Collective negotiations in the field of public education in the State of Montana: Proposed legislation

Randolph Earnest Parker

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COLLECTIVE NEGOTIATIONS IN THE FIELD OF PUBLIC EDUCATION
IN THE STATE OF MONTANA: PROPOSED LEGISLATION

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B.S., Cornell University, 1968

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CHAPTER I

INTRODUCTION

The enactment of Montana House Bill 455, the Professional Negotiations Act for Teachers, on July 1, 1971 provided the structure for collective action by Montana's Public School Teachers. This statute formalized the employment relationship between teachers and their school districts, and as such, dealt with major questions of law, philosophy, and procedure concerning the right of public school teachers to bargain collectively with their employer. The intention of this study is to examine the sections of this act that deal with unit determination, scope of bargaining, and impasse procedures, in an attempt to determine their effect on collective negotiations in the field of public education. While these specific sections can be examined objectively, the rationale that produced them can not be accurately determined. Three divergent professional organizations, the Montana Education Association, the Montana School Board Association, and the Montana Federation of Teachers, attempted to provide the contemplative framework for Montana's collective negotiation statute. The resulting legislation was a compromise derived from the drafts submitted by these competing professional organizations. The realities of this dynamic political situation, in which competing philosophies were compromised, is not within the scope of this study.
A comparative analysis is offered between House Bill 455 and a proposed collective negotiation statute, with an examination of the assumptions upon which the proposed legislation is predicated. National and state historical background information is furnished in an attempt to expose the maze of variform legislation that exists in the field of collective negotiations in public education. The uniqueness of public education is probed in order to establish a set of assumptions concerning collective negotiations that can be utilized to determine the relationship between private employee, public employee and public education legislation. These data supply a frame of reference for examination of House Bill 455 and the proposed legislation. A copy of each statute is provided (Appendix I and Appendix II).
CHAPTER II

HISTORICAL BACKGROUND

National Background

National Teacher Movement

During the 1970-71 school year the National Education Association estimated that 132 teachers strikes occurred in 17 states.¹ These work stoppages are an indication of the growing dissatisfaction teachers feel not only with their working conditions and salaries, but with their role in the educational process.² Virgil Blanke identified six social forces that have contributed to the drive for collective teacher action: (1) the elimination of paternalistic administrations, (2) the emasculation of the teacher role within large and complex school systems, (3) increased teacher anxiety and insecurity due to organizational complexity, (4) the increasingly difficult task of gaining material resources from public taxes, (5) the increase in the number of teachers who are vitally concerned about controlling their vocational careers, and (6) the membership fight between the National


Education Association and the American Federation of Teachers. 3
Stimulated by these social forces and spearheaded by resolute
organizations public school teachers are demanding that collective
negotiations and bilateral decision-making replace the traditional
system of brief pro forma hearings and unilateral board decisions. 4
A teacher movement is rapidly becoming a factor in many school
systems, particularly in large urban areas, and the teachers, or at
least their leaders, are talking about full partnership in the edu-
cational enterprise. 5

The dramatic 1960-62 strikes by the United Federation of
Teachers, emphasized the need for drastic changes in public education
employment relationships. 6 The collective bargaining elections and
subsequent precedent-setting agreements sparked a demand for collective
action by public school teachers across the country. 7 The legal
endorsement for this collective action was provided by the Federal
Government upon the issuance of Executive Order 10988, which grants
to employees of the federal government some of the same rights to

3 Virgil E. Blanke, "Teachers in Search of Power," The Educational

4 Robert E. Doherty, Joan R. Egner and William T. Lowe, The
Changing Employment Relationship in Public Schools: Implications for

5 Alan Rosenthal, "Administrator-Teacher Relations: Harmony or

6 Charles Cogen, "Changing Patterns of Employment Relations," in
The Changing Employment Relationship in Public Schools: Implications
for Quality Education, comp. by Robert E. Doherty, Joan R. Egner and
negotiate with employers that are used by employees in the private sector. 8 "There is no question," according to Cornell University Professor Robert Doherty,

... that this legal endorsement of bilateral determination of employment conditions has encouraged collective activity, and when we couple this development with effects of the increasing percentage of men teachers, the growing rivalry between the two major teacher organizations, and the impact of mounting frustrations in public school teaching, one can only predict that thousands, perhaps hundreds of thousands, more teachers will shortly be covered by formal and elaborate collective agreements. 9

Doctor H. T. James described the changes taking place in teacher-school board relations to the 1965 White House Conference on Education as follows:

The teaching profession is now engaged in a nationwide struggle to promote its interests directly with boards of education, thus removing the need for reliance or intervention by any level of the administrative line. This struggle has been viewed with some alarm by those who would label it a dangerous intrusion of labor-management concepts into a professional realm. My own conclusion is that it is no such thing, but is rather a struggle by professionals to achieve the right, rather generally accepted in western civilization, to be governed by written rules developed with involvement and consent and not by the caprices of men. American schools are still among the most authoritarian institutions in our society, and the revolution now in progress may be needed as badly as was the elimination of partisan politics from the teacher recruitment process after the turn of the century. The substitution of written law and due process for the ubiquitous influence peddler has always been viewed as progress after its accomplishment... The legitimate function of the school administration should be easier to perform after the new agreements are drawn, and the great majority of able and qualified professional school administrators will welcome the change. 10


NEA-AFT Rivalry

The National Education Association and the American Federation of Teachers (AFL-CIO) are both attempting with differing and competing approaches, to provide the organizational structure for collective action by public school teachers. They are endeavoring to secure the passage of state laws guaranteeing to teacher groups the right to recognition and bargaining. The joint determination by school boards, school administrations, and teacher organizations of salaries, working conditions, and in some instances curriculum and methodology appears to be part of the apparent goal of both organizations.

The decisive 1961 collective bargaining victory of the American Federation of Teachers in New York City had the effect of spurring the conflict between the NEA and the AFT, and their apparently disparate approaches to collective action by public school teachers. The American Federation of Teachers is an employee-oriented organization committed to the principles and goals of trade unionism, and affiliated with organized labor. The tactics of collective bargaining, but also the use of a militant stance, exclusion of administrators from teacher organizations, picketing, rallies, and the strike as a last resort in very serious situations. The National Education Association is a non-labor affiliated, pro-

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(Citations and references are not included in the natural text representation.)
professionally oriented organization which includes both teachers and administrators and utilizes the concept of professional negotiations. These two competing organizations are more pragmatic than theoretical, and have employed a barrage of semantic differentiation, while attempting to organize the same group of workers, in order to accomplish approximately the same objectives. There is no basic perceivable distinction between the American Federation of Teachers' concept of collective bargaining and the National Education Association's concept of professional negotiations as employed by their local affiliates. While the national organizations have established policies on such issues as the inclusion or exclusion of supervisory personnel, the local organizations include or exclude various categories of supervisory personnel based on political practicality rather than policy. In many cases, particularly in the militant locals, the only means of distinguishing an American Federation of Teachers' local from a National Education Association's local rest with the local's choice of vocabulary and national affiliation.

Collective Bargaining - A Form of Collective Action

Classically the authority (as distinct from the skill and inspiration) to create and implement educational policy has been the province of the school board and administrators, on the one hand, and taxpayers, on the other. In recent years the aspirations of teach-

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13 NEA, Department of Classroom Teachers, Classroom Teachers Speak on Professional Negotiation (Washington, D.C., NEA, 1963), pp. 3-5.

ers, supported in many places by public opinion and recognized in many by public authority, whether it be the President of the United States, state legislatures, or municipal executives, have been altering the traditional power structure to diffuse the decision-making responsibilities between school boards and teachers. Growing numbers of teachers are demanding a more regular, formalized, and systematic procedure for resolving differences between themselves as a group and school boards. Some form of collective negotiations between representatives of the teacher group and the school board are being implemented in many school systems as a means of formally admitting teachers to the educational decision-making process. Collective negotiation establishes a legally sanctioned confrontation between the elected representatives of the teachers and the representatives of the school board in order to determine jointly a set of terms and conditions under which the members of the teacher group will consent to work. This procedure provides a democratic process for the resolution of existing conflicts; it does not create artificial conflicts. Relations between school boards and teachers have always evidenced strains arising from the clash between the professional norm of individual autonomy for the classroom teacher and the bureaucratic requirements of hierarchal authority in a school system.

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15 Ibid.
16 Ibid.
This conflict of interest between teachers and school boards has intensified as teachers have become more professional, and more interested in improving their school systems.\textsuperscript{19} "Professionalization," according to Doctor R. G. Corwin, "is a militant process which contributes to rates of organizational conflict."\textsuperscript{20} Collective negotiations are providing a channel for this organizational conflict, while serving to revitalize the role of the public school teacher. This new procedure is raising the teachers' professional self-image and helping transform teachers from docile time-serving bureaucrats into virile professionals, intent upon preserving their due measure of autonomy.\textsuperscript{21}

This new policy making process in the public schools is not an ephemeral movement. Like all human institutions, collective negotiation, whether in public education or elsewhere, is a tool that may be productively or destructively used.\textsuperscript{22} The interest of teachers, which certainly include the right to influence school policy and the conditions of their employment, must be balanced with the interest of a society which is relying today more than ever on the public school, to


help bring about broad social improvements. Teacher benefits may be emphasized at the expense of student welfare, bargaining issues may become politically distorted, and the administration may be eclipsed. These possible adverse effects must be considered with the potential for improved teacher morale, the introduction of creative educational ideas, the consideration of the needs of the district as a whole, and the presentation of a unified stance to the taxpayers. The results of collective negotiations within public education will be constructive, if we accept the assumption that those responsible will discharge their obligation to the children of America. Professor Robert Doherty accepts this assumption as one of the main tenets upon which our public school system is predicated, and conclusions that, "...American experience has proved that this assumption is valid and that collective negotiation in the schools, responsibly exercised, will be a force for the improvement of the quality of education."\(^2\)

One is hesitant to draw too close a parallel between problems arising out of teacher-school board relations and corresponding situations in private sector collective bargaining. Certainly the differences between public and private employment are significant and far reaching. Collective negotiations may not be the ideal method for resolving labor disputes in public education. However, serious concerns

\(^{23}\) Ibid.
\(^{24}\) Ibid., pp. 32-33.
\(^{25}\) Ibid., p. 34.
are raised when this alternative is denied to public school teachers, and public education is left to the vagaries of crisis bargaining. If employees, whether public or private, engage in collective action to increase their bargaining power. They want a variety of things not readily available through individual bargaining. To prohibit collective action does not erase the "wants", it simply diverts or represses them. If we accept the previously stated fact that teacher-school board conflict is unavoidable, then a means of accommodating these competing interests must be established. It is the success of collective bargaining as a process to channel conflict in the private sector that has led to the demands for its extension to the public sector and the field of public education.

Divergent Forms of State Legislation

Since public education is a function of the state, the teacher movement has concentrated on the passage of state collective negotiation legislation to replace what has been essentially ad hoc tinkering. Unfortunately, this effort has been retarded by a tendency among state legislatures to regard collective negotiations by public servants, including teachers, as a question of law rather than as a matter of public policy. An elaborate legal argument, the doctrine

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27 Ibid., p. 131.
30 Ibid.
of political sovereignty, has been constructed on the tenet that law
makers can not share their publicly delegated rule-making responsibil-
ities with a group of employees.\textsuperscript{31} This circuitous legal reasoning
prevents an analysis of the issues from the vantage point of public
policy, and provides the rationale for the continuation of a unilat-
eral power structure in public education. However, state legislatures
have begun to consider and pass legislation designed to provide for
collective negotiations between teachers and school boards in the
various states.

