TEACHER BARGAINING:

CONTRACT DEADLINES AND PENALTIES;

BINDING ARBITRATION AS AN ALTERNATIVE

Commission on Employee Relations
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Legislative Commission on Employee Relations
Minnesota Legislature
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EXECUTIVE SUMMARY

In the late 1980s legislators increasingly heard concerns that contract negotiations between school boards and teachers were taking too long to complete and that the effects of those negotiations were occasionally spilling into the classroom. As a result, the legislature passed a law in 1989 to encourage school districts and teachers to settle their contracts more promptly. Under the 1989 law, if negotiations are not complete by January 15th (six and a half months after the old contract expires), a penalty of $25 per pupil unit is assessed.

The legislation appears to have been successful in encouraging districts and their teachers to complete their negotiations more promptly. In the two rounds of contracts that have been negotiated since the penalty provision was established, districts and teachers only failed in fourteen of approximately 860 contracts to meet the deadline.

Fears that imposing a deadline might adversely impact settlements (by inducing districts to settle for compensation increases higher than they otherwise would have, in order not to face the penalties) also seem to be unfounded. Data collected by the Minnesota School Boards Association indicate that the cost of settlements is relatively stable for the two and a half month period prior to the deadline. Thus, it does not appear that districts negotiate larger compensation increases in contracts settled just prior to the deadline.

School board representative and district administrators suggest that binding arbitration be established as a means to resolve impasses in negotiations between teachers and school boards. Binding arbitration is a mechanism employed when management and employee representatives reach an impasse in negotiating a labor contract. A neutral third party with expertise in labor management relations conducts a hearing in which both parties present their perspective on the issues that caused the impasse. The arbitrator then issues an award deciding each of the issues. Both the school district and the teachers must follow the terms of that award, so that it is binding on each of the parties.

These individuals believe that relying on a neutral third party would reduce the amount of tension that develops among school personnel when negotiations become strained, and would reduce the amount of time required to complete the collective bargaining process. However, data maintained by the Bureau of Mediation Services indicates that using binding arbitration (without other changes to the system) would not necessarily result in prompter settlement of collective bargaining agreements.

In meetings with interested parties, staff found some participants increasing concerned that the current system does not work. These parties, primarily school boards representatives and school district administrators, believe that the right of teachers to strike creates an uneven playing field in the collective bargaining process.

Although the actual incidence of strikes is quite low, school boards contend that even the threat of a strike has such a dramatic impact on the community that they are forced to settle contracts which provide for higher compensation increases than they can afford. Some parties hope that the use of binding arbitration would serve to keep labor contracts with teachers more affordable.

While the issue of affordability of contracts was beyond the scope of the assignment to the LCER, staff reviewed research on the impact of binding arbitration on the cost of labor contracts. The data (most of which does not involve teachers) appear to indicate that arbitrators issue awards that are generally comparable to negotiated settlements.

Although the use of binding arbitration might not necessarily lead to more affordable contracts, school boards and district administrators believe that a neutral third party involved in the process would reduce tensions and result in prompter closure of collective bargaining. These officials recognize that adopting a system of binding arbitration would remove ultimate decision making from the board and place it with an unelected labor arbitrator. School board representatives, however, contend that because the effects of a strike are so devastating, eliminating that threat is worth losing the power to make certain labor-related decisions.

The table below lists several of the primary issues that were raised by interested parties as staff developed this report. Because the perspectives and interests of these organizations vary, their positions on these issues discussed in the report are listed here.

Primary Issues and the Positions of Interested Organizations

Attitude toward issue:

	MSBA	MEA	MFT	MASA	ASGSD	AMSD
Support deadline and penalty	no	yes	yes	yes	yes	no
Move deadline to Sept. 1	no	no	no	yes	no	no
Deadline causes higher settlements	yes	no	no	yes	yes	yes
Deadline causes poorly written settlements	yes	no	no	yes	yes	yes
Current contract negotiations system is broken	yes	no	no	yes	yes	yes
Adopt binding arbitration to resolve impasse	yes	no	no	yes	yes	yes
If adopt binding arbitration, use final offer total package	yes	?	no	yes	yes	yes

MSBA = Minnesota School Boards Association
MEA = Minnesota Education Association
MFT = Minnesota Federation of Teachers
MASA = Minnesota Association of School Administrators
ASGSD = Association of Stable and Growing School Districts
AMSD = Association of Metropolitan School Districts

INTRODUCTION

The 1992 Legislature included a provision in the K-12 Education bill directing the Legislative Commission on Employee Relations to conduct a study of the impacts of a statutory deadline for negotiating contracts between school boards and teachers. The January 15th deadline, established by legislation adopted in 1989, imposes a penalty on districts that are unsuccessful in concluding contract negotiations with the exclusive representatives for the teachers. The study is to include an examination of the possible use of binding arbitration in lieu of the current deadline and penalty.

This report summarizes the history and impacts of this deadline and associated penalty. In developing the report, staff examined data regarding the impact of the deadline, other reports on collective bargaining for teachers, and other states' statutory mechanisms.

Staff for this project were provided by the House and Senate Education Committees, House and Senate Governmental Operations Committees, House Research, Senate Counsel and Research, and the Legislative Commission on Employee Relations. Staff involved in the preparation of this report met with interested parties and reviewed numerous reports and other documents.

LEGISLATIVE HISTORY

The Legislature adopted a provision in the K-12 Education bill in 1989 (Chapter 329, Article 1, section 7) establishing a financial penalty for school districts that had not completed collective bargaining with the exclusive representatives of its teachers by January 15th of an even numbered year (6-1/2 months after the old contract would have expired.) The provision only applied to contracts negotiated during the 1989-91 biennium.

The legislation was adopted after hearing numerous concerns about negotiations dragging on without hope of prompt resolution. The delays caused uncertainty for both parties about the financial impacts of operating under the terms of an old contract. The delays also created potential for the difficulties encountered at the bargaining table to spill over into the classroom and impact students' learning.

The original legislation provided that districts without a settled contract by January 15th would face a penalty of $25 per student in their state aids for that fiscal year. The state was to redistribute those dollars to districts that had successfully met the deadline.

