ISSUES IN LOCAL GOVERNMENT

COLLECTIVE BARGAINING

1985

PREPARED BY THE LEGISLATIVE COMMISSION ON EMPLOYEE RELATIONS

FALL 1985

Staff:
Jermaine Foslien, Director
Bette Anderson
Gary Bastian
Lynn Bolnick
Helga Kessler
Anne Knapp
Mark Shepard

ACKNOWLEDGMENT

The commission gratefully acknowledges the representatives from labor and management who volunteered their time to participate in the LCER interviews. Without them this review of local government collective bargaining would not have been possible.

Tom Moore, past president of the Minnesota Professional Fire Fighters, died September 25, 1985. The Commission appreciates Mr. Moore's contribution to this report and will miss his thoughtful and energetic style of explaining the fire fighters' viewpoints on PELRA.

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PREFACE

Minnesota's Public Employee Labor Relations Act (PELRA) governs the collective bargaining process for more than 200,000 state and local public employees. Over the past 14 years it has become an essential ingredient in the establishment of stable and equitable public sector labor relations. As such, the law is of vital concern to public employers, employees, unions and the public.

In 1980, after the Legislature made major changes to PELRA, the Legislative Commission on Employee Relations (LCER) decided that the law should be evaluated to assess the impact of the 1979 and 1980 PELRA amendments on local governments. That year the LCER staff conducted its first review. The report ("Issues in Public Sector Collective Bargaining for 1980-81: A Survey of Employer and Employee Viewpoints," by Douglas Seaton) presented an overview of the major issues facing the state's collective bargaining process and discussed the need for additional reforms.

In June, 1985, the Commission directed staff to prepare a second review of issues and concerns in local government collective bargaining. Over a period of three months, LCER staff conducted extensive interviews with public sector employer and employee representatives. These interviews were intended to solicit opinions and ideas from participants in the collective bargaining process for the purpose of informing legislators of possible ways to improve PELRA; they were not meant to imply or establish a specific agenda for future legislative action.

SUMMARY

Most of the people interviewed by LCER staff voiced general satisfaction with PELRA. Several said specifically that the law should be left alone. Nevertheless, nearly all interviewees had suggestions for improving individual provisions of PELRA or concerns about the way in which the law is being implemented or interpreted by the Bureau of Mediation Services (BMS), the Public Employment Relations Board (PERB), and the courts. Some of the issues raised in 1985 were new; most, however, have been raised before, several as early as 1971 when PELRA was first enacted.

During the course of the interviews some issues were raised more than others. The most frequently discussed issues included pay equity, interest arbitration, unfair labor practice procedures, veterans preference and the definition of public employee. Though each of these topics is dealt with at length in the report, a brief summary is provided here.

1. Pay Equity

   Issues relating to pay equity for local units of government were raised by both labor and management. Participants were concerned about the lack of cross referencing between PELRA and the pay equity statutes, the restructuring of job classifications, the meet and confer requirements for choosing a consultant and a job evaluation system, and future state funding for pay equity adjustments. Labor representatives expressed concern over the possibility of contracting out services to avoid pay equity implementation.

2. Interest Arbitration

   The subject of interest arbitration drew considerable comment from representatives of both labor and management. Employer representatives were particularly concerned about essential employees' automatic right to have bargaining impasses resolved through binding arbitration. They also expressed concern over the number of factors that may be considered by an arbitrator in deciding a case and the possibility that an arbitration award might commit a local government to an excessively expensive contract. Labor representatives generally felt that the law relating to interest arbitration for essential employees should be left alone. Participants from both sides of the bargaining table expressed concerns about the quality of arbitrators and the current arbitrator selection procedures.

3. Unfair Labor Practices

Unfair labor practice issues were of primary concern to labor participants. Employee representatives claimed that employers can commit unfair labor practices without fear of retribution because unions often cannot afford to prosecute unfair labor practices and the courts frequently fail to make informed, equitable, and timely decisions in unfair labor practice cases. They suggested solving these problems by authorizing judges to award attorney's fees and court costs to the prevailing party in unfair labor practice cases, changing original jurisdiction over unfair labor practice cases from the district court to an administrative agency such as the BMS, and amending PELRA to include sanctions to discourage employers from committing frivolous unfair labor practices. At the very least, labor representatives wanted the courts to be required to report unfair labor practices to a central agency so that judges, attorneys and the parties would have easy access to the types of unfair labor practice decisions being made throughout the state.

4. Veterans Preference

The availability of multiple grievance procedures for veterans was raised as an issue by management and some labor representatives. Under current law veterans, unlike other employees, may pursue grievances under the Veterans Preference Act as well as under PELRA. There was some concern about the possibility that an arbitrator and a veterans hearing board might arrive at conflicting decisions in the same case.

5. Public Employees

Both labor and management representatives raised concerns about the definition of public employee particularly as that definition relates to part-time and seasonal workers. Part-time and seasonal employees are excluded from bargaining units unless certain statutory thresholds are met. The thresholds have been a matter of legislative debate for some time. Recently, this controversy has been expanded to include a disagreement between the BMS and PERB over how the term "normal work week" should be interpreted in determining which employees will be considered "part time" and therefore excluded from bargaining units. Legislative clarification of the statute will probably be necessary to quiet this issue.