Twenty-eight states have statutes providing for some form of
collective negotiation in public education,\textsuperscript{32} while in others, school
boards are forbidden, by either court and/or attorney general ruling,
statute or constitutional amendment, to allow teachers to enter for-
mally into the educational decision-making process. The states have
granted or denied the rights necessary to collective teacher action in
varying degrees. Some states have enacted enabling statutes which
merely permit negotiations if both parties request them, while others
compel school boards to bargain, if a majority of the teachers in the
school system indicate a desire to negotiate. Before teachers can
engage in collective action they must secure the right to organize
and the right to obtain recognition, and subsequently the opportunity
to bargain over at least some substantive matters.\textsuperscript{33} A maze of vari-
form alternatives have emerged from the state legislatures in their

\textsuperscript{32}" Strikes Decrease," p. 16.
\textsuperscript{33}Hilderbrand, "Collective Bargaining," p. 5.
Wisconsin became an early leader and enacted a collective negotiation statute grouping public school teachers with other municipal employees, except law enforcement employees. Numerous state legislatures followed this model of grouping teachers with other public employees, while adding various qualifications to the statutes' jurisdiction. The New York statute covers all public employees except organized militia, the Michigan statute excludes civil service employees of the state, and the New Jersey statute, while not excluding any category of public employees, excludes supervisory personnel in all categories. The Wisconsin legislation confers the jurisdiction over these employees upon the state labor agencies operating in the private sector. While Michigan's legislature adopted this alternative, several states, including New York, created separate labor agencies to deal with the problems of public employee relations. The Connecticut legislature created a separate statute covering collective negotiations in public education, and provided educational channels, rather than labor channels, for the resolution of teacher-school board disputes. Many of the state legislatures that have followed this alternative have enacted legislation covering public employees other than teachers which confers jurisdiction on the state labor agencies or on a separate public employee relations board. Minnesota and several other states have enacted separate teacher legislation, but provide labor or legal oriented procedures for impasse resolution.\footnote{Jean T. McKelvey, "The Role of State Agencies in Public Employee Relations," \textit{ilr}, January, 1967, pp. 187-188.}
These divergent state laws have created dissimilar procedures for unit determination, and impasse resolution. For example, some statutes, like the Hawaii statute, permit teacher strikes, others, like the New York statute, prohibit strikes, and some, like the Minnesota statute, do not mention the issue. The diverse provisions of these various statutes can be grouped in four basic categories: (1) representation, (2) negotiation, (3) impasse, and (4) administrative provisions. The representation provisions determine who shall be covered by the statute and the type of coverage. The negotiation provisions determine the scope of the issues that may be raised at the bargaining table, as well as the mechanics of the negotiating procedure. The impasse provisions determine the method of resolving disputes which arise during contract negotiations, and the procedure for resolving grievances. The administrative provisions determine the organizational structure that is necessary to administer the law. Each category provides the legislators with a myriad of alternatives that can be combined in limitless variety.

Montana Background

Collective Teacher Action

The editorial comment in the November 1967 issue of Montana Education advised school boards and administrators that teacher unrest


would exist in Montana "until teachers are provided salaries fully commensurate with the social significance of the teaching profession, as well as a greater role in policy development and other forms of school decision-making about curriculum, working conditions and other personnel policies." The Montana Education Association not only identified the causes of teacher unrest but proposed voluntary written agreements, which provide for communication with teachers, boards, and administration on matters of mutual concern, entered into and carried out in good faith, as the method by which this turmoil and unrest could be avoided and minimized in Montana.

The 8,000 member Montana Education Association and the 700 member Montana Federation of Teachers attempted to implement bilateral decision-making agreements in the school systems across the state. The Montana Federation of Teachers labeled this process "collective bargaining," while the Montana Education Association preferred the term "professional negotiation." The Montana Education Association's definition of professional negotiation as a process, written and agreed to by the school board and the professional association that sets forth the intent of both parties to discuss, through their designated representatives, questions relating to conditions of work and such other

38 "Teacher Unrest," p. 4.

39 Ibid.


41 "Federation of Teachers Lists Convention Agenda," Great Falls Tribune, October 19, 1970, p. 3.
matters as may be mutually agreed to, could be used by the Montana Federation of Teachers as a definition of collective bargaining by merely substituting the word union for "professional association" and bargain for "discuss".

The Montana School Board Association at least partially endorsed this concept of bilateral decision-making by recommending to its membership "that they adopt the MEA's proposed professional policies agreement in such degree as is mutually satisfactory to local boards and MEA units." Montana School Board Association and the Montana Education Association adopted this posture of voluntary cooperation in the absence of any state statute requiring or providing for local teacher-school board agreements, and neither party formally pursued the development of a collective negotiations statute. This interchange of ideas excluded the Montana Federation of Teachers.

Owen Nelson, teacher special services director for the Montana Education Association, established as an immediate goal for 1969 a good written professional agreement in each Montana school system. While the majority of Montana's public school teachers were being heard by school boards on matters of mutual concern, the process was one of consultation not bargaining. The Montana Education Association mounted a drive to alter the procedure by reducing to writing matters of mutual

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concern, thus formalizing and institutionalizing the negotiation process. By March 1969, 35 per cent of Montana's public school teachers were covered by written professional negotiation agreements which conformed closely to the sample "Professional Policies Agreement" that was distributed by the Montana Education Association and recommended by the Montana School Board Association.\textsuperscript{45} By April 1970, 88 local Montana Education Association affiliates had requested professional negotiation agreements with their school boards. Fifty succeeded, 38 were turned down, and another 37 locals did not request written bargaining agreements.\textsuperscript{46} This drive for written professional agreements by the Montana Education Association sparked a membership drive by the Montana Federation of Teachers, and awoke the Montana School Board Association to the fact that professional negotiations were in the field of public education and the state of Montana to stay.

Montana experienced its first teacher strike in April 1970. This strike by the Butte local of the Montana Federation of Teachers effected 450 teachers and nearly 10,000 students,\textsuperscript{47} and made the public aware of the changes occurring in teacher-school board relations around the state. During this period each of these three competing professional organizations began to draft legislation to protect their

\textsuperscript{45}"35 Per Cent of Montana's Teachers Have PN," \textit{Montana Education}, (News edition), March, 1969, p. 3.

\textsuperscript{46}"Educators Seek Law to Bargain," \textit{Great Falls Tribune}, April, 1970, p. 1.

\textsuperscript{47}"Teachers' strike is Settled in Butte," \textit{Great Falls Tribune}, April 14, 1970, p. 1.
vested interests and support their particular variety of collective negotiations.

Proposed Legislation

Collective negotiations statutes, dealing directly or indirectly with public school teachers, have been introduced during Montana legislative sessions in widely variant forms. The 1969 Montana legislature considered two divergent drafts of collective negotiation legislation which grouped teachers with other public employees. Senate Bill 256 would have granted public employers and public employees the right to bargain collectively with jurisdiction being conferred on the State Department of Labor and Industry. Representation elections, exclusive representation, and unfair labor practices were some of the provisions included in the statute. During the same legislative session House Bill 512 was introduced to exclude collective bargaining from the public sector. These two opposing statutes were designed to provide legal endorsement or condemnation for the increasing collective action by Montana teachers. Neither statute became law, and the legal status of collective negotiations in public education remained unanswered. No state law prohibited teacher-school board negotiations, or permitted such negotiations. They existed only with the consent of the local school board.

During the years between the 1969 and the 1971 legislative sessions the three professional organizations involved in teacher-school board negotiations (MEA, MSBA, and MFT) began to draft statutes to provide the guidelines for collective teacher action in Montana. The Montana Education Association drafted a bill that would give all state
and local public employees collective bargaining rights with limited power to strike. A Public Employees Relations Board would have been created by the legislation, and would have had the power to halt or set conditions on a strike if it endangered public health or safety. Public employees would have been permitted to strike, but only after a long process involving mediation, fact-finding, a 60-day waiting period and 10 days notice of intent to strike. The proposed statute would have made it mandatory for school boards and other public employers to bargain with employees on wages, working conditions and other matters.

The Montana School Board Association formed a collective bargaining law for teachers thus separating public education from other forms of public employment. The draft included sections excluding administrators from negotiations, setting limits on what is negotiable, defining unfair labor practices, and creating a "master teacher plan". Teachers would have been prevented from striking, school boards would have been compelled to meet with teacher groups, and tenure laws would have been amended under this proposed statute. The public instruction superintendent would be used for hearings and mediation procedures under the proposed act.48

The Montana Federation of Teachers developed a statute recognizing the right of professional educators to bargain collectively and conferring jurisdiction on the State Department of Labor and Industry. The statute included provisions for exclusive representation, representation elections, mediation and fact-finding, and unfair labor practices. No reference was made in the statute concerning the issue

of teacher strikes. 49

Four statutes concerning collective negotiations in public education were introduced during the 1971 Montana legislative session. Organized labor submitted a collective bargaining statute concerning public employees, including public school teachers, administered by the State Department of Labor and Industry. The Montana Federation of Teachers, while supporting in principle the public employee statute submitted by organized labor, for reasons of political practicality introduced the statute previously described covering only public school teachers. The Montana Education Association adopted this same alternative of a limited statute covering only public school teachers in an effort to develop a joint statute with the Montana School Board Association. These two organizations attempted through a joint committee to develop a single statute for submission to the state legislature. However, unresolved differences concerning the right to strike and the scope of negotiations caused each organization to submit a separate draft. 50

The statute submitted by organized labor, House Bill 165, was quickly diluted and eventually defeated. House Bill 264 and House Bill 123, the Montana Federation of Teachers and the Montana Education Association statutes, were killed without discussion by the House, and only the Montana School Board Association statute, House Bill 455, was


50 "School Board Advisor Shies Away From 'Pro-Teacher' Bargaining," Great Falls Tribune, October 9, 1970, p. 6.
debated. After a process of several amendments House Bill 455 became Montana law and established the framework for teacher action. This statute is not a perfect statute, but is a start in the right direction by providing the framework within which to develop negotiation procedures between teachers and school boards throughout the state.


CHAPTER III

UNIQUENESS OF PUBLIC EDUCATION

Public Education Employment Relationships

Public education is a unique enterprise in that the normal employee-employer relationships can be transcended by a mutual relationship in which teachers, administrators, and school boards strive to provide the best possible education for the children of their district. This mutual relationship would not eliminate the traditional employee-employer relationships with their inevitable problems and essential differences of interest, but would provide the parties involved with a common perspective for analyzing issues of mutual concern. The teaching profession is presently engaged in a struggle to determine which one of these two relationships will provide the direction for collective negotiations in public education.

Our culture has developed an array of myths and pieces of folklore in an attempt to deny the applicability of the employee-employer relationship to white-collar employment situations, but the fact remains that essential differences of interest do exist between those who are employed and those who employ, regardless of

the character of the work. The field of public education is no exception. School boards and administrators want greater flexibility in operating the public schools, while teachers want more professional and individual autonomy. Once this conflict of interest is recognized, the fact that neither side can be trusted to adequately protect the interest of the other must be accepted. The only practical method to resolve these differences is by an accommodation that is mutually acceptable to both parties, and one that permits either party to reject the other. Collective bargaining can provide public education with a system of due process for the resolution of these employee-employer differences.

While it is important to realize that these labor relations problems do exist in public education, the potential contained in professional educational relationships must be given maximum consideration. If all educators, whether as teacher, administrator, or trustee, place the welfare of the children in their district as their first responsibility, then collective negotiations can provide an orderly means of bilateral decision-making where teachers and school boards can pool their expertise for the advancement of education.

54 Ibid., p. 2.
55 Ibid., p. 3.
57 Barbash, "Union Philosophy," p. 3.
58 Ibid., p. 4.
Quality Education and Collective Teacher Action

Collective teacher action and quality education can not be considered as completely independent phenomena. Teachers engage in collective action in an effort to alter their role in the educational decision-making process. The changes that are produced in teacher employment relations by this collective action will have an impact on the manner in which schools are operated and the kind of education students receive. The quality of education can be influenced by changes in three broad areas: (1) the content of the curriculum, (2) the mechanical structure employed to transmit the curriculum, and (3) the actual teaching procedures. As teacher organizations attempt to influence factors in these three categories, they will effect the quality of education in public schools.

The Professional Negotiations Act for Teachers "...recognizes teaching as a profession which requires special educational qualifications and that to achieve high quality education it is indispensable that good relations exist between teaching personnel and their governing boards" (Appendix II). The traditional power structure in public education has alienated the faculties from administrators and is a real threat to effective education. Collective negotiations have the potential to reverse this trend and alter the power structure for the improvement of quality education. The understanding and sense of joint responsibility engendered by participation could help to improve the execution of educational policy, and the additional

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60 Doherty, Egner and Lowe, Changing Employment, p. ii.

skill and knowledge that is applied by formally incorporating teachers in the decision-making process would hopefully produce more effective decisions. Where teachers have worked on a problem, shared in developing alternatives, and participated in decision-making, they will undoubtedly be more willing to implement policy and adapt to promulgated change. On the other hand, the primary function of any employee organization is to improve the well-being of its membership and to enhance their established rights. Historically in the private sectors this involved a minimization of the impact of change upon incumbents. If teacher organizations assume this function, the collective agreements negotiated could create rigid situations at a time when the public interest clearly demands adaptability from the public schools. Collective negotiations can, therefore, be a means whereby the creative spirit of the teaching staff can be harnessed for the advancement of education, or it can be a process for reducing administrative flexibility in responding to changing educational conditions.

