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Senate Counsel & Research
ROOM 123, CAPITOL
ST. PAUL, 55155

JOHN E. POST, DIRECTOR
(612) 296-0539

COUNSEL
(612) 296-2511

PETER S. WATTSON
JO ANNE ZOFF SELLNER
DANIEL P. MC GOWAN
KATHLEEN E. PONTIUS
DALE L. MC DONNELL
ALLISON WOLF
ELIZABETH V. RICE
JULIE A. BECK
BRAD S. ERVIN
BEVERLY CADOTTE OWEN
MICHAEL SCANDRETT
MARK J. HANSON

RESEARCHERS
(612) 296-7678

WILLIAM RIEMERMAN
JOYCE E. KRUPEY
FRANK FLY
DAVID GIEL
ANNE C. KNAPP
GREGORY C. KNOPFF
LAURA J. MILLER
JACK PAULSON
DWIGHT A. SMITH
N STEVENSON
L A. SUTTER

Senate
State of Minnesota

TO: Advisory Council on
Bargaining Impasse Resolution

FROM: Marsha Gronseth, House Research
Bill Marx, House Education Committee
Elizabeth V. Rice, Senate Counsel

DATE: September 25, 1984

SUBJ: 1985-1987 Contract Timeline of Actions
Relating to Education

A timeline of major actions relating to negotiation of the 1985-87 contract between school districts and teachers is attached.

The column on the left side are actions taken by the Governor, Legislature, and school boards. Although dates are indicated, they are usually the latest date the actions could be taken. Most dates are established by law, while others, such as the school board proposing a referendum levy, take into consideration other factors.

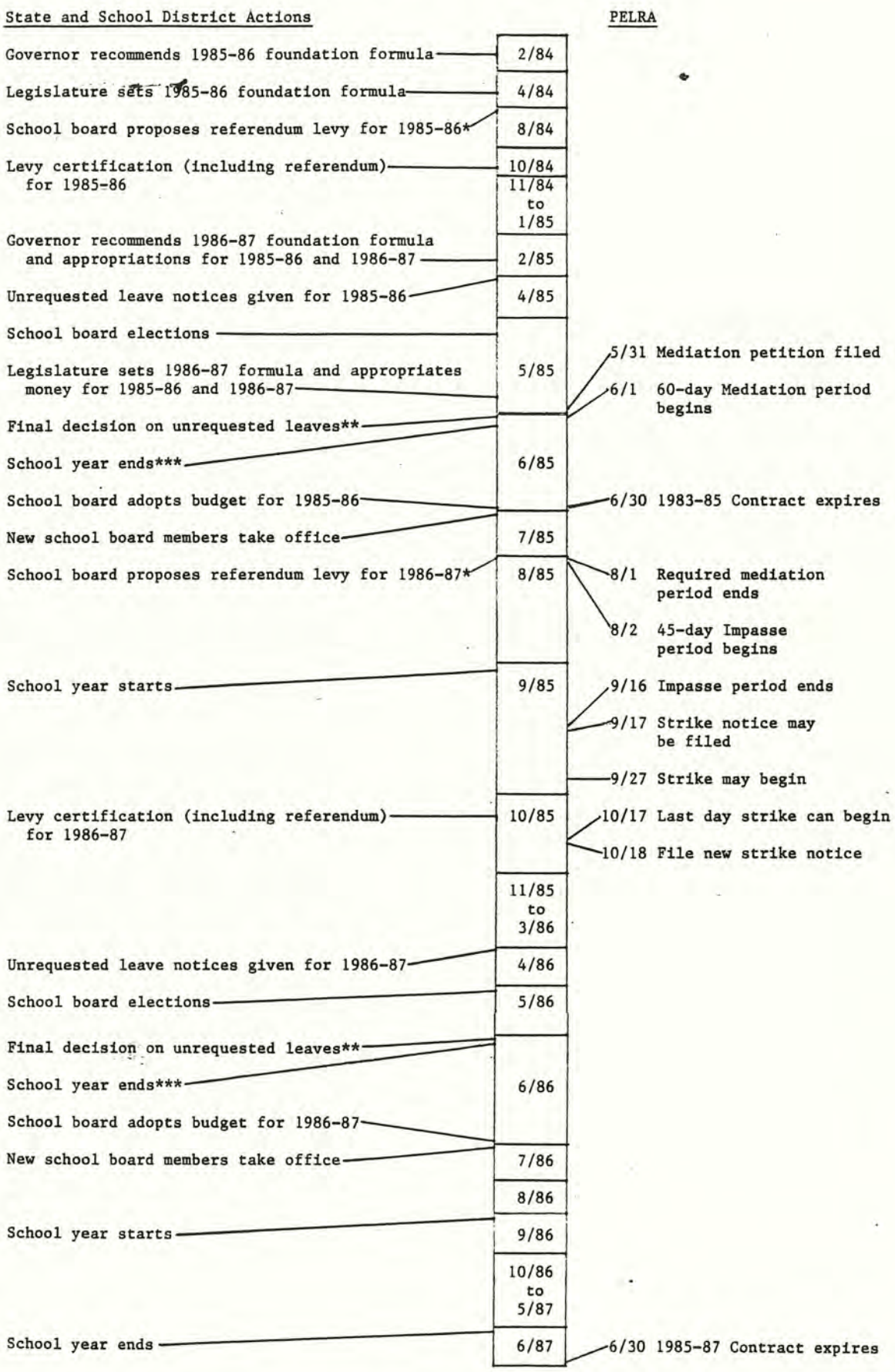
The column on the right side is the PELRA timeline and assumes the parties take actions on the earliest dates allowed by law. It also assumes that no request for arbitration is made. (Chart 1, prepared by BMS and included in the Council's notebooks, was used in preparing this timeline.)

School board elections are usually held on the third Tuesday in May with newly elected members taking office on July 1. Some districts, however, have their elections at the general election in November with newly elected members taking office on the first Monday in January.

We appreciate the assistance of Mary Roberts of the Association of Metropolitan School Districts in preparing the timeline.

EVR:mc

1985-1987 CONTRACT TIMELINE



* A school board may hold a referendum levy election at any time during the year and may hold such an election no more than twice in any given school year.

** Teachers who have been placed on unrequested leave of absence are entitled to unemployment benefits.

*** Most teachers are gone during June, July, and August.

SF-00006-03

STATE OF MINNESOTA

DEPARTMENT MEDIATION SERVICES

Office Memorandum

TO: School Bargaining Impasse Advisory Council

DATE: October 19, 1984

FROM: Paul W. Goldberg

PHONE:

SUBJECT: Mediation Staff

Pursuant to an inquiry at our last meeting, I have reviewed a recent study by the Association of Labor Relations Agencies to determine how Minnesota ranks with respect to the number of Mediators in relation to case load. Although data on individual states is not readily available from ALRA, the attached information seems at least partially responsive.

Number of Full-Time Positions Assigned to the Adjudication or Mediation of Labor Disputes

State	Legal Staff	Mediation Staff	Total
Calif. - Agric. LRB	51	0	51
Calif. - Mediation Svc.	0	18	18
Calif. - PERB	30	0	30
Conn. - LRB	2	0	2
D.C. - PERB	1	0	1
Fla. - PERB	16	0	16
Hawaii - PERB	3	0	3
Ind. - Mediation Dept.	0	2	2
Iowa - PERB	6*	0	6
Kansas - PERB	2	6	8
Kentucky - Mediation Div.	0	2	2
Maine - LRB	2	1	3
Mass. - Conc. & Arb. Bd.	0	14	14
Mass. - LRC	12	0	12
Mich. - Bureau of L.R.	3	0	3
Mich. ERC	6	16	22
MINN. - BMS	**0**	**14**	**14**
Minn. - PERB	0	0	0
Mont. Persl. Appeals Bd.	1	6	7
New. J. - PERC	19	8	27
New J. - Mediation	0	6	6
New York - LRB	11	0	11
New York - PERB	11	11	22
N. Carolina - DOL	0	1	1
Oregon - ERB	4	5	9
Penn. - LRB	12	0	12
Penn. - BMS	0	18	18
Vermont - LRB	1	0	1
Virginia - PERB	0	2	2
Wash. - Higher Ed.	0	1	1
Wash. - PERB	0	8	8
Wisc. - WERC	1	21	22
*Also mediate cases			
Average	6	5	11

MEDIATION CASE LOAD All States - 1983

Category	Range	Average	Minnesota
Private Sector	16-1804	591	251
Public Sector -			
Teachers (K-12)	4-421	114	368
Other School	2-490	138	124
All Other	1-1220	102	598
Total	292-1895	1142	1341

PUBLIC SCHOOL BARGAINING IMPASSE PROCEDURES AND TIME LINES

There are essentially two sets of impasse procedures and time lines for public school employees under current Minnesota law. One impasse procedure covers only "essential" employees (Principals, Assistant Principals, and other Supervisory staff) and provides for mediation and compulsory arbitration of unresolved disputes. The other impasse procedure covers all other school employees and provides for mediation and the right to strike, with arbitration available at the mutual request of the parties. Time lines, however, do not break along "essential" or "non-essential" lines. Here, the distinction is between teachers and all other employees.

Since the perceived focus of interest in time lines centered upon teacher bargaining at our last meeting, this report will be limited to an overview of the negotiations procedures and time lines for teachers only. Similar information can be compiled for non-teacher school employees if there is any need.

Before addressing the impasse focus of the Advisory Council's charge, it is appropriate to briefly review the process and procedures which precede this stage. As has been indicated, the teachers in all but one Minnesota school district are represented by an exclusive bargaining agent, either the MEA or the MFT. By explicit provision in PELRA, all teacher units must negotiate two year collective bargaining agreements, all of which expire on June 30th of odd-numbered years.

Although there are no statutory provisions regarding the point at which negotiation of a successor agreement must begin, it is typical for the contract itself to contain provisions regarding procedures to be followed by either party in notifying the other of a desire to negotiate new terms or provisions. These clauses usually provide for written notice to the other party 30 or 60 days prior to contract expiration. Given the common June 30 expiration date of teacher contracts, negotiations are "opened" in all school districts on or about May 1st of odd-numbered years. (It is significant to note, however, that actual negotiations regarding the successor agreement may not commence until some time after this official "opening" of the agreement.)

Mediation is available to the parties at any point in the bargaining process and is initiated at the request of either the school board or the teacher organization. Once mediation is requested, the Bureau of Mediation Services takes jurisdiction

over the negotiations (in theory,at least) and both parties are obligated to respond to requests from the Director for formal mediation sessions. This obligation lapses 60 days after the current contract expires, however, and mediation sessions held after that point are "for durations agreeable to both parties." For teachers, this means that participation in mediation after August 29th may not be obligatory--although the Bureau has never had either party refuse a request to participate in mediation.

Arbitration of unresolved disputes is available to the parties, but only where there is mutual agreement. In these situations, a formal request for arbitration is filed with the BMS Director, who certifies the matter to PERB if:

1) He determines that further mediation would serve no purpose,

-or-

60 days have passed since the request for mediation was received;

-and-

2) The previous contract has expired;

-and-

3) The other party has accepted the request to arbitrate within 15 days.

In certifying a dispute to PERB for arbitration, the Director specifies the issues which remain unresolved and forwards the final positions on those issues as submitted by the parties.

If arbitration is not requested, or is rejected by either party, a right to strike may mature. The right of teachers to strike in this situation must be preceded by the following circumstances:

1) The previous contract has expired;

-and-

2) A petition for mediation was filed at least 60 days earlier, 30 days of which must have been after contract expiration;

-and-

3) 45 days have passed since the 60-day "mediation period" expired;

-and-

4) A written notice of the intent to strike has been served upon the school board and the Director at least 10 days prior to the start of a strike. (If, however, no strike is commenced within 30 days of such notice, a new notice must be provided and another 10-day "notice period" is imposed.)

Applying these provisions to the re-opening of a teacher contract on May 1, 1983, with a mediation request filed on May 31st, would result in a bargaining calendar as depicted in Chart I attached. Under this scenario, the "mediation period" commences 30 days before the current contract expires and ends 30 days after contract expiration. Following the "mediation period" is a 45-day "impasse period" during which no strike may be commenced. Assuming that a strike were intended in this case, the first day it could commence would have been on September 27, 1983. If no strike was commenced as a result of the first notice of intent to strike, a new notice would be necessary and the earliest date for the strike to commence would be October 28th.

Chart II depicts the bargaining calendar in a similar situation, but where the mediation request was not filed until July 15, 1983. Charts III-X reflect calendars under various other circumstances.

CONTRACT RENEWAL (TEACHERS): No request for arbitration is made.

* 347 dist. filed for mediation on or about 5/31/83

Requirements:

1. Contract has expired (June 30, 1983).
2. Mediation petition is served at least 30 days prior to contract expiration.
3. 60 day mediation period has expired, 30 days of which has followed the contract expiration date (June 30, 1983).
4. 45 day impasse period has expired, following the 30 day mediation period.
5. 10 day notice of intent to strike has expired.

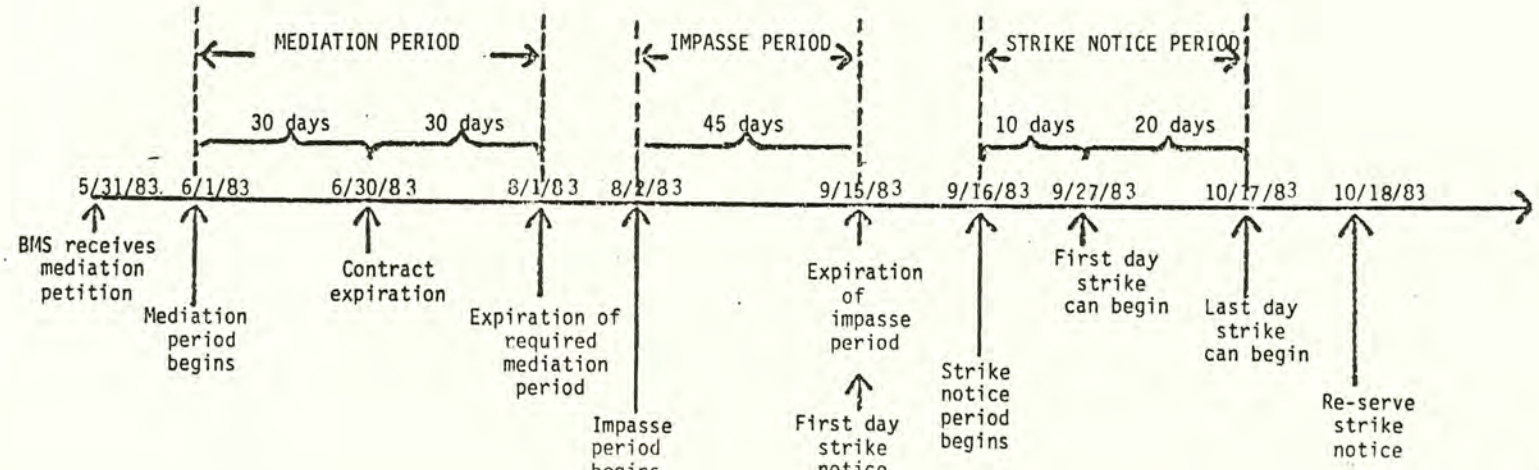


CHART I

CONTRACT RENEWAL (TEACHERS): No request for arbitration is made.

Requirements:

1. Contract has expired (June 30, 1983).
2. Mediation petition is served after contract expiration.
3. 60 day mediation period has expired, 30 days of which has followed the contract expiration date (June 30, 1983).
4. 45 day impasse period has expired, following the 30 day mediation period.
5. 10 day notice of intent to strike has expired.

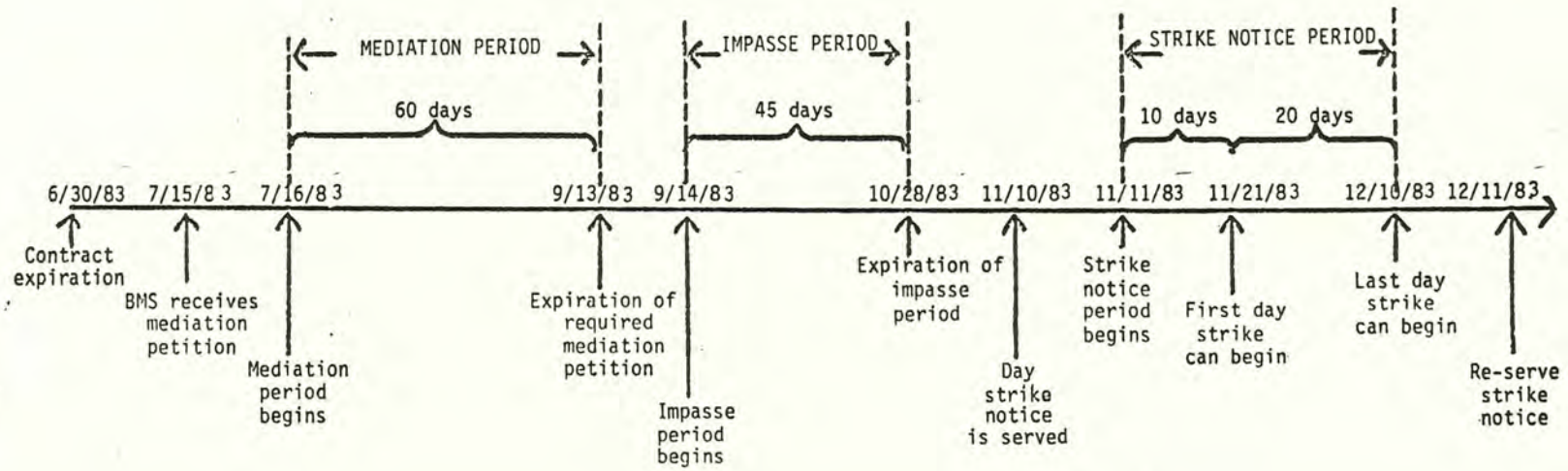


CHART II

CONTRACT RENEWAL (TEACHERS): Request for impasse determination and arbitration is certified by B.M.S. during mediation period.

Requirements:

1. Contract has expired (JUne 30, 1983).
2. 60 day mediation period has expired, 30 days of which has followed the contract expiration date (June 30, 1983).
3. During the 60 day mediation period either labor or management requests certification of impasse and arbitration.
4. Impasse and offer to arbitrate is certified by the B.M.S.
5. Offer to arbitrate is rejected.
6. 10 day notice of intent to strike has expired.

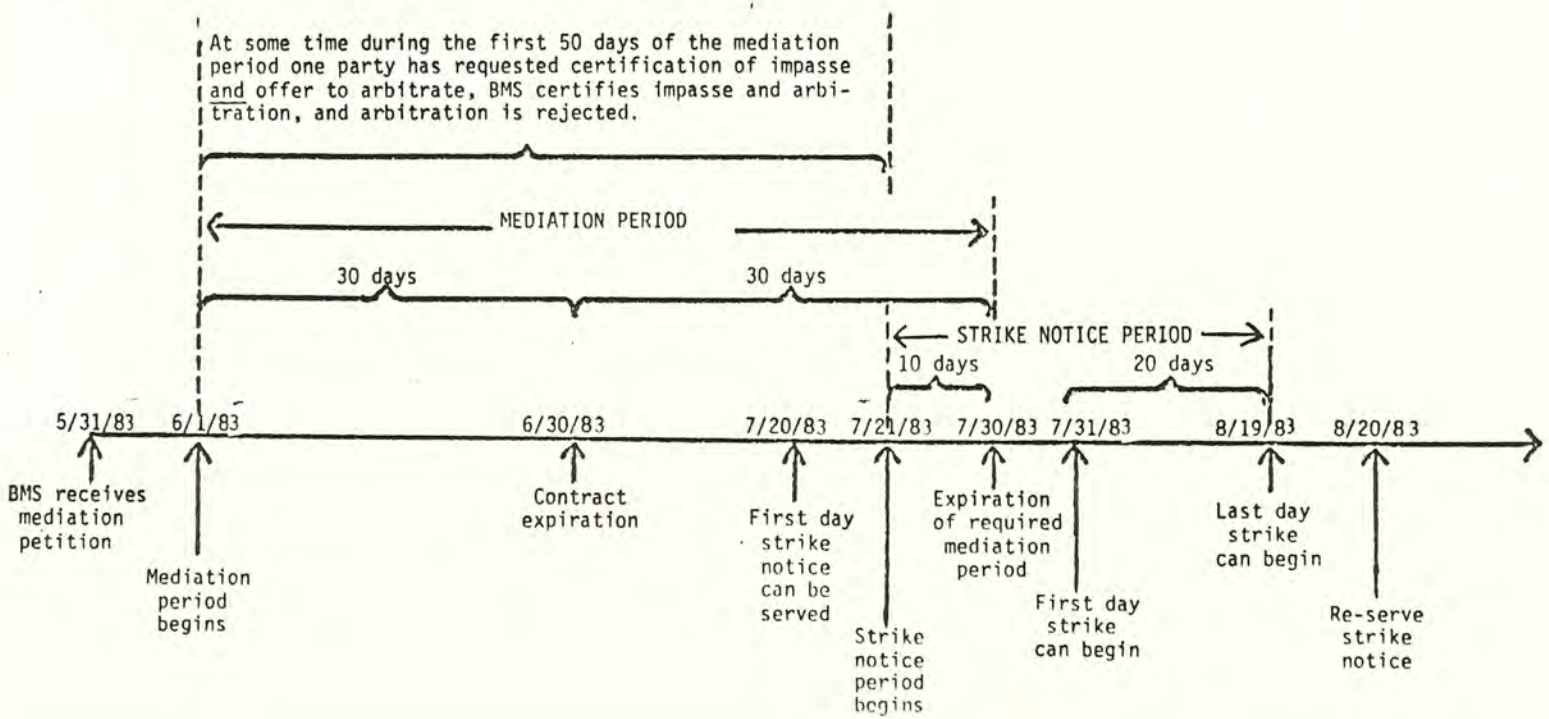
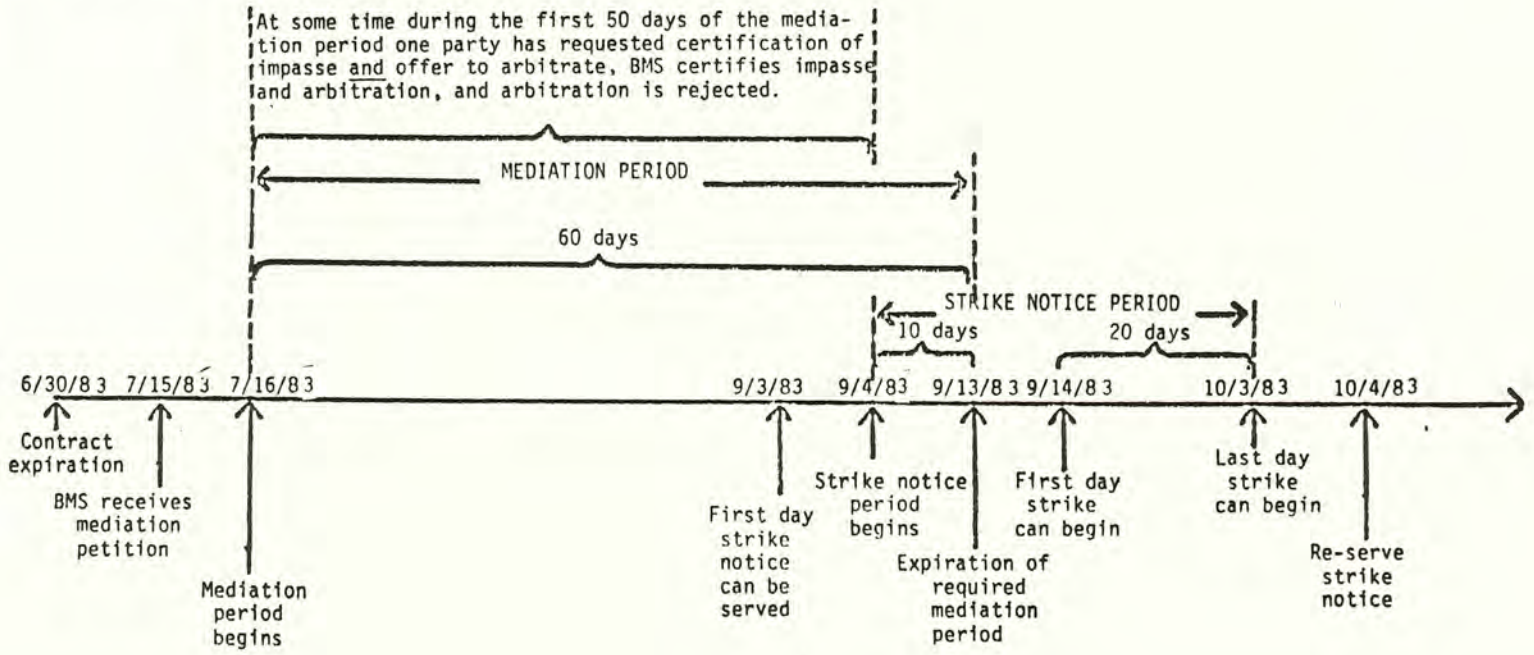


CHART III

CONTRACT RENEWAL (TEACHERS): Request for impasse determination and arbitration is certified by B.M.S. during mediation period.

Requirements:

1. Contract has expired (June 30, 1983).
2. 60 day mediation period has expired, 30 days of which has followed the contract expiration date (June 30, 1983).
3. During the 60 day mediation period either labor or management requests certification of impasse and arbitration.
4. Impasse and offer to arbitrate is certified by the B.M.S.
5. Offer to arbitrate is rejected.
6. 10 day notice of intent to strike has expired.



CONTRACT RENEWAL (TEACHERS): Request for arbitration is certified by B.M.S. during impasse period.

Requirements:

1. Contract has expired (June 30, 1983).
2. 60 day mediation period has expired, 30 days of which has followed the contract expiration date (June 30, 1983).
3. During the 45 day impasse period either labor or management offers arbitration.
4. Offer to arbitrate is certified by the B.M.S.
5. Offer to arbitrate is rejected.
6. 10 day notice of intent to strike has expired.

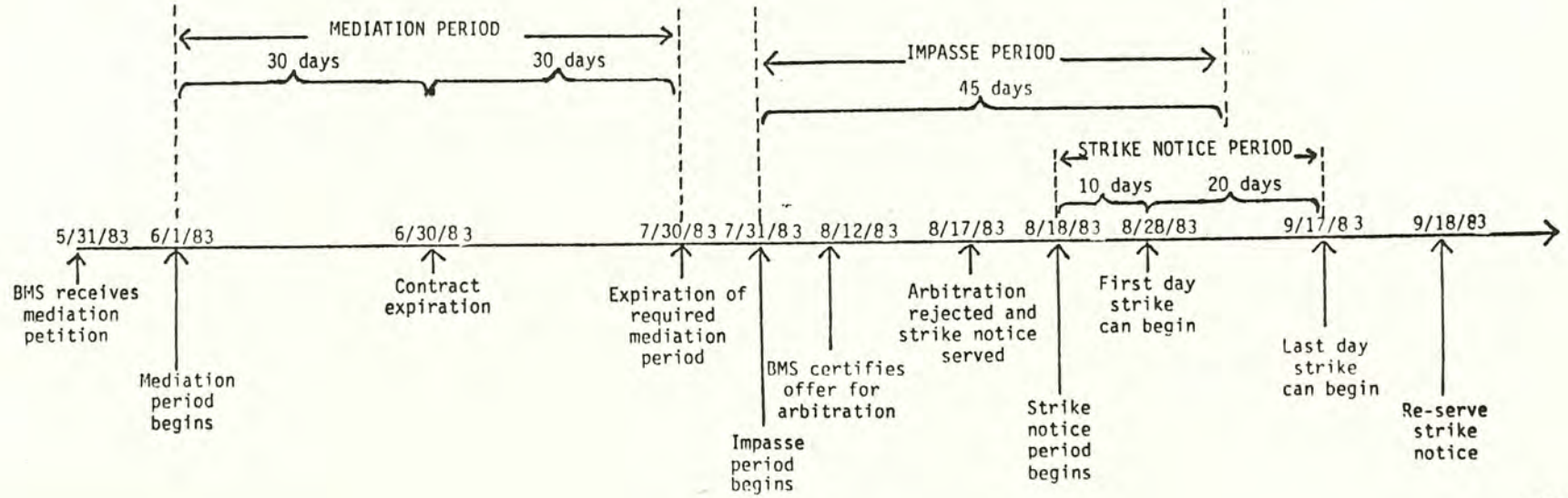


CHART V

CONTRACT RENEWAL (TEACHERS): Request for arbitration is certified by B.M.S. during impasse period.

Requirements:

1. Contract has expired (June 30, 1983).
2. 60 day mediation period has expired, 30 days of which has followed the contract expiration date (June 30, 1983).
3. During the 45 day impasse period either labor or management offers arbitration.
4. Offer to arbitrate is certified by the B.M.S.
5. Offer to arbitrate is rejected.
6. 10 day notice of intent to strike has expired.

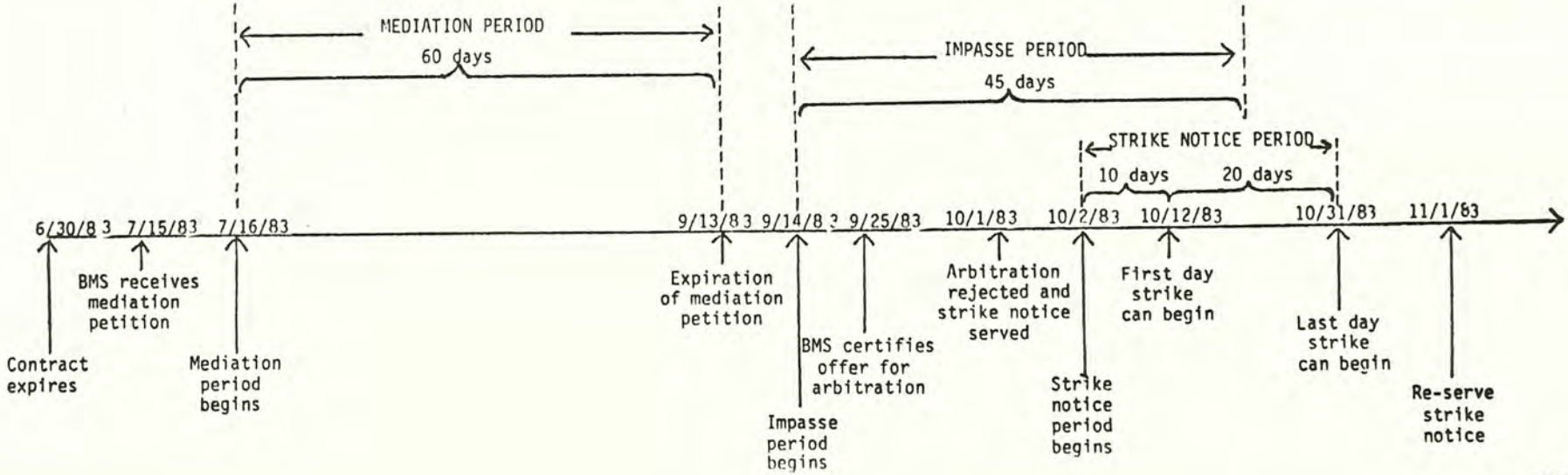


CHART VI

CHANGE IN EXCLUSIVE REPRESENTATIVE (TEACHERS): No request for arbitration is made.

Requirements:

1. Incumbent exclusive representative is defeated by challenging labor organization.
2. Contract has expired (June 30, 1983).
3. 60 day mediation period has expired (before contract expiration).
4. 10 day notice of intent to strike has expired.

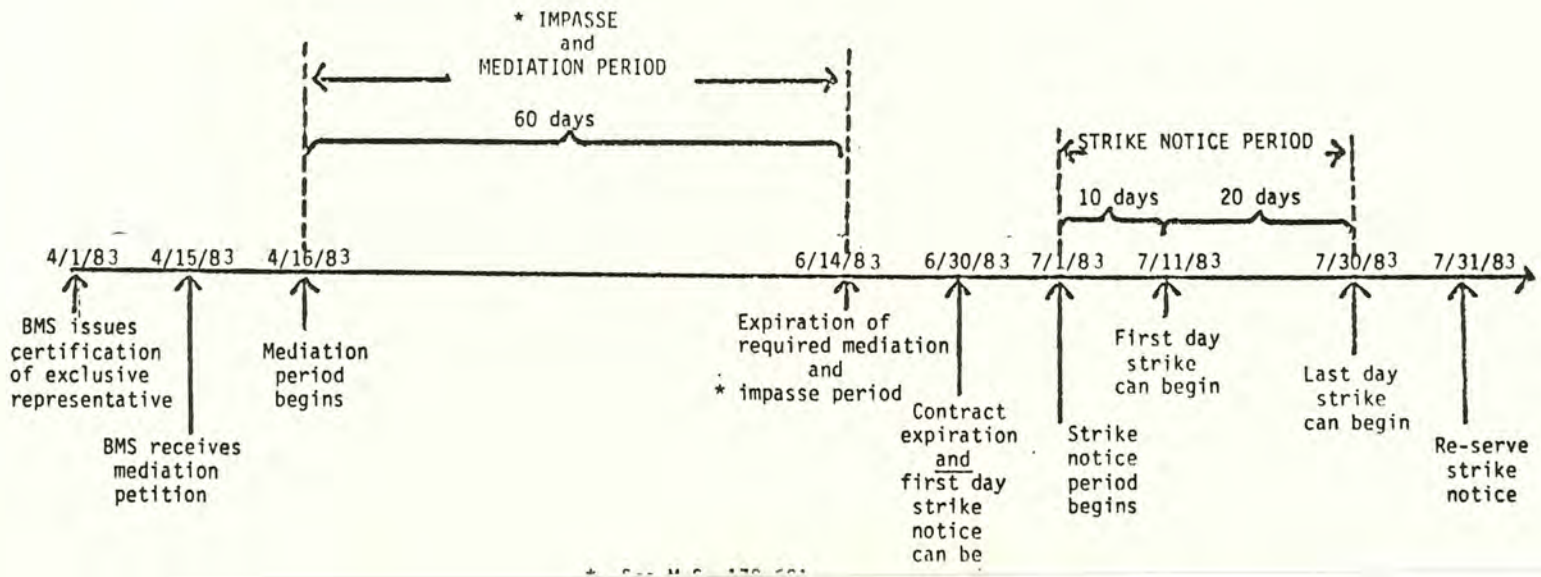
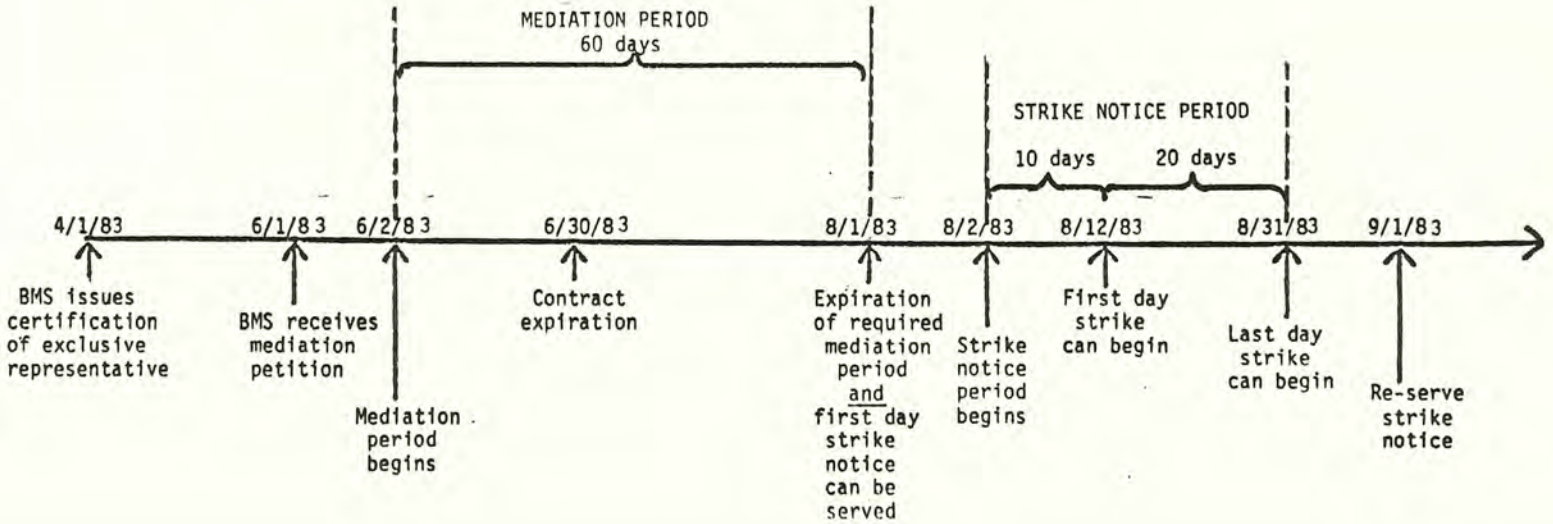


CHART VII

CHANGE IN EXCLUSIVE REPRESENTATIVE (TEACHERS): No request for arbitration is made.

Requirements:

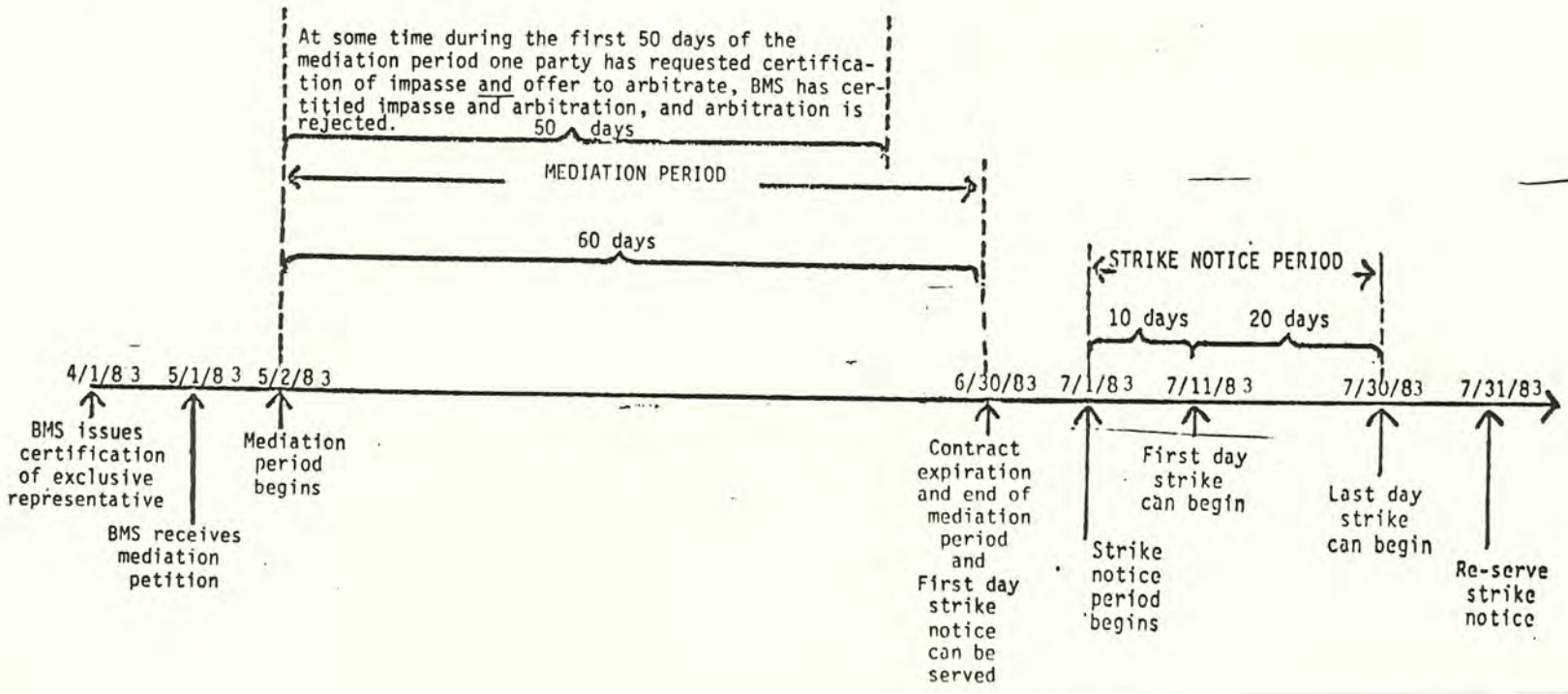
1. Incumbent exclusive representative is defeated by challenging labor organization.
2. Contract has expired (June 30, 1983).
3. 60 day mediation period has expired (after contract expiration).
4. 10 day notice of intent to strike period has expired.



CHANGE IN EXCLUSIVE REPRESENTATIVE (TEACHERS): Request for impasse determination and arbitration is certified by BMS during mediation period.

Requirements:

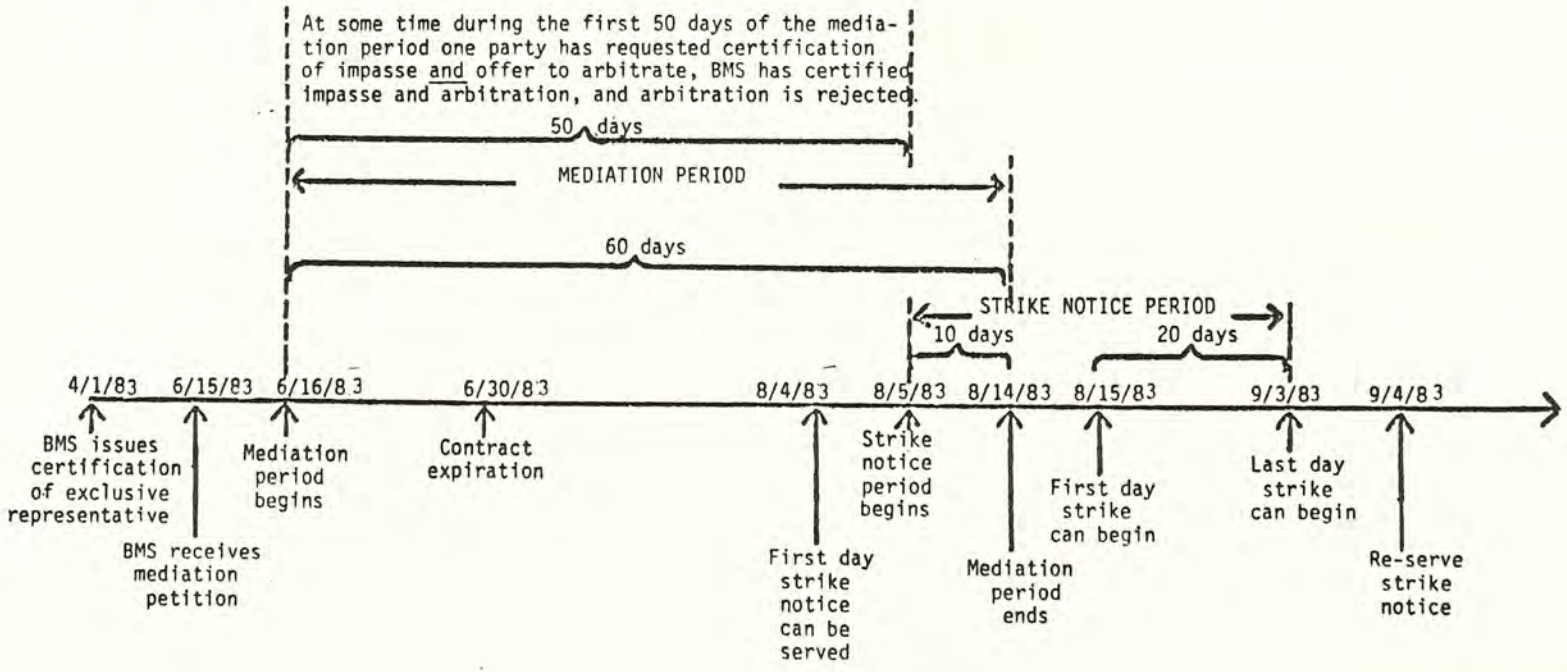
1. Incumbent exclusive representative is defeated by challenging labor organization.
2. Contract has expired (June 30, 1983).
3. During the 60 day mediation period either labor or management requests certification of impasse and arbitration.
4. Impasse and arbitration is certified by the BMS.
5. Offer to arbitrate is rejected.
6. 10 day notice of intent to strike has expired.



CHANGE IN EXCLUSIVE REPRESENTATIVE (TEACHERS): Request for impasse determination and arbitration is certified by B.M.S. during mediation period.

Requirements:

1. Incumbent exclusive representative is defeated by challenging labor organization.
2. Contract has expired (June 30, 1983).
3. During the 60 day mediation period either labor or management requests certification of impasse and arbitration.
4. Impasse and arbitration is certified by the BMS.
5. Offer to arbitrate is rejected.
6. 10 day notice of intent to strike has expired.



Bureau of Mediation Services

The Bureau is a neutral agency whose purpose is to lend assistance to both labor and management in the resolution of labor relations disputes. Although the agency performs other statutory responsibilities (i.e, Unit determinations and clarifications; fair share fee challenge determinations; etc), the following BMS functions and responsibilities are relevant to the Impasse Advisory Council's area of responsibility:

1) Negotiations Notices

A party wishing to negotiate a new or modified collective bargaining agreement must serve written notice to that effect upon the other party and the BMS Director (M.S. 179A.14, Subd 1). The Bureau receives and files these notices, using them primarily as a predictor of future agency workload.

2) Mediation Petitions

Once a party has filed a Negotiation Notice either side may request mediation assistance from the Bureau (M.S.179A.15). Such requests are usually precipitated by the occurrence of a bargaining deadlock during the course of the parties' own negotiating efforts.

Upon receipt of such request or petition, the Bureau assigns one of its staff Mediators to the case and this Mediator then convenes a formal mediation session between the parties. Both sides are legally required to attend such meetings as are called by the Mediator unless, the contract expiration date has been passed or, in the case of teachers, a period of 60 days after the contract expiration date has passed (M.S. 179A.15).

3) Mediation Function

Perhaps one of the most misunderstood processes, mediation involves efforts by a neutral third-party to achieve a voluntary settlement between the advocates in a dispute. Unlike an arbitrator, the Mediator has no power to impose a final settlement and must work within the limits established by the parties themselves. Yet, although the Mediator is powerless to impose a settlement, a Mediator is not without power in forcing the parties to come to grips with the realities each faces in the matter.

The most frequent and typical role of the Mediator is to convene an initial joint session of the parties for purposes of identifying the issues which remain in dispute, then to separate the parties and meet privately with each in an effort to ascertain the priorities of each and define possible areas of compromise. Then, through the use

of separate and/or joint meetings, the Mediator attempts to get the parties moving toward final resolution, usually by applying a "what if..." series of options.

(Since perception is reality in the course of negotiations, one frequently encounters situations where the parties do indeed have additional flexibility on unresolved issues, but are unwilling to make an offer for fear that the move will be seen as a sign of weakness or in the hope of securing a quid pro quo concession from the other side. In these situations, the Mediator can serve the role of testing out options without need for the parties to become committed to a proposal.)

Regardless of the tactics and strategies applied by the Mediator, and{there are several, there are two fundamental factors which must be present in each case:

1) The Mediator must gain and retain the trust of both parties to the dispute; and

2) The Mediator must structure the process so that the responsibility for Agreement or No-Agreement remains with the parties to the dispute.

4) Certification of Impasse

Obviously, not all mediation efforts prove successful and some mediation cases cannot be resolved. In these situations, either party may voluntarily request that the dispute be submitted to arbitration. Arbitration of such disputes for non-essential employees is permitted by the statutes under the following circumstances:

1) The BMS Director certifies that further mediation would serve no purposes and the contract has expired; or or mediation has occurred over a period longer than the 45 or 60 day "Mediation Period" established by M.S.179A. 18; and

2) The other party agrees to submit the dispute to arbitration within 15 days of the request. (A failure to agree within the 15 day period is presumed to be a rejection of arbitration by the non-respondant.)

In the event arbitration of the dispute is agreed upon by the parties, the BMS Director certifies the matter to the Public Employment Relations Board (PERB) as at impasse. The parties are then given 15 days in which to submit their final positions on the

unresolved issues identified by the BMS Director and these positions are forwarded to PERB by the Director.

