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0142 Public Employee Negotiations

Report to the Colorado General Assembly

**PUBLIC EMPLOYEE
NEGOTIATIONS**



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COLORADO LEGISLATIVE COUNCIL

RESEARCH PUBLICATION NO. 142

DECEMBER, 1968

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COLORADO GENERAL ASSEMBLY

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* * * * *

The Legislative Council, which is composed of five Senators, six Representatives, and the presiding officers of the two houses, serves as a continuing research agency for the legislature through the maintenance of a trained staff. Between sessions, research activities are concentrated on the study of relatively broad problems formally proposed by legislators, and the publication and distribution of factual reports to aid in their solution.

During the sessions, the emphasis is on supplying legislators, on individual request, with personal memoranda, providing them with information needed to handle their own legislative problems. Reports and memoranda both give pertinent data in the form of facts, figures, arguments, and alternatives.

PUBLIC EMPLOYEE NEGOTIATIONS

**Legislative Council
Report to the
Colorado General Assembly**

**Research Publication No. 142
December, 1968**

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COLORADO GENERAL ASSEMBLY



LEGISLATIVE COUNCIL

ROOM 341, STATE CAPITOL
DENVER, COLORADO 80203
222-9911 - EXTENSION 2285
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REP. BEN KLEIN
REP. RAY BLACK
REP. JOSEPH CALABRESE
REP. CARL GUSTAFSON
REP. RAYMOND WILDER

December 9, 1968

To Members of the Forty-seventh Colorado General Assembly:

In accordance with provisions of House Joint Resolution No. 1026, 1968 regular session, the Legislative Council undertook a study relating to the subject of public employee negotiations in Colorado.

The report and recommendations of the committee appointed to carry out this study was adopted by the Legislative Council, without recommendation, at its December 9, 1968 meeting for transmission to the members of the first regular session of the Forty-seventh Colorado General Assembly.

Respectfully submitted,

/s/ Representative C. P. Lamb
Chairman

CPL/mp

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REP. RAY BLACK
REP. JOSEPH CALABRESE
REP. CARL GUSTAFSON
REP. RAYMOND WILDER

December 6, 1968

Representative C. P. Lamb, Chairman
Colorado Legislative Council
Room 46, State Capitol
Denver, Colorado 80203

Dear Mr. Chairman:

In accordance with the provisions of House Joint Resolution No. 1026, your Committee on Public Employee Negotiations was appointed to study procedures to be established by law for public employee negotiations; at the same time, the committee was directed to consider the maintenance and continuity of governmental services vital to the public interests. The committee has completed its work and submits the accompanying report and recommendations.

The committee has agreed to submit one bill which establishes procedures for public employee negotiations, and maintains governmental services vital to the public interest.

Respectfully submitted,

/s/ Representative Ben Klein
Chairman
Committee on Public Employee
Negotiations

BK/pw

FOREWORD

The Legislative Council Committee on Public Employee Negotiations was created pursuant to the provisions of House Joint Resolution No. 1026, 1968 regular session, to study methods of establishing public employee negotiations and, at the same time, assure the maintenance of governmental services vital to the public interests. The members appointed to the committee were:

Rep. Ben Klein, Chairman	Sen. Floyd Oliver
Sen. Allegra Saunders,	Rep. James Braden
Vice Chairman	Rep. Don Friedman
Sen. William S. Garnsey, III	Rep. Wayne Knox
Sen. Frank L. Gill	Rep. C. P. Lamb
Sen. Frank Kemp, Jr.	Rep. Paul E. Morris

At the committee's first meeting, the committee members decided to conduct hearings and invite interested persons, both employers and employees, from the various governmental units. After the completion of the hearings, the committee agreed that attempts should be made in formulating legislation. The remainder of the committee meetings were devoted to drafting a bill permitting public employee negotiations.

The committee wishes to express its appreciation to the numerous governmental employees and employers who took time to speak before the committee on the various issues of public employee negotiations.

Stanley Elofson, senior research analyst, and Ed Isern, senior research assistant, on the Legislative Council staff, had the primary responsibility for the staff work on the study. Eugene Cavaliere, staff attorney of the Legislative Drafting Office, had the primary responsibility for bill drafting services provided the committee.

December 10, 1968

Lyle C. Kyle
Director

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COMMITTEE FINDINGS AND RECOMMENDATIONS

By action of the second regular session of the Forty-sixth General Assembly, the Legislative Council was directed to appoint a committee to study public employee negotiations. The Council was directed, under House Joint Resolution No. 1026, to report to the first regular session of the Forty-seventh General Assembly on:

A study on procedures that should be established by law relating to the manner in which employees of the state or any of its political subdivisions should represent themselves in negotiations with their respective employers; the establishment of the legal relationship between the state and its political subdivisions and the public employees and their representatives, particularly in regard to establishing a framework by which negotiation procedures between public employees and their employers should be conducted. This study shall include consideration of the maintenance and continuity of governmental services vital to the public interest.

Committee Procedures

In its study of the advisability of recommending state legislation on public employee negotiations, the committee first held a series of hearings with conferees interested in the problems of public employee negotiations and its many related issues. Four committee meetings were devoted to these hearings and several additional sessions were spent in preparing the bill which the committee recommends. At the first hearing, the committee was given an overview of public employee negotiations in Colorado and other states; at the second meeting, negotiations in public education was the primary topic; at the third hearing attention was devoted to negotiations on the local government level and to negotiations with college and university personnel; and at the final hearing public employee negotiations with state government was the primary topic.

In addition to the hearings, members of the committee attended conferences in Denver and in Boulder at which a number of nationally recognized individuals in the field of public employee negotiations were the principle speakers. The annual meeting of the Education Commission of the States was held in Denver using the topic "Teacher Militancy - Strikes, Sanctions, and State Government." The second conference, sponsored by the Center for Labor Education and Research at the University of Colorado, discussed collective negotiations in all phases of public employment.

Following the hearings and the conferences, the committee discussed the information and recommendations presented to the committee. The majority of the members concluded that an attempt would be made to prepare legislation to enable the state and its political subdivisions to conduct negotiations with their respective employees. The remaining committee meetings were devoted to discussion and revision of draft legislation.

Over 40 persons prepared statements or appeared before the committee in the committee's hearings. (Appendix A, on pages 39-41 provides a list of these conferees.) These conferees represented positions of public employers as well as the public employees of state government, cities and other local government, primary and secondary education, and higher education. Conferees with academic backgrounds in labor relations presented statements concerning public employees in general.

It is difficult to briefly summarize the statements of the conferees in a few major points. However, with a few exceptions, the conferees agreed that it would be desirable to have legislation to establish guidelines and policies relative to public employee negotiations in Colorado, although many differences were expressed as to the content of legislation. Some of the most important differences of the conferees concerned whether legislation should separate teachers from other public employees; whether the scope of negotiations should be limited or unlimited; the relationship of negotiations to present civil service and to merit system procedures; and the issue of whether to attempt to prohibit strikes by public employees. As an example of one area of contention, some educational interests advocated separate legislation for teachers, while other educational organizations recommended coverage of all public employees in one bill. School board representatives generally were favorable toward legislation which would establish collective bargaining guidelines and which would clarify present questions in the negotiation procedures. Organizations representing the classroom teachers generally favored unlimited scope of negotiations on school matters, including school policy matters, while representatives of school boards rejected the idea of unlimited negotiations, favoring negotiations on only economic matters and conditions of employment.

Another point of interest was the question of strikes in the public sector. While it was generally agreed that strikes in the public sector are not desirable and, in some cases, do great damage, strikes occurring in other states indicate that strike prohibitions with severe penalties are not effective methods of preventing public employee strikes. The alternative to prohibiting strikes would be to establish some form of compulsory binding arbitration between the public employer and the exclusive bargaining agent for the public employees. The problem involved in use of binding arbitration involves constitutional issues to the effect that the responsibilities of an elected public body in setting policy for its jurisdiction cannot be delegated to third party arbitrator.

Committee Recommendations

The committee was not in unanimous agreement on the question of whether it is desirable for Colorado to enact legislation pertaining to public employee negotiations. However, the majority of the committee felt that legislation establishing collective bargaining procedures for public employees in Colorado would be desirable. Legislation providing guidelines for the process of negotiations would be beneficial to public employers, as well as the public employees. For example, disputes involving recognition of an employee organization and jurisdictional disputes between competing employee organizations -- two major causes of work stoppages -- would be more easily resolved with legislative policy expressed on these subjects. Without legislative guidelines, a public employer might have some difficulty in deciding on suitable procedures for determining questions such as which of two employee organizations will be granted status of a bargaining unit, and when would new elections on the question of employee representation be held.

It is also argued that public employers would be protected under the proposed legislation since strikes against third parties, secondary boycotts, and strikes during a contract period are prohibited. An example of these activities is a work stoppage by employees in one jurisdiction in sympathy with employees on strike against another employer. Another example of a strike against a third party is a work stoppage in protest of an action (or lack of action) taken by a third party over whom the employer has no control. Such a case could involve teachers striking against school boards if the General Assembly does not provide the amount of state school aid that is requested by educational interests. Penalties against such actions are severe and may be imposed against individuals, employee organizations, or both individuals and organizations which support strikes noted above.

Another argument presented for legislation is that, based on the experiences in other states, the numerous issues of negotiations and strikes by public employees will need to be faced in Colorado and, sooner or later, it will be necessary that a state policy be established to provide an orderly process of solving complicated disputes in the public sector. To believe that the state of Colorado and its political subdivisions will be exempt from public employee disputes is probably not a realistic assumption based on recent experiences in other states. It is argued that legislation would settle questions that might otherwise lead to conflict.

It is for these reasons that the committee recommends enactment of legislation establishing procedures for negotiations between public employers and public employees in Colorado. Under the proposed bill, the state industrial commission would be responsible for regulating the provisions of the law. Exclusive bargaining agents would be designated through elections conducted

by employees. "Dues check-off", the deduction of an employee's organization dues from his paycheck would specifically be authorized. The bill provides that employees would have the right to join any organization of their choosing, or to refrain from joining an employee organization.