INTRODUCTION

In the following pages, the reader will find an overview of the local government collective bargaining issues facing Minnesota in 1985 as expressed by representatives of public employers and employees. Because interviewees were promised that their remarks would remain anonymous, the report does not attribute ideas to specific sources, nor does it attempt to assess the feasibility of the various suggestions. A list of the organizations whose representatives were interviewed is attached as Appendix A.

It should be noted that the LCER intentionally did not include teacher representatives in its list of interview candidates. This was because the Advisory Council on Bargaining Impasse Resolution dealt extensively with the issue of teacher collective bargaining during the 1984 interim and the Legislature made amendments to the PELRA provisions relating to teachers during the 1985 session (Laws 1985, Chapter 157).

To facilitate easy use, this report arranges the concerns of the parties into the following five major subject areas: Coverage, Rights, Process, Administration and Enforcement, and Related Areas. These five subject areas are broken down into sub-topics that are organized in a manner that roughly follows the organization of PELRA (Minnesota Statutes, Section 179A.03 - .25).

A. COVERAGE

The issues discussed in this section relate to PELRA's definition section (Sec. 179A.03)

1. Confidential Employees.

A "confidential employee" is defined as any employee who "works in the personnel office," "has access to information" used in the negotiation process or who actively participates in the negotiation process for the employer. Confidential employees are included under PELRA's "essential employee" definition; therefore, they may not strike and their contract disputes that result in impasse must be resolved through binding arbitration. Confidential employees may form bargaining units, but the units may not include non-essential employees.

Some employer representatives felt that confidential employees should be excluded from collective bargaining and that confidential employees should only be allowed to meet and confer over terms and conditions of employment rather than meet and negotiate. Labor representatives, on the other hand, wanted to expand the bargaining rights of certain confidential employees. Specifically, they wanted to permit those clerical employees who work in personnel offices but who do not have access to information used in bargaining or do not actively participate in the negotiation process to join employee bargaining units containing non-essential clerical employees.

2. Essential Employees.

Employees covered under PELRA's definition of "essential employee" include firefighters, peace officers, correctional guards, hospital employees, confidential and supervisory employees, principals and assistant principals. As indicated above, although essential employees are permitted to bargain collectively, their rights under PELRA are significantly different from those of other employees.

The issue most often discussed concerning the definition of essential employees was whether or not there should be any statutory distinction between essential and non-essential employees. Labor representatives tended to favor the status quo. Several, however, thought that the concept of eliminating the essential category had merit but that the idea needed further study. Management representatives generally liked the idea of repealing the essential employee definition.

In addition to these general comments on essential employees, some labor interviewees made several specific suggestions for changes:

a) The definition of essential should be expanded to include public safety dispatchers. If necessary, a license requirement could be added to cover these employees.

b) Part-time police officers should be treated the same as full-time police officers. Currently, certain part-time employees are excluded from PELRA under section 179A.03, subdivision 14. Proponents of this change

argued that part-time police officers face the same dangers as full-time officers and therefore should enjoy the same contract privileges and bargaining rights.

3. Public Employee.

Any person employed by a public employer is a "public employee" under PELRA unless that person falls into one of twelve statutory exceptions. Two of those exceptions are "part-time" and "temporary or seasonal" public employees. Part-time employees are those people who work the lesser of 14 hours per week or 35% of the normal work week in the appropriate bargaining unit. Seasonal employees are defined as employees who work fewer than 67 days in any calendar year or students who work less than 100 days in a year. Neither part-time nor seasonal employees belong to bargaining units or have collective bargaining rights under PELRA.

At the present time, BMS and PERB are involved in a dispute over the interpretation of the definition of part-time employee. Resolution of the dispute may have a significant impact on the membership of bargaining units that represent large numbers of less than full-time employees. BMS holds that part-time employees are those people who work the lesser of 14 hours per week or 35% of the normal full-time work week for employees in any given bargaining unit. PERB argues that a "normal work week" should be calculated by averaging the number of hours worked by all the employees (both full and part-time) in the job classes covered by

the bargaining unit. Therefore PERB interprets "part-time" as meaning the lesser of 14 hours per week or 35% of the average work week for employees in a given bargaining unit. The effect of PERB's interpretation of part-time is to include more part-time employees in bargaining units.

In connection with this issue one management representative suggested that the BMS adopt rules to govern its interpretation of the PELRA definitions for "part-time" and "temporary and seasonal" employees. It was felt that under this approach, when unit determinations are made, there would be no question as to what method would be used to determine the part-time status of an employee.

The dispute between BMS and PERB over the interpretation of "part-time" is being pursued before the appellate court and could be resolved before the 1986 session. Even with an Appeals Court decision, however, legislative clarification of the issue will probably be necessary to avert further controversy.