(Even though a case has been certified and referred to arbitration, the parties can--and do--negotiate an agreement on all or part of the outstanding issues prior to the actual arbitration hearing.)

5) Strike Notices and Strikes

When a right to strike exists under M.S. 179A.18, a union must give written notice of its intent to strike to the employer and the BMS Director. Such notice must be served at least 10 days prior to the start of any strike and expires 30 days after it is served. It may, however, be renewed, in which case a new 10 day "waiting" period occurs.

The Bureau receives such notices and issues a prompt notice to both parties as to the existence of the notice and the dates upon which the right to strike matures and ends. We provide a similar notice to the parties upon receipt of a renewal of a previously served right to strike.

The Bureau will automatically assume jurisdiction over a dispute in which a strike notice has been served and will continue/invoke mediation sessions once a strike begins, whether or not the "Mediation Period" has expired.

PUBLIC SECTOR
MEDIATION PETITIONS RECIEVED

CAL. YEAR	TYPE UNIT	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL
1976	K-12 Teachers	0	0	0	0	1	0	0	0	1	0	1	0	3
	Princ/Admin	2	2	1	1	1	5	1	0	2	2	2	0	19
	Other School	5	3	2	2	8	9	11	20	17	9	10	7	103
	Non-School Units	51	45	72	46	56	52	40	56	55	57	49	52	631
	Total	58	50	75	49	66	66	52	76	75	68	62	59	756
1977	K-12 Teachers	1	0	1	0	2	27	145	62	25	12	7	3	285
	Princ/Admin	1	0	1	0	0	2	3	1	2	0	1	1	12
	Other School	5	3	3	2	11	12	27	16	16	7	15	7	124
	Non-School Units	42	63	67	43	50	56	47	42	48	50	43	46	597
	Total	49	66	72	45	63	97	222	121	91	69	66	57	1018
1978	K-12 Teachers	2	0	0	0	1	0	0	0	0	1	0	1	5
	Princ/Admin	2	1	1	1	0	2	0	3	0	2	0	0	12
	Other School	6	2	3	3	6	12	9	20	11	6	6	3	87
	Non-School Units	57	51	48	33	45	49	32	51	33	47	26	45	517
	Total	67	54	52	37	52	63	41	74	44	56	32	49	621
1979	K-12 Teachers	0	0	0	2	11	34	83	51	32	8	8	2	231
	Princ/Admin	0	0	0	0	1	0	4	1	0	0	0	1	7
	Other School	5	3	2	2	6	14	17	12	7	15	3	10	96
	Non-School Units	61	36	29	33	43	42	40	37	36	54	44	58	513
	Total	66	39	31	37	61	90	144	101	75	77	55	71	847
1980	K-12 Teachers	2	2	1	0	0	1	1	0	0	0	0	1	8
	Princ/Admin	2	0	0	2	1	4	1	0	0	0	0	0	10
	Other School	3	1	0	9	8	13	18	9	9	4	3	2	79
	Non-School Units	48	41	42	69	48	34	35	30	48	39	63	46	543
	Total	55	44	43	80	57	52	55	39	57	43	66	49	640
1981	K-12 Teachers	0	0	0	1	31	319	20	8	5	5	1	1	391
	Princ/Admin	1	0	1	2	0	0	1	2	2	2	2	0	13
	Other School	2	5	5	3	16	24	21	20	15	17	8	2	138
	Non-School Units	59	50	56	47	55	53	49	41	34	47	83	56	630
	Total	62	55	62	53	102	396	91	71	56	71	94	59	1172
1982	K-12 Teachers	0	0	0	0	0	1	1	1	0	0	0	0	3
	Princ/Admin	2	1	0	0	0	1	3	0	4	0	2	0	13
	Other School	1	1	5	3	6	11	19	19	15	10	2	2	94
	Non-School Units	43	36	43	40	34	31	36	36	34	35	68	71	507
	Total	46	38	48	43	40	44	59	56	53	45	72	73	617

PUBLIC SECTOR
MEDIATION PETITIONS RECIEVED

CAL. YEAR	TYPE UNIT	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL
1983	K-12 Teachers	0	0	0	0	190	103	16	15	22	12	4	5	367
	Princ/Admin	1	0	1	0	1	1	1	0	0	2	0	2	9
	Other School	2	2	1	2	6	18	6	9	19	33	12	7	117
	Non-School Units	51	49	35	30	74	42	25	36	49	48	85	75	599
	Total	54	51	37	32	271	164	48	60	90	95	101	89	1092
1984	K-12 Teachers	11	1	1	0	1	0							14
	Princ/Admin	0	0	0	3	1	1							5
	Other School	7	6	5	6	2	7							33
	Non-School Units	71	50	24	40	23	26							234
	Total	89	57	30	49	27	34							286

PUBLIC SECTOR
MEDIATION SESSIONS CONDUCTED

CAL. YEAR	TYPE UNIT	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL
1976	K-12 Teachers	49	19	17	11	4	3	3	3	0	1	0	2	112
	Princ/Admin	3	3	5	2	7	3	1	3	2	7	3	4	43
	Other School	28	25	17	7	7	23	13	15	39	38	38	33	283
	Non-School Units	87	82	97	111	98	83	84	75	87	80	93	88	1065
	Total	167	129	136	131	116	112	101	96	128	126	134	127	1503
1977	K-12 Teachers	0	0	0	0	1	7		Data					8
	Princ/Admin	3	4	3	3	3	2			not				18
	Other School	37	17	17	13	14	17				available			115
	Non-School Units	109	109	96	88	97	91							590
	Total	149	130	116	104	115	117							731
1978	K-12 Teachers	Data				10	5	2	5	9	4	0	1	36
	Princ/Admin	not				1	2	4	3	6	2	3	1	22
	Other School	available				22	11	10	30	31	38	29	16	187
	Non-School Units					82	55	62	66	70	57	77	91	560
	Total					115	73	78	104	116	101	109	109	805
1979	K-12 Teachers	0	0	1	0	5	21	32	54	70	100	85	33	401
	Princ/Admin	0	2	11	1	0	2	1	4	3	2	1	0	27
	Other School	11	7	8	5	8	12	11	12	25	19	13	15	146
	Non-School Units	111	80	79	76	60	60	48	45	52	57	66	68	802
	Total	122	89	99	82	73	95	92	115	150	178	165	116	1376
1980	K-12 Teachers	25	16	10	7	1	0	2	0	0	0	0	4	65
	Princ/Admin	4	2	1	3	4	5	3	4	1	0	0	0	27
	Other School	18	8	10	11	10	13	16	33	31	31	11	18	210
	Non-School Units	103	100	83	99	75	78	67	58	60	94	70	106	993
	Total	150	126	104	120	90	96	88	95	92	125	81	128	1295
1981	K-12 Teachers	0	0	0	2	4	5	40	78	117	192	121	46	605
	Princ/Admin	0	1	1	2	1	2	1	0	0	1	3	6	18
	Other School	7	8	10	15	11	8	12	25	29	19	27	16	187
	Non-School Units	106	104	106	85	99	102	93	78	75	69	67	100	1084
	Total	113	113	117	104	115	117	146	181	221	281	218	168	1894
1982	K-12 Teachers	20	9	7	4	0	2	2	11	7	2	1	2	67
	Princ/Admin	2	1	2	1	0	2	3	2	3	6	4	4	30
	Other School	12	12	8	5	4	12	14	26	47	39	33	19	231
	Non-School Units	116	101	83	82	71	73	57	59	62	60	55	60	879
	Total	150	123	100	92	75	89	76	98	119	107	93	91	1213

PUBLIC SECTOR
MEDIATION SESSIONS CONDUCTED

CAL. YEAR	TYPE UNIT	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL
1983	K-12 Teachers	3	2	1	5	2	2	6	23	45	72	110	132	403
	Princ/Admin	0	1	2	1	0	1	1	1	0	1	0	1	9
	Other School	18	12	10	15	10	0	4	9	15	29	18	27	167
	Non-School Units	100	102	109	64	66	101	78	81	50	65	63	53	932
	Total	121	117	122	85	78	104	89	114	110	167	191	213	1511
1984	K-12 Teachers	136	93	77	44	33	19							402
	Princ/Admin	3	1	2	3	7	2							18
	Other School	26	15	28	13	16	5							103
	Non-School Units	74	88	96	105	94	55							512
	Total	239	197	203	165	150	81							1035

BARGAINING IMPASSES CERTIFIED TO ARBITRATION BY BMS
NON-ESSENTIAL PUBLIC SECTOR UNITS

CAL. YEAR	TYPE UNIT	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL
1976	K-12 Teachers	2	1	2	5	0	0	1	0	0	0	0	0	11
	Princ/Admin	0	2	0	0	1	1	0	0	0	0	1	2	7
	Other School	6	5	4	1	3	0	2	0	1	2	2	1	17
	Non-School Units	8	6	11	9	9	5	9	1	3	3	10	10	84
	Total	16	14	17	15	13	6	12	1	4	5	13	13	129
1977	K-12 Teachers	0	0	0	0	0	0	1	0	1	11	7	10	30
	Princ/Admin	0	0	1	0	0	0	0	0	0	1	1	2	5
	Other School	3	1	1	5	2	3	0	2	1	0	2	1	21
	Non-School Units	2	3	3	9	5	10	6	?	4	2	3	5	59
	Total	5	4	5	14	7	13	7	2	6	14	13	18	108
1978	K-12 Teachers	4	9	3	2	2	0	0	1	1	0	0	0	22
	Princ/Admin	0	0	0	1	1	0	0	0	0	0	0	0	2
	Other School	0	2	6	1	2	1	3	3	1	1	4	0	24
	Non-School Units	5	10	5	11	9	1	2	2	5	3	3	3	59
	Total	9	21	14	15	14	2	5	6	7	4	7	3	107
1979	K-12 Teachers	0	0	0	0	0	3	1	2	8	6	10	6	36
	Princ/Admin	0	0	1	0	0	0	0	0	1	0	0	0	2
	Other School	0	1	1	1	0	0	0	2	1	2	1	3	12
	Non-School Units	11	13	9	13	4	1	2	1	0	3	3	5	65
	Total	11	14	11	14	4	4	3	5	10	11	14	14	115
1980	K-12 Teachers	7	6	3	1	0	0	0	0	0	0	0	0	17
	Princ/Admin	0	0	0	1	0	0	1	1	0	0	0	0	3
	Other School	2	0	0	1	0	0	1	0	0	1	0	2	7
	Non-School Units	13	10	8	8	6	7	3	4	0	2	6	7	74
	Total	22	16	11	11	6	7	5	5	0	3	6	9	101
1981	K-12 Teachers	0	0	0	0	0	0	0	3	3	3	3	3	15
	Princ/Admin	0	1	0	0	1	1	0	1	0	0	1	0	5
	Other School	1	0	1	0	0	0	2	0	2	0	2	0	8
	Non-School Units	2	2	11	4	3	2	0	1	4	1	3	4	37
	Total	3	3	12	4	4	3	2	5	9	4	9	7	65
1982	K-12 Teachers	2	0	3	0	0	0	0	0	0	0	0	0	5
	Princ/Admin	0	0	1	0	0	1	0	1	0	1	1	1	6
	Other School	0	0	1	0	0	0	0	0	0	1	1	1	4
	Non-School Units	8	4	6	6	1	1	2	3	3	5	8	5	52
	Total	10	4	11	6	1	2	2	4	3	7	10	7	67

BARGAINING IMPASSES CERTIFIED TO ARBITRATION BY BMS
NON-ESSENTIAL PUBLIC SECTOR UNITS

CAL. YEAR	TYPE UNIT	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL
1983	K-12 Teachers	0	0	0	0	0	0	0	0	0	0	1	2	3
	Princ/Admin	0	0	0	1	0	0	1	0	0	0	0	0	2
	Other School	0	0	2	1	1	0	0	0	0	1	0	0	5
	Non-School Units	7	11	3	6	5	2	6	0	2	3	4	7	56
	Total	7	11	5	8	6	2	7	0	2	4	5	9	66
1984	K-12 Teachers	0	0	1	1	0	0							2
	Princ/Admin	0	0	1	0	1	0							2
	Other School	1	0	0	0	1	0							2
	Non-School Units	7	4	11	6	11	1							40
	Total	8	4	13	7	13	1							46

NUMBER OF PUBLIC SECTOR STRIKES BEGINNING--BY MONTH

CAL. YEAR	TYPE UNIT	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL
1976	K-12 Teachers	1	1	1	0	0	0	0	0	0	0	0	0	3
	Princ/Admin	-	-	-	-	-	-	-	-	-	-	-	-	-
	Other School	0	0	0	0	0	0	0	0	0	0	0	0	0
	Non-School Units	0	0	0	0	2	1	1	0	0	0	0	0	4
	Total	1	1	1	0	2	1	1	0	0	0	0	0	7
1977	K-12 Teachers	0	0	0	0	0	0	0	0	0	0	2	0	2
	Princ/Admin	-	-	-	-	-	-	-	-	-	-	-	-	-
	Other School	1	0	0	0	0	0	0	0	0	0	0	0	1
	Non-School Units	1	2	0	0	1	1	1	1	0	0	0	0	7
	Total	2	2	0	0	1	1	1	1	0	0	2	0	10
1978	K-12 Teachers	0	0	0	1	0	0	0	0	1	0	0	0	2
	Princ/Admin	-	-	-	-	-	-	-	-	-	-	-	-	-
	Other School	1	0	0	0	0	0	0	0	0	0	0	0	1
	Non-School Units	1	0	1	0	2	0	0	0	1	0	0	0	5
	Total	2	0	1	1	2	0	0	0	2	0	0	0	8
79	K-12 Teachers	0	0	0	0	0	0	0	0	0	0	1	0	1
	Princ/Admin	-	-	-	-	-	-	-	-	-	-	-	-	-
	Other School	0	0	0	0	0	0	0	0	0	0	0	0	0
	Non-School Units	0	1	3	0	1	0	0	0	0	0	0	0	5
	Total	0	1	3	0	1	0	0	0	0	0	1	0	6
1980	K-12 Teachers	0	0	0	1	0	0	0	0	0	0	0	0	1
	Princ/Admin	-	-	-	-	-	-	-	-	-	-	-	-	-
	Other School	0	0	0	0	0	0	0	0	0	0	0	2	2
	Non-School Units	0	1	0	2	0	0	0	0	0	1	0	0	4
	Total	0	1	0	3	0	0	0	0	0	1	0	2	7
1981	K-12 Teachers	0	0	0	0	0	0	0	0	2	25	7	1	35
	Princ/Admin	-	-	-	-	-	-	-	-	-	-	-	-	-
	Other School	0	0	0	0	0	1	0	0	0	0	0	0	1
	Non-School Units	1	2	0	0	2	2	1	1	0	4	0	0	13
	Total	1	2	0	0	2	3	1	1	2	27	8	1	48
1982	K-12 Teachers	0	0	0	0	0	0	0	0	0	0	0	0	0
	Princ/Admin	-	-	-	-	-	-	-	-	-	-	-	-	-
	Other School	0	0	0	0	0	0	0	0	0	0	0	0	0
	Non-School Units	3	1	0	0	0	0	1	0	0	0	0	1	6
	Total	3	1	0	0	0	0	1	0	0	0	0	1	6

NUMBER OF PUBLIC SECTOR STRIKES BEGINNING--BY MONTH

CAL. YEAR	TYPE UNIT	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL
1983	K-12 Teachers	0	0	0	0	0	0	0	0	0	0	0	1	1
	Princ/Admin	-	-	-	-	-	-	-	-	-	-	-	-	-
	Other School	0	0	1	0	0	0	1	0	0	0	0	0	2
	Non-School Units	0	0	0	0	0	0	0	0	0	0	0	0	0
	Total	0	0	1	0	0	0	1	0	0	0	0	0	3
1984	K-12 Teachers	6	1	0	0	0	0							7
	Princ/Admin	-	-	-	-	-	-							-
	Other School	0	0	0	0	0	0							0
	Non-School Units	0	0	0	0	1	0							1
	Total	6	1	0	0	1	0							8

Date 08/23/84

K-12 TEACHER MEDIATION CASES UNSETTLED AS OF 08/22/84

DISTRICT	TEACHER ORG.
AKELEY (#301)	MEA
BABBITT (#692)	MFT
BEMIDJI (#31)	MEA
BIRD ISLAND (#646)	MEA
DODGE CENTER (#202)	MEA
GILBERT (#699)	MEA
HARMONY (#228)	MEA
*HOFFMAN-KENSINGTON (#265)	MEA
HOWARD LAKE (#880)	MEA
MOUNTAIN IRON (#703)	MFT
RED LAKE (#38)	MFT
SAUK CENTRE (#743)	MEA
SOUTH KOOCHICHING (#363)	MEA
SWANVILLE (#486)	MEA
WATERVILLE/ELYSIAN (#395)	MEA

*Tentative Agreement

MINNESOTA TEACHER STRIKES 1981-82

	School	# of Tchrs.	Date Began	Date Ended	Total School Days	Days Lost	Days Made Up	Total $ Settlement 2 Years	Total % Settlement 2 Years	Total Pkg. Net $ 2 Years	Ave. Total Pkg. $ School Size Category	School Open With Substitutes
1.	Paynesville	90	9/25	10/19	14	9	5	$ 5620	29.66%	$ 4920	$ 5062	N
2.	Tracy	68	9/30	10/ 7	5	0	5	5500	28.8	5500	4861	N
3.	Deer River	80	10/ 1	10/20	11	5	6	5100	28.46	4580	5062	N
4.	Prior Lake	175	10/ 1	11/16	30	24	6	4870 (Arb.)	26.37	2566	5214	Yes
5.	St. Cloud	800	10/ 1	10/27	17	12	5	5961	26.38	4653	5313	N
6.	Anoka	1900	10/ 6	10/19	7	4	3	6207	30.22	5807	5740	N
7.	Rockford	93	10/ 6	11/16	27	11	16	5600	30.89	4577	5062	N
8.	Howard Lake	67	10/ 6	1/11	58	53	5	4750	26.00	(-497)	4861	Yes
9.	Lake City	94	10/ 6	10/10	4	0	4	4944	26.36	4944	5062	N
10.	Wabasha	63	10/ 6	10/19	7	2	5	4706	26.3	4540	4861	N
11.	Eden Prairie	202	10/ 8	12/ 1	34	8	26	7079	34.61	6327	5740	Yes-Part
12.	Walnut Grove	20	10/ 9	11/ 9	19	17	2	4550	29.03	3326	4238	Yes
13.	Glenwood	66	10/12	10/19	3	1½	1½	5175	24.5	5040	4861	N
14.	Proctor	133	10/12	10/14	2½	2½	0	4700	24.0	4418	5214	N
15.	Cambridge	252	10/12	11/16	23	11½	11½	5752	31.77	4648	5313	N
16.	Crookston	130	10/13	11/ 2	12	6	6	4742	24.85	4154	5214	N
17.	Fridley	208	10/13	10/28	10	4	6	6203	27.65	5743	5740	N
18.	Thf. River Falls	217	10/13	11/16	22	14	8	5158	26.15	3758	5313	Yes-Part
19.	Isle	33	10/13	10/24	7	4	3	5074	30.79	4700	4657	N
20.	Hill City	26	10/13	10/19	2	1	1	4800	27.57	4699	4657	N
21.	Granite Falls	80	10/14	11/23	26	18	8	5401	28.51	3601	5062	Yes
22.	Lester Prairie	34	10/14	11/ 2	10	1	9	4980	29.45	4900	4657	N
23.	New Prague	114	10/15	10/20	2	2	0	5314	28.31	5120	5062	N
24.	Grand Meadow	28	10/20	11/16	19	12	7	4800	27.20	3768	4657	N
25.	Eveleth	104	10/21	11/16	18	10	8	6342	30.92	5372	5062	N
26.	Forest Lake	370	10/27	11/16	14	7	7	5450	29.02	4715	5740	N
27.	Mahtomedi	102	10/30	12/21	33	19	14	5863	26.5	3773	5740	Yes
28.	Sauk Centre	85	10/30	12/ 7	22	4	18	4973	23.09	4589	5062	N
29.	Jordan	73	11/ 2	11/16	10	8	2	5446	31.19	4742	4861	N
30.	Hibbing	240	11/ 2	11/ 9	5	2	3	5381	20.5	5161	5313	N
31.	Bemidji	326	11/ 4	11/16	8	4	4	4799	24.61	4407	5313	N
32.	Houston	38	11/10	11/16	4	0	4	4650	26.44	4650	4657	N
33.	Pine River	65	11/13	11/18	3	1½	1½	5479	30.5	5311	4861	N
34.	Randolph	33	11/18	12/ 3	9	9	0	5361	35.08	4641	4657	N
35.	Cass Lake	61	12/ 3	1/ 4	12	6	6	4600	22.29	4090	4861	N
	TOTAL	6470			509½	293 (57.5%)	216½ (42.5%)	$5295	27.83%	$4493		

Source: Minnesota School Boards A ciation

MINNESOTA TEACHER STRIKES 1983 - 1984

School	# of Tchrs.	Date Began	Date Ended	Total School Days	Days Lost	Days Made Up	Total $ Settlement 2 Years	Total % Settlement 2 Years	Total Pkg. Net $ 2 Years	Ave. Tot. Pkg.$ School Size Category *	School Open With Substitutes
Duluth-709	920	12/1	12/19	12	6	6	3375	14.31	N/A	3475	No
Park Rapids-309	118	1/17	1/23	5	5	0	2848	11.66	N/A	3313	No
Appleton 784	49	1/16	1/25	8	8	0	3858	17.5	N/A	3077	No
Greenway/Coleraine	102	1/3	1/30	19	8	11	2993	9.8	N/A	3298	No
Moorhead-152 316	337	1/26	2/10	12	9	3	3526	13.18	N/A	3624	Yes/Part
St. Louis Cty-710	185	1/18	2/6	13	7	6	3576	14.5	N/A	3685	No
Sauk Rapids 47	121	1/5	1/27	37	22	15	#	#	N/A	#	No
Chaska-112	188	2/27	3/26	22	21	1	4500	17.58	N/A	3701	Yes/Part

* - Per MSBA report for the period in which settlement was reported.

- Dispute exists over terms of settlement.

Source: Compiled by BMS based upon data in MSBA reports.

ROLE OF THE PUBLIC EMPLOYMENT RELATIONS BOARD IN BARGAINING IMPASSE RESOLUTION

Arbitrator roster

The Public Employment Relations Board ("PERB") maintains a roster of names of arbitrators who are qualified by experience and training in the field of labor-management negotiations and arbitration. PERB currently has 35 names on its interest arbitrator roster.

Certification of impasse and proposal of list of seven arbitrators

When the Director of the Bureau of Mediation Services ("BMS") certifies an impasse to PERB, PERB receives from BMS a copy of the petition requesting arbitration, a listing of the items in dispute and the final positions of the parties on the unresolved items. PERB then submits to the parties a list of seven arbitrators. The seven names comprising the list are drawn randomly from PERB's arbitrator roster.

Selection of arbitrator or panel of arbitrators

The parties may select one arbitrator or a panel of three arbitrators to hear the dispute. The statute provides that if one party requests a single arbitrator, the dispute shall be decided by one arbitrator rather than a three-member panel. Since this option has been statutorily offered the parties,

very few cases have been heard by a panel of arbitrators. (The last school district interest arbitration case decided by a panel occurred in 1980.) To select the arbitrator or panel of arbitrators, the parties alternately strike names from the list of seven until three names or one name remains. The parties notify PERB of their selection and PERB forwards to the arbitrator or panel the BMS Director's certification of impasse.

Arbitration hearing and award

The arbitrator conducts a hearing and issues a written arbitration award based on the testimony and evidence presented at the hearing. If both parties agree, the arbitrator shall be restricted to selecting between the final offers of the parties on each impasse item, or the final offer of one or the other parties in its entirety. The arbitrator is required by statute to furnish PERB and BMS with a copy of the award. All interest arbitration awards are retained on file in PERB's office.

Settlement prior to arbitration

Not all cases certified to impasse and referred to PERB for arbitration are resolved through arbitration. Many cases are settled voluntarily by the parties prior to arbitration. (See attached case status report.)

PUBLIC EMPLOYMENT RELATIONS BOARD
STATUS OF INTEREST ARBITRATION CASES

	CERTIFIED TO IMPASSE	AWARD	SETTLED PRIOR TO ARBITRATION
FY 73			
School District:			
Teachers	9	5	4
Non-teachers	0	-	-
FY 74			
School District:			
Teachers	0	-	-
Non-teachers	3	2	1
FY 75			
School District:			
Teachers	46	33	13
Non-teachers	17	12	5
FY 76			
School District:			
Teachers	26	19	7
Non-teachers	26	18	8
FY 77			
School District:			
Teachers	0	-	-
Non-teachers	15	9	6
FY 78			
School District:			
Teachers	31	18	13
Non-teachers	22	17	5
FY 79			
School District:			
Teachers	1	1	-
Non-teachers	10	9	1

	CERTIFIED TO IMPASSE	AWARD	SETTLED PRIOR TO ARBITRATION
FY 80			
School District:			
Teachers	38	24	14
Non-teachers	12	9	3
FY 81			
School District:			
Teachers	0	-	-
Non-teachers	7	5	2
FY 82			
School District:			
Teachers	6	6	0
Non-teachers	6	3	3
FY 83			
School District:			
Teachers	0	-	-
Non-teachers	10	9	1
FY 84			
School District:			
Teachers	3 1/	2	0
Non-teachers	5 2/	2	2

1/ One case is pending.

2/ One case is pending.

Arbitration caseload

In the early years, school district impasses totaled a large share of PERB's interest arbitration caseload. This number has diminished considerably in recent years. (See attached caseload activity report.)

PUBLIC EMPLOYMENT RELATIONS BOARD
INTEREST ARBITRATION CASELOAD

	FY 73	FY 74	FY 75	FY 76	FY 77	FY 78
School District:						
Teachers	9	0	46	26	0	31
Non-teachers	0	3	17	26	15	22
	9	3	63	52	15	53
All others	7	20	27	28	48	32

	FY 79	FY 80	FY 81	FY 82	FY 83	FY 84
School District:						
Teachers	1	38	0	6	0	3
Non-teachers	10	12	7	6	10	5
	11	50	7	12	10	8
All others	43	36	42	32	54	53

SF-00006-02

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT PUBLIC EMPLOYMENT RELATIONS BOARD

TO : JERMAINE FOSLIEN
Admnistrative Assistant

DATE: AUGUST 29, 1984

FROM : CLAUDIA M. HENNEN
Executive Director

PHONE: 6-8947

SUBJECT: DATA RE: PRINCIPALS ARBITRATION FOR ADVISORY COUNCIL ON BARGAINING IMPASSE RESOLUTION

Pursuant to Senator Tom Nelson's request made at the Advisory Council's meeting on August 27, 1984, I am enclosing data showing the history of principals' interest arbitration cases.

If you have any questions or if I may be able to provide you with any further information, please give me a call.

Enclosure

PUBLIC EMPLOYMENT RELATIONS BOARD
STATUS OF SCHOOL DISTRICT INTEREST ARBITRATION CASES

	CERTIFIED TO IMPASSE	AWARD	SETTLED PRIOR TO ARBITRATION
FY 73			
Teachers	9	5	4
Principals	0	-	-
All Others	0	-	-
FY 74			
Teachers	0	-	-
Principals	0	-	-
All Others	3	2	1
FY 75			
Teachers	46	33	13
Principals	6	5	1
All Others	11	7	4
FY 76			
Teachers	26	19	7
Principals	4	2	2
All Others	22	16	6
FY 77			
Teachers	0	-	-
Principals	6	5	1
All Others	9	4	5
FY 78			
Teachers	31	18	13
Principals	7	7	0
All Others	15	10	5
FY 79			
Teachers	1	1	0
Principals	1	1	0
All Others	9	8	1

	CERTIFIED TO IMPASSE	AWARD	SETTLED PRIOR TO ARBITRATION
FY 80			
Teachers	38	24	14
Principals	1	1	0
All Others	11	8	3
FY 81			
Teachers	0	-	-
Principals	5	4	1
All Others	2	1	1
FY 82			
Teachers	6	6	0
Principals	4	2	2
All Others	2	1	1
FY 83			
Teachers	0	-	-
Principals	6	5	1
All Others	4	4	0
FY 84			
Teachers	3 1/	2	0
Principals	2	1	1
All Others	3 2/	1	1

1/ One case is pending.

2/ One case is pending.

PUBLIC EMPLOYMENT RELATIONS BOARD
INTEREST ARBITRATION CASELOAD

	FY 73	FY 74	FY 75	FY 76	FY 77	FY 78
School District:						
Teachers	9	0	46	26	0	31
Principals	0	0	6	4	6	7
Others	0	3	11	22	9	15
	9	3	63	52	15	53
All Others	7	20	27	28	48	32

	FY 79	FY 80	FY 81	FY 82	FY 83	FY 84
School District:						
Teachers	1	38	0	6	0	3
Principals	1	1	5	4	6	2
Others	9	11	2	2	4	3
	11	50	7	12	10	8
All Others	43	36	42	32	54	53

Minnesota House of Representatives

September 25, 1984

TO : Advisory Council Members

FROM: Bette Anderson, House Staff

RE : School Employee Groups Organized Under PELRA

Teachers in each Minnesota public school district are represented by an exclusive bargaining agent for purposes of negotiations.

Most administrative bargaining units are composed of principals and assistant principals. Where more than one administrative unit occurs, a second unit generally consists of licensed supervisory employees other than principals. The rare third administrative unit is likely to represent certificated confidential employees or non-certificated supervisors.

Non-licensed employee groups most likely to be organized under PELRA are custodians, clerical workers, food service workers, aides, and bus drivers. There are numerous other kinds of units, however, including mechanics, laundry workers, health service workers and building trades. In some districts, all non-licensed employees are included in a single bargaining unit.

The data on the following page was collected from printed sources compiled by the Minnesota School Board Association based on individual school district reports. It agrees in large part with data on record at the Bureau of Mediation Services.

An employee group is described as represented if it is a unique bargaining unit or if it is part of a larger bargaining group which covers several job classifications.

Because new units are continually being certified and because of some inconsistency in the data sources, the figures do not attempt to document precise numbers of units but rather to describe trends. It is clear that more employee groups are organized under PELRA in metro area districts and in the Iron Range districts than in districts in other parts of the state.

BA:rs

Attachments

PERCENT OF MINNESOTA SCHOOL DISTRICTS WHICH HAVE CERTAIN EMPLOYEE GROUPS ORGANIZED UNDER PELRA

	Principals	Custodians	Bus Drivers	Food Service	Clerical	Aides
State-Wide (435 Districts)	33%	35%	15%	24%	29%	22%
Metro * (48 Districts)	75%	92%	23%	58%	79%	42%
Out State	27%	28%	14%	19%	22%	19%
Iron Range ** (21 Districts)	71%	90%	86%	76%	76%	67%
Out State Excluding Iron Range	25%	24%	10%	16%	19%	17%

* Metro districts designated in this table are in the Education Cooperative Service Unit (ECSU) II.

** Iron Range districts designated in this table are those that receive a distribution from the Taconite Occupation Tax.

BA:rs
9/24/84

Date Source: MINCR
9/25/84

PUBLIC SCHOOL EMPLOYEES 1983-84 SCHOOL YEAR

EMPLOYEE GROUP	# IN STATE SCHOOLS		# IN METRO AREA ESCU REGION 11		METRO AREA EMPLOYEES % OF TOTAL
Administrators		1,116		431	39%
Principals		1,896		706	37%
Elementary Principals	595		282		
Elementary Asst. Principals	31		20		
Part-time Elementary Principals	264		16		
Secondary Principals	579		165		
Secondary Asst. Principals	344		213		
Part-time Secondary Principals	83		10		
Classroom Teachers		42,156		18,361	44%
Elementary Teachers	14,083		6,002		
Part-time Elementary Teachers	1,061		317		
Secondary Teachers	17,756		7,651		
Part-time Secondary Teachers	2,078		672		
Other Classroom Teachers	3,355		1,755		
Part-time Professional Instructors	3,823		1,964		
Professional Staff		4,905		2,745	56%
Guidance	911		475		
Psychological	233		123		
Librarian/Audio Visual	952		422		
Instructional Supervisor	212		126		
Other "Professional" Staff	2,597		1,599		
Non-Certified School Staff		27,477		12,845	47%
Teacher Aides	4,039		1,727		
Technicians (typically requiring 2 or more years of vocational or other education such as computer programmers, draftsmen, math aides, etc.)	391		279		
Clerical/Secretary	5,481		2,691		
Food Service/Custodial/Bus Driver	8,946		3,651		
Skilled Crafts (mechanics, repairmen, electricians, typesetters, etc.)	606		358 84		
Laborers (unskilled)	258		4,055		
Part-time Non-certified School Employees	7,756				
TOTAL PUBLIC SECTOR SCHOOL EMPLOYEES		77,550		35,088	45%
TOTAL STUDENTS IN AVG. DAILY MEMBERSHIP		699,464		323,059	46%

RA:rc

MINNESOTA PUBLIC VOCATIONAL STAFFING 1984-84

VOCATIONAL STAFF	STATE-WIDE	METRO ESCU REGION 11
Instructors	2,664	950
Instructors (part-time)	834	343
Administrators	190	81
Administrators (part-time)	20	8
Non-instructional Staff	537	274
Non-instructional Staff (part-time)	363	212
TOTAL VOCATIONAL STAFF	4,608	1,868
METRO VOCATIONAL STAFF AS PERCENT OF STATE	41%	

Data Sourse: MINCRIS
9/25/84
BA:rs

Minnesota House of Representatives

August 24, 1984

To: Paul Goldberg, Acting Chairperson
Advisory Council on Bargaining Impasse Resolution

From: Bette Anderson, House Staff BA

Re: Employees of Public Schools

MINCRIS (Minnesota Civil Rights Information System) appears to be the best source of data concerning headcounts of public school employees. The chart that follows displays the MINCRIS estimate of the number of public school employees during the 1983-84 school year, based on employment on October 1, 1983.

The figures include all employees involved in delivery of public elementary and secondary school services, not only in public school districts, but including also special education and vocational cooperatives.

Full-time employees are employed full time within a pay period, but may work for only a portion of the year. A few part-time employees may be counted twice, such as some part-time principals who may also be counted as part-time teachers.

NUMBERS OF PUBLIC SCHOOL EMPLOYEES BY CATEGORY
1983-84 SCHOOL YEAR

ADMINISTRATORS		1,116
PRINCIPALS		1,896
Elementary Principals	595	
Elementary Asst. Principals	31	
Part-time Elementary Principals	264	
Secondary Principals	579	
Secondary Asst. Principals	344	
Part-time Secondary Principals	83	
CLASSROOM TEACHERS		42,156
Elementary Teachers	14,083	
Part-time Elementary Teachers	1,061	
Secondary Teachers	17,756	
Part-time Secondary Teachers	2,078	
Other Classroom Teachers	3,355	
Part-time Professional Instructors	3,823	
PROFESSIONAL STAFF		4,905
Guidance	911	
Psychological	233	
Librarian/Audio Visual	952	
Instructional Supervisor	212	
Other "Professional" Staff	2,597	
NON-CERTIFIED SCHOOL STAFF		27,477
Teacher Aides	4,039	
Technicians (typically requiring 2 or more years of vocational or other education such as computer programmers, draftsmen, math aides, etc.)	391	
Clerical/Secretary	5,481	
Food Service/Custodial/Bus Drivers	8,946	
Skilled Crafts (mechanics, repairmen, electricians, typesetters, etc.)	606	
Laborers (unskilled)	258	
Part-time Non-certified School Employees	7,756	
Total Public Sector School Employees		77,550

NUMBER OF EXISTING
SUPPORT STAFF AND PRINCIPAL/ADMINISTRATIVE
BARGAINING UNITS
IN
SCHOOL DISTRICTS

DISTRICT NAME AND NUMBER	NUMBER OF SUPPORT STAFF UNITS	NUMBER OF ADMINISTRATIVE UNITS
1, Special School District, Mpls.	12	3
1, Aitkin	2	1
2, Hill City		1
4, McGregor	1	1
6, Special School District South St. Paul	2	1
11, Anoka	7	1
12, Circle Pines	4	1
13, Columbia Heights	3	
14, Fridley	2	1
15, St. Francis	1	
16, Spring Lake Park	2	
22, Detroit Lakes	2	
31, Bemidji	4	1
38, Red Lake	3	1
47, Sauk Rapids	3	1
51, Foley	3	
72, Mapleton		1
77, Mankato	3	1
88, New Ulm	3	

93, Carlton	1	
94, Cloquet	1	
95, Cromwell	1	1
97, Moose Lake	1	
99, Esko		1
100, Wrenshall	1	
108, Norwood, Young America	1	
110, Waconia	1	
111, Watertown	1	1
112, Chaska	2	1
114, Backus		1
115, Cass Lake	2	1
116, Pillager	1	
117, Pine River		1
118, Remer	1	1
129, Montevideo	2	
138, North Branch	2	1
139, Rush City	1	1
141, Chisago Lakes		1
145, Glyndon	1	
147, Dilworth	1	
152, Moorhead	4	3
166, Grand Marais	2	
177, Windom	1	
181, Brainerd	3	

182, Crosby	1	1
186, Pequot Lakes	2	
191, Burnsville	6	2
192, Farmington	2	1
194, Lakeville	2	1
196, Rosemount	7	1
197, West St. Paul	6	1
199, Inver Grove Heights	5	
200, Hastings	2	
202, Dodge Center		1
204, Kasson	1	1
205, West Concord	1	1
206, Alexandria	1	1
222, Kiester		1
224, Wells		1
227, Chatfield		1
228, Harmony		1
234, Rushford	1	
240, Blue Earth		1
241, Albert Lea	3	1
242, Alden		1
244, Freeborn	1	
245, Glenville	1	
252, Cannon Falls	1	1

254, Kenyon		1
256, Red wing	3	1
258, Wananingo		1
263, Elbow Lake	1	
270, Hopkins	3	
275, Golden Valley	1	1
276, Minnetonka	4	1
277, Mound	5	
278, Long Lake	2	1
279, Osseo	3	1
280, Richfield	1	
281, Robbinsdale	3	1
282, St. Anthony	3	1
283, St. Louis Park	1	1
284, Wayzata	3	2
286, Brooklyn Center	1	
299, Caledonia		1
300, La Crescent	2	
306, La Porte		1
308, Nevis	1	
309, Park Rapids	1	1
314, Braham	3	1
316, Coleraine	2	1
317, Deer River	1	1
318, Grand Rapids	2	1

319, Nashwauk	4	
331, Mora	1	1
333, Ogilvie		1
346, Raymond		1
347, Willmar	3	
351, Hallock	1	
354, Kennedy	1	
356, Lancaster		1
361, International Falls	1	1
362, Littlefork	1	
363, South Koochiching	1	
381, Two Harbors	2	1
390, Baudette	1	
392, Le Center	1	1
393, Le Sueur	1	2
394, Montgomery	1	2
395, Waterville	2	1
404, Lake Benton		1
411, Balaton		1
413, Marshall	2	1
417, Tracy	4	1
422, Glencoe	1	
423, Hutchinson	2	
447, Grygla	1	1

454, Fairmont	2	1
456, Sherburn	1	
457, Trimont	1	
458, Truman		1
464, Grove City		1
465, Litchfield	5	1
466, Cokato	1	1
477, Princeton	4	1
480, Onamia	1	1
482, Little Falls	2	
483, Motley	1	
485, Royalton		1
492, Austin	4	2
504, Slayton	1	1
505, Fulda	1	
507, Nicollet		1
508, St. Peter	1	
518, Worthington	2	1
521, Ada		1
526, Twin Valley		1
534, Stewartville		1
535, Rochester	5	
544, Fergus Falls	2	1
547, Parkers Prairie	2	

549, Perham	1	
550, Underwood	1	1
553, New York Mills	1	
564, Thief River Falls	6	1
576, Sandstone	3	1
578, Pine City	1	
593, Crookston	2	1
595, East Grand Forks	3	1
621, Mounds View	4	1
622, North St. Paul-Maplewood	4	1
623, Roseville	3	1
624, White Bear Lake	4	1
625, St. Paul	7	4
630, Red Lake Falls		1
646, Bird Island-Lake Lillian		1
656, Faribault	2	1
659, Northfield	2	1
671, Hills-Beaver Creek	1	
682, Roseau	1	
690, Warroad	1	1
691, Aurora	4	1
692, Babbitt	1	1
693, Biwabik	1	
695, Chisholm	1	

696, Ely	1	1
697, Eveleth		1
698, Floodwood	1	
699, Gilbert	1	1
700, Hermantown	4	1
701, Hibbing		1
703, Mountain Iron	1	1
704, Proctor	3	1
706, Virginia	1	1
709, Duluth	6	3
710, St. Louis County	4	2
717, Jordon	1	
719, Prior Lake		1
720, Shakopee	2	
721, New Prague	3	1
726, Becker	2	1
727, Big Lake	2	
728, Elk River	4	
732, Gaylord	1	1
735, Winthrop	1	1
741, Paynesville	2	
742, St. Cloud	4	2
748, Sartell	1	
750, Cold Spring		1
756, Blooming Prairie		1

761, Owatonna	2	
762, Ellendale		1
775, Kerkhoven		1
777, Benson	2	
684, Appleton	1	
786, Bertha	1	
792, Long Prairie	1	
801, Browns Valley	1	
803, Wheaton		1
810, Plainview	1	1
819, Wadena	4	
821, Menagha	1	
827, New Richland	1	1
829, Waseca		1
831, Forest Lake	5	1
832, Mahtomedi	1	
833, Cottage Grove	7	2
834, Stillwater	2	1
837, Madelia		1
840, St. James		1
846, Breckenridge	2	
857, Lewiston		1
858, St. Charles		1
861, Winona	2	1

877, Buffalo	3	1
879, Delano	1	
880, Howard Lake	1	
882, Monticello	2	
883, Rockford	1	1
885, St. Michael	1	
894, Granite Falls	1	
911, Cambridge	3	1
912, Milaca	3	1
917,Rosemount	3	
Totals	**396**	**162**

VOCATINAL/TECHNICAL SCHOOLS

916, White Bear Lake	3	2
287, Minneapolis	5	
946, Grand Rapids	1	
932, Hibbing	1	
938, Cokato		1
979, Little Falls	1	
Totals	**11**	**3**

EDUCATIONAL COOPERATIVE SERVICE UNIT (ECSU)

9, Mankato	1

ELEMENTARY-SECONDARY VOCATIONAL UNITS-COMPUTER REGIONS (ESV)

3(5-867), St.Cloud	1	
Grand Totals	409	165

M E M O R A N D U M

TO: ADVISORY COUNCIL ON BARGAINING IMPASSE RESOLUTION MEMBERS

FROM: Gary Bastian

DATE: October 30, 1984

RE: Statutory Criteria For Factfinder's and Arbitrator's Decisions

---

A. SUMMARY

The attached table identifies a number of criteria (or factors) found in various state impasse resolution statutes. The purpose of this analysis was to focus on the presence of statutory criteria guiding a factfinder's or arbitrator's decision making process in impasse situations. This review did not limit itself to impasse procedures available for teacher negotiations, but rather reviewed the procedures for any class of employee in state law.

B. CHECKLIST OF CRITERIA USED IN VARIOUS STATE PROVISIONS:

FACTFINDER'S CRITERIA:

STATE	1 Lawful Authority	2 Stipulations	3 Financial Ability of the Employer	4 Employee's Financial Ability or Interests	5 Comparability[1]	6 CPI	7 Overall Compensation Package	8 Normal and Traditional Matters[2]	9 Interests of the Public	10 Changes During Pendency	11 Past Contracts	12 Others
CALIFORNIA	X	X	X	X	X	X	X	X	X			
DELAWARE	X	X	X		X	X	X		X			
FLORIDA			X		X		X	X	X			
GEORGIA					X			X	X			
NEVADA			X						X			
VERMONT	X	X	X		X	X	X		X			

B. CHECKLIST CONT.

ARBITRATOR'S CRITERIA:

STATE	1 Lawful Authority	2 Stipulations	3 Financial Ability of the Employer	4 Employee's Financial Ability or Interests	5 Comparability[1]	6 CPI	7 Overall Compensation Package	8 Normal and Traditional Matters[2]	9 Interests of the Public	10 Changes During Pendency	11 Past Contracts	12 Others
CONNECTICUT			X	X	X							
HAWAII	X	X	X		X	X	X		X	X		
ILLINOIS	X	X	X		X	X	X		X	X		
IOWA	X[3]		X		X						X	
MAINE			X		X	X	X		X			X
MASS.		X	X		X	X	X	X	X	X		X
MICHIGAN	X	X	X		X	X	X		X	X		
NEW JERSEY	X	X	X		X	X	X	X				
NEW YORK			X		X				X		X	
OHIO	X	X	X		X				X		X	
OKLAHOMA			X		X				X			
OREGON	X	X	X		X	X	X		X	X		
RHODE ISL.					X				X			
WASHINGTON	X	X			X	X				X		
WISCONSIN	X	X	X		X	X	X		X	X		

Footnotes:

[1] Public and/or private sector comparability.

[2] Into this category falls items such as: hazard of equipment, actual qualifications, educational qualifications, mental qualifications, job training and skills as well as un-defined "normal and traditional" matters.

[3] "Ability to levy taxes and appropriate funds."

Source:

Public Employee Bargaining, Commerce Clearing House, Vol. 2.

C. EXAMPLE OF STATUTORY CRITERIA:

The following are illustrative examples of language used in statutes when enumerating factfinder's or arbitrator's criteria.

1. Lawful Authority

--"state and federal laws that are applicable to the employer." (California)
--"The lawful authority of the employer." (Oregon)
--"The power of the public employer to levy taxes and appropriate funds for the conduct of its operations." (Iowa)

2. Stipulations

--"Stipulations of the parties." (Vermont)

3. Financial Ability of the Employer

--"...the financial ability of the municipal employer to pay for increased costs of public services including the cost of labor." (Vermont)
--"The financial ability of the public school employer based on existing revenues, to meet the costs of any proposed settlement, ...any enhancement to such financial ability derived from savings experienced by such...employer...as a result of a strike shall not be considered...and...the certification of available revenue adopted by the...(state)...shall be used by the...as the true statement of the financial ability of any...employer..." (Nevada)
--"The financial impact on the governing unit and residents and taxpayers." (New Jersey)

4. Employee's Financial Ability or Interests

--"...the financial ability of the public school employee-employer." (California)
--"The factors, among others, to be given weight... shall include...welfare of the employes." (Connecticut)

5. Comparability

--"Comparison of the wages, hours and conditions of employment of other employees performing similar services and with other employees, generally:
a. In public employment in comparable communities
b. In private employment in comparable communities
(Illinois)

6. CPI

--"The average consumer price for goods and services, commonly known as the cost of living." (Hawaii)
--"Increases in the average weekly wages earned in the private sector within...Delaware as computed by the department of labor." (Delaware)

7. Overall Compensation Package

--"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." (California)
--"The overall compensation presently received by the employees including direct wages, fringe benefits and continuity conditions and stability of employment, and all other benefits received." (Vermont)

8. Normal and Traditional Matters

--"Such other factors...which are normally or traditionally taken into consideration in making such findings and recommendations." (California)
--"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, factfinding, arbitration or otherwise between parties, in the public service or in private employment." (Massachusetts)
--"The hazards of employment, physical, educational and mental qualifications, job training and skills involved." (Massachusetts)

9. Interests of the Public

--"The interests and welfare of the public..." (Michigan)

10. Changes During Pendency

--"Changes in any of the...circumstances during the pendency of the arbitration proceedings." (Hawaii)

11. Past Contracts

--"Past collective bargaining contracts between the parties including the bargaining that led up to such contracts." (Iowa)

12. Others

--"The present and future general economic conditions of the counties and the state." (Hawaii)
--"Decision and recommendation of factfinding, if any." (Massachusetts)
--"The need...for qualified employees." (Maine)
--"The need to establish fair and reasonable conditions in relation to job qualifications and responsibilities." (Maine)

JOHN ABERNATHY
LABOR ARBITRATOR & PROFESSOR
UNIVERSITY OF OREGON

FACT FINDING*

Fact finding is neither mediation nor arbitration. A mediator comes into a negotiation impasse and attempts, through discussion. to get the parties to reach an agreement. An arbitrator decides a case and his/her decision, depending on the agreement, is often binding.