The bill would not prohibit strikes in the public sector following the exhaustion of all negotiation procedures. An exception is made, however, in cases when a strike will endanger the public health or safety. If it is determined by the industrial commission that the public health and safety will be adversely affected by a strike, the governor, by executive order, may stop the strike for a forty day "cooling off period" during which time "any reasonable means" is used to resolve the dispute.

Legislation on the subject of public employee negotiations probably will result in increased activity in organizing employees in unions and other organizations. The committee concluded that, in the long run, major public employee strikes may be averted if a framework of reasonable state legislation is available for dealing with problems which other states have experienced.

Some committee members were opposed to the idea of state legislation dealing with public employee negotiations. Enactment of negotiation legislation by the state was not considered necessary at this time since Colorado, without legislation, has had a good record of avoiding strikes in the public sector under the existing informal methods of negotiations.

It was also argued that any type of work stoppage in the public sector is automatically illegal. Public employees are paid from taxes imposed on the entire public for certain governmental functions. Since the public pays for these services, it is the duty of government to provide these services at all times. In addition, any public employee strike which directly endangers the public health, safety or welfare, such as a work stoppage by policemen, firemen, or sanitation workers, would be intolerable.

It was noted that a law on public employee negotiations would be limited in the number of public employees that would or could be included in the law. College and university professors asked that they not be included under the law; and spokesmen for home rule cities urged that their employees not be included under the law because of the state constitutional provisions relating to home rule cities. State civil service employees may not bargain effectively under any legislation because of the constitutional powers of the civil service commission. Until these situations change, it was said to be useless to attempt to enact meaningful collective bargaining legislation covering all public employees.

Another argument against legislation was that elected officials are representatives of the general public, whether they serve on the school board, city council, or in the General Assembly. Elected officials are granted certain powers by the state constitution or city charters, and these powers cannot be delegated to bargaining agents. In addition, none of the powers delegated to governing bodies, such as the power to appropriate money for salaries or to raise money through taxation can be subject to the negotiations process.

It was pointed out that employers in the public sector are not ready for full collective bargaining negotiations and will not be able to bargain equally with employees after a law is first enacted. Employees were said to have an advantage in negotiations during the first year because of organizational experience in bargaining. Employees will be able to draw from experienced negotiators affiliated with national unions or employee organizations, while public employers will be inexperienced in negotiations and will not have the resources to employ top negotiators. The advantages of the employees in collective bargaining may be a detriment to the general public since, in some cases, additional tax monies will be needed to reach agreement between the parties.

Important Features of the Recommended Legislation

When the committee commenced its bill drafting work, it was concluded that several issues should be covered in proposed legislation. Briefly, these issues include: (1) the scope or coverage of the act; (2) a statement of the right of employees to organize and to bargain collectively; (3) who is the public employer; (4) provisions for administration of the act; (5) the scope of negotiations; (6) the procedures in the negotiations process, including the settlement of negotiation impasses; (7) unfair labor practices and penalties therefore; (8) whether any or all strikes would be illegal; and (9) whether penalties should be imposed for illegal work stoppages.

The Scope of the Act. The committee's bill would include all employees of the state and its political subdivisions (Section 80-22-3 (5)). The thinking of the committee was that all political subdivisions should be included under the act (Section 80-22-3 (4)) since labor problems in any area of the state or local government would have an impact on the entire state and would be a matter of state-wide concern.

The Right to Organize. The bill specifically authorizes public employees to organize and bargain collectively and enter into written agreements with their employers. (Section 80-22-4).

Public employees would be granted the right to form or join, or to refrain from joining, any employee organization for

the purpose of negotiating. This concept establishes an "open shop" in public employment which, simply stated, means that employees would not be required to join an employee organization in order to be employed in the public sector. (Section 80-22-4 (1)).

Public employees would file a petition with the state industrial commission for recognition as the exclusive bargaining agent for the public employees of the proposed bargain unit. The petition would allege that 50 percent or more of the employees of a bargaining unit desire to be represented by an exclusive bargaining agent or that an existing bargaining agent is no longer the choice of a majority of the public employees within the bargaining unit. If the industrial commission determines, after an investigation, that a question exists concerning representation, it would issue an order requiring that a recognition election be held by secret ballot to determine the bargaining agent (Section 80-22-7).

The industrial commission would be authorized to determine what is a bargaining unit if a situation arises in which two employee groups are asking for exclusive recognition. The industrial commission also would make determinations as to who is the public employer and to identify the terms and conditions of employment that are and are not subject to negotiation, subject to legal restrictions on the scope of negotiations (Section 80-22-7 (4)).

In order for an employee organization to achieve certification as the exclusive bargaining agent of a bargaining unit, a certification election must be held within the unit, and the organization must receive a majority vote of the total number of employees in the unit (Section 80-22-8).

Employees of all labor or employee organizations may request employers for dues check-off. Check-offs are permitted only at the request of the employee (Section 80-22-3 (12)).

Who is the Public Employer? The question of defining the public employer was difficult for the committee to answer. There are several employers in the public sector which would have an important role in the negotiation process. As an example, on the state level, negotiations may have to be conducted with the Civil Service Commission, the General Assembly, and department heads, on various issues. Hence, the committee in defining public employer left the definition as broad as possible, stating that the public employer shall be the person or group of persons authorized to engage in collective bargaining by statute, ordinance, constitution, or rule or regulation. In the absence of specific authorization, the public employer shall be determined by the industrial commission (Section 80-22-3 (4)).

Administration of the Act. When deciding on the agency to administer the act, the committee had the choice of utilizing the present state industrial commission or establishing a separate "Public Employee Labor Relations Board." It was decided that the industrial commission should administer the proposed act since machinery for labor-management relations in the private sector already existed within the commission, and the commission is experienced in labor-management relations.

The commission, under the bill, would be authorized the following additional powers: (1) to make rules and regulations concerning provisions of the proposed act; (2) to request, from public employers, assistance in carrying out the provisions of the proposed act; (3) to make studies of conditions of public employment; (4) to prepare statistical data relating to salaries, wages, benefits, and employment practices in public and private employment and to make the data available to interested parties; (5) to establish procedures for recognition of bargaining agents and certification elections; (6) to resolve controversies concerning recognition; and (7) to hold hearings pursuant to the administrative code (Ch. 3, Art. 16, C.R.S. 1963, as amended) and under the Colorado Rules of Civil Procedure to carry out the necessary functions of the proposed bill (Section 80-22-6).

Scope of Negotiations. The scope of negotiations is limited in the bill to the terms and conditions of employment (Section 80-22-4 (2)). This term is defined as including any or all of the following, as may be determined by the industrial commission: salaries; wages; hours; working conditions; and any other personnel matters (Section 80-22-3 (11)).

Collective Bargaining. It would be the duty of both the public employer, or its representative, and the exclusive bargaining agent, or its representative, to enter into good faith negotiations. Any agreement reached is to be reduced to writing and honored by the public employer and the exclusive bargaining agent. If any portion of an agreement would be in conflict with existing law, ordinance, rule, or regulation beyond the power of the public employer to alter, the public employer would submit a proposed amendment of the law, ordinance, rule, or regulation to the proper governmental unit for its action. The conflicting portion of the agreement shall not become effective until action is taken on any necessary amendment. If no action is taken the governing body, the portion of the agreement in conflict with the existing statute, ordinance, or rule or regulation would be void. The agreement shall then be returned to the public employer and the exclusive bargaining agent for further negotiation if further negotiation is deemed necessary by the parties (Section 80-22-10).

In regard to funds necessary to carry out provisions of the collective bargaining agreement, the public employer would submit the negotiated agreement to the appropriate budgeting agency on or prior to the budget submission date, and would make

every effort to secure the necessary funds to fulfill the terms of the agreement. If the necessary funds are not secured, the agreement shall be returned to the negotiating parties for further negotiations within the framework of the amount of appropriated funds (Section 80-22-10(4)).

If after a collective bargaining agreement has gone into effect, and a dispute arises in the interpretation of the provisions of the agreement, efforts for settlement of the agreement shall be made through the normal grievance procedure. However, if the dispute cannot be settled by the grievance procedure, the dispute can be sent to the industrial commission for final arbitration (Section 80-22-12).

Impasse in Collective Bargaining. If after a reasonable length of negotiations a dispute exists, or within 180 days prior to the budget submission date a dispute exists, an impasse shall be deemed to have occurred. At this point, either party or both parties may petition the industrial commission to initiate mediation. If the industrial commission concludes that an impasse exists, it would prepare a list of three names of disinterested persons, one of which persons would be selected by both parties as the mediator. If the two parties fail to select a mediator within five days, the industrial commission would appoint a mediator. If the dispute is not settled within 30 days, the industrial commission may: (1) discharge the mediator; (2) define the area of dispute; or (3) appoint a disinterested person as a fact finder (Section 80-22-11).

If a fact finder is appointed in a dispute, he would hold hearings and would have the power to make recommendations. If the impasse is not resolved within 30 days, the fact finder would transmit his recommendations for resolving the dispute to the negotiating parties and the industrial commission and would make his findings known to the general public (Section 80-22-11 (5)). In the event agreement is not reached, the industrial commission would submit the findings and recommendations of the fact finder, along with recommendations for resolving the impasse of each bargaining party, to the appropriate legislative body at its next regular session (Section 80-22-11 (6)). It is the intent of the committee that the cost of mediation and fact finding would be borne by the industrial commission.

Because of the delicate nature of the bargaining process, collective bargaining sessions, mediation sessions, and fact finding hearings would not be deemed "public meetings" under Colorado statutes. The documents and other materials produced at these meetings would not be deemed public records subject to the "Open Public Records Act" (Ch. 66, Laws of 1968). However, the executed agreement, findings and recommendations of the fact finder, and completed studies of the industrial commission would be public records under Colorado law (Section 80-22-15).

Unfair Labor Practices. The proposed act contains prohibitions for unfair labor practices by both the public employers and public employees. The prohibited unfair labor practices by the public employer include any of the following actions: (1) interfering with any of the rights of public employees granted under the proposed bill; (2) dominating or interfering with the formation or administration of a labor or employee organization, or contributing financial support to it; (3) refusing to bargain collectively or refusing to bargain in good faith; (4) refusing to discuss grievances; (5) discharging or discriminating against any employee because of charges filed or testimony given by the employee under the bill; or (6) violating the provisions of the collective bargaining agreement (Section 80-22-5 (2)).

