hiring employees whose labor strife could impede this commerce, he cautioned that "the constitutional principles of federalism must place limits on the commerce power where regulation of State activities are concerned." In summation, the Justice maintained that the principles enunciated in *New York v. U.S.* should guide the Court in this case in that the former drew a distinction between "sovereign functions" of States and the "State or government," on the one hand, and non-governmental State functions and the "State or trader," on the other. In the Maryland case, Justice Douglas held that "the State or a sovereign power is being seriously tampered with, potentially crippled."

The Supreme Court's majority opinion, against which this dissent was directed, upheld the District Court's decision, and thereby the constitutionality of the Act's amendments. Mr. Justice Harlan, in reviewing the plaintiffs' arguments, found the "enterprise concept" supportable under previous decisions involving the scope of the commerce power as well as by Congress' statement of finding in the original Act "that substandard labor conditions tended to lead to labor disputes and strikes and that when such strife disrupted businesses involved in interstate commerce, the flow of goods in commerce was itself affected."

With reference to the argument that the commerce power does not provide constitutional grounds for extending the Act to hospitals and schools operated by States or their localities, Justice Harlan noted at the outset that the Act specifically exempts any "employee employed in a bona fide executive, administrative, or professional capacity." The Act simply establishes a minimum wage and a maximum limit of hours unless overtime wages are paid, he maintained, and does not affect otherwise the manner in which school and hospital duties are performed. He went on to point out that "labor conditions in schools and hospitals affect commerce" and that "strikes and work stoppages involving employees of schools and hospitals, events which unfortunately are not infrequent, obviously interrupt and hinder . . . [the] . . . flow of goods across state lines."

To the sovereignty-based contention that the Act cannot be constitutionally applied to State-operated institutions, the Justice stated that the "argument simply is not tenable" and pointed out that prior cases made it clear that "the Federal Government, when acting within a delegated power, may override countervailing State interests whether they be described as 'governmental' or 'proprietary' in character." While recognizing that the commerce power has limits, he maintained that "if a State is engaging in economic activities that are validly regulated by the Federal Government when engaged in by private persons, the State too may be forced to conform its activities to Federal regulation." In finally rejecting the appellants' sovereign function argument, he declared:[91]

> . . . This court has examined and will continue to examine federal statutes to determine whether there is a rational basis for regarding

[90] No. 742.–October Term, 1967. Decision of Supreme Court of the United States in Case of *Maryland v. Secretary of Labor Wirtz.*

[91] *Ibid.*

them as regulations of commerce among the States. But it will not carve up the commerce power to protect enterprises indistinguishable in their effect on commerce from private businesses, simply because those enterprises happen to be run by the States for the benefit of their citizens.

On the two final issues—relating to the Eleventh Amendment and whether hospitals and schools have employees engaged in commerce—the majority opinion agreed with that of the District Court and concluded that no showing had been made that warranted declaratory or injunctive relief.

A more recent case of proposed Federal mandating based on the commerce power is the "Professional Negotiations Act for Public Education" introduced in the Senate by Lee Metcalf on April 25, 1969. This bill (S. 1951) would establish an impartial Professional Education Employee Relations Commission within the Department of Health, Education and Welfare to mediate disputes involving boards of education and teacher organizations in public schools operating under State laws.

The Act declares that it is the policy of the United States to recognize the right of professional employees of boards of education to join and participate in and to be represented by employee organizations in negotiations with such boards over the terms and conditions of public employment culminating in a written agreement. The measure provides that the failure of boards of education to engage in such negotiations in good faith constitutes an unlawful act. The basis for this Federal mandating of State and local collective bargaining for teachers was explained by Senator Metcalf as follows:[92]

> The inequality of negotiating power between professional employees who do not possess full freedom of association or actual liberty of contract and boards of education substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in the national economy and by preventing the stabilization of competitive wage rates and working conditions in such economy.

With respect to dispute settlement machinery, the proposed Act provides that either the board of education or the professional employees' representative may declare an impasse in negotiations and may then request the proposed Commission to appoint a mediator to assist in resolving their differences and in reaching a mutually acceptable agreement. The mediator serves without cost to the parties. In addition, on its own volition, the Commission may declare an impasse and appoint a mediator. The Act, however, does not preclude the parties from establishing a mutually acceptable mediation procedure. If mediation proves unsuccessful after 15 days have elapsed, either party may request that the dispute be submitted to advisory—or if mutually agreed upon to binding—arbitration, and if they cannot agree on an arbitrator the Commission may make such designation. If the dispute is not settled within ten days after the arbitrator's findings and recommendations have been submitted to the parties, this information may be made public. All expenses of the arbitrator must be borne equally by both parties. Binding arbitration also may be utilized to resolve disputes involving the interpretation, application, or violation of agreements, and the Commission may petition any Federal district court to enjoin unlawful acts.

Another key provision of the bill is the repeal of all strike bans on professional employees. However, strikes may be enjoined if their commencement or continuation presents a clear and present danger to public health or safety, or if the employee's representative has failed to make a reasonable effort to utilize the impasse resolution procedures contained in the Act.

The potential impact of this bill, then, is clearly of widespread significance. Based upon the assertion that teacher-school board negotiations affect interstate commerce, the Act not only prescribes machinery to resolve disputes between these parties, but also mandates employer recognition of certain fundamental rights of professional education employees. It also prescribes unlawful acts and means for their prevention and establishes procedures for determining employee representatives and bargaining units regardless of the provisions of State labor relations legislation or local laws and formal policies. Particularly important are the rights of collective bargaining and striking which the bill accords to these employees. The only exceptions to the Act's applicability would be State laws which the Commission determines to be substantially equivalent to the system of teacher-school board relations it prescribes.

## SUMMARY

The major questions in collective bargaining in the public sector may be summarized as follows:

- Should the sovereignty doctrine preclude the right of public employees to organize; to be represented in negotiations with their employers; and to negotiate collectively?
- Should public employees be permitted to engage

[92] *Congressional Record*, April 25, 1969, p. 54122.

in strikes; should a "limited" right to strike be authorized?

- Should a single State comprehensive public labor-management relations law covering all employees be enacted; should separate laws be enacted for State employees, local employees, or special occupational categories?
- Should existing labor relations boards administer both public and private collective bargaining laws; how should the judicial and mediation functions be distributed in the State labor relations unit?
- Should supervisors and professional employees be included in the same unit as non-supervisory and non-professional personnel?
- Can a collective negotiations or a meet and confer system co-exist with the merit principle and the merit system?
- Should matters dealing with the program goals of the employing agency be subjected to negotiation?
- Should public labor-management relations legislation authorize the inclusion of union security provisions in employer-employee agreements?
- To what extent should unfair practices by public employers and employees be specified in the law?
- How can employer-employee discussions and negotiations be adjusted to conform with the State and local budgetary cycle?
- Is it proper for the State to mandate personnel standards for local employees? Should State "mandating" be outlawed; if mandating the terms and conditions of employment persists, should State compensatory aid be provided to affected localities?
- Is there all that much difference between the typical collective bargaining statute and the usual meet and confer act?
- Should Federal grant-in-aid merit requirements be scrapped; be extended to additional program areas; be modified or extended to improve State and local public labor management relations systems?
- Should Congress refrain from enacting laws similar to the 1966 amendments to the Fair Labor Standards Act and the proposed Professional Negotiations Act for Public Education which mandate State and local personnel matters?

# *Chapter 5*

# CONCLUSIONS AND RECOMMENDATIONS

In this report, the factors responsible for the mushrooming of public employee organizations have been highlighted, the provisions of State labor-management relations legislation for the public sector examined, the current status of public employer-employee relations at the local level explored, and the major policy problems and issues raised by these and related developments analyzed in depth. The Commission now sets forth its major findings and conclusions, as well as proposals for placing labor-management relations in State and local employment on a stable, equitable, and workable basis.

## Summary of Major Findings

- Government today, especially at the State and local levels where there are more than nine million employees, has become a prime source of employment in the United States. The growth in membership of public employee organizations, however, has not kept pace with the rapid rise in governmental hiring, although it has far outdistanced the rates of other sectors of the labor market, climbing from just over five percent of the aggregate union membership in 1955 to nearly 10 percent of the current total.
- In 1966, nearly eight percent (644,000) of all State and local employees were members of various AFL-CIO affiliates and of independent State and local employee associations. When the relevant figures for the National Education Association, American Nurses Association, Fraternal Order of Police, and Assembly of Government Employees are combined with those for the unionized sector, the overall "organized" portion of the State and local public service comprises at least one quarter of the total. Yet, this sector clearly is not monolithically organized; cleavages, competition, and conflicting goals are as characteristic of the relations among public employee organizations as are cooperation and collaboration.
- Survey results indicate that most municipalities have some type of public employee organization, and nearly all of those over 500,000 population, in the Northeast and North-Central regions, classed as central cities, and having a mayor-council form of government, have at least three unions. On the other hand, the fastest organizational growth rate in recent years has occurred in Southern, suburban, non-SMSA, as well as council-manager municipalities—most of which not long ago were generally considered as being hostile or indifferent to unions or other employee organizations. More than one-half of the urban counties surveyed had at least two public employee organizations, with jurisdictions over 250,000 and those located in the Western region showing the most significant strength.
- National union affiliates alone were found in about half of the municipalities surveyed and especially in large jurisdictions, suburbs, and non-SMSA cities. Local associations only predominate in the West and generally in those organized municipalities below 100,000. A mixture of nationals and locals was reported by approximately one-third of the total and most frequently by Northeastern central cities. The ACIR-NACO survey shows counties over 250,000 in the West with a strong tendency to have both national affiliates and local associations. Local associations exclusively are most common in counties with a population between 25,000 and 50,000 and in those in the Northeast regardless of size, while nationals alone predominate in the South.
- In terms of the extent of membership, nearly half of all cities surveyed indicated less than 25 percent of their work force belonged to employee organizations. Nearly three-fourths of the public

labor force of municipalities over 100,000 is organized as against only one-fourth of that of cities under 25,000. Fire, police, and public welfare personnel are the most heavily organized local occupational groups.

- In 33 States, the right of State and local employees to organize has been sanctioned by statute, court decision, attorneys general opinion, or executive order; in two others the right is accorded to State personnel only and in three others to local employees solely. Fourteen of these States during the past decade have enacted comprehensive labor-management relations legislation which mandates collective negotiations for State employees, local personnel, or both. Two other States have passed laws permitting management to negotiate collectively with public employee representatives. Five States have enacted statutes requiring public employers to "meet and confer" with individual employees or with employee organizations. States have exhibited a somewhat greater willingness to authorize collective negotiations at the local level than for their own employees. Twelve States provide no general administrative or statutory authorization for the right to organize, but three recent lower Federal court decisions have held that belonging to a public employee organization is a constitutionally protected right and cannot serve as a basis for dismissal or other forms of punishment.
- Nearly two-thirds of the municipalities and more than one-half of the counties surveyed have no laws or formal policies dealing with the right of general or public safety personnel to organize; with punishment for their organizational activities; with arbitration of employer-employee disputes; or with management's power to sign negotiated agreements. In some instances, State legislation covering one or more of these areas may explain the lack of local laws or formal policies. Moreover, in certain States and localities where collective negotiations have not been either explicitly authorized or prohibited, *de facto* negotiations have taken place in order to keep public employer-employee relations on an even keel.
- While no State permits strikes by public employees, 254 "work stoppages" occurred in 1968—17 times the 1958 figure. Between 1966 and 1968, the number of strikes involving government employees almost doubled. Teachers were engaged in more stoppages than any other public sector occupational category. Gut economic or professional issues were the prime causes of strikes, but union recognition and security were the second most significant reasons. The concept of a "limited right to strike" is now being debated in some quarters as evidenced by its endorsement in two recent State study commission reports, its support by certain "experts" in the field, and its incorporation in legislation now pending before at least one legislature. At the same time, a recent Gallup poll indicated that nearly two-thirds of the general public continues to favor anti-strike provisions and safeguards, but sanctions the right of public employees—including teachers, policemen, and firemen—to belong to unions.
- With reference to the content of comprehensive public labor-management relations laws, wide diversity exists as to whether and where the "meet and confer" or "collective negotiations" approach is used and whether the preferred approach is permitted or mandated. Diversity also characterizes the kind of administrative agency assigned responsibilities under the act (other than a preference to use an existing instrumentality); the extent of the authority conferred explicitly or implicitly upon the agency to handle grievances and to settle disputes; the definition of unfair labor practices (other than a simple noninterference provision and the requirement to bargain, negotiate, or meet and confer "in good faith"); the types of matters amenable to negotiations or discussions; and efforts to gear collective negotiations with budgeting timetables. Some uniformity, however, emerges in the right to union membership, strike prohibitions, hearing procedures on charges of unfair practices, and the absence of provisions for union security such as the agency shop. In general, it is still too early to assess accurately the merits and drawbacks of the various provisions of comprehensive State public labor relations laws. Superficial evidence would suggest that jurisdictions having such legislation experience as much—if not more—employee turmoil as those having none. At the same time, some data exist to document the hunch that a considerable number of impasses have been resolved and stoppages averted as a result of the availability of statutory dispute settlement procedures.
- Nearly two-thirds of the States have mandated some terms and conditions of local public employment, with working conditions and fringe benefits being the most prominent type for both cities and counties followed by hours of work. City and county public safety personnel are the

most common occupational focal point of these requirements. Only a handful of States have provided any fiscal support when mandated conditions have caused a hike in local personnel outlays.

- Thus far, Federal mandating of personnel standards for State and local governments has taken two forms: requiring, under 30 grant programs, the establishment of personnel systems based on the merit principle by administering State and local agencies as a condition of receipt of Federal funds; and extending the Fair Labor Standards Act to cover certain State and local hospitals and educational personnel. In the case of the former, Federal funds from these grant programs have been used to help cover the cost of administering merit system requirements. Moreover, training funds in certain functional areas have indirectly assisted States in meeting mandated requirements. Extension of the Fair Labor Standards Act to certain categories of State and local education and hospital personnel was upheld in 1967 by the Supreme Court in *Maryland v. Wirtz.* While most States are in various stages of compliance with this decision, certain observers detect a feeling among some State and local officials that this precedent may well serve as the basis for later Federal "encroachments."

The Commission now sets forth 16 recommendations for intergovernmental action to improve employer-employee relations at the State and local levels. These recommendations fall under three major headings:

A. The Rights and Privileges of Public Employees
B. The Essentials of Proper Public Employer-Employee Relations
C. State and Federal Mandating of Employment Conditions

The Commission does not purport to have any final or ideal answers in this turbulent area of public policy. What the Commission has done is to render some collective judgments (not all of them unanimous) as to what appears to be the most desirable directions in which to move. It has set forth in this report as clearly and as fully as possible the alternative courses of action facing State and local legislative bodies and the reasons for the preferences at which the Commission finally arrived.

## THE RIGHTS AND PRIVILEGES OF PUBLIC EMPLOYEES

A major factor leading to uncertainty and, in some instances, to unrest in public labor-management relations is the failure to define the scope of basic rights and privileges of public employees, to clarify the position of supervisory personnel, and to assure a responsive and responsible relationship between the membership and leadership of public employee associations and unions. The Commission is convinced that these basic questions involving the freedoms of the individual worker and of employee organizations, as well as the necessary limits on these freedoms, should be treated in State legislation and should not be left to administrative or judicial determination or to the exigencies of a meet and confer or bargaining process. The time has long since passed when the argument could be made that public employees have no rights–yet, the tenor of the times clearly indicates that an irrefutable case can *not* be made that the rights and privileges of public personnel are, in all major respects, comparable to and as comprehensive as those of their counterparts in the private sector. A balance then must be struck between the legitimate needs and undeniable rights of the employees on the one hand, and the public service responsibilities and political accountability of the governmental employer, on the other. The recommendations advanced in this and subsequent sections seek to strike this balance.

*Recommendation No. 1–Membership and Representation*

**The Commission recommends that the States enact legislation requiring local governments and agencies of the State to recognize the right of their employees freely to join or not to join and be represented by an employee organization.**

Sharp increases in the number and types of public employee unions and associations and in the willingness of such organizations to resort to aggressive tactics to secure their objectives have caught many State and local governments by surprise. For the most part, however, the demands now being made by public employees merely echo those voiced in the 1930's by private industry's labor force. Perhaps the most basic objective is freedom of individual workers to organize and to be represented by an employee organization.

From the viewpoint of government, these demands raise some basic questions. Will not the sovereign authority of the people be compromised by recognizing organizational freedoms? Will not greater labor strife be a byproduct of such an action? Will not the critical differences between public and private employment be blurred by conceding these rights?

The public employee, on the other hand, views formation of unions and associations in the public service as basically an extension of the citizen's constitutional right to petition his government. Sometimes it is argued that such organizational activity is merely an extension of the constitutional right of free association.

The Commission believes that the same right of employees in the private sector to join unions of their own choosing should be extended to State and local employees by State legislation. While statutory recognition of public employee organizational rights is not always necessary, State legislative policy should be explicit in a matter so vital to the public interest and to peaceful, productive personnel relations. Membership in public employee organizations should be recognized by the States as an extension of the basic constitutional rights of freedom of association and petition.

Old-style opponents of the right to union membership fear that in the absence of statutory safeguards, the political and economic power of employee organizations would be strengthened to the detriment of the public interest, and that large unions and associations would use their numbers along with the strike weapon to win from public management agreement to unjustifiable demands. Others sharing this traditional view contend that, based on the sovereignty doctrine, public employees have no inherent right of unionization. Membership in employee organizations, then, is a privilege that conceivably can be revoked by a legislative body. Some "good government" critics argue that the goals and tactics of employee organizations are incompatible with both the merit principle and the merit system. As a result, full-scale organization of the public service should be opposed. Finally, still other observers believe that since no constitutional right to governmental employment exists, public employers may properly require nonmembership in employee organizations as a condition of employment in order to ensure public services are provided without interruption.

Despite these contrary views, the right of an employee to join a union or association—as distinguished from the right of an organization to be recognized—has been upheld by the U. S. Supreme Court under the First Amendment, made applicable to the States under the Fourteenth Amendment. Although most States previously had not expressly banned membership in public employee organizations or authorized management to punish workers for their organizational activities, a few States either had forbidden such affiliation to some or all public employees or had imposed conditions which made membership unfeasible. The Commission feels that these self-defeating State actions and attitudes do little to engender sound and stable public employer-employee relations at this point in time. Moreover, they run the risk of adverse court action.

While recognition of the right to membership is fundamental, of equal importance is the principle that no public employee should be required or coerced into joining an organization as a condition of employment. At least 14 States recognize that the right to refrain is just as basic and precious as the right to join, and the Commission supports this position.

Some authorities contend that State legislation should not include language that gives employees the option of not joining an employee organization. They point out that the States should not mandate the "choice" provision since it would preclude employer and employee representatives from negotiating union and closed shop agreements. The preferable approach, according to this argument, is for State laws to remain silent on this matter, thereby providing a greater degree of flexibility for public agencies and employee organizations to arrive at agreements tailored to fit their own special circumstances.

The Commission believes these contentions ignore the fact that in the public service the right to join an employee organization must be accompanied by the right not to join. When the right to join becomes a duty, obviously freedom of choice becomes merely a catchword. The union shop and the closed shop may or may not be appropriate for various craft and trade portions of private industry. But given the size of many governmental jurisdictions and agencies, the diversity of employee skills, and the intense competition between and among public employee organizations, this arrangement is wholly unsuitable in the public service.

The right to refrain from organizational membership, however, is conditioned by handling of the representation question. While this right may be expressed in an employee's vote not to be represented by a union or association, in practical terms when a majority of the employees in an appropriate unit choose an agent to act on their behalf, the individual employee cannot refuse to be represented. While the fundamental right not to join is still preserved, the employee is virtually represented by the majority organization. Under an "agency shop" arrangement, he may be required to pay fees for its "representational services." At the same time, the desirability of individual employees and minority organizations having access to the public employer must be recognized.

The legal right of a public employee to join a union or association is meaningless unless it is coupled with the right of recognition. The fact that recognition is still the second highest cause of strikes in the public service indicates the continuing failure of a considerable sector of management to acknowledge the right of workers to be represented by an organization of their choice. Given the size and specialization of the public labor force, the need today for establishing and sustaining an on-going dialogue between public employees and employers is indisputable. Employer recognition of the representational status of employee organizations is clearly a prime prerequisite for any meaningful discussion process.

In the wake of a 1951 Connecticut court decision, many cities, counties, and school districts proceeded within their discretionary authority to recognize public employee organizations in States where such practices were not expressly authorized or prohibited by statute. Yet, the Commission believes that States should not leave the recognition question to court decisions, attorneys general opinions, or administrative orders. Statutory authorization would resolve any doubts on the part of public officials concerning the legality of their actions, and would prod recalcitrant officials to recognize organizations representing their employees. Such legislative action also would eliminate a basic cause of strikes in the public sector, and would help inject an element of trust and dignity into what formerly, in many instances, was a suspicious or sparring relationship.

*Recommendation No. 2–Exclusion of Supervisory and Certain Other Personnel*

**The Commission recommends that in order to protect the position of public employers, employee rights and privileges conferred by State public labor relations laws should be denied to: (a) managerial and supervisory personnel who have authority to act or recommend action in the interest of the employer in such matters as hiring, transferring, suspending, laying-off, recalling, promoting, discharging, assigning, rewarding, or disciplining other employees; who have authority to assign; and/or who direct work or who adjust grievances; (b) elected and top management appointive officials; and (c) certain categories of "confidential" employees including those who have responsibility for administering the public labor relations law as a part of their official duties.**[1]

Supervisors have traditionally been eligible for membership in public employee associations, even though union membership has been denied to them. The issue of inclusion or exclusion of supervisory personnel is particularly controversial in education, the largest field of local government employment, where the National Education Association and the American Federation of Teachers have taken differing positions. NEA favors supervisory employee membership while the AFT, with but few exceptions, is for exclusion. This problem also involves middle-level supervisors in fields other than teaching, where common professional goals and program objectives closely link management and employees.

Whether to accord supervisory and other management personnel the rights granted regular public employees is a basic issue that must be decided by policymakers grappling with proposed public labor-management relations legislation. This subject usually is more complicated in the public than in the private sector, due to the probability that the latter's traditional definitions of "management" and "employee" may not be applicable to the more complex personnel systems of many States and localities. Yet, whether to exclude or to include such personnel is a question on which State statutes cannot be silent or vague.

Many supervisors and key professionals–such as teachers, policemen, firemen, and social workers–have a strong community of interest with the rank-and-file workers they supervise. Hence, frequently no conventional distinctions are apparent between management and employee functions.

The sensitive question of the status of supervisory and other key personnel in public employee organizations must be dealt with forthrightly in State public labor-management relations legislation. The Commission believes that while such statutes should not prohibit supervisors and managerial personnel from membership in a union or association, they should not be allowed to hold office in or to be represented by an employee organization to which rank-and-file employees belong. Elected officials, key appointive people, and certain "confidential"[2] employees also should not be accorded these employee rights. Participation of any of these personnel in union or associational activities would sharply limit management's effectiveness at the discussion table.

A persistent and perplexing problem is the failure of many key middle-management and supervisory officials to act like "management," even when their role and public responsibilities clearly put them on that side of the discussion table. A clear legislative denial of employee rights to such personnel will prompt a clarification of this attitudinal confusion.

From the viewpoint of a union or association, certain objections also can be raised concerning participation by supervisors and other middle-managers in their

[1] Mayor Lugar dissents from this recommendation and states: "I feel that public labor relations laws should recognize as a general principle that supervisory employees should have certain opportunities to organize because of the wide variety of public employers within a State and the diversity of their supervisory personnel structures. In the public sector, many supervisors and professional workers–such as teachers, police, firemen, and social workers–now have and exercise a strong community of interest with the rank and file workers they supervise. To ignore or to attempt to eliminate this relationship would be difficult and potentially disruptive in the sphere of public labor relations."

[2] The term "confidential employee" refers to one whose functional responsibilities or knowledge in connection with the public labor-management issues involved in the meet and confer in good faith process would make his membership in the same organization as rank-and-file employees incompatible with his official duties.

activities. Supervisory personnel cannot remove themselves entirely from an identification with certain management responsibilities, and this can generate intra-union strife. Their involvement in union or associational affairs in effect places management on both sides of the discussion table. State legislation dealing with public labor-management relations, then, should clearly define the types of supervisory and managerial personnel which should not be accorded employee rights.

Some observers contend that States should statutorily accord to supervisory employees the rights to organize and to present proposals to the employer's representative. It is generally conceded, however, that this approach is sound only if supervisors, when exercising such rights, act through an organization entirely independent of any which represents non-supervisory employees. Michigan's Public Employment Relations Act for city, county, and district employees, for example, permits supervisors to form their own bargaining units. Establishment of separate units presumably ensures that supervisors will continue to uphold their responsibilities as representatives of management when dealing with rank-and-file employees.

Another body of opinion holds that no State law can deal comprehensively with the status of all supervisors, given the diversity of public employers and their varying supervisory structures. It is difficult if not impossible, so the argument runs, to deal equitably with this problem by statutory definition. This position is taken in New York State's "Taylor Law," which does not attempt to define "supervisory employee" precisely, but empowers the State public employee relations unit to promulgate this definition by rule or decide it on a case-by-case basis and then apply it to such occupational categories as the agency deems appropriate.

The Commission finds both of these approaches defective. Allowing supervisors to organize and to present proposals perpetuates the vocational ambivalence that this group has long exhibited. The need at the present time is for management to identify its members and to develop a healthy community of interest. This, in the long run, will benefit employees more than any short-term gains which might come from supervisors continuing to act as part-time advocates for the rank-and-file.

Leaving the supervisory status question open for administrative determination will produce widely varying interpretations of organizational rights, and this will do little to engender cohesion within management ranks. Consistency between and among State and local jurisdictions in the definition of the rights of supervisory and managerial personnel can only be realized through legislative action. Experience to date indicates that administrative units have encountered severe difficulties in coping with this question when legislative guidelines are conflicting, uncertain, or non-existent.

The Commission believes, however, that supervisory and managerial personnel should enjoy certain basic organizational rights. They should be permitted to join and to be represented by an organization that does not include rank-and-file employees on its membership roster. They or their representatives should be authorized to meet on an informal basis with their employer's agent for the purpose of consultation in connection with the terms and conditions of employment or on such other matters as may be determined by the agency head. Yet, regardless of their top or middle echelon status, because they are still members of the management team, supervisors or their representatives should not participate in formal discussions, nor should they be parties to memoranda of understanding with the employer.

*Recommendation No. 3—Prohibiting Strikes by Public Employees*

**The Commission recommends that State labor relations laws prohibit all public employees from engaging in strikes. Such laws should mandate the use of specific procedures (e.g., fact-finding, mediation, advisory arbitration) to resolve impasses in public employee disputes.**[3]

The rash of work stoppages in the public sector in recent years has precipitated heated debate over the issue of whether the right to strike should be extended to public employees and, if not, how effectively to prevent strikes in the public service. The implications of this difficult question are numerous and complex. If public employees are prohibited from striking, for example, will this really make them "second-class citizens" in comparison with their private sector counterparts? Will strike bans obstruct meaningful discussions with public employers? Will such prohibitions actually deter public employees from resorting to this tactic?

On the other side of the coin, if public employees are not prohibited from striking, will this ensure parity with their counterparts in private enterprise? Will removal of a strike ban guarantee a meaningful employer-employee dialogue in arriving at the terms and conditions of public employment? Or will authorization of the right to strike generate more and more work disruptions?

The Commission believes compelling reasons exist for prohibiting any public employees from engaging in

[3] Additional views of State Senator Arrington, Congressman Fountain, State Senator Knowles, County Executive Michaelian, and Supervisor Roos: "We feel this recommendation does not go far enough. To deter public employee work stoppages, State public employee relations statutes should provide penalties for violation of no-strike provisions."

strikes. Neither legislative bodies, courts, or the general public have been persuaded to move in this direction. None of the 23 States having comprehensive public labor-management relations statutes have seen fit to lift this ban wholly or partially. Moreover, opinion polls indicate that public patience with striking State and local employees has begun to ebb rapidly.

To condone strikes is to facilitate disruption of essential public services which ultimately could bring government to a standstill. To condone strikes is to sanction putting the government employer, who lacks the weapons of his private counterpart, at the mercy of his organized workers. To condone strikes is to permit undermining the authority of government at a time when a growing majority of the American electorate feels that the symbols of governmental authority–if not the substance–are tattered and in need of mending. To condone government employee strikes is, in the final analysis, to reduce government to the level of just another corporate unit within our pluralistic society, and this is not conducive to a meaningful assessment of the nature, purpose, and basic functions of government in a democratic, representative system.

The Commission disagrees with those who argue that in this area the experience of private industry is wholly relevant. Bans on strikes by public employees do not make the public worker a "second-class citizen" in comparison with his private enterprise counterpart; they merely recognize the unique character and mission of government. Nor are such prohibitions necessarily incompatible with productive employer-employee discussions; meaningful dialogues are not produced by strike threats. Instead, they are based upon procedures which effectively guide the course of labor-management talks and produce a peaceful resolution of disputes. For this reason, State labor relations laws should provide specifically for an "arsenal of weapons"–such as mediation, fact-finding, and advisory arbitration–in order to resolve deadlocks. Procedural mechanisms and the strike are different means to the same end–improvement of the terms and conditions of employment. The former, since they recognize the special ground rules under which government has to operate, are infinitely more preferable to the latter.

In the private sector, the strike weapon may be an appropriate device if only because the employer can counter it with his own economic power–the lockout. Moreover, the consequences of most work stoppages in private industry usually are not injurious to large numbers of people. But it is significant to note that private sector strikes endangering the public health, safety, and welfare have been enjoined.

To focus narrowly on the fact that certain employees in both the public and private sectors perform identical jobs and even belong to the same union, and then to argue that the line between the sectors has vanished is to tilt with windmills. When one government assumes a function which another government has not assumed or when one government divests itself of a role that others retain, the kind of political and public support for such acquiring or relinquishing places the functions governmentally performed into a special category. They are public functions, supported by public revenues, and geared to a goal that has been determined to be in the public interest.

Because of the essential nature of virtually all public services, because political–far more than economic–criteria are the basis for decisions concerning the terms and conditions of public employment, and because of the powerlessness of the public employer to counter strikes by his workers, work disruptions by any public employees simply cannot be tolerated; otherwise effective government is impossible. In this way, then, private and public employment are and must remain vastly different.

The Commission recognizes the recent support in some quarters–particularly 1968 study commission reports in Pennsylvania and Colorado–for a "limited right to strike" for "nonessential" employees. This proposal, however, contains a number of serious flaws. Objective criteria to determine the occupational categories which are "essential" and "nonessential" would be difficult to develop and next to impossible to implement. A real quandary would be specifying the conditions under which an occupation is "nonessential" and determining how long a strike by such employees could be tolerated. Moreover, to extend a right to strike to the often meager and unorganized ranks of those commonly thought of as "nonessential" employees would be virtually meaningless. Another important consideration is the adverse psychological impact an employing agency would create when it tells certain groups of its employees that since they are "nonessential" they may strike. For these reasons, the "limited right to strike" is neither desirable nor feasible.

The Commission likewise can see little justification or rationality in an approach that sanctions the right to strike on the one hand but makes enjoinable by the courts any work stoppages which would be detrimental to the public health, safety, or welfare–a caveat that could easily cover practically all employees. Such an approach throws the whole problem back into the courts. One reason for the current turmoil in the State and local public service is that many legislatures have abdicated their responsibilities for public labor-management relations to the bureaucracy, the judiciary, and pressure groups.

The Commission is aware of the feeling in some

quarters that State public labor-management relations laws should remain silent on the issue of whether public employees may or may not strike, since this approach ostensibly would permit greater flexibility in coping with delicate issues under discussion. It also is claimed that statutory silence would place government in a neutral posture on this controversial question. The Commission finds these arguments faulty. Statutory silence would inject uncertainty and confusion into the one area of public employer-employee relations where near unanimity prevails. It would expand the already wide discretion of the courts and the bureaucracy. Government, or at least its political branches, simply cannot remain neutral on the strike issue, for to do so would be to erase the demarcation between public and private employment. To expect governmental neutrality on a matter that may well encourage additional work stoppages is to be politically naive.

Meaningful flexibility in coping with disputes involves providing a range of viable mechanisms which can ultimately bring the parties to a mutually acceptable agreement. These procedures, not strikes, should be the real focal point of any relevant treatment of labor-management relations in the public service. No State statute dealing with this subject can afford to ignore this fundamental issue.

*Recommendation No. 4—Internal Democracy and Fiscal Integrity of Employee Organizations*

**The Commission believes that the public interest and the preservation of public employee rights dictate that public employee organizations should adhere to certain basic rules and practices designed to assure internal union and associational democracy. Therefore, the Commission recommends that State labor relations laws bar recognition to any public employee organization whose governing requirements fail to provide for a "bill of rights" to protect members in their relations with the organization, standards and safeguards for periodic elections, regulation of trusteeships and fiduciary responsibilities of organizational officers, and maintenance of accounting and fiscal controls and regular financial reports. Such reports should be filed with an appropriate agency of the State, and made public upon receipt.**

In considering the multi-dimensional nature of public employer-employee relations at the State and local levels, the question of union and associational democracy and integrity cannot be ignored. Experience in the private sector clearly demonstrates the need to include this matter in State public labor-management relations legislation. Yet, existing State laws dealing with public employees do not do so either under unfair practices or in a separate section.

Those arguing against statutory treatment of organizational democracy and fiscal integrity point out that existing Federal legislation already covers all major labor unions. Consequently, any State legislation would be duplicative and unnecessary, and would bury employee organizations under mounds of paper work required to comply with these State-imposed safeguards. This line of reasoning is only partially true, however, since no professional association or independent employee organizations are covered by this national legislation. Some skeptics contend that genuine "union democracy" is a matter of proper internal organizational relationships and spirit, and that external legislation can never instill "democracy" if the essential foundation prerequisites are lacking. While there is some truth in this claim, it is also valid to contend that the kind of statutory provision called for here can establish a legal recourse for those seeking to secure intra-organizational democracy and a legal basis for monitoring the fiscal activities of employee unions and associations. Finally, still others argue that the failure of practically all States having public labor relations laws to include such a proviso is indicative of its irrelevance.

On the other side of the coin, simple equity dictates a balancing of the rights of employees against those of employee organizations. And meaningful discussions require organizational representation which genuinely represents a majority of the membership. Moreover, if a cloud of fiscal impropriety, if the hint of conflict of interest, or if the appearance or reality of oligarchy besmirches the reputation of even one employee organization, the electorate's willingness to sanction and support effective discussions between public employers and employees will be seriously undermined. Given the role of public opinion in influencing behavior in the governmental sector, propriety, representativeness, and responsiveness are even more essential as union or association traits here than in the private sector. The Landrum-Griffin Act and the "little Landrum-Griffin Acts" of at least 11 States which require all employee organizations to comply with certain reporting and disclosure requirements, are all the more reason that public employee organizations should be subject to like provisions designed to guarantee internal democratic procedures and practices and to assure fiscal integrity.

## THE ESSENTIALS OF PROPER PUBLIC EMPLOYER-EMPLOYEE RELATIONS

As the foregoing recommendations suggest, the Commission adheres to the view that basic policies with respect to public employer-employee relations at the State and local levels should be set forth in State legislation. Employee rights and limits thereon in such

matters as organizational membership, strikes, and supervisory personnel are proper subjects for statutory treatment. Similarly, State laws should establish a viable framework for handling public labor-management discussions and for settling disputes between the parties. This portion of the report deals with Commission proposals which, in combination, constitute a system geared to overcoming barriers to a candid and constructive dialogue between public employers and employee organizations.

*Recommendation No. 5—State Public Labor Relations Law*

**The Commission recommends that States enact legislation establishing the basic relationship between public employers and employees and their organizations in arriving at the terms and conditions of employment; absence of such legislation tends to encourage chaotic labor-management relations, especially in local governments where the evolution of these relationships is left to chance and to the ebb and flow of political power and influence of employees and their organizations and to widely varying administrative and judicial interpretations. There are two general routes such legislation might take: requiring public employers to meet and confer with employees and their organizations, and permitting or requiring State and local employing agencies to negotiate collectively with employee representatives. The Commission finds a considerable number of variations of each of these approaches. On balance, the Commission tends to view the meet and confer in good faith approach as being most appropriate in a majority of situations in the light of present and evolving conditions in State and local employment.**[4, 5, 6, 7]

Some 29 States have not enacted general legislation setting forth broad ground rules governing employer-employee relations in the public service. Moreover, nearly two-thirds of the municipalities over 10,000 population and over one-half of the urban counties surveyed in chapter three of this report lack laws or formal policies on this subject. These jurisdictions not only have failed to come to grips with a pressing intergovernmental issue, they have forfeited their basic responsibilities over to the courts, to the bureaucracy, and to the unpredictable play of political forces and the influence of employee groups.

The Commission is firmly of the opinion that in this

[4]State Senator Knowles, County Executive Michaelian, and Governor Shafer dissent from this recommendation and state: "We believe the Commission did not give adequate consideration to the fact that a large majority of States enacting public employee labor relations laws in the last decade have turned to the collective negotiations approach. While not opposing the meet and confer concept, we do not believe it goes far enough toward effecting a meaningful and enlightened personnel policy. It is our view that public labor-management relations should be based more on the mutual determination of the terms and conditions of public employment by management and employee organizations, with equal protection ensured by the law for both parties to the negotiating process."

[5]Senator Muskie joins with Senator Knowles, County Executive Michaelian, and Governor Shafer in their dissent and states:

"On such a vital matter of policy as in the case of labor-management relations in the public service, the recommendations of the Advisory Commission should reflect more than the belief that they strike a happy medium between the rights of employee organizations on the one hand and public managements' need for greater discretion than that given its private counterpart on the other.

Such recommendations will bear heavily on the evolution of public policy in this area. Hence, they should clearly come to grips with the basic issues to be resolved. It is questionable whether recommended adoption of a 'meet and confer' approach to such negotiations is sufficient to meet the requirements of effective public dealt with by this report. Nor is it clear that the "meet and confer" concept is part of a normal progression toward that requirement.

For these reasons, I must enter my dissent from the central recommendation adopted by those who attended the September 19 Commission meeting."

[6]Budget Director Mayo takes exception to this recommendation and states: "While I do not wish to dissent this recommendation, it seems to me that the 'meet and confer' approach, when taken in the context of the other recommendations will be unsatisfactory if continued for more than a very short time."

"The present state of labor-management relations at all levels of government clearly indicates the need for a definitive structure authorized by legislation which will clarify the role and responsibility of both management and employee organizations. In most public jurisdictions legislation controls wages, hours of work, and major supplemental benefits, thus sharply restricting the areas available for collective bargaining. Nevertheless, there is room for, and great benefit to be derived from formal negotiations about such matters as: (a) focus and extent of recognition of employee organizations; (b) agreements on working conditions; (c) resolution of negotiation impasses; and (d) agreements with respect to handling appeals from adverse personnel actions and employee grievances. On the basis of Federal experience, prompt movement toward authorization for collective negotiations seems both desirable and sound public policy."

[7]Governor Rockefeller dissents from this recommendation and states: "It is recognized that individual circumstances in some States and their outlook as to how they desire to extend to public employees a role in arriving at terms and conditions of employment may call for an approach somewhat short of collective negotiations. However, a growing number of States are turning toward 'collective negotiations.' In my judgment the Commission's preference should be the 'collective negotiations' approach, while offering 'meet and confer in good faith' as an alternative to those States which felt that they were not quite prepared to move into collective negotiations immediately."

critical area, as in many others, State governments must act, in order to fulfill their pivotal role in the federal system and to avoid being bypassed. Regardless of whether they choose a "conservative," "liberal," or "middle-of-the-road" policy with respect to public labor-management relations, it is absolutely essential that State legislatures make this decision and then implement it clearly and forthrightly in law.

Existing legislation which deals comprehensively with public employer-employee relations takes one of two basic forms: collective negotiation or meet and confer. Great interstate differences, of course, exist in the treatment accorded public employees under either approach. Both types of statute may deal extensively, or sketchily, with the rights of employees, the strike question, and coverage by level of government or occupation. But meet and confer laws generally are less comprehensive than those governing collective negotiations. In particular, they usually treat more superficially the questions of representation, administrative machinery, dispute settlement, and unfair practices. Moreover, they usually accord a different status—a superior one—to the public employer vis-a-vis employee organizations.

While both systems involve continuing communication between the employer and employee representatives, under collective negotiations both parties meet more as equals. The employee organization's position is protected by statutory provisions relating to organization rights, unfair practices, third party intervention in disputes, and binding agreements. The labor and management negotiators hopefully will arrive at a mutually binding agreement which is a byproduct of bilateral decisions. If they reach an impasse, the law generally sets forth a range of procedures to be followed, including such third-party assistance as mediation, fact-finding, and arbitration. The strike ban and the practical difficulties in making agreements binding, however, sometimes produces a system that is much less than bilateral.

Under a meet and confer system, the outcome of public employer-employee discussions depends more on management's determinations than on bilateral decisions by "equals." In some jurisdictions, the public employer may be under statutory obligation to "endeavor" to reach agreement or to "meet and confer in good faith" with an employee organization. If an agreement is reached, it is put into writing, but it normally does not become binding on the employer until such time as the legislative body takes appropriate action with executive concurrence. In other jurisdictions, the meet and confer system does not go this far, since management retains the exclusive right to act when and how it chooses concerning procedures for entering into discussions with employee organizations. Most meet and confer laws also give the employer the final "say" in the adoption and application of rules for employee organization recognition and of methods for settling disputes and handling grievances. Legislative criteria relating to these matters usually are lacking.

Fourteen States have enacted mandatory collective negotiations laws, while two have passed legislation permitting management to negotiate with unions and associations. Five States have meet and confer statutes under which the public employer is required to discuss the terms and conditions of employment with employee organizations and authorized to enter into non-binding memoranda of understanding with such representatives. In the absence of an express statutory authorization or laws to the contrary, other jurisdictions have conferred or negotiated with their employees on a *de facto* basis. Finally, a few States and some local governments have flatly refused to engage in either negotiations or discussions with employee organizations.

A major reason for these wide differences in practice is lack of consensus on the relationship between governmental sovereignty and the public labor-management dialogue. While some jurisdictions continue to cling to traditional interpretations of this doctrine, others are seeking to adapt it to, or as some would argue, move it ahead of contemporary conditions. A related issue is the belief of some public employers that they, as well as their employees, have certain "rights" which should not be surrendered or abridged through entering into a negotiating relationship with unions and associations. Some phrase this argument in terms of the multiple responsibilities falling upon anyone assuming the tough assignment of political executive at this point in time, and the corresponding duty of the public employer to balance the conflicting demands and pressures swirling around him.

The existence of certain basic differences between the private and public sectors also affects the extent to which public employers are willing and able to deal with their employees and with employee organizations. The major and perhaps controlling distinction between labor-management relations in the private sector and those in State and local governments is that neither the employer nor the employee in the latter case are really at liberty to bargain freely. Both parties must operate within the limits of applicable laws and regulations, the full view of public opinion, and the very real world of politics. Both parties must recognize that essential public services, especially in the fields of health and safety, have to be maintained and cannot be allowed to be disrupted by slowdowns or work stoppages. Public employers, in contrast to their counterparts in the private sector, do not have the option of shutting down services and facilities if they feel employee demands are unreasonable. Correspondingly, employee organizations

do not have the option of striking legally. Another unique dimension of the problem is the political overtones inherent in confrontations between public management and employee unions and associations. Many services of government are monopolistic, mandated by law, and supported by revenue derived from taxation. Consumers cannot refuse to "buy" them, nor can they lawfully refuse to pay taxes. Any constraints on the availability of these services as a result of public employee activities inevitably will generate hostile public attitudes and possibly political retaliation. Finally, the fact that government is directly responsible to a general electorate, not to any specific segment thereof, is a paramount factor differentiating the public and private sectors.

Those supporting the meet and confer approach to public employer-employee relations stress the differences between public and private employment, and consequently seek to maximize managerial discretion. Those favoring collective negotiations recognize these differences, but find them no major or insuperable barrier to meaningful bilateral relations among "equals."

The Commission is aware that a strong case can be made in support of the collective negotiations approach. It has heard the argument that equitable and workable public labor-management relations can only result from reciprocal and bilateral dealings. It fully recognizes that 16 States have enacted legislation either requiring or permitting public employers to engage in collective negotiations with employee organizations. It understands that this procedure generally imposes a mutual obligation on the public manager and the exclusive bargaining representative to meet at reasonable times and to negotiate in good faith, and that the results of negotiations over grievance procedures and other personnel matters—including wages, hours, and working conditions—must be reduced to a binding, written agreement.

The Commission has heard the argument that the sovereignty of government tenet should not preclude collective negotiations in the public service. It accepts the fact that the traditional doctrine of sovereignty has been modified already through practice; obviously, if government allows itself to be sued and if it signs contracts with private contractors which contain provisions for the binding arbitration of disputes, then acceptance of certain restrictions on its discretion in dealing with public employees does not undermine its sovereign status. It has considered the related contention that rather than delegating or abdicating sovereign authority a public employer only agrees to limit its powers in a certain area for a given period of time when it enters into a contract with its employees. But it is also cognizant of the fact that, if necessary, agreements which the public employer made on a voluntary basis can be repudiated, and affected employees would lack any legal recourse. This, of course, makes a mockery of one of the distinguishing features of collective bargaining systems. The Commission fully understands the implications of the broad claim that willingness of a government to engage in collective negotiations with its employees should be viewed mainly as a matter of enlightened personnel policy designed to improve labor-management relations through bilateral—rather than unilateral—determination of the terms and conditions of public employment.

On balance, however, the Commission believes another approach is more appropriate, given contemporary and evolving conditions in State and local employment. Twenty-nine States have taken no general legislative action in this controversial field, and it is these States as well as those having unworkable public labor-management laws to which the Commission's recommendation is addressed. What kind of system can be established which will bring about real progress in ensuring employee and employer rights; in promoting the position, pay, and prestige of public employees; and in preventing work disruptions?

At this point in time, the crying need in a majority of situations is for a general statute that balances management rights against employee needs, recognizes the crucial and undeniable differences between public and private employment, and establishes labor-management relationships in which the public-at-large and their elected representatives have confidence.

The Commission believes that legislation embodying the essentials of a meet and confer in good faith system constitutes this kind of statute. "Meet and confer in good faith," as we view it, means the obligation of both the public employer and an employee organization to meet at reasonable times, to exchange openly and without fear information, views, and proposals, and to strive to reach agreement on matters relating to wages, hours, and such other terms and conditions of employment as fall within the statutorily defined scope of the discussion. The resulting memorandum of understanding is submitted to a jurisdiction's governing body, and it becomes effective when the necessary implementary actions have been agreed to and acted on by pertinent executive and legislative officials.

To a greater degree than collective negotiations, the meet and confer approach is protective of public management's discretion. To a greater extent, it seeks a reconciliation with the merit system since agreements reached through the discussional process and actions taken as an implementary follow-up can not contravene any existing civil service statute. To a far greater degree than collective negotiations, it is candid and squarely

confronts the reality that a governmental representative cannot commit his jurisdiction to a binding agreement or contract, and that only through ratifying and implementing legislation and executive orders can such an agreement be effected. To a greater extent, it avoids detailed, statutorily prescribed procedures applicable to all situations, and this lack of specificity in some degree and in some areas permits greater flexibility and adaptability in actual implementation. To a much greater degree, it recognizes–indeed, is rooted in–the vital differences existing between private and public employment, and does not make the mistake of relying heavily on the National Labor Relations Act as a blueprint for action in the public service.

"In good faith" has a number of important connotations as it applies to the meet and confer process. It obligates the governmental employer and a recognized employee organization to approach the discussion table with an open mind. It underscores the fact that such meetings should be held at mutually agreeable and convenient times. It recognizes that a sincere effort should be made by both parties to reach agreement on all matters falling properly within the discussion's purview. It signifies that both sides will be represented by duly authorized spokesmen prepared to confer on all such matters. It means that reasonable time off will be granted to appropriate agents of a recognized employee organization. It calls for a free exchange to the other party, on request, of non-confidential data pertinent to any issues under discussion. It implies a joint effort in drafting a non-binding memorandum of understanding setting forth all agreed upon recommendations for submission to the jurisdiction's appropriate governing officials. It charges the governmental agent to strive to achieve acceptance and implementation of these recommendations by such officials. It affirms that failure to reach agreement or to make concessions does not constitute bad faith when real differences of opinion exist. It requires both parties to be receptive to mediation if *bona fide* differences of opinion produce an impasse. Finally, it means that the State public labor-management relations law should list as an unfair practice failure to meet and confer in good faith, thereby providing a basis for legal recourse.

These special obligations convert the system into something broader and more balanced than the usual "meet and confer" setup, but still something less than the glittering and often unfulfilled promises of a collective bargaining statute.

*Recommendation No. 6–Management Rights*

**To ensure proper executive and legislative responsibility for public activities and services, the Commission recommends that State labor relations laws stipulate that agreements resulting from public employer-employee discussions be governed by the provisions of any pertinent existing or future laws and regulations, including such merit system rules and regulations as may be applicable. Within this framework, State labor relations laws should provide that public employers retain the unrestricted right: (a) to direct the work of their employees; (b) to hire, promote, demote, transfer, assign, and retain employees in positions within the public agency; (c) to suspend or discharge employees for proper cause; (d) to maintain the efficiency of governmental operations; (e) to relieve employees from duties because of lack of work or for other legitimate reasons; (f) to take actions as may be necessary to carry out the mission of the agency in emergencies; and (g) to determine the methods, means, and personnel by which operations are to be carried on.**

The meet and confer in good faith system of public labor-management relations clearly seeks in various ways to recognize the distinctive, dependent, and exposed position of the governmental employer and the concomitant need to provide some safeguards. At the same time, this approach recognizes certain basic employee rights, establishes orderly methods of communication between employers and employees, provides dispute resolution machinery, and places certain obligations on both parties with respect to the consultative process.

Management rights emerge then as a cardinal feature of the meet and confer system, and as the critical balance to the rights, privileges, and powers accorded employees. They can be treated statutorily as a detailed separate provision, as a general statement buttressed by specific unfair employee practices, or as a restriction on the scope of discussions.

Management rights also present a problem in collective negotiations laws, since variations of such "rights" may be included as legitimate subjects for employer-employee negotiations. At the same time, such statutes may contain provisions which promote and protect management rights, including those of Connecticut, New Hampshire, Maine, New York, and Wisconsin.

The Commission believes statutory description of management rights is necessary if well defined parameters to discussions are to be established. In a democratic political system, dealings between public employers and public employee organizations–whether they are called negotiations or discussions–must necessarily be limited by legislatively determined policies and goals. This may involve merely a restatement of basic management prerogatives and civil service precepts. Listing such rights in law eliminates many of the headaches of administrative elaboration and some of the cross pressures generated by ambiguities. Wages, hours, and other terms and conditions of employment, however, are left

for the conference table. Hence, the framework for a meaningful dialogue remains intact.

Those opposing detailed specification of management rights in meet and confer laws advance a mixed bag of arguments. Some contend that such rights should be within the scope of discussion, since discussion after all often is only discussion, not bargaining, and management makes the ultimate decision concerning coverage of agreements. Others contend that it is redundant, if not foolish, to include such a provision in a meet and confer statute, since such an act is in its entirety nothing more than a lengthy assertion of employer prerogatives. These critics also point out that most existing meet and confer laws do not list management rights. Finally, some of the more employer-oriented critics cite the danger of specificity, especially the possibility of overlooking significant rights.

All things considered, the Commission favors incorporation of a specific provision on management rights. Experience in certain meet and confer States shows that as employee organizations wax strong discussions can—in a *de facto* sense—escalate to the level of negotiations. It is likely that any concession made at the conference table by the employer's representative in connection with management rights or civil service procedures would lead to memoranda of understanding which subsequently could only be repudiated by higher authority. This would create serious tension between the parties and possibly would lead to work disruptions.

It is transparent, then, that public employer-employee agreements should facilitate—not impede—the conduct of public business, and that the weakness of government in terms of its inability to close down an operation must be acknowledged and compensated for. It is clear that certain meet and confer systems argue for specificity—the federal system established by Executive Order 10988 and its successor, for example, as well as the model ordinance developed by the League of California Cities and adopted by many localities under the California law. Finally, it seems sensible to include a provision of this type especially in a system, such as is proposed in this report, that departs substantially from the regular meet and confer mold.

*Recommendation No. 7—Coverage*

**The Commission recognizes the existence of considerable diversity between and among the States and their local governments in the conditions of public employment, provisions of merit systems, and constitutional and statutory provisions relating to the structure of local government. The Commission, however, believes it desirable to establish within this diverse framework a system of public labor-management standards on a statewide basis which, to the greatest extent possible, extends the same rights to and imposes the same responsibilities on both State and local employees. Therefore, the Commission recommends that under State labor relations legislation, the treatment accorded to State government and to local government employment be generally uniform as between the two, and further that such legislation be compatible with constitutionally established merit system procedures.**

Any State considering the need for and possible content of public labor-management relations legislation must face the critical and complex issue of who should be covered. A single law, for example, might be enacted to cover all employees of the State and its political subdivisions. On the other hand, two separate laws might be enacted to cover State and local employees respectively. Another dimension of the coverage problem is whether special occupational categories—such as teachers, policemen, or firemen—should be excluded from a comprehensive statute and treated in separate legislation.

The Commission endorses the single law approach, but appreciates the reasons advanced for enactment of separate statutes. At the same time, it underscores the need for achieving generally uniform treatment of State and local employees by according them, to the greatest extent possible, the same rights and privileges and assigning them the same types of responsibilities.

In States with an integrated personnel system, with a tradition of State legislative involvement in local employee matters, or with weak "home rule" provisions, a single act would best serve this goal of parity of treatment. Local public employee-employer relations generally, and especially in States having these traits, are not essentially different from those of the State whether they involve representational questions, the need for dispute settlement procedures, or prohibited practices. A single law with a single administrative system having jurisdiction over both levels of government can provide for more economical and uniform operation of the act. Moreover, regardless of the distinctive characteristics of a State's overall personnel system, the organizational features of most public employee unions and associations as well as their interjurisdictional tactics mean that a labor problem that begins as a localized matter ultimately can have a statewide impact and vice-versa. For these reasons, a single State law is essential to ensuring equity and stability in public labor-management relations.

Likewise, the Commission feels the State statute should deal with all occupational categories of public employees. Even though over one-third of the States have enacted special legislation affecting particular groups of employees, the Commission concurs with the conclusions of several recent studies on this subject to the effect that separate statutory treatment of certain



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types of public employees is incompatible with the need for a smoothly-functioning labor-management relations process in the public service.

The special legislation approach tends to favor only those few well-organized employee groups which can apply political pressure frequently and effectively at the State and local levels. If special attention were given teachers, firemen, and policemen, it would be difficult to justify not extending such treatment to transit workers, sanitation workers, or any other types of employees with political "muscle." The lobbying activities of organizations are focused primarily upon improvement of employment conditions for their own members, and the divisive effects of such special interest pleading can only weaken the establishment of an effective labor-management relations system applicable to all public employees. A basically uniform employee relations policy, then, should prevail irrespective of level of government or type of occupation.

A variation of the single act approach is statutory coverage of both the State and local levels and all occupational categories, but inclusion of sufficiently flexible provisions to permit a sensible and relevant application to a variety of local situations. This option is another feasible way of implementing the Commission's goal of providing generally equal treatment of State and local employees while recognizing varying local needs and home rule traditions. The New York State Public Employee Relations Act, for example, allows local governments to establish their own administrative machinery or to utilize the services of an independent State agency. If the former alternative is chosen, assurance must be given that State legislative policy is being followed.

Finally, in States with personnel and civil service systems which differ significantly from those of their local jurisdictions or where home rule is strongly protected, a separate act for each level might be the only workable approach. Nevertheless, substantially the same rights and duties should still be accorded all State and local employees and employers.

*Recommendation No. 8–Administrative Machinery*

**The Commission believes that State policy relating to management-employee relations in the public sector will have little significance unless there is appropriate machinery to resolve recognition and representation disputes, ensure adherence by all parties to the law, and provide the means of facilitating the resolution of controversies arising out of employer-employee impasses. The varying and special conditions within each State, however, must determine the most suitable type of administrative agency, including (a) the availability of existing administrative machinery; (b) the anticipated volume of cases; and (c) the relative neutrality of the unit to which the public labor-management relations function might be assigned.**

Establishing appropriate machinery to administer public labor-management relations laws is important for four basic reasons. First, existence of some such machinery is essential in order to resolve disputes arising from selection of the employee organization to serve as majority representative. This problem occurs frequently in the public sector, and it is particularly troublesome when rival organizations are seeking formal recognition as the majority spokesman and the special negotiating privileges such recognition confers. Second, an administrative unit or board serves as a regular and recognized forum for hearing complaints over such matters as unfair practices and organizational membership rights, for assessing their validity, and for providing necessary remedies. Third, an administrative unit can help resolve impasses by putting the parties back on the road to a settlement through providing directly or indirectly for third-party mediation, fact-finding, or advisory arbitration. Finally, effective and expeditious implementation of a meet and confer in good faith, as well as a collective negotiations system, will require the kind of interpretations and rulings that an administrative unit can make; court dockets should not be clogged with a heavy load of clarifying cases. Full-fledged implementation also will require the kind of early answers and easy access for both parties in a deadlocked dispute that adequate administrative machinery can provide.

To ignore the need for administrative machinery is to assume that most of the State public labor-management relations law is self-executing. Varying interpretations of the statute by local jurisdictions and time-consuming judicial proceedings, then, should not be incompatible with establishing a viable meet and confer framework. The Commission strongly rejects these naive assumptions. It urges creation of appropriate administrative machinery in the belief that the peculiar traits of the public service, especially the strike prohibition, and the distinctive ground rules of the "meet and confer in good faith" system dictate the presence of an administrative arbiter or umpire to monitor the procedures designed to ensure meaningful discussions and to provide its good offices when an impasse occurs.

On the question of the most suitable type of agency for handling these functions, the Commission has a more flexible point of view. No clear pattern has emerged among the States having public labor-management relations laws in the types of administrative machinery used to implement their statutes. In Alaska, Connecticut, Delaware, Maine, Massachusetts, Michigan, Rhode Island, Vermont (for local employees), Washington (for local employees), and Wisconsin among the collective negotiations States and in Minnesota, Missouri, and

South Dakota among the meet and confer States, the public employee relations function is lodged in a major functional department or a special office or board within an existing department of labor and industry. The State civil service agency or commission administers the collective negotiations program for State employees in Massachusetts and Washington and the meet and confer program for those in Michigan. Where only teachers are affected, the State board of education often has been designated as the administering unit, although in some States local school boards serve in this capacity. Finally, a new independent agency has been created to concern itself solely with public sector collective negotiations in six States–Nevada, New Hampshire, and Vermont for State employees; New Jersey, New York, and Oregon for all public employees.

The Commission suggests that States examine the availability and capability of existing machinery, and weigh the advantages and disadvantages of adding the public employee relations responsibility. One pertinent factor (if the act covers both levels) is whether there are a large number of State and local employees. Another consideration is whether a heavy volume of cases can be anticipated. In these instances, establishment of a new administrative unit to handle public sector problems might well be justified.

The Commission emphasizes that the administrative agency must enjoy the confidence of both the public employer and employee organizations. In dealing with the problems of public labor-management relations, new approaches are called for–approaches usually quite different from those applied in private industry. In general, administrative responsibility should be placed in the hands of persons thoroughly familiar with public employment problems and, most importantly, those having a reputation of neutrality. If an existing department is too closely identified with a particular branch of organized labor, if a civil service commission is viewed as an arm of management, or if an education agency is linked to school boards or superintendents, doubts about the agency's impartiality could be raised.

In an effort to ensure mutual confidence in collective bargaining by both employee organizations and the public employer, New York City's collective bargaining law provides for the establishment of a tri-partite administrative body. Under this arrangement, an equal number of members are appointed by the mayor and by public employee organizations. These members then select the remaining public members of the board, one of whom is designated chairman.

Regardless of the approach taken, the organizational location, composition, and mode of appointment of the unit should all be geared to bolstering expertise, sensitivity, impartiality, and common sense. The Commission does not believe that the record to date points to any "pat" procedures for guaranteeing these traits. Each State must chart its own course in this sea of unknowns.

*Recommendation No. 9–Forms of Recognition*

**The Commission recommends that the States include in their public labor relations legislation a provision which requires public employers to grant full meet and confer rights by formal recognition of employee organizations with majority support.**

The legal right of a public employee to join a union or association is meaningless unless it also includes the right of recognition. The Commission believes this question should not be left to decisions of the courts, opinions of the State attorney general, or administrative orders. Statutory authorization would resolve any doubts of public officials concerning the legality of their actions and would establish a uniform statewide meet and confer policy on the matter of employee organization recognition. Ignoring this issue undermines one of the basic purposes of public labor-management relations legislation. How can meaningful discussion occur if one of the two major participants is not recognized as spokesman for the majority of employees and is not sitting at the conference table?

The meet and confer laws of Minnesota and South Dakota provide for two forms of recognition–informal and formal. Each meets certain needs under this system. Informal recognition is given to any employee organization regardless of the status that may have been extended to any other union or association. This type of recognition is simply an extension of the right of any public employee to be heard, and establishes the right of a minority group to submit proposals and to explain its position. Management officials, however, are not obligated to seek the views of minority organizations.

Formal recognition is given to an employee organization chosen by the majority of employees in a unit. In its dealings with management, this organization speaks for all members of the unit, and any agreement that is reached applies to these employees. Other organizations continue to receive informal recognition and may present their views to management, but only one voice may speak for all employees in a unit.

Supporters of the two-level (informal-formal) recognition approach argue that the willingness of public employers to listen to the views of any public employee, union, or association is a necessary and distinctive trait of the meet and confer system. This openness gives individuals, minority organizations, supervisory groups, as well as the majority representative a chance to have their voices heard. If an employer adopts rules for

majority representation, then, certain minority organization rights should also be recognized. Refusal to recognize an employee organization on the basis that it failed to represent a majority of those in a unit would impair the fundamental right of employees to form, join, and participate in unions or associations of their own choice and to be represented by such organizations in dealings with the public employer. Balancing the interests of the majority representative and minority groups is achieved through the informal recognition technique. Management, from a practical point of view, clearly cannot meet and confer with a mass of small organizations. Formal recognition circumvents this problem. Informal recognition, on the other hand, protects minority organization rights and serves as a check on the potentially arbitrary views of the majority representative.

The Commission believes that State public labor-management relations statutes should require public employers to accord by formal recognition full meet and confer rights to the organization representing a majority of the employees in an appropriate unit. The Commission believes that this preferred treatment accorded the majority representative should condition the approach to minority groups, and that extension of informal recognition privileges to such organizations should not be required by State public labor-management relations laws.

Legislators have basically two options regarding minority groups which are compatible with this position. Management could be statutorily barred from extending any informal recognition privileges to such organizations, and this would have the effect of giving exclusive recognition rights to the majority organization. It also would conserve management's time and eliminate its tough task of keeping informal consultations from becoming *de facto* negotiations, especially on such non-economic issues as the agency's "mission." On the other hand, public employers could be authorized to extend, at their own discretion, informal recognition to minority organizations for the purpose of submitting proposals. This variation of the two-level approach meets the varying needs of the individual public employer and the varying strengths of employee organizations.

*Recommendation No. 10–Dispute Settlement Procedures*

**To assist in the resolution of public employer-employee disputes the Commission recommends that the States in their labor relations statutes incorporate provisions authorizing mediation at the request of either party. The Commission further recommends that public employers be authorized to adopt such additional procedures as may be necessary for the resolution of disputes after unsuccessful efforts to reach agreement with employee organizations.**

The procedures designed by States and their political subdivisions to resolve disputes are vital features of meaningful discussions between employers and employee organizations. Avoiding work disruptions will depend largely on the perfection of these procedures in the event an impasse is reached. Moreover, failure to provide effective ways to handle disputes when a strike ban has been imposed does little to establish an equitable basis for joint discussions.

The Commission endorses inclusion in State labor-management statutes of a provision authorizing mediation of disputes, and sanctions assignment of this function to the agency responsible for administering this law. Following the Minnesota act, the Commission recommends use of this procedure at the request of either the public employer or the recognized majority representative. Although this approach somewhat limits management's discretion, it is more even-handed and expeditious than if either party had a veto. It avoids the necessity of having both the public employer and the majority organization obliged to reach a joint decision in order to submit a dispute for mediation–in many instances an unlikely event, given the fact that the parties may have reached a point of bitter deadlock. Failure on the part of either disputant to meet with a conciliator would, of course, constitute evidence of bad faith and would serve as a basis for corrective administrative or judicial action. Management, however, still is under no obligation to make special concessions or to agree to proposals.

Mediation only involves efforts of an impartial third party to assist the disputants in reaching a voluntary resolution of an impasse through suggestions, interpretations, or advice. Mediation proceedings should be closed to the public and the mediators should take no public stand on the issues in controversy. In short, mediation poses no real threat to anyone. Yet, it may well bring issues into sharper focus, and this can lead to an agreement. It may also constitute one of the most valuable services provided by the administrative agency established by the meet and confer statute.

The Commission also believes the differing needs of individual jurisdictions and the variety of impasse situations which can arise require statutory authorization to permit management to adopt a range of other dispute settlement procedures. The specific approach taken here follows the California act and would allow the public employer, after consultation with employee organizations, to adopt other reasonable procedures for resolving disputes. Mediation clearly is critically important, but it is only one of many in the arsenal of weapons that should be made available for breaking

deadlocks. Other procedures might include public or private fact-finding and advisory or binding arbitration. The decision to utilize any of these other devices must be retained by the employer. After all, under fact-finding and advisory arbitration, third party recommendations usually are publicized, and this can constitute a form of pressure on both parties. Under binding arbitration, management would be consciously abdicating its final discretion. Even here, however, the Commission believes strongly that the realities of the 1970's dictate the availability of binding arbitration if the local employer wishes to make use of this option in order to avoid strikes.

Provision should be made to ensure these dispute settlement procedures rest on a firm financial basis. Some contend that the State should assume full or a major share of the fiscal responsibility, given the State's prime interest in achieving stability in its employee relations and those of its political subdivisions, and its basic concern with avoiding any disruption of public services at either level. These spokesmen also note that some jurisdictions and employee organizations, particularly smaller ones, occasionally find it difficult to pay their share of the cost of mediation, fact-finding, and arbitration services. Based on experience in a number of States, others argue that the various procedures should be handled on a different cost-sharing basis, with the State bearing all or most of the expense and the parties to a dispute assuming some or all of the cost of fact-finding or arbitration. In any event, the State law should not be silent on this mundane, but significant problem.

*Recommendation No. 11—Prohibited Practices*

**The Commission recommends that the States in their labor relations legislation enact provisions prohibiting the restraint or coercion of employees in the exercise of their guaranteed rights and obligating both public employers and employee organizations to meet and confer in good faith.**

The question of prohibited practices is a basic differentiating factor between the "typical" meet and confer and collective negotiations statutes. A majority of the collective bargaining laws contain a fairly detailed specification of unfair practices for both management and employee organizations. But none of the existing "meet and confer" legislation goes into detail on this crucial matter. The Commission believes the "meet and confer in good faith" formula corrects this deficiency, since it establishes criteria for insuring that the parties will uphold their responsibilities in the discussion process.

Each approach includes a "non-interference" clause. The basic purpose of such a provision, of course, is to protect employees from punitive employer action as a consequence of their organizational activities. In some instances, its aim is to protect the individual employee from both the employer and employee organizations. The latter type of safeguard is perhaps best exemplified in the California act: "Public agencies and employee organizations shall not interfere with, intimidate, restrain, coerce, or discriminate against public employees because of their exercise of their rights . . ." Basically, however, a non-interference clause is an attempt to guarantee statutorily defined employee rights and to provide the basis for administrative or judicial action against blatant anti-union activities on the part of management. In the California case, it also serves as a basis for action against anti-individual activities on the part of public employee organizations.

A second type of prohibited practice found in two of the State statutes (California and Minnesota) deals with the refusal of either party "to meet and confer in good faith." While precise definition of the phrase "in good faith" is the subject of some disagreement, the intent of such language is to establish legally the mutual obligation of public employers and recognized employee organizations to meet and confer in order to exchange freely information, opinions, and proposals, and to try to arrive at agreements on matters falling within the scope of discussion. In effect, this proviso adds a distinctive and dynamic element to the usual meet and confer system because it provides a basis for administrative appeal and, if necessary, judicial action, when basic rules of the game are violated by either party.

"Good faith" is partly a matter of attitude and partly a matter of action. As such, to some observers it seems a vague and non-viable basis for establishing a mutually binding duty to talk and to strive for understanding. Yet, the Commission believes that insofar as a public labor-management relations law spells out some basic procedures, rights, and responsibilities, then grounds exist for determining "bad faith." Furthermore, since the administrative agency is charged specifically with ensuring adherence by all parties concerned to the law, immediate recourse is available for those alleging dilatory tactics and "bad faith."

Examples of "bad faith" on the part of either party include chronic inability to meet at reasonable times; sustained withholding of relevant proposals or information during the course of discussions; giving prime attention to matters fully outside the bounds of discussion; failure to designate a duly authorized spokesman; and delay or failure to exchange relevant, non-confidential data. Frequent shifting of position and heavy absenteeism during mediation sessions probably would provide evidence of "dilatory tactics," hence of "bad faith." Failure on the part of the management

representative to present to his superiors recommendations on which the parties have agreed also would fall in the same category.

The foregoing actions, if unchecked, would undermine the integrity of the dialogue between the parties. Consequently, the matter of unfair practices should be confronted squarely by legislators attempting to draft public labor-management legislation. If not, meet and confer in good faith becomes a mockery. If the implications regarding fair procedures are ignored, "in good faith" becomes merely a slogan.

Similarly, collective negotiations legislation cannot achieve its basic purpose of establishing a bilateral basis for public labor-management relations if unfair practices are treated sketchily or are applied to labor only. Of the sixteen collective bargaining statutes, five fail to go beyond a simple "non-interference" provision. Bilateralism in the bargaining process clearly is something less than secure when it rests on such an elusive basis. This aspect of collective negotiations differs in no major respect from the current meet and confer system.

*Recommendation No. 12–Exchange of Public Personnel Data*

**The Commission recommends that State labor relations laws establish procedures to assure the exchange of relevant public personnel data between and among employing agencies and employee organizations. The Commission further recommends that States and localities take steps to facilitate the gathering of such data on a metropolitan, regional, and Statewide basis.**

Before labor and management can hope to come to an agreement on a dispute, they need to reach an understanding on the facts at issue. It seems advisable, then, in the interest of facilitating discussions and promoting mutual trust and good faith, that everything possible be done to make the same public personnel data available to both parties. When this is done, discussions to some extent can be based on these facts, and arguments concerning their reliability and availability can be avoided.

State government has a stake in encouraging both sides to exchange relevant personnel data since it has a paramount interest in developing and maintaining healthy public employer-employee relations. The State through its public labor-management relations legislation should require public employers and employee organizations to disclose fully to the other side all facts of public record on which claims are based or which otherwise are pertinent to the issues under discussion. Non-fulfillment of this requirement should be deemed a failure to meet and confer in good faith and should constitute another specifically defined prohibited practice.

On a more positive note, States and their political subdivisions should make concerted efforts to collect on a regular basis the kind of data expected to be needed in the course of public employer-employee relations. While it is often contended that employing agencies have much better data available than employee organizations, sometimes the shoe is on the other foot. Regularized procedures for gathering and updating comparative data on a metropolitan, regional, statewide and, perhaps for certain specialized positions even on a nationwide basis, for example, would be helpful to both sides at the bargaining table. The gathering of this information might be assigned to a metropolitan (or regional) council of governments or to some comparable areawide body, and it then could be used by individual jurisdictions as a basis for their respective discussions. State and local organizations of public officials also might collect such data.

Both councils of governments and organizations representing State and local officials also might wish to consider expanding their information gathering capability to include provision of technical assistance and advisory services on public labor-management relations. Some components of this effort are already part of the programs of certain State leagues of municipalities. The California, Massachusetts, Michigan, Pennsylvania, and Wisconsin leagues, for example, provide extensive information services to their members on public employee-employer relations problems. A broader endeavor might include consulting directly with local officials, providing mediation and arbitration services, sponsoring workshops, and making continuing analyses of agreements. A related development involves the tentative plans of the National League of Cities and United States Conference of Mayors to establish a joint service-oriented program on public labor-management relations for elected city officials.

Finally, not to be overlooked in a discussion of the ways and means of developing up-to-date and relevant data is the role of the State agency established to administer the meet and confer statute. Certainly its key functions would include serving as a clearinghouse for public personnel information and as a source of technical assistance.

*Recommendation No. 13–Dues Checkoff*

**The Commission recommends that State labor relations laws permit public employers, on the voluntary written authorization of the employee, to regularly withhold organizational dues from the employee's wages and to transmit such funds to the designated union or association. The Commission recommends further that only those employee organizations which have been recognized as representing a majority of the employees**

**in an appropriate unit be eligible for such dues checkoffs.**

Dues checkoff can assist the individual employee who belongs to a union or association and it can serve as a form of union security for the recipient organization. After weighing the various possible approaches to handling this issue, the Commission urges that State public labor relations statutes should include a provision that permits—but does not require—public employers, on the written request of individual employees, to deduct organizational membership dues from wages. At the same time and in keeping with its doctrine of according a preferred position to public employee organizations representing a majority of the members in an appropriate unit, the Commission believes that only organizations of this type should benefit from dues checkoffs.

While no existing meet and confer statute authorizes this practice, the proposal advanced here is wholly compatible with the underlying theme of this form of public labor relations system. The authority after all is wholly discretionary and involves no real loss of management prerogatives. Moreover, while ten of the sixteen existing collective negotiations statutes fail to authorize specifically dues checkoff, inclusion of such a provision would be wholly compatible with the basic goals of this type of legislation.

If management decided to permit withholding, the resulting administrative arrangements, in most cases, would not impose unmanageable burdens since procedures already exist, pursuant to the laws of many States, through which employers make deductions from their employees' wages for such purposes as charitable contributions, health and life insurance payments, and savings bonds purchases. Where public employers allow a dues checkoff, regularity in such deductions would be assured and closer working relationships between the employing agency and formally recognized representatives of its employees would be promoted.

By restricting eligibility to majority employee organizations, a basis for strengthening the relations between the public employer and such organizations is afforded. Moreover, by making this practice a discretionary matter, management acquires an extra item on which it can negotiate from a position of strength.

While the Commission obviously does not oppose minority organizations, deduction of dues for members of these groups probably would generate conflict and instability in employer-employee relationships. In addition, it might overburden the administrative system, since in the absence of objective criteria for distinguishing among minority organizations, all such groups would probably have to be included in the checkoff.

*Recommendation No. 14—Multi-Jurisdictional Cooperation*

**The Commission recommends that local governments and public employee organizations with the cooperation of the State effect appropriate arrangements for meeting and conferring on a regional basis.**

Experience with regional collective negotiations arrangements in Canada and in some European countries suggests that a similar approach might be possible in some metropolitan areas in the United States. Regional machinery for collective negotiations is currently being utilized by several jurisdictions in the Vancouver, British Columbia, metropolitan area. These municipalities jointly gather and exchange data on wage and salary trends and contract settlements as a basis for independent negotiations by the individual jurisdictions. Three of these municipalities have established a central bargaining committee which is empowered to conduct negotiations in each of the communities.

In the United States, since 1967 the seven-county Minneapolis metropolitan area has experimented with regional meet and confer arrangements paralleling somewhat the Canadian and European experience. A Managers' Negotiating Committee—composed of five managers appointed by the Metropolitan Area Managers' Association—and representatives of Local 49 of the International Union of Operating Engineers (IUOE), have acted on behalf of 90 percent of the municipalities in the area. The chief purpose of the parties is to arrive at a mutually acceptable agreement that can be submitted to participating cities as an overall guideline for action. The conferees are not authorized to make binding commitments on behalf of public employees or city councils.

The impetus for handling discussions on an areawide basis could come from either public employee organizations, public employers, or both. Since an increasing number of organizations of local employees are affiliated with national unions, their basic objectives generally do not differ greatly from jurisdiction to jurisdiction in metropolitan areas. Consequently, areawide discussions might well be possible where a metropolitan agency exists or one could be created to represent the participating communities and empowered to enter into discussions for each of the municipalities. Where a council of governments or other areawide body has been established, this assignment could be placed in its hands. In other areas, an independent joint labor relations committee or board could be appointed to represent employing agencies. Public employers might well support areawide discussional arrangements as a means of discouraging employee organizations from "playing off"

one municipality against the other in discussing the terms and conditions of employment.

Skeptics feel this approach involves too great a departure from present practice. They argue local government employers and public employee organizations would have to cede a large part of their autonomy in public labor-management relations. The obstacles to creating metropolitan government and to achieving cooperation among existing governments in urban areas, so the critics contend, all stand in the way of efforts to establish an effective regional discussion process. They point out that wide differences between central city and suburban personnel systems, tax bases, and service levels are too great to overcome, at least for the present.

The difficulties which lie in the path of cooperative action in metropolitan areas should not be minimized. Yet, the Commission believes the advantages of achieving more uniform labor conditions, conserving time and energy in discussions, and avoiding employee organizations playing off one municipality against another warrant giving increased attention to developing appropriate mechanisms for discussions on an interjurisdictional basis.

## STATE AND FEDERAL MANDATING OF EMPLOYMENT CONDITIONS

The imposition by higher levels of government of requirements relating to the salaries and wages, hours of work, working conditions, fringe benefits, and personnel qualifications of employees of lower levels has emerged as a touchy intergovernmental issue. With the enactment of over a score of public labor-management relations laws, State and, to a somewhat lesser extent, Federal mandating of conditions of employment for personnel of lower levels may undermine the labor relations process and, in some cases, may severly restrict the range of subjects covered. In nearly all instances, mandating narrows the discretion of the lower level governmental employer and encourages lobbying rather than direct confrontations between employee organizations and management. Present practices need to be reexamined by the States, as well as by the Federal Government, in light of their effects on labor-management relations at the State and local levels.

*Recommendation No. 15—Curbing State Mandating*

**The Commission urges the States to adopt a policy of keeping to a minimum the mandating of terms and conditions of local public employment which are most properly subject to discussion between employees and employers.**[8]

[8]Mayor Walsh dissents from this recommendation and states: "I am opposed in principle to any State mandating which imposes increased costs on local government unless the State assumes the total cost of such increases."

In the past, most State mandating of the terms and conditions of local employment could be justified as an effort to upgrade the local public service. Mandatory educational and training requirements for professional and technical personnel in critical health and safety fields obviously are necessary. Licensing and certification requirements in practically all cases are also essential means of ensuring a reasonable level of competence in the administration of State-aided education and welfare programs.

Other reasons exist for State involvement in local personnel matters. Employee organizations—especially those representing teachers, policemen, and firemen—have been notably successful in securing passage of special State legislation requiring public employers to improve their benefits and working conditions. Lobbying at the State level, then, is substituted for control by local public employers over personnel matters affecting their employees.

Mandating also serves as a constraint on the development of a full-fledged labor-management relations process since various issues, in effect, are excluded from the range of possible discussion and agreement. In the short run, local employee organizations, particularly those with influence in the legislature, may favor State mandating. Yet, in the long run, the Commission is convinced that public employees as a whole can gain little from this approach since its goal of preferential treatment undermines an effective, governmentwide labor-management relations system. From nearly any angle, local public employers and employee organizations have little but headaches to gain from continuance of this State practice.

The Commission believes State mandating of local personnel standards—with the exception of professional and licensing requirements—violates the principles of constitutional and statutory home rule. This practice interferes with the ability of local jurisdictions to establish effective systems of personnel management and to develop viable and equitable relationships with their employees.

The Commission supports the principle that basic responsibility for local personnel management and salary determination should rest with local governing bodies. Certain mandated programs exist, however, which in our opinion assist in improving the local public service on a statewide basis. In several States, for example, local public employees are covered by a single State established retirement system. Consolidation of small local systems in most of these States was required because they were fiscally unsound. Furthermore, it is entirely appropriate for States to mandate training programs, stipulate standards for the licensing or certification of certain personnel categories, and establish minimum

working conditions for professional and technical personnel in critical health and safety fields.

At the same time, the Commission opposes continuing any indiscriminate State mandating of the terms and conditions of local public employment. Such a policy does little or nothing by way of promoting the basic goals of a State labor-management relations policy. It encourages employee organizations to make "legislative end runs" when the parties are unable to reach agreement, and this violates the spirit, if not the letter, of the "in good faith" ethic. Mandating also can be fiscally irresponsible if the enactment of State legislation benefiting certain local employees is not accompanied by provision of State funds or authorization of additional revenue sources in order to meet the increased costs. Finally, such a State policy usually does little to help local personnel across the board; instead, individual occupations are given preferential treatment and this can sow the seeds of labor unrest.

