MINUTES OF THE
MEETING OF THE SENATE AND ASSEMBLY COMMITTEES
ON GOVERNMENT AFFAIRS

SIXTY-FIRST SESSION
NEVADA STATE LEGISLATURE
April 20, 1981

The Senate and Assembly Committees on Government Affairs were called to order by Co-Chairman James I. Gibson, at 2:11 p.m., Monday, April 20, 1981, in Room 131 of the Legislative Building, Carson City, Nevada. Exhibit A is the Meeting Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator James I. Gibson, Co-Chairman
Senator Jean Ford
Senator Keith Ashworth
Senator Gene Echols
Senator Virgil Getto
Senator James Kosinski
Senator Sue Wagner
Assemblyman Joseph Dini, Co-Chairman
Assemblyman James Schofield
Assemblyman John DuBois
Assemblyman John Jeffrey
Assemblyman Paul May
Assemblyman Donald Mello
Assemblyman David Nicholas
Assemblyman John Polish
Assemblyman Paul Prengaman
Assemblyman Kenneth Redelsperger

COMMITTEE MEMBER ABSENT:

Assemblyman Robert Craddock (Excused)

STAFF MEMBERS PRESENT:

Anne Lage, Committee Secretary

Co-Chairman Gibson explained that the committee would consider the nine bills according to issue to bring some order to the hearings, rather than bill by bill.

SENATE BILL NO. 350

Revises provisions for factfinding and arbitration in disputes of local government employers and employees.

Mr. Ross Culbertson, Nevada Public Employees' Action Coalition, testified that he represented almost 5000 public employees in the state.

Mr. Culbertson was in favor of Senate Bill No. 350 as it was currently written. He stated that the main advantage of this bill was that it was a method in which all employees could agree on. Mr. Culbertson explained that negotiations had worked well with the fire fighters using this procedure for the last four years.

Mr. Culbertson presented position papers on Assembly Bill Nos.55, 400, 452 and Senate Bill No. 367. (See Exhibit C.)

Mr. Culbertson stated that he had introduced Assembly Bill Nos. 225 and 226, but he was prepared to withdraw these two bills if they would have an adverse affect on the passage of Senate Bill No. 350.

Ms. Joyce Woodhouse, Nevada State Education Association, testified that she represented 5,800 teachers of Nevada. She stated that she was in support of this bill.

Ms. Rita Hambleton, Washoe County Teacher and Chairperson for the Nevada State Education Association Negotiations Committee, testified that she had been involved in negotiations since 1974. Ms. Hambleton presented her testimony to the committee members. (See Exhibit D.)

Co-Chairman Dini inquired if perhaps good faith bargaining was not done by both sides as they had gone to binding arbitration four times within the last seven years. Ms. Hambleton believed that there was a problem in interpretation of what was meant by emergency powers of the governor.

Assemblyman Nicholas asked who had requested this bill. The fire fighters had requested it and other public employees had decided to support it.

Mr.Wally DeWitt, President-Elect and Chief Negotiator for the Ormsby County Teachers Association, presented his testimony to the committee members. (See Exhibit E.)

Ms. Woodhouse summarized her position by asking the committee to support Senate Bill No. 350 which would extend last best offer arbitration to all public employees in this state.

It would provide a formal process by which employees and management coud discuss issues and resolve differences.

In response to Senator Kosinski's question, Ms. Woodhouse responded by stating that other alternatives in negotiations had been discussed in the past and this bill provided the best solution to past problems. She felt that this system had worked successfully for the fire fighters and thus it had proven itself within the state of Nevada.

Mr. Jack Schroeder, Attorney for the Reno, Sparks and Truckee Meadows fire fighters, testified that he represented approximately 300 to 400 employees. Mr. Schroeder gave an explanation of factfinding and binding arbitration.

Mr. Schroeder also responded to Senator Kosinski's question by stating that last best offer puts the employee and the employer on an equal footing.

Senator Kosinski voiced concern over how far an arbitrator could go into a budget to extend their search for available resources. Mr. Schroeder explained that the employer had to get together with the employee. The arbitrator or factfinder looked at those monies that were essential for the current year to provide facilities and services to meet the standard of health, welfare and safety. Mr. Schroeder stated that an arbitrator could challenge the employer's policy decisions on where money was to be directed, but this was very difficult to prove that those policy decisions were not necessary.

Assemblyman DuBois inquired as to how far apart the employer and employee were in Mr. Schroeder's past experience with negotiations. Mr. Schroeder stated that it depended upon the unit. It would be impossible to give an average of how the majority of negotiations went as they were all very different.

Mr. Schroeder stated that the last best offer was fair to everyone as a neutral arbitrator was involved.

Mr. Mert Haraughty, Sparks fire fighter, testified that he had been through the last best offer process twice, and felt that it was fair and equitable. Prior to this, they had had binding arbitration and felt the last best offer method was better.

Mr. Haraughty testified that when they used the last best offer method, they had used a different arbitrator each time and the decisions reached favored the employees.

Mr. Jim Fisher, International Association of Fire Fighters, testified that he had been involved in negotiations in every western state. He stated that the Nevada Fire Fighters had a very fair and progressive bargaining bill.

Mr. Fisher provided the committee with a list of the negotiation procedures used by other states. (See Exhibit F.)

Mr. Fisher explained that under factfinding, negotiations were handled issue by issue. When the issues were reduced to a few main ones, both parties submitted a final package and the arbitrator would then select that package which he found to be the more fair.

Assemblyman Dubois questioned if there were problems in determining the local governments' ability to pay. Mr. Fisher stated that so far they had not had any problems in the state of Nevada. When they begin factfinding, they have a certified public accountant with financial figures available and he is aware of their ability to pay.

Mr. Bill Bunker, Federated Fire Fighters of Nevada, testified that he was in support of the concept of Senate Bill No. 350. He felt that this bill improved the relationship between the firemen and the employer. He stated that he went to factfinding one time and it was resolved in favor of the county. This did not create any problems. He also indicated that the morale had improved amongst the fire fighters since making use of this method of negotiation.

Mr. Bunker stated that he was definitely opposed to giving public employees the right to strike. He distributed a copy of The Case for Arbitration of Interest Disputes: An Effective Alternative to Police and Fire Strikes. (See Exhibit G.)

Mr. Doug Byington, Legislative Chairman for the Nevada Association of School Administrators, testified that at a board meeting on March 28, 1981, the board voted to support Senate Bill No. 350. However, he stated that the superintendents at the meeting voted against supporting this bill.

Mr. Cecil Jackson, Elementary Principal from Clark County, testified in support of Senate Bill No. 350. He stated that he had been involved in negotiations for the last ten years. He believed this bill would speed up negotiations.

Mr. Larry Irvine, President of the Las Vegas Police Protective Association, testified in support of this bill. He stated that it encouraged both sides to negotiate in good faith.

Co-Chairman Gibson pointed out the need for repealing the sunset provision in this bill as Nevada Revised Statute No. 288.215 would sunset these provisions effective July 1, 1981. Co-Chairman Gibson also inquired if a four year sunset provision was to be included in this expanded application of the last best offer as Mr. Culbertson had indicated.

Mr. Irvine testified that the fire fighters would like to be excluded from the four year sunset provision as they had already been using it for the past four years. However, he stated that they would accept this provision if the committee wanted to recommend it.

Ms. Woodhouse stated that she would rather not have the sunset provision included, but would accept it if necessary.

Mayor Ron Player, Sparks Mayor, testified in opposition to Senate Bill No. 350. He stated that with the possibility of a revenue cap of six percent being placed on local governments, he did not see how they could extend the provisions of binding arbitration last best offer to all employees in the city of Sparks when, in fact, this made up 75 percent of their total budget. He also stated that the pay increases would be retroactive.

Mayor Player testified that given the ramifications of compulsory binding arbitration, the city of Sparks would support the right to strike before it would support Senate Bill No. 350.

Mr. Greg Rivet, City of Sparks Personnel Director, testified that he was the chief negotiator during the Truckee Meadows situation. In Sparks he stated that it took fifteen months to come to an agreement and the city was forced to pay retroactively a ten percent salary adjustment. He stated in both years of negotiations the fire fighters' demands exceeded forty-two percent. He indicated that binding arbitration was

a "no lose" situation for employees. He distributed a presentation by the city of Sparks which gave a complete history of their experiences with binding arbitration last best offer in their negotiations with the fire fighters. (See Exhibit H.)

In response to Senator Wagner and Assemblyman Jeffrey's question, Mr. Rivet stated that the firemen's salary was about $5000.00 more than the average of all the other employees' salaries.

Mr. Rivet indicated support of Senate Bill Nos. 536 and 537 which offered alternatives to binding arbitration.

Mr. Prengaman referred to the city of Sparks' report and stated that it seemed fairly long on theory and short on the experiences of Sparks. He indicated that he was not sure just what the basic objection was of the city of Sparks. Mr. Rivet responded that they were against a third party making a decision with complete disregard of the effect it might have on a given political entity. He stated that this provision discouraged good collective bargaining.

Mr. Howard Reynolds, Personnel Director and Chief Negotiator for Washoe County, testified in opposition to Senate Bill No. 350. (See Exhibit I.)

Assemblyman Prengaman questioned if it would be possible to pad a contingency fund to avoid paying higher wages to fire fighters. Mr. Reynolds did not believe this was done for that purpose, but admitted that it would be possible do this.

Mr. Jim Wood, Chairman of the Nevada Legislative Action Group for the Greater Reno/Sparks Chamber of Commerce, testified that the Chamber was in opposition to Senate Bill No. 350. He indicated that an alternative would be to keep the present statute. He distributed a position statement to the committee. (See Exhibit J.)

Mr. Clint Knoll, General Manager Nevada Association of Employers, testified that he had been in the collective bargaining arena for thirty-five years, mostly in the private sector. He stated that this bill would never work in the private sector. It would also never get the support of a

large number of organized labor representatives in the private sector. It would put employers at a serious disadvantage in the bargaining arena. He stated that the main thrust of this bill was "to get more".

One problem was that retroactivity was nailed down. This was usually something which could be bargained with. With this provision there would be no worrying about trying to come to an agreement within a time limit.

Another problem was that this bill would be an imposition on the employer in that it would not consider one's "ability to pay".

Mr. George Franklin, City Attorney for North Las Vegas, testified that the legislature was the employer as they were going to determine what method of negotiation would be used.

Mr. Franklin stated that arbitration was an inducement not to settle because there was nothing to lose by waiting. He felt that the total package agreement did not look at individual issues and the public had a right to know what the offers were by the the parties involved.

Although Mr. Franklin had no problems with grievance arbitration, he was totally against interest arbitration. He believed it to be unconstitutional to have an outsider come in and form a contract which a governmental entity had to accept. He did not agree that an outsider should be able to make decisions on what happens to seventy-five percent of a local government's budget.

Mr. Franklin suggested that all offers should be capped at a seventy-five percent maximum including fringe benefits. Mr. Franklin submitted a report on last best offer suggesting that the committee members read it. (See Exhibit K.)

Mr. Jack Warneke, Carson City Supervisor, testified that they had attended caucuses which the Nevada League of Cities set up to study these bills. He stated that Carson City had stayed under the cap which was imposed on them in Senate Bill No. 204. He indicated that the ultimate limit to an arbitrator will be if the given entity had reached their spending cap. This bill would take away all the elected officials' say in the operation of their cities.

Mr. Ed Sutterfield, North Las Vegas Personnel Manager, testified that they had had eighteen sessions and settled all but five or six when Mr. Fisher came in and threw out all the items which had been settled and opened up the entire matter again.

He stated that this year their ability to pay was limited to less than $130,000. He questioned where they were supposed to get the money.

Mr. Charles Silvestri, Associate Superintendent of Personnel and Employee Relations with the Clark County School District, testified that he was in concurrence with the speakers who were in opposition to Senate Bill No. 350. He stated that he had been negotiating since 1969, and Nevada Revised Statute No. 288 worked as it was currently written. He urged the defeat of this bill.

Mr. Robert Cox, Attorney for the Washoe County School District, testified that he was opposed to this bill. The present process of collective bargaining has worked since 1969 and there was no reason to change for another procedure which they had very little experience on. He pointed out that the ultimate decision of a binding arbitrator could be disastrous.

ASSEMBLY BILL NO. 400

Revises Local Government Employee-Management Relations Act.

Ms. Carol Vallardo, Chairman Employee-Management Relations Board, testified that the package in this bill was prepared by the advisory committee.

Mr. John Kidwell, Chairman Advisory Committee, testified that the Advisory Board was made up of three members representing the employer and three members representing the employee. The consensus of the board was that a binding award in the arbitration process was necessary. Mr. Kidwell endorsed the process of binding arbitration. The employees he represented were in favor of having a third party issue a binding award in the impasse process. This would remove the Governor from the process and give the arbitrator final authority.

SENATE AND ASSEMBLY
COMMITTEES ON
GOVERNMENT AFFAIRS
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As all the issues on the agenda had not been discussed, Co-Chairman Gibson stated that another hearing would be held next week to continue discussion of the issues.

The meeting was adjourned at 6:14 p.m.

Respectfully submitted by:

Anne L. Lage
Anne L. Lage

APPROVED BY:

James I. Gibson
Senator James I. Gibson, Co-Chairman

DATE: May 11, 1981

EXHIBIT A

ASSEMBLY AND
SENATE AGENDA

REVISED 4/16/81

COMMITTEE MEETINGS

Committee on Government Affairs, Room 131.

Day Monday, Date April 20, Time 2:00 p.m.

JOINT HEARING OF THE SENATE AND
ASSEMBLY COMMITTEES ON GOVERNMENT AFFAIRS

S. B. No. 350--Revises provisions for factfinding and arbitration in disputes of local government employers and employees.

S. B. No. 367--Revises Local Government Employee-Management Relations Act.

A. B. No. 55--Restricts certain aspects of collective bargaining by local governments.

A. B. No. 225--Permits local government employer to request representative election to determine question of continued recognition of exclusive bargaining agent.

A. B. No. 226--Limits definition of "confidential" as it relates to local government employee-management relations.

A. B. No. 400--Revises Local Government Employee-Management Relations Act.

A. B. No. 452--Revises Local Government Employee-Management Relations Act.

S. B. No. 536--Extends collective bargaining to state employees and removes governor's emergency power to submit dispute to binding factfinding.

S. B. No. 537--Extends collective bargaining to state employees and provides for public referendum under certain circumstances.

ATTENDANCE ROSTER FORM — COMMITTEE MEETINGS

SENATE COMMITTEE ON GOVERNMENT AFFAIRS

DATE: April 20, 1981 — EXHIBIT B

PLEASE PRINT NAME	PLEASE PRINT ORGANIZATION & ADDRESS	PLEASE PRINT TELEPHONE
BOB GAGNIER	SNEA	882-3910
Joyce Woodhouse	NSEA	882-5574
Rita Hambleton	NSEA - WCTA	825-1795
Ray Fullerton	NPEAC	883-0900
Jack Schroeder	Lawyer - Rep'ing RNOFF, L.1265 & L.731	IAFF 329-300
Leo Franklin	N.L.V. Attorney	649-5251
Ed SATTERFIELD	City North Las Vegas	649-5811 Ext
Glenn Trowbridge	Clark County	386-4546
Mat Waughtal	I.A.F.F. Local 1265 Sparks	358-8662
Paul Buchanan	I.A.F.F. Local # 731 Reno	826-8878
Wayne D Matthews	IAFF Local 731 Reno	747-7862
ART HUTTON	LAS VEGAS CONV. VISITORS AUTHORITY	873-6982
LARRY E. HUGHES	Reno, IAFF Local 731	331-0522
Denny Manman	Reno IAFF Local 731	329 5250
Ray M. Harris	Reno Fire Fighters, IAFF # 731	358-8389
Marlow Manner	Sparks Fire Fighters IAFF # 1265	358-8562
Nick Wagner	Local 39, IUOE AFL-CIO	358-3939
Larry IRVINE	L.V. Police Protective Assn.	384-8692
John HAWKINS	Nev. School Boards Assoc.	882-2674
Don Player	City of Sparks	356-2311
ROBERT FOSTER	RENO, IAFF Local 731	972-1270
KEN GRIMES	RENO IAFF LOCAL 731	358-7940
Steve Wagnerich	Reno IAFF Local 731	747-6953
HARRY REINERS	RENO IAFF " 731	747 4697
Lloyd Davison	Reno IAFF Local 731	322-5800

ASSEMBLY GOVERNMENT AFFAIRS COMMITTEE

GUEST LIST

Date _____

PLEASE PRINT YOUR NAME	PLEASE PRINT REPRESENTING:	I WISH TO SPEAK FOR	AGAINST	BILL NO.
Richard T. Kreps	Clark County P.E.A			
CLINT KROLL	NEC Assn of Engineers		4	SB350
Jack Warnecke	Carson City Supervisor		4	All
BILL PEARCE	RENO NV. Chamber of Co			
J E Lovell	Reno/Sparks Chamber		4	SB350
I. Howard Reynolds	Washoe County		4	SB 350
GREG RIVET	CITY OF SPARKS		4	SB 350
Ron Cresap	City of Reno	-		SB 536
Jim Berry	" "	v		SB536
PAT GOTHBERG	NEVADA NURSES' ASSN			
JOHN RIDWELL	E.M.R.B.			
S. Boland	CCDA			
Carole Vilardo	EMPB (Chairman)			
Jane Feldman	Rehab Div			
Mike Brown	Reno Fire Fighters			
JR Elgin	SPARKS FIRE DEPT.			

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ASSEMBLY GOVERNMENT AFFAIRS COMMITTEE

GUEST LIST

Date _____

PLEASE PRINT YOUR NAME	PLEASE PRINT REPRESENTING:		I WISH TO SPEAK FOR	AGAINST	BILL NO.
BOB KERNS	RENO FIREFIGHTERS		✓		
CHUCK LAKINO	Reno Firefighters Loc. 731				
JON JOHNSON	RENO FIREFIGHTERS 731				
KENT HOLLAND	WASHOE CTY EMPLOYEES ASSOC				
Bill Lynch	Washoe Co. Employees Assoc.				
Bill Glenn	Reno Firefighters Local 731				
Bill Bunker	Federated Fire Fighters		✓		SB 350
MITCH GLAZNER	CARSON CITY FIREFIGHTERS				
DALE FUNK	CARSON CITY FIREFIGHTERS				
STEVE MITRLIC	CARSON CITY FIREFIGHTER				
C. Robert Cox	Washoe County School District				All bills.
Robert Maples	" " " "				
Robert Petrini	Clark County Sch Dist				
Charles A. Silvestri	Clark County Sch Dist				
Wallace DeWALT	Carson City School Dis	✓			SB 350
DOUG BYINGTON	NASA		✓		SB 350

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ASSEMBLY GOVERNMENT AFFAIRS COMMITTEE

GUEST LIST

Date _____

PLEASE PRINT YOUR NAME	PLEASE PRINT REPRESENTING:		I WISH TO SPEAK FOR	AGAINST	BILL NO.
Ronald R Norgaard	Sparks Fire Dept				
Glenn C Taylor	Nev. Labor Commission				
Hallan R Kilber	Teacher - Carson City				
Joyce Fisher	Teacher - Washoe County				
Betty J. Lewis	W.C.E.A. - N.P.E.A.C.				
Vicki Stewart	WCEA				
Janet Soderman	WCEA				
Hugo Wagner	WCEA				
Jim V Forbes	International Fire Fighters				
[illegible]	International Fire Fighters				
George Withers	Las Vegas Fire Fighters				

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EXHIBIT C

POSITION PAPERS ON:

A.B. 55
A.B. 400
A.B. 452
S.B. 367

April 20, 1981

ASCRIBED TO BY THE FOLLOWING:

William A Bunker
FEDERATED FIREFIGHTERS

Larry Lawrence
POLICE PROTECTIVE
ASSOCIATION

Ross Gyllenstrom
NEVADA PUBLIC EMPLOYEE
ACTION COALITION

Jean L. Woodhouse
NEVADA STATE EDUCATION
ASSOCIATION

A.B. 55

Assembly Bill 55 is a highly restrictive bill and offers no positive changes to the collective bargaining statute governing public employees. We strongly oppose its passage for several reasons.

We believe that any employee group must have the right to collectively pursue economic and professional goals that are deemed important to that group of people. A.B. 55 denies the right of bargaining to school administrators. We support the right of administrators to negotiate their work contracts.

We are additionally disturbed by the exclusions listed in this measure of the monies available to be considered in the bargaining and arbitration procedure. The statute presently reads that the arbitrator must determine the financial ability of the public employer to pay based upon the employer's information. The arbitrator then must use this information in making his/her award. We believe the suggested language on page 5 of the bill is completely unnessary.

We adamantly oppose the directive that supervisory employees shall provide the normal public services should employees go on strike or violate the law. We ask you:

Do you really want management fighting a fire at a high rise hotel?

Do you really want management quelling a riot in downtown Las Vegas?

Do you really want management teaching your children, serving hot lunches, or driving school buses?

Do you really want management running the computers and data processors or sweeping the streets of your city or county?

We do not believe you do since these circumstances are clearly an inefficient use of time and skills. Certainly the services would not be appropriately rendered.

We urge you to consider A.B. 55 no further. Thank you.

Signed by:

William A Bunker
FEDERATED FIREFIGHTERS

POLICE PROTECTIVE ASSOCIATION

NEVADA PUBLIC EMPLOYEES ACTION COALITION

Joyce L. Woodhouse
NEVADA STATE EDUCATION ASSOCIATION

4/20/81

Since A.B. 400 levies such a heavy load against the employee organizations, we oppose the measure.

A.B. 400 requires membership authorization cards to be signed by the majority of the members stating the assertion of the employee that that organization represent him/her and stating that he/she is a member or will be a member. Many of our organizations have continuing membership forms and are on payroll deduction for membership dues. We do not employ large staffs of professional and support personnel. Instead, all of us have limited staff support which is stretched to cover the load by volunteers from our ranks. Others are too small to afford to employ any staff. We then support these organizations through all volunteer work. A.B. 400 proposes language that will place and undue and unnecessary burden upon us.

We do salute the recognition by the writers of this bill in that the present advisory/binding arbitration procedure used is replaced by automatic binding arbitration. The political influence of the executive branch of government is thus removed. However, we do believe a better procedure for resolution of impasse is the last best offer arbitration procedure as framed in Senate Bill 350.

For these reasons, we urge you to defeat this measure. Thank you.

Signed by:

William A Bunker
FEDERATED FIREFIGHTERS

Larry Levine
POLICE PROTECTIVE
ASSOCIATION

Ross Tudgeon
NEVADA PUBLIC EMPLOYEES
ACTION COALITION

Joyce L. Woodhouse
NEVADA STATE EDUCATION
ASSOCIATION

4/20/81

A.B. 452

Assembly Bill 452 makes a mockery of the Local Government Employee-Management Relations Act and the hours of work done by the Nevada Legislature for six sessions. It lashes out to destroy the compromises in the scope of bargaining made during the 1975 legislative session.

In a time of budget cuts a management bill to make reduction in force provisions a non-negotiable item is reprehensible. Public employees must have the right to a voice in determining direction on those items which affect their professions and their futures.

A.B. 452 further seeks to strike from the statute the provision for contract articles that existed in signed and ratified agreements as of May 15, 1975, at 12 p.m. to remain negotiable. On this date the public employee organizations were before like committees as today--some of you were there. At that time we had just lost a devastating battle on a management bill which sought to reduce the broad scope of bargaining to the one you see before you now in NRS 288.150. This item, along with procedures for reduction in force and teacher preparation time, were the only items we were able to add to this list. We urge you to not destroy the little that we were able to salvage from that confrontation.

The contract provisions that existed in signed and ratified agreements as of May 15, 1975, are extremely important to us. In addition to this item being a part of a very important compromise, every public employee in this state

stands to lose items from their contracts should this bill be accepted. We plead with you to not allow this to happen.

A.B. 452 would also delete teacher preparation time from the scope of bargaining in NRS 288. This is certainly a legitimate item for negotiations between teachers and their school board. We iterate, public employees must have a voice in their profession and their future.

We urge your support for harmony in the public sector. We urge you to not dismantle the collective bargaining process. We urge you to not consider this blatant attack on public employees.

Thank you.

Signed by:

William A Bunker
FEDERATED FIREFIGHTERS

POLICE PROTECTIVE ASSOCIATION

NEVADA PUBLIC EMPLOYEE ACTION COALITION

Joyce L. Woodhouse
NEVADA STATE EDUCATION ASSOCIATION

4/20/81

S.B. 367

Senate Bill 367 will deal a devastating blow to the morale of all public employees in this state. It will deprive present employees of the very few gains we have made over the past ten years. It will deprive others from ever pursuing the goals of their members.

S.B. 367 denies to teachers of this state the right to negotiate teacher preparation time. Although this is an item that related specifically to one employee group, we <u>all</u> support their right to bargain it at the negotiations table. Most certainly preparation time is a definite and direct condition of work for teachers.

S.B. 367 is ill-conceived as it necessitates the complete restructure of boards and commissions throughout Nevada. It is certainly unclear as to whether anyone could serve on any board that is not directly related to employment. This measure seeks to provide to management in law the right to determine just how many days a public employee can serve on a state board or commission. We find this idea particularly abhorrent.

Public employees are <u>not</u> second class citizens, and we do serve this state ably and well. At present, a teacher and a policeman serve on the Public Employee Retirement Board. Three teachers and two administrators serve on the Commission on Professional Standards in Education. PERB meets monthly for two to three days each month. The Professional Standards Commission meets monthly for one day. The people serving prepare for these meetings on their

own time. The Police and Fire Retirement Advisory Committee includes five firefighters and policemen. All three of the committees are in place in Nevada law. All of you are aware of many other boards and commissions. We believe the restriction in S.B. 367 is an attack on our integrity to those commissions and boards and to our professions. We are proud of our involvement, and we salute those public employees who have answered the call to serve.