The threshold for "seasonal employees" continues to be a subject of discussion between employee and employer representatives. A 1983 amendment to PELRA changed the threshold between seasonal employment and regular public employment from 100 to 67 days. This change, however, has not satisfied all parties. Several labor representatives suggested that the number of days that an employee could be considered seasonal should be lowered to 30 days per year. Management representatives would like to see the threshold changed back to 100 days per year.

An alternative to the number of hours or number of days approach to defining part-time and seasonal employees was offered by several interviewees. This approach would eliminate the definitions in statute and allow employers and employees to determine which employees would be part-time and which would be seasonal through the collective bargaining process. Another alternative would be to adopt an approach similar to that used by private sector employers under the National Labor Relations Act. Under the NLRA, such questions are resolved on a case by case basis by the National Labor Relations Board based upon standards the board has developed.

4. Public Employer.

The PELRA definition of "public employer" includes the state, the Regents of the University of Minnesota, and the "governing body of a political subdivision ... which has final budgetary approval authority for its employees." A 1982 amendment to the definition gave "elected appointing authorities" (e.g. sheriffs) the right to have their views "considered" during the labor negotiation process.

The 1982 amendment was intended to clarify that for purposes of PELRA, city councils and county boards were the employers of employees in local government, non-teacher bargaining units. The language concerning "elected appointing authorities" was added to the original draft of the amendment as a result of a compromise between labor and management. In 1985, the prevailing sentiment among people interviewed by LCER staff was to eliminate the

third-party intervention language from the definition of public employer. It should be noted, however, that LCER staff did not interview any "elected appointing authorities".

5. Supervisory Employees.

"Supervisory employees" are those people who exercise or, in the case of supervisors of non-essential employees, who can "effectively recommend" a majority of ten management functions identified in statute (supervisors of essential employees are excluded from the "effectively recommend" provision). Under PELRA, supervisory employees may organize, but they may not form units with non-supervisory employees. Supervisory employees are also included in the definition of essential employees.

Most of the comments regarding supervisory employees dealt with fine tuning the definition and clarifying the meaning of management functions such as "transfer" and "discipline." In general, labor wanted to minimize the number of people included under the definition of "supervisory employee" and to prohibit supervisors from performing bargaining unit work. Several labor representatives suggested that it might be possible to determine annually which employees actively exercised a majority of the supervisory functions. Those employees who had the authority but never used it would become part of non-supervisory bargaining units.

Another approach suggested by labor representatives was to institute a "time test" similar to that required of principals to determine which employees would be designated as "supervisory."

Under section 179A.03, subdivision 12, a person must "devote more than 50 percent of his or her time to administrative or supervisory functions" in order to be a principal. Labor representative felt that a "time test" like this might discourage the practice of designating "lead workers" as supervisors when in fact these workers only spend a small amount of their time performing management functions.

Management favored excluding supervisors from collective bargaining. In addition, there was some employer sentiment in favor of adopting a definition of supervisory employee similar to that used in the National Labor Relations Act. The NLRA defines a supervisor as any individual who performs one of ten specific management functions. One participant suggested extending the "effectively recommend" provision to supervisors of essential employees.

There continues to be a disagreement between management and labor over whether police and fire captains should be included under the definition of supervisory employee. Labor feels that captains should be included in bargaining units along with other employees. Employers want captains excluded from employee units.

6. Teacher Aides and Paraprofessionals.

Teachers are defined in PELRA as a distinct category of licensed, professional, employee. Teacher aides and paraprofessionals, however, are not defined. Some participants suggested that the Legislature add definitions for these job classifications to PELRA.

7. Terms and Conditions of Employment.

PELRA defines "terms and conditions of employment" as meaning hours, compensation, fringe benefits except for pensions, and personnel policies affecting an employee's working conditions. Several labor representatives felt that retirement contributions and benefits should be included in the definition. One labor representative expressed the opinion that scheduling of vacation should be designated as a negotiable item.

8. Other Related Items.

Participants raised several definitional problems that currently are not addressed in PELRA. One interviewee felt that "fair share fee" should be defined. PELRA defines "fair share fee challenge" but not the basic fee itself. There was also some concern voiced over non-sexual harassment of bargaining unit employees by supervisors. One labor representative suggested that section 179A.03 be amended to include a broader definition of harassment. Finally, management representatives felt strongly that PELRA should define "oral discipline" and that the law should exclude oral disciplinary actions from grievance arbitration.

B. RIGHTS AND OBLIGATIONS

1. Rights and Obligations of Employees.

Section 179A.06 deals with the rights and obligations of employees and includes the following: the rights of public

employees to express their views regarding their terms and conditions of employment; the rights of employees to organize; the obligation of employees who are not members of an exclusive bargaining unit to pay, if requested, a fair share fee to the exclusive representative for services rendered; the right of professional employees to meet and confer; and the right of public employees to meet and negotiate, and have a payroll dues check off. During the LCER interviews, participants raised several issues relating to this section.

