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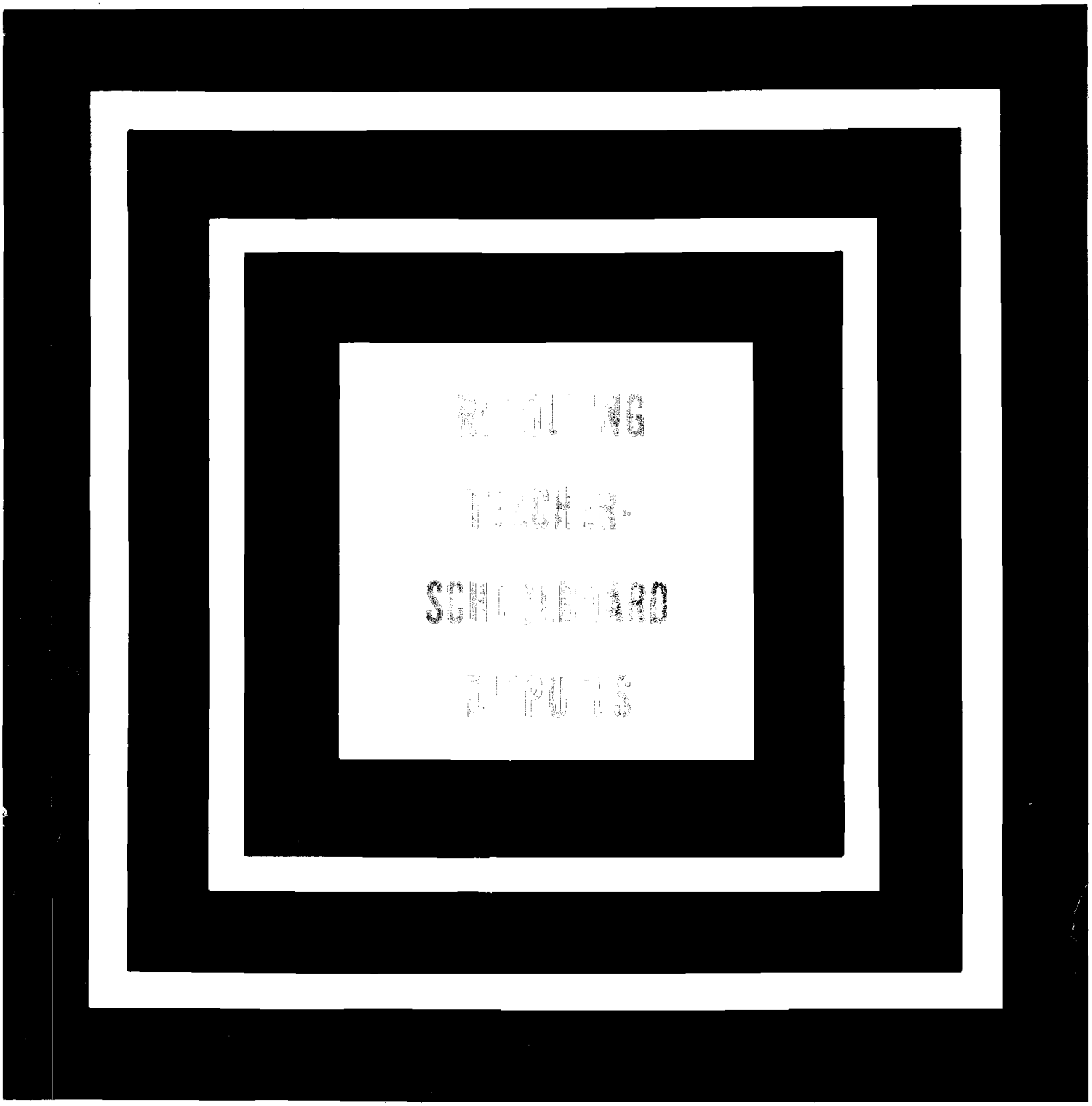
CITIZENS LEAGUE REPORT



CITIZENS LEAGUE REPORT

RESOLVING TEACHER-SCHOOL BOARD DISPUTES

A Proposal for an Improved Process of
Collective Bargaining in Education

Prepared by
Citizens League Committee on
Employer-Employee Bargaining in Education
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Approved by
Citizens League Board of Directors
March 24, 1971

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MAJOR CONCLUSIONS . . . . . .

* If the proper relationship exists between teachers and school management . . . no statutory regulations would be needed, and if antagonistic relations exist . . . no bargaining process will provide harmony. However, provisions of a public employer-employee statute can encourage or even generate bad relations, and other provisions may serve to assist the parties to reach mutually agreeable solutions to their problems.

* Since 1967, teacher-school board relations have become increasingly antagonistic. The "meet and confer" provisions of our present law have fallen short of their stated purpose of encouraging closer cooperation between school boards and certificated personnel.

* At the heart of the problem between teachers and school boards is a question of power. The "meet and confer" process whets the employees' appetite . . . only to provide them with conspicuously little legal substance. It bestows the school board with legal power beyond which it, in reality, can exercise . . . again building false expectations.

* Collective bargaining has been accepted in principle and practice in nearly all areas of employment . . . except for the public sector. The practice of allowing school management the final say on all bargaining decisions is no longer accepted by teachers . . . regardless of the decision made by the school board.

. . . . . IN OUR REPORT

* The "meet and confer" provisions in education have evolved in practice into an advocacy bargaining process. However, the advocacy process does not work well when one of the parties . . . the school board . . . serves as the judge in deciding his own case.

* Teachers can be a valuable resource for a school board in planning basic educational policies. However, school boards have a public responsibility to make the policy determinations. This responsibility must not be compromised through the bargaining process.

* A good bargaining process should protect the school board's educational policy prerogatives, provide teachers with an equitable bargaining process, and assure the public that its interests will be served. The public has the right to expect a process that will encourage the parties to work out agreements with mutual respect, in an unemotional, rational manner. Dispute resolution should emphasize reason rather than power.

Our proposal, summarized on the following page, is based on these conclusions.

A BRIEF SUMMARY OF OUR PROPOSAL

* An exclusive bargaining agent should be provided teachers in a school district. The Bureau of Mediation Services should conduct elections to determine the exclusive bargaining agent. Once an exclusive bargaining agent has been designated, it should retain this status for a period of at least two years, or on a continuing basis until another preference is indicated at a subsequent election called on petition of a member in the bargaining unit. The Bureau of Mediation Services should be charged with interpreting general statutory language as to which employees are included in the bargaining unit.

* The teachers and the school board should both have the right to determine their own bargaining spokesman. Private bargaining sessions should, and will, take place. However, in addition to the informal sessions, formal, public bargaining sessions should continue to be required. Areawide bargaining and multi-year contracts should specifically be authorized.

* Teacher-school board negotiations should consummate in a master contract . . . signed by both parties. Bureau of Mediation Service assistance should be available to assist the parties in working out an agreement.

* A fact-finding/arbitration panel should be assigned to resolve an impasse. The fact-finding/arbitration panel should support its findings with the data and rationale upon which the members made the findings. If school boards accept the findings of the panel, it should be binding on both parties.

* If the school board rejects the panel's findings, the teachers should then be authorized to legally engage in a strike over negotiable issues.

* Neutrals for the fact-finding/arbitration panels should be drawn from a pool approved by a seven-member Minnesota Public Employees Board. The Board should consist of three neutral members, two labor partisans, and two management partisans. The three neutral members should render decisions on alleged violations of the "good faith" and "unfair labor practices" statutory provision, and interpret statutory provisions in what matters are negotiable between teachers and school boards.

* School boards should effectively utilize teachers in planning broad educational policy. The mechanism for involving teachers in educational policy should be separated from the bargaining process. Negotiable issues should include wages, hours, and other terms and conditions of employment. A "management rights clause" in the state bargaining statute should clearly reserve to the school board the final decision on broad educational policy.

* The process by which teachers would be involved in decisions of educational policy should also be a negotiable issue.

Our full proposal is found in Chapter IV, p. 19.

I. TEACHER-SCHOOL BOARD RELATIONS IN MINNESOTA

A Question of Power. On April 9, 1970, over two thirds of the Minneapolis school teachers did not report for work. A strike decision had been reached three days earlier by the membership of the Minneapolis Federation of Teachers. As our committee discussed the strike with the parties, we found that the causes of the strike were many, and that resentments ran deep. We found at the heart of the problem - not a question of dollars, but a question of power. The question of power had festered and swelled under a bargaining process which we came to understand as one which whets the employees' appetite . . . only to provide them with conspicuously little legal substance. A process which bestows the school board with legal power beyond which they, in reality, can exercise -- again building false expectations.

It is a Statewide Problem. While teacher-school board relations, as they relate to the bargaining process, are not good in Minneapolis -- surprisingly, we found indications that they may be better in Minneapolis than in many other school districts in the state. Unfortunately, antagonistic relations between teachers and school boards can be found throughout the state: from the largest districts to the smallest; from the metropolitan area to the furthermost outstate regions.

Statutory Provisions Can Help. During the course of our study, it became apparent to our committee that if the proper relationship exists between teachers and school management . . . no statutory regulations would be needed, and if antagonistic relations exist . . . no bargaining process will provide harmony. However, we have learned that certain provisions in a public employer-employee statute can encourage or even generate bad relations, and other provisions may serve to assist the parties to reach mutually agreeable solutions to their problems.

A. The History of Legislation Governing Teacher-School Board Relations in Minnesota

Prior to 1951, there was no labor relations law relating to public school teachers in Minnesota. Then, legislative action was prompted by a strike by a Minneapolis janitors' union against the Minneapolis School Board, and a Minnesota Supreme Court decision upholding the right of public employees to strike. In its 1951 session, the Minnesota Legislature passed what has become known as the "No Strike Law". Much of the wording from the 1951 act remains unchanged going into the 1971 legislative session.

The "No Strike Law" prohibits all state and local public employees from striking, provides that any employee who participates in a strike automatically has his employment terminated, and provides that the employee can be reemployed only upon the following conditions: (a) his compensation shall in no way exceed that received by him immediately prior to such violation, (b) the compensation of such person shall not be increased until after the expiration of one year from such appointment, reappointment, employment or reemployment as he may have been theretofore entitled. (M.S. 179.55)

In addition to the "no strike" aspects, the 1951 act provided for adjustment panels to be established to consider employee grievances. In 1957 the basic law was extended to provide a "meet and confer" process for settlement of grievances and conditions of employment.

In 1965 there were numerous changes and additions to the "No Strike Law". Most of the changes dealt with the mechanics of employee representation, the "meet and confer" process, and the use of adjustment panels. For teachers, the major thrust of the 1965 act was to exclude them from all but the "no strike" aspects of the law. So, from 1965 until 1967, public school teachers were singularly excluded from any statutory provisions, and were left - in effect - without any sort of a bargaining mechanism.

In 1967, the Legislature provided the teachers with a bargaining mechanism in the form of the "Meet and Confer Law" (M.S. 125.19-.26). The "Meet and Confer Law" applies to only certified school teachers.

B. The Meet and Confer Law

The "Meet and Confer Law" states that it is "the policy of this state to encourage closer cooperation between school boards and certified personnel by providing teachers participation in discussion leading to the formation and implementation of public education policies affecting the conditions of their employment and the practice of their profession."

It provides that, with respect to conditions of professional service, teachers and school boards shall "meet and confer in an effort to reach agreement". It further provides that with regard to all other matters "the parties shall meet and confer in order to afford a reasonable opportunity for the expression of views and exchange of information". The law provides that "conditions of professional service means economic aspects relating to terms of employment, but does not mean educational policies of the district".

