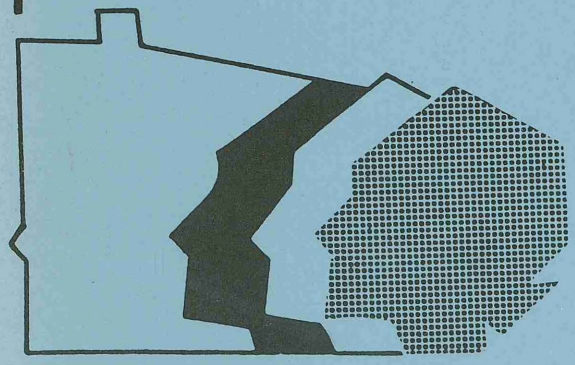
COMMISSIONER'S TASK FORCE ON PELRA

November 1981



Minnesota Department of Employee Relations

TABLE OF CONTENTS

TASK FORCE MEMBERS

Barbara L. Sundquist, Commissioner
Department of Employee Relations

Garry D. Hays, Ph. D., Chancellor
State University System

Arthur E. Noot, Commissioner
Department of Public Welfare

James J. Hiniker, Commissioner
Department of Administration

Jack G. Young, Commissioner
Department of Corrections

Mentor C. Addicks, Jr.

John O'Donnell

Willard Baker

Patricia Paulson

Winston Borden

Gene D. Rucker

Dan Foth

James Shipman

Robert Hanson

Bernard E. Steffen

Michael E. Hulett

William Thomas

Curt Johnson

Rolland C. Toenges

RESOURCE PERSONS

Appointed by the Commissioner

to Assist the Task Force

James W. Geissner	Deputy Commissioner, Labor Relations Bureau Department of Employee Relations
Richard C. Brainerd	Deputy Commissioner, Personnel Bureau Department of Employee Relations
Patrick K. Halvorsen	Director, Planning & Evaluation Department of Employee Relations
Shari L. Render	Labor Relations Representative Department of Employee Relations
Lynelle M. Wood	Labor Relations Representative Department of Employee Relations

TASK FORCE PURPOSE

The Task Force Purpose was to:

Study and analyze Minnesota's Public Employment Labor Relations Act (PELRA) as it applies to certain collective bargaining practices including contract negotiation and contract administration.

Prepare a report which identifies and analyzes areas of concern and recommends future courses of action on each concern for the Governor to consider in formulating his 1982 legislative action plans.

TASK FORCE PROCESS

The Task Force on PELRA was created by the Commissioner of Employee Relations. The Commissioner appointed 18 members knowledgeable in the area of labor-management relations and representative of the private sector; state, city and county jurisdictions; school boards and the Citizens League to study the collective bargaining system in the State of Minnesota, outlined in M.S. § 179.61 - 179.77. The Task Force held three meetings -- September 28, October 13 and October 28, 1981.

The Task Force members effectively utilized the limited time period available to them. The first meeting was spent identifying issues for study. At this meeting members decided to organize into sub-committees to study the two major issues: 1) The Collective Bargaining Process and 2) Impasse Procedures.

In preparation for the second meeting, staff resource persons developed papers for discussion by each of the sub-committees. Drawing upon each individual's expertise, each sub-committee developed issue papers. During this process some sub-issues were deleted.

At the third meeting the whole Task Force reviewed all the issue papers and established final recommendations. Recommendations contained in the enclosed report represent a consensus of the Task Force, taking into consideration sound labor-management policy.

INTRODUCTION

In the analysis of PELRA comparisons are made to Minnesota's private sector labor laws, the Minnesota Charitable Hospitals Act, and the National Labor Relations Act (NLRA). Numerous inconsistencies were found between analogous situations in the private sector and the two public sector laws.

These inconsistencies involve terms and conditions of employment mandated by statute rather than negotiated by the parties, bargaining rights for certain classes of employees, and the right-to-strike versus mandatory arbitration.

The Task Force has reviewed these inconsistencies in the following pages and makes certain recommendations with regard to each.