*Recommendation No. 16–No Further Federal Mandating*

**The Commission recommends that Congress desist from any further mandating of requirements affecting the working conditions of employees of State and local governments or the authority of such jurisdictions to deal freely or to refrain from dealing with their respective personnel.**[9]

Like State mandating of personnel requirements for local government employees, free-wheeling Federal mandating of conditions of employment for State and local personnel also may undermine effective labor-management relations at these levels. Congress, through the Fair Labor Standards Act of 1966, the proposed amendments to the Civil Rights Act of 1964, and the merit system requirements in grant-in-aid legislation, and the Executive Branch, through regulations implementing these and other provisions in certain federally aided programs, have imposed personnel requirements on local governments which may restrict the scope of discussions or collective bargaining between public employees and employers.

The 1966 amendments to the Fair Labor Standards Act extended the requirement that employers must pay employees engaged in interstate commerce a specified minimum hourly wage and a higher rate for work exceeding a certain maximum number of hours a week to cover public and private profit or nonprofit making hospitals, schools, higher educational institutions, and special training and rehabilitative institutions. Congress also expanded the definition of employer to include States and their political subdivisions. As a consequence, over one-half of the States joined with Maryland in bringing action against the Secretary of Labor to enjoin enforcement of the Act's provisions applying to State and local operated schools and hospitals. The plaintiff's failure to secure an injunction has raised serious questions concerning the extent to which the Federal Government under the commerce power can and should mandate internal personnel policies of State and local governments. In particular, the degree to which the regulated activities relate to interstate commerce and the distinction between the governmental and proprietary functions of a State have been focal points of this controversy.

Elimination of discrimination in public employment is a possible future form of Federal mandating. The tremendous recent growth of public employee rolls has been accompanied by significant increases in the number of minority group workers. The recently released report by the U.S. Commission on Civil Rights, entitled *For All the People... By All the People*, demonstrates, however, that members of minority groups do not enjoy equal access to employment in State and local governments. As a result, the Civil Rights Commission has called upon Congress to extend the coverage of the Civil Rights Act of 1964 to protect minority group members from discrimination in the employment practices of States and localities.

Other possible bases for future mandating exist. One kind of further intervention might be justified on grounds that the personnel involved are vital to the implementation of critical, federally aided programs. Another rationale would be that the employees affected perform functions which in no major respect differ from those of private sector workers. Still another argument could be that the personnel involved are working for agencies or institutions operated by State or local governments acting in proprietorial capacity.

Having assessed these various facets of present and potential Federal mandating and recognizing that further intervention is quite possible, the Commission adopts the general position that Congress should refrain from any additional mandating of requirements relating to the working conditions of State and local employees or the authority of these governments to deal with their personnel in whatever fashion they see fit.

The Commission accepts the judgment of the Supreme Court in upholding extension of the Fair Labor Standards Act to certain education and hospital employees of State and local governments. The fact that the extension covered the same occupational categories in both the private and public sectors, coupled with the widespread State and local acceptance of this decision,

[9] Additional view of State Senator Arrington: "While I do not oppose this recommendation, I do not feel it has a place in a report which deals with the public employee relations of State and local governments."

suggest that any other course of action at this time would be unwise, if not foolish.

At the same time, the Administration and Congress should abstain from any further mandating of requirements affecting the working conditions of State and local personnel, either by additional amendments of the Fair Labor Standards Act or by other statutory routes. The arguments for the Commission's position here parallel those developed by Mr. Justice Douglas in his dissent to *Maryland v. Wirtz.* Intrusions of the kind involving extension of the Fair Labor Standards Act tend to blur even more the already hazy distinction between interstate and intrastate commerce and to compromise severely the police powers of the States. Moreover, any additional mandating of salaries, wages, and working conditions can only be interpreted as an unconscionable Federal reordering of the fiscal priorities of State and local governments. If such an action were to be taken, then Congress in all fairness should simultaneously enact legislation providing the funds required for adherence to the standards stipulated.

In a like fashion, the Commission opposes any Federal effort to mandate a collective bargaining, meet and confer, or any other labor-relations system for the employees of State and local jurisdictions or for any sector thereof. Little would be left of the Federal principle of divided powers were such legislation enacted. No interpretation of the commerce power, of the State as proprietor, or of the "general welfare" clause can, in our opinion, serve as a legitimate constitutional basis for this kind of drastic infringement on the basic authority of the States and localities as governments in a federal system.

A major contemporary example of this form of possible usurpation is the "Professional Negotiations Act for Public Education" (S.1951), introduced by Senator Metcalf of Montana in April 1969. This bill would establish an impartial Professional Education Employee Relations Commission (PEERC) within the Department of Health, Education, and Welfare to settle disputes involving teacher organizations and boards of education in public school systems operating under State laws. Based on the position that teacher-school board relations affect interstate commerce, the proposed Act recognizes the rights of professional employees of school boards to membership in employee organizations and to representation by such organizations in negotiations over the terms and conditions of employment culminating in a written agreement. The PEERC could petition any Federal district court to enjoin unlawful acts—such as refusal by boards of education to negotiate in good faith. With respect to dispute settlement procedures, either party, or PEERC on its own volition, could declare an impasse in negotiations and the Commission then could appoint a mediator, who would serve without cost to the parties. The parties also could establish their own mediation procedure. If mediation is unsuccessful after 15 days have passed, either party could request submission of the dispute to advisory—or, if mutually agreed upon, to binding—arbitration, and an arbitrator could be appointed by either PEERC or the parties themselves. All arbitration expenses would be shared equally by the parties. The arbitrator's findings and recommendations would be made public if an agreement was not reached within 10 days following their presentation to the parties. Another key provision of this bill would repeal all strike bans on professional employees in the public sector, although work stoppages could be enjoined if they presented a clear and present danger to public health or safety, or if the employees' representative failed to make a reasonable attempt to use the impasse resolution procedures contained in the Act. The only exceptions to the applicability of S.1951 would be State laws which PEERC determines to be substantially equivalent to the system of teacher-school board relations prescribed by the Act.

This legislation is based on the tenuous position that teacher-school board relations are proper matters for Federal regulation because they affect interstate commerce. The Commission does not agree with the sponsors of this bill that the failure of some boards of education to accord teachers full associational freedom and collective discussion rights has placed substantial burdens on the flow of commerce, at least to the extent of justifying Federal preemption of this important area of State and local activity. As a matter of fact, at least 24 States have enacted either comprehensive labor relations statutes or special laws dealing with labor-management relations in public education. It would be ironic, to say the least, to mandate in Federal legislation negotiating procedures and employee rights for the teaching sector of the State and local public service when such rights have not been accorded to any employed by the Federal Government. Federal statutory requirements providing for across-the-board collective negotiations between public school teachers and boards of education, establishing Federal dispute settlement machinery, and removing strike bans—regardless of the provisions of State public labor-management relations legislation or local laws and policies—not only would disrupt the public education system at the State and local levels; they would seriously undermine the viability of the federal system. In the absence of overwhelming evidence of the unwillingness or inability of State and local governments to act, the Federal Government should refrain from preemptive action. Such evidence clearly is lacking at present. States and localities have developed and are developing their own response to the

challenge of employee militancy, especially teacher militancy. Given the nature of this challenge, experimentation and flexibility are needed, not a standardized, Federal, preemptive approach.

To sum up, effective public employee-employer relations at the State and local levels can only emerge from an unfettered process involving, basically, the employers, employees, and their representatives as well as the electorates of the various jurisdictions. The Federal Government clearly has an interest in the development of stable and equitable labor-management relations at the other levels. This interest can be best served, however, by avoiding actions that would exacerbate these relations and by focusing on ways and means of directly encouraging the establishment of strong, innovative personnel systems, as in the case of the proposed Intergovernmental Personnel Act of 1969 (S.11, 91st Congress).

## CONCLUDING OBSERVATIONS

The major recommendations in this report provide the essentials of a realistic, non-rhetorical approach to a new look at public labor-management relations in the State and local public service. Moreover, this approach is suitable in most instances for a majority of the States and their localities.

Its realism is reflected clearly in the stress placed on the distinctive features of public employment—the strike ban, the reliance on impasse procedures, the question of essential services, the role of public opinion and politics, and the impact of merit principles and systems.

Its non-rhetorical tone is reflected in the absence of traditional terms, procedures, and references drawn from private sector collective bargaining, which when applied to the public sector become mythical and misleading. Logic does not support, for example, the claim that private and public sector collective bargaining are similar, when strikes universally are outlawed in the latter. It is self-deluding to place a private sector contract in the same category as a binding agreement in the public sector, given the fragmented approval authority of most public employers. The approach proposed by the Commission in this report avoids these illusions and the false hopes they generate.

Finally, the Commission's proposals comprise a reform program that recognizes basic employee rights, penalizes obstructionist employers, grants a preferred position to majority organizations, and establishes clear criteria for meeting and conferring "in good faith." These criteria lay down basic ground rules for a candid dialogue and seek to extend even-handed treatment to both parties at the bargaining table.

The approach proposed obviously goes well beyond most of the existing meet and confer statutes by avoiding the one-sidedness of these laws. On the other hand, unlike certain collective bargaining legislation, it stops short of prescribing an employer-employee relations system which ignores the hard realities of political, governmental, and public life. It is, then, a mean between these existing statutory extremes. As such, it strikes a balance between the public interest and employee interests, between management needs and the concerns of the majority representative, between political realism and procedural innovation. The Advisory Commission on Intergovernmental Relations commends this approach and this system to legislators, labor leaders, and public managers as they strive to reconcile these vital goals and seek a more stable, more salutory system of public labor-management relations to meet the severe challenge of the 1970's and beyond.

# APPENDIX A

# HEARING

## Before the

## Advisory Commission on Intergovernmental Relations

## on

## Labor-Management Policies for State and Local Government

On June 12, 1969 the Advisory Commission on Intergovernmental Relations conducted a public hearing in Washington, D.C., to obtain the views of selected witnesses on the subject of possible recommendations which might be adopted concerning labor-management relations in the State and local public sector. Each witness was asked to comment on a total of 17 recommendations—most of which were framed in two or more alternative approaches.

Commission members present at the hearing were Chairman Farris Bryant, Mayor Richard C. Lugar, Supervisor Lawrence K. Roos, and Mayor William F. Walsh.

This Appendix carries the record of the statements presented by witnesses. Since the testimony was addressed to the first draft prepared by the staff, some of the statements have been edited for clarity and continuity.

# STATEMENTS PRESENTED AT HEARING

## OPENING REMARKS BY FARRIS BRYANT
### Chairman, Advisory Commission on Intergovernmental Relations

This public hearing is scheduled by the Advisory Commission on Intergovernmental Relations to hear the views of selected witnesses on the general subject of public employer-employee relations at the State and local levels. More specifically, we seek reactions to a draft report on "Labor-Management Relations in the State and Local Public Service" which the Commission is to consider at its meeting tomorrow here in Washington.

This is the third hearing which the Commission has held. The first occurred in Chicago in February 1968 in connection with a report on *Urban and Rural America: Policies for Future Growth*. The second took place in San Francisco last fall and focused on the Commission's study of *Intergovernmental Problems in Medicaid*. The major objectives of these hearings are to strengthen the Commission's role as a forum for discussion and hopefully for resolution of intergovernmental problems, and to help bring the Commission's work to the attention of interested groups and the general public.

Sound, stable, and successful relationships between State and local governments and their employees are top priority items on federalism's crowded agenda of unfinished business. Regardless of one's perspective on public employer-employee relations, it clearly is a prime, pressing policy issue with major intergovernmental implications. For this reason, the Commission voted to undertake this study at its September 20, 1968 meeting. Critical and controversial recent developments in this area—highlighted by burgeoning State and local employee rolls, mushrooming membership in public employee organizations, escalating rates of public sector work stoppages, and growing State legislative willingness to enact comprehensive collective bargaining legislation—attest to the timeliness of this report and this hearing.

The Commission's study focuses mainly on the responsibilities of State and local governments for labor-management relations in their vast portion of the public sector, and raises basic policy questions concerning the relationship between State and local public employers and their employees. The Federal role, with but a few exceptions, is not explored.

Some explanation should be made about the procedure used in preparing this draft report. The staff placed a first draft before an informal group of "critics" for searching review and criticism on May 16. These reviewers provided expert knowledge and a diversity of viewpoints. They included representatives of State and local government, the AFL-CIO public employee associations, the Department of Labor, the Office of State Merit Systems of the Department of Health, Education, and Welfare, the National Civil Service League, the American Arbitration Association, the Public Personnel Association, and private mediators and arbitrators. The staff made revisions in light of comments it received from these critics, and then transmitted the report to members of the Commission three weeks ago. This is the report on which we have invited you to testify.

If you have any additional suggestions or questions which you are unable to include in your statement, we will be glad to have you submit them in writing or otherwise to the Commission's staff.

## STATEMENT OF ARVID ANDERSON
### Chairman, Office of Collective Bargaining, New York, N.Y.

Thank you for the invitation to appear before your Commission for the purpose of giving my views on the draft recommendations which you have prepared on Labor Management Relations in the state and local public service. By way of background, I am persuaded that the debate is really over as to whether or not there ought to be collective bargaining for public employees. There is such bargaining or negotiations, if you prefer such term, in most parts of the country with or without benefit of statute. The real question now is whether or not there will be orderly procedures to regulate the

bargaining process to determine questions of representation, to resolve impasses and other disputes, affecting public employees. Any illusion that the public may have had that the failure to enact collective bargaining statutes or ordinances will mean that there will be no public employee strikes or no development of public employee collective bargaining should have been dissipated by events. The absence of bargaining laws has not prevented strikes or public employee bargaining in all sections of the nation. If anything, the absence of state and local statutes have been responsible in some degree for strikes for recognition whether in South Carolina or Tennessee or Ohio or Pennsylvania.

The fundamental question that remains before your Commission is whether or not orderly procedures to deal with the process of bargaining will be developed at the local and state or at federal level. My preference is that they be developed at the state and local level, but I am also persuaded if the states and local government fail to accept their responsibility to regulate the labor relations of their own employees–the federal government will do so. As you have heard, the drumbeats for federal action have been sounded. A significant number of states have enacted comprehensive statutes to deal with collective bargaining in public employment, some of which I believe could serve as good models for other states. Numerous study commissions–comparable to your own have made recommendations. What is needed now is state and local legislative action.

## STATEMENT OF RICHARD CARPENTER

### Executive Director and General Counsel, California League of Cities, Sacramento, California

I appreciate the opportunity you have given me to comment on the major findings and recommendations of the Commission in connection with your proposed report on Labor-Management Relations in the State and Local Public Service. Your staff is to be highly commended for the objectivity and excellence of the report. In a field where so much has been said and written and confusion is common, the report clearly defines the principal issues and as clearly offers most of the possible alternatives.

I have attached a copy of our March 1969 "Suggested Employer-Employee Procedure." This includes a copy of the California law on public employee representation, a suggested employer-employee relations resolution implementing the state law, and supplemental rules and regulations. While California is listed as a "meet and confer" state, our 1968 legislation and supplemental rules and regulations are far more than "meet and confer." My comments with respect to the proposed findings and recommendations can only be understood if considered in connection with the actual provisions of California law and rules and regulations.

The primary purposes of the California public employee organizations law are to promote full communication between public employers and their employees and to provide a process by which employers and employee representatives may reach mutual agreement on wages, hours and other terms and conditions of employment. Public employees have the right to join or refrain from joining any employee organization and the right to be represented or to represent themselves.

Recognized employee organizations have the right to represent their members on all matters relating to employment conditions and employer-employee relations. The only limit on the scope of representation is that it shall not include consideration of the merits, necessity, or organization of any service or activity provided by law. Public agencies are required to give reasonable written notice of proposed rules and regulations to recognized employee organizations in every case where the proposal relates to matters within the scope of representation.

The governing body or its designated representative must meet and confer in good faith with employee representatives on wages, hours and other terms and conditions of employment with representatives of employee organizations. This includes the obligation to endeavor to reach agreement on matters within the scope of representation and where agreement is reached, to jointly prepare a written memorandum of understanding to be presented to the legislative body for its determination. California law expressly permits the management representative to meet privately with union representatives and to meet in executive session with the legislative body in order to determine limits of management authority and to assure acceptance of such joint agreement. Public agencies and public employers and employee organizations are prohibited from interfering with the rights of employees or from discriminating against public employees because of the exercise of their rights under the law.

After consultation in good faith with all employee organizations, whether or not recognized as majority representatives, the public agency may adopt rules and regulations on (a) recognition of employee organizations, (b) additional procedures for resolving disputes involving wages, hours and other terms and conditions of employment, (c) access to work locations, (d) furnishing nonconfidential information to employee organizations and (e) any other matters necessary to carry out the purposes of the law.

Mediation by an impartial third party to assist in reconciling disputes regarding wages, hours and other terms and conditions of employment is authorized, but for those who desire fact-finding, arbitration or other methods of resolving impasses, the law permits these or other more imaginative methods to be adopted under the rule-making power. Our suggested resolution implementing the state law fills in the details which may be required for those who need or desire adoption of formal policies on meeting and conferring. California law is purposely broad to permit alternative procedures and includes sections on employee rights, city rights, recognition, designation of appropriate units, majority representation, resolution of impasses, grievances, memorandum of understanding and supplemental rules and regulations on representation proceedings, dues checkoff, time-off to meet and confer, use of city facilities, access to work locations, availability of data and prohibition of strikes and work stoppages. Time prevents any detailed discussion of California law, but I hope I have made the point that our law is far more than a simple "meet and confer" law when considered in its entirety.

## FINDINGS

On page 4 of the findings, the paragraph commences, "While no state permits strikes by public employees, . . . . . ." This is not a correct statement insofar as California is concerned. In 1957, the California Legislature enacted the Los Angeles Metropolitan Transit Authority Act and included therein the following language with respect to the rights of employees:

> "Employees (transit) shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage *in other concerted activities for the purpose of collective bargaining or other mutual aid or protection* . . . . Notwithstanding any other provision of this act . . . . the authority . . . . shall enter into a written contract with the accredited representative of (its) employees governing wages, salaries, hours and working conditions . . . ."

In *Los Angeles Metropolitan Transit Authority v. Brotherhood of Railroad Trainmen*, 54 Cal. 2d 684, the California Supreme Court held that the underlined language granted public employees of the Transit Authority the right to strike and that both the courts and legislative bodies had used the terms "concerted activities" to include strikes, picketing and boycotts. All of the dozen or more California transit district acts contain similar language.

We have had a provision in our law since 1937 on collective bargaining which reads:

> "Negotiations of terms and conditions of labor should result from voluntary agreement between employer and employees. Governmental authority has permitted and encouraged employers to organize in the corporate and other forms of capital control. In dealing with such employers, the individual unorganized worker is helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment. Therefore it is necessary that the individual workman have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or *in other concerted activities for the purpose of collective bargaining or other mutual aid or protection*." (Sec. 923 Labor Code)

Emphasis is again given to language similar to that used in the Transit Authority Act. Prior to the Los Angeles transit authority case, our courts held that Section 923 applied only to employees of private industry and not to public employees. California public employee labor laws enacted since 1959 expressly provide that Section 923 of the Labor Code is not applicable. This is not only because such a provision gives the right to strike, picket or boycott, but also because it includes true collective bargaining and written contracts and a whole body of decisional law applicable to private industry. We continue to believe that collective bargaining in its true sense of a binding bilateral agreement cannot and should not be transplanted from the private to the public sector.

Late in 1966 in a major address to the California State Bar Association, Dr. Harlan Hatcher, President of the University of Michigan, discussed the extension of the concept and the problems involved in industrial–union bargaining to public employees. He posed the question: "Can we accept this (the labor union formula) as the ultimate achievement of American Freedom and the pattern or model for its future growth? Or, like dueling in the 18th century, is this a primitivism we can outgrow?" This 37-page paper is one I commend to you for consideration prior to approving the suggested recommendations, but the following will give you a fair idea of President Hatcher's treatment of the issue:

"The right to form unions, the right to bargain, the right to strike, has become a standard pattern in our national life. But the pattern was made on the issues and within the framework of business and industry controlled by private management, employing labor, dependent upon a fair profit from the marketing of its product and able to fix prices accordingly. The fundamental organic differences between industry and its workers and public servants and their constituencies were never fully examined. The subjects for negotiation, the nature of contracts, the techniques of bargaining, etc., that have become rigidly standard in industry were developed without reference to the unique characteristics of public service. The question to be raised is: Can these be transferred and imposed in their present form on the public structure? Is it desirable to do so? Or is a new philosophy and a new approach required by their differing natures and in the light of accumulated experience?"

Our whole concept in California is that a new philosophy and a new approach is required because there are fundamental differences between public employers and private employers, even though there are relatively few differences between their employees. Your proposed report states in several places that: "The Commission is convinced that new approaches are called for in establishing statewide policy for public labor-management relations." We agree with the Commission because we are convinced that the differences between public and private employers not only require a new approach, but also the greatest amount of flexibility. By experimentation and experience, we can promote full communication between public employers and public employees and provide decent and prevailing wages, good and healthy working conditions and full participation by employees in labor decisions affecting their welfare.

I don't wish to belabor the point, but neither can I overemphasize the basic differences between public and private employers. Public employees are citizens and can resort to the ballot box. Legislative bodies are political and susceptible to political pressures. Private management, stockholders and boards of directors need not be concerned about public voting rights, the rights to initiative, petition or recall. Public employers as elected representatives cannot delegate legislative or policy decisions to nonelected public or private individuals or organizations. The budget, salaries, fringe benefits are legislative and nondelegable. Clichés and sloganeering cannot wash away these differences, no matter how acid or vigorously applied.

## Recommendations

**Employee Rights to Join and Be Represented.**

We believe that . . . (this recommendation) . . . should read: "The Commission recommends that the states enact legislation requiring local governments and agencies of the state to recognize the right of their employees (a) freely to join or not to join and (b) be represented or not to be represented by an employee organization." We believe this to be a universal right and have a comparable section [3502] in the California Government Code enacted in 1961.

**Role of Employee Organizations in Determining the Terms and Conditions of Public Employment.**

This is a key recommendation and we respectfully suggest the approach we have used offers the greatest flexibility in adapting to the diversified conditons which characterize labor-management relations between and within levels of government. We suggest . . . (this recommendation) . . . read: "The Commission believes that public employee organizations have a right to represent their membership in determining the terms and conditions of employment. Public employers have a corresponding responsibility as a matter of sound personnel policy to give recognition to these organizations. The Commission recommends that states enact legislation which requires public employers to meet and confer in good faith with representatives of recognized employee organizations and endeavor to reach agreement on matters within the scope of representation."

This is similar to your Alternative A but goes beyond it. The principal objections to "meet and confer" laws have been the lack of obligation on the part of the employer to do more than listen to proposals on the part of employee representatives and the unlimited discretion to act unilaterally in making a decision. We had such a law from 1961 to 1968, but we have since gone far beyond it by requiring "meeting and conferring in good faith" and defining the phrase to mean "that a public agency, or such representatives as it may designate, and representatives of recognized employee organizations, shall have the mutual obligation personally to meet and confer in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation." No collective bargaining state requires the parties to agree on any contract.

Where agreement is reached, a written memorandum of understanding is prepared for presentation to the

governing body for its discrimination. Under our law the representative of the legislative body may not only meet and confer privately with employee representatives, but he may also meet privately with his legislative body in order to determine the extent of his negotiating authority. In this fashion he will have as much authority as any employee representative and an equal opportunity to guarantee that his principals will accept the written memorandum of agreement by enactment of the appropriate ordinances, resolutions, rules or regulations. If we look at substance instead of form, I think we can successfully argue that laws implementing a written memorandum of agreement afford as much, if not more, comfort than contracts.

**Prohibiting Strikes by Public Employees.**

It has been noted that the California Legislature granted transit employees the right to strike. On June 9, a trial court judge in San Diego lifted a temporary restraining order prohibiting city employees from striking, notwithstanding the holding by the California Supreme Court in the *Los Angeles Metropolitan Transit Authority* case that: "In the absence of legislative authorization public employees in general do not have the right to strike . . . ." (54 Cal. 2d 687) The trial court judge ruled, "The fundamental issue of government employees' right to strike has never been settled in a California court." He points to 1959 California Labor Code sections (1960 et seq.) which prohibit firefighters from striking as lending credence to the rights of other employees to strike. The transit authority case was decided in October 1960 and the Labor code sections referred to were effective in the Fall of 1959. His decision, however, is similar to that of another trial court judge in Los Angeles. California, erroneously accused of having weak "meet and confer" laws, is an apparent leader in assuring public employees the right to strike. While I am personally convinced that too much has been made of strikes by public employees, the majority of the public officials in my state appear to believe that strikes by public employees should be prohibited by statute.

The recommended rules and regulations which we have distributed to all California cities would provide:

(a) "Participation by any employee in a strike or work stoppage is unlawful and shall subject the employee to disciplinary action, up to and including discharge; and,

(b) "No employee organization, its representatives, or members shall engage in, cause, instigate, encourage, or condone a strike or work stoppage of any kind."

Violation of the latter provision by the employee representatives can bring about suspension of (1) recognition, (2) payroll deductions, (3) use of bulletin boards and city facilities, and (4) access to work location. We have not included any of the drastic penalties suggested in New York and some of the other states having collective bargaining laws. It is our suggestion, therefore, that . . . (this recommendation) . . . should read: "The Commission recommends that state laws prohibit all public employees from engaging in strikes. Such laws should provide mediation to resolve impasses and should authorize local agencies to provide additional procedures for the resolution of disputes involving wages, hours and other terms and conditions of employment."

**Coverage of a State Public Employee Labor Relations Act.**

We have never had a single act in California. Transit employees were covered first in 1957 when authorized to take over existing private transit facilities and where private employees operating the same facilities had been under collective bargaining contracts. This transit law was followed by the firefighters act in 1959, the general act applicable to all public employees, state and local, in 1961 (Government Code sections 3500 et seq.), separation of school teachers from the general act in 1963 (Sections 13080 et seq. of the Education Code) and the exclusion of state employees from the 1968 amendments to the general law covering all employees other than teachers.

We believe a good case can be made for a single act and tried unsuccessfuly to maintain single coverage in California. For practical reasons, however, we suggest . . . Alternative B to read: "To meet the unique demands of local and state government, the Commission recommends that public labor relations laws be enacted by the states to cover state and local employees." In other words, we do not feel that it is necessary for the Commission to determine whether there should be single or separate laws, but only that states should enact public labor relations laws.

**Legislation For Special Occupational Categories.**

We suggest that the [preceding] recommendation . . . covers . . . (all occupational categories) . . . . A state should have such labor laws for public employees as may be needed. Each state shall determine whether special or supplemental treatment is to be given particular categories or a general statute made applicable alike to all public employees.



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**The Rights of Supervisory Personnel.**

Public employees under California's employer relations law include all but those elected by popular vote or appointed to office by the Governor. Professional employees are entitled to be represented separately from nonprofessional employees. Public agencies may, by rule and regulation, provide for the designation of management and confidential employees and may restrict management and confidential employees from representing any employee organization on matters within the scope of representation. We have defined confidential and management employees in our suggested local regulations. It would appear, therefore, that while our recommendation is quite similar to Alternative B, [which gives limited rights of organization to supervisors,] it is sufficiently different to warrant our suggesting it as a possible Alternative C for the Commission's consideration. "The Commission recommends that public labor relations laws authorize the designation of management and confidential employees to be restricted from representing employees on matters within the scope of representation and permitting separate organization of professional employees."

**Statutory Designation of Negotiable and Nonnegotiable Terms and Conditions of Public Employment.**

While it is indicated that this recommendation is not germane where collective bargaining is precluded, we believe that Alternative C should be recommended and that where there is a conflict, laws and rules and regulations prevail over the provisions of the agreement.

**Administrative Machinery.**

This recommendation is again stated to be not germane where collective bargaining is precluded. However, our law, which is somewhere between meet and confer and collective bargaining, does provide for administrative machinery. We suggest Alternative B provides the greatest flexibility. The structure and type of administrative agency should be determined by individual state conditions and, in fact, by individual city conditions.

**Settlement of Disputes.**

Again, it is indicated that the recommendation is not germane unless a public agency has true collective bargaining. We disagree. We would suggest the following Commission recommendation: "To resolve impasses arising from disputes over terms and conditions of public employment, the Commission recommends that the states enact mediation provisions in the state law and that local agencies be authorized, after consultations in good faith with representatives of all employee organizations, to adopt such additional procedures for the resolution of disputes involving wages, hours and conditions of employment as may be necessary." It is our view that whenever ordinances, resolutions or rules and regulations on labor relations are to be adopted by local agencies that all employee organizations, whether or not recognized, be consulted even though there is no obligation to reach agreement prior to adoption of such local laws.

**Unfair Practices.**

Our only comment . . . (here) . . . is that the matter should not be left to administrative discretion or court interpretation, but should, after consultation with employee representatives, be spelled out in local laws.

**Dues Checkoff.**

We suggest that . . . (this recommendation) . . . read: "The Commission recommends that state laws should permit public employers, on the voluntary written authorization of the employee, to regularly withhold organizational dues from the employee's wages and to transmit such funds to the designated employee organization. Only recognized employee organizations representing a majority of the employees in an appropriate unit are eligible for dues checkoff."

**Inclusion of Union Security Provisions in Agreements.**

We believe that either a written memorandum of understanding or local rules and regulations may also include certain security provisions such as dues checkoff and agency shop.

**Employee Protection.**

We have not found . . . (laws to ensure the rights of employees vis-a-vis employee organizations) . . . necessary in California.

**Exchange of Public Personnel Data.**

We agree that . . . (this recommendation) . . . should be approved by the Commission. In our recommended rules and regulations sent to all California cities we have included Rule 7, requiring the city to make available to employee organizations all nonconfidential information pertaining to employee relations. Our own salary, fringe

benefit and working conditions survey, one of the most comprehensive made in any state, is furnished on request, at cost, to any union or employee organization.

**Regional Cooperation.**

The regional cooperation suggested . . . (here) . . . is now possible under the Commission's recommended joint powers legislation. We believe that within a given region or area, wages, hours and conditions of employment can and do vary greatly and should preclude regional negotiations. There is, of course, some informal consultation now on a regional or area basis by public employers with other public employers and I am sure by public employee organizations with other employee organizations. It is our suggestion that there be no recommendation on regional cooperation.

**State Mandating of Local Employment Conditions.**

We agree . . . insofar as . . . (this recommendation) . . . calls for the repeal of state-imposed requirements. We urge the Commission to approve Alternative A to read: "The Commission believes that state mandating of the conditions of employment for local government personnel violates the principles of constitutional and statutory home rule and interferes with harmonious and effective state-local as well as labor-management relations. The Commission, therefore, recommends that all state statutory and administrative provisions which mandate the terms and conditions of local public employment with the exception of professional qualifications and licensing requirements be repealed."

**Federal Mandating.**

We strongly recommend approval of Alternative A to read: "The Commission recommends that the 1966 amendments to the Fair Labor Standards Act which extended its coverage to include hospitals, schools, institutions of higher education, and special training and rehabilitative institutions and removed the exclusion of states and their political subdivisions as employers should be repealed."

We have no intention of attempting to reargue *Maryland v. Wirtz* (20 L ED 2d 1020). We cannot help, however, but agree with Justice Douglas in his dissent when he said:

> "But what is done here is nonetheless such a serious invasion of state sovereignty protected by the Tenth Amendment that it is in my view not consistent with our constitutional federalism."

After pointing out that the cases relied on by the majority had not overwhelmed state fiscal policy, Justice Douglas stated with respect to the "enterprise concept" as applied to essential functions being carried on by the states:

> "Yet state government itself is an 'enterprise' with a very substantial effect on interstate commerce, for the states spend billions of dollars each year on programs that purchase goods from interstate commerce, hire employees whose labor strife could disrupt interstate commerce, and act on such commerce in countless subtle ways. If constitutional principles of federalism raise no limits to the commerce power where regulation of state activities are concerned, could Congress compel the states to build superhighways crisscrossing their territory in order to accommodate interstate vehicles, to provide inns and eating places for interstate travelers, to quadruple their police forces in order to prevent commerce-crippling riots, etc.? Could the Congress virtually draw up each state's budget to avoid 'disruptive effects . . . on commercial intercourse'?"

I respectfully suggest one additional recommendation to the Commission . . . to read: "The Commission recommends that Congress desist from enacting any federal legislation affecting the wages, hours and working conditions of employees of state and local governments or from including state and local employees in any federal legislation relating to collective bargaining, collective negotiation, meeting and conferring or involved with the process of resolving disputes between state and local government employers and employees."

## STATEMENT OF THOMAS R. DONAHUE
### Executive Secretary, Service Employees International Union, AFL-CIO Washington, D.C.

I am Thomas R. Donahue, Executive Secretary of the Service Employees International Union, AFL-CIO. Our union represents 400,000 people who are engaged in various sections of the service industries, of whom more than 100,000 are public employees, working in state and local public employment.

I also served as Assistant Secretary of Labor for Labor-Management Relations from 1967 until January of this year, and in that position was chairman of the subcommittee which wrote the Draft Report of the President's Review Committee on Employee Management Relations in the Federal Service.

I appear before you on behalf of my union, as well as personally, and for the record, would simply associ-

ate my union with the testimony which Mr. Fair has given on behalf of the AFL-CIO, and its affiliated unions. There is no point in my reviewing that testimony or discussing in detail the various alternative recommendations which the commission staff has developed in its report.

But I would like to address myself to the general subject of your deliberations, and to comment on a few of the principal areas of consideration.

First, I think the Commission is to be complimented for having initiated this study and for now seeking to bring your considerable prestige to bear on the effort to have states and/or localities adopt meaningful labor relations systems. Obviously your success and the success to be achieved in the implementation of your recommendations will be in direct relationship to the relevancy and sagacity of the alternatives you choose in the multiple choice test the commission staff has set out for you in the draft Chapter Five. A set of meaningful recommendations can make this report an important contribution to the development of effective labor relations procedures in public employment.

Early in the chapter the author points out that 29 states have sanctioned by law, court decision, or executive order, the right of state and local employees to organize. Eleven states, according to the author, have enacted comprehensive labor relations legislation during the past decade, which mandate collective bargaining for state employees, local personnel or both. Some further totaling up of these statistics is contained in that same section, and earlier in Chapter Three. Those figures are really more impressive than is the substance of the legislation, and one sometimes gets the impression that the states are moving along well in this program. I don't think that's true. I think the pace has been much too slow. I think the laws passed are, in many cases, inadequate and I am frankly pessimistic about state action. The states have failed to act and we must either find ways to encourage them to act or the focus will surely shift to the federal level and to an effort to achieve federal legislation guaranteeing the rights of these employees.

A large number of the state laws which are cited are specialized statutes and relate only to firemen, teachers, or transportation employees. A number of others are simply "meet and confer" statutes or are statutes which exclude from coverage large groups of employees.

If you define a public employee labor relations statute, as I would, then only four of our state statutes pass the test. The criteria I would establish are: 1) full coverage of state and local employees; 2) recognition of their right to collective bargaining; 3) the imposition on the employer of the requirement that he bargain in good faith; 4) detailed procedures for recognition, for the making of unit determinations, holding elections, issuing certifications, handling unfair labor practices, etc.; and 5) either the right to strike or third party dispute settlement procedures.

Against those criteria only four state statutes measure up. Four out of the fifty have statutes which I would regard as deserving of recognition as effective laws. Nine or ten more states could pass this test with one or two amendments of their statutes. That still leaves thirty-seven states whose laws are simply inadequate or nonexistent.

Obviously the criteria I've set out establish only one test of sufficiency and I don't want to be understood to say that the procedures, or the dispute settlement machinery, or the denial of the right to strike, or the strike penalties in some of these statutes make them necessarily good models.

I only want to point out that the states have a very long way to go and there does not appear to be any great reason for feeling encouraged on the basis of their overall past performance.

It is my personal view that we are in very bad shape in this area and when disputes erupt, it is then a bit late in the game to expect orderly resolution of the problem.

In the absence of law:

- There is no defined protection of employees' rights
- There is no machinery to determine the validity of claims of competing organizations
- There are no ground rules for negotiations
- There are no procedures for resolving impasses.

The results can be chaotic.

For my part, I'm for justice, law and order, in every part of American society, not just in some.

If we are to have justice in public employment labor relations we need law. And I would hope that all those who talk about law and order could join in that effort.

One of the essentials of any system of labor relations is a means of attaining finality. Conversation, discussion, debate, bargaining, negotiation, will avail us naught unless there is some method of achieving a fair and final resolution of the issues in dispute.

It seems to me that on this issue, as on no other, the members of this commission are called upon to rise above your normal functions and to attain a degree of objectivity too rarely found in our society. Most of the members of this commission have some administrative or executive function. And that responsibility, that orientation, can easily lead you to conclude that you should recommend against any provision of law which would express or sanction the right of public employees to strike. That is clearly the path of least resistance for all of the members of the commission. It is the most acceptable

option—administratively and politically. I do not believe it is objectively the best and most valid option.

I am certain that in any poll among professional labor relations people—among the broadest group of experts in this field from management, labor, and third parties—there would be a near unanimous conclusion that the recognition of the right to strike is an essential element of the ideal system of labor relations. I ask you, please, not to pass this point lightly. The right to strike is what brings reality to negotiations. It is that right which turns conversation into discussions, and discussions into bargaining, and bargaining into agreements, with which parties can live in harmony for a number of years at a time.

I firmly believe that you should recommend the passage of state laws which will recognize the right of public employees to strike if they are unable to resolve negotiation impasses in any other way. But you have already heard eloquent testimony to that effect.

Let me make the alternative point. If you do not recommend the recognition of that right, you must recommend the development of systems which will insure finality in the bargaining process. Finality is achieved when the right to strike is recognized. In the absence of the recognition of that right, you must recommend a system which will produce finality at the parties' option or at the option of a central authority charged with the ultimate responsibility of insuring that disputes are finally resolved. Otherwise, the system cannot and will not operate, employee dissatisfaction is inevitable, and perpetual negotiations are encouraged.

As I look at the staff paper which is before you, I note that eight pages of the final chapter have been devoted to a discussion of the right to strike—and two pages plus five lines have been devoted to the essential mechanics of how one seeks to settle negotiation impasses. That is the kind of misplaced emphasis which permeates nearly all discussions of public employee collective bargaining, and it is inappropriate for this commission's report.

I would like to say just a few words about union security clauses and about what the staff report euphemistically describes as "Federal Mandating of Local Employment Conditions."

I think it is important that your commission give to the parties in collective bargaining the broadest possible latitude, and that necessarily includes the ability to negotiate whatever type of union security arrangement the parties to the agreement think appropriate.

No part of the public employment labor agreement has been the subject of more rapid change and development than these union security clauses and a report which suggests a static position is going to be meaningless in a very few months.

I might also suggest that there are several other issues or recommendations where this commission might be well-advised to set forth one or two options, given the wide variety of political and administrative conditions which exist in the various states.

I shall not spend a great deal of time on what is called "Federal Mandating of Local Employment Conditions" other than to note that this is obviously an effort to drag into a labor relations document an issue which has no place here or elsewhere. Even giving it such a lofty title as "Federal Mandating of Local Employment Conditions" is poor camouflage. It has no place in this document. The Fair Labor Standards Act amendments of 1966 extended coverage of the Act to employees of state and local hospitals and schools. That assertion of federal jurisdiction, that assertion of federal authority to set minimum standards, has been upheld by the Supreme Court. Those amendments don't "mandate" local employment conditions in the sense in which that phrase is used elsewhere. They simply set a minimum standard of decency and the rights of unions and employers above that minimum are not at all impaired.

Finally, let me express my appreciation to this commission for this opportunity to appear and testify and my appreciation for this effort on your part to bring a greater degree of rationality to a field of human and group relations that is too often fraught with irrationality and inaction.

Thank you.

## STATEMENT OF JOHN R. DOYLE
National President, Assembly
of Governmental Employees
Sacramento, California

(This position statement was approved by the National Board of Directors of The Assembly of Governmental Employees at its meeting on June 8, 1969 in Sacramento, California.) Mr. DOYLE was accompanied by THOMAS C. ENRIGHT, AGE National Past President, and JAMES F. MARSHALL, AGE National Secretary.

### A. ASSEMBLY OF GOVERNMENTAL EMPLOYEES' QUALIFICATIONS

We feel that it is appropriate for the reader of this position paper on the draft of the "Labor Management Relations in the State and Local Public Service" to know something concrete about the Assembly of Governmental Employees, particularly its qualifications to speak for public employees throughout the nation and the characteristics which distinguish it from other public employee organizations.

AGE, the Assembly of Governmental Employees, is a nationwide federation of independent public employee associations which represents public employees at the federal, state and local jurisdiction levels. AGE works cooperatively with independent public employee organizations in Canada and Puerto Rico.

Founded in 1952, AGE has been growing steadily and currently has a membership of over 500,000 public employees, mostly at the state level. However, recent applications under board consideration are from organizations representing federal, county and city groups.

The present membership includes: Alaska, Arizona, California, Colorado, Connecticut, Florida, Idaho, Hawaii, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, North Carolina, Montana, Nevada, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oregon, Rhode Island, Texas, Utah, Vermont, Washington and Wyoming.

The purposes of AGE are to:

- Extend and uphold civil service merit system in government;
- Promote and maintain efficiency in public service;
- Advance the prestige, public image and interests of public employees;
- Encourage highest standard of public employee conduct in government;
- Enable nationwide unity on issues of vital interest to public employees;
- Enable exchange of information of mutual concern to member groups;
- Undertake research projects to support member group programs;
- Enable nationwide competition with international unions who raid organized independent public employee groups.

Organizationally, AGE is headed by five officers and three regional vice presidents who constitute the board of directors. Currently serving on the board are:

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|---|---|
| President | John R. Doyle, Executive Secretary, Michigan State Employees Association |
| Past President | Thomas C. Enright, Executive Secty., Oregon State Employees Association |
| Vice President | Dr. Theodore L. Lauer, Past President, California State Employees' Assn. |
| Secretary | James F. Marshall, Executive Secty., Ohio Civil Service Employees' Assn. |
| Treasurer | Harry J. McCullough, First Vice President, Maryland Classified Employees Association |
| Vice President Eastern AGE | John B. Parker, President, New Hampshire State Employees Association |
| Vice President Central AGE | Raphael Horwitz, Past President, Ohio Civil Service Employees Assn. |
| Vice President Western AGE | Robert J. Gagnier, General Manager, Washington State Employees Assn. |
| Executive Director | S. G. Hanson, Consultant to California State Employees' Assn. |

Board meetings of AGE are held throughout the United States. Annual sessions are usually held at the same location of the international annual conference of the Public Personnel Association on or about the same date. Such arrangements permit coverage of both organizational sessions.

AGE has established a national headquarters in Sacramento, California. The staff is headed by S. G. Hanson, Executive Director, who also serves as a consultant for the California State Employees' Association. Plans are under consideration for the establishment of a liaison office in Washington, D.C., needed to coordinate state and local matters at the federal level.

AGE, through its headquarters, provides technical and professional services to its affiliates. It publishes a newsletter periodically, called *CoverAGE*, and issues technical reports on all subjects relating to working conditions of public employees.

After a review of the organizational structure of an organization, such as AGE, the question usually comes to mind as to what degree this public employee group differs from others—say those affiliated with the American Federation of Labor-Congress of Industrial Organization.

Both the independents and the union affiliated groups strive to represent public employees on all matters relating to employee conditions. The techniques used in such representation are quite similar and include, where appropriate, action by administrative means, action through boards and commissions, court review, collective negotiation or bargaining, legislative enactments and action through the initiative of referendum.

Yet there are distinct differences and these differences stem from basic philosophies and historical practices. The more obvious differences are these:

1. *Merit System*–The independent associations are extremely strong advocates of the merit system principle. They believe that the selection and promotion of public employees should be based upon demonstrated merit as determined by competitive examination. In this way, the public through the merit system furnishes the manpower to government. In most jurisdictions, the merit system or civil service has been established and is being maintained through the efforts of the independent associations.

Employee organizations affiliated with international unions tend to give "lip service" to civil service. On the one hand, they call for the preservation of the merit principle while on the other they espouse the philosophy of the unions' furnishing the labor force to government through the hiring hall. Their philosophy is diametrically opposed to the essence of the merit system.

2. *Control of Policy*–The internal policies which guide the independent public employee organizations are conceived and executed at the local jurisdictional level. They brook little or no interference from authorities outside their jurisdiction. On the contrary, the union groups' policies are strongly influenced and even dictated by the international councils located outside of the jurisdiction.

3. *Practice Application*–Since the public unions are closely allied to unions in the private sector, they advocate the application of industrial union practices, without change, to the public scene. The independents, aware of the practical and legal differences between the private and public sectors, believe that programs of industrial origin need to be tailored before applying them to public jurisdictions. Further, the independents feel that government should lead in employee working conditions and consequently they should, through government, develop the patterns of employment conditions separate from industry.

4. *Government By Law*–In the determination of basic conditions of employment the independents continue to support the enactment of laws to provide such benefits. By doing so, the independents subscribe to the concept of government by law. The unions, oriented as they are to the industrial sector, are prone to follow the concept of government by men. In their approach to collective bargaining in public service, they tend to favor a written contract in preference to a statute.

5. *Employee-Management*–In the development of formal employee-employer relations, such as collective negotiation, there is need to distinguish between those who represent public management and those representing the employees. The independents favor a rather broad interpretation of management personnel as those who make or influence governmental policy, who provide direction and who have authority to hire and fire. The union groups attempt to draw a fine line, as in industry, between the supervisor and the employee. Their announced position in this area, which they do not necessarily follow, tends to place semiprofessional, technical and professional personnel under the management category. Further, an employee whose classification title contains the words "supervisor" or "supervising" often is relegated to management status when, in fact, he is not a supervisor within the meaning of a reasonable employee-employer relations program.

6. *Tactics*–In representing public employees the independents rely heavily upon possession of the facts and persistent yet dignified persuasion. They believe that impasses can be resolved through mediation and arbitration and contend that adult sophisticated public management and employees should be able to resolve impasses without the pressure of work stoppage through strikes. Those affiliated with international unions tend to use pressure tactics in the presentation of their requests and generally advocate the threat of strikes at the outset of their presentations or negotiations.

## B. GENERAL REMARKS

The National Board of Directors of AGE have read carefully and pensively the text as well as the recommendations contained in the draft report and are in agreement that the architects of the draft have produced a well rounded, well researched document which presents clearly the various concepts and critical areas involved in the development of employee-employer relations at the state and local level.

The thoroughness of the study leads us to recommend strongly that our affiliates in AGE obtain copies of the Commission's report, when published, for basic reference and concise explanation of the pros and cons of each facet of the broad subject of employee-employer relations.

We would like to suggest that the report could be strengthened by a more elaborate treatment of the merit system principles for the purpose of explaining the need for its continued unabrogated existence and the results to be gained from a true merit system.

In our view, the merit system is a governmental personnel system which has these distinct characteristics:

1) Permanent appointments and promotions to positions of all approved governmental functions are to be made exclusively on the basis of merit, fitness and efficiency as demonstrated by competitive examinations;

2) It provides for placement of the selection and control of the governmental work force under public control, as represented by an impartial board or commission. This is contrasted with the political or private

systems in which manpower control is by patronage, favoritism or the hiring hall.

3) It recognizes citizens' civil rights. This is possible since the merit system provides that any qualified citizen can, through competition, attain a position with his government regardless of creed, race, color, religion, or political affiliation.

4) It establishes control by the public over design and direction of public administration by the elimination of influence by patronage peddlers (spoilsmen), the greedy profit seekers and the power hungry. It should be remembered that the ones who control design determine the destiny of public services.

5) Qualified personnel, selected under the merit system, promote efficiency and economy in government which can be maintained and increased through proper personnel training and administration.

6) The merit system assures the public of stable, efficient and continuous government regardless of the party in power.

7) The system offers a good administrator a properly qualified and experienced work force which can and will produce excellent service. A poor administrator's weaknesses are easily detected by his inability to lead and direct an efficient, qualified staff.

8) The security offered competent employees under a true merit system protects the public from graft, corruption in high and low circles. This is occasioned by the fact that any civil service employee, free from fear of losing his job, can and will reveal publicly the machinations of those who would seek political or private gain at the expense of the taxpayer.

9) A properly administered merit system tends to reduce tension in employee-employer relations. This is attributable to the fact that employees under a strong merit system possess a personal status which, among other things, permits them to speak out for themselves in the development of employment conditions, without fear of reprisal. This desirable condition, however, cannot be maintained if government fails to involve employees or their representatives as equals in decision making on employee benefits which are not restricted by certain recognized constitutional landmarks.

It is our belief that the preservation of a true merit concept, as we have outlined it, is so important in the public scene that its removal from the list of negotiable items should be accepted by ardent advocates of industrial collective bargaining, who understand the inherent corruptness and inefficiencies of the spoils system.

## C. COMMENTS ON THE DRAFT RECOMMENDATIONS

In Section "A" of this position statement, we endeavored to explain the characteristic differences between the Assembly of Governmental Employees and those organizations affiliated with international unions.

In commenting upon the draft recommendations, we wish to underscore the fact that the determination of AGE's national policy is not delegated to the national organization by its affiliates. Policy is determined, in a democratic fashion, by the affiliates at annual session of the General Assembly. Consequently, certain currently approved positions which the National Board of Directors have enunciated in this position statement may not be completely in accord with what the Assembly may say in October 1969.

In these changing times, we are certain that the members of the Commission will understand the possibility of future modification of presently approved positions.

### Employee Rights to Join and be Represented.

The National AGE Board supports the following position:

> . . . *that the States enact legislation requiring local governments and agencies of the State to recognize the right of their employees (a) freely to join or not to join and (b) be represented by an employee organization.*

The selection of the phrase "freely to join or not to join" is to assure individual employees of their right to refrain from affiliation.

### Determining the Terms and Conditions of Public Employment.

The following position is endorsed by the National Board of AGE. It is a modified version of . . . (an alternative included in) . . . the draft:

> . . . *public employee organizations [should] have a right to represent their membership in determining the terms and conditions of employment. Public employers have a corresponding responsibility as a matter of sound personnel policy to give recognition to these organizations . . . . States [should] adopt a selective approach and enact legislation which stipulates (1) those matters relating to the terms and conditions of public employment on which the public employer must meet and confer with employee organizations and those*

*on which public employers must bargain collectively, and (2) those categories of public personnel with whom public employers must meet and confer and those with whom public employers must bargain collectively . . . further . . . exclusive recognition [should] be accorded to organizations representing a majority of the employees in the largest possible bargaining unit.*

AGE believes that there are certain constitutional landmarks and traditional practices which must be respected and cannot easily be subjected to bilateral negotiations. Consequently, it approves the selective approach. The Board of Directors amended . . . (the proposed alternatives) . . . to prevent the current tendency toward unit proliferation. We believe that the concept of one voice for management and one voice for the employees is diluted unreasonably by the proliferation of bargaining units. Further, we believe that a basic law should indicate something more understandable than "an appropriate bargaining unit" if it is to serve as a meaningful guide to those who are to administrate its provisions.

### Prohibiting Strikes by Public Employees.

With certain deletions on the matter of penalties, the AGE Board of Directors supports the following position . . . :

*. . . State labor relations laws [should] prohibit all public employees from engaging in strikes. Such laws should mandate the use of specific procedures (e.g. fact-finding, mediation, arbitration and the like) to resolve impasses in collective bargaining.*

In deleting the reference to penalties, AGE took the position that the assessment of penalties should be left to the courts or to the public relations board, either of which can equitably assess appropriate penalties on the basis of their findings.

### Coverage by Levels of Government.

The Assembly Board of Directors endorses [the] alternative of the draft before the Commission [providing for separate legislation for State and local employees:]

*To meet the unique demands of local and State government . . . separate but comprehensive public labor relations laws [should] be enacted by the States to cover State and local employees.*

Although students of government argue rather convincingly that the enactment of a single law is preferable, the experience of AGE affiliates leads them to support a position which is least disruptive of current structures within government. Too frequently, the enactment of overall legislation is followed by extensive litigation occasioned by the fact that the lawmakers failed to cover all the ramifications of former provisions in the law.

### Legislation for Special Occupational Categories.

The AGE Board of Directors endorse(s) . . . the alternative . . . which reads as follows:

*. . . State labor relations legislation [should] deal with all occupational categories of employees.*

The Board of Directors has not seen evidence sufficiently convincing for it to support a separate set of ground rules for special occupational categories of public employees. Whatever accommodations, if any, necessary for a special group can be made within the basic employee-employer relations plan. Further, separate treatment would cause proliferation, which is undesirable.

### The Rights of Supervisory Personnel

On the subject of the rights of supervisory personnel, the AGE Board has found that neither . . . (of the proposed alternatives) . . reflects the attitude of the AGE affiliates.

As the result of its deliberations, the Board passed the following motion:

*That AGE support the right of supervisory personnel to belong and participate in an organization of their own choice and, further, that the exclusion of management personnel from a bargaining unit be a negotiable issue.*

AGE believes that essentially the reason for exclusion revolves around the need for proper representation, devoid of interest conflict, on both sides of the negotiating or bargaining table. If it is believed by management that a designated negotiator for the employees would limit the effectiveness of management at the table, management should be permitted to challenge the inclusion of such a person on the employee bargaining team. In other words, the inclusion of employee representation should be negotiated.

### Statutory Designation of Negotiable and Nonnegotiable Terms and Conditions of Public Employment.

The AGE Board of Directors proposed that . . . (two of the three alternatives) . . . be combined.

*To ensure flexibility in negotiations between public employee organizations and management . . . the States [should] refrain from enacting provisions in their public labor-management laws which specify on a statewide basis those items dealing with terms and conditions of employment which may be negotiable or nonnegotiable. To resolve cases of conflict between provisions of collective agreements and existing merit system rules and regulations . . . State labor relations laws [should] stipulate that such rules and regulations shall prevail.*

As indicated in . . . (the second sentence) . . . of this position statement, AGE strongly advocates the preservation of the merit system. This position is tantamount to its removal from negotiable items. However, AGE does not feel that items should be specifically noted in the state law since diverse responsibilities of local personnel commissions and boards appear to require reasonable flexibility, not attainable by a single standard.

### Type and Structure of the State Administrative Agency.

The Board of Directors of AGE endorse(s) (. . . the following . . .:)

*. . . State policy relating to management-employee relations in the public sector will have little significance unless appropriate machinery is established to resolve recognition and representation disputes, to ensure adherence to the law by all parties, and to provide the means of settling controversy arising out of negotiation impasses. In order to further these objectives . . . States in their public labor relations laws [should]:*

*(1) establish the administrative unit responsible for public labor-management relations as an independent quasi-judicial agency;*

*(2) separate functionally and in terms of personnel the administrative, regulatory, and enforcement responsibilities from mediation and fact-finding activities;*

*(3) vest administrative authority in an agency established to handle only public labor-management relations.*

. . . (Other options) . . . relating to the composition of the State Administrative Agency, strike at the practice of states on appointments to exempt positions which vary considerably from state to state. Among AGE affiliates there does not appear to be a consensus in support of either approach. Realistically, each state will have to determine board or agency composition on the basis of its orientation and accepted tradition.

### Flexible Statutory Requirements.

On the matter of settlement of disputes the Board of Directors of AGE approves the following:

*To resolve impasses in negotiations from disputes over terms and conditions of public employment . . . the States [should]: (a) permit employers and employee organizations to develop by mutual agreement procedures to be followed in the event of future dispute over employment conditions; and (b) enact dispute settlement provisions in the State law to be applied where the parties cannot agree on procedures or where jurisdictions choose not to develop their own procedures. Such provisions should include an arsenal of devices such as fact finding, mediation, and arbitration, and would authorize State assumption of full or substantial fiscal responsibility for their cost.*

### Need for Substantive and Procedural Unfair Practice Provisions.

The AGE Board of Directors endorses the following position statement on unfair practices:

*. . . unfair practices are of major importance in protecting the rights of employees, employee organizations, and employing agencies and should, therefore, be defined statutorily rather than left to administrative discretion . . . . State labor relations laws should enumerate explicitly the rights and obligations of public employees, employee organizations and employing agencies.*

*. . . the State law [should also] provide for processing unfair employee-employer labor charges, including specific provisions authorizing the administrative agency to (a) issue subpoenas, hear evidence of unfair practices, make appropriate findings, and issue orders, and (b) investigate and prosecute such charges.*

Page 5-62 of the Commission's draft lists a number of types of possible unfair practices. Many of these are desirable, but some are questionable. There are others which might be included, such as a party's failure to comply with the terms of an arbitration or other agreement. The matter of which practices should be included might well be left to the states without recommendation.

### Dues Checkoff.

The Board of Directors of AGE supports the following on dues deductions:

*. . . public employers have a basic responsibility to facilitate employee membership in unions and associations. Therefore . . . State labor relations laws should require public employers, on the voluntary written authorization of the employee, to regularly withhold organizational dues from the employee's wages and to transmit such funds to the designated union or association, subject to such reasonable limitations as may be necessitated by the capability of the employing agency's payroll and accounting system.*

### Inclusion of Union Security Provisions in Agreements.

The AGE Board of Directors endorses the following:

*. . . State public labor relations laws should be silent regarding union security provisions in collective agreements.*

It should be noted that AGE's position on the furnishing of the working force through the merit system places it in a strong position against the possible use of "hiring hall" practices which would require recognition of the "closed shop."

### Employee Protection.

It is the view of the AGE Board of Directors that the following provision should be included in an employee-employer relations plan for the protection of the members:

*. . . the public interest and the preservation of public employee rights dictate that public employee organizations should adhere to certain basic rules and practices designed to assure internal union and associational democracy. Therefore, State labor relations laws [should] bar recognition to any public employee organization whose governing requirements fail to provide for a "bill of rights" to protect members in their relations with the organization, standards and safeguards for periodic elections, regulations of trusteeships and fiduciary responsibilities of organizational officers, and maintenance of accounting and fiscal controls and regular financial reports. Such reports should be filed with an appropriate agency of the State, and made public upon receipt.*

### Exchange of Public Personnel Data.

The AGE Board of Directors endorses the following:

*. . . State labor relations laws [should] establish procedures to assure the exchange of relevant public personnel data between and among employing agencies and employee organizations . . . . States and localities [should] take steps to facilitate the gathering of such data on a metropolitan, regional and Statewide basis.*

Full disclosure of all facets of matters, subject to negotiation, is necessary to meet the spirit of good faith negotiating.

### Regional Cooperation.

AGE is not prepared to take a position on the establishment of regional machinery for collective bargaining or consultations.

### State Role in Mandatory Personnel Requirements on Local Government Employees.

The AGE Board of Directors finds that its affiliates are opposed to both . . . (proposed alternative recommendations) . . . because of the infinite variety of possible approaches to a statutory provision on the matter of state mandating.

### Federal Mandating.

The AGE Board of Directors endorses the following position on Fair Labor Standards:

*. . . the 1966 amendments to the Fair Labor Standards Act which extended its coverage to include hospitals, schools, institutions of higher education, and special training and rehabilitative institutions and removed the exclusion of States and their political subdivisions as employers should not be repealed.*

## STATEMENT OF CLINTON M. FAIR
**Legislative Representative, AFL-CIO**
**Washington, D.C.**

Mr. Chairman: My name is Clinton Fair. I'm a Legislative Representative of the American Federation of Labor and the Congress of Industrial Organizations.

With me is Mr. Kenneth A. Meiklejohn, Legislative Representative of the AFL-CIO. Also appearing will be Mr. Tom Donahue of the Service Employees International Union, AFL-CIO and Mr. Don Wasserman of

the American Federation of State, County and Municipal Employees, AFL-CIO.

We thank the Commission for this opportunity to comment on your staff's proposals on "Labor-Management Relations in the State and Local Public Service."

The first sentence of the staff's suggested Introduction to its paper, Chapter 1, page 1, states:

"The public service, especially at the State and local levels, is in a period of major upheaval." We would only comment by saying that in the area of labor-management relations in the State and local public service that the observation by the staff ranks if not first a close second for the understatement of the year. Our observation that the efforts to organize hospital workers in Charleston, South Carolina, and the State Road Commission employees in West Virginia clearly indicates that on the part of some public employers the cup runneth over with emotional antagonism to union representation of its employees.

We would observe at the outset that the Advisory Commission on Intergovernmental Relations has selected the most emotional laden topic in the area of state and local relations. And even if we could strip the subject of labor-management relations in the State and local public service of its emotionally charged character, the solutions are complex and not easily distinguished as black and white.

We are witnessing at the State level many various procedures to resolve the "major upheavals" arising in public employment. We reject many of these procedures because we are convinced they are weighted against what we believe to be the right of the public employee to engage in concerted effort in the determination of his wages, hours and conditions of employment.

On the other side of the coin, we praise some procedures already in the statutes of some states. We believe that in the end they will prove valid in bringing about peaceful settlement of disagreements between the employer and the employee.

While we would urge your Commission to encourage the States through recommendations to improve public-employer-employee relations by enacting a public labor-management relations act, we would also urge that certain absolutes in the staff wording of recommendations may result in legislation that may polarize the parties to a dispute rather than suggesting options which provide the flexibility necessary to successful labor-management relations.

With the Commission's permission we will comment on the recommendations of the staff in the order in which they appear in the report before you.

### Employee Rights to Join and be Represented.

We urge that the Commission recommend that the States enact legislation *requiring* local governments and agencies of the states to recognize the right of their employees to join and be represented by a labor organization.

A basic and a most frequent cause for much of the tension between labor organizations and governmental agencies exists because neither the employer nor the employee knows exactly where he stands with regard to his rights in labor-management relations.

Use of the word, "permitting" will continue the aggravation presently existing in public employer-employee relations. In many jurisdictions statutory authority for public agencies to recognize the right of their employees to join and be represented by an employee organization is not now necessary. If we are to eliminate substantially one of the causes of aggravation, it is necessary to eliminate the alternatives insofar as possible.

The Commission should note that we would strike the words "freely" and "or not to join" from [this proposed] Recommendation .... The word "freely" opens up an area of interpretive aggravation. Where the employer and the employee agree that within a particular unit membership shall be required of all employees of the unit the public employee and the public employer should not then be denied the right to make such agreement by statute.

We urge rejection of the alternative "not be represented" for similar reasons, but if retained it should not deny employers and employees to contractually agree to the extent of representation.

### Role of Employee Organizations in Determining the Terms and Conditions of Public Employment.

The staff of your Commission has ... (suggested) ... three alternatives concerning the role of employee organizations in determining the terms and conditions of public employment. We recommend ... selection of [the] Alternative ... (which supports collective bargaining).

The AFL-CIO further urges that the Commission recommend that the states enact legislation requiring public employers to accept the procedure of collective bargaining with employee unions and other organizations. We further recommend that exclusive recognition be accorded to organizations representing a majority of the employees in appropriate bargaining units. We would point out that where

permission to bargain collectively is an elective procedure irritation and disruption of collective bargaining are common between public employees and their employers. If the purpose of the legislation is to effectuate reasonable and peaceable negotiations between the public employer and employee those areas which offer no solution to the basic problems of wages, hours and conditions of employment, ought to be affirmatively eliminated.

### Prohibiting Strikes by Public Employees

We urge the Commission to accept none of the recommended alternatives with the exception of law-enforcement officers. Every strike is a serious matter—to the employer, to the employee and to the third persons affected thereby. By their very nature they are costly. However, they have occurred and there is no reason to believe, regardless of whether or not they are prohibited by statute, that they will not continue to occur in a free society. A strike is one of the tools which will be employed when all other procedures for the solution of labor-management dispute fail.

In this connection, the Commission may well bear in mind that neither the unions nor the public employer are unconscious of their obligations to the public at large. In the long history of public employer and employee relations only in the rarest instance has the public been seriously hit by a strike. If the Commission should remain silent in its recommendation with regard to public employee strikes, it would in effect be creating a "no man's land" that will be interpreted in various ways in the various different jurisdictions.

This is not to say that public employee strikes should not be declared illegal and subject to injunction when they have violated specific procedures which may be written into a statute to resolve an impasse in collective bargaining prior to striking. It appears to us that a strong statute will provide various steps such as proper serving of notice at the time of expiration of an agreement, mediation, fact-finding, binding voluntary arbitration, etc., before a strike is legally permitted.

Although the staff has recommended only three alternatives, a quick review of their suggestions makes clear that any number of variations could be included within a specific alternative. Without attempting to comment on any of these variations we would urge the Commission to avoid recommendations which will be violated, but which in the end no punishment will follow. It seems to us wrong and self-defeating for statutes to take positions which, in the final analysis, the community will not enforce.

### Coverage by Levels of Government.

We urge that the Commission recommend that states enact public labor relations laws with a single administrative structure which covers public employees in all categories and at all levels. Notwithstanding the rationale of the staff with regard to Alternative B we think that for most of the States a single administrative structure will be more sound economically and more adequate structurally to handle labor management relations. We fail to see that the differences, which obviously exist between the structure of a state and the structure of local governments, need to be reflected in a multiple administrative structure. The problems of labor-management relations in all categories and at all levels are sufficiently similar, so that a single administrative structure will be adequate to administer the law.

### Legislation for Special Occupational Categories.

We are aware that in many states distinctive legislative treatment has been accorded to such groups as teachers, firemen, policemen, nurses, etc. With the exception of where there are existing contracts we urge the Commission to recommend that state labor relations legislation deal with all occupational categories of employees in the same manner. Each year hundreds of special bills fill the hoppers of our state legislatures. Too often the legislators have but a limited opportunity to acquaint themselves with the complexities of the various types and patterns of treatment accorded different groups of public employees. We believe it is to the benefit of the legislature and of the public employer, as well as the public employee, that all occupational categories be treated in the same manner.

### The Rights of Supervisory Personnel.

We urge the Commission to adopt Alternative B [which deals with limited participation of supervisory personnel]. We believe that the Commission's recommendation will be more wisely framed if it leaves to each state the opportunity to establish flexibility within its statute regarding the supervisory personnel. Experience indicates that certain public employee organizations deny supervisory personnel within the membership of the negotiating

unit, other organizations permit supervisory personnel to remain members of the bargaining unit provided that they do not have a voice in negotiations. We therefore support a program of limited participation of supervisory personnel, limited to the extent that the statute permit the administrative agency flexibility in their actions so that the "shoe fits the person" whom it is intended shall wear it.

### Statutory Designation of Negotiable and Nonnegotiable Terms and Conditions of Public Employment

We urge that the Commission recommend Alternative A. Without belaboring the Commission with an intricate discussion concerning civil service and much special legislation on the statute books, we believe that the overall recommendation should encourage the states to refrain from enacting specific provisions dealing with specific items concerning terms and conditions of employment. We believe that more peaceable negotiations will come if the areas of negotiable and nonnegotiable subjects are left to the discretion of the administrators of state labor management acts.

### Type and Structure of the State Administrative Agency

. . . We recommend . . . that an administrative unit be established responsible for public labor management relations as an independent quasi-judicial agency. We support the recommendation that the statute operate functionally, namely, in terms of personnel for administrative, regulatory, and enforcement responsibilities separate from mediation and fact finding activities. We think it is quite clear that the duties of the prosecutor and the judge are incompatible when they reside in the same person. Clearly, . . . (administrative), . . . regulatory and enforcement personnel will be unacceptable to the parties in mediation and fact finding proceedings. We urge the Commission to recommend that the administrative authority over the statute be vested in a single agency established to handle public labor-management relations only.

Lastly, we recommend that the chairman and the members of the board who are charged with the responsibility of administering the public labor-management relations act be appointed by the Governor. And we would add with the advice and consent of the Senate. We would also point out that it has often worked well where the members of the board were not all of the same political party. Moreover, it has been our observation that decisions in labor relations matters are more consistent when the members serve overlapping terms. We see no need for the establishment of an advisory committee within the framework of our recommendations since the membership on the labor-management relations agency is to be appointed by the Governor with the advice and consent of the Senate. We believe the establishment of a permanent advisory committee could under certain circumstances impair rather than assist the solution of aggravated employee-employer relations. It is our opinion that either the legislature in its oversight function or the Governor in his broad executive authority could at any time establish an ad hoc advisory committee to make recommendations for the improvement of the functions of the labor-management relations act.

### Flexible Statutory Requirements.

One of the difficulties and cause of much dispute is the refusal of the public employer to negotiate. Therefore, we have no argument against . . . (permitting employers and employee organizations to agree to procedures to be followed in the event of future disputes) . . . and think that though it is well that it be put into the law, we are not too optimistic as to its wide use.

With regard to . . . (instances where the parties cannot agree) . . . we believe that in the arsenal of devices the word "arbitration" should be modified by two words, namely, "voluntary binding" so that the sentence would read: ". . . fact finding, mediation, and voluntary binding arbitration . . . ." We further recommend that if solutions to public employer-employee disputes are to be attained, peaceably and amicably, the statute should require that voluntary binding arbitration shall be provided as one of the weapons of the arsenal.

### Need for Substantive and Procedural Unfair Practice Provisions.

Mr. Chairman, we suggest that in the first sentence of the recommendation the word "unfair" should be stricken and the words: "a provision or provisions prohibiting unfair labor" should be inserted in lieu thereof. We believe this is the intent of the recommendation. We would further draw to the attention of the Commission that a dispute, even a jurisdictional dispute, is not an unfair labor practice. Behavior of any certain kind may certainly

be an unfair labor practice, but the fact of a dispute is in itself not an unfair labor practice.

We concur that there should be provision in your recommendations prohibiting unfair labor practices; however, we would respectfully advise that any lists of such practices and their wording should be most carefully selected. We certainly agree that the administrative agency should have adequate authority to carry out the mandate of the legislation.

### Dues Check Off.

We recommend that State labor relations laws should permit public employers, on the written authorization of the employee, to withhold organizational dues from the employee's wages or salary. We would hasten to add that the matter of "check-off" should be included within the terms and conditions of employment and should, therefore, be a negotiable item. We emphasize that where an employee organization has exclusive bargaining rights because it represents a majority of employees in an appropriate bargaining unit, that organization alone should have the exclusive right of dues checkoff.

### Inclusion of Union Security Provisions in Agreements.

We recommend to the Commission that State public employer-employee labor relations laws should permit union security provisions in collective agreements. We believe, however, that in public employment no public employer should justify any discrimination against an employee for non-membership in a labor organization if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other employees, or if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership.

### Employee Protection.

We concur that the public interest and the rights of citizen public employees merit protection with "eternal vigilance." Certainly, no one can quarrel that the Bill of Rights inherent and specific in our system of government should be identical with citizens as members in their relation to their union organization. We would point out to the Commission that periodic elections, regulations of trusteeships, fiduciary responsibility of officers, and fiscal controls with regular financial reporting are now required by federal law.

We would have two quarrels however, with duplicating the reports to an appropriate agency of the state. Our first quarrel would be that it places an undue hardship to file separate reports, though identical in nature, to the federal and state agencies. Secondly, if the state is to exercise this function, which we think is unnecessary, the agency, to be effective, must be well manned. This, we think, most states will find a costly operation. Our affiliates advise us that at present they are filing such reports and living within the regulations of the federal government.

### Exchange of Public Personnel Data.

We concur with the staff in this recommendation [that State laws assure exchange of relevant personnel data between employing agencies and employee organizations] and with the arguments in its support.

### Regional Cooperation.

The AFL-CIO concurs in the recommendation that local governments and public employee organizations, with the cooperation of the state, should certainly experiment in appropriate arrangements for collective bargaining and consultations on a regional basis. We do not interpret the recommendation by the staff to mean that either consultations or collective bargaining are mutually exclusive. We think the state could well arrange for consultations in one area on a regional basis and collective bargaining in another area on a regional basis.

### State Role in Mandating Personnel Requirements on Local Government Employees.

Alternative A calls for the repeal of *all* state statutory and administrative provisions which mandate the terms and conditions of local public employment, with the exception of professional qualifications and licensing requirements.

Sometimes, it is more feasible for children to crawl before they learn to walk.

If states were to follow the absolute in this

recommendation, local service could be badly mauled in many municipalities.

The recommendation assumes that public employees in the thousands of units of local government are collectively prepared to fend for themselves. It just isn't so.

The one-room school in a state where a minimum wage and a professional requirement are tied together is a case in point. Untie the wage and the state, under rural political pressure, will quickly relax the professional qualification. We urge the rejection of this recommendation.

Alternative B is preferable to Alternative A.

We are, however, of the opinion that the "Commission urges the States to adopt a policy of keeping to a minimum the mandating of terms and conditions of local public employment which are most properly subject to bargaining between employees and employers" suffices as a recommendation.

For States to break down all standards of public employment at the local level is wrong on two premises:

1. The recommendation assumes that the state has no interest in the health and welfare of its citizens if they choose public employment; and

2. The recommendation assumes that minimum standards preclude collective bargaining.

If such nonsense were carried over into the private sector it would mean that the state should repeal, for example, all occupational health and safety legislation. We reject the thesis that state legislation is bad or precludes collective bargaining if it fixes minimum standards for the health and safety of persons employed in the public sector at the local level.

We urge the Commission to adopt a flexible and viable recommendation....

## Federal Mandating.

Finally, we strongly urge the Commission to eliminate any recommendation on the subject of extension of the coverage of the Fair Labor Standards Act to State and local government employees. In light of the decision of the United States Supreme Court in *Maryland v. Wirtz* this recommendation represents an intrusion on an appropriate sphere of concern which the Constitution reserves to the Federal Government, namely, the regulation of commerce among the States, and which the Congress has determined is an appropriate sphere for Congressional action.

When this recommendation was discussed with representatives of various agencies and organizations whom the staff of the Commission called in for advice and criticism, the Commission should know that it was the *unanimous* recommendation of all those present, with the apparent exception of the Commission staff, that this recommendation has no place in the present document. We protest most strongly the type of pretense of consultation with interested parties which the handling of this question represents.

We are not aware that the provisions of the Fair Labor Standards Amendments of 1966 extending the coverage of the minimum wage and maximum hours provisions, with certain exceptions, to public as well as privately employed employees, have caused any problems for the various states and localities. While the States undertook, as was their right, to question the constitutionality of the Federal enactment, they have today largely accepted the law as passed by Congress in 1966. There is no reason for this Commission to take the retrogressive step that the proposed Commission recommendation would represent.

The Fair Labor Standards Act does not mandate wages or hours for any employees. It merely establishes a floor under wages and a ceiling over hours as a basic minimum framework within which wages and hours can be negotiated between employees and their employers. It represents governmental policy in a field which the courts since 1940 have held to be clearly within the appropriate sphere of Congressional regulation.

Finally, of course, the recommendation does not call for any action by State or local governments to do anything with respect to their employees' wages, working conditions, or collective bargaining rights. Instead, it calls upon them to engage in a lobbying campaign to upset an existing Federal statute designed simply to protect the "minimum standard of living necessary for health, efficiency, and general well-being of workers." We are quite unable to see that this standard is any less relevant to employees in the public sector than it is to those who are employed in private sector.

We thank the Commission for this opportunity to comment on the staff recommendations and for the generous allocation of time to the AFL-CIO and its affiliates.

We recognize from experience the complexity of your task. We cannot, of course, say what position we will take on your recommendation to the States. If, however, your commission should desire to continue to study alternatives in this area, we will certainly cooperate with you and your staff in

every way possible to the end that both a fair and peaceable solution to these problems may be found.

Thank you.

## STATEMENT OF DR. SAMUEL LAMBERT
Executive Director, National Education Association
Washington, D.C.

We assume that the National Education Association ("NEA") was invited to appear here today on the ground that our experience has provided us with a certain degree of expertise in regard to those matters which are of concern to the Commission. In order to remain within the spirit of that invitation, it is necessary that we limit our remarks to the problems involved in attempting to develop legislation to regulate the employment relationship between public school teachers and their employing boards of education. We believe, however, that with appropriate modifications the comments made would be applicable in most cases to other categories of public employees as well.

...(In)...the [draft] report, it is stated that "The Commission's study focuses mainly on the responsibilities of state and local governments for labor-management relations in their vast portion of the public sector. The Federal role, with but a few exceptions, is not explored." Although the latter reference is primarily to the *last* of the recommendations set forth...(dealing with)..."Federal Mandating," we propose to *begin* our statement with a discussion of this point.

Notwithstanding the fact that the NEA and its affiliates are actively engaged at the present time in attempting to secure the enactment of state negotiation statutes, we believe that the most feasible solution to the problems that exist in this area is through the vehicle of Federal intervention. Admittedly some states have provided fairly adequate procedures for regulating teacher–school board relations, but many have refused to grant teachers even the basic rights other employees in the country have enjoyed for years. Moreover, the structure of the statutes that have been enacted differs markedly, reflecting organizational philosophies, interorganizational rivalries, employer pressures, and political realities. The result is an almost chaotic diversity among various parts of the country which argues strongly for a uniform system of Federal regulation. Accordingly, the NEA has developed a Federal negotiation statute for public school teachers. This statute, which has been introduced into the Senate by Senator Lee Metcalf [1] and which will shortly be introduced into the House of Representatives, is discussed...(in the draft)...report.

The position of the NEA in regard to most of the [alternative] recommendations set forth in..., the report is reflected in the proposed Federal negotiation statute, and we would urge the adoption of the same substantive principles in any negotiation legislation that is enacted at the State level. It is obviously not possible within the confines of this presentation to consider each of these principles in detail or to explore fully all of the subsidiary points which are relevant to them. We would like, therefore, to focus upon certain fundamental considerations which we believe largely will determine the effectiveness of any system of teacher-school board negotiation, whether conducted pursuant to Federal or state mandate. Relating these considerations to...the report, we will be addressing ourselves in general terms to [alternative] recommendations...(dealing with the strike, legislation for special occupational categories, the rights of supervisory personnel, statutory definition of negotiable and non-negotiable terms and conditions of public employment, type and structure of state administrative agency and flexible statutory requirements)...although not in the stated order.

Before considering the above matters, several preliminary comments are necessary. First, we do not propose to spend time debating the reasons why teachers should be guaranteed legislatively the right to form, join and participate in the activities of employee organizations of their own choosing or the importance of establishing orderly statutory procedures for regulating the employment relationship between teachers and boards of education. The evidence on these points is overwhelming and is as well known to you as it is to us.

In addition, we shall assume for present purposes that the statute will *require* a school board to deal with the teachers' organizational representative as distinguished from "permissive" legislation which merely authorizes a school board to engage in negotiation if it chooses to do so. We consider the latter to be a process of voluntary agreement similar to the non-statutory methods which have been used in the past on an *ad hoc* school district by school district basis.

Finally, as the report points out...the NEA does not utilize the phrase "collective bargaining,"

[1] S. 1951, 91st Cong., 1st Sess. (1969).



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but prefers the designation "professional negotiation." Since there may be some confusion as to the significance of this difference in terminology, it is important at the outset to define rather precisely what we mean by professional negotiation. Traditionally, most school boards have listened to the presentations and proposals of teacher organizations and some even have been willing systematically to meet with such organizations and discuss possible changes in salaries, fringe benefits, and personnel policies. Professional negotiation means something quite different. It contemplates the same kind of give-and-take, exchange of proposals and counter-proposals, and action by mutual agreement that characterize the marketplace. As a practical matter, it means the substitution of bilateralism for unilateralism in the making of many school managerial decisions and incorporation of such decisions in a written document which is binding upon both parties. In short, we see negotiation as representing a substantial departure from the usual way of doing business in public education.

It is generally accepted that there are basic economic and political differences between public and private employment, and public employees therefore should not simply be brought under the coverage of legislation designed to regulate bargaining in the private sector. They should be covered rather by a separate statute which takes cognizance of and is structured to deal with the many unique aspects of public employment. We believe that a case can also be made for the separate statutory treatment of teachers. This case rests upon the proposition that teachers, by reason of their education and traditions, have an interest not necessarily shared by other public employees in the quality of the service provided by the enterprise of which they are a part. This distinction, which has meaning for various aspects of the negotiation process, is obscured when teachers and other public employees are treated as equivalents legislatively.

It should also be recognized that legislation of this type, which imposes mutual rights and obligations, does not readily lend itself to self-implementation, and attempts by teachers to function under negotiation statutes have been met, on occasion, with resistance and repressive tactics. While court enforcement is an available avenue of redress, it is often an expensive and time-consuming process, and most commentators would agree that some specific agency should be responsible for administering and enforcing the legislation. They do not agree, however, on whether this responsibility should be vested in some existing agency, such as the department of education, or whether a special agency should be established.

We favor the latter approach. The establishment of a special agency tends to enhance the prestige of its members, thereby increasing their effectiveness. In addition, such an agency can more readily develop the expertise which is necessary in order to properly handle many of the problems that are peculiar to public employee relations.

To this point, we have dealt with the basic statutory approach which in our opinion should be taken. Let us turn now to certain specific aspects of the employer-employee relationship.

## Structure of the Negotiating Unit.

Although other factors would also be relevant, the crucial element in the determination of the appropriate negotiating unit should be the community of interest among the employees affected by the negotiation. Community of interest is not the same thing as identity of interest, which is virtually impossible to achieve in any collective arrangement of employees. All groups of employees have some conflicts, and the question is whether there is sufficient commonality so that these conflicts can be resolved internally or whether they are so divisive that the group cannot function as a single cohesive unit vis-a-vis the representatives of management. The statute should recognize that this is a question which defies uniform prescription and, wherever possible, should allow for local option in regard to unit determination. If a dispute exists, a judgment should be made by the administering agency upon the basis of the particular factual situation.