The legislation was modified in 1990 (Chapter 562, Article 8, section 28) to make the deadline and the associated penalty apply to all future contract negotiations between school districts and the teachers. It also provided for some narrow exceptions, for districts that had agreed to and begun the process of binding arbitration, and if the arbitration panel had issued its decision within 60 days of final positions being filed. The provision was also modified so that penalties were to be returned to the general fund rather than distributed to other school districts meeting the deadline.

Finally, the 1992 Legislature adopted a provision in the Education Aids bill (Chapter 499, Article 8, section 31) requiring the LCER to examine binding arbitration as an alternative to the January 15th deadline and the penalty.

FINDINGS

January 15th deadline

1) **Parties accustomed to deadline.** Although both teacher representatives and school boards originally opposed the adoption of the deadline as an artificial intrusion in the collective bargaining process, both parties acknowledge they are now becoming accustomed to it. Both school boards and teachers have incorporated their planning and negotiations strategies so that they can reasonably expect to reach a settlement by January 15th.

2) **Parties wary of changing the deadline date.** School boards and teacher representatives indicate that the deadline has only been in existence for two rounds of bargaining, and are wary of proposals to change the date. Both teacher unions and school board representatives were resistant to moving the deadline to a date earlier in the school year.

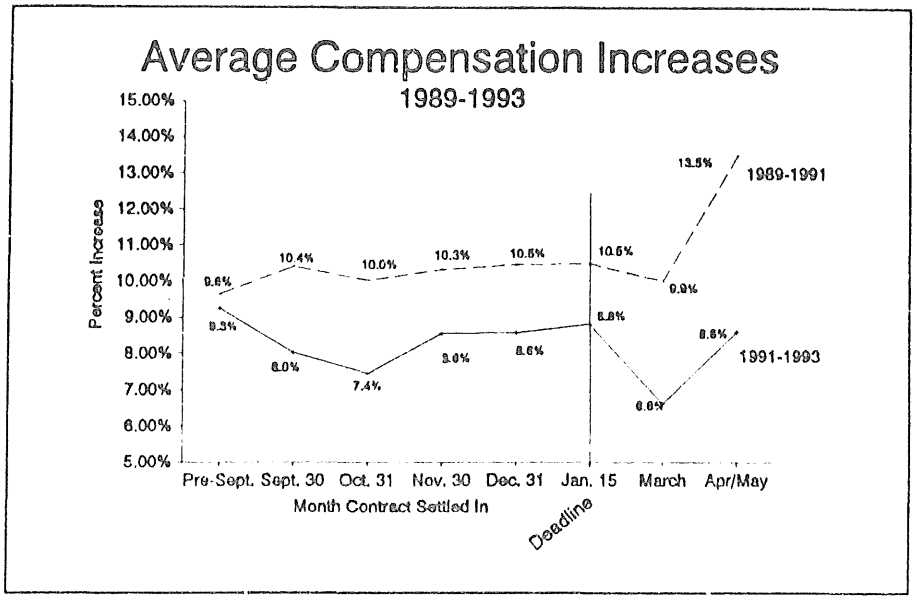
Both parties stated that because of the difficulty of negotiating during the summer, and because state financial aid levels are not known until late May, it is impossible to enter into serious bargaining before fall. Once negotiations begin in earnest in September, January 15th is the earliest a reasonable deadline should be imposed.

3) **Deadline and penalty appear effective.** The January 15th deadline appears effective in encouraging districts and the teachers to reach settlements. In the 1989-1991 contract period, only five districts had not reached settlement by the January 15th deadline. In the 1991-1993 contract period, only nine districts failed to meet the deadline. In each contract period, over 95% of the school districts met the deadline.

4) **Impacts on costs.** Some parties have expressed concern that the deadline and its associated penalty may have some impact on the costs of the contract settlements. Some believe that districts approaching the deadline will concede to salary demands in order to avoid losing general education revenue through the penalty.

Others point out that boards are in the position of having to pay once (if they negotiate to the point of missing the deadline and face the $25 per pupil penalty) in the hope of reaching a lower cost settlement, or to pay more over the long term if they agree to a higher settlement than they otherwise would have (in order to not lose the state aid.)

The Minnesota School Boards Association collects data from districts throughout the state on contract settlements between teachers and school boards. The data show the average percentage increases teachers negotiated in the collective bargaining with the school boards. These data reflect the average increase in total compensation.



The graph shows the average percentage increases of the contracts settled by month in which the agreements were reached. The data are from contracts for the 1989-1991 and the 1991-1993 contract periods. For the 1991-93 contract period, the average of the contracts negotiated and settled before the school year began was 9.3%, while those that were settled during the month of September averaged 8.0%.

1989-91 contract period. The data indicate some amount of variation during the roughly nine month time period in which teacher/school board contracts are negotiated. The first contracts settled at about 9.6%, then rose to 10.4% for those contracts settled in September, and then stayed relatively flat through the January 15th deadline. There was a decline for those contracts settled just after the deadline, which was followed by a period when the contracts settled at a substantially higher rate. (However, there was only one contract concluded in that month.) Of the 353 districts that submitted data, 271 settled during the two and a half months before the deadline.

According to this data, 23 districts reported that their settlements occurred after the January 15th deadline.

1991-93 contract period. The first contracts appear to settle at a somewhat higher rate, drop for negotiations through October, and then rise and stay flat at around 8.5% through the January 15th deadline. Of the 369 districts that submitted their settlements to the MSBA, the vast majority (307) settled at this level in the two and a half months before the deadline.

Six districts missed the January 15th deadline. The districts that settled shortly after the deadline had sharply lower settlement rates, but there were only four districts in this group. The two contracts that settled in April/May returned to the average settlement rate.

This graph depicts the *percent* increases in compensation negotiated between teachers and school boards. To see a chart depicting the *dollar* increases in compensation that were negotiated for these two contract terms see page 26 in the Appendix.