In case the teachers and school board do not reach a mutual agreement on conditions of professional service, the law provides for an adjustment panel to further consider the matter. The adjustment panel combines a representative appointed by the teachers' bargaining unit, a representative of the school board, and a third member to be decided by mutual agreement by the other two parties. If the third member cannot be agreed upon, or if one of the parties will not appoint its representative, the senior or presiding judge of the district court is charged with making the appointments.

The adjustment panel is given both a mediation and a fact-finding role. If the third party is unable to get the teacher and school board representatives to reach an agreement, a fact-finding report is to be issued. The school board has then completed its legal obligations under the "Meet and Confer Law", and can proceed to accept or reject the findings of the adjustment panel. The decision reached by the board then becomes final and legally binding.

C. Other Related Statutory Provisions

Two teacher tenure statutes are also related to the bargaining process: "The Teacher Tenure Act for Cities of the First Class", and the "Continuing Contract Law" which applies to the balance of the school districts in the state.

The "Continuing Contract Law" (M.S. 125.12) provides that unless a tenured teacher resigns by April 1 or is terminated for one of several specific reasons, his previous year's contract automatically goes into effect until a new contract is mutually agreed upon. This protects the teacher from a capricious dismissal, but also means that he must break a contract in order to resign after April 1. Any teacher breaking a contract without board consent may lose his certification to teach within the state.

The provisions of "The Teacher Tenure Act for Cities of the First Class" are silent with regard to when a teacher may resign. Each of the three school boards involved have established a policy stating the amount of notice the individual teacher should give before resigning. The teachers in the cities of the first class do not have individual yearly contracts, so their resignations need not be for the conclusion of the school year.

D. Experience under the Meet and Confer Law

Three rounds of negotiations have been concluded under the "Meet and Confer Law", and the fourth is presently under way. Much can be said for the proposition that the teachers and school boards in the state are just now beginning to develop the familiarity and sophistication needed for the meet and confer process. During the first year the parties - particularly the teachers - were anxious to test the bargaining process by carrying disputes to impasse. In general, the teachers found they fared better when they settled directly with the school boards. Conversely, school boards became more receptive to the adjustment panel process as the trend of findings began to develop. This move has been blocked somewhat as different teacher groups have refused to participate on adjustment panels. Overall, there has been a marked decrease in the use of adjustment panels. However, requests for adjustment panels are greater in 1971 than they were in any of the first three years.

Under the "Meet and Confer Law" teachers in the state have been able to substantially increase their salaries . . . and in many cases the teachers and school boards have been able to reach mutual agreements on policy matters which were not even the topic of discussion between the parties before the "Meet and Confer Law" went into effect. The charts on the following pages show the marked increase in teacher salaries during the last three years the "Meet and Confer Law" has been in effect. The seven-year period from the 1960-61 school year until 1967-68 provided an increase of $1,093 -- from $4,238 to $5,331 -- for the median salary in the state of beginning teachers with a B.A. degree. During the three years under the "Meet and Confer Law", B.A. minimums increased $1,657 -- from $5,331 to $6,988. Similar increases can be found throughout the charted data. The greatest increases came in the first year under meet and confer, when beginning teacher salaries increased 13%. By the third year the rate of increase for B.A. and M.A. minimums was down to 7%.

Within the metropolitan area, teachers do somewhat better than teachers in the rest of the state. The B.A. minimum for 1970-71 is $7,436 and the B.A. maximum is $11,543. The medians for M.A. are $8,383 and $14,970. The median for a teacher without an earned doctorate in the metropolitan area is $16,160.

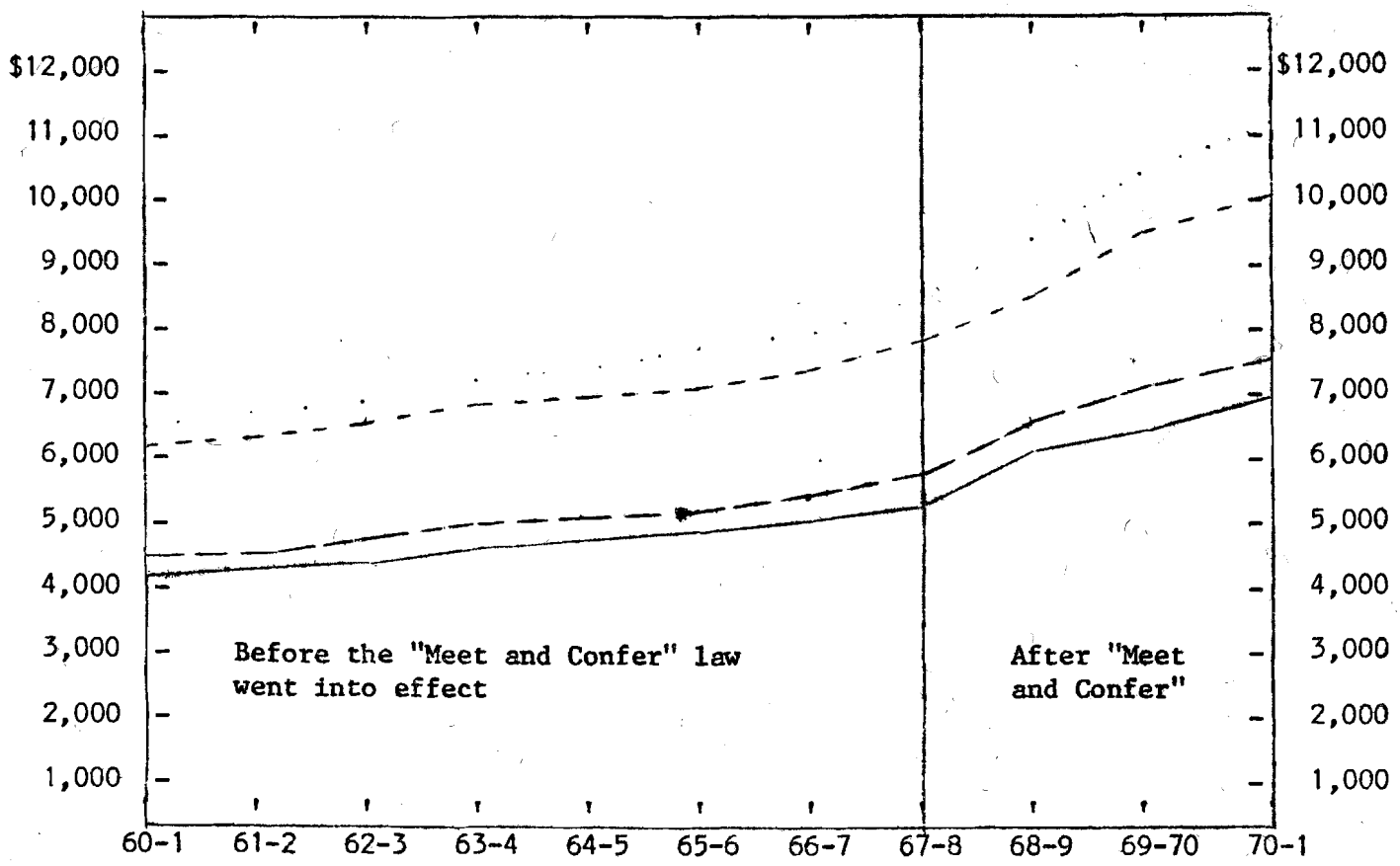
Many reasons account for the rapid increase in Minnesota public school teacher salaries during the last three years. There has been a substantial rate of inflation; wage settlements in construction and other private industry have been high; substantial increases have been achieved by police and other public employees in different parts of the country; state aids made substantial funding available with the enactment of the 1967 sales tax; and, of course, under the "Meet and Confer Law" teachers were in a better position to press their wage demands.

Despite the substantial wage increases under the "Meet and Confer Law, teachers generally are unhappy with the process. Both the Minnesota Education Association and the Minnesota Federation of Teachers are interested in seeing major changes made in the bargaining process during the 1971 legislative session. The Minnesota School Boards Association, on the other hand, is not pressing for any major changes in the "Meet and Confer Law". In the next section of the report we will look more closely at some of the issues and complications that have developed under the "Meet and Confer Law".

COMPARISON OF MEDIANS OF SCHEDULED SALARIES IN MINNESOTA
BY PREPARATION LEVEL FOR THE YEARS 1960 THROUGH 1970

School Year	Preparation Level							
	Bachelor's Degree				Master's Degree			
	Minimum	% Increase	Maximum	% Increase	Minimum	% Increase	Maximum	% Increase
1960	$ 4,238		$ 6,096		$ 4,539		$ 6,484	
1961	4,359	2.8%	6,314	3.6%	4,676	3.0%	6,716	3.6%
1962	4,484	2.9%	6,500	2.9%	4,828	3.2%	6,953	3.5%
1963	4,632	3.3%	6,754	3.9%	4,979	3.1%	7,224	3.9%
1964	4,759	2.7%	6,904	2.2%	5,105	2.5%	7,384	2.2%
1965	4,889	2.7%	7,102	2.9%	5,253	2.9%	7,640	3.5%
1966	5,047	3.2%	7,349	3.5%	5,454	3.8%	7,974	4.4%
1967	5,331	5.6%	7,828	6.5%	5,792	6.2%	8,536	7.0%
1968	6,039	13.3%	8,719	11.4%	6,550	13.1%	9,580	12.2%
1969	6,535	8.2%	9,451	8.4%	7,119	8.7%	10,379	8.3%
1970	6,988	6.9%	10,060	6.4%	7,635	7.2%	11,172	7.6%

COMPARISON OF MEDIANS OF SCHEDULED SALARIES BY PREPARATION LEVEL
FOR THE YEARS 1960-61 THROUGH 1970-71



B.A. Min. ————

B.A. Max. - - - - -

M.A. Min. — — — —

M.A. Max. .....

II. CURRENT ISSUES AND PROBLEMS

Closer Cooperation Not Achieved. Since 1967, teacher-school board relations have become increasingly antagonistic, teacher has been pitted against teacher, the general public has become increasingly critical of the negotiations process, and bargaining has become disruptive to the educational process. Bad relations have led to a fullfledged strike in Minneapolis; withholding of services, "working to rule", and other forms of teacher "sanctions" in numerous districts; and hard feelings and misunderstandings undoubtedly have carried over to the classroom functioning of teachers in other cases. Clearly, the "meet and confer" provisions have fallen short of their stated purpose of encouraging closer cooperation between school boards and certified personnel.

1. Who shall represent teachers?

Questions concerning employee representation have been a continuing irritant under the "meet and confer process". The "meet and confer law" provides that teachers are represented by a teachers council consisting of five teachers--selected by various teacher organizations . . . on a proportional basis relative to a membership count . . . as determined by the school board. It also provides that all certified personnel employed by the school district . . . superintendents excluded . . . are part of the employee bargaining unit.

Divided representation. The greatest representation problem centers around the provision for proportional representation. This has the effect of dividing the teacher bargainers into at least two camps in most districts -- one affiliated with the Education Association and one affiliated with the Federation of Teachers. In most cases the minority organization's representatives on the teachers council are largely ignored. In other cases the minority organization has undercut the efforts of the representatives of the majority organization.