There is little dispute regarding the use of community of interest as the keystone factor in determining whether to include guidance counselors, librarians, psychologists, social workers and other so-called "peripheral" or "satellite" personnel in a classroom teacher unit. A different situation prevails, however, in regard to whether supervisors—that is, personnel who have the power to hire, fire, transfer, suspend, promote, discipline, and the like, or to effectively recommend such action—should be included in a negotiating unit consisting of employees whom they supervise. Analytically, two categories of supervisors may be distinguished—they are (1) the superintendent of schools and his immediate assistants, and (2) first-line supervisors, such as principals, vice-principals, department heads, etc.

The statutory posture of the first category may be disposed of summarily. The superintendent and

assistant superintendents invariably function as the representatives of management in the day-to-day operation of the schools and, therefore, should be statutorily excluded. First-line supervisors, however, present a considerably more vexing problem.

The doctrinaire answer of the American Federation of Teachers is that first-line supervisors should always be excluded and, if the statute gives such persons the right to participate in negotiation at all, it should require that they form their own negotiating unit. This answer is based upon the theory of class consciousness—that supervisors are, by hypothesis, in conflict with the rank-and-file employees whom they supervise. The doctrinaire answer of some of our affiliates, on the other hand, is that first-line supervisors should always be included with nonsupervisory employees in a single negotiating unit. This answer is predicated upon the assumption that supervisors and rank-and-file employees are invariably bound together by the so-called "unity of the profession."

Neither group is on defensible ground when it seeks to have its position categorically incorporated into a statute. In point of fact, both all-inclusive negotiating units and units excluding supervisors have functioned to the satisfaction of management, first-line supervision, and rank-and-file teachers in different school districts. What counts is factual reality, not theory or assumption. What has been the local practice in teacher–school board relations? Along what lines have local teacher organizations been structured? How much conflict in fact exists between supervisors and those whom they supervise over those matters which are pertinent to the negotiation process? In short, the statute should not close the door on any arrangement which might be effective and mutually acceptable, and should provide for the application of the same pragmatic community of interest test.

## Type of Recognition.

It seems to us clear beyond serious argument that the majority organization should have the exclusive right to negotiate on behalf of all employees in the negotiating unit. The Committee on Public Employee Relations established by New York's Governor Rockefeller to recommend appropriate legislation advanced several persuasive arguments:

> We find a number of advantages in the use of the principle of recognizing a majority organization as exclusive representative for all employees in the unit. There are advantages in the elimination of the possibility that the executives of an agency will play one group of employees or one employee organization off against another. There are advantages in the elimination, for a period, of interorganizational rivalries. There are advantages in discouraging the "splitting off" of functional groups in the employee organization in order to "go it on their own." There are advantages in simplifying and systematizing the administration of employee and personnel relations. There are advantages in an organization's ability to serve all the employees in the unit. [2]

Although the exclusivity principle is sometimes resisted on the ground that it is undemocratic in a public enterprise, this is a canard. In the political arena, for example, the senator, congressman, or other official selected by the majority represents all members of the particular voting district. While minority groups retain certain rights (e.g., to protest, criticize, and campaign for replacement of the majority), there is only one representative from each district. Similarly, there should be only one representative for each negotiating unit.

## Scope of Negotiation.

As far as the statutory definition of the subject matter in respect to which the parties should be required to negotiate is concerned, many school boards would limit the obligation to negotiate to salaries and other economic aspects of employment. Attempts have been made to justify this economic emphasis on the following grounds:

1. The suggestion is made that teachers are concerned more about economic than non-economic matters. We deny this and can cite numerous instances in which teachers have rejected attractive economic offers in favor of non-economic improvements in the education system.

2. Alternatively it is argued that teachers are best equipped to make a contribution to decision-making on economic matters. We view this premise as totally invalid. On the contrary, by background and training, school board members probably are better able to make informed judgments on economic matters than they are in regard to matters of educational policy, whereas it is in this latter area that teachers, with their special knowledge and competence as educators, can make their most valuable contribution.

[2] Governor's Committee on Public Employee Relations, Final Report, March 31, 1966, p. 29.

3. The legalistic argument is sometimes advanced that school boards are charged, as public representatives, with the responsibility for determining educational policies and, therefore, may not engage in negotiation regarding these matters. This is patently defective, since school boards also are charged with the financial management of the school system, and it would be no less a delegation of responsibility to negotiate about economic matters.

Some state legislatures have described the scope of negotiation in such traditional collective bargaining terms as "wages, hours and other conditions of employment," but this has not provided a trouble-free solution. Serious disputes have developed under this type of definition over the negotiability of teacher proposals regarding educational programs and services. Whereas school boards have resisted many of these demands on the grounds of non-negotiability, teacher organizations generally have contended that they do, in fact, come within the meaning of the phrase "conditions of employment." While there has been some suggestion that the inevitable confrontation might be avoided if there were a specific statutory enumeration of the negotiable subjects, this would introduce an undesirable and possibly unworkable inflexibility.

It is our position that private sector definitions are unduly restrictive when applied to teacher–school board negotiation. We believe that a teacher, having committed himself to a career of socially valuable service and having invested years in preparation (and perhaps years of postgraduate study after original hire), has a special identification with the standards of his "practice" and the quality of the service provided to his "clientele." As a result of this identification, teachers characteristically seek to participate in decision-making in respect to teaching methods, curriculum content, educational facilities and other matters designed to change the nature or improve the quality of the educational service being given to the children, and they see negotiation as the vehicle for such participation. Accordingly, we propose that a broad and somewhat open-ended definition of scope of negotiation be adopted–to wit, that a school board be obligated to negotiate in regard to "the terms and conditions of professional service and other matters of mutual concern."

The foregoing should be correctly understood. We do not contend that teachers should have the right to participate in decision-making in respect to educational programs and services simply because they seek it, but rather because it is socially desirable for them to do so. Their special knowledge and competence as educators should, when blended with the "lay" perspective of the school board, produce better policy decisions.

## Negotiation Impasse.

For purposes of negotiation, an impasse may be defined as a disagreement between the parties so serious that further conversations between them appear fruitless. In order to resolve such disputes, the statute should provide for a two-step procedure of third-party intervention.

The first step should be mediation. A mediator is an unbiased outsider who is sent in to assist the parties in reaching a peaceful settlement of their dispute. It is not the function of the mediator to make an agreement for the parties, but by bringing to the negotiating table a fresh, clinical view of the areas of disagreement, he can often be an effective catalyst in moving a negotiation toward settlement, particularly where the parties are inexperienced.

If there has not been a settlement within a specified number of days after the appointment of the mediator, the statute should provide for fact-finding. Whereas mediation is an informal, largely catalytical process, fact-finding is more structured, contemplating the presentation of oral testimony, the submission of documentary evidence, and many of the other attributes of a judicial proceeding. The recommendations for settlement made by the fact-finder should not be binding upon either party.

Although fact-finding has demonstrated its utility in teacher–school board negotiation, the process by no means provides a wholly satisfactory solution to the problem of negotiation impasse. The risks of fact-finding are much greater for the teacher organization than they are for the school board, since the organization, as a practical matter, must accept the recommendations of the fact-finder unless it is prepared to violate the ever-present strike prohibition. The school board, on the other hand, may reject the recommendations, comfortable in the knowledge that it can ultimately act unilaterally without effective challenge by the teacher organization. Two alternative methods have been suggested most frequently to correct this inequity.

One method, which is to provide for binding arbitration of negotiation impasse, we oppose for several reasons. In the first place, binding arbitration is in conflict with the basic notion that the terms and conditions of employment should be determined jointly by the school board and the teachers directly affected. It scarcely warrants extended discussion to demonstrate that, in general, imposed

solutions are not likely to be embraced by the parties with the same enthusiasm as solutions mutually arrived at. A second factor militating against binding arbitration is that it is likely to retard the give-and-take inherent in the negotiation process. Why should the parties make a sincere effort to compromise during negotiation when, by doing so, they may prejudice their respective positions if and when they find themselves before an arbitrator? In addition, the use of arbitration simply shifts the authoritative decision-making power from one level of government to some other public or quasi-public agency which has no responsibility for the quality of service provided by the enterprise involved and no responsibility to the public that is served by that enterprise. Finally, since many school boards do not have the authority to determine the extent of their own budget, the notion of "binding" decisions on items that involve the expenditure of funds is somewhat incongruent.

The second suggested alternative is to legalize the strike. This appears to us to be a far more fruitful approach, and we would like briefly to address ourselves to it.

### Strikes.

Although there are those who advocate a virtually unlimited right to strike, we propose legalization only under certain specified circumstances. In the first place, we would relax the prohibition solely for strikes by an organization recognized as the teachers' negotiating representative, and then only in the context of a negotiation impasse. This limitation is premised upon the assumption that the remaining parts of the negotiation statute would provide adequate administrative and/or judicial procedures for resolving problems relating to other aspects of the teacher–school board relationship.

A commonly advanced suggestion within this framework is to legalize the strike where it can be shown that the school board did not make a good faith effort to avoid it or acted in such a manner as actually to provoke it. We would go further and not quite so far. We concede that if the strike presents a clear and present danger to the public health or safety, it should be enjoined regardless of other factors, including the culpability of the parties. If, on the other hand, the strike does not present such a danger, then subject to the one exception noted below, it should be permitted to continue and the events which preceded or provoked it should be irrelevant. Because of the public policy in favor of peaceful resolution of negotiation disputes, we would impose the additional restriction that a strike also could be enjoined if the teacher organization had failed to utilize fully the available statutory impasse machinery.

Although the question of whether a particular strike is enjoinable should be left largely to the court's discretion, we think that certain statutorily prescribed procedural guidelines should be set forth. First, no injunction should issue except pursuant to findings of fact made by a court on the basis of evidence elicited at a hearing. Second, the evidence must establish that the strike presents a clear and present danger to the public health or safety or that the teacher organization has failed to fully utilize the available statutory impasse machinery. In either case, the injunction should be no broader than necessary. In the former situation, it should prohibit only those activities that constitute the demonstrated threat to the community's health or safety. In the latter case, it should specify the delinquencies of the teacher organization and should remain operative only until those delinquencies had been corrected.

Rather than increasing the number of teacher strikes, the proposed framework should encourage the parties to avoid impasse, and, thus, reduce the incidence of such strikes. The element of doubt as to whether and/or when an injunction would ultimately issue if the teachers struck after fact-finding would make the fact-finding as risky for the school board as for the teacher organization, and they both should be motivated to resolve their problems through negotiation. Moreover, if fact-finding should occur, both parties would be under severe pressure to accept the recommendations.

It should be recognized that no legislation can provide an absolute guarantee against teacher strikes. If teachers feel sufficiently aggrieved and have no effective forum in which to air those grievances, experience indicates they will strike regardless of the personal risks involved. The primary emphasis, therefore, in any negotiation statute should be the development of constructive personnel policies and meaningful procedures for preventing and resolving disputes. If this is done, the possibility of such strikes will be minimized substantially.

## STATEMENT OF FELIX A. NIGRO
Professor, University of Delaware

I am honored to testify before this group, for

the findings and recommendations of the Advisory Commission on Intergovernmental Relations command great attention. Your staff has prepared a very good report on "Labor-Management Relations in the State and Local Public Service." This document contains the essential facts on what has been happening in labor relations in government, and it includes the most recent developments. The basic policy issues are also very thoroughly presented. The labor relations field is vast and complicated, and other matters for decision might have been treated, but the most important policy questions are all included. Since you already have this excellent documentation, I will concentrate on drawing a picture of the current situation in governmental labor relations, assessing that situation in terms of the practical considerations which have to be weighed by ACIR and other organizations in a position to influence public policy significantly. As you have requested, I will also comment upon the recommendations made in the staff report.

## Analysis of Current Picture

As that report reveals, relatively few states have passed legislation providing for comprehensive labor relations programs for public employees. Nearly two-thirds of all cities have no laws or formal policies concerning relationships with organized employees. At the same time, there is clear evidence of growth in the number and strength of public employee organizations.

Looking at the country as a whole, those favoring collective bargaining for public employees have good reason to be encouraged; *de facto* bargaining, in the absence of authorizing or mandatory legislation, is spreading. Yet they could not reasonably expect all or most state and local government workers to be enjoying bargaining rights within the very near future, unless, or course, federal legislation guaranteeing such rights is passed. The very fact that the AFSCME is now seeking such federal legislation evidences that there is disappointment with the rate of progress in obtaining additional state and local bargaining laws, and in persuading state and local officials to bargain on a *de facto* basis.

As to those opposed to collective bargaining, they have reason both for fear and for hope. There is much more collective bargaining by public employees than there was just a few years ago; furthermore, it is spreading to areas like the South where the trade unions have been weak. Yet there are many places where public management still deals with the employees on the same traditional basis, as individuals, not collectively.

Many of the independent, non-labor-affiliated public employee organizations oppose collective bargaining on the industrial model. They do not want to be brothers-in-arms with the outside labor movement, and they do not see the same sharp conflict of interest between supervisory and non-supervisory employees. Some of these organizations are very much concerned about preserving the merit system which, in their opinion, the affiliated organizations do not value and would destroy. Some are unconvinced about the need for exclusive bargaining agents, a *sine qua non* as far as organized labor is concerned. One could justifiably say that public employee organizations are far from united on the desirability of collective bargaining on the model of the Taft-Hartley Act. The ACIR could, with some public employee organization support, reject the principle of collective bargaining for public employees and recommend meet-and-confer patterns instead.

My own analysis is that, despite these disagreements between the employee groups, there is overwhelming sentiment among government workers for *meaningful collective dealings* with public management, which means more than just meet-and-confer. The time when they were satisfied with, or reconciled to, dealings on an individual basis is gone. When public agencies were smaller, when, in the midst of mass unemployment, one was lucky to have a government job, when fringe benefits were better in government than in industry, when ours was an economy of scarcity, rather than of abundance, and a government employee did not feel grossly cheated as he does today when he compares himself with private sector workers—that time simply is gone. Nothing would be more unrealistic than to believe that the so-called militancy of public employees is a transistory phenomenon, whipped up, perhaps, by "outside" labor agitators and fed by temporary wartime discontents. The principle of joint decision-making with management has proved itself to thousands of public employees. They see no reason for not borrowing effective techniques from the private sector. In the American tradition of pragmatism, if collective bargaining works in government and improves the economic lot and the level of satisfaction of the worker, as in industry, why be snobbish and disdain "union" practices? After all, when he supports collective bargaining, the public employee is not merging his identity with that of industrial workers. He does not lose his loyalty to the government; rather he

insists upon a basic democratic principle of *participation* which public employers in a democratic form of government have no justification for denying him.

Agreed, there are certain dangers in granting collective bargaining rights to public employees. It is a characteristic of humans that we want to pick and choose—and, like customers in a store, to take only those things which are unmarred by defects, actual or potential, of any kind. But when we deal with social phenomena, we cannot screen out all the undesirable features. To illustrate, we should want public employees to get decent salaries but not for the public treasury to be exhausted in the process of improving government pay. There is plenty of evidence to show that, if the pay of government workers is to be improved substantially, they need to be armed with collective bargaining rights. There is just as solid evidence that, once collective bargaining begins, some of the public employee organizations, determined to make progresss in giant steps, make salary and other demands which are unreasonable in terms of the public employer's revenue possibilities. Similarly, the collective bargaining process makes it possible to utilize the creative ideas of the employees and leads to desirable innovations welcomed by management. The other side of the picture is that unions have stultifying ideas, as well as creative ones, so the consequences of joint decisionmaking can be bad as well as good.

I am not arguing that we cannot shape any of the developments; we can, to some extent, with realistic policies. A decision to grant public employees collective bargaining rights undoubtedly creates new problems for public management, but the question is what is the best policy, on the balance, in the long run—to grant such rights or deny them. I believe that the wise decision is to grant them, rather than to resist the pressures, for the latter policy inevitably creates ill will towards public management which can poison the relationships long after concessions finally are made. A state or local jurisdiction which adopts the "tough" policy of refusing to deal with unions of government workers may be successful in holding back the day when it finally must deal with them, but it may thereby make itself the target for intensive efforts by outside labor and allied groups to meet the challenge and "crack" its resistance. Out of such confrontations national tragedies result. To believe that the outside pressures will not come is unrealistic; there is no impregnable wall a state or local jurisdiction can build around itself to keep out such influences. If an idea has merit—and collective bargaining certainly does to many public employees—many persons will listen sympathetically to the "outsiders," who do not have too hard a job coming in and building up a following.

In the last analysis, unless there is federal legislation, state and local governments will make their own decisions on these matters; an organization like the ACIR can only recommend. I believe that it should recommend what realistically will best satisfy the desires of most public employees and, in the long-run, best meet the needs of public management—and that is *bona fide* collective bargaining, meaning joint decision-making, not unilateral decision-making by management. The legislation passed in California in 1968 illustrates the unsatisfying nature of "meet-and-confer." The parties are to endeavor to reach an agreement, which is to be put in writing—but not be binding on management! Of course, meet-and-confer is better than no dialogue at all between management and the employees, but to recommend meet-and-confer only is essentially to recommend very little. Besides, country-wide, many jurisdictions have already progressed beyond meet-and-confer or achieved it, so the ACIR hardly would be showing the way to greater progress with such a recommendation.

As to the possibility of federal legislation, it is not remote. The undesirability of federal action is not simply that Washington will again have found it necessary to intervene because of state and local inaction. It is also the likelihood that Washington would have to develop some policy machinery to assure that state and local governments were respecting the guarantee of collective bargaining rights. If Congress legislated in this area, uniform provisions likely would be included which might not meet the needs and preferences of individual state and local jurisdictions. At least, this danger exists. Considering the inevitability of outside pressures, and the distinct possibility of federal legislation, if those outside pressures seem to be having too slow an impact, realistic policy for state and local governments would be to act without undue delay in instituting collective bargaining programs for public workers.

## Comments on [Alternative] Recommendations in Draft Report

Let me comment now on the specific policy alternatives set forth in the draft report.

### Employee Rights to Join and be Represented.

While recent federal court decisions establish that public employees have a constitutional right to join unions, the states should pass laws making it clear that it is their policy to sanction the "basic right of freedom of association." These laws should omit any statement about the "right not to join," because to me there is no conclusive evidence that the union shop is an evil which must be banned in public employment. The public employer does not have to agree to the union shop, but, as in industry, he may decide that he should do so in the interests of stable labor relations.

### Role of Employee Organizations in Determining the Terms and Conditions of Public Employment.

I favor Alternative B, with state law *requiring* public employers to bargain collectively with their employees, and with a provision for exclusive bargaining representatives. My feeling about "meet-and-confer" (Alternative A) has already been expressed. Alternative C is interesting, but, in my opinion, unworkable. I do not agree that at present "State legislative policy either makes *all* matters relating to the terms and conditions of work of public policy" subject to collective bargaining or *none* at all. For example, the Connecticut statute, which is in many ways far-reaching in the application of Taft-Hartley concepts to the public service, excludes certain essential elements of the merit system from the bargaining.

More importantly, I do not see how the proposed distinction between economic benefits and "working conditions," to be subject to bargaining, and "broad policy and program concerns," not to be negotiated except with professional groups, can be maintained. To refuse to bargain over "disciplinary action" would mean no negotiated grievance procedure—the so-called "heartbeat" of the collective bargaining process. That disciplinary procedures are not a part of working conditions, and that the whole area of discipline falls under management rights, would be sharply challenged by the great majority of public employee organizations, labor-affiliated or not. Once the term "working conditions" is used, there is no way of keeping from the bargaining table issues which are absolutely unrelated to "policy and program concerns." With binding arbitration, arbitrators can be expected to make interpretations of "working conditions" which will not square with management's concept of its irreducible rights. To let professional employees bargain on "program and policy concerns," and deny that right to non-professionals, would create many problems. Don't practical nurses and hospital orderlies have just as much right to bargain about work assignments, workload, and training programs as registered nurses, teachers, and social workers? Public employers should not agree to bargain everything, but a distinction of this kind cannot logically and realistically be made.

### The Limited Right to Strike.

I prefer Alternative B, "Statutory Silence." Strike prohibitions, backed up by stiff penalties, can in some situations discourage strikes, but the weight of the evidence indicates that many strikes will take place anyway. The argument that there is no need for strikes if impasse settlement machinery is guaranteed by law overlooks the essential consideration that it takes time for this machinery to gain the confidence of the employee organizations. In a state which has no labor relations policy, passing a law tomorrow with well-conceived impasse settlement procedures and an anti-strike provision will not immediately have much effect in deterring some strikes. The New York City school strikes over the decentralization issue make clear that many parties besides the union can be responsible for the shutdowns; these community conflicts are unique to government and cannot be treated purely as industry-type disputes.

My own personal view is that ultimately the public policy-makers will approve a limited right to strike for government workers. Public employee unions are not now giving first priority to gaining legislative recognition of the right to strike. They are concentrating on gaining recognition rights and on getting management to bargain in good faith. They may later decide—and the great likelihood is that they will—that statutory recognition of the strike right is essential for achieving good faith bargaining. There are no compelling reasons at this time for passing such legislation. States which have shied away from collective bargaining might reject the entire package of recommendations if it included the limited right to strike.

Silence in the legislation does not mean that there will be no penalties for striking. Strikers can be punished administratively for misconduct, with dismissal a possible penalty, and the courts will levy their own penalties for defiance of court orders.

### Coverage by Levels of Government and Occupation.

A single act is desirable, because there is no convincing reason for separate laws. Where separate laws have been passed, this has largely been attributable to the political situation at a particular time and the successful pressures of the more powerful employee groups. There is no evidence in the states with single laws that the needs of local governments or of certain groups of employees are neglected.

### The Rights of Supervisory Personnel.

Managerial personnel and supervisors should be allowed to join employee organizations. Furthermore, they should be allowed to form unions of their own so that they are not left out in the cold. School principals in Philadelphia recently considered affiliating with the Teamsters because the American Federation of Teachers both denies membership to supervisors and is not interested at this time in encouraging locals of supervisors, such as of principals. If the Civil Service Employees Association in New York State is considered a "labor organization," my understanding is that it certainly would oppose legislation preventing it from representing supervisory along with non-supervisory employees (as the staff report would have it). Managerial personnel should not be in bargaining units, nor should supervisors be in the same bargaining units as their own subordinates. Any official who shares in policy-making affecting the unions should not be a union official, but the conflict should be real, not simply adduced from the job title. Finally, the recommendation that the statute not attempt a definition of supervisory employee, and that the state labor relations agency decide this by rule or on a case-by-case basis, is a very sound one.

### Statutory Designation of Negotiable and Nonnegotiable Terms and Conditions of Public Employment.

. . . I [have already] explained why I consider it impractical to try to include in the legislation a complete list of negotiable and nonnegotiable items. I do think that the law should exclude the essential elements of the merit system from bargaining. Pay and fringe benefits should be bargained, and some details of the selection system, like the length of the probationary period. Since such details are frequently included in the civil service rules, this means that some rules should be subject to negotiation. The principle of competitive ranking of candidates for both original entrance and promotion should not be bargainable. Conflicts between collective bargaining agreements and civil service laws should always be resolved in favor of the law. After all, the lawmakers can change the civil service law if they prefer the contract provision, but let us not make it easy for the negotiators to throw out legal provisions, remembering the long fight that civic and other groups waged to get civil service laws on the books in the first place.

### Type and Structure of the State Administrative Agency.

I like Alternative B, whereby the structure and type would be determined by individual state conditions. Conditions vary so greatly in the different states that this seems a wise solution. We do not yet have any overwhelming evidence that one organizational structure is better than all others. The essential consideration is that both parties have confidence in the state labor relations agency. If a board is used, provision for employee, as well as management, members is desirable.

### Flexible Statutory Requirements (Settlement of Disputes).

This recommendation is very sound. Standardized dispute settlement procedures seem to be self-defeating. The "arsenal of weapons," however, must be available. Human relations skills in using them is the decisive consideration.

### Need for Substantial and Procedural Unfair Practice Provisions.

In my state of Delaware, the legislation does not spell out unfair labor practices, which omission is unfortunate. Obviously, even with statutory listings of unfair practices much will hinge on the state labor agency's determination that a violation has occurred, but without such a listing, good faith bargaining is virtually left to chance. Effective methods of enforcement should also be provided for in the statute.

### Dues Checkoff.

The public employer should be required to provide dues checkoff, if desired by the individual union member, but for members of the exclusive

bargaining agent only. The employer should do nothing to weaken the position of the exclusive bargaining agent; the rights of minorities are protected by allowing any worker, union member or not, to present his grievances individually to the management.

### Inclusion of Union Security Provisions in Agreements.

The law should be silent about union security provisions and leave this for negotiation. Public employers do not have to agree to union and agency shops or other forms of union security, but they may decide it is desirable to do so. I see the real threat to the merit system not in the union security provisions, but in the demand to substitute seniority for competitive ranking of candidates.

### Employee Protection.

A legislative requirement for standards of conduct for employee organizations is desirable; this matter is not treated adequately in most of the existing state laws.

### Exchange of Public Personnel Data.

I am not sure that legislation is a good way of attaining this objective. The parties, and the different governmental units, will cooperate in these areas only if they find it advantageous to do so.

### Regional Cooperation.

This is a good recommendation to make, but not very many local units may be willing to bargain on a multi-jurisdiction basis.

### State and Federal Role in Mandating Personnel Requirements on Local Government Employees.

. . . in the area of salaries, fringe benefits, and working conditions, it seems to me there should be some state mandating: for example, in prescribing *minimum* salaries. I am also in favor of federal mandating of merit system standards, as proposed in the Intergovernmental Manpower Act. Washington would not be controlling all details of merit system programs, simply assuring that merit principles are observed. If provisions in collective contracts cannot be reconciled with merit principles, then they should be nullified, just as in the case of conflicts between contracts and state and local laws. I fail to see why federal grants requiring observance of merit standards in personnel are any different from federal standards in other grant programs.

## STATEMENT OF MORRIS SLAVNEY
**Chairman, Wisconsin Employment Relations Commission**
**Madison, Wisconsin**

### Employee Rights to Join and be Represented.

I recommend the adoption of legislation which would *require* local governments and agencies of the State to recognize the right of employees to freely join or not to join labor organizations of their own choosing and their right to be represented for the purposes of collective bargaining. If a particular state desires to authorize union security agreements, such condition affecting the right not to join could be reflected in the "rights" section of the statute. The three labor relations statutes administered by our agency, covering private, municipal, and state employees, all include a provision with respect to the "right to refrain." This provision appears not to have imposed any significant obstacle to collective bargaining in our State.

While compulsory union membership strengthens the union, it does provide those employees who were compelled to join a meaningful voice in collective bargaining matters.

### Role of Employee Organization in Determining the Terms and Conditions of Employment.

I favor legislation which would require public employers to bargain in good faith with the representative of the majority of employees in an appropriate collective bargaining unit.

I disagree with those who oppose such a concept that such a requirement amounts to a surrender or delegation of the sovereign authority of the employer. While collective bargaining in the public sector in the areas where legislative approval is required has an effect on the decision-making authority and responsibility of the legislative body so does the activity of those appearing for or against legislation generally, in public hearings and in other activity directed towards influencing the individual legislators. Collective bargaining does not

require that either party give in to the demands of the other. All that is required is an effort to reach an agreement through good faith conferences and negotiations. The fact that a public employer may be persuaded, whether it likes it or not, to accept the proposals of the bargaining representative does not necessarily mean an abdication of the so-called power of sovereignty. As long as the representatives of the employer do not abdicate their responsibilities as agents of the employer, I see no forfeiture or abandonment of sovereignty.

A statute which does not require good faith bargaining but merely licenses same is almost as bad as having no statute at all. As your report discloses, many strikes have occurred throughout the nation because various city fathers have refused to bargain with or even acknowledge organizations which represent a majority of employees in what normally would be an appropriate collective bargaining unit and any legislation which would permit, rather than require, good faith bargaining, would not eliminate such unfortunate situations.

I further recommend that representation be exclusive or not at all, that is to say, an employer should have no duty to bargain unless a particular organization has demonstrated, in some way or other, that it represents a majority of employees in what would normally be an appropriate collective bargaining unit. Recognition granted to various organizations as representing their membership would create a chaotic situation and would frustrate the opportunity for a peaceful labor relations climate in public employment in that particular jurisdiction.

I would not recommend that contemplated legislation attempt to enumerate those conditions of employment which are either mandatory or permissive subjects of bargaining. I would also be skeptical in making such a recommendation for specific legislation covering either police, firemen or teachers, or any other single class of employees. I would rather see the agency which administers the particular law determine, on a case-to-case basis, on what conditions of employment bargaining is required, permitted or prohibited. I take this view because concepts of management rights are continually changing and are more or less dependent upon local conditions. In the early years of the administration of the Wisconsin municipal employee bargaining statute we heard many representatives of school boards indicate that they would never bargain on matters such as the school calendar, size of class, and choice of books, etc. Their attitude has changed in recent years. School boards and other municipal employers as well as our State employer, have found that when they have engaged in bargaining in these areas which are permissive rather than required they have been able to "buy off" certain other demands which are more meaningful to the employer than are matters on which they were not required to bargain.

## Strikes in Public Employment.

The public employee laws in Wisconsin, as well as in other states, prohibit strikes. The mere fact that the law prohibits strikes does not prevent them, nor does the fact that severe penalties for strike action as set forth in the statute have any effective deterrent on strike activity. The municipal labor law in Wisconsin merely contains a statement prohibiting strikes and relief must be sought in the courts of the State. Local judges may issue restraining orders and may impose fines or imprisonment if their orders are not obeyed in a contempt proceeding pursuant to the Wisconsin statutes. The State employee bargaining law, while permitting employees to seek relief in State courts, also provides that a strike is a prohibited practice, subject to the jurisdiction of a complaint proceeding before our agency. During the two and one-half years of the effectiveness of the State bargaining law we have had one strike in State employment which lasted for less than a day and which was terminated upon strenuous mediation by our agency. Parenthetically, the union involved advised us of the strike activity rather than the employer.

I have found that judges are reluctant to issue injunctive relief, especially in labor relations matters, and in Wisconsin, elected officials representing municipalities, who must make decisions in this matter, have been reluctant to seek or authorize court action to restrain strike activity.

Our agency has been actively administering the municipal bargaining law for approximately 8 years and during this period we have experienced 26 strikes. In only four strike situations was there any action initiated to restrain the strike activity through court proceedings. The Wisconsin League of Municipalities has been favoring legislation which would require our agency to seek court action rather than placing the burden for such activity on local officials. Our Commission has opposed this approach for the simple reason that, if the responsibility for bargaining in good faith means anything and a strike occurs, the local officials should at

least shoulder the responsibility of seeking a restraining order. If the statute were to relieve them of this responsibility, they could avoid their obligation to see that the conditions which might create a strike situation did occur in the first place. With respect to whether there should be no right to strike, a limited right to strike, or no restriction on the right to strike, I would like to see experimentation in this area of legislation. I had hoped that Pennsylvania would have adopted the recommendations of the Pennsylvania Study Committee in that regard. I don't believe any statute should be silent with respect to strikes in public employment. Silence on this matter is not golden, but will only tarnish effective administration of the statute and its consequences. It has been suggested that strikes be permitted in certain non-essential areas and prohibited where the employment affects the health, safety and welfare of the community. A garbage strike in Wisconsin during the winter months and in a community where probably the majority of households have garbage disposal units in their kitchen sinks would create no significant problem. However, a similar strike in Miami Beach during the same month may cause all the vacationers to retreat to Wisconsin to enjoy our winter sports.

A word with respect to public utilities. The gas and electrical services furnished to the citizens of my community are furnished by a privately-owned utility which has had its share of strikes. Significantly, service was not greatly interrupted and was provided for by supervisory personnel during work stoppage. Let's surmise that the City took over this utility. Would any greater crises occur just because the operation employs public employees? Wisconsin has on its books a no-strike law governing privately-owned public utilities which provides for compulsory mediation and arbitration. This law was declared unconstitutional by the U.S. Supreme Court in 1951 as it pertains to utilities which are engaged in interstate commerce, and most of them are. Since that court decision, we have had no more serious difficulty in labor disputes involving privately owned public utilities in our State. Many of the utilities and unions have voluntarily entered into agreements which provide for final and binding arbitration if the parties are unable to reach an agreement in their collective bargaining. However, we know of no instance where such procedure has been utilized, since neither management nor the union desires to have a third party make their agreement. The unions and managements recognize their responsibilities and their obligations to the public and have attempted strenuously to avoid strike action. Of course, this does not mean that strikes have not occurred.

Generally public employee organizations and their membership no more want to strike than the employers do. In my experience the vast majority of public employee organizations in our State recognize their responsibilities and strikes have not occurred as a matter of whimsy.

There have been suggestions that, where strikes are prohibited, there should be some other means of reaching an agreement through procedures such as final and binding arbitration. I personally am opposed to final and binding arbitration on interest disputes, that is to say, over wages and conditions of employment when the parties are unable to reach a satisfactory agreement through good faith bargaining. Every procedure that is added to the collective bargaining process weakens the procedure immediately preceding. In Wisconsin, where the parties are unable to reach an agreement by themselves, there is mediation provided both parties agree. Following mediation there is a fact-finding procedure which is not final and binding, but which furnishes recommendations for the resolution of the dispute. We have seen situations where one or both of the parties feel that they cannot get together without mediation. There is a reluctance to significantly move toward a settlement during negotiations without mediation. Likewise, if there is a feeling by either or both of the parties that they desire to proceed to fact-finding, the parties will be reluctant to put their best foot forward in mediation so as not to prejudice their positions when they become involved before the fact finder, and thus if the statute provides for final and binding arbitration there certainly will be a natural reluctance of the parties to present their best offer in any of the impasse procedures preceding the arbitration because of the anticipated impact of their known positions. Further, with respect to the limited right to strike, that is, permitting certain employees to have the right and denying other employees such right, our experience has indicated that in the more sophisticated communities, and certainly in State employment, there is a relationship in salaries between various types of employees, as well as in certain conditions of employment, and although certain classifications of employees may not be permitted to strike they may lend moral and actual support to employees who may be permitted to strike, knowing full well that the gains resulting from such strike activity will have some relationship to the salaries and conditions of employment affecting those employees who are not permitted to strike.

### Coverage by Levels of Government.

I would recommend alternative A set forth in the preliminary report, that is, to establish a single uniform statute governing public employees both on the State and local level, especially if a State agency is to administer the statute. Thus, having the same law apply to both State and local employees under such an administration of the statute would, among other things, avoid criticism that the State was applying standards which were different for local employees as opposed to State employees.

While I concede that there are certain areas of difference in local and State employment and operation, I feel there should be no distinctions in the "rights" of public employees in labor relations whether they be employed by the State or on a local level. I have noted this difference in Wisconsin where although there is no statutory requirement that the State bargain on mandatory issues, there has been a form of bargaining with a committee of the legislation on salaries of State employees. This process is not similar to the process of bargaining on salaries of local units of government where normally there is only one legislative body, where in our State there are two legislative bodies to deal with. In addition, members of local legislative bodies, whether they be city councils or a school board, are much more directly affected by the negotiations than are members of a State legislature. There are some legislators in our State who come from districts where there are very few State employees employed. However, this factor in itself should not make for separate laws because the problem still would exist if there existed a separate law governing State employees. The reasons we have two laws in Wisconsin is because our public employee bargaining statutes have been in the form of an experiment. Our first statute was adopted in 1959 governing labor relations in municipal employment but this version merely expressed certain employee rights and provided for the protection of these rights by statute only. It contained no machinery for the implementation of the rights and obligations therein. It was not until 1961 that our agency was designated to administer the statute when the statute was enlarged to include election and complaint and impasse procedures of mediation and fact-finding. It took quite some time, that is, until 1967, for the proponents for labor legislation in State employment to persuade our legislature to adopt a collective bargaining law governing State employees. That law too seems to be in an experimental stage for presently there is a special committee appointed by the Governor to examine the statute for the purpose of making recommendations with regard to same. The present statute does not provide that salaries are mandatory subjects of bargaining. It is my feeling that said committee will recommend enlarging the scope of bargaining to include, among other things, salaries.

### Legislation for Special Occupational Categories.

Our public employee statutes do not contain any special treatment for teachers, firemen, social workers, utility workers, sanitation workers or any special class of employees, except that law enforcement officers are not presently granted the rights granted to other employees although they have the right to proceed to fact-finding in matters of collective bargaining impasses. My present feeling is that there should be no distinction with respect to the type of employment except I agree with the concept that there should be no strikes in vital areas and perhaps the statute should contain some distinction in that area. The fact that school boards have separate legislation, budgets and special authority has created no insurmountable problems as a result of being covered in our general public employee law. True, there are certain problems which exist in negotiations involving school boards, however such matters are considered when they arise in bargaining.

### Rights of Supervisory Personnel.

Our municipal labor law does not specifically make any distinction with respect to supervisory and confidential employees. They are excluded under the State employee law. However, our agency administratively has excluded those municipal employees from bargaining units. I personally would exclude these categories of employees from the protection and coverage of the statute since there is a definite need for supervisory and managerial identification and function in public employment. The question often arises who would represent the public in carrying out the managerial and supervisory function if supervisors and managerial employees were permitted to be aligned with rank and file employees in collective bargaining. The difficulty has arisen as a result that many supervisory employees have been long-time members of public employee organizations. This is especially true in the organizations affiliated with the American Federation of State, County and Municipal Employees and affiliates of the National Education Association.

Many of the individuals who are now holding high supervisory and managerial positions may very well have been employees who were instrumental in creating the local organization in the first place. By decision our agency has permitted supervisory and managerial employees to maintain their membership in employee organizations, however, they are not permitted to hold office nor take an active role with respect to matters relating to collective bargaining. In my opinion the supervisory and managerial functions should outweigh whatever similar relationship might exist between the supervisor and those he supervises. I cannot imagine any grievance procedure being very meaningful if the supervisor who is involved in the resolution of grievances is an active member or holding office in the union which is processing a grievance on behalf of rank and file employees. In private labor relations supervisory personnel are excluded from coverage and/or membership generally in employee organizations primarily because of the opportunity of the employer, through said supervisors, to dominate the affairs of the union and thus destroy its effectiveness as a true representative of the employees. On the other hand, to permit employees and supervisors to be aligned against the public employer is probably a more undesirable situation than would exist in the situation where an employee organization is dominated by the employer. If supervisory and managerial employees are permitted to align with their employees in collective bargaining in the same employee organizations, you have a situation akin to absentee management and then the question arises who is representing the citizen stockholders of the community in the operation of the local governmental employer.

We have initially determined that the mere fact that a classification is identified as a supervisory position does not necessarily make it so. We have adopted standards similar to those determined by the National Labor Relations Board in making such determinations.

We have given some thought to the possibility of permitting supervisory employees to be covered by the statute but limiting their membership to organizations which are affiliated only with other supervisory organizations. The various AFSCME organizations as well as local teacher associations, police and fire employee organizations in our State have opposed this concept because it would remove many supervisory personnel from their membership roles and dues paying obligations. On the other hand, the Wisconsin teachers union favors this type of an approach since it has very few, if any, principals or school administrators in its organizations. I have made a suggestion to police and fire groups in our State that perhaps they should consider amending the statute to grant the authority to the employee organization, provided the supervisory personnel consent, to bargain for supervisory personnel on salaries and fringe benefits only. This type of an approach would grant supervisory personnel some form of bargaining and would not necessarily conflict with their function as supervisors.

### Statutory Designation of Negotiable and Nonnegotiable Terms and Conditions of Employment.

Our municipal labor law contains no enumeration of matters which are or which are not subject to collective bargaining. Our present State employee law does. The latter statute indicates that the mandatory subjects of bargaining are limited to the matters which are in the discretionary authority of the various department heads. There are specifically enumerated matters, including salaries, on which the State employer is not required to bargain.

The statutory enumeration of matters relating to mandatory and permissive subjects of bargaining has caused obstacles to arise in collective bargaining in our State employment. In those situations the State representatives have found that when they have been instructed not to bargain on various permissive subjects, they have lost the opportunity to "buy off" certain mandatory bargaining items proposed by the employee organizations. I recommend that no distinction be set forth in the statute with respect to subject matters of bargaining; . . . (but) . . . that the statute contain a general management rights clause.

With respect to the conflict between a collective bargaining agreement and merit procedures, such conflict can never be completely resolved by statute, since the conflict will remain in the minds of those who still believe that collective bargaining in public employment will, in the long run, destroy civil service. There must be accommodations to resolve the conflict through collective bargaining.

### Type and Structure of State Administrative Agency.

I certainly agree that appropriate machinery should be established to implement and administer any type of labor relations statute. Our experience in Wisconsin demonstrates that when there was no machinery established in the 1959 version of our

municipal labor relations statute it was almost meaningless.

I recommend the establishment of a separate individual quasi-judicial agency. An agency attached to the executive branch of the unit of government tends to create an impression that the agency is employer dominated. An indication of such an attitude exists with respect to various personnel boards established by civil service in our State where such personnel boards are attached to various Bureaus of Personnel either on the State or local government levels. For example, one of the criticisms of the Milwaukee City Service Commission, which is not a full time agency, was the fact that the City Director of Personnel was the secretary of this agency. In Wisconsin we have not separated in any manner the administrative or regulatory enforcement responsibilities from mediation and fact-finding activities. As a matter of fact, our professional staff engages in all types of activities, e.g., representation matters, complaint cases, mediation cases, final and binding arbitration, and fact-finding investigations, but I must make it clear that in our complaint case procedure we do not make investigations of charges or issue complaints. The complaints are filed by the parties, and we act as a quasi-judicial agency in determining the merits of the matter. We take no part in the prosecution. If our orders are not sustained, we utilize the services of our Department of Justice to seek enforcement in the courts of the State. I am positive that if we processed unfair labor practice cases, either in the private or public sector similar to the procedure utilized by the National Labor Relations Board, we would not be as acceptable as we are in our mediation and arbitration function. One must also remember that our agency has been in business since 1939 and it has taken a number of years to create an atmosphere where both labor and management have accepted our agency and its staff in those voluntary procedures available to them.

I see no objection to investing administrative authority to administer a public employee bargaining law in an agency which serves similar functions for a private sector where that agency has been actively administering a private labor law. The mere fact that a private employee labor relations statute exists in a particular state and that there is an agency designated for the administration of same does not necessarily mean that that particular agency is capable or has the potential of properly administering the public employee bargaining law for the simple reason that such an agency will find that its activity will be greatly expanded as a result of the enactment of a public employee bargaining statute.

Furthermore, the determination as to whether the statute should create a new agency or vest the authority in an existing agency depends on the similarities or dissimilarities of the private and public employee law.

As to who should make the appointments to the agency, I would comment that the answer depends on the situation in each individual state. We are fortunate in Wisconsin in that reappointments to the Commission have been made based on the individual's record as a Commissioner rather than his political affiliation or whether he came out of management or labor. A tripartite type agency does not necessarily create a true neutral agency since there is quite a bit of pressure which can be exerted on those members who come from management or labor. I recommend an agency headed by a full-time Board or Commission, manned by a competent professional staff hired in accordance with civil service procedures.

### Flexible Statutory Requirements.

In my opinion the statute should specify the procedures with regard to dispute settlements, including mediation, voluntary arbitration and fact-finding. I would oppose any provision in the statute which would restrict an employee organization and the public employer from agreeing to their own procedures. The fact that the statute may contain procedures would not necessarily prohibit the parties from adopting their own. As a matter of fact, in Wisconsin where the parties have agreed to their own procedures, our agency will not initiate the statutory procedures. With respect to the assumption of costs to employment impasse procedures the mediation of public employee disputes is performed by professional mediators on our staff at no cost to the parties. In some jurisdictions there are ad hoc mediators appointed who are paid by the State as are fact finders. In Wisconsin if arbitration is performed by staff members there is no charge. If the parties desire arbitration by a private arbitrator the parties assume the cost of such arbitration. Our fact finders are appointed on an ad hoc basis from a panel of persons who are not staff members. The cost of such fact-findings is borne equally by the parties. When Wisconsin was considering the public employee bargaining legislation, we opposed the assumption of costs of fact-finding proceedings by the State. We felt, and still feel, that providing free fact-finding would encourage fact-finding and tend to discourage the other less formal dispute procedures.

Having to share in the cost of fact-finding impels the parties to reach an agreement in order to avoid costly fact-finding.

### Need for Substantive and Procedural Unfair Labor Practice Provisions.

I wholeheartedly agree that the statute should specifically designate unfair labor practices, representing activity of employers, employees and their organizations. Our State employment bargaining law, in addition to including the usual employer unfair labor practices, such as interference, domination, discrimination and refusal to bargain, also provides, as does our private labor act, that violations of collective bargaining agreements are also unfair labor practices, including the refusal to accept an arbitration award . . . (which the parties previously had agreed would be final and binding). Similarly, in addition to the normal unfair labor practices appearing in the Federal Act with respect to employee organization, the employee organization's refusal to bargain in good faith constitutes an unfair labor practice, as [does] the violation of a collective bargaining agreement. Furthermore, strikes, or any concomitant thereof, are also considered unfair labor practices. I would oppose any statutory silence with respect to unfair labor practices. The rules of the game should be made known to the parties before the contest begins. With respect to the processing of unfair labor practices, I recommend our Wisconsin approach, discussed earlier, that the agency take no active part in issuing the complaint or prosecuting it but that it act purely as a quasi-judicial agency and not act as prosecutor and judge. It should be given subpoena powers and given the authority to issue orders enforceable in the courts.

### Dues Check-off.

I recommend that the statute permit dues check-off and at the same time set forth conditions with respect thereto, including a provision for an escape period at least annually. I don't agree with the argument that a check-off necessarily perpetuates the majority representative, where the employees have an opportunity to revoke such authorizations. A check-off may be beneficial to the employer in various ways, the primary benefit being that of having some indication of the relative strength of the employee organization. Statutes generally provide an opportunity for employees to authorize employers to make deductions from the employee's wages for other matters and these deductions should cause no additional inconvenience to the employer.

### Inclusion of Union Security Provisions in Agreements.

This is a problem where you can get many arguments pro and con. Wisconsin, in the private employment sector, is not a right-to-work-law State. It permits union security agreements in private employment only after a referendum has been conducted by our agency authorizing same, wherein two-thirds of the employees voting must authorize the parties to enter into such an agreement, and said two-thirds must also constitute at least a majority of the employees in the unit. Authorizations have occurred in 97 percent of the referendums conducted by us. As the report indicates, our legislature passed a bill authorizing union security agreements in municipal employment which was vetoed by the Governor. There are renewed efforts in the present session of our legislature seeking the same provision. It is almost impossible to concede that a public employee bargaining law containing or permitting some form of union security agreement in public employment could be enacted in a right-to-work-law State. I believe the question of the inclusion or exclusion of the authority to enter into such agreements should be left to the individual states depending upon the climate therein. If the statute remains silent with respect to the matter, it would appear that such union security agreements would be prohibited since it is a form of compulsory unionism. There may be a different result if the statute does not contain a specified right to refrain from concerted activity.

### Employee Protection.

Our public employee statutes do not contain any provisions with regard to internal union affairs, and I don't believe we will ever have such provisions until it is demonstrated there is a need for such provisions in Wisconsin.

### Exchange of Public Personnel Data.

I would oppose legislation which would require or even permit the agency which administers a sophisticated labor relations statute to provide data to the parties for bargaining purposes. I believe

both the employers and the employee organizations should equip themselves to obtain the necessary data and information to carry out their responsibilities in collective bargaining. This is not meant to say that other state agencies who are better equipped to obtain the information could not furnish same. For example, our Department of Administration through its Bureau of Personnel conducts annual surveys of wages paid to various county employees throughout the State. It compiles this information and it is available to the public or anyone requesting the information. If this responsibility were given to the agency administering the labor relations statutes, there exists the opportunity for criticism and harassment with regard to furnishing all information to permit the employee or employee representatives to properly negotiate. Furthermore, many municipalities and school boards are members of existing associations which can provide such information. In addition, employee organizations, especially those affiliated nationally, have the facilities and funds to do likewise.

### Regional Cooperation.

I concur in the recommendation that local governments and employee organizations affect appropriate arrangements for collective bargaining on a regional basis. However, I believe that the accomplishment of such a goal is a dream which cannot be accomplished by statute. Who is to say that uniform labor conditions and uniform collective bargaining agreements are more desirable than non-uniformity? Employee organizations, in order to attract membership and maintain their majority status, are opposed to uniformity where there exists another organization . . . (waiting) . . . to prove its strength should the employees involved reject their employee representative. The role of minority organizations in public employment bargaining cannot be minimized. In private labor relations, where there are two competing unions, the union losing the election in 99 times out of 100 folds its tent and steals away until at least the next opportunity to become competitive in an election. In municipal employment relations a minority organization does not disappear. Its representatives may continue their lobbying activities, appear . . . (at) . . . hearings on the public budget, utilize the news and editorial columns in newspapers, and are continually reminding the employees that had they selected it as the majority representative it could have done a better job than the incumbent organization is doing for them.

### State Role in Mandating Personnel Requirements on Local Government Employees.

I agree with alternative B noted in the report, [which urges States to restrict mandated requirements to essential needs], . . . perhaps . . . (with) . . . local units [having] a voice in such determinations.

### Federal Mandating.

My background in this area is insufficient for me to form any responsible opinion with regard to the matter.

DISTRIBUTION OF STATE AND MUNICIPAL EMPLOYES IN WISCONSIN

| Employer | Number | No. of Employes |
|---|---|---|
| State | 31—Departments | 23,000 |
| Counties | 72 | 25,000 |
| Villages<br>Cities | 384<br>184 | 45,000 |
| School Districts | 493 | 45,000 teachers |

## STATEMENT OF JERRY WURF
International President
American Federation of State, County and Municipal Employees—AFL-CIO
Washington, D.C.

(Mr. Wurf was unable to be present. Donald S. Wasserman, Director, Department of Research, AFSCME, presented Mr. Wurf's statement.)

Mr. Chairman and members of the Commission: My name is Jerry Wurf. I am President of the American Federation of State, County and Municipal Employees, a union of more than 400,000 members who work primarily for state and local governments.

All of you are aware that public employees at all levels of government were specifically excluded from coverage of the National Labor Relations Act and its amendments. Consequently, state and local employees have had to attain employer recognition of their unions on a piecemeal, state-by-state, city-by-city basis. Executive Order 10988 established a



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mechanism for providing recognition for federal employee unions. The scope of bargaining is, however, pitifully limited.

Attempts of public employees to sit down as equals at the bargaining table to mutually work out acceptable conditions of employment are thwarted in many ways. In some states and cities public employees have had to engage in bitter struggles in order to win de facto collective bargaining, that is, a bargaining relationship that precedes any enabling legislation. This certainly was the case in Memphis, Tennessee; Atlanta, Georgia; Cincinnati, Ohio; Fort Smith, Arkansas; Baltimore, Maryland; Miami Beach, Florida; San Jose, California; and in scores of other governmental jurisdictions–states, counties, cities, school boards and universities.

Even in situations in which the public employer does not hold the same antediluvian views as the Mayor of Memphis, he frequently deals with the union as a sovereign would treat his subjects. His attitude makes it abundantly clear that there is little good faith or reasonableness on his part. Employees are supplicants. The relationship is a charade, a caricature of collective bargaining. The entire process is deprived of any dignity.

This same attitude is frequently manifested in legislation which purports to grant public employees collective bargaining rights.

Today, ten years after the first collective bargaining law was enacted in the State of Wisconsin for municipal employees, the right to organize and bargain collectively in the public sector is not yet an accepted fact in a majority of states. Only a mere handful have passed laws which are in any way comparable to the system that has been established by Congress for workers in private industry. Even in the most advanced states, coverage of employees is usually limited, the scope of bargaining is narrowly defined, there are no real union security provisions, and the right to strike is prohibited. None has provided truly impartial administration of the law, as afforded by the National Labor Relations Board. The attitude of the state as the sovereign is all too clear in much of the legislation thus far written.

Another problem is the fact that even in those few states where some positive action has taken place, each one is different and those states that are currently considering legislation tend to get bogged down on even more confusing and repressive procedures for dealing with public employees. It sometimes appears as though legislative bodies were engaged in a contest to determine which can enact the most vicious, repressive, anti-union legislation–legislation that in fact emasculates the collective bargaining process. Only 11 states have enacted laws which make it mandatory for public employers to bargain with majority unions representing their employees, and to enter into written agreements incorporating the results of negotiations. (They are Connecticut, Delaware, Massachusetts, Michigan, Nebraska, New Jersey, New York, Rhode Island, Vermont, Washington and Wisconsin. However, the Connecticut law applies only to municipalities; the Delaware law applies to the State and its counties–but municipalities must elect to participate; Michigan's law does not apply to state civil service employees; and there are separate laws for municipal and state employees in Wisconsin and Massachusetts which provide satisfactory machinery at the municipal level but limited machinery at the state level.) Other states have some lesser form of bargaining relations–or none at all–and some states have gone to the other extreme and have forbidden public employees from even joining unions. This latter action now appears to be unconstitutional as a result of two recent U.S. Court of Appeals decisions. Attorneys' General opinions and court decisions have also testified to the diversity of views in the field of labor relations in state and local government.

In a few cities and states the very right of the union to exist and be recognized is still the prime issue. Undoubtedly, some public officials feel that to deny recognition will cause the union to fold up and wither away. These officials do not want a relationship of equals based upon mutual respect and a sharing of responsibility within an orderly framework. The worker must be shorn of all dignity. At best this yearning for a return to the "good old days" is wishful thinking; at worst it invites catastrophe.

Catastrophe is not too strong a word. For example, the laws of Tennessee do not provide a means of determining questions of union recognition or representation rights. We all know, however, that the garbage collectors of Memphis won recognition just over one year ago, following a nine-week strike during which Dr. Martin Luther King, Jr., was assassinated. Certainly Memphis is an extreme example–but it is a vivid demonstration of what can happen when workers are denied the right of any meaningful procedure to air their grievances. And the truth is that in the absence of a collective bargaining law, a significant number of public employers are reluctant to bargain with unions of their employees.

The stage is now set in Charleston, South

is, no matter how many people, communities and industries may be affected, the strike is permitted to resume at the conclusion of the 80-day injunction. Any further legal action against the strike would have to be taken by Congress on an ad hoc basis.

While no one completely approves of the national emergency provisions of Taft-Hartley, most would agree that they are fairly effective. Private industry strikes have not crippled this nation. It must also be noted that many, many private industry strikes have been much more severe than any strike conducted by public employees.

This body of experience in private industry may provide a possible solution to the strike dilemma. The emergency provisions of Taft-Hartley have been invoked 29 times since enactment of the law. Five impasses were actually settled prior to a strike. On one other occasion no injunction was issued. Thirteen of the remaining 23 disputes were settled during the 80-day cooling-off period. The other ten were settled after the injunction was lifted; three without renewal of the strike. All seven instances in which the strike was resumed after the injunction were in one industry–longshore.

Experience in public employment should have taught us that the absence of collective bargaining legislation or severe anti-strike laws do not prevent strikes. Within the last year or so there have been public employee strikes in Ohio, Illinois, Florida, Georgia, California, Kansas, Tennessee, South Carolina–to name but a few–all states without collective bargaining laws–and all are, of course, states in which such strikes are clearly illegal. The real issue, then, is how best to develop procedures to virtually eliminate strikes in a democratic society. I emphasize the word "virtually." I think it was Arvid Anderson, Chairman of the New York City Office of Collective Bargaining, who said that the only absolute guarantee against strikes is a police state–a price none of us, I think, would be willing to pay.

The first step is to enact legislation that fully provides public employees the right to engage in collective bargaining. This law must be administered impartially by an independent neutral agency. More about this later. The law must contain procedures designed to bring about agreement. There is opportunity here for experimentation–but not for suppression. We favor mediation. We want to give fact-finding a full and fair trial. We shall discuss these procedures under recommendation number nine.

I must emphasize that public employees do not want to strike. As a group they are probably among the most conservative in our nation's work force. Our union does not have a strike fund; we do not pay strike benefits. A strike is a real sacrifice. When public employees have struck they have done so because of the desperate and intolerable situation in which they found themselves. And public employees are rightfully proud of the fact that it is their duty to serve the public. Any interruption of that service is a hard and bitter step.

Let me further suggest that if you remove the indecencies that affect public employees I am sure you will be removing most of the causes of strikes. I suggest that this nation, as a leader of the free world, cannot continue to tolerate treatment of its public employees in a style reminiscent of the totalitarian state.

I do not envision a future in which public employees or their union representatives will continue to be jailed for striking. More than a century ago, our nation ended the imprisonment of debtors.

In short, gentlemen, Alternative A–statutory prohibition–has been tried in a substantial number of states and has been found wanting. It makes strikes illegal but it does not prevent them. Alternative B has the same effect. Statutory silence has also been defined to make all strikes illegal, by both court decision and Attorneys' General opinion.

We see some merit in the approach of Alternative C–a limited right to strike. We believe that only law enforcement personnel [should] be denied the right to strike. Legislation should specifically authorize the right to strike for all other public employees. Strikes that present a clear and present danger to public safety and health could be declared illegal and subject to injunction. (The term "public welfare" is, I think, too fuzzy a concept in this context.)

One distinguished study group has gone at least part way in suggesting that public employees not be totally denied rights of other employees.

The Pennsylvania Governor's Commission appointed by Governor Shafer recognized these points in recommending (except for police and firemen) that a limited right to strike be recognized for public employees. In what must be considered a landmark statement the Report said "... where collective bargaining procedures have been exhausted and public health, safety or welfare is not endangered it is inequitable and unwise to prohibit strikes." The Report further ventured, "the collective bargaining process will be strengthened if this qualified right to strike is recognized. It will be

Carolina, for a repetition of the tragic events that occurred in Memphis.

Ladies and gentlemen of the Commission, I thought it necessary to set forth the framework of state and local government employer-employee relations, at least as seen by this very interested participant. I want desperately to convey to you the thought that there is a sense of urgency in your deliberations.

I am not certain as to whether it is in the tradition of these hearings, but I think I would be remiss not to commend the staff of this Commission in their efforts to set forth in an intelligent manner the background problems, developments and alternative courses of action concerning the future of public employee labor relations. I shall now comment on the alternatives presented in Chapter 5 of the report.

## Employee Rights to Join and be Represented.

State legislation should clearly set forth the requirement that state and local governments recognize the right of their employees to join and be represented by employee organizations. Any language setting forth an employee's right to refrain from such activities should be modified to the extent that such right may be affected by an agreement providing for union security in much the same way that the Taft-Hartley Act makes such provision in Sections 7 and 8 (a)(3).

We know that recognition strikes are virtually unknown in the private sector. I firmly believe that disputes over recognition are responsible for more strikes in public employment than any other single issue. If nothing else, collective bargaining legislation firmly establishing a worker's right to belong to an employee organization, and mandating an employer to bargain with that employee organization, would prevent the greatest single source of disputes in public employment.

## Right of Employee Organizations in Determining the Terms and Conditions of Public Employment.

Unquestionably, public employee organizations should have a right to represent their membership in determining "wages, hours, and other terms and conditions of employment," as set forth in Alternative B. Public employers must be obligated to recognize and bargain in good faith with employee organizations. Public employers should be required to adhere to the principles of collective bargaining as a matter of public policy.

The collective bargaining process in this nation is founded on the principle that an organization representing a majority of employees be designated as an exclusive representative. The concept of dual unionism or minority representation is inimical to the stability of a labor-management relationship.

Legislation simply requiring the employer to "meet and confer" as distinguished from bargaining merely changes the employer-employee relationship from one of individual begging to collective begging. Collective bargaining means bilateral determination, a mutual acceptability of terms and conditions of employment. Meet and confer implies "papa knows best." Permissive bargaining legislation is little improvement. It means the employer may, if he so chooses, bargain with the union—and on those subjects he approves.

Similarly, a selective approach as set forth in Alternative C will not suffice. The need is for collective bargaining, and the need is for collective bargaining for *all* public employees.

## Strikes by Public Employees.

The emotion surrounding the subject of public employee strikes frequently precludes rational discussion of the issue. Strikes do not take place in a vacuum. The real issue here is not so much one of the right to strike, because public employees have been conducting illegal strikes in greater and greater numbers year by year. The issue, rather, is how do we prevent strikes? How do we resolve an impasse? It seems to me then that the issues of strike and impasse are inseparable. Collective bargaining legislation clearly setting forth the rights and obligations of the parties to recognize and deal with one another would eliminate recognition strikes. Further, if legislation is designed to facilitate, rather than to frustrate, the collective bargaining process, the strike can be viewed in more realistic perspective.

First, let us examine how strikes are handled under the Labor Management Relations Act (Taft-Hartley). If, in the opinion of the President of the United States, a strike imperils the national health or safety, he may appoint a board of inquiry which shall report back to him as to the facts of the dispute. The President then may seek to enjoin such a strike and if granted by the court, the strike is enjoined for 80 days. But, no matter how severe the strike may affect the national economy, no matter how crucial or critical the work stoppage

some curb on the possible intransigence of an employer . . . ." The Report further stated, "In short we look upon the limited and carefully defined right to strike as a safety valve that will in fact prevent strikes." The Report also recommended the abolishment of mandatory no-strike penalties.

Unfortunately, Governor Shafer did not accept these recommendations.

### Coverage by Levels of Government.

We concur with alternative A that a uniform system of public labor-management standards be established on a statewide basis by enactment of one law covering employees on both the state and local level.

*The Report of the Task Force on State and Local Government Labor Relations* (National Governors' Conference, 1967) advocates a single law as do three recent Governors' Study Commissions: Illinois, New Jersey and Pennsylvania.

### Legislation for Special Occupational Categories.

We agree with the former Personnel Director of the City of Cincinnati, W. s D. Hiesel, who stated in his book, *Questions and Answers on Public Employee Negotiations*, ". . . the methods of determining recognition, the principle of exclusive recognition, the development of a written agreement, and the uses of mediation, fact-finding, and arbitration are all the same, regardless of the services rendered by the union members. It is therefore our conclusion that the basic law can be the same, and that when necessary, special sections be added applicable to specific groups." We therefore agree with alternative B.

### The Rights of Supervisory Personnel.

Alternative B would permit some participation in the collective bargaining process by supervisors.

These employees should be permitted bargaining rights provided that they be barred from being in the same bargaining unit as those they supervise. We do believe, however, that the law must, at least by way of guidelines, define the term supervisor. These guidelines would, or course, be fleshed out on a case-by-case basis by the administrative agency.

### Statutory Designation of Negotiable and Nonnegotiable Terms and Conditions of Public Employment.

Clearly, from our point of view, there should be no statutory specification of negotiable items other than the term wages, hours and other terms and conditions of employment. All items within this phrase must be negotiable. Thus there should be no nonnegotiable items to list.

Old folkways are not easily laid to rest. The shadow, if not the substance, of government as the sovereign persists. State Court decisions have taught us a hard lesson. Collective bargaining laws must very specifically mandate the government to engage in full scope collective bargaining. Hence, my continued emphasis of the term wages, hours and other terms and conditions of employment. Further, the bargaining law must make it unmistakably clear that where there is a conflict between the desires of the parties, as evidenced by the collective bargaining agreement, and merit system rules and regulations, that the contract shall prevail.

This is *the* substantive issue. Strikes and union security may be the scare words, but the scope of bargaining "is where it's at." This is the gut issue. Too often legislatures appear to grant collective bargaining rights while, in fact, they are at the same time virtually withdrawing these rights by severely limiting the scope of bargaining. This is done in the name of management rights. It is utter nonsense. We accept management's right—in fact its duty—to manage. But, we will not accept being legislated out of the ball game by unduly restricting our right to negotiate over terms and conditions of employment which properly belong on the bargaining table. Bilateral determination is our raison d'etre.

Broad scope collective bargaining simply means that the parties are not prohibited by law from negotiating on various aspects of the employment relationship. It does not mean that management must agree to all union demands, or for that matter, vice versa. In fact, the above cited Governors' Report states that there is general agreement ". . . that a management that wishes to limit areas of bargaining should attempt to obtain this by negotiating a strong management rights clause . . . Moreover, a strong and experienced management should be able to protect itself at the bargaining table without jeopardizing the principle of collective bargaining."

All too often public employees may not engage in genuine collective bargaining on vital subjects such as wages and certain policy matters. In too many jurisdictions civil service rules take precedence over collective bargaining. Such prohibitions so restrict collective bargaining ". . . as to nullify the values of the process," according to the Governors'

Report. Civil Service or merit systems have come to encompass many aspects of employee relations and personnel management not related to the merit principle, which principle these systems were designed to protect. We have no argument with the merit principle, but we do want to have a voice in its implementation and in matters which are not unilaterally determined through civil service.

Before concluding on this subject, I want to mention one example of how irrational the proponents of the merit system may become. In California, local governments may implement, through local ordinances, recent amendments to the Employee Organization Act of that state. Given the framework of California law, Los Angeles County has recently passed a decent collective bargaining ordinance. On the other hand, the California League of Cities has circulated a suggested ordinance that, if enacted by any locality, would completely thwart any meaningful negotiations. Section 5 of this document is entitled "City Rights." It reads:

"The rights of the City include, but are not limited to, the exclusive right to determine the mission of its constituent departments, commissions and boards; set standards of service; determine the procedures and standards of selection for employment and promotion; direct its employees; take disciplinary action; relieve its employees from duty because of lack of work or for other legitimate reasons; maintain the efficiency of governmental operations; determine the methods, means and personnel by which government operations are to be conducted; determine the content of job classifications; 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."

This section simply means that there shall be no collective bargaining. The union will not participate in determining conditions of employment.

## Type and Structure of the State Administrative Agency.

Appropriate administrative machinery is essential to the smooth functioning of the law. The administrative unit should be an independent quasi-judicial agency. It should separate functionally and in terms of personnel the administrative, regulatory and enforcement responsibilities from mediation and fact-finding activities. Administrative authority should be vested in an agency established to handle only public sector labor-management relations.

At this point, I must put in a plug for the tri-partite concept of administrative agency as embodied by the New York City Office of Collective Bargaining. It works well. It works because New York is a well-organized city. It works because the parties believe in the system and want it to work. And it works because the neutral members are eminently qualified—and they are neutral.

Crucial questions, such as the composition of bargaining units, representation elections, certification, unfair labor practices, and the assignment of mediators and fact finders can only be entrusted to neutrals.

But we do recognize that the Office of Collective Bargaining is unique and that not every state can develop a counterpart. In those jurisdictions in which a tri-partite board is not feasible, the administrative board should be appointed by the Governor.

## Flexible Statutory Requirements.

It is axiomatic that mutually agreed upon procedures are more successful than imposed procedures. To the extent that the parties can agree to dispute settling machinery, they should be permitted to do so. The law must, however, provide a variety of procedures that would be applied where the parties fail to agree. Certainly mediation and fact-finding should be used. Fact-finding with public disclosure and recommendations may be effective in public employment due to the exposed position of the parties. It should certainly be tested.

A key issue—and one that gives us fits—is how mediation and fact finders are selected. If they are a representative of the employer (the government) we cannot expect neutrality. Thus we cannot accept the process. This is a crucial issue and one that the boss must not control. Mutual acceptability is the keynote here. We believe the Federal Mediation and Conciliation Service should make itself available for mediation of public employment disputes at the request of *either* party.

A new group has recently come forward under excellent sponsorship—The National Center for Dispute Settlement of the American Arbitration Association. Its director and staff have impressive credentials. Perhaps this voluntary, non-governmental agency will be allowed to function in the area of fact-finding, mediation and arbitration in the public sector.

Our union is in complete accord with the use of binding voluntary arbitration by a mutually selected third party as the terminal step in the grievance procedure. In fact, we think that legislation

should specifically authorize or encourage the parties to negotiate such a provision. We have not, however, taken a position that voluntary binding arbitration is an appropriate means to resolve disputes resulting from negotiations. We have felt that this would hinder the bargaining process. We do recognize that others view it as a useful tool. What would be the effect of a provision in the law that specifically authorized the parties to agree to submit unresolved issues to binding arbitration? Would either party ever compromise on any issue? What would this procedure do to the bargaining process? This is an area that deserves study.

The use of cooling off periods is another device that has on occasion been very useful. I again point to the experience under the national emergency disputes section of Taft-Hartley.

### Need for Substantive and Procedural Unfair Practice Provisions.

Despite some confusion in the wording of the first paragraph of this recommendation, we agree with its intent–to define and prohibit unfair labor practices. We further believe that such practices be limited to those existing in the Labor Management Relations Act, which are applicable to public employment.

We also believe that the right of organization of public employees can be protected by law regardless of the type of legislation passed–even under "meet and confer" legislation.

State Legislation should provide for processing unfair practice charges, with the administrative agency being authorized to conduct hearings, issue subpoenas, issue orders and the like.

### Dues Checkoff.

On the basis that public employers do have a basic responsibility to facilitate membership in employee organizations, the employer should be required to deduct dues upon the voluntary authorization of employees. Until a majority organization is selected, all employee organizations should be permitted checkoff. After a majority organization has been designated as the exclusive representative, it alone should be eligible for checkoff.

### Inclusion of Union Security Provisions in Agreements.

State legislation should specifically authorize the parties to agree to union security provisions requiring that all employees in the bargaining unit join the union or pay the equivalent amount of dues as a service fee.

The concept of union security is not a revolutionary idea in public employment. Over 40 per cent of all AFSCME agreements contain some form of union security. We have negotiated such agreements in roughly one-half of the states. Various forms of union security have already been upheld by courts, Attorneys' General opinion, and state labor boards.

All too frequently, however, the public employer refuses to negotiate on this subject. Government as an employer, in other words, fails to practice what it tells industry to do–negotiate!

### Employee Protection.

This is an interesting title. Employee protection is what collective bargaining is all about. In this context, however, it seems to infer that employees need protection against their own organization. I defy anyone to show me that our union is lacking in democratic procedures. They are built into our constitution. Nevertheless, being against "employee protection" is akin to being against God, flag and country. We do not argue with the approach taken by this recommendation but would urge that you not overburden small local unions with paperwork, forms and red tape. You should not go any further than the Labor-Management Reporting and Disclosure Act of 1959 (Landrum-Griffin).

### Exchange of Public Personnel Data.

It is our understanding that this recommendation is not directly associated with the general requirement that employers give to unions, upon request, that information that will enable them to bargain intelligently. Rather this is a suggestion for a generally free exchange of information between the parties, and a request for the collection and free flow of additional information on a state and local basis–again on the basis that facts are likely to enlighten the parties. We agree. And in fact, we are now encouraging the United States Department of Labor to establish, in the Bureau of Labor Statistics, a data bank of pertinent information of state and local government wages and conditions that all parties will have access to.

### Regional Cooperation.

We see very distinct possibilities for regional, or

multi-employer or multi-union collective bargaining in the future. Also, multi-level bargaining is a distinct possibility.

With rare exception, however, we feel that the public employer is not yet ready to make this departure. Nor, I fear, are most employee organizations. First, the industry must be organized and unions must work out their jurisdictional problems. But I want to encourage the idea and suggest that it deserves very careful consideration.

### State Role in Mandating Personnel Requirements on Local Government Employees.

With modifications we would agree with Alternative B. It is entirely proper for the states to mandate *minimum* terms and conditions of state and local public employment. Beyond these minimums the parties should be free to negotiate wages, hours, and other terms and conditions of employment. The mandating of minimum terms merely assures that the state recognizes that government must not be a sweatshop employer. Mandating of minimum terms would benefit those employees who choose not to be represented by an organization and would further help to assure certain minimum standards of decency in those situations in which employee organizations are weak.

### Federal Mandating.

Certainly the extension of the Fair Labor Standards Act (FLSA) coverage to some public employees should not be repealed. Rather, we believe, such coverage should be extended to all public employees. At the very minimum FLSA coverage should be extended to those public employees who are engaged in proprietary functions of government and any others engaged in pursuits similar to those found in private industry. We so recommend on the basis that the federal government has established FLSA standards as basic standards of decency, below which no employer—especially government—should seek to set wages and working conditions.

### Conclusion.

With your indulgence I would like to add one further thought before concluding. Historically, the American Federation of State, County and Municipal Employees has taken a position that state and local government labor relations is a subject that is best handled legislatively on the state level. We have become disillusioned with this approach. The current rash of repressive state statutes being enacted, such as the Taylor Act and its amendments in New York and the South Dakota legislation to name only two, and those that are seriously being proposed in Florida, Tennessee and Iowa for example, again to name only a few, have caused us to decide to seek federal legislation for state and local government labor relations. It is our intention that this legislation will provide minimum standards. Any state would be permitted to adopt legislation at least substantially equivalent to the federal law, in which case the state law would apply.

This, I emphasize, is a drastic step for us to take. We are taking it because we have given up hope that state and local governments want to fulfill their duty toward a reasonable and responsible labor relations policy for their own employees. They have not only failed to respond but the actions that have been taken are unbelievably repressive.

The Advisory Commission has an opportunity to prove me wrong. I beseech you to do so.

# APPENDIX B

## State Laws

## on

## Public Employer-Employee Relations

## and

## Executive Order 11491,

## Labor-Management Relations in the

## Federal Service

## ALASKA

(*Alaska Statutes*, Title 23, Chapter 40)

### Labor Organizations

*Sec. 23.40.010. Union contracts with state and political subdivisions.* (a) The state or a political subdivision of the state, including but not limited to an organized borough, municipal corporation, independent school district, incorporated school district, and public utility district, may enter into a contract with a labor organization whose members furnish services to the state or the political subdivision. (b) Nothing contained in this chapter requires the state or political subdivision of the state to enter into a union contract.

*Sec. 23.40.020. Enforcement of certain contracts only if union registers.* No labor contract executed in this state by a labor organization which has no local in this state or which contract is not to be executed by one or more of its locals in this state may be enforced in the courts of this state unless the labor organization has registered with the department and complied with all regulations made by it.

*Sec. 23.40.030. Definition of labor organization.* For the purpose of this chapter "labor organization" includes an organization constituted wholly or partly to bargain collectively or deal with employers, including the state and its political subdivisions, concerning grievances, terms, or conditions of employment or other mutual aid or protection in connection with employees.

*Sec. 23.40.040. Collective bargaining agreement.* The commissioner of public works or his authorized representative, in accordance with Sections 10-30 of this chapter, may negotiate and enter into collective bargaining agreements concerning wages, hours, working conditions, and other employment benefits with the employees of the division of marine transportation engaged in operating the state ferry system as masters or members of the crews of vessels or their bargaining agent. No collective bargaining agreement is final without the concurrence of the commissioner of public works. The commissioner of public works may make provision in the collective bargaining agreement for the settlement of labor disputes by arbitration.

*Sec. 23.40.050. Establishment of local organizations.* It shall be unlawful for any national or international labor organization having 100 or more members in good standing who reside or work in Alaska not to have at all times one or more duly chartered and established local organizations in this state.

## CALIFORNIA

(*Government Code*, Sections 3500-3510)

### Public Employee Organizations

*Sec. 3500.* It is the purpose of this chapter to promote full communication between public employers and their employees by providing a reasonable method of resolving disputes regarding wages, hours, and other terms and conditions of employment between public employers and public employee organizations. It is also the purpose of this chapter to promote the improvement of personnel management and employer-employee relations within the various public agencies in the State of California by providing a uniform basis for recognizing the right of public employees to join organizations of their own choice and be represented by such organizations in their employment relationships with public agencies. Nothing contained herein shall be deemed to supersede the provisions of existing state law and the charters, ordinances and rules of local public agencies which establish and regulate a merit or civil service system or which provide for other methods of administering employer-employee relations. This chapter is intended, instead to strengthen merit, civil service and other methods of administering employer-employee relations through the establishment of uniform and orderly methods of communication between employees and the public agencies by which they are employed. (As amended by Ch. 1390, L. 1968)

*Sec. 3501.* As used in this chapter:

(a) "Employee Organization" means any organization which includes employees of a public agency and which has as one of its primary purposes representing such employees in their relations with that public agency.

(b) "Recognized employee organization" means an employee organization which has been formally acknowledged by the public agency as an employee organization that represents employees of the public agency. (As added by Ch. 1390, L. 1968)

(c) Except as otherwise provided in this subdivision, "public agency" means the State of California, every governmental subdivision, every district, every public and quasi-public corporation, every public agency and public service corporation and every town, city, county, city and county and municipal corporation, whether incorporated or not and whether chartered or not. As used in this chapter, "public agency" does not mean a school district or a county board of education or a county superintendent of schools or a personnel commission in a school district having a merit system as provided in Chapter 3 (commencing with Sec. 13580) of Division 10 of the Education Code. (As amended by Ch. 1390, L. 1968)

(d) "Public Employee" means any person employed by any public agency excepting those persons elected by popular vote or appointed to office by the Governor of this State.

(e) "Mediation" means effort by an impartial third party to assist in reconciling a dispute regarding wages, hours and other terms and conditions of employment between representatives of the public agency and the recognized employee organization or recognized employee organizations through interpretation, suggestion and advice. (As added by Ch. 1390, L. 1968)

*Sec. 3502.* Except as otherwise provided by the Legislature, public employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. Public employees also shall have the right to refuse to join or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the public agency.

*Sec. 3503.* Recognized employee organizations shall have the right to represent their members in their employment relations with public agencies. Employee organizations may establish reasonable restrictions regarding who may join and may make reasonable provisions for the dismissal of individuals from membership. Nothing in this section shall prohibit any employee from appearing in his own behalf in his employment relations with the public agency. (As amended by Ch. 1390, L. 1968)

*Sec. 3504.* The scope of representation shall include all matters relating to employment conditions and employer-employee relations, including, but not limited to, wages, hours, and other terms and conditions of employment, except, however, that the scope of representation shall not include consideration of the merits, necessity, or organization of any service or activity provided by law or executive order. (As amended by Ch. 1390, L. 1968)

*Sec. 3504.5* Except in cases of emergency as provided in this section, the governing body of a public agency, and boards and commissions designated by law or by such governing body, shall give reasonable written notice to each recognized employee organization affected of any ordinance, rule, resolution, or regulation directly relating to matters within the scope of representation proposed to be adopted by the governing body or such boards and commissions and shall give such recognized employee organization the opportunity to meet with the governing body or such boards and commissions.

In cases of emergency when the governing body or such boards and commissions determine that an ordinance, rule, resolution or regulation must be adopted immediately without prior notice or meeting with a recognized employee organization, the governing body of such boards and commissions shall provide such notice and opportunity to meet at the earliest practicable time following the adoption of such ordinance, rule, resolution, or regulation. (As added by Ch. 1390, L. 1968)

*Sec. 3505.* The governing body of a public agency, or such boards, commissions, administrative officers or other representatives as may be properly designated by law or by such governing body, shall meet and confer in good faith regarding wages, hours, and other terms and conditions of employment with representatives of recognized employee organizations, as defined in subdivision (b) of Section 3501, and shall consider fully such presentations as are made by the employee organization on behalf of its members prior to arriving at a determination of policy or course of action.

"Meet and confer in good faith" means that a public agency, or such representatives as it may designate, and representatives or recognized employee organizations, shall have the mutual obligation personally to meet and confer in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation. (As amended by Ch. 1390, L. 1968)

*Sec. 3505.1.* If agreement is reached by the representatives of the public agency and a recognized employee organization or recognized employee organizations, they shall jointly prepare a written memorandum of such understanding, which shall not be binding, and present it to the governing body or its statutory representative for determination. (As added by Ch. 1390, L. 1968)

*Sec. 3505.2.* If after a reasonable period of time, representatives of the public agency and the recognized employee organization fail to reach agreement, the public agency and the recognized employee organization or recognized employee organizations together may agree upon the appointment of a mediator mutually agreeable to the parties. Costs of mediation shall be divided one-half to the public agency and one-half to the recognized employee organization or recognized employee organizations. (As added by Ch. 1390, L. 1968)

*Sec. 3505.3.* Public agencies shall allow a reasonable number of public agency employee representatives of recognized employee organizations reasonable time off without loss of compensation or other benefits when formally meeting and conferring with representatives of the public agency on matters within the scope of representation. (As added by Ch. 1390, L. 1968)

*Sec. 3506.* Public agencies and employee organizations shall not interfere with, intimidate, restrain, coerce or discriminate against public employees because of their exercise of their rights under Section 3502.

*Sec. 3507.* A public agency may adopt reasonable rules and regulations after consultation in good faith with representatives of an employee organization or organizations for the administration of employer-employee relations under this chapter (Commencing with Section 3500)

Such rules and regulations may include provisions for (a) verifying that an organization does in fact represent employees of the public agency (b) verifying the official status of employee organization officers and representatives (c) recognition of employee organizations (d) additional procedures for the resolution of disputes involving wages, hours and other terms and conditions of employment (e) access of employee organization officers and representatives to work locations (f) use of official bulletin boards and other means of communication by employee organizations (g) furnishing non-confidential information pertaining to employment relations to employee organizations (h) such other matters as are necessary to carry out the purposes of this chapter. For employees in the state civil service, rules and regulations in accordance with this section may be adopted by the State Personnel Board. (As amended by Ch. 1390, L. 1968)

*Sec. 3508.* The governing body of a public agency may, in accordance with reasonable standards, designate positions or classes of positions which have duties consisting primarily of the enforcement of state laws or local ordinances, and may by resolution or ordinance adopted after a public hearing, limit or prohibit the right of employees in such positions or classes of positions to form, join or participate in employee organizations where it is in the public interest to do so; however, the governing body may not prohibit the right of its employees who are full-time "peace officers," as that term is defined in Sec. 817 of the Penal Code, to join or participate in employee organizations which are composed solely of such peace officers, which concern themselves solely and exclusively with the wages, hours, working conditions, welfare programs, and advancement of the academic and vocational training in furtherance of the police profession, and which are not subordinate to any other organization. The right of employees to form, join and participate in the activities of employee organizations shall not be restricted by a public agency on any grounds other than those set forth in this section.