A fact finder, theoretically, is even more impartial. He/she is a semi-judicial official who has been appointed to review circumstances and data surrounding specific issues in dispute and then prepare a report with recommendations which the parties may (or may not) accept as a basis for arriving at a contract settlement. He/she usually enters the scene after negotiation has failed and means of mediation have been exhausted.

Instigating Fact Finding

Under most state statutes, either party may instigate fact finding on those negotiable issues which remain in dispute. Usually, a fact finder can be appointed by the parties by mutual agreement. In the absence of an enabling statute, if the parties cannot agree on a single fact finder, it may be advisable to have each party select one fact finder, after which the two fact finders choose a third. Normally agreement should be reached

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*Revised 1984. See, Paul D. Staudohat, "Fact-Finding for Settlement of Teacher Labor Disputes." Phi Delta Kappan, April 1970, pp. 422-425; George T. Roumell, Jr., "Fact-Finding Can Unblock Bargaining Impasse." Nation's Schools, pp. 77-79; and R. Allan Spanjer, et. al., Instructional Program for Preparing Mediators and Fact Finders in Idaho (Portland, Oregon: Northwest Regional Education Library, 1972), pp. 96-103.

only published program on F-F

within, say, 30 days of the request for such appointment or some other body should step in and make the appointment(s).

Role of the Fact Finder

Some authorities contend the real mission of the fact finder is to recommend solutions that are not extreme and can be "reluctantly accepted" by both parties since the recommendations are not binding.

Typically, the fact finder has authority to establish procedural rules, conduct investigations and hold hearings during which each party to the dispute is given an opportunity to present its case with supporting evidence. There appear to be no set rules on the conduct of a fact finding mission. However, there are some guidelines.

Typically, a fact finder will hold an informal pre-hearing meeting to clarify issues and evidence and to save time at the actual hearing. Briefs stating the parties' positions are also presented at this time. The hearing itself may be formal or informal. If formal, it closely resembles a trial, with sworn witnesses, cross-examination by attorneys or chief negotiators and closing arguments. If informal, position papers are presented by both sides, though witnesses may still be called. Obviously, state laws may dictate such procedural matters.

The hearing may be public, depending on state law. There are two points of view on this. One says that in such a delicate matter, parties may be less prone to reveal essential facts if the hearing is conducted in public. The other position is that

public employment involves public funds and that all citizens have the right to know what's going on.

As to strategy, contesting parties often withhold their real intentions during negotiations and risk it for fact finding. For example, assume that surrounding school districts are paying a teacher from $17,000 to $17,500 annually. Following such dubious thinking, the teacher's last demand may be $18,500, while the school administration offer only $16,400. Both positions are unrealistic and make the fact finder's role more difficult because he/she cannot render a report with a reasonable recommendation.

Criteria for Decision

Before preparing his/her recommendations, the fact finder must carefully consider the following major criteria:

History of bargaining. An examination of past and current negotiations is sometimes an indicator of what the parties may agree to.

"Substitution for a Strike". Where fact finding is, by law, a substitute for a strike, the fact finder must try to predict what would have helped if a strike had been allowable.

Ability to pay. Where economic issues are involved, some factors to be considered are the current taxing policy of the agency, the agency's budget, future ability to raise money, funded equity of agency, etc.

Comparisons. These can be made with other jurisdictions in the county, in the region, in the state, or nationwide--on a variety of issues.

Supply and demand. The availability of employees in the geographic area may be a factor, particularly in highly skilled, technical, or professional classifications.

Economics of community. Salaries and wages in the private sector and the cost of living will affect public employee salaries. An offshoot of this is the "GM syndrome," where a community of middle-class executives refuses to approve taxation that would allow public workers to make more than the average citizen in the community is earning.*

Reluctance of acceptance. Though not followed by all fact finders, this criterion says that since reports are not binding, recommendations should not be extreme but should contain suggestions that can be "reluctantly" accepted by both sides.

Reports

Fact finders should in all cases be required to prepare a written report. The report should include the findings of fact, opinion and objectives relative to the issues in dispute. The fact finder also states in the report his/her conclusions, recommendations for settlement of the dispute, and the reasoning behind his/her decision. The report should be clear and concise; in most cases it is not more than 5-10 pages in length. The results of the report should be made public if not accepted by both parties, in order to help crystalize public opinion and

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*For a fuller discussion of these fiscal issues, see "Collective Bargaining and the Budget Director," in Sam Zagoria, Public Workers and the Public Unions (Englewood Cliffs, Prentice-Hall, Inc., 1972), pp. 89-100.

enable the public to judge the fairness of the parties' positions and the equity of the proposed settlement. Public reporting of fact finders' recommendations appears to be the main source of pressure resulting in success for fact finding.*

Some Problems

There is one serious problem for fact finding. The risks fall disproportionately on the employee organization. Assuming that the general prohibition against strikes in public employment is adhered to, the employee organization is not in a position to reject a fact finder's recommendations. The public employing agency, on the other hand, can accept or reject the recommendations with relative impunity because it is in a position to act unilaterally on the issues.**

Lest the problem appear worse than it is, however, it should be noted that the employer also incurs risks upon entering into fact finding. Neither side knows what the outcome will be, which tends to increase the risk associated with using the procedure in the first place and encourage the reaching of agreement in the negotiation process. If the employer takes an unreasonable stand on an issue and adverse fact finders' recommendations are made public, his/her image in the community will suffer.

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*See for example, Carlton J. Snow, "The News Media and Collective Bargaining," The Arbitration Journal, 36 (March, 1981), pp. A7-51.

**See Daniel G. Gallagher, "How Effective Is Fact-Finding in the Public Sector?" PPA-LMR (Prentice-Hall, Inc., 1981), pp. 3339-3344.

Another problem which has been cited in some jurisdictions is that fact finding may be regarded as the primary means of achieving settlement, a stance which tends to destroy good collective negotiations. In other words, a party is going to be reluctant to commit his/herself in bargaining on an issue if he/she knows the issues may be submitted to fact finding. This attitude tends to result in impasses and submission to fact finding, causing overuse of the procedure.*

There is the difficulty of securing agreement as to which specific issues are to be submitted to the fact finder. Frequently, the number of issues finally submitted is so great that the decision-making process is considerably slowed. Russell Allen found a distinct positive correlation between the number of issues presented to the fact finder and the number of strikes.** Mediation can serve to reduce the number of issues in dispute prior to fact finding and can help clarify them.

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*A good example of this is Wayne F. Anderson, et. al., Fact-Finding in the Public Sector--A Case Study (Chicago: Public Personnel Association [IMPA], 1970).

**Russell Allen, "1967 School Disputes in Michigan," in Public Employee Organization and Bargaining, Howard J. Anderson (ed). Washington, D.C. Bureau of National Affairs, 1968, p. 74.

DISPOSITION OF CASES GOING TO IMPASSE IN OREGON

JANUARY 1, 1974 - DECEMBER 31, 1983

ESTIMATED NUMBER OF NEGOTIATIONS	DECLARED IMPASSE	SETTLED IN MEDIATION	FACT-FINDING INITIATED	UNKNOWN RESULT DUE TO HOME RULE	SETTLED BEFORE HEARING	FACT-FINDING HEARING HELD	FACT-FINDING REPORT ACCEPTED	SETTLED W/O MEDIATION AFTER FACTFINDING	SETTLED WITH MEDIATION AFTER FACTFINDING
12,500	2433	1664	769	29	276	435	53	34	248
		68% of declared impasses			36% decrease from 769	18% of impasses	53 + 34 = 87 cases or 20% of 435		57% of 435

1664 + 276 = 1940 or 80% of impasses declared

APPEALED TO INTEREST ARBITRATION OR TAKEN TO STRIKE	INTEREST ARBITRATION INITIATED	SETTLED BEFORE INTEREST ARBITRATION	INTEREST ARBITRATION HEARING HELD	STRIKES
100	79	17	62	21
	18% of 435	22% decrease		.9% of total number of impasses or 4.8% of factfindings held

Compiled by Oregon Mediation Service, April 24, 1984.

September 12, 1984

TO: ADVISORY COUNCIL ON BARGAINING IMPASSE PROCEDURES

FROM: Gary Bastian

RE: ANALYSIS OF FACT FINDING AS AN IMPASSE RESOLUTION PROCEDURE

A. INTRODUCTION

Under state laws allowing teachers to collectively bargain, there are a number of procedures available to resolve negotiation impasses. The August 27, 1984 report entitled "Collective Bargaining Laws in Other States", outlined the techniques available in the thirty-three states giving teachers collective bargaining rights.

The right to strike is granted to teachers in ten states (Alaska, Hawaii, Illinois, Minnesota, Montana, Ohio, Oregon, Pennsylvania, Vermont and Wisconsin). This right to strike is often viewed as the ultimate economic weapon available to employees in impasse situations. As a means to avoid, or as an alternative to, a strike, various statutory schemes of mediation, fact finding, or arbitration have been enacted by state legislatures.

Two states provide only for mediation. Ten states have mediation and fact finding provisions. Four states have mediation and arbitration impasse procedures. Thirteen states have all three impasse techniques in their statutory provisions. Fact finding, as the sole technique, is allowed in only one state. (For a complete listing of states, see pages 6 & 7, "Collective Bargaining Laws in Other States".

This memo is intended to review fact finding as an impasse resolution technique. It is intended to be a brief discussion of the process with a presentation of the advantages and disadvantages. Details about the fact finding procedures available in other state laws will be discussed in Mark Shepard's report entitled "Impasse Resolution Procedures in Selected States", September, 1984. This report also makes the assumption that Council members are familar with mediation, arbitration and strike impasse resolution techniques and will not define or discuss them in this memo.

B. DEFINITION

Fact finding is defined as the "identification of the major issues in a particular impasse dispute and resolution of actual differences by one or more impartial fact finders. The process will usually include non-binding recommendations issued by the factfinder in an attempt to resolve the impasse". (Source: Public Employee Bargaining, Volume 1, Section 300.41. CCH.)

C. DESCRIPTION

Fact finding can be an intermediate step, or a final step, in an impasse resolution scheme. Fact finding can be initiated by one or both parties, or by a state agency (one similar to our BMS). The fact finding technique utilizes a disinterested third person or panel, acceptable to both parties. The disinterested party or panel is empowered to hold hearings and require each party to present evidence on their positions on issues in the contract impasse. After the evidentary hearing, the fact-finder is required to issue a report on the issues, including his recommendations for a final settlement of contract impasse.

The factfinder's report, with recommendations, can be final and binding upon the parties. Or, it can be used as a position before an arbitrator in binding arbitration to be considered along with the employer's and employee's positions. In most situations it is only advisory. In some states the parties must take some action, either to accept or reject the offered resolution, before the next step in the impasse resolution procedure can begin. Often times the factfinder's report is made public in order to create public pressure for settlement of the impasse by either or both parties.

The costs of fact finding are usually shared by the parties. Sometimes the costs are picked up by the state. When costs are assessed to the parties, it is to assure good faith fact finding.

D. ADVANTAGES & DISADVANTAGES OF FACT FINDING

This section is intended to provide a simple listing of the advantages and disadvantages of fact finding as discussed by various authors in a number of articles on fact finding.

Advantages:

--Fact finding is viewed as an alternative to the right to strike
--Public pressure, after release of the factfinder's report and recommendations, will force a settlement
--Fact finding allows both parties to "save face". It is a moderating influence that allows both parties to retreat from extreme positions
--The formal fact finding process forces the parties to step back and assess their positions, then to prepare for hearing and their final impasse positions It offers a "cooling off" period in between mediation and arbitration.
--Serves as a useful warmup for arbitration
--Reduces the dependency upon arbitration
--Reduces the number of issues taken into arbitration
--Fact finding is a forum for compromise and not an adversarial hearing

Disadvantages:

--Factfinders do not have the skills of mediators to encourage a negotiated settlement
--Fact finding lacks the risks of arbitration
--The availability of fact finding reduces the effectiveness of mediation and reduces the mediator's ability to pressure a compromise
--Fact finding duplicates the arbitration process and delays the final resolution
--Serves as a management tool to harass the union (increases the costs of bargaining)
--Fact finding is more effective where the parties are inexperienced and where the private sector is not unionized.

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___ (1) "Ability to Pay in Public Sector Factfinding and Arbitration", Howard G. Foster, Labor Law Journal 123, February 1984.

General discussion.

___ (2) "Factfinding in Indiana: A Study of Factfinding Frequency and Acceptance as an Impasse Resolution Procedure in Public School Negotiations", Karen Gallagher and Donald Robson, 12 Journal of Collective Negotiations 153 (1983).

Discussion of Indiana and Wisconsin experiences.

___ (3) "Is Fact Finding Useful in the Public Sector?", Paul Gerhart and John Drotning, 10 Journal of Collective Negotiations 279 (1981).

Article deals with situations where binding arbitration follows unsuccessful fact finding.

___ (4) "Impasse Resolution Under the Iowa Multistep Procedure", Daniel Gallager and Richard Pegnetter, 32 Industrial and Labor Relations Review 327, (1979).

___ (5) "Some Suggested Impasse Resolution Procedures", Joseph Glasser, 8 Journal of Collective Negotiations 209 (1979).

___ (6) "On Factfinding: A One-Eyed Man Lost Among the Eagles", Robert Doherty, ___ Public Personnel Management 363, September-October 1976.

___ (7) "Current Trends in Public Sector Impasse Resolution", Steven Rynecki and Thomas Gausden, State Government, Autumn 1976.

General Discussion of procedures.

___ (8) "Mechanisms for Resolving Collective Bargaining Impasses in Public Education", Dr. Harry Becker, 5 Journal of Collective Negotiations 319 (1976).

Review of several forms of impasse resolution.

___ (9) "Impasse Resolution Preferences of Fire Fighters and Municipal Negotiators", Hoyt Wheeler and Frank Owen, 5 Journal of Collective Negotiations 215 (1976).

Describes preferences of persons negotiating for 370 local fire fighter units.

(10) "Implications of Fact Finding: The New Jersey Experience", ___ William Word, 3 Journal of Collective Negotitations 339 (1974).

(11) "The Effectiveness of Mediation in Public Sector Arbitration ___ Systems: The Iowa Experience", 39 The Arbitration Journal 30 (1984).

(12) "The Effect of Statutory Impasse Schemes on the Acceptance ___ of Factfinding Recommendations: Evidence from Iowa and New York", Daniel Gallagher and Peter Veglhan, 13 Journal of Collective Negotiations 123 (1984).

MINNESOTA
LEGISLATIVE COMMISSION ON EMPLOYEE RELATIONS

Tom Nelson, Chairman — Room 301, State Capitol — Saint Paul 55155
(612) 296-4871

Jermaine Foslien, Administrative Assistant — (612) 296-2963

Nicholas D. Coleman, Past Chairman

August 24, 1984

TO: Members, Advisory Council on Bargaining Impasse Resolution

FROM: Mark Shepard, House Research

This memorandum highlights some of the provisions in the Public Employment Labor Relations Act (PELRA) governing collective bargaining in public schools. This memo focuses on the laws covering teachers.

I. Definitions

A. Public Employee:

Most people employed by school districts are "public employees" under PELRA and thus have the right to bargain collectively. The following people are not public employees (see Minn. Stat. §179A.03, subd. 14 for the full definition of "public employee"):

1. Part-time employees who work the lesser of 14 hours per week or 35 percent of the normal work week.

2. Employees whose positions are basically temporary or seasonal and not for more than 67 working days in a calendar year.

3. Individuals employed less than 300 hours in a fiscal year as instructors in an adult vocational education program.

4. Individuals hired to teach one course for up to four credits for one quarter in a year.

Despite points one and two above, a person who is employed more than 30 working days as a replacement for an absent teacher is a public employee.

B. Teacher:

"Teacher" means any public employee other than a superintendent or assistant superintendent, principal, assistant principal or a supervisory or confidential employee, employed by a school district:

1. In a position for which the person must be licensed by the board of teaching or the state board of education; or

2. In a position as a physical therapist or an occupational therapist. (Minn. Stat. §179A.03, subd. 18.)

C. Principal:

"Principal" and "assistant principal" means any person so licensed by the state board of education who devotes more than 50 percent of his or her time to administrative or supervisory duties.

II. Determination of Bargaining Units

Public employees must bargain in "appropriate units." These units are determined by the director of the Bureau of Mediation Services, under criteria set out in statute. Among the important provisions which apply to school districts are:

A. For school districts, all teachers in the district constitute the "appropriate unit." (Minn. Stat. §179A.03, subd. 2.)

B. Principals and assistant principals are considered "essential employees" (Minn. Stat. §179A.03, subd. 7). Essential employees may not be included in a bargaining unit with other employees (Minn. Stat. §179A.09, subd. 2), but may form their own organizations.

C. Other criteria for determining appropriate units are set forth in Minn. Stat. §179A.09, subd. 1. The director of the BMS is ordered to place particular importance upon the history and extent of organization, and the desires of the employee representative.

III. Resolving Bargaining Impasses

PELRA provides several means for resolving impasses when parties have negotiated but are unable to reach agreement on the terms of a contract. These include mediation services provided by the Bureau of Mediation Services, the opportunity to have the terms of the contract determined by an arbitrator who is selected by the employer and the union, and the opportunity for the employee organization to strike under certain circumstances.

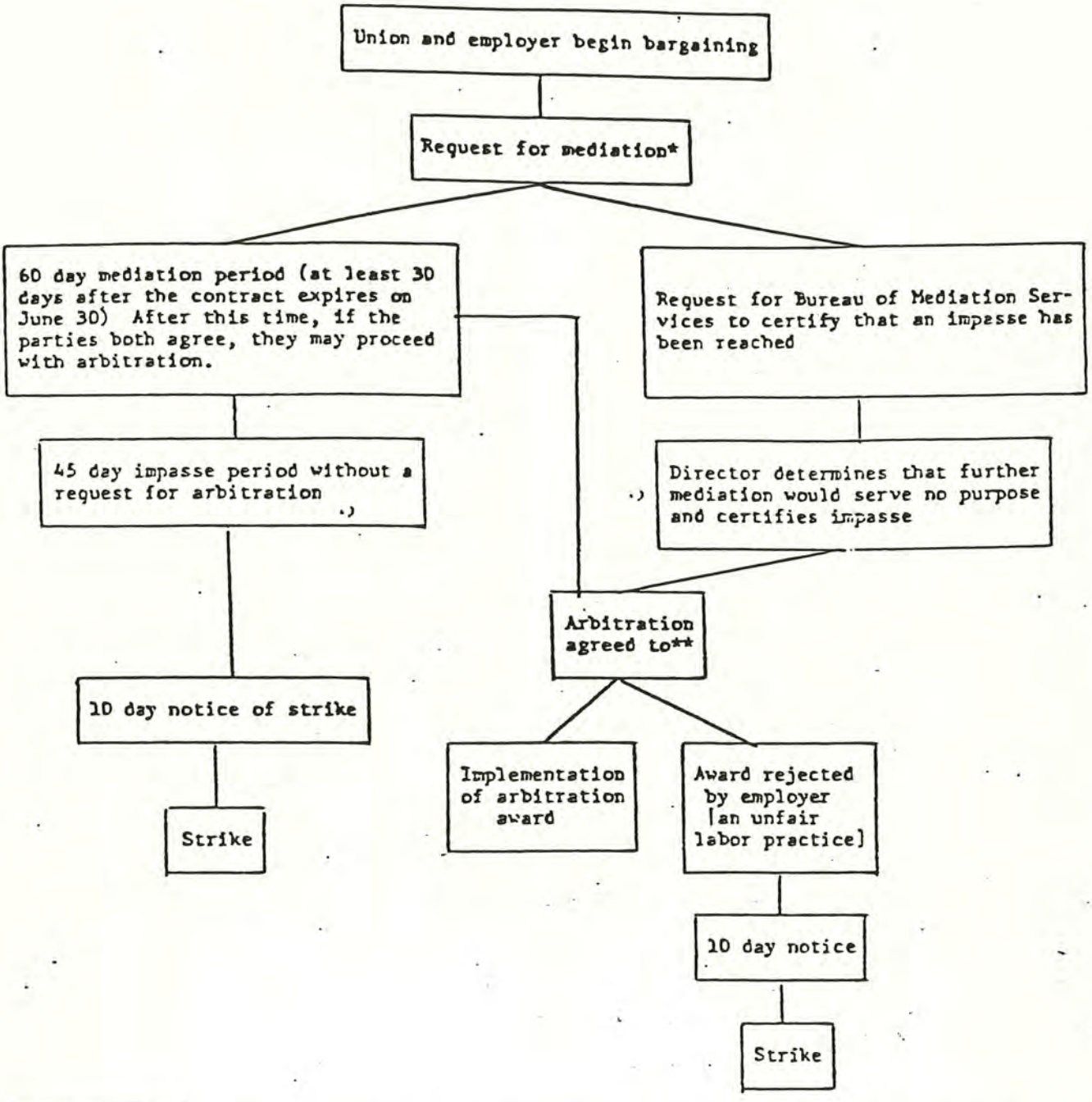
In 1980 major changes were made to the PELRA impasse resolution procedures. Prior to that time, a union could legally strike only if the employer refused to submit the dispute to an arbitrator or if the employer participated in arbitration but then refused to implement the arbitration award. An employer could prevent a legal strike by submitting a dispute to binding arbitration.

The chart on the following page outlines the impasse resolution procedures under the current law.

MS/fa
Attachment

PELRA PROCEDURES FOR RESOLVING IMPASSES IN TEACHER BARGAINING

Settlement can be reached at any time during the course of negotiations, even when a dispute has been submitted to an arbitrator. This chart illustrates what may happen if settlement is not reached.



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* Mediation is a process in which a mediator from the Bureau of Mediation Services assists the union and the employer in agreeing to a contract. The mediator has no power to impose contract terms on the parties.

** Arbitration is a process in which a third party, selected by the union and the employer, decides what the terms of the contract will be. For principals and assistant principals, arbitration is required when requested by either party. These employees cannot legally strike. For other employees, arbitration occurs only when the union and the employer agree to it.

ADVISORY COUNCIL ON BARGAINING IMPASSE RESOLUTION

September 5, 1984

TO: Advisory Council Members

FROM: Ken Dau-Schmidt, Legislative Analyst

RE: The effect of the 1980 amendments on school support staff.

At the last meeting of the Advisory Council, Senator Nelson raised questions concerning how the 1980 PELRA amendments changed the right to strike for school support staff, and how these changes compared with the changes made to the teachers' right to strike. This memo supplies a brief answer to these questions.

Basically the change in the right to strike under the 1980 PELRA amendments was about the same for both support staff and teachers. Before the 1980 amendments no employee of the public schools could undertake or encourage a strike unless his or her employer had refused to submit to interest arbitration or implement an interest arbitration award under PELRA (Laws of Minnesota 1980, Chapter 617, Section 22). After the 1980 PELRA amendments, both support staff and teachers could strike if they met certain conditions. The conditions teachers had to meet were somewhat stiffer than those required of support staff. These conditions are basically the same conditions support staff and teachers must meet to strike today.

Support staff can strike if:

(a) their collective bargaining agreement has expired or, if they have no collective bargaining agreement because they are newly organized, if they have reached an impasse;

(b) they have participated in mediation with their employer for at least 45 days; and

(c) they have given their employer and the director at least 10 days written notice of their intent to strike; such notice cannot be given before the employees' contract expires or, if they have no contract, they reach an impasse. (Laws of Minnesota 1980, Chapter 617, Section 22).

Teachers can strike if:

(a) their collective bargaining agreement has expired or, if they have no agreement, they have reached an impasse;

(b) they have undergone at least 60 days of mediation with their employer, at least 30 days of which must be after the expiration of the collective bargaining agreement if there is a past agreement;

(c) they have given their employer and the director at least 10 days written notice of their intent to strike; such notice cannot be given until the employees' old agreement expires or an impasse is reached; and

(d) a request for binding arbitration has been rejected by one of the parties.

Teachers can also strike if:

(a) an impasse has been certified by the director or has been deemed to have occurred because the parties have undertaken at least 60 days of mediation without success and the past agreement has expired;

(b) 45 days after impasse neither party has requested arbitration; and

(c) at least 10 days written notice of the intent to strike has been given to the employer and the director; such notice cannot be given until after the 45 day period in (b) above.

Both support staff and teachers can also strike if their employer fails to implement an interest-arbitration award and they have given 10 days written notice of their intent to strike.

Thus the 1980 amendments significantly enlarged the right to strike for both support staff and teachers. Teachers are required to undergo more mediation than support staff and at least 30 days of mediation after the expiration of their contract before teachers can lawfully strike. However, the basic conditions on the right to strike for both teachers and support staff are similar.

KDS/dlr

September 26, 1984

TO: MEMBERS, ADVISORY COUNCIL ON IMPASSE RESOLUTION

FROM: Gary Bastian

RE: Background Information - Pre-PELRA and Teachers' Contract Duration

A. INTRODUCTION

This report has been prepared to give the Council some information about pre-PELRA labor law and about several provisions in current law that have their roots in the 1971 Act. Namely, the requirement of a two-year contract for teachers and the prohibition on wage reopeners found in Minnesota Laws 1984, Section 21. (Minn. Stat., Sec. 179A.20, Subd. 3)

B. PRE-PELRA LABOR PROVISIONS

The legislature made it illegal for public employees to strike in 1951 but did set in place a mechanism for the "adjustment of grievances". (Laws 1951, Chapter 146) Under Minn. Stat. 1951, Sec. 179.57, public employees could request the appointment of a three person adjustment panel. The parties each selected one panelist and they in turn had five days to select a third. If they failed, the District Court where the dispute arose would make the final appointment. Expenses were reimbursed by the unit of government involved in the dispute. The panel was required to meet within 15 days of its appointment. It attempted, through informal conferences, to encourage the parties to negotiate and resolve their differences. If this informal process failed, the panel held a full factfinding hearing and issued their findings to both parties, the Governor and the Legislature. The findings of the panel were not binding on the parties. It took a majority of all the employees in the unit of government to request the appointment of the panel. The "grievance" under this provision could have been a dispute relating to terms and conditions (i.e., wages and benefits) or employee discharge.

In 1957, public employees were given the right to join, or not join, labor organizations. Employees joining labor organizations could not be discriminated against in their employment because of their activities. (Laws of 1957, Chapter 789) The law did not clarify the distinction between supervisory and non-supervisory staff and whether or not these employee classes could collectively bargain together in the same unit. A 1962 court decision involving this law held that the state's labor conciliator did not have the power to specify public employee bargaining unit composition. This omission was corrected in 1965 when the legislature expanded Minnesota public sector labor law.

In Laws of 1965, Chapter 839, public employees were given "meet and confer" status. Both parties were required to meet and confer in good

faith, and if no settlement was reached, either party could request intervention. The request was made by petitioning the labor conciliator. The parties were required to cooperate with the labor conciliator. If the mediation efforts were successful, and the negotiators were able to reach agreement on the terms, the governing body was required to implement the agreement in an appropriate manner.

Chapter 839 also clarified the power of the adjustment panel. The adjustment panel could be convened by either party to "settle. . . a controversy involving wages, hours, or other terms and conditions of employment." (Prior law used the phrase "adjustment of grievances" when referring to the panel's jurisdiction in a dispute resolution.) Once appointed, the adjustment panel divested the labor conciliator of all jurisdiction and authority granted by law. The neutral appointee's expenses were shared equally by the parties, otherwise all other expenses were paid for by the governmental agency. The panel was given the power to make findings and recommendations to the parties and the labor conciliator.

The recommendations made by the panel had to take into consideration certain statutorily imposed conditions--the tax limitations imposed by law or charter on the jurisdiction, comparable conditions (in wages, hours, etc.) of comparable public or private sector employees, the internal consistency between employees within the jurisdiction, as well as "such other factors. . .as are normally or appropriately taken into consideration in the determination of wages, hours and other conditions of employment. . .".

Chapter 839 specifically excluded public school teachers. A separate provision was passed by the legislature but was vetoed by the Governor (H.F. No. 1504). During the ensuing biennium, teachers were without statutory protections of their collective bargaining rights. In other words, the right to meet and confer, the right to join and organize and the right to have mediation or factfinding by the adjustments panel were not available to teachers from 1965 until the legislature corrected the situation in 1967.

In 1967, the legislature passed the "Meet and Confer Law". This provision was codified separately from other labor law provisions. (Minn. Stat. 1967, Secs. 125.19 to 125.26.)

Under the meet and confer provisions (Minn. Stat. Sec. 125.23) school districts had to "meet and confer at reasonable times. . . regarding conditions of professional service. . .as well as educational and professional policies, relationships, grievance procedures and other matters. . .".

An adjustment panel process was established that did not have the intermediate labor conciliator step found in the Chapter 179 procedures. Prior to March 1, either party could have requested the appointment of the teacher's adjustment panel. Selection of the panel was similar to the selective process in Chapter 179. The teachers' panel was reimbursed by the party he represented and the neutral's expenses were split equally between the parties.

The teachers' panel had to meet within eight days of the neutral's appointment. The panel would attempt to bring about a settlement by informal conferences. If the informal process was unsuccessful, either party could request a full hearing. Within 15 days of the hearing, the panel would have to issue its findings to the parties and to the commissioner of education. The decision was non-binding.

The 1967 law defined teachers under a reference that excluded superintendents. In addition, the law recognized "teacher councils" for meet and confer purposes. In districts where "more than one teacher organization has. . .members" the board was required to recognize a committee of five (selected proportionately from member organizations active in the district). If a single organization represented teachers in the district, it alone had to meet and confer rights. (In 1971, this provision was to provide some concern when exclusive representative provisions were drafted into PELRA.)

This summary includes only the statutory provisions enacted by the legislature. It does not discuss the events taking place outside of the legislative process that gave rise to the many changes outlined above. There were several significant court decisions, brought to test the various provisions as well as a very significant teachers' strike in Minneapolis in 1970. I have attached a copy of a portion of a 1970 Governor's Advisory Council report which outlines the historical steps which proceeded the enactment of PELRA. (See Appendix I)

There are a number of articles written on Minnesota's public employment labor movement. Anyone interested in pursing this period in Minnesota's history should contact Dan Gjelten, the Legislative Reference Library's Director of Reference Services. His knowledge and ability to retrieve government reports and professional articles is remarkable.

C. TEACHERS' CONTRACT DURATION

Currently, PELRA provides for two year teachers' contracts that begin on July 1, of the odd-numbered year. In addition, Minnesota Statutes, Section 179A.20, Subdivision 3, provides that the contracts shall contain all "teachers' compensation including fringe benefits for the entire two-year term and shall not contain a wage reopening clause or. . .other provision for the renegotiation" of salaries.

1. Duration: This limitation on the contract duration for teachers' contracts dates back to the original provisions of PELRA. When enacted PELRA included language that read "contracts between. . .school board and. . .teachers shall in every instance be for a term of two years commencing July 1, of each even-numbered year. . .". (Minn. Stat. 1971, Sec. 179.70, Subd. 1.)

Two years later there was an attempt to amend the duration language to make all contract durations negotiable, even for teachers. House File No. 295 hit the Senate floor with the negotiable durations included. In speaking on behalf of the change, Senator Thorup (DFL-Anoka County) said:

> "The duration of the contract shall be negotiable. Now this is an area of dispute. The 1971 legislation for the first time imposed a two year period, or contract period, for the teachers, and it said that in no other area could it be longer than three years. It is the position of the teachers and other public employee units that the question of the duration of the contract should be negotiable as it has been in all times past, but they dissatisfied with the phraseology of the '71 limitation and they would prefer to be the way that it is generally throughout the U.S. and as it always was in the state of Minnesota."

An amendment was offered during the floor debates on May 4, 1973, to delete the negotiable contract duration language from the bill. The two year language was defended on the basis that "there should certainly be some time of peace and quiet in regard to the teacher contract. . .". The amendment was adopted by the Senate on a 33 - 26 vote. The amendment was supported by IR's and some rural DFL'ers. (See Appendix II for full text of discussion on amendment)

In Conference Committee the even-numbered year language was removed from the law and replaced with the odd-numbered year language. The transcripts on the debate of the adoption of the Conference Committee Report (May 19, 1973) does not contain any references to this issue.

In a recent conversation with Senator Ashbach (Senate author of the 1971 PELRA) he indicated a very simple reason for the change--the desire to take the contract negotiation period out of the year when school board elections occurred.

2. Wage Reopener: The 1978 legislature, in the School Aids Bill, amended the provisions of Minn. Stat. 179.70, Subd. 3, to prohibit any reopening of teachers' contracts. Neither the Senate File nor the House File contained language on this issue as they passed their respective bodies.

In 1978, an additional $5 per pupil unit was appropriated under the foundation aid formula. The conferees to House File 1885 did not want teachers and school boards to begin new negotiations over compensation and fringe benefit issues.

No attempt was made to listen to the tapes of Conference Committee meetings or of floor sessions explanations on the Conference Committee reports in either body.

APPENDIX I.

REPORT AND RECOMMENDATIONS BY GOVERNOR'S ADVISORY COUNCIL ON PUBLIC EMPLOYEE RELATIONS BETWEEN GOVERNMENT AGENCIES AND EMPLOYEES

NOVEMBER 1970

CHAPTER V

LEGISLATIVE HISTORY OF MINNESOTA'S LABOR RELATIONS ACT

The following is a review of the seven legislative steps enacted by Minnesota's Legislature in its efforts to provide the State with appropriate labor legislation geared to meet the needs as required when legislated. (Following historical background taken from Buck 1970, Obermeyer 1970, and experiences of Council members.) Preceding the factual description of each enactment step there is a description of the collective bargaining climate existing prior to each enactment which motivated the legislative action. Conclusions, founded on fact, follow the descriptions of Steps 1 and 2. The conclusions of Steps 3, 4, 5, 6 and 7 are included at the completion of Step 7.

Climate prior to Step No. 1

The middle and late 30's were years of critical conflict in Minneapolis labor relations. Subversive forces were in control of a powerful local union, supposedly seeking to organize but actually were using labor to accomplish their real purpose which was the overthrow of government. Employers were organized by a militant association, dedicated to resist all forms of collective bargaining.

Labor relations history in Minnesota record the results of this conflict. Chaos prevailed. Numerous strikes and bloodshed on the streets of Minneapolis occurred. At the time Minnesota, like most all other states, had no laws governing the conduct of labor relations. This is the climate the Legislature confronted when it opened its 1939 session; this is the climate that motivated it to legislate Step No. 1.

Step No. 1

The 1939 Legislature enacted a far reaching legislative package designed for the improvement of labor-management relations in the private sector, labeled Labor Relations Act 1939, Minnesota Statutes, Chapter 179. The Act provided for no strike or lockout unless and until specific statutory impasse procedures were observed. The Act provided for the establishment of an administrative agency, entitled State Labor Conciliator. Basically, the statutory procedures consisted of notice by the parties of a dispute, mediation and if the Governor decided public interests were involved, the appointment of a tri-partite fact-finding commission appointed by the Governor to make recommendations for settlement. The Act covered hospitals operated for profit and also those operated non-profitably but did not include those operated by governmental agencies. The Act was designed to apply to the private sector and no government employees were covered under it.

Shortly after the enactment of the Labor Relations Act, the international organization destroyed the charter of the local union headed by the subversive forces and established a new local union in its place. Most of the subversive forces constituting the leadership of the former local union were prosecuted by federal authorities, were convicted on charges of attempting to overthrow the government and served prison sentences.

After thirty-one years the original 1939 Act has had only minor changes made and no changes have been made to the impasse procedures available for dispute settlements. The most important evidence of the fact that the original Act is still successful is that fact-finding has been used only infrequently during the thirty-one years of its existence. Mediation is being used constantly and results in a high percentage of negotiated settlements. The Council concludes from its findings that Step No. 1 has been and continues to be an effective legislative Act for the peaceful settlement of impasse situations in the private sector and, therefore, the Legislature was successful in improving the climate of labor-management relations.

Climate Prior to Step No. 2

Starting in the early 40's critical conflict developed between hospitals and non-professional employees as the result of successful organizing efforts by labor. Numerous strikes occurred, one of which involved University of Minnesota Hospital whose non-professional employees being government employees were not covered under the 1939 Act.

Step No. 2

The Legislature met the hospital crisis in 1947 by enacting Chapters 179.35 through 179.39 referred to as the Charitable Hospital Act, but actually it includes ". . . all state, university, county and municipal hospitals and any hospital no part of which inures to the benefit of any private member stockholder or individual." The Act, therefore, covers all hospitals in the State, both charitable and governmental, except those operated by Federal government.

The significant feature of the Legislature's action is that Chapters 179.35 through 179.39 prohibits strikes by hospital employees but provides for statutory impasse procedures including mediation and final and binding arbitration; the State's experience with these procedures has been phenomenal.

Currently, approximately fifty percent of the 199 hospitals in the State are organized and have working agreements with unions and associations. The Nurses

Association represents most of the Registered Nurses. The Licensed Practical Nurses Association represents the Licensed Practical Nurses. The stationary engineers are represented by the Stationary Engineers. Various craft unions represent various craftsmen in some of the larger hospitals. Technicians are represented by the Technicians Associations. Non-professional groups are represented by numerous unions. Employees in State, County and Municipal hospitals are represented by the State, County and Municipal Employees local unions and in charitable and private hospitals the non-professional employees are represented by the State, County and Municipal Employees unions; in charitable and private hospitals they are represented by the Hospital Workers Union, chartered by the Building Service International; some of the non-professional groups are represented by the Retail Clerks Union and the Cooks and Waiters local unions. Of the 199 hospitals in the State, 76 are operated either by municipalities, counties or the State, which means that they are operated by **government employees.**

Since the enactment of the no-strike law in 1947 the Bureau of Mediation has processed 818 cases through its office; there have been 314 settlements without assistance from the State, making a total of 1,132 negotiations; 211 have gone to final and binding arbitration. Most of the 211 arbitrations involved grievance procedure. Of the 211 arbitrations, approximately 181 involved Twin Cities hospitals where arbitration resolved the impasse for all Twin Cities hospitals. From this arbitration record it appears as though only 30 arbitration cases have occurred since the enactment of Step No. 2 resolving wages and hours, benefits and working conditions in 1,132 negotiations involving approximately 50,000 employees, for a percentage figure of less than 3%. This actual experience data provides proof that final and binding arbitration does not stifle or abolish across-the-table, face to face bargaining; rather, it is the needed stimulant that encourages extra effort to continued bargaining and mediation in resolving collective bargaining negotiations. The most important statistic to the public at large is that since 1947, when the Act was amended to resolve the problems in the operation of hospitals, **not one strike has occurred.** Along with this tremendous record in the achievement of harmonious relationship of government employer-employee relations the record of the gains to the public at large, the employer and the employee reveals:

(1) Minnesota is recognized nationally for having some of the finest medical facilities in the nation.

(2) Standards of wages, salaries, benefits and working conditions rank among the highest by appropriate comparisons. (Bush 1970)

(3) Employees are of a higher caliber because of better conditions and thereby render better care to the patients.

(4) Because of no work stoppages occasioned by labor disputes hospital construction of new facilities has been expedited.

(5) Despite the high standards of wages, salaries, benefits and working conditions, costs to a hospital in Minnesota rank about in the middle of a national average.

Mr. Robert G. Howlett, Chairman. Michigan Employment Relations Commission in his address entitled "Innovations in Impasse Procedures" at the National Symposium on Collective Negotiation in Education, sponsored by New York University School of Education, used the Minnesota Charitable Hospital Act to describe **effective impasse procedures.**

The hearings conducted by the Council revealed that the State's Charitable Hospital Act is the envy of a substantial portion of government employees.

The Council concludes that the Charitable Hospital Act has been tried, tested and proven to be unqualifiedly acceptable to the public at large, the government employer and the government employee; it epitomizes the ultimate in a legislative act by satisfying all parties concerned.

Climate Prior to Step No. 3

A Minnesota Supreme Court decision in 1951 upholding the right for government employees to strike was the motivator for the Legislature to amend the Act.

Step No. 3

Labor Relations Act amended in 1951 prohibiting strikes by public employees and establishing the procedure of an Adjustment Panel to make recommendation for settlement of an impasse. Employees, which included school teachers, were given a limited grievance procedure.

Climate Prior to Step No. 4

Trouble was brewing in 1957 involving three areas as follows:

(1) Lack of bi-lateral grievance procedure.

(2) No machinery available to determine recognition, appropriate bargaining units and bargaining impasses.

(3) Are school teachers covered under the Act?

Step No. 4

The 1957 Legislature amended the Labor Relations Act to provide a method of representation and a method of "meet and confer" process for settlement of grievances and conditions of employment.

Climate Prior to Step No. 5

Minnesota Supreme Court in 1961 ruled that State Labor Conciliator did not have right to make a determination on appropriate bargaining unit.

Step No. 5

The 1965 Legislature amended the Labor Relations Act stating a basic philosophy of employer-employee relations in government service. Further, it outlined procedures for State Labor Conciliator in determining bargaining unit. Further, it expanded impasse procedure to include conciliation service by the State as a technique in assisting the parties to reach settlement. All school teachers, however, were excluded from the 1965 amendments.

Climate Prior to Step No. 6

Several actions of litigation in 1965, 1966 and 1967 resulted in excluding school teachers from recognition, appropriate unit and grievance machinery given other government employees, also, a demand by the teachers to be covered under a "Professional Negotiations Act".

Step No. 6

The 1967 Legislature amended the Labor Relations Act establishing the philosophy that teaching is a profession which needs legislative guide lines providing for teacher participation which lead to policies affecting conditions of employment. Further, it provided for the procedure of "meet and confer" and "adjustment panel" for the settlement of disputes.

Climate Prior to Step No. 7

School teachers and other government employees were disappointed with legislative changes enacted in 1967 because they had not been given the same consideration accorded hospital government employees in the areas of recognition, appropriate unit and grievance machinery. The "meet and confer" and "adjustment panel" procedures designed for impasse procedure were generating rather than resolving disputes. Minnesota's climate typifies the climate throughout the United States; strikes were occurring in practically every large city. Many states were enacting so called "innovation" impasse procedures.

It was in this climate in 1968 the Governor established a task force committee of State department heads labeled The Governor's Labor Relations Advisory Committee; it's task was to evaluate the relationship between State employer and unionized State employees. After exhaustive study, the Committee proposed comprehensive changes to the current Act designed to improve employer-employee relations, which if legislated would have, in the opinion of the Council, improved the climate extant. The proposals took legislate form in identical bills numbered S.F. 1626 and H.F. 1938. Following extensive hearings and debate the bills reached the floor of both the Senate and House in the last days of the 1969 session. S.F. 1626 passed without opposition, while H.F. 1938 died on the docket without a vote of the House.

Step No. 7

The 1969 Legislature amended the Labor Relations Act by changing the name of State Labor Conciliator to Bureau of Mediation Services and provided its head to be named Director Bureau of Mediation Services. Several other changes in language were made in the Act clarifying intent. The Council concludes it was unfortunate that H.F. 1938 did not get the opportunity of a vote.

Climate in 1970

The dissatisfaction prevalent prior to 1969 legislative action has now intensified with school teachers and other government employees by virtue of not being accorded the same rights, privileges and procedures extended to hospital employees. The serious strike of teachers in Minneapolis and a variety of actions that have occurred calls for action by the 1971 legislature. The climate nationally has also intensified, despite the legislative changes made in other states through the introduction of a variety of impasse procedures; strikes in states having statutory prohibition continue to occur.

Step No. 8

This is the climate confronting the 1971 session of the Legislature. The Council is of the opinion the Governor prepared for this confrontation by his appointment of the thirteen member Council, eleven of whom have been disassociated with the public sector, for the purpose of exploring the viewpoint of the private sector. The Council, having completed its studies presents now its findings, conclusions and recommendations of remedial procedures to improve public employment relations. Hopefully and respectfully, these recommendations shall be given consideration in Step No. 8 in the legislative history of Minnesota's Labor Relations Act.

Mr. Chairman: Report the amendment. The clerk will report the amendment.

Mr. Miller: Mr. Krieger moves to amend H. F. 295, the printed bill, as follows: In section 24, page 9, lines 14 through 19, reinstate the stricken language. Further amend section 24, page 9, line 19 strike the new language.

Senator Krieger: Mr. Chairman, members of the committee, this particular amendment, as you will see it on page 9, reinserts these words "The contracts shall not be for a term exceeding three years. Contract between employer school board and exclusive representative of teachers shall in every instance be for a term of two years commencing on July 1 of each even numbered year, except, however, such contracts entered into prior to July 1, 1972 shall expire on June 30, 1972." And then we take out the language "The duration of the contract shall be negotiable."

Mr. Chairman, members of the committee, some sessions ago as I chaired the subcommittee with regard to the public employees bargaining bills we thought I think long and hard on both sides of the question as to how long these contracts shall be for, and I think with the legislature legislating on a biennial basis with respect to budget appropriations we have a situation in which I do not think that it is the intent of the drafters of this bill to have these contracts open for negotiation each year or at any time during the year or maybe even more than once a year.

On that basis I submit with respect to teaching contract so we know what kind of money we are talking about on a two biennial appropriation basis we should not have the teacher contract negotiable. There should certainly be some time of peace and quiet in regard to the teacher contract, therefore, I am asking that you reinsert the old language make those teacher contracts two year contracts, at least two year contracts, and not make them completely open and negotiable as in line 19.

Mr. Chairman: Senator Thorup

Senator Thorup: Thank you, Mr. Chairman. I would just suggest that in the course of the discussion of this particular phraseology the fact that the

duration of the contract shall be negotiable, and that is what we have stated in H. F. 295, that this is really a two way street, and I would think that in todays public forum and with regard to todays money crunch that it might be to the advantage of the employer not to have those long term contracts, but to make them the subject of negotiation. On the other hand, when we have an inflationary period as we have now, it might be well for the teachers to try to get as long, depending on the circumstances, or/as a short contract as possible. What we have, in these circumstances switch back and forth as we go through the times of ups and downs. I guess the thing that we finally resolve in trying to draft this bill is to examine the historical fact that the duration of the contract has been historically one subject of negotiation. That there is no particular magic in having a two year contract for teachers and a three year contract for others, and that probably the best way to resolve the issue is to let those parties decide in their own particular circumstances and their own particular level or governmental unit how long they want to have a contract. On that basis, I think the best thing to do is to defeat the amendment and let the parties work it out.

Senator Krieger: Mr. Chairman

Mr. Chairman: Senator Krieger

Senator Krieger: Mr. Chairman, I am wondering if the Senator would yield to a question?

Mr. Chairman: Senator Thorup

Senator Krieger: What is going to happen if we take our state aid bill on school aids is $1.3 billion and some dollars and fund it at a certain level and appropriate for it and then teaching contracts all over the state open up a year from now when you really have not got the flexibility or the capability of changing the school aid formula. I am wondering whether or not from the standpoint of the two year contract, if you don't think that might not be a little bit of a difficult situation with which to wrestle.

Senator Thorup: Mr. Chairman, Senator Krieger, I really don't think that the sponsors of this legislation considering the fact that we are in flexible session at this time and maybe we are a continuing legislative body whether we want to be or not, I don't think there is any great fear on my part as to what will happen to the state aid formula in this regard. I think we simply, as we do with so many other things, we simply have to allow the parties to make a determination based upon the fiscal circumstances that surround them how much how long a contract they are going to have. If you have a three year contract, there is no great magic in the protection of the state aid formula, nor adversity to it. It is simply one circumstance that has to be dealt with in the terms of negotiation.

Mr. Chairman: Senator Krieger

Senator Krieger: The fact of the matter is when you take a look at all of our appropriation bills we are still funding them on a two year basis and it sounds to me somewhat impractical to allow contracts after a two year funding situation to be reopened arbitrarily whenever they want to be the subject of negotiation. The docile tones of the Senate author's voice don't answer that question for me.

Mr. Chairman: Senator Thorup

Senator Thorup: Mr. Chairman, I guess I have to respond to the question finally by saying this, if the parties are negotiating and there is no money that would provide for response to the demands of the employees, and there is no way to exceed the levy limitations, what are they going to do about it?

Senator Krieger: Mr. Chairman, I suppose they would strike.

Senator Thorup: Mr. Chairman, I would respond by saying strike for what?

Mr. Chairman: Gentlemen, I would hope we could have better order.