Once again, as in A.B. 55, we oppose the move to deny school administrators the opportunity to bargain collectively if that is their desire.

We ask you to destroy this bill as it seeks to further "take away" from the public employees of this state. It seeks to negate the professional and community services we provide. Thank you.

Signed by:

William A Bunker
FEDERATED FIREFIGHTERS

POLICE PROTECTIVE ASSOCIATION

NEVADA PUBLIC EMPLOYEES ACTION COALITION

Joyce L. Woodhouse
NEVADA STATE EDUCATION ASSOCIATION

4/20/81

LEGISLATIVE TESTIMONY

by

Rita Hambleton

EXHIBIT D

April 20, 1981

Senator Gibson, Assemblyman Dini, and members of the committees, my name is Rita Hambleton. I am a teacher in Washoe County, and I am presently the chairperson of the Nevada State Education Association's Negotiations Committee. I have been directly involved at the bargaining table for the Washoe County Teachers Association since 1974, and I am currently the chief negotiator for Washoe County teachers.

Public employee bargaining is greatly hampered in Nevada because of an inadequate means of resolving impasse. As NRS 288 is now written, the only way teachers may go to binding arbitration to settle impasse is if the Governor grants permission to do so. The present Governor has not granted binding arbitration to any public employee group during the past two years. As a result, more and more often, teacher contracts are not agreed to by the end of a school year, and teachers do not know what salaries or working conditions to expect for the coming year when school is out for the summer. Frequently, teachers are back in the classrooms for several months of the next school year before contracts are settled. This situation in these tight economic times creates tension among teachers, lowers their morale, and ultimately affects their classroom performance thereby creating problems for students.

I would like to share some recent teacher negotiations history with you. During 1980, when teachers were bargaining for 1980-81 contracts, seven Nevada counties had not reached agreement when schools were closed for the summer. Those counties were Carson City, Churchill, Douglas, Lander, Mineral, Washoe, and White Pine. Four of those counties (Carson City, Churchill, Mineral, and White

Pine) were still not settled in September when teachers returned to school. It seems that many school districts drag their feet in negotiations when there is no final and binding way to resolve impasse. There is simply no incentive for districts to settle. As a result, we have seen serious disharmony characterize teachers' negotiations in several parts of the state: notably Carson City, Churchill, and White Pine.

Because of the attitudes of school districts in the state after the Governor refused binding arbitration blanketly, the NSEA requested a meeting with Governor List in June,1980, to discuss teacher negotiators' concerns. Most of the counties that still had no contract settlement for 1980-81 were represented by teacher negotiators including myself at the meeting with the Governor. During the course of the meeting, it became clear that Governor List interpreted the term "emergency" as used in NRS 288 to mean that he should grant binding arbitration only if a situation was clearly endangering the public welfare. As a result of this interpretation, fewer and fewer teachers' negotiators are even using the Governor's hearing process to resolve impasse. At the June meeting with the Governor, we did suggest to him that the statute be changed to allow binding arbitration without the necessity of the Governor's intervention. Governor List indicated to us that he would consider that possibility.

After a great deal of deliberation, the Washoe County Teachers Association, for the first time in many years, decided not to file a request for binding arbitration with the Governor this year -- not because we feel we might not need it, but because we do not see the usefulness of going through a protracted and costly charade.

In the past eight years, the WCTA has requested binding arbitration seven times; it was awarded four times. When it was granted, binding arbitration was most useful in bringing negotiations to an end. However, the past two years, the WCTA has spent several thousand dollars of its teachers' dues for attorneys' fees and staff salaries

to pursue a redress that simply was not available. Additional thousands of taxpayers' dollars were wasted by school districts and by the Commissioner of the Employee-Management Relations Board and his staff.

If the teachers and the district in Washoe County are not able to reach agreement on the issues before us for the 1981-82 contract, we will proceed to advisory arbitration. Such procedures may not facilitate our reaching agreement, but we will be no worse off than if we had followed the intended resolution provisions of the statute. If advisory arbitration is not successful, we will have recourse to such activities as publicity, political action, sanctions, etc. -- all activities we believe the statute hoped to preclude.

For the sake of those employees, including teachers, who may badly need binding arbitration to resolve issues, I urge you to pass SB 350. If employers are assured that binding arbitration will not be available, employees are encouraged to demonstrate militant behavior in many areas of our state. Surely, the efforts of teachers, under very adverse economic and social conditions, should be facilitated at least to the extent of expediting their negotiations without dissipating energies on frustrating and unequal efforts to obtain fairness and equity from their employers.

Thank you for your time and attention.

EXHIBIT E

Testimony Presented by:

Wally DeWitt
NEVADA STATE EDUCATION ASSOCIATION

Presented to:

Joint Meeting of Senate and Assembly
Government Affairs Committees

April 21, 1981

Mr. Chairmen and members of the joint committees:

My name is Wally DeWitt. I am President-Elect and Chief Negotiator for the Ormsby County Teachers Association. I would like to tell you briefly about our experience in collective bargaining this past year.

We began negotiations in February, 1980, and finally concluded in January, 1981. We had many problems right from the start. The main problem was NRS 288. It simply doesn't work.

When we began meeting with the district, we tried to set our procedural agreements first. We were able to agree on most items except for impass proceeding. Our association wanted binding arbitration. The district wanted to submit impass to the Governor, knowing he hadn't granted binding arbitration to any employee group. We went to mediation for 8 hours. This accomplished nothing. We went ahead and began negotiations with no impass procedure.

Through the first six months we only agreed to two items, both very insignificant.

Teachers became very frustrated. They had seen this scenario take shape for many years. We formed Action Committees to begin working within the community to rally citizen support for our cause. Teachers set up booths at malls and shopping centers to get signatures on petitions asking the board to negotiate with us. I must add the board had refused to meet and negotiate with us during this time, further adding to teacher frustration. We were able to get over 1,000 signatures in one day. The board was unimpressed.

Adding to our frustration was the district's manner in supplying us with information when we requested it. The information was very slow in coming, very often incorrect, and far too often we didn't receive it at all. Yet we had no recourse except to keep asking and hoping we would get it.

Teachers find the current method of collective bargaining frustrating and degrading. When teachers are forced to go through what we went through in the last year, it affects our performance in the classroom. Nobody can win under our current law. Teachers, parents and most importantly our students will thank you if you pass S.B. 350. Thank you for listening to me today.

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS

1750 NEW YORK AVENUE, N.W., WASHINGTON, D.C. 20006
TELEPHONE NO. (202) 872-8484

John A. Gannon
President

Martin E. Pierce
Secretary-Treasurer

EXHIBIT F

Dear Sir and Brothers:

This is in response to your request for information concerning states with a compulsory/binding arbitration law covering fire fighters.

Our research indicates the following states are presently covered by compulsory or binding arbitration: Alaska, Connecticut, Hawaii, Iowa, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Washington, Wisconsin and Wyoming.

Maine's collective bargaining law mandates an arbitration award is advisory as to salaries, pension and insurance, and binding on all other issues. Vermont has voluntary arbitration unless made compulsory by referendum and the State of Texas has voluntary arbitration by referendum for fire fighters. Delaware permits voluntary binding arbitration for all issues except wages and salaries, and New Hampshire provides voluntary arbitration on non-cost items only.

The state laws in Utah and South Dakota and a local ordinance in Colorado have been declared unconstitutional by the respective State Supreme Court.

While evidence may be presented that strikes by fire fighters have occurred in states with arbitration, the opposition may intentionally forget the date of strike and the effective date of the implementation of binding arbitration. The accurate statement is "there has not been a recorded strike of fire fighters in the United States covered by a state law granting binding/compulsory arbitration since the implementation of the particular Act."

Trusting the enclosed information will be of assistance and with kind regards, I remain

Fraternally,

Michael J. Smith
Director of Research

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STRIKES

LOCAL	CITY & STATE/PROVINCE	DATE OF STRIKE
134	Atlanta, GA	Sept. 2, 1966
73	St. Louis, MO	Sept. 2, 1966
312	Youngstown, OH	Sept. 6, 1967
311	Madison, WI	Nov. 1, 1968
74	Superior, WI	Jan. 1, 1969
376	Pontiac, MI	Feb. 14, 1969
311	Madison, WI	March 27, 1969
4	Des Moines, IA	April 28, 1969
394	Kalamazoo, MI	May 18, 1969
1846	Newark, NJ	July 11, 1969
1186	Vallejo, CA	July 17, 1969
291	Lancaster, OH	Aug. 1, 1969
359	Gary, IN	Aug. 5, 1969
152	Springfield, MO	Sept. 4, 1969
1535	Montreal, Quebec, Canada	Oct. 7, 1969
814	Sioux Falls, SD	Oct. 23, 1969
321	Racine, WI	Jan. 1, 1970
145	San Diego, CA	May 13, 1970
1040	Rapid City, SD	May 16, 1970
109	Newark, OH	June 30, 1970
1505	Flagstaff, AZ	July 15, 1970
1869	Kendallville, IN	July 17, 1970
1959	Affton, MO	Sept. 1, 1970
1446	Auburn, NY	Oct. 22, 1970
781	Independence, MO	Nov. 5, 1970
522	Sacramento, CA	Nov. 7, 1970
1642	Murray, KY	Nov. 18, 1970
77	St. Joseph, MO	June 11, 1971
789	Nashua, NH	June 24, 1971
345	Louisville, KY	June 30, 1971
927	Bowling Green, KY	July 1, 1971
398	St. Louis Co., MO	Sept. 10, 1971
985	Montreal, Quebec, Canada	Oct. 13, 1971
1535	Montreal, Quebec, Canada	Oct. 13, 1971
634	Macon, GA	July 7, 1972
706	Ashland, KY	April 30, 1973
1455	Albuquerque, NM	July 31, 1973
94	New York, NY	Nov. 6, 1973

STRIKES (Cont'd)

LOCAL	CITY & STATE/PROVINCE	DATE OF STRIKE
480	Alliance, OH	Feb. 3, 1974
742	Evanston, IL	March 1, 1974
386	Newport, KY	April 11, 1974
38	Covington, KY	April 12, 1974
383	Peru, IN	July 18, 1974
558	Jeffersonville, IN	Aug. 2, 1974
2250	San Mateo, CA	Aug. 7, 1974
360	Mishawaka, IN	Aug. 13, 1974
526	Lexington, KY	Aug. 20, 1974
291	Lancaster, OH	Nov. 26, 1974
334	Lima, OH	Jan. 20, 1975
2329	Somerset, KY	March 6, 1975
2046	Santa Barbara Co., CA	June 3, 1975
329	Barberton, OH	June 24, 1975
2147	Placentia, CA	July 1, 1975
358	Pine Bluff, AR	Aug. 13, 1975
798	San Francisco, CA	Aug. 20, 1975
1227	Berkeley, CA	Aug. 26, 1975
381	Findlay, OH	Sept. 9, 1975
479	Tucson, AZ	Sept. 22, 1975
42	Kansas City, MO	Oct. 3, 1975
2362	Las Cruces, NM	Feb. 3, 1976
168	Paducah, KY	Feb. 16, 1976
24	East Liverpool, OH	March 20, 1976
325	Fostoria, OH	April 8, 1976
I-24	Hanford, WA	May 3, 1976
388	Bloomington, IL	June 7, 1976
288	Steubenville, OH	Aug. 4, 1976
312	Youngstown, OH	Sept. 27, 1976
2535	Winchester, KY	Oct. 12, 1976
37	Springfield, IL	Nov. 11, 1976
696	Astoria, OR	Jan. 6, 1977
1309	Lakewood, CO	Jan. 21, 1977
I-25	Palmdale, CA	Jan. 27, 1977
204	Warren, OH	Feb. 14, 1977
429	Danville, IL	March 10, 1977
1141	Brook Park Village, OH	March 22, 1977
283	Salem, OH	March 28, 1977
44	Joliet, IL	April 1, 1977
2369	Joliet, IL	April 1, 1977
249	Canton, OH	April 25, 1977
1348	Muncie, IN	July 19, 1977
402	Cleveland Hgts., OH	July 19, 1977
398	St. Louis Co., MO	July 22, 1977
249	Canton, OH	July 26, 1977
136	Dayton, OH	Aug. 8, 1977
758	Terre Haute, IN	Aug. 7, 1977
475	Michigan City, IN	Aug. 9, 1977
165	Ashtabula, OH	Sept. 1, 1977
2402	West Frankfort, IL	Aug. 23, 1977

LOCAL	CITY & STATE/PROVINCE	DATE OF STRIKE
2594	Clarksville, IN	Oct. 1, 1977
778	Burbank, CA	Sept. 16, 1977
1966	Calexico, CA	Sept. 9, 1977
204	Warren, OH	Jan. 1, 1978
I-28	San Francisco, CA	Feb. 22, 1978
398	St. Louis Co., MO (Hazlewood)	May 13, 1978
266	Mansfield, OH	May 1, 1978
267	Lorain, OH	May 5, 1978
2442	Normal, IL	Mar. 21, 1978
442	Marietta, OH	June 2, 1978
345	Louisville, KY	July 14, 1978
1403	Memphis, TN	July 1, 1978
2216	Compton, CA	July 23, 1978
1403	Memphis, TN	Aug. 14, 1978
1262	Anderson, IN	Aug. 26, 1978
820	Chattanooga, TN	Sept. 8, 1978
1583	Biloxi, MS	Sept. 18, 1978
666	Wichita, KS	Sept. 11, 1978
856	Manchester, NH	Sept. 2, 1978
1469	Pascagoula, MS	Oct. 4, 1978
2311	Vernon, CA	Aug. 23, 1978
96	Butte, MT	Sept. 17, 1978
2069	Sylacauga, AL	Oct. 29, 1978
1468	St. Bernard Parish, LA	Nov. 8, 1978
1833	Huntsville, AL	Nov. 18, 1978
561	Lake Charles, LA	Nov. 29, 1978
1398	Dartmouth, Nova Scotia	Jan. 8, 1979
117	Birmingham, AL	May 3, 1979
1563	Anne Arundel Co., MD	June 19, 1979
268	Halifax, Nova Scotia	Aug. 17, 1979
334	Lima, OH	Feb. 7, 1980
24	East Liverpool, OH	April 1, 1980
312	Youngstown, OH	May 2, 1980
763	NASHVILLE, TN	May 7, 1980
24	East Liverpool, OH	May 6, 1980
1386	Ashland, OH	May 30, 1980
42	Kansas City, MO	March 17, 1980
1349	Mobile, AL	July 14, 1980
1375	Hollywood, FL	Sept. 13, 1980

IMPASSE PROCEDURES[1]

Alabama	Fire fighters only. The law does not provide an impasse procedure.
Alaska	Compulsory binding arbitration
Arizona	Arizona does not have a collective bargaining statute for public employees.
Arkansas	Arkansas does not have a collective bargaining statute for public employees.
California	Mediation
Colorado	Colorado does not have a collective bargaining statute for public employees.
Connecticut	Compulsory final offer arbitration - issue by issue basis.
Delaware	Voluntary binding arbitration on all issues except wages and salaries.
District of Columbia	Voluntary binding arbitration.
Florida	Fact finding.
Georgia	The law covers fire fighters in municipalities of 20,000 or more that elect coverage; provides for fact finding.
Hawaii	Compulsory final offer arbitration.
Idaho	Fact finding.
Illinois	Fire fighters in municipalities with populations of 5,000 or more; provides for fact finding.
Indiana	Indiana does not have a collective bargaining statute that covers fire fighters.
Iowa	Compulsory binding final offer arbitration or fact finder's recommendations on an issue-by-issue basis.

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[1]At the present time, 38 states and the District of Columbia have statutes or executive orders that provide a legal framework for collective bargaining for fire fighters. Many of these collective bargaining statutes provide procedures for settling an impasse during negotiations. These impasse procedures vary from fact finding to compulsory arbitration.

Kansas	Fact finding.
Kentucky	Fire fighters in cities with populations of 300,000 or more or cities electing coverage; provides for fact finding.
Louisiana	Louisiana does not have a collective bargaining statute for public employees.
Maine	Compulsory arbitration is advisory as to salaries, pensions and insurance, and binding on all other issues.
Maryland	Maryland does not have a collective bargaining statute that covers fire fighters.
Massachusetts	Compulsory binding final offer arbitration.
Michigan	Compulsory binding arbitration; final offer arbitration on a issue-by-issue basis for economic issues, conventional for non-economic issues.
Minnesota	Compulsory binding arbitration.
Mississippi	Mississippi does not have a collective bargaining statute for public employees.
Missouri	The law does not provide an impasse procedure.
Montana	Final offer binding arbitration. (Fire fighters only.)
Nebraska	Either party may request the Commission of Industrial Relations to determine wages, hours and conditions of employment.
Nevada	Compulsory binding final offer arbitration.
New Hampshire	Voluntary arbitration on non-cost items only.
New Jersey	Compulsory final offer arbitration.
New Mexico	New Mexico does not have a collective bargaining statute that covers fire fighters.
New York	Compulsory binding arbitration.
North Carolina	Collective bargaining is prohibited by state statute.
North Dakota	Fact finding.
Ohio	Ohio does not have a collective bargaining statute for public employees.

Oklahoma	Advisory arbitration (police and fire fighters).
Oregon	Compulsory binding arbitration
Pennsylvania	Compulsory binding arbitration
Rhode Island	Compulsory binding arbitration
South Carolina	South Carolina does not have a collective bargaining statute for public employees.
Tennessee	Tennessee does not have a collective bargaining statute that covers fire fighters.
Texas	Local adoption by referendum; voluntary binding arbitration.
Utah	Utah does not have a collective bargaining statute for public employees.
Vermont	Voluntary arbitration unless made compulsory by referendum.
Virginia	Virginia does not have a collective bargaining statute for public employees.
Washington	Compulsory binding arbitration.
West Virginia	West Virginia does not have a collective bargaining statute for public employees.
Wisconsin	Compulsory binding arbitration: may be final offer or conventional arbitration.
Wyoming	Compulsory binding arbitration. (Fire fighters only.)

EXHIBIT G

THE CASE FOR ARBITRATION OF INTEREST DISPUTES: AN EFFECTIVE ALTERNATIVE TO POLICE AND FIRE STRIKES

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March 4, 1977

THE CASE FOR ARBITRATION OF INTEREST DISPUTES: AN EFFECTIVE ALTERNATIVE TO POLICE AND FIRE STRIKES

I. INTRODUCTION

Binding arbitration of new contract terms has received growing acceptance as an effective alternative to police and fire strikes. Arbitration of disputes over wages and other benefits has occurred on a limited scale in the private sector since the turn of the century, and the concept received nationwide attention in 1973, when the steel industry and the United Steel Workers entered into an agreement in which they substituted arbitration for strikes and lockouts as the weapons of last resort.

In the public sector twenty-seven states and a number of municipalities currently provide for some type of arbitration to settle contract disputes. Although strong opposition has often been expressed by city managers and other local officials who stand to lose authority through the imposition of arbitration, most analysts have been satisfied

with the results. Indeed, collective bargaining has been strengthened in those cases in which arbitration has provided some equality of bargaining power to employees who otherwise had to negotiate from a position of weakness because they lacked the right to strike. The number of disruptions in essential public services has been reduced, and, contrary to some recent representations to the contrary, the cost of the arbitration awards has been comparable to the cost of negotiated contracts.

With but one exception, attacks upon the constitutionality of arbitration statutes have universally been rejected. The highest courts in the states of Pennsylvania, Wyoming, New York, Rhode Island, Michigan, Maine and Nebraska have held that arbitration is not an unlawful delegation of legislative authority, and only South Dakota has come to a contrary conclusion. Prior case authority in this state makes clear that the California courts would follow the majori rule and uphold an arbitration statute.

Finally, arbitration does not infringe upon local political and economic control. Elected represenstatives still retain the ability and responsibility to establish budget priorities and to set tax rates for their jurisdictions In many instances, such as those cities and counties which have "prevailing wage" ordinances or charter provisions,

arbitration would actually increase the flexibility of local governments and enhance their ability to meet adverse economic conditions. Arbitration of interest disputes would not circumvent state laws which establish local property tax limitations.

Thus, the benefits of arbitration greatly outweigh its alleged detriments. Accordingly, California should take action now to join the growing list of states which have adopted arbitration as a means of preventing future disruptions in essential public services.

II. INTEREST ARBITRATION EXPERIENCE IN THE PRIVATE SECTOR

Collective bargaining in the private sector is typified by a confrontation in which economic power determines the result. The principal weapon available to management is the lockout. The principal weapon available to labor is the strike. An accommodation is usually reached in the form of a contract which reflects the relative strength of the opposing sides and their commensurate willingness to resort to arms.

In a limited number of instances, however, private sector employers and unions have used binding arbitration rather than economic combat to establish the terms of a collective agreement. This form of arbitration is referred to as "interest arbitration," and is different from grievance arbitration in that it involves disputes over new contract

terms rather than the interpretation or application of an existing agreement. In some of the instances when interest arbitration has been undertaken in the private sector, it was done voluntarily. In others it was the result of congressional decree.

Direct congressional imposition of binding arbitration to resolve labor-management disputes has usually occurre in "emergency" circumstances where a strike or lockout would have an unacceptable impact upon the public interest. In 1918, during World War I, the first National War Labor Board was created to regulate industrial relations in war-related industry. Although the Board's primary function was to provide mediation and conciliation, it often intervened directly in the establishment of wages and working conditions and thus represented a form of interest arbitration. During World War II the second National War Labor Board was established with a similar purpose.[1]

Congress has also legislated dispute resolution procedures in the Railway Labor Act and the Postal Reorganizatio Act in order to protect the public interest by prescribing an altenrative to economic weaponry. Initially, the Railway Labor Act contemplated a scheme in which mediation and voluntary arbitration would be the central techniques for interest dispute resolution.

In 1963, however, an impasse developed in a dispute concerning diesel firemen and crew size issues. Intervention by President Kennedy was unavailing, and the matter was referred to Congress. Congress passed legislation which established a seven-member Rail Arbitration Board to settle the question. Since then, more than forty other emergency arbitration boards have been created to resolve other railway labor disputes.[2]

The Postal Reorganization Act of 1970 granted postal employees the right to organize and bargain collectively in the same manner as private sector employees. The Act prohibits strikes but attempts to provide employees with an acceptable alternative through extensive procedures for voluntary negotiation, mediation, fact-finding, voluntary arbitration and binding compulsory arbitration.[3]

Three national agreements have been negotiated thus far under the Postal Reorganization Act without resort to binding arbitration, with the most recent of these agreements concluded in July 1975. The only time formal dispute resolution procedures have been invoked was during the 1971 negotiations for the initial national agreement, when fact-finding was conducted with apparent success.[4]

Voluntary resort to binding arbitration has taken place in the private sector with greater frequency. At the

turn of the century, the union which represented local transi workers (now called the Amalgamated Transit Union), together with many of its affiliates, began to arbitrate the terms of new collective bargaining contracts. Between 1900 and 1949 over six hundred wage cases were resolved in this manner. And arbitration continues to be an important part of the labor-management relationship in the transit industry today.[5]

A significant new development occurred in 1973, when the steel industry and the United Steel Workers joined in an Experimental Negotiating Agreement which provided for arbitration of all national issues that cannot be resolved through collective bargaining. After a one hundred sixteen day strike in 1959, the expiration of each subsequent contrac had been accompanied by a disruptive pattern of stockpiling and hedge-buying by customers in order to ensure a sufficient supply of steel in the event of another strike.

This stockpiling in turn spawned increased domestic production as well as increased imports from foreign steel producers. United Steel Workers President I. W. Abel described the pattern this way:

> The stockpiling had its impact not only on our bargaining and on our successes at the bargaining table, but it also had a tremendous impact on the ups and downs of production and employment. This resulted in a "feast or famine" or "boom-bust" treadmill for our members in the

> basic steel industry. Most steelworkers enjoyed steady work and many worked overtime just prior to the negotiating periods and during the negotiating period. But then came the peaceful settlements, the working off of stockpiles, partial plant shutdowns and prolonged layoffs.[6]

Moreover, domestic sales also declined during the next boom period due to continued inroads made by foreign producers. Thus, the periodic strike threat hurt both parties in that it resulted in fewer jobs for the workers and lower profits for the companies.[7] Another nationwide strike loomed in 1968, when the parties deadlocked over an incentive wage issue. The crisis was averted by an agreement to submit the dispute to binding arbitration.[8]

In 1971, the boom-bust cycle produced its worst effects. Extensive layoffs and plant shutdowns occurred one full month before the expiration of the contract. Even though a new agreement was reached without a strike, some USW members went without work for as long as seven months, and about 108,000 job opportunities were lost due to the record level of imported steel. Stockpiling cost the ten largest steelmakers about eighty million dollars.

With this impetus, the Experimental Negotiating Agreement was executed in 1973.[9] One of the principal concerns of the parties, however, was that the arbitration agreement might chill collective bargaining. The 1974 steel

industry negotiations demonstrated, nevertheless, that the pressure to develop a contract without resort to arbitration was just as intense as the pressure to avoid a strike.