*Sec. 3509.* The enactment of this chapter shall not be construed as making the provisions of Section 923 of the Labor Code applicable to public employees.

*Sec. 3510.* The amendments made to this chapter by the act enacted at the 1968 Regular Session of the Legislature adding this section shall not be applicable to employees of the state of California.

## CONNECTICUT

### Municipal Employee Relations Act (as revised in 1967)

*Sec. 1. Definitions.* When used in this act:

(1) "Municipal employer" means any political subdivision of the state, including any town, city, borough, district, school board, housing authority or other authority established by law, and any person or persons designated by the municipal employer to act in its interest in dealing with municipal employees;

(2) "employee" means any employee of a municipal employer, whether or not in the classified service of the municipal employer, except elected officials, administrative officials, board and commission members, certified teachers, part-time employees who work less than twenty hours per week, and persons in such supervisory and other positions as may be excluded from coverage under this act in accordance with subdivision (2) of section 5 hereof;

(3) "employee organization" means any lawful association, labor organization, federation or council having as a primary purpose the improvement of wages, hours and other conditions of employment among employees of municipal employers.

*Sec. 2. Right to Organize.* (a) Employees shall have, and shall be protected in the exercise of, the right of self-organization, to form, join or assist any employee organization, to bargain collectively through representatives of their own choosing on questions of wages, hours and other conditions of employment and to engage in other concerted activites for the purpose of collective bargaining or other mutual aid or protection, free from actual interference, restraint or coercion. (b) When an employee organization has been designated by the state board of labor relations as the representative of the majority of the employees in an appropriate unit, or has been recognized by the chief executive officer of a municipal employer as the representative of the majority of employees in an appropriate unit, that employee organization shall be recognized by the municipal employer as the exclusive bargaining agent for the employees of such unit. (c) When an employee organization has been designated in accordance with the provisions of this act as the exclusive representative of employees in an appropriate unit, it shall have the right to act for and to negotiate agreements covering all employees in the unit and shall be responsible for representing the interests of all such employees without discrimination and without regard to employee organization membership. (d) An individual employee at any time may present a grievance to his employer and have the grievance adjusted, without intervention of an employee organization, provided the adjustment shall not be inconsistent with the terms of a collective bargaining agreement then in effect. The employee organization certified or recognized as the exclusive representative shall be given prompt notice of the adjustment.

*Sec. 3. Duty to Bargain.* The municipal employer and such employee organization as has been designated as exclusive representative of employees in an appropriate unit, through appropriate officials or their representatives, shall have the duty to bargain collectively. This duty extends to the obligation to bargain collectively as set forth in subsection (c) of section 4 of this act.

*Sec. 4. Unfair Practices.* (a) Municipal employers or their representatives or agents are prohibited from : (1) Interfering, restraining or coercing employees in the exercise of the rights guaranteed in section 2 of this act; (2) dominating or interfering with the formation, existence or administration of any employee organization; (3) discharging or otherwise discriminating against an employee because he has signed or filed any affidavit, petition or complaint or given any information or testimony under this act; (4) refusing to bargain collectively in good faith with an employee organization which has been designated in accordance with the provisions of this act as the exclusive representative of employees in an appropriate unit; (5) refusing to discuss grievances with the representatives of an employee organization designated as the exclusive representative in an appropriate unit in accordance with the provisions of this act. (b) Employee organizations or their agents are prohibited from: (1) Restraining or coercing (A) employees in the exercise of the rights guaranteed in subsection (a) of section 2 of this act, and (B) a municipal employer in the selection of his representative for purposes of collective bargaining or the adjustment of grievances; (2) refusing to bargain collectively in good faith with a municipal employer, if it has been designated in accordance with the provisions of this act as the exclusive representative of employees in an appropriate unit. (c) For the purposes of this act, to bargain collectively is the performance of the mutual obligation of the municipal employer or his designated representatives and the representative of the employees to meet at reasonable times, including meetings appropriately related to the budget-making process, and confer in good faith with respect to wages, hours and other conditions of employment, or 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.

*Sec. 5. Authority of Labor Relations Board.* The state board of labor relations shall have the following power and authority in relation to collective bargaining in municipal employment:

(1) Whenever, in accordance with such regulations as may be prescribed by the board, a petition has been filed (A) by an employee or group of employees or any employee organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining by an employee organization as exclusive representative, or (ii) assert that the employee organization which has been certified or is currently being recognized by their municipal employer as the bargaining representative is no longer the representative of a majority of employees in the unit; or (B) by a municipal employer alleging that one or more employee organizations have presented to him a claim to be recognized as the representative of a majority of employees in an appropriate unit, the board shall investigate such petition and, if it has reasonable cause to believe that a question of representation exists, shall provide for an appropriate hearing upon due notice. If, after hearing, the board finds that there is a controversy concerning the representation of employees, it shall direct an election by secret ballot or shall use any other suitable method to determine whether and by which employee organization the employees desire to be represented and shall certify the results thereof. No election shall be directed in any bargaining unit or any subdivision thereof within which in the preceding twelve-month period a valid election has been held. No election shall be directed by the board during the term of a written collective bargaining agreement, except for good cause. In any election where none of the choices on the ballot receives a majority, a run-off shall be conducted, the ballot providing for a selection between the two choices receiving the largest and the second largest number of valid votes cast in the election. An employee organization which receives a majority of votes cast in an election shall be designated by the board as exclusive representative of the employees in the unit.

(2) The board shall have the power to determine whether a supervisory or other position is covered by this act in the event of a dispute between the municipal employer and an employee organization. In determining whether a supervisory position should be

excluded from coverage under this act, the board shall consider, among other criteria, whether the principal functions of the position are characterized by not fewer than two of the following: (A) Performing such management control duties as scheduling, assigning, overseeing and reviewing the work of subordinate employees; (B) performing such duties as are distinct and dissimilar from those performed by the employees supervised; (C) exercising judgment in adjusting grievances, applying other established personnel policies and procedures and in enforcing the provisions of a collective bargaining agreement; and (D) establishing or participating in the establishment of performance standards for subordinate employees and taking corrective measures to implement those standards. The above criteria for supervisory positions shall not necessarily apply to police or fire departments.

(3) The board shall decide in each case whether, in order to insure to employees the fullest freedom in exercising the rights guaranteed by the act and in order to insure a clear and identifiable community of interest among employees concerned, the unit appropriate for purposes of collective bargaining shall be the municipal employer unit or any other unit thereof, provided there shall be a single unit for each fire department consisting of the uniformed and investigatory employees of each such fire department and a single unit for each police department consisting of the uniformed and investigatory employees of each such police department and no unit shall include both professional and nonprofessional employees unless a majority of such professional employees vote for inclusion in such unit, provided employees who are members of a profession may be included in a unit which includes nonprofessional employees if an employee organization has been designated by the board or has been recognized by the municipal employer as the exclusive representative of such unit and a majority of the employees in such profession vote for inclusion in such unit, in which event all of the employees in such profession shall be included in such unit. The term "professional employee" means: (A) Any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given time period; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical processes; or (B) any employee who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of subparagraph (A) and (B) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in subparagraph (A) hereof.

(4) Whenever a question arises as to whether a practice prohibited by this act has been committed by a municipal employer or employee organization, the board shall consider that question in accordance with the following procedure: (A) When a complaint has been made to the board that a prohibited practice has been or is being committed, the board shall refer such complaint to its agent. Upon receiving a report from the agent the board may issue an order dismissing the complaint or may order a further investigation or a hearing thereon. When a hearing is ordered, the board shall set the time and place for the hearing, which time and place may be changed by the board at the request of one of the parties for cause shown. Any complaint may be amended with the permission of the board. The municipal employer, the employee organization and the person so complained of shall have the right to file an answer to the original or amended complaint within five days after the service of such complaint or within such other time as the board may limit. Such municipal employer, such employee organization and such person shall have the right to appear in person or otherwise to defend against such complaint. In the discretion of the board any person may be allowed to intervene in such proceeding. In any hearing the board shall not be bound by the technical rules of evidence prevailing in the courts. A transcript of the testimony taken at any hearing before the board shall be filed with the board. (B) If, upon all the testimony, the board determines that a prohibited practice has been or is being committed, it shall state its findings of fact and shall issue and cause to be served on the party committing the prohibited practice an order requiring it or him to cease and desist from such prohibited practice and shall take such further affirmative action as will effectuate the policies of this act, including but not limited to: (i) Withdrawal of certification of an employee organization established or assisted by any action defined in this act as a prohibited practice, (ii) reinstatement of an employee discriminated against in violation of this act with or without back pay, or (iii) if either party is found to have refused to bargain collectively in good faith, ordering fact finding and directing the party found to have refused to bargain to pay the full costs of fact finding under section 7 of this act resulting from the negotiations in which the refusal to bargain occurred. (C) If, upon all of the testimony, the board determines that a prohibited practice has not been or is not being committed, it shall state its finding of fact and shall issue an order dismissing the complaint. (D) For the purposes of hearings and enforcement of orders under this act, the board shall have the same power and authority as it has in sections 31-107, 31-108 and 31-109 of the general statutes, and the municipal employer and the employee organization shall have the right of appeal as provided therein.

*Sec. 6. Mediation of Grievances.* (a) The services of the state board of mediation and arbitration shall be available to municipal employers and employee organizations for purposes of mediation of grievances or impasses in contract negotiations and for purposes of arbitration of disputes over the interpretation or application of the terms of a written agreement and, if such service is requested by both the municipal employer and the employee organization, for purposes of arbitration of impasses in contract negotiations. Whenever any impasse in contract negotiations is submitted to arbitration the decision of the arbitration panel or arbitrator shall be rendered no later than twenty days prior to the final date by which time the budget-appropriating authority of the municipality is required to adopt its budget or ten days after the close of the arbitration hearing, whichever is later, provided that in no case shall such decision be rendered later than five days prior to such final budget adoption date. Nothing contained herein shall prevent any agreement from being entered into in accordance with the provisions of this act.

*Sec. 7. Investigation by Board.* (a) If, after a reasonable period of negotiation over the terms of an agreement, a dispute exists between a municipal employer and an employee organization, or if no agreement has been reached within a reasonable period of time prior to the final date for setting the municipal budget, either party or the parties jointly may petition the state board of mediation and arbitration to initiate fact finding. (b) Upon receipt of such petition the board of mediation and arbitration shall make an investigation to determine if the conditions set forth in subsection (a) exist and shall certify the results of that determination. If the certification requires that fact finding be initiated or if fact finding is ordered by the state board of labor relations in accordance with subdivision (4) (B) (iii) of section 5 of this act, the board of mediation and arbitration shall submit to the parties a panel of three qualified disinterested persons from which list the parties shall select one person to serve as the fact finder and shall notify the board of mediation and arbitration of

their choice. If the parties fail to select the fact finder within five calendar days of receipt of the list, the board of mediation and arbitration shall appoint the person who shall serve as fact finder. (c) The person selected or appointed as fact finder may establish dates and place of hearings which shall be, where feasible, in the locality of the municipality involved. Any such hearings shall be conducted in accordance with rules established by the board of mediation and arbitration. Upon request, the board of mediation and arbitration shall issue subpoenas for hearings conducted by the fact finder. The fact finder may administer oaths. Upon completion of the hearings and within thirty days from the date of appointment, unless such period is extended by the board of mediation and arbitration for good cause shown, the fact finder shall make written findings of fact and recommendations for resolution of the dispute and shall cause the same to be served on the municipal employer and the employee organization involved. (d) The municipal employer or those employee organizations which are certified as exclusive representatives under this act or which are recognized as exclusive representatives by a municipal employer shall be proper parties in initiating fact finding proceedings. (e) The cost of fact finding proceedings shall be divided equally between the municipal employer and the employee organization except as provided in subdivision (4) (B) (iii) of section 5 of this act. Compensation for the fact finder shall be in accordance with a schedule of payment established by the board of mediation and arbitration. (f) Nothing in this section shall be construed to prohibit the fact finder from endeavoring to mediate the dispute for which he had been selected or appointed as fact finder.

*Sec. 8. Representation of Employer.* (a) Except as hereinafter provided, when an employee organization has been designated, in accordance with the provisions of this act, as the exclusive representative of employees in an appropriate unit, the chief executive officer, whether elected or appointed, or his designated representative or representatives, shall represent the municipal employer in collective bargaining with such employee organization. (b) Any agreement reached by the negotiators shall be reduced to writing. A request for funds necessary to implement such written agreement and for approval of any provisions of the agreement which are in conflict with any charter, special act, ordinance, rule or regulation adopted by the municipal employer or its agents, such as a personnel board or civil service commission, or any general statute directly regulating the hours of work of policemen or firemen or any general statute providing for the method of covering or removing employees from coverage under the Connecticut municipal employees retirement system shall be submitted by the bargaining representative of the municipality within fourteen days of the date on which such agreement is reached to the legislative body which may approve or reject such request as a whole by a majority vote of those present and voting on the matter. Failure by the bargaining representative of the municipality to submit such request to the legislative body within such fourteen-day period shall be considered to be a prohibited practice committed by the municipal employer. Such request shall be considered approved if the legislative body fails to vote to approve or reject such request within thirty days of the end of the fourteen-day period for submission to said body. If rejected, the matter shall be returned to the parties for further bargaining. (c) Notwithstanding any provision of any general statute, charter, special act or ordinance to the contrary, the budget-appropriating authority of any municipal employer shall appropriate whatever funds are required to comply with a collective bargaining agreement, provided the request called for in subsection (b) of this section has been approved by the legislative body of such municipal employer. (d) If the municipal employer is a district, school board, housing authority or other authority established by law, which by statute, charter, special act or ordinance has sole and exclusive control over the appointment of and the wages, hours and conditions of employment of its employees, such district, school board, housing authority or other authority, or its designated representatives, shall represent such municipal employer in collective bargaining and shall have the authority to enter into collective bargaining agreements with the employee organization which is the exclusive representative of such employees, and such agreements shall be binding on the parties thereto, and no such agreement or any part thereof shall require approval of the legislative body of the municipality. (e) No provision of any general statute, charter, special act or ordinance shall prevent negotiations between a municipal employer and an employee organization, which has been designated or recognized as the exclusive representative of employees in an appropriate unit, from continuing after the final date for making or setting the budget of such municipal employer. An agreement between a municipal employer and an employee organization shall be valid and in force under its terms when entered into in accordance with the provisions of this law and signed by the chief executive officer or administrator as a ministerial act. Such terms may make any such agreement effective on a date prior to the date on which the agreement is entered. No publication thereof shall be required to make it effective. The procedure for the making of an agreement between the municipal employer and an employee organization provided by this act shall be the exclusive method for making a valid agreement for municipal employees represented by an employee organization, and any provisions in any general statute, charter or special act to the contrary shall not apply to such an agreement. (f) Where there is a conflict between any agreement reached by a municipal employer and an employee organization and approved in accordance with the provisions of this act on matters appropriate to collective bargaining, as defined in this act, and any charter, special act, ordinance, rules or regulations adopted by the municipal employer or its agents such as a personnel board or civil service commission, or any general statute directly regulating the hours of work of policemen or firemen, or any general statute providing for the method of covering or removing employees from coverage under the Connecticut municipal employees retirement system, the terms of such agreement shall prevail. (g) Nothing herein shall diminish the authority and power of any municipal civil service commission, personnel board, personnel agency or its agents established by statute, charter or special act to conduct and grade merit examinations and to rate candidates in the order of their relative excellence from which appointments or promotions may be made to positions in the competitive division of the classified service of the municipal employer served by such civil service commission or personnel board. The conduct and the grading of merit examinations, the rating of candidates and the establishment of lists from such examinations and the appointments from such lists and any provision of any municipal charter concerning political activity of municipal employees shall not be subject to collective bargaining.

*Sec. 9. Prohibition of Strikes.* Nothing in this act shall constitute a grant of the right to strike to employees of any municipal employer and such strikes are prohibited.

*Sec. 10. Alteration of Bargaining Unit Prohibited.* Nothing in this act is intended to require that the composition of an existing bargaining unit be altered during the term of an existing agreement.

*Sec. 11. Authorization to Negotiate Provisions.* Municipal employers and employee organizations are authorized to negotiate provisions in a collective bargaining agreement calling for the payroll deduction of employee organization dues and initiation fees.

*Sec. 12.* Section 7-466 of the 1963 supplement to the general statutes is repealed.

*Sec. 13. Effective Date.* This act shall take effect from its passage.

## DELAWARE

*(Delaware Code,* Title 19, Chapter 13)

### Right to Organize for Collective Bargaining

*Sec. 1301. Definitions.* As used in this chapter:

(a) "Public employer" means:

(1) the State of Delaware or any agency thereof;

(2) any County of the State, or any agency thereof;

(3) any municipal corporation, municipality, city or town located within the State, or any agency thereof which, upon the affirmative legislative act of its common council or other governing body elects to come within the provisions of this chapter.

(b) "Public employee" means any employee of a public employer except: (1) any person elected by popular vote or appointed to office by the Governor; (2) any certified professional employee of the public school system of the State.

(c) "Employment relations" means matters concerning wages, salaries, hours, vacations, sick leave, grievance procedures and other terms and conditions of employment.

(d) "Bargaining representative" means any lawful organization which has as a primary purpose the representation of public employees in their employment relations with the public employer.

(e) "Collective bargaining" means the performance of the mutual obligations of the public employer and the exclusive bargaining representative to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to employment relations, except that by such obligation neither party shall be compelled to agree to a proposal, or be required to make a concession, unless otherwise provided in this chapter.

(f) "Department" means the Department of Labor and Industrial Relations.

*Sec. 1302. Right to organize.* The right of public employees freely to organize and designate representatives of their own choosing for the purpose of collective bargaining with public employers shall not be denied.

*Sec. 1303. Free exercise.* No public employer, or other person, directly or indirectly, shall interfere with, restrain, coerce, or discriminate against any public employee in the free exercise of any right under this chapter.

*Sec. 1304. Bargaining unit.* The Department, after hearing upon reasonable notice, shall decide in each case the unit appropriate for the purpose of collective bargaining. In determining, modifying or combining the bargaining unit, the Department shall consider the duties, skills, and working conditions of the public employees; the history of collective bargaining by the public employees and their bargaining representatives; the extent of organization among the employees; and the desire of the public employees.

*Sec. 1305. Election to determine representation.*

(a) Where there is no exclusive bargaining representative certified for a bargaining unit, the Department shall, upon the request of a bargaining representative showing written proof of at least 30% representation of the public employees within the unit, hold an election by secret ballot to determine representation. The ballot shall contain the name of any bargaining representative showing written proof of at least 10% representation of the public employees within the unit and, in every instance, a provision for a marking of no representation.

(b) Where there is an exclusive bargaining representative certified for a bargaining unit, the Department shall, upon the written petition of at least 30% of the public employees within the unit, hold an election by secret ballot to determine representation, except that no election shall be held within 1 year of the certification of an exclusive bargaining representative. The ballot shall contain the name of any bargaining representative showing written proof of at least 10% representation of the public employees within the unit and, in every instance, a provision for a marking of no representation.

*Sec. 1306. Certification of exclusive bargaining representative.* The bargaining representative receiving the majority of all votes cast by the public employees within a bargaining unit upon any election held under this chapter, shall be certified by the Department as the exclusive bargaining representative of all the public employees within the unit; except that any public employee at any time may present his grievance to the public employer and have such grievance adjusted without the intervention of the exclusive bargaining representative, provided that the adjustment is not inconsistent with the terms of a collective bargaining agreement then in effect and the exclusive bargaining representative has been given reasonable opportunity to be present.

*Sec. 1307. Failure to obtain majority of votes.* In the event that no bargaining representative receives the majority of all votes cast by the public employees within a bargaining unit upon any election held under this chapter, no election to determine representation within the unit shall be held within 1 year thereof.

*Sec. 1308. Regulations.* The Department may make and revise or rescind such regulations as it may deem necessary or appropriate to administer the provisions of this chapter, and such regulations shall, except as may be otherwise provided by the Department, take effect upon publication.

*Sec. 1309. Public employer to bargain collectively.* The public employer may engage in collective bargaining with the exclusive bargaining representative and no public employer shall refuse to engage in collective bargaining with the exclusive bargaining representative.

*Sec. 1310. Submission of dispute to State Mediation Service or arbitration.* Upon the failure of the public employer and the exclusive bargaining representative to conclude a collective bargaining agreement, any matter in dispute, except matters of wages and salaries, may be submitted by either party to the State Mediation Service or, by agreement of the parties, to arbitration under Chapter 1 of this title.

*Sec. 1311. Payroll education for dues.* Upon the written authorization of any public employee within a bargaining unit, the public employer shall deduct from the payroll of the public employee the monthly amount of dues as certified by the secretary of the exclusive bargaining representative and shall deliver the same to the treasurer of the exclusive bargaining representative.

*Sec. 1312. Merit of personnel system exclusive.* Whenever the procedures under the merit or personnel system established by statute or ordinance are exclusive with respect to matters otherwise comprehended by this chapter, they shall apply and shall be followed.

*Sec. 1313. Right to strike prohibited.* No public employee shall strike while in the performance of his official duties.

## HAWAII
(Acts 50 and 287, 1967 Legislature)

### Employee-Management Cooperation In The State And County Service

*Sec. 1.* Section 3-80 of the Revised Laws of Hawaii 1955, as amended, is hereby further amended to read as follows:

"3-80. Employee-management cooperation. "In the interest of effective personnel management and efficient operations of State or county government, orderly and constructive relationships shall be encouraged between government management officials and employees.

"Subject to the paramount requirements of the public service, employee-management cooperation must provide employees with an opportunity for meaningful participation in the formulation and implementation of policies and procedures affecting the conditions of their employment.

"Employee-management relations shall be consistent with the merit system, laws, and rules. They shall be facilitated through the establishment of uniform and orderly methods of communication.

"(a) Membership in public employees' organizations. "Employees shall have the right to join or not to join any public employees' association, organization, or union not asserting the right to strike or proposing to assist in any strike against the government.

"(b) Right to petition. "The right of any individual officer or employee in civil service, or any group of officers or employees, to present grievances or to petition for redress of grievances to the Legislature, or any other public officer or body, shall not be denied or interfered with.

"(c) Consultation. "Each department shall consult its employees or employee organizations when formulating and implementing personnel policies and practices, and matters affecting working conditions that are of concern to its employees.

"(d) Discussion before changes. "Before changing major policies or methods of operation, each department shall notify its employees of the proposed changes. When requested by its employees, each department shall meet to discuss the proposed changes.

"(e) Request for meetings. "Employees may request meetings with departments to act upon subjects or disputes for which adjustments are not provided in established rules, regulations, procedures or directives.

"(f) Time for meetings. "Meetings between employees and officials of the department shall be held during normal working hours. A reasonable number of full-time representatives of public employees' organizations may attend these meetings with the approval of the department.

"(g) Written records. "Written records may be kept of these meetings and written statements of understanding may be prepared by mutual consent of the department and its employees.

"(h) Visitation. "Full-time representatives of public employees' organizations may visit members of their organization at work during regular working hours to investigate grievances and to observe whether civil service rules and safety regulations are being observed; provided, that they do not interfere with the normal operations of the department.

"(i) The rights and privileges granted to the employees under this section shall be extended to all employees, irrespective of whether they are members of any public employees' organization or not."

*Sec. 2.* This Act shall take effect upon its approval.

### Informational And Educational Meetings During Working Hours

*Sec. 1.* Chapter 3 of the Revised Laws of Hawaii 1955, as amended, is hereby amended by adding a new section to read as follows:

"3-80.5 Meetings. Each department shall permit its employees to attend informational and educational meetings conducted during working hours by duly recognized governmental employee organizations, provided that these meetings shall permit the attendance of members and non-members and shall be scheduled for periods of not more than two hours once every three months at times which do not interfere with the normal operations of the respective departments.

*Sec. 2.* This Act shall take effect on July 1, 1967.

## MAINE
(*Revised Statutes*, Title 26, Chapter 9-A)

### Municipal Public Employees Labor Relations Law

*Sec. 1.* R. S., T. 26, c. 9-A, additional. Title 26 of the Revised Statutes is amended by adding a new chapter 9-A, to read as follows:

*Sec. 961. Purpose.* It is declared to be the public policy of this State and it is the purpose of this chapter to promote the improvement of the relationship between public employers and their employees by providing a uniform basis for recognizing the right of public employees to join labor organizations of their own choosing and to be represented by such organizations in collective bargaining for terms and conditions of employment.

*Sec. 962. Definitions.* As used in this chapter the following terms shall, unless the context requires a different interpretation, have the following meanings:

1. *Appeals board.* "Appeals board" means the Public Employees Labor Relations Appeals Board referred to in section 968.

2. *Bargaining agent.* "Bargaining agent" means any lawful organization, association or individual representative of such organization or association which has as its primary purpose the representation of employees in their employment relations with employers, and which has been determined by the public employer or the commissioner to be the choice of the majority of the unit as their representative.

3. *Commissioner.* "Commissioner" means the Commissioner of Labor and Industry.

4. *Department.* "Department" means the Department of Labor and Industry.

5. *Professional employee.* "Professional employee" means any employee engaged in work:

A. Predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work;

B. Involving the consistent exercise of discretion and judgment in its performance;

C. Of such a character that the output produced or the result accomplished cannot be standardized in relation to a given time period; and

D. Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical processes.

6. *Public employee.* "Public employee" means any employee of a public employer except any person:

A. Elected by popular vote; or

B. Appointed to office pursuant to statute, ordinance or resolution for a specified term of office by the executive head or body of the public employer; or

C. Whose duties as deputy, administrative assistant or secretary necessarily imply a confidential relationship to the executive head, body, department head or division head of the applicable bargaining unit; or

D. Who is a department head or division head appointed to office pursuant to statute, ordinance or resolution for an unspecified term by the executive head or body of the public employer; or

E. Who is a superintendent or assistant superintendent of a school system; or

F. On a probationary or provisional status, or who is a temporary, seasonal, on-call or part-time employee.

7. *Public employer.* "Public employer" means any officer, board, commission, council, committee or other persons or body acting on behalf of any municipality or town or any subdivision thereof, or of any school, water, sewer or other district.

*Sec. 963. Right of public employees to join labor organizations.* No one shall directly or indirectly interfere with, intimidate, restrain, coerce or discriminate against public employees or a group of public employees in the free exercise of their rights, hereby given, voluntarily to join, form and participate in the activities of organizations of their own choosing for the purposes of representation and collective bargaining, or in the free exercise of any other right under this chapter.

*Sec. 964. Prohibited acts of public employers, public employees and public employee organizations.*

1. *Public employer prohibitions.* Public employers, their representatives and their agents are prohibited from:

A. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed in section 963;

B. Encouraging or discouraging membership in any employee organization by discrimination in regard to hire or tenure of employment or any term or condition of employment;

C. Dominating or interfering with the formation, existence or administration of any employee organization;

D. Discharging or otherwise discriminating against an employee because he has signed or filed any affidavit, petition or complaint or given any information or testimony under this chapter;

E. Refusing to bargain collectively with the bargaining agent of its employees as required by section 965;

F. Blacklisting of any employee organization or its members for the purpose of denying them employment.

2. *Public employee prohibitions.* Public employees, public employee organizations, their agents, members and bargaining agents are prohibited from:

A. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed in section 963, or a public employer in the selection of his representative for purposes of collective bargaining or the adjustment of grievances;

B. Refusing to bargain collectively with a public employer as required by section 965;

C. Engaging in:

(1) A work stoppage;

(2) A slowdown;

(3) A strike; or

(4) The blacklisting of any public employer for the purpose of preventing it from filling employee vacancies.

3. *Violations.* Violations of this section may be enjoined upon complaint of any party affected by such violation. Sections 5 and 6 shall apply to any such injunction proceedings except that neither an allegation nor proof of unavoidable substantial and irreparable injury to the complainant's property shall be required to obtain a temporary restraining order or injunction. In connection therewith, actions may be brought by or against any unincorporated employee organization in the name by which it is known.

*Sec. 965. Obligation to bargain.*

1. *Negotiations.* It shall be the obligation of the public employer and the bargaining agent to bargain collectively. "Collective bargaining" means, for the purposes of this chapter, their mutual obligation:

A. To meet at reasonable times;

B. To meet within 10 days after receipt of written notice from the other party requesting a meeting for collective bargaining purposes, provided the parties have not otherwise agreed in a prior written contract;

C. To confer and negotiate in good faith with respect to wages, hours, working conditions and contract grievance arbitration except that by such obligation neither party shall be compelled to agree to a proposal or be required to make a concession and except that public employers of teachers shall meet and consult but not negotiate with respect to educational policies for the purpose of this paragraph, educational policies shall not include wages, hours, working conditions or contract grievance arbitration;

D. To execute in writing any agreements arrived at, the term of any such agreement to be subject to negotiation but shall not exceed 3 years; and

E. To participate in good faith in the fact-finding and arbitration procedures required by this section.

Whenever wages, rates of pay or any other matter requiring appropriation of money by any municipality are included as a matter of collective bargaining conducted pursuant to this chapter, it is the obligation of the bargaining agent to serve written notice of request for collective bargaining on the public employer at least 120 days before the conclusion of the current fiscal operating budget.



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2. *Mediation.* Mediation procedures shall be followed whenever the parties jointly agree to use such services.

3. *Fact-finding.* If the parties, either with or without the services of a mediator, are unable to effect a settlement of their controversy, they may jointly agree either to call upon the Maine Board of Arbitration and Conciliation for fact-finding services with recommendations or to pursue some other mutually acceptable fact-finding procedure.

If the parties do not jointly agree to call upon the Maine Board of Arbitration and Conciliation or to pursue some other procedure, either party to the controversy may request the commissioner to assign a fact-finding board. If so requested, the commissioner shall appoint a fact-finding board, ordinarily of 3 members, in accordance with rules and procedures prescribed by the commissioner for making such appointment. The fact-finding board shall be appointed from a list maintained by the commissioner and drawn up after consultation with representatives of state and local government administrators, agencies with industrial relations and personnel functions and representatives of employee organizations and of employers. Any person who has actively participated as the mediator in the immediate proceedings for which fact-finding has been called shall not sit on that fact-finding board. The board shall hear the contending parties to the controversy. It may request statistical data and reports on its own initiative in addition to the data regularly maintained by the commissioner. The members of the fact-finding board shall submit their findings and recommendations to the parties only.

The parties shall have a period of 30 days, after the receipt of findings and recommendations from the fact finders, in which to make a good faith effort to resolve their controversy. If the parties have not resolved their controversy by the end of said period, either party may, but not until the end of said period unless the parties otherwise jointly agree, make the fact-finding and recommendations public.

4. *Arbitration.* In addition to the 30-day period referred to in subsection 3, the parties shall have 15 more days, making a total period of 45 days from the receipt of findings and recommendations, in which to make a good faith effort to resolve their controversy.

If the parties have not resolved their controversy by the end of said 45-day period, they may jointly agree to an arbitration procedure which will result in a binding determination of their controversy. Such determinations will be subject to review by a Justice of the Superior Court in the manner specified by section 7.

If they do not jointly agree to such an arbitration procedure within 10 days after the end of said 45-day period, then either party may, by written notice to the other, request that their differences be submitted to a board of 3 arbitrators. The bargaining agent and the public employer shall within 5 days of such request each select and name one arbitrator and shall immediately thereafter notify each other in writing of the name and address of the person so selected. The 2 arbitrators so selected and named shall, within 10 days from such request, agree upon and select and name a neutral arbitrator. If either party shall not select its arbitrator or if the 2 arbitrators shall fail to agree upon, select and name a neutral arbitrator within said 10 days, either party may request the American Arbitration Association to utilize its procedures for the selection of the neutral arbitrator. As soon as possible after receipt of such request, the neutral arbitrator will be selected in accordance with rules and procedures prescribed by the American Arbitration Association for making such selection. The neutral arbitrator so selected will not, without the consent of both parties, be the same person who was selected as mediator pursuant to subsection 2 nor any member of the fact-finding board selected pursuant to subsection 3. As soon as possible after the selection of the neutral arbitrator, the 3 arbitrators or if either party shall not have selected its arbitrator, the 2 arbitrators, as the case may be, shall meet with the parties or their representatives, or both, forthwith, either jointly or separately, make inquiries and investigations, hold hearings, or take such other steps as they deem appropriate. If the neutral arbitrator is selected by utilizing the procedures of the American Arbitration Association, the arbitration proceedings will be conducted in accordance with the rules and procedures of the American Arbitration Association. The hearing shall be informal, and the rules of evidence prevailing in judicial proceedings shall not be binding. Any and all documentary evidence and other data deemed relevant by the arbitrators may be received in evidence. The arbitrators shall have the power to administer oaths and to require by subpoena the attendance and testimony of witnesses, the production of books, records and other evidence relative or pertinent to the issues represented to them for determination.

If the controversy is not resolved by the parties themselves, the arbitrators shall proceed as follows: With respect to a controversy over salaries, pensions and insurance, the arbitrators will recommend terms of settlement and may make findings of fact; such recommendations and findings will be advisory only and will be made, if reasonably possible, within 30 days after the selection of the neutral arbitrator; the arbitrators may in their discretion, make such recommendations and findings public, and either party may make such recommendations and findings public if agreement is not reached with respect to such findings and recommendations within 10 days after their receipt from the arbitrators; with respect to a controversy over subjects other than salaries, pensions and insurance, the arbitrators shall make determinations with respect thereto if reasonably possible within 30 days after the selection of the neutral arbitrator; such determinations may be made public by the arbitrators of either party; and if made by a majority of the arbitrators, such determinations will be binding on both parties and the parties will enter an agreement or take whatever other action that may be appropriate to carry out and effectuate such binding determinations; and such determinations will be subject to review by a Justice of the Superior Court in the manner specified by section 7.

5. *Costs.* The costs for the services of the mediator, the members of the fact-finding board and of the neutral arbitrator including, if any, per diem expenses, and actual and necessary travel and subsistence expenses and the costs of hiring the premises where any mediation, fact-finding or arbitration proceedings are conducted, will be shared equally by the parties to the arbitration. All other costs will be assumed by the party incurring them. The services of the members of the State of Maine's Panel of Mediators and of the Maine Board of Arbitration and Conciliation are available to the parties without cost.

*Sec. 966. Bargaining unit; how determined.* In the event of a dispute between the public employer and an employee or employees as to whether a supervisory or other position is included in the bargaining unit, the commissioner shall make the determination, except that anyone excepted from the definition of public employee under section 962 may not be included in a bargaining unit. In determining whether a supervisory position should be excluded from coverage under this chapter, the commissioner shall consider, among other criteria, if the principal functions of the position are characterized by performing such management control duties as scheduling, assigning, overseeing and reviewing the work of subordinate employees, or performing such duties as are distinct and dissimilar from those performed by the employees supervised, or exercising judgment in adjusting grievances, applying other established personnel policies and procedures and in enforcing the provisions of a collective bargaining agreement or establishing or participating in the

establishment of performance standards for subordinate employees and taking corrective measures to implement those standards. Nothing in this chapter is intended to require the exclusion of principals, assistant principals, other supervisory employees from school system bargaining units which include teachers and nurses in supervisory positions.

The commissioner shall decide in each case whether, in order to insure to employees the fullest freedom in exercising the rights guaranteed by this chapter, and in order to insure a clear and identifiable community of interest among employees concerned, the unit appropriate for purposes of collective bargaining shall be the public employer unit or any subdivision thereof and no unit shall include both professional and nonprofessional employees unless a majority of such professional employees vote for inclusion in such unit, except that teachers may be included in a unit consisting of other certificated employees.

*Sec. 967. Determination of bargaining agent.*

1. *Voluntary recognition.* Any public employee organization may file a request with a public employer alleging that a majority of the public employees in an appropriate bargaining unit wish to be represented for the purpose of collective bargaining between the public employer and the employees' organization. Such request shall describe the grouping of jobs or positions which constitute the unit claimed to be appropriate and shall include a demonstration of majority support. Such request for recognition shall be granted by the public employer unless the public employer desires that an election determine whether the organization represents a majority of the members in the bargaining unit.

2. *Elections.* The commissioner upon signed request of a public employer alleging that one or more public employees or public employee organizations have presented to it a claim to be recognized as the representative of a bargaining unit of public employees, or union signed petition of at least 30% of a bargaining unit of public employees that they desire to be represented by an organization, shall conduct a secret election to determine whether the organization represents a majority of the members in the bargaining unit.

The ballot shall contain the name of such organization and that of any other organization showing written proof of at least 10% representation of the public employees within the unit, together with a choice for any public employee to designate that he does not desire to be represented by any bargaining agent. Where more than one organization is on the ballot and no one of the 3 or more choices receives a majority vote of the public employees voting, a run-off election shall be held. The run-off ballot shall contain the 2 choices which received the largest and second-largest number of votes. When an organization receives the majority of votes of the unit, the commissioner shall certify it as the bargaining agent. The bargaining agent certified as representing a bargaining unit shall be recognized by the public employer as the sole and exclusive bargaining agent for all of the employees in the bargaining unit unless and until a decertification election by secret ballot shall be held and the bargaining agent declared by the commissioner as not representing a majority of the unit.

Whenever 30% of the employees in a certified bargaining unit petition for a bargaining agent to be decertified, the procedures for conducting an election on the question shall be the same as for representation as bargaining agent hereinbefore set forth.

No question concerning representation may be raised within one year of a certification or attempted certification. Where there is a valid collective bargaining agreement in effect, no question of representation may be raised except during the period not more than 90 nor less than 60 days prior to the expiration date of the agreement.

The bargaining agent certified by the commissioner as the exclusive bargaining agent shall be required to represent all the public employees within the unit without regard to membership in the organization certified as bargaining agent, provided that any public employee at any time may present his grievance to the public employer and have such grievance adjusted without the intervention of the bargaining agent, if the adjustment is not inconsistent with the terms of a collective bargaining agreement then in effect and if the bargaining agent's representative has been given reasonable opportunity to be present at any meeting of the parties called for the resolution of such grievance.

All bargaining units officially recognized by public employers prior to the effective date of this Act shall be recognized as certified units and each collective bargaining agreement covering employees in any such bargaining unit shall be effective for its duration or not later than January 1, 1972.

*Sec. 968. Right of appeal.* Whenever any party is aggrieved by any ruling or determination of the commissioner under sections 966 and 967, such party may appeal, within 15 days after the announcement of the ruling or determination, to the Public Employees Labor Relations Appeals Board hereinafter established. This appeal will be the sole means of review of such determinations, section 7 to the contrary notwithstanding.

1. *Public Employees Labor Relations Appeals Board.* The Public Employees Labor Relations Appeals Board shall consist of 3 members to be appointed by the Governor, with the advice and consent of the Council. The Governor, in making his appointments, shall name one to represent public employees, one to represent public employers and school systems and the 3rd to represent the public, who shall be its chairman. The term of each member shall be for a period of 4 years. The members of the appeals board shall receive necessary expenses on the approval of the Commissioner of Labor and Industry. The commissioner shall designate a member of the Department of Labor and Industry to be the permanent secretary to the appeals board, who shall maintain a record of all proceedings of the appeals board.

The appeals board shall from time to time adopt such rules of procedure as it deems necessary for the orderly conduct of its business, and shall annually, on or before the first day of July, make a report to the Governor and Council which shall be incorporated in and printed with the biennial report of the department. The appropriation for the appeals board shall be included in the department's budget and authorization for expenditures shall be the responsibility of the commissioner.

The appeals board shall sit at the call of the chairman to hear and decide appeals arising from determinations of the commissioner. Decisions of the appeals board shall be subject to review by a Justice of the Superior Court in the manner specified in section 7.

The appeals board shall have the authority to recommend to the Legislature changes or additions to this chapter or of related enactments of law.

2. *Summoning witnesses; production of books and records.* The appeals board may summon as witnesses any employee or any person in the department who keeps records of wages earned in the business in which the controversy exists and may require the production of books which contain the record of wages paid. Summonses may be signed and oaths administered by any member of the appeals board. Witnesses summoned by the appeals board shall be allowed the same fees as are paid to witnesses in the Superior Court.

These fees together with all necessary expenses of the appeals board shall be paid by the Treasurer of State on warrants drawn by the State Controller.

3. *Hearings.* The appeals board shall, upon receipt of an appeal by the chairman and at the call of the chairman, hold, within 10 days, a hearing on the appeal. The chairman shall give at least 7 days' notice in writing of the time and place of hearing to each of the other 2 members, the aggrieved parties, the labor organizations or bargaining agent and the public employer.

The hearings shall be informal, and the rules of evidence prevailing in judicial proceedings shall not be binding. Any and all documentary evidence and other data deemed relevant by the appeals board may be received in evidence. The chairman shall have the power to administer oaths and to require by subpoena the attendance and testimony of witnesses, the presentation of books, records and other evidence relative or pertinent to the issues presented to them for determination.

The hearings conducted by the appeals board shall be concluded within 20 days of the time of commencement of the hearings. Within 10 days after the conclusion of the hearings the appeals board shall make written findings and a written statement upon the appeal presented, a copy of which shall be mailed or otherwise delivered to the labor organization or bargaining agent or its attorney or other designated representative and the public employer.

*Sec. 969. Municipal personnel board or civil service authority.* Nothing in this chapter shall diminish the authority and power of any municipal civil service commission or personnel board or its agents established by statute, charter or special act to conduct and grade merit examinations and to rate candidates in the order of their relative excellence from which appointments or promotions may be made to positions in the competitive division of the classified service of the municipal employer served by such a civil service commission or personnel board. The conduct and the grading of merit examinations, the rating of candidates and the establishment of lists from such examinations and the appointments from such lists shall not be subject to collective bargaining. If a collective bargaining agreement between a public employer and a bargaining agent contains provisions for binding arbitration of grievances involving the following matters: The demotion, lay-off, reinstatement, suspension, removal, discharge or discipline of any public employee, such provisions shall be controlling in the event they are in conflict with any authority and power, involving such matters, or any such municipal civil service commission or personnel board or its agents.

*Sec. 970. Scope of binding contract arbitration.* A collective bargaining agreement between a public employer and a bargaining agent may provide for binding arbitration as the final step of a grievance procedure but the only grievances which may be taken to such binding arbitration shall be disputes between the parties as to the meaning or application of the specific terms of the collective bargaining agreement. An arbitrator with the power to make binding decisions pursuant to any such provision shall have no authority to add to, subtract from or modify the collective bargaining agreement.

*Sec. 971. Rules and regulations.* The commissioner may issue such rules and regulations as the commissioner may consider necessary or appropriate for carrying out the purposes of sections 966 and 967.

*Sec. 2.* R.S., T. 26, c. 10, repealed. Chapter 10 of Title 26 of the Revised Statutes, as enacted by chapter 396 of the public laws of 1965, is repealed.

## MASSACHUSETTS

(Acts, 1965. – Chap. 763.)

AN ACT PROVIDING FOR THE ELECTION OF REPRESENTATIVE BARGAINING AGENTS WITH POLITICAL SUBDIVISIONS OF THE COMMONWEALTH.

*Be it enacted, etc., as follows:*

*Section 1.* Section four C of chapter forty of the General Laws is hereby repealed.

*Section 2.* Chapter 149 of the General Laws is hereby amended by inserting after section 178F the following eight sections:–

*Section 178G.* When used in this section and in sections one hundred and seventy-eight H to one hundred and seventy-eight N, inclusive, the following words shall, unless the context requires otherwise, have the following meanings:–

"Municipal employer", any county, city, town, or district, and any person designated by the municipal employer to act in its interest in dealing with municipal employees.

"Employee", any employee of a municipal employer, whether or not in the classified service of the municipal employer, except elected officials, board and commission members, police, and the executive officers of any municipal employer.

"Employee organization", any lawful association, organization, federation or council having as a primary purpose the improvement of wages, hours and other conditions of employment.

"Professional employee", any employee engaged in work which is predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work, which involves the consistent exercise of discretion and judgment in its performance, of such a character that the output produced or the result accomplished cannot be standardized in relation to a given time period, and which requires knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical processes.

*Section 178H.* (1) Employees shall have, and be protected in the exercise of, the right to self-organization, to form, join or assist any employee organization, to bargain collectively through representatives of their own choosing on questions of wages, hours and other conditions of employment and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, free from actual interference, restraint or coercion; provided, however, that an employee organization recognized by a municipal employer or designated as the representative of the majority of the employees in an appropriate unit, shall be the exclusive bargaining agent for all employees of such unit, and shall act, negotiate agreements and bargain collectively for all employees in the unit, and shall be responsible for representing the interests of all such employees without discrimination and without regard to employee organization membership.

(2) Whenever, in accordance with such regulations as may be prescribed by the state labor relations commission, a petition is filed with said commission by a municipal employer alleging that one or more employee organizations have presented a claim to be recognized as the representative of a majority of employees in a specified unit, or by an employee or group of employees or an employee organization alleging that a substantial number of employees wish to be represented for collective bargaining by an employee organization as exclusive representative, or that the employee organization currently certified or recognized by the municipal employer as the bargaining representative does not currently represent a majority of the employees in the unit, said commission shall investigate such petition and, if it has reasonable cause to believe that a question of representation exists, shall provide for an appropriate hearing upon due notice.

(3) If, after hearing, the commission finds that there is a controversy concerning the representation of employees, it shall direct an election by secret ballot or shall use any other suitable method to determine whether and by which employee organization the employees desire to be represented and shall certify the results thereof. No election shall be directed in any bargaining unit or any subdivision thereof within which in the preceding twelve-month period a valid election has been held. No election shall be directed during the term of a collective bargaining agreement; except that for good cause shown the commission may direct such an election. An employee organization which receives a majority of votes cast in an election shall be designated by the commission as exclusive representative of the employees in the unit. In any election where none of the choices on the ballot receives a majority, a run off shall be conducted, the ballot providing for a selection between the two choices receiving the largest and the second largest number of valid votes cast in the election.

(4) The commission shall decide in each case whether the appropriate unit for purposes of collective bargaining shall be the municipal employer unit or any other unit thereof; provided, uniformed employees of the fire department shall be in a separate unit; and provided, further, that no unit shall include both professional and nonprofessional employees unless a majority of such professional employees vote for inclusion in such unit.

*Section 178I.* The municipal employer and the employee organization recognized or designated as exclusive representative of employees in an appropriate unit shall have the duty to bargain collectively. In such bargaining other than with an employee organization for school employees, the municipal employer shall be represented by the chief executive officer, whether elected or appointed, or his designated representative or representatives. In such bargaining with an employee organization for school employees, the municipal employer shall be represented by the school committee or its designated representative or representatives.

For the purposes of collective bargaining, the representative of the municipal employer and the representative of the employees shall meet at reasonable times, including meetings appropriately related to the budget making process, and shall confer in good faith with respect to wages, hours and other conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and shall execute a written contract incorporating any agreement reached, but neither party shall be compelled to agree to a proposal or to make a concession. In the event that any part or provision of any such agreement is in conflict with any law, ordinance or by-law, such law, ordinance or by-law shall prevail so long as such conflict remains. If funds are necessary to implement such written agreement, a request for the necessary appropriation shall be submitted to the legislative body. If such request is rejected, the matter shall be returned to the parties for further bargaining. The preceding two sentences shall not apply to agreements reached by school committees in cities and towns in which the provisions of section thirty-four of chapter seventy-one are operative.

*Section 178J.* (*a*) If, after a reasonable period of negotiation over the terms of an agreement, a dispute exists between a municipal employer and an employee organization, or if no agreement has been reached sixty days prior to the final date for setting the municipal budget, either party or the parties jointly may petition the state board of conciliation and arbitration to initiate fact finding.

(*b*) Upon receipt of such petition the board of conciliation and arbitration shall make an investigation to determine if the conditions set forth in paragraph (*a*) exist. If the board finds that such conditions do exist, it shall initiate fact finding. Prior to such fact finding, or prior to fact finding ordered by the state labor relations commission in accordance with the provisions of section one hundred and seventy-eight L, the board of conciliation and arbitration shall submit to the parties a panel of three qualified disinterested persons from which list the parties shall select one person to serve as the fact finder and shall notify the board of conciliation and arbitration of their choice. If the parties fail to select the fact finder within five calendar days of receipt of the list, the board of conciliation and arbitration shall appoint the person who shall serve as fact finder.

(*c*) The person selected or appointed as fact finder may establish dates and place of hearings which shall be where feasible in the locality of the municipality involved. Any such hearings shall be conducted in accordance with rules established by the board of conciliation and arbitration. Upon request, the board of conciliation and arbitration shall issue subpoenas for hearings conducted by the fact finder. The fact finder may administer oaths. Upon completion of the hearings and within sixty days from the date of appointment, unless extended by the board of conciliation and arbitration for good cause shown, the fact finder shall make written findings of fact and recommendations for resolution of the dispute and shall cause the same to be served on the municipal employer and the employee organization involved.

(*d*) Only employee organizations which are designated or recognized as the exclusive representative under section one hundred and seventy-eight H shall be proper parties in initiating fact finding proceedings.

(*e*) The cost of fact finding proceedings under this section shall be divided equally between the municipal employer and said employee organization. Compensation for the fact finder shall be in accordance with a schedule of payment established by the board of conciliation and arbitration.

(*f*) Nothing in this section shall be construed to prohibit the fact finder from endeavoring to mediate the dispute in which he has been selected or appointed as fact finder.

*Section 178K.* The services of the state board of conciliation and arbitration shall also be available to municipal employers and employee organizations for purposes of conciliation of grievances or contract disputes and for purposes of arbitration of disputes over the interpretation or application of the terms of a written agreement. Nothing in this section shall prevent the use of other arbitration tribunals in the resolution of disputes over the interpretation or application of the terms or written agreements between municipal employers and employee organizations.

*Section 178L.* Municipal employers or their representatives or agents are prohibited from:–(1) interfering with, restraining or coercing employees in the exercise of the rights guaranteed in section one hundred and seventy-eight H; (2) dominating or interfering with the formation, existence or administration of any employee organization; (3) discharging or otherwise discriminating against an employee because he has signed or filed any affidavit, petition or complaint or given any information or testimony under this section; (4) refusing to bargain collectively in good faith with an employee organization which has been recognized or designated as the exclusive representative of employees in an appropriate unit; and (5) refusing to discuss grievances with the representatives of an employee organization recognized or designated as the exclusive representative in an appropriate unit.

Employee organizations or their agents are prohibited from (1) restraining or coercing a municipal employer in the selection of its representative for purposes of collective bargaining or the adjustment of grievances; and (2) if recognized or designated as the exclusive representative of employees in an appropriate unit, refusing to bargain collectively in good faith with a municipal employer.

When a complaint is made to the labor relations commission that a practice prohibited by this section has been committed, the commission may issue an order dismissing the complaint or may order a further investigation or a hearing thereon. If a hearing is ordered, the commission shall set the time and place for the hearing, which time and place may be changed by the commission at the request of one of the parties for cause shown. Any complaint may be amended with the permission of the commission. The municipal employer, the employee organization or the person so complained of shall have the right to file an answer to the original or amended complaint within five days after the service of such complaint or within such other time as the commission may limit. Such municipal employer, such employee organization or such person shall have the right to appear in person or otherwise to defend against such complaint. In the discretion of the commission any person may be allowed to intervene in such proceeding. In any hearing the commission shall not be bound by the technical rules of evidence prevailing in the courts. A transcript of the testimony taken at any hearing before the commission shall be filed with the commission.

If, upon all the testimony, the commission determines that a prohibited practice has been committed, it shall state its findings of fact and shall issue and cause to be served on the party committing the prohibited practice an order requiring it or him to cease and desist from such prohibited practice, and shall take such further affirmative action as will comply with the provisions of this section, including but not limited to the withdrawal of certification of an employee organization established by or assisted in its establishment by any such prohibited practice. If it is alleged that either party has refused to bargain collectively, the state labor relations commission shall order fact finding and direct the party at fault to pay the full costs thereof. It shall order the reinstatement with or without back pay of an employee discharged or discriminated against in violation of the first paragraph of this section. If, upon all of the testimony, the commission determines that a prohibited practice has not been or is not being committed, it shall state its finding of fact and shall issue an order dismissing the complaint.

*Section 178M.* It shall be unlawful for any employee to engage in, induce, or encourage any strike, work stoppage, slowdown or withholding of services by such employees.

*Section 178N.* Nothing in sections one hundred and seventy-eight F to one hundred and seventy-eight M, inclusive, shall diminish the authority and power of the civil service commission, or any retirement board or personnel board established by law, nor shall anything in said sections constitute a grant of the right to strike to employees of any municipal employer.

*Section 3.* Section 9R of chapter 23 of the General Laws, as appearing in section 1 of chapter 345 of the acts of 1938, is hereby amended by inserting after the word "inclusive", in line 4, the words:–, of this chapter, sections one hundred and seventy-eight H and one hundred and seventy-eight L of chapter one hundred and forty-nine.

### Public Employees: Right to Join

*Sec. 178D.* Employees of the Commonwealth or any political subdivision thereof shall have the right to form and join vocational or labor organizations and to present proposals relative to salaries and other conditions of employment through representatives of their own choosing. No such employee shall be discharged or discriminated against because of his exercise of such right, nor shall any person or group of persons, directly or indirectly, by intimidation or coercion, compel or attempt to compel any such employee to join or refrain from joining a vocational or a labor organization. This section shall not be applicable to police officers in the employ of the Commonwealth or any political subdivision thereof. Whoever violates any provision of this section shall be punished by a fine of not more than $200 dollars.

### State Employees (Chapter 774, Laws, 1967)

*Sec. 178F.* (1) The following words, when used in this section shall have the following meanings:

"Employee", any employee of the commonwealth assigned to work in any department, board, commission or other agency thereof except the head of any department, board, commission, or other agency who is appointed by the governor and members of any board, commission or other agency who are so appointed, and any other persons whose participation or activity in the management of employee organizations would be incompatible with law or with his official duty as an employee.

"Employer", the commonwealth, acting through a department or agency head as agent, or any person so designated by such department or agency head.

"Employee organization", any lawful association, organization, federation, council or labor union, the membership of which includes employees of the commonwealth, and having as a primary purpose the improvement of working conditions for employees of the commonwealth.

"Commission", the Labor Relations Commission established under section nine O of chapter twenty-three.

(2) Employees shall have, and be protected in the exercise of the right of self-organization, the right to form, join or assist any employee organization, to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining and other mutual aid or protection, free from interference, restraint or coercion; provided, however, that an employee organization recognized by a department or agency head and designated as the representative of the majority of

employees in an employee unit according to procedures hereinafter set forth shall be the exclusive bargaining agent for all employees of such unit, and shall act, negotiate agreements and bargain collectively for all employees in the unit. Such organizations shall represent the interests of all such employees without discrimination and without regard to employee organization membership.

(3) Employee organizations and the appropriate department or agency heads may, by mutual agreement, subject to the approval of the director of personnel and standardization, establish appropriate collective bargaining units based upon community of interest, which may include similar working conditions, common supervision and physical location. Employees may, in appropriate cases, be given the opportunity to determine for themselves whether they desire to establish themselves as an appropriate collective bargaining unit.

If no such agreement on an appropriate collective bargaining unit is reached between the employee organization or organizations and the department or agency head within a reasonable time, such reasonable time to be determined by the director of personnel and standardization, but in any event not longer than sixty days after the initial request for such discussion, the failure to reach such agreement, unless such time period is extended by mutual agreement between the parties involved, shall be held to constitute a dispute. When the failure to reach such an agreement qualifies as a dispute, the parties involved shall use the services of the Labor Relations Commission to resolve such dispute.

(4) When an employee organization presents to the department or agency head satisfactory and timely written evidence that more than fifty per cent of the employees in the appropriate bargaining unit wish to be represented, for purposes of collective bargaining, by an employee organization, there shall be posted by the department or agency head, in a conspicuous place, a notice of intent to recognize the petitioning employee organization. If no claim for recognition from any other employee organization is presented to the department or agency head within fifteen days following the posting of such notice, the director of personnel and standardization, upon notification, shall issue forthwith a consent recognition designating that organization as the exclusive bargaining representative. This recognition will be binding and shall not be subject to challenge by any party for at least a period of twelve months thereafter.

If a majority determination is not achieved by the foregoing procedure, a petition may be filed with the Labor Relations Commission for an election to determine the appropriate collective bargaining representative by procedures set forth in chapter one hundred and fifty A.

Revocation of certification of an employee organization as an exclusive bargaining representative shall be initiated in like manner.

(5) In any election where none of the choices on the ballot receives a majority, a runoff election shall be conducted, the ballot providing for a selection between the two choices receiving the largest and the second largest number of valid votes cast in the election.

(6) Following either certification or consent recognition of the majority designated employee organization, the commonwealth, through its department or agency heads or their designated representatives, shall have the duty to bargain collectively in good faith with such employee organization.

For the purposes of collective bargaining, the department or agency head or his designated representative and the representative of the employees shall meet at reasonable times and shall confer in good faith with respect to conditions of employment, and shall execute a written contract incorporating any agreement so reached, but neither party shall be compelled to agree to a proposal or to make a concession.

(7) If, after a reasonable period of negotiation, a dispute exists between a department or agency head and an employee organization over the terms of an agreement, either party or the parties jointly may petition the director of personnel and standardization to initiate procedures for fact finding. Upon receipt of such petition, the director of personnel and standardization shall cause an investigation to be made to determine the validity of the conditions set forth in such petition. If the director finds that such alleged conditions do exist, he shall submit to the parties a list of three qualified disinterested persons from which list the parties shall select one person to serve as a fact finder and shall so notify the director, who shall then appoint such person. If the parties fail to select a fact finder within five calendar days of receipt of the list, the director shall appoint a person who shall serve as fact finder.

The person appointed fact finder may establish dates and places of hearings which shall be, where feasible, in a convenient location to the parties concerned. Upon completion of the hearings and within forty-five days from the date of appointment, unless extended by the director of personnel and standardization for good cause shown, the fact finder shall make written findings of fact and recommendations for the resolution of the dispute and shall cause the same to be served on the department or agency head and the employee organization involved.

(8) Department or agency heads or their designated representatives or agents are prohibited from: interfering with, restraining or coercing employees in the exercise of their rights guaranteed them under this section; dominating or interfering with the formation or administration of any employee organization or contributing financial or other support to it; encouraging or discouraging membership in any employee organization by discrimination in regard to hiring, tenure, or other conditions of employment; refusing to bargain collectively in good faith with the representative chosen by the majority of employees in the appropriate collective bargaining unit; discharging or discriminating against an employee because he has filed charges or given testimony under this section; violating the provisions of any written agreement already entered into.

(9) Employee organizations or their agents are prohibited from: interfering with, restraining or coercing employees in the exercise of their rights guaranteed them under this section; restricting, coercing or interfering with the department or agency head in the selection of his agent for the purposes of collective negotiations or adjustment of grievances; causing or attempting to cause an employer to discriminate against an employee for membership or nonmembership in an employee organization; refusing to bargain collectively in good faith with the duly authorized agent of the employer, provided it is the recognized or certified exclusive collective bargaining representative of the employees in the appropriate collective bargaining unit; violating the provisions of any written agreement already entered into; engaging in, inducing or encouraging any state employees to engage in a strike or a concerted refusal to work or to perform their usual duties as employees.

(10) Upon a complaint being made to the Labor Relations Commission alleging that a practice prohibited by subsections (8) and (9) of this section has been committed, the commission, upon investigation, may issue an order dismissing the complaint or may order a further investigation or a hearing thereon. The commission shall set the time and place for such hearing, which time and place may be changed by the commission at the request of one of the parties for cause shown. Any complaint may be amended with the permission of the commission. The department or agency head, the employee organization or the person so complained of shall have the right to file

an answer to the original or amended complaint within five days after the service of such complaint and amendments thereto, or within such other time as the commission may determine. Such department or agency head, such employee organization or such person shall have the right to appear in person or otherwise defend against such complaint. In the discretion of the commission any person may be allowed to intervene in such proceeding. In any hearing the commission shall not be bound by the technical rules of evidence. A transcript of the testimony before the commission shall be filed with the commission and with the director of personnel and standardization.

If, after such hearing, the commission determines that a prohibited practice has been committed, it shall state its findings of fact and shall issue and cause to be served on the party committing the prohibited practice a copy of such findings of fact, and its recommendations for resolving such prohibited practice; if, the commission determines that a prohibited practice has not been or is not being committed, it shall state its findings of fact and shall issue an order dismissing the complaint.

It shall be unlawful for any employee to engage in, induce, or encourage any strike, work stoppage, slowdown or withholding of services by such employees.

(11) The director of personnel and standardization, subject to the approval of the commissioner of administration, shall make, and from time to time may amend, such rules as may be necessary to carry out the provisions of this section.

*Sec. 178G.* When used in this section and in sections 178H-178N, inclusive, the following words shall, unless the context requires otherwise, have the following meanings:

"Municipal employer", any county, city, town, or district, and any person designated by the municipal employer to act in its interest in dealing with municipal employees.

"Employee", any employee of a municipal employer, whether or not in the classified service of the municipal employer, except elected officials, board and commission members, and the executive officers of any municipal employer. (Amended by Ch. 156, L. 1966.)

"Employee organization", any lawful association, organization, federation or council having as a primary purpose the improvement of wages, hours and other conditions of employment.

"Professional employee", any employee engaged in work which is predominately intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work, which involves the consistent exercise of discretion and judgment in its performance, of such a character that the output produced or the result accomplished cannot be standardized in relation to a given time period, and which requires knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical processes.

## MICHIGAN

### Public Employment Relations Act

### Act 336 of the Public Acts of 1947 as amended.

An act to prohibit strikes by certain public employees; to provide review from disciplinary action with respect thereto; to provide for the mediation for grievances and the holding of elections; to declare and protect the rights and privileges of public employees; and to prescribe means of enforcement and penalties for the violation of the provisions of this act.

*The People of the State of Michigan enact:*

17.455(1) Strike defined.

*Sec. 1.* As used in this act the word "strike" shall mean the concerted failure to report for duty, the wilful absence from one's position, the stoppage of work, or the abstinence in whole or in part from the full, faithful and proper performance of the duties of employment, for the purpose of inducing, influencing or coercing a change in the conditions, or compensation, or the rights, privileges or obligations of employment. Nothing contained in this act shall be construed to limit, impair or affect the right of any public employee to the expression or communication of a view, grievance, complaint or opinion on any matter related to the conditions or compensation of public employment or their betterment, so long as the same is not designed to and does not interfere with the full, faithful and proper performance of the duties of employment.

17.455(2) Strikes by public employees prohibited.

*Sec. 2.* No person holding a position by appointment or employment in the government of the state of Michigan, or in the government of any 1 or more of the political subdivisions thereof, or in the public school service, or in any public or special district, or in the service of any authority, commission, or board, or in any other branch of the public service, hereinafter called a "public employee," shall strike.

17.455(3) Authorizing strike, etc., unlawful.

*Sec. 3.* No person exercising any authority, supervision or direction over any public employee shall have the power to authorize, approve or consent to a strike by public employees, and such person shall not authorize, approve or consent to such strike, nor shall any such person discharge or cause any public employee to be discharged or separated from his or her employment because of participation in the submission of a grievance in accordance with the provisions of section 7.

17.455(4) Appointment, etc., terminated.

*Sec. 4.* (Repealed by Public Acts 1965 No. 379).

17.455(4a) State employees.

*Sec. 4a.* The provisions of this act as to state employees within the jurisdiction of the civil service commission shall be deemed to apply in so far as the power exists in the legislature to control employment by the state or the emoluments thereof.

17.455(5) Reappointment, etc., conditions.

*Sec. 5.* (Repealed by Public Acts 1965 No. 379).

17.455(6) When deemed on strike.

*Sec. 6.* Notwithstanding the provisions of any other law, any person holding such a position who, by concerted action with others, and without the lawful approval of his superior, wilfully absents himself from his position, or abstains in whole or in part from the full, faithful and proper performance of his duties for the purpose of inducing, influencing or coercing a change in the conditions or compensation, or the rights, privileges or obligations of employment shall be deemed to be on strike but the person, upon request, shall be entitled to a determination as to whether he did violate the provisions of this act. The request shall be filed in writing, with the officer or body having power to remove or discipline such employee, within 10 days after regular compensation of such employee has ceased or other discipline has been imposed. In the event of such request the officer or body shall within 10 days commence a proceeding for the determination of whether the provisions of this act have been violated by the public employee, in accordance with the law and regulations appropriate to a proceeding to remove the public employee. The proceedings shall be undertaken without unnecessary delay. The decision of the proceeding shall be made within 10 days. If the employee involved is held to have violated this law and his employment terminated or other discipline imposed, he shall have the right of review to the circuit court having jurisdiction of the parties, within 30 days from such decision, for determination whether such decision is supported by competent, material and substantial evidence on the whole record.

17.455(7) Mediating grievances.

*Sec. 7.* Upon the request of the collective bargaining representative defined in section 11, or if no representative has been designated or selected, upon the request of a majority of any given group of public employees evidenced by a petition signed by said majority and delivered to the labor mediation board, or upon request of any public employer of such employees, it shall be the duty of the labor mediation board to forthwith mediate the grievances set forth in said petition or notice, and for the purposes of mediating such grievances, the labor mediation board shall exercise the powers and authority conferred upon said board by sections 10 and 11 of Act No. 176 of the Public Acts of 1939.

17.455(8) Misdemeanor, penalty.

*Sec. 8.* (Repealed by Public Acts 1965 No. 379).

17.455(9) Forming or joining labor organizations; collective bargaining.

*Sec. 9.* It shall be lawful for public employees to organize together or to form, join or assist in labor organizations, to engage in lawful concerted activities for the purpose of collective negotiation or bargaining or other mutual aid and protection, or to negotiate or bargain collectively with their public employers through representatives of their own free choice.

17.455(10) Interference or discrimination by employer prohibited.

*Sec. 10.* It shall be unlawful for a public employer or an officer or agent of a public employer (a) to interfere with, restrain or coerce public employees in the exercise of their rights guaranteed in section 9; (b) to initiate, create, dominate, contribute to or interfere with the formation or administration of any labor organization: Provided, that a public employer shall not be prohibited from permitting employees to confer with it during working hours without loss of time or pay; (c) to discriminate in regard to hire, terms or other conditions of employment in order to encourage or discourage membership in a labor organization; (d) to discriminate against a public employee because he has given testimony or instituted proceedings under this act; or (e) to refuse to bargain collectively with the representatives of its public employees, subject to the provisions of section 11.

17.455(11) Exclusive bargaining representatives; rights of individual employees.

*Sec. 11.* Representatives designated or selected for purposes of collective bargaining by the majority of the public employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the public employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment or other conditions of employment, and shall be so recognized by the public employer: Provided, that any individual employee at any time may present grievances to his employer and have the grievances adjusted, without intervention of the bargaining representative, if the adjustment is not inconsistent with the terms of a collective bargaining contract or agreement then in effect, provided that the bargaining representative has been given opportunity to be present at such adjustment.

17.455(12) Petition; investigation; hearing; election; stipulation for consent election; procedure.

*Sec. 12.* Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the board:

(a) By a public employee or group of public employees, or an individual or labor organization acting in their behalf, alleging that 30% or more of the public employees within a unit claimed to be appropriate for such purpose wish to be represented for collective bargaining and that their public employer declines to recognize their representative as the representative defined in section 11, or assert that the individual or labor organization, which has been certified or is being currently recognized by their public employer as the bargaining representative, is no longer a representative as defined in section 11; or

(b) By a public employer or his representative alleging that 1 or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in section 11; the board shall investigate the petition and, if it has reasonable cause to believe that a question of representation exists, shall provide an appropriate hearing after due notice. If the board finds upon the record of the hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results

thereof. Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with the rules and regulations of the board.

17.455(13) Bargaining unit; status of fire fighting personnel.

*Sec. 13.* The board shall decide in each case, in order to insure public employees the full benefit of their right to self-organization, to collective bargaining and otherwise to effectuate the policies of this act, the unit appropriate for the purposes of collective bargaining as provided in section 9e of Act No. 176 of the Public Acts of 1939: Provided, that in any fire department, or any department in whole or part engaged in, or having the responsibility of, fire fighting, no person subordinate to a fire commission, fire commissioner, safety director, or other similar administrative agency or administrator, shall be deemed to be a supervisor.

17.455(14) Elections; time for holding; determining eligibility; runoff; effect of collective bargaining agreement; contract bar.

*Sec. 14.* An election shall not be directed in any bargaining unit or any subdivision within which, in the preceding 12-month period, a valid election has been held. The board shall determine who is eligibile to vote in the election and shall establish rules governing the election. In an election involving more than 2 choices, where none of the choices on the ballot receives a majority vote, a runoff election shall be conducted between the 2 choices receiving the 2 largest numbers of valid votes cast in the election. No election shall be directed in any bargaining unit or subdivision thereof where there is in force and effect a valid collective bargaining agreement which was not prematurely extended and which is of fixed duration: Provided, however, no collective bargaining agreement shall bar an election upon the petition of persons not parties thereto where more than 3 years have elapsed since the agreement's execution or last timely renewal, whichever was later.

17.455(15) Collective bargaining duty of employer; what constitutes bargaining.

*Sec. 15.* A public employer shall bargain collectively with the representatives of its employees as defined in section 11 and is authorized to make and enter into collective bargaining agreements with such representatives. For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract, ordinance or resolution incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.

17.455(16) Unfair labor practices; remedies and procedures.

*Sec. 16.* Violations of the provisions of section 10 shall be deemed to be unfair labor practices remediable by the labor mediation board in the following manner:

(a) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the board, or any agent designated by the board for such purposes, may issue and cause to be served upon the person a complaint stating the charges in that respect, and containing a notice of hearing before the board or a member thereof, or before a designated agent, at a place therein fixed, not less than 5 days after the serving of the complaint. No complaint shall issue based upon any unfair labor practice occurring more than 6 months prior to the filing of the charge with the board and the service of a copy thereof upon the person against whom the charge is made, unless the person aggrieved thereby was prevented from filing the charge by reason of service in the armed forces, in which event the 6-month period shall be computed from the day of his discharge. Any complaint may be amended by the member or agent conducting the hearing or the board, at any time prior to the issuance of an order based thereon. The person upon whom the complaint is served may file an answer to the original or amended complaint and appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member or agent conducting the hearing or the board, any other person may be allowed to intervene in the proceeding and to present testimony. Any proceeding shall be conducted in accordance with the provisions of section 5 of Act No. 197 of the Public Acts of 1952, as amended, being section 24.105 of the Compiled Laws of 1948.

(b) The testimony taken by the member, agent or the board shall be reduced to writing and filed with the board. Thereafter the board upon notice may take further testimony or hear argument. If upon the preponderance of the testimony taken the board is of the opinion that any person named in the complaint has engaged in or is engaging in the unfair labor practice, then it shall state its findings of fact and shall issue and cause to be served on the person an order requiring him to cease and desist from the unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this act. The order may further require the person to make reports from time to time showing the extent to which he has complied with the order. If upon the preponderance of the testimony taken the board is not of the opinion that the person named in the complaint has engaged in or is engaging in the unfair labor practice, then the board shall state its findings of fact and shall issue an order dismissing the complaint. No order of the board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if the individual was suspended or discharged for cause. If the evidence is presented before a member of the board, or before examiners therof, the member, or examiners shall issue and cause to be served on the parties to the proceeding a proposed report, together with a recommended order, which shall be filed with the board, and if no exceptions are filed within 20 days after service thereof upon the parties, or within such further period as the board may authorize, the recommended order shall become the order of the board and become effective as prescribed in the order.

(c) Until the record in a case has been filed in a court, the board at any time, upon reasonable notice and in such manner as it deems proper, may modify or set aside, in whole or in part, any finding or order made or issued by it.

(d) The board may petition the court of appeals for the enforcement of the order and for appropriate temporary relief or restraining order, and shall file in the court the record in the proceedings. Upon the filing of the petition, the court shall cause notice thereof to be served upon the person, and thereupon shall have jurisdiction of the proceeding and shall grant such temporary or permanent relief or restraining order as it deems just and proper, enforcing, modifying, enforcing as so modified, or setting aside in whole or in part the order of the board. No objection that has not been urged before the board, its member or agent shall be considered by the court, unless the failure or neglect to urge the objection is excused because of extraordinary circumstances. The findings of the board with respect to questions of fact if supported by competent, material and substantial evidence on the record considered as a whole shall be conclusive. If

either party applies to the court for leave to present additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to present it in the hearing before the board, its member or agent, the court may order the additional evidence to be taken before the board, its member or agent, and to be made a part of the record. The board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file the modifying or new findings, which findings with respect to questions of fact if supported by competent, material and substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the supreme court in accordance with the general court rules.

(e) Any person aggrieved by a final order of the board granting or denying in whole or in part the relief sought may obtain a review of such order in the court of appeals by filing in the court a complaint praying that the order of the board be modified or set aside, with copy of the complaint filed on the board, and thereupon the aggrieved party shall file in the court the record in the proceeding, certified by the board. Upon the filing of the complaint, the court shall proceed in the same manner as in the case of an application by the board under subsection (d), and shall grant to the board such temporary relief or restraining order as it deems just and proper, enforcing, modifying, enforcing as so modified, or setting aside in whole or in part the order of the board. The findings of the board with respect to questions of fact if supported by competent, material and substantial evidence on the record considered as a whole shall be conclusive.

(f) The commencement of proceedings under subsections (d) or (e) shall not, unless specifically ordered by the court, operate as a stay of the board's order.

(g) Complaints filed under this act shall be heard expeditiously by the court to which presented, and for good cause shown shall take precedence over all other civil matters except earlier matters of the same character.

(h) The board shall have power, upon issuance of a complaint as provided in subsection (a) charging that any person has engaged in or is engaging in an unfair labor practice, to petition any circuit court within any circuit where the unfair labor practice in question is alleged to have occurred or where such person resides or exercises or may exercise its governmental authority, for appropriate temporary relief or restraining order, in accordance with the general court rules, and the court shall have jurisdiction to grant to the board such temporary relief or restraining order as it deems just and proper.

(i) For the purpose of all hearings and investigations, which in the opinion of the board are necessary and proper for the exercise of the powers vested in it under this section, the provisions of section 11 of Act No. 176 of the Public Acts of 1939, being section 423.11 of the Compiled Laws of 1948, shall be applicable, except that subpoenas may issue as provided in section 11 without regard to whether mediation shall have been undertaken.

(j) The labor relations and mediation functions of this act shall be separately administered by the board.

## State of Michigan
## 75th Legislature
## (Regular Session of 1969)
## Enrolled Senate Bill No. 270

To provide for compulsory arbitration of labor disputes in municipal police and fire departments.

*The People of the State of Michigan enact:*

*Sec. 1.* It is the public policy of this state that in public police and fire departments, where the right of employees to strike is by law prohibited, it is requisite to the high morale of such employees and the efficient operation of such departments to afford an alternate, expeditious, effective and binding procedure for the resolution of disputes, and to that end the provisions of this act, providing for compulsory arbitration, shall be liberally construed.

*Sec. 2.* Public police and fire departments means any department of a city, county, village or township having employees engaged as policemen or in fire fighting or subject to the hazards thereof.

*Sec. 3.* Whenever in the course of mediation of a public police or fire department employee's dispute, the dispute has not been resolved to the agreement of both parties within 30 days of the submission of the dispute to mediation and fact-finding, or within such further additional periods to which the parties may agree, the employees *or* employer may initiate binding arbitration proceedings by prompt request therefor, in writing, to the other, with copy to the labor mediation board.

*Sec. 4.* Within 10 days thereafter, the employer shall choose a delegate and the employees' designated or selected exclusive collective bargaining representative, or if none, their previously designated representative in the prior mediation and fact-finding procedures, shall choose a delegate to a panel of arbitration as provided in this act. The employer and employees shall forthwith advise the other and the mediation board of their selections.

*Sec. 5.* Within 5 days thereafter, or within such further additional periods to which they may agree, the delegates shall designate an impartial, competent and reputable person to act as an arbitrator, hereafter called the arbitrator or chairman of the panel of arbitration, and with them to constitute an arbitration panel to further consider and order a settlement of all matters. Upon their failure to agree upon and appoint the arbitrator within such time, or mutually extended time, either of them may request the chairman of the state labor mediation board to appoint the arbitrator, and the chairman of the state mediation board shall appoint, in not more than 7 days, an impartial, competent and reputable citizen as the arbitrator.

*Sec. 6.* Upon the appointment of the arbitrator, he shall proceed to act as chairman of the panel of arbitration, call a hearing, to begin within 15 days and give reasonable notice of the time and place of the hearing. The chairman shall preside over the hearing and

shall take testimony. Upon application and for good cause shown, and upon such terms and conditions as are just, a person, labor organization, or governmental unit having a substantial interest therein may be granted leave to intervene by the arbitration panel. Any oral or documentary evidence and other data deemed relevant by the arbitration panel may be received in evidence. The proceedings shall be informal. Technical rules of evidence shall not apply and the competency of the evidence shall not thereby be deemed impaired. A verbatim record of the proceedings shall be made and the arbitrator shall arrange for the necessary recording service. Transcripts may be ordered at the expense of the party ordering them but the transcripts shall not be necessary for a decision by the arbitration panel. The expense of the proceedings, including a fee to the chairman, established in advance by the labor mediation board shall be borne equally by each of the parties to the dispute and the state. The delegates, if public officers or employees, shall continue on the payroll of the public employer at their usual rate of pay. The hearing conducted by the arbitration panel 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. Its majority actions and rulings shall constitute the actions and rulings of the arbitration panel.

*Sec. 7.* The arbitration panel may administer oaths, require the attendance of witnesses, and the production of such books, papers, contracts, agreements and documents as may be deemed by it material to a just determination of the issues in dispute, and for such purpose may issue subpoenas. If any person refuses to obey a subpoena, or refuses to be sworn or to testify, or if any witness, party or attorney is guilty of any contempt while in attendance at any hearing, the arbitration panel may, or the attorney general if requested shall, invoke the aid of any circuit court within the jurisdiction in which the hearing is being held, which court shall issue an appropriate order. Any failure to obey the order may be punished by the court as contempt.

*Sec. 8.* The arbitration panel, within 30 days after the conclusion of the hearing, or such further additional periods to which the parties may agree, shall make written findings of fact and promulgate a written opinion and order upon the issues presented to it and upon the record made before it, and shall mail or otherwise deliver a true copy thereof to the governing body of the public employer and to the attorney or other designated representatives of the employees of the public employer. The findings, opinions and order shall be just and reasonable and based upon the factors prescribed in sections 9 and 10.

*Sec. 9.* Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

(a) The lawful authority of the employer.

(b) Stipulations of the parties.

(c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.

(d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:

(i) In public employment in comparable communities.

(ii) In private employment in comparable communities.

(e) The average consumer prices for goods and services, commonly known as the cost of living.

(f) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

*Sec. 10.* A majority decision of the arbitration panel, if supported by competent, material and substantial evidence on the whole record, shall be final and binding upon the parties, and may be enforced, at the instance of either party or of the arbitration panel in the circuit court for the county in which the dispute arose or in which a majority of the affected employees reside. The commencement of a new municipal fiscal year after the initiation of arbitration procedures under this act, but before the arbitration decision, or its enforcement, shall not be deemed to render a dispute moot, or to otherwise impair the jurisdiction or authority of the arbitration panel or its decision. Increases in rates of compensation awarded by the arbitration panel under section 10 may be effective only at the start of the fiscal year next commencing after the date of the arbitration award. If a new fiscal year has commenced since the initiation of arbitration procedures under this act, the foregoing limitation shall be inapplicable, and such awarded increases may be retroactive to the commencement of such fiscal year any other statute or charter provisions to the contrary notwithstanding. At any time the parties, by stipulation, may amend or modify an award of arbitration.

*Sec. 11.* Where an employee organization recognized pursuant to Act No. 336 of the Public Acts of 1947, as amended, as the bargaining representative of employees subject to this act willfully disobeys a lawful order of enforcement by a circuit court pursuant to section 10, or willfully encourages or offers resistance to such order, whether by a strike or otherwise, the punishment for each day that such contempt persists, may be a fine fixed in the discretion of the court in an amount not to exceed $250.00 per day. Where an employer, as that term is defined by Act No. 336 of the Public Acts of 1947, as amended, willfully disobeys a lawful order of enforcement by the circuit court or willfully encourages or offers resistance to such order, the punishment for each day that such contempt persists may be a fine, fixed at the discretion of the court, an amount not to exceed $250.00 per day to be assessed against the employer.

*Sec. 12.* Orders of the arbitration panel shall be reviewable by the circuit court for the county in which the dispute arose or in which a majority of the affected employees reside, but only for reasons that the arbitration panel was without or exceeded its jurisdiction; the order is unsupported by competent, material and substantial evidence on the whole record; or the order was procured by fraud, collusion or other similar and unlawful means. The pendency of such proceeding for review shall not automatically stay the order of the arbitration panel.