Employer and employee representatives who favored eliminating the distinction between essential and non-essential employees and giving all employees the right to strike suggested repealing the language in this section requiring these two categories of employees to form separate bargaining units. Several management representatives would also like PELRA to specifically authorize employers to impose a fee for administering the fair share fee. This would include assessing costs for providing employee lists and making payroll deductions. As an alternative, some employers would like to see the fair share fee become a negotiable item.

Labor representatives strenuously objected to these proposed changes in the fair share fee provision. Instead, labor representatives suggested limiting the fees that can be charged by employers for administering the fair share fee. One interviewee felt that the right to meet and confer should be extended to all public employees, not just professional employees. Another wanted PELRA to require that teacher aides be given employer-paid self-defense training and that personal belongings such as

eyeglasses and hearing aids, which are broken during student contact, be replaced at employer expense.

2. Rights and Obligations of Employers.

Under PELRA (section 179A.07) public employers are not required to meet and negotiate on matters of inherent managerial policy, but they must meet and negotiate with exclusive representatives regarding grievance procedures and terms and conditions of employment. PELRA also requires employers to recognize and negotiate through certified exclusive representatives and to give elected union officials reasonable time off to conduct the duties of the exclusive representative.

Labor representatives had several suggestions for changing this section of PELRA. They would like to see some of the matters of inherent managerial policy, specifically the right to bargain over the selection and number of employees, become negotiable. Labor also suggested the need for further clarification of the right to "reasonable time off" for conducting union duties. Employee representatives felt that there should be an easy enforcement remedy when an employer makes it difficult for employees to exercise their right to take time off.

3. Unit Determinations.

The size and proliferation of bargaining units has been an issue for several years. Amendments to PELRA in 1979 and 1980 defined the occupational units for state and University of

Minnesota employees. There have been suggestions that a similar action should be taken for local government employees.

Labor representatives strongly opposed any legislative restrictions on the number of the size of bargaining units for local government employees. They argued that the problems addressed in the 1979 and 1980 amendments for state and university employees do not exist at the local level. Labor participants acknowledged that small units are time-consuming for employee representatives and lack bargaining clout, but said that employees should be free to select their own representation. One labor participant would like the BMS rules to be applicable to PERB.

Management representatives made several comments regarding unit determinations. Several brought up a long-standing PELRA requirement (section 179A.09) that in making unit determinations, the director of BMS must "place particular importance upon the history and extent of organization, and the desires of the petitioning employee representatives." These management representatives want to see this provision repealed because it tips the balance toward unions, encourages proliferation of units, and hinders the flexibility of the director in making unit determinations. Other management representatives suggested that the issue of unit determination be negotiable. One employer representative voiced the opinion that bargaining units at the city and county levels should be structured along broad functional lines such as "law enforcement," "public works," "court house employees," and "social service workers."

4. Exclusive Representation and Elections Decertification.

Section 179A.12 sets forth the procedures for electing and decertifying an exclusive representative. One labor representative objected to the fact that a union could not check another union's cards during a decertification contest. This representative wanted to be able to verify the names submitted by the opposing employee organization in calling for an election under section 179A.12, subdivision 3. There was also concern expressed by this person that repeated certification challenges within a single year undermined employee representatives at the local level.

5. Independent Review.

In section 179A.25, PELRA provides that public employees have the right to an independent review by PERB of grievances arising from their employment. This right appears to exist outside of the collective bargaining process, and apparently it was included in PELRA to address fears that employees would be required to join a union in order to have their rights protected. Several representatives asserted, however, that a 1974 Supreme Court ruling effectively negated this right by severely restricting the number of employees covered under the independent review provision. These interviewees felt that the inclusion of this section in PELRA gives employees the false impression that they enjoy a right to an independent review. Since this is not, in fact, the case, the law should either be reviewed and strengthened or repealed.

C. PROCESS

1. Negotiation Procedures and Contracts.

Several miscellaneous issues were raised during the interviews regarding negotiation procedures and contracts. These included suggestions by various participants to encourage joint bargaining as set forth in section 179A.14 and to correct the confusion regarding veterans' rights caused by a 1984 Supreme Court decision allowing veterans to pursue grievances under both PELRA and the Veterans Preference Act (See page 31). Labor representatives thought that parties should be required to renegotiate an entire contract if a portion of that contract is later ruled to be in conflict with state or federal law (such as the recent Garcia decision by the Supreme Court regarding overtime pay for public employees) and some employer representatives felt that grievance procedures and contract duration should be negotiable items and not mandated in statute (section 179A.20, subdivisions 3 & 4).

2. Mediation.

Section 179A.15 establishes the procedures for initiating mediation and sets forth the powers of the director of BMS with respect to mediating bargaining disputes. Except for one labor participant who felt that mediation is an unnecessary step in the negotiation process and that parties should be able to certify themselves to impasse, participants generally liked the system of

mediation currently practiced in Minnesota. The parties registered a high level of satisfaction with the services rendered by BMS; several people felt that the BMS provides better services than the Federal Mediation and Conciliation Service.