In closely divided districts, the pressure to out-perform the competing union has increasingly pushed the leadership of each organization into more militant, less conciliatory positions. Teacher organizations have moved to adversary relationships with school boards in the bargaining process -- in part as a tactic to win concessions from the school board, but also as a ploy in the power struggle between the Education Association and the Federation of Teachers.

When representatives of the Minneapolis Education Association (C.M.E.A.) met with our committee, they charged that the 1970 strike vote by the Minneapolis Federation of Teachers was engineered by the Federation leaders for reasons of organizational maintenance. Conversely, when the Minneapolis Federation representatives met with us, they suggested that there most likely would not have been an impasse if the Minneapolis School Board had not counted on working the C.M.E.A. against the M.F.T. In any case, negotiators from the C.M.E.A., the M.F.T., and the Minneapolis School Board all indicated that proportional representation on the teachers council had substantially undermined the bargaining process in Minneapolis.

No resource person appearing before our committee advocated continuing the use of proportional representation. It was pointed out, however, that in districts where one organization is clearly dominant, proportional representation does not necessarily represent a problem. In cases where the membership in the two organizations was closely divided, the resource people verified that there were problems. Teachers, school administrators and board members all faulted proportional representation

in the negotiations process. They differed only in what mechanism they recommended for providing an exclusive bargaining agent.

The key questions in considering an exclusive bargaining agent center around: whether the bargaining agent should be elected to a fixed term or on a contingency basis; under what conditions an election should be called--upon petition of a percentage of the members, only if the organization has a given percentage of the total membership, at the request of a second teachers' organization, or some combination thereof; who should conduct the elections and where they should be held; and, should the teachers be given the option of not having a bargaining agent.

Membership in the bargaining unit. Principals and other supervisory personnel are presently included in the teachers' bargaining unit. It is generally agreed that supervisory personnel do not appropriately belong in an employees' bargaining unit. In fact, school boards in larger districts have often ignored the statutory designation of the bargaining unit, and bargain separately with their supervisory personnel. As a negotiations ploy, teachers' organizations have at times attempted to force school boards to bargain supervisors' salaries with them.

In the private sector, the National Labor Relations Board (N.L.R.B.) specifies that "the term supervisor 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 responsibility to direct them or adjust their grievances or effectively recommend such action." Supervisors in the public schools have a much more limited direct control over teachers assigned to their jurisdictions. Therefore, such a definition is of questionable applicability.

Clearly, secondary school principals in large school districts do not have a sufficient community of interest with classroom teachers to belong to their bargaining unit . . . and they do clearly function as part of the management team. More difficult decisions are whether to include elementary principals or vice-principals, and whether to include such quasi-management personnel as curriculum directors, department chairmen, head coaches, librarians, counselors, and others with limited administrative responsibilities. Questions also arise as to whether teaching aides and other para-professionals have sufficient community of interest with teachers to be included in the bargaining unit. As patterns of instruction change, these questions will become increasingly important.

2. Who shall represent school management?

The bargaining process established under the "meet and confer law" requires a school board or a committee of the school board to meet and confer with the recognized teachers' organization or teachers' council. The courts have found this to mean a school board member must be present at all bargaining sessions. As the bargaining process has become more complex and drawn out, this has become increasingly burdensome on board members. Accordingly, school boards are increasingly turning to pay professional negotiators to bargain for them. An important question is whether or not school board members should be required to participate in all of the negotiation sessions.

3. Length of agreement.

The present bargaining process is geared to one-year agreements. Provisions of the continuing contract law, as well as various deadlines in the negotiations process, point toward single-year agreements. However, in a few isolated cases, two-year agreements have been reached between teachers and school boards in Minnesota. These

two-year agreements have not been well received, since they did not provide as high a salary increase in the second year as was negotiated in comparable districts on an annual bargaining basis.

Most people we have heard from feel that there are some obvious advantages in multi-year agreements. The disruptive effects of bargaining each year is the factor most often cited. Other advantages given include stability, greater opportunity to consider non-negotiable issues during the off year, better budgetary forecasting, and a more orderly process.

While there may be some consensus on the desirability of multi-year agreements, the method of providing multi-year agreements is not generally agreed upon. Some people would prefer specific authorization of optional multi-year agreements, while others urge that agreements cover the same period of time for all school districts throughout the state. Two-year agreements, based on biennial state funding, are often recommended by those who feel all agreements should cover the same period of time. Those who favor a common length of agreement maintain that the agreement reached for a second or third year of a settlement in one district would become a minimum for negotiating annual agreements in competitive districts. The argument continues that, as a result of this whipsaw phenomenon, multi-year agreements are not practical unless they are mandatory. Advocates of optional multi-year agreements do not feel there is adequate evidence to justify forcing all districts into a common practice.

4. Working in a goldfish bowl.

Currently, bargaining sessions, in the opinion of many, are legally required to take place in an open, public meeting. Some school districts have public bargaining sessions, while others have a form of public sessions and actually bargain in private. As we discussed the issue with a number of experienced negotiators, we came to understand that actual negotiations invariably take place in private, and that generally only role-playing takes place at public bargaining sessions.

During the public sessions, both parties tend to play to the public, and each party is likely to overplay his case. It is often at these public role-playing sessions that antagonisms develop. In the public setting, emotions are fanned and the parties are susceptible to taking the argument of the other party, as well as their own, too seriously.

At public meetings the negotiator must concern himself with the other party, the general public, and the particular group he represents at the bargaining table. Under these conditions, it is much easier to make war . . . than love . . . in the goldfish bowl.

5. What is actually agreed upon?

School boards are presently required to meet and confer in an effort to reach agreement on economic conditions of professional service. At the end of the process the school board unilaterally has responsibility for making the final decisions and establishing policies. Since the final decision is the school board's, no official statement of agreement is set to writing. Often, not even an unofficial written agreement is prepared. Disputes can, and do, arise over the nature of the agreement.

One practice that partly eliminates the confusion over what is actually agreed upon is to have the negotiators for both parties approve a set of detailed notes on the

agreement before it is formally submitted to the school board. While this is helpful, teachers' groups generally desire binding master agreements, signed by both the teachers' organization and the school board. There is presently a serious legal question as to whether a school board is legally bound to adhere to any bargaining agreement. An Attorney-General's ruling provides that salary schedules agreed upon are just guidelines which the school board does not necessarily need to adhere to in the setting of individual employee salaries. If a master contract were authorized, individual contracts might not be needed.

5. Scheduling negotiations in the budgeting process.

An important question to be considered is how negotiation timing should relate to the budgeting process. There is the basic question of whether negotiation settlements should be determined on their own merits -- independent of predetermined fiscal constraints -- or whether the economic conditions of employment should be negotiated within a framework of predetermined fiscal constraints. Then there is the practical consideration of how a process is accomplished to achieve either objective.

Three basically different processes are currently being practiced. Each affects negotiations somewhat differently.

(a) Historically, school districts have determined an expenditure budget in advance of a July 1 start of the fiscal year, and then used this budget to determine the mill levy for the following calendar year. This means that they are always one year behind in cash flow and must finance expenditure increases by borrowing.

(b) Increasingly, particularly in the metropolitan area, school districts are moving to provide a tax levy budget estimate that attempts to anticipate expenditure increases for the following school year. To the extent that their projections are not adequate, they must borrow on the next year's budget. They attempt to substitute contingency funding for borrowing on the following year's budget.

(c) In Minneapolis, their tax levy budget is their actual expenditure budget for the following calendar year. This means that the calendar year is also the fiscal year. It requires that the school district borrow for operations until the first actual cash payment of tax funds is made to them in June. Since salaries are negotiated for a school year that includes part of two fiscal years, the larger portion of the salary increases generally comes on January 1 rather than at the start of the school year in September. This allows the school board to budget the increases after a negotiation settlement has been reached.

State Aid. The magnitude of state aid, as well as possible changes in aid formula, are decided by the State Legislature at its regular session in odd-numbered years. By June following the legislative session, an individual school district can generally determine what state aid it will receive for the following school year, with 80% accuracy. This means that a large factor in most schools' income is not determined until after negotiations are generally concluded.

The school district that plans to use borrowing to support expenditure increases is not particularly disrupted in its planning process by negotiations. However, it is somewhat more restricted, since it has no contingency fund. The school districts that attempt to budget fiscal increases for the following July 1 fiscal year are forced to play a guessing game for the fiscal year following a legislative session. In Minneapolis, they are relatively unaffected by the session timing problem for two reasons: One, they currently receive a much smaller percentage of state aid than most other districts; and two, they have a new fiscal year starting January 1

rather than the following July 1. This means that they only have the short part of the school year--September to January--for which they are operating under a budget that is based on an unknown level of state aid.

Flexibility. Under the present practice, most school districts appear to have some flexibility to adjust their budgets following negotiation settlements which take place during the school year. This flexibility is provided through both contingency funding and the ability to borrow. The amount which a school district can borrow on next year's levy varies considerably and entails a number of factors. The major factor appears to be the availability of school building funds which can be borrowed on a short-term basis for operating expenditures. Levy limits provide a major constraint on economic settlements, regardless of the budgeting and negotiation schedules.

7. Other time schedule considerations.

There are many factors to be weighed in considering time schedules for teacher-school board negotiations. As discussed in the previous section, negotiations both affect and are affected by the bargaining process. The time of a negotiation can give an advantage to one party or the other. Negotiation in the early part of a school year makes management particularly vulnerable to work stoppages or disruptions. Negotiation late in the school year gives management greater independence from teacher leverage. Summer negotiation finds the teachers scattered and leaves the school management with very little time to find replacements, if needed.

As mentioned in chapter I, the "continuing contract law" requires teachers outside of Minneapolis, Saint Paul and Duluth to either resign by April 1, or forfeit their state certification to teach if they resign at a later date without receiving a release from the school board. This means that the individual teacher is obligated to accept a continuation of his last year's rate of compensation if a settlement has not been reached by April 1.

The continuing contract law also guarantees tenured teachers reemployment. Therefore, it can be argued that to provide a balance at some point the school board must be assured which of their tenured teachers will actually return. An unabridged right for teachers to resign could have the practical effect of giving them a right to strike. If a mass resignation were to occur shortly before the start of a school year, in many cases it would not be possible to secure replacements on such short notice.

8. Lack of "good faith".

Minnesota law does not require either teachers or school boards to bargain in "good faith". Questions arise as to whether a given school board is actually meeting and conferring with the teacher council"in an effort to reach agreement" on economic issues of professional service. Are teachers really offered an opportunity for "the expression of (their) views and the exchange of information" on other matters? On the other hand, do teachers attempt to force school boards to actually negotiate policy issues? If so, does such an approach violate "good faith" adherence to the law?

Allegations have been made that some school boards will merely listen to teachers with regard to their requests on salaries and fringe benefits, and will not even discuss educational policy issues. Counter allegations have been made that teachers have attempted to force their school boards to relinquish their management rights and allow teachers to set educational policy. Teachers have used various forms of

work stoppages--such as "working to rule" and, in the case of Minneapolis, an actual strike--in pushing their bargaining position. Questions arise as to whether "good faith" bargaining takes place under such circumstances.

9. What is negotiable?

Perhaps the most heated and controversial problem under the provisions of the "meet and confer law" is answering the question of what is negotiable. Teacher organizations tend to view the law as confirming their contention that school boards must be willing to bargain a wide range of educational issues with teachers. School boards tend to view the law as reinforcing their exclusive right to determine educational policy. In practice, teachers do negotiate some educational policy agreements, but to a greater extent their power is felt in what is not done . . . than what is.