Senator Krieger: I would ask for a roll call, Mr. Chairman.

Mr. Chairman: A roll call has been requested on Senator Krieger's amendment.

A show of hands please. Okay. The clerk will take the roll on the amendment. Have all voted who care to vote? Have all voted who desire to vote? Have all voted who desire to vote? The clerk will take the roll. There being 33 yeas and 26 nays the amendment is adopted. Senator Krieger.

Senator Krieger: Mr. Chairman, the passage of this particular amendment I see from one of our research staff makes necessary a clarification amendment on page 11, lines 2 through 5, and my amendment I have but one copy here, but I think we can, it is very simply, we have to reinstate that language. It says that "The panel's order shall be for such priod as the panel shall direct, except that orders determining contracts for teacher units shall be effective to the next June 30 of the next even numbered year." I have one copy of that, Mr. Chairman.

Mr. Chairman: The clerk will report the amendment. Have we got any pages?

Mr. Miller: Mr. Krieger moves to amend H. F. 295 as follows: Page 11, line 2 through 5, reinstate the old language.

Senator Krieger; I think the language of that amendment is self explanatory, Mr. Chairman. It parallels what has been done and voted on in the last amendment and I would move my amendment.

Mr. Chairman: Any further discussion on Senator Krieger's amendment? Senator Thorup.

Senator Thorup: Mr. Chairman, in my reading of the language, I would gather that that would make it in fact consistent with the last amendment which I was happy to see adopted.

Mr. Chairman: The question arises on Senator Krieger's amendment. Any further discussion. All those in favor say aye. Opposed. So ordered. The question now arises on Senator Thorup's motion to approve H. F. 295 as amended. Senator Nelson.

POLICY STUDIES SERIES

HOW LONG DOES IT TAKE A CASE TO MOVE THROUGH THE MINNESOTA PUBLIC EMPLOYEE IMPASSE PROCEDUF

Frederic C. Champlin
Mario F. Bognanno*

Industrial Relations Center
Policy Studies and Development Service
271 19th Avenue South
University of Minnesota
Minneapolis, Minnesota 55455

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Frederic C. Champlin
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* The authors are, respectively, Assistant Professor of Management at the University of Oklahoma and Professor and Director, Industrial Relations Center, University of Minnesota.

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POLICY STUDIES SERIES

The "Policy Studies Series" is published by the University of Minnesota's Industrial Relations Center, Policy Study and Development Service, to distribute the results of policy oriented research conducted largely by the faculty and staff of the Center. Papers appearing in this Series focus on state or federal public policy, and to private organization policy relevant to issues involving labor and human resources. The papers: (1) identify trends and changing relationships between major variables; (2) are aimed at identifying the cause of such changes; or (3) identify and examine the effects of public or private policy.

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Introduction

Industrial relations specialists have long studied various mechanism for resolving labor management disputes over future terms.[1] This research has largely been concerned with the problem of devising schemes which encourage, or at least do not discourage, bargaining in their presence. Largely absent from this literature, however, is any effort to study their procedural aspects. Prominent among these aspects is the length of time it takes for a case to work its way through the procedure.

Procedural delay is important not only because it involves direct expense both to the parties and to society but also because the rapid resolution of disputes is itself valuable. Direct private costs include salaries, fees, and clerical expenses borne by the disputants. These mount with the passage of time. However, mediator time and the clerical and overhead costs of the public agencies involved in dispute resolution also must be counted in assessing direct social costs. These also clearly increase with the length of the dispute. But perhaps more important than these direct expenses is the indirect private and social cost of decision delay. An unresolved dispute is frequently disruptive, harmful to efficiency and morale, and may become progressively more embittered and intractable. Furthermore, plans and decisions may well be delayed until a decision is realized. These costs also place a substantial premium on the early resolution of conflict.

This paper is concerned with the processing time taken by a random sample of 220 cases arising under the Minnesota Public Employee Relations Act during the years 1973 to 1980. While this statute prohibits the strike for certain "essential" units, it grants a limited right to strike for certain other nonessential "employee" units.[2] Comparisons are made among

cases terminatng in negotiated settlement, conventional arbitration, and strike. Comparisons are also made with the experience of a sample of "rights" or grievance cases from the same period reported by the Federal Mediation And Conciliation Service and a sample of New York "interest" or contract cases reported by Kochan and his associates.[3]

In the next section the impasse provisions of the Minnesota Public Employee Relations Act are outlined and the sample is briefly described. In the following section results for the entire sample, for cases terminating in negotiated settlement, for those terminating in arbitration awards, and for those terminating in strike settlements are furnished. Next some comparisons among the three types of cases are drawn and three statistical hypotheses are tested. Comparisons are also made to the FMCS and Kochan, et. al. data. In the last section some conclusions and recommendations for further research are discussed.

The MPELRA Procedure and Sample

The Minnesota Public Employee Labor Relations Act (MPELRA) was a "choice of procedures" statute in the sense that management had, during the period under investigation, a limited option to choose either arbitration or the strike as the impasse or terminal step. This option was available to employers whose employee units were not classified as "essential." Essential employees were, prior to the 1979 Amendments to the Act, defined as those "whose employment duties involve work or service essential to the health or safety of the public and the withholding such services would create a clear and present danger to the health or safety of the public." In 1979 this definition was altered to include certain specifically named employee groups such as firefighters and police officers. The short run

effect of this change in definition was the reclassification of only two bargaining units.

As it existed in the period 1973 to 1980, the MPELRA impasse procedure was as follows: Upon the initiation of contract negotiations, parties were supposed to file a "negotiation notice" with the Bureau of Mediation Services (BMS).[4] Parties jointly desiring mediation services then filed a "mediation petition" with the BMS Director who could then schedule mediation meetings. If after mediation efforts the parties remained at impasse, either could petition the BMS Director for arbitration. The Director then determined that an impasse existed and listed the issues remaining open. If either the employee unit was essential or if it was nonessential and the employer petitioned for arbitration, the Director would certify the dispute to binding conventional arbitration. If, however, the employee unit was nonessential and the union was the petitioner, the employer had fifteen days to accept or reject arbitration. In this latter case, if the employer rejected arbitration, the employee organization was free to strike. Negotiation and mediation could continue after impasse certification. Thus the strike could occur but only if the employee group was nonessential and the employer rejected arbitration.[5]

Data in this study are gathered as part of a larger study of the Minnesota Public Employee Relations Act conducted by the authors.[6] The sample consists of 220 randomly selected cases from all public employee disputes filing mediation petitions during the fiscal years 1973 through 1980. The sample is, in effect, a proportional sampling of all cases processed by the BMS in each of the three termination categories. The strike category is, however, somewhat over represented due to the relatively small number of these cases.

The Results

Table 1 contains the mean number of days elapsed between procedure steps for the combined sample. Tables 2, 3, and 4 break these numbers down by the way the dispute was finally resolved. Table 2 contains information on elapsed time between procedure steps for cases settled without resort to arbitration or strike. Table 3 contains similar information for cases terminating in arbitration awards and Table 4 reports these statistics for strike cases.

It is important for the reader to note that each cell in these tables presents descriptive statistics computed from all cases in the sample for which the necessary data are available. In Table 1, for example, the mean number of days from last mediation to certification (column 2) is calculated from all cases for which the date of last mediation and the date of impasse certification are available. Because not all cases reached successive stages in the procedure and because of missing data, the means in each cell in a column are not based on precisely the same cases. It is necessary, therefore, to interpret these tables with caution. One should not, for example, attempt to interpolate within a column (as, for example, attempt to calculate the mean number of days from certification to settlement from column 1 by subtracting days to certification from days to settlement) since the means in a column are not calculated from the same cases. If one seeks to know the days from any particular juncture to another subsequent stage one should select the appropriate column for the initial juncture and read down.

Table 1 presents summary statistics for all cases in the sample. The average time in mediation for all cases is 104.45 days. From the end of mediation to impasse certification it is 19.09 days and from impasse

certification to settlement the mean number of days is 84.68. The mean time in the procedure for all cases (from filing the mediation petition to settlement by either agreement, award, or strike) is 143.47 days. The variation in time taken by a case moving through the system is quite large, ranging from zero to 554.5 days.

Table 2 presents summary statistics for cases settled without resort to arbitration or strike. For these cases the mean time in the procedure is 121.58 days but still with a range of zero to 551.5 days. The mean time in mediation is 102.24 days and for those cases reaching certification to impasse the mean time from last mediation to certification is 20.41 days. Cases reaching certification took an average of 47.33 after certification to reach settlement.

Cases clearly differ in their difficulty of settlement. Some are more difficult than others. It would be interesting to know how much additional time in the procedure a difficult case takes. It seems reasonable to assume that those settlement cases reaching certification are more difficult than the broad class of settlement cases. This question may be examined, then, by comparing the mean settlement time from Table 2 for cases reaching certification to those settled without certification.

The mean number of days to settlement for those cases reaching certification may be estimated from Table 2 by adding the 110.32 days from mediation petition to impasse certification to the 47.33 days from impasse certification to settlement.[7] This yields a mean settlement time of 157.65 days. The mean settlement time for settlement cases as a whole is 121.58 days. It appears, then, that these more difficult cases take on average just over 36 days longer to process.

Table 3 presents similar statistics for cases terminating in arbitration. These cases took an average of 239.97 days in the procedure and also

included the case with the longest processing time--554.5 days. Arbitration cases spent an average of 93.42 days in mediation. The average time from last mediation to certification for these cases is 24.69 days and from certification to hearing date it is 73.29 days. However, from hearing to award the elapsed time averaged only 29.24 days.

It is interesting to compare the results given in the paragraph above with statistics on "rights" arbitration cases for the same period reported by the Federal Mediation And Conciliation Service. Comparisons are also made with similar statistics gathered by Kochan and his associates on a sample of "interest" cases arising under New York's Taylor Law. The FMCS statistics are reported in Table 5 and the New York statistics are in Table 6.

The grievance cases took an average of 241.35 days from filing to award and 161.46 days from panel request to award. This latter statistic is roughly comparable to the period from impasse certification to award under the Minnesota procedure which took an average of 102.62 days. New York cases took an average of 281 days from impasse declaration to award and an estimated 118.5 days from arbitration petition to award.[8] The time from certification (arbitration petition or panel request) to hearing is 73.29 days in Minnesota, 71 days in New York, and 116.28 days for the grievance cases.[9] The time from hearing to award is 29.24 days in Minnesota, 47.5 days in New York and 45.18 days for the grievance cases.[10]

Results for cases involving strikes are reported in Table 4. These took an average of 157.82 days in mediation and mediation efforts persisted an average of 7.60 days after impasse was certified. The strike date followed an average of 35.48 days after impasse certification and the strikes lasted an average of 26.5 days. The average time in the procedure for strike cases is 200.08 days.

The results for strike cases may also be compared to the statistics from grievance and New York interest arbitration cases mentioned above. In particular it appears that the 35.48 day average from certification to strike date in Minnesota is substantially less than the 71 day average taken by New York arbitration cases from petition to arbitration hearing and the 116.28 days taken by the interest cases from panel request to hearing. Similarly, the 26.5 day average strike length is substantially less than the 47.5 days required to obtain an arbitration award in New York and the 45.18 days needed to get an interest award.

While there are undoubted differences between jurisdictions, these comparisons seem to indicate that the Minnesota procedure operates in a relatively efficient manner with respect to time. However, from first mediation to final resolution it still takes from six to eight months to process the average case reaching the final stage of the procedure (strike or arbitration). This appears to be a substantial delay for units operating on an annual or biennial negotiating cycle. An important policy goal may be to reduce this time in process even further.

Comparisons Between Final Resolution Categories

Our results indicate that cases resolved without arbitration or strike took an average of 121.58 days in the procedure while those involving strikes took an average of 200.08 days, and those terminating in arbitration awards took an average of 239.97 days to process. It is natural to inquire whether these differences are statistically significant. To examine this possibility the null hypothesis that there is no difference between these three means is tested against the alternative that at least one differs. The null hypothesis is rejected at $\alpha = .01$ ($F = 22.881$, d.f. = 2, 202).

There appears, then, to be some differences in mean processing times among these three categories. However, the more interesting question is whether there is a significant difference between arbitration and strike categories. As noted above, strike cases took an average of 39.89 days longer to process than arbitration cases. The null hypothesis that these two means are equal is tested against the alternative that they differ. The difference does not reach statistical significance ($t = 1.04$, $df = 38$) and we cannot reject the null hypothesis.

Since the focus of this paper has been on procedural delay, it is useful to decompose total processing time into a procedural delay component and a component reflecting the pace of bargaining. Stike and arbitration cases may then be compared with respect to these components. It seems reasonable to suppose that arbitration is a less costly alternative than the strike. In this sense then, the strike is the greater threat. If this is true, it is also reasonable to suppose that parties would devote more resources, including time, to the resolution of disputes with a high probability of involving a strike. Consequently, we hypothesize that the pace of bargaining will be slower in a dispute where the strike is a reasonable expectation than where arbitration is the likely outcome.[11] On the other hand, arbitration, involving as it does problems of arbitrator selection and scheduling, would seem to suffer most from procedural delay.

To test the hypothesis that negotiations are more deliberate in potential strike cases a subperiod must be selected which is relatively sensitive to the pace of bargaining and relatively insensitive to purely procedural delay. This subperiod must also be one in which it may be expected that the parties will have formed reasonable expectations about whether an impasse will result in strike or arbitration. The mediation period seems best

suited to meet these requirements. On the other hand, to test the hypothesis that arbitration is procedurally slower, a subperiod must be selected which is relatively sensitive to procedural delay and relatively insensitive to the pace of bargaining. The period from the date of last mediation to the strike date or to the first date of arbitration hearing seems best suited for this purpose since it includes most of the procedural activities under both methods of impasse resolution.

The mean number of days from last mediation effort to first day of arbitration is 115.39 as compared to a 26.75 day mean from last mediation effort to strike date. This difference is significant at $\alpha = .005$ for a "one tailed" test ($t = 3.32$, d.f. $\cong 27$).[12] The mean number of days in mediation for strike cases was 157.82 while the mean number of days in mediation for arbitration cases was only 93.42. While the direction of the difference is as hypothesized, it does not reach statistical significance ($t = 1.33$, d.f. $\cong 6$).

The data presented here indicate a rough overall equality in total time taken by strike and arbitration cases to work their way through the impasse procedure. Unpacking these aggregates, however, reveals that arbitration cases are subject to substantially more procedural dalay than strike cases. The average arbitration case takes more than 88 days longer than the average strike case to move from the last mediation effort to the first day of the strike or arbitration hearing. Moreover, this difference is strongly significant. This result combined with the equality of total processing time implies that barginaing pairs facing the strike threat invest more time in bargaining. The data suggest this conclusion. The mean number of days in mediation is more than 64 days greater for cases terminating in strike than

for those ending in arbitration. This is a difference of 68.9%. However, this difference does not reach statistical significance.[13]

These data suggest, without firmly establishing, that one effect of an arbitration procedure as compared to a procedure terminating in strike is to shift time away from bargaining towards purely procedural activities. Thus, it may be that arbitration has the effect of reducing the time spent in negotiation. If this conclusion is supported by further investigation this could well turn out to be one of the most damaging criticisms of arbitration as an impasse resolution procedure.

Discussion and Conclusions

In this paper an exploratory analysis of the time taken by a sample of cases to progress through the Minnesota Public Employment Relations Act impasse procedure is undertaken. The results indicate that the Minnesota statute does not suffer by comparison with other impasse resolution procedures in terms of the time taken by a case to work its way through the system. Minnesota arbitration cases seem to take about the same length of time to process as New York cases arising under the Taylor Law. However, it takes nearly twice as long in New York to obtain an award once hearing is completed. The FMCS grievance cases appear to take substantially longer to process than either New York or Minnesota cases. Comparisons of Minnesota strike to New York and FMCS data indicate some time advantage for this method of impasse resolution.

The evidence indicates, however, that it takes from six to eight months for a case reaching the terminal impasse stage to make its way through the system. This appears to be a substantial delay in the context of the annual and biennial negotiating cycles prevalent in Minnesota. In view of this

substantial delay some exploration of methods to reduce time taken by these cases is warranted.

Further analysis of this data suggest that there may be important differences between strike and arbitration cases in the way time is allocated to negotiation and procedural activities. It appears that bargainers in strike cases invest more time in negotiation while bargainers in cases resolved through arbitration are more involved with strictly procedural delay. Such a result is consistent with the theory which holds that the greater threat associated with the strike encourages "hard" bargaining. It also suggests that an important criticism of arbitration as a dispute resolution mechanism may be that it reduces the incentive for this "hard" bargainging.

The focus of ~~their~~ this paper has been on the processing time for cases under the Minnesota statute. However, it seems that processing time is jointly determined along with other bargaining outcomes. An important area for further research is to untangle the relationship between these various factors affecting bargaining outcomes. This promises to yield clearer insights into their determinants. It is this sort of knowledge which will allow the design of dispute resolution mechanisms that effectively promote agreement, handle cases in a timely way, and possess other desirable properties.

TABLE 1

Mean Number of Days Elapsed Between
Procedure Steps for the Combined Sample
1973-1980

Days to	From Mediation Petition	From Last Mediation Effort	From Certification of Impasse
Mediation Petition	0		
Last Mediation Effort			
Mean	104.45	0	
Range	14.00-360.58		
Standard Deviation	69.29		
Number of Cases	59		
Certification to Impasse			
Mean	117.39	19.09[1]	0
Range	19.00-258.75	-60.83-88.24	
Standard Deviation	51.48	28.65	
Number of Cases	54	38	
Settlement[2]			
Mean	143.47	84.16	84.68
Range	0-554.50	0-520.09	3.00-338.58
Standard Deviation	104.22	83.86	59.11
Number of Cases	205	56	51

[1]In some instances the last mediation effort occurred after the certification to impasse. These have been entered as negative numbers. Accordingly, this estimate must be interpreted with caution.

[2]Settlement refers to negotiated settlement, arbitration award, or strike settlement as applicable.

TABLE 2

Mean Number of Days Elapsed Between
Procedure Steps for Contract Negotiations
Terminating Without Resort to Strike or Arbitration
1973-1980

Days to	From Date of Mediation Petition	From Date of Last Mediation Effort	From Date of Certification of Impasse
Mediation Petition	0		
Last Mediation Effort			
Mean	102.24	0	
Range	19.00-235.33		
Standard Deviation	58.75		
Number of Cases	30		
Certification to Impasse			
Mean	110.32	20.41[1]	0
Range	19.00-190.58	-27.41-88.24	
Standard Deviation	46.98	31.18	
Number of Cases	17	12	
Settlement			
Mean	121.58	42.37	47.33
Range	0-551.50	0-152.09	3.00-131.67
Standard Deviation	95.03	41.89	43.92
Number of Cases	165	27	13

[1]See footnote 1 of Table 1.

TABLE 3

Mean Number of Days Elapsed Between Procedure Steps for Contract Negotiations Terminating in Arbitration 1973-1980

Days to	From Date of Mediation Petition	From Date of Last Mediation Effort	From Date of Certification of Impasse	From Date Arbitrati Hearing
Mediation Petition	0			
Last Mediation Effort				
Mean	93.42	0		
Range	14.00-248.75			
Standard Deviation	65.25			
Number of Cases	23			
Certification to Impasse				
Mean	123.32	24.69[1]	0	
Range	45.84-258.75	-60.83-57.83		
Standard Deviation	56.85	22.92		
Number of Cases	31	21		
Arbitration Hearing				
Mean	209.89	115.39	73.29	0
Range	84.25-542.50	8.00-508.09	11.00-301.17	
Standard Deviation	97.09	103.93	57.82	
Number of Cases	31	21	30	
Award				
Mean	239.97	139.80	102.62	29.2
Range	100.67-554.50	22.42-520.09	21.00-338.58	7.00-120.6
Standard Deviation	93.09	97.32	60.92	25.77
Number of Cases	33	23	32	32

[1]See footnote 1 of Table 1.

TABLE 4

Mean Number of Days Elapsed Between Procedure Steps for Contract Negotiations Involving Strikes 1973-1980

Days to	From Date of Mediation Petition	From Date of Last Mediation Effort	From Date of Certification of Impasse	From Strike Date
Mediation Petition	0			
Last Mediation Effort				
Mean	157.82	0		
Range	80.25-360.58			
Standard Deviation	113.74			
Number of Cases	6			
Certification to Impasse				
Mean	106.76	-7.60[1]	0	
Range	72.25-168.50	-57.42-36.41		
Standard Deviation	33.37	35.08		
Number of Cases	6	5		
Strike Date				
Mean	173.58	26.75	35.48	0
Range	88.25-361.58	1.00-80.25	15.41-77.83	
Standard Deviation	97.94	34.05	29.16	
Number of Cases	7	6	6	
Strike Ended				
Mean	200.08	53.83	69.90	26.50
Range	125.66-371.00	10.42-94.25	29.41-112.25	9.42-88.25
Standard Deviation	87.38	38.42	36.71	27.72
Number of Cases	7	6	6	7

[1]See footnote 1 of Table 1.

TABLE 5

Mean Number of Days Elapsed Between
Procedure Steps for a Sample of
Rights Arbitration Cases
1973-1980[1]

Days to	From Date of Grievance Filing	From Date of Panel Request	From Date Panel Sent	From Date Arbitrator Appointed	Date of Hearin
Grievance Filing	0				
Request for Panel	79.89	0			
Panel Sent by FMCS	85.91	6.02	0		
Arbitrator Appointed	128.92	49.03	43.01	0	
Arbitration Hearing	196.17	116.28	110.26	67.25	0
Award	241.35	161.46	155.44	112.43	45.18

Source: Federal Mediation and Conciliations Service, Thirty Third Annual Report, Fiscal Year 1980, Table 20.

[1]All statistics are based on a sample of 5319 cases for which complete data are available.

TABLE 6

Mean Number of Days Elapsed Between Procedure Steps For Cases in Which Arbitration Petitions Were Filed Under the Revised New York State Fair Employment Act (Taylor Law) 1974-1975

Days to	From Date of Impasse	From Date of Fact-Finder's Report	From Date of Arbitration Petition	From Panel Appointment
Impasse	0			
Fact-Finder's Report	-	0		
Arbitration Petition				
Mean	-	49	0	
Range		11-169		
Number of Cases		58		
Problem Cases				
Mean	-	55	-	
Range		17-132		
Number of Cases		10		
Panel Appointment				
Mean	-	-	38	0
Range			11-138	
Number of Cases			46	
Problem Cases				
Mean	-	-	97	-
Range			0-135	
Number of Cases			10	
First Hearing				
Mean	-	-	-	33
Range				10-60
Number of Cases				25
Award				
Mean	281	-	-	80.5
Range	132-470			30-146
Number of Cases	23			23
Problems Cases				
Mean	338	-	-	91
Range	226-609			31-264
Number of Cases	10			9

Source: Thomas A. Kochan, Mordehai Mironi, Ronald G. Ehrenberg, Jean Baderschneider, and Todd Jick, Dispute Resolution Under Fact-finding and Arbitration: An Empirical Analysis, New York: American Arbitration Association, 1979, Table 10-2.

FOOTNOTES

[1]For a recent comprehensive review see John C. Anderson, The Impact of Arbitration: A Methodological Assessment," Industrial Relations, Vol. 20, No. 2 (Spring 1981), pp. 129-148.

[2]Minnesota Statutes, 1979, Section 3-855 (Section 1). A change in definition of "essential" is found at Minnesota Statutes, 1979, Section 179.63, Subdivision 11. For details see Mario F. Bognanno and Frederic C. Champlin, A Quantitative Description and Evaluation of Public Sector Collective Bargaining in Minnesota: 1973 - 1980. Unpublished report submitted to the Legislative Commission on Employee Relations, Minnesota State Legislature, August 1981.

[3]Federal Mediation and Conciliation Service, Third Annual Report, Fiscal Year 1980. Thomas A. Kochan, Mordehai Mironi, Ronald G. Ehrenberg, Jean Baderschneider, and Todd Jick, Dispute Resolution Under Fact-Finding and Arbitration: An Empirical Evaluation, New York: American Arbitration Association, 1979.

[4]Bargaining pairs in Minnesota have, at best, a spotty record of filing these notices. Bognanno and Champlin estimate an annual aveage non-compliance rate of 46%. See Bognanno and Champlin, 1981.

[5]Effective fiscal 1981, Minnesota's public sector impasse procedure was amended to provide voluntary conventional arbitration for nonessential units and final-offer-selection by issue arbitration for essential units. This amendment contains a "sunset" provision.

[6]See Bognanno and Champlin, 1981.

[7]This calculation is vexed with some of the same difficulties mentioned in the second paragraph of this section. However, the cases used in this estimate have in common that they are all settlement cases reaching impasse.

[8]Estimated as 38 days from petition to panel appointment plus 80.5 days from panel appointment to award.

[9]New York estimate: 38 days from petition to panel appointment plus 33 days from panel appointment to first hearing.

[10]New York estimate: 80.5 days from panel appointment to award less 33 days from panel appointment to first hearing. But, see the caution in the text about this sort of computation.

[11]This hypothesis is, of course, closely related to the "chilling effect" hypothesis which supposes that arbitration as compared to the strike has the effect of reducing incentives to bargain.

[12]The test used here and below does not assume equality of variances between the two populations. The "degrees of freedom" are calculated from a variance weighted formula which yields unusual results. For details see Robert L. Winkler and William L. Hays, Statistics: Probability, Inference, and Decision, New York: Holt Rinehart and Winston, 1975, p. 450. The null hypothesis of equality of variances is rejected in both this case and the mediation period case described next. For the present case we have $F = 9.32$, d.f. = 20,5 and for the mediation period we have $F = 3.04$, d.f. = 5,22. These are significant at $\alpha = .025$ and $\alpha = .05$ respectively.

[13]Comparisons such as this raise a multitude of control problems related to possible differences between bargainers in the two categories. The authors have extensively dealt with these problems elsewhere. See Frederic C. Champlin and Mario F. Bognanno, "Compromise and Concessions in Minnesota's Public Sector Under Strike and Arbitration Regimes," unpublished paper, Industrial Relations Center, University of Minnesota, June 1983. The authors conclude that there is not a substantial difference other than impasse procedure between cases limited to arbitration and cases with the strike option. It is not, however, possible to make a statisfying specification of control variables without an adequate theory of bargaining. In the absence of such a theory we have only intuition and impression to rely upon. Consequently, some caution must be used in interpreting these results. It is probably best to think of them as posing a problem for theoretical explanation.

THEORY - See pages 11-22

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Some Comments on Labor Dispute Settlement Processes

*Paul H. Sanders**

"A Strikeless Society on America's Horizon?"

The question mark at the end of this recent headline on a syndicated newspaper column suggests appropriate skepticism about the substance therein, even though the column reported that the first eleven months of 1973 had been "the most serene labor climate in a decade with manhours lost at a 10-year low."[1] Well before the year-end "energy crisis" and attendant economic dislocations, however, questions such as the following, far from being in the realm of idle conjecture, were becoming increasingly pertinent: Will the travail of this gloomy period be the fullness of time for the emergence of significant new developments in labor peacemaking? Will pervasive fears and drives to satisfy divergent needs in difficult times coalesce the forces moving toward more rational and less costly methods of resolving labor conflicts? Will the necessity of developing legal alternatives for the illegal strike in the public sector (governmental employment) lead to improved methods of peaceful settlement in the private sector?

A number of signs point to affirmative answers to these questions. AFL-CIO President George Meany has said that "a strike doesn't make sense" when a well-established industry and a well-established union can agree to arbitrate wage adjustments in a new agreement in the event their collective bargaining itself does not resolve the particular dispute.[2] In a more recent press release, President Meany declared: "Strikes are expensive. We'd like to see some mechanism that would eliminate strikes because we find that strikes are becoming more and more expensive not only to industry but to those we represent."[3] In March 1973, companies in the basic steel industry and the United Steelworkers of America signed a landmark agreement under which there will be no strike and no

* Professor of Law, Vanderbilt University. A.B. 1941, Austin College; J.D. 1943, Duke University. The author gratefully acknowledges the assistance of Mark E. Edwards, staff member of the *Law Review*, for his background research in the preparation of this article.

1. Fritchey, *A Strikeless Society on America's Horizon?*, Nashville Tennessean, Nov. 29, 1973, at 15, col. 1.

2. BNA (1970) Lab. Rel. Yearbook 276.

3. Kagel & Kagel, *Using Two New Arbitration Techniques*, 14 COL. BARG. NEG. & CONTRACTS 351 (1972) (Strike Alternative Med-Arb).

that you cannot "compel people to work in harmony unless they have the urge to do so."[7]

It may be worth noting that the foregoing indications of a substantial departure from "trial by battle" in private sector "contract-negotiation" disputes do not make express reference to new discoveries in the behavioral sciences or the science of management.[8] Moreover, there are no references to legislative or administrative action. There are, in fact, no open signs of governmental compulsion, "jawboning," or "arm-twisting." The development does not seem to depend upon either a sudden proliferation of superneutrals[9] or the skill and personality of some individual, gifted peacemaker. The processes carry the familiar titles of "collective bargaining" and "arbitration." All that is really new is the indication of a commitment to a more vigorous, imaginative, and forehanded use of collective bargaining directed to settlement processes as well as to substance, and a willingness to trust the arbitration process for the solution of a contract term or "interest" dispute in the private sector.

The intensification of governmental mediation effort and study with greater emphasis on "preventive mediation" undoubtedly has also been a part of the recent scene. As early as 1926, however, the Railway Labor Act[10] envisaged that all of these ingredients—vigorous bargaining, mediation, and voluntary arbitration—would be operative in contract-term dispute settlement.[11] To the uninitiated, at least, acceptance of arbitration and rejection of the strike weapon as the means of resolving a contract dispute might

7. *Id.* at 24.

8. The extensive literature setting forth new insights in industrial psychology and managerial science undoubtedly contributed to the creation of the climate in which these new developments in labor dispute settlement are occurring. Discussions of human nature and theories of management (X and Y) in D. McGregor, The Human Side of Enterprise (1960), the "need hierarchy" advanced in A. Maslow, Motivation and Personality (1954), and employee motivation in F. Herzberg, B. Mausner & B. Snyderman, The Motivation to Work (2d ed. 1959) should prove most stimulating to any person involved in labor conflict resolution. *See also* Herzberg, *One More Time: How Do You Motivate Employees?*, in How Successful Executives Handle People—Twelve Studies on Communications and Management Skills 82 (1970) (Harvard College publication).

9. *See Conflict Resolution and the Superneutral*, 61 Gov. Emp. Rel. Rep. 521-23 (1973).

10. Railway Labor Act §§ 1-201, 45 U.S.C. §§ 151-88 (1970).

11. As stated in § 1(a), the main purpose of the Railway Labor Act is to avoid any interruption to commerce or the operation of any carrier. 45 U.S.C. § 151(a) (1970). To accomplish this, the Act establishes a series of steps that the parties to a labor dispute must follow to settle their differences. Beginning with collective bargaining, *id.* § 152, the steps progress through mediation under the National Mediation Board, *id.* §§ 152 Ninth, 155, voluntary arbitration, *id.* § 155, and possible Presidential intervention, *id.* § 160.

seem to deserve little comment, since no-strike clauses and grievance arbitration, which involve "rights" under collective agreements, usually are provided in such agreements.[12] The manner in which the Steel Industry Pact is being publicized and scrutinized[13] demonstrates, however, that this surface impression is inappropriate.

The concern reflected in some of the quoted materials for voluntary, mutually acceptable action in the use of the arbitration process is not universal by any means. In fact, there is considerable support where government employees are concerned ("public sector") for imposing a final settlement by means of the arbitration process, whether or not consented to by the parties, if other settlement procedures fail to resolve the dispute.[14] Some state statutes so provide and the trend in this direction is not likely to be reversed.[15] Within the portion of the private sector covered by the National Labor Relations Act,[16] there does not appear to be any substantial sentiment on the part of either labor or management for any such "compulsory" or "legislated" arbitration.[17] On the other hand, railroad and airline management, who are covered by the Railway Labor Act,[18] have urged legislative imposition of final and binding decisions in disputes regarding contract terms.[19]

In the push to establish peaceful methods of settling contract negotiation disputes, particularly in the promotion of arbitration, some statements appear to suggest that all "labor conflict" should be deplored and that the adversary atmosphere can and should be banished from labor-management relations. For example, a recent full-page advertisement of the United States Steel Corporation[20]

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12. *See Grievances and Arbitration*, 51 COL. BARG. NEG. & CONTRACTS 261 (1972); *Basic Patterns in Union Contracts*, 77 COL. BARG. NEG. & CONTRACTS 1 (1971).

13. *See, e.g.*, Notes 4 & 5 *supra* and note 20 *infra*.

14. A comprehensive discussion will be found in Howlett, *Contract Negotiation Arbitration in the Public Sector*, 42 U. CIN. L. REV. 47 (1973).

15. *Id.* at 65-69.

16. National Labor Relations Act § 2(2), 29 U.S.C. § 152(2) (1970). This section of the Act limits application to the private sector by excluding from the definition of employer "the United States or any wholly owned Government corporation. . . . or any State or political subdivision thereof . . . ."

17. "On the whole, however, labor and management are clearly against such measures." D. HOH & J. DENSON, LABOR AND THE AMERICAN COMMUNITY 236 (1970).

18. Railroad management is covered by Title I of the Act. Railway Labor Act §§ 1-11, 45 U.S.C. §§ 151-61 (1970), while airline management is covered by Title II, Railway Labor Act §§ 201-07, 45 U.S.C. §§ 181-87 (1970).

19. Note 17 *supra*. *See also Final Report of the Ad Hoc Comm. to Study National Emergency Disputes*, ABA SECTION OF LABOR RELATIONS LAW (1966).

20. Wall Street J., Jan. 3, 1974 at 9 (advertisement).

proposes that a "Declaration of Interdependence" be signed in connection with the dedication of an "American Productivity Center." "By this act," it is declared, "we will recognize that labor and business can no longer continue their adversary relationship, that all of us are inseparably linked in the productivity quest."[21] In addition, an advertisement for a current arbitration seminar asserts:

> Labor conflict hurts. Management knows it. The unions know it . . . [and] so does the consumer. And today fewer people on either side of the fence are willing to live with it.[22]

It is not helpful thus to reject broadly the concept of an "adversary relationship." While the purpose undoubtedly was constructive, the suggestion that "labor conflict" necessarily is detrimental and that "living without it" is both desirable and readily achievable, is neither realistic nor fundamentally constructive.

The context of the seminar advertisement quoted above shows that what is being described as hurtful is not disagreement between the employer and organized employees, but rather the conflict-resolution process used to bring the disagreement to an end. The strike and arbitration are alternative settlement mechanisms. Although it might be thought that an agreement to submit an unresolved dispute for binding decision by a third party terminates the "labor conflict" on the particular matter, it is more instructive and, hopefully, constructive to view the conflict as a continuing one, pending an accepted conclusion of the dispute. "Conflict" is no more a "dirty word" than "change," and change inevitably involves conflict. While it may paralyze and destroy, conflict may also provide the occasion for achieving new forms of excellence for all concerned. Some conflict will be recognized as positively desirable, and, conversely, the absence of it will indicate an unhealthy or moribund state. The adversary process is an essential ingredient in an arbitration proceeding just as it is in a court of law.

Conflict over compensation and conditions of employment is, in fact, inevitable in the employment relationship, whether or not the employees are unionized. Necessarily then, effective procedures for resolving such conflict will be an essential condition for viable operation of the enterprise, whether or not the employees have a collective-bargaining representative. The promise to marshal collective strength and to supply more effective representation in such

21 *Id.*

22 Advertisement of American Management Associations, *A Seminar: Arbitration: Preparing and Presenting Your Arbitration Case.*

conflict resolution is the basic "stock in trade" of labor organization drives. If a union is chosen, it becomes legally obligated to provide fair representation[23] and to deal with the employer at arm's length.[24] To choose collective bargaining, therefore, is to opt for the adversary process on behalf of all in the unit with regard to compensation and working conditions.[25] Physical violence, economic punishment, and vituperative language have no inherent or necessary relationship to this process. The adversary feature can, and should, add thoroughness and fairness to the operation of the conflict-resolving process and, by contributing to its effectiveness, serve public as well as private purposes. Desirable as it is to recognize mutuality of interest and to promote labor-management harmony and cooperation in certain areas, nothing will be gained by glossing over the existence of an intrinsic "labor conflict" and the positive need for the continuation of a vigorous adversary approach to acceptable resolutions of such conflict.

At one time I too assumed that an analysis which placed emphasis on "conflict" and "adversaries" was not the most fruitful approach in a discussion stressing labor dispute settlement. Writing in 1947, prior to the enactment of the Labor-Management Relations Act[26] in that year, I said:

> [I]t would be possible to analyze the measures taken by the parties to labor disputes in terms of economic strategy, physical tactics, psychological warfare, and political maneuvering. It is possible, in fact, to view the whole body of labor law in terms of the judicial and legislative process which from time to time alters the relative strength of the parties, now giving a potent legal weapon to one side or the other, and again rendering legally ineffective a device used by one of them. Analyses along such lines, although they have some utility and are appealing because of the dynamic character of the subject-matter, overemphasize the 'struggle' aspect of labor relations and distort out of all recognition the economic function performed by the enterprise in which the employment is carried on and the relationship that must exist between employer and employee in carrying out that enterprise with the maximum of benefit to the parties and the general public. If one of two parties, engaged in an enterprise in which there is mutuality of interest, wins a 'battle' over the other, the probability of success of the enterprise will be lessened in proportion to the damage inflicted.[27]

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23. *See, e.g.*, Syres v. Oil Workers Union Local 23, 350 U.S. 892 (1955) (per curiam) (National Labor Relations Act); Steele v. Louisville & N.R.R., 323 U.S. 192 (1944) (Railway Labor Act). *See generally* THE DEVELOPING LABOR LAW 726-56 (C. Morris ed. 1971).

24. *See, e.g.*, Labor-Management Reporting & Disclosure Act (Landrum-Griffin Act) § 2, 29 U.S.C. § 402 (1970); Morris, *supra* note 23, at 726-56.

25. *See* National Labor Relations Act § 9(a), 29 U.S.C. § 159(a) (1970) (representative chosen by majority is exclusive representative of all employees in a unit); note 24 *supra*.

26. Labor-Management Relations Act (Taft-Hartley Act) §§ 201-503, 29 U.S.C. §§ 141-97 (1970).

27. Sanders, *Types of Labor Disputes and Approaches to Their Settlement*, 12 LAW &

It was a mistake to conclude that the mutuality of interest between the employer and his employees would justify dismissing or downgrading the conflict, or "struggle," aspect of the relationship. The truth is that these two aspects—conflict and mutuality of interest—must continue to coexist in an appropriate balance. My statement about the development of labor law accurately stressed the "conflict" context and relationship. As subsequent legislative[28] and administrative[29] action have demonstrated, this concept in fact provides the essential basis for any general theory of labor relations law in this country.

In the area of labor dispute settlement, an understanding of the nature of labor conflict and the patterns of conflict development and escalation should be useful in understanding and utilizing the processes that lead to final settlement. All of these processes amount to successive steps in, or continuations of, conflict resolution efforts. As has been well said: "If you desire peace, understand war."[30] The statement, however, is devoid of moral content. It offers no suggestion of limits on strategy and tactics nor any indication about the substantive basis of the "peace," apart from the fact that it embodies a resolution of the conflict accepted by the involved parties. In our federal labor law, such matters may be discussed in connection with the implications of the mutual obligation to engage in good-faith bargaining[31] and the employer's obligation not to discriminate[32] against employees who engage in "protected concerted activities."[33] Strangely enough, the actual resolution of labor conflict—the achievement of labor peace—does not seem to be of major consequence in the midst of what may well be an over extensive

CONTEMP. PROB. 211, 212 (1947).

28. *E.g.*, Labor-Management Relations Act (Taft-Hartley Act) §§ 201-503, 29 U.S.C. §§ 141-97 (1970); Labor-Management Reporting & Disclosure Act (Landrum-Griffin Act) §§ 1-611, 29 U.S.C. §§ 401-531 (1970).

29. The responses of the National Labor Relations Board to subsequent wants are many and varied. Examples of developments include treatment of employer "no-solicitation" rules and lockouts. *See generally* Morris, *supra* note 23 at 84-5, 539-56.

30. Motto of the Institut Francais de Polemologie.

31. National Labor Relations Act §§ 8(a)(5), (b)(3) & (d), 29 U.S.C. §§ 158(a)(5), (b)(3) & (d) (1970).

32. National Labor Relations Act §§ 8(a)(1) & (3), 29 U.S.C. §§ 158 a)(1) & (3) (1970).

33. National Labor Relations Act § 7, 29 U.S.C. § 157 (1970), provides: "Employees 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, and shall also have the right to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a)(3) of this title."

regulation of the bargaining process.

The term "labor conflict" should refer to a condition of opposition in desire related to assumed needs in the area of compensation and working conditions. It cannot be restricted to situations where one or more parties in their efforts to resolve the conflict are acting illegally or are legally utilizing a strike or lockout as a privileged economic weapon to pressure a desired settlement. Conflict resolution behavior should be viewed as including not only the orderly, the peaceful, and the rational, but also the disorderly, the violent, and the irrational. As the quotation beginning "Labor conflict hurts"[34] indicates, the persistent problem is to find methods of conflict resolution that will minimize the hurt to both the parties in conflict and consumers, and that all concerned can "live with." Apart from commanding good-faith bargaining between employers and the representatives of employees, the National Labor Relations Act, our most important federal law, provides little substance in solving this central problem. It is true that the Railway Labor Act, promising perhaps more than it has achieved, goes into detail about dispute settlement procedures.[35] Moreover, "precatory words" on settlement are expressed in section 201 of the Labor-Management Relations Act.[36] On the whole, however, our federal labor statutes, regulations, and the reports of their implementation reflect the ambivalence between "war" and "peace," with the attention usually centered on the former.

One explanation for the lack of emphasis on labor conflict resolution is that "peace at any price" assuredly is not our national policy in the labor relations field. Our laws create conflict. The promulgation and protection of "employee rights," such as those set forth in section 7 of the National Labor Relations Act,[37] will provide the support that results in the surfacing of conflict that otherwise would have been unobserved and, perhaps, non-existent. More importantly, the major thrust of our laws has been to restrain and "defuse" the excesses of labor conflict—diverting it from physical

34 See note 22 *supra*.

35 See note 11 *supra*.

36 Section 201(b) provides that "the settlement of issues between employers and employees through collective bargaining may be advanced by making available full and adequate governmental facilities for conciliation, mediation and voluntary arbitration to aid and encourage employers and the representatives of their employees to . . . make all reasonable efforts to settle their differences by mutual agreement reached through conferences and collective bargaining or by such methods as may be provided for in any applicable agreement for the settlement of disputes." 29 U.S.C. § 171(b) (1970).

37. 29 U.S.C. § 157 (1970).

violence and economic coercion into the very serious "war game" we call collective bargaining, while retaining limited privileges to pressure agreement with economic weapons. To many, the only purpose of playing a game is "winning," which means overcoming your adversary. Having ritualized and, hopefully, civilized labor conflict, most of our labor law is concerned with "rules of the game." We thus combine the adversary process of the law and an adversary system in economics—an arrangement in which ethical and moral problems will proliferate.

While our laws contemplate the settlement of disputes by the collective-bargaining process and achieve considerable success in this respect, there is nothing that positively commands settlement, much less a "just," mutually-acceptable, conclusion. At the federal level, we have vast amounts of material informing us of the legal requirement to bargain in good faith—the minimum limits of the obligation.[38] There is very little in our laws beyond exhortation[39] to provide guidance or incentive with respect to the means of achieving the affirmative purpose of collective bargaining—to make and maintain agreements concerning wages, hours, and conditions of employment, as well as to resolve disputes over the application of such agreements. We should be able to provide a more substantial legal structure to teach and support the basic lesson of successful bargaining, which is to provide pay-offs to protect the reasonable interests of conflicting parties and all concerned—"let everybody win." It is perhaps too much to hope that we could dismantle some of our laws and administrative machinery that impede "free collective bargaining." We need fewer law enforcers and more broad-gauged, skillful mediators (superneutrals, if you prefer) with a dominant commitment to the achievement of viable resolutions of labor conflict in the national interest. Considering the occasions for our major strikes and the economic waste and other costs of work stoppage, it makes little sense at this stage of our national development to allocate our attention and our federal resources, administrative activity, and personnel in the way that we do between the "war" and "peace" sides of the ledger. We appear to be at a juncture where intensive, knowledgeable, and imaginative bargaining, coupled with massive mediation efforts along the lines suggested by David Cole,

38. *See, e.g.*, Labor-Management Relations Act (Taft-Hartley Act) § 204(a)(1), 29 U.S.C. § 174(a)(1) (1970); Railway Labor Act § 2 First, 45 U.S.C. § 152 First (1970).

39. For example, § 2 First of the Railway Labor Act simply states that "[i]t shall be the duty of all [involved in a labor dispute] to exert every reasonable effort to make and maintain agreements . . . ." 45 U.S.C. § 152 First (1970). *But see* Chicago & N.W.R. Co. v. United Transp. Union, 402 U.S. 570 (1971).

could well achieve a break-through in the peaceful solution of contract disputes and the establishment of constructive patterns and standards of wide significance. We can hope that the opportunity will not be lost.

Notwithstanding the role played, responsibility involved, or the substantive result desired, understanding and skill in the resolution of labor conflict is furthered by precision and thoroughness in identifying and analyzing the basic substantive conflict (opposition in desire related to assumed need in the area of compensation or working conditions) and behavior (including all steps or processes of escalation or de-escalation) that lead or could lead to an accepted conclusion. In such identification and analysis, it will be of major importance to recognize and separate clearly the substantive aspects of the conflict from the organizational power struggle and personality aspects (the people, individually and in organized groups). Labor conflict will involve not only subject matter such as wages or compulsory overtime, but also power over subject matter within and between groups and the personalities of the various "players." The locations and organizations of power, as well as the personalities, will vary tremendously from one employment relation to another. Supports and restraints in the legal structure have no necessary carryover from one conflict to another. Very seriously, the subject matter may be the least important aspect of a particular conflict. The personality and power struggle aspects of labor conflict undoubtedly explain the general reluctance of the parties to use voluntary arbitration to settle "interest" or contract-term disputes, as well as the continuing opposition to legislatively imposed arbitration.

As if the problem were largely an intellectual one, discussions of labor dispute settlement have all too frequently ignored the escalation processes of conflict resolution and, assuming the existence of a matured dispute (perhaps with a peaceful, or even violent, work stoppage in progress), have centered on "approaches" to a peaceful resolution of the substantive conflict.[40] In my 1947 article, I listed and briefly defined "all of the usual approaches" in the following order:

(1) Discussion and negotiation
(2) Conciliation
(3) Mediation

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40 *See, e.g.*, Blumrosen, *Civil Rights Conflicts: The Uneasy Search for Peace in Our Time*, 27 ARB. J. (n.s.) 35 (1972), HOWLETT, *supra* note 14, Sanders, *supra* note 27.

(4) Voluntary arbitration
(5) Investigation and fact-finding
(6) Compulsory arbitration
(7) Court action
(8) Legislation"

The order progressed from voluntary bilateral action between the disputing parties and the increasingly forceful involvement of a third party to compulsion from an apparently independent outside force. The third party involvement in turn moves from that of unilateral advice and assistance to that of dictating a decision which the disputing parties are obliged to accept. I did not suggest that the several processes had to occur in any particular sequence or that they represented completely distinct and compartmentalized processes incapable of being usefully combined in a flexible manner. "Investigation and fact-finding" was described as representing "an extreme degree of third party interference in the dispute between the parties, although it stopped short of forcing acceptance of the findings upon the parties to the dispute."[42] Although the description was accurate in the context in which it was made, it is now clearer that "fact-finding," whether imposed by statute or voluntarily sought, can and should provide increased awareness of interests and pertinent facts, and thus assist conflicting parties directly in resolving their dispute as well as indirectly through pressures generated by public disclosure. The "interference" designation still may be regarded as completely appropriate where voluntary aspects are eliminated.