*Sec. 13.* During the pendency of proceedings before the arbitration panel, existing wages, hours and other conditions of employment

shall not be changed by action of either party without the consent of the other but a party may so consent without prejudice to his rights or position under this act.

*Sec. 14.* This act shall be deemed as supplementary to Act No. 336 of the Public Acts of 1947, as amended, being sections 423.201 to 423.216 of the Compiled Laws of 1948, and does not amend or repeal any of its provisions; but any provisions thereof requiring fact-finding procedures shall be inapplicable to disputes subject to arbitration under this act.

*Sec. 15.* This act shall expire June 30, 1972. Cases pending under negotiations on June 30, 1972 shall be completed under the provisions of this act.

*Sec. 16.* No person shall be sentenced to a term of imprisonment for any violation of the provisions of this act or an order of the arbitration panel.

*Sec. 17.* This act shall become effective on October 1, 1969.

This act is ordered to take immediate effect.

## MINNESOTA
### Public Employees: Right to Bargain Collectively

*Sec. 1. Public Policy.* Unresolved disputes in the public service are injurious to the public, the governmental agencies, and public employees; therefore, adequate means should be provided for preventing controversies between governmental agencies and public employees and for resolving them when they occur. Because the paramount interest of the public and the nature of governmental processes make it necessary to impose special limitations upon public employment, it is incumbent upon governmental agencies to provide orderly procedures for the participation by public employees and their representatives in the formulation of personnel policies and plans to insure the fair and considerate treatment of public employees, to eliminate employment inequities, and to provide effective means of resolving questions and controversies with respect to terms and conditions of employment. It is the public policy of the state of Minnesota that governmental agencies, public employees and their representatives shall enter into discussions with affirmative willingness to resolve grievances and differences. Governmental agencies and public employees and their representatives shall have a mutual obligation to endeavor in good faith to resolve grievances and differences relating to terms and conditions of employment, acting within the framework of laws and charter provisions, and giving consideration to personnel policies, position classification and compensation plans, and other special rules governing public employment.

*Sec. 179.51. Strikes by Public Employees.* No person holding a position by appointment or employment in the government of the State of Minnesota, or in the government of any one or more of the political subdivisions thereof, or in the service of the public schools or of the State University, or in the service of any authority commission, or board, or any other branch of the public service, hereinafter called a "public employee" shall strike, or participate in a strike. As used in sections 179.51 to 179.58 the word "strike" shall mean the failure to report for duty, the wilful absence from one's position, the stoppage of work, or the abstinence in whole or in part from the full, faithful and proper performance of the duties of employment, for the purpose of inducing, influencing or coercing a change in the condition or compensation or the rights, privileges or obligations of employment.

*Sec. 179.52. Right of Complaint and to Form or Join Labor Organizations.* Nothing contained in sections 179.51 to 179.58 shall be construed to limit, impair or affect the right of any public employee or his or her representative to the expression or communication of a view, grievance, complaint or opinion on any matter related to the conditions or compensation of public employment or their betterment, so long as the same is not designed to and does not interfere with the full, faithful and proper performance of the duties of employment; nor shall it be construed to require any public employee to perform labor or services against his will.

Public employees shall have the right to form and join labor or employee organizations, and shall have the right not to form and join such organizations, public employees shall have the right to designate representatives for the purpose of meeting and conferring with the governmental agency or representatives designated by it with respect to grievances and conditions of employment. It shall be unlawful to discharge or otherwise discriminate against an employee for the exercise of such rights, and the governmental agency or its designated representatives shall be required to meet and confer with the representatives of the employees at reasonable times in connection with such grievances and conditions of employment. It shall be unlawful for any person or group of persons, either directly or indirectly, to intimidate or coerce any public employee to join, or to refrain from joining, a labor or employee organization.

Organizations of public employees shall be granted recognition by a governmental agency according to the extent to which they represent employees of the governmental agency. Informal recognition shall be granted to any labor or employee organization regardless of the recognition granted to any other labor or employee organization. Informal recognition shall give an organization the right to meet with, confer, and otherwise communicate with the governmental agency or its designated representatives on matters of interest to its members. Formal recognition shall be granted to any labor or employee organization representing a majority of the employees in an appropriate unit. Formal recognition shall give an organization the right to meet with, confer and otherwise communicate with the governmental agency or its designated representatives with the object of reaching a settlement applicable to all employees of the unit. When a governmental agency declines to grant formal recognition or when a question concerning the designation of a representation unit is raised by the governmental agency, labor or employee organization, or employees, the labor conciliator or any person designated by him shall, at the request of any of the parties, investigate such question and, after a hearing if requested by any party, rule on the definition of the appropriate representation unit. He shall certify to the parties in writing the proper definition of the unit. In defining the unit, the labor conciliator shall take into consideration, along with other relevant factors, the principles of efficient administration of government, the principles and the coverage of uniform comprehensive position classification and compensation plans in the governmental agency, the history and extent of organization, occupational classification, administrative and supervisory levels of authority, geographical location, and the recommendations of the parties.

When a question concerning the representative of employees is raised by the governmental agency, labor or employee organization, or employees, the labor conciliator or any person designated by him shall, at the request of any of the parties, investigate such question and certify to the parties in writing, the name or names of the representatives that have been designated or selected. The filing of a petition for the investigation or certification of a representative of employees by any of the parties shall constitute a question within the meaning of this section. In any such investigation, the labor conciliator may provide for an appropriate hearing, and shall take a secret ballot of employees to ascertain such representatives for the purposes of formal recognition. If the labor conciliator has certified a formally recognized representative in a unit of employees as provided in this section, he shall not be required to consider the matter again for a period of one year unless it appears to him that sufficient reason exists. The labor conciliator may promulgate such rules and regulations as may be appropriate to carry out the provisions of subdivisions 4 and 5 of this section.

*Sec. 179.521. Conciliation of Disputes.* If after a reasonable period of meeting and conferring, the parties are deadlock, or if the governmental agency or its designated representatives or the employees or their formally recognized representative fail or refuse to meet and confer in good faith at reasonable times in a bona fide effort to arrive at a settlement, either party to a dispute involving conditions of employment or any violation of sections 179.51 to 179.58 may then file a petition requesting the labor conciliator to act in the dispute. Such petition shall set forth the issues of the dispute, the efforts to settle it and a statement of the failure to reach a settlement. The labor conciliator shall thereupon take jurisdiction of the dispute and shall fix a time and place for a conference with the parties to the dispute upon the issues involved, and he shall then take whatever steps he deems expedient to bring about a settlement, including assisting in preparing information necessary to an understanding of the issues and of a settlement. Both parties shall confer with the labor conciliator and cooperate with him in his attempts to bring about a settlement.

*Sec. 4, Ch. 839, L. 1965. Implementation of Settlement.* If a tentative settlement is reached between a labor or employee organization or organizations and the designated representatives of the governmental agency, such representatives shall recommend such settlement to the governing body or officer having authority to take action. The governing body or officer shall as soon as practicable consider the recommendations and take such action, if any, upon them as it or he deems appropriate. If a settlement is reached with a labor or employee organization or organizations and the governing body, such governing body shall implement the settlement in the form of an ordinance, resolution, or memorandum of understanding as may be appropriate. If the settlement requires the adoption of a law or charter amendment to implement it fully, the governmental agency shall make every reasonable effort to propose and secure the enactment of the law or charter amendment.

*Sec. 179.53. Submission of Grievance.* No person exercising any authority, supervision or direction over any public employee shall have the power to authorize, approve or consent to a strike by one or more public employees and such person shall not authorize, approve or consent to such strike, nor shall any person discharge, demote, or cause any public employee to be discharged or demoted, or separated from his employment because of participation in the submission of a grievance.

*Sec. 179.54. Violation, Penalty.* Notwithstanding any other provision of law, any public employee who violates the provisions of sections 179.51 to 179.58 shall thereby abandon and terminate his appointment or employment and shall no longer hold such position, or be entitled to any of the rights or emoluments thereof, except if appointed or reappointed as hereinafter provided.

*Sec. 179.55. Reemployment of Striking Employees.* Notwithstanding any other provision of law, a person knowingly violating the provisions of sections 179.51 to 179.58 may, subsequent to such violation, to be appointed, or reappointed, employed or reemployed, as a public employee but only upon the following conditions: (a) his compensation shall in no event exceed that received by him immediately prior to such violation, (b) the compensation of such person shall not be increased until after the expiration of one year from such appointment or reappointment, employment or reemployment, and (c) the said person shall be on probation for two years with respect to such civil service status, tenure of employment, or contract of employment, as he may have theretofore been entitled.

*Sec. 179.56. Employee Entitled to Establish Fact of No Violation.* Any public employee, upon request, shall be entitled, as hereinafter provided, to establish that he did not violate the provisions of sections 179.51 to 179.58. Such request must be filed in writing with the officer or body having the power to remove such employee, within ten days after regular compensation of such employee has ceased, whereupon such officer, or body, shall within ten days commence a proceeding at which such person shall be entitled to be heard for the purpose of determining whether the provisions of this act have been violated by such public employee, and if there be laws and regulations establishing proceedings to remove such public employee, the hearing shall be conducted in accordance therewith. Such proceedings shall be undertaken without unnecessary delay.

*Sec. 179.57. Adjustment Panel.* In order to avoid or minimize any possible controversies by making available full and adequate governmental facilities for the settlement of a controversy involving wages, hours, or other terms and conditions of employment, the governmental agency involved, as its own instance or at the request of a labor or employee organization granted formal recognition, or, in the absence of such an organization, a majority of the public employees involved in the controversy, shall set up a panel of three members. The appointment of such panel shall divest the labor conciliator of all jurisdiction and authority granted by section 3.

One of the panel members shall be selected by the labor or employee organization or by the employees as the case may be, one by the governmental agency, and the two so selected shall select a third member. If after five days, the two members cannot agree upon the third member, the senior or presiding judge of the district court of the county wherein the dispute has arisen shall, after notifying the labor conciliator and giving him an opportunity to suggest names of suitable prospective neutral members, appoint such member. Such appointment shall be made upon application by either of the appointed members in writing by giving five days notice thereof in writing to the other member. If one of the parties fails or refuses to appoint a member to the panel, such member shall be appointed by the senior or presiding judge of the district court in the same manner as the third member is appointed, upon application by a panel member in writing upon five day's notice in writing to the party so failing or refusing.

The members of the panel shall be compensated for all necessary expenses by the governmental agency involved. The third member of the panel shall be compensated equally by the parties involved at the rate of $50 for each day or part of a day the hearing is held, except as may be otherwise agreed to by the parties.

The panel shall meet within 15 days after the appointment of the third member. The panel shall attempt in good faith to settle the dispute through negotiation and informal conferences. If the results of the conference negotiations are not satisfactory to all parties concerned, the panel shall afford the public employees, the labor or employee organization involved, if any, and the governmental

agency a full hearing after which the panel shall make their findings and recommendations, a copy of which shall be sent to the labor conciliator, and to the head of the governmental agency involved, and to the employees or their representatives, if any. In making such findings and recommendations, the panel shall take into consideration the tax limitations imposed by law or charter, if any, upon the governmental agency together with wages, hours and other conditions of employment of public employees performing comparable duties for other governmental agencies of a comparable nature and of employees performing comparable duties in private employment, internal consistency of treatment of the employees in the several classes of positions in the governmental agency, as well as such other factors not confined to the foregoing as are normally or appropriately taken into consideration in the determination of wages, hours and other conditions of employment by the governmental agency.

The officer or employee of the governmental agency having the authority to recommend changes in wages, hours or other terms and conditions of employment shall prepare whatever ordinances, resolutions, rules, or other written documents as are necessary to carry into effect the recommendations of the panel and shall present them to the governing body or officer of the governmental agency having authority to adopt them and such governing body or officer shall as soon as practicable consider them and take such action, if any, upon them as it or he deems appropriate. In addition, the appropriate officer or employee of the governmental agency involved shall submit to the governing body as soon as practicable estimates of the effects, if any, including, but not limited to, the effects on the budget, of the recommendations of the panel for such action as the governing body may take upon the recommendations consistent with law or charter.

*Sec. 6, Ch. 839, L. 1965. Independent Review.* It shall be public policy of the state of Minnesota that every public employee should be provided with the right of independent review, by a disinterested person or agency, of any grievance arising out of the interpretation of or adherence to terms and conditions of employment. When such review is not provided under statutory, charter, or ordinance provisions for a civil service or merit system, the governmental agency may provide for such review consistent with the provisions of law or charter. If no other procedure exists for the independent review of such grievances, the provisions of section 179.57 shall be available to the public employee upon request to the governmental agency.

*Sec. 7, Ch. 839, L. 1965.* This shall not apply to public school teachers as defined in Minnesota Statutes 1961, Section 125.03, Subdivision 1.

*179.58 Sections not applicable.* Minnesota statutes 1949, sections 185.07 to 185.18, shall not be held to apply to any governmental employee or any other public official affected by sections 179.51 to 179.58.

## MISSOURI
## (House Bill 106, 74th General Assembly, 1967)
## Bargaining Rights for Public Employees

Be it enacted by the General Assembly of the State of Missouri, as follows:

*Sec. 1.* Sections 105.500, 105.510, 105.520 and 105.530 RSMo Supplement 1965, are repealed and five new sections enacted in lieu thereof, to be known as Sections 105.500, 105.510, 105.520, 105.530 and 105.540 as follows:

*105.500.* Unless the context otherwise requires, the following words and phrases mean: (1) "Public body" means the State of Missouri, or any officer, agency, department, bureau, division, board or commission of the state, or any other political subdivision of or within the state. (2) "Exclusive bargaining representative" means an organization which has been designated or selected by majority of employees in an appropriate unit as the representative of such employees in such unit for purposes of collective bargaining. (3) "Appropriate unit" means a unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned.

*105.510.* Employees, except police, deputy sheriffs, Missouri State Highway Patrolmen, Missouri National Guard, all teachers of all Missouri schools, colleges and universities of any public body shall have the right to form and join labor organizations and to present proposals to any public body relative to salaries and other conditions of employment through the representative of their own choosing. No such employee shall be discharged or discriminated against because of his exercise of such right, nor shall any person or group of persons, directly or indirectly, by intimidation or coercion, compel or attempt to compel any such employee to join or refrain from joining a labor organization.

*105.520.* Whenever such proposals are presented by the exclusive bargaining representative to a public body, the public body or its designated representative or representatives shall meet, confer and discuss such proposals relative to salaries and other conditions of employment of the employees of the public body with the labor organization which is the exclusive bargaining representative of its employees in a unit appropriate. Upon the completion of discussions, the results shall be reduced to writing and be presented to the appropriate administrative, legislative or other governing body in the form of an ordinance, resolution, bill or other form required for adoption, modification or rejection.

*105.530.* Issues with respect to appropriateness of bargaining units and majority representative status shall be resolved by the State Board of Mediation. In the event that the appropriate administrative body or any of the bargaining units shall be aggrieved by the decision of the State Board of Mediation an appeal may be had to the circuit court of the county where the administrative body is located or in the Circuit Court of Cole County. The State Board of Mediation shall use the services of the State Hearing Officer in all contested cases.

*105.540.* Nothing contained herein shall be construed as granting a right to employes covered hereby to strike.

*Section 1.* That section 48-801, Reissue Revised Statues of Nebraska, 1943, be amended to read as follows:

*48-801.* As used in sections 48-801 to 48-823, unless the context otherwise requires:

(1) Person shall include an individual, partnership, association, corporation, business trust, or any other organized group of persons;

(2) Governmental service shall mean all services performed under employment by the State of Nebraska, any political or governmental subdivision thereof, any municipal corporation, or any public power district or public power and irrigation district;

(3) Public utility shall include any individual, partnership, association, corporation, business trust, or any other organized group of persons, any political or governmental subdivision of the State of Nebraska, any public corporation, or any public power district or public power and irrigation district, which carries on an intrastate business in this state and over which the government of the United States has not assumed exclusive regulation and control, that furnishes transportation for hire, telephone service, telegraph service electric light, heat and power service, gas for heating or illuminating, whether natural or artificial, or water service, or any one or more thereof;

(4) Employer shall mean any political or governmental subdivision of the State of Nebraska, any municipal corporation, or any public power district or public power and irrigation district. It shall also include any public utility as defined in sections 48-801 to 48-823;

(5) Employee shall include any person employed by any employer as defined in sections 48-801 to 48-823;

(6) Labor organization shall mean any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work;

(7) Industrial dispute shall include any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, or refusal to discuss terms or conditions of employment; and

(8) Courts shall mean the Court of Industrial Relations.

*Sec. 2.* That section 48-804, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

*48-804.* The Court of Industrial Relations shall be composed of five judges who shall be appointed by the Governor with the advice and consent of the Legislature. Such judges shall be representative of the public. Of the three judges first appointed, one shall be appointed for a term of two years, one for a term of four years, and one for a term of six years, the terms to begin simultaneously upon qualification of the persons to be appointed within thirty days after May 31, 1947. Upon the expiration of the term of the three judges first appointed, each succeeding judge shall be appointed and hold office for a term of six years and until his successor shall have qualified. Two judges shall be appointed for six-year terms within thirty days after the effective date of this act, with their successors to be appointed for a term of six years and until their successors have been appointed and qualified. In case of a vacancy in the office of judge of the Court of Industrial Relations, the Governor shall appoint his successor to fill the vacancy for the unexpired term.

*Sec. 3.* That section 48-810, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

*48.810.* All industrial disputes involving governmental service, service of a public utility, or other disputes as the Legislature may provide shall be settled by invoking the jurisdiction of the Court of Industrial Relations; Provided, such court shall have no jurisdiction over any persons, organizations, or school districts subject to the provisions of the Nebraska Teachers' Professional Negotiations Act, sections 79-1287 to 79-1295, Revised Statutes Supplement, 1967, until all provisions of such act have been exhausted without resolution of the dispute involved.

*Sec. 4.* That section 48-811, Reissued Revised Statutes of Nebraska, 1943, be amended to read as follows:

*48-811.* Any employer, employee, or labor organization, or the Attorney General of Nebraska on his own initiative or by order of the Governor, when any industrial dispute exists between parties as set forth in section 48-810, may file a petition with the Court of Industrial Relations invoking its jurisdiction. No adverse action by threat or harassment shall be taken against any employee because of any petition filing by such employee, and the employment status of such employee shall not be altered in any way pending disposition of the petition by the court.

*Sec. 5.* That section 48-816, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

*48-816.* After a petition has been filed under the provisions of section 48-811, the clerk shall immediately notify the members of the Court of Industrial Relations, which court shall promptly convene at its office to take such preliminary proceedings as may be necessary to insure a prompt hearing and speedy adjudication of the industrial dispute. The court shall have power and authority upon its own initiative to make such temporary findings and orders as may be necessary to preserve and protect the status of the parties, property and public interest involved, pending final determination of the issues. In the event of an industrial dispute between employer and employees of a privately-owned public utility or any other public utility which is owned, managed, or operated by any political or governmental subdivision of the State of Nebraska, any public corporation, or any public power and irrigation district, where such employer and employees have failed or refused to bargain in good faith concerning the matters in dispute, the court may order such bargaining to be begun or resumed, as the case may be, and may make any such order or orders as may be appropriate to govern the situation pending such bargaining.

Before an industrial dispute with respect to representation is recognized as such, the parties may mutually agree to a secret ballot procedure to determine questions of representation for purposes of collective bargaining, for and on behalf of employees. The Court of Industrial Relations shall be immediately informed of the results, and the court shall inform the parties that the employees have designated a bargaining agent, and so shall certify the proper bargaining agent.

Public employers are hereby authorized to recognize employee organizations for the purpose of negotiating collectively in the determination of, and administration of grievances arising under, the terms and conditions of employment of their public employees as

provided in this act, and to negotiate and enter into written agreements with such employee organizations in determining such terms and conditions of employment.

Where an employee organization has been certified or recognized pursuant to the provisions of this act, the appropriate public employer shall be and is hereby authorized to negotiate collectively with such employee organization in the settlement of grievances arising under the terms and conditions of employment of the public employees as provided in this act, and to negotiate and enter into written agreements with such employee organizations in determining such terms and conditions of employment.

The court shall have the authority (1) to make studies and analyses of, and act as a clearing house of information relating to, conditions of employment of public employees throughout the state; (2) to request from any government, and such governments are authorized to provide, such assistance, services and data as will enable the board properly to carry out its functions and powers; (3) to conduct studies of problems involved in representation and negotiation, including, but not limited to (a) whether employee organizations are to be recognized as representatives of their members only or are to have exclusive representation rights for all employees in the negotiating unit, (b) the problems of unit determination, (c) those subjects which are open to negotiation in whole or in part, (d) those subjects which require administrative or legislative approval of modifications agreed upon by the parties, and (e) those subjects which are for determination solely by the appropriate legislative body, and make recommendations from time to time for legislation based upon the results of such studies; (4) to make available to employee organizations, governments, mediators, fact-finding boards and joint study committees established by governments and employee organizations statistical data relating to wages, benefits and employment practices in public and private employment applicable to various localities and occupations to assist them to resolve complex issues in negotiations; and (5) to establish, after consulting representatives of employee organizations and administrators of public services, panels of qualified persons broadly representative of the public to be available to serve as mediators or members of fact-finding boards.

*Sec. 6.* That section 48-818, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

*48-818.* The findings and order or orders may establish or alter the scale of wages, hours of labor, or conditions of employment, or any one or more of the same. In making such findings and order or orders, the Court of Industrial Relations shall establish rates of pay and conditions of employment which are comparable to the prevalent wage rates paid and conditions of employment maintained for the same or similar work of workers exhibiting like or similar skills under the same or similar working conditions. In establishing wage rates the court shall take into consideration the overall compensation presently received by the employees, having regard not only to wages for time actually worked but also to wages for time not worked, including vacations, holidays, and other excused time, and all benefits received, including insurance and pensions, and the continuity and stability of employment enjoyed by the employees. Any order or orders entered may be modified on the court's own motion or on application by any of the parties affected, but only upon a showing of a change in the conditions from those prevailing at the time the original order was entered.

*Sec. 7.* Public employees shall have the right to form, join and participate in, or to refrain from forming, joining, or participating in, any employee organization of their own choosing. Public employees shall have the right to be represented by employee organizations to negotiate collectively with their public employers in the determination of their terms and conditions of employment, and the administration of grievances arising thereunder; Provided, that any such agreements with the State of Nebraska or any agency thereof shall cover a biennial period coinciding with the biennial budgeting period of the state and shall be subject to approval by the Legislature.

*Sec. 8.* That original sections 48-801, 48-804, 48-810, 48-811, 48-816, and 48-818, Reissue Revised Statutes of Nebraska, 1943, and also sections 48-810.02, 48-820, and 48-824 to 48-836, Reissue Revised Statutes of Nebraska, 1943, are repealed.

## NEVADA
## Senate Bill No. 87, 1969

*Section 1.* Title 23 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to 27, inclusive, of this act.

*Sec. 2.* This chapter may be cited as the Local Government Employee-Management Relations Act.

*Sec. 3.* As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 4 to 8, inclusive, of this act have the meanings ascribed to them in such sections.

*Sec. 4.* "Board" means the local government employee-management relations board.

*Sec. 5.* "Employee organization" means any:

1. Association, brotherhood, council or federation composed of employees of the State of Nevada or local government employees or both; or

2. Craft, industrial or trade union whose membership includes employees of the State of Nevada or local government employees or both.

*Sec. 6.* "Local government employee" means any person employed by a local government employer.

*Sec. 7.* "Local government employer" means any political subdivision of this state or any public or quasi-public corporation organized under the laws of this state and includes, without limitation, counties, cities, unincorporated towns, school districts, irrigation districts and other special districts.

*Sec. 8.* "Strike" means any concerted:

1. Stoppage of work, slowdown or interruption of operations by employees of the State of Nevada or local government employees;

2. Absence from work by employees of the State of Nevada or local government employees upon any pretext or excuse, such as illness, which is not founded in fact; or

3. Interruption of the operations of the State of Nevada or any local government employer by any employee organization.



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*Sec. 9.* 1. It is the right of every local government employee, subject to the limitation provided in subsection 3, to join any employee organization of his choice or to refrain from joining any employee organization. A local government employer shall not discriminate in any way among its employees on account of membership or nonmembership in an employee organization.

2. The recognition of an employee organization for negotiation, pursuant to this chapter, does not preclude any local government employee who is not a member of that employee organization from acting for himself with respect to any condition of his employment, but any action taken on a request or in adjustment of a grievance shall be consistent with the terms of an applicable negotiated agreement, if any.

3. A police officer, sheriff, deputy sheriff or other law enforcement officer may be a member of an employee organization only if such employee organization is composed exclusively of law enforcement officers.

*Sec. 10.* 1. It is the duty of every local government employer, except as limited in subsection 2, to negotiate through a representative or representatives of its own choosing concerning wages, hours and conditions of employment with the recognized employee organization, if any, for each appropriate unit among its employees. Where any officer of a local government employer, other than a member of the governing body, is elected by the people and directs the work of any local government employee, such officer is the proper person to negotiate, directly or through a representative or representatives of his own choosing, in the first instance concerning any employee whose work is directed by him, but may refer to the governing body or its chosen representative or representatives any matter beyond the scope of his authority.

2. Each local government employer is entitled, without negotiation or reference to any agreement resulting from negotiation:

(a) To direct its employees;

(b) To hire, promote, classify, transfer, assign, retain, suspend, demote, discharge or take disciplinary action against any employee;

(c) To relieve any employee from duty because of lack of work or for any other legitimate reason;

(d) To maintain the efficiency of its governmental operations;

(e) To determine the methods, means and personnel by which its operations are to be conducted; and

(f) To take whatever actions may be necessary to carry out its responsibilities in situations of emergency.

*Sec. 11.* 1. An employee organization may apply to a local government employer for recognition by presenting:

(a) A copy of its constitution and bylaws, if any;

(b) A roster of its officers, if any, and representatives; and

(c) A pledge in writing not to strike against the local government employer under any circumstances.

A local government employer shall not recognize as representative of its employees any employee organization which has not adopted, in a manner valid under its own rules, the pledge required by paragraph (c).

2. If an employee organization, at or after the time of its application for recognition, presents a verified membership list showing that it represents a majority of the employees in a negotiating unit, and if such employee organization is recognized by the local government employer, it shall be the exclusive negotiating representative of the local government employees in that negotiating unit.

3. A local government employer may withdraw recognition from an employee organization which:

(a) Fails to present a copy of each change in its constitution or bylaws, if any, or to give notice of any change in the roster of its officers, if any, and representatives;

(b) Disavows its pledge not to strike against the local government employer under any circumstances; or

(c) Ceases to be supported by a majority of the local government employees in the negotiating unit for which it is recognized.

4. If an employee organization is aggrieved by the refusal or withdrawal of recognition, or by the recognition or refusal to withdraw recognition of another employee organization, the aggrieved employee organization may appeal to the board. If the board in good faith doubts whether any employee organization is supported by a majority of the local government employees in a particular negotiating unit, it may conduct an election by secret ballot upon the question. Subject to judicial review, the decision of the board is binding upon the local government employer and all employee organizations involved.

*Sec. 12.* 1. Each local government employer which has recognized one or more employee organizations shall determine, after consultation with such recognized organization or organizations, which group or groups of its employees constitute an appropriate unit or units for negotiating purposes. The primary criterion for such determination shall be community of interest among the employees concerned. A local government department head shall not be a member of the same negotiating unit as the employees who serve under his direction. A principal, assistant principal or other school administrator below the rank of superintendent, associate superintendent or assistant superintendent shall not be a member of the same negotiating unit with public school teachers unless the school district employs fewer than five principals but may join with other officials of the same specified ranks to negotiate as a separate negotiating unit.

2. If any employee organization is aggrieved by determination of a negotiating unit, it may appeal to the board. Subject to judicial review, the decision of the board is binding upon the local government employer and all employee organizations involved.

*Sec 13.* 1. Whenever an employee organization desires to negotiate concerning any matter which is subject to negotiation pursuant to this chapter, it shall give written notice of such desire to the local government employer. If the subject of negotiation requires the budgeting of money by the local government employer, the employee organization shall give such notice at least 120 days before the date fixed by law for the completion of the tentative budget of the local government employer for the first period for which the required budget is to be effective.

2. This section does not preclude, but this chapter does not require, informal discussion between an employee organization and a local government employer of any matter which is not subject to negotiation or contract under this chapter. Any such informal discussion is exempt from all requirements of notice or time schedule.

*Sec. 14.* 1. The parties shall promptly commence negotiation and if at the expiration of 45 days from the date of service of the notice required by section 13 of this act the parties have not reached agreement, the parties or either of them may so notify the board, requesting mediation and explaining briefly the subject of negotiation. The board shall, within 5 days, appoint a competent, impartial and disinterested person to act as mediator in the negotiation. It is the function of such mediator to promote agreement between the parties, but his recommendations, if any, are not binding upon an employee organization or the local government employer.

2. If a mediator is appointed, the board shall fix his compensation. The local government employer shall pay one-half of the costs of mediation, and the employee organization or organizations shall pay one-half.

*Sec. 15.* 1. If at the expiration of 75 days from the date of service of the notice required by section 13 of this act, the parties have not reached agreement, the mediator is discharged of his responsibility, and the parties shall submit their dispute to a factfinding panel. Within 5 days, the local government employer shall select one member of the panel, and the employee organization or organizations shall select one member. The members so selected shall select the third member, or if within 5 days they fail to do so, the board shall select him within 5 days thereafter. The third member shall act as chairman.

2. The local government employer shall pay one-half of the costs of factfinding, and the employee organization or organizations shall pay one-half.

3. The factfinding panel shall report its findings and recommendations to the parties to the dispute within 25 days after its selection is complete. These findings are not binding upon the parties, but if within 5 days after the panel has so reported the parties have not reached an agreement, the panel shall make its findings public.

*Sec. 16.* 1. For the purpose of investigating disputes, any factfinding panel may issue subpenas requiring the attendance of witnesses before it, together with all books, memoranda, papers and other documents relative to the matters under investigation, administer oaths and take testimony thereunder.

2. The district court in and for the county in which any investigation is being conducted by a factfinding panel may compel the attendance of witnesses, the giving of testimony and the production of books and papers as required by any subpena issued by the factfinding panel.

3. In case of the refusal of any witness to attend or testify or produce any papers required by such subpena, the factfinding panel may report to the district court in and for the county in which the investigation is pending by petition, setting forth:

(a) That due notice has been given of the time and place of attendance of the witness or the production of the books and papers;

(b) That the witness has been subpenaed in the manner prescribed in this chapter;

(c) That the witness has failed and refused to attend or produce the papers required by subpena before the factfinding panel in the investigation named in the subpena, or has refused to answer questions propounded to him in the course of such investigation, and asking an order of the court compelling the witness to attend and testify or produce the books or papers before the factfinding panel.

4. The court, upon petition of the factfinding panel, shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in such order, the time to be not more than 10 days from the date of the order, and then and there show cause why he has not attended or testified or produced the books or papers before the factfinding panel. A certified copy of the order shall be served upon the witness. If it appears to the court that the subpena was regularly issued by the factfinding panel, the court shall thereupon enter an order that the witness appear before the factfinding panel at the time and place fixed in the order and testify or produce the required books or papers, and upon failure to obey the order the witness shall be dealt with as for contempt of court.

*Sec. 17.* The following proceedings, required by or pursuant to this chapter, are not subject to any provision of chapter 241 or NRS:

1. Any negotiation or informal discussion between a local government employer and an employee organization or employees as individuals, whether conducted by the governing body or through a representative or representatives.

2. Any meeting of a mediator with either party or both parties to a negotiation.

3. Any meeting or investigation conducted by a factfinding panel.

*Sec. 18.* 1. The local government employee-management relations board is hereby created, to consist of three members, broadly representative of the public and not closely allied with any employee organization or local government employer, not more than two of whom shall be members of the same political party. Except as provided in subsection 2, the term of office of each member shall be 4 years.

2. The governor shall appoint the members of the board. Of the first three members appointed, the governor shall designate one whose term shall expire at the end of 2 years. Whenever a vacancy occurs on the board other than through the expiration of a term of office, the governor shall fill such vacancy by appointment for the unexpired term.

*Sec. 19.* 1. The members of the board shall annually elect one of their number as chairman and one as vice chairman. Any two members of the board constitute a quorum.

2. The board may, within the limits of legislative appropriations:

(a) Appoint a secretary, who shall be in the unclassified service of the state; and

(b) Employ such additional clerical personnel as may be necessary, who shall be in the classified service of the state.

*Sec. 20.* The members of the board shall serve without compensation, but are entitled to the expenses and allowances prescribed in NRS 281.160.

*Sec. 21.* 1. The board may make rules governing proceedings before it and procedures for factfinding and may issue advisory guidelines for the use of local government employers in the recognition of employee organizations and determination of negotiating units.

2. The board may hear and determine any complaint arising out of the interpretation of, or performance under, the provisions of this chapter by any local government employer or employee organization. The board, after a hearing, if it finds that the complaint is well taken, may order any person to refrain from the action complained of or to restore to the party aggrieved any benefit of which he has been deprived by such action.

3. Any party aggrieved by the failure of any person to obey an order of the board issued pursuant to subsection 2 may apply to a court of competent jurisdiction for a prohibitory or mandatory injunction to enforce such order.

*Sec. 22.* 1. For the purpose of hearing and deciding appeals or complaints, the board may issue subpenas requiring the attendance of witnesses before it, together with all books, memoranda, papers and other documents relative to the matters under investigation, administer oaths and take testimony thereunder.

2. The district court in and for the county in which any hearing is being conducted by the board may compel the attendance of witnesses, the giving of testimony and the production of books and papers as required by any subpena issued by the board.

3. In case of the refusal of any witness to attend or testify or produce any papers required by such subpena, the board may report to the district court in and for the county in which the hearing is pending by petition, setting forth:

(a) That due notice has been given of the time and place of attendance of the witness or the production of the books and papers;

(b) That the witness has been subpenaed in the manner prescribed in this chapter;

(c) That the witness has failed and refused to attend or produce the papers required by subpena before the board in the hearing named in the subpena, or has refused to answer questions propounded to him in the course of such hearing, and asking an order of the court compelling the witness to attend and testify or produce the books or papers before the board.

4. The court, upon petition of the board, shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in such order, the time to be not more than 10 days from the date of the order, and then and there show cause why he has not attended or testified or produced the books or papers before the board. A certified copy of the order shall be served upon the witness. If it appears to the court that the subpena was regularly issued by the board, the court shall thereupon enter an order that the witness appear before the board at the time and place fixed in the order and testify or produce the required books or papers, and upon failure to obey the order the witness shall be dealt with as for contempt of court.

*Sec. 23.* Every hearing and determination of an appeal or complaint by the board is a contested case within the meaning of chapter 233B of NRS. Every such determination is subject to judicial review as provided in chapter 233B or NRS.

*Sec. 24.* 1. The legislature finds as facts:

(a) That the services provided by the state and local government employers are of such nature that they are not and cannot be duplicated from other sources and are essential to the health, safety and welfare of the people of the State of Nevada;

(b) That the continuity of such services is likewise essential, and their disruption incompatible with the responsibility of the state to its people; and

(c) That every person who enters or remains in the employment of the state or a local government employer accepts the facts stated in paragraphs (a) and (b) as an essential condition of his employment.

2. The legislature therefore declares it to be the public policy of the State of Nevada that strikes against the state or any local government employer are illegal.

*Sec. 25.* 1. If a strike occurs against the state or a local government employer, the state or local government employer shall, and if a strike is threatened against the state or a local government employer, the state or local government employer may, apply to a court of competent jurisdiction to enjoin such strike. The application shall set forth the facts constituting the strike or threat to strike.

2. If the court finds that an illegal strike has occurred or unless enjoined will occur, it shall enjoin the continuance or commencement of such strike. The provisions of N.R.C.P. 65 and of the other Nevada Rules of Civil Procedure apply generally to proceedings under this section, but the court shall not require security of the state or of any local government employer.

*Sec. 26.* If a strike is commenced or continued in violation of an order issued pursuant to section 25 of this act, the court may:

(a) Punish the employee organization or organizations guilty of such violation by a fine of not more than $50,000 against each organization for each day of continued violation.

(b) Punish any officer of an employee organization who is wholly or partly responsible for such violation by a fine of not more than $1,000 for each day of continued violation, or by imprisonment as provided in NRS 22.110.

(c) Punish any employee of the state or of a local government employer who participates in such strike by ordering the dismissal or suspension of such employee.

2. Any of the penalties enumerated in subsection 1 may be applied alternatively or cumulatively, in the discretion of the court.

*Sec. 27.* 1. If a strike is commenced or continued in violation of an order issued pursuant to section 25 of this act, the state or the local government employer may:

(a) Dismiss, suspend or demote all or any of the employees who participate in such strike.

(b) Cancel the contracts of employment of all or any of the employees who participate in such strike.

(c) Withhold all or any part of the salaries or wages which would otherwise accrue to all or any of the employees who participate in such strike.

2. Any of the powers conferred by subsection 1 may be exercised alternatively or cumulatively.

*Sec. 28.* There are hereby appropriated from the general fund in the state treasury for the support of the local government employee-management relations board the following sums:

| | |
|---|---|
| For the fiscal year ending June 30, 1969 | $5,000 |
| For the fiscal year ending June 30, 1970 | 15,000 |
| For the fiscal year ending June 30, 1971 | 15,000 |

*Sec. 29.* This act shall become effective upon passage and approval, but no employee organization, local government employer or other person may submit to the local government employee-management relations board before October 1, 1969, any appeal, complaint or other request for action by the board.

## NEW HAMPSHIRE

### Chapter 290, 1969 Acts

*290:1 Management-Employee Relations.* Amend RSA by inserting after RSA 98-B (supp) the following new chapter:

*Chapter 98-C*

*Management-Employee Relations in State Employment*

*98-C:1 Definitions.* As used in this chapter the following words shall have the following meanings unless the context clearly requires otherwise:

I. "Employee" or "employees" shall mean classified employees of the state, and non-academic employees (exclusive of department heads and executive officers) of the University of New Hampshire including Keene State College and Plymouth State College as defined by the board of trustees of the university in accordance with 1963, 303:11, II.

II. "Employee organization" shall mean any lawful association, federation, council or other labor organization of employees, having as a primary purpose the improvement of working conditions among employees. This term shall not include any organization (1) which advocates the unlawful overthrow of the constitutional form of government in the United States or this state, or (2) which discriminates with regard to terms or conditions of membership because of race, color, creed or national origin, or (3) which does not maintain democratic procedures and practices regarding election of officers, individual participation in organization affairs, fair and equal treatment under its by-laws including due process in disciplinary proceedings, or (4) which does not maintain fiscal integrity in the conduct of the affairs of the organization including accounting controls and regular financial reports to members.

III. "Commission" shall mean the commission, hereby established, consisting of three persons, namely, the chairman of the state personnel commission (or some other member of such commission when designated by the chairman), the commissioner of labor (or his deputy when designated by him), and the secretary of state (or his deputy when designated by him). The commission shall choose its own chairman and secretary.

IV. "Director" shall mean the director of personnel or his deputy as provided in RSA 98.

V. "Unit" shall mean all employees, or, in the alternative, groups of employees classified according to department, groups of departments, institution, or groups of institutions, as the commission shall determine, upon petition, to be appropriate in order to assure to employees the fullest freedom in exercising their rights hereunder and also to provide for efficient and harmonious administration of management-employee relations. No unit may contain less than ten employees; provided however, that with respect to the University of New Hampshire, Keene State College, Plymouth State College and the Merrimack Valley Branch, a unit for purposes of representation and collective bargaining shall not be less than entire campus of any one division of the system.

VI. "Appointing authority" shall mean the officer, board, commission, person or group of persons having the power to make appointments, promotions, discharges or demotions of employees or to take disciplinary action against them.

VII. "Chief executive officer of unit" shall mean (1) the governor with the consent of the council, if the unit includes all employees or two or more departments or institutions, (2) the department head if the unit is a single department or institution, (3) the president of the University of New Hampshire if the unit includes non-academic employees of the University of New Hampshire including Keene State College and Plymouth State College.

*98-C:2 Employee Rights.* 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. Except as hereinafter expressly provided, the freedom of such employees to assist any employee organization shall be recognized as extending to participation in the management of such employee organization and acting for such organization as its representative, including, without limitation, presentation of its views to the governor, the governor and council, the legislature, the commission or the director.

The head of each department or agency and the appointing authority shall take such action, consistent with law, as may be required to assure that no interference, restraint, coercion or discrimination is practiced within such department or agency to discourage or encourage membership in any employee organization or to discourage or hinder the free exercise of the rights of employees hereunder. Provided that the rights described in this section do not extend to participation in the management of an employee organization or acting as its representative where such participation or activity would result in a conflict of interest or otherwise be incompatible with law or with the official duties of an employee.

*98-C:3 Representation and Elections.*

I. An employee organization designated or selected by the majority of the employees in the unit shall be the exclusive representative of all the employees in such unit for the purpose of this chapter, shall be entitled to recognition by all departments, agencies and appointing authorities as such exclusive representative; shall be entitled to confer upon and to adjust employee grievances, and 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 membership in the organization.

II. Recognition of an employee organization as such exclusive representative shall not–

(a) If he so elects, preclude any employee, regardless of membership or non-membership in such organization, from bringing matters of personal concern to the attention of appropriate officials in accordance with applicable law, regulations or established policy, or from acting in his own behalf or choosing his own attorney or agent in a grievance or appellate action; or

(b) Preclude any employee who is not a member of such organization from having and enjoying, without discrimination, all employment rights and benefits available to members thereof.

III. If an employee organization claims the right to act as exclusive representative for any employees, it may file a petition with the commission setting forth its claims and describing the unit for which it claims the right of exclusive representation. No such petition may be considered unless it is supported by the signatures of at least twenty-five percent of the employees in the claimed unit or one hundred employees, whichever is less. The commission shall investigate such petition and may, upon due notice, conduct a hearing on the appropriateness of the unit. If the commission finds that the unit claimed or some other unit or units are appropriate and that a question of representation of such unit or units exists, it shall direct an election by secret ballot in such unit or units and shall certify the results thereof to the governor and the employee organization. The conduct of such elections shall be under the supervision of the director and shall be in accordance with regulations issued by the commission. The petitioners shall have the right to be heard on the question of election procedure. The director shall determine all questions of eligibility to vote, subject to the right of appeal to the commission. Upon the filing of a petition with the commission signed by twenty-five percent or more of the employees in the unit alleging that they desire to revoke a prior selection of an employee organization as exclusive representative, the commission shall likewise direct an election by secret ballot and shall certify the results thereof. No election shall be directed in any unit within which, in the preceding two-year period, a valid election shall have been held.

IV. An employee organization shall be entitled to have payroll deductions of membership dues upon presentation of dues deduction authorization cards signed by individual employees.

V. The names of employees signing petitions for elections or decertification shall be exempt from disclosure under RSA 91-A.

*98-C:4 Agreements.*

I. The chief executive officer of a unit is empowered to negotiate and enter into a written agreement for a term not exceeding five

years with a certified and recognized employee organization as to the conditions of employment of employees in the unit, which may, without being limited thereto, include provisions–

(a) Establishing lawful procedures and steps for adjustment of grievances and disputes relating to conditions of employment, provided that the settlement thereof is not incompatible with law.

(b) Establishing lawful procedures and steps for conferring upon and considering recommendations for improvements in personnel policies and changes in classifications and allocations.

(c) Establishing lawful procedures and steps for arbitration of grievances and disputes relating to conditions of employment, which cannot be adjusted by agreement; the decision of the arbitrator or arbitrators to be final and binding on the parties unless it is incompatible with existing law or regulation or requires an appropriation of additional funds, in which case it shall be only advisory in nature.

(d) Establishing lawful procedures and steps for mediation or fact-finding to assist in the negotiation of an agreement in succession to one which is about to or has expired which provisions shall survive the term of the agreement.

II. Every such agreement shall contain a no-strike clause which shall survive the term of the agreement and remain in effect until a new agreement is negotiated covering the same employees. No such agreement shall infringe upon the rights of individual employees under RSA 98 and the regulations issued pursuant thereto. Such agreement shall at all times be subject to existing or future laws and all valid regulations adopted pursuant thereto. Every such proposed agreement shall be approved as to form and legality by the attorney general or his deputy or assistant prior to its execution.

III. Such agreements shall be binding on the state and the employee organization and all department heads and appointing authorities and employee organizations shall be obligated to faithfully execute the provisions thereof.

*98-C:5 Obligation to Negotiate.* The chief executive officer of a unit, or his duly authorized representative or representatives, shall be required to meet with the duly authorized representative or representatives of a certified and recognized employee organization, upon request, and to bargain in good faith for the purpose of reaching agreement upon the terms of an agreement as provided in section 4.

*98-C:6: Withdrawal of Recognition and Penalties.* An employee organization may lose its right of exclusive representation by loss of a duly called election under section 3. The commission may decertify any recognized employee organization upon finding after due notice and hearing, that it fails to meet the standards of section 1, paragraph II or that it has actually called a strike against the state or any agency thereof or has assisted or participated in any such strike. Upon decertification as provided in this section, any agreement to which such employee organization is a party shall terminate forthwith and this condition shall be implied in all agreements negotiated hereunder. Any employee who engages in, participates in, or assists in a strike against the state or any agency thereof shall be subject to the disciplinary penalties provided by law and personnel regulations for serious misconduct.

*98-C:7 Prerogatives of Management.* The state retains the exclusive right through its department heads and appointing authorities, subject to the provisions of law and the personnel regulations (a) to direct and supervise employees, (b) to appoint, promote, discharge, transfer or demote employees, (c) to lay off unnecessary employees, (d) to maintain the efficiency of government operations, (e) to determine the means, methods and personnel by which operations are to be conducted, and (f) to take whatever actions are necessary to carry out the mission of the agency or department in situations of emergency.

*290:20 Effective Date.* This act shall take effect sixty days after its passage [August 26, 1969].

## NEW JERSEY
## (Chapter 303, Laws of N.J., 1968)

Be it enacted by the Senate and General Assembly of the State of New Jersey:

1. The title of chapter 100 of the laws of 1941 is amended to read as follows: An act concerning employer-employee relations in public and private employment, creating a board of mediation, a public employment relations commission and prescribing their functions, powers and duties.

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

1. This act shall be known and may be cited as "New Jersey Employer-Employee Relations Act."

3. Section 2 of P. L. 1941, chapter 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 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.

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

3. When used in this act:

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

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

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

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

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

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 and public employer disputes and grievance procedures. 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.

(b) The Division of Private Employment Dispute Settlement shall assist 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.

6. (a) 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 chapter 100, P. L. 1941 and in sections 2 and 3 of chapter 32, P. L. 1945. There shall be a chief executive officer and administrator who shall devote his full time to the performance of his duties exclusively in the Division of Public Employment Relations. (b) This commission shall make policy and establish rules and regulations concerning employer-employee relations in public employment relating to dispute settlement, grievance procedures and administration including enforcement of statutory provisions concerning representative elections and related matters. The commission shall consist of 7 members to be appointed by the Governor, by and with the advice and consent of the Senate. Of such members, 2 shall be representative of public employers, 2 shall be representative of public employee organizations and 3 shall be representative of the public including the appointee who is designated as chairman. Of the first appointees, 2 shall be appointed for 2 years, 2 for a term of 3 years and 3, including the chairman, for a term of 4 years. Their successors shall be appointed for terms of 3 years each, 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 of the commission shall be compensated at the rate of $50.00 for each day, or part thereof, spent in attendance at meetings and consultations and shall be reimbursed for necessary expenses in connection with the discharge of their duties.

7. Except as hereinafter provided, public employees shall have, and shall be protected in the exercise of, the right, freely and without fear of penalty or reprisal, to form, join and assist any employee organization or to refrain from any such activity; provided, however, that this right shall not extend to any managerial executive except in a school district the term managerial executive shall mean the superintendent of schools or his equivalent, nor, except where established practice, prior agreement or special circumstances, dictate the contrary, shall any supervisor having the power to hire, discharge, discipline, or to effectively recommend the same, have the right to be represented in collective negotiations by an employee organization that admits 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 board as authorized by this act shall be the exclusive representatives for collective negotiation concerning the terms and conditions of employment of the employees in such unit. Nothing herein shall be construed to prevent any official from meeting with an employee organization for the purpose of hearing the views and requests of its members in such unit so long as (a) the majority representative is informed of the meeting; (b) any changes or modifications in terms and conditions of employment are made only through negotiation with the majority representative; and (c) a minority organization shall not present or process grievances. Nothing herein shall be construed to deny to any individual employee his rights under Civil Service laws or regulations. When no majority representative has been selected as the bargaining agent for the unit of which an individual employee is a part, he may present his own grievance either personally or through an appropriate representative or an organization of which he is a member and have such grievance adjusted.

A majority representative of public employees in an appropriate unit shall be entitled to act for and to negotiate agreements covering all employees in the unit and shall be responsible for representing the interests of all such employees without discrimination and without regard to employee organization membership. Proposed new rules or modifications of existing rules governing working conditions shall,

be negotiated with the majority representative before they are established. In addition, the majority representative and designated representatives of the public employer shall meet at reasonable times and negotiate in good faith with respect to grievances and terms and conditions of employment.

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

Public employers shall negotiate written policies setting forth grievance procedures by means of which their employees or representatives of employees may appeal the interpretation, application or violation of policies, agreements, and administrative decisions affecting them, provided that such grievance procedures shall be included in any agreement entered into between the public employer and the representative organization. Such grievance procedures may provide for binding arbitration as a means for resolving disputes.

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

(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 issues between employer and employees which have precipitated or culminated in or threaten to precipitate or culminate in such labor dispute.

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

(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 subpoenas as described below, and shall determine the rules and regulations for the conduct of such hearing or hearings.

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

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

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

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

9. Section 8 of P. L. 1941, chapter 100 (C. 34:13A-8) is amended to read as follows:

8. Nothing in this act shall be construed to interfere with, impede or diminish in any way the right of private employees to strike or engage in other lawful concerted activities.

10. Nothing in this act shall be construed to annul or modify, or to preclude the renewal or continuation of any agreement heretofore entered into between any public employer and any employee organization, nor shall any provision hereof annul or modify any statute or statutes of this State.

11. The commission shall collect and maintain a current file of filed contracts in public employment. Public employers shall file with the commission a copy of any contracts it has negotiated with public employee representatives following the consummation of negotiations.

12. The commission in conjunction with the Institute of Management and Labor of Rutgers, the State University, shall develop and maintain a program for the guidance of public employers in employee-management relations, to provide technical advice to public

employers on employee-management programs, to assist in the development of programs for training management personnel in the principles and procedures of consultation, negotiation and the settlement of disputes in the public service, and for the training of management officials in the discharge of their employee-management relations responsibilities in the public interest.

13. Section 11 of P. L. 1941, chapter 100 (C.34:13A-11) is amended to read as follows:

11. The board shall have power to adopt, alter, amend or repeal such rules in connection with the voluntary mediation of labor disputes in private employment and the commission shall have the same powers in public employment, as may be necessary for the proper administration and enforcement of the provisions of this act.

14. For the purpose of carrying out the amendatory and supplementary provisions of this act there is hereby appropriated for the use of the commission for the fiscal year 1968-1969, the additional sum of $100,000.00.

15. This act shall take effect July 1, 1968.

## NEW YORK

### Ban on Strikes by Public Workers

*Sec. 200. Statement of policy.*—The legislature of the state of New York declares that it is the public policy of the state and the purpose of this act to promote harmonious and cooperative relationships between government and its employees and to protect the public by assuring, at all times, the orderly and uninterrupted operations and functions of government. These policies are best effectuated by (a) granting to public employees the right of organization and representation, (b) requiring the state, local governments and other political subdivisions to negotiate with, and enter into written agreements with employee organizations representing public employees which have been certified or recognized, (c) encouraging such public employers and such employee organizations to agree upon procedures for resolving disputes, (d) creating a public employment relations board to assist in resolving disputes between public employees and public employers, and (e) continuing the prohibition against strikes by public employees and providing remedies for violations of such prohibition.

*Sec. 201. Definitions.* As used in this article—1. The term "board" means the public employment relations board created by section two hundred five of this article.

2. The term "budget submission date" means the date by which, under law or practice, a government's proposed budget, or a budget containing proposed expenditures applicable to such government, is submitted to the legislative or other similar body of the government for final action, and (a) in the case of a school district other than city school districts means the date of the annual meeting, and (b) in the case of city school districts means the first day of July.

3. The term "membership dues deduction" means the obligation or practice of a government to deduct from the salary of a public employee with his consent an amount for the payment of his membership dues in an employee organization. Such term also means the obligation or practice of a government to transmit the sums so deducted to an employee organization.

4. The term "chief legal officer" means (a) in the case of the state of New York or a state public authority, the attorney general of the state of New York, (b) in the case of a county, city, town or village, the county attorney, corporation counsel, town attorney or village attorney, as the case may be, and (c) in the case of any such government not having its own attorney, or any other government or public employer, the corporation counsel of the city in which such government or public employer has its principal office, and if such principal office is not located in a city, the county attorney of the county in which such government or public employer has its principal office.

5. The term "terms and conditions of employment" means salaries, wages, hours and other terms and conditions of employment.

6. The term "employee organization" means an organization of any kind having as its primary purpose the improvement of terms and conditions of employment of public employees, except that such term shall not include an organization (a) membership in which is prohibited by section one hundred five of this chapter, (b) which discriminates with regard to the terms or conditions of membership because of race, color, creed or national origin, or (c) which, in the case of public employees who hold positions by appointment or employment in the service of the board and who are excluded from the application of this article by rules and regulations of the board, admits to membership or is affiliated directly or indirectly with an organization which admits to membership persons not in the service of the board, for purposes of any provision of this article other than sections two hundred ten and two hundred eleven of this article.

7. The term "government" or "public employer" means (a) the state of New York, (b) a county, city, town, village or any other political subdivision or civil division of the state, (c) a school district or any governmental entity operating a public school, college or university, (d) a public improvement or special district, (e) a public authority, commission, or public benefit corporation, or (f) any other public corporation, agency or instrumentality or unit of government which exercises governmental powers under the laws of the state.

8. The term "public employee" means any person holding a position by appointment or employment in the service of a public employer, except that such term shall not include persons holding positions by appointment or employment in the organized militia of the state for purposes of any provision of this article than sections two hundred ten and two hundred eleven of this article.

9. The term "state public authority" means a public benefit corporation or public corporation, a majority of the members of which are (i) appointed by the governor or by another state officer or body, (ii) designated as members by virtue of their state office, or (iii) appointed or designated by any combination of the foregoing.

10. The term "strike" means any strike or other concerted stoppage of work or slowdown by public employees.

11. The term "chief executive officer" in the case of school districts, means the superintendent of schools in school districts employing their own superintendents, and in school districts under the jurisdiction of a district superintendent of schools, shall mean the principal of the district.

12. The term "legislative body of the government," in the case of school districts, means the board of education, board of trustees or sole trustee, as the case may be.

13. The term "agreement" means the result of the exchange of mutual promises between the chief executive officer or a public employer and an employee organization which becomes a binding contract, for the period set forth therein, except as to any provisions therein which require approval by a legislative body, and as to those provisions, shall become binding when the appropriate legislative body gives its approval.

*Sec. 202. Right of organization.* –Public employees shall have the right to form, join and participate in, or to refrain from forming, joining, or participating in, any employee organization of their own choosing.

*Sec. 203. Right of representation.* –Public employees shall have the right to be represented by employee organizations to negotiate collectively with their public employers in the determination of their terms and conditions of employment, and the administration of grievances arising thereunder.

*Sec. 204. Recognition and certification of employee organizations.*–1. Public employers are hereby empowered to recognize employee organizations for the purpose of negotiating collectively in the determination of, and administration of grievances arising under, the terms and conditions of employment of their public employees as provided in this article, and to negotiate and enter into written agreements with such employee organizations in determining such terms and conditions of employment.

2. Where an employee organization has been certified or recognized pursuant to the provisions of this article, the appropriate public employer shall be, and hereby is, required to negotiate collectively with such employee organization in the determination of, and administration of grievances arising under, the terms and conditions of employment of the public employees as provided in this article, and to negotiate and enter into written agreements with such employee organizations in determining such terms and conditions of employment.

*Sec. 204a. Agreements between public employers and employee organizations.* 1. Any written agreement between a public employer and an employee organization determining the terms and conditions of employment of public employees shall contain the following notice in type not smaller than the largest type used elsewhere in such agreement:

"It is agreed by and between the parties that any provision of this agreement requiring legislative action to permit its implementation by amendment of law or by providing the additional funds therefor, shall not become effective until the appropriate legislative body has given approval."

2. Every employee organization submitting such a written agreement to its members for ratification shall publish such notice, include such notice in the documents accompanying such submission and shall read it aloud at any membership meeting called to consider such ratification.

3. Within sixty days after the effective date of this act, a copy of this section shall be furnished by the chief fiscal officer or each public employer to each public employee. Each public employee employed thereafter shall, upon such employment, be furnished with a copy of the provisions of this section.

*Sec. 205. Public employment relations board.*–1. There is hereby created in the state department of civil service a board, to be known as the public employment relations board, which shall consist of three members appointed by the governor, by and with the advice and consent of the senate from persons representative of the public. Not more than two members of the board shall be members of the same political party. Each member shall be appointed for a term of six years, except that of the members first appointed, one shall be appointed for a term to expire on May thirty-first, nineteen hundred sixty-nine, one for a term to expire on May thirty-first, nineteen hundred seventy-one, and one for a term to expire on May thirty-first, nineteen hundred seventy-three. The governor shall designate one member as chairman of the board. A member appointed to fill vacancy shall be appointed for the unexpired term of the member whom he is to succeed.

2. Members of the board shall hold no other public office or public employment in the state. The chairman shall give his whole time to his duties.

3. Members of the board other than the chairman shall, when performing the work of the board, be compensated at the rate of one hundred dollars per day, together with an allowance for actual and necessary expenses incurred in the discharge of their duties hereunder. The chairman shall receive an annual salary to be fixed within the amount available therefor by appropriation, in addition to an allowance for expenses actually and necessarily incurred by him in the performance of his duties.

4. The board may appoint an executive director and such other persons, including but not limited to mediators, members of fact-finding boards and representatives of employee organizations and public employers to serve as technical advisers to such fact-finding boards, as it may from time to time deem necessary for the performance of its functions, prescribe their duties, fix their compensation and provide for reimbursement of their expenses within the amounts made available therefor by appropriation.

5. In addition to the powers and functions provided in other sections of this article, the board shall have the following powers and functions:

(a) To establish procedures consistent with the provisions of section two hundred seven of this article and after consultation with interested parties, to resolve disputes concerning the representation of employee organizations.

(b) To resolve, pursuant to such procedures, disputes concerning the representation status of employee organizations of employees of the state and state public authorities upon request of any employee organization, state department or agency or state public authority involved.

(c) To resolve, pursuant to such procedures but only in the absence of applicable procedures established pursuant to section two hundred six of this article, disputes concerning the representation status of other employee organizations, upon request of any employee organization or other government or public employer involved.

(d) To establish procedures for the prevention of improper employer and employee organization practices as provided in section two hundred nine-a of this article, provided, however, that in case of a claimed violation of paragraph (d) of subdivision one or paragraph (b) of subdivision two of such section such procedures shall provide only for the entry of an order directing the public employer or employee organization to negotiate in good faith. The pendency of proceedings under this paragraph shall not be used as the basis to

delay or interfere with determination of representation status pursuant to section two hundred seven of this article or with collective negotiations. The board shall exercise exclusive nondelegable jurisdiction of the powers granted to it by this paragraph.

(e) To make studies and analyses of, and act as a clearing house of information relating to, conditions of employment of public employees throughout the state.

(f) To request from any government, and such governments are authorized to provide, such assistance, services and data as will enable the board properly to carry out its functions and powers.

(g) To conduct studies of problems involved in representation and negotiation, including, but not limited to (i) whether employee organizations are to be recognized as representatives of their members only or are to have exclusive representation rights for all employees in the negotiating unit, (ii) the problems of unit determination, (iii) those subjects which are open to negotiation in whole or in part, (iv) those subjects which require administrative or legislative approval of modifications agreed upon by the parties, and (v) those subjects which are for determination solely by the appropriate legislative body, and make recommendations from time to time for legislation based upon the results of such studies.

(h) To make available to employee organizations, governments, mediators, fact-finding boards and joint study committees established by governments and employee organizations statistical data relating to wages, benefits and employment practices in public and private employment applicable to various localities and occupations to assist them to resolve complex issues in negotiations.

(i) To establish, after consulting representatives of employee organizations and administrators of public services, panels of qualified persons broadly representative of the public to be available to serve as mediators, arbitrators or members of fact-finding boards.

(j) To hold such hearings and make such inquiries as it deems necessary for it properly to carry out its functions and powers.

(k) For the purpose of such hearings and inquiries, to administer oaths and affirmations, examine witnesses and documents, take testimony and receive evidence, compel the attendance of witnesses and the production of documents by the issuance of subpoenas, and delegate such powers to any member of the board or any person appointed by the board for the performance of its functions. Such subpoenas shall be regulated and enforced under the civil practice law and rules.

(l) To make, amend and rescind, from time to time, such rules and regulations, including but not limited to those governing its internal organization and conduct of its affairs, and to exercise such other powers, as may be appropriate to effectuate the purposes and provisions of this article.

6. Notwithstanding any other provisions of law, neither the president of the civil service commission nor the civil service commission or any other officer, employer, board or agency of the department of civil service shall supervise, direct or control the board in the performance of any of its functions or the exercise of any of its powers under this article; provided however, that nothing herein shall be construed to exempt employees of the board from the provisions of the civil service law.

*Sec. 206. Procedures for determination of representation status of local employees.*—1. Every government (other than the state or a state public authority), acting through its legislative body, is hereby empowered to establish procedures, not inconsistent with the provisions of section two hundred seven of this article and after consultation with interested employee organizations and administrators of public services, to resolve disputes concerning the representation status of employee organizations of employees of such government.

2. In the absence of such procedures, such disputes shall be submitted to the board in accordance with section two hundred five of this article.

*Sec. 207. Determination of representation status.*—For purposes of resolving disputes concerning representation status, pursuant to section two hundred five or two hundred six of this article, the board or government, as the case may be, shall

1. define the appropriate employer-employee negotiating unit taking into account the following standards:

(a) the definition of the unit shall correspond to community of interest among the employees to be included in the unit;

(b) the officials of government at the level of the unit shall have the power to agree, or to make effective recommendations to other administrative authority or the legislative body with respect to, the terms and conditions of employment upon which the employees desire to negotiate; and

(c) the unit shall be compatible with the joint responsibilities of the public employer and public employees to serve the public.

2. ascertain the public employees' choice of employee organization as their representative (in cases where the parties to a dispute have not agreed on the means to ascertain the choice, if any, of the employees in the unit) on the basis of dues deduction authorization and other evidences, or, if necessary, by conducting an election.

3. certify or recognize an employee organization upon (a) the determination that such organization represents that group of public employees it claims to represent, and (b) the affirmation by such organization that it does not assert the right to strike against any government, to assist or participate in any such strike, or to impose an obligation to conduct, assist or participate in such a strike.

*Sec. 208. Rights accompanying certification or recognition.*—A public employer shall extend to an employee organization certified or recognized pursuant to this article the following rights:

(a) to represent the employees in negotiations and in the settlement of grievances;

(b) to membership dues deduction upon presentation of dues deduction authorization cards signed by individual employees; and

(c) to unchallenged representation status until the next succeeding budget submission date and, thereafter, for an additional period of either twelve months or, if the parties so agree, not less than twelve months nor more than twenty-four months, which period shall commence one hundred twenty days prior to such next succeeding budget submission date.

*Sec. 209. Resolution of disputes in the course of collective negotiations.*—1. For purposes of this section, an impasse may be deemed to exist if the parties fail to achieve agreement at least sixty days prior to the budget submission date of the public employer.

2. Public employers are hereby empowered to enter into written agreements with recognized or certified employee organizations setting forth procedures to be invoked in the event of disputes which reach an impasse in the course of collective negotiations. Such agreements may include the undertaking by each party to submit unresolved issues to impartial arbitration. In the absence or upon the failure of such procedures, public employers and employee organizations may request the board to render assistance as provided in this section, or the board may render such assistance on its own motion, as provided in subdivision three of this section.

3. On request of either party or upon its own motion, as provided in subdivision two of this section, and in the event the board

determines that an impasse exists in collective negotiations between such employee organization and a public employer as to the conditions of employment of public employees, the board shall render assistance as follows:

(a) to assist the parties to effect a voluntary resolution of the dispute, the board shall appoint a mediator or mediators representative of the public from a list of qualified persons maintained by the board;

(b) if the impasse continues, the board shall appoint a fact-finding board of not more than three members, each representative of the public, from a list of qualified persons maintained by the board, which fact-finding board shall have, in addition to the powers delegated to it by the board, the power to make public recommendations for the resolution of the dispute;

(c) If the dispute is not resolved at least twenty days prior to the budget submission date, the fact-finding board, acting by a majority of its members, (i) shall immediately transmit its findings of fact and recommendations for resolution of the dispute to the chief executive officer of the government involved and to the employee organization involved, (ii) may thereafter assist the parties to effect a voluntary resolution of the dispute, and (iii) shall within five days of such transmission make public such findings and recommendations;

(d) in the event that the findings of fact and recommendations are made public by a fact-finding board established pursuant to procedures agreed upon by the parties under subdivision two of this section, and the impasse continues, the public employment relations board shall have the power to take whatever steps it deems appropriate to resolve the dispute, including (i) the making of recommendations after giving due consideration to the findings of fact and recommendations of such fact-finding board, but no further fact-finding board shall be appointed and (ii) upon the request of the parties, assistance in providing for voluntary arbitration;

(e) in the event that either the public employer or the employee organization does not accept in whole or part the recommendations of the fact-finding board, (i) the chief executive officer of the government involved shall, within ten days after receipt of the findings of fact and recommendation of the fact-finding board, submit to the legislative body of the government involved a copy of the findings of fact and recommendations of the fact-finding board, together with his recommendations for settling the dispute; (ii) the employee organization may submit to such legislative body its recommendations for settling the dispute; (iii) the legislative body or a duly authorized committee thereof shall forthwith conduct a hearing at which the parties shall be required to explain their positions with respect to the board; and (iv) thereafter, the legislative body shall take such action as it deems to be in the public interest, including the interest of the public employees involved.

*Sec. 209-a.* Improper employer practices; improper employee organization practices; application. 1. Improper employer practices. It shall be an improper practice for a public employer or its agents deliberately (a) to interfere with, restrain or coerce public employees in the exercise of their rights guaranteed in section two hundred two for the purpose of depriving them of such rights; (b) to dominate or interfere with the formation or administration of any employee organization for the purpose of depriving them of such rights; (c) to discriminate against any employee for the purpose of encouraging or discouraging membership in, or participation in the activities of, any employee organization; or (d) to refuse to negotiate in good faith with the duly recognized or certified representatives of its public employees.

2. Improper employee organization practices. It shall be an improper practice for an employee organization or its agents deliberately (a) to interfere with, restrain or coerce public employees in the exercise of the rights granted in section two hundred two, or to cause, or attempt to cause, a public employer to do so; or (b) to refuse to negotiate collectively in good faith with a public employer, provided it is the duly recognized or certified representative of the employees of such employer.

3. Application. In applying this section, fundamental distinctions between private and public employment shall be recognized, and no body of federal or state law applicable wholly or in part to private employment, shall be regarded as binding or controlling precedent.

*Sec. 210. Prohibition of strikes.*–1. No public employee or employee organization shall engage in a strike, and no public employee or employee organization shall engage cause, instigate, encourage, or condone a strike.

2. Violations and penalties; presumption; prohibition against consent to strike; determination; notice; probation; payroll deductions; objections; and restoration. (a) Violations and penalties. A public employee shall violate this subdivision by engaging in a strike or violating paragraph (c) of this subdivision and shall be liable as provided in this subdivision pursuant to the procedures contained herein. In addition, any public employee who violates subdivision one of this section may be subject to removal or other disciplinary action provided by law for misconduct.

(b) Presumption. For purposes of this subdivision an employee who is absent from work without permission, or who abstains wholly or in part from the full performance of his duties in his normal manner without permission, on the date or dates when a strike occurs, shall be presumed to have engaged in such strike on such date or dates.

(c) Prohibition against consent to strike. No person exercising on behalf of any public employer any authority, supervision or direction over any public employee shall have the power to authorize, approve, condone or consent to a strike, or the engaging in a strike, by one or more public employees, and such person shall not authorize, approve, condone or consent to such strike or engagement.

(d) Determination. In the event that it appears that a violation of this subdivision may have occurred, the chief executive officer of the government involved shall, on the basis of such investigation and affidavits as he may deem appropriate, determine whether or not such violation has occurred and the date or dates of such violation. If the chief executive officer determines that such violation has occurred, he shall further determine, on the basis of such further investigation and affidavits as he may deem appropriate, the names of employees who committed such violation deemed to be final until the completion of the procedures provided for in this subdivision.

(e) Notice. The chief executive officer shall forthwith notify each employee that he has been found to have committed such violation and the date or dates thereof; he shall also notify the chief fiscal officer of the names of all such employees and of the total number of days, or part thereof, on which it has been determined that such violation occurred. Notice to each employee shall be by personal service or by certified mail to his last address filed by him with his employer.

(f) Probation. Notwithstanding any inconsistent provision of law, any public employee who has been determined to have violated this subdivision shall be on probation for a term of one year following such determination during which period he shall serve without tenure.

(g) Payroll deductions. Not earlier than thirty nor later than ninety days following the date of such determination, the chief fiscal officer of the government involved shall deduct from the compensation of each public employee an amount equal to twice his daily rate

of pay for each day or part thereof that it was determined that he had violated this subdivision; such rate of pay to be computed as of the time of such violation. In computing such deduction, credit shall be allowed for amounts already withheld from such employee's compensation on account of his absence from work or other withholding of services on such day or days.

(h) Objections and restoration. Any employee determined to have violated this subdivision may object to such determination by filing with the chief executive officer, (within twenty days of the date on which notice was served or mailed to him pursuant to paragraph (e) of this subdivision) his sworn affidavit, supported by available documentary proof, containing a short and plain statement of the facts upon which he relies to show that such determination was incorrect. Such affidavit shall be subject to the penalties of perjury. If the chief executive officer shall determine that the affidavit and supporting proof establishes that the employee did not violate this subdivision, he shall sustain the objection. If the chief executive officer shall determine that the affidavit and supporting proof fails to establish that the employee did not violate this subdivision, he shall dismiss the objection and so notify the employee. If the chief executive officer shall determine that the affidavit and supporting proof raises a question of fact which, if resolved in favor of the employee, would establish that the employee did not violate this subdivision, he shall appoint a hearing officer to determine whether in fact the employee did violate this subdivision after a hearing at which such employee shall bear the burden of proof. If the hearing officer shall determine that the employee failed to establish that he did not violate this subdivision, the chief executive officer shall so notify the employee. If the chief executive officer sustains an objection or the hearing officer determines on a preponderance of the evidence that such employee did not violate this subdivision, the chief executive officer shall forthwith restore to the employee the tenure suspended pursuant to paragraph (f) of this subdivision, and notify the chief fiscal officer who shall thereupon cease all further deductions and refund any deductions previously made pursuant to this subdivision. The determinations provided in this paragraph shall be reviewable pursuant to article seventy-eight of the civil practice law and rules.

3. (a) An employee organization which is determined by the board to have violated the provisions of subdivision one of this section shall, in accordance with the provisions of this section, lose the rights granted pursuant to the provisions of paragraph (b) of section two hundred eight of this chapter.

(b) In the event that it appears that a violation of subdivision one of this section may have occurred, it shall be the duty of the chief executive officer of the public employer involved (i) forthwith to so notify the board and the chief legal officer of the government involved and (ii) to provide the board and such chief legal officer with such facilities, assistance and data as will enable the board and such chief legal officer to carry out their duties under this section.

(c) In the event that it appears that a violation of subdivision one of this section may have occurred, the chief legal officer of the government involved, or the board on its own motion, shall forthwith institute proceedings before the board to determine whether such employee organization has violated the provision of subdivision one of this section.

(d) Proceedings against an employee organization under this section shall be commenced by service upon it of a written notice, together with a copy of the charges. A copy of such notice and charges shall also be served, for their information, upon the appropriate government officials who recognize such employee organization and grant to it the rights accompanying such recognition. The employee organization shall have eight days within which to serve its written answer to such charges. The board's hearing shall be held promptly thereafter and at such hearing, the parties shall be permitted to be represented by counsel and to summon witnesses in their behalf. Compliance with the technical rules of evidence shall not be required.

(e) In determining whether an employee organization has violated subdivision one of this section, the board shall consider (i) whether the employee organization called the strike or tried to prevent it, and (ii) whether the employee organization made or was making good faith efforts to terminate the strike.

(f) If the board determines that an employee organization has violated the provisions of subdivision one of this section, the board shall order forfeiture of the rights granted pursuant to the provisions of paragraph (b) of section two hundred eight of this chapter, for such specified period of time as the board shall determine, or, in the discretion of the board, for an indefinite period of time subject to restoration upon application, with notice to all interested parties, supported by proof of good faith compliance with the requirements of subdivision one of this section since the date of such violation, such proof to include, for example, the successful negotiation, without a violation of subdivision one of this section, of a contract covering the employees in the unit affected by such violation; provided, however, that where a fine imposed on an employee organization pursuant to subdivision two of section seven hundred fifty-one of the judiciary law remains wholly or partly unpaid, after the exhaustion of the cash and securities of the employee organization, the board shall direct that, notwithstanding such forfeiture, such membership dues deduction shall be continued to the extent necessary to pay such fine and such public employer shall transmit such moneys to the court. In fixing the duration of the forfeiture, the board shall consider all the relevant facts and circumstances, including but not limited to: (i) the extent of any wilful defiance of subdivision one of this section (ii) the impact of the strike on the public health, safety, and welfare of the community and (iii) the financial resources of the employee organization; and the board may consider (i) the refusal of the employee organization or the appropriate public employer or the representative thereof, to submit to the mediation and fact-finding procedures provided in section two hundred nine and (ii) whether, if so alleged by the employee organization, the appropriate public employer or its representatives engaged in such acts of extreme provocation as to detract from the responsibility of the employee organization for the strike. In determining the financial resources of the employee organization, the board shall consider both the income and the assets of such employee organization. In the event membership dues are collected by the public employer as provided in paragraph (b) of section two hundred eight of this chapter, the books and records of such public employer shall be prima facie evidence of the amount so collected.

(g) An employee organization whose rights granted pursuant to the provisions of paragraph (b) of section two hundred eight of this article have been ordered forfeited pursuant to this section may be granted such rights after the termination of such forfeiture only after complying with the provisions of clause (b) of subdivision three of section two hundred seven of this article.

(h) No compensation shall be paid by a public employer to a public employee with respect to any day or part thereof when such employee is engaged in a strike against such employer. The chief fiscal officer of the government involved shall withhold such compensation upon receipt of the notice provided by paragraph (e) of subdivision two of section two hundred ten; notwithstanding the failure to have received such notice, no public employee or officer having knowledge that such employee has so engaged in such a strike

shall deliver or caused to be delivered to such employee any cash, check or payment which, in whole or in part, represents such compensation.

4. Orders of the board made pursuant to this article (including, but not limited to, orders made pursuant to subdivision three of this section) shall be (a) reviewable under article seventy-eight of the civil practice law and rules, and (b) enforceable, upon petition of such board, by the supreme court, which shall have jurisdiction of the proceeding and the power to grant such temporary relief or affirmative or restraining orders as it deems just and proper. The failure to perform the duties required by subdivisions two and three, of this section and by section two hundred eleven of this chapter shall be reviewable in a proceeding under article seventy-eight of the civil practice law and rules by any taxpayer, as defined in section one hundred two of this chapter. Any such taxpayer shall also have standing to institute any action described in subdivisions one and two of section one hundred two of this chapter.

5. Within sixty days of the termination of a strike, the chief executive officer of the government involved shall prepare and make public a report in writing, which shall contain the following information; (a) the circumstances surrounding the commencement of the strike, (b) the efforts used to terminate the strike, (c) the names of those public employees whom the public officer or body had reason to believe were responsible for causing, instigating or encouraging the strike and (d) related to the varying degrees of individual responsibility, the sanctions imposed or proceedings pending against each such individual public employee. (As amended by A.6704, L.1969, effective April 1, 1969)

*Sec. 211. Application for injunctive relief.*–Notwithstanding the provisions of section eight hundred seven of the labor law, where it appears that public employees or an employee organization threaten or are about to do, or are doing, an act in violation of section two hundred ten of this article, the chief executive officer of the government involved shall (a) forthwith notify the chief legal officer of the government involved, and (b) provide such chief legal officer with such facilities, assistance and data as will enable the chief legal officer to carry out his duties under this section, and, notwithstanding the failure or refusal of the chief executive officer to act as aforesaid, the chief legal officer of the government involved shall forthwith apply to the supreme court for an injunction against such violation. If an order of the court enjoining or restraining such violation does not receive compliance, such chief legal officer shall forthwith apply to the supreme court to punish such violation under section seven hundred fifty of the judiciary law.

*Sec. 212. Local government procedures.*–1. This article, except sections two hundred one, two hundred two, two hundred three, two hundred four, paragraph d of subdivision five of section two hundred five, paragraph b of subdivision three of section two hundred seven, section two hundred eight, section two hundred nine-a, subdivisions one and two of section two hundred ten, and section two hundred eleven, shall be inapplicable to any government (other than the state or a state public authority) which, acting through its legislative body, has adopted by local law, ordinance or resolution, its own provisions and procedures which have been submitted to the board by such government and as to which there is in effect a determination by the board that such provisions and procedures and the continuing implementation thereof are substantially equivalent to the provisions and procedures set forth in this article with respect to the state;

2. With respect to the city of New York, such provisions and procedures need not be related to budget submission dates; and with respect to provisions and procedures adopted by local law by the city of New York no such submission to or determination by the board shall be required, but such provisions and procedures shall be of full force and effect unless and until such provisions and procedures, or the continuing implementation thereof, are found by a court of competent jurisdiction, in an action brought by the board in the county of New York for a declaratory judgment, not to be substantially equivalent to the provisions and procedures set forth in this article.

In order to promote harmonious and cooperative relationships between the city of New York and its employees, and thereby to protect the public from the interruption of vital public services, it is necessary that the city of New York adopt provisions and procedures which would effectuate the fundamental principles of the public employees fair employment act of nineteen hundred sixty-seven. Consequently, on or before August one, nineteen hundred sixty-nine the mayor of the city of New York shall submit to the temporary president of the senate, the speaker of the assembly and the public employment relations board a report of the steps taken and a plan designed to bring such practices of the city of New York into substantial equivalence with such state law. This report and plan shall, among other things, particularly deal with making effective the jurisdiction of the office of collective bargaining, the need for a specified final step in the impasse procedures, and the relation of negotiations and impasse procedures to budget submission dates. On or before December one, nineteen hundred sixty-nine the public employment relations board shall submit to the temporary president of the senate and speaker of the assembly its comments and recommendations regarding such report and plan. If the report of the mayor is not received as aforesaid, the special provisions relating to the city of New York contained in paragraph two of section two hundred twelve of the civil service law, shall cease on August one, nineteen hundred sixty-nine and such paragraph shall be deemed null and void.

## CRIMINAL LAW PROVISION

Sec. 751 of the Judiciary Law, amended by Ch. 392, L. 1967, effective September 1, 1967, which reads as follows:

*Sec. 751. Punishment for criminal contempts*–1. Except as provided in subdivision (2), punishment for a contempt, specified in section seven hundred and fifty, may be by fine, not exceeding two hundred and fifty dollars, or by imprisonment, not exceeding thirty days, in the jail of the county where the court is sitting, or both, in the discretion of the court. Where a person is committed to jail, for the nonpayment of such a fine, he must be discharged at the expiration of thirty days; but where he is also committed for a definite time, the thirty days must be computed from the expiration of the definite time.

Such a contempt, committed in the immediate view and presence of the court, may be punished summarily; when not so committed, the party charged must be notified of the accusation, and have a reasonable time to make a defense.

2. (a) Where an employee organization, as defined in section two hundred one of the civil service law, wilfully disobeys a lawful mandate of a court of record, or wilfully offers resistance to such lawful mandate, in a case involving or growing out of a strike in violation of subdivision one of section two hundred ten of the civil service law, the punishment for each day that such contempt persists may be by a fine fixed in the discretion of the court. In the case of a government exempt from certain provisions of article fourteen of the civil service law, pursuant to section two hundred twelve of such law, the court may, as an additional punishment for such contempt,

order forfeiture of the rights granted pursuant to the provisions of paragraph (b) of section two hundred eight of such law for such specified period of time, as the court shall determine or, in the discretion of the court, for an indefinite period of time subject to restoration upon application, with notice to all interested parties, supported by proof of good faith compliance with the requirements of subdivision one of this section since the date of such violation, such proof to include, for example, the successful negotiation, without a violation of subdivision one of this section, of a contract covering the employees in the unit affected by such violation; provided, however, that where a fine imposed pursuant to this subdivision remains wholly or partly unpaid, after the exhaustion of the cash and securities of the employee organization, such forfeiture shall be suspended to the extent necessary for the unpaid portion of such fine to be accumulated by the public employer and transmitted to the court. In fixing the amount of the fine and/or duration of the forfeiture, the court shall consider all the facts and circumstances directly related to the contempt, including, but not limited to: (i) the extent of the wilful defiance of or a resistance to the court's mandate (ii) the impact of the strike on the public health, safety and welfare of the community and (iii) the ability of the employee organization to pay the fine imposed; and the court may consider (i) the refusal of the employee organization or the appropriate public employer, as defined in section two hundred one of the civil service law, or the representatives thereof, to submit to the mediation and fact-finding procedures provided in section two hundred nine of the civil service law and (ii) whether, if so alleged by the employee organization, the appropriate public employer or its representatives engaged in such acts of extreme provocation as to detract from the responsibility of the employee organization for the strike. In determining the ability of the employee organization to pay the fine imposed, the court shall consider both the income and the assets of such employee organization.