Labor or employee organizations are prohibited from engaging in any of the following unfair labor practices: (1) interfering or coercing any public employees in the exercise of any rights granted to them by the bill; (2) restraining, coercing, or interfering with a public employer in the selection of its representative for collective bargaining purposes; (3) causing or attempting to cause a public employer to either discharge or discriminate against a public employee for membership or nonmembership in a labor or employee organization; (4) refusing to bargain or refusing to bargain in good faith; (5) refusing to discuss grievances; or (6) violating any of the provisions of the collective bargaining agreement (Section 80-22-5 (3)).

If a complaint of an unfair labor practice is filed with the industrial commission, and evidence indicates that an unfair labor practice has occurred, the commission shall issue a cease and desist order. The bill includes provisions for reinstatement of public employees and for revocation of certification of the organization as the exclusive bargaining agent in the case of unfair labor practices by either the employer or by the employees. Any final decisions of the industrial commission would be subject to judicial review (Section 80-22-13).

Lawful Strikes. The committee concluded that the experience with strike prohibitions in other states indicated that strikes in the public sector cannot effectively be prohibited by legislation. Strikes are a part of the collective bargaining process and if collective bargaining fails, laws against strikes cannot prevent strikes. Under the bill, however, any strike which presents a danger to the public health or safety may be postponed for a 40-day period by executive order of the governor. During this period efforts would be made "using any reasonable means" to resolve the dispute (Section 80-22-11 (7)).

Unlawful Strikes. The committee felt that strikes or work stoppages which occur in support or in sympathy of issues that are beyond the control of the negotiating parties should be considered illegal strikes. These strikes would be in the form of secondary boycotts or strikes against a third party (Section

80-22-5 (1)). A strike against a public agency in Denver in support of a strike in Colorado Springs would be an example of an illegal strike against a third party, as defined in the proposed act (Section 80-22-3 (8)).

In addition to strikes against a third party, the committee believed that legislation should prohibit strikes in breach of collective bargaining agreements, as defined in Section 80-22-3 (7) of the proposed bill. Therefore, the committee also included strikes during a collective bargaining agreement in the category of unlawful strikes (Section 80-22-5 (1)).

Finally, the committee felt that strikes in the public sector should be avoided. Therefore, the committee declared that any strike that occurred prior to following all of the procedures for settling an impasse shall be an unlawful strike (Section 80-22-11 (8) and Section 80-22-5 (1)).

The committee felt the unlawful strikes described above should be subject to severe penalties. Therefore, penalties may be assessed against the individual striker, against the employee organization as a whole, or against both the individual and the organization. The industrial commission would be responsible for determining whether an unlawful strike exists. If it is determined that an unlawful strike exists the industrial commission would order the strikers to cease and desist (Section 80-22-14 (1)). Individual strikers could be disciplined in any of the following ways: (1) placement on probation for a period of two years with respect to tenure of employment or contract of employment; (2) forfeiture of all increases in compensation for one year; and (3) filing of charges with the civil service commission for state civil service employees for discipline or dismissal in lieu of the above named penalties (Section 80-22-14 (2)).

If it is determined by the industrial commission that an employee or labor organization was responsible for an unlawful strike, the commission would render a cease and desist order. In addition, the industrial commission shall assess the following penalties if the strike persists: (1) a fine of one fifty-second of the total annual dues of the organization for each day the strike continues, except in cases where one fifty-second of the total membership dues is less than \$1,000, in which case the daily fine shall be \$1,000; and (2) shall revoke the right of membership dues deduction for a period not to exceed two years, but in no case shall the revocation of membership dues be less than one year, except in cases where the fine has not been fully paid by the striking organization in which case the dues shall continue to be deducted until the fine assessed against the organization has been fully paid (Section 80-22-14 (4)).

In cases where a cease and desist order has not been complied with by a labor organization, the industrial commission shall seek a court order from district court (Section 80-22-14

(5)). If the court order is not obeyed, the same penalties apply to striking employee organizations as those which can be applied by the industrial commission (Section 80-22-14 (8)). In addition, the court may assess any penalties for contempt of court -- a fine not to exceed \$250 a day or imprisonment in the county jail for a period not to exceed 30 days (Section 80-22-14 (7)). Any decision rendered by the industrial commission is subject to judicial review (Section 80-22-14 (9)).

Other Provisions of the Proposed Bill. The sections in existing law affecting mass transportation systems and metropolitan sewage disposal districts have been amended so employee organizations under these acts, would be placed under the proposed act (Section 80-4-2 (2), C.R.S. 1963 and Section 89-15-2 (2), C.R.S. 1963, as amended by Sections 2 and 5 of this bill).

The suggested effective date of the bill is January 1, 1970, which will provide time for the industrial commission to acquire the necessary staff and organization to provide for the administration of the law (Section 7 of the proposed bill).

THE MINORITY REPORT

The undersigned committee members voted against recommending state legislation which would grant to public employees the right to enter into collective negotiations with public employers. These committee members base their opposition on three major points -- (1) public employers are elected officials or representatives of elected officials; (2) work stoppages in the public sector are illegal; and (3) interest in public employee negotiations is limited at this time.

Public Employers Are Elected Officials or Representatives of Elected Officials

It was argued that public employers are elected officials or representatives of elected officials. Public employers, whether school board members, members of a city council, members of the General Assembly, a mayor, or governor, are in turn representatives of the general public. They are primarily responsible to the general public, not to public employees. If the general public becomes dissatisfied with public employers, the general public can change public employers through elections.

Governing bodies have been authorized certain constitutional or charter powers which cannot be delegated to any bargaining agent. An example of these powers is taxation. If, through the negotiation process, public employees demand a raise in salary, and the bargaining agent for the public employer signed the agreement, which would be binding, the governing bodies would be forced to raise taxes to meet the demands of the public employees. In this instance, the governing bodies would have unlawfully delegated their legislative authority, and in addition, they would no longer be representing the general public. The end result of negotiations of this type in the public sector would be chaotic. Elected officials would no longer be serving the general public, but would be using the general public to satisfy demands of public employees who because of their choice of employment are supposed to serve the general public.

It was also pointed out by several public employers that they would be unprepared to meet the challenge of full scale collective negotiations. Public employers would be placed in a disadvantageous situation for some time, possibly over a year, since they would not have the resources nor personnel to bargain effectively. Public employees, on the other hand, could obtain both resources and top negotiating personnel from national organizations. The end result would probably be that public employers would be forced to meet the demands of public employees, possibly to the detriment of the general public. In some cases, the settlement of a collective bargaining agreement may result in requiring additional tax monies. Again the situation's end result would be chaos.

It is felt by the minority members of the committee that public employees should have the right to sit with public employers on an informal basis and be permitted to make recommendations concerning salaries and other working conditions, which is presently being done in many areas of the public sector. However, if public employees and public employers sat as equals, across a bargaining table, the general public would no longer be represented, and their protected rights would become bargainable issues.

Work Stoppages in the Public Sector Are Illegal

The minority members of the committee believe that work stoppages in the public sector are illegal. They pointed out that government provides certain essential services which, if interrupted, would endanger the public health and safety. Examples of work stoppages which endanger public health and safety include police and fire protection and removal of trash or treating of sewage.

In addition, it was pointed out that the services provided by the state and its political subdivisions are paid for by taxes imposed on the general public. Since the public pays for these services, it is the duty of government to provide these services at all times.

Interest in Public Employee Negotiations Is Limited at This Time

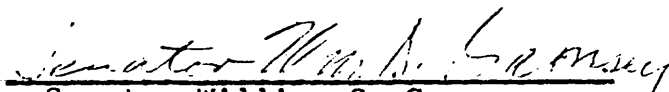
During committee hearings several conferees commented that they could not be included or did not desire to be included under the proposed public employee negotiations law. College and university professors requested that they be exempted from the law, since they preferred their own method of obtaining salary increases and improvements in working conditions. Spokesmen for home rule cities felt that their cities could not be included in a law relating to public employee negotiations. They argued that constitutional provisions relating to home rule cities would exclude home rule cities from a state law (Art. XX, Sec. 6, Constitution of Colorado). Finally, state civil service employees may not be capable of bargaining effectively due to the constitutional powers of the Colorado Civil Service Commission (Art. XII, Sec. 13, Constitution of Colorado).

It was further argued that the issue of public employee negotiations tends to be a matter of local concern rather than state-wide concern. It was noted that primary interest has been shown by employees, especially teachers, of the Denver metropolitan area, and employees in Colorado Springs and Pueblo. Each of these areas are home rule cities and may be exempted from the law as has been noted above. If legislation is to be enacted, it should be done by the municipalities where concern has been shown.

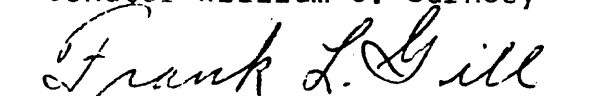
Until the required changes are made in the state constitution or there becomes a greater state-wide concern for public employee negotiations, it would be meaningless to enact legislation permitting collective bargaining legislation including all public employees.

This minority report is submitted to the members of the Legislative Council for its consideration.

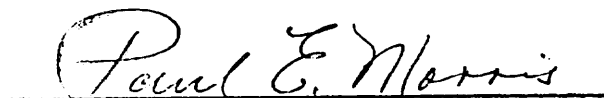
Respectfully submitted,



Senator William S. Garnsey



Senator Frank L. Gill



Representative Paul E. Morris

Forty-seventh General Assembly

STATE OF COLORADO

A BILL FOR AN ACT

1 CONCERNING LABOR, AND PROVIDING FOR A SYSTEM OF COLLECTIVE
2 BARGAINING BY PUBLIC EMPLOYEES, AND PLACING CERTAIN
3 LIMITATIONS ON ACTIVITIES OF PUBLIC EMPLOYEES.

4 Be it enacted by the General Assembly of the State of Colorado:

5 SECTION 1. Chapter 80, Colorado Revised Statutes 1963, as
6 amended, is amended BY THE ADDITION OF A NEW ARTICLE 22 to read:

7 ARTICLE 22

8 PUBLIC EMPLOYEES COLLECTIVE BARGAINING

9 80-22-1. Short title. This article shall be known and
10 may be cited as the "Colorado Public Employees Labor Relations
11 Act of 1969".