The discussion of "legislation" as an approach included the following:

> Legislation is listed as an approach to the settlement of labor disputes because through legislation certain disputes may be entirely eliminated or procedures may be provided for their settlement. Legislation providing settlement procedures, however, results only in requiring or extending one or more of the approaches previously discussed. . . .
>
> [I]t is possible by legislation to deal with the substance of the employer-employee relationship and, by defining the rights and duties of the parties, to remove certain elements of that relationship from the field of economic contention. . . . Agreement between the parties cannot validly effect any arrangement which would be less beneficial to the employees. Thus through legislation it is possible to take certain matters out of the hands of the parties entirely, or to circumscribe the area within which they can bargain . . . .[43]

41. Sanders, *supra* note 27, at 214
42. *Id.* at 216
43. *Id.* at 218-19

Legislation, including administrative regulations, could provide standards, restraints, supports, and incentives directed to advancing voluntary settlement, particularly by minimizing fears in connection with agreements to submit disputed contract terms to arbitration. Legislation along such lines also would be important to any compulsory imposition of arbitration as an ultimate solution for contract-term disputes in the public sector.[44] Legislation does not resolve conflict, however, unless the bargaining parties recognize and accept it as producing a viable result.

It is difficult for a "peacemaker" to face up to the fact that escalation aspects, including developmental, organizational, and confrontational, are integral parts of the conflict resolution process. Somewhat comparably, the adversaries involved find it difficult to see desirable "peace" as anything other than vanquishment of, or "unconditional surrender" by, the other side. Analytically and practically, it would have been appropriate to place "self help" or "unilateral action" at the beginning of my list of approaches to labor dispute settlement. Labor conflict begins with a condition of disaffection or opposition in desire with regard to one or more of the "arrangements" covering compensation and conditions of employment. Some self-help efforts to resolve the conflict in a manner acceptable to the disaffected party undoubtedly will precede any other "approach." Measures falling under the "self-help" label may be taken contemporaneously with, or subsequent to, one or more of the other listed approaches, within whatever limits of legality and morality that a conflicting party will recognize. If there is a bargaining obligation, it continues during the self-help period of a strike and mediation efforts often will be in the picture during the same period.

Prior to the initiation of observable self-help measures, a disaffected party will need to make a preliminary decision either to accept the *status quo* or to move toward a more satisfactory arrangement applicable to the subject matter of the conflict. Whether to move for a change and, if so, the choice of supporting strategy and tactics are subjects that lend themselves to a variety of information gathering, intelligence efforts, and sophisticated analyses. A systematic approach to such questions would result in the development of adequate information, the refinement of potential issues, and would involve utilization of existing tools, methods, and insights to aid in interest identification and evaluation, policy analysis, and

44. Howlett, *supra* note 14, at 67-69.

decision making. In the labor field, the analysis of the interests in conflict necessarily would include and differentiate the substantive, the power struggle, and the personality aspects involved. The following check list suggests the type of analysis that might precede a decision concerning the use of self help in labor conflicts:

A. Strategies and tactics for behavior modification (of self or others) on an unstructured basis.

B. Analytical preliminaries (identification, definition, measurement, and evaluation)

(1) Of interests and parties ("self" and "other");

(2) Of authoritative restraints and "public" reactions (including law);

(3) Of resources and allies;

(4) Of desired objective and probability of success;

(5) Of alternative routes to accomplish objective.

C. Organizational preliminaries.

D. Planning preliminaries.

E. Logistics, strategy, and tactics in operations (including propaganda).

F. Confrontation and the initiation of dialogue.

While the foregoing check list is not meant to suggest that conflicting parties in the labor field routinely approach the matter of self help in such a thorough and completely systematic a manner, many are doing so. Rather, the point is that an extremely important decision has to be made by a disaffected party at the outset of the conflict resolution process and that decision making on this subject lends itself to thoroughness in information development and analysis, systematic exploration of alternatives, the use of increasingly sophisticated tools and methodologies, and insights and skills from diverse disciplines and professions.

It may be helpful at this point to comment upon the cause of conflict and some human characteristics relating to its development and resolution. Human beings, individually and in organizations, will act to satisfy perceived needs. It appears that all of us consciously and unconsciously make arrangements (establish relationships and create or adapt systems and institutions) to fulfill and protect that with which we identify. Although such behavior in a particular need area may include rigorous analysis and careful planning, rationality may be completely non-observable. In any event, we can expect a strong sense of interest in, and an emotional attachment to, the need-satisfying "arrangements" established or felt to be required. Since it is characteristically "human" to have exagger-

ated conceptions of self interest, it is not surprising that overly-protective "arrangements" frequently will be considered necessary or at least desirable, even though their original purpose may have diminished in importance or ceased to exist. We want "buffer zones" to protect us against our fears, and maintaining that "buffer zone" tends to become an independent value. We want broad areas of freedom from restriction in which to achieve fulfillment, or what we at one time thought was needed for fulfillment. "Arrangements" so motivated inevitably will overlap, and be contradictory to, the comparable desires of others. When conflict is defined as opposition in desire with respect to these "arrangements" to meet felt needs, its inevitability and pervasiveness in the labor relations field is obvious.

The self-help check list set forth above has no necessary legal or moral content nor does the indicated analysis in any way suggest the decision that will be reached by a particular party involved in labor conflict. The outlined approach is as consistent with the most exaggerated protection of self interest as it would be with a maximization of the interests of an adverse party or some other interest represented by neither of the conflicting parties. The outline does suggest, however, that the identification, definition, delimitation, measurement, and evaluation of all interests significantly related to the conflict is an aid to rational decision making by the representative of any such interest. What will be done with relatively complete knowledge and thorough analysis involves a decision in which ethical and moral considerations will be equally as important as judgments concerning ultimate need satisfaction and practicability. There is no indication that in the last analysis such judgments can be made by a machine, although they may be aided significantly by electronic data processing.

Self-help measures in labor conflict may range from the use of raw power pushed to the uttermost to unilateral development and insistence upon a carefully-balanced proposal believed by a partisan to meet adequately the needs of the proponent as well as those of the adversary and other interested parties. Basic approaches to self help are literally "poles apart." At one pole we have what might be called Game Plan Alpha, which is organized and managed on the basis that the self interests of the particular party should be served with minimum or no regard for the interests of the adversary or others not represented in the particular conflict; that "enemies" should be rendered powerless or destroyed; and that the adversary and those felt to be allied with him should be punished as need be

to secure the objective desired by the acting party.[45] At the other pole, what might be designated Game Plan Omega, is organized and conducted on the basis that the interests of the acting party should be duly recognized and protected in order to meet his reasonable needs; that this should coexist, however, with a balanced protection of the reasonable interests and needs of the adversary and others concerned; that, in fact, recognition and protection of the legitimate interests concerned to the maximum extent consistent with reasonable recognition and protection of self interest of the acting party will prove most beneficial to him. Thus Game Plan Omega neither rejects the vigorous adversary protection of partisan interests nor calls for the abdication of self interest. Recognizing a larger mutuality of interest, it places upon each party in the conflict situation a duty to minimize harm to himself and others in this larger community and to search for that accommodation of legitimate interests, whether or not represented, that would not only reduce costs associated with narrow concepts of self protection, but also maximize the production of greater value for all concerned.[46]

There is much wandering between the above poles in the labor field and a particular party, normally committed to Omega, may switch to Alpha because of the nature of the interest involved and the perception of a fundamental threat to that interest. On the larger conflict scene, what might be characterized as a debate between adherents to Alpha and adherents to Omega has been going on for centuries among philosophers, theologians, historians, military strategists, political scientists, economists, behaviorists, and others.[47] We may have reached the point, however, where there is no longer an option, assuming one has existed. It seems increasingly evident that Alpha must lead to zero and that, as Toynbee would say,[48] survival depends upon the sort of a response that would be clustered around the Omega pole.

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45. For the systematic development of what is here denominated "Game Plan Alpha" see the references to "agonology," "science of struggle," and the works of Kotarbinski, in Fisher, *Contrasting Approaches to Conflict*, in CONFLICT, VIOLENCE AND NONVIOLENCE 185 (J. Bondurant ed. 1971).

46. M. K. Gandhi's thorough analysis and development of what he called "satyagraha" is briefly described in Margaret Fisher's article, *supra* note 45, at 186-91, which illustrates its identity with what is here dubbed "Game Plan Omega." For a comparison of "agonology" and "satyagraha" in parallel columns see Fisher, *supra* note 45, at 190.

47. *See generally* Fisher, *supra* note 45.

48. A recurring theme running through the works of Arnold Toynbee is that the decline of a civilization results from the inability of its leaders to respond creatively to new challenges. *See generally* A. TOYNBEE, STUDY OF HISTORY (1934-54).

The suggested ingredients of information and analysis needed for rational decision-making and action of a self-help nature can be carried over with relatively minor adjustments as a particular labor conflict moves into the negotiation (bilateral) stage. In fact, essentially the same systematic approach to the development of pertinent facts and evaluation of interests will be of obvious value in settlement efforts as third parties become involved as mediators, fact-finders, arbitrators, or some combination of such roles.[49] Alterations may occur not only in the substance of a dispute, but also in its power organization and personality aspects as "players" change and third parties become involved in various capacities. Nevertheless, a continuing focus on the interests to be served and the needs to be satisfied, and a continuing refinement and critical examination of such matters as interest identification, delimitation, measurement, and evaluation, should provide the raw material for fruitful dialogue. By uncovering and pointing up realistic limits on interests and needs, these methods set the stage for that creative conflict which can be directed toward an optimum accommodation of not only the legitimate interests of the parties, but also those interests ("public" or otherwise) not represented at the bargaining table.

In discussing labor dispute settlement involving contract terms, there is no point in taking the spotlight away from the joint and several responsibility of the parties at the bargaining table to "exert every reasonable effort to make and maintain agreements"[50] consistent with their community of interest, their separate interests, and those other "public" interests entitled to consideration. Neither the parties nor the public should be given the impression that principal reliance can be placed on third parties or "government" itself for viable resolution of labor conflict once the identity of the bargaining parties is established. As already indicated, legislation might be of benefit in pressuring bargaining parties into "trying harder" to carry out their responsibilities, such as by agreeing voluntarily to submit contract-term disputes to arbitration if they are otherwise unable to achieve a viable settlement. The notion, however, that "passing a law" or the adoption of a novel gimmick somehow will provide a magic or suitable alternative to responsible bargaining is fallacious. Assisted by counsel, the bargaining parties know or can discover more about their problems and the possibilities for accommodation of competing interests within their operation than any

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49. *See* Kagel & Kagel, *supra* note 3.

50. *See* note 39 *supra*.

outsider. They should not be "let off the hook" or given the impression that either party can do better elsewhere than he can at the bargaining table with imagination, effort, and perseverance. Mediators can add a useful dimension to communication by assisting the parties in uncovering and organizing pertinent facts or by providing useful data and different approaches to known facts. Moreover, they can help "fractionate" overly broad issues into more manageable portions and do much to smooth the personality and power struggle aspects of the dispute. The broad-gauged mediator with a dominant commitment to achieving a "liveable" resolution of labor conflict in fact can in numerous ways be of tremendous assistance to the parties in carrying out their responsibilities.[51] Whether he does it by pushing, pulling, leading, or discreetly threatening will no doubt depend on the exigencies of the particular situation. The "conciliator with a club," acting to enforce a law narrow in scope, is, and will likely continue to be, important in the current scene, but the basic job of accommodating all legitimate interests in a liveable labor settlement is not likely to be aided by such a person and the use of the word "neutral" in his case is not very accurate.[52] In fact, the basic job is made more difficult as we pass another special law and send out government servants who see their program as the center of the labor relations universe and act accordingly. There is a problem of balance and accommodation between our several statutes in determining what the law is to begin with. This, of course, complicates the responsibilities of bargaining representatives in achieving balance and accommodation within the operation of an enterprise.

The responsible bargaining representatives are in the best, and perhaps the only, position to achieve optimum accommodation and balance of the several competing interests and "superneutrals" are needed to assist in the exercise of this responsibility and opportunity. Nevertheless, "super self-helpers" and "super negotiators" along with their "super counsellors" are of even more importance and the neutral achieves excellence as he helps these others fulfill their function in a truly creative fashion.

The position of the arbitrator is not as different from the me-

51 For extremely helpful insights on mediation and its relationship to the public interest see Nicolau & Cormick, *Community Disputes and the Resolution of Conflict: Another View*, 27 ARB. J. (n.s.) 195 (1972), and *Conflict Resolution and the Superneutral*, note 9 *supra*. *See generally* W. MAGGIOLO, TECHNIQUES OF MEDIATION IN LABOR DISPUTES (1971); W. SIMKIN, MEDIATION AND THE DYNAMICS OF COLLECTIVE BARGAINING (1971).

52 *Compare* Nicolau & Cormick, note 51 *supra*, *with* Blumrosen, *Civil Rights Conflicts: The Uneasy Search for Peace in Our Time*, 27 ARB. J. (n.s.) 35 (1972).

diator as it might seem. The same development of needs, interest identification and evaluation, refinement of precise issues, and organization of pertinent facts doubtless will be very much involved in the arbitration of a contract-terms dispute. The arbitrator must, as best he can, achieve for the parties what, perhaps, they should have achieved for themselves or at least achieved with the assistance of a skillful, knowledgeable, broad-gauged mediator. As David Cole has expressed it, the desirable and realistic criterion in interest arbitration is: "What would it have been reasonable for the parties to have agreed upon under the prevailing facts and conditions?"[31] If the arbitrator does not produce a viable resolution of the conflict with his award—one that the parties will accept and "live with"—then the conflict remains and the processes of resolution must continue.

[31] Cole, *supra* note 6, at 24.

MINNESOTA
LEGISLATIVE COMMISSION ON EMPLOYEE RELATIONS
Tom Nelson, Chairman — Room 301, State Capitol — Saint Paul 55155
(612) 296-4871
Jermaine Foslien, Administrative Assistant — (612) 296-2963
Nicholas D. Coleman, Past Chairman

TO: Members, Advisory Council

FROM: Gary Bastien
Mark Shepard MS

DATE: December 6, 1984

RE: MEDIATION COST SHARING

You asked us to review the statutory provisions relating to mediation. Specifically you wanted to know if any state charged the parties for mediation services and how the charges were imposed.

A review of the statutory collective bargaining laws turned up a number of states that require the parties to pay for mediation services as an impasse resolution procedure. In many of these states there is not a staff of state-employed mediators. In the states which have state-employed mediators, it is likely that the state pays for mediation unless the statute indicates otherwise.

The review was not limited to teacher collective bargaining laws. Thirty three states have some provision relating to mediation on a voluntary or mandatory basis.

Summary: The most common provision among states requiring employer and employee participation in mediation expenses is an even split or sharing of expenses. Many states, although they require mediation, make no provision in statute for imposition of costs on either or both parties. Tennessee requires a party requesting mediation to pay the cost of the mediator. In North Dakota, the parties have to agree to a mediator and how to distribute the costs of mediation between themselves. Maine will pay up to three days of mediation, anything over that time is to be split between the parties on an equal basis. Sometimes state law will charge one group of employees and not others if they avail themselves of mediation services.

State-by-State Summary

Alaska	Mediator appointed by labor relations agency. No mention of cost sharing.
California	State employee mediation is split equally by parties. Educational employees have mediation paid for by the state, unless they select their own mediator.
Connecticut	Teachers must pay mediators a per diem and it is split equally. State employees have mediators appointed by state board of mediation and arbitration, no mention of costs sharing.
Delaware	Costs of mediation are paid by PERB.
Florida	Cost of mediation borne equally by parties
Georgia	Mediation is provided by a 3-person panel. Parties each select one. Mediators selected by the parties select the third. Parties share the costs of the third person.
Hawaii	Mediation costs are paid by PERB.
Idaho	Appointment and compensation is to be determined by the parties.
Illinois	Costs are paid equally by the parties.
Iowa	State paid mediation.
Kansas	Mediator appointed by PERB. Secretary of Human Resources pays cost for state employees. Parties pay for the cost of teacher/school board mediation.
Maine	3 days of mediation are paid for by the state, anything over that is imposed upon by the parties equally. If deemed to be a financial hardship, state will pay.
Maryland	Mediation costs are shared.
Massachusetts	Board of Conciliation and Arbitration appoints mediator, or parties can agree to one. No mention of costs.
Michigan	No mention of cost sharing of mediation.
MINNESOTA	State paid mediation.
Montana	Mediation is required, but no mention of cost in statute or rule.
Nebraska	Parties pay for costs of mediation.

Nevada	Parties pay one-half of costs.
New Hampshire	Parties share equally in all fees and costs.
New Jersey	Division of Public Employment Relations provides mediation service.
New York	Mediation by PERB.
North Dakota	Costs agreed to by parties.
Ohio	Board appoints a mediator; no mention of cost imposition.
Oregon	State pays for costs.
Pennsylvania	Mediation provided by Bureau of Mediation.
Rhode Island	No mention of cost imposition.
South Dakota	Department of Manpower Affairs can mediate, but no cost imposition mentioned.
Tennessee	Party requesting mediation pays costs.
Texas	Parties can agree to a mediator or state agency can appoint one, no mention of cost imposition.
Vermont	Teachers share cost of mediation. State employees have mediator appointed by LRB with no mention of cost.
Washington	PERC appoints mediator, without mentioning cost imposition.
Wisconsin	State mediation cost imposition not mentioned. Municipal employees have to share the cost of mediation/arbitration.

GB:MS/bp

MINNESOTA
LEGISLATIVE COMMISSION ON EMPLOYEE RELATIONS
Tom Nelson, Chairman — Room 301, State Capitol — Saint Paul 55155
(612) 296-4871
Jermaine Foslien, Administrative Assistant — (612) 296-2963
Nicholas D. Coleman, Past Chairman

October 9, 1984

TO: Members, Advisory Council on Bargaining Impasse Resolution

FROM: Ken Dau-Schmidt, Anne Knapp, Mark Shepard, Gary Bastian

RE: Impasse Resolution in Other States

The attached materials:

-- Summarize impasse resolution procedures in seven other states

-- Comment on the operation of these procedures in the seven states

The purpose of gathering this information is to help evaluate how well possible alternatives to the current Minnesota system have worked in other states. The only general conclusion that we can draw is that the success of a given impasse resolution procedure depends on a number of factors that vary from state to state. For example, in at least one state which uses factfinding and permits teacher strikes, factfinding is seldom used. In another state with very similar laws, factfinding is used extensively.

The following factors, which vary from state to state and are sometimes difficult to quantify, help to account for differences in the effectiveness of any particular impasse resolution procedure:

-- Experience of negotiators for both sides, and stability of the bargaining relationship

-- Strength of unions and general political climate

-- Ability of school districts to operate schools with substitutes during strikes

-- Severity of penalty to school districts for failing to meet mandatory minimum number of school days.

-- General economic climate in the state

-- Quality and availability of the state mediation agency and its mediators

-- Sources and predictability of school board revenue

-- Length of contracts

The statistics presented on impasse resolution techniques were gathered from phone calls to other states. In some cases two people in the same state gave us different answers to the same question. Thus all statistics related to impasse resolution should be regarded as rough estimates.

Data relating to state education systems is taken from a publication of the Education Commission of the States.

dr

STATE: Montana

IMPASSE PROCEDURES

MEDIATION: Mandatory after "reasonable period of negotiations"

FACTFINDING: Either party may petition upon expiration of contract

ARBITRATION: Can take place at any time if both parties agree

STRIKES: Legal by virtue of court ruling; no legislation governs

EDUCATION SYSTEM

Number of School Districts: 554

Sources of Revenue (83-84)

% Federal	9.1
% State	45.3
% Local	45.6

Avg. Teacher Salaries (83-84)

$20,657

Per Pupil Exp. (83-84) $3631

% Districts where teachers bargain Approx. 30%

OPERATION OF NEGOTIATION AND IMPASSE PROCEDURES

CONTRACTS -- Length and expiration date are not governed by statute. Many of the contracts are for one year, many for two, and a few for three. Most expire June 30.

Those contracts that are not settled by the expiration date of the old contract are generally retroactive, but this is a bargainable topic.

NEGOTIATIONS -- Serious bargaining generally begins in February or March.

-- There is no state-run training program for negotiators.

-- Most bargaining takes place after school, so the issue of teachers being paid for time spent in negotiations does not arise.

-- The legislature generally makes its appropriations for school aid by March of the odd-numbered year. The school board representative felt that in some cases fear of a poor foundation aid program led unions to seek early settlement.

TIMING OF SETTLEMENTS -- Most districts have settled by May. It is uncommon for a district not to have a settlement before school starts.

MEDIATION -- Estimates of the percentage of negotiations that use mediation range from 10 to 35% of those negotiating.

-- Most disputes going to mediation are settled there without any further proceedings.

-- The parties like the laws governing mediation and do not seek any changes.

FACTFINDING -- Very few cases go to factfinding (perhaps 3 or 4 a year). The parties are happy with the laws governing factfinding and do not feel that it is used as a delaying device.

Two of the four sets of negotiations that went to factfinding this year involved new negotiators.

ARBITRATION -- Never used by teachers and school boards. The union that represents most teachers may prepare a legislative proposal that would mandate last best offer, issue by issue arbitration as an impasse resolution procedure.

STRIKES -- Very few -- four since 1975.

-- The school board representative felt that generally schools would continue with substitutes, and would not close in the event of a teachers' strike.

-- Representative of a teachers' union said that school is never shut down during strikes due to lenient rules governing hiring of substitute teachers.

-- Neither side is seeking changes in the laws governing strikes.

COMMENTS

Montana negotiations appear to be settled earlier than those in Minnesota. Some of the following factors may help to explain this:

-- All school aids for the biennium are set by March of the odd-numbered year. Thus even in odd-numbered years parties have a good idea of the available resources by April. In even-numbered years (and there are many one-year contracts) the state aid has been known for a long time when negotiations begin.

-- The fact that a teachers organization may seek to have the law changed to require last best offer arbitration as an impasse resolution technique may indicate that the strike is not currently perceived by teachers as an effective tool. This may be due to laws governing hiring of substitutes. If the strike is not an effective tool, teachers may settle earlier than they would if they felt the threat of a strike would be effective in negotiations.

-- The threat of factfinding might encourage the parties to settle earlier. However, neither side indicated that this was a major factor.

-- There was some feeling from those people contacted that the negotiators are generally experienced and the relationships stable, and that this contributes to early settlements.

STATE: Oregon

IMPASSE PROCEDURES

MEDIATION: Permissive after "reasonable period of negotiations"

FACTFINDING: Either party may petition or board may initiate after 15 days of mediation

ARBITRATION: Can take place any time during or after factfinding, if both sides agree

STRIKES: Permitted 30 days after fact-finding recommendation is made public

EDUCATION SYSTEM

Number of School Districts: 309

Sources of Revenue (83-84)

% Federal	5.6
% State	28.8
% Local	65.6

Avg. Teacher Salaries (83-84)

$22,833

Per Pupil Exp. (83-84) $ 3,771

% Districts where teachers bargain approx. 75%

OPERATION OF NEGOTIATION AND IMPASSE PROCEDURES

CONTRACTS -- Average contract duration is 2 years. However, some are 3, a few are 4 years, and some are 1.

-- Almost all contracts expire June 30.

-- Contracts that are not settled by the expiration date of the old contract are generally retroactive, but in some cases additional payments for insurance premiums have not been retroactive.

NEGOTIATIONS -- Serious bargaining generally takes place January through March.

TIMING OF SETTLEMENTS -- In the past, most settlements have come in June. However, this year over 50 were unsettled when school started, and 38 of the 113 districts that are bargaining contracts this year had not settled as of September 30.

Union representatives felt the reason for slow settlements this year is that management has more of a statewide strategy than in the past.

MEDIATION -- In the past, about one-third of the districts bargaining required mediation. This year that figure has been much higher -- the great majority of districts have used mediation.

FACTFINDING -- Both sides felt factfinding was useful because 1) the parties don't like to use it, so negotiated settlements are encouraged; 2) the procedure gives the parties a breathing spell in negotiations; and 3) the negotiators can sometimes use the threat of factfinding to convince school board or union members to modify unreasonable proposals.

-- This year, of the 113 districts bargaining, as of September 30, 15 were in pre-factfinding procedures, 14 in factfinding, and 7 were post-factfinding.

-- Factfinding used to take place in June most of the time. However recently non-teaching public employees have been using factfinding more, and the number of factfinders has not gone up, so there have been delays.

-- The union representative commented that the parties have a distaste of factfinding because it takes a lot of preparation, and the factfinder often splits the difference between the parties anyway.

-- Of the factfinders' recommendations that are rejected, many are for minor reasons, and the parties tend to settle fairly quickly by making minor modifications in the factfinders' recommendations.

-- The school board representative commented that the early factfinding recommendations help to set a course of expectations on economics which speeds future negotiations.

-- Most factfinding is initiated by the neutral board, so the parties can be forced into it even if neither wants it.

ARBITRATION -- Never used in teacher/school board negotiations.

STRIKES -- There have been very few -- nine in the past 10 years.

-- Only once has a strike closed a school. In other cases, schools continued with substitutes.

-- Although Oregon has a mandatory minimum number of school days, districts which fail to comply due to a strike are not penalized until two years after the fact. Apparently districts can avoid any penalty by filing a plan assuring the state that they will meet the standards in the future. (These laws are unclear to me.)

COMMENTS -- In the past, Oregon districts appeared to settle earlier than Minnesota. However, this does not appear to be as true this year, since 38 out of 113 contracts were still unsettled as of September 30.

Some of the following factors may help to explain the fact that Oregon has fewer strikes than Minnesota, and the fact that, at least in the past, settlements came earlier:

-- There is a very heavy dependence on property tax levies to finance schools. Thus negotiations would not be as dependent on legislative appropriations. The heavy reliance on local taxes may also reduce the tendency to wait for other districts to settle. Finally, the presence of "Proposition 13" type initiatives on the ballot the past few years may reduce teachers' willingness to strike.

-- Both sides say they have made major efforts to avoid strikes.

-- Apparently school districts have been able to keep schools open during strikes, thus reducing the effectiveness of the threat of a strike as a bargaining tool for teachers.

-- Factfinding appears to encourage negotiated settlements in Oregon.

STATE: Pennsylvania

IMPASSE PROCEDURES

MEDIATION: Mandatory if after 21 days of negotiation no agreement has been reached. Voluntary after "reasonable period" of negotiation.

FACTFINDING: Triggered at the discretion of the Labor Relations Board or the advice of the Bureau of Mediation Services.

ARBITRATION: Can take place at any time if both parties agree.

STRIKES: Strikes are legal after mediation and fact-finding phases have taken place.

EDUCATION SYSTEM

Number of School Districts: 501

Sources of Revenue (83-84)

% Federal	4.3
% State	45.4
% Local	50.3

Avg. Teacher Salaries (83-84)

$20,657

Per Pupil Exp. (83-84) $3,725

% Districts where teachers bargain
Approx. 99%

OPERATION OF NEGOTIATION AND IMPASSE PROCEDURES

CONTRACTS -- The length of contracts is not governed by statute. In practice, 6% are for 1 year, 43% are for 2 years, 48% are for 3 years, 2% are for 4 years, and 1% are for 5 years. Most contracts expire either June 30 or August 31.

-- Contracts not settled by the expiration date of the old contract are generally, but not always, retroactive.

NEGOTIATIONS -- Negotiations must begin by January 10 and most bargaining units and school boards file mediation notices at that time.

-- Serious bargaining takes place in May and again in August and September. The state does not provide any formal training for teacher or school board negotiators.

TIMING OF SETTLEMENTS -- 56-60% of school districts have settled their contracts by the end of the first week of school. Most of the rest are finished by the end of October. Some, however, drag on for a long time.

-- The Pennsylvania SBA believes that the major bargaining pressure points are the close of school, the beginning of football and band practice in August, the beginning of the school year, and the end of October (this date is significant because the Pennsylvania Court has ruled that strikes may be enjoined if the schools cannot complete the required 180 instructional days by June 30). Those negotiations that go on past October generally do not result in strikes.

MEDIATION -- Since 1980, approximately 70% of teacher bargaining cases have been settled after mediation. Of that 70%, 10% went to factfinding and 15% were settled after a strike.

-- The Pennsylvania Supreme Court has ruled that in order for the right to strike to mature, a mediator must have been physically present in at least one mediation session.

-- The unions tend to approve of the mediation law. The SBA, however, believes that the process is too long and that the timeline should be shortened to reflect the realities of bargaining.

FACTFINDING -- Approximately 7% of all school districts end up in factfinding. Factfinding in Pennsylvania is used sparingly and is only ordered in cases where the mediator believes that it will solve the impasse. As a result, the success rate of factfinding is very high -- one estimate put it at approximately 80%.

-- The School Boards think that factfinding should be used more often as a way to disseminate information to the public. They object to its use as a "super-mediation" tool (a method of applying pressure).

ARBITRATION -- Very rarely used in regular negotiations.

STRIKES -- Pennsylvania has had a problem with strikes since the enactment of its law in 1970. Since 1980 there have been 116 school strikes in Pennsylvania.

-- The consensus of the parties was that these strikes were "meant to happen." The parties were too far apart to reach agreement, and communication had completely broken down.

-- The number of strikes has declined during the past few years. The SBA believes that this is the result of budget cuts and the loss of community support for most strikes.

-- Strikes are generally caused by monetary and seniority issues. The school boards also believe that some are orchestrated to achieve solidarity in a weak bargaining unit.

-- Strikes that go on so long that the school district cannot complete 180 days of instruction before June 30 have been ruled to constitute a clear and present danger to the health and welfare of the community and can be enjoined. The crucial date for the completion of strikes, therefore, is sometime in late October.

COMMENTS

-- Pennsylvania's PELRA has not been changed since it was enacted in in 1970. However, there have been efforts to change the law. The most recent of these was a task force report published this year that recommended shortening the bargaining timeline, hiring additional mediators, strengthening the

factfinding process by enabling either party to initiate factfinding after mediation had failed and prior to contract termination, and forbidding the rescheduling of make-up days between Christmas and New Years and after June 15. The penalty for failure to complete the required minimum number of school days would be the loss of 1/180th of total state aid per day lost for school districts and 1/180th annual salary per day lost for teachers. The report has been tabled because it was not supported by labor. The unions objected to the restrictions on make-up days, changing the factfinding process, and compressing the bargaining timetable.

-- All parties feel that the court's definition of "clear and present danger" for school strikes has had an impact on the duration of strikes.

AK:lkl
10-8-84

STATE: California

IMPASSE PROCEDURES

MEDIATION: Either party may request a mediator from the California PERB.

FACTFINDING: 15 days after appointment of mediator, and mediator declares fact-finding is appropriate, either party may request a factfinding panel.

ARBITRATION: Statute does not deal with arbitration.

STRIKES: Statute does not deal with strikes.

EDUCATION SYSTEM

Number of School Districts: 1029

Sources of Revenue (83-84)

% Federal	6.9
% State	67.0
% Local	29.1

Avg. Teacher Salaries (83-84)

$26,403

Per Pupil Exp. (83-84) $2,912

% Districts where teachers bargain "virtually all"

OPERATION OF NEGOTIATION AND IMPASSE PROCEDURES

CONTRACTS -- Contracts may not exceed 3 years.

-- 1 and 2 year contracts generally contain annual reopener clauses on economic issues.

-- Most contracts expire on June 30.

NEGOTIATIONS -- Parties must begin to negotiate sufficiently in advance of the adoption of the employer's final budget (Sept. 1) so that there is adequate time for agreement or resolution of impasse.

-- Most bargaining for successor contracts begins in January, February or March. Bargaining for reopener clauses begins somewhat later.

-- There is no formal state training of school board or teacher negotiators.

TIMING OF SETTLEMENTS -- According to California PERB, the majority of contracts are settled before June 30. Approximately 20% continue on into the summer.

MEDIATION -- The California PERB does not know what proportion of teacher contract negotiations require mediation. The only way that they become aware of bargaining is when a party reaches impasse and requests a mediator.

-- 85-90% of cases that go to mediation are settled through mediation.

-- All parties seem to be pretty comfortable with the mediation process.

FACTFINDING -- 15% of mediated cases end up in factfinding. 1/3 of these settle before issuance of the factfinder's report.

-- According to one mediator, parties avoid factfinding because it takes too long (often several months) and it is nonbinding.

ARBITRATION -- Arbitration is virtually never used to settle contract disputes. There have been fewer than 20 cases in the 8 year history of the law.

STRIKES -- The California law does not deal with strikes, but the California courts have ruled that work actions are permissible if one side has committed an unfair labor practice or unilaterally altered the terms of the contract.

-- California has relatively few school strikes. There were 7 strikes involving school employees (certificated and support personnel) during the 1983-84 school year.

-- The California PERB has primary authority to determine whether or not a strike is legal. Parties who have questioned PERB's decisions have generally lost their cases in court.

COMMENTS

-- The general impression from the parties in California was that they were satisfied with the operation of their collective bargaining system.

-- With over 1,000 school districts, most of which have several bargaining units, the system is too vast for close supervision. The assumption seems to be that the parties are responsible for settling their own affairs. The state steps in only when it is requested to do so by one of the parties and a state mediator determines that an impasse exists.

-- The parties seem to feel that the quality of mediators provided by the state is very high, and that these people are very effective.

-- At one time, all state aid was withheld from school districts that did not complete the required 175 days of instruction. This was an effective deterrent to prolonged strikes. Today state aid is withheld on a pro-rated basis from districts that do not complete 175 school days.

AK:lkl
10-8-84

STATE: Iowa

IMPASSE PROCEDURES

MEDIATION: Required before fact-finding or arbitration

FACTFINDING: Required before arbitration

ARBITRATION: Final offer, item-by-item. Arbitrator can choose the teachers' offer, the school board's offer, or the fact-finder's recommendation on each issue.

STRIKES: Illegal

EDUCATION SYSTEM

Number of School Districts: 439

Sources of Revenue (83-84)

% Federal	5.4
% State	41.0
% Local	53.7

Avg. Teacher Salaries (83-84)

$20,140

Per Pupil Exp. (83-84) $3,239

% Districts where teachers bargain 75%

OPERATION OF NEGOTIATION AND IMPASSE PROCEDURES

CONTRACTS: Length of contract and expiration date are not set by law. The vast majority of teacher contracts are one year although there is a trend towards 2 and 3 year contracts. Multi-year contracts usually have a reopener. Teacher contracts usually expire July 1.

NEGOTIATIONS: Negotiations generally begin in September or October. While this seems early with respect to the usual expiration date of the contracts, it is only 6 months before March 15th deadline for negotiations discussed in the next section. There is some tendency for bargaining activities to increase as the parties move towards the March 15th deadline. There is no state-run training for negotiators. Teachers are not paid for time spent bargaining.

TIMING OF SETTLEMENTS: Negotiations must be completed by March 15th of the year the agreement is to become effective. Iowa's PERB sets a date by which impasses must be submitted to arbitration in order to have a contract by March 15th. Most voluntary settlements come before the parties have entered this mandatory arbitration scheme, generally in December or January. Virtually no teacher contract negotiations extend into the next school year.

MEDIATION: Iowa's PERB will appoint a mediator if requested by either party. Most (80%) bargaining units request mediation in progressing through Iowa's system for resolving teacher bargaining disputes. However, only in about 60% of cases is mediation actually used and important for settlement.

FACTFINDING: If there is still an impasse 10 days after the mediator has met with the parties, PERB appoints a factfinder. The factfinder generally schedules his or her first meeting with the parties for 4 to 6 weeks after appointment. The mediator can continue to mediate during this time and even after the factfinder has begun his or her tasks if the mediator believes it is productive. The factfinder issues a list of findings and recommendations on each of the issues presented by the parties. If the impasse continues 10 days after the factfinders opinion is handed down, the opinion is made public. Roughly 10% of all teacher negotiations end up in factfinding. About 60% of these go on to arbitration.

ARBITRATION: If impasse persists after factfinding, the PERB may arrange for arbitration upon request of either party. Iowa's PERB can also force any negotiations to arbitration in order to make sure the March 15th date for achieving a contract is met. Arbitration is final offer, item-by-item, however the arbitrator is given the choice of taking the factfinder's recommendation on any issue in place of either of the parties'.

STRIKES: Strikes are illegal in Iowa. There have been no teacher strikes in Iowa according to the memories of the parties that were interviewed.

COMMENTS: Settlements in Iowa come earlier than in Minnesota because of the fixed date by which all negotiations must be completed and the ability of the Iowa PERB to force the parties to arbitrate in order to meet this statutory deadline.

Iowa has fewer teacher strikes than Minnesota because strikes are illegal in Iowa.

Factfinding is not popular with the parties in Iowa because it is seen as costly and duplicative of arbitration. However, staff from Iowa's PERB thought that factfinding aided in resolution of a significant number of tough bargaining situations.

STATE: New York

IMPASSE PROCEDURES

MEDIATION: Undertaken after impasse at the request of the parties or at the direction of the PERB

FACTFINDING: Generally the procedure of last recourse

ARBITRATION: Not mandated or specified by law

STRIKES: Illegal, although some do occur

EDUCATION SYSTEM

Number of School Districts: 703

Sources of Revenue (83-84)

% Federal	3.8
% State	41.3
% Local	55.0

Avg. Teacher Salaries (83-84)

$26,750

Per Pupil Exp. (83-84) $4,845

% Districts where teachers bargain 99%

OPERATION OF NEGOTIATION AND IMPASSE PROCEDURES

CONTRACTS: Length of contract is not set by law but the contract must expire with the school's fiscal year (June 30th or September 1st). Most teacher contracts are for 2 years although there is a significant number of 3 year contracts and a very few one year contracts.

NEGOTIATIONS: Negotiations generally begin 6-8 months before the expiration of the contract. The most serious bargaining occurs after the state passes its budget. Little bargaining occurs during the summer. There is no state run training program for negotiators. Teachers are not paid for time spent bargaining.

TIMING OF SETTLEMENTS: There seems to be a number of settlements after the state passes its budget and then another group around the expiration date of the old contract. About 5-15% of teacher units are still bargaining when school begins.

MEDIATION: When New York's PERB has determined that there is an impasse in negotiations, it may, upon request of either party or on its own motion, appoint a mediator. An impasse may be found to exist if there is no agreement 120 days before the end of the employer's fiscal year. About 50% of all teacher negotiations use mediation and about 50-60% of these settle without resort to any further proceedings.

FACTFINDING: If the impasse continues, PERB may appoint a factfinder. The factfinder must give his or her opinion no later than 80 days before the end of the employer's fiscal year. Within five days of giving his or her opinion to the parties the factfinder must make the opinion public. About 20-25% of all bargaining cases end up using factfinding.

ARBITRATION: The parties can agree to arbitrate, but cannot be forced to by the PERB. New York law leaves it up to the parties to determine the proceedings and type of arbitration to undertake (last best offer or traditional). The PERB can help arrange arbitration however if the parties desire it. Very few teacher negotiations use arbitration in New York.

STRIKES: Strikes are illegal and there is a penalty of two days pay for each day struck for participating teachers. New York has had few teacher strikes in recent years.

COMMENTS: The parties like to avoid factfinding in New York and one respondent suggested this can be an impetus to bargaining.

New York has fewer strikes than Minnesota because strikes are illegal in New York and there are significant penalties to striking.

New York law allows the parties to develop dispute resolution procedures of their own, including arbitration, as an alternative to the procedures outlined above.

STATE: Wisconsin

IMPASSE PROCEDURES

MEDIATION: Required before arbitration or strike under the med/arb system outlined below.

FACTFINDING: An option under Wisconsin law, but little used.

ARBITRATION: Final offer. This is the primary procedure of last recourse in Wisconsin.

STRIKES: Legal if both parties agree to strike, however either side can force the other to arbitrate.

EDUCATION SYSTEM

Number of School Districts: 408

Sources of Revenue (83-84)

% Federal	4.4
% State	37.9
% Local	57.7

Avg. Teacher Salaries (83-84)

$23,000

Per Pupil Exp. (83-84) $3,553

% Districts where teachers bargain Approx. 95%

OPERATION OF NEGOTIATION AND IMPASSE PROCEDURES

CONTRACTS: Length of contract and expiration date are not set by law except that the length of a contract is limited to three years. Most teacher contracts (70%) are for 1 year, but 2 or 3 year contracts are not rare. Most contracts expire in May, June, or the end of August. The expiration date is generally based on the school year not the fiscal year.

NEGOTIATIONS: Negotiations generally begin 5-6 months before the expiration of the contract. The most serious bargaining occurs around the expiration of the contract or after a pattern has been set by other school districts. The state budgetary process was seen as predictable enough that the parties did not wait for state appropriations to bargain. There is no state-run training for negotiators. Teachers are not paid for time spent bargaining.

TIMING OF SETTLEMENTS: The timing of settlements doesn't seem to follow any rule except that once a pattern is set, comparable school districts tend to settle. Most bargaining units have not settled a contract by the time school starts the next year.

MEDIATION/ARBITRATION: In Wisconsin either party can request "mediation/arbitration." If the dispute is submitted to "mediation/arbitration" a neutral third party attempts to mediate the dispute but after a "reasonable period of mediation" can announce his or her intent to arbitrate the dispute. At that time if both parties reject arbitration, the teachers may legally strike but if either party wants to arbitrate the contract is settled by final offer arbitration. Estimates of the percent of teacher negotiations that use mediation varied from 30-50%. Estimates of the percent of teacher negotiations that ended up being arbitrated were in the 4-6% range.

FACTFINDING: An option under Wisconsin law which is rarely used. All parties thought that it was costly and time consuming. Teacher representatives said that when it was used in the past, school boards would adopt only the portions of the factfinder's opinion that supported the school board and thus the factfinding accomplished little. Factfinding did not seem to be popular with any one in Wisconsin.

STRIKES: There have been very few strikes in recent years. This is probably due to the fact that both parties must agree to a strike before one can occur and the memory of some particularly bitter strikes during the 1970's.

COMMENTS: Teacher settlements probably occur earlier in Wisconsin than in Minnesota although most still come after the start of school. To the extent that teacher disputes settle earlier in Wisconsin than Minnesota it is probably due to the ability of the mediator under the Wisconsin system to decide when negotiations have impassed and the parties must either strike or arbitrate.

Wisconsin has somewhat fewer strikes than Minnesota. This is probably due to the fact that in Wisconsin there is a much more limited right to strike in that strikes must be by the mutual consent of the parties. Also teachers and school boards in Wisconsin recall some particularly harsh strikes from the 1970s and so see large potential costs to this option.

In addition to the dispute resolution procedures outlined above, the parties in Wisconsin may agree to any dispute resolution procedure they choose including strike and arbitration.

STATE: Minnesota

IMPASSE PROCEDURES

MEDIATION: Mandatory upon summons of BMS until 60 days after agreement expires

FACTFINDING: None

ARBITRATION: Can take place after impasse if both sides agree

STRIKES: Permitted upon 10 days notice once statutory timelines have been met

EDUCATION SYSTEM

Number of School Districts: 436

Sources of Revenue (83-84)

% Federal	4.4
% State	54.1
% Local	41.5

Avg. Teacher Salaries (83-84)

$24,480

Per Pupil Exp. (83-84) $3,376

% Districts where teachers bargain 99 plus

MINNESOTA
LEGISLATIVE COMMISSION ON EMPLOYEE RELATIONS
Tom Nelson, Chairman — Room 301, State Capitol — Saint Paul 55155
(612) 296-4871
Jermaine Foslien, Administrative Assistant — (612) 296-2963
Nicholas D. Coleman, Past Chairman

September 12, 1984

TO: Members, Advisory Council on Impasse Resolution

FROM: Mark Shepard
Anne Knapp
Ken Dau-Schmidt

RE: Impasse Resolution Procedures in Selected States

This memorandum describes impasse resolution procedures for school district employees in selected states. The states studied are those which either permit strikes or utilize factfinding to settle impasses. The first chart, on pages three and four of the memo, summarize impasse resolution procedures in the states studied. The remainder of the memo describes in more detail the procedures in each state. This information was gathered by contacting the agency in each state which is analogous to our Bureau of Mediation Services. More calls would have to be made in each state to gather more complete information about the effectiveness of the laws.

While the laws of each state are fairly complicated and procedures vary widely from state to state there are several general conclusions that can be drawn:

-- In most states, school district employees are treated the same as other employees (with the exception of public safety employees). However, there is a separate law governing teachers in California and Illinois.

-- Many of the statutes set up timelines for moving through the various impasse resolution procedures. However, these timelines are often not tied to the calendar, so there is often no guarantee that negotiations will be complete at a certain time.

-- The most common impasse resolution technique in other states that is not currently used in Minnesota is factfinding.

-- States which require a state agency to declare an "impasse" before certain impasse resolution techniques may be used have a full-time multi-member board make this decision. There is no analogous board in Minnesota.

-- Many states do not mandate the length of teacher contracts, nor do they mandate when the contracts must expire.

-- Montana and Oregon, which have a relatively broad right to strike, seem to settle most of their teacher contracts prior to the start of the school year.

SUMMARY OF IMPASSE PROCEDURES IN STATES STUDIED

NEGOTIATIONS BEGIN

In some states the statute allows the parties to negotiate their own impasse resolution procedures. In those states the statutory procedures discussed below apply only if the parties don't come up with their own system.

California: Parties must begin to negotiate sufficiently in advance of adoption of the employer's budget so there is adequate time for agreement or resolution of impasse.

MEDIATION

Montana, Oregon: Mediation occurs if a dispute exists after "a reasonable period of time" in negotiations.

New York, California, Wisconsin: If the labor board determines there is an impasse it may appoint a mediator on its own motion or if requested by either party.

Labor board appoints a mediator, a prescribed number of days before the employer's budget submission date (Iowa, Pennsylvania) or the start of the school year (Illinois), or expiration of the contract (Ohio).

FACTFINDING

All States: Must have some mediation or reach a certain point in employer's budget process before factfinding can take place.

Montana, California, Pennsylvania, Oregon: Factfinding takes place if requested by either party or the labor board, but it is not mandatory.

New York, Iowa: Factfinding is mandatory if impasse continues after a prescribed number of days in mediation, or if the dispute is not resolved a certain number of days prior to the end of the fiscal year (New York) or expiration of the contract.

Montana, Oregon, Ohio: Parties select the factfinder.

New York, Iowa, Wisconsin, Pennsylvania: Labor board selects factfinders.

California: Parties each select one factfinder and the board appoints a third.

All States: Factfinder makes written findings and recommendations. These are initially just given to the parties, but if they are not accepted by both parties are made public after 5-15 days.

Ohio: Factfinders recommendations are accepted unless rejected by a three-fifths vote of the employer's legislative body or a three-fifths vote of the total membership of the employee organization.

ARBITRATION

In some states parties must wait until after factfinding has taken place to proceed to arbitration. In others, arbitration may occur anytime the parties both agree on it.

Illinois, Montana, New York, Iowa, Pennsylvania, Oregon: Dispute is settled through arbitration only if both parties agree to go to arbitration.

Wisconsin: Either party may send the dispute to arbitration. Wisconsin uses a "mediation-arbitration" system, which is different from all other states, and which is described in detail later in this memo.

STRIKES

Forbidden: Michigan, Iowa, New York

Permitted when conditions met: Illinois, Ohio, Montana (by common law, not statute), Oregon, Pennsylvania, Wisconsin (but conditions are very limited)

CALIFORNIA

Parties must begin negotiations sufficiently in advance of adoption of the employer's final budget so that there is adequate time for agreement or resolution of impasse.

Mediation: Either party may request a mediator. The board appoints a mediator if it determines that an impasse exists.

Factfinding: If there is still a dispute 15 days after appointment of the mediator, and the mediator declares that factfinding is appropriate, either party may request a factfinding panel.

The factfinding panel is composed of one member appointed by each party and one member appointed by the board.

If the dispute is not settled within 30 days after the appointment of the panel (or a longer time if agreed to by both parties) the panel shall make findings and recommendations. The employer must make the recommendations public after 10 days.

Arbitration: The act does not deal with interest arbitration.

Strikes: The act does not deal with strikes.

Results: There is no consistent pattern of when contracts expire. About two-thirds of the parties settle without outside help. Those who do use outside help generally settle during mediation. Arbitration is very rare, and factfinding is not used extensively, as it has tended to drag on for long periods.

IOWA

Although the statute specifies impasse resolution procedures, it also encourages the parties to agree on their own procedures as a substitute for those provided in law.

Mediation: 120 days before the budget submission date (generally March 15), the board shall appoint a mediator, if requested by either party.