ISSUE IA. THE COLLECTIVE BARGAINING PROCESS

DEFINITION OF AND COLLECTIVE BARGAINING RIGHTS FOR SUPERVISORS AND CONFIDENTIALS

In view of the right to strike for public employees in Minnesota, the rights of confidential and supervisory employees to collectively bargain and the definition of "supervisory" employee and "confidential" employee have become important issues in the administration of government services at all levels.

Analysis:

Supervisory Employees:

Substantial debate has occurred over whether or not public sector supervisory employees should be excluded from bargaining. Under the Public Employment Labor Relations Act (PELRA), supervisors have the right to collectively bargain, while under the National Labor Relations Act (NLRA), private sector supervisors are precluded from bargaining. PELRA (M.S. § 179.65, Subd. 6) is inconsistent in that it excludes any affiliation of a supervisory employee unit with an employee organization representing non-supervisory employees but allows a non-state, non-University of Minnesota essential supervisory employee unit to be represented by the same parent organization which represents non-supervisory essential employees provided each group has a separate local union with separate officers.

Problems exist when supervisors are allowed to collectively bargain. As part of management, supervisors must have a firm commitment to the employer and its overall objectives. Supervisors should not be placed in a "dual role" as both an employer representative and a member of a labor organization bargaining with the employer. A "dual role" relationship can lead to potential "dual loyalties" with diminishing managerial confidence in supervisors and an overall decrease in managerial effectiveness and in employee productivity and accountability. Supervisory bargaining is inconsistent with a job that requires managerial and supervisory responsibilities. For example, it is inconsistent for a supervisor who is part of the "management team" to represent the employer in the grievance procedure while at the same time to bargain across the table from employer representatives. When supervisors are represented by a labor organization, top management tends not to seek meaningful input from supervisors in matters relating to non-supervisory employee collective bargaining and employee relations.

The extension of collective bargaining rights to supervisory employees raises conflict of interest issues when several levels of supervisors are within a public employer's organization and are represented by the same union in the same bargaining unit. In these situations, supervisors in the upper levels of management, who are called upon by the employer to supervise other supervisors in the day-to-day operations, bargain jointly with the employer with those employees in lower levels who are under their supervision.

In the private sector, a supervisory employee as defined by the National Labor Relations Act (NLRA) is

> "any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees or responsibly to direct them or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

In the private sector, an employee need only effectively recommend one of the aforementioned actions to be considered supervisory under the NLRA. In contrast, PELRA (M.S. § 179.71, Subd. 3) mandates that an employee must perform or effectively recommend at least six of the ten supervisory functions contained in the law to be defined as supervisory, with the exception of essential supervisors who must actually perform at least six of the ten functions to qualify.

Confidential Employees:

PELRA is inconsistent regarding bargaining rights of confidential employees. State of Minnesota and University of Minnesota confidential employees are excluded from any appropriate bargaining unit by PELRA (M.S. § 179.74, Subd. 4 and M.S. § 179.741, Subd. 3). Other public employees designated as confidential under PELRA may form their own unit for collective bargaining purposes but may not be included in the same bargaining units with non-confidential employees or be represented by an employee organization which represents non-confidential employees of the same public employer.

There are operational problems associated with the definition and collective bargaining rights of confidentials similar to the "dual role" dilemma faced by supervisory employees. It is a definite conflict of interest for confidential employees to be members of a union negotiating with the employer, while at the same time assisting the employer in negotiations with other unions.

PELRA (M.S. § 179.63, Subd. 8) is inconsistent in the definition of confidential employee.

For "executive branch employees of the State of Minnesota and employees of the Regents of the University of Minnesota confidential employee means any employee who has access to information subject to use by the public employer in collective bargaining or who actively participates in collective bargaining on behalf of the public employer." While in other public jurisdictions, a confidential employee is any employee who works in the personnel office of a public employer or has access to information subject to use by the public employer in meeting and negotiating or who actively participates in meeting and negotiating on behalf of the public employer."

By contrast, the National Labor Relations Board (NLRB) defines "confidential employees" as employees who assist and act in a confidential capacity to persons who formulate, determine and effectuate management policies in the field of labor relations. While the National Labor

Relations Act (NLRA) does not explicitly exclude confidential employees from bargaining units, the NLRB consistently has excluded these employees from any appropriate bargaining unit. The NLRB reasoning is: "management should not be required to handle labor relations matters through employees who are represented by the union with which the company is required to deal and who, in the normal performance of their duties may obtain advance information of the company's position with regard to contract negotiations, the disposition of grievances and other labor relations matters."