As the parties approached the April 15 deadline, each became aware that arbitration might tend to be an all-or-nothing process. While it had been originally thought that the two sides might resolve most of their major differences and then turn over a few loose ends to outside umpires, R. H. Larry, chief negotiator for the steel industry, later reported that it became very difficult to isolate specific areas of disagreement. If one side balked on one point, the opposition would probably have pulled back on another.[10] Eventually, the whole thing could have "unraveled." I. W. Abel saw in the arbitration itself substantial pressure for an agreed settlement:

> It is only natural for both sides to prefer a settlement shaped by themselves, and not by a third party. The parties themselves know the problem best. A third party dictating the terms of a settlement might not be aware of technical problems that may, unwittingly, stem from an imposed settlement. The need to formulate contract conditions that are workable and acceptable to both sides will serve as additional pressure to resolve issues independent of the arbitration machinery that has been established.[11]

Agreement was finally reached just before the deadline date on which either could have taken the other to

arbitration. According to industry negotiator Larry, "the last three nights were as sleepless as if the parties had been racing a deadline for a strike or lockout."[12] Larry also said, with regard to the cost of the settlement, that: "We came out about where we would have, had we been faced with a strike or lockout."[13]

The steel industry and the union have agreed that they will bargain again in 1977 under the Experimental Negotiating Agreement. I. W. Abel foresees that the agreement could become a permanent solution to the problem of resolving employment disputes in the steel industry without the threat of strikes:

> We believe this unprecedented experiment will prove there is a better way for labor and management to negotiate contracts. The new procedure will not only relieve both sides of the pressures of a potential shutdown, but will also offer us a genuine opportunity to achieve results equal to those obtainable when the threat of a strike exists.[14]

III. INTEREST ARBITRATION EXPERIENCE IN OTHER STATES

An increasing number of state and local governments is also perceiving this same need for binding arbitration as an alternative to strikes by employees performing essential services. These governments have come to realize that although it may be within their power to prohibit strikes, such

a prohibition will be ineffective unless an alternative means of dispute resolution is provided.

Twenty-seven states currently have some type of public sector interest arbitration. They are: Alaska, Connecticut, Delaware, Hawaii, Indiana, Iowa, Maine, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, Oklahoma, Oregon, Pennsylvania Rhode Island, South Dakota, Texas, Utah, Vermont, Washington, Wisconsin and Wyoming.[15] Of these, arbitration is compulsory in eighteen -- Alaska, Connecticut, Iowa, Maine, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, New York, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, Washington, Wisconsin and Wyoming.[16]

Although strong opposition has often been expressed by city managers and other local officials, who stand to lose some of their authority through the imposition of compulsory arbitration, neutral commentators are generally in agreement that the experiment has been successful. In their excellent international work on compulsory arbitration, Loewenberg, Walker, Glasbeek, Heppel and Gershenfeld conclude:

> In the short run compulsory arbitration in the public sector seems to have passed its tests. Most analysts and participants are satisfied with the process. Serious collective bargaining with a substantial number of settlements continues despite the availability of arbitration. Strikes

> are virtually unknown among employees covered by compulsory arbitration legislation. Arbitrators have not stripped management of their rights and authority. The costs of arbitration awards do not appear to be higher than settlements reached by parties in similar circumstances. The public seems satisfied; at least there has been no great public outcry against the procedure. Perhaps the most telling evidence of success is the increasing adoption of arbitration as an impasse procedure. That fact indicates not only acceptance of the principle, but also satisfaction with the initial experience.[17]

The evidence clearly rebuts the claim that the availability of arbitration will deter collective bargaining.[18] In the first fifteen months of operation under Michigan's statute, settlements of two hundred twenty-four police and fire fighter disputes were reached without arbitration. During the same period arbitration was initiated in one hundred five cases, of which seventeen were settled before an award was rendered. In Wyoming, between 1968 and March 1972, two of the five municipalities with paid fire fighters did not utilize arbitration; Cheyenne arbitrated once, Laramie twice, and Casper three times.[19]

Experience in Minnesota also shows that compulsory binding arbitration may actually strengthen collective bargaining by providng some equality of bargaining power to employees who must otherwise negotiate from a position of weakness because they lack the right to strike. In 1947, the

Minnesota legislature enacted the Charitable Hospitals Act, prohibiting strikes and lockouts and substituting mandatory arbitration as the ultimate step in resolving labor disputes in nonprofit hospitals.[20]

Since then, no strikes have occurred in any of Minnesota's two hundred twenty-three hospitals. Of the 1,315 collective bargaining contracts executed during the period from 1947 to 1963, only two hundred fifty-one, or about twenty-six percent, were arbitrated.[21] Vern E. Buck, Director of the Minnesota Board of Mediation Services, says: "This in itself should be sufficient proof that binding arbitration does not abolish across-the-table bargaining, but as a matter of fact would indicate that it strengthens it."[22]

Opponents of binding arbitration have claimed that the availability of arbitration will not prevent strikes. But most employees in the public sector do not strike simply because of dissatisfaction with wages and working conditions. They strike because a strike is the only way of achieving an agreement resulting from good faith negotiations. Negotiations in which an employee organization is informed of a decision that has already been made are not good faith negotiations. Because arbitration also precipitates good faith negotiations, it provides an effective alternative to strikes.

Robert Howlett, Chairman of the Michigan Employment Relations Commission, reports that, in his opinion, experience under that state's statute effectively refutes the critics who say that strikes will still occur. The Michigan arbitration statute was first adopted in 1969, and then extended in 1972. Howlett states:

> The charge that the Michigan Police-Firefighters Arbitration Act (hereafter PFAA) did not prevent strikes was made by the Michigan Municipal League in its campaign opposing extension of the Michigan statute. Ten police strikes after October, 1969 were cited as proof that the statute had not been effective. Of the ten strikes cited, three were part of a single incident in one city where there were also non-collective bargaining issues. The city discharged the police for their work stoppage. Some policemen returned, but as new employees.
>
> At least one of the strikes involved a grievance with which PFAA is not involved. All (except the three-strike situation discussed above) were of short duration; and in each instance, the police officers, and in some cases the city, did not understand the procedures under the new statute. No objective observer will conclude that these incidents establish that the Michigan PFAA has not been effective.
>
> It may be significant that there have been no firefighter strikes since the enactment of PFAA; whereas, between 1965, when the Public Employment Relations Act (PERA) became effective and October, 1969, there were three firefighter strikes, one of which lasted a week.[23]

Moreover, at least one of the police strikes in Michigan was the result of a city's refusal to abide by an arbitration award it disliked.[24]

Howlett states, in addition, that a study by the Michigan Employment Relations Commission also contradicts those arbitration critics who claim that the costs of arbitration awards are generally higher than the costs of the contracts a city or county would have normally negotiated:

> It was also charged by the Michigan Municipal League that the awards have been excessively high. In most instances during the "first round," they were substantial. However, a comparison made in our office between arbitration decisions establishing wage increases determined by bargaining shows no significant difference in wage increases occurring before and after the passage of the Act. Admittedly, awards issued may have had an impact on later bargaining. But even if they were high, some urge that substantial awards were warranted, so that police and firefighters who had not been as militant as other public employees--teachers being the prime example--could "catch up." The "second round" awards are coming in lower than those during 1970-71 and recent public support for the Michigan statute, was shown by the extension from October 30, 1972 to June 30, 1975, passed by large majorities in both houses of the legislature.[25]

Part of the reason for the success of compulsory binding arbitration in the public sector undoubtedly results

from the fact that most of the experience thus far has been with public safety employees who have never had nor particularly desired the legal right to strike. They view arbitration not so much as a substitute for the right to strike but rather as a substitute for powerless collective bargaining which is, in fact, nothing more than collective begging. Thus, binding arbitration commands the confidence of such employees much as it commands the confidence of the private sector unions who use it by choice.

A second reason is that the arbitration statutes have usually been fashioned, or, when necessary, modified to ensure that the results will be reasonable and satisfactory to both sides. First, the arbitration body is usually not a single arbiter, but rather a tripartite board composed of one person selected by each side and a neutral chairman.[26]

As the hearings proceed, the neutral is then free to convey his feeling about a disputed issue to one of the partisan arbitrators, who in turn can inform his side that the neutral is leaning the other way. When that side modifies its offer to suit the neutral, the neutral can then follow a similar procedure with the other party.[27]

This causes the abandonment by both sides of positions which are unrealistic or totally unacceptable to the other and results in an award which embodies, substantially,

the terms the parties themselves would have reached. Rather than reaching a judgment upon the "merits" of the competing positions, the arbitration award creates a mutually acceptable solution.

Secondly, many modern statutes require an arbitrator or an arbitration board to choose between the "final offers" submitted by the parties rather than the conventional format of permitting an award according to the arbitrator's best judgment. When an arbitrator is free to compromise or "split the difference," the parties may be discouraged from serious bargaining or they may submit unreasonable proposal because of a belief that they are more likely to get what they actually want if they demand far more.

With conventional arbitration, a neutral arbitrator may be unable to distinguish between proposals which are acceptable to the parties and those which are not. Consequently awards may be either too high or too low in relation to the parties' expectations or in relation to their ability to comply.

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With final offer arbitration, however, the parties know that they may be penalized heavily if they do not formulate realistic positions. Each side will seek a favorable decision from the arbitrator by attempting to make its position appear the more reasonable. Settlements can be more

often achieved, and in those cases where agreement is not reached, the two sides will be closer together so that there will be far less room for arbitration error.[29] When one more refinement is added which requires both parties to submit an opening arbitration proposal but also permits them to postpone their "final offers" until the conclusion of the hearings, the neutral is then able to accurately weigh the parties' positions against what the parties consider to be the zones of acceptability.[30]

A final component of successful arbitration statutes in other states has been the provision of standards to guide the arbitration board in the exercise of its discretion. Standards provide a gauge against which the parties and the arbitrators can measure evidence. Although a party may seriously believe in its position, it will be more likely to accept an adverse award when it can see that the evidence offered by the other side was more convincing.

IV. INTEREST ARBITRATION EXPERIENCE IN CALIFORNIA

Three northern California cities -- Vallejo, Oakland and, most recently, Hayward -- have adopted and used arbitration as a means of settling interest disputes.

Vallejo was the first city to employ arbitration. After a bitter strike by that city's police officers and fire

fighters, the voters, through an initiative measure, decided to reestablish peaceful labor relations by a 1970 amendment to the municipal charter providing for mediation, fact-finding, and, finally, compulsory arbitration.

Twice since 1970 the Vallejo city management has sought to repeal Vallejo's arbitration provisions. By larger margins in each election, these efforts at repeal failed. The second election followed lengthy arbitration and fact-finding proceedings involving the fire fighters in 1972 and a Supreme Court decision which the City lost in 1974.[31]

By a two-to-one margin, voters of the City of Oakland amended their charter in 1973 to provide for binding arbitration of police and fire disputes. Disputes over the wages, hours, and other terms and conditions of employment for that city's fire fighters were arbitrated in 1974 and again in 1976. Irresponsible and untrue claims that have been made concerning these arbitration proceedings are discussed below.

The City of Hayward adopted a similar charter amendment in 1975, and an arbitration took place pursuant to that charter amendment in 1976. The city and the fire fighters union had reached agreement on most of the terms of a new contract, but had deadlocked over wages and sick leave. The arbitrator decided in favor of the city's position on sick

leave, and granted a wage increase of nine percent for 1976 and seven percent for 1977.

Binding arbitration has also been used on a voluntary basis by Santa Clara County to settle a 1975 strike over the wages to be paid its employees. The willingness of Santa Clara County to arbitrate its differences with the union avoided a prolonged disruption of county services.

The City of Vallejo's fact-finding and arbitration procedures are too complex and unwieldy, as the fire fighters' experience during 1972 disclosed. Yet, even these procedures are preferable to the strike alternative which preceded them. The Vallejo fact-finding arbitration experiences nevertheless have been of considerable value as the principle instigation for the far more sophisticated "last best offer" or "final offer" formula contained in proposed legislation now before the legislature.[32]

In 1972, fire fighters and the City of Vallejo proceeded through fact-finding proceedings after mediation efforts had failed. These proceedings continued for months. The City of Vallejo refused to accept the fact finder's recommendations and twenty-five issues were then presented to a different third party acting as an arbitrator. The city refused to permit the arbitrator to determine four of these issues.

While litigation commenced, lengthy arbitration

hearings proceeded simultaneously. The result was an arbitration award which satisfied no one, and incomplete because of issues which were awaiting a judicial determination.

In 1975, the City of Vallejo and its fire fighters again proceeded to arbitration before Sam Kagel, a nationally renowned arbitrator from San Francisco. The fact-finding procedures were avoided by agreement of the parties, and Kagel proceeded to resolve scores of issues -- including issues which had been referred to him as the result of the Supreme Court decision -- through his unique "med-arb" technique. The result was one of the most comprehensive labor agreements ever reached between a public employer and public employee organization in California.[33]

Recently, critics of arbitration have made irresponsible claims that the 1974 Oakland arbitration award was excessively expensive. An impartial analysis proves otherwise. First, the amount of the wage increased granted fire fighters for fiscal year 1974-75 was 8.88 percent. The consumer price index increased by 10.3 percent over that same period. Thus, the wage increase granted by the arbitrator was actually less than the amount needed to keep pace with inflation.

Second, the claims that the arbitrator required the city to increase the number of positions in its fire departmen

are untrue. In fact, the arbitrator required the city to restore the strength of its engine and truck companies to five men. The city had earlier taken illegal unilateral action to reduce its manpower. The city was left free to decide how many engine and truck companies it would maintain, how many fire fighters it would employ, and the minimum number it would place on duty each day.

The City of Oakland chose to implement the award by increasing the total number of fire fighter positions despite its earlier claims of a fiscal crisis. As it turned out, the city ended fiscal year 1974-75 with a fund balance of twenty-seven million dollars, notwithstanding the costs of hiring additional fire fighters. This surplus was more than one-quarter of the total city budget, and an increase of seven million dollars above the surplus which the city had at the end of the prior fiscal year.

Finally, it should also be pointed out that Arthur Jacobs, the Oakland arbitrator who recently has been so viciously attacked, had been agreed to by the parties after the City of Oakland had suggested his name as the neutral arbitrator. Jacobs, who died last year, had been highly respected as an arbitrator for many years, in both public sector and private sector arbitration proceedings. Jacobs was the fact finder in the 1972 Vallejo fire fighter proceedings. Before becoming an arbitrator, Jacobs had been

an attorney representing management in labor relations disputes. His management clients included the major food chains in northern California.

As we have seen, arbitration has proven to be an effective alternative to strikes in those California cities which have recognized that their employees can no longer be denied the rights which workers in the private sector have had now for more than forty years. Vallejo, Oakland and Hayward have enjoyed labor peace in recent years, while police officers and fire fighters have walked off their jobs or engaged in work slowdowns in Sacramento, San Diego, San Mateo, and most recently in San Francisco, Santa Barbara, Berkeley and San Rafael. And the voters in those cities with arbitration repeatedly have made it clear they are satisfied with the results.

V. THE LEGAL AND CONSTITUTIONAL ISSUES

With but a single exception, constitutional challenges to state arbitration statutes have universally been rejected. The most frequent ground of attack has been that arbitration is an impermissible delegation of legislative authority. The Wyoming Supreme Court was the first to consider such a challenge. A provision in that state's constitution prohibited the legislature from delegating "to any special commissioner" power "to levy taxes, or to perform any

municipal function..." However, Wyoming also had a strong state policy in favor of collective bargaining. In balancing the two policies, the court recognized that "there could be no collective bargaining if the bargaining necessarily had to end with terms and conditions dictated by the city."[34] It continued:

> Even though one of the parties in the arbitration...is [the] city, the act of arbitration is no different from the act of arbitration in business and industrial affairs. It is nothing more than [a] performance of arbitration, and it cannot be said to be the performance of a municipal function....[A] city [is] a creature of the legislature, having only such powers as [are] granted to it by the state. [Thus] the state can direct cities to submit labor disputes with firemen to arbitration...[35]

The Pennsylvania Supreme Court at first ruled that its constitution prohibited delegation to individuals of the power to bind municipal legislators,[36] but after the passage of a constitutional amendment permitting binding arbitration, upheld an arbitration statute.[37] The court found that the statute contained sufficient safeguards to protect against abuse of the delegated power even though it had no explicit standards. The court pointed to the "obvious legislative policy to protect the public from strikes by policemen and firemen," and held that "[t]o require a more explicit statement of legislative policy in a statute calling for labor arbitration would

be sheer folly [as] [t]he great advantage of arbitration is... the ability of the arbitrators to deal with each case on its own merits in order to arrive at a compromise which is fair to both parties."[38]

The Rhode Island Supreme Court used a different approach to arrive at the same conclusion. It held that the arbitrator had been endowed with a portion of the state's sovereignty in order to deal with public employee disputes, and could therefore be called a "public officer."[39] The arbitration panel was thus a "public board or agency." Consequently, there was no violation of a constitutional provision prohibiting delegation to a private, as opposed to a public, board.

The Rhode Island statute includes specific standards to guide the arbitrators. With respect to those standards the court said:

> We would also direct attention to the obvious fact that these standards serve a dual purpose. They not only operate to direct or limit the action of the recipients of such delegated power, but they are standards pursuant to which on judicial review a court may determine whether the action taken by the recipients of such powers was capricious, arbitrary, or in excess of the delegated authority.[40]

The New York Court of Appeal summarily dismissed the improper delegation argument, deciding simply that "...there

is no constitutional prohibition against the legislative delegation of power, with reasonable safeguards and standards, to an agency or commission established to administer an enactment."[41] Since the New York statute contains specific standards to guide the arbitrators, the delegation was sustained.[42] The arbitration statutes of Michigan,[43] Maine and Nebraska[44] were also upheld against arguments that they improperly delegated legislative authority, although the courts of those states had greater difficulty in reaching that conclusion.

The only state in which a statewide compulsory arbitration statute has been invalidated is South Dakota.[45] The decision turned on a constitutional provision which restricted state interference with municipal monies. Citing a previous case[46] which had held that setting salaries is exclusively a legislative function of a city, the state supreme court held that the arbitration of salary disputes at the municipal level violated the state constitution.

In addition to the delegation question, other grounds of attack have been raised and rejected.[47] The Michigan and New York courts[48] have held that their arbitration statutes do not violate constitutional "home rule" provisions because those statutes are general in nature and applicable to all political subdivisions and were intended to override municipal

power to legislate on the subject matter. Regarding claims of violations of the taxing power, most of the courts have held that even if an increase in taxes were necessary to implement an award, the actual raising of taxes is still a subject of municipal discretion.[49] The Pennsylvania and New York courts[50] have both rejected claims that the arbitration statutes of those states infringe upon the "one man, one vote" principle of the Fourteenth Amendment. The Pennsylvania Supreme Court said: "...the mere fact that the arbitration panel...could affect the spending of public funds is clearly not sufficient to make that body 'legislative' and thus subject to the one man, one vote principle."[51]

Prior case law makes clear that the California courts would follow the majority rule and uphold an arbitration statute.

As in other states, the primary ground of attack would probably be that arbitration is an impermissible delegation of legislative authority. The relevant portion of the California Constitution is Article XI, Section 11(a), which provides:

> §11. Delegation of county or municipal powers -- Deposit and investment of public moneys.
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> fere with county or municipal corporation improvements, money, or property, or to levy taxes or assessments, or perform municipal functions.

This section, it will be noted, only forbids a delegation of power with respect to local or municipal affairs. Accordingly, the Legislature may delegate extensive powers for the fulfillment of state functions,[52] and any interference with municipal affairs or control over municipal functions which results from or is incidental to the exercise of such powers will survive attack on Section 11(a) grounds, so long as it fulfills a statewide purpose.[53] The peaceful resolution of public sector labor disputes is a statewide purpose.[54] Hence, the Legislature may lawfully delegate the power to an arbitration board to establish salary levels and perform other municipal functions in order to achieve that purpose.

In addition, Section 11(a) only prohibits delegations to a private person or body. Since the arbitrators would be acting in a public capacity, they would be public officers carrying out state functions. Accordingly, under the rationale adopted by the Rhode Island Supreme Court, the prohibition of Section 11(a) would not extend to them.

Arbitration would also withstand attack on the ground that it violates "home rule." It has already been established that local ordinances and charter provisions are

superseded by state laws regulating the municipal employment relationship because labor relations in the public sector are matters of statewide concern.[55] If a state statute affects a municipal affair only incidentally in the accomplishment of a matter of statewide concern, then it can be applied to charter cities and counties.[56] Accordingly, even though an arbitration statute may impinge upon local control to some extent, it would nevertheless be upheld because, as previously noted, it accomplishes the statewide purpose of resolving public sector labor disputes without strikes.

VI. THE IMPACT ON LOCAL POLITICAL AND ECONOMIC CONTROL

Finally, an arbitration statute would not infringe upon local political and economic control to an unacceptable degree. Elected representatives would retain the ability and responsibility to establish budget priorities and to set tax rates for their jurisdictions. Although an arbitration statute may remove from their control the power to establish the cost of the services they wish to purchase, elected representatives would still decide the level of those services that will be provided and the source of the funds to be used for that purpose. Local government officials do not now and have never had the power to prescribe the costs of gasoline, machinery, or all of the other goods which cities and counties purchase in the course of everyday affairs.

Why then should such officials have an absolute right to prescribe the costs of the services they procure? In fact, elected representatives already lack control over employee wages in numerous California jurisdictions. In San Francisco, for example, a recent charter amendment deprived the Board of Supervisors of the power to set wages for that city's police officers and fire fighters. Such wages are set instead according to a formula based entirely upon the wages paid by other large California cities. The Board of Supervisors obviously had no objection to losing control over the amount of wages to be paid its employees, since it was the Board itself that sponsored the charter amendment.

Many other cities and counties have "prevailing wage" ordinances or charter provisions that remove from their elected representatives the power to establish the cost of the services they purchase. Such ordinances and charter provisions generally require the application of a rigid salary formula regardless of the financial circumstances of the particular jurisdiction. An arbitration board, on the other hand, would have both the power and the duty to award wages below the "prevailing rate" when a city or county is in a fiscal crisis. Hence, arbitration would actually increase the flexibility of many local governments and enhance their

ability to meet adverse economic conditions.

An arbitration statute would also leave intact the property tax limitations imposed by Senate Bill 90 and other laws. Increased wage costs which result from an arbitration award are imposed by the arbitration board, and not by a judge, notwithstanding the fact that the arbitration award may receive judicial confirmation in a court proceeding. Accordingly, the governing body may not circumvent the tax limitations through the statutory exclusion of Revenue and Taxation Code Section 2271 for costs which are mandated by the courts.

Thus, arbitration has only a minimal impact upon local political and economic control. Any detriment which results is greatly outweighed by the benefit of resolving public sector labor disputes without strikes. Many other states have adopted arbitration statutes and reported satisfaction with the outcome. California should draw upon the experience of these states and take action now to prevent future disruptions in essential public services.

Dated: March 4, 1977.

Respectfully submitted,

DAVIS, COWELL & BOWE
Alan C. Davis
Duane W. Reno

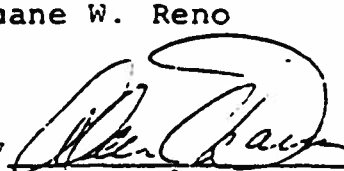
By 
Alan C. Davis

EXHIBIT H

THE SECOND MOST IMPORTANT ISSUE FACING LOCAL GOVERNMENTS IN THE 1981 LEGISLATURE: COMPULSORY BINDING INTEREST ARBITRATION

PREPARED BY:
GREG RIVET
DIRECTOR OF PERSONNEL
CITY OF SPARKS
FEBRUARY, 1981

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PURPOSE

The purpose of this paper is to discuss the implications of compulsory binding interest arbitration. (This is sometimes referred to as "Last Best Offer Arbitration"). It reviews the ramifications of making this experimental process permanent for Firefighters and extending the benefits to other local government bargaining units. It highlights why this issue, which is before the 1981 Legislature, is after tax reform the most important bill affecting local government administration.

BACKGROUND

Under Nevada Law, local public employers are required to collectively bargain with employee representatives over wages, hours, and conditions of employment. This employee right is granted in the local Government Employee - Management Relations Act, enacted in 1969. This statute is sometimes also referred to as the Dodge Act.

During the 1977 session of the Nevada Legislature, a section was added to the Employee - Management Relations Act, Nevada Revised Statutes (NRS), Chapter 288, which provides for compulsory binding interest arbitration. This provision was enacted for a trial period, effective until July 1, 1981 and applies to firemen only.

This piece of legislation requires the parties to submit their unresolved issues to an impartial arbitrator for a decision. The arbitrator is not allowed to fashion an award on an "issue by issue", basis, but must choose one package which is the final offer of each party. The decision of the arbitrator is final and binding on the parties.

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The award is mandatorily retroactive to the expiration date of the last contract.

Compulsory binding interest arbitration is on an experimental basis for Firefighters because Nevada already has an impasse resolution procedure in effect. It covers all bargaining units in the State and can also be binding at the option of the Governor. In this process either party can submit their unresolved issues to the Governor, who holds a hearing on matters and decides whether any or all issues should be binding before a factfinder. The Governor exercises this authority on a case by case consideration and on the basis of his evaluation regarding the best interests of the State and all its citizens, the potential fiscal effect both within and outside the political subdivision, and any danger to the safety of the people of the State or a political subdivision.

Public employee unions tend to look with disfavor on the process because the governor, who is accountable to the electorate has historically not been as liberal as third party neutrals and has considered the damaging effects a binding award can have on a political subdivision and the balance of the State. However, the governor, who has a much broader view of the state of affairs can protect employee groups from unreasonable settlements and unfair treatment at the hands of local governments by exercising his emergency power and awarding binding arbitration.

Binding interest arbitration is a process which sets the terms of a collective bargaining agreement and should be contrasted with grievance arbitration which settles a dispute over the interpretation or application of an existing contract.