Factfinding: If there is still an impasse 10 days after a mediator is appointed, the board appoints a factfinder, who makes findings of fact and recommendations within 15 days of appointment. If the impasse continues 10 days after the findings and recommendations are given to the parties, the report is made public.

Arbitration: Upon the request of either party, if an impasse persists after factfinding, the board may arrange for arbitration. Arbitration is final offer, item-by-item. However, the arbitrator may choose the position of the factfinder on each item instead of choosing the position of one of the parties.

Strikes: All strikes are prohibited.

Results: Most contracts expire July 1. In 1983-84, of the 826 public employee units bargaining, 71 cases were settled through factfinding and 40 through arbitration.

MICHIGAN

Mediation: If a dispute is unresolved 30 days before the expiration of a contract, the labor commission must appoint a mediator.

Factfinding: Either party, or the labor commission may initiate factfinding. The factfinder is appointed by the commission.

Arbitration: No provisions in statute.

Strikes: Prohibited.

MONTANA

Mediation: The parties must request mediation if, after a "reasonable period of negotiation" a dispute still exists.

Factfinding: Either party may petition the board of personnel appeals to initiate factfinding "upon expiration of an existing collective bargaining agreement." If neither party requests factfinding it may be initiated by the board.

- The parties select the factfinder by striking names from a list of five submitted to them by the board.
- Within 20 days from appointment of the factfinder, the factfinder must make written findings of fact and recommendations.
- The factfinder may make this report public five days after it is submitted to the parties. The report must be made public 15 days after it is submitted to the parties if the dispute is not resolved.
- The cost of factfinding is shared by the board and the parties.
- The factfinder may attempt to mediate the dispute.

Arbitration: The parties may voluntarily agree to submit any or all issues to arbitration. Arbitration supercedes factfinding.

Strikes: The Montana Supreme Court has ruled that the right to engage in "concerted activities" includes the right to strike. The statute does not deal with strikes at all.

Results: Most teacher/school board contracts expire July 1. Most new contracts are settled just before school starts. The vast majority are settled either through negotiations along or after mediation. Very few go to factfinding, very few to arbitration, and there are very few strikes. Most factfinding has taken place when one or both of the parties negotiating are inexperienced. Sometimes one party calls for factfinding in an attempt to gain leverage in negotiations.

NEW YORK

An impasse may exist if there is no agreement 120 days before the end of the employer's fiscal year. The parties are authorized to enter into written agreements establishing their own impasse resolution producers. This may include arbitration.

The statutory procedures listed below are used if the parties have not set up their own impasse resolution procedures.

Mediation: When the Board determines that there is an impasse it may, upon request of either party or upon its own motion, appoint a mediator.

Factfinding: If the impasse continues, the board must appoint a factfinding board. If the dispute is not resolved 80 days before the end of the employer's fiscal year, the factfinders must immediately give their findings and recommendations to the parties and within five days make these findings and recommendations public.

If the impasse still continues, the Public Employment Relations Board may take "whatever steps it deems appropriate" to resolve the dispute, including making its own recommendations or assisting the parties in arranging arbitration.

Arbitration: The parties may agree to go to arbitration, but the state does not mandate it or provide procedures to be followed.

Strikes: Strikes are prohibited.

Results: All teacher contracts expire June 30, at the end of school board's fiscal year. Mediation and factfinding are used extensively. Of the negotiations needing outside assistance, 65% are settled in mediation, the rest through factfinding or arbitration. No further breakdowns are available at this time.

OREGON

Mediation: If no agreement has been reached after "a reasonable period of negotiation" the parties must notify the employment relations board of the status of negotiations. The notice must contain a statement of all unsettled issues. At this point the parties may request mediation, or the board may appoint one without a request.

Factfinding: If the dispute is not settled after 15 days of mediation, either party may petition the board to initiate factfinding. The board may also initiate factfinding. The parties may select their own factfinder, or may have one chosen by striking names from a list submitted by the board. The parties may choose to have a panel of three factfinders.

Not more than 30 days after the end of the factfinding hearings, the factfinder must make written findings of fact and recommendations. Within five days after the findings and recommendations have been sent the parties must state if they accept them. If the parties do not accept them, the board must publicize the findings and recommendations within five days of a rejection.

The cost of factfinding is split by the parties.

Arbitration: The parties may voluntarily agree at any time during or after factfinding to submit their dispute to arbitration.

Strikes: Employees may strike after they have satisfied the mediation and factfinding requirements, and when 30 days have passed since the board has made public the factfinding recommendations. The exclusive representative must give 10 days notice of intent to strike.

The courts may enjoin strikes where there is a clear and present danger or threat to the health, safety or welfare of the public. This does not mean an economic or financial inconvenience to the public or to the public employer that is normally indicative to a strike by public employees.

Results: Contracts expire on June 30. The only data available on impasse settlement covers all public employees. This information shows more than 82% of all impasses were settled after mediation over the past 10 years. FActfinding was held in 18% of the cases, but the report of the factfinder was accepted by the parties in only 12% of the cases that went to factfinding. (2.2% of all impasses). The majority of the cases that went to factfinding were settled in mediation after factfinding. Interest arbitration was initiated in 2.6% of the cases that went to impasse. Less than 1% of the cases (21 out of 2,404 impasses) resulted in strikes.

The majority of the teacher contracts were settled in June or in September. Very few negotiations carry into the school year. There is a lot of bargaining in December and January and many negotiations have reached impasse by the beginning of the year.

PENNSYLVANIA

Mediation: The parties may voluntarily submit to mediation if an impasse exists after "a reasonable period of negotiation." However, if there is no agreement within twenty-one days after negotiations begin, or an agreement is not reached 150 days prior to the employer's "budget submission date," the parties must use mediation.

Factfinding: If no agreement is reached 20 days after mediation has started, or if there is no agreement 130 days prior to the "budget submission date," the Labor Relations Board may in its discretion appoint a factfinding panel. The following proceedings occur under factfinding:

-- Findings of fact and recommendations must be sent to the parties within 40 days after the matter is turned over to the Board for potential factfinding.

-- Within 10 days after the findings have been sent to the parties, the parties must notify the board whether they accept the recommendations. If the recommendations are not accepted, the board shall publish them.

-- Within five to ten days after publication of the findings, the parties must once again inform the board if they accept the recommendations.

The state pays half of the cost of factfinding. The parties split the other half.

Arbitration: The parties may voluntarily submit the dispute to arbitration at any time.

Strike: Public employees may strike after the mediation and factfinding procedures have been completed. Strikes which pose a clear and present danger or threat to the health, safety or welfare of the public may be enjoined.

Results: Factfinding is not used often. There have been few strikes.

WISCONSIN

Mediation: Either party can request mediation, or it may be initiated by the Employment Relations Commission. Mediation is also involved int he mediation-arbitration system discussed below.

Factfinding: If a dispute has not been settled after a "reasonable period of negotiation" and if settlement procedures, if any, established by the parties have been exhausted, either party may petition the Commission to initiate factfinding.

When a party petitions for factfinding, the Commission investigates to determine if there is a deadlock. If the Commission decides that factfinding should be initiated, it appoints a factfinder of a three person factfinding panel.

-- Factfinder makes findings of fact and recommendations.

-- Within 30 days of receiving the factfinders recommendations (or another time period agreed upon by the parties) the parties must accept or reject the recommendations.

Other Impasse Procedures: The statute grants the parties the right to negotiate their own dispute settlement procedure, including strikes and arbitration.

Mediation-Arbitration: If a dispute is not settled after a reasonable period of negotiation and after mediation, either party may petition the Commission to initiate mediation-arbitration. The Commission decides if an impasse exists, or if further negotiation and mediation are still likely to yield a settlement. Before the Commission makes a decision on ordering mediation-arbitration, the parties must each submit a single final offer containing proposals on all subjects in dispute. The following are the procedures to be followed if the Commission orders mediation-arbitration:

-- The parties select a mediator-arbitrator by striking names from a list of five submitted by the Commission.

-- The parties submit their "final offers" to the mediator-arbitrator. These offers are available to the public.

-- Upon petition of five citizens of the affected jurisdiction, the mediator-arbitrator must conduct a public hearing to let both sides present their positions.

-- The mediator-arbitrator continues to try to mediate the dispute and encourage the parties to negotiate from their "final" offers. During this time either party, with the consent of the other party, may modify its final offer.

-- If the parties fail to reach a settlement after "a reasonable period for mediation" the mediator-arbitrator gives notices of intent to use binding arbitration.

-- Either party, within a time limit set by the mediator-arbitrator, may withdraw its offer. If both parties withdraw their offers, the employees may strike. Unless both parties withdraw their offers, the dispute proceeds to arbitration.

-- Before the arbitration decision is issued, the mediator arbitrator shall, at the request of either party, or on his or her own motion, conduct another public meeting to allow the parties to explain their positions.

-- The mediator-arbitrator then adopts, without modification, the final offer of one of the parties on all disputed issues.

-- Cost of mediation-arbitration is divided equally between the parties.

Strikes: Strikes are permitted only if the parties have agreed to a strike as a dispute settlement procedures, or if both parties withdraw their final offers in the course of mediation-arbitration, as outlined above.

Results: Most contracts expire at the end of August, but contract duration and expiration dates are left to the parties to bargain. In 1983-84 66% of the cases going to mediation were settled through mediation. 11% settled after appointment of an arbitrator, but before an award was issued. Slightly over 22% were settled by an arbitration award. These numbers are for all public employees, not just teachers.

TO: Advisory Council on Bargaining
Impasse Resolution

FROM: Anne Knapp

DATE: September 11, 1984

RE: Illinois and Ohio Public Employee
Labor Relations Acts (PELRAS)

Introduction:

This report is intended to provide the Council with information on the two most recently enacted public employee collective bargaining laws -- the Illinois law passed in 1983 and effective January 1, 1984, and Ohio's law passed in 1983 and effective October 6, 1983. It was originally felt that these laws would illustrate current trends in PELRAS and possibly incorporate innovations in bargaining impasse procedures.

After studying the Illinois and Ohio PELRAS and speaking to people on each state's labor relations board, it seems safe to conclude two things: 1) that these laws resemble many other state PELRAS; and 2) they are too new to evaluate as neither has established a track record.

ILLINOIS

Collective bargaining procedures for teachers in Illinois are governed by the Educational Labor Relations Act (Illinois Laws, Chapter 48, Sections 1701-1721). This law is separate from the Illinois Public Labor Relations Act (Illinois Laws, Chapter 48, Sections 1601-1627) and recognizes a "substantial" difference "between educational employees and other public employees." The essence of this difference is contained in a bargaining time line that is intended to promote teacher/school board contract resolution prior to the beginning of the school year.

Initiation of Bargaining: Bargaining can begin any time during the year or within 60 days of receipt by a party of a demand to bargain issued by the other party. Once commenced, bargaining must continue for 60 days unless a contract is entered into. If school districts and teachers have not reached an agreement 90 days before the beginning of the forthcoming school year, they must notify the Illinois Educational Labor Relations Board (IELRB) of the status of their negotiations.

Mediation: Services of IELRB mediators are continuously available to the employer and to the exclusive bargaining representatives. If, however, after a reasonable period of negotiation and within 45 days of the commencement of the school year a contract has not been agreed upon, either party may petition the IELRB to initiate mediation. If no agreement has been reached 15 days prior to the beginning of the school year, the IELRB shall invoke mediation.

The costs of mediation are shared equally by the employer and the exclusive bargaining agent.

Fact-Finding: IELRB mediators may perform fact-finding if requested to do so by both parties. The costs of fact-finding are shared equally by the employer and the exclusive bargaining agent.

Arbitration: Parties may mutually agree to submit their dispute to arbitration at any time.

Strikes: Teachers may strike if they have not submitted their dispute to arbitration and after their contract has expired, mediation has been used without success, and a 5-day intent to strike notice has been given. Strikes which pose a clear and present danger to the health or safety of the public may be enjoined.

Results: Illinois has over 1000 school districts. There is no standard length for teacher/school board contracts, nor is there a calendar date when contracts generally expire.

At this time the IELRB is not well enough established to enforce its provisions in the Educational Labor Relations Act nor to keep track of all of the teacher/school board contract negotiations in the state. It is the IELRB's hope that by next summer it will be able to begin implementing the law.

OHIO

Under Ohio's new PELRA, teachers are defined as public employees with the same collective bargaining rights and regulations as other public employees. The contract negotiation time line in Ohio is geared toward settling contracts before the expiration of the old agreements.

Initiation of Bargaining: Bargaining may begin any time during the year, but it must start at least 60 days prior to the contract expiration date.

Mediation: Statutory language in Ohio's PELRA suggests that mediation is made available at either party's request if agreement is not reached 50 days prior to the contract expiration date, and that mediation is mandatory at impasse or 45 days before the contract expires. It also suggests that once the State Employment Relations Board (SERB) intervenes by providing a mediator, a definite mediation/fact-finding timetable begins. According to a SERB mediator, however, under current practice, SERB intervenes only if both parties mutually request a SERB mediator, and the mediation/fact-finding timetable is very flexible.

Fact-Finding: If a mediator declares that an impasse has been reached or not later than 31 days prior to the contract expiration date, a fact-finding panel shall be convened within one day. The following proceedings occur under fact-finding:

-- The fact-finding panel may attempt mediation at any time during the process. It shall not discuss recommendations with any party other than those directly involved in the dispute.

-- The findings of fact and recommendation on all unresolved issues shall be sent to SERB no later than 14 days after appointment of the panel.

-- The fact-finding panel's recommendations become the new contract unless within seven days it is rejected by either a 3/5ths vote of the total membership of the legislative body (the school board) or a 3/5ths vote of the total membership of the employee organization.

-- If either party rejects the recommendations, then SERB will publicize the findings of fact and recommendations.

The state pays one-half of the costs of fact-finding. The remainder is split between the employer and the employee organization.

Arbitration: Parties may at any time voluntarily agree to submit any or all of their dispute to arbitration, a citizens' conciliation council, or to any other mutually agreed-upon dispute settlement procedure.

Strikes: Strikes are authorized if the parties have not reached agreement within seven days after the fact-finders' recommendations have been published or when their contract has expired. In order to strike, the employee organization must have given 10-day prior written notice of intent to strike. Strikes which pose a clear and present danger to the health or safety of the public may be enjoined for up to 72 hours.

Results: Teacher/school board contracts in Ohio may not exceed three years. Within that restriction, however, there is no standard length for contracts. Contracts may and do expire at any time during the year.

Ohio's SERB has been in operation since April 1, 1984. Thus far its tendency has been to move gingerly and not to impose itself or its timelines upon parties engaged in collective bargaining. It will be several years before SERB and the Ohio law have established a track record.

ACK:jb

August 27, 1984

TO: Advisory Council on Bargaining Impasse Resolution

FROM: Gary Bastian

RE: Collective bargaining laws in other states

A. INTRODUCTION

This report is not intended to be a detailed survey of laws granting public employees collective bargaining rights. The purpose is to provide an overview of the provisions of the various state laws granting teachers, principals and assistant principals the right to bargain with public employers over the terms and conditions of employment.

Likewise, this report is not intended to discuss the merits or theories of various impasse resolution procedures. An assumption is made that most council members have some familiarity with the collective bargaining provisions.

The following terms will be used frequently in this report.

(a) Mediation: "A means of settling labor disputes whereby the contending parties use a third person-called a mediator-as a go-between."

(b) Fact Finding: "Identification of the major issues in a particular bargaining impasse dispute and resolution of factual differences by one or more impartial fact finders. The process will usually include non-binding recommendations issued by the fact finder in an attempt to resolve the impasse.

(c) Arbitration: "A procedure in which a neutral third party, acting under authority from both parties to a dispute, hears both sides of a controversy and issues an award, usually accompanied by a decision. Binding arbitration is where the decision is binding upon both parties. Compulsory arbitration is that required by law and voluntary is agreed to by the parties."

(d) Interest Arbitration: "The resolution of disputes over new contract terms through arbitration."

--Definitions taken from Public Employee Bargaining, Vol. 1, Section 300, "Labor Terms," Commerce Clearing House.

The summaries contained in this report were taken from two loose leaf reporters, and were not taken from the actual provisions of state law. The sources are:

(1) Labor Law, Vol. 10, Chapters 54 to 57, by Ted Kheel, updated February, 1984.

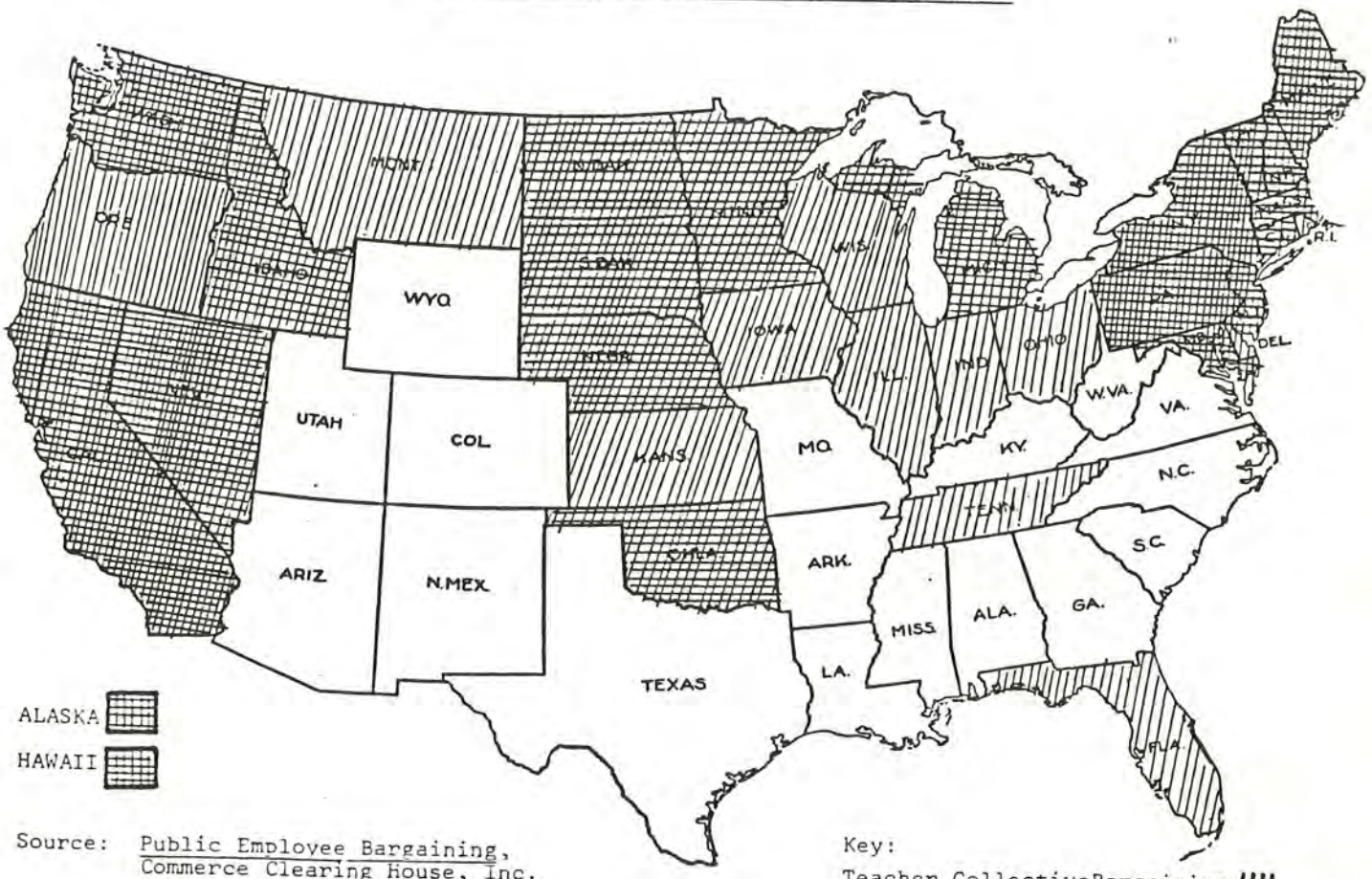
(2) Public Employee Bargaining, Volumes 1 and 2 by Commerce Clearing House, Inc.

B. BACKGROUND:

According to Kheel's Labor Law, thirty-nine states have enacted various forms of collectively bargaining legislation for all or specified classes of public employees. The laws will vary from "meet and confer" status ("An obligation on an employer to meet...and discuss recommendations...submitted by a union with no duty to reduce...to writing." :CCH p. 888) for firefighters to full meet and negotiate status involving various arrangements of mediation, fact finding, arbitration and strikes.

Thirty-three states have statutory provisions relating to certificated professionals employeed by school districts. Twenty-one of these states extend the collective bargaining privilege to principals or assistant principals (referred to as administrator, supervisors, or certificated non-teaching professionals) under various state laws.

COLLECTIVE BARGAINING RIGHTS FOR TEACHERS AND PRINCIPALS AND ASSISTANT PRINCIPALS



Source: Public Employee Bargaining, Commerce Clearing House, Inc.

Key:
Teacher CollectiveBargaining ////
Principal Collective Bargaining ≡

C. STATE BY STATE SUMMARY: (TEACHER IMPASSE PROCEDURES)

ALASKA:
1. Mediation - either party can request
2. Fact Finding - No
3. Arbitration - If mediation report rejected, Governor can require non-binding arbitration
4. Right to strike

CALIFORNIA
1. Mediation - Either party can request
2. Fact Finding - Mediator or either party can request fact finding
3. Arbitration - Not required
4. No right to strike

CONNECTICUT
1. Mediation - Either party can request or statutory time will require
2. Fact Finding - Either or both can request fact finding
3. Arbitration - Either party can request binding arbitration
4. No right to strike

DELAWARE
1. Mediation - Either party can request or statutory time will require
2. Fact Finding - Initiated by the parties, or by mediator
3. Arbitration - No provision
4. No right to strike

FLORIDA
1. Mediation - Either party can initiate
2. Fact Finding - Initiated by PERC
3. Arbitration - No provision
4. No right to strike

HAWAII
1. Mediation - Either party can request
2. Fact Finding - After 15 days of impasse PERB appoints Fact Finding Board
3. Arbitration - After 30 days of impasse parties can agree to binding arbitration
4. Right to strike matures 60 days from Fact Finding Board report and with 10 day notice

IDAHO
1. Mediation - Either party can request
2. Fact Finding - Either party can request after mediation
3. Arbitration - No provision
4. No right to strike

ILLINOIS
1. Mediation - Either party can request
2. Fact Finding - Parties can mutually agree to Fact Finding which is advisory
3. Arbitration - Parties can agree to binding arbitration
4. Right to strike

INDIANA
1. Mediation - Available, but can be by-passed if parties ask for Fact Finding
2. Fact Finding - available
3. Arbitration - Parties can agree to arbitration
4. No right to strike

IOWA
1. Mediation - Either party can request
2. Fact Finding - Takes place if mediation doesn't resolve impasse
3. Arbitration - Either party can request binding arbitration
4. No right to strike

KANSAS
1. Mediation - Either party may request
2. Fact Finding - Either party may request Fact Finding after 10 days of mediation
3. Arbitration - No provision
4. No right to strike

MAINE
1. Mediation - Either party can request
2. Fact Finding - Can be used
3. Arbitration - 45 days after Fact Finding Report, parties can jointly request arbitration
4. No right to strike

MARYLAND
1. Mediation - Parties may jointly consent to mediation report due within 30 days
2. Fact Finding - No provision
3. Arbitration - Not mentioned in law
4. No right to strike

MASSACHUSETTS
1. Mediation - Joint request for mediation
2. Fact Finding - Joint request for Fact Finding, non-binding
3. Arbitration - Parties can agree to binding arbitration
4. No right to strike

MICHIGAN
1. Mediation - Available if parties request
2. Fact Finding - Non-binding, jointly requested
3. Arbitration - Not required by law
4. No right to strike

MINNESOTA
1. Mediation - Either party can request
2. Fact Finding - No provision
3. Arbitration - Either party can request binding arbitration
4. Right to strike

MONTANA
1. Mediation - Parties request mediation, mediator report on progres must be made within 30 days
2. Fact Finding - Either party may petition for Fact Finding. Fact finder must issue report within 20 days
3. Arbitration - Parties can agree to binding arbitration
4. Right to strike

NEBRASKA
1. Mediation - Available
2. Fact Finding - Available, but not binding
3. Arbitration - No provision
4. No right to strike

NEVADA
1. Mediation - Required by law if no agreement by March 1
2. Fact Finding - Either party maysubmit impasse to Fact Finder between April 25th and May 25th; findings and recommendations are binding if parties agree
3. Arbitration - No provision
4. No right to strike

NEW HAMPSHIRE
1. Mediation - Parties can request, becomes compulsory if no agreement within 90 days of budget time
2. Fact Finding - Parties can select, if no agreement within 45 days of budget time
3. Arbitration - No provision
4. No right to strike

NEW JERSEY
1. Mediation - Either party may request up to 90 days before budget date, then mandatory
2. Fact Finding - Either party may request up to 60 days before budget date, then mandatory
3. Arbitration - Parties can agree to binding arbitration
4. No right to strike

NEW YORK
1. Mediation - Either party can request
2. Fact Finding - Required if impasse continues
3. Arbitration - Parties can agree to arbitration
4. No right to strike

NORTH DAKOTA
1. Mediation - Available to parties
2. Fact Finding - Either party can request Fact Finding
3. Arbitration- No provision
4. No right to strike

OHIO
1. Mediation - Parties can request mediation
2. Fact Finding - Initiated by mediator, Fact Finding Board must report within 14 days
3. Arbitration - Parties may agree to binding arbitration if they have gone through Fact Finding or contract has expired.
4. Right to strike

OKLAHOMA
1. Mediation - No provision
2. Fact Finding - Required procedure if impasse continues
3. Arbitration - No provision
4. No right to strike

OREGON
1. Mediation - Either party can request mediation
2. Fact Finding - If no resolution within 15 days of mediation, either party or both may request Fact Finding
3. Arbitration- Parties can agree to binding arbitration
4. Right to strike

PENNSYLVANIA
1. Mediation - Both parties must call for mediation
2. Fact Finding - If no agreement in mediation, Fact Finding begins upon PLRB discretion
3. Arbitration - Parties may agree to binding arbitration
4. Right to strike

RHODE ISLAND
1. Mediation - Either party may request after 30 days of bargaining
2. Fact Finding - No provision
3. Arbitration - May agree to binding arbitration
4. No right to strike

SOUTH DAKOTA
1. Mediation - Either party can request
2. Fact Finding - No provision
3. Arbitration - No provision
4. No right to strike

TENNESSEE
1. Mediation - Either party may request
2. Fact Finding - Either party may request advisory Fact Finding
3. Arbitration - No provision
4. No right to strike

VERMONT
1. Mediation - Either or both parties can request
2. Fact Finding - Either may request Fact Finding, not binding
3. Arbitration - No provision
4. Right to strike

WASHINGTON
1. Mediation - Either party can declare impasse and request mediation
2. Fact Finding - If no agreement within 10 days, either party can request Fact Finding
3. Arbitration - No provision
4. No right to strike

WISCONSIN
1. Mediation - Voluntary
2. Fact Finding - Either, or both, may request Fact Finding
3. Arbitration - Either party may request final offer, mediation-arbitration
4. Right to strike, parties can agree to impasse procedure which includes right to strike

STATE BY STATE SUMMARY - RECAP:

1. Mediation: Maryland, South Dakota

2. Fact Finding: Oklahoma

3. Mediation/Fact Finding: California, Delaware, Idaho, Kansas, Michigan, Nevada, North Dakota, Tennessee, Vermont and Washington

Source: Public Employee Bargaining, Sections 400, 600 and 4,000, Commerce Clearing House, Inc.

4. Mediation/Arbitration: Alaska, Minnesota, Nebraska, and Rhode Island

5. Mediation/Fact Finding Arbitration: Conneticut, Hawaii, Illinois, Indiana, Iowa, Maine, Massachusettes, Montana, New Jersey, New York, Ohio, Oregon and Wisconsin

6. Mediation/Fact Finding/Other: Florida and New Hampshire

D. PRINCIPALS AND ASSISTANT PRINCIPALS

Twenty-one states permit principals and assistant principals to bargain. Twelve states exclude principals and assistant principals from the collective bargaining process. (Delaware, Florida, Indiana, Iowa, Illinois, Kansas, Montana, Ohio, Oregon, Rhode Island, Tennessee and Wisconsin.)

Twelve states (Connecticut, Hawaii, Maryland, Minnesota, Nebraska, Nevada, New Hampshire, North Dakota, Oklahoma, Pennsylvania, South Dakota and Vermont) require supervisors (or if defined administrators or managerial) to be in separate units. In some states they can be in the same unit as teachers. Other states allow them to be voted out, or to opt out, of the teachers' unit.

E. CONCLUSION

Each state has a unique collective bargaining procedure that is a result of their political process. Only Alaska, Hawaii, Illinois, Minnesota, Montana, Ohio, Oregon, Pennsylvania, Vermont and Wisconsin allow the ultimate impasse procedure--the right to strike.

Several states allow their public employees to proceed with mediation and/or fact finding, but if impasse continues after good faith attempts to reach agreement the legislative body can set the pay, benefits and conditions of employment without regard to the employees' positions.

There are provisions of state laws that provide for binding fact finding or binding arbitration. In some states the fact finders' report is one position for arbitrators to consider if the impasse is sent to final offer arbitration.

Many states have statutory timelines for mediation, fact finding and arbitration. Statutory dates often require certain impasse procedures to begin or end at the dates pegged to the time the school district's budget must be finalized.

Once the Advisory Council begins to identify study areas, more detail can be provided on what other states provide in their teacher collective bargaining laws. In particular, we can provide details on the procedures, the time requirements and the respective rights and duties of each party.

SOLICITING INFORMATION FROM OTHER STATES

General Purpose: Select potential alternatives to current Minnesota impasse procedures and see how well the alternatives have worked in other states.

A. Contacts

NCSL ?
ECS ?

1. Employee representatives
2. School board organizations
3. Labor agency analogous to our BMS
4. Legislative staff

B. Topics

1. Negotiations: When do negotiations generally begin? When does most serious bargaining take place? What factors external to the negotiations influence when serious bargaining takes place (e.g. legislative appropriations, finalization of the budget, etc.)
Orientation/educ. sessions for negotiators?
2. Mediation: What percentage of contract negotiations proceed to mediation? Does the law mandate when mediation must occur and for how long? If so, what do the parties and the labor agency think of these mandates? If not, when and for how long does mediation generally occur? Is mediation generally helpful? If not, why not? What percentage of negotiations proceeding to mediation are settled there?
3. Factfinding: If the state uses factfinding, what percentage of negotiations proceed to factfinding? What do the parties and the labor agency think of the laws governing when they can (or in some cases when they must) use factfinding? Does factfinding tend to produce quicker settlements than would take place without it? How often do the parties accept the recommendation of the factfinder? If parties have a choice about using factfinding or not, what factors generally govern how they make this choice? Of the total number of strikes taking place, in how many cases was factfinding used first?
4. Arbitration: What is the format? What do the parties and the labor agency think of the format? What must occur before the parties can use arbitration? Do they have to use arbitration? How many impasses are settled through arbitration?
5. Educational System: Number of school districts? Extent of unionization? Law governing makeup of days missed due to strikes, school aids lost due to strike days? When are budgets set in relation to bargaining schedule? How much $ comes from state? Per pupil expenditures ranking w/ teacher salaries?
6. General: Results of any studies? Are any major changes currently under consideration? What changes would the parties and the labor agency make if they could?

MINNESOTA
LEGISLATIVE COMMISSION ON EMPLOYEE RELATIONS
Tom Nelson, Chairman — Room 301, State Capitol — Saint Paul 55155
(612) 296-4871
Jermaine Foslien, Administrative Assistant — (612) 296-2963
Nicholas D. Coleman, Past Chairman

October 22, 1984

TO: Members, School Bargaining Impasse Council

FROM: Ken Dau-Schmidt, Anne Knapp, Mark Shepard

RE: Responses to questions from October 10 meeting

The attached materials are in response to three sets of issues raised at the October 10 meeting of the council.

I. The percentage of eligible students enrolled in private schools in Minnesota and other states

II. The percentage of state budgets devoted to K-12 education in other states

III. The regulation of the use of "outside" negotiators in other states

/dr
Attachment

I. PRIVATE SCHOOL ENROLLMENT IN OTHER STATES

The chart below lists the percentage of school children (K-12) in each state that attend private schools. We had some difficulty obtaining this information. The percentages presented below are obtained by comparing enrollment in private schools in the fall of 1980 to enrollment in public schools in the fall of 1981. Thus the information is not totally accurate, but should give the council some idea of the variation among states. This information was obtained from the attached tables compiled by the United States Department of Education, National Center for Education Statistics.

United States	11.0		
Alabama	7.8	Missouri	13.4
Alaska	4.0	Montana	4.8
Arizona	7.4	Nebraska	12.7
Arkansas	4.0	Nevada	4.2
California	11.2	New Hampshire	11.2
Colorado	6.1	New Jersey	16.1
Connecticut	14.9	New Mexico	6.3
Delaware	19.7	New York	17.4
District of Columbia	18.3	North Carolina	5.1
Florida	12.1	North Dakota	8.3
Georgia	7.3	Ohio	12.4
Hawaii	18.6	Oklahoma	2.7
Idaho	2.8	Oregon	5.7
Illinois	15.4	Pennsylvania	17.9
Indiana	8.9	Rhode Island	17.3
Iowa	9.7	South Carolina	7.5
Kansas	7.6	South Dakota	8.0
Kentucky	9.6	Tennessee	7.9
Louisiana	16.9	Texas	4.8
Maine	7.8	Utah	1.5
Maryland	12.9	Vermont	7.5
Massachusetts	12.2	Virginia	7.1
Michigan	10.5	Washington	6.9
Minnesota	10.8	West Virginia	3.2
Mississippi	9.6	Wisconsin	16.8
		Wyoming	3.0

Table 20.—Enrollment in public elementary and secondary schools, by level and by State: Fall 1981 and fall 1982

State or other area	Fall 1981			Fall 1982		
	Total	Kindergarten through grade 8	Grades 9–12 and postgraduate	Total	Kindergarten through grade 8	Grades 9–12 and postgraduate
1	2	3	4	5	6	7
United States	**40,148,373**	**27,289,119**	**12,879,254**	**39,643,476**	**27,142,803**	**12,500,673**
Alabama	743,448	518,534	224,914	724,037	509,952	214,085
Alaska	90,858	63,756	27,102	89,413	63,211	26,202
Arizona	507,199	355,275	151,924	510,296	359,229	151,067
Arkansas	437,121	305,030	132,091	432,565	304,443	128,122
California	4,046,156	2,769,788	1,276,368	4,065,486	2,801,818	1,263,668
Colorado	544,174	376,043	168,131	545,209	379,599	165,610
Connecticut	505,386	347,490	157,896	486,470	335,997	150,473
Delaware	95,072	60,287	34,785	92,646	59,527	33,119
District of Columbia	94,975	67,547	27,428	91,105	64,696	26,409
Florida	1,487,721	1,035,323	452,398	1,484,734	1,038,998	445,736
Georgia	1,056,117	736,565	319,552	1,053,689	739,178	314,511
Hawaii	162,805	109,272	53,533	162,024	110,202	51,822
Idaho	204,524	145,547	58,977	202,973	145,416	57,557
Illinois	1,924,084	1,304,192	619,892	1,880,289	1,286,858	593,431
Indiana	1,025,172	690,810	334,362	999,542	663,547	335,995
Iowa	516,216	341,218	174,998	504,983	337,728	167,255
Kansas	409,909	282,014	127,895	407,074	282,879	124,195
Kentucky	658,350	458,781	199,569	651,084	457,505	193,579
Louisiana	782,053	543,275	238,778	775,666	555,978	219,688
Maine	216,293	148,769	67,524	211,986	146,848	65,138
Maryland	721,841	472,288	249,553	699,201	461,794	237,407
Massachusetts	996,555	645,218	351,337	908,984	596,990	311,994
Michigan	1,803,034	1,182,083	620,951	1,761,521	1,156,597	604,924
Minnesota	733,741	480,008	253,733	715,190	471,670	243,520
Mississippi	471,615	328,016	143,599	468,294	326,998	141,296
Missouri	818,705	553,012	265,693	802,535	546,751	255,784
Montana	153,435	106,235	47,200	152,335	106,869	45,466
Nebraska	273,340	186,755	86,585	269,009	186,265	82,744
Nevada	151,339	102,635	48,704	151,104	96,812	54,292
New Hampshire	163,827	109,959	53,868	160,197	107,349	52,848
New Jersey	1,199,000	787,700	411,300	1,172,520	776,608	395,912
New Mexico	268,091	187,192	80,899	268,632	189,968	78,664
New York	2,760,774	1,778,207	982,567	2,718,678	1,761,336	957,342
North Carolina	1,108,960	772,876	336,084	1,096,815	768,755	328,060
North Dakota	117,708	79,579	38,129	117,078	81,171	35,907
Ohio	1,898,501	1,255,096	643,405	1,860,245	1,258,642	601,603
Oklahoma	582,572	408,579	173,993	593,825	423,140	170,685
Oregon	457,165	315,388	141,777	448,184	308,964	139,220
Pennsylvania	1,839,015	1,186,821	652,194	1,783,969	1,157,356	626,613
Rhode Island	142,815	91,642	51,173	139,362	89,467	49,895
South Carolina	609,158	420,664	188,494	608,518	424,362	184,156
South Dakota	125,657	85,887	39,770	123,897	85,990	37,907
Tennessee	838,297	593,556	244,741	828,264	590,839	237,425
Texas	2,935,547	2,098,126	837,421	2,985,659	2,149,813	835,846
Utah	355,554	261,722	93,832	370,183	275,145	95,038
Vermont	93,183	64,988	28,195	91,454	64,181	27,273
Virginia	989,548	690,736	298,812	975,727	682,630	293,097
Washington	750,188	513,018	237,170	739,215	507,515	231,700
West Virginia	377,772	266,944	110,828	375,115	266,950	108,165
Wisconsin	804,262	512,831	291,431	784,830	503,871	280,959
Wyoming	99,541	71,842	27,699	101,665	74,396	27,269
Outlying areas	818,074	603,685	214,389	804,824	595,863	208,981
American Samoa	9,896	7,350	2,546	[1] 10,000	[1] 7,400	[1] 2,600
Guam	25,084	18,932	6,152	25,526	19,018	6,508
Northern Marianas	5,300	3,964	1,336	[1] 5,300	[1] 4,000	[1] 1,300
Puerto Rico	721,419	[2] 528,151	[2] 193,268	708,299	521,807	186,492
Trust Territory	30,850	[2] 25,700	[2] 5,150	[1] 30,000	[1] 25,000	[1] 5,000
Virgin Islands	25,525	19,588	5,937	25,699	18,638	7,061

[1] Data estimated by the National Center for Education Statistics.

[2] Distribution by level estimated by the National Center for Education Statistics.

SOURCES: U.S. Department of Education, National Center for Education Statistics, survey of "Common Core of Data;" and estimates of the National Center for Education Statistics.

Table 37.—Enrollment in private elementary and secondary schools,[1] by affiliation of school and by State: Fall 1980

State	Total	Not church-related	Church-related								
			Total	Baptist	Catholic	Christian	Episcopal	Jewish	Lutheran	Seventh-Day Adventist	Other
1	2	3	4	5	6	7	8	9	10	11	12
United States	4,961,755	795,260	4,166,495	232,125[4]	3,138,209	111,810	76,388	84,542	218,278	81,507	223,636
Alabama	62,669	24,653	38,016	7,016	14,720	3,206	1,058	62	1,319	988	9,647
Alaska	3,800	568	3,232	830	1,029	731	---	---	64	161	417
Arizona	40,261	10,946	29,315	1,248	18,306	2,885	551	316	2,072	1,267	2,670
Arkansas	18,423	5,195	13,228	1,340	7,223	153	642	---	626	798	2,446
California	513,709	103,134	410,575	28,198	262,690	29,877	6,984	6,250	24,295	18,811	33,470
Colorado	35,250	7,257	27,993	2,244	17,120	1,087	193	550	2,783	1,459	2,557
Connecticut	88,404	21,005	67,399	250	61,760	372	1,873	885	814	381	1,064
Delaware	23,374	4,352	19,022	1,700	14,725	554	230	114	---	39	1,660
District of Columbia	21,203	4,636	16,567	152	12,214	210	2,184	---	---	499	1,308
Florida	204,988	50,084	154,904	31,704	74,268	7,580	9,072	3,791	9,337	3,688	15,464
Georgia	82,505	44,453	38,052	11,615	13,297	4,390	1,208	655	433	2,400	4,056
Hawaii	37,147	13,166	23,981	2,570	15,059	1,283	1,731	---	1,337	939	1,062
Idaho	5,839	377	5,462	65	2,189	524	---	---	620	1,200	864
Illinois	349,463	25,782	323,681	4,683	278,240	2,951	212	2,587	26,720	2,154	6,134
Indiana	100,234	7,433	92,801	8,629	63,237	2,887	455	359	9,226	1,229	6,779
Iowa	55,227	1,342	53,885	1,071	44,790	207	---	18	2,640	293	4,866
Kansas	33,889	3,514	30,375	320	25,610	1,021	183	167	1,759	408	907
Kentucky	69,728	11,033	58,695	3,977	50,226	1,737	82	132	179	735	1,627
Louisiana	158,921	30,176	128,745	4,451	112,099	649	4,642	110	1,994	1,284	3,516
Maine	17,540	8,002	9,538	867	6,733	591	---	33	---	291	1,023
Maryland	106,447	18,889	87,558	4,755	68,168	1,429	1,897	3,082	2,979	2,407	2,841
Massachusetts	138,333	28,405	109,928	316	104,720	386	901	1,582	---	1,088	935
Michigan	211,871	15,978	195,893	13,300	129,992	1,994	491	871	25,089	5,587	18,569
Minnesota	88,966	4,441	84,525	2,811	64,418	1,845	939	249	10,909	662	2,692
Mississippi	50,118	30,336	19,780	3,105	11,342	826	2,008	---	---	474	2,025
Missouri	126,319	8,857	117,462	2,668	95,194	1,104	300	312	11,399	1,335	5,152
Montana	7,668	925	6,743	201	4,684	16	---	---	535	528	779
Nebraska	38,574	1,367	37,207	245	30,169	261	315	25	4,944	955	293
Nevada	6,599	944	5,655	274	4,305	248	---	63	330	215	220
New Hampshire	20,721	5,886	14,835	838	11,239	555	852	---	---	71	1,280
New Jersey	229,878	23,463	206,415	1,701	189,876	1,764	408	6,427	1,341	1,059	3,839
New Mexico	18,027	5,173	12,854	786	9,217	740	20	80	224	523	1,264
New York	579,670	70,694	508,978	4,303	425,981	2,336	5,296	47,815	10,916	3,483	8,846
North Carolina	58,078	24,605	33,473	16,373	9,323	1,835	1,071	101	797	1,840	2,133
North Dakota	10,659	1,571	9,088	---	8,230	---	---	---	538	255	65
Ohio	268,357	14,294	254,063	6,336	227,888	6,318	117	2,064	5,569	1,700	4,071
Oklahoma	16,335	2,218	14,117	237	7,381	1,206	2,494	39	657	1,077	1,026
Oregon	27,828	4,059	23,769	775	14,357	2,014	551	118	744	3,968	1,242
Pennsylvania	402,058	39,978	362,080	6,880	314,367	8,175	2,361	2,684	1,676	1,446	24,491
Rhode Island	29,875	2,643	27,232	70	25,015	17	380	284	110	---	1,356
South Carolina	49,619	24,354	25,265	9,448	7,555	2,947	2,699	153	508	194	1,761
South Dakota	10,898	1,790	9,108	72	6,882	471	59	---	510	146	968
Tennessee	71,617	20,794	50,823	13,636	15,185	2,256	2,132	356	1,543	3,372	12,343
Texas	148,534	17,994	130,540	11,102	79,766	3,058	13,562	1,475	8,437	2,799	10,341
Utah	5,555	1,862	3,693	---	3,055	---	---	---	371	148	119
Vermont	7,555	3,264	4,291	69	4,082	35	46	---	---	59	---
Virginia	75,069	26,807	48,262	10,961	23,060	2,053	5,454	260	1,773	1,177	3,524
Washington	55,950	8,901	47,049	3,047	27,358	2,958	582	228	2,401	4,355	6,122
West Virginia	12,608	840	11,768	1,865	8,466	876	---	---	---	329	232
Wisconsin	162,361	6,060	156,301	2,485	110,014	1,192	155	245	37,551	1,089	3,570
Wyoming	3,036	760	2,276	538	1,387	---	---	---	209	142	---

[1] Includes enrollment in special education, vocational/technical, and alternative schools.

NOTE.—Data have been revised slightly since originally published. Data represent an undercount of approximately 5 percent because some schools were not included in the survey universe.

SOURCE: U.S. Department of Education, National Center for Education Statistics, derived from the survey of private elementary and secondary schools, 1980–81.

II. State Expenditures on K-12 Education, 1981

The table below lists total state expenditures, state expenditures on K-12 education, and education expenditures as a percent of state expenditures for FY 1981. These statistics came from two separate government publications and should be viewed at best as extremely rough estimates. They must be viewed in conjunction with statistics on the proportion of school funding derived from state funds (as opposed to federal or local funds) and with the knowledge that some state funding of K-12 education does not show up in these statistics (the Minnesota Homestead Credit is a good example of this).

(in thousands)

	Total State* Expenditures	K-12** Expenditures	K-12 as % of Total
California	$30,224,353	$ 7,371,100	24%
Iowa	2,781,297	561,035	20
Montana	714,789	196,970	28
New York	20,268,058	3,990,151	20
Oregon	2,873,998	446,200	16
Pennsylvania	10,955,882	2,444,957	22
Wisconsin	6,838,350	827,731	16
Minnesota	4,549,838	1,321,529	29

* Total state expenditures were calculated by using data in the Department of Commerce's State Government Finances in 1981. The expenditures do not include money derived from intergovernmental revenue.

** K-12 expenditure data came from the National Center for Education Statistics' Digest of Education Statistics 1983-1984, Table 63 entitled "Revenue and Non Revenue Receipts of Public Elementary and Secondary Schools, by Source and by State, 1980-81.

AK:lkl
10-23-84

III. THE REGULATION OF OUTSIDE NEGOTIATORS

In response to Representative Levi's questions concerning the regulation of outside negotiators in other states we called the Public Employment Relations Board in the eight states we had previously called and asked the following questions:

(1) Do either school boards or teachers in your state make much use of lawyers or other "outsiders" as negotiators?

(2) If yes, does this cause any problems?

(3) Are there any legal restrictions on the use of "outside" negotiators in your state?

With the exception of Montana, all respondents indicated that the use of outside negotiators was common or even "extensive" for both school boards and teachers in their state. School boards tended to use private lawyers while teacher locals used professional staff from their state organization.

Most respondents indicated that there were both pros and cons to the use of outside negotiators and that on the whole they were not a problem. On the pro side, outside professional negotiators can add expertise, continuity to bargaining (since some professional negotiators represent a school board or local over several changes in school board or teacher personnel), and may inject a more flexible personality to school board or teacher intransigence. On the con side professional negotiators may not know the true desires of the parties, can add to game playing, can have personal incentive to prolong negotiations if they're paid by the hour, and can add an intransigent personality to what was previously a flexible relationship. Most respondents felt that in some circumstances outside negotiators helped negotiations while in others they hurt them without any strong general rule as to whether outside negotiators were good or bad. The California respondent indicated that he thought outside negotiators hurt more than helped.

No states had restrictions on the use of outside negotiators. In fact the only state action on the question that we found was in California where the state will pay for the cost of outside negotiators, for both the school boards and teachers, if the expense is approved by the state comptroller.

October 22, 1984

TO: Members, Advisory Council on Bargaining Impasse Resolution

FROM: Marsha Gronseth, Dan Mott, Elizabeth Rice, Bill Marx

RE: Budget setting timelines and education funding in selected states

The attached materials summarize:

- timeframes in which the education aids budgets are set at the state level
- sources that local school districts have for raising revenue
- limits on the amounts of revenue raised by school districts

In general, there does seem to be a relationship between when the education aids budgets are set at the state level and when the serious bargaining begins. However, this relationship varies from state to state.