Recommendations:

The Task Force recommends that PELRA be amended to:

1. Establish a meet and confer relationship with supervisory (including school principals) and confidential employees rather than the current meet and negotiate relationship.

2. Adopt the National Labor Relations Act (NLRA) definition of "supervisory employee" and the National Labor Relations Board (NLRB) interpretation and definition of "confidential employee".

ISSUE IB. THE COLLECTIVE BARGAINING PROCESS

CRITERIA FOR BARGAINING UNIT DETERMINATION

Bargaining unit determinations in the public sector impact both the employer and the unions. These determinations influence the range of bargaining subjects, the roles played by various governmental employers, the likelihood of peaceful resolution, general order versus chaos in bargaining and the potential exclusive representatives' future existence and/or success.

Analysis:

The Public Employment Labor Relations Act (PELRA) is inconsistent in outlining the criteria for bargaining unit determinations. State and University of Minnesota bargaining units are occupationally determined (M.S. § 179.74) whereas school district, city and county units are determined on the basis of "community of interest" considerations by the Director of the Bureau of Mediation Services (M.S. § 179.71, Subd. 3). The law instructs the Director of the Bureau of Mediation Services to place particular importance on the history and extent of organization and the desires of the petitioning employee representatives. The Bureau of Mediation Services and the Public Employment Relations Board has applied these criteria in cities and counties with the effect being fragmentation of bargaining units. Fragmentation is detrimental to the labor relations function since small fragmented units result in whipsawing, excessive time and money spent on contract negotiations, limited scope of subject matter for bargaining and instability of the labor relations organization due to the cumbersome nature of contract administration with many small units.

Another inconsistency in the law is PELRA (M.S. § 179.63, Subd. 7) which excludes from bargaining unit membership part-time employees except part-time teachers who work the lesser of 14 hours per week or 35 percent of the normal work week and employees who hold positions of a basically temporary or seasonal nature for a period not in excess of 100 working days in any calendar year with the exception of teachers from bargaining unit memberships. In contrast, teachers are exempted from these requirements and are included in bargaining units after 30 days of employment.

Recommendations:

The Task Force recommends that PELRA be amended to:

1. Provide broad based, more inclusive bargaining units for school district, city and county employees.

2. Delete provisions of (M.S. § 179.71, Subd. 3) "... and shall place particular importance upon the history and extent of organization and the desires of the petitioning employee representatives."

3. Ensure that the requirement set forth in M.S. § 179.63, Subd. 7 which excludes from bargaining unit membership those employees who work less than 100 days in any calendar year or 14 hours per week or 35% of the normal work week requirements apply to teachers.

ISSUE IC. THE COLLECTIVE BARGAINING PROCESS

NEGOTIABILITY OF STATUTORILY MANDATED ITEMS

The Public Employment Labor Relations Act (PELRA) provides the following:

Fair share fee (M.S. § 179.65, Subd. 2)
Dues check off (M.S. § 179.65, Subd. 5)
Time off for officers of the exclusive representatives (M.S. § 179.66, Subd. 10)
Contracts, grievances, arbitration (M.S. § 179.70, Subds. 1, 4, 6)

Analysis:

In order to obtain the maximum benefit from the collective bargaining process and to fully accommodate the needs of both parties, it is inappropriate to ensure the above items in law. Under current law, if agreement is not reached on certain aspects of union security, job security and grievance procedures, the union has a guarantee on these matters provided in law. This diminishes incentives for good faith bargaining on these matters leading to an agreement. Increasing the efficiency of the collective bargaining process by allowing the parties to structure a contract that best suits their needs, is both cost effective and sound labor/management policy.

Recommendations:

The Task Force recommends that PELRA be amended to:

Make terms and conditions of employment such as fair share, dues deduction, grievance procedure, union leave, and selection of grievance arbitration bargainable rather than statutorily mandated.