(b) In the event membership dues are collected by the public employer as provided in paragraph (b) of section two hundred eight of the civil service law, the books and records of such public employer shall be prima facie evidence of the amount so collected.

(c) (i) An employee organization appealing an adjudication and fine for criminal contempt imposed pursuant to subdivision two of this section, shall not be required to pay such fine until such appeal is finally determined.

(ii) The court to which such an appeal is taken shall, on motion of any party thereto, grant a preference in the hearing thereof.

## OREGON
### Senate Bill 55, 1969 Session

*Section 1.* ORS 243.710 is repealed and section 2 of this Act is enacted in lieu thereof.

*Section 2.* As used in ORS 243.710 to 243.760, unless the context requires otherwise:

(1) "Collective bargaining" means the performance of the mutual obligation of a public employer and the representative of its employes to meet at reasonable times and confer in good faith with respect to employment relations, or 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. However, this obligation does not compel either party to agree to a proposal or require the making of a concession.

(2) "Employment relations" includes, but is not limited to, matters concerning direct or indirect monetary benefits, hours, vacations, sick leave, grievance procedures and other conditions of employment.

(3) "Labor organization" means any organization which includes public employes and which has as one of its primary purposes representing such employes in their employment relations with the public employer.

(4) "Public employe" means an employe of a public employer.

(5) "Public employer" means the state and any of its agencies and institutions, and includes a city, county or other political subdivision that has requested the Public Employe Relations Board under section 4 of this 1969 Act to make its services and facilities available for the purpose of establishing public employe representation.

*Section 3.* ORS 243.750 is repealed, and section 4 of this Act is enacted in lieu thereof.

*Section 4.* (1) Upon the request of a public employer, or any city, county or other political subdivision, the Public Employe Relations Board shall make its services and facilities available for the purpose of establishing public employe representation. The services shall include, but not be limited to, holding public hearings and conducting secret ballot elections to determine bargaining unit and representation issues.

(2) When a public employer and a labor organization cannot agree on the terms for collective bargaining, or when a labor dispute arises between them, the Public Employe Relations Board may be called upon to aid in arriving at an agreement or to settle the dispute through conciliation, mediation, fact-finding or voluntary arbitration.

(3) Upon the request of a city, county or other political subdivision, the Public Employe Relations Board shall make its services and facilities available to aid in arriving at an agreement or to settle a dispute between such city, county or other political subdivision, and a labor organization.

(4) In providing the services of the Public Employe Relations Board under this section, the board may assign duties and responsibilities to the State Conciliation Service and the conciliator under ORS 662.435, and to ad hoc committees of persons appointed by the board who are knowledgeable in labor relations.

(5) Except as provided in ORS 243.780, the board may by rule establish procedures governing the services of the State Conciliation Service under this section.

*Section 4a.* Sections 5 to 12 of this Act are added to and made a part of ORS 243.710 to 243.760.

*Section 5.* (1) A labor organization certified by the Public Employe Relations Board is the exclusive representative of the employes of a public employer for the purposes of collective bargaining with respect to employment relations. However, an individual employe or group of employes at any time may present grievances to their employer and have such grievances adjusted, without the intervention of the labor organization, if:

(a) The adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect; and

(b) The labor organization has been given opportunity to be present at the adjustment.

(2) Nothing in this section prevents a labor organization from being the exclusive representative of the employes of a public employer in a jurisdiction or unit that has not been established or in which rules setting procedures for the selection and certification of the collective bargaining representative for the employes have not been adopted.

*Section 6.* If a public employer or a labor organization representing public employes complains that the mutual obligation to bargain collectively in good faith is not being observed by a party so obligated or that a party has failed to comply with the terms of an agreement, the Public Employe Relations Board shall cause an investigation to be carried out to determine whether any party to the dispute has refused or failed to bargain collectively or has failed to comply with the terms of an agreement. The board shall make a finding in accordance with the investigation, and may hold hearings and take testimony to assist in making its findings. The findings of the board under this section, which are not subject to appeal, shall be published as the board determines to be appropriate.

*Section 7.* If the public employer and a labor organization after a reasonable period of negotiation are deadlocked with respect to a dispute existing between them arising out of the mutual obligation to bargain collectively or from the application or interpretation of a collective bargaining contract or agreement existing between them, either or both may petition the Public Employe Relations Board in writing to initiate fact-finding as provided in sections 7 to 12 of this 1969 Act, in order to make recommendations for resolution of the existing deadlock. In lieu of a petition, the board on its own motion may initiate such fact-finding if it determines the existence of a deadlock as described in this section.

*Section 8.* Initiation of fact-finding proceedings is discretionary with the Public Employe Relations Board. If the board decides to initiate fact-finding inquiry with respect to a particular dispute, it shall appoint a fact-finding committee consisting of three disinterested individuals knowledgeable in labor relations. The board shall furnish staff assistance to such committee.

*Section 9.* (1) The fact-finding committee promptly shall investigate the issues disputed by the parties involved in the controversy. The committee may hold hearings and take testimony. The Public Employe Relations Board on request of the committee may issue subpenas, and any member of the committee may administer oaths to witnesses before the committee.

(2) On completion of its hearings and other investigations, the fact-finding committee shall make written findings of fact and recommendations for solution of the dispute and shall cause a copy of such findings and recommendations to be served on the parties. The committee also shall submit a copy of its findings and recommendations to the board.

(3) A majority of the members of a fact-finding committee constitutes a quorum to transact business.

(4) Nothing in this section prohibits a fact-finding committee from attempting to mediate a dispute at any time prior to the submission of its findings and recommendations.

*Section 10.* The Public Employe Relations Board shall make public, in a manner it considers appropriate, the findings and recommendations of a fact-finding committee not later than the fifth day after such findings and recommendations were submitted to it by the committee, unless the parties before that time reach agreement on the matters in dispute.

*Section 11.* The Public Employe Relations Board may not appoint more than one fact-finding committee with respect to the same dispute. However, this does not prevent the board from filling vacancies that may occur in the membership of such a committee.

*Section 12.* Members of a fact-finding committee appointed under sections 7 to 12 of this 1969 Act shall receive reasonable reimbursement for their services. In addition, subject to applicable law regulating travel and other expenses of state officers and employes, the members shall receive their actual and necessary travel and other expenses incurred in the performance of their official duties.

*Section 13.* ORS 662.415 is amended to read:

*662.415.* A State Conciliation Service hereby is established within the Public Employe Relations Board with the primary responsibility for fostering collective bargaining by rendering voluntary assistance to employers and employes in resolving their differences without resort to strikes, lockouts or other forms of conflict.

*Section 14.* ORS 662.425 is amended to read:

*662.425.* (1) When any party to a labor controversy notifies the State Conciliation Service that a labor controversy exists or is imminent, the conciliator, if he determines that a labor controversy exists or is imminent, shall immediately set a time and place for a mediation conference and invite the parties to attend to participate in mediation of their differences.

(2) When it comes to the attention of the conciliator that a labor controversy exists or is imminent, the conciliator may offer mediation services if he deems it to be in the public interest.

(3) At the request of the Governor, the Public Employe Relations Board shall instruct the conciliator to investigate any existing or imminent labor dispute, or controversy in the public sector and report the facts of the dispute and the matters in issue to the Governor.

*Section 15.* ORS 662.435 is amended to read:

*662.435.* The services and facilities of the State Conciliation Service and the conciliator shall be made available to the State of Oregon or any of its agencies, boards, commissions or other branches or any of the political subdivisions of the state and to the public employes of the State of Oregon in all its agencies, boards, commissions or other branches or its political subdivisions in the same manner as such facilities are available to private employers and their employes.

*Section 16.* ORS 662.455 is amended to read:

*662.455.* The head of the State Conciliation Service shall be the conciliator who shall be appointed by the Executive Secretary of the Public Employe Relations Board, with the approval of the board. The conciliator and all other employes of the State Conciliation Service shall be subject to the State Merit System Law.

*Section 17.* ORS 662.505 is amended to read:

*662.505.* As used in ORS 662.505 to 662.655 and 662.990, unless the context requires otherwise:

(1) "Board" means the State Labor-Management Relations Board.

(2) "Conciliator" means the head of the State Conciliation Service.

(3) "Employe" includes any employe, and is not limited to the employes of a particular employer unless ORS 662.505 to 662.655

explicitly states otherwise, and includes any individual whose work has ceased as a consequence of, or in connection with, a current labor dispute and who has not obtained any other regular and substantially equivalent employment, but does not include an individual:

(a) Employed as an agricultural laborer;

(b) Employed by his parent or spouse;

(c) Employed in the domestic service of any family or person at his home;

(d) Having the status of an independent contractor;

(e) Employed as a supervisor;

(f) Employed by an employer subject to the Railway Labor Act, as amended (45 U.S.C. 151 to 163 and 181 to 188); or

(g) Employed by any other person who is not an employer as defined in subsection (4) of this section.

(4) "Employer" includes any person acting as an agent of an employer, directly or indirectly, but does not include:

(a) The United States or any wholly owned government corporation, or any Federal Reserve Bank.

(b) This state, or any county, city or political subdivision or agency thereof.

(c) Any person subject to the Railway Labor Act, as amended (45 U.S.C. 151 to 163 and 181 to 188).

(d) Any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of a labor organization.

(5) "Labor organization" means an organization of any kind, or an agency or employe representation committee or plan, in which employes participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work.

(6) "Professional employe" means:

(a) An employe engaged in work (A) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work; (B) involving the consistent exercise of discretion and judgment in its performance; (C) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (D) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical processes; or

(b) An employe who (A) has completed the courses of specialized intellectual instruction and study described in subparagraph (D) of paragraph (a) of this subsection, and (B) is performing related work under the supervision of a professional person to qualify himself to become a professional employe as defined in paragraph (a) of this subsection.

(7) "Representative" includes an individual or labor organization.

(8) "Supervisor" means any individual, other than a licensed professional or practical nurse, having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employes, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

*Section 18.* ORS. 662.785 is amended to read:

*662.785.* If a health care facility and the representative of an appropriate bargaining unit of its employes are unable to reach agreement after protracted collective bargaining in good faith, either party may:

(1) Request the State Conciliation Service to mediate the dispute. Both parties shall participate actively and in good faith in the mediation of such dispute by the conciliator.

(2) Apply to the Public Employe Relations Board for a fact-finding inquiry concerning the dispute, if the parties are not able to settle their dispute within 10 days through mediation and conciliation. Upon such an application, the Public Employe Relations Board shall forthwith make an investigation of the dispute. The Public Employe Relations Board may, in compliance with ORS 183.310 to 183.510, hold hearings, issue subpenas, administer oaths and do all things necessary to enable it to make a complete investigation. Upon completion of its investigation the Public Employe Relations Board shall make written findings of fact and file the original thereof as a part of the record of its investigation. The Public Employee Relations Board shall serve a copy of findings upon each of the parties.

*Section 19.* In addition to and not in lieu of other appropriations, there hereby is appropriated to the Public Employe Relations Board for the biennium beginning July 1, 1969, out of the General Fund, the sum of $87,000 for the purpose of carrying out the provisions of section 4 of this Act.

*Section 20.* Section 35c, chapter 80, Oregon Laws 1969 is repealed.

*Section 21.* This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Act shall take effect on July 1, 1969.

## OREGON
## (Chapter 80, Laws, 1969)

*Section 30.* ORS 240.015 is amended to read:

*240.015.* As used in this chapter, unless the context clearly requires otherwise:

(1) "Appointing authority" means an officer or agency having power to make appointments to positions in the state service.

(2) "Class" or "class of positions" means a group of positions in the state classified service sufficiently alike in duties, authority and responsibilities that the same qualifications may reasonably be required for, and the same schedule of pay can be equitably applied to, all positions in the group.

(3) "Board" means the Public Employe Relations Board.

*Section 32.* ORS 240.060 is amended to read:

*240.060.* The Civil Service Commission that has functioned under ORS chapter 240 shall be continued as a board of three members to be known as the Public Employe Relations Board. Each member of the board shall be a citizen of the state known to be in sympathy



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with the application of merit principles to public employment and shall be of recognized standing and known interest in public administration and in the development of efficient methods of selecting and administering personnel. No member of the board shall hold, or be a candidate for, any public office. No person shall be appointed to the board who has held an elective public office or appointive public office of a partisan nature, or position in a political party, within six months immediately preceding his appointment to the board. No member of the board shall be an employe of the state, municipality or any political subdivision.

*Section 33.* For the purpose of harmonizing and clarifying statutory sections to be published in Oregon Revised Statutes, the Legislative Counsel may substitute for words designating the Department of Civil Service, the Merit System Director, or the Civil Service Commission, wherever such words occur in Oregon Revised Statutes, other words designating respectively the Personnel Division, the Administrator of the Personnel Division, or the Public Employe Relations Board.

*Section 33a.* The State Civil Service Law, cited in ORS 240.005, is redesignated the State Merit System Law. Any reference in the statute laws of this state to the State Civil Service Law shall be considered a reference to the State Merit System Law. For the purpose of harmonizing and clarifying Oregon Revised Statutes the Legislative Counsel may substitute, for words designating the State Civil Service Law, wherever they occur in Oregon Revised Statutes, words designating the State Merit System Law.

*Section 34.* ORS 240.065 is amended to read:

*240.065.* The members of the board shall be appointed by the Governor for a term of three years, with the term of one member expiring on June 30 of each year. Each member shall be appointed for a term ending three years from the date of the expiration of the term for which his predecessor was appointed, except that a person appointed to fill a vacancy occurring prior to the expiration of such term shall be appointed for the remainder of the term. Each member of the board shall hold office until his successor is appointed and qualifies.

*Section 34a.* ORS 240.071 is amended to read:

*240.071.* A member may receive a payment of $20 for each day or portion thereof during which he is actually engaged in the performance of his official duties. In addition, all members may receive actual and necessary travel and other expenses incurred in the performance of their official duties within limits as provided by law or by the Executive Department under ORS 292.220 and 292.230.

*Section 35.* ORS 240.085 is repealed and section 35a of this Act is enacted in lieu thereof.

*Section 35a.* The primary responsibility of the board shall be to foster and protect a merit system of personnel administration in state government. In carrying out this function it shall:

(1) Review and hear comments on any rules or modifications thereof adopted by the personnel division. Such a rule or modification does not become effective if the board finds that the rule is arbitrary, improper or contrary to law and disapproves the rule or modification on that basis.

(2) Review any personnel action that is alleged by an affected party, or an organization certified by the rules of the board as representing an affected party, to be arbitrary or contrary to law or rule, or taken for political reason, and set aside such action if it finds these allegations to be correct. The board on its own motion may act with like effect under this subsection.

(3) Adopt such rules or hold such hearings as it finds necessary properly to perform the duties, functions and powers imposed on or vested in it by law.

(4) Submit annually to the Governor and regularly to the Legislative Assembly a report of its activities and the operation of this state's personnel system.

*Section 35b.* ORS 243.780 is amended to read:

*243.780.* (1) Any board or commission which, pursuant to state law, administers a civil service system for public employes, shall establish, by rule, procedures for the selection and certification of the collective bargaining representative of the classified employes under such system. The Public Employe Relations Board by rule shall establish such procedures for classified employes under ORS chapter 240.

(2) The rules shall include, but not be limited to, provisions for the designation of the bargaining unit, to an election process for employe selection of the bargaining representative and to the specification of practices which will be prohibited as improper influences on that election process.

(3) Any board or commission which issues rules pursuant to this section may apply to and obtain from a circuit court of this state, court process in enforcement of such rules and against any practice found to be in violation of such rules.

*Section 35d.* Notwithstanding the transfer of any duties, functions or powers by this Act, the lawfully adopted rules and orders of the State Civil Service Commission under ORS 243.780 and certification of employee representatives pursuant to such rules, in effect on the operative date of this section, shall continue in effect as rules and orders of the board until modified or rescinded by other rules and orders adopted by the board.

*Section 35e.* (1) The board shall employ such personnel as it considers necessary for the efficient administration of this Act, and fix the compensation of its employees in accordance with the compensation plan for classified employees.

(2) The board shall designate one of its employees as its executive secretary and delegate to him such administrative duties and responsibilities as it finds advisable to carry out the purpose of this Act. The executive secretary shall be in the classified service.

*Section 36.* (1) The administrator, subject to approval by the Director of the Executive Department and the board and in compliance with ORS 183.310 to 183.510, shall make such rules as are necessary to carry out the duties, functions and powers of the personnel division under this Act.

(2) Notwithstanding ORS 183.310 to 183.510, ORS 183.310 to 183.510 does not apply with respect to actions of the Governor authorized under this Act, or with respect to actions of the division or rules thereof authorized under ORS 240.215, 240.220, 240.235, 240.240, 240.380, 240.385, 240.395, 240.565 or 240.570.

*Section 38.* ORS 240.100 is amended to read:

240.100. Each member of the board may administer oaths, subpena witnesses, and compel the production of books and papers pertinent to any investigation or hearing authorized by this chapter.

*Section 38a.* ORS 240.105 is amended to read:

240.105. All officers and employees of the state and of municipalities and political subdivisions of the state shall allow the division

or board the reasonable use of public buildings under their control, and furnish heat, light, and furniture, for any examination, hearing or investigation authorized by this chapter *or ORS chapter 243*. The division or board shall pay to a municipality or political subdivision the reasonable cost of any such facilities furnished by it.

*Section 39a.* ORS 240.120 is amended to read:

240.120. The records of the division and the board, except such records as the rules may require to be held confidential for reasons of public policy, shall be public records and shall be open to public inspection, subject to regulations as to the time and manner of inspection which may be prescribed by the division or board.

*Section 41.* ORS 240.130 is amended to read:

240.130. The Governor may remove the administrator for cause, but before taking such action he shall first give to the administrator a statement in writing of his intention to effect his removal and the reason therefor. Not later than the fifth day after receipt of such statement in writing, the administrator may appeal in writing to the board for a hearing. Not later than the 10th day after the hearing, the board shall render its decision which shall be binding and final.

(2) There is hereby established in the General Fund a separate account to be known as the Public Employee Relations Account. The moneys in the account shall be used as a working fund by the Public Employee Relations Board. All moneys received by the board shall be deposited in the State Treasury to the credit of the account. Such amount as may be necessary, and no more, is hereby appropriated out of the account for payment of all expenses incurred by the board.

(2) After consultation with appointing authorities, the administrator shall allocate each position in the classified service to the appropriate class therein on the basis of its duties, authority and responsibilities. Any employee affected by allocation of a position to a class shall, after filing with the administrator a written request for reconsideration thereof, be given a reasonable opportunity to be heard by the board.

*Section 51.* ORS 240.220 is amended to read:

240.220. (1) An appointing authority desiring to establish a new position in the classified service or to make any permanent and substantial change in the duties, authority or responsibilities of a position in that service, shall notify the division in writing of the proposed change. Any employee affected by the contemplated change may appeal the change to the board.

*Section 78.* ORS 240.560 is amended to read:

240.560. (1) A regular employee who is reduced, dismissed, suspended or demoted, shall have the right to appeal to the board not later than 10 days after the effective date of such reduction, dismissal, suspension or demotion. Such appeal shall be in writing and shall be heard by the board within 30 days after its receipt. The board shall furnish the division of the service concerned with a copy of the appeal in advance of the hearing.

(2) The hearing shall be public. Both the employe and his appointing authority shall be notified reasonably in advance of the hearing and shall have the right to have subpenas issued, present witnesses, give evidence before the board and be represented by counsel. The finding and decision of the board as to such appeal shall be in writing and a copy thereof shall be mailed or delivered to the appellant within 10 days of the hearing.

(3) If the board finds that the action complained of was taken by the appointing authority for any political, religious or racial reasons, or was an unlawful employment practice as described in subsection (1) of ORS 659.026, the employe shall be reinstated to his position and shall not suffer any loss in pay.

(4) In all other cases, if the board finds that the action was not taken in good faith for cause, it shall order the immediate reinstatement and the reemployment of the employe in his position without the loss of pay. The board in lieu of affirming the action, may modify it by directing a suspension without pay for a given period, and a subsequent restoration to duty, or a demotion in classification, grade or pay. The findings and order of the board shall be certified in writing to the appointing authority and shall be forthwith put into effect by the appointing authority.

*Section 82.* (1) Any reference to the agencies from which duties, functions and powers are transferred by this Act, with respect to such duties, functions and powers so transferred are intended to be and shall be deemed a reference to the agencies to which such duties, functions and powers are, respectively, transferred.

(2) The Director of the Executive Department and the heads of the divisions and offices established within the Executive Department to which duties, functions and powers are transferred by this Act may be appointed prior to the operative date of this Act, and may, respectively, take any action prior to the operative date of this Act that is necessary to enable them, respectively to exercise on the operative date of this Act the duties, functions and powers given to their respective agencies under this Act.

*Section 83.* (1) Each agency whose duties, functions and powers are by this Act assigned and transferred to another agency shall transfer and deliver to such other agency all supplies, materials, equipment, facilities, contracts, books, maps, plans, papers, records and property of every description within its jurisdiction or control which relate to the duties, functions and powers so transferred and shall also transfer thereto those employes engaged primarily in the exercise of the duties, functions and powers so transferred. The head of such other agency to which such assignment or transfer is made shall take possession of such property and shall take charge of such employes and, except as provided in subsection (2) of this section, shall employ them in the exercise of their respective duties, functions and powers assigned or transferred by this Act, without reduction of compensation.

(2) The head of such other agency to which employes are transferred by this Act may abolish positions and change duties to the extent that he finds it desirable for the sound, efficient and economical administration and enforcement of the duties, functions and powers transferred by this Act. However, in the case of any transfer of personnel made pursuant to this section, any employe occupying a classified position under the State Civil Service Law who is so transferred shall, so far as possible, retain the same salary classification and civil service status.

(3) Any disputes as to the transfers of property and employes made by this section shall be resolved by the Governor.

*Section 84.* (1) The unexpected balances of those amounts authorized to be expended for the biennium beginning July 1, 1969, from revenues dedicated, continuously appropriated or otherwise made available to any agency for the purpose of administering and enforcing the duties, functions and powers transferred by this Act, respectively, to another agency are appropriated and transferred to and shall be available for expenditure by such other agency.

(2) Such other agency to which duties, functions and powers are transferred by this Act, for the purpose of administering and enforcing such duties, functions and powers, respectively, and for the payment of expenses incurred pursuant to law by the former agency, with respect to the administration and enforcement of such duties, functions and powers, respectively, may expend the amounts of money authorized to be expended by the former agency for the purpose of administering and enforcing such duties, functions and powers and which are unexpended as of the operative date of this Act. Such other agency, respectively, shall assume and pay all outstanding obligations which are incurred by the former agency pursuant to law prior to the operative date of this Act and which are properly charged against the amounts authorized by this section to be expended by such other agency. The expenditure classifications, if any, established by Acts authorizing or limiting expenditures remain applicable to expenditures by such other agency. Such other agency, respectively, may expend moneys referred to in this section prior to the operative date of this Act to the extent authorized in subsection (2) of section 82 of this Act.

*Section 85.* Nothing in this Act shall relieve any person of any obligation with respect to any tax, fee, fine or other charge, interest, penalty, forfeiture or other liability, duty or obligations accruing under or with respect to, the duties, functions and powers transferred by this Act. After the operative date of this Act the agency to which such transfer is made, respectively, may undertake the collection or enforcement of such tax, fee, fine, charge, interest, penalty, forfeiture or other liability, duty or obligation; but such liability, duty or obligation shall not be increased or decreased or continued beyond the period authorized by law for its existence or beyond the time when it would have terminated if this Act had not been passed.

*Section 86.* Each agency to which the duties, functions and powers are by this Act assigned and transferred respectively, shall be considered and held to constitute a continuation of the former agency with respect to such powers, functions and duties, and not a new authority, for the purpose of succession to all rights, powers, duties and obligations of the former agency legally incurred under contracts, leases and business transactions, executed, entered into or commenced prior to the operative date of this Act. Each agency to which the duties, functions and powers are by this Act assigned and transferred, respectively, shall exercise such rights, powers, duties and obligations with the same force and effect as if they had not been transferred; but such right, power, duty or obligation shall not be continued beyond the period authorized by law for its existence or beyond the time when it would have terminated if this Act had not been passed.

*Section 87.* Any proceeding, court action, prosecution, or other business or matter undertaken or commenced prior to the operative date of this Act by an agency, with respect to the duties, functions or powers which are by this Act assigned and transferred to another agency and still pending on the operative date of this Act, may be conducted and completed by such other agency in the same manner and under the same terms and conditions and with the same effect as though it were undertaken or commenced and were conducted or completed by the former agency prior to the transfer.

*Section 88.* (1) Whenever in any other law or resolution of the Legislative Assembly, or in any rule, regulation, document, record or proceeding authorized by the same, any word or phrase is used in reference to or descriptive or any agency, or employe thereof, or their respective activities, whose powers, functions or duties are by this Act assigned or transferred, such word, phrase or reference shall, after the operative date of this Act, unless the context or provisions of this Act require otherwise, be considered to refer to, include and describe such agency or employe as by this Act is charged with carrying out such powers, functions and duties, as the context and provisions of this Act may require.

(2) Notwithstanding the transfer of duties, functions and powers by this Act, any lawful authorization, designation, determination, directive, license, order, permit, policy, privilege, regulation, rule or other action of an agency whose powers, functions and duties are by this Act assigned and transferred to another agency, in effect on the operative date of this Act, shall continue in effect until superseded by, or repealed by, the lawful action of such other agency; but such other agency shall not continue any such action beyond the period authorized by law for its existence or beyond the time when it would have terminated if this Act had not been passed.

*Section 91.* This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and except as otherwise provided in subsection (2) of section 82, and in subsection (2) of section 84 of this Act, this Act shall become operative on July 1, 1969.

*Section 92.* ORS 240.090 is repealed.

## RHODE ISLAND

### Public Employees: Right to Bargain

*Sec. 36-11-1 Right to organize–bargaining representatives.* (a) State employees, except employees and members of the department of state police, shall have the right to organize and designate representatives of their own choosing for the purpose of collective bargaining with respect to wages, hours and other conditions of employment. (b) Said representatives of state employees are hereby granted the right to negotiate with state officials (appointed, elected, or possessing classified status) on such matters pertaining to wages, hours and working conditions as are within such officials' budgetary control. (c) State officials (appointed, elected or possessing classified status) are hereby authorized and required to recognize an organization designated by state employees for the purpose of collective bargaining as the collective bargaining agency for its members.

*Sec. 36-11-2 Discrimination because of membership in employee organization prohibited.* There shall be no discrimination against any state employee because such employee has formed, joined or chosen to be represented by any labor organization or employee organization. Membership in any employee organization may be determined by each individual employee. Supervisory employees shall not endorse any particular employee organization, or by reason of membership in such organization, show prejudice or discriminate toward any individual employee.

*Sec. 36-11-3 Action on grievances.* It shall be the responsibility of supervisors at all levels to consider and, commensurate with authority delegated by the head of the state department or agency, to take appropriate action promptly and fairly upon the grievances of their subordinates. To this end appropriate authority shall be delegated to supervisors by the heads of all state departments or agencies. It shall be the duty of state officials (appointed, elected, or possessing classified status) to exert every reasonable effort to settle

disputes involving hours, wages and working conditions, by collective negotiations with designated employee organizations and to reduce any and all agreements to writing in the form of signed collective bargaining agreements. Said agreements shall be deemed lawful documents.

*Sec. 36-11-4 Application of chapter.* The provisions of this chapter and the procedures established hereunder shall be applicable in any state department or agency to conditions which are in whole or in part subject to the control of the head of such department or agency and which involve conditions of employment.

*Sec. 36-11-5 Merit system laws applicable.* Whenever the procedures under a merit system statute or rule are exclusive with respect to matters otherwise comprehended by this chapter, they shall apply and shall be followed.

*Sec. 36-11-6 Powers of representative organizations.* Organizations representing state employees including the Rhode Island State Employees Association shall enjoy all the benefits of and be subject to all provisions of chapter 28-7 of the general laws, entitled "Labor relations act" except that state employees shall not have the right to strike.

## Municipal Employees Arbitration Act

*Sec. 28-9.4-1 Declaration of policy–purpose.* It is hereby declared to be the public policy of this state to accord to municipal employees, as hereinafter defined, the right to organize, to be represented, to negotiate, and to bargain on a collective basis with municipal employers, as hereinafter defined, covering hours, salary, working conditions and other terms of employment; provided, however, that nothing contained in this chapter shall be construed to accord to municipal employees the right to strike.

*Sec. 28-9.4-2 Definitions. When used in this act.* (1) "Municipal employer" means any political subdivision of the state, including any town, city, borough, district, school board, housing authority, or other authority established by law, and any person or persons designated by the municipal employer to act in its interest in dealing with municipal employees; (2) "Municipal employee" means any employee of a municipal employer, whether or not in the classified service of the municipal employer, except, elected officials, administrative officials, board and commission members, certified teachers, policemen, firefighters, part-time employees who work less than twenty hours per week, and persons in supervision positions. The state labor relations board shall, whenever requested to do so, in each instance, determine who are supervisors and administrative employees. (3) "Employee organizations" means any lawful association, labor organization, federation or council having as a primary purpose the improvement of wages, hours and other conditions of employment among employees of municipal employers.

*Sec. 28-9.4-3 Right to organize and bargain collectively.* The municipal employees of any municipal employer in any city, town or regional school district, shall have the right to negotiate and to bargain collectively with their respective municipal employers and to be represented by an employee organization in such negotiation or collective bargaining concerning hours, salary, working conditions and all other terms and conditions of employment.

*Sec. 28-9.4-4 Recognition of bargaining agent.* The employee organization selected by the municipal employees in an appropriate bargaining unit as determined by the state labor relations board, shall be recognized by the municipal employer or the city, town or district, as the sole and exclusive negotiating or bargaining agent for all of the municipal employees in such appropriate bargaining unit, in such city, town or school district unless and until recognition of such employee organization is withdrawn or changed by vote of the municipal employees in such appropriate bargaining unit after a duly conducted election, held pursuant to the provisions of this chapter. An employee organization or the municipal employer may designate any person or persons to negotiate or bargain in its behalf.

*Sec. 28-9.4-5 Obligation to bargain.* It shall be the obligation of the municipal employer to meet and confer in good faith with the representative or representatives of the negotiating or bargaining agent within ten (10) days after receipt of written notice from said agent of the request for a meeting for negotiating or collective bargaining purposes. This obligation shall include the duty to cause any agreement resulting from negotiation or bargaining to be reduced to a written contract, provided that no such contract shall exceed the term of three (3) years. Failure to negotiate or bargain in good faith may be complained of by either the negotiating or bargaining agent or the municipal employer to the state labor relations board which shall deal with such complaint in the manner provided in chapter 28-7 of this title.

*Sec. 28-9.4-6 Determination of negotiating agent. Elections.* The state labor relations board upon the written petition for an election signed by not less than twenty percent (20%) of the municipal employees in an appropriate bargaining unit (as determined by the state labor relations board) of such city, town or regional school district, indicating their desire to be represented by a particular employee organization or to change or withdraw recognition shall forthwith call and hold an election at which all municipal employees in such appropriate bargaining unit shall be entitled to vote. The employee organization selected by a majority of said municipal employees in said appropriate bargaining unit, voting in said election, shall be certified by the state labor relations board as the exclusive negotiating or bargaining representative of such municipal employees in said appropriate bargaining unit of such city, town or regional school district in any matter within the provision of this chapter. Upon written petition to intervene in the election signed by not less than fifteen percent (15%) of such municipal employees in such appropriate bargaining unit indicating their desire to be represented by a different or competing employee organization, the name of such different or competing employee organization shall be placed on the same ballot. If the majority of those voting desire no representation, no employee organization shall be recognized by the municipal employer as authorized to negotiate or bargain in behalf of its municipal employees in such appropriate bargaining unit, and in all elections there shall be provided on the ballot an appropriate designation of such a choice.

*Sec. 28-9.4-7 Supervision of elections.* The state labor relations board shall prescribe the method of petitioning for an election, the manner, place and time of conducting such election, and shall supervise all such elections to insure against interference, restraint, discrimination, or coercion from any source. Complaints of interference, restraint, discrimination or coercion shall be heard and dealt with by the labor relations board as provided in chapter 28-7 of this title. All unfair labor practices enumerated in section 28-7-13 are declared to be unfair labor practices for a municipal employer.

*Sec. 28-9.4-8 Certification of negotiating agent.* No employee organization shall be certified initially as the representative of municipal employees in an appropriate bargaining unit except after an election. Municipal employees shall be free to join or to decline to join any employee organization regardless of whether it has been certified as the exclusive representative of municipal employees in an

appropriate bargaining unit. If new elections are not held, after an employee organization is certified, such employee organization shall continue as the exclusive representative of the municipal employees of such appropriate bargaining unit from year to year until recognition is withdrawn or changed as provided in section 28-9.4-6. Elections shall not be held more often than once each twelve months and must be held at least thirty (30) days before the expiration date of any employment contract. An employee organization designated as the representative of the majority of the municipal employees in an appropriate bargaining unit, shall be the exclusive bargaining agent for all municipal employees of such unit, and shall act, negotiate agreements and bargain collectively for all employees in the unit and shall be responsible for representing the interest of all such municipal employees without discrimination and without regard to employee organization membership.

*Sec. 28-9.4-9 Request for negotiation or bargaining.* Whenever salary or other matters requiring appropriation of money by any municipal employer are to be included as matter of negotiation or collective bargaining conducted under the provisions of this chapter, the negotiating or bargaining agent must first serve written notice of request for negotiating or collective bargaining on the municipal employer at least one hundred twenty (120) days before the last day on which money can be appropriated by the municipal employer to cover the first year of the contract period which is the subject of the negotiating or bargaining procedure.

*Sec. 28-9.4-10 Unresolved issues submitted to mediation or arbitration.* In the event that the negotiating or bargaining agent and the municipal employer are unable within thirty (30) days from and including the date of their first meeting, to reach an agreement on a contract, either of them may request mediation and conciliation upon any and all unresolved issues by the director of labor or from any other source. If mediation and conciliation fail or are not requested, at any time after said 30 days either party may request that any and all unresolved issues shall be submitted to arbitration by sending such request by certified mail, postage prepaid to the other party, setting forth the issue to be arbitrated.

*Sec. 28-9.4-11 Arbitration board–Composition.* Within seven (7) days after arbitration has been requested as provided in section 28-9.4-10 the negotiating agent and the municipal employer shall each select and name one (1) arbitrator and shall immediately thereafter notify each other in writing of the name and address of the person so selected. The two (2) arbitrators so selected and named shall, within ten (10) days from and after their selection agree upon and select and name a third arbitrator. If within said ten (10) days, the arbitrators are unable to agree upon the selection of a third arbitrator, such third arbitrator shall be selected in accordance with the rules and procedure of the American Arbitration Association. If the negotiating or bargaining agent agrees with the municipal employer to a different method of selecting arbitrators, or to a lesser or greater number of arbitrators, or to any particular arbitrator, or if they agree to have the state director of labor designate the arbitrator or arbitrators to conduct the arbitration, such agreement shall govern the selection of arbitrators, provided, however, that if the state director of labor shall be unwilling or shall fail to designate the arbitrator or arbitrators, an alternative method of selection shall be used. The third arbitrator, whether selected as a result of agreement between the two arbitrators previously selected or selected under the rules of the American Arbitration Association or by the state director of labor or by any other method, shall act as chairman.

*Sec. 28-9.4-12 Hearings.* The arbitrators shall call a hearing to be held within ten (10) days after their appointment and shall give at least seven (7) days' notice in writing to the negotiating or bargaining agent and the municipal employer of the time and place of such hearing. The hearing shall be informal, and the rules of evidence prevailing in judicial proceedings shall not be binding. Any and all documentary evidence and other data deemed relevant by the arbitrators may be received in evidence. The arbitrators shall have the power to administer oaths and to require by subpoena the attendance and testimony of witnesses, the production of books, records and other evidence relative or pertinent to the issues presented to them for determination. Both the negotiating or bargaining agent and the municipal employer shall have the right to be represented at any hearing before said arbitrators by counsel of their own choosing. The hearing conducted by the arbitrators shall be concluded within twenty (20) days after the time of commencement, and within ten days after the conclusion of the hearings, the arbitrators shall make written findings and a written opinion upon the issues presented, a copy of which shall be mailed or otherwise delivered to the negotiating or bargaining agent or its attorney or other designated representative and the municipal employer.

*Sec. 28-9.4-13 Appeal from decision.* The decision of the arbitrators shall be made public and shall be binding upon the municipal employees in such appropriate bargaining unit and their representative and the municipal employer on all matters not involving the expenditure of money. The decision of the arbitrators shall be final and no appeal shall lie therefrom except on the ground that the decision was procured by fraud or that it violates the law, in which case appeals shall be to the superior court. The municipal employer shall within three (3) days after it receives the decision send a true copy thereof by certified or registered mail, postage prepaid, to the department or agency of the municipal employer responsible for the preparation of the budget and to the agency of the municipal employer which appropriates money for the operation of the particular municipal function or service in the city, town or regional school district involved, if said decision involves the expenditure of money.

*Sec. 28-9.4-14 Fees and expenses of arbitration.* Fees and necessary expenses of arbitration shall be borne equally by the negotiating or bargaining agent and the municipal employer.

*Sec. 28-9.4-15 Plural and singular application.* Whenever the word arbitrators is used herein it shall also mean arbitrator where applicable.

*Sec. 28-9.4-16 Strikes by municipal employees illegal.* Municipal employees covered by the provisions of this chapter shall not have the right to engage in any strike, work stoppage, or slowdown strike; and any such strike, work stoppage, or slowdown strike shall be illegal.

*Sec. 28-9.4-17 Mediation by director of labor and his conciliators.* The services of the state director of labor and his conciliators shall be available to municipal employers and employee organizations for purposes of conciliation of grievances or contract disputes; provided, however, that nothing in this section shall prevent the use of the arbitration procedures and arbitration tribunals heretofore provided for in sections 28-9.4-10 to 28-9.4-15 (inclusive) of this chapter.

*Sec. 28-9.4-18 Severability of provisions.* If any provision of this chapter, or application thereof to any person or circumstances, is held unconstitutional or otherwise invalid, the remaining provisions of this chapter and the application of such provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

*Sec. 28-9.4-19 Short title.* This chapter may be cited as the "Municipal employees arbitration act."

## SOUTH DAKOTA
## (S.B. 150, Laws, 1969)

*Section 1. Definitions.*

1. Public Employees. The word "public employees" as used in this Act shall mean any person holding a position by appointment or employment in the government of the state of South Dakota or in the government of any one or more of the political subdivisions thereof, or in the service of the public schools, or in the service of any authority, commission, or board, or any other branch of the public service.

2. Strike. The word "strike" as used in the Act shall mean the failure to report for duty, the wilful absence from one's position, the stoppage of work, or the abstinence in whole or in part from the full, faithful and proper performance of the duties of employment by concerting action with others, and without the lawful approval of one's superior, or in any manner interfering with the operation of government of the state of South Dakota, the government of any of the political subdivisions thereof, the public schools or any authority, commission, board or branch thereof, for the purpose of inducing, influencing or coercing a change in the conditions or compensation or the rights, privileges or obligations of employment.

*Section 2. Strike Prohibited.* No public employee shall strike against the state of South Dakota, any of the political subdivisions thereof, any of its authorities, commissions, or boards, the public school system or any other branch of the public service. Provided, however, that nothing contained in this Act shall be construed to limit, impair or affect, the right of any public employee to the expression or communication of a view, grievance, complaint or opinion on any matter related to the conditions or compensation of public employment or their betterment with the full, faithful and proper performance of the duties of employment.

*Section 3.* No person exercising any authority, supervision or direction over any public employee shall have the power to authorize, approve or consent to a strike by one or more employees, and such person shall not authorize, approve or consent to such strike, nor shall any such person discharge or cause any public employee to be discharged or separated from his or her employment because of participation in the submission of a grievance in accordance with the provision of section 2 of this Act.

*Section 4.* Any state or national association or employee organization of public employees who shall knowingly incite, agitate, influence, coerce, or urge a public employee to strike shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed Fifty Thousand Dollars ($50,000.00).

*Section 5.* Any employee or group of employees who shall knowingly incite, agitate, influence, coerce, or urge a public employee to strike shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed One Thousand Dollars ($1,000.00) or imprisonment not to exceed one year, or both such fine and imprisonment in the discretion of the court.

*Section 6.* The governing boards of the state and its political subdivisions shall apply for injunctive relief in Circuit Court immediately upon the existence of a strike or related activities, and the State's Attorney of every county shall have the same duty and enforcement of the Act.

*Section 7.* Any public employee, upon request, shall be entitled, as hereinafter provided, to establish that he did not violate the provisions of sections 2 and 3. Such requests must be filed in writing with the officer or body having the power and authority over such employees, within ten days after any action has been taken against such employee, whereupon such officer, or body, shall within ten days commence a proceeding at which time such person shall be entitled to be heard for the purpose of determining whether the provisions of sections 2 and 3 of the Act have been violated by such public employee. Such proceedings shall be undertaken without any unnecessary delay. The decision of such proceedings shall be made within ten days. In the event that the employee involved is held to have violated this law and action is taken against him, he shall have the right of review by a trial de novo in the Circuit Court. Petition for such trial must be made within 20 days after the decision of the above proceedings is made known to the employee.

*Subdivision 1.* Nothing contained in this Act shall be construed to limit, impair or affect the right of any public employee or his or her representative to the expression or communication of a view, grievance, complaint or opinion on any matter related to the conditions or compensation of public employment or their betterment, so long as the same is not designed to and does not interfere with the full, faithful and proper performance of the duties of employment; nor shall it be construed to require any public employee to perform labor or services against his will.

*Subdivision 2.* Public employees shall have the right to form and join labor or employee organizations, and shall have the right not to form and join such organizations. Public employees shall have the right to designate representatives for the purpose of meeting and conferring with the governmental agency or representatives designated by it with respect to grievances and conditions of employment. It shall be unlawful to discharge or otherwise discriminate against an employee for the exercise of such rights, and the governmental agency or its designated representatives shall be required to meet and confer with the representatives of the employees at reasonable times in connection with such grievances and conditions of employment. It shall be unlawful for any person or group of persons, either directly or indirectly to intimidate or coerce any public employee to join, or to refrain from joining, a labor or employee organization.

*Subdivision 3.* Organizations of public employees shall be granted recognition by a governmental agency according to the extent to which they represent employees of the governmental agency. Informal recognition shall be granted to any labor or employee organization regardless of the recognition granted to any other labor or employee organization. Informal recognition shall give an organization the right to meet with, confer, and otherwise communicate with the governmental agency or its designated representatives on matters of interest to its members. Formal recognition shall be granted to any labor or employee organization representing a majority of the employees in an appropriate unit. Formal recognition shall give an organization the right to meet with, confer and otherwise communicate with the governmental agency or its designated representatives with the object of reaching a settlement applicable to all employees of the unit.

*Subdivision 4.* When a governmental agency declines to grant formal recognition or when a question concerning the designation of a representation unit is raised by the governmental agency, labor or employee organization, or employees, the labor commissioner or any person designated by him shall, at the request of any of the parties, investigate such question and, after a hearing if requested by any party, rule on the definition of the appropriate representation unit. He shall certify to the parties in writing the proper definition of the

unit. In defining the unit, the labor commissioner shall take into consideration, along with other relevant factors, the principles of efficient administration of government, the principles and the coverage of uniform comprehensive position classification and compensation plans in the governmental agency, the history and extent of organization, occupational classification, administrative and supervisory levels of authority, geographical location, and the recommendations of the parties.

*Subdivision 5.* When a question concerning the representative of employees is raised by the governmental agency, labor or employee organization, or employees, the labor commissioner, or any person designated by him shall, at the request of any of the parties, investigate such question and certify to the parties in writing, the name or names of the representatives that have been designated or selected. The filing of a petition for the investigation or certification of a representative of employees by any of the parties shall constitute a question within the meaning of this section. In any such investigation, the labor commissioner may provide for an appropriate hearing, and shall take a secret ballot of employees to ascertain such representatives for the purposes of formal recognition. If the labor commissioner has certified a formally recognized representative in a unit of employees as provided in this section, he shall not be required to consider the matter again for a period of one year unless it appears to him that sufficient reason exists. The labor commissioner may promulgate such rules and regulations as may be appropriate to carry out the provisions of subdivisions 4 and 5 of this section.

*Section 8.* If a tentative settlement is reached between a labor or employee organization or organizations and the designated representatives of the governmental agency, such representatives shall recommend such settlement to the governing body or officer having authority to take action. The governing body or officer shall as soon as practicable consider the recommendations and take such action, if any, upon them as it or he deems appropriate. If a settlement is reached with a labor or employee organization or organizations and the governing body, such governing body shall implement the settlement in the form of an ordinance, resolution, or memorandum of understanding as may be appropriate. If the settlement requires the adoption of a law or charter amendment to implement it fully, the governmental agency shall make every reasonable effort to propose and secure the enactment of the law or charter amendment.

## VERMONT

### Collective Bargaining in State Employment

*Sec. 901. Purpose*–It is the purpose and policy of this chapter to prescribe the legitimate rights of both state employees and the state of Vermont and of Vermont state colleges in their relations with each other, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations, to define and proscribe practices on the part of labor, the state of Vermont and Vermont state colleges which are harmful to the general welfare, and to protect the rights of the public in connection with labor disputes.

*Sec. 902. Definitions*–In this chapter the following words and phrases shall have the following meanings unless the context requires otherwise:

(1) "Board," the state employee labor relations board.

(2) "Collective bargaining," or bargaining collectively" means the process of negotiating terms, tenure or conditions of employment between the state of Vermont or Vermont state colleges and representatives of employees with the intent to arrive at an agreement which, when reached, shall be reduced to writing.

(3) "Collective bargaining unit," the employees of an employer being either all of the employees, the members of a department or agency or such other unit or units as the board may determine are appropriate to best represent the interests of employees.

(4) "Employee" means a state employee as defined by subsection (6) of this section except as the context requires otherwise.

(5) "State employee" means any individual employed on a permanent status basis by the state of Vermont or Vermont state colleges, including permanent part time employees, and an individual whose work has ceased as a consequence of, or in connection with any current labor dispute or because of any unfair labor practice, but excluding an individual;

(a) Exempted or excluded from the state classified service under the provisions of section 306 of Title 3,

(b) Employed in the office of the lieutenant governor,

(c) Employed as the legal assistant to the attorney general authorized by section 155 of Title 3.

(d) Employed as a department or agency head or deputy officer not included in section 306 of Title 3, head of an institution or as a division director in the department of administration, and similar positions in Vermont state colleges,

(e) Employed by any other person who is not an employer as defined in subsection (7) of this section,

(f) Determined after hearing by the board, upon petition of any individual desiring exclusion, of the employer, or of a collective bargaining unit, to be in a position which is so inconsistent with the spirit and intent of this chapter as to warrant exclusion.

(6) "Employee organization," an association of state employees or an organization of any kind in which employees participate and which exists for the purpose, in whole or in part, of dealing with and representing its members if certified by the board as a collective bargaining unit.

(7) "Employer" means the state of Vermont, excluding the legislative and judicial branches, represented by the governor or his duly authorized representative(s), and Vermont state colleges, represented by the provost or his duly authorized representative(s).

(8) "Strike" means any concerted stoppage of work by employees, and any concerted slowdown, interference, or interruption of operations or services by employees. For purposes of this act, "strike" also includes boycotts of any kind, picketing, refusal to use any products or services or to work or cooperate with any person by employees in the course of their employment when properly directed to do so by the employer or any lawfully constituted supervisor or superior.

(9) "Labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(10) "Person" includes one or more individuals, the state of Vermont, Vermont state colleges, employee organizations, labor organizations, partnerships, corporations, legal representatives, trustees, or any other natural or legal entity whatsoever.

(11) "Representatives" includes any individual or individuals certified by the board to represent employees or employee organizations in collective bargaining or grievance proceedings.

(12) "State police member" any member of the department of public safety assigned to law enforcement and police duties.

*Sec. 903. Employees' rights and duties; prohibited acts*–(a) Employees shall have the right to self-organization; to form, join or assist employee organizations; to bargain collectively through representatives of their own choice, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities, except as provided in subsection (b) of this section, and to appeal grievances as provided in this chapter.

(b) No state employee may strike or recognize a picket line of an employee or labor organization while in the performance of his official duties.

(c) All employers, their officers, agents, and employees or representatives shall exert every reasonable effort to make and maintain agreements concerning matters allowable under section 904 of this title and to settle all disputes, whether arising out of the application of those agreements, or growing out of any dispute between the employer and the employees thereof.

*Sec. 904. Subjects for bargaining*–(a) All matters relating to the relationship between the employer and employees shall be the subject of collective bargaining except those matters which are prescribed or controlled by statute. Such matters include but are not limited to:

(1) wage and salary schedules to the extent they are inconsistent with rates prevailing in commerce and industry for comparable work within the state;

(2) work schedules relating to assigned hours and days of the week;

(3) use of vacation or sick leave;

(4) general working conditions;

(5) overtime practices;

(6) rules and regulations of the personnel board, except rules and regulations of the personnel board relating to exempt and excluded persons under section 970 of this title and rules and regulations relating to applicants for employment in state service, provided such rules and regulations are not discriminatory by reason of an applicant's race, color, creed, sex or national origin.

(b) This chapter shall not be construed to be in derogation of, or contravene the spirit and intent of the merit system principles and the personnel laws.

*Sec. 905. Management rights*–(a) The governor, or a person or persons designated by him, for the state of Vermont, and the provost, or a person or persons designated by him for Vermont state colleges, shall act as the employer representatives in collective bargaining negotiations and administration. The representative shall be responsible for insuring consistency in the terms and conditions in various agreements throughout the state service, insuring compatibility with merit system statutes and principles, and shall not agree to any terms or conditions for which there are not adequate funds available.

(b) Subject to rights guaranteed by this chapter and subject to all other applicable laws, rules and regulations, nothing in this chapter shall be construed to interfere with the right of the employer to:

(1) Carry out the statutory mandate and goals of the agency, or of the colleges, and to utilize personnel, methods and means in the most appropriate manner possible.

(2) With the approval of the governor, take whatever action may be necessary to carry out the mission of the agency in an emergency situation.

## Subchapter 2. Labor Relations Board

*Sec. 921. Creation; membership, compensation*–(a) There is hereby created a state employee labor relations board composed of three members, of whom not more than two shall be of the same political party. The governor shall biennially appoint the members with the advice and consent of the senate for a term of six years or for the unexpired portion thereof in such manner that not more than one term shall expire in the same biennium. To be eligible for appointment to the board a person must be a citizen of the United States and resident of the state of Vermont for one year immediately preceding his appointment. He shall not be an employee of the state or a state officer during the three years immediately preceding his appointment nor shall he have been an officer or employee of any employee or labor organization at any time during the three years immediately preceding his appointment.

(b) The board shall elect a chairman from its members.

(c) The board may not be attached to any state department or agency and shall operate independently.

(d) The members of the board shall be entitled to compensation of $50.00 a day for time spent in the performance of their duties and their necessary expenses incurred therein.

*Sec. 922. Office space; employees*–(a) The commissioner of administration shall, upon request by the state employee labor relations board, allow the board the responsible use of public buildings under his control and furnish heat, light and furniture for any meeting or hearing called by the board.

(b) The board may employ such employees and agents as it deems necessary, and may employ a reporter for taking and transcribing testimony in hearing before it.

*Sec. 923. Legal counsel*–The board may retain an attorney or attorneys qualified in labor law to represent it in all matters under this chapter.

*Sec. 924. Powers and duties*–(a) The board shall report in writing to the governor at the end of every year, stating in detail the work it has done in hearing and deciding cases and otherwise, and may include therein any recommendations concerning the effectiveness of this chapter and such other recommendations as it deems appropriate.

(b) Until a transcript of the record in a case is filed in a court under this chapter the board at any time upon reasonable notice and in such manner as it considers proper may modify or set aside wholly or partially a finding made or order issued by it.

(c) The board may appoint a mediator to assist in resolving differences.

*Sec. 925. Fact finding; abritration*—(a) Whenever the representatives of a collective bargaining unit and the representative of the employer, after a reasonable period of negotiation are deadlocked with respect to any dispute existing between them during the course of collective bargaining or arising from the application or interpretation of any provision of a collective bargaining agreement, the board, upon petition of either or both parties, may authorize the parties to submit their differences to a fact finding panel.

(b) The panel shall consist of three persons, one to be selected by the employer's representative, one by the collective bargaining unit, and a third designated by the first two appointees.

(c) The panel shall conduct hearings, pursuant to rules established by the board. Upon request of either party or of the panel, the board may issue subpoenas of persons and documents for the hearings and the panel may require that testimony be given under oath and may administer oaths. Upon completion of the hearings, the panel shall make written findings and recommendations and shall furnish copies to both parties and to the board at its Montpelier office.

(d) Within thirty calendar days of the receipt of the panel's recommendations or within such time period as is mutually agreed upon between the parties, each party shall advise the other, in writing, as to their acceptance or rejection in whole or in part, of the panel's recommendations, and at the same time, send a copy of such notification to the board at its Montpelier office. Failure to comply herewith, by the employer or employer representative shall be construed as a rejection of the recommendations in their entirety. Recommendations of the panel are not subject to judicial review.

(e) Nothing herein shall prohibit any fact-finding panel from endeavoring to mediate the dispute, which it is considering, at any time prior to the issuance of its recommendations.

(f) Recommendations of a fact-finding panel shall not be binding upon either party unless both agree in writing to be bound prior to the commencement of proceedings by the panel, which agreement shall be filed with the board at its Montpelier office. A copy of the agreement shall be furnished to the panel prior to the commencement of proceedings by the panel. If the proceedings are made binding by mutual consent as herein provided, the panel shall issue an order based upon the evidence and its findings. Either party may appeal from the order to the supreme court on questions of law as provided by section 2382 et seq. of Title 12.

(g) Nothing herein shall be construed to permit a panel to issue an order under subsection (f) of this section binding upon the parties which is in conflict with any statute or any rule or regulation which is not bargainable.

(h) The costs of fact finding proceedings shall be borne by the party incurring them, and costs of the panel shall be divided equally between the parties. A statement of costs of the panel shall be submitted to the board and the board shall, after approving such costs, cause statements to be sent to each party. Payment shall be made to the state treasurer.

*Sec. 926. Grievances*—The board shall hear and make final determination on the grievances of all state employees, and all other persons who are eligible to appeal grievances to the board. Grievance procedures shall be conducted in accordance with the rules and regulations promulgated by the board. The right to institute grievance procedures shall be conducted in accordance with the rules and regulations promulgated by the board. The right to institute grievance proceedings extends to individual employees, groups of employees and collective bargaining units.

*Sec. 927. Appropriate unit*—(a) The board shall decide the unit appropriate for the purpose of collective bargaining in each case and those employees to be included therein in order to assure the employees the fullest freedom in exercising the right guaranteed by this chapter.

(b) In determining whether a unit is appropriate under subsection (a) of this section, the extent to which the employees have organized is not controlling.

(c) The board may decline recognition to any group of employees as a collective bargaining unit if, upon investigation and hearing, it is satisfied that the employees will not constitute an appropriate unit for purposes of collective bargaining or if recognition will result in over-fragmentation of state employee collective bargaining units. In case such a determination is made, the provisions of subchapter 3 of this chapter shall not become operative in that instance.

*Sec. 928. Rules and regulations*—(a) The board shall make and may amend and rescind and promulgate such rules and regulations consistent with this chapter, as may be necessary to carry out the provisions of this chapter.

(b) Notwithstanding the provisions of subsection (a) of this section, rules and regulations promulgated by the board as they relate to personnel appeals shall provide:

(1) All state employees and other persons authorized by this chapter shall have the right to appeal to the board in accordance with the rules and regulations of the board.

(2) That a reasonable notice be given to the state agency or officer, and state employee, and the representative concerned and to the personnel director.

(3) That all hearings of the board shall be public and, unless both parties concerned request that it be formal, hearings shall be informal and not subject to the rules of pleadings, procedure and evidence of the courts of law and chancery of the state.

(4) That all parties in interest to any appeal shall be entitled to be heard on any matter at issue.

(5) That in appeals from the decisions of the personnel divisions or any state agency or officer, the state agency and officer and the state employee shall be parties in interest, and the personnel director, the personnel board, or the collective bargaining representative on motion, may intervene as a party in interest.

(6) That the parties at interest shall have the right to present witnesses, give evidence, and examine witnesses before the board.

*Sec. 929. Records to be public*—All findings, conclusions and determinations of the board and the records of all hearings and other proceedings, unless otherwise provided by law, shall be public records.

## Subchapter 3. Certification Procedure

*Sec. 941. Unit determination, certification, and representation*—(a) The board shall determine issues of unit determination, certification, and representation in accordance with this chapter.

(b) No bargaining unit or collective bargaining representatives shall be recognized by the employer until formally certified by the board.

(c) A petition may be filed with the board in accordance with procedures prescribed by the board:

(1) By an employee or group of employees, or any individual or employee organization purporting to act in their behalf, alleging that not less than thirty percent of the employees, wish to form a bargaining unit and be represented for collective bargaining, or assert that the individual or employee organization currently certified as bargaining agent is no longer supported by at least fifty-one percent of the employees in the bargaining unit, or now included in an approved bargaining unit wish to form a separate bargaining unit under criteria for purposes of collective bargaining.

(2) By the employer alleging that one or more individuals or employee organizations have presented to him a claim to be recognized as representative for purposes of collective bargaining, or the presently certified bargaining agent is no longer supported by fifty-one percent of the employees of the bargaining unit, or the presently certified bargaining unit is no longer appropriate under board criteria.

(d) The board, a member thereof, or a person or persons designated by the board shall investigate the petition, and

(1) if it finds reasonable cause to believe that a question of unit determination or representation exists, an appropriate hearing shall be scheduled before the board upon due notice. Written notice of the hearing shall be mailed by certified mail to the parties named in the petition not less than seven calendar days before the hearing. Hearing procedure and notification of results of same shall be in accordance with rules prescribed by the board, or

(2) dismiss the petition, based upon the absence of substantive evidence.

(e) Whenever, as a result of a petition and an appropriate hearing the board finds substantial interest among employees in forming a bargaining unit, a secret ballot election shall be conducted by the board to be taken in such manner as to show separately the wishes of the employees in the voting group involved as to the determination of the collective bargaining unit, including the right not to be organized. In order for a collective bargaining unit to be recognized and certified by the board, there must be at least a fifty-one percent affirmative vote of all employees within such proposed bargaining unit.

(f) In certifying an appropriate collective bargaining unit the board shall take into consideration but not be limited to the following criteria:

(1) The authority of governmental officials at the unit level to take positive action on matters subject to negotiation.

(2) The appropriateness of the proposed unit to represent all employees within the unit having regard for the similarity or divergence of their interests, needs, and general conditions of employment. The board may, in its discretion require that a separate vote be taken among any particular class or type of employees within a proposed unit to determine specifically if the class or type wishes to be included.

(3) Whether over-fragmentation of units among state employees will result from certification to a degree which is likely to produce an adverse effect either on effective representation of state employees generally, or upon the effective operation of state government.

(g) (1) In determining the representation of state employees in a collective bargaining unit the board shall conduct a secret ballot of the employees and certify the results to the interested parties and to the state employer. The original ballot shall be so prepared as to permit a vote against representation by anyone named on the ballot. No representative will be certified with less than a fifty-one percent affirmative vote of all the employees in the bargaining unit.

(2) If in such election one of the choices receives at least a fifty-one percent affirmative vote of all employees in the bargaining unit, a run-off election shall be conducted, the ballot providing for a selection between the two choices receiving the largest and second largest number of valid votes cast in the original election.

(3) The board's certification of the results of any election shall be conclusive as to findings unless reviewed under proceedings instituted for the prevention of prohibited practices in section 965 of this act.

(h) A representative chosen by secret ballot for the purposes of collective bargaining by at least fifty-one percent of the state employees in a collective bargaining unit shall be the exclusive representative of all of the employees in such unit for a minimum of one year, except as provided in subsection (m) of this section. Such representative shall be eligible for reelection.

(i) The board, by rule, shall prescribe a uniform procedure for the resolution of employee grievances submitted through the collective bargaining machinery. The final step of such grievance procedure, if required, shall be hearing and final determination by the board. Grievance hearings conducted by the board shall be informal and not subject to the rules of pleading procedure, and evidence of the courts of law and chancery of the state, except when both parties agree in writing that the board shall sit as a board of arbitration.

(j) Any individual employee or group of employees shall have the right at any time to present grievances to their employer informally, and to have such grievances considered in good faith with or without the intervention of the bargaining representative, adjustments shall not be inconsistent with the terms of a collective bargaining contract of agreement then in effect. All such grievances shall be considered within fifteen days of presentment.

(k) Nothing in this chapter requires an individual to seek the assistance of his collective bargaining unit of its representative(s) in any grievance proceeding. He may represent himself or be represented by counsel of his own choice. Employees who are eligible for membership in a collective bargaining unit who exercise their right not to join such unit may avail themselves of the services of the unit representative(s) in grievance proceedings before the board upon payment to the unit of a fee equal to one-year's membership dues.

(l) Temporary provision: In lieu of an election to determine a collective bargaining unit or a representative, the board may accept a petition signed by at least a majority (fifty-one percent) of the employees of an employee organization, duly certified by an appropriate officer of the organization, that the signers wish to be certified as a collective bargaining unit, or to be represented in collective bargaining and in other appropriate matters by the representative(s) named in the petition. In determining whether it should accept a petition in lieu of an election, the board shall conduct such investigation as it deems proper to satisfy itself that the signatures were obtained without threats, coercion, or undue pressure and that each signer was advised, by a statement in the petition that he was free to exercise independent judgment without fear of subsequent retaliation or discrimination of any kind. This subsection does not apply to petitions requesting revocation of certification of the unit or of the representatives. Reasonable notice shall be given to permit protest petitions to be filed by eligible objecting employees, which shall be considered before accepting the first petition. This subsection (m) shall expire and be of no further force and effect upon certification of the initial bargaining unit and representative under this chapter.

*Sec. 942. Election conduct*—Any interested person may file with the board a charge that employees eligible to vote in an election under this chapter have been coerced or restrained in the exercise of this right. The board shall investigate and conduct hearings into the validity of the charge. If, upon the basis of its findings, the board concludes that employees eligible to vote in the election were so

coerced or restrained, the board may set aside such election and order another election under the provisions of this subchapter. No election shall be set aside unless the board finds such coercion or restraint.

## Subchapter 4. Unfair Labor Practices

*Sec. 961. Employers*—It shall be an unfair labor practice for an employer.

(1) To interfere with, restrain or coerce employees in the exercise of their rights guaranteed by section 903 of this title, or by any other law, rule or regulation.

(2) To dominate or interfere with the formation or administration of any employee organization or contribute financial or other support to it; provided that an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(3) By discrimination in regard to hire and tenure of employment or any term or condition of employment to encourage or discourage membership in any employee organization.

(4) To discharge or otherwise discriminate against an employee because he has filed charges or complaints or given testimony under this chapter.

(5) To refuse to bargain collectively with representatives of his employees subject to the provisions of subchapter 3 of this chapter.

(6) To discriminate against an employee on account of race, color, creed, sex or national origin.

*Sec. 962. Employees*—It shall be an unfair labor practice for an employee organization or its agents:

(1) To restrain or coerce employees in the exercise of the rights guaranteed to them by law, rule or regulation. However, this paragraph shall not impair the right of an employee organization to prescribe its own rules with respect to the acquisition or retention of membership therein, provided such rules are not discriminatory.

(2) To restrain or coerce an employer in the selection of his representatives for the purposes of collective bargaining or adjustment of grievances.

(3) To cause or attempt to cause an employer to discriminate against an employee in violation of section 961 of this title or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition for acquiring or retaining membership.

(4) To refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of subchapter 3 of this chapter.

(5) To engage in, or to induce or encourage any individual employed by any person to engage in, a strike or a refusal in the course of his employment to use, transport or otherwise handle or work on any goods, articles, materials or commodities or to perform any authorized functions.

(6) To threaten, coerce or restrain any person where in either case an object thereof is:

(a) Forcing or requiring any state employee to join any state employee organization or to enter into any agreement which is prohibited by the provisions of this chapter.

(b) Forcing or requiring any employer or employee to cease using, handling, transporting, or otherwise dealing in the products of a producer, processor or manufacturer, or to cease doing business with any other person, in the course of regular state business, or forcing, or requiring the employer to recognize or bargain with an employee organization as the representative of his employees unless such employee organization has been certified as the representative of such employees under the provisions of subchapter 3 of this chapter.

(c) Forcing or requiring the employer to recognize or bargain with a particular employee organization as the representative of his employees if another employee organization has been certified as the representative of those employees under subchapter 3 of this chapter.

(d) Forcing or requiring the employer to assign particular work to employees in a particular position class or state employee organization rather than to employees in another position class or state employee organization unless such employer is failing to conform to an order of certification of the board determining the bargaining representative for employees performing that work.

(7) To cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value in the nature of an exaction, for services which are not performed or not to be performed or which are not needed or required by the employer.

(8) To picket or cause to be picketed, or threaten to picket or cause to be picketed, the employer where an object thereof is forcing or requiring the employer to recognize or bargain with an employee organization as the representative of his employees, or forcing or requiring the employees of an employer to accept or select the employee organization as their collective bargaining representative.

(9) To engage in activities unlawful under section 903 of this title.

*Sec. 963. Membership; employees' rights*—An employee organization entering into an agreement shall not:

(1) Discriminate against a person seeking or holding membership therein on account of race, color, creed, sex or national origin

(2) Penalize a member for exercising a right guaranteed by the Constitution or laws of the United States or the State of Vermont.

(3) Cause or attempt to cause the discharge from employment of employees who refuse membership therein because of religious beliefs.

*Sec. 964. Business and products of other employers*—It shall be an unfair labor practice for any employee organization and any employer to enter into any contract or agreement, express or implied, whereby the employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other person, or to cease doing business with any other person, and any contract or agreement entered into before or after enactment of this act containing such an agreement shall be to that extent unenforceable and void.

*Sec. 965. Prevention of unfair practices*—(a) The board may prevent any person from engaging in any unfair labor practice listed in sections 961-962 of this title. Whenever a charge is made that any person has engaged in or is engaging in any unfair labor practice, the board may issue and cause to be served upon that person a complaint stating the charges in that respect and containing a notice of hearing before the board at a place and time therein fixed at least seven days after the complaint is served. The board may amend the

complaint at any time before it issues an order based therein. No complaint shall issue based on any unfair labor practice occurring more than six months prior to the filing of the charge with the board and the service of a copy thereof upon the person against whom such charge is made, unless the person aggrieved thereby was prevented from filing the charge by reason of service in the armed forces, in which event the six month period shall be computed from the day of his discharge.

(b) The person complained of shall have the right to file an answer to the original or amended complaint and appear in person or otherwise and present evidence in connection therewith at the time and place fixed in the complaint. In the discretion of the board any other person may be permitted to intervene and present evidence in the matter. Any proceeding under this section shall, so far as practicable, be conducted in accordance with rules of evidence used in the courts of law or equity. The board shall provide for the making of a transcript of the testimony presented at the hearing.

(c) The board shall have power to administer oaths and take testimony under oath relative to the matter of inquiry. At any hearing ordered by the board, the board shall have the power to subpoena witnesses and to demand the production of books, papers, records and documents for its examination. Officers who serve subpoenas issued by the board and witnesses attending hearings conducted by the board shall receive fees and compensation at the same rates as officers and witnesses in causes before a district court, to be paid on vouchers of the board.

(d) If upon the preponderance of the evidence, the board finds that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, it shall state its finding of fact in writing and shall issue and cause to be served on that person an order requiring him to cease and desist from the unfair labor practice, and to take such affirmative action as will carry out the policies of this chapter. If upon the preponderance of the evidence the board does not find that the person named in the complaint has engaged in or is engaging in any unfair labor practice, it shall state its findings of fact in writing and dismiss the complaint.

(e) In determining whether a complaint shall issue alleging a violation of section 961 (1) or (2) of this title, and in deciding those cases, the same regulations and rules of decision shall apply irrespective of whether or not an employee organization affected is affiliated with an employee organization national or international in scope.

(f) No order of the board shall require the reinstatement of any individual as an employee who has been suspended or discharged or the payment to him of any back pay, if such individual was suspended or discharged for cause, except through the grievance procedures.

*Sec. 966. Freedom of expression*—The expressing of any views, argument or opinion, or the dissemination thereof, whether in written, printed, graphic, oral or visual form, shall not constitute or be evidence of an unfair labor practice under this chapter, if such expression contains no threat of reprisal or force or promise of benefit.

## Subchapter 5. Agreements; Generally

*Sec. 967. Good faith; failure to agree*—For the purpose of this chapter to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to all matters bargainable under the provisions of this chapter; but the failure or refusal of either party to agree to a proposal, or to change or withdraw a lawful proposal or to make a concession shall not constitute, or be evidence direct or indirect, of a breach of this obligation.

*Sec. 968. Agreements; limitations, renegotiation and renewal*—(a) A collective bargaining agreement negotiated between an employer and the collective bargaining unit on behalf of its employees shall be reduced to writing with the original to be filed with the board at its Montpelier office.

(b) Collective bargaining agreements shall be for a specified term not to exceed three years and shall not be subject to cancellation or renegotiation during the term except with the mutual consent in writing of both parties, which consent shall be filed with the board at its Montpelier office. Upon the filing of such consent an agreement may be supplemented, cancelled or renegotiated.

(c) Nothing in this chapter shall be construed to require either party in collective bargaining to accede to any proposal or proposals of the other party or to submit to binding arbitration without their consent in writing.

(d) Such an agreement shall terminate at the expiration of its specified term. Negotiations for a new agreement to take effect upon the expiration of the preceding agreement shall be commenced at any time within one year next preceding the expiration date upon the request of either party and may be commenced at any time previous thereto with the consent of both parties.

(e) In the event the employer and the collective bargaining unit are unable to arrive at an agreement and there is not an existing agreement in effect, the personnel board with the approval of the governor may make such temporary rules and regulations as may be necessary to insure the uninterrupted and efficient conduct of state business. Such rules and regulations shall terminate and be of no further force and effect, except for any rights arising thereunder, as soon as an agreement is reached.

(f) The board is authorized to enforce compliance with all provisions of a collective bargaining agreement upon complaint of either party to an agreement the board shall proceed in the manner prescribed in section 965 of this title relating to the prevention of unfair labor practices.

## Subchapter 5. Miscellaneous Provisions

*Sec. 970. Grievances; exempt and excluded personnel*—Persons in the classified service of the state and other persons who, prior to the enactment of this chapter were entitled to the benefits of a grievance procedure but are exempt or excluded from membership in collective bargaining units by the provisions of this chapter, except those expressly entitled to be represented by a bargaining unit, may appeal personal grievances related to their employment to the state personnel board and shall be entitled to a hearing and a determination by the appeal which is binding on the employee and the employer. The personnel board shall make rules and regulations governing appeal procedures under this section subject to approval by the governor, provided such rules and regulations shall not restrict or limit the scope of appeals and shall include the right to appeal personal service ratings and may include a provision that a preliminary decision shall be rendered by the personnel director. In conducting hearings the personnel board is empowered to subpoena persons and documents and to require testimony to be given under oath and to administer oaths.

*Sec. 971 Enforcement*—(a) The labor relations board and the personnel board shall have the power to enforce all orders and decisions made under the authority of this chapter by petition to the Washington county court of chancery. A copy of the petition,

together with any temporary order of the court shall be served upon the defendant in the manner provided by law for the service of civil process in chancery actions.

(b) Upon filing of a petition by the board, the court may grant such temporary relief, including a restraining order, as it deems proper pending formal hearing.

(c) The sole issue before the court shall be whether or not the records of the board and the law relating thereto support the order. Costs shall be assessed in favor of the prevailing party. Any party aggrieved by the order or decree of the court may appeal to the supreme court on questions of law under sections 2382 et seq. of Title 12.

*Sec. 973. Judicial review*—Any person aggrieved by an order or decision of the labor relations board or the personnel board issued under the authority of this chapter may appeal on questions of law to the supreme court under sections 2382 et seq. of Title 12.

*Sec. 974. State police*—The provisions of this chapter shall not apply to matters of discipline, disciplinary action, transfer or suspension of any state police member in the department of public safety.

*Sec. 975. Administrative procedure laws; application*—Laws of this state relating to administrative procedure including chapter 25 of this title are not applicable to the labor relations board except as set forth in this chapter.

*Sec. 976. Short title*—This chapter may be cited as "State Employee Labor Relations Act."

*Sec. 977. Separability*—If any provision of this act, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of this act, or the application of that provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

*Sec. 301. Personnel division*—There is hereby created a personnel division consisting of:

(1) A personnel board consisting of five members as follows: The personnel director, and a department head appointed annually by the governor, both of whom shall be without vote, and three voting members who shall be citizens of known interest in the improvement of public administration and in efficient government personnel. These three members shall be appointed biennially by the governor with the advice and consent of the senate for a term of six years or for the unexpired portion thereof in such manner that not more than one term shall expire in the same biennium. The governor shall biennially designate the chairman from among the voting members.

(2) A personnel director, appointed by the governor with the advice and consent of the senate.

*Sec. 301b. Qualifications*—(a) Except as otherwise specifically provided, a person shall be disqualified to serve as a member of the personnel board or personnel director if he or his spouse is in the employ of the state or receives a salary from the state. However, this shall not disqualify a member of the general assembly from serving on the board by reason of such membership.

(b) A person may not be appointed to serve on the personnel board and the state labor relations board under chapter 27 of this title at the same time.

(a) The personnel board shall adopt and establish a plan of classification and compensation for each position and type of employment in state government, now or hereafter created, except as stated in section 306 of this title, and shall prescribe therein the necessary salary schedules, fixing a minimum and maximum for each class of employee doing the same general type of work. A plan of classification and compensation adopted and established by the board shall become effective only after approval by the general assembly, provided that, subject to bargaining rights as set forth in chapter 27, of this title, the board may, from time to time modify wage and salary schedules when inconsistent with rates prevailing in commerce and industry for comparable work within the state.

(b) Subject to bargaining rights as set forth in chapter 27 of this title, the personnel board shall make such regulations and adopt such methods of qualifying employees for positions as will make the plan effective, and shall prescribe rules governing appointments, promotions, demotions, transfers, separations, vacations, sick leave, hours of employment and the grievance procedures applicable to persons exempt or excluded from the effect of chapter 27 of this title.

The personnel board and the director shall have the power to administer oaths, subpoena witnesses, and order the production of books and papers pertinent to any investigation or hearing authorized by this chapter.

*Sec. 6. Temporary rules*—Rules and regulations of the personnel board in effect at the time of passage of this act shall continue in full force and effect until changed pursuant to the provisions of this act.

*Sec. 7. Repealed*

*Sec. 8. Appropriation*—There is appropriated to the state employee labor relations board for the purpose of this act the sum of $7,000.00 for the fiscal year ending July 1, 1970.

*Sec. 9.*—This act shall expire July 1, 1971.

## WASHINGTON
### Public Employees' Collective Bargaining Act

*Section 1. [Public Policy].*—The intent and purpose of this act is to promote the continued improvement of the relationship between public employers and their employees by providing a uniform basis for implementing the right of public employees to join labor organizations of their own choosing and to be represented by such organizations in matters concerning their employment relations with public employers.

*Sec. 2. [Application of Law].*—This act shall apply to any county or municipal corporation, or any political subdivision of the state of Washington except as otherwise provided by RCW 47.64.030 [relates to Marine Employee Commission having the authority to administer labor relations and to adjudicate all labor disputes on the best interests of the efficient operation of any ferry system], 47.64.040 [relates to the Marine Commission's right to make an inquiry into any employee, employee's representative, or Washington toll bridge authority claiming labor disputes], 54.04.170 [authorizes employees of public utility districts to enter into collective bargaining relations with their employers], 54.04.180 [provides for any public utility district to enter into collective bargaining relations with its employees], 28.72.010 through 28.72.090 [provides for representatives of an employee organization, including certificated employees of a school district, to meet and negotiate with the board of directors of the school district on matters concerning salaries,

hiring, etc.], and S. B. 34, L. 1967, regular session, [provides for collective bargaining between port districts and employee organizations and the arbitration of jurisdictional disputes, See ¶49,000].

*Sec. 3. [Definitions].*—As used in this act:

(1) "Public employer" means any officer, board, commission, council, or other person or body acting on behalf of any public body governed by this act as designated by section 2 of this act, or any subdivision of such public body.

(2) "Public employee" means any employee of a public employer except any person (a) elected by popular vote, or (b) appointed to office pursuant to statute, ordinance or resolution for a specified term of office by the executive head or body of the public employer, or (c) whose duties as deputy, administrative assistant or secretary necessarily imply a confidential relationship to the executive head or body of the applicable bargaining unit, or any person elected by popular vote or appointed to office pursuant to statute, ordinance or resolution for a specified term of office by the executive head or body of the public employer.

(3) "Bargaining representative" means any lawful organization which has as one of its primary purposes the representation of employees in their employment relations with employers.

(4) "Collective bargaining" means the performance of the mutual obligations of the public employer and the exclusive bargaining representative to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to grievance procedures and collective negotiations on personnel matters, including wages, hours and working conditions, which may be peculiar to an appropriate bargaining unit of such public employer, except that by such obligation neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this act.

(5) "Department" means the department of labor and industries.

*Sec. 4. [Unlawful Practices].*—No public employer, or other person, shall directly or indirectly, interfere with, restrain, coerce, or discriminate against any public employee or group of public employees in the free exercise of their right to organize and designate representatives of their own choosing for the purpose of collective bargaining, or in the free exercise of any other right under this act.

*Sec. 5. [Right of Department to Intervene in Representation Matters].*—In the event that a public employer and public employees are in disagreement as to the selection of a bargaining representative the department shall be invited to intervene as is provided in sections 6, 7, 8 and 9 of this act.

*Sec. 6. [Determination of Appropriate Unit].*—The department, after hearing upon reasonable notice, shall decide in each application for certification as an exclusive bargaining representative, the unit appropriate for the purpose of collective bargaining. In determining, modifying, or combining the bargaining unit, the department shall consider the duties, skills, and working conditions of the public employees; the history of collective bargaining by the public employees and their bargaining representatives; the extent of organization among the public employees; and the desire of the public employees. The department shall determine the bargaining representative by (1) examination of organization membership rolls, (2) comparison of signatures on organization bargaining authorization cards, or (3) by conducting an election specifically therefor.

*Sec. 7. [Holding of Representation Elections].*—In the event the department elects to conduct an election to ascertain the exclusive bargaining representative, and upon the request of a prospective bargaining representative showing written proof of at least thirty percent representation of the public employees within the unit, the department shall hold an election by secret ballot to determine the issue. The ballot shall contain the name of such bargaining representative and of any other bargaining representative showing written proof of at least ten percent representation of the public employees within the unit, together with a choice for any public employee to designate that he does not desire to be represented by any bargaining agent. Where more than one organization is on the ballot and neither of the three or more choices receives a majority vote of the public employees within the bargaining unit, a run off election shall be held. The run off ballot shall contain the two choices which received the largest and second largest number of votes. No question concerning representation may be raised within one year of a certification or attempted certification. Where there is a valid collective bargaining agreement in effect, no question of representation may be raised except during the period not more than ninety nor less than sixty days prior to the expiration date of the agreement. Any agreement which contains a provision for automatic renewal or extension of the agreement shall not be a valid agreement; nor shall any agreement be valid if it provides for a term of existence for more than three years.

*Sec. 8. [Certification of Bargaining Representatives].*—The bargaining representative which has been determined to represent a majority of the employees in a bargaining unit shall be certified by the department as the exclusive bargaining representative of, and shall be required to represent, all the public employees within the unit without regard to membership in said bargaining representative: PROVIDED, that any public employee at any time may present his grievance to the public employer and have such grievance adjusted without the intervention of the exclusive bargaining representative, if the adjustment is not inconsistent with the terms of a collective bargaining agreement then in effect, and if the exclusive bargaining representative has been given reasonable opportunity to be present at any initial meeting called for the resolution of such grievance.