The source of most local school district revenue is property taxes, although some additional options exist in Iowa and Pennsylvania. Limits on local school district options vary from very strict limits in California to no limits in several states. Districts in some states have no formal limits but excess amounts must receive voter approval.

IOWA

STATE BUDGET TIMELINE

-- By September 15 of each year, the state comptroller must establish the state growth rate (percentage) for K-12 funding for the school year beginning the following July. There is no specific legislative appropriation.

-- Any reductions in the level of state funding must be made by March 15. This was done by executive order during a recent budget crisis.

-- Negotiations generally begin in September or October and must be completed by March 15.

REVENUE AVAILABLE TO SCHOOL DISTRICT

-- The minimum level of state funding for each district is determined by multiplying the "state cost per pupil unit" (determined as of 1972) by an annual "percentage growth rate."

-- The local share of revenue comes primarily from property taxes (90%) but some districts (approx 10%) make an "enrichment levy," which is subject to voter approval. Half of this levy is raised by a local surcharge on state income tax and half is raised by property taxes.

-- Districts may also levy for gifted and talented programs, dropout programs and school improvement programs. The amounts are limited to a certain percentage of growth.

OREGON

STATE BUDGET TIMELINE

-- The state K-12 budget is finalized by the Legislature by June of the odd-numbered years and is set for a two-year period, beginning in July of that odd-numbered year.

-- However, the guaranteed level of funding for the districts is determined by an inflation factor (the lesser of the CPI or 9%) which is set in January. School districts must be notified of their funding level growth by March.

-- It has been necessary to modify the level of funding during the budget crises in recent years.

-- Serious bargaining generally takes place during January through March, and in the past, most settlements have come in June.

REVENUE AVAILABLE TO SCHOOL DISTRICTS

-- The minimum level of state guaranteed funding for each district is determined by multiplying a cost level per pupil unit (determined in 1979) by an annual inflation factor.

-- The local share of revenue is generated by property taxes.

-- There is no cap on expenditure levels but additional levies made by local school boards must be approved by the voters.

STATE: Pennsylvania

State Budget Timelines

- state aid subsidy set by the legislature annually, usually in late June

- funds are appropriated when subsidy is set, planning figures are not set in advance

- most negotiations are not settled until September
- education aid subsidies have not been protected from budget cuts

Revenue Available To School Districts

- local share of educational revenue is primarily property tax, however, districts share 10% wage tax with municipalities, have access to a $10 per capita tax aid and occupation tax (fee for lawyers, accountants, etc., to practice)

- state establishes a minimum amount of revenue available to districts, however, there is no cap on what districts can raise through local taxes

STATE: California

State Budget Timelines

- revenue available to school districts is set annually by the legislature, usually between June 15-July 1.

- ongoing formula is in state law but is ignored because it has not been fully funded in recent years

- most contracts, except for economic items are settled before the legislature sets revenue figures, most multi-year contracts contain reopeners on economic items

Revenue Available To School Districts

- since passage of Proposition 13, all school district revenue is controlled by the state

- property tax levies are shared by all local governments but school districts have no access to additional revenue above the state-set formula except for foundations, fundraising and admission to school events

New York

State Budget timeline

* The education aids budget is usually set by April 1 of each year. It is an annual budget.

* The state has not been forced to reduce education aids to meet budget shortfalls. However, only 25% of the current year's appropriation is used to meet current expenses. The remaining 75% is used to pay last year's expenses.

Revenue available to school districts

* The state establishes a minimum guaranteed amount of revenue per pupil.

* The local share of revenue for education consists solely of property taxes.

* There may or may not be a limit of the amount a district can spend.

  1. If the school district is a city, there is a levy limit.

  2. If the district is not a city, there is no levy limit and a referendum process is used.

* Revenue raised through an increased levy is all local. There is no state participation.

Wisconsin

State budget timeline

* The education aids budget is usually set by July 1st of the odd-numbered year. It is a biennial budget.

* The education aids budget is viewed as being very stable and predictable.

* Appropriations are made simultaneously in the first year of the budget.

* Education aids have not been reduced to meet budget shortfalls.

* The executive branch provides districts with assumptions for the purpose of setting levies in the even-numbered years.

Revenue available to school districts

* The state guarantees a minimum per pupil property valuation for each district. The effect is similar to a per pupil revenue guaranty.

* The local share of revenue for education consists solely of property taxes.

* A district is free to choose its spending level within a two-tier system. As the spending level increases, both property taxes and state aids increase proportionately.

* There is no formal cap on how much revenue may be raised locally. Levy limits were repealed last year. However, there is a disincentive for districts to raise property taxes beyond a pre-determined level. The disincentive is a loss of state aid.

State: MONTANA

STATE BUDGET TIMELINE -- Appropriations for two years are made by the end of March each odd-numbered year. (Previous report indicated serious bargaining begins in February or March and most contracts are settled by May.)

-- Governor's recommendations for funding are made public in early December.

-- Appropriations in March are for the school year beginning that same year and for the following school year.

-- A School Fund receives money from several sources and is supplemented by general fund appropriations in an amount needed to meet the scheduled level of revenue per pupil. If, at any time, there is a deficiency in the School Fund, a statewide property tax is automatically implemented to eliminate the deficit. As a result, adequate funding is assured.

-- There have been no cuts in state aid to education recently. The automatic property tax to eliminate a School Fund deficit was last triggered about ten years ago.

REVENUE AVAILABLE TO SCHOOL DISTRICTS

-- All local money available to school districts is derived from property taxes with some very minor exceptions.

-- The state guarantees a minimum amount of revenue to each school district.

-- All districts must levy at least 45 mills. If a district receives its scheduled amount with fewer mills the excess proceeds are distributed to other poorer districts.

-- There is a maximum amount districts have available without voter approval. There is a second maximum amount of revenue districts have available subject to voter approval.

State: MICHIGAN

STATE BUDGET TIMELINE -- Legislature attempts to pass education aids appropriations by June or July but it does not always make it. Contract expiration dates and duration are negotiable. Some expire on August 31 and some at the end of the school year. When the state economy is healthy, contracts are often for two and three years. One year contracts are more common when revenues are uncertain. Many contracts are settled by early September but settlements may be slower when the state economy is not healthy.

-- The bill passed in June or July appropriates money for the school year beginning that September.

-- Governor's recommendations are made in January or February.

-- The state's fiscal year begins October 1. School district fiscal year begins on July 1. Contract expiration date is negotiable and often expire August 31.

-- Appropriations and levels of funding are established annually for one year.

-- State aids have been cut approximately three times in the last five years. The last two years aids were increased.

REVENUE AVAILABLE TO SCHOOL DISTRICTS

-- All local money available to school districts is derived from property taxes with some minor exceptions.

-- The state guarantees a minimum amount of revenue per pupil.

-- Some districts (over 100 of 570) do not receive equalization aid because they are out-of-formula. About 66% of their categorical aid is recaptured by the state.

-- Recent legislation for the state and political subdivisions prohibits all tax increases, except the state income tax, unless the voters approve of the increase. The Michigan Constitution establishes a 50 mill limit.

Elizabeth V. Rice
Senate Counsel
October 22, 1984

OCTOBER 9, 1984

TO: Advisory Council on Bargaining Impasse Resolution

FROM: Marsha Gronseth, Legislative Analyst

STATEWIDE AVERAGE PER PUPIL EXPENDITURES AND TEACHER SALARIES IN THE 1983-1984 SCHOOL YEAR

	State	Expenditures Per Pupil in Average Daily Membership		State	Average Salary of Classroom Teachers
1.	Alaska	$7,026	1.	Alaska	$36,564
2.	New Jersey	4,943	2.	Michigan	28,877
3.	New York	4,845	3.	New York	26,750
4.	Wyoming	4,488	4.	California	26,403
5.	Connecticut	4,061	5.	Washington	24,780
6.	Hawaii	3,982	6.	Rhode Island	24,641
7.	Oregon	3,771	7.	Wyoming	24,500
8.	Delaware	3,735	8.	MINNESOTA	24,480
9.	Pennsylvania	3,725	9.	Hawaii	24,357
10.	Maryland	3,720	10.	Maryland	24,095
11.	Rhode Island	3,720	11.	Illinois	23,345
12.	Montana	3,631	12.	New Jersey	23,044
13.	Wisconsin	3,553	13.	Nevada	23,000
14.	Michigan	3,498	14.	Wisconsin	23,000
15.	Illinois	3,397	15.	Colorado	22,895
16.	MINNESOTA	3,376	16.	Oregon	22,833
17.	Kansas	3,361	17.	Pennsylvania	22,800
18.	Oklahoma	3,312	18.	Connecticut	22,624
19.	North Dakota	3,307	19.	Massachusetts	22,500
20.	Colorado	3,261	20.	Arizona	21,605
21.	Iowa	3,239	21.	Indiana	21,587
22.	Florida	3,201	22.	Ohio	21,421
23.	Massachusetts	3,176	23.	Delaware	20,925
24.	Vermont	3,148	24.	New Mexico	20,760
25.	Washington	3,106	25.	Montana	20,657
26.	Ohio	3,090	26.	North Dakota	20,363
27.	Virginia	2,967	27.	Utah	20,256
28.	Nebraska	2,927	28.	Iowa	20,140
29.	New Mexico	2,921	29.	Texas	20,100
30.	California	2,912	30.	Virginia	19,867
31.	Nevada	2,870	31.	Kentucky	19,780
32.	Maine	2,829	32.	Kansas	19,598
33.	Louisiana	2,821	33.	Florida	19,545
34.	New Hampshire	2,796	34.	Missouri	19,300
35.	Arizona	2,738	35.	Louisiana	19,100
36.	Indiana	2,730	36.	Nebraska	18,785
37.	Missouri	2,714	37.	Idaho	18,640
38.	Texas	2,670	38.	Georgia	18,505
39.	South Dakota	2,657	39.	Oklahoma	18,490
40.	West Virginia	2,587	40.	North Carolina	18,014
41.	Kentucky	2,550	41.	Alabama	18,000
42.	North Carolina	2,460	42.	Vermont	17,931
43.	South Carolina	2,431	43.	Tennessee	17,900
44.	Georgia	2,309	44.	South Carolina	17,500
45.	Arkansas	2,257	45.	West Virginia	17,482
46.	Idaho	2,219	46.	New Hampshire	17,376
47.	Tennessee	2,173	47.	Maine	17,328
48.	Alabama	2,102	48.	Arkansas	16,929
49.	Utah	1,992	49.	South Dakota	16,480
50.	Mississippi	1,962	50.	Mississippi	15,895
	AVERAGE	3,123		AVERAGE	21,235

Source: Education Commission of the States: School Finance at a Glance, 1983-84

OCTOBER 9, 1984

TO: Advisory Council on Bargaining Impasse Resolution

FROM: Marsha Gronseth, Legislative Analyst

RE: State Requirements for Length of School Year in the 50 States

State	Length of School Year		
	Pupil Contact	Non-Contact	Total
Alabama	175	5	180
Alaska	170	10	180
Arizona	175	School Dist. Option	175
Arkansas	175	5	180
California	175	School Dist. Option	175
Colorado	175	(9)	
Connecticut	180	School Dist. Option	180
Delaware	180	5	185
Florida	180	16	196
Georgia	180	10	190
Hawaii	175-180	varies	varies
Idaho	177	3	180
Illinois	176	4	180
Indiana	175	School Dist. Option	175
Iowa	179	1	180
Kansas	180	School Dist. Option	180
Kentucky	175	10	185
Louisiana	180	School Dist. Option	180
Maine	175	5	180
Maryland	180	School Dist. Option	180
Massachusetts	180	School Dist. Option	180
Michigan	180	School Dist. Option	180
MINNESOTA	170(165 for K)	5 (10 for kindergarten)	175
Mississippi	175	School Dist. Option	175
Missouri	174	School Dist. Option	174
Montana	173	7	180
Nebraska	175	7	182
Nevada	175	5	180
New Hampshire	180	School Dist. Option	180
New Jersey	180	School Dist. Option	180
New Mexico	180	4	184
New York	177	3	180
North Carolina	180	School Dist. Option	180
North Dakota	173	7	180
Ohio	175	School Dist. Option	175
Oklahoma	175	5	180
Oregon	175	School Dist. Option	175
Pennsylvania	180	School Dist. Option	180
Rhode Island	180	School Dist. Option	180
South Carolina	180	10	190
South Dakota	170	5	175
Tennessee	180	20	200
Texas	175	8	183
Utah	180	School Dist. Option	180
Vermont	175	School Dist. Option	175
Virginia	170	10	180
Washington	180	2	182
West Virginia	180	School Dist. Option	180
Wisconsin	180	School Dist. Option	180
Wyoming	175	5	180

Sources: Education Commission of the States and phone interviews.

NOTE: Non-contact days typically are used for in-service training, staff development and parent-teacher conferences.

October 19, 1984

TO: Advisory Council on Bargaining Impasse Resolution

FROM: Bill Marx, Committee Administrator
Marsha Gronseth, Legislative Analyst mg

RE: Proportion of school district revenues from federal, state and local sources

The attached chart shows the percentages of public school revenue from state, local, and federal sources. The source of this information is the Education Commission of the States. ECS obtains the information from the National Education Association. The NEA information is obtained from state education agencies or by NEA research estimates. Since this information for the 1983-84 school year was obtained in April, 1984, the figures for most states do not represent final data.

It is important to note that these percentages generally reflect portions of total school revenues but total revenue may not always be available for negotiations. For example, in Minnesota, total school revenue includes revenue for capital expenditure, debt service, community education and transportation. These revenues are not available to pay teachers' salaries. Furthermore, most of these funds tend to come primarily from local sources. So of the revenue available for negotiation, the percentage from state sources is higher than 54%. There may also be variations in how revenues are reported (i.e., is tax relief aid included in the state share or not counted as state aid to education?).

Most federal revenue for education is categorical so states with higher special populations (special education, vocational, Indian) tend to receive more federal revenue. However, because these percentages reflect proportions of federal, state and local shares within a state, a higher federal share figure does not necessarily reflect a higher level of federal education revenue coming into the state.

This chart should not be used to draw any specific conclusions about the sources of education revenue but rather to obtain a general comparison of revenue sources in the states.

BM/MG/fa

State	Sources of Revenue for 1983-84 School Year (percent)		
	Federal	State	Local
Alabama	13.1	67.3	19.6
Alaska	1.3	83.1	15.7
Arizona	8.5	52.3	39.2
Arkansas	12.5	54.3	33.1
California	6.9	67.0	26.1
Colorado	4.7	42.0	53.3
Connecticut	5.2	38.2	56.7
Delaware	9.4	67.6	23.1
Florida	8.2	54.5	37.4
Georgia	9.3	58.6	32.1
Hawaii	9.0	90.7	0.3
Idaho	7.1	64.1	28.8
Illinois	7.6	37.7	54.6
Indiana	5.7	53.6	40.7
Iowa	5.4	41.0	53.7
Kansas	5.0	44.2	50.8
Kentucky	10.5	70.9	18.6
Louisiana	8.8	59.4	31.8
Maine	7.8	50.9	41.3
Maryland	5.6	39.6	54.8
Massachusetts	4.5	41.3	54.1
Michigan	4.3	35.1	60.6
Minnesota	4.4	54.1	41.5
Mississippi	19.4	55.3	25.3
Missouri	7.2	39.9	52.9
Montana	9.1	45.3	45.6
Nebraska	6.3	28.5	65.2
Nevada	5.2	42.4	52.4
New Hampshire	3.7	7.1	89.2
New Jersey	3.8	39.3	57.0
New Mexico	10.8	77.7	11.5
New York	3.8	41.3	55.0
North Carolina	11.4	61.7	26.9
North Dakota	7.1	56.4	36.4
Ohio	5.2	43.9	50.9
Oklahoma	7.3	66.7	26.0
Oregon	5.6	28.8	65.6
Pennsylvania	4.3	45.4	50.3
Rhode Island	4.6	35.8	59.5
South Carolina	12.0	59.3	28.6
South Dakota	8.1	26.9	65.0
Tennessee	10.0	45.9	44.1
Texas	6.8	47.7	45.5
Utah	5.1	54.7	40.1
Vermont	5.7	33.8	60.5
Virginia	6.6	43.0	50.4
Washington	5.6	75.1	19.2
West Virginia	9.2	61.2	29.6
Wisconsin	4.4	37.9	57.7
Wyoming	2.6	29.6	67.8

Senate Counsel & Research
ROOM 123, CAPITOL
ST. PAUL, 55155

JOHN E. POST, DIRECTOR
(612) 296-0539

COUNSEL
(612) 296-2511

PETER S. WATTSON
JO ANNE ZOFF SELLNER
DANIEL P. MC GOWAN
KATHLEEN E. PONTIUS
DALE L. MC DONNELL
ALLISON WOLF
ELIZABETH V. RICE
JULIE A. BECK
BRAD S. ERVIN
BEVERLY CADOTTE OWEN
MICHAEL SCANDRETT
MARK J. HANSON

RESEARCHERS
(612) 296-7678

WILLIAM RIEMERMAN
JOYCE E. KRUPEY
FRANK FLY
DAVID GIEL
ANNE C. KNAPP
GREGORY C. KNOPFF
LAURA J. MILLER
JACK PAULSON
DWIGHT A. SMITH
JON STEVENSON
JOEL A. SUTTER

Senate
State of Minnesota

TO: Members of the Advisory Council on Bargaining Impasse Resolution

FROM: Elizabeth V. Rice, Senate Counsel EVR

DATE: October 22, 1984

SUBJ: State Rankings of Certain Performance Data

The Council asked for information concerning the quality of education in the various states. Quality of education is a subjective matter not amenable to consensus as to its meaning. There are no generally accepted measures of education quality and, furthermore, there are no tests administered nationally to representative samples of students throughout the elementary and secondary years. Significant differences exist from state to state and from locality to locality making comparisons using any measures suspect and incomplete. For example, many argue that the education provided in an area in which per capita income is relatively low, the school population is transient, poverty is high, and resources are few, may well be of higher quality than areas in which these factors are absent.

The only tests that are taken nationally are college entrance examinations - the SAT and ACT. These tests are taken voluntarily by students when the college they wish to attend requires the test as a part of the admissions process. The students taking the tests are not representative of the high school population. They are only college-bound students and only some of that group. Not all colleges require the SAT or ACT. Many colleges admit students based on PSAT scores--a similar test taken in the junior year. The number of students taking the tests varies considerably from state to state. Furthermore, the tests are designed to predict how well a student will perform in college and not the achievement level in high school.

Two of the tables report the college entrance test scores taken by high school seniors. The test score is reported for the test the majority of the students take in that state. The states are listed in rank order within each group. No score for Washington is reported because fewer than 20% of the students took either test.

Information is available showing SAT scores for all 50 states. Those results are not included in this report. There is a high correlation between the state rank and the percent of students taking the test making comparisons of states quite misleading. Of the top 29 states, all but one have fewer than 17% of its students taking the test. Of the bottom 21 states, all have 28% or more of their students taking the test.

A third table reports the percent of students who graduate from high school. This table takes into account all students and can be considered a report of student performance.

Attached also are informational comments by column from the United States Department of Education.

EVR:mc

Attachments

ACT
(Scores for 28 States)

		ACT Score (1)	Rank Out of 28 (2)	Pct of HS Seniors Taking Test (3)	Score Change 1972-82 (4)	Ranking of Score Change* (Out of 28) (5)
Wisconsin	1982	20.4	1	32.0	-0.3	1.5
	1972	20.7	4	40.7		
Iowa	82	20.3	2	54.6	-1.7	27
	72	22.0	1	49.0		
Minnesota	82	20.2	3	26.9	-1.2	18.5
	72	21.4	2	44.3		
Nebraska	82	19.9	4	72.8	-0.7	5
	72	20.6	6	27.1		
Colorado	82	19.6	5	66.7	-0.3	1.5
	72	19.9	11.5	50.2		
Montana	82	19.5	6	49.3	-1.6	26
	72	21.1	3	46.5		
Wyoming	82	19.2	7	51.8	-1.4	23.5
	72	20.6	6	53.8		
S. Dakota	82	19.1	8	61.9	-1.5	25
	72	20.6	4	55.0		
Ohio	82	19.0	9	49.2	-1.0	13.5
	72	20.0	9.5	35.2		
Idaho	82	18.9	10.5	55.3	-1.0	13.5
	72	19.9	11.5	45.2		
Kansas	82	18.9	10.5	60.8	-1.1	16.5
	72	20.0	9.5	55.2		
Alaska	82	18.7	13.5	31.4	-0.9	10.5
	72	19.6	15.5	33.6		
Arizona	82	18.7	13.5	41.2	-0.6	4
	72	19.3	17.5	55.5		
Michigan	82	18.7	13.5	51.4	-0.4	3
	72	19.1	19	24.4		
Missouri	82	18.7	13.5	45.2	-1.4	23.5
	72	20.1	8	21.1		

		ACT Score	Rank Out of 28	Pct of HS Seniors Taking Test	Score Change 1972-82	Ranking of Score Change* (Out of 28)
		(1)	(2)	(3)	(4)	(5)
Illinois	1982	18.6	16	67.4	-1.2	18.5
	1972	19.8	13	62.1		
Utah	82	18.4	17	66.4	-1.3	20.5
	72	19.7	14	62.5		
Nevada	82	18.3	18	44.5	-1.0	13.5
	72	19.3	17.5	51.3		
N. Dakota	82	17.8	19	64.6	-1.8	28
	72	19.6	15.5	67.3		
Arkansas	82	17.7	20	56.3	-0.9	10.5
	72	18.6	22	40.4		
New Mexico	82	17.6	21.5	56.6	-0.8	7.5
	72	18.4	23.5	51.2		
Oklahoma	82	17.6	21.5	51.4	-1.1	16.5
	72	18.7	21	58.5		
Kentucky	82	17.5	23.5	53.7	-0.9	10.5
	72	18.4	23.5	45.1		
Tennessee	82	17.5	23.5	56.3	-0.8	7.5
	72	18.3	25.5	52.8		
W. Virginia	82	17.4	25	48.4	-1.4	23.5
	72	18.8	20	43.4		
Alabama	82	17.2	26	55.2	-1.1	16.5
	72	18.3	25.5	49.6		
Louisiana	82	16.7	27	40.8	-1.3	20.5
	72	18.0	27	56.7		
Mississippi	82	15.5	28	74.5	-0.8	7.5
	72	16.3	28	76.5		

* Ranking of score changes go from states having the least (1) to the greatest (28) score decline.

Year and Sources of Data by Column

Column 1	1982	Individual State Department of Education
	1972	Individual State Department of Education
Column 3	1982	Individual State Department of Education National Center for Education Statistics (NCES) unpublished preliminary data
	1972	Individual State Department of Education NCES Digest of Education Statistics 1973

Elizabeth V. Rice
Senate Counsel
October 19, 1984

SAT
(Scores for 22 States)

		SAT Score (6)	Rank Out of 22 (7)	Pct of HS Seniors Taking Test (8)	Score Change 1972-82 (9)	Ranking of Score Change* (Out of 22) (10)
New Hampshire	1982	925	1	56.2	-47	14.5
	1972	972	1	52.1		
Oregon	82	908	2	41.7	-30	4
	72	938	7	39.8		
Vermont	82	904	3	54.3	-31	5.5
	72	935	9	50.5		
California	82	899	4	38.4	-58	20
	72	957	2	31.6		
Delaware	82	897	5	49.3	-46	11.5
	72	943	5	57.2		
Connecticut	82	896	6.5	69.0	-49	16
	72	945	4	70.7		
New York	82	896	6.5	61.6	-59	21
	72	955	3	60.2		
Maine	82	890	8	46.5	-41	8.5
	72	931	11	44.2		
Florida	82	889	9.5	37.5	-52	18
	72	941	6	26.8		
Maryland	82	889	9.5	50.3	-47	14.5
	72	936	8	51.4		
Massachusetts	82	888	11.5	45.6	-45	10
	72	933	10	68.2		
Virginia	82	888	11.5	51.0	-31	5.5
	72	919	16	54.3		
Pennsylvania	82	885	13	51.4	-41	8.5
	72	926	13	55.2		
Rhode Island	82	877	14	60.7	-50	17
	72	927	12	59.6		
New Jersey	82	869	15	64.7	-47	14.5
	72	916	17	71.3		

		SAT Score	Rank Out of 22	Pct of HS Seniors Taking Test	Score Change 1972-82	Ranking of Score Change* (Out of 22)
		(6)	(7)	(8)	(9)	(10)
Texas	1982	868	16	32.4	-53	19
	1972	921	14.5	32.2		
Indiana	82	860	17	47.0	-46	11.5
	72	906	18	50.4		
Hawaii	82	857	18	47.3	-64	22
	72	921	14.5	52.9		
North Carolina	82	827	19	46.6	-22	3
	72	849	19	47.4		
Georgia	82	823	20	49.0	-11	2
	72	834	20	55.0		
District of Columbia	82	821	21	53.4	+18	1
	72	803	22	46.2		
South Carolina	82	790	22	49.2	-33	7
	72	823	21	50.0		

* Rankings are from gain (1) to greatest decline (22). Only the District of Columbia had a score gain between 1972 and 1982.

Year and Sources of Data by Column

Column 6	1982	Educational Testing Service (ETS) unpublished data
	1972	ETS
Column 8	1982	ETS National Center for Education Statistics (NCES) unpublished data
	1972	ETS NCES Digest of Education Statistics 1973

Elizabeth V. Rice
Senate Counsel
October 19, 1984

GRADUATION RATE

State	Pct 1982 1972 (11)	Rank Out of 51 1982 1972 (12)	State	Pct 1982 1972 (11)	Rank Out of 51 1982 1972 (12)
Minnesota	89.2 91.5	1 1	Vermont	77.7 70.9	16 41
North Dakota	87.3 89.0	2 6	Oklahoma	77.6 79.3	17 24
Iowa	85.8 89.5	3 3	Ohio	77.5 80.3	18 20
Hawaii	84.2 89.1	4 4	Idaho	76.9 84.7	19 10
S. Dakota	83.9 90.5	5 2	Washington	76.9 83.9	20 11
Nebraska	83.6 85.9	6 7	Indiana	76.9 76.1	21 34
Wisconsin	83.4 89.1	7 5	Colorado	76.3 84.8	22 9
Montana	82.2 79.0	8 27	Massachusetts	75.9 77.9	23 30
Delaware	81.8 78.0	9 29	Maryland	75.4 80.2	24 21
Utah	81.4 83.3	10 13	Missouri	75.4 77.5	25 31
Kansas	80.9 82.8	11 15	Nevada	75.3 75.0	26 35
Pennsylvania	78.8 85.0	12 8	Virginia	75.0 76.4	27 33
New Hampshire	78.3 80.7	13 19	Illinois	74.8 78.0	28 28
Wyoming	78.3 83.1	14 14	W. Virginia	74.8 71.9	29 40
New Jersey	78.1 79.7	15 23	Arkansas	74.7 68.9	30 45

State	Pct 1982 1972 (11)	Rank Out of 51 1982 1972 (12)	State	Pct 1982 1972 (11)	Rank Out of 51 1982 1972 (12)
Rhode Island	72.9 81.1	31 16	N. Carolina	68.4 68.6	41 46
Michigan	72.7 81.0	32 17	Texas	68.2 70.2	42 43
Arizona	72.4 73.8	33 37	Alaska	67.1 65.4	43 48
Maine	72.1 80.9	34 18	Kentucky	66.9 70.4	44 42
Oregon	71.7 79.2	35 26	New York	66.3 74.7	45 36
New Mexico	71.6 76.9	36 32	Florida	65.4 72.1	46 39
Connecticut	71.2 83.4	37 12	S. Carolina	64.3 69.2	47 44
Alaska	71.0 79.3	38 25	Louisiana	64.0 66.5	48 47
California	68.9 79.9	39 22	Mississippi	63.0 57.4	49 50
Tennessee	68.9 72.4	40 38	District of Columbia	55.8 54.8	50 51
			Georgia	-- 64.3	-- 49

Year and Sources of Data

1982 National Center for Education Statistics (NCES) Statistics of Public Elementary and Secondary Day School and unpublished data.

1972 NCES Statistics of Public Schools Digest of Education Statistics 1973

Elizabeth V. Rice
Senate Counsel
October 19, 1984

Not to be released
until Thursday, Jan.5
1984 at 11:00 A.M.

STATE EDUCATION STATISTICS

Discussion of State Outcomes
Columns 1 through 10

In these 10 columns are displayed data on statewide average student scores for the years 1972 and 1982 on the two widely used college entrance examinations. The test score reported for a State is that of the test taken by most college-bound high school seniors in the State. Columns 1 through 5 display data for States in which the greater number of students are tested under the American College Testing (ACT) program. In columns 6 through 10, the data are displayed for the States in which the greater number of students take the Scholastic Aptitude Test (SAT). Twenty-eight States are listed under ACT and 22 States are listed under SAT. The State's average score is displayed in either column 1 or column 6. (No score is shown for Washington State because fewer than 20 percent of its high school seniors took either the ACT or SAT.) The rank order of the State is displayed in Columns 2 and 7. If two or more States tie for the same rank order, the average of the two rank order numbers is displayed. (For example, Idaho and Kansas scored 18.9 and they were tied for 10th or 11th place. Thus, a rank order of 10.5 was assigned.)

In columns 3 and 8 are displayed the data indicating the percent of each State's total graduating class that took the test.

In columns 4 and 9 are displayed data on the change in ACT or SAT scores from 1972 to 1982. All of these are declining scores except for the District of Columbia. (This number is obtained by subtracting the 1982 score from the 1972 score to get the decline.) In columns 5 and 10 are displayed the rank order of score change to designate what States have had the least and the greatest decline.

What do these scores mean? Some educators claim that they are not very accurate measures of student achievement. But most college and university officials find that they are useful sources of projecting student preparation to do college level work. The significance of the scores to higher education is manifested by the widespread requirement that such scores accompany student applications for admission. (Many State education departments have data on a variety of other standardized achievement tests, and these measures should also be considered. Data on these other standardized achievement tests were not available in the U.S. Department of Education. Thus, they are not displayed in the comprehensive table.)

The reader is urged to consider all of the data on the table. The percent of students living in poverty, the percent of minority students, the percent of handicapped student enrollment may all influence statewide college entrance scores. Other factors such as expenditures per student, pupil-teacher ratio, etc., may also be of interest to the reader. As the reader notes the wide variation of the data, it will be apparent that each State is unique with widely differing student, social, and economic conditions. When all of the data are taken into consideration, it may be true that some States with heavy education burdens and low per capita incomes are performing in a more notable manner than others with higher scores but lesser education burden.

The SAT scores have been widely published in the Press while ACT scores have not been so easily available to public scrutiny. The percent of high school students taking the examination may be a factor in the statewide average scores. In some States where a very small number of students take the SAT, the contrast in scores to a State where a high percentage take the SAT led to complaints of unfair comparisons. (In States where most of the students take the ACT examination, there are still small numbers of students who take the SAT because they want to apply for admission to a college that requires an SAT score.) This phenomenon (plus the policy of publishing the results widely on the part of SAT) has led to requests that the Department of Education publish statewide data on all the States.

An examination of the comprehensive table indicates that some States have very high student participation and relatively high scores. (Nebraska had 72.8 percent participation in 1982 and a comparatively high statewide ACT average score. Wisconsin, by contrast, ranked first in statewide average ACT scores but only 32 percent participated. Neither State, however, has a heavy poverty enrollment as indicated by column 26.) Thus conclusions about these scores should be drawn from the full context of the comprehensive table. The discussions that follow will elaborate further on this.

The sources of the data displayed will be found in the footnotes at the bottom of the comprehensive table.

Discussion of High School Graduation Rates
Columns 11 and 12

In these columns we display data that show percent of the ninth grade class four years earlier that completed high school for the years 1972 and 1982. In many respects, these high school dropout data are just as significant as the college entrance examination data. With a nationwide average of only 72.8 percent of ninth graders completing high school, the challenge to the States is obvious. For years, census data have shown that high school graduates have significantly higher lifetime earnings. High school graduates are more employable and less prone to be found on welfare rolls. A high percentage of those in State prisons are high school dropouts. Students who drop out deny themselves opportunities throughout their lives that are available to others.

In his address to education leaders at the National Forum on Excellence in Education (held in Indianapolis in December), the Secretary of Education urged State leaders to set a goal to decrease the high school dropout rate to not more than 10 percent by the year 1989, and to move college entrance examination scores back up to the 1965 level over the next five years. Attaining academic rigor and reducing the dropout rate

simultaneously will be a difficult but attainable goal. Neither objective should be permitted to be attained at the expense of the other. Excellence and equal opportunity in education are attainable, and the attainment of some States should encourage others to recognize that these highly desirable twin goals can be reached.

S.F. No. 1986
CHAPTER No.
462

AN ACT

relating to public employment labor relations; recodifying the public employment labor relations act; proposing new law coded as Minnesota Statutes, chapter 179A; repealing Minnesota Statutes 1982, sections 179.61 to 179.76, as amended.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. [CITATION.]

This act shall be known as the 1984 Public Employment Labor Relations Recodification Act. The intent of this act is to eliminate obsolete and redundant language, arrange the provisions governing public sector labor relations in a more logical order, and make the law easier to read and understand.

Sec. 2. [179A.01] [PUBLIC POLICY.]

It is the public policy of this state and the purpose of sections 179A.01 to 179A.25 to promote orderly and constructive relationships between all public employers and their employees. This policy is subject to the paramount right of the citizens of this state to keep inviolate the guarantees for their health, education, safety, and welfare.

The relationships between the public, public employees, and employer governing bodies involve responsibilities to the public and a need for cooperation and employment protection which are different from those found in the private sector. The importance or necessity of some services to the public can

create imbalances in the relative bargaining power between public employees and employers. As a result, unique approaches to negotiations and resolutions of disputes between public employees and employers are necessary.

Unresolved disputes between the public employer and its employees are injurious to the public as well as to the parties. Adequate means must be established for minimizing them and providing for their resolution. Within these limitations and considerations, the legislature has determined that overall policy is best accomplished by:

(1) granting public employees certain rights to organize and choose freely their representatives;

(2) requiring public employers to meet and negotiate with public employees in an appropriate bargaining unit and providing that the result of bargaining be in written agreements; and

(3) establishing special rights, responsibilities, procedures, and limitations regarding public employment relationships which will provide for the protection of the rights of the public employee, the public employer, and the public at large.

Nothing in sections 179A.01 to 179A.25 impairs, modifies, or alters the authority of the legislature to establish rates of pay, or retirement or other benefits for its employees.

Sec. 3. [179A.02] [CITATION.]

Sections 179A.01 to 179A.25 shall be known as the Public Employment Labor Relations Act.

Sec. 4. [179A.03] [DEFINITIONS.]

Subdivision 1. [GENERAL.] For the purposes of sections 179A.01 to 179A.25, the terms defined in this section have the meanings given them unless otherwise stated.

Subd. 2. [APPROPRIATE UNIT.] "Appropriate unit" or "unit" means a unit of employees determined under sections 179A.09 to 179A.11. For school districts, the term means all the teachers in the district.

Subd. 3. [BOARD.] "Board" means the Minnesota public employment relations board.

Subd. 4. [CONFIDENTIAL EMPLOYEE.] "Confidential employee" means any employee who works in the personnel offices of a public employer or who:

(1) has access to information subject to use by the public employer in meeting and negotiating; or

(2) actively participates in the meeting and negotiating on behalf of the public employer.

However, for executive branch employees of the state or employees of the regents of the University of Minnesota, "confidential employee" means any employee who:

(a) has access to information subject to use by the public employer in collective bargaining; or

(b) actively participates in collective bargaining on behalf of the public employer.

Subd. 5. [DIRECTOR.] "Director of mediation services" or "director" means the director of the bureau of mediation services.

Subd. 6. [EMPLOYEE ORGANIZATION.] "Employee organization" means any union or organization of public employees whose purpose is, in whole or in part, to deal with public employers concerning grievances and terms and conditions of employment.

Subd. 7. [ESSENTIAL EMPLOYEE.] "Essential employee" means firefighters, peace officers subject to licensure under sections 626.84 to 626.855, guards at correctional facilities, employees of hospitals other than state hospitals, confidential employees, supervisory employees, principals, and assistant principals. However, for state employees, "essential employee" means all employees in law enforcement, health care professionals, correctional guards, professional engineering, and supervisory collective bargaining units, irrespective of severance, and no other employees. For University of Minnesota employees, "essential employee" means all employees in law enforcement, nursing professional and supervisory units, irrespective of severance, and no other employees. "Firefighters" means salaried employees of a fire department whose duties include, directly or indirectly, controlling, extinguishing, preventing,

detecting, or investigating fires.

Subd. 8. [EXCLUSIVE REPRESENTATIVE.] "Exclusive representative" means an employee organization which has been certified by the director under section 179A.12 to meet and negotiate with the employer on behalf of all employees in the appropriate unit.

Subd. 9. [FAIR SHARE FEE CHALLENGE.] "Fair share fee challenge" means any proceeding or action instituted by a public employee, a group of public employees, or any other person, to determine their rights and obligations with respect to the circumstances or the amount of a fair share fee.

Subd. 10. [MEET AND CONFER.] "Meet and confer" means the exchange of views and concerns between employers and their employees.

Subd. 11. [MEET AND NEGOTIATE.] "Meet and negotiate" means the performance of the mutual obligations of public employers and the exclusive representatives of public employees to meet at reasonable times, including where possible meeting in advance of the budget making process, with the good faith intent of entering into an agreement on terms and conditions of employment. This obligation does not compel either party to agree to a proposal or to make a concession.

Subd. 12. [PRINCIPAL.] "Principal" and "assistant principal" means any person so licensed by the state board of education who devotes more than 50 percent of his or her time to administrative or supervisory duties.

Subd. 13. [PROFESSIONAL EMPLOYEE.] "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 a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and (iv) requiring advanced knowledge 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, an apprenticeship, or training in the performance of routine mental, manual, or physical processes; or

(b) any employee, who (i) has completed the course of advanced instruction and study described in clause (iv) of paragraph (a); and (ii) is performing related work under the supervision of a professional person to qualify as a professional employee as defined in paragraph (a); or

(c) a teacher.

Subd. 14. "Public employee" or "employee" means any person appointed or employed by a public employer except:

(a) elected public officials;

(b) election officers;

(c) commissioned or enlisted personnel of the Minnesota national guard;

(d) emergency employees who are employed for emergency work caused by natural disaster;

(e) part-time employees whose service does not exceed the lesser of 14 hours per week or 35 percent of the normal work week in the employee's appropriate unit;

(f) employees whose positions are basically temporary or seasonal in character and: (1) are not for more than 67 working days in any calendar year; or (2) are not for more than 100 working days in any calendar year and the employees are under the age of 22, are full-time students enrolled in a nonprofit or public educational institution prior to being hired by the employer, and have indicated, either in an application for employment or by being enrolled at an educational institution for the next academic year or term, an intention to continue as students during or after their temporary employment;

(g) employees providing services for not more than two consecutive quarters to the state university board or the community college board under the terms of a professional or technical services contract as defined in section 16.098;

(h) graduate assistants employed by the school in which they are enrolled in a graduate degree program;

(i) employees of charitable hospitals as defined by section 179.35, subdivision 3;

(j) full-time undergraduate students employed by the school which they attend under a work study program or in connection with the receipt of financial aid, irrespective of number of hours of service per week;

(k) an individual who is employed for less than 300 hours in a fiscal year as an instructor in an adult vocational education program;

(l) an individual hired by a school district, the community college board, or the state university board, to teach one course for up to four credits for one quarter in a year.

The following individuals are "public employees" regardless of the exclusions of clauses (e) and (f):

An employee hired by a school district, the community college board, or the state university board, except at the university established in section 136.017 or for community services or community education instruction offered on a noncredit basis: (1) to replace an absent teacher or faculty member who is a public employee, where the replacement employee is employed more than 30 working days as a replacement for that teacher or faculty member; or (2) to take a teaching position created due to increased enrollment, curriculum expansion, courses which are a part of the curriculum whether offered annually or not, or other appropriate reasons.

Subd. 15. [PUBLIC EMPLOYER.] "Public employer" or "employer" means:

(a) the state of Minnesota for employees of the state not otherwise provided for in this subdivision or section 179A.10 for executive branch employees;

(b) the board of regents of the University of Minnesota for its employees; and

(c) notwithstanding any other law to the contrary, the governing body of a political subdivision or its agency or

instrumentality which has final budgetary approval authority for its employees. However, the views of elected appointing authorities who have standing to initiate interest arbitration, and who are responsible for the selection, direction, discipline, and discharge of individual employees shall be considered by the employer in the course of the discharge of rights and duties under sections 179A.01 to 179A.25.

When two or more units of government subject to sections 179A.01 to 179A.25 undertake a project or form a new agency under law authorizing common or joint action, the employer is the governing person or board of the created agency. The governing official or body of the cooperating governmental units shall be bound by an agreement entered into by the created agency according to sections 179A.01 to 179A.25.

"Public employer" or "employer" does not include a "charitable hospital" as defined in section 179.35, subdivision 2.

Nothing in this subdivision diminishes the authority granted pursuant to law to an appointing authority with respect to the selection, direction, discipline, or discharge of an individual employee if this action is consistent with general procedures and standards relating to selection, direction, discipline, or discharge which are the subject of an agreement entered into under sections 179A.01 to 179A.25.

Subd. 16. [STRIKE.] "Strike" means concerted action in failing to report for duty, the willful absence from one's position, the stoppage of work, slowdown, or the abstinence in whole or in part from the full, faithful, and proper performance of the duties of employment for the purposes of inducing, influencing, or coercing a change in the conditions or compensation or the rights, privileges, or obligations of employment.

Subd. 17. [SUPERVISORY EMPLOYEE.] "Supervisory employee" means a person who has the authority to undertake a majority of the following supervisory functions in the interests of the employer: hiring, transfer, suspension, promotion, discharge,

assignment, reward, or discipline of other employees, direction of the work of other employees, or adjustment of other employees' grievances on behalf of the employer. To be included as a supervisory function which the person has authority to undertake, the exercise of the authority by the person may not be merely routine or clerical in nature but must require the use of independent judgment. An employee, other than an essential employee, who has authority to effectively recommend a supervisory function, is deemed to have authority to undertake that supervisory function for the purposes of this subdivision. The administrative head of a municipality, municipal utility, or police or fire department, and the administrative head's assistant, are always considered supervisory employees. A determination that a person is or is not a "supervisory employee" may be appealed to the public employment relations board.

The removal of employees by the employer from nonsupervisory bargaining units for the purpose of designating the employees as "supervisory employees" shall require either the prior written agreement of the exclusive representative and the written approval of the director or a separate determination by the director before the redesignation is effective.

Subd. 18. [TEACHER.] "Teacher" means any public employee other than a superintendent or assistant superintendent, principal, assistant principal, or a supervisory or confidential employee, employed by a school district:

(1) in a position for which the person must be licensed by the board of teaching or the state board of education; or

(2) in a position as a physical therapist or an occupational therapist.

Subd. 19. [TERMS AND CONDITIONS OF EMPLOYMENT.] "Terms and conditions of employment" means the hours of employment, the compensation therefor including fringe benefits except retirement contributions or benefits, and the employer's personnel policies affecting the working conditions of the employees. In the case of professional employees the term does

not mean educational policies of a school district. "Terms and conditions of employment" is subject to section 179A.07.

Sec. 5. [179A.04] [DIRECTOR'S POWER, AUTHORITY, AND DUTIES.]

Subdivision 1. [PETITIONS.] The director shall accept and investigate all petitions for:

(a) certification or decertification as the exclusive representative of an appropriate unit;

(b) mediation services;

(c) any election or other voting procedures provided for in sections 179A.01 to 179A.25;

(d) certification to the board of arbitration; and

(e) fair share fee challenges, upon the receipt of a filing fee. The director shall hear and decide all issues in a fair share fee challenge.

Subd. 2. [UNIT DETERMINATION.] The director shall determine appropriate units, under the criteria of section 179A.09.

Subd. 3. [OTHER DUTIES.] The director shall:

(a) provide mediation services as requested by the parties until the parties reach agreement. The director may continue to assist parties after they have submitted their final positions for interest arbitration;

(b) issue notices, subpoenas, and orders required by law to carry out duties under sections 179A.01 to 179A.25;

(c) certify to the board items of dispute between parties subject to action of the board under section 179A.16;

(d) assist the parties in formulating petitions, notices, and other papers required to be filed with the director or the board;

(e) certify the final results of any election or other voting procedure conducted under sections 179A.01 to 179A.25;

(f) adopt rules regulating the forms of petitions, notices, and orders; and the conduct of hearings and elections;

(g) receive, catalogue, and file all orders and decisions of the board, all decisions of arbitration panels authorized by

sections 179A.01 to 179A.25, all grievance arbitration decisions, and the director's orders and decisions. All orders and decisions catalogued and filed shall be readily available to the public;

(h) adopt, subject to chapter 14, a grievance procedure to fulfill the purposes of section 179A.20, subdivision 4. The grievance procedure shall not provide for the services of the bureau of mediation services. The grievance procedure shall be available to any employee in a unit not covered by a contractual grievance procedure;

(i) conduct elections;

(j) maintain a schedule of state employee classifications or positions assigned to each unit established in section 179A.10, subdivision 2.

Subd. 4. [LOCATION OF HEARINGS.] Hearings and mediation meetings authorized by this section shall be held at a time and place determined by the director, but, whenever practical, a hearing shall be held in the general geographic area where the question has arisen or exists.

Sec. 6. [179A.05] [PUBLIC EMPLOYMENT RELATIONS BOARD; POWERS AND DUTIES.]

Subdivision 1. [MEMBERSHIP.] The public employment relations board is established with five members appointed by the governor. Two members shall be representative of public employees; two shall be representative of public employers; and one shall be representative of the public at large. Public employers and employee organizations representing public employees may submit for consideration names of persons representing their interests. The board shall select one of its members to serve as chairman for a term beginning May 1 each year.

Subd. 2. [TERMS, COMPENSATION.] The membership terms, compensation, removal of members, and filling of vacancies on the board shall be as provided in section 15.0575.

Subd. 3. [RULES, MEETINGS.] The board shall adopt rules governing its procedure and shall hold meetings as prescribed in

those rules. The chairman shall preside at meetings of the board.

Subd. 4. [OTHER POWERS.] In addition to the other powers and duties given it by law, the board has the following powers and duties:

(a) to hear and decide appeals from determinations of the director relating to "supervisory employee," "confidential employee," "essential employee," or "professional employee";

(b) to hear and decide appeals from determinations of the director relating to the appropriateness of a unit;

(c) to hear and decide on the record, determinations of the director relating to a fair share fee challenge.

Subd. 5. [APPEALS.] The board shall adopt rules under chapter 14 governing the presentation of issues and the taking of appeals relating to matters included in subdivision 4. All issues and appeals presented to the board shall be determined upon the record established by the director, except that the board may request additional evidence when necessary or helpful.

Subd. 6. [LIST OF ARBITRATORS.] The board shall maintain a list of names of arbitrators qualified by experience and training in the field of labor management negotiations and arbitration. Names on the list may be selected and removed at any time by a majority of the board. In maintaining the list the board shall, to the maximum extent possible, select persons from varying geographical areas of the state.

Subd. 7. [ARBITRATION.] The board shall provide the parties with a list of arbitrators under section 179A.16, subdivision 4.

Sec. 7. [179A.06] [RIGHTS AND OBLIGATIONS OF EMPLOYEES.]

Subdivision 1. [EXPRESSION OF VIEWS.] Sections 179A.01 to 179A.25 do not affect the right of any public employee or the employee's representative to express or communicate a view, grievance, complaint, or opinion on any matter related to the conditions or compensation of public employment or their betterment, so long as this is not designed to and does not interfere with the full faithful and proper performance of the

duties of employment or circumvent the rights of the exclusive representative. Sections 179A.01 to 179A.25 do not require any public employee to perform labor or services against the employee's will.

If no exclusive representative has been certified, any public employee individually, or group of employees through their representative, has the right to express or communicate a view, grievance, complaint, or opinion on any matter related to the conditions or compensation of public employment or their betterment, by meeting with their public employer or the employer's representative, so long as this is not designed to and does not interfere with the full, faithful, and proper performance of the duties of employment.