2) **No agreement on penalty bias.** There is no consensus that the deadline and penalty adversely affect one party in the negotiations process. Some have expressed the belief that districts would be more affected by the penalty since there could be pressure to settle a contract early (with a higher cost) rather than to risk losing general education revenue. Others, however, pointed out that districts, when presenting their negotiating positions to teachers, will offer two proposals: one reflecting an agreement to be reached before the deadline, and a second (lower) proposal reflecting an agreement reached after the deadline and after a penalty has been imposed.

3) **Consider incentive for early settlements.** Meetings with interested parties often included suggestions that the legislature consider adopting an incentive to those districts which are able to settle their negotiations early. Some urged that the penalty be replaced with an early settlement incentive, while others simply suggested that the early settlement incentive be added as an additional tool.

Binding Arbitration

1) **Binding arbitration does not necessarily lead to quick resolutions of contract negotiations at impasse.** Some interested parties have suggested that binding arbitration is a good alternative to the current mechanism of the January 15th deadline and penalty. These parties suggest that arbitration would be an effective mechanism to ensure more timely resolution of unsettled contracts.

However, a 1991 LCER study found that once arbitration is requested the average time for resolution (i.e., issuance of the arbitrated award) is 31 weeks---almost 4 1/2 months. If the goal of possible legislation is to devise a mechanism to accelerate the settlement of teacher contracts, binding arbitration may not be the best alternative.

We point out that the time it takes for any one arbitration to be completed is highly dependent on the parties involved. If the parties are very cooperative, and are able to ensure that their representatives are available for the arbitration hearings, it is possible to greatly shorten the time required to complete the process. The data from the 1991 LCER study were based on a large number of arbitrations that largely consisted of city and county essential employee groups.

This experience is mitigated by that of school districts striving to meet the January 15th deadline. The legislation establishing the deadline and penalty also provide that if binding arbitration is used to resolve the issues at impasse, other interim deadlines must be met. Final positions of each of the parties must be submitted by December 31, and the arbitrators must issue their awards within 60 days after that.

While the three districts that resorted to binding arbitration in the 1991-93 biennium do not appear to have met the deadline, the arbitration awards were issued substantially faster than cities and counties generally face with their essential employee units. It is not clear that if arbitration were used on a widespread basis for large numbers of school districts that that record could be maintained.

2) **Binding arbitration may lessen teacher/school district tensions.** Some interested parties have stated that a major benefit of resolving disputes through binding arbitration rather than through strikes (or the threat of them) is that arbitration is a more rational and less emotionally taxing process. Rather than putting a community into turmoil because of the disruption of a strike, or to avoid acrimony (that sometimes spills into the classroom) that occurs due to heated negotiations, arbitration can be an alternative that inserts a neutral third party to resolve issues at impasse.

3) **No consensus that the current mechanism is broken.** Staff held several meetings with interested parties to gain their insights into concerns relating to the deadline and the use of binding arbitration as an alternative to the current system.

There is significant divergence of opinion whether adoption of such major legislation as binding arbitration is necessary. Representatives of teacher organizations were not convinced that the current system is broken. They point out that almost all districts were able to successfully negotiate their contracts with teachers by the January 15th deadline. They also point out that in 1992, out of some 430 school districts, only three districts were involved in actual strikes by teachers.

Some representatives of school district administrators and school boards are convinced that the current system does not serve schools and students well. However, they do not focus that concern on the deadline and the penalty, but rather on their perspective that the overall collective bargaining construct is unevenly balanced. These representatives do not believe that school boards are on equal footing with teacher representatives when they are negotiating labor contracts.

These school board representatives and administrators believe that because of this unequal footing, contract settlements frequently outstrip the ability of the district to pay for the increased compensation costs. As a result, they propose adoption of binding arbitration as a mechanism to help constrain cost increases.

4) **Adoption of binding arbitration would be a significant change.** Adoption of binding arbitration for teachers is one option available to the legislature. Many states have adopted such procedures as a means to resolve differences at the bargaining table between teacher representatives and school boards.

Labor relations representatives are generally cautious about changes to PELRA. They argue that even small changes to the mechanisms by which labor and management representatives negotiate and settle their contracts can cause significant and unintended results.

A 1990 study prepared by a consultant for the LCER and the Legislative Commission on Public Education that examined alternative bargaining unit structures (i.e., regional bargaining) cautioned against modifying PELRA as a means to fix a problem that is rooted in the way public education is financed. The consultants expressed concern that modifying PELRA to provide for regional bargaining was in essence treating a symptom, when the real problem was differing levels of resources in districts that lead to differing salary levels.

However, the legislature should be clear about what policy goals it would want to achieve from such a change. If considered purely as an alternative to the current deadline and penalty to bring about more timely conclusion to contract negotiations, binding arbitration would probably not have significant impact. Most school districts have met the January 15th deadline. And other studies have indicated that binding arbitration does not necessarily lead to a more prompt settlement of contracts.

Some argue that adoption of binding arbitration would be a means to ensure that teacher contracts are fair and affordable. These parties have concluded that many districts negotiate contracts which are thought to be more than the district can really afford. However, a study conducted by the University of Minnesota in the early 1980s concluded that arbitrators did not grant awards with larger wage increases than were otherwise being negotiated. It is not clear that adoption of binding arbitration would result in "more affordable" contracts. But, depending on how arbitration is structured, some parties may prefer to take their chances with an arbitrator rather than continuing negotiations or taking a strike.

Finally, some interested parties believe that binding arbitration would be a means of avoiding the disruption to communities when teachers exercise their current right to strike. Some have indicated that school boards fear the strike more because of negative reaction by the community that relies on schools for child care as opposed to the possible impact of a strike on the education of students.

While strikes occurred only three times in the 1991-93 contract term, and only two times in the 1989-91 contract term, some argue that the threat of strike creates a fundamental imbalance in favor of teachers and limits the ability of the school boards to negotiate a fair and reasonable contract.

OPTIONS

The legislature has a number of alternatives it could consider that would impact the process by which representatives of teachers and school boards collectively bargain terms and conditions of employment. This list of options is divided into two categories. The first group includes alternatives that deal directly and primarily with the deadline and penalty. The second group includes alternatives that would have a much wider impact, and are not necessarily directed at the deadline and penalty. These were brought up by interested parties and are discussed here, even though they are somewhat beyond the scope of the study assigned to the LCER.