12 80-22-2. Declaration of policy. The general assembly of
13 the state of Colorado declares that it is the public policy of
14 the state and the purpose of this article to promote harmonious
15 and cooperative relationships between government and its employ-
16 ees and to protect the public by assuring, at all times, the
17 orderly and uninterrupted operations and functions of government.
18 Since unresolved disputes in the public service are injurious to
19 the public, the governmental agencies, and public employees, ade-
20 quate means should be provided for preventing controversies
21 between governmental agencies and public employees and for

1 resolving them when they occur. These ends, the general assem-
2 bly believes, can best be attained by the enactment of a statute
3 applicable to all public employees and all public employers of
4 the state, by granting public employees the right of organiza-
5 tion, representation, and collective bargaining, by requiring
6 that the state, local governmental units, and other political
7 subdivisions of the state negotiate with, and enter into written
8 agreements with labor or employee organizations representing
9 public employees, insofar as such negotiations and agreements
10 are not contrary to the state constitution, by granting addi-
11 tional powers to the industrial commission of Colorado to assist
12 in resolving disputes between public employees and public employ-
13 ers, and by providing methods for avoiding strikes by public
14 employees.

15 80-22-3. Definitions. (1) As used in this article, unless
16 the context otherwise indicates:

17 (2) "Commission" means the industrial commission of Colo-
18 rado.

19 (3) "Labor or employee organization" means any labor or
20 employee organization of any kind that has as its primary pur-
21 pose the improvement of the terms and conditions of employment
22 of public employees.

23 (4) "Public employer" includes the state, a county, city,
24 city and county, incorporated town, school district, special
25 improvement district, county public improvement district, water
26 district, sanitation district, sewage disposal district, fire
27 protection district, metropolitan district, irrigation district,
28 drainage district, public corporation, or any other kind of
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1 public district, or any other political subdivision of the state
2 organized pursuant to law, and shall be that person or group of
3 persons specifically authorized by constitution, statute, charter,
4 ordinance, or resolution to engage in collective bargaining
5 negotiations on behalf of a public employer or employers concern-
6 ing terms and conditions of employment. In the absence of such
7 authorization by constitution, statute, charter, ordinance, or
8 resolution, the commission shall designate the person or group
9 of persons who shall be authorized to engage in collective bar-
10 gaining negotiations on behalf of a public employer or employers.

11 (5) "Public employee" means any person holding a position
12 by appointment or employment in the service of a public employer,
13 except that such term shall not include persons holding positions
14 by appointment or employment in an executive capacity, or in the
15 organized militia of the state.

16 (6) "Strike" means the willful failure to report for duty,
17 the willful absence from one's position, the willful stoppage of
18 work, or the willful abstinence in whole or in part from the full,
19 faithful, and proper performance of the duties of employment with
20 a public employer, for the purpose of inducing, influencing, or
21 coercing a change in the terms and conditions of employment or
22 the rights, privileges, or obligations of public employment.

23 (7) "Strike in breach of collective bargaining agreement"
24 means a strike during the term of a collective bargaining agree-
25 ment containing a provision that neither the exclusive bargain-
26 ing agent nor any public employee of the bargaining unit shall
27 engage in a strike during the term of the agreement.

28 (8) (a) "Strike against a third party" includes the
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1 following acts by public employees:

2 (b) The withholding of labor or services from their public
3 employer during required working hours, the picketing of their
4 public employer during required working hours, or the refusing
5 to handle, install, use, or work on particular materials, sup-
6 plies, equipment, products, or any other matter or thing for the
7 purpose of coercing, intimidating, influencing, compelling, or
8 inflicting damage upon a third party who is not their public
9 employer and who is engaged in a labor dispute, or for the pur-
10 pose of bringing their public employer who is not a party to the
11 labor dispute into a concerted plan to coerce, intimidate, in-
12 fluence, compel, or inflict damage upon a third party who is not
13 their public employer and who is engaged in a labor dispute; or

14 (c) The willful failure to report for duty, the willful
15 absence from their positions, or the willful stoppage of work
16 during required working hours for the purpose of partaking in
17 activities aimed at coercing, intimidating, influencing, or com-
18 pelling a third party who is not their public employer to perform
19 a particular act or to refrain from performing a particular act.

20 (9) "Labor dispute" includes any controversy concerning
21 terms, tenure, or conditions of employment, or concerning the
22 association or representation of persons in negotiating, fixing,
23 maintaining, changing, or seeking to arrange terms and conditions
24 of employment, regardless of whether the disputants stand in the
25 proximate relation of employer and employee.

26 (10) "Terms and conditions of employment" includes any or
27 all of the following that the commission rules may be the sub-
28 ject of collective bargaining between a public employer and an

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1 exclusive bargaining agent for a designated bargaining unit:
2 Salaries, wages, hours, working conditions, and any other per-
3 sonnel matters.

4 (11) "Collective bargaining" means the performance of the
5 mutual obligations of the public employer and the exclusive bar-
6 gaining agent to meet at reasonable times, to confer and negoti-
7 ate in good faith, and to execute a written agreement with
8 respect to collective negotiations concerning the terms and con-
9 ditions of employment, except that neither party shall be com-
10 pelled to agree to a proposal or be required to make a concession
11 unless otherwise provided in this article.

12 (12) "Membership dues deduction" means the obligation or
13 practice of a public employer to deduct from the salary or wages
14 of a public employee an amount for the payment of such public
15 employee's membership dues in a labor or employee organization
16 upon the presentation to the public employer of dues deduction
17 authorization cards signed by such individual public employee.
18 Such term also means the obligation or practice of a public em-
19 ployer to transmit the sums so deducted to such labor or employee
20 organization.

21 (13) "Total amount of annual membership dues of the labor
22 or employee organization" includes initiation fees, membership
23 dues, and any other periodic dues, and all assessments collected
24 by or for a labor or employee organization in the twelve month
25 period preceding any violation or contempt under the provisions
26 of this article attributable to the members of such labor or
27 employee organization in that part of the collective bargaining
28 unit actually in violation or contempt; but, if such violation
29

1 or contempt prevents the functioning of the entire collective
2 bargaining unit or units represented by such labor or employee
3 organization, it shall mean such fees, dues, and assessments
4 attributable to the total number of members of the labor or
5 employee organization in such unit or units.

6 (14) "Budget submission date" means the date by which,
7 under law or practice, a public employer's proposed budget, or
8 a budget containing proposed expenditures applicable to such
9 public employer, is submitted to the appropriate administrative
10 or legislative body.

11 (15) "Mass transportation system" means any system which
12 transports the general public by bus, rail, or any other means
13 of conveyance, moving along prescribed routes, except any rail-
14 road subject to the Federal Railway Labor Act, Title 45 U.S.C.A.

15 80-22-4. Right of organization and representation. (1)
16 Public employees shall have the right to form, join, and partici-
17 pate in, or to refrain from forming, joining, or participating
18 in, any labor or employee organization of their own choosing.

19 (2) Public employees shall have the right to be represented
20 by any labor or employee organization of their own choosing, to
21 negotiate collectively through a certified exclusive bargaining
22 agent with their public employer in the determination of the
23 terms and condition of their employment, and to be represented
24 in the determination of grievances arising thereunder.

25 (3) Nothing in this article shall be construed to prevent
26 any public employee from presenting, at any time, his own griev-
27 ances in person or by a representative of his own choosing to
28 his public employer, and having such grievances adjusted without
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1 the intervention of the exclusive bargaining agent, if the
2 adjustment is not inconsistent with the terms of the collective
3 bargaining agreement then in effect and if the exclusive bar-
4 gaining agent has been given reasonable opportunity to be present
5 at the initial meeting called for the resolution of such griev-
6 ances.

7 80-22-5. Strikes by public employees prohibited - pro-
8 hibited practices. (1) No public employee or labor or employee
9 organization shall, either directly or indirectly, cause, insti-
10 gate, encourage, or engage in a strike in breach of a collective
11 bargaining agreement or a strike against a third party, as such
12 terms are defined in this article, or a strike in violation of
13 section 80-22-11 (8), nor shall any public employee or labor or
14 employee organization obstruct, impede, or resist, either directly
15 or indirectly, any lawful attempt to terminate a strike in breach
16 of a collective bargaining agreement or a strike against a third
17 party, as such terms are defined in this article, or a strike in
18 violation of section 80-22-11 (8).

19 (2) (a) Public employers or their agents or representatives
20 are prohibited from:

21 (b) Interfering with, restraining, or coercing public
22 employees in the exercise of any rights granted to them under
23 the provisions of this article;

24 (c) Dominating or interfering with the formation or adminis-
25 tration of any labor or employee organization, or contributing
26 financial or other support to it;

27 (d) Encouraging or discouraging membership in any labor
28 or employee organization by discriminating in regard to hiring,
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1 tenure or other conditions of employment;

2 (e) Refusing to bargain collectively or to bargain col-
3 lectively in good faith, with the labor or employee organization
4 certified as the exclusive bargaining agent for the public em-
5 ployees in the bargaining unit;

6 (f) Refusing to discuss grievances or to discuss griev-
7 ances in good faith, with the representative of the labor or em-
8 ployee organization certified as the exclusive bargaining agent
9 for the public employee or employees involved;

10 (g) Discharging or discriminating against a public employee
11 because he has filed charges or given testimony under this arti-
12 cle; or

13 (h) Violating the provisions, in effect, of any collective
14 bargaining agreement to which it is a signatory party.