The effect that collective negotiations will have on the quality of public education will to a large extent be determined by the teacher's self-image. If teachers perceive their role in the educational system as predominately an employee-employer relationship, then their organizations will pursue the private sector approach to collective

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63 Stuart L. Openlander, "Negotiation - Which Road to Follow?," The School Administrator, February, 1969, p. 2.
bargaining. Their collective power will be used to demand action or inaction along a particular line, with primary emphasis being given to the concerns of the membership. However, if teachers perceive their role as that of a professional, then collective negotiations can become an avenue for the expression of their competence on educational issues. While their collective power could be used to demand action or inaction along a particular line, the primary emphasis becomes the welfare of the students, not the advancement of the memberships' special interests. The acceptance of this professional responsibility does not mean that teachers would subsidize education with inadequate salaries, or that school boards would capitulate to every teacher demand, rather it means all educators, teachers, administrators, and trustees would share a mutual relationship in which the welfare of the student is paramount. This professional responsibility does not preclude conflicts from accompanying negotiations and might even, as was pointed out above, cause increased conflict as teachers attempt to broaden their influence in the school system. Conflicts, however, are not always divisive and are often responsible for progress.

Scope of Collective Negotiations

In probing collective teacher action, the issue is not the uniqueness of public education per se, but rather the uniqueness of the application of collective bargaining in public education. If teacher

organizations voluntarily or through legislation assume the posture of merely economic representatives, and bargain solely over wages and working conditions, then the differences between teacher-school board relations and other public employee-employer relations will be minute. However, if teacher organizations pursue professional goals through collective negotiations, then teacher-school board relations will become increasingly unique as more areas of professional activity are brought to the bargaining table.

Any attempt to predict the future of educational negotiation is fraught with the danger of oversimplification, however, it seems reasonable to assume though presently concerned with gaining power through the negotiation process to improve salaries, expand fringe benefits, and improve working conditions, teachers are not likely to let these remain their exclusive concerns.67 The subject matter of negotiations may eventually be as broadly defined as the education program itself, as teachers seek to resolve the dissatisfaction they feel with their role in the educational process. As classroom teachers become recognized as essential and constructive factors in the educational decision-making process, the collective strength necessary to transfer teaching into a legitimate dynamic profession may be provided.

Teachers are in some respects an enigmatic group, uncertain as to the direction they want collective negotiations to follow. They appear to want the status of a professional and often equate themselves with doctors and lawyers, while often pursuing the level of responsi-
bility associated with organized labor. It is vital that teachers accept the fact that, if they expect to negotiate over so-called professional issues, they will have to accept the responsibilities of being professionals. The authority of a profession is rooted in competence and skill, not in legal power or collective action. Teachers must accept this reality, and recognize that the only basis upon which they can legitimately participate in decisions concerning curriculum, teacher recruitment, class size, and textbook selection, is expert knowledge.

If it is in the public interest for teacher organizations to bargain over more than the wages and working conditions traditional in private sector collective bargaining, then the public has the right to expect that professional advice will be based upon skill and competence, not upon irrelevant concerns. The Kingsport Press case demonstrates the application of one such irrelevant concern to the selection of textbooks. The Kingsport Press is one of the largest integrated printers in the nation, printing for, among others, McGraw-Hill, Lippincott, Grolier, Field Enterprises, Holt, Rinehart, and Harper and Row. Five unions, representing the 2,200 workers of Kingsport Press went on strike on March 11, 1963, but the company continued to operate with supervisors, new hires, and returning strikers. Finding themselves unable to win the strike, the five unions called upon the AFL-CIO for help. The American Federation of Teachers, a member of the

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the AFL-CIO, urged its members not to use textbooks printed at Kingsport, and demanded that boards of education not buy books printed there. A number of school boards capitulated in varying degrees to the teachers' pressure to institute "secondary boycotts" by restricting the purchase of books from Kingsport Press. The focal point of this example is not whether the strike at Kingsport Press was justified or not, but rather that only one standard can properly be used in the selection of textbooks, and that is how well the textbooks serve the educational process. Professional educators must not utilize their collective strength to support a particular vested interest or allow interest groups to shape our educational policies.

Teacher organizations can also supplant educational competence during collective negotiations by focusing on the needs of their membership. One aspect of "wide scope negotiations" where this might be true is in the participation by teachers in the establishment of teaching standards and teacher education programs. Teacher organizations seem to have succumbed to the fiction that competence is somehow synonymous with formal training and longevity, and have supported the private sector employment concept of "equal pay for equal work." The test of a profession is its ability to serve others rather than itself, and until teachers accept this responsibility their self-interest will compel the support of tenure laws and the rejection of teacher


merit systems, where their educational expertise might dictate the opposite position.

These two examples clearly depict the problems that exist in determining the scope of the educational negotiations. The legislators' answers to these concerns must be based on their assessment of the role of teachers in the educational process, employee, or professional. The challenge is to take the offensive with change, and, with the use of our imagination and ingenuity, develop procedures which make use of experience, but recognize the potential contained in the unique relationships which exist in public education, thus freeing us from the precedents, institutional loyalties, and stereotypes associated with private sector employment and predicated on the traditional employee-employer relationships.

Legislative Alternatives

The interpretation of the phrase "terms and conditions of employment" has been a source of dispute in the private sector, and there is every reason to believe that some controversy will exist in the public sector. The matter of what is appropriate content for teacher-school board collective agreements is a question of public policy that must be dealt with in the formation of any collective negotiation statute for public education. Unfortunately the scope of negotiations has been used by the courts as a counter balance to compensate public employees for the loss of the right to strike. A Wisconsin court has stated this concern for employee rights as follows:

The right to compel collective bargaining on certain specific issues was substituted for the employee's historic right to strike. This is not precisely a "quid pro quo." Rather it is actually the substitution of a lesser for a greater right. Under such circumstances the lesser right, i.e., the right to compel negotiations on issues effecting employment conditions should be broadly construed to more equitably balance the scale of justice.

The Montana legislature rejected the broad interpretation of "terms and conditions of employment," and provided that "...matters of negotiation and bargaining for agreement shall not include matters of curriculum, policy of operation, selection of teachers and other personnel, or physical plant of schools or other school facilities..." (Appendix I). The discussion at the bargaining table is therefore limited to "...matters relating directly to the employer-teacher relationship such as salary, hours, and other terms of employment..." (Appendix I). While the negotiations can not go beyond the narrow limits of labor precedents, the legislation provides for a dual system of negotiation and consultation. Matters relating directly to the employer-teacher relationship are subject to bilateral decision-making, while all other matters are the responsibility of the school board and the administration. However, school boards are required, ...to meet and confer on any proposal advanced by a representative of teachers, or by a teacher or group of teachers if no representative of teachers has been elected, if such proposal does not endeavor to amend the terms of a professional negotiations agreement then in effect, and nothing in this act shall be construed to diminish such duty (Appendix I).

This obligation permits teachers to consult with school boards on matters of curriculum, but prohibits them from introducing such matters during the bilateral decision-making process of collective

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negotiations. A further restriction is placed on the scope of negotiations by requiring that professional negotiation conferences not begin until after November 1 of the last year the collective agreement is effective, and that the teachers or their representative "... must serve written notice of intention to negotiate collectively upon the employer not later than November 1 of such year stating specifically the items to be negotiated" (Appendix I).

The Professional Negotiations Act for Teachers clearly grants teachers the "employee" rights of private sector collective bargaining to joint determination of salary, hours, and other terms of employment, while forcing teachers to assume a mere advisory role on matters of professional concern. One would hardly expect or desire that curriculum, methodology or educational services be subjected to the pressures that inevitably characterize negotiations over conditions of employment. However, while the content of the curriculum should not be subjected to negotiation, the mechanics for determining the content should be formulated jointly by teachers and school boards at the bargaining table. The joint determination of such procedures would result in the inclusion of teachers in the curriculum decision-making process. Teachers would be provided the opportunity to participate in decisions on professional matters in an environment which should result in more knowledgeable decisions. A sense of professional responsibility is likely to be developed among participating teachers. With this alternative available, there is little reason to debate professional prob-

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lems and make administrative decisions at the negotiating table. In order for this to be a viable alternative, however, teachers must be able to assume the role of partners not mere advisors.

The proposed statute states "...that the board and the certified employee organization shall meet at reasonable times and shall negotiate in good faith with respect to terms and conditions of employment" (Appendix II). No limiting or qualifying statements are included in the statute to further define the phrase "terms and conditions of employment." Therefore we find that the specific items to be negotiated are themselves negotiable. This does not mean that school boards should relinquish the power of unilateral determination on all subjects broached by the teachers; it means rather that they should not adopt a "management rights" stance which precludes discussion, but should instead demand (i.e. bargain hard for) retention of unilateral control over matters which, in their judgment, merit such.76

The broad scope of negotiations possible under the proposed statute necessitates that the State Department of Education administer the statute. The determination as to what provisions are necessary or what provisions are detrimental to the advancement of quality education are matters for professional educators not labor or legal tribunals. The Montana statute with its limited scope of negotiations utilizes the district court to administer the statute, and emphasizes the employee-employer aspect of the teacher-school board relationship.

CHAPTER IV

UNIT DETERMINATION

Guide Lines for Unit Determination

Unit determination in public education is not as colorful an issue as the question of should public school teachers have the right to strike or as noticeable to the public as the controversy over impasse procedures, but it is the necessary first step in any collective bargaining relationship for it defines the constituency within which collective negotiations take place.\footnote{Andrew W. Thomson, "Unit Determination in Public Employment," Public Employee Relations Reports, (Ithaca, Cornell University), p. 1.} Before the formal process of collective negotiations can begin, the two parties, who are to negotiate, must be established. The statutes of the various states which authorize collective negotiations in public education have attempted to solve the question of who these parties should be in a myriad of divergent procedures. The problem comes not with the employer unit, for all the legislatures agree that this should be the local school board, but with the employee unit. Who should be included in the "teacher bargaining" unit and who should be excluded from this unit? Should exclusive representation be given to one teacher organization? The determination of the appropriate unit is crucial for it defines the field on which to play before the contest begins; significantly effects who the opponents are going to be; and can have far reaching
implications for the contest itself.

All the legislatures that have dealt with the problems of unit determination have had to answer three basic questions: (1) what is an appropriate unit, (2) what guidelines should be followed in establishing the unit, and (3) who should establish the unit? The determination of the unit directly affects the demands and the effectiveness of the representation, the independence of the organization, the militancy of the organization, the grievance procedures, and the efficiency of the school administration.

The following quotation is taken from the dissenting opinion in the May 17, 1966 decision by the Labor Relations Commission of the Commonwealth of Massachusetts in a case involving the appropriate bargaining unit in the public schools of Pittsfield, Massachusetts.

I reject the theory that the same standards used in industry and trade are applicable here in determining what constitutes an appropriate bargaining unit. I find on all the evidence that the supervision exercised by principals down to supervisors is not comparable to the supervision exercised by supervisors or foreman in industry or trade. On the one hand, a supervisory employee in industry and trade is primarily concerned with the best interests of his employer, and usually has the authority to hire and fire other employees. On the other hand, principals down to classroom teachers are primarily concerned with the proper education of children. They can neither hire nor fire subordinates. The authority developing upon them is not comparable. The duties with which principals, vice-principals and supervisors are charged is to properly educate students. In order to meet this demand, it is vital that all members of this profession operate as a team. I can find no precedent for holding that members within the same profession can be excluded from a unit in which other members are admitted. To hold that principals, vice-principals and supervisors should be excluded from a unit consisting of school teachers in my opinion would create and perpetuate barriers within the teaching profession to the detriment of our children and the profession.78

Whether we agree or disagree with the above opinion, that there are

78City of Pittsfield, Case No. MCB-18, reported in Government Employee Relations Report (BNA), November, 1966, pp. B-2 and B-3.
significant differences between private industry and public education in the area of unit determination, we must recognize the need to develop some type of criteria or guidelines for determining the appropriate bargaining unit in teacher-school board negotiations.