Group 1.

1) **Financial incentives for early settlements.** Just as the legislature created a disincentive for late settlements by establishing a penalty, it could create an incentive for districts and teachers to settle early. If the legislature's goal is to encourage school boards and teachers to settle their contract before the negotiations process can impact on the classroom (e.g., before the school year begins) it could establish an incentive for districts meeting that goal. During the 1991-93 contract term, only 13 of 430 districts were able to corplete their negotiations before the school year began.

By creating an incentive, the legislature can reward districts settling before the school year. The incentive could be framed in a similar way to the disincentive currently established, based on a flat allocation per pupil.

The legislature could choose to both establish an incentive for districts settling early and maintain the existing penalty for districts settling after January 15th. If the penalty were retained, proceeds from the penalty could be used to fund the incentive for settling early. However, the proceeds from the penalty would not be a dependable source of funding for the incentive.

2) **Prohibit retroactive settlements.** If the legislature's goal is to encourage districts to settle earlier in the school year, it could prohibit retroactive settlements.

A common practice in collective bargaining in the public sector is for management to agree to apply wage and benefit increases retroactively to the date the old contract expired, generally June 30th. This practice has the effect of holding the represented employees harmless for the length of the negotiations, because the union understands that their members will get the full benefit of any increases, no matter when the contract is ultimately settled. By prohibiting retroactive settlements, the legislature would place an incentive on the exclusive representatives for teachers to settle the contract as soon as possible.

This option may have limited appeal, since it would not be perceived as being a neutral change in PELRA, because its impact would fall solely on the teachers. Also, negotiators for the teachers could mitigate the impact of such a prohibition by demanding increases elsewhere in the compensation package. Teachers could make up for a "loss" of not receiving retroactive increases by either getting a larger salary increase, or by receiving a lump sum amount that could approximate the retroactive losses. Finally, it is not clear that this change would induce earlier settlements, since school boards would have a financial incentive to delay reaching settlements.

3) **Prohibit salary increases under continuing contract provisions.** Under PELRA (Chapter 179A.20, Subd. 6) the terms of the existing contract continue in effect after the old contract expires, until the date when a right to strike matures. During this time, teachers (as do all other organized public employees) continue to receive salary increases that are provided in the contract. Salary increases dependent on seniority, or on increased training (such as steps and lanes) continue even if there is no new agreement reached.

Some have suggested that these kinds of increases be prohibited until a new agreement is agreed on. By prohibiting these interim increases, there would be increased pressure on teachers to settle, since they would not be enjoying any increases in the midst of bargaining. However, representatives of teachers would likely oppose this sort of measure as being unfair, in that it assumes the only cause for delay in reaching settlements lies with teacher negotiators. Also, it would be difficult to make a systemic change of this kind just for teacher groups without affecting other public employees.

Group 2.

4) **De-couple teacher contract terms from the state's fiscal year.** Under Minn. Stat. 179A.20, Subd.3, contracts between teachers and school districts must coincide with the state's biennium. There is no such requirement for other school district employees or for employees of other governmental subdivisions. State employee contracts, however, must coincide with the state fiscal year.

Some have argued that because these contracts are coterminous with the state biennium, negotiators have entered into practices where it is assumed that the funding that becomes available through legislative appropriations is directly available at the bargaining table. Many interested parties have mentioned that negotiations for the next teacher contract term can hardly be expected to be completed by September, since the funding from the legislature is not often known until late May.

Some labor practitioners point out that school districts should be negotiating salary and benefit demands by teachers, and should not be "bargaining the budget." By discussing the funding changes made by the legislature, a school district implicitly puts that funding on the table for negotiation. Instead, according to this perspective, the district ought to be focusing on its own needs and demands, and responding to demands of the exclusive representative of the teachers.

The legislature could de-couple this relationship by treating teachers the same way it does other local subdivision employees. By eliminating this requirement. districts and teachers could enter into single or multi-term contracts, whic.. would not necessarily coincide with the state fiscal year or the biennium.

5) **Eliminate make-up days.** Some observers criticize the current process for teachers and school districts because both parties could be considered to be immune from the financial impacts of the most devastating weapon in collective bargaining--the strike. State law establishes a minimum number of school days that districts must offer, and state aids are based on a per pupil per day formula. Because of these policies, districts and teachers know that in the event of a strike, school days lost to a strike (which normally results in a loss of salary to teachers and a loss of revenue to the district) will be recouped by adding on days. These add-on days have the effect of keeping teachers and districts whole, which minimizes the financial impact of the strike as a collective bargaining tool.

Some have contended that districts enduring a strike be exempted from the minimum school day requirement, so that teachers would face a loss in compensation in deciding to use that tool. In this way, teachers would be treated like other public--and private--employee groups.

However, others point out that such a policy harms children, who would have fewer school days and lessened learning opportunities. Some proponents of this change would limit the number of days that could be lost without requiring that they be made up (such as permitting five days to be lost to a strike) to minimize the impact on students.

6) **Limiting make-up days combined with reduced aids.** Eliminating make-up days, or limiting the number of make-up days, for districts that have endured a strike is criticized for placing all of the burden for change for reaching settlements on teachers. While such a change would treat teachers like other organized employee groups, it could be coupled with a policy change that would reduce state aids to districts for those make-up days, which would have the effect of placing greater pressure on districts to reach a settlement with the teachers.

Under this option, days lost to a strike would be required to be made-up, but at reduced salaries for the teachers and with reduced state aids for the district. Such a system would force both districts and teachers to face economic consequences in the event of a strike, consequences they do not currently face.

7) **Extend current binding arbitration mechanism to teachers.** Some school board organizations have called for the extension of the use of binding arbitration for teachers. They contend that school boards are in an unequal bargaining position with teachers because school boards believe that the use of (or threat of) the strike by teachers is too devastating for most communities to endure. They contend that districts are then forced into the position of acceding to teachers' salary demands.