It is often argued by unions that compulsory binding interest arbitration is the quid pro quo for the private sector's rights to strike. It is presumably a procedure for motivating good faith bargaining behavior and for ensuring at least minimum equity and fairness when the parties become mired in impasse. Unions claim that arbitration substitutes justice, order, and reasoned persuasion for strikes. Its political palatability is increased by the fact that many public sector union leaders have learned that strikes have serious practical limitations. Public employee strikes often are marginally effective or just plain ineffective, as in the case of the San Francisco Building Trademen's strike in April, 1976; or they are too effective, as in the case of the San Francisco police and fire strikes in August of 1975, which set in motion political reprisals which cost public employees more than the short-run gains were worth. As a consequence, strikes are perceived by many public sector unions as having limited utility in making gains at the bargaining table.

Arbitration systems have great political and moral appeal. They are marketable to the public, primarily because they explicitly illegalize strikes; they virtually guarantee to employees economic gains which might otherwise not be attainable; and they are, superficially at least, less costly than strikes. However, while strikes may be symptomatic of poor employer-employee relations, the arbitral process deteriorates the relationships even more. The following questions, among others are pertinent. What is the impact on the bargaining process? What political price is paid for a system which prohibits strikes and mandates arbitration? What is the impact on the cost of government?

The City of Sparks, from its own perspective and after reviewing other experiences with binding interest arbitration, is a strong opponent of this process and believes that it does not fulfill its intended purpose. Summarily, it indeed creates several more serious problems which affect sound public administration. IN FACT, AS UNAPPETIZING A POSITION AS IT MAY SEEM, GIVEN THE RAMIFICATIONS OF COMPULSORY BINDING ARBITRATION, THE CITY OF SPARKS WOULD SUPPORT THE RIGHT TO STRIKE BEFORE IT WOULD EVEN SUPPORT THE LATTER. The Sparks experience with arbitration has been so damaging that we believe this issue should be the focus of attention for local government in the 1981 Legislature. The impact of awarding compulsory arbitration to the firefighters and extending it to other bargaining units is potentially so disastrous that it could critically impair the City's ability to provide effective public services. We believe, that given the worst of two evils, at least through the threat of a strike, the electorate could make a conscious decision to settle or pay the price of a strike. In this respect, the decision remains where it belongs, with the people who are consumers of the services and are paying the taxes.

1. BINDING INTEREST ARBITRATION CHILLS THE BARGAINING PROCESS

Binding Interest Arbitration discourages, honest, good faith collective bargaining. It is difficult to assess the true impact of compulsory arbitration since the statistical data merely measures the results of peripheral factors such as the number of cases going to impasse or how the parties rate the outcome. Nevertheless, it has in many jurisdictions caused a party to hold back making accomodations on which effective bargaining relies. The attitude of saving the best for last has increased the dependency on

arbitration rather than the bargaining process. In fact, in many jurisdictions where final offer binding interest arbitration is available, it has virtually replaced collective bargaining. This appears to be the case in Philadelphia, Detroit and Nevada.

In Philadelphia, from 1956 to 1968, collective bargaining was informal. In June of 1968, Pennsylvania Act No. 111 was enacted by the State Legislature, providing for binding compulsory arbitration for interest disputes involving police and fire employees of the commonwealth and its political subdivisions.

The Act provides for an arbitration panel of three, with one of the three being a neutral arbitrator, who serves as panel chairman. The other two arbitrators are appointed by the parties and serve as their respective advocates.

The first Act 111 arbitration panel convened in Philadelphia was appointed in the Fall of 1968, when negotiations between the City and the firefighters stalled. The police settled through negotiations, however, and the firefighters subsequently negotiated a similar agreement. Both contracts were for an eighteen month period, 1/1/69 through 6/30/70. These agreements represent the last successful attempt at reaching negotiated settlements between the City and its uniformed personnel's labor organizations. In fact, the negotiation process has been chilled to such an extent that in most years, there have been five or less negotiating sessions prior to reaching an impasse and the invocation of arbitration, with little serious movement from the parties initial positions. In all cases, the impasse has been declared and arbitration requested by the unions.

The situation and the experience with binding interest arbitration in Detroit is not much different than in Philadelphia. With respect to bargaining in good faith, Mayor Coleman Young, of Detroit has explained that since the incorporation of binding interest arbitration for public safety employees, negotiations have been devastated. In the Mayor's words: "We now know that compulsory arbitration has been a failure. Slowly, inexorably, compulsory interest arbitration destroys collective bargaining and collective bargaining relationships... At the bargaining table, Act 312 unions find it difficult, if not impossible, to bargain in good faith. How can they agree to drop, or compromise on, any issue? Each issue is the favorite demand of some member or group of members. How can responsible union leadership, which must stand for election to keep their jobs, tell any part of the membership that their pet demand will not be pursued when Act 312 is readily available? The answer is: They usually can't; and they wind up going to arbitration with dozens of issues. The only way a union can avoid arbitration is to get the employer to grant its demands. As each issue is discussed at the bargaining table, the underlying position of the union is: 'either give in or we'll arbitrate."

Under Michigan Law, Act 312 is the provision which compels binding interest arbitration for police and fire departments to resolve bargaining impasses. There is very little good faith bargaining. There is very little mutual understanding and mutual problem solving. Compromises are not made. In fact, Act 312 puts the parties in antagonistic positions. It forces them to fight over virtually every issue rather than try to agree on disputed questions. The experience in Detroit bears this out.

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Since the enactment of Act 312, there has been seventeen (17) possible opportunities in Detroit for the parties to go to arbitration. There has been eleven (11) arbitration awards. In the other six (6) situations, the City avoided arbitration only by promising to pass on to the union involved, the terms of the Act 312 award being determined in another case.

The Nevada experience is very similar to Philadelphia and Detroit. Since the binding interest arbitration provision for firemen, was added to NRS 288, there has been six (6) opportunities for the parties to go to arbitration. In four (4) out of six (6) situations, the Union involved has requested arbitration. In the other two instances the City settled for exhorbitant amounts. In many of the situations, Management has complained that the union engaged in surface bargaining, a technique in collective bargaining whereby the party is not really interested in bargaining at the table, but is merely going through the motions to satisfy its duty to negotiate. The goal in surface bargaining is to obtain from the other party whatever it can and make no concessions. Furthermore, items are introduced to frustrate the bargaining process, whereby an impasse is declared. By engaging in such a technique the Union is in a no lose situation. The latest position of management becomes the floor and the Union can afford to gamble to gain further concessions from management. This is a major drawback in final offer arbitration. Some contend that by its nature, this form of compulsory arbitration is intended to move the parties closer together so as to reach an agreement. In reality what happens, is management makes significant concessions and moves closer

to the union, only to have the union move its position in the other direction.

The aforementioned scenerio is exactly what happened in the City of Sparks during collective bargaining sessions with the International Association of Firefighters (IAFF), Local 1265 over the past two (2) years. This behavior has had a deleterious effect on the relationship between the City and the Firefighters and has created a schism between the organizations. This strained employer - employee relationship has resulted in low morale, decreased productivity and poor communication in the Fire Department.

This relationship is contrasted to the other bargaining units in the City which do not have the availability of binding interest arbitration. The units represented by the Sparks Police Association and the Operating Engineers, Local 3, have settled contracts with the City under normal bargaining circumstances. This amicable relationship has led to excellent employer - employee relationships, in which there is mutual understanding, cooperative problem solving and open lines of communication, ingredients which are very necessary for efficient and effective administration of public services.

This esprit de corps is non existent with local 1265. In fact, the relationship with the Firefighters has deteriorated to such an extent that for the first time in the bargaining history of the City, the City filed unfair labor practice charges against IAFF, Local 1265. These charges were filed with the Employer - Management Relations Board (EMRB) over the Firefighters deplorable bargaining practices. The decision of the EMRB is currently on appeal in District Court and scheduled to be heard March 13, 1981.

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As a preliminary to the appeal, the City and Local 1265 were forced to go to court to sign a stipulation restricting certain issues which would be allowed to go to arbitration.

This is the effect of binding arbitration on the bargaining process.

2. THERE IS NO ACCOUNTABILITY IN BINDING INTEREST ARBITRATION

With the introduction of binding interest arbitration to the bargaining process, a far reaching power has been given to a person not elected nor accountable to elected officials. This person is usually not a resident of the community or, as in the Nevada experience, not even a resident of the state. This person who is not familiar with the intracacies of Nevada life, substitutes for the voice of the people. The arbitrator does not have to live with an award, manage in a situation which is forced at best, nor pay taxes to support inconceivable decisions. Yet this person, by the power bestowed upon him in binding interest arbitration can place a mandate on community leadership, force increased taxation, establish public policy priorities and exercise control in the work place.

Compulsory arbitration removes from elected officials their constitutional or charter authority to do the things they were elected to do - represent and carry out the will of the electorate. In this time of public dissatisfaction with the responsiveness of government and elected officials and the public's lack of involvement in the decision making process it is incongruous that further responsibility should be removed from the officials of government and placed in the hands of a third party over whom neither the

people or the government exercise any authority. The arbitrator has no continuing responsibility or accountability, contrary to principles of representative government and sound public administration.

Additionally, in Nevada, as in the rest of the country, the mood of the people is outrage at the cost of living and high taxation. This is manifested in proposition 6 referenda, spending cap limitations and legislation intended to restrict revenues. It is inconceivable that the Legislature can place absolute revenues and expenditure limitations on local governments and at the same time remove the authority from the elected officials to decide salary and fringe benefits which constitute 75% of a typical local government budget.

Proponents of interest arbitration might argue that controls are placed upon the arbitrator through certain criteria and standards which are outlined in the enabling bargaining statute. In Nevada, the only two (2) criteria an arbitrator must consider in rendering an award are the financial ability of the local government employer based on all existing available revenues to finance the award, and normal interest dispute criteria regarding the terms and provisions to be included in an agreement. What does this mean? Practically, these criteria translate into - the arbitrator can award anything he wants within the bounds of the dispute .

The local government can't argue ability to pay effectively because by eliminating some services, laying off people within the bargaining unit, not honoring other contracts, reducing needed capital outlay or reducing maintenance the employer can usually under these circumstances fund an award.

The effect of implementing such an award can be very costly, not only financially, but emotionally as well.

Although, there are many examples of the high cost of arbitration awards, witness the experiences in Oakland, Vallejo and New York City, there is no better example of the financial impact of binding interest arbitration awards than in the City of Detroit. Since Act 312 was passed a decade ago, it has been calculated that arbitrator's awards have cost the taxpayers in the City of Detroit 50 million dollars or more per year and this does not include the latest decision awarded by an arbitrator.

In this award, the offers from the City to the police and fire employees, were extremely fair by any standard. If they had been adopted by the arbitrators, the police and fire employees would have been the highest paid in the nation. Both the salaries and the fringes would have been number one, even though Detroit has not been the traditional leader in this area. The offers were also equal to the settlement with other unions in the City and the strongest among them engaged in strikes to get those settlements. The arbitrator chose to ignore all these criteria and granted an award which cost the City an additional 50 million dollars.

The arbitrators apparently believe there is no limit to the amount of money they should spend. The last award in Detroit exceeded the total revenues from their unpopular, regressive utility excise tax. In one fiscal year's budget it now costs Detroit taxpayers for just police and fire employees' wages and fringe benefits more than the total revenues from both local property taxes and local income taxes.

Since the experimentation with binding interest arbitration for firemen in Nevada, the City of Sparks has had two (2) collective bargaining rounds with IFFA, Local 1265. Although this may not seem like much experience, that is twice as much as anybody in the State. We can testify that our experience is very similar to that of Detroit. In the two bargaining rounds, the City made fair and equitable offers to the Firefighters. Offers, which were not only similar to other bargaining units, but in one case exceeded those offers by 1.5%. On both occasions the Firefighters rejected those offers and chose to go to an arbitrator for a decision. On both occasions, the arbitrator ignored the fact that Sparks' total compensation for Firefighters was the highest in the local labor market and awarded in their favor. This has cost the City an additional $50,000 per year. In a budget, in which approximately 65% to 75% is dedicated to salaries and fringe benefits, Sparks cannot afford binding interest arbitration and continue to provide effective services to our constituency. It is imperative that, if the Legislature restricts our revenues and "caps" our expenditures, it cannot give to an unaccountable third party the ability to set wages and fringe benefits within the City or any local government.

It is sometimes argued, that research into the data indicates there is very little difference in the levels of negotiated settlements as compared to arbitration awards. In digging a little deeper into the matter, it is revealed however, that most proponents of this argument fail to consider the effects of "whipsawing."

This is the process whereby unions use other settlements, such as arbitrated awards, to set the basis for their own settlements. This situation is no more apparent than in the City of Sparks.

In its latest award from an arbitrator, the Sparks Firefighters were awarded a 13.3% salary increase, retroactive to July 1st, 1980. All other bargaining units in the City settled for an 8.5% increase the same offer made to the Firefighters in the City's last best offer position. The Sparks Police Association agreements also provided for a re-opener in the second year. As a result of the arbitrated award, the City will be very hard pressed to settle with the Police Officers for anything less than 13.3%. This represents 4.8% more than the City was prepared to pay. The amount of the arbitrated award and the additional money the City is forced to pay police officers is not budgeted. This money will have to come from contingency accounts. Money which is set aside for emergency situations. This is a prime example of how an arbitrator can undermine the policy decisions and the fiscal stability of local governments.

3. <u>BINDING INTEREST ARBITRATION DOES NOT ELIMINATE STRIKES</u>

It is believed in the labor relations field that the power must be balanced between management and labor in order to have fair and equitable bargaining. Management's power is derived from its ability to control the resources and set policy. Labor, on the other hand, has the ability through a strike or job action to withhold its manpower.

In the public sector, government has perceived, somewhat erroneously, that the public could not tolerate a strike,

particularly in essential services of public safety. This perception had led to strong public policy of declaring strikes illegal in most states for public employees. This is the case in Nevada. Government employees do not have the right to strike. They are illegal and additionally, strong sanctions are provided for, in the case of any job action.

Practitioners of labor relations and unions in particular, believe that the balance of power has been tipped in favor of management in public sector by removing the right to strike. They believe there must be a substitute in order to restore the balance of power and ensure fair collective bargaining.

There is no question in this author's mind that history has shown us that arbitration has reduced the number of strikes, but it has not eliminated them. The experience in Nevada is very inconclusive in this area. Although there have not been any Firefighter strikes in the State since the enactment of binding interest arbitration, there has never been a public sector strike in the State of Nevada. We must look elsewhere for our insight. Canada, Australia and Michigan are jurisdictions which have a longer history and experience with compulsory binding interest arbitration. Although there has been the availability of mandated arbitration in these countries and state, there still have been strikes. In one case, there was a vicious strike in Montreal, Canada in 1968 of police officers, following an arbitration award. The arbitrator awarded in the police officers favor, but they thought the award was too low; so they struck. The results of that strike were vandalism, bloodshed and even death.

CONCLUSION

Since history has shown us that compulsory binding interest arbitration has undermined the collective bargaining process, cost the taxpayers excessive amounts of dollars and not eliminated strikes, it is imperative that we carefully evaluate the experimentation with arbitration. It has not worked. It is not a solution in other jurisdictions and it is not the answer in Nevada. The trend in other parts of the country is to reject or rescind mandatory arbitration. Voters in Massachusetts in effect repealed the State's compulsory interest arbitration law for fire and police negotiation impasses. Elsewhere, voters in Cincinnati, Ohio, San Jose, California, Phoenix, Arizona and San Bernardino, California defeated ballot proposals which would have allowed compulsory binding interest arbitration. It is important to consider this trend and examine the mood of the taxpayers.

Nevada has enjoyed labor peace unparalleled in the rest of the country, long before mandatory arbitration. We have achieved this peace through good hard collective bargaining, under the present system, without the crutch of compulsory binding interest arbitration. The voice of labor, George Meany, sums it up best: "Fairly long experience convinces me that the best, surest and, indeed, only way to secure stability in labor-management relations in any area, including government service, is through the normal pattern of free negotiations on every aspect of wages and working conditions." There is no room in this process for compulsory binding interest arbitration.

The evidence suggests that the price of prohibiting strikes

and substituting binding interest arbitration is high both in terms of the costs of government and the erosion of our political institutions. The voice of the people through its elected representatives must be heard in public collective bargaining. This voice is mute in compulsory binding interest arbitration. The record is void on sound arguments of why the present system, which includes the governor, does not work; or, is it, that those who espouse the irrationality of the system are those who do not want to be accountable to the people.

As was suggested earlier, if there is a strong compunction to change the system, the viability of a right to strike needs to be explored with the electorate. At least under such a system, although traditionally scorned by public officials, the constituents can make a conscious decision to fund unbelievable demand, pay the price of a strike or put pressure on the bargaining agents to settle reasonable contracts.

APPENDICES

[Appendix A]

Address of Mayor Coleman A. Young
to Legislative Forum on New Directions
for Public Employee Labor Relations
Lansing, Michigan - 12/4/79

"What's Wrong with Public Employee Labor Relations in Michigan?"

I have been asked to come before you today and tell you what I think is wrong with public employee labor relations in Michigan. Most of you are experts on public employee labor relations and so you already know what's wrong. There are some greater problems and there are some lesser problems. I'm going to discuss the problems that have had the most serious effect on the City of Detroit

The number one problem is, of course, compulsory arbitration. When Act 312 was first passed, most of us sincerely hoped it would be a success. It was a new idea and we felt it was certainly worth a try. After all, no one wants police or fire strikes or strikes by any other employees for that matter. The Romney Committee recommended trying it, several noted arbitration experts recommended trying it -- and so we voted to try it. I say "we" because I was a member of the State Senate at the time, and I voted for it too. We now know that compulsory arbitration has been a failure. Slowly, inexorably, compulsory interest arbitration destroys collective bargaining and collective bargaining relationships and, even more disastrous for Detroit, compulsory arbitration destroys sensible fiscal management. The costs of paying the awards are too high. They come after a budget is planned, or, in our case, after two or even three, annual budgets are planned. The process is so slow that we not only don't know what our next budget should look like, we can't even close our books on old budgets long since passed.

The costs of the Act 312 awards have been astronomical in Detroit. We have calculated that these costs since the enactment of Act 312 are now $50 million dollars or more per year for the City of Detroit. The arbitrators seem to believe that there is no limit to how much of our money they should spend.

There are many procedural problems with Act 312, but I want to focus your attention on two fundamental problems: (1) Act 312 destroys collective bargaining, and (2) the awards we have had under Act 312 are intolerable - and have caused more damage to the public service in Detroit than the strikes the law was designed to prevent.

Our claim that Act 312 destroys collective bargaining, as most of us understand that term, is not made lightly. We are convinced that compulsory arbitration, by its very nature, simply cannot resolve differences in the same way voluntary agreements resolve differences. Compulsory arbitrations differs sharply from voluntary binding arbitration in this respect also. If a party to a dispute does not voluntarily agree to its solution, either by direct agreement or agreeing to be bound by a third party's decision, then that party can, and probably will, repudiate that solution if he disagrees with it in any way. The non-voluntary "solution", then, really is no solution at all. The issue lives and will be raised again at the next opportunity.

At the bargaining table, Act 312 unions find it difficult, if not impossible, to bargain in good faith. How can they agree to drop, or compromise on, any issue? Each issue is the favorite demand of some member or group of members. How can responsible union leadership, which must stand for election to keep their jobs, tell any part of the membership that their pet demand will not be pursued when Act 312 is readily available? The answer is: they usually can't; and they wind up going to arbitration with dozens of issues. The only way a union can avoid arbitration is to get the employer to grant its demands. As each issue is discussed at the bargaining table, the underlying position of the union is: "either give in or we'll arbitrate."

There is very little good faith bargaining. There is very little mutual understanding and mutual problem solving. Compromises are not made. Either we give in to the union or they arbitrate. The Act 312 unions in Detroit have proven they have no reluctance to go to arbitration. They are not deterred by the costs of the procedure as some smaller units in other parts of the state might be. Today, the City of Detroit deals with eight separate bargaining units that are entitled to Act 312. Some of these have only recently been included in Act 312 coverage. So far there have been seventeen possible opportunities for Detroit unions to utilize Act 312. There have been eleven cases. In the other six situations, the City avoided arbitration only by promising to pass on to the union involved, the terms of the Act 312 award being determined in another case.

The destruction of the bargaining process caused by Act 312 is not solely a matter of opinion. There is evidence available to support this conclusion. Because Act 312 puts the parties in antagonistic positions - forces them to fight over virtually every issue - they tend to fight rather than try to agree on disputed questions.

In the last three years the City of Detroit has been involved in approximately 76 court actions involving city employee unions. Although the City deals with 57 unions, four of these unions, all Act 312 unions, have accounted for over 75% of the litigation. The other unions, the non-Act 312 unions that are used to collective bargaining, tend to bring their problems to us so they can be solved through negotiation. The Act 312 unions tend to run to court. And they scream bloody murder if we exercise our right to go to court! I could talk all day about how Act 312 prevents collective bargaining, but I'll move on now to the other fundamental weakness of this Act.

Act 312 gives to an arbitrator broad powers - powers so broad that they undermine the democratic process and strip from the people of a community their ability to control their own affairs. This broad power makes it possible for an arbitrator to do almost any damn thing he, or she, wants. It is possible for good awards to issue, and there have been some. The problem is: there is no way to stop arbitrators from issuing bad awards. There are insufficient controls, no checks and balances, and no truly meaningful appeal mechanisms. Thus, if an arbitrator is biased in some way going into a case, or doesn't understand the issues, or just has a bad day when he decides the case, there is very little anyone can do about it. We are hoping the courts of this state will see the very real need to provide a meaningful appeal process. There is no much at stake that we are confident the courts will deal directly with this problem. We have recently experienced some very bad awards, about which there has been much publicity, and we are hopeful the courts will see the very real need for them to act.

We were shocked by the recent police and fire arbitration awards we received. We have about as much experience as anyone with Act 312 and we are not naive. But we were shocked. The awards make no sense. There is no logic in their reasoning. They ignored obvious facts and ignored the factors that Act 312 requries them to follow. We put those factors in the law in the first place for a reason. We expected that arbitrators would adhere to them. But they chose to ignore the most important ones there. Before I go on about the misplaced reasoning of arbitrators, I have to tell you a few things about the policies and attitudes of the City of Detroit.

First, and foremost in our labor relations policies, is our commitment to the proposition that our employees should be paid fairly and equitably. Detroit is a town of working men and women. It is a union town. It is unthinkable that the City of Detroit would have any other policy. Furthermore, I have a deep personal life-long commitment to the concept of a fair day's pay for a fair day's work. It is sometimes true, as all of you know, when there is a financial situation facing an employer, either private or public, that makes it impossible to pay the going rate. I think the recent Chrysler-UAW agreement illustrates how that sort of problem might be handled. But that was <u>not</u> quite the situation with our police and fire employees. We were prepared to tighten our belts and pay fair wages. Our offers to our police and fire employees were more

than fair. If they had been adopted by the arbitrators our police and fire employees would have been the highest-paid in the nation. Both the salaries and the fringes would have been number one. Detroit has not been the traditional wage leader among the large cities, but the financial troubles of New York City and the effects on Los Angeles and San Francisco of Proposition 13 had slowed down wage increases in those cities. So it happened, that even though we were not the traditional leader, our offers to our police and fire employees would have made them the highest paid in the country. Our offers were also equal to our settlements with our other unions - and the strongest among them engaged in strikes to get those settlements. We were not ashamed of our offers. We were not hiding behind an inability to pay argument.

Despite some gossip to the contrary, we did present a great deal of evidence about our fiscal condition. I testified personally at length on that subject. I was there. The arbitrators could have asked me anything they felt they needed to know about our finances. We told those arbitrators that it would not be easy, but we could afford to pay fair wages. We also told them we could not afford to pay excessive wages - that there were too many other essential programs for us to finance.

Despite all this, the Act 312 arbitrators chose to ignore the evidence and ignore the factors that Act 312 requires them to use. They ignored the factor of comparibility even though this is the one that arbitrators generally proclaim to be the most important; they ignored the factor that says "The interests and welfare of the public and the financial ability of the unit of government to meet those costs."

One of the arbitrators as much as admitted that he ignored all but one of the factors. He claimed he was moved by the cost of living factor, but when you read his award you can't find where he even used that. His award was to grant the same percentage increases that had been granted in the previous contract, apparently believing that to be self-justifying. Now think about that for a minute. What he was saying was that, if, for example, General Motors and the UAW agree to a .75¢ per hour raise in 1974, then .75¢ per hour is the appropriate settlement in 1977 - no matter how different all the circumstances may be. If you followed this kind of logic, you'd have to say that no further bargaining would ever be required. The previous settlement will become the next one and so on.

The other arbitrator, whose award came out a little later, said he was compelled to follow the first guy. The first arbitrator's union has traditionally followed the second but this time the second felt he must follow the first. It was the classic case of the tail wagging the dog - as the second arbitrator later admitted. The problem is, these awards will cost the City $50 million dollars more than our offers would have cost. This is why we are appealing these awards and asking the courts to save us from these maniacs. And this is why we believe the time has come for the Legislature to get rid of Act 312 and go back to the drawing boards.

Now this $50 million dollars is not the same $50 million I mentioned earlier. The non-police and fire employees of the City of Detroit are also very well paid. In fact, they too are among the best-paid in the country. However, since Act 312 was passed some 10 years ago, if police and fire employees had received wage increases similar to those increases negotiated with the City's other employees, the City's costs would be $50 million <u>per year</u> less than they are now.