15 (3) (a) Labor or employee organizations or their agents
16 or representatives are prohibited from:

17 (b) Interfering with, restraining, or coercing public em-
18 ployees in the exercise of any rights granted to them under the
19 provision of this article;

20 (c) Restraining, coercing, or interfering with the public
21 employer in the selection of its representative for the purposes
22 of collective bargaining or adjustment of grievances;

23 (d) Causing or attempting to cause a public employer to
24 either discriminate against or discharge any public employee
25 for membership or nonmembership in a labor or employee organiza-
26 tion;

27 (e) Refusing to bargain collectively or to bargain collec-
28 tively in good faith with the public employer if such labor or
29

1 employee organization has been certified as the exclusive bar-
2 gaining agent for the public employees in the bargaining unit;

3 (f) Refusing to discuss grievances or to discuss griev-
4 ances in good faith with the representative of the public employer
5 if such labor or employee organization has been certified as the
6 exclusive bargaining agent for the public employees in a bargain-
7 ing unit; or

8 (g) Violating the effective provisions of any collective
9 bargaining agreement to which it is a signatory party, except
10 the violating of a provision that neither the exclusive bargain-
11 ing agent nor any public employee of the bargaining unit shall
12 engage in a strike during the term of the agreement which shall
13 be an unlawful strike as provided in subsection (1) of this
14 section.

15 80-22-6. Additional powers of the commission. (1) (a)
16 In addition to any other powers prescribed in this article or
17 in law, the commission shall have the following powers:

18 (b) To make, amend, and rescind, from time to time, such
19 rules and regulations and to exercise such powers as may be
20 necessary to carry out the purposes and provisions of this article.

21 (c) To request from any public employer, and such public
22 employer is authorized to provide, such assistance, services,
23 and data as will enable the commission to properly carry out
24 its functions.

25 (d) To make studies and analyses of conditions of employ-
26 ment of public employees throughout the state.

27 (e) (i) To make studies of, but not limited to:

28 (ii) The problems involved in public employee representation
29

1 and negotiations in Colorado, including, but not limited to,
2 the problems of bargaining unit determination;

3 (iii) Those terms and conditions of public employment that
4 are open to negotiation in whole or in part;

5 (iv) Those terms and conditions of public employment that
6 require administrative or legislative approval;

7 (v) Those terms and conditions that are for determination
8 solely by the qualified electors of the state or any political
9 subdivision thereof, or by the appropriate legislative body,
10 and to make such studies available to public employers and exclu-
11 sive bargaining agents.

12 (f) To make available to public employers, labor or em-
13 ployee organizations, mediators, and fact finders, any statistical
14 data relating to salaries, wages, benefits, and employment prac-
15 tices in public and private employment to assist them in resolv-
16 ing the complex issues of negotiations.

17 (g) To establish procedures consistent with the provisions
18 of sections 80-22-7, 80-22-8, 80-22-11, 80-22-13, and 80-22-14.

19 (h) To resolve, pursuant to such procedures established by
20 it, questions and controversies concerning claims for recognition
21 as exclusive bargaining agent for a bargaining unit, impasses in
22 collective bargaining negotiations, charges of engagement in pro-
23 hibited practices, and charges of prohibited striking by public
24 employees.

25 (i) To hold such hearings and make such inquiries as shall
26 be necessary to carry out the functions ascribed to the commis-
27 sion by this article.

28 (j) For the purposes of such hearings and inquiries, to
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1 administer oaths and affirmations, examine witnesses and docu-
2 ments, take testimony and receive evidence, compel the attend-
3 ance of witnesses and the production of documents by the issu-
4 ance of subpoenas, and delegate such powers to any member of
5 the commission or any person appointed by the commission for the
6 performance of its function, as authorized by this article. Such
7 subpoenas shall be regulated and enforced under article 16 of
8 chapter 3, C.R.S. 1963, as amended, and the Colorado rules of
9 civil procedure.

10 80-22-7. Petition - claim for recognition as exclusive
11 collective bargaining agent - investigation. (1) (a) Any labor
12 or employee organization acting on behalf of any public employee
13 or group of public employees may file a petition with the commis-
14 sion for recognition as the exclusive bargaining agent for the
15 public employees of a proposed bargaining unit. The petition
16 shall allege either:

17 (b) That fifty per cent or more of the public employees
18 within a proposed bargaining unit desire to be represented for
19 purposes of collective bargaining of the terms and conditions of
20 employment and the administration of grievances arising under
21 the terms and conditions of employment;

22 (c) That the labor or employee organization presently
23 certified as the exclusive bargaining agent is no longer the
24 choice of a majority of the public employees of the bargaining
25 unit as their exclusive bargaining agent.

26 (2) Any public employer may file a petition with the com-
27 mission alleging that one or more labor or employee organiza-
28 tions have presented to it a claim to be recognized as the
29

1 exclusive bargaining agent for the public employees of a pro-
2 posed bargaining unit.

3 (3) The commission shall investigate the petition to
4 determine if a controversy or question concerning representation
5 exists.

6 (4) (a) Where a petition is filed pursuant to the provi-
7 sions of subsections (1) (b) or (2) of this section and the com-
8 mission finds after an investigation of the allegations of the
9 petition that a question concerning representation exists, it
10 shall:

11 (b) Define the proposed bargaining unit and determine which
12 public employees shall be qualified and entitled to vote at any
13 election held by the commission. Such public employees shall be
14 those public employees who shall be represented by the exclusive
15 bargaining agent for purposes of collective bargaining; and

16 (c) Identify the public employer or employers for purposes
17 of collective bargaining with the exclusive bargaining agent; and

18 (d) Identify the terms and conditions of employment that
19 shall be subject to negotiation between the public employer and
20 the exclusive bargaining agent, and those terms and conditions
21 that shall not be subject to negotiation, in accordance with any
22 provisions of the state constitution or any law, or any home
23 rule charter or ordinance enacted pursuant thereto; and

24 (e) Order an election by secret ballot.

25 (5) Where a petition is filed pursuant to the provisions
26 of subsection (1) (c) of this section and the commission finds
27 after an investigation of the allegations of the petition that
28 a controversy concerning representation exists, it shall order
29

1 an election by secret ballot.

2 (6) (a) In defining a proposed bargaining unit, the com-
3 mission shall take into consideration, among other factors:

4 (b) The desires and recommendations of the public employees
5 to be represented;

6 (c) The duties, skills, and working conditions of the pub-
7 lic employees to be represented;

8 (d) The geographical location of the public employer or of
9 the public employees to be represented, or both;

10 (e) The occupational classification of the public employees
11 to be represented;

12 (f) The extent of organization among the public employees
13 to be represented; and

14 (g) The principles of efficient administration of government.

15 80-22-8. Election to determine exclusive bargaining agent -
16 ballot - limitation on elections. (1) Where a petition is filed
17 by a labor or employee organization pursuant to section 80-22-7 (1),
18 the election ballot shall contain the name of the petitioning
19 labor or employee organization, and the name or names of any other
20 labor or employee organization showing written proof of at least
21 ten per cent representation of the public employees within the
22 defined bargaining unit. Where a petition is filed by a public
23 employer pursuant to section 80-22-7 (2), the election ballot shall
24 contain the names of the one or more labor or employee organiza-
25 tions claiming recognition as the exclusive bargaining agent for
26 the defined bargaining unit. The ballot, whether the petition is
27 filed pursuant to section 80-22-7 (1) or (2), shall also contain
28 a statement that may be marked by any public employee voting that
29

1 he does not desire to be represented by any of the named labor
2 or employee organizations.

3 (2) Where the names of three or more labor or employee
4 organizations are on the election ballot and none of the three
5 or more choices receives the votes of a majority of the total
6 number of public employees within the defined bargaining unit,
7 a run-off election shall be held. The run-off election ballot
8 shall contain the names of the two labor or employee organiza-
9 tions that previously received the largest and second-largest
10 number of votes. Such run-off election ballot shall also con-
11 tain a statement that may be marked by any public employee voting
12 that he does not desire to be represented by either of said labor
13 or employee organizations. Only where the names of three or more
14 labor or employee organizations appear on the ballot shall there
15 be a run-off election ordered, and only one such run-off election
16 shall be held.

17 (3) No question concerning representation shall be raised
18 by any public employee, group of public employees, labor or
19 employee organization, or public employer within one year after
20 a certification or after an election or run-off election when
21 ordered for a certification where no labor or employee organiza-
22 tion received the votes of a majority of the total number of pub-
23 lic employees within the defined bargaining unit.

24 80-22-9. Certification of exclusive bargaining agent -
25 scope of representation. (1) No labor or employee organization
26 shall be certified by the commission as the exclusive bargaining
27 agent of a bargaining unit unless such labor or employee organi-
28 zation received the votes of a majority of the total number of
29

1 public employees in the bargaining unit.

2 (2) (a) Any labor or employee organization certified as
3 the exclusive bargaining agent of a bargaining unit shall:

4 (b) Exclusively represent all the public employees within
5 the bargaining unit, whether or not any such public employee is
6 a member of said labor or employee organization, for purposes of
7 collective bargaining of the terms and conditions of employment
8 and the administration of grievances arising thereunder; and

9 (c) Have unchallenged representation status as provided in
10 this article until loss of certification.

11 80-22-10. Collective bargaining, duty of public employer
12 and exclusive bargaining agent - collective bargaining agree-
13 ments - void provisions - approval or rejection of provisions.

14 (1) Whenever a labor or employee organization has been certified,
15 pursuant to the provisions of this article, as the exclusive bar-
16 gaining agent for a bargaining unit, such labor or employee
17 organization and the appropriate public employer or employers
18 shall bargain collectively in the determination of the terms and
19 conditions of employment of the public employees within the bar-
20 gaining unit. The public employer, or its representative, and
21 the exclusive bargaining agent, or its representative, shall meet
22 at reasonable times and confer in good faith. Any agreement
23 reached by the negotiators shall be reduced to writing, and such
24 written collective bargaining agreement shall be executed by the
25 public employer and the exclusive bargaining agent.

26 (2) Any collective bargaining agreement that contains a
27 provision for automatic renewal or extension, or provides for a
28 term of existence of more than three years shall be void in its
29

1 entirety. Any provision of a collective bargaining agreement
2 that is in conflict with the state constitution or with an
3 applicable home rule city charter shall be void in its entirety.

4 (3) If any provision of a collective bargaining agreement
5 is in conflict with any statutory law, ordinance, rule, regula-
6 tion, or bylaw over which the public employer has no amendatory
7 power, the public employer shall submit to the appropriate
8 governmental body having amendatory power a proposed amendment to
9 such law, ordinance, rule, regulation, or bylaw, and shall make
10 every effort to secure its approval. Unless and until such amend-
11 ment is enacted or adopted and becomes effective, the conflicting
12 provision of the collective bargaining agreement shall not become
13 effective. If such amendment is not enacted or adopted, the con-
14 flicting provision of the collective bargaining agreement shall in
15 no way be considered a part of the collective bargaining agreement
16 and shall be returned to the public employer and the exclusive
17 bargaining agent for further negotiation, at their discretion.