School boards cloud reality by deluding themselves that they can determine basic educational policy without teacher concurrence. This simply is not the case. Differentiated staffing, management by objectives, performance pay schedules, teacher and program evaluation, 12-months school programming, decentralization for community involvement, and fundamental curriculum changes are examples of basic changes which have been found to be nearly impossible to achieve without an involved, receptive faculty.

Teacher involvement is not only necessary, but very desirable. The problem is to find a means of promoting teacher contribution and involvement without placing the burden on the bargaining process or adding another barrier to innovation.

10. Balancing power.

Traditionally, labor negotiations in this country have been based largely on the relative power positions of the employer and the employee or his labor organization. Until recently, better-organized blue collar workers have won greater increases in compensation and benefits than their white collar counterparts.

In the public sector, employees--white or blue collar--have not been well organized, and universally have been denied the legal right to strike. While receiving lower pay than their private counterparts performing similar functions, public employees have been partly compensated in greater job security and retirement benefits.

Increasingly, certain white collar workers have become better organized and have achieved more economic power as a result. Doctors, lawyers, barbers, dentists, beauticians, and various other groups have gained economic leverage by regulating admission requirements to their unions through government licensing. Teachers, airline pilots, civil service employees, and nurses are examples of groups of white collar workers having turned to collective bargaining.

The question arises, as teachers and other public employees turn to collective bargaining, how does the process work without the ultimate right to collectively withhold services. One answer is that, nationally, public employee strikes have become increasingly common . . . regardless of their legal status. Another answer is that organized public employees can effectively operate through the political process to provide the power base they need in labor negotiations. A third possibility is to provide a neutral means of dispute resolution that does not depend solely on economic or political power.

Where does the balance of power currently lie? Under Minnesota law, legal power clearly is weighted on the side of the school board. The school board is authorized to unilaterally make final decisions on wage increases, hours and working conditions . . . not to mention all educational policy matters. However, legal power should not be confused with actual power. The very fact that the legal power favors the school board has tended to unite individual faculty members and pushed them towards a more militant posture. Teacher power has asserted itself through political pressure, public opinion, and the underlying threat . . . and in some cases the actual practice . . . of withholding services and of work stoppages.

What is an appropriate level of power? The power relationship in employer-employee bargaining is somewhat like an arms race between two nations -- it can soon escalate beyond the direct interests of either of the two parties or the general welfare. This is particularly true with monopolistic services such as we find in the public sector. Power, in an adversary situation, tends to seek a workable balance between parties. The balance can be at a high level of leverage on the part of both sides, or at a moderate level. Left to their own devices, the parties will tend to strike balances on increasingly higher levels. In the private sector, the striking power of labor tends to be balanced with management's prerogative to lockout or employ non-union replacements and its resistance to reemploying the full labor complement--or at least phasing some employees back in on a gradual basis.

Serious questions arise as to whether the public sector should follow the example of the private model of power escalation. It is not at all clear that the public arena is suitable for handling the pressures of a strike. Publicly elected officials are not in the same positions as board members in a private corporation in reaching rational decisions when confronted with the pressure of a strike. Public employee strikes distort the decision-making process and take it away from the general public. It may well be that an elected official can better politically withstand the consequences of a bad agreement with an employees' union than he can the pressures generated by a strike.

If the decision is reached that teacher-school board bargaining could not resort to higher levels of power, then it is imperative that alternative methods be provided that are fair and acceptable to both parties.

11. Fairness of the procedure.

Collective bargaining has been accepted in principle and practice in nearly all areas of employment -- except for the public sector. Bilateral labor agreements are routinely negotiated by refuse collectors if they work for a private employer, but not if they work for a municipality. Private employees managing such critical functions as providing heat and power, transportation, and communications are allowed to negotiate salaries and strike their employers. As a matter of routine policy in education, we close down our public schools for periods totaling more than one quarter of the year---yet we have not allowed true collective bargaining . . . partly on the grounds that we cannot afford to allow strikes to disrupt education.

The present practice of allowing school management the final say on all bargaining decisions is no longer accepted by teachers . . . regardless of the decision made by

the school board. Teachers are demanding bargaining rights comparable to employees in other occupations. The challenge is to explore the reasons for differentiating between the public and private employees, and then decide on a process that is fair . . . and appropriate . . . for each.

III. CRITERIA FOR AN IMPROVED BARGAINING PROCESS

Before proceeding to develop our recommendations for improving the bargaining process, our committee found it useful to discuss possible criteria to be used in evaluating alternate recommendations. We found that by thinking through what effect we felt various aspects of the process should have, it helped us to reach some of the hard decisions on specific recommendation alternatives. For organizational purposes the criteria have been divided into four areas: representation, negotiation procedures, impasse resolution, and non-substantive issues.

1. Representation.

Do the provisions provide a clear and speedy determination of who represents teachers in the bargaining process? In discussing this problem we concluded that it is very important that a clear and speedy determination be provided. We concluded that it is improper to require school boards to administer the provision of deciding representation issues between two competing teacher groups. We became strongly convinced that only one bargaining agent or teacher organization should be allowed to represent the teachers' bargaining unit at any one time.

We decided that the teachers' bargaining unit should be defined in a sufficiently broad manner to allow for changing instructional patterns and still provide a clear basis for determining who would or would not be in the unit. Supervisory personnel should specifically be excluded from the bargaining unit. An appropriate third party should be provided to administer the determination procedures and settle disputes.

Our reasoning for excluding supervisory personnel from the bargaining unit is that supervisors are an important part . . . in some regards the most important part . . . of the management team. When assessing teacher-management relations, teacher grievances and teacher sentiment in preparation for negotiations, an astute negotiator for the school board will consult with the teachers' immediate supervisors. From the teachers' side, they do not have a high community of interest with their supervisors. In fact, the teachers may view their immediate supervisors as their primary source of frustration with management.

Are both parties appropriately represented at the bargaining table? We concluded that both teachers and school boards can best decide who should be their bargaining spokesman. We realize that this may encourage greater use of professional negotiators. However, we do not view this as being necessarily undesirable.

We feel it is important that the parties give their representatives at the table sufficient authority to conduct earnest negotiations. Therefore, the bargaining process should encourage reasonable delegation of power. We realize that final approval of an agreement cannot be delegated by the school board and most likely will not be delegated by members of the bargaining unit.

We feel that multi-district negotiation might be of mutual advantage to the school boards and the teachers in a region. Therefore, we concluded that the bargaining process should specifically allow multi-district negotiations. We feel that such multi-member negotiations should require the mutual consent of all school boards and all teachers' bargaining units in each of the school districts involved.

2. Negotiation procedures.

Do the provisions provide a mechanism for better communications and meaningful expression between teachers and school management in the decision-making process? We feel it is very important to improve the dialogue between teachers and school management on educational policy issues. We recognize that there have been many problems in trying to combine discussing policy issues with negotiations on compensation. We therefore concluded that the machinery for handling communication on broad educational policy should be separated from the process of bargaining mandatory issues.

We feel it is important that the parties work out their own arrangements for handling some items outside the regular negotiations process. Provision should be made for the discussion and resolution of grievances on a continuing basis. We also feel that communication on policy issues should be encouraged on a continuing basis. To assure that an appropriate set of arrangements is developed, we concluded that the regular bargaining process might be used to negotiate a format.

Is a clear and impartial method provided for determining when an item is negotiable? Statutory guidelines as to what is negotiable should be reasonable and workable. Clear legal language can help reduce confusion as to what is negotiable. However, there will obviously be some borderline cases. We concluded that some outside means should be made available to the parties to resolve whether a dispute is . . . or is not . . . negotiable. We feel that an orderly process in deciding the negotiability of an item would be a major step to reduce friction in the teacher-school board bargaining process.

How do the provisions affect the public image of the parties in the bargaining process? The purpose of a bargaining process is to reach a settlement. However, in the negotiations process one, or both, parties can be forced into an unfavorable public light. Such a circumstance raises the level of emotionalism in the dispute, and may work against an amicable settlement. The bargaining process should be structured in such a manner as to avoid degrading the parties.

The following are relevant questions which should be taken into consideration in considering the effect of the bargaining process on the image of the parties: (a) Does either party have cause to feel they must circumvent provisions of the law in order to have effective bargaining? (b) Do the requirements for having open, public meetings unnecessarily place the parties in a position where they may appear foolish or self-serving? (c) Are the positions taken by the parties at public negotiation sessions adequately understood by the general public? (d) Is the bargaining process adequately defined to avoid procedural or non-substantive issues? (e) Does the bargaining process treat the parties in a balanced and fair manner?

Do the provisions protect the educational process from undue disruption by the bargaining process? In discussing the problem, we concluded that it is imperative that any bargaining process be judged in its long-run effect on the education of students. On the specific question of teacher strikes, we feel that a short strike will not necessarily have any serious detrimental effect on the educational process. However, if the strike is illegal, the matter is more serious -- as this action by the teachers sets a very bad example on the impressionable young minds of the students.

A protracted strike invariably hurts education in several ways: (a) The students' education is seriously disrupted at the time; (b) a protracted strike is likely to create lingering resentments on the part of the teachers, school management, and the community at large; (c) these resentments will undoubtedly carry over at times into

the classroom; and (d) for at least some of the students, the education missed will never be made up. It should be kept in mind that any strike can become a protracted strike, and the degree to which a strike can force a settlement depends on the potential threat of the strike becoming drawn out.

In addition to actual strikes, teacher-school board bargaining can disrupt the educational process in several ways. Other forms of work stoppages or withholding of services are certainly disruptive to education. To the degree that extra-curricular activities contribute to education, they no longer do so when a faculty member withholds the service in a labor dispute . . . and to the degree students become emotionally involved, other aspects of education are disrupted. Similarly, any other services withheld may reduce education. Even if there are no work stoppages or services withheld, the bargaining process can be psychologically disruptive and contribute to poor contribution on the part of the faculty.

In discussing ways to protect the educational process from undue disruption by the bargaining process, we looked at the following questions and found them to be relevant considerations: (a) Does the bargaining process allow strikes, work stoppages, or some form of withholding of services? (b) Does the bargaining process foster illegal strikes, work stoppages, or withholding of services? (c) Does the bargaining process in any way draw the students into the dispute? (d) Is there sufficient flexibility with regard to any punitive provisions to accommodate various gradations of interference with the educational process? (e) Does the process provide for a determination of responsibility for action leading towards the disruption of the educational process? (f) Is the bargaining process confined to as short a period of time as practically manageable? (g) Does the length of an agreement take into consideration the disruptive aspects of the bargaining process?

Do the provisions provide a mechanism which will be viewed as being fair and appropriate by both parties? We feel that this is a proper goal to be sought. In doing so, we realize that teachers' organizations and the school boards association are not likely to agree on what is a fair and appropriate process. To further complicate the matter, we feel that it is vital that not only does the process need to reasonably satisfy the two parties, but that the process must also promote the greater interest of the public.

The following considerations were discussed and found to be relevant considerations by the committee: (a) Does the bargaining process provide a reasonably equal legal bargaining position between the parties? (b) Does the bargaining process promote a reasonably equal, practical power balance between the parties? (c) Does the public retain policy control through their elected representatives? (d) Is the final agreement binding on both sides? (e) Are the parties encouraged to bargain in "good faith"? (f) Are the provisions for bargaining in public education the same as, or comparable to, the provisions for other public employees in Minnesota?