These costs are tremendous! They exceed the total revenues from our unpopular, regressive utility excise tax. I could go on and on about how much $50 million a year could mean to us - suffice it to say that we believe damage done through Act 312 has exceeded the potential damage of any strikes Act 312 was designed to prevent. The costs in one budget of wages and fringes for just police and fire employees now exceeds the total revenues from both our local property taxes and our local income taxes.

The City of Detroit is not the only victim of Act 312. In our part of the state, we are now painfully aware of the crushing affect Act 312 has had on Wayne County. Arbitrators have not only imposed unreasonable financial costs on Wayne County, they have also hamstrung the County's efforts to control their costs with improved efficiency.

Although only a relatively small proportion of Wayne County's employees are covered by Act 312, the County has found it nearly impossible to keep the wage pattern established through Act 312 from spreading to its other Unions.

I think it can be safely said that most, of the County's current fiscal difficulties can be traced back to excessive Act 312 awards. The County's new budget, announced this past week, calls for approximately a 10% reduction in County employment and, therefore, in the levels of services the County will be able to provide its citizens.

It is time for a change in our labor laws. It is time for the repeal of Act 312. It doesn't work. It was a noble experiment but we now know it is a disaster.

In his State of the State address, the Governor announced he was going to have the Department of Labor review the State's labor laws and recommend any necessary changes. He told them he was specifically concerned about the impact of Act 312 on the fiscal solvency of the State's local units of government. Those departments did conduct a study and on May 21 of this year they issued their report. We were so disappointed in that Report that we felt compelled to write a criticism of it which we sent to the Director of the Department of Labor. Copies of our critique are available here today.

The Report to the Governor contained quite a few suggested modifications of Act 312, some of which are very good, but the Report did not deal with the basic problems.

First, the Report specifically rests upon the premise that a strike of public safety employees is <u>always</u> more costly to society when compared with the costs of an arbitration award. In other words, it is not possible for an award to hurt society more than a strike. We so no! It is possible. We have had such awards. The premise is false.

Our other quarrel with that report is that it fails to examine carefully the problem I discussed earlier: that Act 312, especially in the larger cities, has become, instead of a "strike substitute", a substitute for the collective bargaining process.

We believe those State departments should reexamine Act 312. We believe that a thorough, objective study will reveal that it is time to repeal Act 312.

There are many people who claim that if we are going to prohibit strikes then we <u>must</u> provide compulsory, binding insterest arbitration. They say we must have one or the other. Police and fire unions and arbitrators say we must have arbitration. They know a golden goose when they see it! I say, if that is the choice, one or the other, let it be the right to strike - exactly in the format used in the private sector.

But I hasten to add that I'm not convinced we have to be on the horns of that dilemma. There are some other things we haven't thoroughly tried yet. All of them designed to improve the climate for collective bargaining.

We should consider a closely limited, carefully regulated right to strike. If we do that, of course, we should learn a lesson from the private sector and exclude supervisors from collective bargaining. There should be a reasonable attempt to balance bargaining power as is done in the private sector under the National Labor Relations Act. There should be a far greater effort made by the State government in providing mediation services. Because in the public service we have a greater desire to avoid strikes, the mediation effort should be greater than that provided to the private sector by the federal and state governments. Most of all we should be encouraging the process of

collective bargaining. Many people are afraid of it or don't understand it. It works, we know it works, we should do everything possible to make it work. And we should remove every impediment to collective bargaining that exists. Most particularly we should remove compulsory arbitration.

I would like to read to you the words of one of the prominent labor leaders of this century. This is from a paper he wrote entitled "Union Leaders and Public Sector Unions." Here are the words of the recently retired president of the AFL-CIO, George Meany:

> "The success of voluntary arbitration in settling disputes unresolved at the bargaining table is based on the fact that such arbitration is itself a product of the collective bargaining process. It is not imposed by some outside authority against the will of either party.
>
> And this is the rock against which the notion of compulsory arbitration has been shipwrecked every time it has been tried. The hasty, ill-conceived legislation with which Congress tried to break strikes in the airline and railraod industries only succeeded in making matters worse. In any guise, under any name - 'mediation to finality,' 'final-offer' arbitration, or what have you - compulsory arbitration has been perceived by employers as an out that makes real bargaining unnecessary and by employees as a tool of tyranny that makes bargaining meaningless.
>
> Collective bargaining is a two-handed tool that won't work unless both parties want it to work, and that goes for arbitration as well.
>
> There are those who argue that collective bargaining is all very well in 'non-critical' public services such as schools and sanitation departments, but that some substitute for the strike must be found in the areas of law enforcement, fire protection, and hospital services.
>
> That would be fine if such a substitute could be found, but so far none has been found. There are no shortcuts and no substitutes for the bargaining table and mutual freedom of contract.
>
> And compulsory arbitration - the favorite proposal of certain editorialists - just will not work because it is an abrogation of freedom. The crucial difference between voluntary and compulsory arbitration is the difference between freedom and its denial.
>
> Fairly long experience convinces me that the best, surest and, indeed, only way to secure stability in labor-management relations in any area, including government service, is through the normal pattern of free negotiations on every aspect of wages and working conditions."

George is right. There is no substitute for collective bargaining. Act 312 destroys collective bargaining. Act 312 must be repealed. It's time to fold that hand and ask for a new deal.

However, Act 312 is not the only concern we have with the State's labor laws. As I'm sure you all know, there is currently pending in the House of Representatives a bill that is being called the "Right to Strike" bill. This is HB 4645.

The proponents of this bill argue that public employees should have a legal right to strike, that public employees should not be deprived of a basic right enjoyed by their union brothers and sisters in the private sector. Don't be fooled by their sophistry! They no more want to be treated like their so-called brothers and sisters than you want to go live at the North Pole. They do not want to give up the protections they

enjoy under the Civil Service rules or the Teacher Tenure Act. They do not want to exclude supervisors from unions, they do not want to give up the golden goose we call Act 312, and they do not want to limit collective bargaining to the subject matters traditional in the private sector. Public employees in Michigan now have many advantages under the State's labor laws that their private sector brothers and sisters do not have. Many of these were given them because there was no legal right to strike. Now they want to have their cake and eat it too! And they're quite willing to allow their brothers and sisters to continue to pay for the advantages they enjoy.

In connection with HB 4645, the City of Detroit and other public employers have argued strenuously that the State's labor laws must provide a balance of power at the bargaining table, that, if the Legislature feels we should pattern ourselves after the private sector, then we must go all the way, and adopt that kind of balance. There must be no collective bargaining for supervisory employees and the kinds of things that must be negotiated must be limited to the kinds of things that must be negotiated in the private sector. The public employee unions that endorse HB 4645 don't merely want the right to strike - they want a law that will virturally guarantee they'll win every strike. And there's an amendment to the bill before the House that would open up access to Act 312 to all public employee unions under certain circumstances.

Today the House may be voting on the Right to Strike bill and several important amendments to it. I for one hope, and I am very confident, that the House of Representatives will act responsibly to assure that collective bargaining in this state will be given every chance to operate in a balanced, fair, and reasonable manner.

I say to you today that the central theme of the State's labor laws must be collective bargaining. This is the key to reasonable employee relations in the public sector in this state. We must not destroy collective bargaining with compulsory arbitration and we must not destroy it with lopsided changes in the labor laws.

Philadelphia experience under arbitration is negative

The following article was written by **Ellis M. Saull,** *Assistant City Solicitor, and* **William Grab,** *Personnel Technician for the City of Philadelphia.*

Uniformed employees of the City of Philadelphia Police Department have been represented for collective bargaining purposes since 1958 by Lodge No. 5 of the Fraternal Order of Police. Lodge No. 5's representational unit includes all employees from the class of Police Officer up to and including Chief Police Inspector, the highest uniformed Civil Service rank.

The uniformed employees of the Philadelphia Fire Department are represented by the Philadelphia Firefighter's Association, International Association of Firefighter's Local No. 22. Since 1956 Local 22 has represented every employee in the classes from firefighter to Assistant Fire Chief.

state adopts arbitration law

From 1956 to 1968, collective bargaining was informal. In June of 1968, Pennsylvania Act No. 111 was enacted by the State Legislature, providing for binding compulsory arbitration for interest disputes involving police and fire employees of the Commonwealth and its political subdivisions.

The Act provides for an arbitration panel of three, with one of the three being a neutral arbitrator, who serves as panel chairman. The other two arbitrators are appointed by the parties and serve as their respective advocates.

The first Act 111 arbitration panel convened in Philadelphia was appointed in the Fall of 1968, when negotiations between the City and the firefighters stalled. The police settled through negotiations, however, and the firefighters subsequently negotiated a similar agreement. Both contracts were for an eighteen month period, 1/1/69 through 6/30/70. These agreements represent the last successful attempt at reaching negotiated settlements between the City and its uniformed personnel's labor organizations.

arbitration always used

Beginning with fiscal year 1971 (7/1/70 to 6/30/71), to present, every police and fire contract has been determined through binding arbitration under Act 111. From 1953 until the first arbitrated award (7/1/70), the police and firefighter maximum pay levels were identical. The first arbitration award resulted in a top fireman level $100 above the police for the first six months of the one year award. However, the award provided for parity in the final six months. The next awards maintained police and fire at the same salary level, and this practice was followed by all succeeding panels, until the most recent awards (effective 7/1/80), wherein the firemen received no increase in the first year of a two year award, and a 10% increase in the second year. The police were awarded a five per cent increase effective 1/1/81, and an additional five per cent increase effective 7/1/81.

Available statistics show that, in the five year period prior to the first arbitrated award, (i.e., 1966-1970), increases averaged 8.7%. In the first seven years of arbitrated awards (1971-1977), increases averaged 7.5%. (In the first nine years of arbitration awards, 1971-1979, the increases averaged 7/9%). The awards for 1978 (9.0%) and 1979 (10.263%) were higher than the earlier average, during a time of relatively high inflation.

With respect to the City's annually repeated concerns regarding its ability to pay, the response of the arbitration panels has varied.

Act 111 does not set out factors which the arbitrators must consider, nor does it require them to file an opinion disclosing which factors they considered, or the weight given to those factors. Some of the arbitrators appear to have accorded little or no weight to the ability to pay argument, while others have given it more significant consideration. The most recent award indicates that the ability to pay argument can certainly play a large part in an arbitrator's decision.

no strikes but

There have been no police or firefighter strikes since the inception of arbitration. However, since Act No. 111 went into effect, the negotiating process has been chilled to the extent that, in most years there have been five or less negotiating sessions prior to reaching of impasse and the invocation of arbitration, with little serious movement from the parties' initial positions. In all of these cases, the impasse has been declared and arbitration requested by the Unions.

During the 1980 negotiations, for the first time (since 1969) a tentative negotiated agreement was reached with one of the employee representation organizations. Local 22's executive board and the City reached an agreement for a four year pact in February, 1980. However, the rank and file membership, hoping to do better in arbitration, overwhelmingly rejected the pact. The parties then entered into the arbitration process, which resulted in a two year arbitration award, which was substantially like the terms of the first two years of the rejected four year negotiated agreement.

conclusions

Limited conclusions can be drawn from the City of Philadelphia's experiences since the 1968 enactment of the statute providing for compulsory arbitration for interest disputes involving police and fire employees. These may be summarized as follows:

1. Since the first resort to arbitration for fiscal year 1971, both police and fire units have ultimately sought arbitration. The lack of mediation or some other intermediate step has led to early impasse and little or no real movement from the initial positions of the parties.

2. The lack of statutory guidelines regarding factors to be considered by the arbitrators has magnified the importance of the selection of the neutral arbitrator.

3. No matter whether the police officers or firefighters have gone to arbitration first, the second award has been a mirror image of the first award, with only minor variances.

compulsory arb leads to layoffs, suit, complaints

With 18 states now requiring compulsory binding arbitration in impasses involving certain groups of city, county or state employes, attention to the process continues to grow. There were these developments:

• In New York state, where Nassau County Executive Francis T. Purcell bitterly attacked the law which brought about a 24.5 percent increase in police officer pay over three years, Gov. Hugh L. Carey said he would propose legislation to prevent arbitrators on public employee union contracts from awarding settlements that would force the counties to raise taxes.

• In Nassau County, N.Y., the Taxpayers Union of Long Island filed a taxpayer suit challenging the arbitration provisions, arguing that the statute leaves the local legislative body with but a "ministerial function" and unable to exercise its constitutional function.

• In Philadelphia, where arbitrators awarded a 9 percent increase to policemen, 600 city employes were laid off last month and another 2900, including some policemen and firemen, were put on notice by Mayor Frank L. Rizzo that they were to be furloughed.

• In California, Palo Alto voters adopted binding interest arbitration for police and firemen in a June balloting. Vallejo, Oakland and Hayward also have arbitration ordinances enacted by municipal votes.

• In Vermont, Burlington Aldermen put on the November ballot a proposal for binding arbitration for all municipal workers. The local option was made possible by a new Vermont law enacted this year.

• In Seattle, Wash., LMRS Director Sam Zagoria, appearing before the College and University Personnel Association last month, argued that "in deciding an impasse case involving a particular group of workers, the arbitrator necessarily has to focus his attention on equity for that group. But one of his considerations should be the city's ability to pay. This depends, in part, on other workers. The ultimate city wage and benefits bill will depend on the merits and presentation of the demands by other groups of workers, as well as the unorganized workers, yet this is beyond the responsibility or jurisdiction of the arbitrator to probe, so it is necessarily excluded from the arbitrator's deliberations. . . .

"An arbitrator, in order to do his job properly, has to put himself into the place of the Mayor, but he does not have the knowledge or the accountability of the Mayor. The arbitration process is a dangerous step away from collective bargaining; it is a step in the direction of wage-fixing and all that this means in taking away rights from both public employers and public employes."

Also appearing on the program were Arvid Anderson, Chairman of the New York Office of Collective Bargaining, and Dr. Robben Fleming, president of the University of Michigan, who expressed other views on the process.

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voters speak out on compulsory interest arbitration

In the wake of last month's national election, significant results of local labor relations issues which were before the electorate went unreported. Compulsory interest arbitration for bargaining impasses was repealed, rejected or adopted depending on the location.

Voters in Massachusetts in effect repealed the state's compulsory interest arbitration law for fire and police negotiation impasses. The provision was a part of the "proposition 2½" which also limits property taxes and abolishes fiscal autonomy for local school districts. It is effective December 4, 1980, and will end the labor-management committee approach to arbitration (See LMRS Newsletter of July 1979). While the state legislature could adopt arbitration again, it is considered unlikely, especially since the state now must fund state mandated programs. This reduces to nineteen the number of states having compulsory interest arbitration for one or more employee groups.

Elsewhere, voters in Cincinnati, Ohio, and San Jose County, California, defeated proposals by public safety unions to require interest arbitration. Citizens of Cincinnati rejected a firefighter backed proposal, while the one in San Jose County would have allowed interest arbitration for county deputies and required it for firefighters if passed.

Ironically, the electorate in the City of San Jose, California, adopted a charter provision which gives police and firefighters compulsory interest arbitration in the event of bargaining impasses. According to city officials, the unions ran an expensive public relations campaign which stressed "fairness" and "no right to strike" issues. Included in the unions' program were numerous newspaper ads, "slick" information brochures and several mass mailings. On the management side, elected officials were split on the issue with Mayor Janet Gray Hayes leading the opposition to arbitration while a majority of the council supported it. A local taxpayers association did run one ad against arbitration.

Finally, citizens in Phoenix, Arizona, will vote on December 9, to accept or reject a police and fire backed proposal for interest arbitration. City officials are optimistic that the electorate will not impose arbitration.

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U.S. Conference of Mayors, 1620 Eye St., N.W., Suite 616, Washington, D.C. 20006. Phone: (202) 293-6790 January 1981, Vol. 12, N.

A Mixed Return for Public Management

further election results on compulsory interest arbitration

Reports are still coming in on November election results, specifically public referenda on compulsory interest arbitration.

In California, City of San Bernardino voters defeated "arbitration" by a vote of 16,987 to 15,593. However, the electorate also voted down another ballot proposal which would have *outlawed* compulsory binding interest arbitration of wages, hours and other terms and conditions of employment. Nevertheless, "arbitration" remains unlawful.

And, in Alameda, while the firefighters were successful in getting arbitration past the voters by a narrow margin, their victory was diminished by the passage of another "measure" which provides: "No additional financial burdens may be imposed on the taxpayers of the City as a result of binding fact finding, arbitration or parity without approval of the voters as set forth in this Section. Any other provision of this Charter notwithstanding, no wages, benefits or employee related expenses shall be paid by the City that have not been approved by a resolution of the City Council until additional revenues and appropriations therefor have been approved by a vote of the people pursuant to Proposition 13. The City Council shall not be required to call such an election more than once a year and may consolidate said elections with elections held for other purposes."

In Santa Clara County, two arbitration measures went down to defeat. The City of Vallejo, which has had arbitration since 1970, saw voters pass a measure supported by public employee unions which eliminates fact-finding, authorizes a committee of the City Council to assist in bargaining and set time schedules which in the opinion of the League of California Cities Employee Relations Service suggests "that what little collective negotiation there was has been silenced and the firefighters will now rush to arbitration. It may be that the time will arrive when an arbitrator will recognize this lack of good faith bargaining in his or her decision and when that happens we will have an opportunity to determine how effective the 'no strike' provisions are."

Across the nation in Montgomery County, Maryland, police have been provided with collective bargaining rights and compulsory binding arbitration by the local electorate.

And back in the West, on December 9th, voters in Phoenix, Arizona, turned down a police and firefighter supported measure for last-best offer arbitration where the economic and non-economic portions of the package would have been considered separately. However, those same voters also said "no" to City supported measures against arbitration.

Last month, the *LMRS Newsletter* reported on referenda results in the State of Massachusetts; Cincinnati, Ohio; and San Jose, California (both City and County).

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WASHOE COUNTY
"To Protect and To Serve"

PERSONNEL DEPARTMENT
I. Howard Reynolds, Director

EXHIBIT I

TESTIMONY BY I. HOWARD REYNOLDS,

PERSONNEL DIRECTOR, WASHOE COUNTY

In opposition to SB 350 and any other bill granting compulsory binding interest arbitration under Chapter 288 of the Nevada Revised Statutes

BACKGROUND

Currently Chapter 288 of NRS provides for compulsory interest arbitration for fire fighters as the means of resolving collective bargaining interest disputes. This provision was adopted for a two year trial period. Proposed legislation would make this provision permanent as well as expand compulsory binding interest arbitration to all other local government employees.

Presumably, the legislature adopted the fire fighter provision on a trial period to examine whether compulsory arbitration is a viable means for settling impasses which arise out of the collective bargaining process taking into account the concerns of all the parties - the employer, the employee, and the general citizenry of Nevada. I am convinced that a complete look at the experiences that have occurred over the last two years can only result in the conclusion that compulsory interest arbitration does not work for all the parties. It works only to the advantage of the public employee.

THE TRUCKEE MEADOWS FIRE PROTECTION DISTRICT EXPERIENCE

There were several issues that were submitted to Factfinding and Arbitration between the District and the International Association of Fire Fighters, Local 2487. The following will only highlight the significant issues.

- What the Union Got

  - Effective July 1, 1979 a salary increase of 21.1%
  - Effective July 1, 1980 a salary increase of 15.3%

- Where the Money Came From

  - All of the District's salary account was expended

  - $45,000 Contingency Account was totally eliminated

  - Remainder had to be taken from the District's Capital Outlay account

- Impact of Award

  - In order to pay for the award the District was unable to purchase in Fiscal 79-80 two pieces of equipment which it had budgeted. These were two 1980, 1,000 G.P.M. Pumpers at a total cost of $113,000 to replace a 1942 Pumper and a 1957 pumper made from a snow plow.

    In rendering this decision, the Factfinder was supposed to have considered under NRS 288.200 among other things".....the obligation of the local government employer to provide facilities and services guaranteeing the health, welfare and safety of the people residing within the political subdivision."

    (Question: If one of these very old pieces of equipment had broken down in a response to a fire and there was a loss of life in the fire, who would have been responsible? Certainly not the Arbitrator!)

- What the Union Didn't Get

  - A proposal to increase the manning level, which if it had been awarded by the outside arbitrator, would have resulted in the District having to shut down 3 out of its 6 fire stations.

    (Question: Could this have happened under compulsory interest arbitration? The answer is Yes!)

  - A proposal that would have placed "supervisory" personnel in the same bargaining unit as "non-supervisory" personnel without the consent of the "supervisory" personnel involved and in clear violation of NRS 288.170. Fortunately the factfinding neutral found that...."it would be outside the scope of his authority to place "supervisory" employees in the unit."

(Question: Could this have happened under compulsory interest arbitration? The answer is Yes! This would have forced the District into court to overturn the decision without the courts having the statutory criteria and/or standards with which it could overturn the decision.)

SUMMARY

If the Fire Fighter experience gives any indication of what compulsory interest arbitration can do to public employee collective bargaining in general, then it must not be granted. To do so would be to only consider the interests of the public employee and to completely disregard the responsibilities of the local government employer and most importantly the interests of the tax paying public.

GREATER RENO CHAMBER OF COMMERCE

LEGISLATIVE ACTION REPORT

FROM THE DEPARTMENT OF ECONOMIC DEVELOPMENT / BOX 3499 / RENO, NV 89505 / 702-786-3030

March 30, 1981

EXHIBIT J

TO: Interested parties

FR: Jim Thornton, Chairman, Public Employees Bargaining and Budget Committee

RE: Position statement

- -

The Greater Reno-Sparks Chamber of Commerce has developed a position concerning binding arbitration and the "last best offer" concept in collective bargaining for local government employees. At the conclusion of extensive discussion with personnel managers of Reno, Sparks, Washoe County and the Washoe County School District; the Chamber is convinced that legislation proposing mandatory binding arbitration and the "last best offer" principle should be opposed.

Such legislation has been introduced inthe form of SB 350, which is hereby strongly OPPOSED. SB 350 essentially extends the provisions of NRS 288.215, which applies only to firefighters, to all employees of local governments. Enactment of this legislation would create a very real potential for the financial ruination of local governments, as well as the destruction of the bargaining process.

Current statutes provide a system for collective bargaining which has proven to be workable and to result in meaningful negotiation of appropriate employee-management issues. Section 288.215 has been a test of mandatory binding arbitration including the last best offer concept but applicable only to firefighters. The results of the test have been totally and catastrophically negative in our area. Probably the most graphic experience has taken place with the Sparks firefighters.

That experience highlighted most of the potential problems with this type of process. The negotiations were "soured" throughout the interaction, with both sides claiming bad faith bargaining. The issues were not resolved until every phase of arbitration was completed and the last best offers were submitted. The ruling was retroactive, as provided in 288.215, from when it

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was rendered in February 1981 back to July 1, 1980. The retroactivity poses a substantial financial burden alone, while the generous award to the firefighters will result in an added financial impact in the form of renegotiated salary levels for other city employees. So, in essence, this award by the arbitrator takes out of the hands of both elected and appointed officials of Sparks the ability to manage the city's resources as they are charged to do.

This example is taken from one of our own local governmental entities; there are many similar reports from other cities around the country. Compulsory binding artibration, combined with the "last best offer" concept simply destroys employee-management negotiations. It allows for the situation in which a governmental agency offers what it determines is the most it is capable of giving, while the employee group asks for considerably more in the hopes that the arbitrator will rule in their favor. At the very least, they know they are certain of receiving the government's offer. Effectively, then the bargaining process is destroyed.

It is interesting to note that this legislation is proposed to apply only to local governments, but not to state government. If this approach is felt to be valid, one cannot help asking why is is not suggested as applicable to state employees as well.

Additionally, this process is used nowhere in the private sector. In fact, most practitioners believe that such an approach would be resisted by both labor and management groups in the private sector.

Consequently, it could be argued that SB 350 suggests very discriminatory legislation which would apply only to a relatively small segment of the population.

The strongest agrument against passage of SB 350 is that local governing bodies would be deprived of their ability to administer to the needs of their constituents. Given the situation in which those bodies are limited in the total amount of money they are allowed to spend, and noting that the average local governmental budget allocates 70-75% for personnel, it seems unwise to allow an arbitrator to effectively control that sizeable portion of the budget. It is not inconceivable that an arbitrator's decision could jeopardize a capital improvement program which had been planned and ongoing over a number of years. Such a situation seems to violate the very basic notion of government by elected bodies.

One of the reported arguments in favor of the last best offer concept is that it serves as a counterbalance to public employees' lack of the right to strike. If the choice has to be made between giving those employees the right to strike and mandatory binding arbitration with last best offer included, it would be the recommendation of the Chamber to allow the right to strike. There is a certain amount of suffering and forbearance which attends

(more...)

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striking employees. Consequently, there is some strong incentive to actively pursue a negotiated settlement of disputes, as opposed to the security which employee groups would enjoy under the proposal in SB 350.

In sum, the Greater Reno-Sparks Chamber of Commerce strongly opposes SB 350 in particular, and any other similar bill which includes the concept of mandatory binding arbitration and the "last best offer" in general. The Chamber persists in its attempts to assist government at all levels to be effective and cost-efficient in managing the scarce resources available in order to provide the necessary services to its constituents.

jb

EXHIBIT K

special report

LAST BEST OFFER

how to win and lose

by
Charles C. Mulcahy
and
Marion Cartwright Smith

LMRS
Labor-Management Relations Service of the
NATIONAL LEAGUE OF CITIES
UNITED STATES CONFERENCE OF MAYORS
NATIONAL ASSOCIATION OF COUNTIES

Contents

Introduction

COMPULSORY INTEREST ARBITRATION has been described as that process which "compels the uncompellable and attempts to enforce the unenforcible, with the public employer and the public caught in the middle." [1] Interest arbitration in the public sector has also been hailed as an alternative to devastating strikes by public employees. What is this process which has generated so much controversy? Generally, interest arbitration is that process used to resolve the impasses reached in labor negotiations by utilizing an impartial third party arbitrator who hears evidence, considers the positions of the public employer and the union, and makes a decision which is final and binding on both parties. This process is to be distinguished from the grievance arbitration procedure which is utilized to resolve labor disputes involving wages, hours and conditions of employment arising from provisions in a *signed* labor agreement.