18 (4) The public employer shall submit to the appropriate
19 appropriating or tax levying body, as the case may be, a request
20 on or before the budget submission date for such funds or a tax
21 levy to raise such funds as shall be sufficient to fund the pro-
22 visions of the collective bargaining agreement and shall make
23 every effort to secure its approval. If less than the requested
24 amount is appropriated or will be produced by the certified tax
25 levy, the collective bargaining agreement shall be returned to
26 the public employer and the exclusive bargaining agent for fur-
27 ther negotiations within the framework of the amount of the funds
28 so appropriated or to be produced by the certified tax levy.

1 80-22-11. Collective bargaining negotiations - impasse -
2 mediation - fact finding. (1) If, after a reasonable period of
3 negotiation concerning the terms and conditions of employment to
4 be incorporated in a collective bargaining agreement, a dispute
5 exists between a public employer and an exclusive bargaining agent,
6 or if no agreement is reached within one hundred eighty days prior
7 to the budget submission date of the public employer, an impasse
8 shall be deemed to have occurred. Where an impasse occurs, either
9 the public employer or the exclusive bargaining agent, or both
10 jointly, may petition the commission to initiate mediation.
11 (2) Upon receipt of such petition, the commission shall
12 make an investigation to determine if an impasse exists. If the
13 commission finds that an impasse exists, it shall initiate media-
14 tion. The commission shall submit to the public employer and the
15 exclusive bargaining agent a list containing the names of three
16 qualified disinterested persons. The public employer and the ex-
17 clusive bargaining agent shall select one person from such list
18 to serve as the mediator, and shall notify the commission of
19 their choice. If the public employer and the exclusive bargaining
20 agent fail to select the mediator within five calendar days after
21 the receipt of the list, the commission shall appoint the person
22 who shall serve as the mediator.
23 (3) (a) If the impasse is not resolved within thirty days
24 after the selection or appointment of the mediator, the commission,
25 after consultation with the mediator, may:
26 (b) Discharge the mediator; and
27 (c) Define the area or areas of dispute; and
28 (d) Appoint a qualified disinterested person to serve as a fact
29 finder for the board with respect to such area or areas of dispute.

1 (4) Where a fact finder is appointed, he shall set a time,
2 date, and place for an initial hearing which shall be, where feas-
3 ible, in a locality convenient to the public employer or employers
4 and the exclusive bargaining agent. Hearings shall be conducted in
5 accordance with rules established by the commission. Upon request
6 of the fact finder, or the public employer or employers, or the
7 exclusive bargaining agent, the commission shall issue subpoenas
8 for any hearings conducted by the fact finder. The fact finder
9 shall have, in addition to the powers delegated to him by the com-
10 mission, the power to make public recommendations for the resolu-
11 tion of the dispute.

12 (5) If the dispute is not resolved within thirty days after
13 the appointment of the fact finder, the fact finder shall immedi-
14 ately transmit his findings of fact and recommendations for resolu-
15 tion of the dispute to the public employer or employers, the exclu-
16 sive bargaining agent, and the commission, and shall simultaneously
17 make public such findings and recommendations.

18 (6) In the event that either the public employer or employers,
19 or the exclusive bargaining agent does not accept in whole or in
20 part the recommendations of the fact finder, the commission shall
21 submit the findings of fact and recommendations of the fact finder
22 to the appropriate legislative body at its next regular or special
23 meeting or session. The commission shall also submit at the same
24 time separate recommendations for resolving the dispute from the
25 public employer and the exclusive bargaining agent involved.

26 (7) In the event that the exclusive bargaining agent does not
27 accept in whole or in part the determination of the legislative body,
28 and the public employees of the bargaining unit vote to strike
29 against the public employer or employers involved, the exclusive

1 bargaining agent shall file with the commission a notice of intent
2 to strike at least twenty days prior to the date on which such
3 strike is scheduled to commence. The commission shall immediately
4 notify the public employer or employers involved of the filing of
5 the notice of intent to strike, and shall make a determination
6 whether the strike will endanger the public health or safety.
7 Prior to the expiration of the twenty-day period, the commission
8 shall notify the public employer or employers involved, the exclu-
9 sive bargaining agent, and the governor of its determination.
10 Where the commission determines that the strike will endanger the
11 public health or safety, the governor may issue an order postponing
12 the intended strike for a period of forty days next following the
13 date on which the strike was to have commenced, and shall use any
14 reasonable means at his command to resolve the dispute.

15 (8) The provisions of this section relating to procedures
16 for resolving an impasse shall be complied with before any employee
17 or labor or employee organization shall engage in a strike.

18 80-22-12. Disputes concerning interpretation or performance
19 of agreement. Where a dispute arises between a public employer and
20 an exclusive bargaining agent concerning the interpretation of the
21 provisions of a collective bargaining agreement, or concerning the
22 performance or nonperformance by either party of the provisions of
23 such collective bargaining agreement, the public employer and exclu-
24 sive bargaining agent shall initially attempt to resolve such dis-
25 pute through procedures established for grievances. In the event
26 that the dispute is not resolved through such grievance procedures,
27 the public employer and exclusive bargaining agent shall submit the
28 dispute to arbitration in accordance with the Colorado rules of
29 civil procedure.

1 80-22-13. Prohibited practices - procedure - remedies. (1)

2 Whenever a charge is filed with the commission alleging that any
3 person, public employer, or labor or employee organization has
4 engaged in or is engaging in any of the practices prohibited by
5 the provisions of section 80-22-5 (2) or (3), the commission
6 shall issue and cause to be served upon such person, public em-
7 ployer, or labor or employee organization a complaint stating
8 the charges and containing a notice of hearing before the commis-
9 sion or a hearing examiner, which may be a member of the commis-
10 sion, at a place therein fixed and on a date not less than five
11 days after the service of the complaint.

12 (2) No complaint shall be issued based upon any prohibited
13 practice occurring more than six months prior to the filing of
14 the charges with the commission, unless the person aggrieved
15 thereby was prevented from filing the charges by reason of serv-
16 ice in the armed forces of the United States, in which event the
17 six-month period shall be computed from the day of such person's
18 discharge.

19 (3) Any complaint may be amended by the hearing examiner,
20 or the commission, at any time prior to the issuance of an order
21 of the commission based thereon. The person, public employer,
22 or labor or employee organization complained of shall have the
23 right to file an answer to the original or amended complaint
24 within ten days after the service of a copy thereof, or within
25 such other time as the hearing examiner or the commission may
26 determine, to appear in person or by counsel, to call witnesses,
27 and to give testimony in defense at the time and place fixed in
28 the notice. In the discretion of the hearing examiner or the

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1 commission, any other person, public employer, or labor or employee
2 organization may be permitted to intervene in the proceeding and
3 to present testimony and cross-examine witnesses. In any hearing,
4 the hearing examiner or the commission shall not be bound by the
5 technical rules of evidence.

6 (4) The testimony taken before the hearing examiner or the
7 commission shall be reduced to writing and filed with the com-
8 mission. Thereafter, the commission, upon notice, may take
9 further testimony or hear additional argument.

10 (5) If upon a preponderance of the testimony taken, the
11 commission determines that the person, public employer, or labor
12 or employee organization complained of has engaged in or is en-
13 gaging in a practice prohibited by the provisions of section
14 80-22-5 (2) or (3), it shall state its findings of fact and shall
15 issue and cause to be served upon such person, public employer,
16 or labor or employee organization an order requiring him or it to
17 cease and desist from the prohibited practice.

18 (6) The commission may take such affirmative action, in-
19 cluding reinstatement of public employees or the revocation of
20 certification of an exclusive bargaining agent, as will effectu-
21 ate the policies and purposes of this article. Where a public
22 employee was removed through proceedings instituted before the
23 state civil service commission, the industrial commission shall
24 not order reinstatement of such public employee.

25 (7) If upon a preponderance of the testimony taken, the
26 commission determines that the person, public employer, or labor
27 or employee organization complained of has not engaged in or is
28 not engaging in a practice prohibited by the provisions of sec-

1 tion 80-22-5 (2) or (3), then the commission shall state its
2 findings of fact, and shall issue an order dismissing the com-
3 plaint. No order of the commission shall require the reinstate-
4 ment of any public employee who has been suspended or discharged,
5 or the payment to him of any back pay, if such public employee
6 was lawfully suspended or discharged for cause.

7 (8) Until the record in any proceeding has been filed in
8 court, the commission, at any time, upon reasonable notice and in
9 such manner as it deems proper, may modify or set aside, in whole
10 or part, any finding or order made or issued by it. The commis-
11 sion may petition the district court in the district where the
12 complained of person resides, or where the public employer exer-
13 cises its governmental function, or where the labor or employee
14 organization has a business office, as the case may be, or where
15 the prohibited practice has been or is being engaged in, for the
16 enforcement of the order. The court may enforce the order of the
17 commission, or modify and enforce such order as modified, or set
18 aside such order. The finding of the commission with respect to
19 any question of fact shall be conclusive upon the court, unless
20 any such finding is based upon evidence so minimal as to amount
21 to an abuse of discretion. Upon the filing of the record of the
22 proceeding by the commission with a district court, such district
23 court shall have exclusive jurisdiction and its judgment shall be
24 final, except that such judgment shall be subject to review by the
25 supreme court in accordance with the Colorado rules of civil pro-
26 cedure.

27 (9) Any person, public employer, or labor or employee or-
28 ganization aggrieved by a final order of the commission may seek
29

1 judicial review pursuant to section 3-16-5, C.R.S. 1963. The
2 commencement of judicial review pursuant to section 3-16-5,
3 C.R.S. 1963, shall not, unless specifically ordered by the court,
4 operate to stay an order of the commission.

5 (10) Complaints and petitions for appellate review filed
6 under this section shall be heard expeditiously by the court to
7 which presented, and shall take precedence over other civil cases,
8 except earlier cases arising under this section or cases arising
9 under section 80-22-14.