One basic standard or criteria that can be employed is that of "the community of interest of the employees." This standard of community of interest has been utilized in the private sector since the problem of unit determination and the process of collective bargaining first began. The National Labor Relations Board has made this standard a central factor in its unit determination cases. However, like any standard it is more easily applied in easy cases than in hard cases. For example, it is clear that classroom teachers and the school bus drivers do not belong in the same unit (unless the primary function of the school teachers in that district is driving school buses); but what about department heads who teach only one class a day, should they be included in a teacher unit?79

The NLRB has set down the following rules for determining community of interest: whether the employees sought to be grouped together are subject to common working rules, personnel practices, environment, or salary and benefit structure. Such criteria are, however, more suitable for a check list than for actual decision-making, for reality is much more complicated. A good example of how complicated this problem really is, is the fact that the NLRB often attacks the problem from the other end. Instead of asking if any real community of interest exists, it asks whether any real conflict of interest ex-

ists among the employees in the proposed unit. This type of approach is especially applicable to a small employer or small school district.80

Community of interest, however, may be claimed along several dimensions, each having its advantages and disadvantages, for example, the community of interest of employees with respect to conditions of employment applying particularly to them, the community of interest of employees with respect to the continuation of a traditional, workable, and, on the whole, acceptable negotiating pattern, the community of interest of employees with respect to specialization of occupation according to a craft or profession, or the community of interest of employees with respect to the manner of exercising their right of representation.81

What constitutes a community of interest or a conflict of interest in public education? This question can most accurately be determined by the individual school district. In one school district department heads may not teach at all, but they may still feel their association or interest lies with the teachers. While in another school district the department heads may spend half their time teaching, but feel their allegiance lies with the administrators. The same may be true of building principals. One building principal may feel he is the representative of his teachers to the administration and another may feel he is the representative of the administration to his teachers. While there is a community of interest shared by all professional educators in their desire for the advancement of quality education, the important point to consider is do the conflict of in-

81Ibid., pp. 24-25.
terests override the community of interest thereby making it de-
sirable to exclude supervisors from the bargaining unit. The struc-
ture of the community of interest in the individual school district
should determine the composition of that district's bargaining unit
or units.

Section 7 of the proposed statute contains guide lines for
unit determination. Major consideration is given to the community of
interest of the employees as determined by the employees. It is the
employees who are being represented, and it is their desires which
must remain paramount. The other guides, the public interest and
ease of administration, provide the boundaries within which the em-
ployees can exercise the maximum freedom of choice. The law is
structured to prevent arbitrary divisions between teachers and admin-
istrators, and to permit either group to be represented separately.
Only two units are possible under the statute, an all inclusive unit
or separate teacher and administrator units. No more fracturing of
the certificated personnel is possible. By limiting the number of
possible units through legislation the public interest has been pre-
served and the ease of administration has been achieved. The employees'  
right to be represented by an organization of their own choosing has
been balanced against the need for stability in the bargaining rela-
tionship. The decision concerning the composition of the negotiating
unit is made at the local level based on the local climate, tradition,
and the effectiveness of past cooperation among school staff members.
The guide lines are flexible enough to allow diversity where it is
necessary and prevent arbitrary standards of uniformity. These rather
nebulous guide lines are administered by an independent third party
chosen by the parties involved or the State Education Department.

**Bi-Unit Elections**

A secret bi-unit election conducted by an independent third party is the method of determining representation contained in the proposed statute. It would seem senseless for any school board to assume the responsibility of designating a representative, except in those rare cases where there is no question as to what group represents the teachers. In the future as the competition between the two professional teacher organizations increases these cases will become more and more rare. An election conducted by an independent third party has the great value of assuring the integrity of the determination, and this advantage clearly outweighs such disadvantages as the cost and other disruptions that may occur from campaigning and other attendant election procedures. The independence and neutrality of the election procedures contained in the Montana Professional Negotiations Act for Teachers are seriously limited by the fact that the school boards are empowered to conduct the elections.

Employing the secret ballot election to resolve questions of teacher representation is the only method which insures the free exercise of choice on the part of the teachers. Having the election conducted by a mutually agreed upon third party gives further safeguards for the impartiality and fairness of the elections. Reliance upon membership lists, authorization cards, or petitions does not assure the same freedom as an election because of the lack of secrecy and the

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pressure to conform. While an election may not be necessary in every case, the problem exists with who is to determine if an election is warranted. To vest this power with one of the parties involved in the collective bargaining process, as in the Montana statute, raises serious questions about the impartiality of such representation procedures. An independent third party election is a necessary safeguard for both the school board and the teacher organizations. Under the proposed statute, all teacher representation will be determined by an election conducted by an independent third party, after 30 per cent of the teachers in that particular district have petitioned for such an election with the State Department of Education.

The 30 per cent "show of interest" requirement as a condition for holding an election is an important regulation. This assures the school board, who must share the cost of the election with the teachers, that there is sufficient desire among the teachers to be represented for the purposes of collective bargaining to warrant an election. Since the petition is filed with the State Department of Education rather than the local school board, the proper secrecy is assured the teachers whose signatures called for the election.

The State Department of Education is designated as the supervising agency in the proposed statute. Petitions for election must be filed with the State Department of Education and an independent election supervisor must be selected by the school board and teachers within the legislated time period. If the parties involved can not agree on an election supervisor, then the State Department of Educa-

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83Ibid., pp. 69-70.
tion has the authority to appoint an independent third party. The function of the State Department of Education is not to conduct representation elections, but rather to insure that if the requirements for an election are met a fair and impartial election is conducted.

The proposed statute specifies that all representation elections must be bi-unit elections. The only basic standards established are (1) that the superintendent or chief school officer for the district shall not be included in any bargaining unit, and (2) all other certificated employees shall be given a choice as to the composition of the bargaining unit(s). The parties involved and the election supervisor they designate have the ultimate power within the legislative limitations to establish their bargaining units, and no outside agency has the authority to repeal or reverse their decisions as to what constitutes an appropriate unit.

The bi-unit election allows local self-determination within categorically defined limits in order to protect the public and allow the certificated public school employee maximum freedom of choice. All

- the certificated personnel in each school district are divided into two separate categories; (1) those with teaching or special services certificates, and (2) those with administrative or supervisory certificates and those engaged in supervisory positions. Those certificated employees, such as department heads and teaching vice-principals, which can not clearly be placed in one unit or the other have the right under the proposed statute to choose to be included in either the "administrative unit" or the "teacher unit", with the "teacher unit" reserving the right to exclude any category of these certificated employees by a majority vote. Once determined by the election supervisor these
two groups of certificated employees vote separately, but simultaneously, to determine their bargaining representative, and at the same time vote to be included in one all inclusive unit, or two separate units, or not to be represented at all. Either group has the power by a majority vote to exclude the other and form a separate bargaining unit.

It is important for the reader to note that the Professional Negotiations Act for Teachers grants the opportunity of choice in unit determination to only one limited category of certificated employees, principals certificated in class 3, and the choice is between the "teacher unit" or a unit composed of all principals of a single employer. The "teacher unit" is not afforded the opportunity under the Montana statute to reject or accept this category of certificated employees. The lack of local self-determination and the arbitrary grouping of certificated employees greatly reduces the flexibility and the effectiveness of the Montana statute. The certificated employees should be represented in the "teacher unit" or the "administrative unit" based on their relationship to the management hierarchy, and the way the other certificated employees perceive this relationship.

Exclusive Representation

The proposed statute and the Montana statute legislate the type of representation, rather than allowing the matter to be determined on the local level. Exclusive representation is established once an organization can command a majority vote in an appropriate unit, and a single employee organization represents the entire personnel in the negotiating unit. The employer can not negotiate conditions of employment for anyone in the unit with any other individual or organiza-
tion except the exclusive negotiating agent.

Historically the private sector has moved from the principle of representation-for-members-only to the principle of exclusive representation. The private sector adopted the latter principle in an effort to eliminate the inter-union rivalries and jurisdictional disputes that were causing numerous work stoppages. By granting exclusive representation to the majority representative of the employees, the problem of splitting off small units from the employee organization and playing one settlement against the next are eliminated. A simplified and systematic administration of employer-employee relations was made possible by having only one employee organization meeting and bargaining over wages, hours, and conditions of employment with the employer.

The public interest in maintaining educational peace and stability can be best served by the process of exclusive representation. The teachers are compelled to agree among themselves on a set of bargaining proposals before approaching the board, and the board is aided by the fact that the exclusive representative is responsible for all employees in the unit regardless of whether they vote for the representative or not. The alternative to exclusive representation is an impracticable arrangement, with school administrations having to face many organizations, all of which have different requests and demands for small groups of the total number of employees, while the total group of employees must be governed by a uniform set of rules and policies relating to wages, hours, and other conditions of employment.

Election Bar

In order for the process of exclusive representation to be an
equitable procedure the rights of the minority organization must be protected. An organization can not be certified as the exclusive bargaining unit, under the proposed law, unless it has gained the support of 51 per cent of those employees in the appropriate unit voting in a representation election. If no organization receives such a majority then the unit may not be represented in the formal bargaining process until another election is conducted. However, once an organization is certified as the exclusive representative of the employees or a particular unit, it must represent all the employees of that unit equally, and not merely at the bargaining table, but also through the grievance procedures as well.

The rights of the minority organization are further protected by the simple decertification procedure, which requires only 30 per cent of the members of the unit to petition the State Department of Education in order for another election to be held. However, the interest of the public in having uninterrupted service is protected by setting the percentage high enough so that elections will not as a matter of routine take place every two years and it is also low enough so the minority organization does have an opportunity to challenge the organization in power. A two year election bar has been incorporated in the proposed statute to protect the public, so that if the bargaining representative does change, the inconvenience, no matter how slight or large, which accompanies an election will occur only once every twenty-four months. This election bar, however, applies only after an organization has been certified the exclusive representative.

The two year election bar allows the school board and the exclusive representative to establish a stable and workable relationship
over at least two separate budgetary periods while protecting the rights of the minority organization and the teachers' freedom of choice. The one-year election bar contained in the Montana statute may not allow sufficient time for the development of a collective bargaining relationship, and may further jeopardize this relationship by allowing the school boards to request representation elections.
CHAPTER V

IMPASSE PROCEDURES

Contract Disputes

Impasses that occur in teacher-school board relations can be classified in two broad categories; (1) disagreements that originate during contract negotiations, and (2) disagreements that arise concerning the administration of the current collective agreement. If we accept the previously stated fact that teacher-school board conflict is unavoidable, then a means of accommodating these competing interests must be established. Collective negotiations provide a democratic process for the resolution of existing conflicts. However, as long as either party has the ability to refuse an offer made by the other, some orderly procedure must exist for reaching mutually satisfactory agreements. The multistep dispute mechanism contained in the proposed legislation is designed to secure mutually satisfactory agreements within the constraints of the following basic assumptions; (1) the desirability of preserving local decision-making, (2) the necessity of pursuing educational rather than labor channels to assist local decision-making, and (3) the importance of the right to strike in compelling the employer to engage in good faith negotiations. Mediation, fact-finding and advisory arbitration procedures are provided to aid teachers and school boards in their attempts to culminate collective agreements. If these procedures fail to produce a-
agreement between the parties, then the teachers may collectively with­
hold their services. Teachers and school boards are provided with the 
opportunity to solve their disputes with the sanction of public pres­
sure and the application of economic pressure, rather than direct third 
party intervention.

The procedures contained in the proposed statute for resolving 
contract disputes promote voluntary local settlements to the maximum 
extent possible, while minimizing coercion against the parties involved. 
They provide channels for pressure through which outsiders can assist 
the parties involved in recognizing the various points of view. Unless 
one party stands to lose by not agreeing, however, it can not be said 
that any real pressure has been applied. In any economic society, what 
is a feasible solution has been determined by economic power. It is 
the potential use of the strike looming just off stage, that provides 
the pressure needed to produce an agreement. However, it is only the 
resolution of a bargaining impasse which renders the strike a legal wea­
pon, and only after all impasse procedures have been exhausted.