ISSUE ID. THE COLLECTIVE BARGAINING PROCESS

THE EXCLUSIVE REPRESENTATIVE'S ROLE IN THE MEET AND CONFER PROCESS FOR PROFESSIONAL EMPLOYEES

Under the Public Employment Labor Relations Act, PELRA (M.S. § 179.65, Subd. 3) public employees who are deemed to be professional have the right to meet and confer with their employer(s) regarding policies and matters not included in the definition of terms and conditions of employment (M.S. § 179.63, Subd. 18). However, M.S. § 179.66, Subd. 7 requires that all meet and confer relationships with professional employees be channeled through the union which is certified as the employees' exclusive representative.

M.S. § 179.63, Subd. 15 defines "meet and confer" as "the exchange of views and concerns between employers and their respective employees".

M.S. § 179.73, Subd. 1 states "It is, therefore, the policy of the state to encourage close cooperation between public employers and professional employees by providing for discussions and the mutual exchange of ideas regarding all matters not specified under Section 179.63, Subdivision 18."

Analysis:

There is an inherent conflict between the provisions of M.S. § 179.63, Subd. 3, M.S. § 179.66, Subd. 7 and M.S. § 179.73, Subd. 1. M.S. § 179.66, Subd. 7 requires that all meet and confer discussions take place with the exclusive representative. M.S. § 179.73, Subd. 1 implies that all exchange of views on non terms and conditions (M.S. § 179.63, Subd. 18) are within the scope of meet and confer. These contradictions are self-defeating: on the one hand, professional employees are encouraged to meet and confer directly with their employers on items not subject to negotiations, yet, on the other hand, such meet and confer relationships must be coordinated through the employee's union, whose primary role is to negotiate terms and conditions of employment. The distinction between negotiation issues and professional issues not included in contract negotiations is thus blurred. Though unions and employers may make every effort to keep the two kinds of issues and concerns separated, the practical result is that both parties are frequently unable to do so as a result of the adversarial relationship inherent in formalized collective bargaining.

"Professional employee" as defined in PELRA (M.S. § 179.63, Subd. 10) implies a great degree of individual discretion and expertise on the part of the employee. These employees do not perform jobs that require routine mental, mechanical, or physical work. By the very nature of their jobs, professional employees are responsible for meeting with the employer on issues germane to their professional working relationships. These professional relationships can be adversely affected by the exclusive representative's demands that all communication to the employer of advice and recommendations are captured by the meet and confer definition. Working relationships requiring communication of professional employees are adversely affected when employers and employees do not agree on the difference between job-related, required communications and the meet and confer exchange of views.

Contract negotiations are established to develop, through the bargaining process, the basic terms and conditions of employment. By contrast, meet and confer processes for professional employees are established to create a dialogue between managerial and professional employees on matters relating to professional expertise of the employees and to the attendant programmatic responsibilities of the employer. Communication of advice or recommendations by professional employees when such communication is part of the work assignment should not be viewed as coming under the definition of meet and confer.

Recommendation:

The Task Force recommends that PELRA (M.S. § 179.66, Subd. 7) be amended by addition of the underlined language:

The employer shall not meet and negotiate or meet and confer on terms and conditions of employment with any employee or group of employees who are at the time designated as a member or part of an appropriate employee unit except through the exclusive representative if one is certified for that unit or as provided for in Section 179.69, Subd. 1. This shall not be deemed to prevent the communication to the employer of advice or recommendations by professional employees when such communication is a part of the work assignment of such employees.

ISSUE IE. THE COLLECTIVE BARGAINING PROCESS

STUDENT PARTICIPATION IN HIGHER EDUCATION COLLECTIVE BARGAINING

Recently, there has been increased interest in student involvement in the collective bargaining process for higher education.

Analysis:

Students are affected by faculty collective bargaining. Issues related to budget, educational programs, institutional policies and student services may be directly or indirectly influenced by the collective bargaining process. However, this potential impact on the students does not argue for formalized student participation in contract negotiations.