10 (11) The commission may, upon the issuance of a complaint
11 as provided in subsection (1) of this section charging that a
12 person, public employer, or labor or employee organization has
13 engaged in or is engaging in a prohibited practice, petition the
14 district court where the alleged prohibited practice in question
15 is occurring, or where such person resides, or such public employ-
16 er exercises its governmental functions, or such labor or employee
17 organization has a business office, as the case may be, for
18 appropriate temporary relief or restraining order in accordance
19 with the Colorado rules of civil procedure, and the court shall
20 have jurisdiction to grant to the commission such temporary re-
21 lief or restraining order as it deems just and proper.

22 80-22-14. Strikes - violations - procedure - penalties.

23 (1) Whenever a charge is filed with the commission alleging that
24 a public employee, or group of public employees, or a labor or
25 employee organization has violated or is violating the provisions
26 of section 80-22-5 (1), the commission shall immediately issue
27 and cause to be served upon such public employee, group of public
28 employees, or labor or employee organization a complaint stating
29

1 the charges, and containing a notice of hearing before the com-
2 mission or member thereof, at a place therein fixed, not more
3 than two days after the service of a copy of the complaint. Where
4 such public employee or the members of the group of public em-
5 ployees are members of a "labor or employee organization", as
6 such term is defined in this article, whether or not such organ-
7 ization is certified as the exclusive bargaining agent pursuant
8 to the provisions of sections 80-22-8 and 80-22-9, service may be
9 made upon such labor or employee organization in lieu of service
10 upon such public employee or the members of the group of public
11 employees. The public employee, or group of public employees,
12 or labor or employee organization shall have the right to file
13 an answer to the complaint, to be represented by counsel, to
14 summon witnesses, and to give testimony and cross-examine wit-
15 nesses in defense at the time and place fixed in the notice for
16 the hearing. At any hearing, the commission, or any member there-
17 of, shall not be bound by the technical rules of evidence. The
18 commission shall file its decision and order within one day after
19 the termination of the hearing.

20 (2) (a) If the commission determines upon a preponderance
21 of the testimony taken that the public employee or group of pub-
22 lic employees complained of has violated or is violating the
23 provisions of section 80-22-5 (1), the commission shall state
24 its findings of fact, and:

25 (b) Shall, if it is determined that such violation is still
26 continuing, issue and cause to be served upon such public employee,
27 or the members of the group of public employees, or the labor or
28 employee organization of which he or they are members, an order
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1 requiring him or them to cease and desist from such violation;
2 and

3 (c) May order that such public employee or group of public
4 employees be disciplined in accordance with procedures established
5 by law for misconduct; and

6 (d) Shall order that such public employee or group of pub-
7 lic employees be placed on probation for a period of two years
8 with respect to tenure of employment or contract of employment,
9 as the case may be; and

10 (e) Shall order that such public employee or group of pub-
11 lic employees forfeit all increases in compensation and benefits,
12 if any, that such public employee or group of public employees
13 would be entitled to by reason of his or their public employment
14 for a period of one year next following the commencement of the
15 violation of the provisions of section 80-22-5 (1).

16 (f) Where such public employee or group of public employees
17 is within the classified civil service of the state, the provi-
18 sions of paragraphs (c), (d), and (e) of this subsection (2)
19 shall not be applicable. In lieu thereof, the public employer or
20 employers shall file charges with the state civil service commis-
21 sion for discipline or removal as provided in the state constitu-
22 tion and the laws and rules enacted or adopted in pursuance
23 thereof.

24 (3) If the commission determines upon the preponderance of
25 the testimony taken that such public employee or group of public
26 employees has not violated and is not violating the provisions
27 of section 80-22-5 (1), the commission shall state its findings
28 of fact and shall issue an order dismissing the complaint.

29

1 (4) (a) If the commission determines upon a preponderance
2 of the testimony taken that the labor or employee organization
3 complained of has violated or is violating the provisions of
4 section 80-22-5 (1), the commission shall state its findings of
5 fact, and:

6 (b) Shall, if it is determined that such violation is still
7 continuing, issue and cause to be served upon such labor or em-
8 ployee organization an order requiring it to cease and desist
9 from such violation; and

10 (c) Shall impose for each day that the violation of section
11 80-22-5 (1) persists a fine in an amount equal to one fifty-second
12 of the total amount of the annual membership dues of such labor or
13 employee organization, as defined in this article, except where
14 an amount equal to one fifty-second part of the total amount of
15 the annual membership dues of such labor or employee organization
16 is less than one thousand dollars, such fine shall be imposed in
17 the amount of one thousand dollars; and

18 (d) Shall revoke the right of membership dues deduction for
19 a period not to exceed two years, but in no event less than one
20 year, and shall forthwith notify the public employer and the labor
21 or employee organization involved of such revocation; except,
22 that where a fine is imposed on such labor or employee organiza-
23 tion pursuant to the provisions of paragraph (c) of this subsec-
24 tion (4), or subsection (8) of this section, or a fine previously
25 imposed on such labor or employee organization pursuant to the
26 provisions of paragraph (c) of this subsection (4), or subsection
27 (8) of this section, remains wholly or partly unpaid after the
28 exhaustion of the cash and securities of such labor or employee
29

1 organization, the commission shall direct, in a supplemental
2 order if necessary, that, notwithstanding such revocation, such
3 membership dues deduction shall be continued to the extent neces-
4 sary to pay such fine and the public employer involved shall
5 transmit such moneys to the commission, if the fine was imposed
6 by the commission, or the court, if the fine was imposed by the
7 court.

8 (5) Where the commission has issued and caused to be served
9 upon such labor or employee organization a cease and desist order,
10 as provided in subsection (4) (b) of this section, such labor or
11 employee organization shall immediately comply with such order.
12 In the event that such labor or employee organization fails to
13 comply with such cease and desist order within one day after serv-
14 ice upon it of such order, the commission shall petition the dis-
15 trict court in the district where the violation of section 80-22-5
16 (1) is occurring, or where the labor or employee organization has
17 its business office, for the enforcement of such cease and desist
18 order. The court may enforce the cease and desist order, or
19 modify and enforce such order as modified, or set aside such
20 order. The finding of the commission with respect to any ques-
21 tion of fact shall be conclusive upon the court, unless any such
22 finding is based upon evidence so minimal as to amount to an
23 abuse of discretion. Upon the filing of the record of the pro-
24 ceeding by the commission with a district court, such district
25 court shall have exclusive jurisdiction and its judgment shall
26 be final, except that such judgment shall be subject to review
27 by the supreme court in accordance with the Colorado rules of
28 civil procedure.

1 (6) The commission may, upon the issuance of a complaint as
2 provided in subsection (1) of this section charging that a public
3 employee or group of public employees or labor or employee organ-
4 ization has violated or is violating the provisions of section
5 80-22-5 (1), petition the district court in the district where
6 the alleged violation is occurring, or where the public employee
7 resides, or any of the group of public employees reside, or where
8 the labor or employee organization has its business office, as
9 the case may be, for appropriate temporary relief or restraining
10 order in accordance with the Colorado rules of civil procedure,
11 and the court shall have jurisdiction to grant to the commission
12 such temporary relief or restraining order as it deems just and
13 proper.

14 (7) Where a public employee or group of public employees or
15 any officer of a labor or employee organization willfully disobeys
16 a lawful order of a court, or willfully offers resistance to such
17 lawful order, in a case involving or growing out of a violation
18 of section 80-22-5 (1), the punishment for such contempt shall
19 be a fine, not to exceed two hundred and fifty dollars, or im-
20 prisonment, not to exceed thirty days, in the jail of the county
21 where the court is sitting, or both such fine and imprisonment.
22 Where a person is committed to jail for the nonpayment of such a
23 fine, he shall be discharged at the expiration of thirty days;
24 but where he is also committed for a definite time, the thirty
25 days shall be computed from the expiration of the definite time.

26 (8) (a) Where a labor or employee organization willfully
27 disobeys a lawful order of a court, or willfully offers resist-
28 ance to such lawful order, in a case involving or growing out of
29

1 a violation of section 80-22-5 (1), the punishment shall be, for
2 each day that such contempt persists, a fine fixed by the court
3 in an amount equal to one fifty-second of the total amount of the
4 annual membership dues of such labor or employee organization, as
5 defined in this article, except that where an amount equal to one
6 fifty-second part of the total amount of the annual membership
7 dues of such labor or employee organization is less than one
8 thousand dollars, such fine shall be fixed in the sum of one
9 thousand dollars.

10 (b) In the event that membership dues are collected by the
11 public employer, the books and records of such public employer
12 shall be prima facie evidence of the amount so collected.

13 (9) Any public employee, group of public employees, labor
14 or employee organization, or public employer aggrieved by a final
15 order of the commission may seek judicial review pursuant to
16 section 3-16-5, C.R.S. 1963. The commencement of judicial review
17 pursuant to section 3-16-5, C.R.S. 1963, shall not, unless specif-
18 ically ordered by the court, operate to stay an order of the com-
19 mission.

20 (10) Notwithstanding any other provision of law to the
21 contrary, where a public employee, or group of public employees,
22 or a labor or employee organization plans, proposes, or threatens
23 action in violation of section 80-22-5 (1), and the public em-
24 ployer involved has reasonable cause to believe that such viola-
25 tion is imminent, such public employer may apply to the district
26 court in the district where such public employee resides, or where
27 any of such group of public employees resides, or where such labor
28 or employee organization has a business office, as the case may

1 be, or where the violation will occur, for a restraining order
2 and an injunction restraining and enjoining such violation. If
3 an order of such district court restraining or enjoining such
4 violation does not receive compliance, the public employer shall
5 immediately apply to the district court to punish such contempt
6 under subsections (7) or (8) of this section, as the case may be,
7 and shall immediately file charges with the commission under sub-
8 section (1) of this section.

9 (11) Complaints and petitions for appellate review filed
10 under this section shall be heard expeditiously by the court to
11 which presented, and shall take precedence over other civil
12 cases, except earlier cases arising under this section.