They contend that adoption of binding arbitration would equalize the negotiating positions for boards and teachers, and eliminate the devastating potential of a strike on the community. Some believe that in many ways teachers ought to be

considered "essential employees" like firefighters and law enforcement officials because of the reliance parents have on their children being in the classroom during the weekday.

Under this option, teachers and districts at impasse in their bargaining would resort to binding arbitration to settle their differences. Teachers would lose their right to strike. Districts and the exclusive representative for the teachers would submit their final positions on each issue. The parties would receive a list of arbitrators from the Bureau of Mediation Services, strike names until one (or three if they decide to use a panel) remain. That arbitrator receives briefs outlining the various issues, positions and rationale, and conducts a hearing.

The arbitration award is generally issued about thirty days after the record is closed. The arbitrators under this system are free to fashion the award in any way they decide, with the general notion of attempting to establish an outcome similar to what the parties would have developed had they been successful in their negotiations.

It is not clear if adopting binding arbitration would address all of the concerns that have been cited about the current system of collective bargaining for teachers. First, binding arbitration does not necessarily result in prompter settlement of contracts. A study by the LCER found that arbitration generally took an average of 4-1/2 months from the time it was formally requested. (However, school districts striving to meet the January 15th deadline are required to meet shorter timelines so that binding arbitration is completed more quickly). Second, a study done in the early 1980s by the University did not find that arbitrated awards varied significantly from comparable negotiated settlements.

8) **Establish binding arbitration-final offer.** Some interested parties suggest that if the legislature were to require that impasses in negotiations between school boards and teachers be resolved through arbitration rather than strikes, then final offer arbitration should be adopted. Under conventional arbitration, parties submit their final positions, and the arbitrators are free to establish an award in any manner they believe appropriate. Under final offer arbitration, the arbitrator must select the best offer of one or the other parties, and cannot compromise between the two.

Proponents of this form of arbitration contend that final offer arbitration would lead to more meaningful negotiations and more negotiated settlements because parties would fear that if their final offer were too outlandish, it would be rejected by the arbitrator. Currently, both parties can submit extreme positions knowing that the arbitrator will likely compromise somewhere between the final two offers. But if the parties know that they could lose everything because their position is extreme, they will seek a more accommodating position. Because each of the parties is attempting to narrow their differences, they are more likely to reach a point where the differences are small enough that they are able to settle on their own.

There are two forms of final offer arbitration: item by item, and total package. In final offer item by item arbitration, the arbitrators must select either party's final offer on each of the items at impasse. Frequently, wages are split into a separate issue for each year of the contract. Health insurance is usually a separate issue, followed by whatever other issues could not be agreed on during negotiations. Critics say that while this form is better than conventional arbitration, because an arbitrator can trade off one item against another, the incentive for parties to submit their best possible set of proposals is somewhat limited.

In final offer total package arbitration, the arbitrators must select either of the parties' entire package with all of the issues considered en masse. Because this form of arbitration creates the greatest risk for both parties, there is a great incentive to submit the best package possible so as to limit the chances of being rejected. And because each party is working to make its package the most attractive, proponents argue that there is a greater likelihood that they will resolve their differences on their own and reach a voluntary settlement.

Some critics believe that total package arbitration can be damaging to the collective bargaining relationship because selection of one entire package or the other creates too great a loser and winner. Those damaged relationships can remain for years.

Some proponents of extending the application of binding arbitration to teachers also suggest that statutory criteria be added to PELRA to provide guidance to arbitrators on what factors ought to be considered in reaching their decisions. PELRA currently does not establish such criteria, leaving that issue to arbitrators to decide. While arbitrators generally follow a somewhat standardized list, proponents contend that the legislature should be more explicit in developing guidelines. The states of Iowa and Wisconsin both have criteria in their public employee bargaining statutes.

9) **Define teachers as essential employees.** One alternative available to the legislature is to include teachers in the definition of units of public employees who are defined in PELRA to be "essential." Minnesota Statutes 179A.03, Subd. 7 defines essential employees by occupation to include firefighters, peace officers and correctional guards, among others.

Interested parties contend that the impacts of strikes (or even the threat of strikes) are so disruptive of the community that school boards are not in a position to negotiate on equal terms with teachers union representatives. Because it appears that these impacts are similar to those contemplated with possible work disruptions by firefighters and peace officers, perhaps teachers should also be considered to be "essential" under PELRA.

If teachers were statutorily defined to be essential, they would have the same collective bargaining mechanisms as these other groups. They would be able to negotiate, and if those negotiations reached impasses, either party could request mediation and then binding arbitration.

10) **Legislatively established limits on salary increases.** Several interested parties have observed that the current collective bargaining mechanisms are generally working as designed. Teachers and school boards are able to negotiate agreements, and the vast majority do so by the deadline established by the legislature. There are very few strikes. As was pointed out in a consultant's report to the LCER in 1990, collective bargaining under PELRA has been successful in enabling boards and teachers to cooperatively reach agreements on their terms and conditions of employment. Those labor contracts reflect the varying resources of districts, and the varying interests and demands of the teachers.

While some express concern that school boards and teachers reach agreements that they contend are unaffordable, there is nothing in statute or legislative policy limiting increases. If the legislature desired to limit increases, it should simply do so, without modifying the process by which teachers and boards negotiate labor contracts. By legislatively establishing limits on increases, PELRA could be left intact for the parties to negotiate on local issues and concerns.

Critics of this option argue that whatever the legislature established as the limit would become the "given" when districts and teachers concluded their negotiations. These parties believe that if the legislature capped increases at 2.5%, for example, then each of the contracts negotiated throughout the state would reflect that 2.5% increase. Some critics are concerned that to offset that limit, teachers might demand increases in other, non-financial aspects of the contracts.

APPENDIX

OTHER STUDIES

There have been several studies conducted in the last few years that have examined the process for negotiating the labor contracts between the exclusive representatives for teachers and the school boards. In addition, there have been other reports written since public employees' right to strike was greatly expanded in 1980.

1. Final Report of the Advisory Commission on Bargaining Impasse Resolution. The 1984 Legislature established an advisory council on bargaining impasse resolution to study collective bargaining as it relates to public schools. Headed by the Director of the Bureau of Mediation Services, this report focused on collective bargaining for teachers and school districts.