There was some concern among labor and management that the Legislature might extend the 1985 teacher impasse amendments, particularly those pertaining to strike notifications, to non-teachers. While one labor representative suggested that parties be allowed to negotiate their own timeframes and impasse procedures, the general consensus among labor and management was to limit the newly enacted timelines to teachers. The most frequent response to whether or not the legislature could speed up bargaining was that "the parties will agree to a contract when they want to."

In addition to opposing collective bargaining timelines, representatives from labor and management also opposed adopting either fact-finding or mediation-arbitration. Fact-finding is an intermediate step between mediation and arbitration most often used in states where public employees don't have the right to strike. Under fact-finding, parties who have reached a bargaining impasse submit their issue to a neutral person or panel. The person or panel investigates the disputed issues and makes a finding of facts and recommendations. The recommendations can be either advisory or binding. Most of the people interviewed by LCER staff objected to fact-finding and described it as one more costly and cumbersome delay in the collective bargaining process.

Mediation-arbitration is a process whereby once a dispute has gone to arbitration, the person who had been the mediator becomes the arbitrator and may still attempt to mediate the dispute and gain a settlement without having to make an arbitration award. Interviewees objected to this system of impasse procedure because they felt that mediators could not maintain their credibility if they would, at some time, be forced to take sides in a dispute and make an arbitration award. The essence of a mediator's effectiveness, participants explained, is the individual's neutrality.

3. Interest Arbitration.

Under section 179A.16, public employees are given the right to request binding interest arbitration as an alternative to their right to strike. For non-essential employees, either party may petition the BMS for interest arbitration and either party may reject the petition. Essential employees may not strike and must submit impasse matters to binding arbitration. Section 179A.16 also authorizes the director of BMS to certify an impasse and determine the issues to be submitted to arbitration. It sets forth the type of arbitration that parties may use, prescribes the method for construction of the arbitration panel, and establishes the jurisdiction, powers and procedures for arbitrators.

The topic of arbitration received quite a bit of discussion during the LCER interviews. Most of the comments on this subject

revolved around arbitration for essential employees, the quality of arbitrators and the construction of arbitration panels.

Management representatives voiced considerable discontent over the system of binding arbitration for essential employees. Many thought that the current system provides incentives for arbitrators to base their decisions on securing future employment, not on the public interest. As a result, they claimed that arbitration awards commonly give disproportionately high economic settlements for essential employees. Eliminating binding arbitration for essential employees and allowing these employees the right to strike, some employer representatives argued, would restore "economic discipline" to the bargaining process.

Employer representatives suggested several methods for modifying essential employees' right to binding arbitration. The first and most common suggestion was to eliminate the "essential employee" distinction from PELRA and giving all public employees the right to strike. Another proposal called for allowing employers to designate job classes as essential or non-essential either at the time bargaining units are formed or when a negotiation impasse is reached. In either instance, the case for designating a unit as "essential" would be made before a neutral person, agency, or court. In discussing a flexible definition of "essential employee", employers acknowledged that such a definition might include more employees than the current law. For example, the essential designation might be requested for snowplow operators between the months of November and April or for municipal liquor store clerks.

Labor representatives generally opposed any change in the binding arbitration law for essential employees. They argued that permitting essentials to strike would jeopardize the public welfare.

Opinions gathered during the LCER interviews indicate that some employers and employees continue to have concerns over the method of selecting arbitrators and the overall quality of Minnesota's arbitrator lists. The construction of arbitration panels is set out in section 179A.16, subdivision 4. After BMS has certified an impasse, PERB supplies the parties with the names of seven candidates selected at random from PERB's arbitrator list. Either party may request a single arbitrator; otherwise, each party may strike two names from the list and a three-person panel is used. Most parties select one arbitrator.

PERB's random selection process drew criticism from a number of labor and management participants. These people want the selection process to be more controlled so that parties are not provided with the names of "obviously inappropriate" arbitrators. In order to gain more control over the selection of arbitrators, many labor contracts between public employers and employees include the names of certain arbitrators who may be used in interest or grievance arbitration, or they specify that the parties must use the BMS's arbitrator list.

Interviewees who expressed concern over the uneven quality of arbitrators and arbitration awards tended to focus on PERB's arbitrator list and to attribute the perceived problems to lack of sufficient training and review of arbitrators. Most parties,

even those who were satisfied with the overall quality of Minnesota's arbitrators, thought that it would be a good idea to require prospective arbitrators to participate in a more extensive internship program before being included on PERB's list. They also felt that experienced arbitrators should be reviewed periodically to ensure that fair and equitable decisions are being rendered. Several people suggested that all arbitrators on the PERB and BMS lists should be Minnesota residents.

One participant felt that the problem with arbitrators was bad enough to warrant abolishing the current system. This person suggested that the state should create a separate office of arbitration and hire, train, and provide its own professional arbitrators. Under this system, an arbitrator's concern over future employment could be eliminated by making the position a high-paying, tenured job.