Subd. 2. [RIGHT TO ORGANIZE.] Public employees have the right to form and join labor or employee organizations, and have the right not to form and join such organizations. Public employees in an appropriate unit have the right by secret ballot to designate an exclusive representative to negotiate grievance procedures and the terms and conditions of employment with their employer. Confidential employees of the state and the University of Minnesota are excluded from bargaining. Other confidential employees, supervisory employees, principals, and assistant principals may form their own organizations. An employer shall extend exclusive recognition to a representative of or an organization of supervisory or confidential employees, or principals and assistant principals, for the purpose of negotiating terms or conditions of employment, in accordance with sections 179A.01 to 179A.25, applicable to essential employees.

Supervisory or confidential employee organizations shall not participate in any capacity in any negotiations which involve units of employees other than supervisory or confidential employees. Except for organizations which represent supervisors who are: (1) firefighters, peace officers subject to licensure under sections 626.84 to 626.855, guards at correctional facilities, or employees at hospitals other than

state hospitals; and (2) not state or University of Minnesota employees, a supervisory or confidential employee organization which is affiliated with another employee organization which is the exclusive representative of nonsupervisory or nonconfidential employees of the same public employer shall not be certified, or act as, an exclusive representative for the supervisory or confidential employees. For the purpose of this subdivision, affiliation means either direct or indirect and includes affiliation through a federation or joint body of employee organizations.

Subd. 3. [FAIR SHARE FEE.] An exclusive representative may require employees who are not members of the exclusive representative to contribute a fair share fee for services rendered by the exclusive representative. The fair share fee shall be equal to the regular membership dues of the exclusive representative, less the cost of benefits financed through the dues and available only to members of the exclusive representative. In no event shall the fair share fee exceed 85 percent of the regular membership dues. The exclusive representative shall provide advance written notice of the amount of the fair share fee to the director, the employer, and to unit employees who will be assessed the fee. The employer shall provide the exclusive representative with a list of all unit employees.

A challenge by an employee or by a person aggrieved by the fee shall be filed in writing with the director, the public employer, and the exclusive representative within 30 days after receipt of the written notice. All challenges shall specify those portions of the fee challenged and the reasons for the challenge. The burden of proof relating to the amount of the fair share fee is on the exclusive representative. The director shall hear and decide all issues in these challenges.

The employer shall deduct the fee from the earnings of the employee and transmit the fee to the exclusive representative 30 days after the written notice was provided. If a challenge is filed, the deductions for a fair share fee shall be held in

escrow by the employer pending a decision by the director.

Subd. 4. [MEET AND CONFER.] Professional employees have the right to meet and confer under section 179A.08 with public employers regarding policies and matters other than terms and conditions of employment.

Subd. 5. [MEET AND NEGOTIATE.] Public employees, through their certified exclusive representative, have the right and obligation to meet and negotiate in good faith with their employer regarding grievance procedures and the terms and conditions of employment, but this obligation does not compel the exclusive representative to agree to a proposal or require the making of a concession.

Subd. 6. [DUES CHECK OFF.] Public employees have the right to request and be allowed dues check off for the exclusive representative. In the absence of an exclusive representative, public employees have the right to request and be allowed dues check off for the organization of their choice.

Sec. 8. [179A.07] [RIGHTS AND OBLIGATIONS OF EMPLOYERS.]

Subdivision 1. [INHERENT MANAGERIAL POLICY.] A public employer is not required to meet and negotiate on matters of inherent managerial policy. Matters of inherent managerial policy include, but are not limited to, such areas of discretion or policy as the functions and programs of the employer, its overall budget, utilization of technology, the organizational structure, selection of personnel, and direction and the number of personnel. No public employer shall sign an agreement which limits its right to select persons to serve as supervisory employees or state managers under section 43A.18, subdivision 3, or requires the use of seniority in their selection.

Subd. 2. [MEET AND NEGOTIATE.] A public employer has an obligation to meet and negotiate in good faith with the exclusive representative of public employees in an appropriate unit regarding grievance procedures and the terms and conditions of employment, but this obligation does not compel the public employer or its representative to agree to a proposal or require the making of a concession.

The public employer's duty under this subdivision exists notwithstanding contrary provisions in a municipal charter, ordinance, or resolution. A provision of a municipal charter, ordinance, or resolution which limits or restricts a public employer from negotiating or from entering into binding contracts with exclusive representatives is superseded by this subdivision.

Subd. 3. [MEET AND CONFER.] A public employer has the obligation to meet and confer, under section 179A.08, with professional employees to discuss policies and other matters relating to their employment which are not terms and conditions of employment.

Subd. 4. [OTHER COMMUNICATION.] If an exclusive representative has been certified for an appropriate unit, the employer shall not meet and negotiate or meet and confer with any employee or group of employees who are in that unit except through the exclusive representative. This subdivision does not prevent communication to the employer, other than through the exclusive representative, of advice or recommendations by professional employees, if this communication is a part of the employee's work assignment.

Subd. 5. [ARBITRATORS PAY AND HIRING.] An employer may hire and pay for arbitrators desired or required by sections 179A.01 to 179A.25.

Subd. 6. [TIME OFF.] A public employer must afford reasonable time off to elected officers or appointed representatives of the exclusive representative to conduct the duties of the exclusive representative and must, upon request, provide for leaves of absence to elected or appointed officials of the exclusive representative.

Sec. 9. [179A.08] [POLICY CONSULTANTS.]

Subdivision 1. [PROFESSIONAL EMPLOYEES.] The legislature recognizes that professional employees possess knowledge, expertise, and dedication which is helpful and necessary to the operation and quality of public services and which may assist public employers in developing their policies. It is,

therefore, the policy of this state to encourage close cooperation between public employers and professional employees by providing for discussions and the mutual exchange of ideas regarding all matters that are not terms and conditions of employment.

Subd. 2. [MEET AND CONFER.] The professional employees shall select a representative to meet and confer with a representative or committee of the public employer on matters not specified under section 179A.03, subdivision 19, relating to the services being provided to the public. The public employer shall provide the facilities and set the time for these conferences to take place. The parties shall meet at least once every four months.

Sec. 10. [179A.09] [UNIT DETERMINATION.]

Subdivision 1. [CRITERIA.] In determining the appropriate unit, the director shall consider the principles and the coverage of uniform comprehensive position classification and compensation plans of the employees, professions and skilled crafts, and other occupational classifications, relevant administrative and supervisory levels of authority, geographical location, history, extent of organization, the recommendation of the parties, and other relevant factors. The director shall place particular importance upon the history and extent of organization, and the desires of the petitioning employee representatives.

Subd. 2. [PROHIBITIONS.] The director shall not designate an appropriate unit which includes essential employees with other employees.

Sec. 11. [179A.10] [STATE UNITS.]

Subdivision 1. [EXCLUSIONS.] The commissioner of employee relations shall meet and negotiate with the exclusive representative of each of the units specified in this section. The units provided in this section are the only appropriate units for executive branch state employees. The following employees shall be excluded from any appropriate unit:

(1) the positions and classes of positions in the

classified and unclassified services defined as managerial by the commissioner of employee relations in accordance with section 43A.18, subdivision 3, and so designated in the official state compensation schedules;

(2) unclassified positions in the state university system and the community college system defined as managerial by their respective boards;

(3) positions of physician employees compensated under section 43A.17, subdivision 4;

(4) positions of all unclassified employees appointed by a constitutional officer;

(5) positions in the bureau of mediation services and the public employment relations board;

(6) positions of employees whose classification is pilot or chief pilot;

(7) hearing examiner and compensation judge positions in the office of administrative hearings; and

(8) positions of all confidential employees.

The governor may upon the unanimous written request of exclusive representatives of units and the commissioner direct that negotiations be conducted for one or more units in a common proceeding or that supplemental negotiations be conducted for portions of a unit or units defined on the basis of appointing authority or geography.

Subd. 2. [STATE EMPLOYEES.] Unclassified employees, unless otherwise excluded, are included within the units which include the classifications to which they are assigned for purposes of compensation. Supervisory employees shall only be assigned to units 12 and 16. The following are the appropriate units of executive branch state employees:

(1) law enforcement unit;

(2) craft, maintenance, and labor unit;

(3) service unit;

(4) health care nonprofessional unit;

(5) health care professional unit;

(6) clerical and office unit;

(7) technical unit;

(8) correctional guards unit;

(9) state university instructional unit;

(10) community college instructional unit;

(11) state university administrative unit;

(12) professional engineering unit;

(13) health treatment unit;

(14) general professional unit;

(15) professional state residential instructional unit; and

(16) supervisory employees unit.

Each unit consists of the classifications or positions assigned to it in the schedule of state employee job classification and positions maintained by the director. The director may only make changes in the schedule in existence on the day prior to the effective date of this section as required by law or as provided in subdivision 4.

Subd. 3. [STATE EMPLOYEE SEVERANCE.] Each of the following groups of employees has the right, as specified in this subdivision, to separate from the general professional, health treatment, or general supervisory units provided for in subdivision 1: attorneys, physicians, professional employees of the higher education coordinating board who are compensated pursuant to section 43A.18, subdivision 4, state patrol-supervisors, and criminal apprehension investigative-supervisors. This right shall be exercised by petition during the 60-day period commencing 270 days prior to the termination of a contract covering the units. If one of these groups of employees exercises the right to separate from the units they shall have no right to meet and negotiate, but shall retain the right to meet and confer with the commissioner of employee relations and with the appropriate appointing authority on any matter of concern to them. The manner of exercise of the right to separate shall be as follows: An employee organization or group of employees claiming that a majority of any one of these groups of employees on a state-wide basis wish to separate from their units may petition the

director for an election during the petitioning period. If the petition is supported by a showing of at least 30 percent support for the petitioner from the employees, the director shall hold an election to ascertain the wishes of the majority with respect to the issue of remaining within or severing from the units provided in subdivision 1. This election shall be conducted within 30 days of the close of the petition period. If a majority of votes cast endorse severance from the unit in favor of separate meet and confer status for any one of these groups of employees, the director shall certify that result. This election shall, where not inconsistent with other provisions of this section, be governed by section 179A.16. If a group of employees elects to sever they may rejoin that unit by following the same procedures specified above for severance, but may only do so during the periods provided for severance.

Subd. 4. [OTHER ASSIGNMENTS.] The director shall assign state employee classifications, University of Minnesota employee classifications, and supervisory positions to the appropriate units when the classifications or positions have not been assigned under subdivision 2 or section 179A.11 or have been significantly modified in occupational content subsequent to assignment under these sections. The assignment of the classes shall be made on the basis of the community of interest of the majority of employees in these classes with the employees within the statutory units. All the employees in a class, excluding supervisory and confidential employees, shall be assigned to a single appropriate unit.

Sec. 12. [179A.11] [UNIVERSITY OF MINNESOTA.]

Subdivision 1. [UNITS.] The following are the appropriate units of University of Minnesota employees. All units shall exclude managerial and confidential employees. Supervisory employees shall only be assigned to unit 12. No additional units of University of Minnesota employees shall be recognized for the purpose of meeting and negotiating.

(1) The law enforcement unit consists of the positions of all employees with the power of arrest.

(2) The craft and trades unit consists of the positions of all employees whose work requires specialized manual skills and knowledge acquired through formal training or apprenticeship or equivalent on-the-job training or experience.

(3) The service, maintenance, and labor unit consists of the positions of all employees whose work is typically that of maintenance, service, or labor and which does not require extensive previous training or experience, except as provided in unit 4.

(4) The health care nonprofessional and service unit consists of the positions of all nonprofessional employees of the University of Minnesota hospitals, dental school, and health service whose work is unique to those settings, excluding labor and maintenance employees as defined in unit 3.

(5) The nursing professional unit consists of all positions which are required to be filled by registered nurses.

(6) The clerical and office unit consists of the positions of all employees whose work is typically clerical or secretarial, including nontechnical data recording and retrieval and general office work, except as provided in unit 4.

(7) The technical unit consists of the positions of all employees whose work is not typically manual and which requires specialized knowledge or skills acquired through two-year academic programs or equivalent experience or on-the-job training, except as provided in unit 4.

(8) The Twin Cities instructional unit consists of the positions of all instructional employees with the rank of professor, associate professor, assistant professor, including research associate or instructor, including research fellow, located on the Twin Cities campuses.

(9) The outstate instructional unit consists of the positions of all instructional employees with the rank of professor, associate professor, assistant professor, including research associate or instructor, including research fellow, located at the Duluth campus, provided that the positions of instructional employees of the same ranks at the Morris,

Crookston, or Waseca campuses shall be included within this unit if a majority of the eligible employees voting at a campus so vote during an election conducted by the director, provided that the election shall not be held until the Duluth campus has voted in favor of representation. The election shall be held when an employee organization or group of employees petitions the director stating that a majority of the eligible employees at one of these campuses wishes to join the unit and this petition is supported by a showing of at least 30 percent support from eligible employees at that campus and is filed between September 1 and November 1.

Should both units 8 and 9 elect exclusive bargaining representatives, those representatives may by mutual agreement jointly negotiate a contract with the regents, or may negotiate separate contracts with the regents. If the exclusive bargaining representatives jointly negotiate a contract with the regents, the contract shall be ratified by each unit.

(10) The graduate assistant unit consists of the positions of all graduate assistants who are enrolled in the graduate school and who hold the rank of research assistant, teaching assistant, teaching associate I or II, project assistant, or administrative fellow I or II.

(11) The noninstructional professional unit consists of the positions of all employees meeting the requirements of section 179A.03, subdivision 14, clause (a) or (b), which are not defined as included within the instructional unit.

(12) The supervisory employees unit consists of the positions of all supervisory employees.

Subd. 2. [UNIVERSITY OF MINNESOTA EMPLOYEE SEVERANCE.] Each of the following groups of University of Minnesota employees shall have the right, as specified in this subdivision, to separate from the instructional and supervisory units: (1) health sciences instructional employees at all campuses with the rank of professor, associate professor, assistant professor, including research associate, or instructor, including research fellow, (2) instructional

employees of the law school with the rank of professor, associate professor, assistant professor, including research associate, or instructor, including research fellow, (3) instructional supervisors, and (4) noninstructional professional supervisors. This right shall be exercised by petition between September 1 and November 1. If a group separates from its unit, it has no right to meet and negotiate, but retains the right to meet and confer with the appropriate officials on any matter of concern to them. The right to separate shall be exercised as follows: An employee organization or group of employees claiming that a majority of any one of these groups of employees on a statewide basis wish to separate from their unit may petition the director for an election during the petitioning period. If the petition is supported by a showing of at least 30 percent support from the employees, the director shall hold an election on the separation issue. This election shall be conducted within 30 days of the close of the petition period. If a majority of votes cast endorse severance from their unit, the director shall certify that result. This election shall, where not inconsistent with other provisions of this section, be governed by section 179A.12. If a group of employees severs, they may rejoin that unit by following the procedures for severance during the periods for severance.

Sec. 13. [179A.12] [EXCLUSIVE REPRESENTATION; ELECTIONS; DECERTIFICATION.]

Subdivision 1. [CERTIFICATION CONTINUED.] Any employee organization holding formal recognition by order of the director or by employer voluntary recognition on the effective date of Extra Session Laws 1971, chapter 33, under any law that is repealed by Extra Session Laws 1971, chapter 33, is certified as the exclusive representative until it is decertified or another representative is certified in its place.

Any teacher organization as defined by section 125.20, subdivision 3, which on the effective date of Extra Session Laws 1971, chapter 33, has a majority of its members on a teacher's council in a school district as provided in section 125.22 is

certified as the exclusive representative of all teachers of that school district until the organization is decertified or another organization is certified in its place.

Subd. 2. [CERTIFICATION UPON JOINT REQUEST.] The director may certify an employee organization as an exclusive representative in an appropriate unit upon the joint request of the employer and the organization if, after investigation, the director finds that no unfair labor practice was committed in initiating and submitting the joint request and that the employee organization represents over 50 percent of the employees in the appropriate unit. This subdivision does not reduce the time period or nullify any bar to the employee organization's certification existing at the time of the filing of the joint request.

Subd. 3. [OBTAINING ELECTIONS.] Any employee organization may obtain a certification election upon petition to the director stating that at least 30 percent of the employees of a proposed employee unit wish to be represented by the petitioner. Any employee organization may obtain a representation election upon petition to the director stating that the currently certified representative no longer represents the majority of employees in an established unit and that at least 30 percent of the employees in the established unit wish to be represented by the petitioner rather than by the currently certified representative. An individual employee or group of employees in a unit may obtain a decertification election upon petition to the director stating the certified representative no longer represents the majority of the employees in an established unit and that at least 30 percent of the employees wish to be unrepresented.

Subd. 4. [STATE UNIT ELECTIONS.] The director shall not consider a petition for a decertification election during the term of a contract covering employees of the executive branch of the state of Minnesota except for a period for not more than 270 to not less than 210 days before its date of termination.

Subd. 5. [DIRECTOR TO INVESTIGATE.] The director shall,

upon receipt of an employee organization's petition to the director under subdivision 3, investigate to determine if sufficient evidence of a question of representation exists and hold hearings necessary to determine the appropriate unit and other matters necessary to determine the representation rights of the affected employees and employer.

Subd. 6. [AUTHORIZATION SIGNATURES.] In determining the numerical status of an employee organization for purposes of this section, the director shall require dated representation authorization signatures of affected employees as verification of the statements contained in the joint request or petitions. These authorization signatures shall be privileged and confidential information available to the director only.

Subd. 7. [ELECTION ORDER.] The director shall issue an order providing for a secret ballot election by the employees in a designated appropriate unit. The election shall be held in the premises where those voting are employed unless the director determines that the election cannot be fairly held, in which case it shall be held at a place determined by the director.

Subd. 8. [BALLOT.] The ballot in a certification election may contain as many names of representative candidates as have demonstrated that 30 percent of the employees in the unit desire them as their exclusive representative. The ballots shall contain a space for employees to indicate that no representation is desired. The director shall provide and count absentee ballots in all elections.

Subd. 9. [RUN-OFF ELECTION.] If no choice on the ballot receives a majority of those votes cast in the unit, the director shall conduct a run-off election between the two choices receiving the most votes.

Subd. 10. [CERTIFICATION.] Upon a representative candidate receiving a majority of those votes cast in an appropriate unit, the director shall certify that candidate as the exclusive representative of all employees in the unit.

Subd. 11. [UNFAIR LABOR PRACTICES.] If the director finds that an unfair labor practice was committed by an employer or

representative candidate or an employee or group of employees, and that the unfair labor practice affected the result of an election, the director may void the election result and order a new election.

Subd. 12. [BAR TO RECONSIDERATION.] When the director certifies an exclusive representative, he shall not consider the question again for a period of one year, unless the exclusive representative is decertified by a court of competent jurisdiction, or by the director.

Sec. 14. [179A.13] [UNFAIR LABOR PRACTICES.]

Subdivision 1. [ACTIONS.] The practices specified in this section are unfair labor practices. Any employee, employer, employee or employer organization, exclusive representative, or any other person or organization aggrieved by an unfair labor practice as defined in this section may bring an action for injunctive relief and for damages caused by the unfair labor practice in the district court of the county in which the practice is alleged to have occurred.

Subd. 2. [EMPLOYERS.] Public employers, their agents and representatives are prohibited from:

(1) interfering, restraining, or coercing employees in the exercise of the rights guaranteed in sections 179A.01 to 179A.25;

(2) dominating or interfering with the formation, existence, or administration of any employee organization or contributing other support to it;

(3) discriminating in regard to hire or tenure to encourage or discourage membership in an employee organization;

(4) discharging or otherwise discriminating against an employee because he has signed or filed an affidavit, petition, or complaint or given any information or testimony under sections 179A.01 to 179A.25;

(5) refusing to meet and negotiate in good faith with the exclusive representative of its employees in an appropriate unit;

(6) refusing to comply with grievance procedures contained in an agreement;

(7) distributing or circulating any blacklist of

individuals exercising any legal right or of members of a labor organization for the purpose of preventing blacklisted individuals from obtaining or retaining employment;

(8) violating rules established by the director regulating the conduct of representation elections;

(9) refusing to comply with a valid decision of a binding arbitration panel or arbitrator;

(10) violating or refusing to comply with any lawful order or decision issued by the director or the board; or

(11) refusing to provide, upon the request of the exclusive representative, all information pertaining to the public employer's budget both present and proposed, revenues and other financing information. In the executive branch of state government, this clause shall not be considered contrary to the budgetary requirements of sections 16A.10 and 16A.11.

Subd. 3. [EMPLOYEES.] Employee organizations, their agents or representatives, and public employees are prohibited from:

(1) restraining or coercing employees in the exercise of rights provided in sections 179A.01 to 179A.25;

(2) restraining or coercing a public employer in the election of representatives to be employed to meet and negotiate or to adjust grievances;

(3) refusing to meet and negotiate in good faith with a public employer, if the employee organization is the exclusive representative of employees in an appropriate unit;

(4) violating rules established by the director regulating the conduct of representation elections;

(5) refusing to comply with a valid decision of an arbitration panel or arbitrator;

(6) calling, instituting, maintaining, or conducting a strike or boycott against any public employer on account of any jurisdictional controversy;

(7) coercing or restraining any person with the effect to:

(a) force or require any public employer to cease dealing or doing business with any other person or;

(b) force or require a public employer to recognize for

representation purposes an employee organization not certified by the director;

(c) refuse to handle goods or perform services;

(d) preventing an employee from providing services to the employer;

(8) committing any act designed to damage or actually damaging physical property or endangering the safety of persons while engaging in a strike;

(9) forcing or requiring any employer to assign particular work to employees in a particular employee organization or in a particular trade, craft, or class rather than to employees in another employee organization or in another trade, craft, or class;

(10) causing or attempting to cause a public 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;

(11) engaging in an unlawful strike;

(12) picketing which has an unlawful purpose such as secondary boycott;

(13) picketing which unreasonably interferes with the ingress and egress to facilities of the public employer;

(14) seizing or occupying or destroying property of the employer;

(15) violating or refusing to comply with any lawful order or decision issued by the director or the board.

Sec. 15. [179A.14] [NEGOTIATION PROCEDURES.]

Subdivision 1. [INITIATION OF NEGOTIATION.] When employees or their representatives desire to meet and negotiate an agreement establishing terms and conditions of employment, they shall give written notice to the employer and the director. The employer has ten days from receipt of the notice to object or refuse to recognize the employees' representative or the employees as an appropriate unit. If the employer does not object within ten days, the employer must recognize the employee representative for purposes of reaching agreement on terms and

conditions of employment for the represented employees. If the employer does object, the employer or employees' representative may petition the director to take jurisdiction of the matter and the director shall investigate the petition.

Subd. 2. [JOINT NEGOTIATIONS.] Public employers and exclusive representatives of employees may voluntarily participate in joint negotiations in similar or identical appropriate units. It is the policy of sections 179A.01 to 179A.25 to encourage areawide negotiations, and the director shall encourage it when possible.

Subd. 3. [PUBLIC MEETINGS.] All negotiations, mediation sessions, and hearings between public employers and public employees or their respective representatives are public meetings except when otherwise provided by the director.

Sec. 16. [179A.15] [MEDIATION.]

Once notice has been given under section 179A.14, the employer or the exclusive representative may petition the director for mediation services.

A petition by an employer shall be signed by the employer or an authorized officer or agent. A petition by an exclusive representative shall be signed by its authorized officer. All petitions shall be delivered to the director in person or sent by certified mail. The petition shall state briefly the nature of the disagreement of the parties. Upon receipt of a petition, the director shall fix a time and place for a conference with the parties to negotiate the issues not agreed upon, and shall then take the most expedient steps to bring about a settlement, including assisting in negotiating and drafting an agreement.

The director may, at the request of a party to a labor dispute, assist in settling the dispute even if no petition has been filed. In these cases, the director shall proceed as if a petition had been filed.

The director shall not furnish mediation services to any employee or employee representative who is not certified as an exclusive representative.

All parties shall respond to the summons of the director

for conferences and shall continue in conference until excused by the director. However, for other than essential employees, mediation conferences following:

(1) the expiration date of a collective bargaining agreement, or

(2) in the case of teachers, mediation over a period of 60 days after the expiration date of a collective bargaining agreement shall continue only for durations agreeable to both parties.

Sec. 17. [179A.16] [INTEREST ARBITRATION.]

Subdivision 1. [NONESSENTIAL EMPLOYEES.] An exclusive representative or an employer may petition the director for interest arbitration. For all public employees except those specified in subdivision 2, the director shall certify a matter to the board for binding interest arbitration if:

(a) the director has determined that further mediation would serve no purpose and has certified an impasse, or impasse has occurred because the exclusive representative and the employer have participated in mediation for the period required in section 179A.18, subdivisions 1 and 2, and the collective bargaining agreement has expired; and

(b) within 15 days of a request by one party for binding arbitration the other party has accepted the request. A request for arbitration is rejected if the other party has not responded within 15 days of the request.

Subd. 2. [ESSENTIAL EMPLOYEES.] For essential employees the director shall only certify a matter to the board for binding arbitration if either or both parties petition for binding arbitration stating that an impasse has been reached, and the director has determined that further mediation would serve no purpose.

Subd. 3. [PROCEDURE.] Within 15 days from the time the director certifies a matter to the board for binding arbitration the parties shall submit their final positions on matters not agreed upon. The director shall determine the matters not agreed upon based on the positions submitted by the parties and

the director's efforts to mediate the dispute. The parties may stipulate items to be excluded from arbitration.

Subd. 4. [CONSTRUCTION OF ARBITRATION PANEL.] The board shall provide the parties to the interest arbitration a list of seven arbitrators. In submitting names of arbitrators to the parties, the board shall try to include names of persons from the geographical area in which the public employer is located. The parties shall, under the direction of the chairman of the board, alternately strike names from the list of arbitrators until only three names remain, or if requested by either party, until only a single arbitrator remains. If the parties are unable to agree on who shall strike the first name, the question shall be decided by the flip of a coin. The arbitrator or arbitrators remaining after the striking procedure constitute the arbitration panel.

Subd. 5. [JURISDICTION OF THE PANEL.] The arbitration panel selected by the parties has jurisdiction over the items of dispute certified to and submitted by the board. However, the panel has no jurisdiction or authority to entertain any matter or issue that is not a term and condition of employment, unless the matter or issue was included in the employer's final position. Any order or part of an order issued by a panel which determines a matter or issue which is not a term or condition of employment and was not included in the employer's final position is void and of no effect. A decision of the panel which violates, is in conflict with, or causes a penalty to be incurred under: (1) the laws of Minnesota; or (2) rules promulgated under law, or municipal charters, ordinances, or resolutions, provided that the rules, charters, ordinances, and resolutions are consistent with this chapter, has no force or effect and shall be returned to the arbitrator to make it consistent with the laws, rules, charters, ordinances, or resolutions.

Subd. 6. [POWERS OF THE PANEL.] The arbitration panel may issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence which relates to any

matter involved in any dispute before it. The panel may administer oaths and affidavits and may examine witnesses. Attendance of witnesses and the production of evidence may be required from any place in the state at any hearing. However, the panel's meeting shall be held in the county where the principal administrative offices of the employer are located, unless another location is selected by agreement of the parties. In case of refusal to obey a subpoena issued under this section, the district court of the state for the county where the proceeding is pending or where the person who refuses to obey is found, or resides, or transacts business shall, on application of the panel, have jurisdiction to issue an order requiring the person to appear before the panel, to produce evidence, or to give testimony. Failure to obey the order may be punished by the court as a contempt.

Subd. 7. [DECISION BY THE PANEL.] The panel's order shall be issued by a majority vote of its members. The order shall resolve the issues in dispute between the parties as submitted by the board. If the parties agree in writing, the panel shall be restricted to selecting between the final offers of the parties on each impasse item, or the final offer of one or the other parties in its entirety. In considering a dispute and issuing its order, the panel shall consider the statutory rights and obligations of public employers to efficiently manage and conduct their operations within the legal limitations surrounding the financing of these operations. The panel's decision and order shall be final and binding on all parties.

The panel shall render its order within ten days from the date that all arbitration proceedings have concluded. However, the panel must issue its order by the last date the employer is required by statute, charter, ordinance, or resolution to submit its tax levy or budget or certify its taxes voted to the appropriate public officer, agency, public body or office, or by November 1, whichever date is earlier. The panel's order shall be for the period stated in the order, except that orders determining contracts for teacher units shall be effective to

the end of the contract period determined by section 179A.20.

The panel shall send its decision and orders to the board, the director, the appropriate representative of the public employer, and the employees. If any issues submitted to arbitration are settled voluntarily before the arbitrator issues a decision, the arbitrator shall report the settlement to the board and the director.

The parties may at any time prior to or after issuance of an order of the arbitration panel, agree upon terms and conditions of employment regardless of the terms and conditions of employment determined by the order. The parties shall, if so agreeing, execute a written contract or memorandum of contract.

Subd. 8. [PAYMENT OF THE PANEL.] The members of the panel shall be paid actual and necessary traveling and other expenses incurred in the performance of their duties plus an allowance of $180 for each day or part of a day spent considering a dispute. All costs of the panel shall be shared equally by the parties to the dispute.

Sec. 18. [179A.17] [NEW EXCLUSIVE REPRESENTATIVES.]

Subdivision 1. [FOR TEACHERS.] If a new or different exclusive representative of teachers employed by a local school district is certified by the director at any time other than the period between 120 days before the termination date of a contract and the termination date of the contract, or if on July 1 of any odd-numbered year a representation proceeding involving the employer and the employer's teachers is before the director, section 179A.18, subdivision 2, clause (1), shall apply. In those cases, however, the employer and the exclusive representative of the teachers shall execute a written contract or memorandum of contract no later than 60 days after a certification by the director of a new or different exclusive representative or the resolution by the director of a representation proceeding. Either party may petition the director of mediation services for assistance in reaching an agreement. If the employer and the exclusive representative of the teachers fail to execute a contract by 60 days after the

certification of a new or different exclusive representative or the resolution by the director of a representation proceeding, they shall be conclusively presumed to be at an impasse after having participated in mediation sessions over a period of no less than 60 days.

Subd. 2. [NONTEACHERS.] If a new or different exclusive representative of employees other than teachers employed by a local school district is certified by the director, or if on the expiration date of an existing contract a representation proceeding is before the director, section 179A.18, subdivision 1, clause (1), shall apply. In those cases, however, the employer and the exclusive representative of the employees shall execute a written contract or memorandum of contract no later than 45 days after a certification by the director of a new or different exclusive representative or the resolution by the director of a representation proceeding. Either party may petition the director of mediation services for assistance in reaching an agreement. If the employer and the exclusive representative fail to execute a contract by 45 days after the certification of a new or different exclusive representative or the resolution by the director of a representation proceeding, they shall be conclusively presumed to be at an impasse after having participated for a period of no less than 45 days in mediation sessions.

Sec. 19. [179A.18] [STRIKES AUTHORIZED.]

Subdivision 1. [WHEN AUTHORIZED.] Confidential, essential, and managerial employees may not strike. Except as otherwise provided by subdivision 2 and section 179A.17, subdivision 2, other public employees may strike only under the following circumstances:

(1)(a) The collective bargaining agreement between their exclusive representative and their employer has expired or, if there is no agreement, impasse under section 179A.17, subdivision 2, has occurred; and

(b) The exclusive representative and the employer have participated in mediation over a period of at least 45 days,

provided that the mediation period established by section 179A.17, subdivision 2, shall govern negotiations pursuant to that section. For the purposes of this subclause the mediation period commences on the day following receipt by the director of a request for mediation; or

(2) The employer violates section 179A.13, subdivision 2, clause (9); or

(3) In the case of state employees,

(a) The legislative commission on employee relations has not given approval during a legislative interim to a negotiated agreement or arbitration award under section 179A.22, subdivision 4, within 30 days after its receipt; or

(b) The entire legislature rejects or fails to ratify a negotiated agreement or arbitration award, which has been approved during a legislative interim by the legislative commission on employee relations, at a special legislative session called to consider it, or at its next regular legislative session, whichever occurs first.

Subd. 2. [SCHOOL DISTRICT REQUIREMENTS.] Except as otherwise provided by section 179A.17, subdivision 1, teachers employed by a local school district, other than principals and assistant principals, may strike only under the following circumstances:

(1)(a) the collective bargaining agreement between their exclusive representative and their employer has expired or, if there is no agreement, impasse under section 179A.17, subdivision 1, has occurred; and

(b) the exclusive representative and the employer have participated in mediation over a period of at least 60 days, 30 days of which have occurred after the expiration date of the collective bargaining agreement, provided that the mediation period established by section 179A.17, subdivision 1, shall govern negotiations pursuant to that section. For the purposes of this subclause the mediation period commences on the day following receipt by the director of a request for mediation; and

(c) a request for binding interest arbitration has been rejected; or

(2) 45 days after impasse under section 179A.16, subdivision 1, neither party has requested interest arbitration; or

(3) the employer violates section 179A.13, subdivision 2, clause (9).

Subd. 3. [NOTICE.] In addition to the other requirements of this section, no employee may strike unless written notification of intent to strike is served on the employer and the director by the exclusive representative at least ten days prior to the commencement of the strike. If more than 30 days have expired after service of a notification of intent to strike, no strike may commence until ten days after service of a new written notification. Notification of intent to strike under subdivisions 1, clause (1); and 2, clause (1), may not be served until the collective bargaining agreement has expired, or if there is no agreement, on or after the date impasse under section 179A.17 has occurred. Notification of intent to strike under subdivision 2, clause (2), may not be served before the 45th day following an impasse under section 179A.16, subdivision 1.

Sec. 20. [179A.19] [ILLEGAL STRIKES.]

Subdivision 1. [OTHER STRIKES ILLEGAL.] Except as authorized by section 179A.18, all strikes by public employees are illegal. Except as provided in this section, no unfair labor practice or violation of sections 179A.01 to 179A.25 by a public employer gives public employees a right to strike. Those factors may be considered, however, by the court in mitigation of or retraction of any penalties provided by this section.

Subd. 2. [INDIVIDUAL PENALTIES.] Notwithstanding any other law, public employees who strike in violation of this section may have their appointment or employment terminated by the employer effective the date the violation first occurs. The termination shall be made by serving written notice upon the employee. Service may be made by certified mail.

Subd. 3. [PRESUMPTION OF STRIKE.] For purposes of this section, an employee who is absent from any portion of a work assignment without permission, or who abstains wholly or in part from the full performance of duties without permission from the employer on a day when a strike not authorized by this section occurs is prima facie presumed to have engaged in an illegal strike on that day.

Subd. 4. [REAPPOINTMENT.] A public employee who knowingly participates in a strike in violation of this section and whose employment has been terminated under this section may subsequently be appointed or reappointed, employed or reemployed, but the employee shall be on probation for two years with respect to the civil service status, tenure of employment, or contract of employment to which he or she was previously entitled.

Subd. 5. [COMPENSATION.] No employee is entitled to any daily pay, wages, reimbursement of expenses, or per diem for the days on which he or she engaged in a strike.

Subd. 6. [HEARINGS.] Any public employee is entitled to request the opportunity to establish that he or she did not violate this section. The request shall be filed in writing with the officer or body having the power to remove the employee, within ten days after notice of termination is served upon the employee. The employing officer or body shall within ten days commence a proceeding at which the employee shall be entitled to be heard for the purpose of determining whether the provisions of this section have been violated by the public employee. If there are contractual grievance procedures, laws or rules establishing proceedings to remove the public employee, the hearing shall be conducted in accordance with whichever procedure the employee elects. The election shall be binding and shall terminate any right to the alternative procedures. The same proceeding may include more than one employee's employment status if the employees' defenses are identical, analogous, or reasonably similar. The proceedings shall be undertaken without unnecessary delay.

Any person whose termination is sustained in the administrative or grievance proceeding may appeal in accordance with chapter 14.

Subd. 7. [EMPLOYEE ORGANIZATION PENALTIES.] An employee organization which has been found pursuant to section 179A.13 to have violated this section: (1) shall lose its status, if any, as exclusive representative; and (2) may not be so certified by the director for a period of two years following the finding. No employer may deduct employee payments to any such organization for a period of two years.

Sec. 21. [179A.20] [CONTRACTS.]

Subdivision 1. [WRITTEN CONTRACT.] The exclusive representative and the employer shall execute a written contract or memorandum of contract containing the terms of the negotiated agreement or interest arbitration award and any terms established by law.

Subd. 2. [NO CONTRACT PROVISIONS CONTRARY TO LAW.] No provision of a contract shall be in conflict with:

(1) the laws of Minnesota; or

(2) rules promulgated under law, or municipal charters, ordinances, or resolutions, provided that the rules, charters, ordinances, and resolutions are consistent with this chapter.

Subd. 3. [DURATION.] The duration of the contract is negotiable but shall not exceed three years. Any contract between a school board and an exclusive representative of teachers shall be for a term of two years, beginning on July 1 of each odd-numbered year. A contract between a school board and an exclusive representative of teachers shall contain the teachers' compensation including fringe benefits for the entire two-year term and shall not contain a wage reopening clause or any other provision for the renegotiation of the teachers' compensation.

Subd. 4. [GRIEVANCE PROCEDURE.] All contracts shall include a grievance procedure which shall provide compulsory binding arbitration of grievances including all disciplinary actions. If the parties cannot agree on the grievance

procedure, they shall be subject to the grievance procedure promulgated by the director under section 179A.04, subdivision 3, clause (h).

Employees covered by civil service systems created under chapter 43A, 44, 375, 387, 419, or 420, by a home rule charter under chapter 410, or by Laws 1941, chapter 423, may pursue a grievance through the procedure established under this section. When the grievance is also within the jurisdiction of appeals boards or appeals procedures created by chapter 43A, 44, 375, 387, 419, or 420, by a home rule charter under chapter 410, or by Laws 1941, chapter 423, the employee may proceed through the grievance procedure or the civil service appeals procedure, but once a written grievance or appeal has been properly filed or submitted by the employee or on the employee's behalf with his consent the employee may not proceed in the alternative manner.

This section does not require employers or employee organizations to negotiate on matters other than terms and conditions of employment.

Subd. 5. [IMPLEMENTATION.] Upon execution of the contract, the employer shall implement it in the form of an ordinance or resolution. If implementation of the contract requires adoption of a law, ordinance, or charter amendment, the employer shall make every reasonable effort to propose and secure the enactment of this law, ordinance, resolution, or charter amendment.

Subd. 6. [CONTRACT IN EFFECT.] During the period after contract expiration and prior to the date when the right to strike matures, and for additional time if the parties agree, the terms of an existing contract shall continue in effect and shall be enforceable upon both parties.

Sec. 22. [179A.21] [GRIEVANCE ARBITRATION.]

Subdivision 1. [DEFINITION.] For purposes of this section, "grievance" means a dispute or disagreement as to the interpretation or application of any term or terms of any contract required by section 179A.20.

Subd. 2. [SELECTION.] If the parties to a contract cannot agree upon an arbitrator or arbitrators as provided by the

contract grievance procedures or the procedures established by the director, the parties shall, under direction of the board, alternately strike names from a list of five arbitrators selected by the board until only one name remains. This arbitrator shall decide the grievance and the decision is binding upon the parties. The parties shall share equally the costs and fees of the arbitrator.

Subd. 3. [LIMITS.] Arbitration decisions authorized or required by a grievance procedure are subject to the limitations contained in section 179A.16, subdivision 5. The arbitrator shall send the board and the director a copy of each grievance arbitration decision and any written explanation. If any issues submitted to arbitration are settled voluntarily before the arbitrator issues a decision, the arbitrator shall report the settlement to the board and the director.

Sec. 23. [179A.22] [STATE AND ITS EMPLOYEES; NEGOTIATIONS.]

Subdivision 1. [APPOINTING AUTHORITY.] For purposes of this section the term "appointing authority" has the meaning given it by section 43A.02, subdivision 5.

Subd. 2. [EMPLOYER.] The employer of state employees shall be, for purposes of sections 179A.01 to 179A.25, the commissioner of employee relations or the commissioner's representative.

Subd. 3. [DUTIES.] In all negotiations between the state and exclusive representatives the state shall be represented by the commissioner of employee relations or his representative. The attorney general, and each appointing authority shall cooperate with the commissioner of employee relations in conducting negotiations and shall make available any personnel and other resources necessary to enable the commissioner to conduct effective negotiations.

Subd. 4. [AGREEMENTS.] The commissioner of employee relations is authorized to enter into agreements with exclusive representatives. The negotiated agreements and arbitration awards shall be submitted to the legislature to be accepted or

rejected in accordance with this section and section 3.855.

If a proposed agreement or arbitration award is rejected or is not approved by the legislature prior to its adjournment in an odd-numbered year, the legislative commission on employee relations is authorized to give interim approval to a proposed agreement or arbitration award. The proposed agreement or arbitration award shall be implemented upon its approval by the commission and state employees covered by the proposed agreement or arbitration award shall not have the right to strike while the interim approval is in effect. The commission shall submit the agreement or arbitration award to the legislature for ratification at a special legislative session called to consider it or at its next regular legislative session. Wages and economic fringe benefit increases provided for in the agreement or arbitration award which were paid pursuant to the interim approval by the commission shall not be affected but these wages and benefit increases shall cease to be paid or provided effective upon the rejection of the agreement or arbitration award or upon adjournment by the legislature without acting upon the agreement or arbitration award.

Sec. 24. [179A.23] [LIMITATION ON CONTRACTING-OUT OF SERVICES PROVIDED BY MEMBERS OF A STATE OF MINNESOTA OR UNIVERSITY OF MINNESOTA BARGAINING UNIT.]

Any contract entered into after March 23, 1982, by the state of Minnesota or the University of Minnesota involving services, any part of which, in the absence of the contract, would be performed by members of a unit provided in sections 179A.10 and 179A.11, shall be subject to section 16.07 and shall provide for the preferential employment by a party of members of that unit whose employment with the state of Minnesota or the University of Minnesota is terminated as a result of that contract.

Contracts entered into by the state of Minnesota for the purpose of providing court reporter services or transcription of the record of a hearing which was recorded by means of an audio magnetic recording device shall be subject to section 16.098 and

the preferential employment provisions enumerated in this section. Any court reporter seeking a contract pursuant to the preferential employment provisions of this section shall be given preference when the services are needed only if that court reporter's charges for the services requested are no greater than the average of the charges made for the identical services by other court reporters in the same locality who are also under contract with the state for those services.

Sec. 25. [179A.24] [APPLICATION OF SECTIONS 185.07 TO 185.19.]

Sections 185.07 to 185.19, apply to all public employees, including those specifically excepted from the definition of public employee in section 179A.03, subdivision 14, except as sections 185.07 to 185.19 are inconsistent with section 179A.13.

Sec. 26. [179A.25] [INDEPENDENT REVIEW.]

It is the 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 employee may present his grievance to the public employment relations panel under procedures established by the board.

Sec. 27. [REVISOR'S INSTRUCTION.]

In the next and subsequent editions of Minnesota Statutes, the revisor of statutes shall substitute the section reference "179A.01" for the section reference "179.61" and the reference "179A.25" for "179.76" in every place where the references "179.61" and "179.76" appear. The revisor shall also, in the next and subsequent editions of Minnesota Statutes, in each section referred to in column A, strike the reference referred to in column B and insert the reference in column C. If the

revisor changes the coding for references in column C, he may change references in column C to the appropriate coding.

Column A	Column B	Column C
3.855, Subd. 2	179.74, Subd. 5	179A.22, Subd. 4
10.39, Subd. 1	179.65	179A.06
15.62, Subd. 1	179.63	179A.03
43A.04, Subd. 5	179.74, Subd. 5	179A.22, Subd. 4
43A.05, Subd. 5	179.74, Subd. 5	179A.22, Subd. 4
43A.07, Subd. 2	179.741	179A.10
43A.08, Subd. 3	179.741	179A.10
43A.14	179.741	179A.10
43A.16, Subd. 1	179.741	179A.10
43A.18, Subd. 2	179.74, Subd. 5	179A.22, Subd. 4
121.506, Subd. 2	179.63, Subd. 13	179A.03, Subd. 18
121.506, Subd. 2	179.63, Subd. 14	179A.03, Subd. 12
121.507, Subd. 2	179.63, Subd. 13	179A.03, Subd. 18
125.032, Subd. 2	179.63, Subd. 13	179A.03, Subd. 18
125.12, Subd. 4	179.70, Subd. 2	179A.20, Subd. 5
125.12, Subd. 6a	179.72	179A.16
125.12, Subd. 14	179.63, Subd. 1	179A.03
125.12, Subd. 14	179.70, Subd. 1	179A.20, Subd. 4
125.12, Subd. 14	179.71, Subd. 5, clause (i)	179A.04, Subd. 3, clause (h)
125.17, Subd. 12	179.63, Subd. 1	179A.03
125.17, Subd. 12	179.70, Subd. 1	179A.20, Subd. 4
125.17, Subd. 12	179.71, Subd. 5, clause (i)	179A.04, Subd. 3, clause (h)
216A.035	179.63, Subd. 8	179A.03, Subd. 4
216A.035	179.741	179A.10
353.03, Subd. 1	179.63, Subd. 5	179A.03, Subd. 6
354.66, Subd. 7	179.63, Subd. 7	179A.03, Subd. 15
354A.094, Subd. 7	179.63, Subd. 17	179A.03, Subd. 7
354A.094, Subd. 7	179.63, Subd. 7, clauses (e) and (f)	179A.03, Subd. 15, clauses (e) and (f)
471.616, Subd. 1	179.67	179A.12
471.617, Subd. 4	179.67	179A.12

Sec. 28. [REPEALER.]

Minnesota Statutes 1982, sections 179.61; 179.62; 179.63, as amended by Laws 1983, chapters 216, article 2, section 4; 322, section 1; and 364, sections 1 and 2; 179.64, as amended by Laws 1983, chapter 247, section 77; 179.65; 179.66, as amended by Laws 1983, chapter 364, section 3; 179.67; 179.68; 179.69; 179.691; 179.692; 179.70, as amended by Laws 1983, chapter 216, article 1, section 33; 179.71, as amended by Laws 1983, chapter 364, section 4; 179.72, as amended by Laws 1983, chapter 305, section 20; 179.73; 179.74; 179.741, as amended by Laws 1983, chapters 247, section 78; 287, article 1, sections 1 and 2; 299, sections 22 and 23; 179.7411, as amended by Laws 1983, chapter 301, section 153; 179.742; 179.743; 179.75; and 179.76, are repealed.

S. F. No. 1986

Jerome M. Hughes
President of the Senate.

Harry A. Sieben, Jr.
Speaker of the House of Representatives.

Passed the Senate this 12th day of April in the year of Our Lord one thousand nine hundred and eighty-four.

Patrick E. Flahaven
Secretary of the Senate.

Passed the House of Representatives this 17th day of April in the year of Our Lord one thousand nine hundred and eighty-four.

Edward A. Burdick
Chief Clerk, House of Representatives.

Approved
4/24/84

Rudy Perpich
Governor of the State of Minnesota.

Filed
April 24, 1984

Joan Anderson Growe
Secretary of State.

LAWS OF MINNESOTA 1984, CHAPTER 463, ARTICLE VII, SEC. 51

Sec. 51 [ADVISORY COUNCIL ON BARGAINING IMPASSE RESOLUTION.]

Subdivision 1. There is created an advisory council on bargaining impasse resolution whose purpose shall be to study collective bargaining as it relates to public schools.

Subd. 2. The advisory council shall consist of 11 members as follows: two members of the senate appointed by the subcommittee on committees of the committee on rules and administration; two members of the house of representatives appointed by the speaker of the house; the director of the bureau of mediation services or a designee; and six members of the general public appointed by the governor. The advisory council shall elect a chair from its membership. The advisory council shall terminate on June 30, 1985.

Subd. 3. By January 15, 1985, the advisory council shall submit to the legislative commission on employee relations its report and recommendations on the impasse resolution policies under Minnesota Statutes, sections 179.61 to 179.76 relating to public schools. The advisory council shall study:

(1) existing provisions of state law relating to negotiations, mediation, and impasse resolution;

(2) attitudes of public employers and employees and the public on current collective bargaining laws relating to public schools;

(3) collective bargaining laws in other states relating to public schools;

(4) changes in stuatutory timelines and the right to strike; and

(5) collective bargaining rights and procedures relating to

principals and assistant principals.

Subd. 4. The legislative commission on employee relations shall provide staff for the advisory council. Members who are legislators shall be compensated in the same manner as other legislative meetings. The compensation of public members shall be governed by section 15.059, subdivision 3.