Do the provisions recognize that teacher-school board bargaining is an evolving process? We feel that the bargaining process should be so structured as to allow the parties to work out their own refinements in the bargaining process. However, we do not feel that the individual school boards should be put in a position where they could bargain away their constitutional management rights. We do feel that the process should be flexible enough to allow refinements by case law, agency ruling, and individual practices.

3. Impasse Resolution.

Do the provisions act to stimulate the parties to reach an agreement among themselves? The committee concluded that it is very important that the two parties be strongly encouraged to work out their own agreements. This can be done in one of two primary ways: first, by providing a sound method of reaching agreement among the parties without going to impasse; and second, by providing an impasse procedure that is fair but mutually undesirable to the parties.

We support flexible impasse procedures that are provided in logical steps. Each successive step should have its own built-in disincentive to encourage the parties to reach a settlement as early as possible. In this regard, the effectiveness of an impasse procedure might best be measured in the percentage of settlements that are reached without using the procedure. On the other hand, the impasse procedure must be reasonable and fair. Otherwise, the parties will merely bypass the procedure and turn to some other means . . . perhaps an illegal means . . . to resolve a dispute.

The kind of impasse procedure we have in mind would only be used when the parties cannot reach an agreement among themselves . . . even with considerable incentives for each of them to do so. . . and yet be fair and reasonable enough that . . . . under the deadlock conditions . . . both parties would be willing to move to and accept the prescribed impasse procedures.

We discussed the following considerations and found them to be relevant in evaluating impasse procedures: (a) Are flexible impasse procedures provided in stages, with built-in disincentives at each successive stage? (b) Are the impasse procedures equally fair to both parties, so that neither party can automatically assume an advantage by carrying the matter to an impasse? (c) Do the impasse procedures assure that third party mediation and conciliation assistance will be provided as needed? (d) Do the impasse procedures contain a significant risk and element of the unknown to discourage the parties from moving to impasse without sufficient provocation? (e) Is the financial burden of the impasse procedures borne in an equitable manner by the parties requiring the service?

Do the provisions provide a clear and certain final impasse procedure? We feel it is absolutely essential that cloture be provided. There must be a clear and final impasse procedure beyond which there is no further recourse. In considering a final impasse procedure, we feel it is important that the procedure encourage consideration of the greater public interest in the impasse resolution. We also feel it is important that the final impasse procedure be equally fair to both parties. However, while we feel the procedure should be equally fair, this does not . . . and should not . . . assure the parties that the final settlement will fall within the range that separates them.

4. Non-Substantive Issues.

Do the provisions eliminate non-substantive issues? We have found that some of the most heated disputes under the "meet and confer" law are over procedural or non-substantive issues. We do not feel that it is appropriate or productive for the two parties to bog down the bargaining process over procedural issues. Questions such as: Who represents teachers, who represents management, who is included in the bargaining unit, how is the agenda established for a bargaining session, how are the negotiation procedures to be worked out, are closed meetings allowed, and how should impasse procedures be used . . . should be decided for the parties.

The key questions which should be considered are: (a) Does the state law provide general statutory guidelines for the procedural questions? (b) Is an appropriate third party provided to administer the statutory provisions? (c) Is there provision for a speedy third-party determination of how a provision should be interpreted?

IV. OUR PROPOSAL FOR AN IMPROVED BARGAINING PROCESS

A good bargaining process should protect the school board's educational policy prerogatives, provide teachers with an equitable bargaining process, and assure the public that their interests will be served. The public has the right to expect a process that will encourage the parties to work out agreements with mutual respect, in an uncharged, rational manner. Dispute resolution should emphasize reason, rather than power.

Both the decisions and the process must be fair. We are convinced that the public school teachers and the school boards must be provided with a bargaining process that is fair, both in fact and in appearance. At this point in the evolution of public employee negotiations, nothing short of true collective bargaining on wages, hours and terms and conditions of employment will be viewed as being fair by the teachers or substantial portions of the public.

Present provisions have evolved in practice into an adversary bargaining process. Economic issues -- and in some cases, even broad educational policies -- have been negotiated during the last four years under the "meet and confer law" . . . and even before. However, the adversary process does not work well when one of the parties--the school board--serves as the judge in deciding his own case. Some would contend that decisions of school boards have been fair. Others would even charge that recent salary settlements decided by Minnesota school boards have been downright generous. Few would maintain that the process is balanced. It has become apparent to our committee that this process no longer serves the interests of teachers, school management, or the public.

We recommend the following as a means of giving Minnesota fair and appropriate public employer-employee bargaining in education:

1. Methods of representation should be provided which encourage effective collective bargaining.

Exclusive bargaining agent. Proportional representation of teacher organizations in the bargaining process simply does not work well. We concur with the M.E.A., the M.F.T., and the M.S.B.A. that teachers should be represented by an exclusive bargaining agent. That agent should be determined by a majority vote of the employees in the bargaining unit voting on the issue. When needed, a run-off election should be held.

The Minnesota Bureau of Mediation Services should conduct the election to determine the exclusive bargaining agent. State law should provide guidelines for the Bureau in fulfilling this charge. Once an exclusive bargaining agent has been designated through the elective process, it should retain this status for a period of at least two years, or on a continuing basis until another preference is indicated at a subsequent election called by the Director of the Bureau of Mediation Services on petition of members in the bargaining unit.

The Bureau of Mediation Services should be charged with interpreting general statutory language as to which employees shall be included in a bargaining unit. Supervisory personnel should be excluded from the bargaining unit. Details of how supervisory personnel would be defined should be left flexible. The key considerations

are that persons with the greatest community of interest should be in the unit, management must clearly work together in the negotiations process, and sufficient flexibility should be provided to accommodate changes in staffing patterns.

Statutory provisions should guarantee that nothing shall prohibit individual employees from expressing a viewpoint to the school board, or a group of employees outside of the bargaining unit from bargaining with the school board. This recommendation is intended to protect the rights and interests of supervisors, teachers, and other individuals who are not covered by the negotiations between the school board and an exclusive bargaining agent.

The teachers and the school board should both have the right to name their own bargaining spokesman. Our committee heard considerable testimony that it may not be feasible or wise for the parties--particularly members of the school board--to personally participate in the day-to-day bargaining process. We feel that both parties should be given the right to select a spokesman who they feel will best serve their interests at the bargaining table. "Good faith" negotiations mandate that each party's spokesman be granted considerable authority; however, clearly final agreements must be officially ratified.

If negotiations are conducted by spokesmen, with school board members no longer required to take part, the sessions would no longer have the character of a public meeting. In addition to the informal private meetings that would take place, we feel formal and public bargaining sessions should continue to be required. The public has a need . . . and a right . . . to know the substance and basis of the proposals offered by both parties as the bargaining progresses.

Areawide bargaining between teachers and school boards should be specifically authorized. Presently, the "meet and confer law" provides for bargaining on an individual school district basis. We feel that areawide bargaining should be specifically authorized upon mutual agreement of both the teachers and the individual school boards. In practice this would most likely occur only where teachers were represented by the same bargaining spokesman, and school boards had a strong sense of areawide community of interest.

2. Teachers and school boards should be strongly encouraged to work out rational agreements on negotiable issues...by themselves...through collective bargaining.

Teacher-school board negotiations should consummate in a master contract...signed by both parties. Master contracts eliminate confusion of what agreement was actually reached. They also perform an even more important psychological function in that the very existence of a master contract implies an element of equality and fairness. Our committee has come to understand that teachers resent what they view as a bargaining process that relegates them to a second-class status, and school boards feel illegally put upon when teachers assert themselves. We view master contracts as changing very little in what is actually taking place in many districts. However, they substantially eliminate some of the psychological hang-ups of the process. While we do not feel that multi-year contracts should be required at this time, we feel that they should be specifically authorized.

Collective bargaining need not be an adversary process. Teachers and school boards have a great community of interest. Both are primarily interested in improving education. However, under the "meet and confer law", each party has confronted the other as its adversary. This is due in part to a misunderstanding of collective

bargaining on the part of newcomers to the negotiations process. It also comes from conflicting expectations of what the "meet and confer" process is to entail. Each side has attempted to compel the other to accept its version of the process.

Once questions of process are resolved on an equitable basis, the parties can better approach the substantive issues in a rational manner. Hopefully, they would come to recognize that negotiations can be most productive under conditions of conciliation and mutual respect.

The State Bureau of Mediation Services should be expanded to cover teacher-school board negotiations. Mediation is a most valuable service in helping the parties to reach a settlement of their differences. Presently, a form of mediation is provided through the adjustment panel process. However, our examination of the process has found the mediation function provided by adjustment panels to be deficient in two major respects: First, the parties tend to hold back their true positions and not open up to the mediator, since they know he may next be acting as a fact-finder in the case. Second, the third party selected under the process is normally not a professional mediator. The skills of a mediator are critical to an effective mediation service. We see no reason, whatsoever, for denying education the assistance of the state's professional mediation service.

Mediation should be made available to the parties without necessarily declaring an impasse. Mediation is generally considered to be the first step of impasse resolution. Once an impasse is declared, a red flag goes up to the public telling them that the parties have been unable to reach an agreement by themselves. We feel that the very declaring of an impasse can have an adverse effect on the bargaining process. Therefore, at the request of either party, the Director of the Bureau of Mediation Services should be authorized to provide assistance as needed in advance of a declaration of impasse.

A final impasse procedure should be provided as a court of last resort. This procedure should contain an element of uncertainty for both parties, a rational basis for reaching the final decision, protection for the public interest, and fairness to both parties.

In the event that teachers and school boards are unable to reach a mutual agreement on negotiable issues, a fact-finding, arbitration panel should be assigned to the impasse. This panel should be so organized as to insure its confidence, independence, and impartiality. The Bureau of Mediation Services should provide the panel with comparative data and research. The panel should be encouraged to not simply split the parties' differences, but to make a finding based on what settlement ought to be . . . weighing a wide range of relevant comparisons of wages and working conditions in both the public and private sectors. In all cases the panel's findings should be required to conform with Minnesota law. This would mean, for example, that no wage finding could be issued that would exceed the school board's legal means to comply.

A Minnesota Public Employees Board should be created to provide for individual fact-finding/arbitration panels and perform certain judicial functions. In order that the fact-finding/arbitration panels are competent, independent, and impartial, we recommend the following organization and method of selection:

a. A seven-member Minnesota Public Employees Board should be appointed by the Governor with the advice and consent of the Minnesota Senate. The Board should consist of three neutrals, two labor partisans, and two management partisans. Initially, one neutral, one labor partisan, and one management partisan should be appointed for full six-year terms; two neutrals should be appointed for four years; and one labor partisan and one management partisan should be appointed for two years.

b. The Minnesota Public Employees Board should appoint a pool of neutrals to man the individual fact-finding/arbitration panels. The neutrals should be well-known, experienced in negotiations, and accepted by both labor and management. Each neutral appointed to the pool should require the approval of at least three partisans and two neutrals from the Board. The Board should be authorized to appoint up to 30 neutrals, depending on the workload.

c. Seven names should be selected by the Board from the pool of neutrals for each impasse requiring a fact-finding/arbitration panel. To the degree that the workload allows, the Board should select names from the pool of neutrals on a random basis. The parties in the dispute should alternately strike names from the list of seven until three remain. The party to strike the first name should be determined by the flip of a coin. In some cases the Board might decide that only one fact-finder/arbitrator would be required. Then the parties would strike from the list until only one name remains. This would most likely come in disputes over contract interpretation.