A variety of other issues involving arbitration were raised by management and labor during the LCER interviews. Employer representatives expressed the following ideas:

a) That PELRA specifically prohibit any arbitration award that exceeds a local unit of government's ability to pay or that a local government be given a levy limit exception if the award exceeds its estimated revenues for the contract period;

b) That the Legislature should reinstitute its experiment with final offer arbitration because during the first experience, the system was not given an adequate test; and

c) That PELRA should limit the factors that can be considered in arbitration and provide stronger, more concise standards for arbitrators to follow.

Labor representatives suggested that the Legislature clarify an arbitrator's jurisdiction over a case after an award has been given. One labor representative wanted arbitration awards to be effective for a minimum of two years so that employees do not have to endure the cost of going to arbitration every year. Several other labor representatives suggested that the Legislature give consideration to an amendment that would enable small, non-essential units to force employers into arbitration as an option to going on strike. These representatives argued that striking is not a real alternative for small units because these units are too weak to have any true bargaining leverage.

Both employer and employee representatives commented that arbitrators seldom meet the statutory requirements that they make awards within 10 days of the hearing and issue orders "by the last date the employer is required" to " submit its tax levy or budget or certify its taxes voted...or by November 1, which ever date is earlier." Parties also felt that since the $180 per day limit on interest arbitrators' fees is unrealistically low and usually ignored or circumvented by the parties, that the Legislature should either raise or repeal the limit. There is no statutory limit on the fees charged in grievance arbitrations (section 179A.20).

4. Strikes.

PELRA gives all non-essential public employees and teachers the right to strike. None of the parties interviewed said that they would change that right. However, interviewees raised a number of strike-related issues. Among these were concerns about picket lines, lock-outs, job actions by essential employees and illegal strikes.

Labor representatives felt that PELRA should be amended to permit non-striking public employees to honor the picket lines of striking employees. They support this change by saying that under the current system public employers have an edge over employees because they can continue to operate with non-striking personnel. Allowing employees to honor picket lines, labor representatives argued, would shift the balance of power to the center. Management representatives vehemently opposed this idea saying that if public employees could honor picket lines, the balance of power would swing dramatically to the union side.

Several labor representatives felt that Minnesota's picket line statute (section 179.121) should be reviewed, but they did not make specific suggestions as to how it should be changed. Under current law, during a strike a person "entering or leaving a place of business or employment" must make a full stop at the point of ingress or egress. Failure to stop or to exercise caution when entering or leaving a place where there is clear evidence of a labor dispute in progress is a misdemeanor.

Labor representatives raised several other concerns. They thought that the PELRA sanctions against illegal strikes should

be repealed because they are obsolete. The sanctions were written at a time when public employees did not have the right to strike and therefore are no longer relevant. In addition, one employee representative suggested that PELRA authorize job actions for essential employees whose employers unilaterally violate their labor contracts.

Management representatives suggested several changes to PELRA that dealt with strike-related concerns. The first of these was that PELRA specifically authorize an employer's option to lock-out employees who fail to strike at the end of a 10-day strike notice. A second suggestion was that the law state that contracts are void when the 10-day strike notice matures.

D. ADMINISTRATION AND ENFORCEMENT

PELRA provides for the administration of the law by two distinct branch agencies -- BMS and PERB. In addition, unfair labor practice actions may be pursued in district court. This section discusses concerns relating to PELRA administration and enforcement by BMS, PERB, and the courts.

1. Bureau of Mediation Services, and Public Employment Relations Board.

BMS is the neutral agency charged with administering certain provisions of PELRA. Its statutory duties (section 179A.04) include conducting certification and decertification elections for exclusive bargaining units, making unit determinations,

deciding fair share fee challenges, certifying impasses to PERB for interest arbitration, and providing mediation services to negotiating parties. PERB is a five-member board empowered to hear appeals from BMS decisions, make independent reviews and to maintain arbitration lists for use in interest arbitration for public employees (section 179A.05).

As stated earlier, most people interviewed are satisfied with the services provided by the BMS, but some people criticized the BMS's recent decisions regarding part-time employees. Issues concerning PERB generally centered on that board's arbitration lists. However, several participants also stated that PERB handles BMS appeals in a less than timely fashion.

2. Consolidation of PERB and BMS.

While this topic caused considerable controversy during the 1985 session, it seemed to have become of secondary interest to the parties by the time they were interviewed by LCER staff. A majority of the labor and management representatives interviewed continue to support the notion of consolidating BMS and PERB into a National Labor Relations Board-like agency, but their support is luke-warm at best. These people also suggested that if BMS and PERB are consolidated, that the new agency would have to be careful about separating its mediation and arbitration functions so that the neutrality of mediators would not be compromised. Several interviewees vehemently opposed any consolidation of the two enforcement agencies.

3. Unfair Labor Practices.

The topic of unfair labor practice enforcement seemed to be a major concern of many of the employee representatives interviewed. A number of labor representatives and some management representatives wanted the initial jurisdiction for deciding unfair labor practices changed from the district courts to an administrative agency such as the BMS. This desire was based on the general opinion that district court judges do not review enough labor cases to develop expertise in the subject of labor law. This lack of knowledge on the part of district court judges can result in bad or uneven unfair labor practice decisions. Labor claimed that particularly in the outstate areas, judges tend to discriminate in favor of employers.