1. VARIETIES OF INTEREST ARBITRATION

The three basic forms of interest arbitration are distinguished by the treatment by the arbitrator of the final last positions of both parties to the dispute. Under the procedure termed *conventional arbitration* parties submit their final offers to the arbitrator who hears the evidence and fashions an award based on his best judgment. The arbitrator is not confined by the final offer of either party in making his decision, although the offers of the parties generally serve as perimeters to the arbitrator. The second form is referred to as *final last offer on the package* arbitration. Under this procedure the arbitrator must choose either the employer's or the union's offer totally and without deviation. The third form is *final last offer issue by issue arbitration* whereby the arbitrator must choose either the employer's position or the union's position on each individual issue presented for arbitration by the parties. While there are variations on these three basic models, most legislated interest arbitration in the United States adheres fairly strictly to one of these forms.

2. PROBLEMS WITH THE PROCESS

Public employers and many taxpayer groups have severely criticized the interest arbitration process since it involves delegation to an arbitrator of government powers to appropriate funds. A second criticism of the process is that it has a "chilling" effect upon the bargaining process rather than effecting a search for accommodation between the parties. These inherent problems have to be weighed against the risk inherent in strikes and the attendant curtailment of critical public services. For that reason, binding interest arbitration for at least some critical employees, usually police and fire fighting personnel, is authorized as an alternative to the right to strike in almost one-half of the states.[2] As of February 1976, 17 states require binding arbitration for certain public employes. Of this number, Connecticut, Iowa and Michigan require last best offer arbitration, issue by issue; Massachusetts and Wisconsin require last best offer arbitration by package and the rest follow conventional arbitration. In addition, a number of state statutes authorize voluntary agreement to interest arbitration.

In addition to the general two drawbacks to interest arbitration, each of the forms of arbitration carries with it its own pitfalls for the parties at the bargaining table. Conventional arbitration allows face-saving since either party can put one or more fairly unreasonable items on the table, knowing that the arbitrator will choose a more reasonable solution to the problem when shaping his award. It is precisely because the arbitrator shapes the award that this type of arbitration has the most impact on the negotiation process. Neither party is forced to order its priorities, discard harassment demands, and formulate its most reasonable offer in order to convince an arbitrator to select its offer. For that reason, this type of arbitration has very limited usefulness in advancing bargaining.

Final last offer arbitration on the package, on the other hand, has been described as playing Russian roulette. Since there is only one winner, strong constraints are placed upon the parties to resolve problems at the table and to submit to the arbitrator a final position with which their constituents can live. Since there is one winner and one loser in this process it has many aspects of a strike since in a strike situation one party usually emerges as the victor and the losing party seeks to overcome the loss in the next negotiations or harasses the other party during the term of the contract. Experience in states with final last offer on the package arbitration reveals some difficulty in negotiation the year following an arbitrated settlement since one party seems determined to make up for what it lost in the arbitration process.

Arbitration on final last offer, issue by issue, also affords the "Solomon" solution of conventional arbitration in that the arbitrator is somewhat free to fashion his award between the extremes of each party's offer. The parties may advance some extreme demands knowing that the arbitrator will accept the other party's demand on this particular point without rejecting their entire offer, as would happen under final last offer on the package arbitration. For that reason, issue by issue arbitration also has a chilling effect on bargaining in that the parties will seek an arbitrated rather than a negotiated solution to their problems.

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Union reaction to compulsory arbitration has varied. Generally, larger, very strong unions tend to favor the right to strike over compulsory arbitration. Other unions with less clout at the bargaining table favor compulsory arbitration in order to gain bargaining demands which they cannot achieve at the table. The American Federation of State, County and Municipal Employees, AFL-CIO, has favored the use of *voluntary* binding arbitration in contract disputes since 1968.[3] Recently, Jerry Wurf, President of AFSCME, attempted to solicit the support of the AFL-CIO in favor of binding arbitration for public safety workers. Binding arbitration was rejected by the AFL-CIO. AFSCME has favored binding arbitration to secure for its members the larger wage gains achieved by police and fire unions in recent compulsory arbitration cases. There have been indications that the public is becoming more tolerant of public employee strikes and less tolerant of increases in tax rates due to arbitration awards beyond the current ability, or will of a community to pay.

3. AVOIDING INTEREST ARBITRATION

Some discussion on the avoidance of binding arbitration by employers is appropriate since arbitration is usually an ordeal for both parties and should be avoided *whenever possible*. The process of arbitration in itself is an admission that the parties cannot resolve their own problems. Arbitration does not lend itself to creative solutions to problems within government. Operational problems are difficult to present to an arbitrator and moreover, are almost impossible to resolve given the constraints of the arbitration process.

Solutions negotiated between the parties continue to be the best resolution to problems between public employers and unions.

To that end, the employer should seek to maintain a credible position throughout the bargaining process. If the employer's demands are realistic and based upon a sincere desire to improve the quality of government services while assisting its employees to maintain a decent standard of living there is less likelihood that the negotiations will reach impasse and result in arbitration.

If the problems between the parties are primarily financial rather than operational, the government unit should utilize all the tools at hand to bring the dispute to settlement. Comparative data should be utilized early in negotiations between the parties to ascertain where public employees stand in relationship to other public employees providing the same services as well as their counterparts in the private sector. If ability to pay is an issue (and this issue seems to be more and more prominent as financial woes hit local government) a complete disclosure of actual financial conditions within the government unit are in order. This technique has been used with significant success in both the public and the private sector. While municipal financial data is available in most states under public disclosure of documents laws, most union representatives will need a complete briefing in order to understand the impact of rising costs on government services. The employer's position on ability to pay should be thoroughly explained to employee groups so it is no surprise when the dispute reaches binding arbitration. In fact, some arbitrators have found that if either party has not bargained in good faith and supported its position with facts, such tactics are prejudicial to that party's position and may cause the arbitrator to award for the opposing party.

Finally, the public employer's position should be communicated to the the public with supporting data through the media. Where critical services are involved the public has a particular tendency to concern itself with the bargaining process. At an early stage, the public employee union and the public employer can gauge public sentiment on proposals for wage and benefit increases. Not a few settlements have been reached because pressure was brought to bear on one or both of the parties even after impasse.

The remainder of this article will deal with the public employer's preparation for arbitration under the final last offer process, both on the package and issue by issue.

I.

Structuring Bargaining When Arbitration Appears Inevitable

IN SOME INSTANCES the public employer can sense fairly early in the bargaining process that the dispute will only be resolved through the arbitration procedure. Legislated interest arbitration is a relatively new tool for unions in many jurisdictions. Hence, some employee groups are using it without discretion until the potency of the process becomes known.

In such an instance the employer's bargaining strategy should be clearly defined and carefully executed. First, the employer must establish his bargaining priorities. If there are operational problems involving employees they should be identified early in the bargaining process and every attempt should be made to resolve these at the bargaining table. When arbitration is anticipated, it is not the time to seek additions to the no-strike language or to polish the management rights clause to perfection. Clarify the real issues with administrative personnel and legal advisors. Pursue these items at the bargaining table vigorously.

Second, try to eliminate early in negotiations items which deal with the actual language of the collective bargaining agreement. Many arbitrators are reluctant to deal with such items in an award and may remand these items back to the parties for resolution at the bargaining table. Further incentive for the removal of language items from the areas of impasse arises from the tendency of arbitrators to award language distasteful to either party if the contract is to be of short duration to the length of the impasse and arbitration proceedings. Also, where final last offer on the package prevails, unreasonable language demands could cause the arbitrator to award for the union. The employer should force the union to clarify its bargaining demands and seek to identify preliminarily what appear to be union priorities. In this manner, fair trades can be made at the bargaining table and the number of issues submitted to the arbitrator may be reduced.

It is absolutely necessary for the employer to support his position at the bargaining table to avoid findings of bad faith bargaining by the arbitrator. Arbitrators have stated in interest arbitration awards that such tactics are not to be tolerated and that they are unwilling to make an award to an employer who has exhibited tendencies to save reasonable solutions for the final offer rather than extending them during bargaining. Therefore, most of the material which will eventually be presented to the arbitrator should have been revealed in some form at the bargaining table.

The employer should shed lesser priorities in a timely fashion at the bargaining table. By discarding all harassment or low priority demands immediately prior to making the final offer, the employer appears to have capitulated totally to the compulsory arbitration process. This encourages unions to utilize the process to bring employers to their knees rather than negotiating to mutual agreement.

In proceeding to arbitration the public employer should communicate with its staff and electorate to ensure support for its proposal. Often one committee handles negotiations for the elected body and makes all policy decisions relating to employee relations. However, binding arbitration involves high visibility for elected officials and therefore they should all be fully informed of 1) the mechanics of the process; 2) the public employer's position and 3) the reasons for that position.

The public should be informed through news releases prepared by the public employer that the process is final and binding. Recently in a major city a taxpayer's group publicly blasted elected officials for implementing an arbitrator's award, not realizing that the award was binding on the employer. Good public relations and a reasonable employer posture contribute to continuing stability in labor relations.

Finally, the employer should calculate the cost of going to arbitration. (Compulsory arbitration is a deadly serious business; the stakes are high and the result can accurately be described as the ecstacy of victory or the agony of defeat.) In some instances it may be cheaper to increase the wage offer by a half of a percent rather than proceed to arbitration unprepared and risk losing on more costly union demands. The employer cannot afford to incompletely prepare for this process. The consequences are potentially too severe to risk an amateurish presentation to a sophisticated and discerning arbitrator.

II.

Preparation for Interest Arbitration

1. WHO SHOULD PETITION FOR ARBITRATION?

GENERALLY, STATE LAWS allow either the employer or the union, or both, to petition for arbitration. Usually the union petitions for arbitration. However, in instances where the union's demands are unrealistic, it may be to the employer's benefit to shorten the length of negotiations and petition for arbitration. In addition, many states require that mediation precede the arbitration process. Therefore, if the union has refused mediation, an employer petition for arbitration will force a mediator into the dispute.

2. DEADLINES

Generally, the statutes control the various deadlines to be met by the parties: filing their final offers, notifying proper authorities of a petition for arbitration, continuance of collective bargaining agreement in the interim and selection of the arbitrator. The employer should adhere rigorously to time deadlines.

3. CHOOSING THE NEUTRAL ARBITRATOR

Several methods of choosing the arbitrator are common in interest arbitration proceedings:

- Mutual choice of the parties.
- Appointment by a state labor agency.
- Selection from a slate of arbitrators provided by a state labor agency, the American Arbitration Association, or the Federal Mediation and Conciliation Service.

Least desirable is any method by which an arbitrator is appointed without an opportunity for management input. The quality of the arbitrator is a significant factor in the award and in the long term relationship between the parties. Therefore, great care should be exercised in the choice of the arbitrator. Several steps can be taken by the public employer to try to ensure a favorable outcome in the arbitration if the employer has some voice in the choice of the arbitrator.

a. The employer should review the final offers of the parties to determine the critical areas of difference. If the issues at impasse tend to be policy matters, an arbitrator with a background in government service or management consulting is generally better than a financial wizard. If the issues tend to revolve around the level of wages or fringe benefits, an arbitrator with a background in economics or industrial relations may be more suited to evaluate comparative data presented by the parties. Finally, if the employer is to make an argument of inability to pay the union's final offer, the employer should be absolutely certain that the arbitrator has exhibited the ability to handle complex mathematical concepts and to understand government finance with relative ease.

b. Analyze the arbitrator candidates' biographies. Prior employment or academic background as well as age and arbitration experience may indicate a tendency to favor management or the union on certain issues.

c. Carefully examine past decisions of the arbitrator to detect bias on particular issues. If an arbitrator candidate has worked solely in the private sector or only on grievance arbitration he may be rejected in favor of someone with interest arbitration experience in the public sector. In addition, a review of decisions rendered will highlight in management's mind the types of evidence and mental guideposts considered by a given arbitrator.[4]

No effort should be spared in the examination of an arbitrator's background and if information is unavailable on a given arbitrator, it is recommended that person be rejected rather than jeopardize the proceedings.

4. ESTABLISHING GROUND RULES FOR THE HEARINGS

Once the arbitrator is selected the parties should attempt to establish ground rules for the proceedings. Although the applicable state statute may establish certain procedures for the arbitration, normally the arbitrator is allowed certain latitude in structuring the proceedings. The employer can endeavor to reach agreement with the union on procedural matters and thus greatly improve the efficiency of the process. If the hearing is held during working hours it is to the employer's benefit to resolve the ground rules before the day of the hearing when many employees present to testify may have to be paid for their presence during the work day. Procedural details can be arranged either at a pre-hearing conference with the arbitrator or by prior agreement of the parties. However, in the latter instance, the arbitrator must concur with procedures.

Some aspects of the process which can be resolved are:

a. Final offers: A date should be firmly established for the submission of the final offers of the parties. In some jurisdictions the procedure and timing of submission of final offers is provided by statute. Generally, the parties exchange their offers simultaneously a few days prior to the hearing to allow for adequate preparation time.

b. Transcript: Decide whether or not a transcript or tape recorded version of the proceedings will be taken. In the absence of statutory provisions the arbitrator generally determines whether or not a transcript will be taken and who shall pay for it. Generally, the cost is split between the parties. If the issues are numerous or complex, the employer should insist upon a transcript in order to assist the arbitrator in making his decision. Since these proceedings are often very lengthy a transcript will refresh the arbitrator's memory as to points made during the hearing.

c. Order of the hearing: Generally, the party who petitions for arbitration should present its case first. However, the employer should be aware that very often the union, putting only minimal preparation into the hearing, will submit a limited number of exhibits and then rest its case. Then the employer is forced to bear the burden of the proof on its offer while the union scrutinizes and criticizes every point on the employer's very carefully presented exhibits.

d. Witnesses: The employer may also try to ascertain whether or not the union intends to use outside, i.e., expert witnesses. If possible, the parties should agree to limit the number of witnesses in order to expedite the hearing.

e. Determine comparable communities: At this time the parties may also discuss the communities to be used for comparative purposes. If the parties can agree upon those communities which are comparable, it will eliminate a lot of argument at the time of the hearing. If the parties cannot agree, the employer may stipulate to an agreed upon list and a contested list, directing comments during the hearing to the comparability of only a select list. While this may seem to be a minor matter, it saves a lot of time and prevents judgmental errors in the preparation of exhibits for the hearing.

f. Criteria for the decision: If state statutes do not list criteria the parties should agree upon the criteria to be used by the arbitrator in fashioning his decision. Those items generally considered to be adequate criteria and which are contained in many state statutes are as follows:

1. The lawful authority of the employer.
2. Agreement of the parties.
3. The interest and welfare of the public.
4. The financial ability of the government unit to meet costs.
5. Comparisons of wages, hours and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services:

—in public employment in comparable communities and

—in private employment in comparable communities.

6. The average prices for consumer goods and services, commonly known as the cost of living.
7. The overall compensation presently received by employees including direct wage compensation, vacations, holidays and excused time, insurance and pensions, medical and hospital benefits, and the continuity and stability of employment and all other benefits received.
8. Changes in any of the foregoing circumstances during the pendency of arbitration procedures.
9. Finally, such factors not listed in the foregoing but which are normally or traditionally taken into consideration in a determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact finding, arbitration or otherwise between the parties in the public service or in private employment.[5]

g. Stipulate areas of agreement: At this time the parties should stipulate as to all of the other issues agreed to during the course of collective bargaining. In one instance, the union reneged on all prior agreements and in its final offer reverted to its initial bargaining position with respect to all items in the contract. A stipulation as to other agreements would have eliminated this problem.

h. Brief: At this time the parties should also discuss whether or not there will be opening and closing statements and whether it will be necessary to file briefs or reply briefs on the matter. The matter of briefs may be reserved for final decision to the end of the hearing. It is generally recommended, however, that briefs be filed in all but the simplest cases. Following the pre-hearing conference, a summary of all the agreements between the parties should be drafted and sent in writing to the arbitrator.

At this time the arbitrator may attempt to mediate the dispute. In some cases this mediation is required by law. When the law does not require mediation, it is recommended that the employer refuse to utilize the arbitrator as a mediator since any offer of compromise in excess of the employer's stated final offer could be prejudicial to the employer's case.

If the parties are in a position to formulate their own criteria for use by the arbitrator, the scope of the criteria to be used should be formulated with a certain amount of care. In times of rising inflation the "changes in the pendency of the proceedings" language has caused severe problems for the public employer. Since these arbitration proceedings have a tendency to linger on, what might have been a reasonable offer by an employer in January may not be a reasonable offer in June since the rate of inflation in those months may have outstripped the employer's offer. Finally, the last criteria is a catch-all provision which allows the arbitrator a great amount of latitude in the formulation of his decision. If the employer has reason to believe that the authority of the arbitrator should be strictly curtailed, this provision should also be deleted from the criteria under consideration.

5. STRUCTURING THE FINAL OFFER

The structuring of the employer's final offer is the most crucial, if not the most delicate, part of the final offer arbitration process. If the employer is proceeding to final last offer on the package arbitration, one item which is overly zealous or

removed from the realm of reality will taint the offer and force the arbitrator to select the union's package as the most reasonable solution to the impasse. In general, package arbitration awards go to the *most* reasonable of two reasonable offers, rather than the only reasonable offer, since in most instances both offers are reasonable. In issue-by-issue final offer arbitration the employer is allowed a certain amount of latitude in the structuring of his final offer since the arbitrator is not forced to restrict himself to either party's offer in total but may put together an award incorporating parts of both parties' offers. In structuring the public employer's final offer certain guideposts should be observed.

a. Maintain credibility: In both varieties of arbitration the employer should constantly be aware of maintaining his credibility with the union. Drastic changes in the employer's position at this point have severe impact, both politically and on the future bargaining relationship between the parties. It really boils down to the fact that when the employer says "no" he means "no". The employer should present the union substantially its best offer during negotiations. If the employer fails to put his best offer on the table prior to going to final offer arbitration the union will be tempted in later years to doubt the employer's word when he says that this is his best offer on a given issue. This attitude assumes that the union exhibits a similar posture in paring down its demands.

b. Objectively analyze your position: On the other hand, if after all the facts are collated and the employer finds himself in a slightly untenable position, he should be willing to extend an offer by one-half of a percent or attempt to work out a more creative solution in hopes of inducing the union to negotiate a settlement. Perhaps additional monies wisely distributed in the last offer will enhance the public employer's chances of winning an arbitration when the union's proposal is totally repugnant to the employer.

c. Remove unnecessary language items: All unnecessary language items should normally be removed from the employer's proposal and set aside for future contract bargaining. Arbitrators are not disposed to award to either party language improvements which were sought at the bargaining table but not negotiated because the items were distasteful to the union or to management. However, experience has shown that arbitrators are willing to strengthen contract language in areas where problems could be proven, such as abuse of sick leave or scheduling difficulties which were causing an excessive amount of overtime. However, the employer has to be prepared to support his proposal with hard facts, specific instances and the testimony of sincere and concerned management personnel. If *any* of these factors are missing, eliminate the language item from the final offer immediately. When preparing for issue-by-issue arbitration some of these items might be left on the table so that the arbitrator will trade them for items which the union finds highly desirable.

d. Draft each item in the offer as it will appear in the final contract: All language and economic items should be drafted in article form as the employer would like them to appear in the final contract. This will eliminate any doubt on the arbitrator's mind as to the intent of the employer's offer and will forestall confusion as to the actual content of the contract when the arbitrator's award is issued.

e. Insist that prior agreements be honored: Every final offer should contain language stipulating that all of the provisions of the collective bargaining agreement would appear as agreed upon earlier by the parties in collective bargaining or as it appeared in the prior collective bargaining agreement if not amended during collective bargaining for the upcoming agreement.

f. Do not introduce new issues: Demands not discussed at the bargaining table should not be introduced in arbitration. Experience has shown that introduction of new issues into the arbitration process is either illegal [6] or extremely prejudicial to the public employer's offer. On the other hand, the public employer should block any attempt by the union to present new demands in arbitration. Evidence can be introduced at the hearing as to bargaining history to indicate bad faith bargaining.

The employer should remember that experience has shown that very few disputes that proceed to final last offer arbitration are settled through negotiation rather than through completion of the process.[7] Therefore, final offer is not so much a search for accommodation and mutual solutions as it is a search for the offer which will win the award. Binding arbitration is an adversary process and as such is not really part of the give and take which characterizes the bargaining table.

6. POINTERS ON PREPARATION OF EXHIBITS

The hallmarks of effective exhibits are simplicity, clarity, conciseness and, above all, accuracy. Usually, an arbitrator entering a dispute is almost certain to be overwhelmed with the emotion of an impasse situation as well as the great complexity of detail involved in government operations and the current dispute. In order to expedite the proceedings and to avoid deluging the arbitrator with a barrage of paper, all exhibits should be simplified as much as possible. At this stage final offer arbitration closely resembles the preparation of a complex personal injury law suit. No length should be spared in the search for facts and arguments to support the employer's own offer. The following checklist is provided in order to assist the employer in preparing exhibits for the arbitration. (A more comprehensive discussion of arguments which may be used by the public employer on common areas of impasse

is included in the chart at the end of this report.)

a. Review carefully all the criteria to be used by the arbitrator in making his decision. Be sure that all the criteria which are applicable are covered for *all* of the items in the employer's final offer.

b. Defend with facts all employer positions. Facts, in many instances, involve comparisons with other communities, economic benefits and management policies. Comparative data utilized in arbitration must be carefully gathered, verified and analyzed.

c. The employer should decide at this point which communities will be used for comparisons of wage rates, fringe benefits and management policies at issue. During negotiations the tendency is to use a broader field of comparisons than one would wish to present an arbitrator. The rules of thumb to be utilized in justifying the communities that will be used for comparative purposes are as follows:

- Geographic proximity
- Population and size of municipal work force
- Industrial concentration

Communities historically used by the parties for comparative purposes

- Per capita or median income
- Competition in job market

Once the comparative communities have been selected collective bargaining agreements should be gathered to verify all data. Furthermore, telephone calls and meetings with personnel from the communities can be used to alert management of any idiosyncrasies involved, which may be familiar to union representatives who are fairly sophisticated as to current wage and fringe benefit practices.

An exhibit showing the comparative level should be prepared for each economic item in dispute, as well as areas where the particular bargaining unit at issue may have outstanding benefits. Charts and graphs are much more effective in presenting a wide variety of complex information than are strings of numbers and complex calculations. While some arbitrators may desire to verify the information underlying such charts and graphs, many will be satisfied with the pictorial representation of the employer's position. Such charts are particularly effective when analyzing wage increases and cost of living increases.

d. Prepare exhibits and arguments to refute all union proposals: The employer must factually support his position while revealing the unreasonable posture of the union's offer wherever possible. For instance, while the educational incentive program proposed by a fire fighter group may be very similar to the program enjoyed by the police unit in the same community, the employer may be able to prove that no other fire fighters' union in the area has such a program. Thus, the union argument that its proposal is reasonable because another bargaining unit has the benefit fails in light of broader comparative data. The employer should analyze areas of weakness in his offer and anticipate union arguments to that effect. Exhibits which tend to highlight weaknesses in the employer's argument need not be presented to the arbitrator unless the union uses inaccurate information which needs to be verified or clarified.

e. Carefully research questions of legalities: If there is a question as to the legality of the opposing party's offer, carefully present copies of the statutes and cases supporting the employer's position to the arbitrator. In one instance the union was attempting to gain at the bargaining table a concession on promotional procedures which it had not been able to gain in the Legislature. The employer presented a copy of the bill which the union had presented in the Legislature to gain the same concessions which it was now seeking to gain through collective bargaining. The legality of the union's offer was severely questioned.

f. Present a summary of the concessions made by both parties during collective bargaining. The arbitrator will then be able to gauge the impact of each party's offer as a whole as well as issue by issue. Such a summary may also point out the unreasonableness of certain union demands. For instance, if the employer has granted the union high priority items like a fair share agreement and final and binding grievance arbitration and the union still expects very generous economic concessions the employer's more modest offer may appear to be more reasonable.

g. Plan to present the public employer's position as a package and as the end result of negotiations: The arbitrator should constantly be aware of the shape of the overall settlement package which the employer is offering, including issues resolved during bargaining. The employer's offer will then appear as an evolution of the collective bargaining process. *This will deter the arbitrator from splitting the award in issue-by-issue arbitration and enhance the overall reasonability of the employer's offer in package arbitration.*

h. Emphasize the differences between public employer's offer and the union's offer. Point out the practical effects, both economically and functionally within the department, so that the arbitrator understands the ramifications of his award. In considering wage increases the employer should not only cost its own offer, but the union's as well and point out the dollar difference between the offers. This costing will serve to highlight the difference for the arbitrator, especially when wages lie at the heart of the dispute. It has generally been found that if the employer does not offer this costing, arbitrators tend to estimate the economic impact of both offers, and such estimates are not always completely accurate.

III.

Procedures at the Hearing

1. RULES OF EVIDENCE

ARBITRATION HEARINGS are usually informal and the strict rules of evidence do not apply. However, certain minimum standards will normally be adhered to by the arbitrator in order to preserve the integrity of the proceedings and to insure orderly progression:

a. Witnesses should be sworn.

b. The petitioner should proceed first in presenting his evidence.

c. Those issues not presented at the bargaining table should not be allowed to be brought up as issues during the arbitration proceeding.

d. Compromise settlement offers should not be allowed into the record under any circumstances.