Students have every right to expect that negotiations of faculty contracts will be undertaken by parties who are sensitive to and are concerned about the institutions' educational responsibilities and that their interests will be given legitimate consideration in the bargaining process. Student representatives currently have the means to communicate with both faculty and administrators prior to negotiations as well as during the negotiations on any issues of potential concern. Negotiation sessions and arbitration hearings are "open" meetings under Minnesota law. Student representatives may currently attend such meetings as observers, and, can communicate any concerns as issues are addressed. By statute, student representatives currently serve on the governing boards at the University of Minnesota, State University Board, and the Community College System. In addition to having representatives on the governing boards, the existing governance structure of the various systems of higher education in Minnesota provides for methods and procedures whereby students, through Senates and other committees, participate in the institutional decision-making process.

While it is sound practice for student representatives to have a means to communicate with faculty and administrators about negotiations, there are two reasons why actual student participation at the collective bargaining table is detrimental to sound labor/management policy.

1. By definition, the bargaining process is bilateral between the employer and employee representatives, and any attempt to formalize participation by any third party would unduly complicate negotiations and potentially hinder bargaining.

2. Providing a statutory role in the bargaining process for higher education students would set a precedent for similar treatment for other groups who also are affected by collective bargaining; for example, welfare clients, inmates of correctional institutions, and students of elementary and secondary schools.

Recommendation:

The Task Force recommends the status quo be maintained.

ISSUE IF. THE COLLECTIVE BARGAINING PROCESS

LABOR UNION DEMOCRACY ACT FOR PUBLIC EMPLOYEE ORGANIZATIONS

Under the Minnesota Labor Union Democracy Act (M.S. § 179.18 to 179.25) labor organizations in the private sector are charged with certain responsibilities to their membership. Under the Public Employment Labor Relations Act (PELRA), public employees are not afforded this accountability. The Labor Union Democracy Act provides that the governor shall appoint labor referees for particular disputes and the director of the Bureau of Mediation Services (BMS) is charged with certifying any violations of this Act to the governor. PELRA makes no similar provision.

Analysis:

The granting of broader rights in collective bargaining, especially the right to strike, has complicated internal union structures. While unions represent expectations of their memberships, many union members are not aware of their legal rights. Many individual employees seek guidance from management regarding their rights as union members, placing management in a precarious position. Some employees approach the BMS for advice based upon an assumption that the agency is responsible for handling such matters. However, currently the BMS is not able to provide these union members with information regarding their rights. The inconsistency between the private and the public employee's rights involving internal union matters should be eliminated.

Recommendation:

The Task Force recommends PELRA be amended to include the provisions of the Minnesota Labor Union Democracy Act (M.S. § 179.18 to 179.25).

ISSUE IIA. IMPASSE PROCEDURES

VOLUNTARY VS. BINDING ARBITRATION VS. RIGHT TO STRIKE ESSENTIAL EMPLOYEES

The Public Employment Labor Relations Act (PELRA) mandates that employees, defined as essential, have a guaranteed right to binding arbitration.

Analysis: Binding Arbitration vs. Right to Strike

The right to strike is an intergal part of the collective bargaining process in the private sector. This right, while recently given to certain public employees in the State of Minnesota, has worked well in most cases. However, the right to strike for certain types of public employees remains an issue to be addressed in this report.

Compulsory arbitration has the potential to inhibit genuine good faith collective bargaining if the parties rely on the arbitration process rather than the negotiation process. It also can result in a delegation of duties and responsibilities away from an elected official to a non-elected individual. Arbitration for certain essential employees such as firefighters, police officers and prison guards, has ensured a continuation of these functions without interruption. Admittedly, the absence of these employees, if permitted to strike, could endanger the health, safety and welfare of the general public. However, it is not felt that all strikes by these types of employees would have an adverse affect on the public's health, safety, and welfare. To remedy this dichotomy, PELRA should be flexible enough to allow for a strike by essential employees if the employer deems it permissible.

Analysis: Essential Employees

There is currently an inconsistency in Minnesota's labor laws regarding the right to strike for hospital employees. Present labor laws covering certain charitable hospitals including county and municipal hospitals prohibit hospital employees from striking. By contrast, employees of State-operated hospitals have the right to strike.

Mandatory arbitration as it now exists in PELRA should be eliminated. The present list of essential employees should continue with the addition of Bargaining Unit No. 4 - Health Care Non-professional at the state level.