While concluding that PELRA was fundamentally sound, the report made numerous recommendations for fine-tuning the process to overcome what the council found to be the most significant problem--delays in the conclusion of negotiations.

The Council provided several recommendations in its final report to the Legislature. The most significant of those suggestions were:

1) That statutory requirements regarding the terms of teacher contracts be repealed;
2) Limit teachers to initiating only a single notice to strike;
3) Re-establish final offer, item by item binding arbitration for principals and assistant principals;
4) Establish a financial incentive system for those school districts where negotiations are settled in a timely fashion.

Since the report was issued in January 1985, the Legislature has adopted two of these provisions and adopted a variation on a third. It has adopted legislation limiting teachers to issuing only one strike notice, made permanent a provision that binding arbitration for principals and assistant principals be best offer-item by item, and it has established a penalty for those districts who do not settle their contracts in a timely fashion.

Interestingly, the report's discussion regarding the use of binding arbitration for principals and assistant principals focused only on extending a temporary provision that already existed in PELRA. There was no discussion about the feasibility of extending binding arbitration to cover teachers. (Because principals were considered essential employees under PELRA, the only discussion was on the type of arbitration that should be followed. Establishing binding arbitration for teachers would have been a much bigger step.)

2. Report on Alternative Collective Bargaining Unit Structures For Minnesota's Public Schools. This report, written under a consulting contract for the LCER and the Legislative Commission on Public Education, focused on the feasibility of developing regional bargaining for Minnesota's public school districts. They identified the major problems with the collective bargaining process as 1) negotiations take too long; negotiations divert energy and resources away from teaching; 3) collective bargaining creates animosity; and 4) the process is duplicative across 435 districts.

The principal finding of this study was that adoption of a regional bargaining model alone would not resolve the major tensions that exist between school districts in Minnesota. Because there are such wide variations in school districts' size, resources and policies, it would be difficult for regional bodies to successfully negotiate contracts with teachers. Instead, the consultants suggested that school districts be reorganized to ensure that resources are distributed more equitably.

The report also briefly addressed the issue of binding arbitration as one alternative they had encountered during their research on regional bargaining. (The consultants pointed out that school district superintendents supported binding arbitration as a preferred mechanism to solve many of the problems school districts face.) Their report acknowledges that binding arbitration might reduce the amount of time needed to reach agreements, and would alleviate those stresses created by the right to strike.

However, the consultants also pointed out that most labor relations practitioners believe collective bargaining agreements that are negotiated are generally superior to those that are imposed by a third party. They also conclude that binding arbitration would not alter the current funding mechanisms or the organization of school districts, which the consultants believe are the primary causes of the disparities between districts and tensions between teachers and school boards.

3. Arbitrated Contract Awards: Where Does the Time Go? This report, prepared by LCER staff, examined the amount of time it takes for parties to go through the process of binding arbitration. Using data from the Bureau of Mediation Services, the report found that on average, each step took the following number of days:

*From expiration of the contract to the request for arbitration--219 days
*From request for arbitration to certification of issues for arbitration--33 days
*From certification of impasse to issuance of arbitration panel--12 days
*From issuance of arbitration panel to selection of arbitrator--27 days
*From selection of arbitrator to hearing--68 days
*From completion of hearing to filing of post-hearing briefs--38 days
*From submission of hearing briefs to arbitrator's award--44 days

The BMS data indicate, that on average, it takes about 441 days, or 14 months to complete the process of binding arbitration. Although almost half of that time is comprised of the time between the expiration of the old contract and the decision by one of the parties to request arbitration, it is clear that this process is not necessarily one that leads to speedy resolutions of contract disputes.

The report included approximately 100 cases in its evaluation, most of which were essential employee groups of local units of government (chiefly law enforcement officials and fire fighters). While the evaluation included some school districts where the parties jointly agreed to arbitration, the data were not broken down to determine whether their experience was different from the other groups.

The report's findings should give pause to those who would hope that the use of binding arbitration would lead to quicker resolution of disputes between school boards and teacher groups. Even if arbitration were requested early in the process after the old contract expired it would still be over seven months before the arbitrators issued their award.

4. A Quantitative Description and Evaluation of Public Sector Collective Bargaining in Minnesota: 1973-1980. This report, prepared by researchers at the University of Minnesota under a consulting contract for the LCER was a wide ranging examination of public sector collective bargaining. A major focus of the study was directed at apparent increasing reliance on arbitration by public employers and their essential employee units. The theory (referred to as the "narcotic effect") was that once parties became accustomed to handing over difficult decisions to a third party when negotiations became difficult, those parties would tend to do so more frequently in the future.

One relatively minor component of that study was an examination of whether arbitrated awards resulted in higher wage increases than those collective bargaining agreements that were negotiated. The researchers concluded that arbitrators did not grant awards with larger wage increases that were otherwise being negotiated.

There may be some who believe that if binding arbitration were used more in disputes between teachers and school boards that the costs of those wage increases would be more modest. In this study (albeit one that was conducted in 1980), the researchers concluded that "these results may be interpreted as support for the view that arbitrators made their awards based on specific comparison to other similarly situated groups." (p. 90). This study apparently concluded that arbitration awards mirror settlements, and are neither substantially higher nor lower than those settlements that are negotiated.

5. School Finance: MASA Education Position Committee Report. This report was published in June, 1992 by a committee of the Minnesota Association of School Administrators. The committee's general charge by the association was to examine Minnesota's system of school finance and to make recommendations in concert with the constitutional mandate for funding education.

One area examined in the report included cost containment, and focused on collective bargaining between school boards and the exclusive representatives of the teachers. The report concludes that the "current process used to arrive at the terms and conditions of employment is not working in the best interests of the students or the state." (p.17)

The report recommends that in the short term the legislature consider a salary freeze for all employees. In the long term, the report recommends alternatives that include:

- Replacing the right to strike with mandatory last best offer arbitration;
- Initiate a statewide or regional bargaining system;
- Legislate a cap on employee salary increases;
- Classify teachers as essential employees.