This is a critical point since, in more than one instance, offers of compromise which were higher than the employer's final offer, in an effort to settle the contract by bilateral agreement rather than through arbitration, when disclosed have prejudiced an employer's case. In support of this position there is substantial case law prohibiting the introduction of compromise offers into the record as being prejudicial to either party's case. Arbitrator John F. Sennbower expresses this doctrine very eloquently:

"If parties are deemed to prejudice their position by engaging in discussions relative to possible compromise solutions, it will have the effect of discouraging attempts at settlement lest the efforts fall through and become embarrassing. Courts of law, in their efforts to foster the free interchange of settlement efforts and thereby to encourage the parties' own attempts at resolving the controversy, have long held that evidence as to purely settlement offers and counter-offers will not be received in evidence and arbitration has much to gain by following the same policy. In addition to case law supporting the prohibition this contention on the part of the employer can be supported by the pronounced objectives in most interest arbitration procedures. It is well established that the primary objective of most interest arbitration procedures is to enhance the possibility of bilateral agreement by threatening both sides with the possibility of the imposition of a neutral third party award. Therefore the employer is on good grounds for refusing to admit compromise offers into the record."[8]

e. While the public employer may object to the introduction of what he considers to be irrelevant data, generally the arbitrator will allow introduction of such data into the record and will take it upon himself to determine the weight that such evidence should be given in structuring his award.

f. If there appear to be conflicts in data or lack of supporting data, the public employer should always offer to brief the point or to offer further supporting data. However, this tool should not be used as a crutch for lack of preparation.

g. Be prepared and be accurate.

h. All information and arguments should be presented to the arbitrator in a factual and pragmatic manner. This is not the forum for histrionics and emotional outbursts.

i. As sometimes happens, a member of the management team may be a better witness for the union than for management. Since the employer is generally not given to using weak management personnel as witnesses, the public employer should force the union to subpoena this management person if it wishes to use him as a witness. In this case the management person is identified to the arbitrator and appears on the record as a witness adverse to the public employer's cause. Under no circumstances should management personnel be allowed to testify on behalf of the union under the guise of a management witness.

2. WITNESSES

The witnesses to present the case for the employer should be aware of the bargaining history of the parties, confident of employer's position and articulate in presenting it to the arbitrator. Therefore, it is imperative to choose witnesses, whether they be elected officials or staff personnel, with proper management attitudes and the ability to verify facts presented in evidence. It is not unheard of for certain *elected* officials to be used as adverse witnesses to the employer's case. Such testimony is devastating since it severely undermines the employer's unanimous and single-minded posture before the arbitrator.

Once the exhibits are prepared they will fall *naturally* into certain categories. The financial officer for the government unit should be called upon to testify as to financial impact or ability to pay questions. All testimony relating to the operations of the department should be referred to management personnel. Questions with regard to the level of wages and fringe benefits and the level of the management offer are more properly the subject of elected officials' testimony. However, in small government units, the personnel director or one elected official may present the employer's entire case utilizing the exhibits. Once the exhibits are prepared, a listing of all points pertinent to the employer's case should be made by the person handling the conduct of the hearing for the employer. This checklist should carefully catalogue the highlights of all the exhibits taking special note of those areas which most effectively support the employer's position or those areas which might not be readily understood by the arbitrator. Witnesses should be carefully briefed and given adequate time to review the exhibits, ask questions and analyze the information presented so as to efficiently and effectively handle cross-examination by the union representative. Since this is an adversary hearing, the employer can expect vigorous cross-examination

and should be prepared to render the same to union witnesses.

The use of expert witnesses may be justified in situations where the material to be presented is complex and out of the realm of knowledgeable government officials. For instance, complex economic projections, information as to nationwide levels of wages and fringe benefits, or identification of trends in the operation of local government should be the subject matter of an expert witness of unimpeachable experience, credentials and credibility with the arbitrator. While it is recognized that this expert witness very often advocates the employer's position, the arbitrator tends to hear this testimony more favorably since this person maintains a more neutral posture than the parties in the arbitration proceeding.

3. TESTIMONY AND HOW TO DELIVER IT

In keeping with the simplicity of the exhibits, the testimony should be laid out in a clear, straightforward manner. The employer must recognize that the arbitrator is forced to absorb an astounding number of facts all at once in an arbitration proceeding. Therefore, the witness should speak slowly, clearly and emphasize the strong points in the employer's exhibits. Witnesses should be sworn and adequate time given for the presentation of all testimony before cross-examination. If the issues are so complex as to necessitate a hearing which will last more than one day, it is recommended that exhibits be handed to the arbitrator one by one as they are introduced. However, if the hearing can be handled in one day, it is very effective to bind all of the exhibits together and distribute them to the arbitrator and the union before beginning the presentation. However, this is only recommended if the hearing is expected to take one day because if it extends more than one day the union will have more time to prepare for cross-examination and try to find flaws in the employer's presentation.

Set aside those exhibits which may be needed for rebuttal of union arguments. Do not offer information unless it is advantageous to your position. However, be prepared to counter union arguments. While the utmost care may be exerted in preparation of exhibits, the possibility of error is still present and the less time the union has to review these exhibits prior to the close of the hearing, the easier the presentation of the employer's case will be and the less grueling the cross-examination will be.

Witnesses should be carefully briefed on the points which they will be expected to cover in testimony. The following checklist may be utilized with each witness to insure clear and accurate testimony:

1. Don't memorize what you are going to say.

2. Be serious at all times. Avoid talking about the matter in the halls, restrooms, or any place in the area where the hearing is being conducted.

3. Speak loudly and clearly so that all parties can hear you.

4. Listen carefully to the questions asked of you. No matter how nice the other attorney or union representative may seem on cross-examination, he may be trying to hurt you as a witness. Understand the question. Have it repeated if necessary; then give a thoughtful, considered answer. Do not offer a snap answer without thinking. Don't be rushed into answering a question. However, don't take so much time on each question that the arbitrator or hearing examiner might think you are making up an answer.

5. Explain your answers if necessary. This is better than a simple "yes" or "no." Give an answer in your own words. If a question cannot be truthfully answered with a "yes" or "no," you have a right to explain the answer.

6. Answer directly and simply only the question asked and then stop. Do not volunteer information not actually asked.

7. If your answer was wrong, correct it immediately.

8. If your answer was not clear, clarify it immediately.

9. Always be polite, even to the other attorney or union representative.

10. Don't be a smart aleck or a cocky witness. This will lose you the respect of the arbitrator or hearing examiner.

11. You will be sworn to tell the truth. Tell it. Every material truth should be readily admitted, even if not to the advantage of the employer. Do not stop to figure out whether your answer will help or hurt your side. Just answer the questions to the best of your memory.

12. Don't try to think back to what you said in a statement you made.

13. Do not exaggerate.

14. Stop instantly if the arbitrator or hearing examiner interrupts you, or when the other attorney objects to what you say. Do not try to sneak your answer in.

15. Give positive, definite answers when at all possible. Avoid saying, "I think" or "I believe." If you do not know, say so; do not make up an answer. If you are asked about little details that a person naturally would not remember, it is best to just say that you don't remember. However, don't let the cross examiner get you in the trap of answering question after question with "I don't know."

16. Don't act nervous. Avoid mannerisms if possible which will make it look as though you are scared, or not telling the truth or all you know.

17. *Never* lose your temper. Testifying for a length of time is tiring. It causes fatigue. You will recognize fatigue by certain symptoms: (a) tiredness; (b) crossness; (c) nervousness;

(d) anger; (e) careless answers; (f) willingness to say anything or answer any question in order to leave the witness stand. When you feel these symptoms, recognize them and strive to overcome fatigue. Some attorneys on cross examination will try to wear you down to the point where you will lose your temper or say things that are incorrect or that will hurt you or your testimony. Do not let this happen.

18. If you do not want to answer a question, do not ask the arbitrator or hearing examiner whether you must answer it. If it is an improper question, your attorney will take it up with the arbitrator or hearing examiner for you.

19. Don't look to your attorney for help in answering a question. You are on your own. If the question is improper, your attorney will object.

20. Don't "hedge" or argue with the other attorney.

21. Don't nod your head for a "yes" or "no" answer. Speak out clearly. If a transcript has been ordered the court reporter must hear everything you say.

22. When you leave the witness stand after testifying, wear a confident, not a down-cast expression.

23. If you feel it is necessary, you may refer to prepared notes to refresh your memory periodically. However, do not totally depend on them and use them only when and if necessary.

IV.

Briefing the Employer's Case

WHETHER OR NOT a brief will be invited in an arbitration proceeding will generally be at the discretion of the arbitrator. This decision is generally made at the conclusion of the hearing. Some arbitrators prefer briefs and others abhor them. However, on very complex issues or proceedings which extend over a long period of time, it is recommended that the employer press for the right to file a brief. The brief is generally a summary of the issues in the dispute, the evidence presented and key arguments by the employer to support his position and refute the union's position, and an opportunity to clarify evidence presented at the hearing. A brief is not a rehash of the testimony, but an opportunity to pull all of the evidence together into a coherent argument for the employer's position.

The organization and length of the brief will depend on the complexity of the issues and the amount of evidence presented at the hearing. Generally, interest arbitration briefs are allowed more latitude than the standard legal brief. The employer should cite other interest arbitration cases which support the arguments put forth by the employer in the instant case. However, a brief is not the time to introduce new information. Arbitrators have generally recognized that introduction of new evidence in the brief is improper and such evidence will not be recognized in the formulation of the award.

The key to effective briefing is organization. A few introductory sections assist the arbitrator in focusing on the issues and placing the impasse situation in perspective.

A Statement of Facts should be the first section of the brief and usually includes the date upon which the parties bargained, the approximate number of bargaining sessions, the date the parties petitioned for arbitration, the date the parties were certified at impasse and, finally, the date of the hearing.

Secondly, a clear and non-argumentative *Statement of the Issues*, including the final offers of both parties, is instrumental in establishing the issues still at impasse after the hearing since often concessions are made in the final offers to resolve some issues. This statement also assists the arbitrator in writing the award since usually a statement of the issues is included by the arbitrator.

Third, an *Introduction* outlining the employer's philosophy of collective bargaining and illustrating areas of agreement between the parties if the union has already made substantial gains in collective bargaining for the current contract could be an effective vehicle for presenting the employer's offer as a whole before the arbitrator. The purpose of this section is to prevent package splitting by the arbitrator by providing him with a brief history of bargaining between the parties and the employer's goals in bargaining. In short, the offer of the employer is placed in perspective.

Fourth, the employer should carefully reiterate the reasons why certain communities were utilized for comparative purposes. Since economic benefits are often at issue in interest arbitration proceedings, comparisons which support the employer's position are his best argument. Therefore, it is imperative that the arbitrator accept the basis for the employer's comparisons.

Finally, the employer's affirmative arguments on each issue should be presented in an orderly, coherent fashion. Special attention should be paid to the criteria to be utilized by the arbitrator in fashioning the award. Arbitrators are generally very careful to follow established criteria since failure to do so could result in legal challenges to the award. In addition, the brief should highlight the difference between the employer and union offers on each issue, otherwise the arbitrator may assume the differences are minimal. Projecting the impact of economic and non-economic proposals beyond the term of the proposed collective bargaining agreement is often effective in making the arbitrator aware of the employer's priorities and the effect of the award on the long term relationship between the parties.

Woven into the employer's arguments should be refutations of the union's arguments. Rather than highlighting the union's arguments in the employer's brief, those arguments should be eroded as effectively as possible through the employer's factual presentations.

V.

Converting the Award into a Contract

ONCE THE ARBITRATOR has issued the award, the problem of converting that award into a contract arises. It is extremely helpful if the parties have stipulated before the arbitration as to all the areas of agreement. It is also helpful to the employer, if he should win the arbitration, if the final offer has been framed in terms of the actual language to be included in the collective bargaining agreement.

One party should be assigned to draft the final form of the agreement and forward it to the other. Thereafter, a short meeting may be necessary to resolve language difficulties. Every effort should be made at this point to reach final agreement expeditiously. However, situations have occurred where the arbitration award was not sufficient for the parties to understand exactly what the arbitrator was awarding. A request for clarification from the arbitrator usually resolves the dispute more easily than renewed bargaining and is recommended.

Conclusion

CONFLICTING VIEWS on the success or failure of the final offer arbitration process have been eloquently recorded in labor relations journals across the country. Arbitrators, management participants, union participants and scholarly observers reflect different opinions after reviewing the same basic data on the experiences of final offer arbitration.

As participants for management in the final offer process under law, the authors have found that use of arbitration, generally as an alternative to strikes, is not without it price. Both the municipal union and the municipal employer cede their traditional collective bargaining right to be the architects of their collective bargaining agreement to a third party outside the bargaining relationship. Continuous use of the process has resulted in agreements with which neither party can live.

The purpose of this monograph is to emphasize that final offer arbitration is not a process to be taken lightly. Careful preparation is essential to a favorable outcome under the procedure. The authors feel that a negotiated agreement is always the best solution to labor disputes for management and the union. When the public interest in the continuation of critical services is weighed against the right to strike, final offer arbitration is sometimes a saner solution. In many instances, however, the arbitration results in a far worse situation than the threatened strike.

Neither arbitration nor the right to strike produces labor peace. Only consistently equitable dealings with organized labor on the part of all levels of public management during bargaining and during the term of the agreement effectuates harmonious public employer-employee relations. Equitable solutions to labor disputes are the only solutions which serve the public interest.

Appendix A:

Case Summaries of Interest Arbitrations

CASE I:
MUNICIPAL FIRE DEPARTMENT, Final Last Offer on the Package

As the parties approached the arbitration procedure the issues remaining at impasse were:

1. **Wages** — The union proposed a wage increase of 10 percent and a holiday pay increase from $42 to $85 per holiday; the employer proposed a 9 percent wage increase and an increase in holiday pay from $42 to $85.

2. **Definition of a work period as required under the Fair Labor Standards Act** — The union proposed a 9-day work period; the employer proposed that the definition of a work period be subject to a reopener during the term of the contract.

3. **Grievance procedure** — The union proposed that discipline and discharge cases fall within the purview of the grievance and arbitration clause; the employer proposed to retain the procedure under which discipline and discharge cases were heard by a municipal review body established by State law.

4. **Sick leave** — The union offered to provide a doctor's excuse after 2 consecutive days of sick leave absence; the employer demanded a doctor's excuse after 1 day's sick leave absence, for the duration of this agreement only.

5. **Educational incentive program**—the union demanded a flat dollar payment for each credit earned in pursuit of further education; the employer offered to reimburse the fire fighters for tuition and book costs incurred in pursuing advanced education in fire fighting.

THE CITY ARGUED:

Other suburban communities on the South side of a large metropolitan area are the only valid comparable communities.

The city's proposal on wages and holiday pay together exceeds the increases in cost of living in the area.

The city's proposal on wages and holiday pay is greater than settlements with other city employee bargaining units.

The city's economic offer compares very favorably to other economic settlements on the South side.

The union is offering no guarantee of increased productivity in return for its economic demands.

The cumulative earnings of the average union member exceeds the rise in the Consumer Price Index in the last eight years.

The city does not contend that excessive sick leave has been used, but only that sick leave has been abused and has been utilized to extend time off without proper justification. To that end the city offered evidence of eight instances when *bona fide* time off was extended through the utilization of sick days.

This abuse of sick leave has become a critical threat to the adequate manning of the department and is running up overtime costs.

The city's offer on sick leave language is on a trial basis for the duration of the current two-year agreement only.

Other departments on the South side provide for doctor's certificates for the use of sick leave.

The arbitration procedure to which the union objects was included for the first time in the last collective bargaining agreement. During the term of that agreement there were no grievances filed

THE UNION ARGUED:

Utilizing a broader base of comparison and more affluent communities, the level of wages and fringe benefits for union members is lower in this community.

The city utilizes non-union departments for purposes of comparisons.

The cost of living is increasing at a higher rate than the city's financial offer.

The city is demanding increases in productivity without adequate increases in compensation.

The city has singled out this bargaining unit in its examination of sick leave use and the proposal of the Association is more appropriate for curbing any possible abuse of sick leave.

Doctors' certificates are expensive and difficult to obtain on short notice.

No other South side communities have such stringent sick leave language in their fire department contracts.

The municipal review commission is not an impartial body and therefore is not the best forum for review of discipline and discharge cases.

It is common practice in other communities to utilize the grievance arbitration procedure for review of discipline and discharge cases.

The definition of a work period proposed by the Association does not cause the payment of additional overtime monies by the city.

The educational incentive program proposed by the union is exactly the same as that enjoyed by police department employees in the same community. Further, this program has proven to be

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THE CITY ARGUED:

nor were there any discipline or discharge cases which proceeded through the municipal review commission. Since neither party has had an opportunity to utilize the grievance procedure and evaluate its effectiveness, there is no reason to change the procedure.

It is unclear whether discipline and discharge cases will continue to be heard by law by the municipal review commission given the fact that employers are required to bargain on matters of discipline and discharge.

The city introduced into the record a bill submitted by the union to the Legislature to change the statutory construction of the municipal review commission to allow discipline and discharge cases to proceed through arbitration. Therefore, the city concludes that there is some legal question as to whether the union's demand in this regard is legal.

Definition of a work period should be held in abeyance until the U.S. Supreme Court firmly decides that municipal employers either are covered or are not covered under the Fair Labor Standards Act Amendments.

No other fire fighter's unit in the state has an educational incentive plan comparable to the one which the union is proposing and, in fact, several comparable fire departments have no educational incentive program.

The city's proposal is similar to the educational incentive programs in effect in other fire departments in the area.

Although the fire fighters' proposal is exactly the same as the educational incentive program enjoyed by the police department in the community, that program is currently being reduced and curtailed because of the excessive costs.

THE UNION ARGUED:

very lucrative for the policemen and has increased the disparity between the police and fire fighter personnel.

THE ARBITRATOR RULED:

1. Wages — The arbitrator utilized the city's comparisons on the South side of a large metropolitan area, finding that the other communities utilized by the union were more affluent and were not situated in a similar geographic area. The arbitrator found further that neither wage offer could be found unreasonable in terms of the comparisons offered by the parties. It should also be noted that the arbitrator *would not* regard the increase in holiday pay offered by the city as an offset against basic salary increases. Therefore, on this issue the arbitrator viewed the union's offer as more reasonable.

2. Work period — Since the failure to negotiate the definition of a work period would cause liability to fall solely upon the employer and since the Supreme Court had not ruled on the constitutionality of the 1974 Amendments to the Fair Labor Standards Act, the arbitrator favored the employer's offer on this point.

3. Grievance procedure — The fact that the present grievance procedure has not been utilized is not in itself a reason to preserve it when one of the parties involved, namely the union, asserts that it is unfair. In addition, the arbitrator did not view the municipal review commission as being totally impartial. However, since the comparisons offered by the city reveal that other cities do not allow discipline and discharge cases to be processed through the grievance arbitration, the union's argument lost a great deal of its weight.

4. Sick leave abuse — Since the employer's proposal is identified as a trial proposal and evidence adducing the abuse of sick leave was presented, the arbitrator believed the employer's claim is justified. However, the arbitrator takes note that the employer did not advance this offer during the negotiations and states that while he believes the employer's position is sound, he does not wish to reward a bargaining strategy which involv failure to make a reasonable proposal duri negotiations.

5. Educational incentive program—This w the hinge issue of this package arbitrati Since the union could not cite a single e ample of a Wisconsin community in whic the fire fighters had a program similar t that which they were proposing, the propos of the employer emerged as the more reasc able. The arbitrator noted that it is easier build from a sound basis than to cancel reduce a substantial program which does r produce the results it promised to genera namely improved firefighting services. Sinc the union did not present a cost-benefit ana ysis for the expensive program it propose the arbitrator could not view the union's pr posal as more reasonable.

Summary: In viewing all the proposals of th parties, the arbitrator ruled for the employ with the award swinging for the city on th educational incentive program issue.

CASE II:
MUNICIPAL POLICE DEPARTMENT, Final Last Offer on the Package

These issues remained as the parties reached impasse:

1. **Wages** —The city offered an increase of $58.33 per month per employee; union demanded $75 per month.
2. **Leaves and Vacation** — The city offered 2 weeks after 1 year, 3 weeks after 8 years, and 4 weeks after 18 years of service; the union demanded 2 weeks after 1 year, 3 weeks after 5 years, 4 weeks after 10 years, 5 weeks after 15 years and 6 weeks after 20 years of service.
3. **Cost of living adjustment** — The city offered no cost of living adjustment; the union demanded the cost of living adjustment made semi-annually based on the amount of $3.50 a month increase for every full point rise in the Consumer Price Index.

ARGUMENTS:

1. Both parties offered comparative data from neighboring departments.
2. The union argued cost of living increases.
3. Both sides offered comparative data with respect to vacation benefits enjoyed in surrounding communities.
4. The city argued that the municipal budget had been formulated and the tax rate had been levied for the current contract year. Therefore, the city was financially unable to meet the increased cost demanded by the union offer.

THE ARBITRATOR RULED:

The arbitrator viewed the wage issue as the primary consideration in this award and as a result the city's ability to pay emerged as a compelling argument. The arbitrator reasoned as follows:

1. In comparison with the level of wages in surrounding communities, city policemen ranked very favorably.
2. Consumer prices have risen about 8.8 percent while the city's offer would only produce a 7.6 percent increase.
3. Since this is a one-year agreement and the award was to be issued by the arbitrator fully five months after the taxes were levied he took serious note of the city's ability to pay argument. The property tax yield was fixed and the city was without means of passing on cost increases to the taxpayer without engaging in the borrowing process. The arbitrator did not consider the borrowing process the proper avenue for paying personnel costs and he therefore found the city's argument persuasive.
4. Further, the arbitrator recommended that the parties in negotiating the successor agreement keep in mind budgetary requirements and the needs of the bargaining unit members.
5. With respect to the vacation proposals the arbitrator found the union's proposal more in keeping with current practices and conditions in surrounding communities.
6. However, since the comparative position of the bargaining unit was high with respect to wages, the overall compensation presently received by employees was fair and reasonable, and the city's good faith offer was more than reasonable, the arbitrator awarded for the city.

CASE III:
COUNTY DEPUTY SHERIFFS, Final Last Offer on the Package

As the parties entered the binding arbitration procedure the issues at impasse were:

1. **Duration** — The county wanted a two-year agreement; the union offered a one-year agreement.
2. **Wages** — The county offered a 4 percent increase effective the beginning of the first year of the contract, a 2 percent increase effective the middle of the first year of the contract and either a 6 percent increase effective in the second year of the contract or a wage reopener for the second year of the contract; the union demanded an 8.3 percent increase effective at the beginning of the contract.
3. **Longevity pay** — The county offered to maintain the current contract language which provided for longevity payments for employees employed before the beginning of the expired agreement (two years prior) and no longevity payments for new employees thereafter. The union demanded that the County reinstate the longevity plan for all employees.
4. **Liability indemnification** — The county offered to defend actions taken in the line of duty and in good faith by officers which become the subject of litigation; the union demanded full liability indemnification. During the course of the hearing the union offered to accept the county's position on liability indemnification. Since this was package arbitration the county objected to any modification of the union's offer.
5. **Ability to amend offer**—The union wanted to amend its offer to accept the county's offer on liability indemnification; the county insisted that the union maintain its former position as submitted in its final offer.

THE COUNTY ARGUED:

The union request is 3.1 percent greater than the county's offer and it is exorbitant.

The deputies receive many other benefits which involve increased costs to the county in the amount of 31.7¢ per hour over and above the county's offer.

The top deputy in the county earns $10 more than the average top deputy rates listed by the union.

THE UNION ARGUED:

The wage increase proposed by the union is necessary to preserve a standard of living in the face of 8.8 percent increases in the Consumer Price Index.

The county offer would reduce real wages of employees 4.8 percent in the first six months of the contract and thereafter 2.8 percent. There has been no corresponding reduction of the services on the part of the deputies. Therefore, they should not receive less money than they received in the prior year due to inflationary spiral.

The county is able to pay the union offer on wages.

THE COUNTY ARGUED:

Settlements nationwide were less than increases in the cost of living.

The county has experienced no difficulty in recruiting employees and, in fact, has recruited employees from the larger metropolitan area which pays higher wages.

Spending limitations have been imposed on local government by state law.

The longevity system proposed by the union results in excessive costs. This is not controverted by the union.

The county is unwilling to defend deputies who act in bad faith.

The county is in doubt as to the legality of the union's proposal on liability indemnification.

Other surrounding counties do not have such liability indemnification language in their contracts.

A two-year contract is sound, equitable and consistent with good labor relations practices. A one-year contract results in constant labor contract negotiations and turmoil.

The county has settled at a two-year basis with many other county unions.

The county is offering a wage reopener, an advantage not offered to other county employees.

Other surrounding counties have two-year contracts.

In response to a union argument that it needs a one-year contract because it dropped issues in the current bargaining which it now deems critical to next year's bargaining, the county argues that these issues were dropped at the bargaining table, not in preparation for interest arbitration.

THE UNION ARGUED:

The cost of reinstating the longevity is minimal, 0.5 percent.

Paying longevity to certain members of the bargaining unit and not to others creates divisiveness in the unit.

The union agrees to accept the county's offer with respect to liability indemnification.

The uncertain rates of inflation necessitate that the contract duration remain at one year for full protection of union members.

Despite other two-year settlements within the county, uniformed personnel should be treated differently because of the hazardous occupation.