*Sec. 9. [Rules and Regulations].*—The department shall promulgate, revise or rescind such rules and regulations as it may deem necessary or appropriate to administer the provisions of this act in conformity with the intent and purpose of this act and consistent with the best standards of labor-management relations.

*Sec. 10. [Employers Right to Engage in Collective Bargaining].*—A public employer shall have the authority to engage in collective bargaining with the exclusive bargaining representative and no public employer shall refuse to engage in collective bargaining with the exclusive bargaining representative: PROVIDED, that nothing contained herein shall require any public employer to bargain collectively with any bargaining representative concerning any matter which by ordinance, resolution or charter of said public employer has been delegated to any civil service commission or personnel board similar in scope, structure and authority to the board created by chapter 41.06 RCW. Upon the failure of the public employer and the exclusive bargaining representative to conclude a collective bargaining agreement, any matter in dispute may be submitted by either party to the state mediation service of the department of labor and industries.

*Sec. 11. [Deduction of Dues].*—A collective bargaining agreement may provide that upon the written authorization of any public employee within the bargaining unit, the public employer shall deduct from the pay of such public employee the monthly amount of

dues as certified by the secretary of the exclusive bargaining representative and shall transmit the same to the treasurer of the exclusive bargaining representative.

*Sec. 12. [Prohibition of Strikes]*.–Nothing contained in this act shall permit or grant any public employee the right to strike or refuse to perform his official duties.

*Sec. 13. [Adoption of Rules by the State Personnel Board]*.–The board [State Personnel Board] shall adopt and promulgate rules and regulations, consistent with the purposes and provisions of this chapter and with the best standards of personnel administration, regarding the basis for, and procedures to be followed for, the dismissal, suspension, or demotion of an employee, and appeals therefrom; certification of names for vacancies, including departmental promotions, with the number of names equal to two more names than there are vacancies to be filled, such names representing applicants rated highest on eligibility lists; examinations for all positions in the competitive and noncompetitive service; appointments; probationary periods of six months and rejections therein; transfers; sick leaves and vacations; hours of work; layoffs when necessary and subsequent reemployment, both according to seniority; determination of appropriate bargaining units within any agency: PROVIDED, that in making such determination the board shall consider the duties, skills, and working conditions of the employees, the history of collective bargaining by the employees and their bargaining representatives, the extent of organization among the employees, and the desires of the employees; certification and decertification of exclusive bargaining representatives; agreements between agencies and certified exclusive bargaining representatives providing for grievance procedures and collective negotiations on all personal matters over which the appointing authority of the appropriate bargaining unit of such agency may lawfully exercise discretion; written agreements may contain provisions for payroll deductions of employee organization dues upon authorization by the employee member and for the cancellation of such payroll deduction by the filing of a proper prior notice by the employee with the appointing authority and the employee organization: PROVIDED, that nothing contained herein shall permit or grant to any employee the right to strike or refuse to perform his official duties; adoption and revision of a comprehensive classification plan for all positions in the classified service, based on investigation and analysis of the duties and responsibilities of each such position; allocation and reallocation of positions within the classification plan; adoption and revision of a state salary schedule to reflect not less than the prevailing rates in Washington state private industries and other governmental units for positions of a similar nature, such adoption and revision subject to approval by the state budget director in accordance with the provisions of chapter 43.88 RCW; training programs including in-service, promotional and supervisory; regular increment increases within the series of steps for each pay grade, based on length of service for all employees whose standards of performance are such as to permit them to retain job status in the classified service; and providing for veteran's preference as required by existing statutes. [Sec. 41.06.150 (Sec. 15, Ch. 1, L. 1961) reads as amended by H.B. 483, L. 1967, effective July 1, 1967.]

*Sec. 14. [Effective Date]*.–Sections 1 through 14 of this act shall be known as the "Public Employees' Collective Bargaining Act" and shall take effect on July 1, 1967.

*Sec.–[Employer Unfair Labor Practices]*.–It shall be an unfair labor practice for a public employer: (1) To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter; (2) To control, dominate or interfere with a bargaining representative; (3) To discriminate against a public employee who has filed an unfair labor practice charge; (4) To refuse to engage in collective bargaining. [As added by Ch. 215, L. 1969, approved and effective May 8, 1969.]

*Sec.–[Bargaining Representative Unfair Labor Practices]*.–It shall be an unfair labor practice for a bargaining representative: (1) To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter; (2) To induce the public employer to commit an unfair labor practice; (3) To discriminate against a public employee who has filed an unfair labor practice charge; (4) To refuse to engage in collective bargaining. [As added by Ch. 215, L. 1969, approved and effective May 8, 1969.]

*Sec.–[Departmental Authority]*.–The department is empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders. This power shall not be affected or impaired by any means of adjustment, mediation or conciliation in labor disputes that have been or may hereafter be established by law. [As added by Ch. 215, L. 1969, approved and effective May 8, 1969.]

*Sec.–[Hearings]*.–Whenever a charge has been made concerning any unfair labor practice, the department shall have power to issue and cause to be served a complaint stating the charges in that respect, and containing a notice of hearing before the department at a place therein fixed to be held not less than seven days after the serving of said complaint. Any such complaint may be amended by the department any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint within five days after the service of such original or amended complaint and to appear in person or otherwise to give testimony at the place and time set in the complaint. In the discretion of the department, any other person may be allowed to intervene in the said proceedings and to present testimony. In any such proceeding the department shall not be bound by technical rules of evidence prevailing in the courts of law or equity. [As added by Ch. 215, L. 1969, approved and effective May 8, 1969.]

*Sec.–[Investigations–Subpoenas]*.–For the purpose of all hearings and investigations, which, in the opinion of the department, are necessary and proper for the exercise of the powers vested in it by this act, the department shall at all reasonable times have access to, for the purposes of examination, and the right to examine, copy or photograph any evidence, including payrolls or lists of employees, of any person being investigated or proceeded against that relates to any matter under investigation or in question. The department shall have power to issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question before the department. The department, or any agent, or agency designated by the department for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. [As added by Ch. 215, L. 1969, approved and effective May 8, 1969.]

*Sec.–[Judicial Enforcement]*.–The department, or any party to the department proceedings, thirty days after the department has entered its findings of fact, shall have power to petition the superior court of the state within the county wherein the unfair labor practice in question occurred or wherein any person charged with the unfair labor practice resides or transacts business, or if such court be on vacation or in recess, then to the superior court of any county adjoining the county wherein the unfair labor practice in question occurred or wherein any person charged with the unfair labor practice resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the

proceeding, including the pleadings and testimony upon which such order was made and the findings and order of the department. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the department. [As added by Ch. 215, L. 1969, approved and effective May 8, 1969.]

## WISCONSIN

### State Employment Labor Relations Act

*Sec. 111.80. Declaration of Policy.* The public policy of the state as to labor relations and collective bargaining in state employment, in the furtherance of which this subchapter is enacted, is as follows:

(1) It recognizes that there are 3 major interests involved, namely: that of the public, the state employe, and the state as an employer. These 3 interests are to a considerable extent interrelated. It is the policy of this state to protect and promote each of these interests with due regard to the situation and to the rights of the others.

(2) Orderly and constructive employment relations for state employes and the efficient administration of state government are promotive of all these interests. They are largely dependent upon the maintenance of fair, friendly and mutually satisfactory employe-management relations in state employment, and the availability of suitable machinery for fair and peaceful adjustment of whatever controversies may arise. It is recognized that whatever may be the rights of disputants with respect to each other in any controversy regarding state employment relations neither party has any right to engage in acts or practices which jeopardize the public safety and interest and interferes with the effective conduct of public business.

(3) Where permitted hereby, negotiations of terms and conditions of state employment should result from voluntary agreement from the state, and its agents, as an employer and its employes. For that purpose a state employe has the right, if he desires, to associate with others in organizing in bargaining collectively through representatives of his own choosing, without intimidation or coercion from any source.

(4) It is the policy of this state, in order to preserve and promote the interests of the public, the state employe and the state as an employer alike, to encourage the practices and procedure of collective bargaining in state employment subject to the requirements of the public service and related laws, rules and policies governing state employment, by establishing standards of fair conduct in state employment relations by providing a convenient, expeditious and impartial tribunal in which these interests may have their respective rights determined. In the furtherance of this policy the director shall establish a division of employment relations, which shall, along with the particular appointing authority, or his representative, represent the state in its responsibility as an employer under this subchapter. The division shall be responsible for establishing and maintaining, wherever practicable, consistent employment relations policies and practices throughout the state service.

*Sec. 111.81. Definitions.* When used in this subchapter: (1) "Board" means the Wisconsin employment relations board created by s. 111.03.

(2) "Collective bargaining" means the negotiating by the state as an employer, by its officers and agents, and a majority of its employes, by their representatives in an appropriate collective bargaining unit, concerning terms and conditions of employment of all employes in said unit in a mutually genuine effort to reach an agreement with reference to the subject under negotiation.

(3) "Collective bargaining unit" means the unit determined to be appropriate by the board for the purposes of collective bargaining. Employes in a single craft or profession may constitute a separate and single collective bargaining unit. The board may, and in order to effectuate the policies of this subchapter, determine the appropriate bargaining unit and whether the employes engaged in a single or several departments, divisions, institutions, crafts, professions, or occupational groupings constitute an appropriate collective bargaining unit. The board may make such a determination with or without providing the employees involved an opportunity to determine for themselves whether they desire to establish themselves as an appropriate collective bargaining unit. Where the board permits employes to determine for themselves whether they desire to constitute a separate collective bargaining unit, such unit determination shall be as provided in s. 111.05 (2). A collective bargaining unit thus established by the board shall be subject to all rights by termination or modification given by subch. I in reference to collective bargaining units otherwise established under said subchapter. Nothing herein shall prevent 2 or more collective bargaining units from bargaining collectively through the same representative.

(4) "Craft employe" means a skilled journeyman craftsman, including his apprentices and helpers, but shall not include employes not in direct line of progression in the craft.

(5) "Director" means the state director of personnel.

(6) "Election" means a proceeding conducted by the board in which the employes in a collective bargaining unit cast a secret ballot for collective bargaining representatives, or for any other purpose specified in this subchapter.

(7) "Labor organization" means any employe organization whose purpose is to represent state employes in collective bargaining with the state, or its agents, on matters pertaining to terms and conditions of employment; but the term shall not include any organization:

(a) Which advocates the overthrow of the constitutional form of government in the United States; or

(b) Which discriminates with regard to the terms or conditions of membership because of race, color, creed, sex, age or national origin.

(8) "Person" includes one or more individuals, labor organizations, associations, corporations or legal representatives.

(9) "Professional employe" means:

(a) Any employe engaged in work:

1. Predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work;

2. Involving the consistent exercise of discretion and judgment in its performance;



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3. Of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time;

4. Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical processes; or

(b) Any employe, who:

1. Has completed the courses of specialized intellectual instruction and study described in par. (a) 4; and

2. Is performing related work under the supervision of a professional person to qualify himself to become a professional employe as defined in par. (a).

(10) "Prohibited practice" means any prohibited practice as defined in s. 111.84.

(11) "Representative" includes any person chosen by a state employe to represent him.

(12) "State employe" includes any employe in the classified service of the state, as defined in s. 16.08, except employes who are performing in a supervisory capacity, and individuals having privy to confidential matters affecting the employer-employe relationship, as well as all employes of the board.

(13) "State employer" means the state of Wisconsin, and any department thereof, or appointing officer, as defined in s. 16.02(3), and includes any person acting on behalf of the state and any of its departments or agencies within the scope of this authority, express or implied.

(14) "Strike" includes any strike or other concerted stoppage of work by employes, and any concerted slowdown or other concerted interruption of operations or services by employes or any concomitant thereof. The establishment of a strike and the participation therein by a state employe is not intended to affect the right of the state employer, in law or equity, to deal with such strike, including:

(a) The right to impose discipline, including discharge, or suspension without pay, of any employe participating therein;

(b) The right to cancel the civil service status of any employe engaging therein; and

(c) The right of the employer to seek an injunction or to request the imposition of fines, either against the labor organization or the employe engaging therein, or to sue for damages because of such strike activity.

(15) "Supervisor" means any individual having authority, in the interest of the state employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employes, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

*Sec. 111.82. Rights of State Employees.* State employes shall have the right of self-organization and the right to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection; and such employes shall also have the right to refrain from any or all of such activities.

*Sec. 111.83. Representatives and Elections.* (1) Representatives chosen for the purposes of collective bargaining by a majority of the state employers voting in a collective bargaining unit shall be the exclusive representative of all the employes in such unit for the purposes of collective bargaining. Any individual employe, or any minority group of employes in any collective bargaining unit, shall have the right to present grievances to the state employer in person, or through representatives of their own choosing, and the state employer shall confer with said employe in relation thereto, provided that the majority representative has been afforded the opportunity to be present in such conferences and that any adjustment resulting from such conferences is not inconsistent with the conditions of employment established by the majority representative and the state.

(2) Whenever the board concludes to permit the employes an opportunity to determine for themselves whether they desire to establish themselves as an appropriate collective bargaining unit as defined in s. 111.81(3), such determination shall be conducted by secret ballot, and, in such instances, the board shall cause the ballot to be taken in such a manner as to show separately the wishes of the employes in the voting group involved as to the determination of the collective bargaining unit.

(3) Whenever a question arises concerning the representation of state employes in a collective bargaining unit the board shall determine the representative thereof by taking a secret ballot of the employes and certifying in writing the results thereof to the interested parties and to the state and its agents. There shall be included on any ballot for the election of representatives the names of all persons, having an interest in representing state employes, submitted by a state employe or group of state employes participating in the election, except that the board may exclude from the ballot one who, at the time of the election, stands deprived of his rights under this subchapter by reason of a prior adjudication of his having engaged in a prohibited practice. The ballot shall be so prepared as to permit a vote against representation by anyone named on the ballot. The board's certification of the results of any election shall be conclusive as to the findings included therein unless reviewed under s. 111.07:8;

(4) Whenever an election has been conducted pursuant to sub. (3) in which the name of more than one proposed representative appears on the ballot and results in no conclusion, the board may if requested by any party to the proceeding within 30 days from the date of the certification of the results of such election, conduct a runoff election. In such runoff election, the board may drop from the ballot the name of the representative that received the least number of votes at the original election, or the board shall drop from the ballot the privilege of voting against any representative when the least number of votes cast at the first election was against representation by any named representative.

(5) Questions concerning the determination of collective bargaining units or representation of state employes may be raised by petition of any state employe or the state employer, or the representative of either of them. Where it appears by the petition that any emergency exists requiring prompt action, the board shall act upon said petition forthwith and hold the election requested within such time as will meet the requirements of the emergency presented. The fact that one election has been held shall not prevent the holding of another election among the same group of state employes, if it appears to the board that sufficient reason therefor exists.

*Sec. 111.84 Prohibited Practices* (1) It shall be a prohibited practice for a state employer individually or in concert with others:

(a) To interfere with, restrain or coerce state employes in the exercise of their rights guaranteed in s. 111.82.

(b) To initiate, create, dominate or interfere with the formation or administration of any labor or employe organization or

contribute financial support to it, but the state employer shall not be prohibited from reimbursing state employes at their prevailing wage rate for the time spent conferring with its officers or agents. It shall not be a prohibited practice, however, for an officer or supervisor of the state employer to remain or become a member of the same labor organization of which its employes are members, when they perform the same work or are engaged in the same profession, provided, that 4 years from the effective date of this subchapter said supervisor shall not participate as an active member or officer of said organization.

(c) To encourage or discourage membership in any labor organization, employe agency, committee, association or representation plan by discrimination in regard to hiring, tenure or other terms or conditions of employment.

(d) To refuse to bargain collectively on those matters set forth in s. 111.91 with the representative of a majority of its employes in an appropriate collective bargaining unit, however, where the state employer files with the board a petition requesting a determination as to majority representation, it shall not be deemed to have refused to bargain until an election has been held and the result thereof has been certified to it by the board. Such refusal to bargain shall include, but not be limited to, the refusal to execute a collective bargaining agreement previously orally agreed upon.

(e) To violate the provisions of any written agreement with respect to terms and conditions of employment affecting state employes, including an agreement to arbitrate, or to accept the terms of an arbitration award, where previously the parties have agreed to accept such award as final and binding upon them.

(f) To deduct labor organization dues or assessments from a state employe's earnings, unless the state employer has been presented with an individual order therefor, signed by the state employe personally, and terminable at the end of any year of its life by the state employe giving at least 30 days' written notice of such termination to the state employer and to the representative organization.

(2) It is an unfair labor practice for a state employe individually or in concert with others;

(a) To coerce or intimidate a state employe in the enjoyment of his legal rights, including those guaranteed in s. 111.82.

(b) To coerce, intimidate or induce any officer or agent of the state employer to interfere with any of its employes in the enjoyment of their legal rights, including those guaranteed in s. 111.82 or to engage in any practice with regard to its employes which would constitute a prohibited practice if undertaken by him on his own initiative.

(c) To refuse to bargain collectively on those matters set forth in s. 111.91 with the duly authorized officer or agent of the state employer, provided it is the recognized or certified exclusive collective bargaining representative of employes in an appropriate collective bargaining unit. Such refusal to bargain shall include, but not be limited to, the refusal to execute a collective bargaining agreement previously orally agreed upon.

(d) To violate the provisions of any written agreement with respect to terms and conditions of employment affecting state employes, including an agreement to arbitrate or to accept the terms of an arbitration award where previously the parties have agreed to accept such award as final and binding upon them.

(e) To engage in, induce or encourage any state employes to engage in a strike, or a concerted refusal to work or perform their usual duties as an employe of the state.

(f) To coerce or intimidate a supervisory employe, officer or agent of the state employer, working at the same trade or profession as its employes, to induce him to become a member of or act in concert with the labor organization of which they are members, pursuant to s. 111.84 (1) (b).

(3) It is a prohibited practice for any person to do or cause to be done on behalf of or in the interest of state employers or state employes, or in connection with or to influence the outcome of any controversy as to employment relations, any act prohibited by subs. (1) and (2).

*Sec. 111.85. Prevention of Prohibited Practices.* Any controversy concerning prohibited practices may be submitted to the board as provided in s. 111.07, except that references therein to "unfair labor practices" shall be construed to refer to "prohibited practices"; and except that the board shall fix hearing on complaints involving alleged violations of s. 111.84(2)(e) within 3 days after the filing of such complaints, and notice shall be given to each party interested by service on him personally, or by telegram advising him of the nature of the complaint and of the date, time and place of hearing thereon.

*Sec. 111.86. Arbitration.* Parties to a labor dispute arising from the interpretation or application of a collective bargaining agreement affecting terms and conditions of state employment may agree in writing to have the board act or name arbitrators in all or any part of such dispute, and thereupon the board shall have the power to act. The board shall appoint as arbitrators only competent, impartial and disinterested persons. Proceedings in any such arbitration shall be as provided in ch. 298 where applicable.

*Sec. 111.87. Mediation.* The board may appoint any competent, impartial, disinterested person to act as mediator in any labor dispute either upon its own initiative or upon the request of one of the parties to the dispute. It is the function of such mediator to bring the parties together voluntarily under such favorable auspices as will tend to effectuate settlement of the dispute, but neither the mediator nor the board shall have any power of compulsion in mediation proceedings.

*Sec. 111.88. Fact Finding.* Whenever the representative, which has either been certified by the board after an election, or has been duly recognized by the state employer, as the exclusive representative of state employes, in an appropriate collective bargaining unit, and the appointing authority, together with the division of employment relations, after a reasonable period of negotiation, are deadlocked with respect to any dispute existing between them arising from collective bargaining or from the application or interpretation of any provisions of a collective bargaining agreement existing between them, either party, or the parties jointly, may petition the board in writing, to initiate fact finding, as hereafter provided, to make recommendations to resolve the existing deadlock.

(1) Upon receipt of a petition to initiate fact finding, the board shall make an investigation, either informally or by a formal hearing, to determine whether the parties are, after a reasonable period of negotiations, deadlocked with respect to any dispute as previously provided. After its investigation the board shall certify the results thereof. If the certification requires that fact finding be initiated, the board shall appoint from a list established by the board a qualified disinterested person or 3-member panel, when jointly requested by the parties, to function as a fact finder.

(2) The fact finder may establish times and place of hearings which shall be where feasible in the jurisdiction of the state, and shall conduct the hearings pursuant to rules established by the board. Upon request, the board shall issue subponenas for hearings conducted

by the fact finder. The fact finder may administer oaths. Upon completion of the hearing, the fact finder shall make written findings of fact and recommendations for solution of the dispute and shall cause the same to be served on the parties. In making such findings and recommendations, the fact finder shall take into consideration among other pertinent factors the logical and traditional concepts of public personnel and merit system administration concepts and principles vital to the public interest in efficient and economical governmental administration. Cost of fact finding proceedings shall be divided equally between the parties. The fact finder shall, at the time he submits his recommendations and cost to the parties, send copies thereof to the board at its Madison office.

Nothing herein shall be construed as prohibiting any fact finder from endeavoring to mediate the dispute, in which he is involved, at any time prior to the issuance of his recommendations.

(4) Within 30 days of the receipt of the fact finder's recommendations or within such time period as is mutually agreed upon by the parties, both parties shall advise each other, in writing, as to their acceptance or rejection, in whole or in part, of the fact finder's recommendations and, at the same time, send a copy of such notification to the board at its Madison office. Failure to comply by the state employer or employe representative, shall be deemed a violation of s. 111.84 (1)(d) or (2)(c).

*Sec. 111.89. Agreements.* Upon the completion of negotiations with a labor organization representing a majority of the employes in a collective bargaining unit and the appointing officer, together with the division of employment relations, if a settlement is reached, the employer shall reduce the same to writing in the form of an agreement. Such agreement may include a term for which it shall remain in effect not to exceed 3 years. Either party to such agreement shall have a right of action to enforce the same by petition to the board. No agreement shall become effective until it has been submitted by the appointing authority or his representative to the division of employment relations and approved by the division.

*Sec. 111.90. Management Rights.* Nothing in this subchapter shall interfere with the right of the employer in accordance with applicable law, rules and regulations to:

(1) Carry out the statutory mandate and goals assigned to the agency utilizing personnel, methods and means in the most appropriate and efficient manner possible.

(2) Manage the employes of the agency, to hire, promote, transfer, assign or retain employes in positions within the agency and in that regard to establish reasonable work rules.

(3) Suspend, demote, discharge or take other appropriate disciplinary action against the employe for just cause; or to lay off employes in the event of lack of work or funds or under conditions where continuation of such work would be inefficient and nonproductive.

*Sec. 111.91. Subjects of Collective Bargaining.* (1) Matters subject to collective bargaining are the following conditions of employment for which the appointing officer has discretionary authority:

(a) Grievance procedures;

(b) Application of seniority rights as affecting the matters contained herein;

(c) Work schedules relating to assigned hours and days of the week and shift assignments;

(d) Scheduling of vacations and other time off;

(e) Use of sick leave;

(f) Application and interpretation of established work rules;

(g) Health and safety practices;

(h) Intradepartmental transfers; and

(i) Such other matters consistent with this section and the statutes, rules and regulations of the state and its various agencies.

(2) Nothing herein shall require the employer to bargain in relation to statutory and rule provided prerogatives of promotion, layoff, position classification, compensation and fringe benefits, examinations, discipline, merit salary determination policy and other actions provided for by law and rules governing civil service.

*Sec. 111.92. Board Rules and Regulations.* The board may adopt reasonable and proper rules and regulations relative to the exercise of its powers and authority and proper rules to govern its proceedings and to regulate the conduct of all elections and hearings.

*Sec. 111.93. Advisory Committee.* The board shall enlarge its advisory committee established pursuant to s. 111.13 to permit representation therein by officers or agents of the state, and officers or agents of organizations representing state employes for the purpose of collective bargaining. Such membership on the advisory committee shall be in accordance with and pursuant to s. 111.13.

*Sec. 111.94 Title of Subchapter V.* This subchapter may be cited as the "State Employment Labor Relations Act."

## MUNICIPAL EMPLOYMENT

*111.70 Municipal employment.* (1) Definitions. When used in this section:

(a) "Municipal employer" means any city, county, village, town, metropolitan sewerage district, school district or any other political subdivision of the state.

(b) "Municipal employe" means any employe of a municipal employer except city and village policemen, sheriff's deputies, and county traffic officers.

(c) "Board" means the Wisconsin employment relations board.

(2) RIGHTS OF MUNICIPAL EMPLOYES' Municipal employes shall have the right of self-organization, to affiliate with labor organizations of their own choosing and the right to be represented by labor organizations of their own choice in conferences and negotiations with their municipal employers or their representatives on questions of wages, hours and conditions of employment, and such employes shall have the right to refrain from any and all such activities.

(3) PROHIBITED PRACTICES. (a) Municipal employers, their officers and agents are prohibited from:

1. Interfering with, restraining or coercing any municipal employe in the exercise of the rights provided in sub. (2).

2. Encouraging or discouraging membership in any labor organization, employe agency, committee, association or representation plan by discrimination in regard to hiring, tenure or other terms or conditions of employment.

(b) Municipal employes individually or in concert with others are prohibited from:

1. Coercing, intimidating or interfering with municipal employes in the enjoyment of their legal rights including those set forth in sub. (2).

2. Attempting to induce a municipal employer to coerce, intimidate or interfere with a municipal employe in the enjoyment of his legal rights including those set forth in sub. (2).

(c) It is a prohibited practice for any person to do or cause to be done, on behalf of or in the interest of any municipal employer or employe, or in connection with or to influence the outcome of any controversy, as to employment relations, any act prohibited by pars. (a) and (b).

(4) POWERS OF THE BOARD. The board shall be governed by the following provisions relating to bargaining in municipal employment:

(a) Prevention of prohibited practices. Section 111.07 shall govern procedure in all cases involving prohibited practices under this subchapter.

(b) Mediation. The board may function as a mediator in disputes between municipal employes and their employers upon the request of both parties.

(d) Collective bargaining units. Whenever a question arises between a municipal employer and a labor union as to whether the union represents the employes of the employer, either the union or the municipality may petition the board to conduct an election among said employes to determine whether they desire to be represented by a labor organization. Proceedings in representation cases shall be in accordance with ss. 111.02 (6) and 111.05 insofar as applicable, except that where the board finds that a proposed unit includes a craft the board shall exclude such craft from the unit. The board shll not order an election among employes in a craft unit except on separate petition initiating representation proceedings in such craft unit.

(e) Fact finding. Fact finding may be initiated in the following circumstances: 1. If after a reasonable period of negotiation the parties are deadlocked, either party or the parties jointly may initiate fact finding; 2. Where an employer or union fails or refuses to meet and negotiate in good faith at reasonable times in a bona fide effort to arrive at a settlement.

(f) Same. Upon receipt of a petition to initiate fact findings, the board shall make an investigation and determine whether or not the condition set forth in par. (e) 1 or 2 has been met and shall certify the results of said investigation. If the certification requires that fact finding be initiated, the board shall appoint from a list established by the board a qualified disinterested person or 3-member panel when jointly requested by the parties, to function as a fact finder.

(g) Same. The fact finder may establish dates and place of hearings which shall be where feasible in the jurisdiction of the municipality involved, and shall conduct said hearings pursuant to rules established by the board. Upon request, the board shall issue subpoenas for hearings conducted by the fact finder. The fact finder may administer oaths. Upon completion of the hearings, the fact finder shall make written findings of fact and recommendations for solution of the dispute and shall cause the same to be served on the municipal employer and the union.

(h) Parties. 1. Proceedings to prevent prohibitive practices. Any labor organization or any individual affected by prohibited practices herein is a proper party to proceedings by the board to prevent such practice under this subchapter.

2. Fact finding cases. Only labor unions which have been certified as representative of the employes in the collective bargaining unit or which the employer has recognized as the representative of said employes shall be proper parties in initiating fact finding proceedings. Cost of fact finding proceedings shall be divided equally between said labor organization and the employer.

(i) Agreements. Upon the completion of negotiations with a labor organization representing a majority of the employes in a collective bargaining unit, if a settlement is reached, the employer shall reduce the same to writing either in the form of an ordinance, resolution or agreement. Such agreement may include a term for which it shall remain in effect not to exceed one year. Such agreements shall be binding on the parties only if express language to that effect is contained therein.

(j) Personnel relations in law enforcement. In any case in which a majority of the members of a police or sheriff or county traffic officer department shall petition the governing body for changes or improvements in the wages, hours or working conditions and designates a representative which may be one of the petitioners or otherwise, the procedures in pars. (e) to (g) shall apply. Such representative may be required by the board to post a cash bond in an amount determined by the board to guarantee payment of one-half of the costs of fact finding.

(k) Civil service exception. Paragraphs (e) to (g) shall not apply to discipline or discharge cases under civil service provisions of a state statute or local ordinance.

(l) Strikes prohibited. Nothing contained in this subchapter shall constitute a grant of the right to strike by any county or municipal employe and such strikes are hereby expressly prohibited.

(m) Local ordinances control. The board shall not initiate fact finding proceedings in any case when the municipal employer through ordinance or otherwise has established fact finding procedures substantially in compliance with this subchapter.

# EXECUTIVE ORDER 11491

## LABOR-MANAGEMENT RELATIONS IN THE FEDERAL SERVICE

WHEREAS the public interest requires high standards of employee performance and the continual development and implementation of modern and progressive work practices to facilitate improved employee performance and efficiency; and

WHEREAS the well-being of employees and efficient administration of the Government are benefited by providing employees an opportunity to participate in the formulation and implementation of personnel policies and practices affecting the conditions of their employment; and

WHEREAS the participation of employees should be improved through the maintenance of constructive and cooperative relationships between labor organizations and management officials; and

WHEREAS subject to law and the paramount requirements of public service, effective labor-management relations within the Federal service require a clear statement of the respective rights and obligations of labor organizations and agency management:

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and statutes of the United States, including sections 3301 and 7301 of title 5 of the United States Code, and as President of the United States, I hereby direct that the following policies shall govern officers and agencies of the executive branch of the Government in all dealings with Federal employees and organizations representing such employees.

## GENERAL PROVISIONS

Section 1. Policy. (a) Each employee of the executive branch of the Federal Government has the right, freely and without fear of penalty or reprisal, to form, join, and assist a labor organization or to refrain from any such activity, and each employee shall be protected in the exercise of this right. Except as otherwise expressly provided in this Order, the right to assist a labor organization extends to participation in the management of the organization and acting for the organization in the capacity of an organization representative, including presentation of its views to officials of the executive branch, the Congress, or other appropriate authority. The head of each agency shall take the action required to assure that employees in the agency are apprised of their rights under this section, and that no interference, restraint, coercion, or discrimination is practiced within his agency to encourage or discourage membership in a labor organization.

(b) Paragraph (a) of this section does not authorize participation in the management of a labor organization or acting as a representative of such an organization by a supervisor, except as provided in section 24 of this Order, or by an employee when the participation or activity would result in a conflict or apparent conflict of interest or otherwise be incompatible with law or with the official duties of the employee.

Sec. 2. Definitions. When used in this Order, the term --

(a) "Agency" means an executive department, a Government corporation, and an independent establishment as defined in section 104 of title 5, United States Code, except the General Accounting Office;

(b) "Employee" means an employee of an agency and an employee of a nonappropriated fund instrumentality of the United States but does not include, for the purpose of formal or exclusive recognition or national consultation rights, a supervisor, except as provided in section 24 of this order;

(c) "Supervisor" means an employee having authority, in the interest of an agency, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to evaluate their performance, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of authority is not of a merely routine or clerical nature, but requires the use of independent judgment;

(d) "Guard" means an employee assigned to enforce against employees and other persons rules to protect agency property or the safety of persons on agency premises, or to maintain law and order in areas or facilities under Government control;

(e) "Labor organization" means a lawful organization of any kind in which employees participate and which exists for the purpose, in whole or in part, of dealing with agencies concerning grievances, personnel policies and practices, or other matters affecting the working conditions of their employees; but does not include an organization which --

(1) consists of management officials or supervisors, except as provided in section 24 of this Order;

(2) asserts the right to strike against the Government of the United States or any agency thereof, or to assist or participate in such a strike, or imposes a duty or obligation to conduct, assist or participate in such a strike;

(3) advocates the overthrow of the constitutional form of government in the United States; or

(4) discriminates with regard to the terms or conditions of membership because of race, color, creed, sex, age, or national origin;

(f) "Agency management" means the agency head and all management officials, supervisors, and other representatives of management having authority to act for the agency on any matters relating to the implementation of the agency labor-management relations program established under this Order;

(g) "Council" means the Federal Labor Relations Council established by this Order;

(h) "Panel" means the Federal Service Impasses Panel established by this Order; and

(i) "Assistant Secretary" means the Assistant Secretary of Labor for Labor-Management Relations.

Sec. 3. Application. (a) This Order applies to all employees and agencies in the executive branch, except as provided in paragraphs (b), (c) and (d) of this section.

(b) This Order (except section 22) does not apply to --

(1) the Federal Bureau of Investigation;

(2) the Central Intelligence Agency;

(3) any other agency, or office, bureau, or entity within an agency, which has as a primary function intelligence, investigative, or security work, when the head of the agency determines, in his sole judgment, that the Order cannot be applied in a manner consistent with national security requirements and considerations; or

(4) any office, bureau or entity within an agency which has as a primary function investigation or audit of the conduct or work of officials or employees of the agency for the purpose of ensuring honesty and integrity in the discharge of their official duties, when the head of the agency determines, in his sole judgment, that the Order cannot be applied in a manner consistent with the internal security of the agency.

(c) The head of an agency may, in his sole judgment, suspend any provision of this Order (except section 22) with respect to any agency installation or activity located outside the United States, when he determines that this is necessary in the national interest, subject to the conditions he prescribes.

(d) Employees engaged in administering a labor-management relations law or this Order shall not be represented by a labor organization which also represents other groups of employees under the law or this Order, or which is affiliated directly or indirectly with an organization which represents such a group of employees.

Sec. 4. Federal Labor Relations Council. (a) There is hereby established the Federal Labor Relations Council, which consists of the Chairman of the Civil Service Commission, who shall be chairman of the Council, the Secretary of Labor, an official of the Executive Office of the President, and such other officials of the executive branch as the President may designate from time to time. The Civil Service Commission shall provide services and staff assistance to the Council to the extent authorized by law.

(b) The Council shall administer and interpret this Order, decide major policy issues, prescribe regulations, and from time to time, report and make recommendations to the President.

(c) The Council may consider, subject to its regulations –

(1) appeals from decisions of the Assistant Secretary issued pursuant to section 6 of this Order;

(2) appeals on negotiability issues as provided in section 11 (c) of this Order;

(3) exceptions to arbitration awards; and

(4) other matters it deems appropriate to assure the effectuation of the purposes of this Order.

Sec. 5. Federal Service Impasses Panel. (a) There is hereby established the Federal Service Impasses Panel as an agency within the Council. The Panel consists of at least three members appointed by the President, one of whom he designates as chairman. The Council shall provide the services and staff assistance needed by the Panel.

(b) The Panel may consider negotiation impasses as provided in section 17 of this Order and may take any action it considers necessary to settle an impasse.

(c) The Panel shall prescribe regulations needed to administer its function under this Order.

Sec. 6. Assistant Secretary of Labor for Labor-Management Relations. (a) The Assistant Secretary shall –

(1) decide questions as to the appropriate unit for the purpose of exclusive recognition and related issues submitted for his consideration;

(2) supervise elections to determine whether a labor organization is the choice of a majority of the employees in an appropriate unit as their exclusive representative, and certify the results;

(3) decide questions as to the eligibility of labor organizations for national consultation rights under criteria prescribed by the Council; and

(4) except as provided in section 19(d) of this Order, decide complaints of alleged unfair labor practices and alleged violations of the standards of conduct for labor organizations.

(b) In any matters arising under paragraph (a) of this section, the Assistant Secretary may require an agency or a labor organization to cease and desist from violations of this Order and require it to take such affirmative action as he considers appropriate to effectuate the policies of this Order.

(c) In performing the duties imposed on him by this section, the Assistant Secretary may request and use the services and assistance of employees of other agencies in accordance with section 1 of the Act of March 4, 1915, (38 Stat. 1084, as amended; 31 U.S.C. §686).

(d) The Assistant Secretary shall prescribe regulations needed to administer his functions under this Order.

(e) If any matters arising under paragraph (a) of this section involve the Department of Labor, the duties of the Assistant Secretary described in paragraphs (a) and (b) of this section shall be performed by a member of the Civil Service Commission designated by the Chairman of the Commission.

## RECOGNITION

Sec. 7. Recognition in general. (a) An agency shall accord exclusive recognition or national consultation rights at the request of a labor organization which meets the requirements for the recognition or consultation rights under this Order.

(b) A labor organization seeking recognition shall submit to the agency a roster of its officers and representatives, a copy of its constitution and by-laws, and a statement of its objectives.

(c) When recognition of a labor organization has been accorded, the recognition continues as long as the organization continues to meet the requirements of this Order applicable to that recognition, except that this section does not require an election to determine whether an organization should become, or continue to be recognized as, exclusive representative of the employees in any unit or subdivision thereof within 12 months after a prior valid election with respect to such unit.

(d) Recognition, in whatever form accorded, does not --

(1) preclude an employee, regardless of whether he is a member of a labor organization, from bringing matters of personal concern to the attention of appropriate officials under applicable law, rule, regulations, or established agency policy; or from choosing his own representative in a grievance or appellate action;

(2) preclude or restrict consultations and dealings between an agency and a veterans organization with respect to matters of particular interest to employees with veterans preference; or

(3) preclude an agency from consulting or dealing with a religious, social, fraternal, or other lawful association, not qualified as a labor organization, with respect to matters or policies which involve individual members of the association or are of particular applicability to it or its members.

Consultations and dealings under subparagraph (3) of this paragraph shall be so limited that they do not assume the character of formal consultation on matters of general employee-management policy, except as provided in paragraph (e) of this section, or extend to areas where recognition of the interests of one employee group may result in discrimination against or injury to the interests of other employees.

(e) An agency shall establish a system for intra-management communication and consultation with its supervisors or associations of supervisors. The communications and consultations shall have as their purposes the improvement of agency operations, the improvement of working conditions of supervisors, the exchange of information, the improvement of managerial effectiveness, and the establishment of policies that best serve the public interest in accomplishing the mission of the agency.

(f) Informal recognition shall not be accorded after the date of this Order.

Sec. 8 Formal Recognition. (a) Formal recognition, including formal recognition at the national level, shall not be accorded after the date of this Order.

(b) An agency shall continue any formal recognition, including formal recognition at the national level, accorded a labor organization before the date of this Order until --

(1) the labor organization ceases to be eligible under this Order for formal recognition so accorded;

(2) a labor organization is accorded exclusive recognition as representative of employees in the unit to which the formal recognition applies; or

(3) the formal recognition is terminated under regulations prescribed by the Federal Labor Relations Council.

(c) When a labor organization holds formal recognition, it is the representative of its members in a unit as defined by the agency when recognition was accorded. The agency, through appropriate officials, shall consult with representatives of the organization from time to time in the formulation and implementation of personnel policies and practices, and matters affecting working conditions that affect members of the organization in the unit to which the formal recognition applies. The organization is entitled from time to time to raise such matters for discussion with appropriate officials and at all times to present its views thereon in writing. The agency is not required to consult with the labor organization on any matter on which it would not be required to meet and confer if the labor organization were entitled to exclusive recognition.

Sec. 9. National consultation rights. (a) An agency shall accord national consultation rights to a labor organization which qualifies under criteria established by the Federal Labor Relations Council as the representative of a substantial number of employees of the agency. National consultation rights shall not be accorded for any unit where a labor organization already holds exclusive recognition at the national level for that unit. The granting of national consultation rights does not preclude an agency from appropriate dealings at the national level with other organizations on matters affecting their members. An agency shall terminate national consultation rights when the labor organization ceases to qualify under the established criteria.

(b) When a labor organization has been accorded national consultation rights, the agency, through appropriate officials, shall notify representatives of the organization of proposed substantive changes in personnel policies that affect employees it represents and provide an opportunity for the organization to comment on the proposed changes. The labor organization may suggest changes in the agency's personnel policies and have its views carefully considered. It may confer in person at reasonable times, on request, with appropriate officials on personnel policy matters, and at all times present its views thereon in writing. An agency is not required to consult with a labor organization on any matter on which it would not be required to meet and confer if the organization were entitled to exclusive recognition.

(c) Questions as to the eligibility of labor organizations for national consultation rights may be referred to the Assistant Secretary for decision.

Sec. 10. Exclusive recognition. (a) An agency shall accord exclusive recognition to a labor organization when the organization has been selected, in a secret ballot election, by a majority of the employees in an appropriate unit as their representative.

(b) A unit may be established on a plant or installation, craft, functional, or other basis which will ensure a clear and identifiable community of interest among the employees concerned and will promote effective dealings and efficiency of agency operations. A unit shall not be established solely on the basis of the extent to which employees in the proposed unit have organized, nor shall a unit be established if it includes --

(1) any management official or supervisor, except as provided in section 24;

(2) an employee engaged in Federal personnel work in other than a purely clerical capacity;

(3) any guard together with other employees; or

(4) both professional and nonprofessional employees, unless a majority of the professional employees vote for inclusion in the unit.

Questions as to the appropriate unit and related issues may be referred to the Assistant Secretary for decision.

(c) An agency shall not accord exclusive recognition to a labor organization as the representative of employees in a unit of guards if the organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.

(d) All elections shall be conducted under the supervision of the Assistant Secretary, or persons designated by him, and shall be by secret ballot. Each employee eligible to vote shall be

provided the opportunity to choose the labor organization he wishes to represent him, from among those on the ballot, or "no union." Elections may be held to determine whether --

(1) a labor organization should be recognized as the exclusive representative of employees in a unit;

(2) a labor organization should replace another labor organization as the exclusive representative; or

(3) a labor organization should cease to be the exclusive representative.

(e) When a labor organization has been accorded exclusive recognition, it is the exclusive representative of employees in the unit and is entitled to act for and to negotiate agreements covering all employees in the unit. It is responsible for representing the interests of all employees in the unit without discrimination and without regard to labor organization membership. The labor organization shall be given the opportunity to be represented at formal discussions between management and employees or employee representatives concerning grievances, personnel policies and practices, or other matters affecting general working conditions of employees in the unit.

## AGREEMENTS

Sec. 11. Negotiation of agreements. (a) An agency and a labor organization that has been accorded exclusive recognition, through appropriate representatives, shall meet at reasonable times and confer in good faith with respect to personnel policies and practices and matters affecting working conditions, so far as may be appropriate under applicable laws and regulations, including policies set forth in the Federal Personnel Manual, published agency policies and regulations, a national or other controlling agreement at a higher level in the agency, and this Order. They may negotiate an agreement, or any question arising thereunder; determine appropriate techniques, consistent with section 17 of this Order, to assist in such negotiation; and execute a written agreement or memorandum of understanding.

(b) In prescribing regulations relating to personnel policies and practices and working conditions, an agency shall have due regard for the obligation imposed by paragraph (a) of this section. However, the obligation to meet and confer does not include matters with respect to the mission of an agency; its budget; its organization; the number of employees; and the numbers, types, and grades of positions or employees assigned to an organizational unit, work project or tour of duty; the technology of performing its work; or its internal security practices. This does not preclude the parties from negotiating agreements providing appropriate arrangements for employees adversely affected by the impact of realignment of work forces or technological change.

(c) If, in connection with negotiations, an issue develops as to whether a proposal is contrary to law, regulation, controlling agreement, or this Order and therefore not negotiable, it shall be resolved as follows:

(1) An issue which involves interpretation of a controlling agreement at a higher agency level is resolved under the procedures of the controlling agreement, or, if none, under agency regulations;

(2) An issue other than as described in subparagraph (1) of this paragraph which arises at a local level may be referred by either party to the head of the agency for determination;

(3) An agency head's determination as to the interpretation of the agency's regulations with respect to a proposal is final;

(4) A labor organization may appeal to the Council for a decision when --

(i) it disagrees with an agency head's determination that a proposal would violate applicable law, regulation of appropriate authority outside the agency, or this Order, or

(ii) it believes that an agency's regulations, as interpreted by the agency head, violate applicable law, regulation of appropriate authority outside the agency, or this Order.

Sec. 12. Basic provisions of agreements. Each agreement between an agency and a labor organization is subject to the following requirements --

(a) in the administration of all matters covered by the agreement, officials and employees are governed by existing or future laws and the regulations of appropriate authorities, including policies set forth in the Federal Personnel Manual; by published agency policies and regulations in existence at the time the agreement was approved; and by subsequently published agency policies and regulations required by law or by the regulations of appropriate authorities, or authorized by the terms of a controlling agreement at a higher agency level;

(b) management officials of the agency retain the right, in accordance with applicable laws and regulations --

(1) to direct employees of the agency;

(2) to hire, promote, transfer, assign, and retain employees in positions within the agency, and to suspend, demote, discharge, or take other disciplinary action against employees;

(3) to relieve employees from duties because of lack of work or for other legitimate reasons;

(4) to maintain the efficiency of the Government operations entrusted to them;

(5) to determine the methods, means, and personnel by which such operations are to be conducted; and

(6) to take whatever actions may be necessary to carry out the mission of the agency in situations of emergency; and

(c) nothing in the agreement shall require an employee to become or to remain a member of a labor organization, or to pay money to the organization except pursuant to a voluntary, written authorization by a member for the payment of dues through payroll deductions.
The requirements of this section shall be expressly stated in the initial or basic agreement and apply to all supplemental, implementing, subsidiary, or informal agreements between the agency and the organization.

Sec. 13. Grievance procedures. An agreement with a labor organization which is the exclusive representative of employees in an appropriate unit may provide procedures, applicable only to employees in the unit, for the consideration of employee grievances and of disputes over the interpretation and application of agreements. The procedure for consideration of employee grievances shall meet the requirements for negotiated grievance procedures established by the Civil Service Commission. A negotiated employee grievance procedure which conforms to this section, to applicable laws, and to regulations of the Civil Service Commission and the agency is the exclusive procedure available to employees in the unit when the agreement so provides.

Sec. 14. Arbitration of grievances. (a) Negotiated procedures may provide for the arbitration of employee grievances and of disputes over the interpretation or application of existing agreements. Negotiated procedures may not extend arbitration to changes or proposed changes in agreements or agency policy. Such procedures shall provide for the invoking of arbitration only with the approval of the labor organization that has exclusive recognition and, in the case of an employee grievance, only with the approval of the employee. The costs of the arbitrator shall be shared equally by the parties.

(b) Either party may file exceptions to an arbitrator's award with the Council, under regulations prescribed by the Council.

Sec. 15. Approval of agreements. An agreement with a labor organization as the exclusive representative of employees in a unit is subject to the approval of the head of the agency or an official designated by him. An agreement shall be approved if it conforms to applicable laws,

existing published agency policies and regulations (unless the agency has granted an exception to a policy or regulation) and regulations of other appropriate authorities. A local agreement subject to a national or other controlling agreement at a higher level shall be approved under the procedures of the controlling agreement, or, if none, under agency regulations.

## NEGOTIATION DISPUTES AND IMPASSES

Sec. 16. Negotiation disputes. The Federal Mediation and Conciliation Service shall provide services and assistance to Federal agencies and labor organizations in the resolution of negotiation disputes. The Service shall determine under what circumstances and in what manner it shall proffer its services.

Sec. 17. Negotiation impasses. When voluntary arrangements, including the services of the Federal Mediation and Conciliation Service or other third-party mediation, fail to resolve a negotiation impasse, either party may request the Federal Service Impasses Panel to consider the matter. The Panel, in its discretion and under the regulations it prescribes, may consider the matter and may recommend procedures to the parties for the resolution of the impasse or may settle the impasse by appropriate action. Arbitration or third-party fact finding with recommendations to assist in the resolution of an impasse may be used by the parties only when authorized or directed by the Panel.

## CONDUCT OF LABOR ORGANIZATIONS AND MANAGEMENT

Sec. 18. Standards of conduct for labor organizations.

(a) An agency shall accord recognition only to a labor organization that is free from corrupt influences and influences opposed to basic democratic principles. Except as provided in paragraph (b) of this section, an organization is not required to prove that it has the required freedom when it is subject to governing requirements adopted by the organization or by a national or international labor organization or federation of labor organizations with which it is affiliated or in which it participates, containing explicit and detailed provisions to which it subscribes calling for --

(1) the maintenance of democratic procedures and practices, including provisions for periodic elections to be conducted subject to recognized safeguards and provisions defining and securing the right of individual members to participation in the affairs of the organization, to fair and equal treatment under the governing rules of the organization, and to fair process in disciplinary proceedings;

(2) the exclusion from office in the organization of persons affiliated with Communist or other totalitarian movements and persons identified with corrupt influences;

(3) the prohibition of business or financial interests on the part of organization officers and agents which conflict with their duty to the organization and its members; and

(4) the maintenance of fiscal integrity in the conduct of the affairs of the organization, including provision for accounting and financial controls and regular financial reports or summaries to be made available to members.

(b) Notwithstanding the fact that a labor organization has adopted or subscribed to standards of conduct as provided in paragraph (a) of this section, the organization is required to furnish evidence of its freedom from corrupt influences or influences opposed to basic democratic principles when there is reasonable cause to believe that --

(1) the organization has been suspended or expelled from or is subject to other sanction by a parent labor organization or federation of organizations with which it had been affiliated because it has demonstrated an unwillingness or inability to comply with governing requirements comparable in purpose to those required by paragraph (a) of this section; or

(2) the organization is in fact subject to influences that would preclude recognition under this Order.

(c) A labor organization which has or seeks recognition as a representative of employees under this Order shall file financial and other reports, provide for bonding of officials and employees of the organization, and comply with trusteeship and election standards.

(d) The Assistant Secretary shall prescribe the regulations needed to effectuate this section. These regulations shall conform generally to the principles applied to unions in the private sector. Complaints of violations of this section shall be filed with the Assistant Secretary.

Sec. 19. Unfair labor practices. (a) Agency management shall not --

(1) interfere with, restrain, or coerce an employee in the exercise of the rights assured by this Order;

(2) encourage or discourage membership in a labor organization by discrimination in regard to hiring, tenure, promotion, or other conditions of employment;

(3) sponsor, control, or otherwise assist a labor organization, except that an agency may furnish customary and routine services and facilities under section 23 of this Order when consistent with the best interests of the agency, its employees, and the organization, and when the services and facilities are furnished, if requested, on an impartial basis to organizations having equivalent status;

(4) discipline or otherwise discriminate against an employee because he has filed a complaint or given testimony under this Order;

(5) refuse to accord appropriate recognition to a labor organization qualified for such recognition; or

(6) refuse to consult, confer, or negotiate with a labor organization as required by this Order.

(b) A labor organization shall not --

(1) interfere with, restrain, or coerce an employee in the exercise of his rights assured by this Order;

(2) attempt to induce agency management to coerce an employee in the exercise of his rights under this Order;

(3) coerce, attempt to coerce, or discipline, fine, or take other economic sanction against a member of the organization as punishment or reprisal for, or for the purpose of hindering or impeding his work performance, his productivity, or the discharge of his duties owed as an officer or employee of the United States;

(4) call or engage in a strike, work stoppage, or slowdown; picket an agency in a labor-management dispute; or condone any such activity by failing to take affirmative action to prevent or stop it;

(5) discriminate against an employee with regard to the terms or conditions of membership because of race, color, creed, sex, age, or national origin; or

(6) refuse to consult, confer, or negotiate with an agency as required by this Order.

(c) A labor organization which is accorded exclusive recognition shall not deny membership to any employee in the appropriate unit except for failure to meet reasonable occupational standards uniformly required for admission, or for failure to tender initiation fees and dues uniformly required as a condition of acquiring and retaining membership. This paragraph does not preclude a labor organization from enforcing discipline in accordance with procedures under its constitution or by-laws which conform to the requirements of this Order.

(d) When the issue in a complaint of an alleged violation of paragraph (a)(1), (2), or (4) of this section is subject to an established grievance or appeals procedure, that procedure is the exclusive procedure for resolving the complaint. All other complaints of alleged violations of this section initiated by an employee, an agency, or a labor organization, that cannot be resolved by the parties, shall be filed with the Assistant Secretary.

## MISCELLANEOUS PROVISIONS

Sec. 20. Use of official time. Solicitation of membership or dues, and other internal business of a labor organization, shall be conducted during the non-duty hours of the employees concerned. Employees who represent a recognized labor organization shall not be on official time when negotiating an agreement with agency management.

Sec. 21. Allotment of dues. (a) When a labor organization holds formal or exclusive recognition, and the agency and the organization agree in writing to this course of action, an agency may deduct the regular and periodic dues of the organization from the pay of members of the organization in the unit of recognition who make a voluntary allotment for that purpose, and shall recover the costs of making the deductions. Such an allotment is subject to the regulations of the Civil Service Commission, which shall include provision for the employee to revoke his authorization at stated six-month intervals. Such an allotment terminates when --

(1) the dues withholding agreement between the agency and the labor organization is terminated or ceases to be applicable to the employee; or

(2) the employee has been suspended or expelled from the labor organization.

(b) An agency may deduct the regular and periodic dues of an association of management officials or supervisors from the pay of members of the association who make a voluntary allotment for that purpose, and shall recover the costs of making the deductions, when the agency and the association agree in writing to this course of action. Such an allotment is subject to the regulations of the Civil Service Commission.

Sec. 22. Adverse action appeals. The head of each agency, in accordance with the provisions of this Order and regulations prescribed by the Civil Service Commission, shall extend to all employees in the competitive civil service rights identical in adverse action cases to those provided preference eligibles under sections 7511-7512 of title 5 of the United States Code. Each employee in the competitive service shall have the right to appeal to the Civil Service Commission from an adverse decision of the administrative officer so acting, such appeal to be processed in an identical manner to that provided for appeals under section 7701 of title 5 of the United States Code. Any recommendation by the Civil Service Commission submitted to the head of an agency on the basis of an appeal by an employee in the competitive service shall be complied with by the head of the agency.

Sec. 23. Agency implementation. No later than April 1, 1970, each agency shall issue appropriate policies and regulations consistent with this Order for its implementation. This includes but is not limited to a clear statement of the rights of its employees under this Order; procedures with respect to recognition of labor organizations, determination of appropriate units, consultation and negotiation with labor organizations, approval of agreements, mediation, and impasse resolution; policies with respect to the use of agency facilities by labor organizations; and policies and practices regarding consultation with other organizations and associations and individual employees. Insofar as practicable, agencies shall consult with representatives of labor organizations in the formulation of these policies and regulations, other than those for the implementation of section 7(e) of this Order.

Sec. 24. Savings clauses. (a) This Order does not preclude --

(1) the renewal or continuation of a lawful agreement between an agency and a representative of its employees entered into before the effective date of Executive Order No. 10988 (January 17, 1962); or

(2) the renewal, continuation, or initial according of recognition for units of management officials or supervisors represented by labor organizations which historically or traditionally represent the management officials or supervisors in private industry and which hold exclusive recognition for units of such officials or supervisors in any agency on the date of this Order.

(b) All grants of informal recognition under Executive Order No. 10988 terminate on July 1, 1970.

(c) All grants of formal recognition under Executive Order No. 10988 terminate under regulations which the Federal Labor Relations Council shall issue before October 1, 1970.

(d) By not later than December 31, 1970, all supervisors shall be excluded from units of formal and exclusive recognition and from coverage by negotiated agreements, except as provided in paragraph (a) of this section.

Sec. 25. Guidance, training, review and information.

(a) The Civil Service Commission shall establish and maintain a program for the guidance of agencies on labor-management relations in the Federal service; provide technical advice and information to agencies; assist in the development of programs for training agency personnel and management officials in labor-management relations; continuously review the operation of the Federal labor-management relations program to assist in assuring adherence to its provisions and merit system requirements; and, from time to time, report to the Council on the state of the program with any recommendations for its improvement.

(b) The Department of Labor and the Civil Service Commission shall develop programs for the collection and dissemination of information appropriate to the needs of agencies, organizations and the public.

Sec. 26. Effective date. This Order is effective on January 1, 1970 except sections 7(f) and 8 which are effective immediately. Effective January 1, 1970, Executive Order No. 10988 and the President's Memorandum of May 21, 1963, entitled Standards of Conduct for Employee Organizations and Code of Fair Labor Practices, are revoked.

RICHARD NIXON

THE WHITE HOUSE

October 29, 1969

# APPENDIX C

## Statistical

## Tables



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Table C-1 (A)
STRIKES AND OTHER WORK STOPPAGES IN GOVERNMENT
BY TYPE OF WORK, 1958-68[1]

| Year | Administration and Protection Services | | | Sanitation Services | | | Public Schools and Libraries | | |
|---|---|---|---|---|---|---|---|---|---|
| | Number of Stoppages | Workers Involved | Man-days Idle During Year | Number of Stoppages | Workers Involved | Man-days Idle During Year | Number of Stoppages | Workers Involved | Man-days Idle During Year |
| 1958 | 3 | 620 | 2,230 | 7 | 950 | 4,890 | | | |
| 1959 | 3 | 130 | 1,560 | 7 | 390 | 1,020 | 4 | 220 | 440 |
| 1960 | 2 | 130 | 760 | 12 | 8,180 | 21,400 | 5 | 10,200 | 17,000 |
| 1961 | 2 | 40 | 1,000 | 12 | 1,390 | 3,550 | 2 | 90 | 180 |
| 1962 | – | – | – | 5 | 850 | 4,100 | 6 | 23,900 | 37,700 |
| 1963 | 2 | 120 | 240 | 8 | 1,760 | 7,720 | 7 | 2,540 | 5,080 |
| 1964 | 1 | 30 | 30 | 5 | 700 | 1,550 | 18 | 17,100 | 40,600 |
| 1965 | 3 | 6,620 | 114,000 | 16 | 1,750 | 8,030 | 9 | 1,930 | 13,800 |
| 1966 | 19 | 9,360 | 50,300 | 36 | 7,500 | 24,700 | 54 | 44,800 | 78,300 |
| 1967 | 24 | 22,200 | 197,000 | 23 | 3,100 | 17,300 | 89 | 96,200 | 983,000 |
| 1968 | 28 | 10,600 | 44,300 | 63 | 27,500 | 200,100 | 112 | 148,000 | 2,193,800 |
| | Publicly Owned Transportation | | | Publicly Owned Utilities | | | Street and Highway Departments | | |
| 1958 | – | – | – | 2 | 40 | 230 | 1 | 10 | 40 |
| 1959 | – | – | – | – | – | – | 6 | 660 | 5,310 |
| 1960 | 2 | 8,340 | 16,100 | 1 | 10 | 10 | 11 | 920 | 2,310 |
| 1961 | 2 | 4,520 | 4,520 | 5 | 350 | 4,690 | 3 | 150 | 1,170 |
| 1962 | 4 | 1,700 | 2,340 | 8 | 3,510 | 33,200 | 4 | 140 | 390 |
| 1963 | – | – | – | 3 | 90 | 580 | 6 | 260 | 1,580 |
| 1964 | 4 | 3,840 | 18,300 | 3 | 380 | 850 | 9 | 560 | 4,250 |
| 1965 | 1 | 180 | 4,620 | 3 | 80 | 230 | 6 | 650 | 3,700 |
| 1966 | 2 | 34,900 | 275,000 | 6 | 130 | 1,510 | 2 | 60 | 210 |
| 1967 | 6 | 1,530 | 5,360 | 5 | 670 | 4,780 | 5 | 1,330 | 3,030 |
| 1968 | 1 | 10 | 30 | 10 | 3,200 | 17,000 | 5 | 100 | 1,000 |
| | Museums, Art Galleries, and Botanical and Zoological Gardens | | | Hospitals and Other Health Services | | | Miscellaneous Services | | |
| 1958 | – | – | – | – | – | – | 2 | 100 | 130 |
| 1959 | 3 | 610 | 1,990 | – | – | – | 2 | 40 | 180 |
| 1960 | 1 | 200 | 200 | – | – | – | 2 | 610 | 610 |
| 1961 | 1 | 60 | 60 | – | – | – | 1 | 10 | 150 |
| 1962 | – | – | – | – | – | – | 1 | 1,070 | 1,430 |
| 1963 | – | – | – | 1 | 10 | 30 | 2 | 80 | 210 |
| 1964 | – | – | – | – | – | – | 1 | 140 | 5,290 |
| 1965 | 1 | 250 | 500 | 1 | 160 | 1,120 | 2 | 250 | 250 |
| 1966 | – | – | – | 17 | 7,760 | 23,400 | 6 | 520 | 1,420 |
| 1967 | – | – | – | 19 | 1,200 | 26,800 | 10 | 5,470 | 8,860 |
| 1968 | 2 | 100 | 1,100 | 21 | 11,000 | 83,500 | 12 | 1,400 | 4,200 |

[1] Includes stoppages lasting a full day or shift or longer and involving 6 workers or more.

[2] "Hospitals and other health services" were included in "miscellaneous services," 1958-1962.

NOTE: Data on stoppages and workers involved refer to stoppages beginning in the year; man-days idle refer to all stoppages in effect during the year. Because of rounding, sums of individual items may not equal totals.

Source: Monthly Labor Review, Vol. 91, No. 7, July 1968, p. 53; 1968 data provided by the Bureau of Labor Statistics, U.S. Department of Labor.

TABLE C-1 (B) (Continued)
Work Stoppages in Government, by State, 1958-68[1]

| Year and State | Stoppages Beginning in Year | | Man-days Idle During Year (All Stoppages) |
|---|---|---|---|
| | Number | Workers Involved | |
| 1958 | | | |
| Alabama | 1 | 20 | 90 |
| California | 1 | 30 | 60 |
| Connecticut | 1 | 250 | 500 |
| Indiana | 2 | 730 | 3,930 |
| Maryland | 1 | 30 | 30 |
| Massachusetts | 1 | 10 | 40 |
| Missouri | 2 | 70 | 500 |
| New Hampshire | 1 | 70 | 70 |
| New York | 2 | 450 | 2,040 |
| Ohio | 1 | 30 | 30 |
| Utah | 1 | 10 | 10 |
| Washington | 1 | 30 | 220 |
| 1959 | | | |
| Alabama | 1 | 70 | 3,380 |
| Connecticut | 2 | 120 | 1,480 |
| Illinois | 2 | 60 | 120 |
| Indiana | 4 | 270 | 690 |
| Iowa | 1 | [2] | 10 |
| Kentucky | 1 | 40 | 180 |
| Louisiana | 1 | 20 | 20 |
| Missouri | 3 | 110 | 310 |
| New Jersey | 2 | 400 | 1,490 |
| New York | 2 | 550 | 1,810 |
| North Carolina | 1 | 130 | 260 |
| Ohio | 2 | 40 | 120 |
| Pennsylvania | 2 | 200 | 450 |
| Washington | 2 | 40 | 180 |
| 1960 | | | |
| Alabama | 1 | 250 | 750 |
| Alaska | 1 | 20 | 20 |
| California | 1 | 3,890 | 11,700 |
| Delaware | 1 | 10 | 10 |
| Florida | 1 | 10 | 10 |
| Georgia | 1 | 170 | 170 |
| Illinois | 6 | 660 | 1,580 |
| Iowa | 1 | 40 | 2,280 |
| Maryland | 1 | 240 | 720 |
| Massachusetts | 1 | 4,450 | 4,450 |
| Missouri | 3 | 6,280 | 14,800 |
| Montana | 1 | 10 | 10 |
| New Jersey | 3 | 290 | 2,850 |
| New York | 4 | 10,500 | 15,400 |
| North Carolina | 2 | 240 | 240 |
| Ohio | 2 | 420 | 1,220 |
| Pennsylvania | 4 | 410 | 610 |
| South Carolina | 1 | 190 | 190 |
| West Virginia | 1 | 20 | 20 |
| Wisconsin | 2 | 420 | 1,490 |
| 1961 | | | |
| Alaska | 1 | 150 | 2,520 |
| California | 2 | 140 | 180 |
| 1961 Continued | | | |
| Delaware | 1 | 20 | 20 |
| Florida | 1 | 420 | 1,270 |
| Illinois | 4 | 110 | 880 |
| Indiana | 1 | 80 | 680 |
| Iowa | 1 | 10 | 150 |
| Massachusetts | 1 | 4,400 | 4,400 |
| Missouri | 1 | 60 | 60 |
| New Hampshire | 1 | 80 | 170 |
| New Jersey | 4 | 610 | 1,010 |
| New York | 2 | 160 | 930 |
| North Carolina | 3 | 140 | 350 |
| Ohio | 1 | 10 | 20 |
| Pennsylvania | 1 | 60 | 550 |
| Tennessee | 1 | 150 | 2,100 |
| Utah | 1 | 10 | 30 |
| Washington | 1 | 20 | 20 |
| 1962 | | | |
| Alabama | 1 | 10 | 10 |
| California | 2 | 310 | 670 |
| Connecticut | 1 | 20 | 60 |
| Illinois | 3 | 140 | 310 |
| Kentucky | 5 | 3,150 | 33,600 |
| Massachusetts | 1 | 1,600 | 2,200 |
| Minnesota | 1 | 20 | 20 |
| Missouri | 3 | 420 | 1,870 |
| New Jersey | 1 | 60 | 60 |
| New York | 2 | 23,800 | 36,400 |
| North Carolina | 1 | 10 | 130 |
| Ohio | 1 | 20 | 20 |
| Texas | 3 | 460 | 2,170 |
| West Virginia | 2 | 1,100 | 1,580 |
| Wisconsin | 1 | 20 | 80 |
| 1963 | | | |
| Arkansas | 1 | 200 | 2,000 |
| California | 2 | 90 | 170 |
| Colorado | 1 | 10 | 20 |
| Connecticut | 1 | 50 | 190 |
| Georgia | 3 | 170 | 300 |
| Illinois | 4 | 140 | 1,530 |
| Indiana | 3 | 2,370 | 3,290 |
| Michigan | 1 | 30 | 240 |
| Missouri | 1 | 100 | 400 |
| New York | 2 | 160 | 310 |
| Ohio | 2 | 50 | 160 |
| Pennsylvania | 2 | 30 | 60 |
| Tennessee | 1 | 10 | 20 |
| Texas | 2 | 490 | 1,880 |
| Virginia | 1 | 50 | 140 |
| West Virginia | 1 | 20 | 20 |
| Wisconsin | 1 | 860 | 4,700 |

TABLE C-1 (B) (Continued)
Work Stoppages in Government, by State, 1958-68[1]

| Year and State | Stoppages Beginning in Year | | Man-days Idle During Year (All Stoppages) |
|---|---|---|---|
| | Number | Workers Involved | |
| 1964 | | | |
| California | 3 | 3,750 | 17,900 |
| Connecticut | 1 | 140 | 280 |
| Georgia | 1 | 30 | 150 |
| Illinois | 7 | 1,680 | 11,400 |
| Indiana | 2 | 160 | 5,310 |
| Kentucky | 3 | 1,950 | 3,340 |
| Mississippi | 1 | 30 | 30 |
| Missouri | 3 | 380 | 850 |
| New Hampshire | 1 | 90 | 470 |
| New Jersey | 3 | 810 | 1,130 |
| New York | 4 | 2,490 | 5,490 |
| North Dakota | 1 | 40 | 130 |
| Ohio | 2 | 100 | 240 |
| Rhode Island | 1 | 360 | 2,490 |
| Texas | 2 | 260 | 520 |
| Utah | 1 | 10,000 | 20,000 |
| Virginia | 2 | 220 | 350 |
| West Virginia | 1 | 110 | 110 |
| Wisconsin | 2 | 140 | 610 |
| 1965 | | | |
| Alaska | 1 | 10 | 40 |
| California | 2 | 300 | 680 |
| Florida | 3 | 680 | 2,550 |
| Georgia | 1 | 10 | 40 |
| Illinois | 3 | 190 | 1,910 |
| Indiana | 2 | 330 | 1,350 |
| Kentucky | 2 | 140 | 3,750 |
| Louisiana | 3 | 510 | 990 |
| Maryland | 1 | 140 | 710 |
| Michigan | 1 | 120 | 480 |
| Missouri | 2 | 140 | 460 |
| New Jersey | 5 | 1,080 | 3,010 |
| New York | 4 | 6,820 | 118,000 |
| North Carolina | 1 | 150 | 5,400 |
| North Dakota | 1 | 80 | 320 |
| Ohio | 1 | 10 | 40 |
| Oklahoma | 1 | 20 | 80 |
| Rhode Island | 2 | 380 | 3,940 |
| Tennessee | 1 | 20 | 140 |
| Texas | – | – | [3]20 |
| West Virginia | 3 | 450 | 1,560 |
| Wisconsin | 2 | 290 | 300 |
| 1966 | | | |
| Alabama | 1 | 50 | 200 |
| Arizona | 1 | 120 | 2,160 |
| California | 18 | 5,790 | 27,500 |
| Colorado | 1 | 100 | 200 |
| Connecticut | 2 | 130 | 250 |
| Florida | 2 | 260 | 1,540 |
| Georgia | 6 | 1,570 | 9,650 |
| Idaho | 1 | 230 | 230 |
| Illinois | 11 | 4,170 | 17,300 |
| Indiana | 2 | 120 | 960 |
| 1966 Continued | | | |
| Iowa | 1 | 30 | 60 |
| Kansas | 2 | 30 | 90 |
| Kentucky | 5 | 25,800 | 26,400 |
| Louisiana | 2 | 390 | 1,140 |
| Michigan | 27 | 8,110 | 28,900 |
| Minnesota | 1 | 50 | 150 |
| Missouri | 4 | 1,420 | 2,040 |
| Montana | 1 | 60 | 60 |
| New Jersey | 5 | 2,280 | 4,210 |
| New Mexico | 1 | 240 | 520 |
| New York | 15 | 41,000 | 294,000 |
| North Carolina | 3 | 270 | 7,160 |
| Ohio | 15 | 5,420 | 17,100 |
| Oklahoma | 1 | 3,420 | 3,420 |
| Pennsylvania | 4 | 1,110 | 1,900 |
| Rhode Island | 1 | 690 | 690 |
| Texas | 3 | 660 | 790 |
| West Virginia | 3 | 590 | 1,230 |
| Wisconsin | 3 | 1,430 | 5,110 |
| 1967 | | | |
| Alabama | 5 | 280 | 4,040 |
| Arkansas | 1 | 100 | 1,570 |
| California | 8 | 1,190 | 25,700 |
| Connecticut | 1 | 10 | 30 |
| Delaware | 1 | 180 | 180 |
| Washington, D.C. | 1 | 20 | 20 |
| Florida | 6 | 4,720 | 25,000 |
| Georgia | 2 | 460 | 3,090 |
| Idaho | 1 | 510 | 510 |
| Illinois | 18 | 4,810 | 57,800 |
| Indiana | 4 | 2,360 | 4,420 |
| Iowa | 1 | 860 | 4,430 |
| Kentucky | 4 | 1,130 | 13,100 |
| Louisiana | 1 | 400 | 2,400 |
| Maine | 1 | 20 | 20 |
| Maryland | 2 | 1,350 | 2,480 |
| Massachusetts | 5 | 960 | 1,300 |
| Michigan | 34 | 28,900 | 242,000 |
| Missouri | 6 | 260 | 900 |
| New Hampshire | 1 | 130 | 130 |
| New Jersey | 8 | 2,930 | 9,750 |
| New Mexico | 1 | 20 | 20 |
| New York | 15 | 64,700 | 794,000 |
| North Carolina | 2 | 40 | 140 |
| Ohio | 28 | 5,940 | 32,900 |
| Oregon | 1 | 20 | 70 |
| Pennsylvania | 10 | 8,190 | 12,800 |
| Rhode Island | 1 | 50 | 50 |
| Texas | 2 | 320 | 2,120 |
| Utah | 1 | 20 | 640 |
| Virginia | 2 | 190 | 3,260 |
| West Virginia | 2 | 30 | 50 |
| Wisconsin | 5 | 600 | 1,050 |

TABLE C-1 (B) (Continued)
Work Stoppages in Government, by State, 1958-68[1]

| Year and State | Stoppages Beginning in Year | | Man-days Idle During Year (All Stoppages) |
|---|---|---|---|
| | Number | Workers Involved | |
| 1968 | | | |
| Alabama | 2 | 1,550 | 9,610 |
| Arkansas | 2 | 290 | 3,700 |
| California | 18 | 5,590 | 13,900 |
| Connecticut | 14 | 4,030 | 12,500 |
| Delaware | 1 | 210 | 410 |
| District of Columbia | 3 | 8,450 | 8,660 |
| Florida | 6 | 27,200 | 354,000 |
| Georgia | 2 | 950 | 6,550 |
| Illinois | 22 | 10,400 | 57,900 |
| Indiana | 9 | 1,520 | 14,900 |
| Iowa | 3 | 180 | 520 |
| Kansas | 2 | 70 | 270 |
| Kentucky | 2 | 90 | 410 |
| Louisiana | 4 | 1,140 | 4,540 |
| Maryland | 3 | 4,980 | 22,200 |
| Massachusetts | 4 | 860 | 1,490 |
| Michigan | 42 | 9,570 | 69,000 |
| Mississippi | 2 | 170 | 1,370 |
| Missouri | 6 | 940 | 6,390 |
| Montana | 1 | 10 | 150 |
| New Hampshire | 3 | 690 | 880 |
| New Jersey | 10 | 3,310 | 7,800 |
| New Mexico | 1 | 3,380 | 16,000 |
| New York | 23 | 68,100 | 1,760,000 |
| North Carolina | 4 | 610 | 2,320 |
| Ohio | 24 | 6,080 | 19,400 |
| Oklahoma | 1 | 13,500 | 13,500 |
| Pennsylvania | 13 | 21,700 | 30,400 |
| Rhode Island | 4 | 560 | 2,870 |
| South Dakota | 1 | 440 | 3,970 |
| Tennessee | 7 | 3,090 | 90,500 |
| Texas | 1 | 480 | 2,320 |
| Utah | 1 | 200 | 1,800 |
| Washington | 1 | 540 | 2,140 |
| West Virginia | 7 | 480 | 3,030 |
| Wisconsin | 2 | 430 | 3,800 |

Source: U.S. Department of Labor, Bureau of Labor Statistics.
[1] Stoppages extending across State lines have been counted in each State affected; workers and man-days idle were allocated among the States.
[2] Interstate stoppage involving fewer than 5 workers in Iowa.
[3] Idleness in 1965 resulting from a stoppage that began in 1964.

Data on stoppages and workers involved refer to stoppages beginning in the year; man-days idle refer to all stoppages in effect during the year. Because of rounding, sums of individual items may not equal totals.

Table C-2
RESPONSES TO 1968 AND 1969 QUESTIONNAIRE SURVEYS, BY POPULATION GROUP, GEOGRAPHIC REGION, CITY TYPE, AND FORM OF GOVERNMENT

| Distribution | Number of Cities Surveyed | Number of Cities Responding | | Percent Response | |
|---|---|---|---|---|---|
| | | Survey #1* | Survey #2** | Survey #1* | Survey #2** |
| Total, all cities | 2,072 | 1,532 | 1,358 | 74 | 66 |
| Population group | | | | | |
| Over 500,000 | 27 | 23 | 26 | 85 | 96 |
| 250,000-500,000 | 27 | 24 | 25 | 89 | 93 |
| 100,000-250,000 | 96 | 78 | 77 | 81 | 80 |
| 50,000-100,000 | 232 | 194 | 167 | 84 | 72 |
| 25,000- 50,000 | 477 | 365 | 319 | 77 | 67 |
| 10,000- 25,000 | 1,213 | 848 | 744 | 70 | 61 |
| Geographic region | | | | | |
| Northeast | 593 | 370 | 313 | 62 | 53 |
| North Central | 615 | 487 | 430 | 79 | 70 |
| South | 522 | 372 | 314 | 71 | 60 |
| West | 342 | 303 | 301 | 89 | 88 |
| City type | | | | | |
| Central | 290 | 239 | 225 | 82 | 78 |
| Suburban | 1,030 | 757 | 675 | 73 | 66 |
| Independent | 752 | 536 | 458 | 71 | 61 |
| Form of government | | | | | |
| Mayor-council | 868 | 540 | 452 | 62 | 52 |
| Council-manager | 998 | 887 | 833 | 89 | 83 |
| Commission | 132 | 69 | 49 | 52 | 37 |
| Town meeting | 44 | 23 | 14 | 52 | 32 |
| Representative town meeting | 30 | 13 | 10 | 43 | 33 |

*1968 ICMA questionnaire on "Employee Organizations."
**1969 ACIR-ICMA questionnaire on "Public Employee-Employer Relations in Local Governments."

Table C-3
POLICE PROTECTION EMPLOYEES REPRESENTED BY UNIONS OR ASSOCIATION

| Distribution | Number of Cities Reporting (A) | Total Number of Police Protection Employees | Number of Employees Represented | Percent of Employees Represented | Cities with: 0% Represented % of (A) | 1-24% Represented % of (A) | 25-49% Represented % of (A) | 50-74% Represented % of (A) | 75-89% Represented % of (A) | 90-99% Represented % of (A) | 100% Represented % of (A) |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Total, all cities | 1,500 | 185,810 | 136,007 | 73 | 45 | 1 | 3 | 8 | 11 | 13 | 19 |
| Population group | | | | | | | | | | | |
| Over 500,000 | 23 | 85,220 | 74,512 | 87 | 9 | 0 | 4 | 26 | 13 | 26 | 22 |
| 250,000-500,000 | 23 | 15,921 | 13,115 | 82 | 9 | 0 | 0 | 13 | 26 | 9 | 43 |
| 100,000-250,000 | 77 | 21,436 | 13,572 | 63 | 25 | 1 | 4 | 12 | 18 | 22 | 18 |
| 50,000-100,000 | 190 | 22,210 | 15,379 | 69 | 22 | 1 | 0 | 13 | 14 | 27 | 23 |
| 25,000- 50,000 | 360 | 20,232 | 11,641 | 58 | 35 | 1 | 4 | 8 | 13 | 15 | 24 |
| 10,000- 25,000 | 827 | 20,791 | 7,788 | 37 | 58 | 1 | 2 | 6 | 9 | 8 | 16 |
| Geographic region | | | | | | | | | | | |
| Northeast | 362 | 72,561 | 66,764 | 92 | 26 | 1 | 2 | 8 | 12 | 18 | 33 |
| North Central | 485 | 39,599 | 27,591 | 70 | 45 | . . . [1] | 1 | 9 | 14 | 15 | 16 |
| South | 371 | 40,392 | 16,932 | 42 | 70 | 1 | 3 | 6 | 7 | 4 | 9 |
| West | 282 | 33,258 | 24,720 | 74 | 37 | 1 | 4 | 11 | 12 | 16 | 19 |
| City type | | | | | | | | | | | |
| Central | 237 | 132,926 | 107,272 | 81 | 25 | 1 | 2 | 13 | 17 | 21 | 21 |
| Suburban | 727 | 33,930 | 21,626 | 64 | 40 | 1 | 3 | 8 | 11 | 16 | 21 |
| Independent | 536 | 18,954 | 7,109 | 38 | 59 | . . . [1] | 3 | 6 | 9 | 6 | 17 |
| Form of government | | | | | | | | | | | |
| Mayor-council | 534 | 117,088 | 96,505 | 82 | 38 | 1 | 2 | 9 | 10 | 14 | 26 |
| Council-manager | 863 | 62,295 | 35,406 | 57 | 49 | 1 | 2 | 8 | 13 | 12 | 15 |
| Commission | 68 | 5,092 | 3,293 | 65 | 41 | 1 | 3 | 12 | 9 | 9 | 25 |
| Town meeting | 22 | 614 | 370 | 60 | 45 | 0 | 5 | 9 | 5 | 36 | 0 |
| Representative town meeting | 13 | 721 | 433 | 60 | 46 | 0 | 8 | 8 | 0 | 38 | 0 |

Table C-4
FIRE PROTECTION EMPLOYEES REPRESENTED BY UNIONS OR ASSOCIATIONS

| Distribution | Number of Cities Reporting (A) | Total Number of Fire Protection Employees | Cities with: | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | Number of Employees Represented | Percent of Employees Represented | 0% Represented % of (A) | 1-24% Represented % of (A) | 25-49% Represented % of (A) | 50-74% Represented % of (A) | 75-89% Represented % of (A) | 90-99% Represented % of (A) | 100% Represented % of (A) |
| Total, all cities | 1,317 | 125,673 | 102,897 | 82 | 41 | 1 | 1 | 4 | 8 | 22 | 23 |
| Population group | | | | | | | | | | | |
| Over 500,000 | 23 | 42,931 | 41,555 | 97 | 0 | 0 | 0 | 4 | 13 | 48 | 35 |
| 250,000-500,000 | 24 | 13,488 | 12,558 | 93 | 4 | 0 | 0 | 0 | 13 | 50 | 33 |
| 100,000-250,000 | 77 | 19,081 | 14,998 | 79 | 20 | 0 | 3 | 5 | 5 | 45 | 22 |
| 50,000-100,000 | 184 | 19,568 | 15,760 | 81 | 17 | 1 | 0 | 6 | 10 | 37 | 29 |
| 25,000- 50,000 | 321 | 17,011 | 12,131 | 71 | 27 | 1 | 1 | 2 | 11 | 29 | 29 |
| 10,000- 25,000 | 688 | 13,594 | 5,895 | 43 | 58 | 1 | 2 | 4 | 6 | 11 | 18 |
| Geographic region | | | | | | | | | | | |
| Northeast | 264 | 41,354 | 38,755 | 94 | 30 | 0 | 1 | 2 | 6 | 29 | 32 |
| North Central | 432 | 29,196 | 24,341 | 83 | 37 | 1 | 1 | 3 | 11 | 25 | 22 |
| South | 354 | 30,922 | 18,761 | 61 | 66 | ...[1] | 2 | 4 | 4 | 12 | 12 |
| West | 267 | 24,201 | 21,040 | 87 | 24 | 1 | 1 | 7 | 12 | 25 | 30 |
| City type | | | | | | | | | | | |
| Central | 238 | 86,047 | 76,849 | 89 | 17 | ...[1] | 1 | 6 | 8 | 43 | 25 |
| Suburban | 573 | 24,092 | 17,852 | 74 | 39 | 1 | 1 | 3 | 8 | 22 | 26 |
| Independent | 506 | 15,534 | 8,196 | 53 | 53 | 1 | 2 | 3 | 9 | 13 | 19 |
| Form of government | | | | | | | | | | | |
| Mayor-council | 456 | 70,315 | 63,536 | 90 | 38 | ...[1] | 1 | 2 | 8 | 22 | 29 |
| Council-manager | 768 | 49,808 | 34,632 | 70 | 43 | 1 | 1 | 5 | 8 | 23 | 19 |
| Commission | 63 | 4,439 | 3,896 | 88 | 35 | 2 | 2 | 2 | 11 | 17 | 31 |
| Town meeting | 18 | 467 | 295 | 63 | 60 | 0 | 0 | 6 | 6 | 22 | 6 |
| Representative town meeting | 12 | 644 | 538 | 84 | 17 | 0 | 8 | 0 | 8 | 59 | 8 |

[1] Less than ½ of one percent.