OTHER STATES

General Practice of Other States. According to a report published by the Commerce Clearing House ("Labor and Employment Arbitration," edited by Borenstein and Goslyn) 33 states provide teachers some form of collective bargaining over their employment contracts.

According to that study, six states (the report erroneously excludes Minnesota from its list of five), permit teachers the right to strike. Those states are: Illinois, Ohio, Pennsylvania, Wisconsin (and Minnesota). States have varying requirements or steps that must be followed leading to the step of actually engaging a strike.

That study also indicates that eighteen states provide for or allow binding arbitration. Fourteen of those require that both parties must mutually agree before it is mandatory.

Wisconsin. Wisconsin uses a binding arbitration procedure, with a limited right to strike, for all municipal employees. Essentially, the Wisconsin Employment Relations Commission (WERC) must attempt to mediate any bargaining dispute at the request of one or both parties, or on its own initiative, before the binding arbitration process can begin. WERC encourages a voluntary settlement, but has no power of compulsion.

Binding arbitration can be initiated upon the request of one or both parties if mediation is unsuccessful. WERC must certify impasses for arbitration and appoint an arbitrator. Within 10 days of the appointment, the arbitrator must establish a date and time for the arbitration hearing. The parties' final entire offer serves as the basis for the hearing, though either party may modify its offer during the process with the consent of the other party. The arbitrator must adopt the entire final package offer of one of the parties in making his or her decision.

Employees have a limited right to strike under two conditions; (1) if, after the arbitrator is appointed, both parties withdraw their final offers, the labor organization may strike after giving 10 days notice, (2) both parties may agree to use their own impasse resolution procedures, which may, among other things include a strike.

Wisconsin has approximately 430 school districts. Teacher contracts are negotiated for a period of up to three years; however, virtually all contracts are for one or two years, with the majority being two year contracts.

For the two-year period from July 1, 1987 - June 30, 1989, in negotiations involving teachers and other school district professionals, 117 petitions requesting arbitration were filed with WERC. Of these 117 cases: (1) 66 settled during the investigation stage, prior to the appointment of an arbitrator, (2) 10 settled after the arbitrator was appointed but before mediation had begun; (3) four settled after mediation by the arbitrator; and (4) 37 arbitration awards were issued. Of the 37 arbitration awards, 11 were consent awards, in 13 cases the employer's offer was selected, and in 13 cases the union's offer was selected.

Wisconsin legislative staff had the following observations about Wisconsin's procedures:

- Wisconsin legislators often have a problem with arbitrators making decisions which affect levies and taxes.
- There is often a problem in identifying the "comparables" arbitrators should use in making decisions and it is difficult to select a total final package based on a number of comparables.
- They have found that there are one or two arbitrators who get selected all the time. (Given the pattern of awards however, this may not necessarily be a negative aspect.)
- Last year Wisconsin had a legislative proposal that would have required teachers to accept the school district wage offer if the district offered at least the rate of inflation for teacher salary increases. This proposal did not pass.

Iowa

Iowa also uses a binding arbitration procedure, however Iowa's procedure differs significantly in that the timing of events is directly tied with the legislative budgeting process. In addition, the bargaining process is always completed before the start of the next contract year, usually by the end of the preceding May.

The Iowa public employment bargaining process is a three-tiered process made up of mediation, fact-finding and final binding arbitration. Employees do not have the right to strike. The parties can agree to negotiate a separate impasse procedure, but failure to agree on an alternative requires the parties to follow the statutory procedure.

In 1991, school employees were exempted from the fact-finding process. This change was partially due to the shortening of the time schedule for release of budget increase estimates, which in turn shortens the schedule teachers must follow in reaching a contract settlement. The current process for both budget certification for local governments and teacher bargaining are shown below:

- A district's first few negotiation meetings are held in early December or before through January. At this time the parties must agree upon an impasse procedure. Impasse must be declared by January 31.

- Simultaneously, the Governor announces during the first two weeks of session, the recommended budget and allowable growth index for school districts.

- The legislature must within 30 days either approve this growth index or issue and approve a different index.

- All local budgets (including school districts) for the next fiscal year must be certified by April 16.

- School districts must hold contract mediation sessions prior to April 6. Arbitration must be requested no later than 10 days after the start of mediation, but in no case later than April 16 unless an independent impasse procedure has been agreed upon.

- Arbitration hearings must be held no later than May 16. The arbitrator's final award must be postmarked no later than May 31.

- Since 1979, 562 (average of 43.2 per year) arbitration awards have been issued in Iowa. This includes all school district, city, county and state employees. Of these arbitration awards, 274 (21 per year) or 49 percent have been issued for school district employees. (Iowa has approximately 430 school districts.)

BINDING ARBITRATION

The legislation providing for this study requires that binding arbitration be evaluated as an alternative to the current mechanism of a deadline and penalty. Binding arbitration is a method by which parties unable to negotiate a contract on their own submit the issues to a third party. The neutral third party conducts a hearing, receives evidence, reviews the testimony, and then issues an award that is binding on the employer and the employee group.

The Minnesota Public Employment Labor Relations Act (Chapter 179A) (PELRA) requires that binding arbitration be used when public employers and essential employee units are unable to successfully negotiate their labor contracts. Typical essential employee groups include law enforcement officials and firefighters. These groups do not have the right to strike, and instead rely on arbitration as the method for resolving unsuccessful contract negotiations.

PELRA provides a very structured process that parties follow in binding arbitration. Responsibility for managing the overall process is assigned to the Bureau of Mediation Services.

PELRA does not provide explicit criteria for the arbitrators to use in making their award. Instead, arbitrators generally follow traditional guidelines that typically include:

- Settlements of comparable jurisdictions
- Other settlement within the jurisdiction
- Salaries of comparable positions with that employer
- Cost of living increases
- The financial ability of the jurisdiction to pay

In addition, arbitrators are required to consider equitable compensation relationships under Section 471.992.

Most labor relations practitioners agree that the best labor contracts are those that are negotiated directly by the parties. When negotiations are successful, the parties know exactly what the terms of the contract are, what meanings the language changes have, and they are committed to the agreement because they have agreed to each provision.