Recommendations:

The Task Force recommends that PELRA be amended to:

> Provide that a public employer submit to binding arbitration with firefighters, police, registered nurses, prison guards and certain State hospital employees if at the time of the bargaining impasse, the public employer determines that such employees are essential and that their participation in a work stoppage would affect the health, welfare and safety of the residents, inmates or general public, these employees then would not have the right to strike.

ISSUE IIB. IMPASSE PROCEDURES

TIME LINES FOR MEDIATION AND THE USE OF THE STRIKE NOTICE AS A CONTINUING BARGAINING THREAT; PRESUMPTIVE STRIKES

The Public Employment Labor Relations Act (PELRA) recognizes the value of mediation and requires a mediation period before an exclusive representative may legally engage in a strike. The mediation time requirement for teachers is 60 days and for all other public employees, 45 days. PELRA provides that once a petition for mediation has been filed with the Bureau of Mediation Services, the mediator shall take whatever steps he/she deems most expedient to bring about a settlement. The law also states that it is the duty of all parties to respond to the summons of the mediator for negotiation sessions and to continue in such sessions until excused by the mediator.

Analysis:

Mediation is the most widely used impasse procedure. A mediator can assist the parties by:

1. providing order and coherence to the parties' relationship;
2. maintaining communications at various levels between and within the parties;
3. setting a balanced pace for negotiations and/or speeding up negotiations;
4. reducing the likelihood of miscalculation; and
5. developing and achieving a mutual will and desire to settle.

The role of the mediator is to act as conciliator and facilitator. He/she can do things that the parties cannot do by themselves. Thus, mediation is generally considered to be a valuable and most effective tool in achieving a voluntary settlement. However, the current provisions in PELRA tend to reduce and diminish the benefits of mediation.

The law imposes artificial time lines on the mediation process. The collective bargaining process is not a science that can be defined by predetermined parameters. The process will not always conform to clean, clear-cut time frames. Collective bargaining simply does not work this way. Placing collective bargaining into a framework of artificial time tables does not benefit the process. The parties must be allowed to develop their own time limits and develop their own pressure points that will produce an eventual settlement. The current system encourages the parties to view mediation as only a pro forma step that must be completed before they can strike. The 45/60 day criteria leads the parties to file for mediation at a point in the process when neither side may be at a point at which mediation will be helpful. The parties will often file for mediation in order to get their "days in" after only one or two bargaining meetings, or at best, before any substantive negotiations have begun. At this juncture, the mediator may be of little or no use and the entire purpose of mediation is defeated. In addition, the parties may have met with the mediator only one or two times before the right to strike matures thus reducing the effectiveness of the mediation process.

Under the current provisions of the law, mediation may never have a chance to work. The law states that after the expiration date of the contract (or in the case of teachers, following mediation over a period of 60 days after the contract expires) mediation continues only if agreeable to both parties. Thus, the benefits of mediation may again be lost to the parties.

Once the parties are engaged in mediation, the question becomes what triggers the next step in the impasse procedure.

PELRA states that the terms of an existing contract shall continue in effect and be enforceable upon both parties even after it has expired until "the right to strike matures." The law also provides that the exclusive representative must serve written notification on the employer of its intent to strike at least ten days prior to the commencement of the strike. If the exclusive representative does not strike within twenty days of the intent becoming effective, a new notice must be served with another ten day waiting period. This statutory procedure gives an exclusive representative some advantages in the bargaining process. There is no pressure exerted on the exclusive representative to settle the contract since the contract can expire and the exclusive representative is still assured of all economic and non-economic contract benefits. There is no risk in not settling. This also gives the exclusive representative the ability to plan a strike at a time that will be most detrimental to the public employer. The employer has no such analogous advantages. It cannot terminate the employee's benefits. It is uncertain as to if it can lockout employees. Unless the public employer is allowed to exercise the same type of pressure as is the exclusive representative, the balance of power will continue to be tipped in favor of the exclusive representative.

Recommendations:

The Task Force recommends that PELRA be amended to:

1. Provide that either party may call for mediation at a reasonable time after negotiations have begun between the two parties.

2. Delete any reference to the 45/60 day time lines and provide that the duration of mediation would be based on the judgment of the mediator.