The establishment of a three member mediation panel is the first 
step in the proposed impasse procedures. The teachers and the school 
board each select a member for the panel and the two members chosen 
choose a third member to function as chairman of the panel. In the event 
the two members selected can not select a third, the State Department of 
Education will appoint the third member. The mediation panel acts as a 
master of ceremonies in an attempt to enable the collective negotiations

84 Andrew W. J. Thomson, "Strikes and Strike Penalties in Public 
Employment," Public Employee Relations Reports, (Ithaca, Cornell 
University), p. 2.
to proceed, without providing specific recommendations for settlement. If this infusion of direction can not assist the parties in resolving their differences, then the panel is transformed into a fact-finding panel. It should be mentioned at this point that none of the levels contained in the proposed impasse procedures are a substitute for good faith negotiations. They are designed to stimulate collective bargain­ing not supplant it.

Fact-finding differs from mediation in that the function of the fact-finding panel is not merely to keep the channels of communication open between the two parties, but to make specific recommendations that can guide the parties towards settlement. Once given these guide lines if the parties involved fail to reach a settlement, then the panel may make its findings public and bring to bear a rule of reason for shaping public opinion. Since the recommendations are not binding this tech­nique does not deprive the parties of all opportunity or responsibility for settlement. The real power of the fact-finding panel is the public­lity accorded their report, and the subsequent pressure generated by public review of these neutral third party recommendations.85

This logic can be applied as well to the final step of the proposed impasse procedures, advisory arbitration by the State Department of Education. The Department reviews the dispute and the recommendations of the fact-finding panel and advises the parties involved of its recommend­ations for settlement. If the teachers and the school board are unable to reach an agreement utilizing the State Education Department's recom­

recommendations, then these recommendations are made public. This procedure provides the public with a set of guidelines that can be used to evaluate a teacher-school board impasse and its effect on the public's right to quality education. Review by the elected educational officials of the state provides an important safeguard for the public, and can be an instrumental factor in forming public opinion. The resolution of the dispute is important, but the effect of the settlement on public education remains paramount.

The State Department of Education performs an important function in the proposed impasse procedures. The use of educational rather than labor or legal channels is derived from the broad scope of the subject matter permitted by the proposed statute during collective negotiations. If teachers and boards of education are provided the opportunity to discuss matters which effect the quality of school programs, then the public has the right to expect that the parties administering the impasse procedures will have some background in educational research and the learning process.

The Montana Professional Negotiations Act for Teachers recognizes the need to protect the public's right to high quality education, but ultimately places this responsibility with one of the parties directly involved in the dispute, the local school board. The Montana statute establishes mediation and fact-finding procedures, but fails to provide educational channels to aid in the resolution of disputes. The senior district judge of the county in which the employer is located assists the parties involved if they are unable to select the third member of the panel. Noting this exception the mediation and fact-finding procedures are similar in both statutes. However, this is where the similarity ends.
The Montana statute does not provide for any form of advisory arbitration, and categorically bans the teacher strikes.

Once the mediation and fact-finding procedures contained in the Montana statute have been exhausted, the settlement of the dispute rests with the local school board. The teachers do not have the right under the Montana statute to withhold their services in an attempt to exert economic pressure to force the board to reach agreement. The Montana Professional Negotiations Act for Teachers "...declares that it recognizes teaching as a profession which requires special educational qualifications and that to achieve high quality education it is indispensable that good relations exist between teaching personnel and their governing boards" (Appendix II). The Montana statute rejects unilateral decision-making because such procedures make it easy to ignore legitimate grievances, multilateral decision-making, while considerably noisier and vastly less comfortable, tends to resolve conflict. However, an essential condition of multilateral decision-making is the power of each of the parties to defend its own interest. This assumption compels one to ask the question, how can teachers defend their interests except by withholding their services? The strike, after impasse procedures have been exhausted, should be legalized because teachers have no other effective way to influence decisions of vital concern to them. Logic compels us to admit that, without the right to strike, collective bargaining is little more than militant supplication.

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87 Ibid., p. 10.
Grievance Procedures

The Montana Professional Negotiations Act for Teachers does not provide a procedure for dealing with disputes introduced through the administration of the collective agreement. No provision is included in the Montana statute permitting collective agreements to contain grievance procedures, or prohibiting them from containing such procedures. The proposed statute, however, specifically grants teachers and school boards the opportunity to develop local grievance procedures that may terminate in binding arbitration. If the local contract does not include binding arbitration as the final step in their grievance machinery, then the proposed statute permits either party to request the State Department of Education to arbitrate the grievance after the local grievance procedures have been exhausted. Disputes over terms of an initial or renewed collective agreement do not constitute a grievance, and are excluded from this procedure.

No teacher organization can afford to leave the interpretation of the collective agreement to the school administrators; indeed simple justice would dictate that all employees be protected by the right to grieve with the ultimate decision to be made by a neutral third party should the grievance proceed that far. According to the American Association of School Administrators,

In every employment relationship, however enlightened and democratic the administration, grievances and dissatisfactions will arise. A well-conceived procedure for grievance adjudication which will resolve the dissatisfactions and redress the legitimate grievances of

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staff members is essential to the efficient and harmonious operation of a school district.\textsuperscript{89}

An effective grievance procedure, with binding arbitration by an independent third party as the final step, protects the integrity of the contract and prevents trials of strength over minor items. The grievance procedures contained in the proposed statute allow maximum freedom of local determination, while guaranteeing the certificated employees the right to have their grievances arbitrated by an agency which is in no way beholden to or prejudiced against any party in interest. The public interest in uninterrupted educational services is insured by the proposed statute for the length of any collective agreement.

A grievance procedure provides the judicial process for the adjudication of complaints "...based upon an event or condition under which an employee works, allegedly caused by misinterpretation or inequitable application of an established policy."\textsuperscript{90} It represents the presence of procedural due process within a school district\textsuperscript{91} and should not be confused with the negotiation procedure. The negotiation procedure is the process for jointly developing employment policies, and the grievance procedure is one such policy. While binding arbitration is a necessary final step in order to insure the equitable processing of grievances arising from the administration of the current collective agreement, this procedure if applied to contract disputes would destroy


\textsuperscript{90}Ibid.

\textsuperscript{91}Ibid.
the responsibility of the bargaining parties, and transform the negotiators into actors performing for the arbitrator. Teachers and school boards would be permitted the luxury of "passing the buck" to the arbitrator, and the public and the teachers would be deprived of responsible and accountable representatives. Good faith negotiating would be replaced by hypocrisy and honesty with deception. If compulsory arbitration were imposed on the Montana schools, it would be reasonable to expect teachers and school board members, who are just beginning to learn what good faith negotiations are all about, to turn their problems over to their lawyers, who in turn, would make a technical presentation before a college professor.

Right to Strike

The question of allowing certificated public employees to utilize economic pressure, in the form of a strike, in order to resolve a collective bargaining impasse (or prevent such an impasse), revolves around the balancing of two sometimes conflicting ideals: private decision-making and public welfare. Whether in the public or private sector these two ideals must be dealt with in formulating any policy concerning the legitimacy of employees to engage in work stoppages. Since both these variables are abstract ideals, any decision that is reached in an attempt to balance these two factors must be essentially a value judgment.

92 Charles Cogen, "Compulsory Arbitration," An American Federation of Teachers Leadership Paper (Chicago, American Federation of Teachers, AFL-CIO)

93 Ibid.
For too long the public and its legislators have been content to categorically ban strikes in the public sector. It is time that the public awoke to the fact that the exclusive use of the "employment categories," i.e. public or private, is no longer a viable concept in determining what group of employees should, or should not, have the right to collectively withhold their services. This categorical discrimination should be eliminated from the field of public education, and this antiquated strike ban removed for certificated public employees.

Role of the Strike in Traditional Collective Bargaining

The following quotation is taken from Chamberlain and Kuhn's college textbook on collective bargaining, and expresses the private sector concept of the role of the strike in the negotiating process. "... though collective bargaining does not and need not always result in strikes, the possibility or ultimate threat of strikes is a necessary condition for collective bargaining." Collective bargaining, according to this theory, is basically a power relationship, with the strike functioning as the "club in the closet" that enables the joint decision-making process to function. As long as a strike threatens greater loss to at least one of the bargaining parties, if it disagrees rather than agrees with the other's demands, there is reason for them to settle. Without such a threat the employer and the union might continue to disagree indefinitely and never bargain seriously, each simply refusing to

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give ground in an effort to reach a settlement acceptable to both.\textsuperscript{96}

While collective bargaining is a process of voluntary agreement this agreement can only be reached when one or both of the parties would rather accept the other's terms than face the consequences of disagreement. If this view is correct, then it would seem that merely the right to talk with an employer about wages, hours, and conditions of employment is not enough, but some kind of pressure is needed behind the workers' demands in order for a bargain to be consumated. The private sector has chosen the strike as the appropriate sanction to provide the impetus necessary to produce a collective agreement. The following quotation from a bulletin by Cornell Professor Donald Cullen summarizes the above viewpoint.

Thus, while the strike weapon can be harmful and crude, we don't know any better way of granting workers an effective voice in resolving the disagreements that inevitably arise between employer and employed...this imperfect solution is scarcely unique in our society. The ballot box, the cash register, and the jury room all render disastrous decisions on occasion, just as the strike does, but each provides a means, hopefully democratic, of settling disputes that "good faith" and "reason" alone fail to resolve.\textsuperscript{97}

The strike plays a key motivating role in private sector collective bargaining. While the vast majority of collective negotiations end successfully in a collective agreement without a strike, this is not to say that these agreements would have been reached if employees did not have the right to strike looming in the wings off stage.\textsuperscript{98} It is only at the point where either union or management concludes that the loss to it from a strike would be greater than the "cost" of surrendering on the

\textsuperscript{97}Cullen, "Negotiating Contracts," p. 3.

\textsuperscript{98}Ibid., p. 4.
other's conditions that an agreement eventuates. The strike, therefore, in the private sector is an economic weapon to raise the other parties' cost of disagreeing relative to agreeing to the first parties' terms. Collective bargaining is regarded as a marketing procedure, involving the sale of labor services, and the right not to contract is supreme.

**Reasons for Banning Teacher Strikes**

Montana public school teachers are placed in a rather perplexing situation by the Professional Negotiations Act for Teachers. They are told that they should elect collective bargaining representatives and engage in collective negotiations with their employers, but they are forbidden to utilize the shows of strength which the private sector has found necessary in order for this collective process to function successfully.

Most of the traditional arguments against granting government employees the right to strike rely in some way upon the sovereignty doctrine. This concept states that if public employees are allowed to strike, then we are sanctioning their attack upon the sovereignty of the state. This argument centers around the fact that the nature of the decision-making process is vastly different in the public sector as opposed to the private sector. In our democratic system of government, responsibility for determining public policy, even conditions of public employment, is vested in the elected representatives of the people, sub-

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99 Hilderbrand, "Collective Bargaining," p. 44.

100 Ibid.

ject only to a veto power by the executive, and/or judicial power to declare legislative acts unconstitutional. Legislative bodies, according to this point of view, should not be subject to economic pressures exerted by an employee organization. Public employees should not be permitted to challenge the ultimate right of the elected lawmakers to consider and pass legislation, including rules concerning the terms of employment for government employees. The strike is not viewed as a legitimate avenue of expression.

The sovereignty doctrine has been a formidable obstacle in the path of public employees, but within the last decade it has been weakened beyond the point of repair. The strength of the argument rested in the proposition that public employers could not delegate or share their legally delegated authority with any other outside organization, including an employee organization. However, if this rather narrow and legalistic line of reasoning is pursued it would soon be seen that this logic precludes any type of collective bargaining at all in the public sector. Since the issuing of Executive Order #10988 collective bargaining, in some form or other, has been recognized as a desirable objective for all levels of government employees. Therefore, when the sovereignty argument is viewed in the context of collective bargaining in the public sector, it loses much of its previous sting.