In arbitrated awards, a third party, the arbitrator, becomes involved who may include provisions in the award that were not contemplated by the parties. It is the risk of having an outsider involved that is intended to encourage labor and management to work together to resolve their differences and reach a settlement.

There are three general forms of binding arbitration: Conventional, final offer-item by item, and final offer-total package. PELRA provides that unless parties agree otherwise, the arbitrator will use conventional arbitration. However, arbitration for school principals and assistant principals (also determined by PELRA to be essential employees) is required to be final offer-item by item.

1. **Conventional arbitration.** Under this form of arbitration, labor and management representatives each submit final positions on each of the issues which remain in dispute. After conducting a hearing, and reviewing evidence, the arbitrator fashions an award. The arbitrators are free to fashion the award in any way they deem appropriate, generally following a guideline of creating the award so as to reflect what they believe the parties would have come up with on their own had they been successful.

The majority of arbitrations follow this form. Critics point out that this form of arbitration is less likely to induce the parties to settle on their own. Because arbitrators generally split the differences between labor and managements' final positions, there is little incentive for the parties to negotiate to narrow their differences. Thus, parties moving through the arbitration process have little incentive to settle or to moderate their positions.

2. **Final offer-item by item.** Under this form of arbitration, labor and management representatives each submit their final positions on each of the items of the contract that remain in dispute. As in conventional arbitration, the arbitrator conducts a hearing and reviews the evidence. However, in making the award, the arbitrator must take either the labor or the management position on each of the issues. Because both parties fear losing their proposed positions, they will tend to moderate their proposals, and the differences between them will be narrower.

This form of arbitration is sometimes considered preferable to conventional arbitration in that it forces each party to more carefully consider its final position on each issue, and to present the best possible (i.e., the most likely to be adopted by the arbitrator) proposal in its final offer. If a final position is considered by the arbitrator to be outlandish, they will take the other parties' position.

However, critics say that even this form of arbitration may not cause the labor and management representatives to work to submit their best final positions, because they know that the arbitrator can trade off one issue against another. For example, if there is a two year contract, an arbitrator could select a "too low" management offer for the first year, and a "too high" labor offer for the second year. Knowing that these trade-offs can occur may cause the parties to limit their willingness to submit their best proposals, and can inhibit negotiators from working towards a resolution on their own.

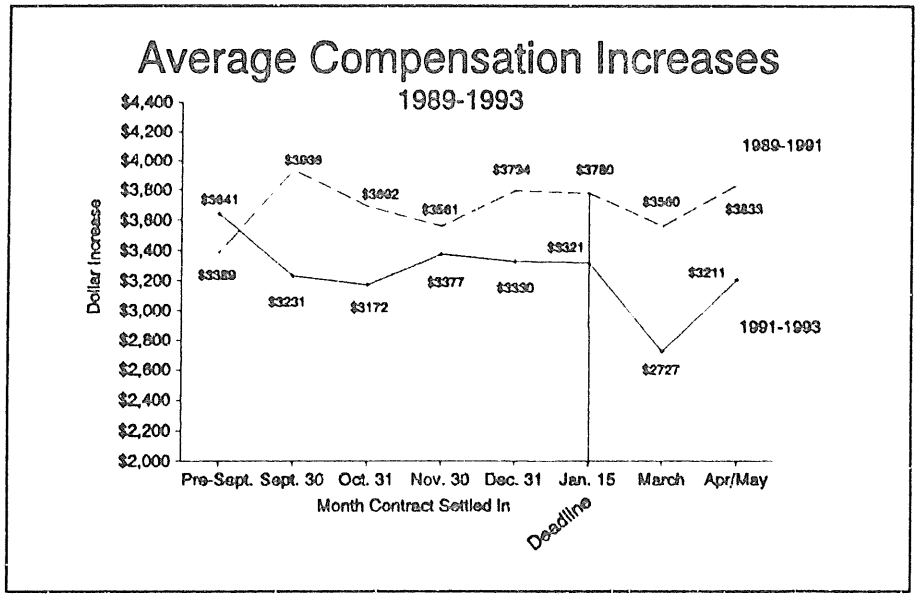
3. **Final offer-total package.** This form is similar to the other two in process: Labor and management submit their final positions on the issues, submit evidence to defend those positions, and attend a hearing conducted by the arbitrator. However, under total package arbitration, arbitrators must weigh all of the evidence and then select either management's or labor's package in its entirety.

This form of arbitration creates the most risk for both parties, since they will either completely "win" or "lose." As a result, parties work more diligently to successfully settle the contract through negotiations, or failing that, to submit their best possible package. In order to make their best proposals, parties will generally narrow their differences, so as to appear more acceptable to the arbitrator.

One drawback to this approach however, is that it can create more widespread winners and losers. Under conventional arbitration, arbitrators will tend to split the difference. Under item by item arbitration, an arbitrator can trade one item off another one, limiting either parties' gains or losses. However, under total package arbitration one party or the other loses everything while the other wins everything. Although the differences are narrower to start with (because neither party will risk appearing to be too outlandish), the relationship between management and labor can be strained when one party is such a clear loser while the other is a clear winner.

AVERAGE DOLLAR INCREASES

The chart on page 8 of the report depicts the percentage cost of increases negotiated by teachers and school boards for the 1989-91 and the 1991-93 collective bargaining agreements. Because percentage increases can mask differences in costs (i.e., an "x" percent increase for a group of employees with higher salaries costs more than an "x" percent increase for a group of employees with lower salaries), we are including a comparable graph showing the costs of those contract increases expressed in dollars.



The pattern of contract settlements in this graph depicting dollar increases is similar to the graph showing percent increases. For the 1989-91 contract term, the earliest contract settlements had increases of $3,389, rose to an average of $3,936, and then settled to a lower range of between $3,561 and $3,794. For the 1991-93 contract term, the earliest contracts had average increases of $3,641, which then dropped to $3,231. The remaining contracts meeting the January 15th deadline average between $3,172 and 3,377.

As in the graph depicting percentage increases, contract increases dropped immediately after the deadline, and then rose again to the average increases for contracts settled before the January 15th deadline. However, there are relatively few districts that missed the deadline.

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