The fact that there is no requirement to report unfair labor practice decisions to a central agency so that no one knows how many unfair labor practice actions are being filed annually was also raised as issues. Interviewees felt that the Legislature would be doing the process a service by passing a filing requirement. This would enable parties and the courts to easily monitor the types of unfair labor practice actions being filed in the state and the unfair labor practices decisions being passed down by district court. Several people suggested that BMS or PERB would be logical places to collect this information.

Several labor representatives also expressed dislike of the provisions in PELRA that limit a party's unfair labor practice remedies. These interviewees thought that PELRA should be amended to authorize district court judges to award attorney and

court fees to the prevailing party in unfair labor practices cases and to enable judges to punish offending parties by assessing penalties, removing individuals from appointed or elective office, or jailing them for contempt. Parties differed as to whether the award of fees should be mandatory or discretionary.

Several miscellaneous suggestions were made regarding unfair labor practices enforcement. One person thought that the Legislature should prescribe a procedure for commencing unfair labor practice actions. Another wanted the statute amended to specifically state that violation of a contract provision by an employer constituted an unfair labor practice.

E. RELATED TOPICS

1. Residency Requirements.

Generally speaking, a city or county may not make residence within a specific geographic area a mandatory condition of employment. However, there are three exceptions to this rule: 1) that a residency requirement may be imposed when employment duties require an employee to live on the premises; 2) that non-metro units of government may have a reasonable residency requirement that includes both geographic and response time limits "if there is a demonstrated job-related necessity;" and 3) that a response time requirement (but not a geographic requirement) may be imposed by all cities and counties on persons employed as volunteer firefighters or members of non-profit firefighter companies.

The issue of residency requirements was raised several times during the interviews. Management representatives wanted the non-metro government's ability to impose reasonable time and distance requirements to be applied statewide. Labor representatives, on the other hand, thought that the law should remain in its present form.

2. Charitable Hospital Act.

The Charitable Hospital Act (CHA) was enacted in 1947 to govern the bargaining for city and county-operated hospitals. CHA employees do not have the right to strike; their impasses are settled through binding arbitration. Over the years there has been some sentiment that the CHA should be repealed and its provisions included in PELRA. Other parties, however, feel that the CHA should be retained because the parties affected by the law are comfortable with it; any change in the CHA would simply increase the likelihood of litigation as the parties attempt to define PELRA to fit their circumstances.

3. Open Meeting Law.

The open meeting law (section 471.705) requires that all meetings of a public body must be open to the public, and that all votes must be recorded and filed. An exception to this law allows a governing body to hold closed sessions for the purpose of discussing strategies for labor negotiations. In addition to the open meeting law, another section of law (section 179A.14) requires all negotiations and mediation sessions to be open to

the public unless closed by the director of the BMS. Management representatives opposed the application of the open meeting law to mediation sessions and expressed the opinion that all mediation sessions should be closed.

4. Pay Equity.

The local government pay equity law enacted in 1984 drew quite a bit of comment from the interview participants. Much of the discussion echoed testimony taken during the debates over the bill in 1984 and the proposed amendments in 1985 and will not be reiterated here. However, the parties did raise a number of issues associated with the implementation of pay equity which could be addressed by clarifying amendments or by further interim study.

A number of participants agreed that PELRA and the pay equity law should be properly cross-referenced. The pay equity law makes only an indirect reference to the PELRA definitions. In addition, PELRA contains no reference to either the state or local government pay equity laws.

LCER staff received numerous complaints from labor representatives regarding pay equity. Employee organizations felt that the meet and confer requirement laid out in the pay equity statute was not followed by employers. As a result, employee organizations felt they did not have adequate input into the selection of personnel consultants and job evaluation systems. Since the results of the job evaluations may alter the employment conditions of certain employees, labor representatives wanted the

Legislature to consider an amendment requiring employers to negotiate the choice of job evaluation and job classification systems. Under this proposal, failure to meet this requirement would constitute an unfair labor practice. Labor representatives also expressed fears, which some management representatives confirmed, that the pay equity law would be used by local government as reason to increase the contracting out of public services, particularly those services performed by highly-paid bargaining unit employees.

Management voiced concern that the multiplicity of bargaining units at the local level will hinder the implementation of pay equity. They also argued that because the state had mandated pay equity it should make a commitment to fund any pay equity adjustments required as a result of the 1984 law.

5. Veterans Preference.

Under current law, veterans are entitled to pursue grievances concerning discharge under the veterans preference law (section 197.46) and under PELRA. The veterans preference law sets forth conditions and procedures that an employer must follow when discharging or suspending a veteran. PELRA requires all contracts to include a grievance procedure and provide for compulsory binding arbitration of grievances.