Reliance upon the sovereignty doctrine is often supplemented by waving the doctrine of "protecting the public health and safety." Professor Moskow addresses himself to this issue in his book, Teachers and Unions, when he states:

Some authorities still maintain...that 'no strike' statutes are only constitutional when the health and safety of the public are endangered. They would have no objection to 'no strike' legislation pertaining to policemen and firemen since this (SIC) would clearly jeopardize the health and safety of the public. In private industry, the Taft-Hartley Act recognizes threats to health and safety only if a national emergency is created by the strike, and even then only a temporary injunction will be allowed. These authorities feel that statutes should at least say that under some circumstances public employees should have the right to strike.\textsuperscript{104}

The proposed statute makes a distinction between what is merely an inconvenience to the public and what is really harmful to the public health and safety. Certificated public employees are placed in the former category, and are granted a limited right to strike. The public has a right to expect that those services which they have delegated to government, and paid for in advance, should be provided on an uninterrupted basis.\textsuperscript{105} While it might be said that strikes by public school teachers are inconsistent with the public interest in the uninterrupted operation of the public schools, the more fundamental and essential public interest must prevail. The equitable resolution of conflict is more important to the proper functioning of our society than the dates the schools open and close.\textsuperscript{106}

If the test of who should or should not be allowed to strike is that of the public health and safety, rather than that of categorically public or private employment, then curiously enough, we seem more dependent upon the private sector.\textsuperscript{107} If our national survival were at stake

\textsuperscript{104}Doherty and Oberer, Changing of the Guard, p. 98.


\textsuperscript{106}Eggleston, Collective Negotiations," p. 8.

\textsuperscript{107}Polisar, "Public Employees," p. 12.
in World War II, or the Korean police action, or the current non-war in Vietnam, the steel plants of our nation and the production plants of Boeing and Lockheed aircraft companies appear far more crucial, than a strike by public school teachers. Even at a time of peace, the private sector is crucial to our national health and safety, for it is upon this sector that we depend for all food, clothing, and shelter. 108

•Those who assert the unique and critical nature or the public sector as the rationale for banning strikes in the public sector fail to muster much of an argument. To deny public school teachers the right to strike while patiently enduring strikes in vital private industries, i.e. railroads, longshore, and airlines, casts strange shadows over logic and equity. 109

It is important to note that the opposite side of this argument, i.e. banning the strike in essential private services as well as in public services, would deprive more workers of the opportunity to significantly influence their terms and conditions of employment. The democratic resolution of conflict by the parties involved, at times must over shadow the need to protect the public health and safety. This is not to say that all strikes are necessary and desirable, but rather, if we accept the principle of joint employee-employer decision-making with respect to terms and conditions of employment then employees must be provided with some means of effecting the outcome of these joint decisions. The proposed statute does not provide a perfect solution to this dilemma, but offers a reasonable balance between these conflicting in-

108 Ibid.

interests. Ultimately, however, the balance depends on the certificated employees, school boards, legislators, the State Department of Education and the voting public. Each has a role to play in promoting harmonious relations in the field of public education.

The following quotation is taken from the report of the New York Public Employee Relations Committee, and expresses two additional reasons why strikes should not be allowed in the field of public education.

Instead of the constraints of the market place on collective bargaining, including the right to strike, which are in the private sector, negotiations in the public sector are subject to the constraints imposed by democratic political processes. A work stoppage in the private sector involves costs primarily to the direct participants...On the other hand, a strike by government employees (there can scarcely be a countervailing lockout) introduces an alien force in the legislative process. With a few exceptions, there are no constraints of the market place. The constraints in the provision of 'free services' by government are to be found in the budget allocation and tax decisions which are made by legislators responsive to the public will.¹¹⁰

Both of these additional arguments concern the nature of public employment. First, the right to strike in the private sector is balanced on the employer's side by his right to lock out his employees. In the public sector it would be impossible for a government agency to withhold its services from the public merely in an effort to exert economic pressure against its employees.¹¹¹ The argument states that by granting the employees the right to strike when the comparable economic weapon is not available to the employer, we have created an imbalance in the collective bargaining relationship between the two parties. The proposed statute prevents this imbalance from occurring by granting the cer-


tificated employees only a limited right to strike. The certificated employees are permitted to engage in a work stoppage only after all impasse procedures have been exhausted, and those certificated employees who collectively withhold their services under any other conditions can lose their collective representation for up to twenty-four months. Under these circumstances a strike by the certificated school employees does not create an imbalance in the collective bargaining relationship. In fact it is designed to relieve an imbalance in this relationship.

The second issue is that the cost of the work stoppage is born not by the government employer, but by the public. Governmental services are usually not priced, and in many cases the consumer can not signify that the cost is too high by refusing to buy; he must by law pay the taxes which purchase these services whether he wants them or not. According to this hypothesis the public sector is not subject to the constraints of the market, and therefore, the economic pressure of a strike has no place in this kind of system. This argument fails to recognize that public education, like any business, is faced with the problem of allocating limited resources. A strike by public school teachers may result in the school district losing state and even federal aid money, and these represent real market constraints. The public schools must compete with other state agencies for the taxpayers' dollars. The current trend by taxpayers of voting against school bond issues, clearly demonstrates that the public will not routinely accept increases in the school tax rate.

The above has been an effort to list the major reasons experts give

112 Doherty and Oberer, Changing of the Guard, p. 98.
for banning strikes in public education. This list centers around three basic arguments: (1) the sovereignty doctrine; (2) the health and safety doctrine; and (3) the unique nature of the public sector. The reasons for banning strikes in public education are too numerous to list in their totality, but all of the reasons eventually can be traced in whole or part to one of the above general reasons.

Reasons for Granting Teachers a Limited Right to Strike

There appears to be no deep rooted legal obstacles to granting Montana public school teachers the right to strike. The Montana legislatures' recognition of a conditional right to strike for nurses conquered the legality of the constitutional argument of the sovereignty doctrine for all public employees in the state. There can be no doubt that the legislature is free to provide by statute that public school teachers may enforce their right to collective bargaining by arbitration or a strike. Those who base their opposition to the right of teachers to strike upon the Montana statutes that currently prohibit such action, will find that laws and precedents, like everything else, change with events. Current legalisms can never be an acceptable substitute for clear thinking. A limited right to strike for teachers has been established in three states: Hawaii, Pennsylvania, and Vermont.

Labor disputes simply can not be legislated away. Legislation can diagnose the ailments but can not cure them. The purpose of col-

tive bargaining is to channel conflict, not necessarily to eliminate conflict, and in order for this process to function properly both parties must engage in "good faith" negotiations. The right to strike is a necessary condition for free collective bargaining, without which the employer will only listen and never bargain over employee demands. Teachers will never be fairly represented at the bargaining table until they have the ability to support their demands. Collective bargaining is basically a power relationship, and one in which no decision, other than an employer's unilateral decision, will be reached unless some type of sanction is available to the workers. "Thus, it can be seen that while strikes may be abhorrent to the public and damage the image of public employees generally, they have proven a benefit to the employees and organizations involved."\(^{117}\)

This quotation taken from a committee report of public employees in the Civil Service Employees Association upon voting unanimously to end their nineteen year old no-strike pledge crystalizes the reason why the strike is the most important type of sanction available to employees. Teachers, along with other public employees, have discovered that the strike works. There is not now and never can be a substitute for the right of employees to withhold their labor in order to advance their interests.\(^{118}\) No satisfactory alternative has yet been advanced to compel the employer to bargain in good faith. The strike crystalizes that relative economic power which is the final determinant in making private agreements.\(^{119}\)

Although the right to strike may be circumscribed in some instances

\(^{117}\) Polesar, "Public Employees," p. 5.

\(^{118}\) Thomson, "Strikes," p. 6.

\(^{119}\) Ibid., p. 5.
in the private industry, its availability for use as an ultimate weapon is not supplanted by the Taft-Hartley law. The proposed statute attempts to follow this procedure by legalizing the use of the strike only after the prescribed settlement procedures have been exhausted. This procedure provides teachers and school boards with every opportunity to negotiate a settlement, while protecting the public's interest in uninterrupted public education. Since public education is a broadly used service, public opinion can enter as a new influence of ponderate importance to both sides in reckoning their respective costs of agreement or disagreement. While traditionally public opinion is slow to mobilize, community pressure may be stimulated by the fact that parents can no longer send their children to school, but must keep them home. The fact-finding report and the recommendations of the State Department of Education are designed to provide the public with the tools necessary to intelligently evaluate an impasse. Given this set of circumstances the public interest and concern should be easier to generate and apply in order to help the parties involved reach an agreement.

The reasons for granting certificated public employees a limited right to strike, therefore, rests on the previously advanced argument that collective negotiations are desirable in the field of public education, and that the right of certificated public employees to collectively withhold their services is necessary in order for this joint decision-making process to function.

120 Hilderbrand, "Collective Bargaining," p. 3.
CHAPTER VI

CONCLUSION

This study is an examination of the sections of the Montana Professional Negotiations Act for Teachers that deal with the scope of bargaining, unit determination, and impasse procedures. Their projected effect on the field of collective negotiations in public education is compared with the corresponding sections contained in a proposed collective bargaining statute. The two statutes differ significantly in each of the three areas.

One of the fundamental differences between the two statutes is the role of the State Department of Education in the collective negotiation process. The proposed statute utilizes the State Department of Education as the controlling agency for all phases of the proposed legislation, thereby enabling the elected state education officials to directly influence the course of collective educational negotiations in the state. The position assumed by the State Department of Education under the proposed statute is predicated on three basic assumptions; (1) public education is a unique enterprise, (2) collective teacher action and quality education can not be considered as completely independent phenomenon, and (3) teachers should be permitted to pursue professional objectives through collective negotiations. Given these assumptions the proposed statute provides educational channels rather than legal or labor channels for the administration of the statute and the resolution
of impasse. Since collective teacher action can directly effect the quality of public education, the public interest in the advancement of public education dictates that those individuals administering the law have a background in educational research and the learning process.

The Montana statute incorporates the first of the above assumptions, but rejects the others by employing legal channels for dispute resolution and limiting the scope of collective negotiations. The teacher organizations are permitted to bargain solely over wages and working conditions, and are forced to accept the role of merely economic representatives. The Montana statute therefore compels teachers to perceive their role in the educational system as predominately an employee-employer relationship. Their organizations will pursue the private sector approach to collective bargaining, and employ their collective power to demand action or inaction along a particular line with primary emphasis being given to the concerns of the membership. While recognizing the uniqueness of public education, the Montana statute fails to exploit the mutual relationship, that transcends the normal employee-employer relationship, in which teachers, administrators, and school boards strive to provide the best possible education for the children of their district. Collective negotiations can provide an orderly means of bilateral decision-making where teachers and school boards can pool their expertise for the advancement of education, if teachers are permitted to bargain over professional issues. When teachers perceive their role as that of a professional, then collective negotiations can become an avenue for the expression of their competence on educational issues. The effect that collective negotiations will have on the quality of public education will to a large extent be determined by the teachers' self-image.
The unit determination section of the Montana statute does not allow the certificated employees maximum freedom of local determination. The statute allows class 3 principals to form a separate unit, but does not grant the teachers the option of excluding them. The proposed statute sets forth a set of guidelines for unit determination and places emphasis on the community of interest of the employees as determined by the employees. A bi-unit election procedure is employed where the proposed supervisory and teacher units vote simultaneously to determine their representatives. One unit can be formed only if both of the proposed units concur.

The Montana statute places the integrity of the recognition procedures in a precarious position by allowing one of the parties involved, the local board of education, to determine the teacher representative. The integrity of the determination is protected in the proposed statute by requiring that an independent third party election be conducted before an exclusive representative can be certified. The proposed statute contains a two year election bar, with the teachers having the exclusive right to call for another election, while the Montana statute contains a one year election bar. This bar does not allow sufficient time for the development of a collective bargaining relationship and this relationship is further jeopardized by allowing the school board to request representation elections.

The impasse procedures contained in the two statutes differ not only in the channels employed to resolve disputes (i.e. educational vs. legal) but in the use of advisory arbitration and the right to strike. The proposed statute and the Montana statute utilize similar mediation and fact-finding procedures, but the proposed statute also includes an
advisory arbitration procedure by the State Department of Education. After this additional procedure has been exhausted the teachers are permitted to engage in a legal work stoppage. This limited right to strike protects the public's interest in uninterrupted educational services, while allowing the more fundamental and essential public interest to prevail in the equitable resolution of conflict. However, in order for joint decision-making to function the employees must have some sanction available to support their demands. The limited right to strike provides the public school teachers with the means necessary to compel the school boards to engage in good faith negotiations. Without the right to strike, collective negotiation in public education becomes little more than militant supplication.