A fact-finding/arbitration panel should not only report its findings on the issues in dispute, but it should also support its findings with the data and rationale upon which the members made their findings. An important consideration in a panel report should be how well it will serve to persuade the parties and the public of the correctness of the findings. We are convinced that, unless a settlement is viewed as being fair by both parties and the general public, the dispute is at best laid to an uneasy rest until the next round of bargaining.

If the school board accepts the findings of the panel, it should be binding upon both parties. If the school board rejects the panel's findings, the teachers should then . . . upon the majority vote of the members in the bargaining unit . . . be authorized to legally strike over negotiable issues. Such an arrangement has a number of desirable features:

a. Both parties would be reluctant to enter into an impasse procedure that has so great an element of risk and uncertainty for them. Conversely, they would be encouraged to reach an agreement among themselves.

b. A rational procedure is provided for reaching decisions on the impasse issues in dispute.

c. The elected school board never needs to relinquish its authority over the school budget or operations.

d. The school board is furnished with clear alternatives once the panel report is in: either accept the findings or negotiate a settlement directly with the teachers in a power confrontation.

e. Teachers are assured of a bilateral decision-making process.

f. Chances of an illegal strike are drastically reduced.

g. The procedure is balanced and fair.

Both parties should be required to bargain in "good faith", and "unfair labor practices" should be prohibited. A failure to bargain in "good faith" should be defined as "an unfair labor practice". Most minor "unfair labor practices" should not carry a penalty. However, violators should be ordered to discontinue such a practice. Responsibility for ruling on an unfair labor practice should be given to the three neutral members of the Minnesota Public Employees Board, with judicial review. Non-compliance with a ruling should be enforced by a finding of contempt of court. Decisions by the M.P.E.B. should be made available to the public in published form.

Some more serious "unfair labor practice" violations should be specifically specified by statute and carry different, mandatory penalties for various gradations of the violations. Such penalties should be designed to have a maximum deterrent effect, while not preventing a settlement once a violation has occurred. If, for example, striking employees could not legally be rehired, this penalty could serve to prevent any settlement. Any penalty should allow the parties to return to performing their regular educational functions.

The following are examples of the kinds of fixed penalties for a serious "unfair labor practice" that we feel would have a maximum deterrent value: If a school board were found guilty of a serious "unfair labor practice" . . . such as discrimination against an individual teacher for his legal bargaining activities or refusing to comply with a Board order to bargain in "good faith" . . . the teachers in that district might be given a written authorization by the three neutral members of the M.P.E.B. to legally strike; and under such conditions the school district would not be allowed to permanently replace the striking teachers. The M.P.E.B. ruling would, of course, be subject to judicial review.

On the other hand, if a group of teachers were found guilty of a major "unfair labor practice" . . . such as an illegal strike . . . the teacher organization involved might be denied the right to serve as the teachers' exclusive bargaining agent for a fixed period of years; the individual teachers involved might forfeit their tenure protection, and the teachers involved might be denied any compensation increases and other personal benefits for set periods determined by statute, depending on the length of the strike.

3. School boards should effectively utilize teachers in planning broad educational policy.

The mechanism for involving teachers in educational policy should be separated from the bargaining process. Much of the confusion and bad relations associated with the "meet and confer process" can be directly attributed to an attempt to combine discussion of broad educational policy with a bargaining process on economic conditions of professional service. This neither provides teachers with an adequate mechanism for meaningful involvement in policy planning, nor provides a proper framework for negotiating wages, hours and working conditions. The two processes should be clearly separated.

Negotiable issues should include wages, hours, and other terms and conditions of employment as determined by the neutral members of the Minnesota Public Employees Board. Final decision on broad educational policy should be reserved to the school boards. This principle should be clearly stated in a "management rights" clause in the state bargaining statute, and in the master contract between teachers and school boards in individual districts. Corresponding to the "management rights" clause should be an "employee rights" clause . . . providing such items as a right to

freely organize, join and participate, or not join and participate, in an employee organization; provision for dues check-off; and authorization of lawful activities for the purpose of collective bargaining.

The process by which teachers would be involved in discussions of educational policy should also be a negotiable issue. While we feel that the final say on broad educational policy must be left to elected representatives, we strongly feel that school boards should have the benefit of faculty suggestions and discussion. To insure that the faculty members are meaningfully involved in a format that is mutually acceptable, that format should be a negotiable issue which can be carried to impasse.

4. The Bureau of Mediation Services should be given adequate direction and resources to perform the various functions we have recommended for it in this report.

We have recommended that the Bureau of Mediation Services perform the following services for education:

a. Conduct elections to determine the exclusive bargaining agent for the teacher bargaining unit;
b. Call elections to consider a change in the bargaining agent on petition of members of the bargaining unit;
c. Interpret general statutory language as to which employees shall be included in an employee bargaining unit;
d. Provide informal assistance to the parties in advance of an impasse; and
e. Provide mediation assistance as the first step in resolving an impasse.

Currently, the Bureau of Mediation Services provides many of these services for other state and local governmental jurisdictions, but elementary and secondary public education is specifically excluded. At some later date, it may be desirable to establish a separate state agency to administer the statutory provisions concerning public employer-employee bargaining. However, we do not feel that this is necessary or desirable at this time.

5. The Minnesota Public Employees Board should be given adequate direction and resources to perform the various functions we have recommended for it in this report.

We have recommended that the full Board would serve to appoint a pool of neutrals, and assign the neutrals to a list from which panels would be drawn in individual disputes.

We have also recommended that the neutral members of the Board perform the following judicial services:

a. Render decisions on alleged violations of "good faith" and "unfair labor practice" statutory provisions recommended in this report; and

b. Interpret statutory provisions in what matters are negotiable between teachers and school boards.

V. DISCUSSION OF OUR PROPOSAL

Why don't you recommend giving teachers an open right to strike?

Our committee took a long and serious look at giving teachers an open right to strike. We also gave serious consideration to mutually binding arbitration and to retaining the final decision-making authority for all matters in the school board. Very persuasive arguments can be . . . and were . . . made for each case. We finally decided on a proposal which we feel contains many of the strengths of each.

During the last few months we heard numerous suggestions for improving the negotiations process in education. We found that most of the recommendations we heard fit under three basic "models". The following is a brief description of the three models we considered:

The Unilateral Model. This concept is based on the premise that the school board, as the elected representatives of the people, must be allowed to retain the final decision-making authority on all policy issues, including wages, hours and conditions of service of its teachers. This model accommodates a "meet and confer" process and fact-finding, but retains the ultimate authority of a school board to unilaterally decide policy issues.

The Arbitration Model. This concept is based on the premise that, within a limited area, a school board must share its decision-making authority with its teachers. If a mutual agreement cannot be worked out between the parties on certain items, such as wages, hours and conditions of service, either party can evoke binding arbitration. This model assumes that teachers will not be given a right to strike. It also assumes that arbitration is preferable to strike and lockout provisions.

The Right-To-Strike Model. This concept is based on the premise that certain issues should be resolved by negotiation between teachers and school boards. It also assumes that the right to strike and lockout provisions provide a necessary . . . or at least a very important . . . incentive to earnest negotiations.

The advocates of the "unilateral model" argue that the process of allowing school boards to make the final decision is fair . . . if not balanced. They maintain that there is a problem only when a school district uses its power in an arbitrary way . . . and this does not happen very often. They raise the question as to who do we want to decide where the tax dollars for education are to go . . . an arbitrator or an elected representative. They suggest that giving teachers an open right to strike would even further remove the decision-making process from the public.

To strengthen the bargaining process, while still retaining the "unilateral model", it was suggested that a high-powered, research-backed system of fact-finding should be substituted for the adjustment panel. It was felt that if a fact-finding panel was comprised of highly respected neutrals experienced in negotiating and accepted by labor and management, and developed a reasoned report, such a report would invariably guide the school board in its final decision. If at some later date there is a need established for further modification of the bargaining process, the advocates

of the "unilateral model" feel it can more appropriately be done at that time.

The advocates of the "arbitration model" argue that a fair bargaining process must be balanced. They feel that no man should be the judge in his own case . . . and that this is what exists when school boards have the final say in their negotiations with teachers. On the other hand, they do not feel that giving public school teachers the right to strike is a reasonable or appropriate way to settle an impasse. They feel that the procedure for impasse resolution should be reasonable and fair. This, they feel, can best be done by neutrals in an arbitration process.

The supporters of arbitration cite the experience under the charitable hospitals act as evidence that arbitration on disputes can . . . and does . . . work well. The members of our committee were very taken with the fact that resource persons from both the Minnesota Nurses Association and the Twin City Hospital Association told us they felt that the threat of going to compulsory arbitration was equally effective as the threat of a strike and getting the two parties to reach a settlement between themselves.

Supporters of the "strike model" argue that there is nothing so critical about public education that it cannot accommodate teacher strikes. They quickly point out that we routinely use less than three-fourths of a year in scheduling the regular program in education. They feel that true collective bargaining cannot be accomplished unless the employees have the right to collectively withhold their services. They further feel that teacher strikes will take place regardless of the law, and that a legal strike is preferable to an illegal strike.

After thoroughly weighing the rationale for each of the three models, our committee decided on a proposal to maximize the strength of all three models and minimize their liabilities. From the unilateral model we liked the process by which high-quality, reasoned fact-finding could be brought to the process. However, we agreed that school boards should not be the judge in their own case and rejected that aspect of the "unilateral model". We became convinced that the inequities of the unilateral process will eventually lead to an explosion on the part of public employees -- unless it is diffused, and a more balanced procedure established.

We were impressed with the concept of arbitration providing a rational resolution to a dispute. We feel that reason provides a much more appropriate basis for settlement than economic and political power marshaled under the strike model. However, we were convinced that a third party should not have the final say over elected representatives. Therefore, we recommended that school boards should have a choice of accepting . . . or not accepting . . . the panel findings. To restore the balance, we recommend giving teachers the right to strike . . . if the school board does not accept the panel's report. Under either option . . . acceptance of the panel report or right to strike . . . the teachers are assured of a balanced procedure.

We were not convinced that strikes on the part of teachers should be banned on the grounds that they are excessively disruptive or harmful. Neither were we convinced that strikes provide a useful or appropriate means for resolving disputes in public education. The reason why we feel that strikes are not appropriate has been discussed at several points in the report. We find there are serious questions as to whether strikes are in the public interest when a monopoly . . . such as public education . . . leaves people with no competitive alternative. There are serious questions as to whether the political arena is a suitable place for handling the pressures of a strike. There are serious questions as to whether a strike is appropriate

when the employer does not have a profit motive. Finally, there are serious questions as to whether it would be desirable to follow the private strike model even if the conditions were fully transferable.

Under our proposal we recommend the right to strike under a very specific condition . . . which is controllable by the school board. We frankly do not feel that it would be used very often. However, we feel it serves an important function by assuring teachers of a balanced procedure for collective bargaining while retaining the school board's responsibility in approving any settlement.

Doesn't arbitration take the decision-making authority out of the hands of elected officials?

Arbitration takes the final decision on a matter out of the hands of both the employer and the employees. However, we are not recommending straight arbitration. We are recommending a process which strongly encourages the teachers and the school board to negotiate their own settlement. If an impasse cannot be avoided, we provide a rational procedure for reaching a fair decision. The school board then has an option of treating the panel report as fact-finding or arbitration.

If the school board chooses to adopt the report findings, they will have voluntarily settled the dispute on those terms. If the school board refuses to do so, they can accept the report as fact-finding . . . and use it in whatever manner they see fit in negotiating a settlement directly with the teachers. However, in this second case, the teachers may strike . . . if a mutual agreement is not reached. In either case, final agreement requires the approval of the elected representatives on the school board.