Management and labor are both concerned about the multiple grievance procedures available to veterans. The overlap of current procedures creates the potential for arbitrators and the Veterans Preference Board to reach conflicting decisions in a

veteran's discharge case. Most interviewees felt that veterans should be forced to choose which grievance procedure to follow. A few labor representatives, however, downplayed the problem and said that the two procedures should be left in place. In their opinion, either the first hearing will usually end the controversy so the second hearing will be unnecessary, or the decisions will be combined, with the grieving party's consent.

6. Employee Benefits.

At the request of the Commission, staff attempted to survey the interview participants in the areas of vacation leave, sick leave and paid holidays. The purpose for obtaining this information was to compare the level of employee benefits between state and local government employees.

The findings from the interviews with labor and management groups were inconclusive because participants did not have comprehensive data on the various local government employee benefit policies. Several people suggested using the Metropolitan Area Salary Survey prepared by Stanton Associates to get comparative information on employee benefits.

Nevertheless, the interviews did provide some insights into employee benefits among local government employees. The number of paid holidays ranged from seven to fourteen with an average of about eleven. Vacation and sick leave policies appeared to vary considerably among the groups interviewed.

Some labor representatives commented that an exchange of contract provisions was necessary to obtain Martin Luther King's

Day as a paid holiday. Previously, once passed by the Legislature, paid holidays were negotiated more as a given than as an exchange item.

7. Miscellaneous Comments.

The practice of public employers contracting for delivery of public services with private companies received quite a bit of discussion during the interviews. Labor representatives opposed the practice of contracting out. They claimed that the savings gained by communities through contracting were short-lived and in the long run, contracted services cost more than those delivered by public employees. Several management representatives, on the other hand, disagreed with this interpretation of contracting out and argued that contracting is an effective method for local governments to cut costs without reducing services.

A few other miscellaneous issues were raised by interviewees. One issue related to a 1985 bill that would have amended statutory severance pay provisions. The general feeling among participants was that the severance pay provisions should be left alone. Several labor representatives expressed a desire to have PELRA specifically define the rights of employees hired by public sector employers under the wage subsidy or the Community Investment programs. Finally, one party suggested that the Legislature undertake a full review of all statutory discharge procedures. The purpose of this review would be to provide a uniform discharge procedure and address the employment at will issue for public employees of the state of Minnesota.

F. CONCLUSION

During the course of the LCER interviews, labor and management representatives raised well over 100 issues relating to local government collective bargaining. General concerns included such items as PELRA definitions, arbitration, unfair labor practices, pay equity, unit determinations, and contracting out. Suggestions to improve PELRA ranged from simply clarifying certain sections of law to restructuring state agencies to improve PELRA enforcement. If enacted, some of the changes suggested by interviewees would impact the collective bargaining process for all public employees, not just for local government employees.

APPENDIX

LIST OF ORGANIZATIONS INTERVIEWED

AFSCME, COUNCIL #14, TWIN CITIES AREA, TOM HENNESSY

AFSCME, COUNCIL #65, HIBBING AREA FRED ARGIR

AFSCME, COUNCIL #96, DULUTH AREA, TONY ORMAN (BY CORRESPONDENCE)

ASSOCIATION OF METROPOLITAN MUNICIPALITIES, ROGER PETERSON

ASSOCIATION OF MINNESOTA COUNTIES, LYNN BOLAND AND EDWARD KUNKEL

DON BYE, ATTORNEY

FELHABER, LARSON, FENLON & VOGT, PA, TOM VOGT AND JIM DAWSON

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL #320, JACK MOGELSON AND LARRY BASTIAN

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL #49, TIM CONNORS AND WALTER NIELSEN

LABOR RELATIONS ASSOCIATION, INC., CY SMYTHE

LAW ENFORCEMENT LABOR SERVICES, INC., ROLLAND MILES

LEAGUE OF MINNESOTA CITIES, JOEL JAMNICK

MINNESOTA AFL-CIO, BERNARD BROMMER

MINNESOTA NURSES ASSOCIATION, GERRY WEDEL, BOB WEISNER

MINNESOTA PROFESSIONAL FIRE FIGHTERS, TOM MOORE, RALPH KAYS

MINNESOTA PUBLIC EMPLOYER LABOR RELATIONS ASSOCIATION, SUE RICHARD, ROLLIE TOENGES, BERNIE STEFFANS, AND MIKE HULET

MINNESOTA SCHOOL BOARDS ASSOCIATION, JIM SCHMID

MINNESOTA SCHOOL EMPLOYEES ASSOCIATION, LOCAL #1980, GLENNIS TER WISSCHA AND BOB SHRANK

POLICE OFFICERS FEDERATION OF MINNEAPOLIS, BRUCE LINDBERG AND ROGER PETERSON

ROBINS, ZELLE, LARSON & KAPLAN, STEVE GORDON

ST. PAUL POLICE FEDERATION, BOB KUNZ

SCHOOL SERVICE EMPLOYEES ASSOCIATION, LOCAL #284, JOHN ALLERS

BUREAU OF MEDIATION SERVICES, PAUL GOLDBERG, DIRECTOR

PUBLIC EMPLOYMENT RELATIONS BOARD, CLAUDIA HENNEN, EXECUTIVE DIRECTOR