While both the Montana statute and the proposed statute support the concept of collective negotiations in public education, the future of teacher-school board relations depends on more than a single technical process for the advancement of education.
APPENDIX I

A PROPOSED ACT CONCERNING THE RIGHT OF CERTIFICATED PUBLIC EMPLOYEES TO NEGOTIATE COLLECTIVELY WITH BOARDS OF EDUCATION

A BILL FOR AN ACT TO PROVIDE PROCEDURES FOR REPRESENTATIVE ORGANIZATIONS OF CERTIFICATED PUBLIC SCHOOL EMPLOYEES TO NEGOTIATE COLLECTIVELY WITH THE PUBLIC SCHOOL DISTRICTS OF THE STATE WITH REFERENCE TO TERMS AND CONDITIONS OF EMPLOYMENT, INCLUSIVE OF GRIEVANCE PROCEDURES, WITH THE EXPLICIT INTENT OF PRODUCING A WRITTEN AGREEMENT.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. Statement of policy and purpose. In pursuance of the duty imposed upon it by the constitution to promote public schools and to adopt all means necessary and proper to secure to the people the advantages and opportunities of education, the legislative assembly hereby declares that it is the public policy of the state and the purpose of this act to promote harmonious and cooperative relationships between certificated public school employees and the public by assuring effective and orderly operation of the public school system. These policies are best effectuated by (1) granting certificated public school employees the right of organization and representation, (2) requiring the public school districts of the state to negotiate with and enter into written agreements with the certified representative of the certificated public school employees, (3) channeling the resolution of
disputes between certificated public school employees and public school districts through the State Department of Education, and (4) granting certificated public school employees the right to strike under the provisions of this act.

Section 2. Definitions. As used in this act:

(1) The term "certificated employee" includes any person employed by a public school district in a position which requires a certificate issued by the State Superintendent of Public Instruction.

(2) The term "employer" means a school district as defined in Section 75-6501, R. C. M. 1947.

(3) The term "board" means any public school board of trustees.

(4) The term "terms and conditions of employment" means salaries, wages, hours, and other terms and conditions of employment.

(5) The term "employee organization" means an organization of any kind having as its primary purpose the improvement of the terms and conditions of employment of certificated employees.

(6) The term "administrator" means any certificated employee who is employed by a public school district in an administrative capacity and who devotes at least fifty per cent of his employed time to administrative duties.

(7) The term "supervisory employee" means any individual having authority in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to assign work to and direct them, or to adjust grievances, or effectively to recommend such action, if, in connection with the foregoing, the exercise of such authority is not merely of a routine or clerical nature, but requires the use of indepen-
dent judgment.

(8) The term "appropriate unit" means the unit designated to be appropriate for the purpose of collective negotiations and will be composed of all or part of the certificated employees of a single employer, below the rank of superintendent.

(9) The term "certified" means official recognition by the State Department of Education of an employee organization as the exclusive representative for all the employees in an appropriate unit.

(10) The term "strike" means any work stoppage by a certificated employee which interferes with the operation of a school or schools, which includes abstinence in whole or part from the full, faithful and proper performance of the duties of employment, for the purpose of inducing, influencing or coercing an employer to change any terms or conditions of employment.

Section 3. **Right of organization.** Certificated employees shall have the right to form, join and participate in, or to refrain from forming, joining or participating in, any employee organization of their own choosing.

Section 4. **Right of representation.** Certificated employees shall have the right to be represented by employee organizations to negotiate collectively with their employers in the determination of their terms and conditions of employment, and the administration of grievances arising thereunder.

Section 5. **Recognition of bargaining agent.** Boards are hereby empowered to recognize employee organizations as the sole and exclusive bargaining agent for all certificated employees in the appropriate unit, and to negotiate and enter into written agreements with such em-
ployee organizations in determining terms and conditions of employment.

Section 6. Obligation to bargain.

(1) Where an employee organization has been certified pursuant to the provisions of this act, the board shall be required to negotiate collectively and enter into written agreements with said employee organization in determining terms and conditions of employment.

(2) It shall be the obligation of the board and the employee organization or their representatives to meet and confer in good faith concerning the terms and conditions of employment.

(3) Such good faith negotiations and meetings shall begin within ten days after the receipt by the board of written notice from the bargaining agent of the certificated employees requesting a meeting for negotiating purposes.

(4) It shall be the mutual obligation of the board and the employee organization or their representatives to participate in good faith in mediation and fact-finding required by this act.

Section 7. Guidelines for unit determination.

(1) The negotiating unit shall be established in accordance with the following criteria: the public interest; the community of interest of employees; the ease of administration; and the wishes of the employees.

(2) The appropriate unit shall involve consideration of the maximum freedom of choice and community of interest of the employees, in so far as these are compatible with the public interest.

Section 8. Election Procedures.

(1) The board and the representatives of the employee organization(s) shall jointly select an independent third party to conduct a repre-
sentation election when thirty per cent of the certificated employees of that district have petitioned for such an election with the State Department of Education.

(2) The decisions of the independent third party on the election proceedings shall be binding on both parties. If no independent third party can be chosen by the parties involved sixty days after the petition for the election has been submitted to the State Department of Education, then the State Department of Education will appoint said third party.

(3) The election shall be a bi-unit election. The unit designated as the "teacher unit" and the unit designated as the "administrative unit" shall hold separate, but simultaneous elections in order to determine which employee organization should represent them or if no employee organization should represent them. Each unit will use a separate secret ballot in a separate voting place to select a negotiating representative.

(4) If a category of supervisory employees desires not to be represented with the teachers in the "teacher unit" it must submit to the election supervisor a majority petition of those certificated employees that are classified by the election supervisor as belonging to that particular supervisory category at least ten days prior to the election.

(5) If the "teacher unit" desires the exclusion of any category of supervisory employees it must submit to the election supervisor a majority petition of all the other members of the "teacher unit" exclusive of the members who are in the category being considered for exclusion at least ten days prior to the election.

(6) A petition consisting of ten per cent of the members of the
proposed unit is necessary in order to have the name of an employee organization placed on the ballot.

Section 9. **Types of Representation Units.**

(1) The unit shall be of local self-determination within categorically defined limits.

(2) A unit could be composed solely of all certificated employees of a single employer below the rank of superintendent.

(3) A unit could be composed solely of all certificated employees employed and engaged in positions requiring only a teaching or special services certificate.

(4) A unit could be composed solely of all administrators below the rank of superintendent.

(5) Any group of supervisory employees may as a group reject the "teacher unit" and not be represented or be represented with the "administrative unit".

(6) Any group of supervisory employees excluded by the "teacher unit" may be represented with the "administrative unit" or not be represented.

(7) Unit 9(2) can only exist if a majority of both the "teacher unit" and the "administrative unit" vote for such a unit to be established. If either unit calls for a separate unit, said unit must be established.

Section 10. **Certification of bargaining agent.**

(1) If any employee organization shall receive more than fifty per cent of the recorded votes by the certificated employees of an appropriate unit, then said employee organization shall be certified as the exclusive bargaining agent for that appropriate unit for not less
than two years from the date of the election.

(2) No employee organization shall be certified as the represen-
tative of the certificated employees except after an election.

Section 11. Unfair practices.

(1) Employers, their agents or representatives are prohibited from
the following unlawful acts:

(a) interfering with, restraining or coercing certificated em-
ployees in the exercise of the rights granted in this act;

(b) encouraging or discouraging membership in any employee or-
ganization in regard to hiring or tenure of employment or any terms or
conditions of employment;

(c) dominating or interfering with the formation, existence, or
administration of any employee organization;

(d) refusing to bargain collectively in good faith with the bar-
gaining agent of its certificated employees as provided in Section 6;

(e) discharging or otherwise discriminating against an employee
because he has signed or filed an affidavit, petition, or complaint or
given information or testimony under this act;

(f) refusing to reduce to writing and sign an agreement arrived
at through negotiation and discussion.

(2) Certificated employees or employee organizations, their agents
or representatives, are prohibited from the following unlawful acts:

(a) interfering with, restraining or coercing certificated em-
ployees in violation of their rights guaranteed by this act;

(b) refusing to bargain collectively in good faith with the
board or its bargaining agent as provided in Section 6;

(c) instituting, maintaining, or participating in a strike
against any employer, or picketing any school or school facility or to
induce a strike because of any controversy except as provided in Sec-
tion 16.

(3) Violations of this section may be enjoined upon written com-
plaint of any party effected by any such violation in so far as the
State Department of Education confers.

Section 12. Ratification of agreements. All professional nego-
tiation agreements reduced to writing and executed by an employer and
the employee organization must be ratified by a majority of the cer-
tificated employees in the appropriate unit before becoming binding
upon the parties. If a professional negotiation agreement is executed
by a professional negotiation agent of the employer it must be ratified
by a majority of the board.

Section 13. Service fees.

(1) The certified employee organization shall in a written state-
ment specify an amount of reasonable service fees necessary to defray
the costs for its services rendered in negotiating and administering an
agreement. The service fee shall be computed on a pro rata basis among
all certificated employees contained in the appropriate unit and must be
ratified by a majority of the certificated employees in said unit.

(2) The board upon receiving written notification from the cer-
tified employee organization that the specified service fee has been
ratified shall deduct from the payroll of every certificated employee
in the appropriate unit the amount of service fees and remit the amount
to the exclusive representative.

(3) The deduction permitted by this section shall extend to any
employee organization that is certified as the exclusive representative
of an appropriate unit. If an employee organization is no longer the certified representative of the appropriate unit, the deduction shall terminate.

Section 74. Negotiation Procedures.

(1) The board and the certified employee organization shall meet at reasonable times and shall negotiate in good faith with respect to terms and conditions of employment.

(2) Any mutual agreement reached by the representative of the board and the certified employee organization shall be reduced to writing.

(3) The board shall have authority to enter into written agreement with the certified employee organization setting forth a grievance procedure culminating in a final and binding arbitration, to be invoked in the event of any dispute concerning the interpretation or application of a written agreement. In the absence of such a procedure, either party may submit the dispute to the State Department of Education for a final and binding decision. A dispute over the terms of an initial or renewed agreement does not constitute a grievance.

Section 75. Impasse Procedures.

(1) If, after fifty (50) days following the commencement of negotiation between the employer and certified employee organization or their designated representatives an agreement can not be reached upon any issue or issues presented, either party may notify the other and the State Department of Education in writing that it desires to present the issue or issues to a mediation panel. The mediation panel shall consist of three (3) persons who are residents of the state in which the employer is located, one to be selected by the certified em-
ployee organization, and one to be selected by the employer, and the third to be selected by the first two named, who shall act as chairman of the panel. Each party shall select its panel member within ten (10) days after such notification. If the members selected by the parties are unable to agree upon the third member within ten (10) days from the date of their selection, then the third member shall be selected by the State Department of Education. Negotiations shall thereupon continue before the mediation panel.

(2) If an agreement has not been reached by the parties within twenty (20) days after the presentation before the mediation panel has commenced, the panel shall make findings of fact and recommendations concerning the issues discussed and shall serve a copy upon both parties within five (5) days after such twenty (20) day period. Within five (5) days following mailing of such findings and recommendations, the parties must notify in writing the State Department of Education and each other whether or not they accept the findings and recommendations of the panel.

(3) Unless both parties do so accept, the panel shall publicize its findings of fact and recommendations in such manners it deems advisable. Not less than five (5) nor more than ten (10) days after such publication of the findings of fact and recommendations of the panel, the parties shall again notify in writing the State Department of Education and each other whether or not they accept the recommendations of the panel.

(4) The State Department of Education shall make public its recommendations on the issue or issues in dispute ten (10) days after it is notified in accordance with section 15 (3), the parties shall notify
in writing the State Department of Education and each other whether or not they accept the recommendations of the State Department of Education.

(5) The parties may further negotiate and settle the issues at any time before or after the recommendations of the panel. Each party shall pay the expenses of its selected member of the panel and both parties shall share equally the expenses of the third member of the panel and the publication costs.

Section 16. The Right to Strike.

(1) It shall be lawful for a certificated employee who is in an appropriate unit involved in an impasse, to participate in a strike after:

(a) all of the requirements of section 15 relating to the resolution of disputes have complied with in good faith;

(b) the certified employee organization has notified in writing the employer and the State Department of Education of its intent to strike;

(c) ten (10) days have elapsed since the recommendations of the State Department of Education were made public in accordance with section 15 (4).