There are several important issues which the union dropped which should not be allowed to be carried over a two-year contract without renegotiation.

THE ARBITRATOR RULED:

In reviewing the arguments of the parties the arbitrator took cognizance of increases in the the cost of living which amounted to 8.5 percent in the local area. While the deputies' wages did not compare exceedingly well with those paid in surrounding communities, the arbitrator also recognized that they received substantial fringe benefits which amounted to about 48 percent of the wages. In addition, the arbitrator noted that the county was able to pay either offer.

In considering the wage offers of the parties, the arbitrator favored the union's offer because of the low comparable position of the deputies and substantial increases in the Consumer Price Index. In reviewing the longevity issue the arbitrator recognized the cost of the longevity program to the county, which cost is not balanced by the union's argument of the benefits involved in reinstitution of the program. The arbitrator stated that this issue should be decided by later bargaining if possible.

Considering the duration of the contract, the arbitrator notes that there is a growing pattern of two-year contracts in public employment and, in fact, the municipal unit within the county settled on a two-year package with a reopener in the second year with its police department. The arbitrator does note, however, that a two-year contract without a reopener on wages in times of rapid inflation is unacceptable. Since the arbitrator recognizes the stress of continued one-year contracts which proceed to binding arbitration, he favors the two-year agreement.

Finally, in considering the procedural issue of whether or not the union should be allowed to amend its final offer, the arbitrator found in reviewing the statutes that the final offer of the union cannot be amended and must remain as first presented to the arbitrator. The offer must be considered as a package and it becomes a different offer entirely when any part of it is changed. However, the arbitrator does recognize that there is a need for the liability indemnification proposed by the union since the statute of limitations has been extended governing actions by protective service personnel. He also recognizes the county's concern with legal settlements and legal costs for bad faith actions on the part of officers.

Considering the information at hand, the arbitrator finds that the union's proposal is closer to the actual rise of prices. However, the substantial level of fringe benefits received by the employees tends to reduce the differences between the two offers. The arbitrator favors the county's position on several of the other issues and therefore awards for the employer.

CASE IV:
GENERAL MUNICIPAL EMPLOYEES, Final Last Offer, Issue By Issue

1. WAGES

The County offered a two-year contract with a six percent wage increase across the board in both years and a lower hiring rate for certain classifications effective in the first year of the contract. The Union demand was 8½ percent increase across the board with a minimum 45 cents an hour increase in the first year of the contract and 9½ cents across the board increase in the second year of the contract. In addition, the Union requested a cost of living clause which would generate one cent per hour for each 0.25 change in the Consumer Price Index. However, the Union subsequently dropped its cost of living escalator proposal in a settlement offer.

THE COUNTY ARGUED:

While the cost of living had increased substantially in the past two years, increases in wages which occurred over preceding five years were substantially greater than increases in cost of living during those years. Therefore, a six percent increase is reasonable.

The six percent increase in the second year of the contract would meet the estimated cost of living increases for the second year of the contract presented by the County's expert economic witness.

The cost of living escalator had previously been in the contract between the parties but had been abandoned.

The cost of living escalators were not generally prevalent in comparable public sector contracts.

The cents per hour, across-the-board proposal of the Union would be inequitable in its impact on the widely diversified groups of County employees.

The cents per hour across-the-board wage proposal of the Union would compress the salary schedule.

The cents per hour, across-the-board proposal of the Union would disproportionately increase the pay of employees on the lower pay ranges for which the County is already paying more than other employers in the local labor market.

8. Settlements in smaller communities in the area used for comparisons by the Union do not cover as widely diversified group as are included in the larger County bargaining unit.

Settlements in smaller communities in the area did not result in wage rates which were more favorable than those paid by the County.

Settlements in the private sector could not be used in comparisons since they did not cover comparable wage groups.

No direct relationship over time has been established between the County and other government bodies in the area in terms of the level of settlements.

THE UNION ARGUED:

The Union's wage proposal involves essentially no real wage increase since it would only restore the erosion in real wages which occurred as the result of increases in the cost of living.

Increases in the cost of living had a particularly severe impact on employees on lower pay ranges. Therefore, the Union's flat cents per hour proposal would alleviate that severe impact.

Settlement in smaller communities surrounding and inside the County, private sector employers in the area, school board and the City revealed higher levels of settlement than that offered by the County. Such settlements were similar to the increases requested by the Union.

THE ARBITRATOR FOUND:

In general the single most important factor which must be taken into consideration in the dispute is the persistent and substantial increase of the cost of living. In light of such increases, additional labor costs imposed on the County must be directed toward dealing with the erosion in wages rather than providing additional fringe benefits and expansion of pay for time not worked. In reviewing the diversity of jobs, occupations and skills which are involved in this large bargaining unit, the arbitrator had general difficulty in determining whether the wage rates for various government units should be compared, given the fact that job responsibilities for similar job titles were not compared by either party in the dispute. Further the arbitrator noted that no evidence was presented

as to number of employees in a given classification, the ranges of the rates of pay, the number of employees on each step in the ranges and the length of time that employees were on the job. However, the arbitrator found that the County's rates were clearly adequate to attract and maintain a work force to perform the necessary tasks.

In reviewing the level of settlements for other large public employers in the area, the arbitrator found that while settlements covered widely diversified groups of employees several of the settlements were with other locals of the same Union as was a party to the current dispute. While the wage data submitted by the Union was incomplete, certain close relationships became apparent between specific job rates among the employers. It seemed clear and convincing to the arbitrator that 8 and 9 percent general wage increases were a pattern for major public employers in the area.

However, the arbitrator found no persuasive labor market evidence to justify a cents per hour across-the-board wage increase. The arbitrator felt that employees on the higher end of the pay scale also were affected by increases in the cost of living. In view of the fact that certain low wage employees were recently hired and were not at the top of their pay range rates, the arbitrator considered the step increases built into the salary structure adequate to compensate the employee for increases in the cost of living over and above their percentage wage increase.

In considering the cost of living escalator proposed by the Union, the arbitrator noted that settlements with other large public employees in the area were devoid of cost of living escalators. Further the formula proposed by the Union would have distributed the cost of living monies on a cents per hour rather than a percentage increase basis. Thus, wages would be increased by a greater percentage than the percentage increase in the Consumer Price Index. For all the foregoing reasons the cost of living escalator proposed by the Union cannot be recommended.

Finally, with respect to the new lowe entry wage rate established in the County proposal, the arbitrator found that the County did not support its arguments information from the local labor mar While the starting rates for the County may well be in excess of the local labor market. the County's failure to support such argument does not convince the arbitrator.

THE ARBITRATOR RULED:

1. All pay rates within the pay ranges shall be increased by 8 percent in the first year of the contract and 9 percent in the second year of the contract.

2. No cost of living escalator clause shall be granted.

3. The new, lower entry level wages proposed by the County should not be adopted.

2. AUTO ALLOWANCE

The County offered to increase the mileage payment for employees who use their personal automobiles in the course of County business from 12 cents per mile to 15 cents per mile with no cost of living adjustment. The Union demanded 17 cents per mile with a cost of living adjustment based upon transportation components of the Consumer Pr... Index for the metropolitan area.

THE COUNTY ARGUED:

That the Internal Revenue Service recognizes 15 cents per mile as the legitimate cost.

The Federal government now reimburses its employees at that rate for the use of their autos.

Auto allowance provided by private employers in the area are comparable to the County's offer.

THE UNION ARGUED:

The Union offered general evidence to demonstrate the increase costs of operating a car.

An escalator clause would protect County employees against uncertain fuel costs in the immediate future.

THE ARBITRATOR FOUND:

The Union's proposed escalator clause was too clumsy to administer. The IRS's 15 cent per mile figure for tax deduction purposes was a legitimate citation. The Federal government and the Internal Revenue Service constantly study the cost of auto transportation for tax purposes and their actions based on study were good guides to be followed.

THE ARBITRATOR RULED:

1. The County's proposed 15 cents per mile allowance for the use of a private auto should be adopted.

2. Further, if either the Internal Reve Service for tax purposes or the Federal g ernment for purposes of expense reimbu ment of its own employees adopts a fi in excess of 15 cents per mile. the Co shall adopt such figure within 30 days adoption.

3. OVERTIME PAYMENT

The Union requested double time payment for all work on holidays, Sundays and all hours worked over 12 hours per day and time and a half for all hours worked on Saturday. The County objected to the introduction of said issue into the arbitration stating that the issue was settled during bargair Further the County stated that the 25 premium per hour was paid for all Satur and Sunday work.

THE COUNTY ARGUED:

The issue has been settled in negotiations.

3,100 of the employees in the bargaining unit worked at tasks which must be performed on a continuous, 24 hour basis. Further, approximately 1,000 employees must regularly be scheduled for Saturday and Sunday work.

THE UNION ARGUED:

Private sector manufacturing plants in the area offer such pr miums for Saturday, Sunday and holiday work.

Saturday work in several community organizations is paid premium wage.

THE COUNTY ARGUED:	THE UNION ARGUED:
A 25 cent per hour premium is currently paid for Saturday and Sunday work to compensate employees for the less favorable assignments.	
No other private or public hospitals or similar institutions in the metropolitan area pay time and a half for Saturday work as such or double time for Sunday work as such.	

THE ARBITRATOR FOUND:

Testimony confirmed a well known employment practice in private sector organizations; that premium rates are established for work scheduled to be performed at unfavorable times. Further, such premiums are to discourage employers who have control over work schedules from scheduling work at unfavorable times. The County, however, has established beyond a doubt that a substantial number of employees are necessary for the delivery of critical service to dependent citizens and persons. In the arbitrator's judgment, in the present economic social setting, a premium beyond that offered now would penalize the delivery of non-deferrable services on Saturdays and Sundays. Seniority arrangements and the existing premiums provide some compensation for those who must work on those days. Since the Union did not offer evidence as to the administration of a holiday premium the arbitrator can make no recommendation thereon.

THE ARBITRATOR RULED:

There shall be no change in existing payment arrangements for work performed on Saturdays, Sundays or holidays.

Appendix B:

Summary of Arguments by Issue

STRATEGIES FOR THE PRESENTATION OF THE EMPLOYER'S CASE

Certain basic arguments which should be considered for use on any issue which is the subject of interest arbitration:

A. Comparative data

On both economic and non-economic issues the employer can use comparisons with comparable communities as well as comparisons with the other bargaining units of the same employer. The comparisons should be used to establish the fairness of the employer's offer and the unreasonableness of the union's offer in a given area. If the issue is economic the comparisons should be ranked from highest to lowest and the employer's offer should be filled in at the appropriate level. With respect to non-economic issues, contract language from other communities can be presented to the arbitrator as evidence of a trend or a pattern which corresponds to the employer's offer.

B. The bargaining history

If substantial economic or non-economic items have been granted in bargaining the arbitrator should be made aware of the employer's concessions and the cost or other impact of these items. For instance, if the employer has granted a fair share agreement to the union during bargaining and the union persists in its demand to gain final and binding arbitration of grievances the employer can point out that it is unreasonable for the union to insist upon two large concessions from the employer during one round of negotiations. Or, if the union has consistently bargained in bad faith and has refused to move at the bargaining table that should be pointed out to the arbitrator. Or, if a pattern has emerged in prior bargaining to increase the uniform allowance every other contract year and the union is now demanding it during an off year, such a demand could be deemed unreasonable. Finally, the employer should argue the impasse items not only issue by issue, but also make the arbitrator familiar with the total settlement package as offered by the employer, including those items agreed to by the parties during bargaining.

C. Ability to pay

If the employer is to successfully advance an ability to pay argument it must be carefully constructed and clearly advanced before the arbitrator. The arbitrator must be made aware of budgetary restrictions on the municipality. To this end the following facts may be useful in making an ability to pay argument before the arbitrator:

1) The budget priorities of the community.

2) Any budget limitations in effect by statute.

3) The total budget in the prior year.

4) The amount of the budget which is the result of property tax levy.

5) The equalized tax rate in the community as compared to that in other communities.

6) Any liability which may fall on the community as the result of pending litigation.

7) The median family income in the community as opposed to that in other communities—the relative ability of the community to absorb a new tax increase.

8) If the budget has already been approved and the taxes have been levied, outline the amount available in the budget for increases for the particular bargaining unit in arbitration.

9) Any revenues which have been lost to the community which would have a significant impact on the budget.

10) The level of debt of the community and the total amount of debt service which the community pays.

11) The amount of increases allotted to other employee groups in the community.

12) The level of employee benefits for other employees of the employer and the structure of their collective bargaining agreement. This

argument can be used for both economic and non-economic benefits sought by the union. Arbitrators have generally recognized the necessity for maintaining equitable relationships between employees of the same employer. Absent compelling reasons to the contrary they will be reluctant to make significant changes. In addition, if the employer has successfully resisted non-economic changes in the areas of fair share, residency requirements, management rights, no strike clauses, etc. with other employee groups, a proposal by the union for radical departure in these policies, which other bargaining units have been unable to gain from the employer, will render their proposal unreasonable.

D. Legality of a proposal

Each area of the union's final offer should be carefully examined for its legality. If a proposal, whether economic or non-economic, is found to be illegal, the employer should substantiate his position by putting into evidence copies of applicable case law and statutes.

TYPICAL IMPASSE ARGUMENTS, Pro and Con

In addition to the above standard arguments, there are methods of presenting arguments on the standard issues which go to impasse. The following is not intended to be a comprehensive listing of employer arguments, but a discussion of strategies which could assist the employer in more effectively presenting his case. Also discussed are some of the more effective union counter arguments.

ECONOMIC BENEFITS

A. WAGES AND RETIREMENT

These issues will be considered together since it is assumed that if the employer does not pay the retirement premium that the employees will pay the balance of the premiums out of their paychecks. Therefore this amounts to a wage increase if the employer picks up the premium. Some arguments which may be advanced in favor of the employer's economic offer are as follows:

1) The percentage and dollar amount per month of the settlements which the employer has reached with other municipal bargaining units.

2) The percentage and dollar level of settlements of comparable bargaining units in the area.

3) Comparative position of the employees with other public employees performing the same job duties listed by annual, monthly or hourly rates and ranked from highest to lowest. The employer should note that if the work week for the particular unit is lower than comparative units, reducing the monthly rate to an hourly rate generally improves the comparative position of the employees. The employer should also reduce the wage increases in the area to an average and state whether the offer of the employer meets or exceeds the average.

4) The necessity to maintain parity with other units or to maintain equitable differences between other units of the same employer is often an effective argument. Under this strategy union arguments for cost of living clauses where no other employees of the same employer have the clause may be effectively denied.

5) Another effective argument against automatic cost of living adjustments is the effect on budget stability within the community.

6) The employer should also present the increases given to production workers in the community if such increases were less than the employer's offer.

7) In general, in times of spiraling inflation, wage increases do not meet the full cost of living and municipal employers should not expect more favorable treatment than private sector workers.

8) If the employer is able to pay the union's demand, by raising taxes, it can be argued that it is not in the interest and welfare of the public to have a tax increase at the time or to reduce other services to finance demands.

9) Represent by line graphs the increases given to bargaining unit members on the maximum pay rates as well as an actual unit member beginning employment for the last five to seven years.

10) List the reductions in the work week for that same period of time.

11) If inequities exist in the relationship between members of the bargaining unit and their job responsibilities, take some steps to rectify and show that improvement to the arbitrator.

12) The financial inability of the employer to pay the union demands.

Common Union Arguments:

1) Cost of living increases.

2) The ability to pay in the community does not differ sufficiently from other comparable communities.

3) In police and fire units the hazardous duty necessitates better pay.

4) Increased productivity by presentation of increased number of fire calls or increasing crime rate statistics.

5) Retirement fund payments should not be increased in lieu of wage increases.

6) Bargaining unit members must be able to maintain their standard of living.

7) The length of the proceedings has delayed the increases due to bargaining unit members. Since these dollars were not available to employees at a lower rate of inflation and increased buying power, the increase now should be higher.

8) Catch-up increases in low wage situations.

9) Comparisons between the second year of two-year contracts and wages currently demanded are not valid since the settlements were made during other economic circumstances.

B. PREMIUM PAY, SHIFT DIFFERENTIAL, PAY FOR SERVING IN A HIGHER RANK, ETC.

1) Establish for the arbitrator the percentage of fringe benefits to wages.

2) Explain that premium pay results in across-the-board increases without negotiation as the wages go up if such premium pay is based on wages.

Common Union Arguments:

1) That such premium pay is used to bolster low wages.

2) Working at odd times such as at night, holidays, weekends, etc., should be compensated through extra dollars.

C. INSURANCE PREMIUMS:

Frequently the employer and the employee organization reach impasse as to the amount of the employer's contribution to insurance premiums. Sometimes there is a dispute whether the payment should be reflected as a percent or as a dollar amount in the contract. Arguments against putting the percentage amount in the contract rather than a flat dollar figure are:

1) The percent results in the bargaining unit receiving higher benefits as premiums increase without negotiations.

2) The employer must have a method for accurate budgeting which is not available with a percent in the contract.

Common Union Arguments:

1) The city negotiates with the insurance carriers and does all the bidding, therefore the city controls the cost.

2) Excessive increases in insurance premiums are oppressive and reduce the standard of living of union members.

D. REDUCTION IN WORK WEEK

1) A manpower shortage will be caused by reducing the work week.

2) The employer is financially unable to hire more employees to replace the productive time lost through the reduction in work week.

3) The reduction in services to the public which does not serve the best interests and welfare of the public.

4) The unknown impact of the schedule change, both in terms of manning and economic impact.

Common Union Arguments:

1) That in the police and fire services especially the duties are hazardous and they need the time off to maintain efficiency.

E. HOLIDAYS AND VACATIONS

1) The city can argue the lost productivity due to increases in paid time off.

2) The city should cost the loss at the straight time pay for each officer and represent that as a percentage in costing the union's total offer.

3) The city should estimate the amount of overtime which will be necessary to replace people on holidays and vacations.

4) The city can develop a ratio of paid days off to the days actually worked for the unit at impasse as well as other city employees to see if such a ratio shows excessive amounts of "off time" in a given department.

Common Union Arguments:

1) Increased time off is the compensation for the hazards and difficulties in public service.

2) Since paid time off usually increases only a small amount at a time the overtime requirements are not excessive.

F. EDUCATIONAL INCENTIVE PROGRAMS

1) They are costly.

2) Increased services to the citizens as a result of a higher level of education of unit members has not been demonstrated.

Common Union Arguments:

1) The interest and welfare of the public is better served by well educated public employees.

2) In the police and fire service it can be argued that there are professional criminals, increasing crime rates and modern enforcement techniques developed, and, therefore, members must stay abreast of changes in the field.

3) The cost of such a program should not be applied against wage increases where the effect is to hold down the level of wages since it is a separate benefit and serves the employer, the employee and the community as well.

NON-ECONOMIC ISSUES

A. DURATION OF THE AGREEMENT:

This is perhaps the most common non-economic item to go to arbitration with the employer preferring a two-year agreement and the union requesting a one-year agreement. If the employer expects to win a two-year agreement all economic benefit increases should be retroactive to the beginning of the contract. In addition, if the employer expects to win a two-year agreement during periods of rapidly rising inflation, it is more advisable to offer a wage reopener in the second year. Other employer arguments for a two-year agreement are:

1) Preserving labor peace since continuous one-year agreements result in constant contract negotiations and periods of upheaval. Two-year agreements allow for stability in the contract language and more uniform enforcement of the contract.

2) Multi-year agreements are becoming more customary in public employment.

3) If the employer has had two-year agreements with the employees in prior years a pattern has been established.

4) If other employee groups of the employer have settled on two-year agreements, a two-year agreement will be necessary to maintain equitable relationships between employee groups.

5) Two-year agreements assist the employer on accurately budgeting for wage and benefit increases.

The most effective union counter argument is that rapidly rising costs of living necessitate a one-year agreement for full protection of the members of the bargaining unit.

B. GRIEVANCE PROCEDURE:

Generally it is in the employer's best interest to consent to some kind of grievance or complaint procedure in bargaining since compelling reasons for a grievance procedure fall on the union's side. However, if no other employee groups of the employer or comparable employee groups have grievance procedures, possibly the employer can sustain an argument against inclusion of a grievance procedure in the contract. The compelling reasons *for* a grievance procedure are as follows:

1) Generally state statutes recognize the need for municipal labor peace.

2) There is compelling public policy for a protest and appeal procedure.

3) The union is legally bound to protect its membership.

4) Courts of law recognize that grievance arbitration operates in that area of rights where a decision by a third party specialist in labor relations is preferable to other avenues of relief by law.

C. PROMOTIONS AND SENIORITY LANGUAGE:

Generally when these issues reach impasse the union is attempting to assure promotion by seniority. In refuting this demand the employer should establish factually:

1) The objective criteria which will be adhered to by management in making promotions.

2) The necessity for choosing the best person for promotions.

3) Any studies supporting the merit concept of promotion and its effectiveness.

4) Cite actual examples where promotion by seniority has not worked to the best interest of the community.

5) The employer may wish to offer seniority as the final criteria if all other qualifications are equal.

6) Offer into evidence job descriptions for the command positions so as to illustrate the responsibility required of these positions.

7) Some jobs require employees especially qualified to handle effective human relations such as narcotics agents, juvenile officers or officers assigned to family disputes and, therefore, the employer must have the flexibility to assign the most qualified employees.

D. SICK LEAVE ABUSE LANGUAGE:

1) Support an employer demand for such language with listings of specific instances where sick leave was utilized to extend *bona fide* days of absence. Statistics should be presented by number of employees rather than listing employees by name.

2) Show that the employer's proposal is less restrictive than that utilized by private employers in the area. Usually private sector sick pay plans are very restrictive and in some instances there is no pay for time off due to illness.

3) Stress that there is no economic impact to the employer's offer.

4) If the employer has similar language in other contracts, stress that the employer is merely treating all employees alike.

5) Perhaps the public employer would offer to pay for the doctor's certificate.

Common Union Arguments Against This Are:

1) Such language implies distrust of union members.

2) No other public employees are subject to such language.

3) The less restrictive contract language would be less costly to the city.

4) Doctor's certificates are unavailable on short notice and are costly.

5) Such restrictions dilute previously bargained language.

6) There has been no abuse or excessive use of sick leave.

FOOTNOTES

[1] "Mayor Stokes Reflects on City Labor Problems", LMRS NEWSLETTER, Vol. 2, No. 10, October 1971, at 3. Single copy—50 cents; annual subscription—$15. LMRS, 1620 Eye St., N.W., Suite 616, Washington, D. C. 20006.

[2] Binding arbitration is required by state statute for certain public employes in Alaska, Connecticut, Iowa, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, New York, Oregon, Pennsylvania, Rhode Island, South Dakota, Texas, Washington, Wisconsin and Wyoming. Last best offer arbitration, issue by issue, is required in Connecticut, Iowa and Michigan. Last best offer arbitration by package is required in Massachusetts, Wisconsin and the city of Eugene, Oregon. In addition, several state statutes specifically permit the parties to engage in voluntary arbitration. Complete texts of public employe bargaining statutes may be found in the Government Employee Relations Report, published by the Bureau of National Affairs, 1231 25th St., N.W., Washington, D. C. 20037, beginning at 51:1011.

[3] See Industrial Relations Research Association Series, Proceedings of the Twenty-Seventh Annual Winter Meeting, James L. Stern and Barbara D. Dennis, ed., at 315. Single copy—$8.50, IRRA, 7226 Social Science Building, University of Wisconsin, Madison, Wisconsin 53706.

[4] American Arbitration Association publishes a monthly summary of arbitration awards and fact-finding recommendations, "Labor Arbitration in Government". $60 a year. The address is 140 West 51st St., New York, N.Y. 10020.

R. C. Simpson and Staff of Ridgewood, New Jersey has a management service entitled "Arbitrators' Qualifications Report". This service is a looseleaf work which summarizes questionnaires filled out by management personnel who have analyzed and commented on the arbitrators with whom they have had experience. Finally, certain national publications of labor relations contain summaries of arbitrators' cases which are newsworthy. Examples are the LMRS MONTHLY NEWSLETTER, Government Employee Relations Report, Prentice-Hall Personnel Service and Commerce Clearing House.

[5] Wisconsin Statutes § 111.77(6).

[6] In *Milwaukee Deputy Sheriffs Association vs. Milwaukee County*, 221 NW 2d 673, 64 Wis 2d 651, the court vacated that part of an arbitrator's award pertaining to the second year of the contract since the county had never proposed a two-year contract during negotiations. In its decision the court stated "the public purpose of compulsory arbitration can only be attained after a narrowing of differences of opinion in respect to the matters submitted to arbitration. . . . The final offer, although it can be amended as submitted to final arbitration, must, if amended, be germane to the matters subject to negotiations in the prior bargaining sessions. We conclude that the interjection of a new contract time period in an amended final offer after the petition is filed presents a question not germane to the previous negotiations and is beyond the statutory jurisdiction of the arbitrators."

[7] For further discussion on the ratio between awards and negotiated settlements after the arbitration petition, see: Stern, James L., *Final-Offer Arbitration* (Lexington, Massachusetts, D.C. Health & Company, 1975), pp. 13 and 54.

[8] *A. M. Castle & Co.*, 41 LA 391, 397.

[9] Acceptable methods for determining the fiscal impact of collective bargaining municipal agreements can be found in Public Employment Labor Relations, Chapter 11 (Moberly and Mulcahy) and "Municipal Negotiations: From Differences to Agreement", LMRS, Chapter 5. Costing the Economic Package. Government officials—$2, educational institutions—$3, others—$4. LMRS, 1620 Eye St., N.W., Suite 616, Washington, D.C. 20006.

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