3. Provide that the contract provisions expire on date of expiration of the contract.

4. Provide that only the mediator has the authority to declare that an impasse exists between the two parties.

5. Provide that the right to strike matures only after the expiration of the contract and a 10 day notice after the mediator has declared that an impasse exists and that if the exclusive representative does not strike after the 10 day notice matures, the public employer may take the position that a strike is in progress.

ISSUE IIC. IMPASSE PROCEDURES

LAST BEST OFFER ITEM-BY-ITEM VS. TOTAL PACKAGE VS. CONVENTIONAL ARBITRATION

There are two basic types of interest arbitration. 1) conventional and 2) final offer. In conventional arbitration, the arbitrator has the right to base his/her award either on the position advocated by one of the parties or at a point between the positions of the parties. In final offer arbitration, the arbitrator must select the position of one of the parties and may not select a compromise position. Final offer arbitration may be item-by-item or total package. In item-by-item final offer arbitration, the arbitrator selects the final position of either party on each issue submitted. Total package final offer arbitration requires the arbitrator to choose the total position of one party on all issues.

Analysis:

In conventional arbitration, the arbitrator can, and many times does, fashion a remedy somewhere between the last offers of the parties. There are several problems associated with conventional arbitration. One problem is the "narcotic effect" this type of arbitration can have on the parties. The parties will hold to extreme positions in the belief that the arbitrator will split the difference between their positions. Instead of decreasing posturing and game playing, this type of arbitration tends to increase such actions. Conventional arbitration prevents true collective bargaining from occurring since either party may believe that its best settlement can be received from the arbitrator and not at the bargaining table.

In final offer arbitration, the arbitrator's discretionary power is restricted. This type of arbitration is designed to encourage hard bargaining by the parties before they resort to arbitration. Since both parties realize that the arbitrator's authority is limited to accepting one of the two positions, each party will bargain in good faith to reach an agreement. The parties should, more often than not, find it more advantageous to reach a compromise agreement than to accept the risk of having the arbitrator implement the other party's final offer. Of the two types of final arbitration (item-by-item and total package), total package is preferable. Under this procedure there is more incentive for both sides to make their own compromises and bargain to resolution. The greater the risk to each party of submitting a final offer, the greater the likelihood of settlement. Each party runs the risk of its whole package being discarded because of the unreasonableness or unacceptability of even one element in the package. Total package arbitration should lead to an end result of more voluntary settlements and consequently a reduction in the use of arbitration. The use of total package arbitration promotes true collective bargaining which is a desired labor/management policy. Item-by-item arbitration encourages the parties to leave internal political and low priority demands on the bargaining table, wasting the time and money of both parties.

Recommendations:

The Task Force recommends that PELRA be amended to:

1. Provide that interest arbitration be last best offer, total package; or

2. Provide for total package arbitration based on two final packages, one on economic items and one on non-economic language items or, by mutual agreement of the parties, an alternate method within this format.

ISSUE IID. IMPASSE PROCEDURES

CRITERIA FOR ARBITRATION

The Public Employment Labor Relations Act (PELRA) mandates that an interest arbitrator only consider "the statutory rights and obligations of public employers to efficiently manage and conduct their operations within the legal limitations surrounding the financing of such operations."

Analysis:

This statutory criteria is very broad and extremely vague. It places few constraints on the arbitrator in rendering an award. This requirement only mandates that the arbitrator consider the legal obligations of a public employer and does not require that he/she take into account practical labor relations considerations.

An arbitrator should be more accountable to the parties and the general public and bear the responsibility of justifying his/her award. In order for this to occur, the statute should delineate specific criteria that an arbitrator must consider in rendering an award. The law should also mandate that the arbitrator include in his/her award an explanation of how these factors were taken into consideration in reaching his/her decision. If arbitration is the substitute for a strike, then practical labor relations concerns should be given priority.

Recommendations:

The Task Force recommends that PELRA be amended to include the following additional criteria which an arbitrator should be required to consider in rendering an award:

1. the interests and welfare of the public;
2. the financial ability and general economic condition of the public employer and implications of the award in succeeding years;
3. the comparison of wages, hours, and employment conditions with other employees who are similarly situated and performing similar work;
4. the overall total compensation presently received by other employees who are similarly situated and perform similar work; and
5. the stipulation of the parties.