Isn't it unfair to allow the school board, but not the teachers, to reject the panel findings?

Under our proposal the teachers are assured of a balanced procedure for resolving an impasse . . . if either arbitration or the right to strike is used. It is true that the school board is favored by having the option to choose between the two. However, in public employment the employees have special advantages as well. For example, they have a double access to their management . . . as employees in the usual employer-employee relationship . . . and also as a potentially powerful political constituency of the elected school board members.

Won't the Minnesota Public Employees Board reflect biases of the governor appointing the majority of the members?

We recommend a process that goes to some lengths to assure the neutrality of the members serving on a fact-finding, arbitration panel. We feel that this is critical -- for if either party feels that the neutrals are weighted on their side, they will have an incentive to allow the dispute to go to impasse.

Under our proposal, the Minnesota Public Employees Board would consist of seven members: three neutrals, two labor partisans, and two management partisans. Each neutral appointed to the pool would require the approval of at least three partisans and two neutrals from the board. This means that at least one labor partisan and one management partisan would be needed for each appointment.

Our proposal would have members of the board appointed to six-year staggered terms by the governor with the advice and consent of the Minnesota Senate. While it would be possible for the governor to appoint a "labor partisan" who did not represent the interests of labor, or a "management partisan" who did not represent the interests of management, we do not feel this would be likely and we do not feel the Minnesota Senate would approve such appointments.

In a given dispute, seven neutrals would be drawn at random from a pool of up to 30. The parties would then alternately strike names from the list until three remain. The entire process is designed to offer maximum assurance of impartiality and neutrality on the part of panel members.

Might not the fact-finding, arbitration panels make reports giving higher settlements than school boards can meet?

Our proposal provides that all panel findings must conform with Minnesota law. This is specifically designed to prevent a panel from coming in with a report that a school board cannot meet. We are silent with regard to how it shall be determined if a report exceeds a school board's capacity to comply. This, we feel, can best be left up to the courts to decide through case law.

Are you recommending a separate statutory act for teachers?

Our committee was charged to study only the bargaining process with regard to teacher-school board disputes. We have developed a proposal for improving the bargaining process for public education. This does not mean that our recommendations might not be appropriate for other areas of public employment.

During the course of our study, we heard considerable testimony to the effect that teacher-school board bargaining provisions should be part of a general statute for state and local public employees. We did not find any compelling reason by negotiations in education should be covered by a separate statute. However, we have not studied the problem with regard to other public employees. We do not know but what there may be many good reasons why certain other public employees should not be covered under the provisions we are recommending for teachers and school boards. For example, we have not studied the special case of police and firemen, and accordingly we do not know whether it would be appropriate to give them a limited right to strike.

How do you envision the parties handling issues having both negotiable and non-negotiable aspects?

We recommend that the parties should negotiate issues of wages, hours, and other terms and conditions of employment as determined by the State Bureau of Mediation Services. We also recommend a procedure be established for involving teachers in discussions of educational policy. The procedure for involving the teachers should be arrived at by mutual agreement. Therefore, we recommend that the procedure . . . but not the policy issues themselves . . . also be negotiable.

We can best explain how we feel this would work out in practice in terms of a specific example. Moving to differentiated staffing would be a broad educational policy which would affect wages, hours, and other terms and conditions of employment. Under our proposal the school board would have unilateral authority to move the school district to differentiated staffing. However, any new arrangements concerning wages, hours, and other terms and conditions of employment needed to implement the plan would have to be negotiated with the teachers. More importantly, the school board would bring the teachers into the planning at the early discussion stage.

While the final decision must be the school board's, as a practical matter such a plan would not succeed very well without the cooperation of the teachers involved. Therefore, getting the teachers involved is a good tactic, whether the board is or is not required to do so. Since the means of involving the teachers is arrived at by mutual agreement, the teachers are more likely to feel a sense of participation . . . regardless of the board's final decision.

Nothing can prevent a school board from completely ignoring even the most concrete suggestions and contributions by the teachers. Similarly, nothing can prevent a group of teachers from feeling left out or ignored if the board does not decide each issue along the lines recommended by the teachers. However, we feel that our proposal would serve to bring the parties closer together on policy issues. The board would not feel threatened by the teachers' role, and the teachers would not need to use the negotiations process for policy involvement.

Why do you recommend expanding the State Bureau of Mediation Services rather than creating a special staff agency for public employment disputes?

Several states, including Nevada, New Hampshire, New Jersey, New York, Oregon and Vermont, have recently created PERBs (Public Employee Relation Boards) to provide various staff agency assistance in resolving public employer-employee disputes. We do not recommend a separate staff agency for public employees in Minnesota. First, the Bureau of Mediation Services is already serving other portions of public employment with the services we recommend for education. Second, the Bureau has the experience and expertise to smoothly expand into the broadened role.

We do propose a Minnesota Public Employees Board to select a pool of neutrals for the fact-finding, arbitration function, and to render decisions on charges of unfair labor practice. We feel that these latter two functions are inherently different from the unit designation and mediation roles of the Bureau of Mediation Services. In fact, we concluded that both a determination of "unfair labor practices" and fact-finding are basically incompatible with the Bureau's role of conciliation and mediation.

Our proposal extends the assignment of the present staff agency into elementary and secondary education (it now serves higher education). It creates a new policy board (not a staff agency), and it creates a pool of neutrals to serve on an ad hoc basis. At some later date there may be a need for a separate staff agency to serve the public sector, but we do not feel such a need is sufficiently present at this time.

Shouldn't supervisors be accorded the same rights as teachers to bargain collectively?

We do not feel that it is necessary or proper to provide supervisors the same bargaining machinery as teachers. Supervisors cannot at the same time be on both sides of the labor-management table. They are clearly part of management. This does not mean that supervisors should not be able to collectively or separately make their views known to the school board on a variety of issues . . . including their own wages, hours, and terms and conditions of employment. What they are denied, under our proposal, is to carry their demands to impasse.

Won't giving teachers the right to negotiate the process by which they will be involved in the discussion of policy issues lead to their negotiating policy issues?

Our proposal recommends a management rights clause to clearly confirm the legislature's intent that school boards exercise their constitutional powers to establish educational policy. By removing non-negotiable issues from the bargaining process, we feel that we have eliminated much of the present impetus to consider broad educational policy matters as part of a bargaining continuum.

It should be kept in mind that allowing teachers to negotiate a procedure will not put them in a position to unilaterally decide the matter . . . any more than they unilaterally decide wages or other negotiable questions. This merely assures an equal voice for the teachers and the school board in deciding the procedure.

Do you . . . or don't you . . . advocate areawide bargaining?

We can see some definite advantages to areawide bargaining. We feel that in many cases areawide bargaining would be desirable. However, we do not feel that this should be forced upon individual school boards, or that it could be achieved unless each district's teacher bargaining unit was represented by the same organization. Therefore, we have recommended specifically authorizing the parties to move to areawide bargaining by mutual consent.

We do not feel that areawide bargaining needs to lead to standardized salaries. Under the present practice, one district is generally forced to fall in line with settlements of other districts in the area. Areawide negotiations would allow differential pay to be established for differential teaching conditions. This is not practical under present conditions. In fact, affluent suburban districts may provide their teachers both higher salaries and better teaching conditions than are provided teachers in the inner cities. Areawide bargaining might recognize a job in the inner city as being more demanding and accordingly provide higher salaries. In any case, areawide negotiations would reduce the inequities between districts, and alleviate much of the bargaining burden for the individual districts.

VI. WORK OF THE COMMITTEE

Background

The Citizens League has a long and continued interest in public education. We have also maintained an interest in public employee wages and personnel policies. Over the last 19 years we have conducted numerous studies in both general areas. However, this is the first time we have explored employer-employee relations as they relate to the bargaining process.

In 1969 we did a study on "Stretching the School Salary Dollar", which recommended differentiated staffing. Subsequently, we have increasingly come to realize that the implementation of basic educational policy change, including differentiated staffing, requires that the school management and the faculty work together in planning the change. This added to a basic Citizens League concern for improving teacher-school board relations. The teachers strike in Minneapolis, as well as evidence of numerous problems elsewhere, led the League to decide to conduct a study of teacher-school board relations -- centering on the bargaining process.

The Committee on Employer-Employee Bargaining in Education was organized in October, 1970. We were assigned the following charge from the Citizens League Board of Directors:

> "Review 'meet and confer' laws and negotiations of 1969-1970 in order to work out a set of arrangements for the handling of teacher-school board disputes. Consider and determine what mechanisms can be developed to mediate disputes and what methods can be made available to maintain public services in the event of a strike. Analyze laws governing public employee disputes in other states. Make comparisons with laws and procedures affecting the settlement of disputes in private industry. Review the need for some arrangements for areawide bargaining by school boards in the metropolitan area or in the state."

Membership

We were fortunate to have the active participation of 27 committee members. The committee was somewhat different from many Citizens League committees, as the vast majority of the members brought to the committee extensive knowledge of and/or experience in the bargaining process. While our committee had many partisans on it, it was a balanced committee, and each of the partisans put in their earnest efforts in seeking a process to improve bargaining in education.

Of six attorneys on the committee who do labor law in education, three have school board clients, two have M.F.T. clients, and one has an M.E.A. client. Additional experience with the meet and confer law was furnished by school board members with bargaining experience, teachers with bargaining experience, and an M.E.A. staffer. Again, as it worked out, there was an equal number from school boards and teachers.

Other persons on our committee with particularly relevant backgrounds included several members with experience in negotiating for either private labor or management; an attorney with the N.L.R.B.; a junior college president who had done a doctoral paper on the meet and confer law; and an industrial psychologist.

The committee was chaired by Roger L. Hale, Vice-President, The Tennant Company, Minneapolis. Staff assistance was furnished by Calvin Clark, Citizens League Research Associate. In addition to Chairman Hale, the following members served on the committee:

Dale E. Beihoffer
John Carmichael
Charles H. Clay
Martin E. Conway
Charles A. Dolinar
Mrs. James C. Erickson
Raymond K. Frellsen
Charles J. Frisch
Terence M. Fruth
Glen F. Galles
W. Art Gessner
C. J. Howard
Laurence IntVeld
E. G. Joselyn
Frank G. Laegeler
John H. LeMay
Theodore B. Lindbom
Martey A. Martin
J. Dennis O'Brien
Roger A. Peterson
Peter S. Popovich
Robert L. Seha
Gerald J. Shaughnessy
Senator Robert J. Tennessen
Daniel B. Ventres, Jr.
Duane Wilson

Committee Activity

The committee held 24 meetings from October 5, 1970, until March 16, 1971. Most of the meetings were 2½ hour sessions, with additional time required when we entered into deliberations during the last month. In addition, a steering committee was utilized to help organize discussion materials to be presented to the full committee. During the course of our deliberations, numerous resource persons met and discussed various aspects of the problem with our committee. The following persons listed in chronological order generally shared their thoughts and opinions with the committee:

Cyrus Smythe, Associate Professor, Industrial Relations Center, University of Minnesota.
W. Art Gessner, President, Inver Hills State Junior College.
Deborah Howell, reporter, Minneapolis Star.
Dale Holstrom, Executive Secretary, Minneapolis Federation of Teachers.
Norman A. Moen, President, Minneapolis Federation of Teachers.
Colleen M. Schepman, elementary teacher, Minneapolis Federation of Teachers.
Richard Allen, Chairman, Minneapolis Board of Education.
Bernard W. Kaye, Associate Superintendent for Personnel, Minneapolis Public Schools.
Roy Lindstedt, Executive Secretary, City of Minneapolis Education Association.
Stan Fure, President, City of Minneapolis Education Association.
Jim Bennett, teacher, City of Minneapolis Education Association.
Vern Buck, Director, Minnesota Bureau of Mediation Services.
Edwin M. Lane, Minnesota Civil Service Department.
Joseph Robison, Minnesota State Employees Union.
Karen Lorimor, Assistant Executive Secretary, Minnesota Nurses Association.
Eugene Keating, attorney, Minnesota Nurses Association.
Donald Wood, Executive Director, The Twin City Hospital Association.
Thomas Vogt, attorney, The Twin City Hospital Association.
James Sherman, Assistant to the Chancellor, Minnesota Junior College System.
Ralph Chesebrough, Executive Secretary, Minnesota Junior College Faculty Association.