Table C-5
PUBLIC WORKS EMPLOYEES REPRESENTED BY UNIONS OR ASSOCIATIONS

| Distribution | Number of Cities Reporting (A) | Total Number of Public Works Employees | Number of Employees Represented | Percent of Employees Represented | Cities with: | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | 0% Represented % of (A) | 1-24% Represented % of (A) | 25-49% Represented % of (A) | 50-74% Represented % of (A) | 75-89% Represented % of (A) | 90-99% Represented % of (A) | 100% Represented % of (A) |
| Total, all cities | 1,430 | 169,362 | 85,919 | 51 | 57 | 1 | 3 | 9 | 13 | 9 | 8 |
| *Population group* | | | | | | | | | | | |
| Over 500,000 | 22 | 50,433 | 34,852 | 69 | 9 | 0 | 27 | 18 | 36 | 5 | 5 |
| 250,000-500,000 | 21 | 19,714 | 10,530 | 53 | 24 | 5 | 5 | 24 | 9 | 14 | 19 |
| 100,000-250,000 | 75 | 27,914 | 10,984 | 39 | 35 | 7 | 9 | 22 | 9 | 11 | 7 |
| 50,000-100,000 | 186 | 25,500 | 13,350 | 52 | 36 | 3 | 5 | 11 | 18 | 16 | 11 |
| 25,000- 50,000 | 337 | 23,132 | 10,333 | 45 | 45 | 1 | 3 | 11 | 18 | 11 | 11 |
| 10,000- 25,000 | 789 | 22,669 | 5,870 | 26 | 71 | 1 | 2 | 5 | 8 | 6 | 7 |
| Geographic region | | | | | | | | | | | |
| Northeast | 354 | 37,846 | 26,062 | 69 | 48 | 1 | 2 | 9 | 15 | 13 | 12 |
| North Central | 440 | 38,154 | 24,801 | 65 | 52 | 1 | 2 | 9 | 17 | 11 | 8 |
| South | 350 | 55,958 | 12,543 | 22 | 86 | 1 | 4 | 4 | 2 | 1 | 2 |
| West | 286 | 37,404 | 22,513 | 60 | 41 | 3 | 5 | 13 | 15 | 10 | 13 |
| City type | | | | | | | | | | | |
| Central | 230 | 111,448 | 61,702 | 55 | 39 | 4 | 8 | 17 | 14 | 10 | 8 |
| Suburban | 710 | 34,089 | 17,780 | 52 | 53 | 1 | 3 | 8 | 15 | 10 | 10 |
| Independent | 490 | 23,825 | 6,437 | 27 | 72 | ...[1] | 2 | 5 | 9 | 6 | 6 |
| Form of government | | | | | | | | | | | |
| Mayor-council | 477 | 84,697 | 52,981 | 63 | 55 | ...[1] | 3 | 8 | 14 | 11 | 9 |
| Council-manager | 857 | 77,183 | 29,876 | 39 | 59 | 2 | 3 | 9 | 11 | 8 | 8 |
| Commission | 60 | 5,750 | 1,869 | 33 | 58 | 7 | 7 | 7 | 8 | 3 | 10 |
| Town meeting | 23 | 844 | 518 | 61 | 39 | 0 | 0 | 9 | 26 | 17 | 9 |
| Representative town meeting | 13 | 888 | 675 | 76 | 39 | 0 | 0 | 8 | 23 | 15 | 15 |

[1] Less than ½ of one percent.

Table C-6
PUBLIC UTILITIES EMPLOYEES REPRESENTED BY UNIONS OR ASSOCIATIONS

| Distribution | Number of Cities Reporting (A) | Total Number of Public Utilities Employees | Number of Employees Represented | Percent of Employees Represented | Cities with: | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | 0% Represented % of (A) | 1-24% Represented % of (A) | 25-49% Represented % of (A) | 50-74% Represented % of (A) | 75-89% Represented % of (A) | 90-99% Represented % of (A) | 100% Represented % of (A) |
| Total, all cities | 882 | 131,113 | 72,718 | 55 | 63 | 2 | 4 | 10 | 9 | 5 | 7 |
| Population group | | | | | | | | | | | |
| Over 500,000 | 15 | 77,797 | 54,597 | 70 | 13 | 7 | 27 | 13 | 13 | 27 | 0 |
| 250,000-500,000 | 17 | 5,544 | 3,362 | 61 | 23 | 0 | 6 | 35 | 12 | 12 | 12 |
| 100,000-250,000 | 57 | 14,787 | 6,359 | 43 | 38 | 4 | 14 | 18 | 12 | 9 | 5 |
| 50,000-100,000 | 101 | 10,559 | 3,503 | 33 | 41 | 4 | 5 | 14 | 12 | 16 | 8 |
| 25,000- 50,000 | 201 | 9,754 | 2,824 | 29 | 52 | 3 | 5 | 11 | 15 | 6 | 8 |
| 10,000- 25,000 | 491 | 12,672 | 2,073 | 16 | 77 | 1 | 2 | 7 | 5 | 2 | 6 |
| Geographic region | | | | | | | | | | | |
| Northeast | 127 | 45,744 | 42,799 | 94 | 49 | 3 | 3 | 7 | 14 | 10 | 14 |
| North Central | 311 | 23,598 | 12,171 | 52 | 52 | 2 | 5 | 16 | 12 | 7 | 6 |
| South | 290 | 28,975 | 6,578 | 23 | 90 | 2 | 2 | 2 | 2 | . . .[1] | 2 |
| West | 154 | 32,796 | 11,170 | 34 | 45 | 2 | 7 | 14 | 12 | 9 | 11 |
| City type | | | | | | | | | | | |
| Central | 158 | 105,066 | 65,775 | 63 | 41 | 4 | 11 | 20 | 10 | 10 | 4 |
| Suburban | 339 | 10,694 | 4,132 | 39 | 58 | 2 | 4 | 7 | 11 | 7 | 11 |
| Independent | 385 | 15,353 | 2,811 | 18 | 76 | 1 | 2 | 7 | 7 | 3 | 4 |
| Form of government | | | | | | | | | | | |
| Mayor-council | 278 | 90,718 | 60,663 | 67 | 58 | 3 | 4 | 11 | 10 | 6 | 8 |
| Council-manager | 552 | 36,399 | 10,631 | 29 | 66 | 1 | 4 | 9 | 9 | 5 | 6 |
| Commission | 44 | 3,809 | 1,327 | 35 | 57 | 5 | 11 | 11 | 6 | 5 | 5 |
| Town meeting | 6 | 77 | 26 | 34 | 50 | 17 | 17 | 0 | 0 | 0 | 16 |
| Representative town meeting | 2 | 110 | 71 | 65 | 50 | 0 | 0 | 50 | 0 | 0 | 0 |

[1] Less than ½ of one percent.

Table C-7

PUBLIC HEALTH AND HOSPITAL EMPLOYEES REPRESENTED BY UNIONS OR ASSOCIATIONS

| Distribution | Number of Cities Reporting (A) | Total Number of Public Health and Hospital Employees | Number of Employees Represented | Percent of Employees Represented | Cities with: | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | 0% Represented % of (A) | 1-24% Represented % of (A) | 25-49% Represented % of (A) | 50-74% Represented % of (A) | 75-89% Represented % of (A) | 90-99% Represented % of (A) | 100% Represented % of (A) |
| Total, all cities | 513 | 84,286 | 48,098 | 57 | 77 | 4 | 4 | 4 | 3 | 3 | 5 |
| Population group | | | | | | | | | | | |
| Over 500,000 | 16 | 54,854 | 38,396 | 70 | 25 | 6 | 37 | 6 | 13 | 13 | 0 |
| 250,000-500,000 | 17 | 5,083 | 1,907 | 38 | 40 | 0 | 18 | 0 | 12 | 12 | 18 |
| 100,000-250,000 | 44 | 8,978 | 4,282 | 48 | 41 | 14 | 9 | 18 | 5 | 2 | 11 |
| 50,000-100,000 | 85 | 3,364 | 771 | 23 | 72 | 7 | 5 | 3 | 5 | 3 | 5 |
| 25,000- 50,000 | 130 | 6,662 | 1,556 | 23 | 81 | 2 | 1 | 5 | 2 | 2 | 7 |
| 10,000- 25,000 | 221 | 5,345 | 646 | 12 | 91 | 1 | 1 | 2 | 0 | 1 | 4 |
| Geographic region | | | | | | | | | | | |
| Northeast | 195 | 41,041 | 32,356 | 79 | 70 | 3 | 3 | 6 | 3 | 4 | 11 |
| North Central | 167 | 20,114 | 8,186 | 41 | 80 | 4 | 5 | 3 | 2 | 2 | 4 |
| South | 116 | 15,442 | 2,775 | 18 | 92 | 1 | 4 | 2 | 0 | 0 | 1 |
| West | 35 | 7,689 | 4,781 | 62 | 57 | 11 | 9 | 9 | 9 | 5 | 0 |
| City type | | | | | | | | | | | |
| Central | 119 | 69,792 | 45,281 | 65 | 50 | 9 | 12 | 9 | 7 | 5 | 8 |
| Suburban | 200 | 7,702 | 1,475 | 19 | 84 | 3 | 2 | 2 | 2 | 2 | 5 |
| Independent | 194 | 6,792 | 1,342 | 20 | 86 | 1 | 2 | 3 | 1 | 2 | 5 |
| Form of government | | | | | | | | | | | |
| Mayor-council | 223 | 68,004 | 43,020 | 63 | 71 | 2 | 5 | 6 | 3 | 4 | 9 |
| Council-manager | 240 | 13,498 | 4,200 | 31 | 81 | 4 | 4 | 3 | 3 | 1 | 4 |
| Commission | 28 | 2,200 | 760 | 35 | 82 | 10 | 0 | 4 | 0 | 0 | 4 |
| Town meeting | 11 | 62 | 0 | 0 | 100 | 0 | 0 | 0 | 0 | 0 | 0 |
| Representative town meeting | 11 | 522 | 118 | 23 | 82 | 0 | 9 | 0 | 0 | 9 | 0 |

Table C-8

PARKS AND RECREATION EMPLOYEES REPRESENTED BY UNIONS OR ASSOCIATIONS

| Distribution | Number of Cities Reporting (A) | Total Number of Parks and Recreation Employees | Number of Employees Represented | Percent of Employees Represented | Cities with: 0% Represented % of (A) | 1-24% Represented % of (A) | 25-49% Represented % of (A) | 50-74% Represented % of (A) | 75-89% Represented % of (A) | 90-99% Represented % of (A) | 100% Represented % of (A) |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Total, all cities | 1,220 | 56,617 | 25,942 | 46 | 67 | 3 | 4 | 8 | 8 | 3 | 7 |
| Population group | | | | | | | | | | | |
| Over 500,000 | 20 | 20,300 | 13,309 | 66 | 20 | 15 | 20 | 20 | 15 | 5 | 5 |
| 250,000-500,000 | 20 | 6,794 | 3,869 | 57 | 25 | 0 | 20 | 20 | 15 | 5 | 15 |
| 100,000-250,000 | 74 | 9,988 | 3,300 | 33 | 39 | 8 | 14 | 12 | 12 | 7 | 8 |
| 50,000-100,000 | 172 | 7,771 | 2,968 | 38 | 46 | 5 | 3 | 12 | 16 | 7 | 11 |
| 25,000- 50,000 | 304 | 6,329 | 1,768 | 28 | 57 | 3 | 5 | 11 | 10 | 5 | 9 |
| 10,000- 25,000 | 630 | 5,435 | 728 | 13 | 83 | 1 | 2 | 5 | 4 | ...[1] | 5 |
| Geographic region | | | | | | | | | | | |
| Northeast | 273 | 14,555 | 10,970 | 75 | 61 | 3 | 4 | 10 | 7 | 4 | 11 |
| North Central | 357 | 13,336 | 6,073 | 46 | 64 | 3 | 4 | 9 | 14 | 2 | 4 |
| South | 327 | 14,152 | 1,658 | 12 | 92 | 2 | 2 | 2 | ...[1] | ...[1] | 2 |
| West | 263 | 14,574 | 7,241 | 50 | 46 | 3 | 7 | 12 | 11 | 6 | 15 |
| City type | | | | | | | | | | | |
| Central | 213 | 40,638 | 21,555 | 53 | 46 | 6 | 9 | 14 | 11 | 6 | 8 |
| Suburban | 542 | 9,700 | 3,340 | 34 | 63 | 3 | 3 | 9 | 9 | 4 | 9 |
| Independent | 465 | 6,279 | 1,047 | 17 | 80 | 1 | 3 | 5 | 5 | 1 | 5 |
| Form of government | | | | | | | | | | | |
| Mayor-council | 413 | 29,386 | 17,570 | 60 | 66 | 4 | 3 | 9 | 9 | 3 | 6 |
| Council-manager | 727 | 24,970 | 7,761 | 31 | 66 | 2 | 5 | 8 | 8 | 4 | 8 |
| Commission | 53 | 1,907 | 531 | 28 | 75 | 4 | 4 | 4 | 7 | 0 | 6 |
| Town meeting | 16 | 147 | 56 | 38 | 88 | 0 | 0 | 6 | 0 | 0 | 6 |
| Representative town meeting | 11 | 207 | 24 | 12 | 55 | 9 | 18 | 9 | 9 | 0 | 0 |

[1] Less than ½ of one percent.

Table C-9
PUBLIC WELFARE EMPLOYEES REPRESENTED BY UNIONS OR ASSOCIATIONS

| Distribution | Number of Cities Reporting (A) | Total Number of Public Welfare Employees | Number of Employees Represented | Percent of Employees Represented | Cities with: | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | 0% Represented % of (A) | 1-24% Represented % of (A) | 25-49% Represented % of (A) | 50-74% Represented % of (A) | 75-89% Represented % of (A) | 90-99% Represented % of (A) | 100% Represented % of (A) |
| Total, all cities | 260 | 26,358 | 18,268 | 69 | 77 | 1 | 2 | 7 | 2 | 1 | 10 |
| Population group | | | | | | | | | | | |
| Over 500,000 | 8 | 22,112 | 16,929 | 77 | 38 | 12 | 12 | 12 | 12 | 0 | 12 |
| 250,000-500,000 | 5 | 870 | 436 | 50 | 40 | 0 | 0 | 0 | 20 | 0 | 40 |
| 100,000-250,000 | 26 | 1,347 | 332 | 25 | 57 | 8 | 8 | 8 | 4 | 0 | 15 |
| 50,000-100,000 | 38 | 972 | 366 | 38 | 58 | 0 | 3 | 8 | 5 | 5 | 21 |
| 25,000- 50,000 | 71 | 734 | 193 | 26 | 75 | 0 | 1 | 12 | 1 | 1 | 10 |
| 10,000- 25,000 | 112 | 323 | 12 | 4 | 94 | 0 | 0 | 3 | 0 | 0 | 3 |
| Geographic region | | | | | | | | | | | |
| Northeast | 151 | 16,537 | 15,570 | 94 | 73 | 0 | 2 | 6 | 3 | 2 | 14 |
| North Central | 41 | 825 | 451 | 55 | 69 | 2 | 0 | 20 | 2 | 0 | 7 |
| South | 59 | 7,171 | 1,233 | 17 | 92 | 3 | 3 | 0 | 0 | 0 | 2 |
| West | 9 | 1,825 | 1,014 | 56 | 78 | 0 | 0 | 0 | 11 | 0 | 11 |
| City type | | | | | | | | | | | |
| Central | 57 | 24,771 | 17,816 | 72 | 53 | 5 | 7 | 9 | 9 | 0 | 17 |
| Suburban | 114 | 783 | 307 | 39 | 82 | 0 | 1 | 3 | 0 | 3 | 11 |
| Independent | 89 | 804 | 145 | 18 | 86 | 0 | 0 | 9 | 1 | 0 | 4 |
| Form of government | | | | | | | | | | | |
| Mayor-council | 117 | 23,761 | 17,980 | 76 | 66 | 2 | 3 | 8 | 3 | 3 | 15 |
| Council-manager | 117 | 2,442 | 273 | 11 | 85 | 1 | 2 | 5 | 2 | 0 | 5 |
| Commission | 12 | 78 | 1 | 1 | 92 | 0 | 0 | 0 | 0 | 0 | 8 |
| Town meeting | 9 | 26 | 2 | 8 | 89 | 0 | 0 | 0 | 0 | 0 | 11 |
| Representative town meeting | 5 | 51 | 12 | 24 | 80 | 0 | 0 | 20 | 0 | 0 | 0 |

Table C-10

NON-INSTRUCTIONAL EDUCATION EMPLOYEES REPRESENTED BY UNIONS OR ASSOCIATIONS

| Distribution | Number of Cities Reporting (A) | Total Number of Non-Instructional Education Employees | Number of Employees Represented | Percent of Employees Represented | Cities with: 0% Represented % of (A) | 1-24% Represented % of (A) | 25-49% Represented % of (A) | 50-74% Represented % of (A) | 75-89% Represented % of (A) | 90-99% Represented % of (A) | 100% Represented % of (A) |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Total, all cities | 199 | 68,956 | 40,597 | 59 | 56 | 5 | 5 | 7 | 5 | 10 | 12 |
| Population group | | | | | | | | | | | |
| Over 500,000 | 9 | 39,418 | 28,789 | 73 | 33 | 11 | 11 | 23 | 11 | 11 | 0 |
| 250,000-500,000 | 4 | 2,893 | 2,075 | 72 | 50 | 0 | 0 | 0 | 0 | 0 | 50 |
| 100,000-250,000 | 25 | 14,277 | 5,157 | 36 | 36 | 8 | 8 | 8 | 12 | 12 | 16 |
| 50,000-100,000 | 27 | 3,452 | 2,057 | 60 | 44 | 0 | 4 | 11 | 0 | 26 | 15 |
| 25,000- 50,000 | 42 | 5,072 | 1,455 | 29 | 52 | 10 | 2 | 7 | 5 | 12 | 12 |
| 10,000- 25,000 | 92 | 3,844 | 1,064 | 28 | 70 | 2 | 7 | 4 | 3 | 4 | 10 |
| Geographic region | | | | | | | | | | | |
| Northeast | 109 | 38,703 | 30,445 | 79 | 39 | 5 | 6 | 7 | 7 | 18 | 18 |
| North Central | 32 | 8,155 | 2,701 | 33 | 59 | 9 | 6 | 13 | 0 | 0 | 13 |
| South | 54 | 19,571 | 5,886 | 30 | 87 | 2 | 3 | 2 | 2 | 2 | 2 |
| West | 4 | 2,527 | 1,565 | 62 | 75 | 0 | 0 | 25 | 0 | 0 | 0 |
| City type | | | | | | | | | | | |
| Central | 51 | 55,675 | 35,961 | 65 | 39 | 6 | 6 | 10 | 7 | 16 | 16 |
| Suburban | 84 | 9,236 | 4,015 | 43 | 50 | 5 | 5 | 7 | 5 | 13 | 15 |
| Independent | 64 | 4,045 | 621 | 15 | 79 | 3 | 6 | 5 | 1 | 1 | 5 |
| Form of government | | | | | | | | | | | |
| Mayor-council | 88 | 53,620 | 36,904 | 69 | 42 | 5 | 8 | 10 | 5 | 12 | 18 |
| Council-manager | 83 | 12,956 | 2,769 | 21 | 72 | 4 | 4 | 4 | 4 | 6 | 6 |
| Commission | 3 | 190 | 0 | 0 | 100 | 0 | 0 | 0 | 0 | 0 | 0 |
| Town meeting | 14 | 718 | 225 | 27 | 36 | 7 | 7 | 7 | 14 | 7 | 22 |
| Representative town meeting | 11 | 1,472 | 699 | 47 | 55 | 9 | 0 | 9 | 0 | 27 | 0 |

Table C-11
ALL OTHER EMPLOYEES REPRESENTED BY UNIONS OR ASSOCIATIONS[1]

| Distribution | Number of Cities Reporting (A) | Total Number of All Other Employees | Number of Employees Represented | Percent of Employees Represented | Cities with: 0% Represented % of (A) | 1-24% Represented % of (A) | 25-49% Represented % of (A) | 50-75% Represented % of (A) | 75-89% Represented % of (A) | 90-99% Represented % of (A) | 100% Represented % of (A) |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Total, all cities | 1,529 | 338,374 | 222,534 | 66 | 73 | 5 | 5 | 6 | 5 | 2 | 4 |
| Population group | | | | | | | | | | | |
| Over 500,000 | 23 | 227,640 | 190,467 | 84 | 30 | 26 | 9 | 13 | 13 | 9 | 0 |
| 250,000-500,000 | 24 | 16,642 | 6,985 | 42 | 29 | 17 | 21 | 4 | 8 | 4 | 17 |
| 100,000-250,000 | 78 | 25,065 | 8,811 | 35 | 46 | 12 | 14 | 8 | 10 | 5 | 5 |
| 50,000-100,000 | 192 | 25,280 | 9,115 | 36 | 53 | 9 | 5 | 11 | 9 | 3 | 10 |
| 25,000- 50,000 | 364 | 21,923 | 4,708 | 21 | 69 | 4 | 6 | 7 | 8 | 2 | 4 |
| 10,000- 25,000 | 848 | 21,824 | 2,448 | 11 | 85 | 4 | 3 | 3 | 2 | 1 | 2 |
| Geographic region | | | | | | | | | | | |
| Northeast | 369 | 193,511 | 173,246 | 90 | 68 | 6 | 6 | 6 | 6 | 3 | 5 |
| North Central | 486 | 42,556 | 15,686 | 37 | 79 | 5 | 6 | 5 | 3 | . . .[2] | 2 |
| South | 372 | 62,810 | 15,316 | 24 | 90 | 4 | 2 | 1 | 1 | . . .[2] | 2 |
| West | 302 | 39,497 | 18,286 | 46 | 50 | 7 | 6 | 11 | 13 | 4 | 9 |
| City type | | | | | | | | | | | |
| Central | 237 | 279,142 | 207,166 | 74 | 54 | 12 | 10 | 8 | 7 | 3 | 6 |
| Suburban | 755 | 37,577 | 12,631 | 34 | 73 | 5 | 3 | 7 | 6 | 2 | 4 |
| Independent | 537 | 21,655 | 2,737 | 13 | 82 | 3 | 5 | 3 | 3 | 1 | 3 |
| Form of government | | | | | | | | | | | |
| Mayor-council | 540 | 259,882 | 200,649 | 77 | 74 | 7 | 6 | 5 | 4 | 1 | 3 |
| Council-manager | 885 | 70,744 | 20,031 | 28 | 73 | 4 | 5 | 6 | 6 | 2 | 4 |
| Commission | 68 | 5,500 | 1,155 | 21 | 71 | 12 | 3 | 3 | 4 | 0 | 7 |
| Town meeting | 23 | 1,349 | 438 | 32 | 83 | 4 | 0 | 9 | 0 | 4 | 0 |
| Representative town meeting | 13 | 899 | 261 | 29 | 69 | 8 | 0 | 8 | 15 | 0 | 0 |

[1] Includes all employees not covered in Tables C-3 through C-10.

[2] Less than ½ of one percent.

Table C-12
MEMBERSHIP AFFILIATION OF POLICE PROTECTION EMPLOYEES

| Distribution | Number of Cities Reporting | Number of Cities Reporting Union and/or Association Membership (A) | % of Cities Reporting | Cities with Police Protection Employees Who Belong to: [1] | | | | |
|---|---|---|---|---|---|---|---|---|
| | | | | AFSCME % of (A) | IBT % of (A) | FOP % of (A) | Other % of (A) | Local Associations % of (A) |
| Total, all cities | 1,500 | 848 | 57 | 9 | 2 | 45 | 16 | 41 |
| Population group | | | | | | | | |
| Over 500,000 | 23 | 21 | 91 | 14 | 5 | 48 | 43 | 52 |
| 250,000-500,000 | 23 | 23 | 100 | 17 | 4 | 52 | 22 | 39 |
| 100,000-250,000 | 77 | 56 | 73 | 16 | 0 | 48 | 14 | 39 |
| 50,000-100,000 | 190 | 144 | 76 | 8 | 1 | 44 | 16 | 41 |
| 25,000- 50,000 | 360 | 238 | 66 | 9 | 1 | 40 | 14 | 45 |
| 10,000- 25,000 | 827 | 366 | 44 | 7 | 2 | 47 | 15 | 38 |
| Geographic region | | | | | | | | |
| Northeast | 362 | 265 | 73 | 11 | 1 | 41 | 21 | 37 |
| North Central | 485 | 277 | 57 | 10 | 3 | 59 | 15 | 26 |
| South | 371 | 122 | 33 | 3 | 0 | 75 | 11 | 26 |
| West | 282 | 184 | 65 | 8 | 2 | 10 | 11 | 80 |
| City type | | | | | | | | |
| Central | 237 | 179 | 76 | 14 | 1 | 53 | 21 | 32 |
| Suburban | 727 | 432 | 59 | 6 | 3 | 43 | 14 | 48 |
| Independent | 536 | 237 | 44 | 9 | 1 | 52 | 14 | 34 |
| Form of government | | | | | | | | |
| Mayor-council | 534 | 337 | 63 | 9 | 2 | 58 | 20 | 24 |
| Council-manager | 863 | 451 | 52 | 8 | 1 | 35 | 14 | 54 |
| Commission | 68 | 42 | 62 | 17 | 2 | 64 | 10 | 21 |
| Town meeting | 22 | 12 | 55 | 17 | 0 | 17 | 8 | 67 |
| Representative town meeting | 13 | 6 | 46 | 0 | 33 | 0 | 0 | 83 |

Key:
AFSCME–American Federation of State, County, and Municipal Employees
FOP–Fraternal Order of Police
IBT–International Brotherhood of Teamsters

[1] Percent of (A) does not always add up to 100 as some cities reported employees represented by more than one organization.

Table C-13
MEMBERSHIP AFFILIATION OF FIRE PROTECTION EMPLOYEES

| Distribution | Number of Cities Reporting | Number of Cities Reporting Union and/or Association Membership (A) | % of Cities Reporting | Cities with Fire Protection Employees Who Belong to: [1] | | | |
|---|---|---|---|---|---|---|---|
| | | | | AFSCME % of (A) | IAFF % of (A) | Other % of (A) | Local Associations % of (A) |
| Total, all cities | 1,317 | 783 | 59 | 3 | 73 | 9 | 26 |
| Population group | | | | | | | |
| Over 500,000 | 23 | 23 | 100 | 9 | 96 | 30 | 17 |
| 250,000-500,000 | 24 | 23 | 96 | 9 | 91 | 9 | 22 |
| 100,000-250,000 | 77 | 61 | 79 | 2 | 85 | 7 | 21 |
| 50,000-100,000 | 184 | 150 | 82 | 1 | 76 | 5 | 27 |
| 25,000- 50,000 | 321 | 233 | 73 | 2 | 73 | 10 | 25 |
| 10,000- 25,000 | 688 | 293 | 43 | 3 | 66 | 10 | 29 |
| Geographic region | | | | | | | |
| Northeast | 264 | 181 | 69 | 2 | 69 | 13 | 22 |
| North Central | 432 | 274 | 63 | 3 | 91 | 7 | 9 |
| South | 354 | 124 | 35 | 2 | 75 | 9 | 22 |
| West | 267 | 204 | 76 | 3 | 51 | 9 | 55 |
| City type | | | | | | | |
| Central | 238 | 195 | 82 | 3 | 89 | 8 | 19 |
| Suburban | 573 | 347 | 61 | 3 | 61 | 11 | 35 |
| Independent | 506 | 241 | 48 | 2 | 78 | 7 | 19 |
| Form of government | | | | | | | |
| Mayor-council | 456 | 285 | 63 | 4 | 80 | 12 | 16 |
| Council-manager | 768 | 440 | 57 | 1 | 68 | 8 | 34 |
| Commission | 63 | 41 | 65 | 10 | 90 | 0 | 30 |
| Town meeting | 18 | 7 | 39 | 0 | 43 | 0 | 57 |
| Representative town meeting | 12 | 10 | 83 | 0 | 80 | 0 | 30 |

Key:
AFSCME–American Federation of State, County, and Municipal Employees
IAFF–International Association of Fire Fighters

[1] Percent of (A) does not always add up to 100 as some cities reported employees represented by more than one organization.

Table C-14
MEMBERSHIP AFFILIATION OF PUBLIC WORKS EMPLOYEES

| Distribution | Number of Cities Reporting | Number of Cities Reporting Union and/or Association Membership (A) | % of Cities Reporting | Cities with Public Works Employees Who Belong to: [1] | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | AFSCME % of (A) | BSEIU % of (A) | LIU % of (A) | Bldg. Trades % of (A) | IBT % of (A) | Other % of (A) | Local Associations % of (A) |
| Total, all cities | 1,430 | 622 | 43 | 49 | 4 | 5 | 5 | 12 | 14 | 32 |
| Population group | | | | | | | | | | |
| Over 500,000 | 22 | 21 | 95 | 67 | 48 | 29 | 43 | 48 | 38 | 38 |
| 250,000-500,000 | 21 | 19 | 90 | 74 | 0 | 5 | 42 | 32 | 16 | 53 |
| 100,000-250,000 | 75 | 47 | 63 | 49 | 4 | 6 | 11 | 19 | 23 | 28 |
| 50,000-100,000 | 186 | 116 | 62 | 56 | 3 | 1 | 5 | 9 | 10 | 34 |
| 25,000- 50,000 | 337 | 181 | 54 | 49 | 2 | 4 | 1 | 9 | 12 | 31 |
| 10,000- 25,000 | 789 | 238 | 30 | 41 | 3 | 6 | 2 | 9 | 14 | 31 |
| Geographic region | | | | | | | | | | |
| Northeast | 354 | 184 | 52 | 52 | 5 | 4 | 3 | 9 | 17 | 23 |
| North Central | 440 | 215 | 49 | 57 | 4 | 8 | 7 | 19 | 15 | 10 |
| South | 350 | 52 | 15 | 58 | 2 | 6 | 0 | 6 | 12 | 33 |
| West | 286 | 171 | 58 | 32 | 4 | 3 | 8 | 8 | 12 | 69 |
| City type | | | | | | | | | | |
| Central | 230 | 148 | 64 | 65 | 9 | 7 | 16 | 19 | 20 | 29 |
| Suburban | 710 | 332 | 47 | 41 | 3 | 5 | 2 | 11 | 12 | 36 |
| Independent | 490 | 142 | 29 | 49 | 3 | 4 | 1 | 7 | 14 | 27 |
| Form of government | | | | | | | | | | |
| Mayor-council | 477 | 221 | 46 | 56 | 6 | 7 | 6 | 18 | 15 | 19 |
| Council-manager | 857 | 357 | 42 | 43 | 3 | 4 | 5 | 8 | 15 | 43 |
| Commission | 60 | 22 | 37 | 68 | 5 | 9 | 14 | 18 | 5 | 9 |
| Town meeting | 23 | 14 | 61 | 57 | 7 | 21 | 0 | 7 | 0 | 7 |
| Representative town meeting | 13 | 8 | 62 | 50 | 0 | 13 | 0 | 13 | 0 | 38 |

Key:
AFSCME–American Federation of State, County, and Municipal Employees
Bldg. Trades–Building Trades Unions (Carpenters, Plumbers, etc.)
BSEIU–Building Service Employees International Union
IBT–International Brotherhood of Teamsters
LIU–Laborers International Union

[1] Percent of (A) does not always add up to 100 as some cities reported employees represented by more than one organization.

Table C-15
MEMBERSHIP AFFILIATION OF PUBLIC UTILITIES EMPLOYEES

| Distribution | Number of Cities Reporting | Number of Cities Reporting Union and/or Association Membership (A) | % of Cities Reporting | Cities with Public Utilities Employees Who Belong to: [1] | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | AFSCME % of (A) | BSEIU % of (A) | LIU % of (A) | Bldg. Trades % of (A) | IBT % of (A) | Other % of (A) | Local Associations % of (A) |
| Total, all cities | 882 | 348 | 39 | 44 | 4 | 3 | 8 | 8 | 26 | 32 |
| Population group | | | | | | | | | | |
| Over 500,000 | 15 | 13 | 87 | 69 | 23 | 31 | 54 | 54 | 38 | 38 |
| 250,000-500,000 | 17 | 16 | 94 | 69 | 0 | 6 | 31 | 6 | 13 | 50 |
| 100,000-250,000 | 57 | 32 | 56 | 50 | 6 | 0 | 9 | 19 | 41 | 31 |
| 50,000-100,000 | 101 | 60 | 59 | 48 | 5 | 2 | 5 | 3 | 20 | 38 |
| 25,000- 50,000 | 201 | 102 | 51 | 40 | 1 | 2 | 2 | 6 | 25 | 31 |
| 10,000- 25,000 | 491 | 125 | 25 | 38 | 3 | 3 | 6 | 6 | 26 | 28 |
| Geographic region | | | | | | | | | | |
| Northeast | 127 | 69 | 54 | 39 | 7 | 4 | 6 | 12 | 23 | 35 |
| North Central | 311 | 149 | 48 | 52 | 4 | 3 | 8 | 9 | 32 | 13 |
| South | 290 | 35 | 12 | 57 | 0 | 0 | 0 | 0 | 17 | 37 |
| West | 154 | 95 | 62 | 31 | 2 | 4 | 13 | 8 | 20 | 60 |
| City type | | | | | | | | | | |
| Central | 158 | 95 | 60 | 60 | 6 | 6 | 17 | 15 | 31 | 35 |
| Suburban | 339 | 145 | 43 | 37 | 3 | 4 | 4 | 6 | 20 | 35 |
| Independent | 385 | 108 | 28 | 40 | 2 | 0 | 6 | 6 | 29 | 27 |
| Form of government | | | | | | | | | | |
| Mayor-council | 278 | 120 | 43 | 51 | 5 | 5 | 8 | 13 | 28 | 19 |
| Council-manager | 552 | 207 | 38 | 40 | 2 | 1 | 8 | 6 | 25 | 43 |
| Commission | 44 | 17 | 39 | 59 | 12 | 12 | 18 | 6 | 18 | 12 |
| Town meeting | 6 | 3 | 50 | 33 | 0 | 33 | 0 | 33 | 0 | 0 |
| Representative town meeting | 2 | 1 | 50 | 0 | 0 | 0 | 0 | 0 | 100 | 0 |

Key:
AFSCME–American Federation of State, County, and Municipal Employees
Bldg. Trades–Building Trades Unions (Carpenters, Plumbers, etc.)
BSEIU–Building Service Employees International Union
IBT–International Brotherhood of Teamsters
LIU–Laborers International Union

[1] Percent of (A) does not always add up to 100 as some cities reported employees represented by more than one organization.

Table C-16
MEMBERSHIP AFFILIATION OF PUBLIC HEALTH AND HOSPITAL EMPLOYEES

| Distribution | Number of Cities Reporting | Number of Cities Reporting Union and/or Membership (A) | % of Cities Reporting | Cities with Public Health and Hospital Employees Who Belong to: [1] | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | AFSCME % of (A) | BSEIU % of (A) | LIU % of (A) | Bldg. Trades % of (A) | IBT % of (A) | Other % of (A) | Local Associations % of (A) |
| Total, all cities | 513 | 130 | 25 | 40 | 6 | 2 | 3 | 7 | 32 | 45 |
| Population group | | | | | | | | | | |
| Over 500,000 | 16 | 13 | 81 | 69 | 38 | 15 | 31 | 38 | 46 | 46 |
| 250,000-500,000 | 17 | 12 | 71 | 42 | 0 | 0 | 0 | 0 | 25 | 67 |
| 100,000-250,000 | 44 | 27 | 61 | 30 | 4 | 4 | 0 | 4 | 52 | 30 |
| 50,000-100,000 | 85 | 26 | 31 | 35 | 0 | 0 | 0 | 8 | 31 | 54 |
| 25,000- 50,000 | 130 | 26 | 20 | 42 | 0 | 0 | 0 | 0 | 19 | 50 |
| 10,000- 25,000 | 221 | 26 | 12 | 38 | 8 | 0 | 0 | 4 | 23 | 35 |
| Geographic region | | | | | | | | | | |
| Northeast | 195 | 53 | 27 | 36 | 6 | 2 | 2 | 6 | 36 | 47 |
| North Central | 167 | 42 | 25 | 62 | 10 | 2 | 7 | 12 | 31 | 29 |
| South | 116 | 15 | 13 | 33 | 0 | 7 | 0 | 0 | 27 | 53 |
| West | 35 | 20 | 57 | 10 | 5 | 0 | 0 | 5 | 30 | 65 |
| City type | | | | | | | | | | |
| Central | 119 | 65 | 55 | 46 | 9 | 5 | 6 | 11 | 37 | 42 |
| Suburban | 200 | 34 | 17 | 35 | 0 | 0 | 0 | 3 | 29 | 56 |
| Independent | 194 | 31 | 16 | 32 | 6 | 0 | 0 | 3 | 26 | 39 |
| Form of Government | | | | | | | | | | |
| Mayor-council | 223 | 69 | 31 | 51 | 7 | 3 | 6 | 10 | 35 | 38 |
| Council-manager | 240 | 56 | 23 | 27 | 5 | 2 | 0 | 0 | 29 | 54 |
| Commission | 28 | 4 | 14 | 50 | 0 | 0 | 0 | 25 | 25 | 25 |
| Town meeting | 11 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Representative town meeting | 11 | 1 | 9 | 0 | 0 | 0 | 0 | 100 | 100 | 100 |

Key:
AFSCME–American Federation of State, County, and Municipal Employees
Bldg. Trades–Building Trades Unions (Carpenters, Plumbers, etc.)
BSEIU–Building Service Employees International Union
IBT–International Brotherhood of Teamsters
LIU–Laborers International Union

[1] Percent of (A) does not always add up to 100 as some cities reported employees represented by more than one organization.

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Table C-17
MEMBERSHIP AFFILIATION OF PUBLIC WELFARE EMPLOYEES

| Distribution | Number of Cities Reporting | Number of Cities Reporting Union and/or Association Membership (A) | % of Cities Reporting | Cities with Public Welfare Employees Who Belong to: [1] | | | | |
|---|---|---|---|---|---|---|---|---|
| | | | | AFSCME % of (A) | Bldg. Trades % of (A) | IBT % of (A) | Other % of (A) | Local Associations % of (A) |
| Total, all cities | 260 | 76 | 29 | 38 | 3 | 8 | 22 | 51 |
| Population group | | | | | | | | |
| Over 500,000 | 8 | 7 | 88 | 86 | 29 | 29 | 71 | 29 |
| 250,000-500,000 | 5 | 5 | 100 | 60 | 0 | 20 | 40 | 20 |
| 100,000-250,000 | 26 | 11 | 42 | 55 | 0 | 0 | 9 | 36 |
| 50,000-100,000 | 38 | 15 | 39 | 27 | 0 | 13 | 20 | 60 |
| 25,000- 50,000 | 71 | 20 | 28 | 40 | 0 | 0 | 10 | 55 |
| 10,000- 25,000 | 112 | 18 | 16 | 11 | 0 | 5 | 22 | 67 |
| Geographic region | | | | | | | | |
| Northeast | 151 | 41 | 27 | 34 | 2 | 7 | 27 | 51 |
| North Central | 41 | 17 | 41 | 59 | 6 | 18 | 12 | 35 |
| South | 59 | 11 | 19 | 36 | 0 | 0 | 27 | 64 |
| West | 9 | 7 | 78 | 14 | 0 | 0 | 14 | 71 |
| City type | | | | | | | | |
| Central | 57 | 33 | 58 | 61 | 6 | 9 | 27 | 36 |
| Suburban | 114 | 22 | 19 | 23 | 0 | 9 | 18 | 64 |
| Independent | 89 | 21 | 24 | 19 | 0 | 5 | 19 | 62 |
| Form of government | | | | | | | | |
| Mayor-council | 117 | 40 | 34 | 50 | 5 | 10 | 32 | 32 |
| Council-manager | 117 | 32 | 27 | 25 | 0 | 3 | 9 | 72 |
| Commission | 12 | 2 | 17 | 50 | 0 | 0 | 0 | 50 |
| Town meeting | 9 | 1 | 11 | 0 | 0 | 0 | 100 | 0 |
| Representative town meeting | 5 | 2 | 40 | 0 | 0 | 50 | 0 | 100 |

Key:
AFSCME–American Federation of State, County, and Municipal Employees
Bldg. Trades–Building Trades Unions (Carpenters, Plumbers, etc.)
IBT–International Brotherhood of Teamsters

[1] Percent of (A) does not always add up to 100 as some cities reported employees represented by more than one organization.

Table C-18
MEMBERSHIP AFFILIATION OF PARKS AND RECREATION EMPLOYEES[1]

| Distribution | Number of Cities Reporting | Number of Cities Reporting Union and/or Association Membership (A) | % of Cities Reporting | Cities with Parks and Recreation Employees Who Belong to: | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | AFSCME % of (A) | BSEIU % of (A) | LIU % of (A) | Bldg. Trades % of (A) | IBT % of (A) | Other % of (A) | Local Associations % of (A) |
| Total, all cities | 1,220 | 422 | 35 | 48 | 4 | 2 | 4 | 8 | 13 | 41 |
| Population group | | | | | | | | | | |
| Over 500,000 | 20 | 17 | 85 | 71 | 29 | 18 | 44 | 29 | 41 | 41 |
| 250,000-500,000 | 20 | 20 | 100 | 65 | 0 | 10 | 20 | 15 | 5 | 50 |
| 100,000-250,000 | 74 | 43 | 58 | 51 | 7 | 5 | 5 | 16 | 16 | 33 |
| 50,000-100,000 | 172 | 88 | 51 | 50 | 3 | 0 | 0 | 6 | 11 | 44 |
| 25,000- 50,000 | 304 | 134 | 44 | 49 | 1 | 2 | 0 | 3 | 11 | 38 |
| 10,000- 25,000 | 630 | 120 | 19 | 38 | 3 | 0 | 1 | 7 | 13 | 42 |
| Geographic region | | | | | | | | | | |
| Northeast | 273 | 105 | 38 | 52 | 6 | 1 | 3 | 10 | 15 | 33 |
| North Central | 357 | 135 | 38 | 62 | 4 | 4 | 4 | 11 | 16 | 16 |
| South | 327 | 40 | 12 | 58 | 0 | 0 | 0 | 3 | 8 | 40 |
| West | 263 | 142 | 54 | 28 | 4 | 3 | 5 | 4 | 11 | 70 |
| City type | | | | | | | | | | |
| Central | 213 | 119 | 56 | 61 | 8 | 6 | 12 | 13 | 18 | 36 |
| Suburban | 542 | 202 | 37 | 42 | 2 | 1 | 0 | 5 | 10 | 46 |
| Independent | 465 | 101 | 22 | 45 | 3 | 0 | 1 | 6 | 14 | 36 |
| Form of government | | | | | | | | | | |
| Mayor-council | 413 | 147 | 36 | 61 | 5 | 3 | 5 | 14 | 11 | 23 |
| Council-manager | 727 | 255 | 35 | 38 | 4 | 1 | 2 | 4 | 16 | 52 |
| Commission | 53 | 13 | 25 | 85 | 8 | 8 | 8 | 15 | 0 | 15 |
| Town meeting | 16 | 1 | 6 | 100 | 0 | 0 | 0 | 0 | 0 | 0 |
| Representative town meeting | 11 | 6 | 55 | 50 | 0 | 17 | 0 | 17 | 0 | 50 |

Key:
AFSCME–American Federation of State, County, and Municipal Employees
Bldg. Trades–Building Trades Unions (Carpenters, Plumbers, etc.)
BSEIU–Building Service Employees International Union
IBT–International Brotherhood of Teamsters
LIU–Laborers International Union

[1]Percent of (A) does not always add up to 100 as some cities reported employees represented by more than one organization.

Table C-19
MEMBERSHIP AFFILIATION OF EDUCATION EMPLOYEES

| Distribution | Number of Cities Reporting | Number of Cities Reporting Union and/or Association Membership (A) | % of Cities Reporting | Cities with Education Employees Who Belong to: [1] | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | AFSCME % of (A) | BSEIU % of (A) | LIU % of (A) | Bldg. Trades % of (A) | IBT % of (A) | Other % of (A) | Local Associations % of (A) |
| Total, all cities | 199 | 102 | 51 | 50 | 7 | 3 | 5 | 4 | 22 | 41 |
| Population group | | | | | | | | | | |
| Over 500,000 | 9 | 6 | 67 | 67 | 50 | 33 | 50 | 17 | 83 | 50 |
| 250,000-500,000 | 4 | 3 | 75 | 33 | 33 | 0 | 33 | 0 | 33 | 33 |
| 100,000-250,000 | 25 | 17 | 68 | 47 | 6 | 0 | 6 | 0 | 29 | 41 |
| 50,000-100,000 | 27 | 19 | 70 | 42 | 5 | 0 | 0 | 11 | 5 | 42 |
| 25,000- 50,000 | 42 | 23 | 55 | 52 | 0 | 4 | 0 | 0 | 13 | 43 |
| 10,000- 25,000 | 92 | 34 | 37 | 53 | 3 | 0 | 0 | 3 | 21 | 54 |
| Geographic region | | | | | | | | | | |
| Northeast | 109 | 71 | 65 | 53 | 6 | 1 | 1 | 1 | 20 | 44 |
| North Central | 32 | 16 | 50 | 63 | 13 | 0 | 19 | 6 | 25 | 6 |
| South | 54 | 11 | 20 | 36 | 0 | 9 | 0 | 9 | 27 | 55 |
| West | 4 | 4 | 100 | 0 | 25 | 25 | 25 | 25 | 25 | 100 |
| City type | | | | | | | | | | |
| Central | 51 | 34 | 67 | 50 | 18 | 6 | 15 | 6 | 32 | 38 |
| Suburban | 84 | 44 | 52 | 52 | 2 | 2 | 0 | 2 | 16 | 45 |
| Independent | 64 | 24 | 38 | 46 | 0 | 0 | 0 | 4 | 17 | 38 |
| Form of government | | | | | | | | | | |
| Mayor-council | 88 | 53 | 60 | 57 | 8 | 4 | 8 | 6 | 25 | 30 |
| Council-manager | 83 | 34 | 41 | 44 | 6 | 0 | 3 | 0 | 18 | 56 |
| Commission | 3 | 1 | 33 | 100 | 0 | 0 | 0 | 0 | 0 | 0 |
| Town meeting | 14 | 9 | 64 | 56 | 11 | 0 | 0 | 0 | 22 | 33 |
| Representative town meeting | 11 | 5 | 45 | 0 | 0 | 20 | 0 | 20 | 20 | 80 |

Key:
AFSCME–American Federation of State, County, and Municipal Employees
Bldg. Trades–Building Trades Unions (Carpenters, Plumbers, etc.)
BSEIU–Building Service Employees International Union
IBT–International Brotherhood of Teamsters
LIU–Laborers International Union

[1] Percent of (A) does not always add up to 100 as some cities reported employees represented by more than one organization.

Table C-20
MEMBERSHIP AFFILIATION OF ALL OTHER EMPLOYEES

| Distribution | Number of Cities Reporting | Number of Cities Reporting Union and/or Association Membership (A) | % of Cities Reporting | Cities with Employees Who Belong to: [1] | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | AFSCME % of (A) | BSEIU % of (A) | LIU % of (A) | Bldg. Trades % of (A) | IBT % of (A) | Other % of (A) | Local Associations % of (A) |
| Total, all cities | 1,529 | 400 | 26 | 37 | 4 | 3 | 4 | 6 | 18 | 50 |
| Population group | | | | | | | | | | |
| Over 500,000 | 23 | 17 | 74 | 71 | 35 | 24 | 35 | 35 | 41 | 47 |
| 250,000-500,000 | 24 | 18 | 75 | 67 | 0 | 6 | 22 | 6 | 17 | 50 |
| 100,000-250,000 | 78 | 36 | 46 | 58 | 11 | 3 | 8 | 11 | 22 | 39 |
| 50,000-100,000 | 192 | 80 | 42 | 35 | 3 | 0 | 3 | 4 | 16 | 54 |
| 25,000- 50,000 | 364 | 112 | 31 | 35 | 2 | 1 | 1 | 4 | 13 | 53 |
| 10,000- 25,000 | 848 | 137 | 16 | 27 | 2 | 4 | 1 | 4 | 19 | 49 |
| Geographic region | | | | | | | | | | |
| Northeast | 369 | 106 | 29 | 35 | 6 | 3 | 2 | 5 | 25 | 39 |
| North Central | 486 | 106 | 22 | 58 | 5 | 4 | 8 | 11 | 18 | 24 |
| South | 372 | 37 | 10 | 46 | 0 | 3 | 0 | 0 | 24 | 46 |
| West | 302 | 151 | 50 | 22 | 4 | 3 | 4 | 4 | 12 | 77 |
| City type | | | | | | | | | | |
| Central | 237 | 106 | 45 | 56 | 11 | 6 | 12 | 12 | 23 | 44 |
| Suburban | 755 | 194 | 26 | 28 | 1 | 2 | 2 | 4 | 15 | 57 |
| Independent | 537 | 100 | 19 | 36 | 3 | 2 | 1 | 2 | 18 | 42 |
| Form of government | | | | | | | | | | |
| Mayor-council | 540 | 138 | 26 | 51 | 7 | 5 | 7 | 9 | 21 | 29 |
| Council-manager | 885 | 236 | 27 | 28 | 3 | 1 | 3 | 3 | 17 | 64 |
| Commission | 68 | 20 | 29 | 55 | 5 | 10 | 0 | 20 | 10 | 25 |
| Town meeting | 23 | 4 | 17 | 50 | 0 | 0 | 0 | 0 | 25 | 25 |
| Representative town meeting | 13 | 2 | 15 | 0 | 0 | 0 | 0 | 50 | 0 | 100 |

Key:
AFSCME–American Federation of State, County, and Municipal Employees
Bldg. Trades–Building Trades Unions (Carpenters, Plumbers, etc.)
BSEIU–Building Service Employees International Union
IBT–International Brotherhood of Teamsters
LIU–Laborers International Union

[1] Percent of (A) does not always add up to 100 as some cities reported employees represented by more than one organization.

Table C-21

MUNICIPAL LAWS REGARDING PUBLIC EMPLOYEE ORGANIZATIONS

| Municipal Law | Response | Cities Reporting | | Organized Cities | | Cities Without Organizations | | Cities with: Locals Only | | Nationals Only | | Both Nationals and Locals | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | No. (A) | % of (A) | No. (B) | % of (B) | No. (C) | % of (C) | No. (D) | % of (D) | No. (E) | % of (E) | No. (F) | % of (F) |
| Total, all cities | | 1,357 | – | 1,026 | – | 331 | – | 143 | – | 497 | – | 386 | – |
| Permit general employees to join nationally affiliated organizations | Yes | 450 | 33 | 414 | 40 | 36 | 11 | 41 | 29 | 170 | 34 | 203 | 53 |
| | No | 23 | 2 | 11 | 1 | 12 | 4 | 2 | 1 | 7 | 1 | 2 | 1 |
| | No Policy | 867 | 64 | 590 | 58 | 277 | 84 | 98 | 69 | 314 | 63 | 178 | 46 |
| | No Answer | 17 | 1 | 11 | 1 | 6 | 2 | 2 | 1 | 6 | 1 | 13 | 1 |
| Permit general employees to join local associations | Yes | 426 | 31 | 397 | 39 | 29 | 9 | 53 | 37 | 150 | 30 | 194 | 50 |
| | No | 26 | 2 | 11 | 1 | 15 | 5 | 1 | 1 | 8 | 2 | 2 | 1 |
| | No Policy | 877 | 65 | 598 | 58 | 279 | 84 | 85 | 59 | 327 | 66 | 186 | 48 |
| | No Answer | 28 | 2 | 20 | 2 | 8 | 2 | 4 | 3 | 12 | 2 | 4 | 1 |
| Forbid public safety personnel to join nationally affiliated organizations | Yes | 58 | 4 | 43 | 4 | 15 | 5 | 9 | 6 | 14 | 3 | 20 | 5 |
| | No | 426 | 31 | 392 | 38 | 34 | 10 | 35 | 25 | 177 | 36 | 180 | 47 |
| | No Policy | 836 | 62 | 564 | 55 | 272 | 82 | 94 | 66 | 293 | 59 | 177 | 46 |
| | No Answer | 37 | 3 | 27 | 3 | 10 | 3 | 5 | 3 | 13 | 3 | 9 | 2 |
| Permit public safety personnel to join local associations | Yes | 426 | 31 | 401 | 39 | 25 | 8 | 57 | 40 | 148 | 30 | 196 | 51 |
| | No | 31 | 2 | 13 | 1 | 18 | 5 | 2 | 1 | 7 | 1 | 4 | 1 |
| | No Policy | 864 | 64 | 586 | 57 | 278 | 84 | 77 | 54 | 326 | 66 | 183 | 47 |
| | No Answer | 36 | 3 | 26 | 3 | 10 | 3 | 7 | 5 | 16 | 3 | 3 | 1 |
| Permit management to dismiss or severely punish general employees for organization activity | Yes | 30 | 2 | 23 | 2 | 7 | 2 | 2 | 1 | 10 | 2 | 11 | 3 |
| | No | 475 | 35 | 421 | 41 | 54 | 16 | 41 | 29 | 171 | 34 | 209 | 54 |
| | No Policy | 822 | 61 | 559 | 55 | 263 | 80 | 96 | 67 | 303 | 61 | 160 | 42 |
| | No Answer | 30 | 2 | 23 | 2 | 7 | 2 | 4 | 3 | 13 | 3 | 6 | 2 |
| Permit management to dismiss or severely punish public safety employees for organization activity | Yes | 31 | 2 | 24 | 2 | 7 | 2 | 1 | 1 | 8 | 2 | 15 | 4 |
| | No | 477 | 35 | 426 | 42 | 51 | 15 | 43 | 30 | 183 | 37 | 200 | 52 |
| | No Policy | 806 | 59 | 543 | 53 | 263 | 80 | 91 | 64 | 289 | 58 | 163 | 42 |
| | No Answer | 43 | 3 | 33 | 3 | 10 | 3 | 8 | 6 | 17 | 3 | 8 | 2 |
| Permit recognition of single negotiating representative for general employees | Yes | 268 | 20 | 251 | 25 | 17 | 5 | 33 | 23 | 101 | 20 | 117 | 30 |
| | No | 172 | 13 | 130 | 13 | 42 | 13 | 15 | 11 | 55 | 11 | 60 | 16 |
| | No Policy | 860 | 63 | 610 | 60 | 250 | 76 | 87 | 61 | 322 | 65 | 201 | 52 |
| | No Answer | 57 | 4 | 35 | 3 | 22 | 7 | 8 | 6 | 19 | 4 | 8 | 2 |
| Permit recognition of single negotiating representative for public safety employees | Yes | 202 | 15 | 191 | 19 | 11 | 3 | 25 | 18 | 80 | 16 | 86 | 22 |
| | No | 194 | 14 | 153 | 15 | 41 | 12 | 13 | 10 | 65 | 13 | 75 | 19 |
| | No Policy | 877 | 65 | 627 | 61 | 250 | 76 | 95 | 66 | 326 | 66 | 206 | 53 |
| | No Answer | 84 | 6 | 55 | 5 | 29 | 9 | 10 | 7 | 26 | 5 | 19 | 5 |
| Permit signing negotiated agreements | Yes | 312 | 23 | 298 | 29 | 14 | 4 | 29 | 20 | 127 | 26 | 142 | 37 |
| | No | 156 | 12 | 128 | 13 | 28 | 9 | 13 | 9 | 60 | 12 | 55 | 14 |
| | No Policy | 850 | 63 | 579 | 56 | 271 | 82 | 98 | 69 | 300 | 60 | 181 | 47 |
| | No Answer | 39 | 3 | 21 | 2 | 18 | 5 | 3 | 2 | 10 | 2 | 8 | 2 |
| Authorize arbitration of disputes involving general employees | Yes | 259 | 19 | 238 | 23 | 21 | 6 | 23 | 16 | 96 | 19 | 119 | 31 |
| | No | 185 | 14 | 162 | 16 | 23 | 7 | 24 | 17 | 70 | 14 | 68 | 18 |
| | No Policy | 858 | 63 | 592 | 58 | 266 | 80 | 91 | 64 | 313 | 63 | 188 | 49 |
| | No Answer | 55 | 4 | 34 | 3 | 21 | 6 | 5 | 3 | 18 | 4 | 11 | 3 |
| Authorize arbitration of disputes involving public safety employees | Yes | 249 | 18 | 228 | 22 | 21 | 6 | 24 | 17 | 97 | 20 | 107 | 28 |
| | No | 184 | 14 | 159 | 16 | 25 | 8 | 22 | 15 | 65 | 13 | 72 | 19 |
| | No Policy | 866 | 64 | 603 | 59 | 263 | 80 | 91 | 64 | 317 | 64 | 195 | 51 |
| | No Answer | 58 | 4 | 36 | 4 | 22 | 7 | 6 | 4 | 18 | 4 | 12 | 3 |

Table C-22
RESPONSES TO 1969 ACIR–NACO
QUESTIONNAIRE SURVEY
(by Population Group and Geographic Region)

| Distribution | Number of Counties Surveyed | Number of Counties Responding | Percent Response |
|---|---|---|---|
| Total, all counties | 429 | 209 | 49 |
| Population group | | | |
| Over 500,000 | 65 | 45 | 69 |
| 250,000-500,000 | 70 | 40 | 57 |
| 100,000-250,000 | 125 | 66 | 53 |
| 50,000-100,000 | 97 | 28 | 29 |
| 25,000- 50,000 | 60 | 22 | 37 |
| 10,000- 25,000 | 12 | 8 | 67 |
| Geographic region | | | |
| Northeast | 87 | 40 | 46 |
| North Central | 130 | 53 | 41 |
| South | 164 | 74 | 45 |
| West | 48 | 42 | 88 |

Table C-23

COUNTY LAWS REGARDING PUBLIC EMPLOYEE ORGANIZATIONS

| County Law | Response | Counties Reporting | | Organized Counties | | Counties Without Organizations | | Counties with: Locals Only | | Nationals Only | | Both Nationals and Locals | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | No. (A) | % of (A) | No. (B) | % of (B) | No. (C) | % of (C) | No. (D) | % of (D) | No. (E) | % of (E) | No. (F) | % of (F) |
| Total, all counties | | 209 | – | 117 | – | 92 | – | 17 | – | 44 | – | 56 | – |
| Permit general employees to join nationally affiliated organizations | Yes | 88 | 42 | 71 | 61 | 17 | 18 | 9 | 53 | 23 | 52 | 39 | 70 |
| | No | 5 | 2 | 1 | 1 | 4 | 4 | 0 | 0 | 1 | 2 | 0 | 0 |
| | No Policy | 111 | 53 | 43 | 37 | 68 | 74 | 8 | 47 | 20 | 45 | 15 | 27 |
| | No Answer | 5 | 2 | 2 | 2 | 3 | 3 | 0 | 0 | 0 | 0 | 2 | 4 |
| Permit general employees to join local associations | Yes | 78 | 37 | 63 | 54 | 15 | 16 | 11 | 65 | 16 | 36 | 36 | 64 |
| | No | 3 | 1 | 0 | 0 | 3 | 3 | 0 | 0 | 0 | 0 | 0 | 0 |
| | No Policy | 118 | 56 | 48 | 41 | 70 | 76 | 6 | 35 | 25 | 57 | 17 | 30 |
| | No Answer | 10 | 5 | 6 | 5 | 4 | 4 | 0 | 0 | 3 | 7 | 3 | 5 |
| Forbid public safety personnel to join nationally affiliated | Yes | 10 | 5 | 4 | 3 | 6 | 7 | 0 | 0 | 1 | 2 | 3 | 5 |
| | No | 65 | 31 | 54 | 46 | 11 | 12 | 7 | 41 | 17 | 39 | 30 | 54 |
| | No Policy | 123 | 59 | 54 | 46 | 69 | 75 | 10 | 59 | 23 | 52 | 21 | 38 |
| | No Answer | 11 | 5 | 5 | 4 | 6 | 7 | 0 | 0 | 3 | 7 | 2 | 4 |
| Permit public safety personnel to join local associations | Yes | 72 | 34 | 61 | 52 | 11 | 12 | 11 | 65 | 15 | 34 | 35 | 63 |
| | No | 5 | 2 | 1 | 1 | 4 | 4 | 0 | 0 | 0 | 0 | 1 | 2 |
| | No Policy | 120 | 57 | 49 | 42 | 71 | 77 | 6 | 35 | 25 | 57 | 18 | 32 |
| | No Answer | 12 | 6 | 6 | 5 | 6 | 7 | 0 | 0 | 4 | 9 | 2 | 4 |
| Permit management to dismiss or severely punish general employees for organization activity | Yes | 7 | 3 | 4 | 3 | 3 | 3 | 0 | 0 | 0 | 0 | 4 | 7 |
| | No | 79 | 38 | 66 | 56 | 13 | 14 | 12 | 71 | 20 | 45 | 34 | 61 |
| | No Policy | 117 | 56 | 44 | 38 | 73 | 79 | 5 | 29 | 23 | 52 | 16 | 29 |
| | No Answer | 6 | 3 | 3 | 3 | 3 | 3 | 0 | 0 | 1 | 2 | 2 | 4 |
| Permit management to dismiss or severely punish public safety employees for organization activity | Yes | 6 | 3 | 3 | 3 | 3 | 3 | 0 | 0 | 0 | 0 | 3 | 5 |
| | No | 78 | 37 | 63 | 54 | 15 | 16 | 11 | 65 | 19 | 43 | 33 | 59 |
| | No Policy | 112 | 54 | 43 | 37 | 69 | 75 | 6 | 35 | 20 | 45 | 17 | 30 |
| | No Answer | 13 | 6 | 8 | 7 | 5 | 5 | 0 | 0 | 5 | 11 | 3 | 5 |
| Permit recognition of single negotiating representative for general employees | Yes | 47 | 22 | 39 | 33 | 8 | 9 | 8 | 47 | 10 | 23 | 21 | 38 |
| | No | 23 | 11 | 14 | 12 | 9 | 10 | 2 | 12 | 4 | 9 | 8 | 14 |
| | No Policy | 119 | 57 | 55 | 47 | 64 | 70 | 7 | 41 | 26 | 59 | 22 | 39 |
| | No Answer | 20 | 10 | 9 | 8 | 11 | 12 | 0 | 0 | 4 | 9 | 5 | 9 |
| Permit recognition of single negotiating representative for public safety employees | Yes | 35 | 17 | 32 | 27 | 3 | 3 | 6 | 35 | 7 | 16 | 19 | 34 |
| | No | 24 | 11 | 14 | 12 | 10 | 11 | 2 | 12 | 2 | 5 | 10 | 18 |
| | No Policy | 119 | 57 | 61 | 52 | 58 | 63 | 9 | 53 | 29 | 66 | 23 | 41 |
| | No Answer | 31 | 15 | 10 | 9 | 21 | 23 | 0 | 0 | 6 | 14 | 4 | 7 |
| Permit signing negotiated agreements | Yes | 57 | 27 | 51 | 44 | 6 | 7 | 11 | 65 | 14 | 32 | 26 | 46 |
| | No | 23 | 11 | 14 | 12 | 9 | 10 | 1 | 6 | 6 | 14 | 7 | 13 |
| | No Policy | 116 | 56 | 47 | 40 | 69 | 75 | 5 | 29 | 22 | 50 | 20 | 36 |
| | No Answer | 13 | 6 | 5 | 4 | 8 | 9 | 0 | 0 | 2 | 5 | 3 | 5 |
| Authorize arbitration of disputes involving general employees | Yes | 43 | 21 | 39 | 33 | 4 | 4 | 8 | 47 | 12 | 27 | 19 | 34 |
| | No | 38 | 18 | 25 | 21 | 13 | 14 | 3 | 18 | 6 | 14 | 16 | 29 |
| | No Policy | 113 | 54 | 48 | 41 | 65 | 71 | 6 | 35 | 24 | 55 | 18 | 32 |
| | No Answer | 15 | 7 | 5 | 4 | 10 | 11 | 0 | 0 | 2 | 5 | 3 | 5 |
| Authorize arbitration of disputes involving safety employees | Yes | 35 | 30 | 30 | 26 | 5 | 5 | 8 | 47 | 7 | 16 | 15 | 27 |
| | No | 41 | 20 | 29 | 25 | 12 | 13 | 3 | 18 | 7 | 16 | 19 | 34 |
| | No Policy | 117 | 56 | 51 | 44 | 66 | 72 | 6 | 35 | 27 | 61 | 18 | 32 |
| | No Answer | 16 | 8 | 7 | 6 | 9 | 10 | 0 | 0 | 3 | 7 | 4 | 7 |

Table C-24

COUNTY MANAGEMENT PRACTICES: RECOGNITION AND NEGOTIATION PROCEDURES

| Practice | Organized Counties Responding | | Counties with: [1] | | | | | |
|---|---|---|---|---|---|---|---|---|
| | | | Nationals Only | | Locals Only | | Both Nationals and Locals | |
| | No. (A) | % of (A) | No. (B) | % of (B) | No. (C) | % of (C) | No. (D) | % of (D) |
| Recognition procedure | | | | | | | | |
| No. of organized counties reporting | 98 | 100 | 36 | 100 | 14 | 100 | 48 | 100 |
| Submit bylaws and list of officers to specified city officer | 17 | 17 | 0 | | 2 | 14 | 15 | 31 |
| Organization officers request appointment with chief appointed or elected administrative officer | 33 | 34 | 14 | 39 | 6 | 43 | 13 | 27 |
| Request for representatives to be heard at public meeting of the governing board | 22 | 22 | 8 | 22 | 4 | 28 | 10 | 21 |
| No particular formal action on the part of organizations | 26 | 27 | 14 | 39 | 2 | 14 | 10 | 21 |
| County representative in negotiations | | | | | | | | |
| No. of organized counties reporting | 108 | 100 | 39 | 100 | 16 | 100 | 53 | 100 |
| County manager | 7 | 6 | 1 | 3 | 0 | 0 | 6 | 11 |
| Committee of the governing board | 17 | 16 | 3 | 8 | 7 | 44 | 7 | 13 |
| Entire governing board | 17 | 16 | 9 | 23 | 1 | 6 | 7 | 13 |
| Personnel director | 19 | 17 | 7 | 18 | 1 | 6 | 11 | 21 |
| Civil service commission | 4 | 4 | 1 | 3 | 0 | | 3 | 6 |
| Elected county executive | 14 | 13 | 6 | 15 | 5 | 31 | 3 | 6 |
| Chief appointed administrative officer | 10 | 9 | 2 | 5 | 0 | | 8 | 15 |
| County employed arbitrator | 4 | 4 | 2 | 5 | 0 | | 2 | 4 |
| Department heads | 3 | 3 | 2 | 5 | 1 | 6 | 0 | 0 |
| No negotiations | 13 | 12 | 6 | 15 | 1 | 6 | 6 | 11 |
| Conduct of negotiations | | | | | | | | |
| No. of organized counties reporting | 101 | 100 | 34 | 100 | 14 | 100 | 53 | 100 |
| Public hearings before governing board | 8 | 8 | 4 | 12 | 0 | 0 | 4 | 8 |
| Governing board committee negotiation sessions | 28 | 28 | 9 | 26 | 9 | 64 | 10 | 19 |
| Chief administrative officer or county manager-negotiation sessions | 15 | 15 | 5 | 15 | 0 | 0 | 10 | 19 |
| Chief administrative officer or county manager—informal sessions prior to submission of budget to governing board | 12 | 12 | 2 | 6 | 2 | 14 | 8 | 15 |
| Hearings before personnel board and also before the governing board | 15 | 15 | 3 | 9 | 0 | 0 | 12 | 23 |
| Negotiation sessions conducted by elected county executive | 8 | 8 | 5 | 15 | 1 | 7 | 2 | 4 |
| Other procedures | 15 | 15 | 6 | 18 | 2 | 14 | 7 | 13 |

NOTE: Percentages will not necessarily add to totals due to rounding.

Table C-25
COUNTY BINDING AGREEMENTS, ARBITRATION, AND GRIEVANCE PROCEDURES

| Distribution | Number of Organized Counties Responding | Binding Agreement | Arbitration | Grievance Procedure |
|---|---|---|---|---|
| | (A) | % of (A) | % of (A) | % of (A) |
| Total, all counties | 124 | 40 | 6 | 62 |
| Population group | | | | |
| Over 500,000 | 38 | 42 | 3 | 76 |
| 250,000-500,000 | 27 | 19 | 4 | 59 |
| 150,000-250,000 | 33 | 58 | 9 | 58 |
| 50,000-100,000 | 15 | 47 | 13 | 60 |
| 25,000- 50,000 | 8 | 25 | 5 | 50 |
| 10,000- 25,000 | 3 | 33 | 0 | 0 |
| Geographic region | | | | |
| Northeast | 28 | 68 | 7 | 61 |
| North Central | 32 | 50 | 13 | 66 |
| South | 31 | 16 | 3 | 48 |
| West | 33 | 30 | 3 | 73 |

TABLE C-26
EXTENT OF STATE MANDATING
(by Occupational Category, Nature of Requirement,
and Type of Local Jurisdiction)[1]

| State | Salaries and Wages | Hours of Work | Fringe Benefits[2] | Working Conditions | Employee Qualifications |
|---|---|---|---|---|---|
| Alabama | Health (county) | Fire (city)<br>Health (county) | Health (county) | Health (county) | Health (county) |
| Alaska | Note: most local jurisdictions have opted for inclusion within State personnel system. | | | | |
| Arizona | | | | | Civil Defense (city, county)<br>Health (city, county) |
| Arkansas | Police (county) | Police (city) | Police (city) | | |
| California (no mandating reported for cities) | Welfare (county) | | | Welfare (county) | Welfare (county) |
| Colorado | | All employees | | | |
| Connecticut (no mandating reported) | | | | | |
| Delaware (no mandating reported) | | | | | |
| Florida (no mandating reported) | | | | | |
| Georgia (no mandating reported) | | | | | |
| Hawaii | Note: all local employees receive similar pay for similar work; hours, working conditions, qualifications, etc. are mandated. | | | | |
| Idaho (no mandating reported) | | | | | |
| Illinois | Police (city) | Fire (city) | Retirement system (all local employees) | | Sewerage (city)<br>Water supply (city) |
| Indiana | Police (city)<br>Fire (city) | Police (city)<br>Fire (city) | | Police (city)<br>Fire (city) | Water supply (city)<br>Police (city)<br>Fire (city) |
| Iowa | | | | | Police (city, county) |
| Kansas | | | | All employees (city, county) | Welfare (county) |
| Kentucky | Police (city)<br>Fire (city) | Police (city)<br>Fire (city) | | Police (city)<br>Fire (city) | Police (city)<br>Fire (city) |
| Louisiana | Police (parish)<br>Fire (parish) | | | Police (parish)<br>Fire (parish) | |

TABLE C-26 (Continued)

| State | Salaries and Wages | Hours of Work | Fringe Benefits[2] | Working Conditions | Employee Qualifications |
|---|---|---|---|---|---|
| Maine | Fire (city)<br>Civil Defense (city, county) | Civil Defense (city, county) | | | Civil Defense (city, county) |
| Maryland (no mandating reported) | | | | | |
| Massachusetts | Note: State Director of Civil Service approves specifications and qualifications criteria set by local governments. | | | | |
| Michigan | Police (city) | Fire (city) | | | Police (city, county)<br>Fire (city) |
| | Note: County welfare employees integrated with State Civil Service. | | | | |
| Minnesota | | | Retirement system (all local employees) | | Police (city, county)<br>Sewerage (city, county) |
| Mississippi (no mandating reported) | | | | | |
| Missouri | Police (city) | | | Police (city) | |
| Montana (no mandating reported) | | | | | |
| Nebraska | | | Retirement system (city police and fire) | | |
| Nevada (no mandating reported) | | | | | |
| New Hampshire | | Fire (Manchester only) | | | |
| New Jersey | Police (city) | Police (city)<br>Fire (city) | | Police (city)<br>Fire (city) | Police (city)<br>Assessors (city)<br>Tax collectors (city) |
| New Mexico (no mandating reported) | | | | | |
| New York | Police | Police (city, county)<br>Fire (city, county) | Retirement system (all local employees) | | Police<br>Sewerage<br>Libraries (city, county)<br>Water supply<br>Welfare |
| North Carolina | Health (city, county)<br>Civil Defense (city, county) | Health (city, county)<br>Civil Defense (city, county) | | Civil Defense (city, county)<br>Health (city, county) | Civil Defense (city, county)<br>Health (city, county) |
| | Note: counties may opt out of State mandated civil service with approval of State Personnel Board. | | | | |

TABLE C-26 (Continued)

| State | Salaries and Wages | Hours of Work | Fringe Benefits[2] | Working Conditions | Employee Qualifications |
|---|---|---|---|---|---|
| North Dakota (no reply) | | | | | |
| Ohio[3] | Welfare (city) | Police (city)<br>Fire (city)<br>Welfare (city) | Retirement system (all local employees) | Highways<br>Police (city, county)<br>Fire (city, county)<br>Sewerage (city, county)<br>Sanitation (city, county)<br>Parks & Recreation (city, county)<br>Water Supply (city, county)<br>Welfare (city) | Police |
| Oklahoma | | Fire (city) | | | |
| Oregon | Appraisers (city) | All county employees<br>Fire (city) | | | Police (city)<br>Appraisers (city)<br>Health (city) |
| Pennsylvania | Police (city, boroughs)<br>Fire (city)<br>Welfare (county)<br>Civil Defense (city, county)[5] | Police (city)<br>Fire (city)<br>Welfare (county) | | Police (city)<br>Fire (city) | Police (city)[4]<br>Fire (city)[4]<br>Water supply (city)<br>Welfare (county)<br>Civil Defense (city, county)[5] |
| Rhode Island (no reply) | | | | | |
| South Carolina (no mandating reported) | | | | | |
| South Dakota (no mandating reported) | | | | | |
| Tennessee (no mandating reported) | | | | | |
| Texas | Police (city)<br>Fire (city) | Police (city) | | | |
| Utah | | | Retirement system (local police and fire personnel) | | |
| Vermont (no mandating reported) | | | | | |
| Virginia | Welfare (city, county) | | | | Welfare (city, county) |

TABLE C-26 (Continued)

| State | Salaries and Wages | Hours of Work | Fringe Benefits[2] | Working Conditions | Employee Qualifications |
|---|---|---|---|---|---|
| Washington | Police (city, county)<br>Fire (city, county)<br>Appraisers (county) | | Retirement system (local police and fire personnel; all first class city employees) | | Police (city, county)<br>Fire (city, county)<br>Libraries (city, county)<br>Health (city, county)<br>Appraisers (county) |
| West Virginia (no reply) | | | | | |
| Wisconsin | Welfare (county)<br>Civil Defense (city, county) | Police (city, county)<br>Fire (city, county)<br>Welfare (county) | Retirement system (all local employees) | Police (city, county)<br>Fire (city, county)<br>Welfare (county) | Sewerage (city, county)<br>Libraries (city, county)<br>Water supply (city, county)<br>Welfare (city, county)<br>Civil Defense (city, county) |
| Wyoming (no reply) | | | | | |

[1] Data excludes state mandated policies effecting local teaching personnel.

[2] Usually consists of mandated statewide retirement and pension system.

[3] Charter cities exempt from mandated requirements.

[4] Residence requirements.

[5] Voluntary participation.



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## PUBLISHED REPORTS OF THE ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS[1]

*Coordination of State and Federal Inheritance, Estate and Gift Taxes.* Report A-1, January 1961. 134 pages, printed.

*Investment of Idle Cash Balances by State and Local Governments.* Report A-3, January 1961. 61 pages (out of print; summary available).

*Governmental Structure, Organization, and Planning in Metropolitan Areas.* Report A-5, July 1961, 83 pages; U.S. House of Representatives, Committee on Government Operations. Committee Print. 87th Cong. 1st Sess.

*State and Local Taxation of Privately Owned Property Located on Federal Areas.* Report A-6, June 1961. 34 pages, offset (out of print; summary available).

*Periodic Congressional Reassessment of Federal Grants-in-Aid to State and Local Governments.* Report A-8, June 1961. 67 pages, offset (reproduced in Appendix of *Hearings on S. 2114 Before the U.S. Senate, Subcommittee on Intergovernmental Relations of the Committee on Government Operations.* January 14, 15 and 16, 1964 88th Cong. 2d Sess.)

*Local Nonproperty Taxes and the Coordinating Role of the State.* Report A-9, September 1961. 68 pages, offset.

*Intergovernmental Responsibilities for Water Supply and Sewage Disposal in Metropolitan Areas.* Report A-13, October 1962. 135 pages, offset.

*Transferability of Public Employee Retirement Credits Among Units of Government.* Report A-16, March 1963. 92 pages, offset.

**The Role of the States in Strengthening the Property Tax.* Report A-17, June 1963. Vol. I (187 pages) and Vol. II (182 pages), printed. $1.25 ea.

*Statutory and Administrative Controls Associated with Federal Grants for Public Assistance.* Report A-21, May 1964. 108 pages, printed.

*The Problem of Special Districts in American Government.* Report A-22, May 1964. 112 pages, printed.

*The Intergovernmental Aspects of Documentary Taxes.* Report A-23, September 1964. 29 pages, offset.

*State-Federal Overlapping in Cigarette Taxes.* Report A-24, September 1964. 62 pages, offset.

*Relocation: Unequal Treatment of People and Businesses Displaced by Governments.* Report A-26, January 1965. 141 pages, offset.

*Federal-State Coordination of Personal Income Taxes.* Report A-27, October 1965. 203 pages, offset.

*Building Codes: A Program for Intergovernmental Reform.* Report A-28, January 1966, 103 pages, offset.

**State-Local Taxation and Industrial Location.* Report A-30, April 1967. 114 pages, offset 60¢.

**Fiscal Balance in the American Federal System.* Report A-31, October 1967. Vol. 1, 385 pages offset. $2.50; Vol. 2 *Metropolitan Fiscal Disparities*, 410 pages offset. $2.25.

**Urban and Rural America: Policies for Future Growth.* Report A-32, April 1968. 186 pages, printed. $1.25.

**Intergovernmental Problems in Medicaid.* Report A-33. September 1968. 122 pages, offset. $1.25.

**State Aid to Local Government.* Report A-34, April 1969. 105 pages, offset. $1.00.

*Factors Affecting the Voter Reactions to Government Reorganization in Metropolitan Areas.* Report M-15. May 1962. 80 pages, offset.

**Performance of Urban Functions: Local and Areawide.* Report M-21, September 1963. 281 pages, offset. $1.50.

*State Technical Assistance to Local Debt Management.* Report M-26, January 1965, 80 pages offset.

**A Handbook for Interlocal Agreements and Contracts.* Report M-29, March 1967. 197 pages, offset. $1.00.

**Federalism and the Academic Community: A Brief Survey.* Report M-44, March 1969. 55 pages, offset. 60¢.

*The Advisory Commission on Intergovernmental Relations.* A Brochure. M-46. August 1969.

*Urban America and the Federal System.* Report M-47. September 1969. 140 pages, offset. $1.25.

*1970 Cumulative ACIR State Legislative Program.* Report M-48 August 1969.

*Eleventh Annual Report.* Report M-49. 88 pages, offset.

[1] Single copies of reports may be obtained without charge from the Advisory Commission on Intergovernmental Relations. Washington, D. C. 20575.

*Multiple copies of items may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D. C. 20402.