(2) No employee organization shall declare or authorize a strike of certificated employees which is or would be in violation of this section.

(3) The State Department of Education shall have the power to remove certification from any employee organization involved in an unlawful strike for a period of not less than twelve (12) months nor more than twenty-four (24) months from the date of the unlawful strike.
Section 17. This act shall not operate so as to annul, modify or preclude the renewal or continuation of any lawful agreement heretofore or hereafter entered into between a board and certified employee organization in accordance with the procedure provided in this act.

Section 18. Severability. This act shall be severable, and should any part or provision hereof be declared unconstitutional by a competent court, such declaration will not invalidate the remaining provisions hereof.
APPENDIX II

MONTANA

PROFESSIONAL NEGOTIATIONS ACT FOR TEACHERS

AN ACT RELATING TO THE TEACHING PROFESSION, RECOGNIZING THE RIGHT OF TEACHERS TO JOIN ORGANIZATIONS OF THEIR CHOOSING, PROMOTING COOPERATION AND DISCUSSION BETWEEN SCHOOL BOARDS AND TEACHERS, ESTABLISHING PROFESSIONAL NEGOTIATION PROCEDURES, RECOGNIZING BARGAINING REPRESENTATIVES.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. Short title. Sections 1 through 14 of this act shall be known as the "Professional Negotiations Act for Teachers."

Section 2. Declaration of policy and purpose. In pursuance of the duty imposed upon it by the constitution to provide a system of free public schools and to adopt all means necessary and proper to secure to the people the advantages and opportunities of education, the legislative assembly hereby declares that it recognizes teaching as a profession which requires special educational qualifications and that to achieve high quality education it is indispensable that good relations exist between teaching personnel and their governing boards. It is, therefore, the policy of this state to recognize the rights of professional school employees to form, join, or assist professional employees' organizations to negotiate with their governing boards regarding the terms and conditions of professional service and to confer and consult
in other matters for the purpose of establishing, maintaining, protect-
ing and improving educational standards, and to establish procedures
which will facilitate and encourage amiable settlement of disputes. It
is further recognized that the authority of public school district
boards of trustees is established by law and a district board of trus-
tees has final authority for determining policies for the operation of
public schools under its jurisdiction which are not inconsistent with
law.

Section 3. Definitions. As used in this act, unless the context
clearly requires otherwise:

(1) "Teacher" means an individual certificated in class 1, 2, 4 or
5 as provided in section 75-6006, R.C.M. 1947, but shall not include
such certificated individuals who are not currently under contract to
perform classroom teaching; however "teacher" shall include principals
certificated in class 3 who so elect as provided in subsection (3).

(2) "Employer" means a school district as defined in section 75-
6501, R.C.M. 1947.

(3) "Appropriate unit" means all of the teachers employed by a
single employer. Principals employed by an employer may elect to be
included in the appropriate unit or may elect to establish a separate
appropriate unit of principals.

(4) "Board" means any public school board of trustees.

(5) "Strike" means any work stoppage by a teacher or teachers
which interferes with the operation of a school or schools, which in-
cludes abstinence in whole or part from the full, faithful, and proper
performance of the duties of employment, for the purpose of inducing,
influencing, or coercing an employer to change any terms or conditions
relating to the employer-teacher relationship.

(6) "Teacher organization" means any organization of employees which includes teachers in its membership.

(7) "Representative of Teachers" means a representative elected pursuant to the provisions of section 7.

Section 4. Teachers' rights. It shall be lawful for teachers to organize, form, join or assist in employee organizations or to engage in lawful activities for the purpose of collective bargaining or to bargain collectively through representatives of their own free choice. Teachers shall also have the right to refrain from any or all such activity but shall be bound by a professional negotiations agreement involving the appropriate unit of which they are a member. It shall be the duty of an employer to meet and confer on any proposal advanced by a representative of teachers, or by a teacher group if no representative of teachers has been selected, if such proposal does not endeavor to amend the terms of a professional negotiations agreement then in effect, and nothing in this act shall be construed to diminish such duty. However, a representative of teachers selected as provided by this act, shall be the exclusive representative of all the teachers in the appropriate unit to meet, confer or negotiate upon all matters permitted in section 5 and such teachers shall not negotiate individually.

Section 5. Duty to negotiate and bargain. It shall be the duty of all employers acting as a board, or acting by and through a bargaining agent designated or employed by the employer, and all teachers, or a representative of teachers, to meet and confer for professional negotiations purposes at the request of either, except as provided by this
act, to discuss matters relating directly to the employee-teacher relationship such as salary, hours and other terms of employment, and to negotiate and bargain for agreement on such matters. The matters of negotiation and bargaining for agreement shall not include matters of curriculum, policy of operation, selection of teachers and other personnel, or physical plant of schools or other school facilities, however nothing herein shall limit the obligation of employers to meet and confer as provided in section 4. Teachers under a professional negotiations agreement, or the representative of teachers, shall not demand that professional negotiation conferences begin until after November 1 of the last year such agreement is effective but, if professional negotiation is desired, must serve written notice of intention to negotiate collectively upon the employer not later than November 1 of such year stating specifically the items to be negotiated. If such notice is not served, the employer shall not be required to negotiate any terms of the employer-teacher relationship for the following school year. Professional negotiation agreements in effect at the time this act becomes effective shall continue to their expiration. No professional negotiation agreement shall extend for a term of more than two (2) years.

Section 6. Unfair practices.

(1) Employers, their agents or representatives, are prohibited from the following unlawful acts:

(a) Interfering with, restraining or coercing teachers in any manner in their right of self-organization or selection of a representative.

(b) Discriminating in regard to conditions of employment when
the purpose is to discourage membership in a teacher organization.

(c) Refusing to meet, confer or negotiate in good faith with teachers or the duly elected representative of an appropriate unit of teachers or with a panel selected upon impasse as provided in section 9, to discuss or negotiate upon any matter dealing directly with the employer-teacher relationship as provided in section 4.

(d) Refusing to reduce to writing and sign a professional negotiation agreement arrived at through negotiation and discussion.

(2) Teachers or teacher organizations, their agents or representatives, are prohibited from the following unlawful acts:

(a) Restraining or coercing teachers in violation of their rights guaranteed under section 4 or interfering in the conduct of an election as provided in section 6.

(b) Refusing to reduce to writing or sign a professional negotiation agreement arrived at through negotiation and discussion.

(c) Instituting, maintaining or participating in a strike or boycott against any employer, or picketing any school or school facility to further or to induce a strike or boycott because of any controversy, engaging in, or inducing or encouraging any individual to engage in, a strike or refusal to handle goods or perform services or threatening, coercing or restraining any individual where the object thereof is to force or require any employer to discontinue doing business with such individual or to force or require an employer to recognize a teacher representative not selected as provided in section 7.

(d) Refusing to meet, confer or bargain in good faith with an employer or its agents or with a panel selected upon impasse as provided in section 9, to discuss or bargain upon any matter dealing directly
Section 7. Selection of teachers' representative. Any teacher organization whose membership includes a majority of the teachers in the appropriate unit, as verified by affidavit of the secretary of the teacher organization delivered to the employer, shall be recognized by the employer as the representative of teachers in the appropriate unit, however, (1) if the membership of more than one (1) teacher organization desiring to represent the appropriate unit includes a majority of the teachers in the appropriate unit or (2) if no teacher organization's membership includes a majority of the teachers in the appropriate unit but thirty (30) per cent or more of the teachers in the unit have petitioned the board, in writing, for a particular representative, or (3) if the employer questions whether a majority of the teachers in the appropriate unit desire the representation of a teacher organization determined by organization membership and applied for an election, the board or his representative to represent the teachers in the appropriate unit. The board shall give not less than ten (10) nor more than thirty (30) days written notice of the time and place of such election by mailing to all teachers in the appropriate unit and by posting in the school or schools where such teachers teach. The board shall include on the ballot the names of all teacher organizations verified by affidavit to include a majority of such teachers, then the names of all prospective representatives offered by the petition of thirty (30) per cent or more of the teachers in the unit received by the board not less than five (5) days prior to the date for election, and in either event the choice of "no representative." One candidate must receive a majority of the votes cast to be recognized as the representative of the
teachers in the appropriate unit. If "no representative" receives a majority, no representative shall be recognized. If two (2) or more prospective representatives are named on the ballot and no choice receives a majority, a second election, after notice, shall be conducted naming the two (2) proposed representatives receiving the greatest number of votes in the first election. A determination under this section by secret ballot shall remain in effect for one (1) year after the date of the election and thereafter until the employer or thirty (30) percent or more of the teachers in the appropriate unit shall apply to the board for another election.

Section 8. Ratification of agreements. All professional negotiation agreements reduced to writing and executed by an employer and the representative of teachers must be ratified by a majority of the teachers in the appropriate unit before becoming binding upon the parties. If a professional negotiation agreement is executed by a professional negotiation agent of the employer it must be ratified by a majority of the board of the employer.

Section 9. Professional negotiation. If, after fifty (50) days following the commencement of negotiation between an employer, and a negotiating agent designated by the employer, and teachers, or a representative of teachers, an agreement cannot be reached upon any proper issue or issues presented, either party may notify the other in writing that it desires to present the issue or issues to a panel of three (3) persons, residents of the state in which the employer is located, one (1) to be selected by the employer, one (1) to be selected by the representative of teachers, and the third to be selected by the first two (2) named, who shall act as chairman of the panel. Each party shall select
its panel member within ten (10) days after such notification. If the
members selected by the parties are unable to agree upon the third mem-
ber within ten (10) days from the date of their selection, the senior
district judge of the county in which the employer is located shall
submit the names of five (5) persons to the parties at impasse and each
party shall in the presence of such senior district judge alter­nately
strike one (1) name until only one (1) shall remain. The teachers or
representative of teachers shall strike the first name. The person so
remaining shall be the third panel member. Negotiation shall thereupon
continue before the panel. The panel may take oral testimony under
oath and shall consider all documents and arguments presented to it.
If an agreement has not been reached by the parties within twenty (20)
days after presentation before the panel has commenced, the panel shall
make findings of fact and recommendations concerning the issues dis­
cussed and shall serve a copy upon both parties within five (5) days
after such twenty (20) day period. Within five (5) days follow­ing
mailing of such findings and recommendations, the parties must notify
the county superintendent of schools and each other whether or not they
accept the findings and recommendations of the panel, and unless both
parties do so accept, the panel shall publicize its findings of fact
and recommendations in such manner as it deems advisable. Not less than
five (5) days nor more than ten (10) days after such publication of
findings of fact and recommendations of the panel, the parties shall
again notify the county superintendent of schools and each other whether
or not they accept the recommendations of the panel. The parties may
further negotiate and settle the issues at any time before or after the
recommendations of the panel. Each party shall pay the expenses of its
selected member of the panel and both parties shall share equally the expenses of the third member of the panel and the publication costs.

Section 10. **Employer's right under other state laws.** Nothing contained in this act shall impair the employer's right to hire teachers or to discharge teachers for cause consistent with other state laws.

Section 11. **Court review.** An employer, a duly elected representative of teachers, or if no representative of teachers has been selected, then a teacher or group of teachers, may institute proceedings in the district court for the county in which the employer is located to restrain the commission of any unlawful or unfair practice as provided in this act. Any teacher acting in violation of any court order to enforce the provisions of this act shall be subject to suspension without pay or dismissal at the discretion of the employer.

Section 12. **Penalty for violation.** Any teacher who violates the provisions of section 6 (2)(c) shall forfeit his salary for every day that he is in violation.

Section 13. **Planning for negotiating sessions closed to public.** Professional negotiating sessions between employers and teachers, or their representatives, may be open to the public, but meetings of school boards wherein professional negotiating proposals are discussed prior to any professional negotiating sessions shall be closed to the public.

Section 14. This act shall not operate so as to annul, modify or preclude the renewal or continuation of any lawful agreement heretofore or hereafter entered into between a board and a teacher organization. This act shall not preclude the modification of any existing agreement upon the request of either the board or the teacher organization in accordance with the procedure provided in this act.
Section 15. Severability. This act shall be severable, and should any part or provision hereof be declared unconstitutional by a competent court, such declaration will not invalidate the remaining provisions hereof.

Effective date - July 1, 1971
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