Barton L. Hess, Jr., Commissioner, Federal Mediation and Conciliation Service.
A. Bertram Locke, Associated Industries of Minneapolis.
Edward V. Donahue, President, Lithographers Union Local 229.
Thomas Arneson, Personnel Director, Anoka School District.
Jerome T. Barrett, Chief, Division of Public Employee Labor-Management Relations, U.S. Department of Labor, Washington, D. C.
Spencer Myers, Superintendent, Edina Public Schools.
Lloyd Nielsen, Superintendent, Roseville Public Schools.
David Meade, Executive Secretary, Minnesota Association of Secondary School Principals.
Frank Gleeson, Chairman, Governor's Advisory Council on Public Employee Relations between Government Agencies and Employees.
Senator Mel Hansen, Chairman, Minnesota Senate Education Subcommittee on Special Problems.
Representative Harvey Sathre, Vice-Chairman, Minnesota House Labor Relations Subcommittee on Teacher-School Board Relations.
Senator Wayne Popham, Chairman, Minnesota Senate Civil Administration Subcommittee on Public Employer-Employee Relations.
A. L. Gallop, Executive Secretary, Minnesota Education Association.
John Carlson, teacher, Rushford Education Association.
Charles Swanum, teacher, White Bear Lake Education Association.
Edward Bolstad, Executive Secretary, Minnesota Federation of Teachers.
Richard Acker, teacher, Robbinsdale Federation of Teachers.
Harlan Downing, teacher, Columbia Heights Federation of Teachers.
Edward Rapp, teacher, Columbia Heights Federation of Teachers.
Willard Baker, Administrative Assistant, Minnesota School Boards Association.
Joseph Flynn, school board member, North St. Paul.
Robert Washburn, school board member, Mahtomedi.
Roger Stangeland, school board member, Hopkins.
Rollin Dennistoun, school board member, Rosemount.

The committee received excellent cooperation and assistance from various organizations and agencies. A highlight of our committee was meeting with Mr. Jerome T. Barrett of the U. S. Department of Labor. We are most grateful for Mr. Barrett's trip and the continued information and assistance his office has furnished. Others who were most helpful are the Minnesota School Boards Association, the Minnesota Education Association, the Minnesota Federation of Teachers, the Bureau of Mediation Services, and the House Research Department and Senate Counsel's Office of the Minnesota Legislature.

In addition to the oral presentations, the committee was furnished background information from the following sources:

Collective Negotiations in Minnesota,
Department of Educational Administration, University of Minnesota, May 1970.

Labor-Management Policies,
The Advisory Commission on Intergovernmental Relations, September 1969.

Pickets at City Hall,
Twentieth Century Fund Task Force on Labor Disputes in Public Employment, 1970.

Report and Recommendations,
Governor's Advisory Council on Public Employee Relations between Governmental Agencies and Employees, November 1970.

Structuring Collective Bargaining in Public Employment, The Brookings Institution, 1970; and

Numerous short reports, articles and clippings.

VII. PROPOSALS BEFORE THE LEGISLATURE

Public employer-employee bargaining has been well studied during the last year. Here in Minnesota, a special Governor's Council on Public Employee Relations made a detailed study and report on the problem; three legislative interim committees studied and reported on the issue; the League of Minnesota Municipalities and the AFL-CIO each developed major legislative proposals; and, of course, the Citizens League conducted a study resulting in this report.

In this section we will attempt to compare the recommendations of the various groups including a bill introduced by Senator Robert Ashbach, which has been generally endorsed by the M.E.A. and has received considerable attention and support by other groups as well.

1. Who is covered by the act?

The Governor's Council, the AFL-CIO, and Senator Ashbach propose a single statutory act to cover all state and local employees -- including teachers. The Senate Civil Administration Subcommittee on Public Employer-Employee Relations suggested that a single statutory act was a desirable goal, but made no specific recommendations. The League of Minnesota Municipalities recommended provisions for all state and local government employees -- except teachers. The House Labor Subcommittee on Teacher-School Board Relations and the Senate Education Subcommittee on Special Problems made proposals to retain a separate act for teacher-school board relations. The Citizens League proposal is directed towards education, but could be included as part of a general public employee statute.

2. Nature of the bargaining process.

The Governor's Council, the League of Minnesota Municipalities, Senator Ashbach, and the Civizens League recommended a bilateral process of collective bargaining. The Senate Civil Administration Subcommittee on Public Employer-Employee Relations recommended collective bargaining without specifying a bilateral impasse procedure. The House Labor Subcommittee and the Senate Education Subcommittee proposals would retain the final decision-making authority in the hands of school boards.

3. What is negotiable?

Governor's Council: The Governor's Council proposal provides for a master contract which, among other things, shall contain the scope of the agreement, hours of work, rates of pay, benefits, specific conditions of employment, and a grievance procedure. An employer cannot be required to negotiate matters of inherent managerial policy.

League of Minnesota Municipalities: The League of Minnesota Municipalities proposal provides that wages, hours and conditions of employment are negotiable. It provides that the employer cannot be required to bargain over matters of inherent managerial policy.

AFL-CIO: The AFL-CIO proposal provides that wages, hours and other terms and conditions of employment...including, but not limited to, a grievance procedure...are specifically designated as being negotiable. The proposal provides for a collective bargaining contract which supersedes "any rule or regulation adopted by the employer, including civil service or other personnel regulations, or between said agreement and

any statute or ordinance adopted by the state or any subdivision thereof." There are no restrictions on what matters may be included in the contract. Therefore, it appears that everything would be negotiable.

Senator Ashbach: The Ashbach proposal provides that wages, hours and terms and conditions of employment are negotiable. The employer is not required to negotiate concerning matters of inherent managerial policy.

House Labor Subcommittee: The subcommittee would limit negotiable items to salaries and fringe benefits.

Senate Education Subcommittee: The subcommittee made no recommendations for changing what is negotiable.

Senate Civil Administration Subcommittee: The subcommittee proposal specifies a number of managerial rights, which are not negotiable.

Citizens League: This report recommends that wages, hours, and other terms and conditions of employment, as determined by the Minnesota Bureau of Mediation Services, should be negotiable. The proposal also provides for a process of involving teachers in policy planning. The process by which teachers would be involved in discussions on educational policy would be negotiable. The employer would not be required to negotiate matters of inherent managerial policy.

4. Nature of the agreement.

The Governor's Council, the League of Minnesota Municipalities, the AFL-CIO, the House Labor Subcommittee, the Senate Education Subcommittee, the Senate Civil Administration Subcommittee, and the Citizens League all recommend some form of master written agreement. Only the AFL-CIO proposal does not contain any limits on the scope of written agreement (see the previous section on what is negotiable).

The Governor's Council proposal provides for written agreements to remain in effect for up to two years. The League of Minnesota Municipalities and the AFL-CIO is silent in their proposals as to the length of an agreement. The House Labor Subcommittee proposal would require establishing two-year agreements on even-numbered years. The Senate Education Subcommittee and the Citizens League would specifically authorize multi-year agreements.

5. Impasse resolution.

The Governor's Council: The Governor's Council proposal provides for mediation and then binding arbitration at the request of either party. An Arbitration Review Board could make changes necessary to keep the award within the provisions of the various governmental statutes and ordinances.

League of Minnesota Municipalities: The League of Minnesota Municipalities' proposal provides for mediation by the Bureau of Mediation Services and then fact-finding by a panel of three neutral members. The parties may by mutual consent then submit their unresolved issues to binding arbitration. If the parties do not agree to arbitration, the employees may serve notice of an intention to strike. The public employer could then accept a legal strike or unilaterally call for arbitration. At any time during a legal strike, the employer may call for binding arbitration. Once this is done, the employees lose their legal right to strike.

AFL-CIO: The AFL-CIO proposal provides for mediation, and then voluntary binding arbitration or right to strike.

House Labor Subcommittee: The subcommittee proposal suggests that an adjustment panel should not be involved in both the process of mediation and the process of fact-finding. The proposal recommends a statewide fact-finding panel.

Senate Education Subcommittee: The subcommittee proposal provides for mediation, to be followed by voluntary binding arbitration.

Senate Civil Administration Subcommittee: The subcommittee proposal provides for mediation and recommends some variation of arbitration be considered.

Senator Ashbach: Senator Ashbach recommends third party assistance by the Bureau of Mediation Services in advance of impasse, mediation, and a form of fact-finding which can lead to arbitration or giving the employees a legal right to strike. If the employer rejects the recommendations of the panel, the employees are then given a legal right to strike.

Citizens League: The Citizens League proposal provides the same basic mechanism as the Ashbach proposal -- except that the fact-finding, arbitration panel does not include representatives of the parties, and it is selected in a much different manner.

6. Unfair labor practices.

The Governor's Council, the League of Minnesota Municipalities, the AFL-CIO, Senator Ashbach, the Senate Civil Administration Subcommittee, and the Citizens League proposals each provides for "good faith bargaining and unfair labor practices" provisions. The Senate Education Subcommittee proposal recommends "good faith" language but does not recommend "unfair labor practice" provisions. The House Labor Subcommittee proposal is silent on the matter.

7. Unit designation.

The Governor's Council, the League of Minnesota Municipalities, the AFL-CIO, Senator Ashbach, the House Labor Subcommittee, the Senate Education Subcommittee, the Senate Civil Administration Subcommittee, and the Citizens League all recommend an exclusive bargaining agent for public employees.

The Governor's Council, the AFL-CIO, Senator Ashbach, and the Citizens League proposals each provides that the Bureau of Mediation Services would use statutorily designated criteria to determine who will be in an employee bargaining unit. The League of Minnesota Municipalities proposal provides for a Minnesota Public Employee Labor Relations Board, which, among other things, would decide the appropriate bargaining unit. The House Labor Subcommittee and the Senate Education Subcommittee recommend that administrators, principals, and supervisors who teach less than 50 percent of the time should be excluded from representation by the teachers organization.

ABOUT THE CITIZENS LEAGUE . . .

The Citizens League, founded in 1952, is an independent, non-partisan educational organization in the Twin Cities area, with some 3,600 members, specializing in questions of government planning, finance and organization.

Citizens League reports, which provide assistance to public officials and others in finding solutions to complex problems of local government, are developed by volunteer research committees, supported by a fulltime professional staff.

Membership is open to the public. The League's annual budget is financed by annual dues of $10 ($15 for family memberships) and contributions from more than 600 businesses, foundations and other organizations.

CITIZENS LEAGUE

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