13 80-22-15. Collective bargaining and mediation session and
14 fact finding hearings not open meetings - public records. (1)
15 Collective bargaining negotiation sessions between the exclusive
16 bargaining agent and the public employer or employers, mediation
17 sessions, and fact finding hearings provided for in this article
18 shall not be deemed "public meetings" subject to the provisions
19 of section 3-19-1, C.R.S. 1963, and any interim documents, re-
20 ports, transcripts, and agreements produced during such sessions
21 or hearings shall not be deemed "public records" subject to the
22 provisions of chapter 66, Session Laws of Colorado 1968.

23 (2) The executed collective bargaining agreement, the find-
24 ings of facts and recommendations of the fact finder, and docu-
25 ments embodying completed studies and analyses of the commission
26 made pursuant to authority granted in this article shall be
27 deemed "public records" within the meaning of chapter 66, Ses-
28 sion Laws of Colorado 1968.

1 80-22-16. Protection of certain employees. (1) (a) Be-

2 fore the state or any board, commission, agency, or instrumental-
3 ity thereof, or any city, city and county, county, or combination
4 thereof shall acquire and operate any property of a privately or
5 publicly owned mass transportation system, fair and equitable
6 protective arrangements, as determined by the commission, shall
7 be made to insure certain rights of employees. Such protective
8 arrangements shall include, without being limited to, such pro-
9 visions as may be necessary to accomplish the following objectives:

10 (b) The preservation of existing rights, privileges, and
11 benefits of employees under existing collective bargaining agree-
12 ments between the mass transportation system and the employees
13 thereof, including the continuation of all pension rights and
14 benefits of the employees and their beneficiaries.

15 (c) The continuation of all collective bargaining in any
16 and all situations wherein it existed at the time of such
17 acquisition insofar as such collective bargaining does not vio-
18 late the provisions of this article, and the assurances of em-
19 ployment of all the employees of such mass transportation system
20 so acquired.

21 (d) The protection of all individual employees with respect
22 to their employment, including priorities, seniorities, and
23 right of advancement when in agreement with any existing collec-
24 tive bargaining agreement.

25 (e) Training and retraining programs of employees and man-
26 aging personnel.

27 (2) The contract whereby any property of a privately or
28 publicly owned mass transportation system is acquired shall

1 specify, with particularity, the terms and conditions of all the
2 protective arrangements as set forth in this section, including
3 all other protective arrangements which may be added through
4 collective bargaining or by direction of the commission.

5 (3) The determination of the sufficiency of protective
6 arrangements shall be made by the commission in accordance with
7 such rules and regulations as the commission may from time to
8 time establish.

9 SECTION 2. 80-4-2 (2), Colorado Revised Statutes 1963 (1965
10 Supp.), is amended to read:

11 80-4-2. Definitions. (2) The term "employer" means a per-
12 son who regularly engages the services of eight or more employees
13 other than persons within the classes expressly exempted under
14 the terms of subsection (3) of this section, and includes any
15 person acting on behalf of any such employer within the scope of
16 his authority, express or implied, but shall not include the
17 state or any political subdivision thereof ~~except where the state~~
18 ~~or any political subdivision thereof shall acquire or operate a~~
19 ~~mass transportation system as defined in subsection (17) of this~~
20 ~~section~~; or any carrier by railroad, express company, or sleep-
21 ing car company subject to the Federal Railway Labor Act, Title
22 45 U.S.C.A., or any labor organization or anyone acting in be-
23 half of such organization other than when it or he is acting as
24 an employer in fact.

25 SECTION 3. 89-15-2 (2), Colorado Revised Statutes 1963, is
26 amended to read:

27 89-15-2. Definition of terms. (2) The word "district"
28 when not otherwise qualified means a metropolitan sewage disposal
29

1 district formed under the provisions of this article or as changed
2 from time to time. A district formed under this article shall
3 not be considered a political subdivision for the purposes of
4 section 80-5-2-~~(2)~~ 80-4-2 (2), Colorado Revised Statutes 1963,
5 AS AMENDED.

6 SECTION 4. Repeal. 80-4-2 (16) and (17), 80-4-3 (4),
7 80-4-9, 80-4-10 (2), and 80-4-11 (3), Colorado Revised Statutes
8 1963 (1965 Supp.), are repealed.

9 SECTION 5. Effective date. This act shall take effect
10 January 1, 1970.

11 SECTION 6. Safety clause. The general assembly hereby
12 finds, determines, and declares that this act is necessary for
13 the immediate preservation of the public peace, health, and
14 safety.

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BACKGROUND REPORT ON PUBLIC EMPLOYEE NEGOTIATIONS

The first question to be considered is whether legislation providing a framework for public employee negotiations for the state and its political subdivisions is necessary. The answers to this question are likely to vary, depending upon the situation of the persons of whom the question is asked. It was stated at the annual meeting of the Education Commission of the States, as an example, that there are persons already involved in the bargaining process in states in which there are no laws on public employee negotiations. These persons may say: "We would be more fearful of the enactment of a law than the lack of it because we are now in a position where we think we are operating effectively without a law." Legislators simply impose limitations which do not now exist. Thus these persons would conclude that they can fare better in negotiations without legislation than they could fare with legislation.

Continuing the example, it was pointed out that other persons in the same state who would be denied the ability to participate in the process of negotiations with their public employer because the employer would say: "There are no legal guidelines; consequently, I am not going to be involved because I do not have to."^{1/}

There are, of course, many other ramifications involved in the question of whether state legislation relating to public employee negotiations should be enacted. The point is that it is difficult to make many general statements, applicable to all public employees and their employers, on the effects of state legislation on this subject.

Part of the difficulty in attempting to evaluate whether legislation is necessary stems from the diversity of public employment situations in a state such as Colorado. Some school districts, large cities, and the state government employ thousands of persons; other units of government employ few persons each of whom is well-known to the public employer. Some of the governmental units have civil service systems which would have an effect on the negotiation process.

As would be expected, a variety exists in the methods of determining wages of public employees in Colorado. The Denver

^{1/} Statement of Prof. J. P. Linn, University of Denver School of Law taken from Compact, the publication of the Education Commission of the States.

city charter requires that police and fire department salaries be set by vote of the people of the city. State civil service and local career service boards are involved in making wage surveys which have a major part in determining salary adjustments for public employees. Teachers in Denver may be said to bargain collectively through an exclusive bargaining agent with the school board. In general, it would be expected that less formal arrangements would be used in the determining of salaries of public employees for smaller governmental units.

What changes might be expected if a bill such as that proposed by the committee were to be adopted in Colorado? First, Herrick Roth, President of the Colorado Labor Council (AFL-CIO), stated that a law providing for public employee negotiation procedures would encourage public employees to organize in order to bargain collectively. This result is borne out in the experience of other states. Another probable result of legislation was pointed out by Ted Tedesco, Boulder City Manager, who suggested that statutory procedures for negotiations would tend to place the relationship between the public employers and the employees on more formal, less personal, basis. Mr. Tedesco said he did not know whether a change to more formal work relationships would be detrimental or beneficial, but that such a change would probably occur.

Possibly the most important consideration by the committee involved whether a statute on public employee negotiations would act to reduce disputes between public employees and their employers, or whether such laws might actually encourage disputes. The opinion of most of the conferees appearing before the committee was favorable toward legislation. Legislation could provide a means of avoiding disputes on the question of recognition of an employee organization -- that is, it would settle any question of whether employees would have the right to organize. Further, legislation would provide a clear means of resolving jurisdictional disputes between competing employee organizations regarding the exclusive bargaining agent for the employees. These guidelines for employee organizations may be viewed as helpful to both the employees and employers in providing answers to questions that arise when public employees organize and ask to be recognized as a collective bargaining agent.

It should be noted that some of the committee members argued that legislation was unnecessary in Colorado, partly because the present informal procedures established between the public employer and the employees have worked satisfactorily in the past and can continue to make satisfactory adjustments in the future. Most public employers are interested in hearing from their employees in regard to all aspects of their employment, and it would be unnecessary to establish formal procedures for this process. Additional arguments against legislation were discussed by the committee and are outlined in the committee report contained in this publication.

The remainder of this background report will review existing Colorado legislation relating to public employee negotiations; outline the approach of the federal government in this area; list statutes of other states and discuss the experience under two state statutes; and summarize the recommendations submitted to the committee in hearings held this summer.

Existing Colorado Legislation

Colorado has not enacted specific legislation regarding either the rights of public employees to organize or to prohibit their organizing for the purpose of conducting negotiations with their employers. However, general legislation in the statutes pertaining to the industrial commission may apply to public employee negotiations (sections 80-1-30 through 80-1-33, C.R.S. 1963). These sections forbid employees, perhaps including public employees, the right to strike until the industrial commission has held hearings on the dispute, if the courts rule that a strike would not be in the best interest of the public. However, action taken by the court is only temporary and allows an indefinite "cooling off period" before a strike could go into effect. The term "employer" as used in article 1 of chapter 80 includes "the state, and each county, city, town, irrigation and school district therein...having four or more employees." (80-1-3 (4) (a), C.R.S. 1963).

Under section 80-4-2 (2), C.R.S. 1963, the state and political subdivisions are not considered to be employers and are exempt from the provisions of the "Labor Peace Act". The Labor Peace Act sets standards for: (1) employee-employer relations; (2) prevents unfair labor practices, as defined; and (3) establishes procedures for arbitration and mediation of labor disputes.

Several attempts have been made in the General Assembly to remove the exempt status of the state and its political subdivisions from the Labor Peace Act. If the exemption for the state and its political subdivisions were removed, these governmental units would become as any other employer and all provisions of the act would apply to the state and its political subdivisions. The only areas in which the Labor Peace Act applies to public employees is for employees of metropolitan sewage disposal districts (89-15-2 (2), C.R.S. 1963) and to employees of any publicly owned and operated mass transportation system in the state (80-4-2, C.R.S. 1963, 1965 Supp.).

The Federal Approach to Public Employee Negotiations

On January 17, 1962, President Kennedy signed Executive Order 10988 -- Employee-management Cooperation in the Federal Service. Executive Order 10988 created, for the first time, a government policy of "affirmative-willingness" to enter agreements with employee organizations.^{2/}

Forms of Recognition. The Executive Order provides for three types of employee recognition -- informal, formal, and exclusive. To be accorded any type of recognition, an employee organization must not: (1) assert the right to strike against the government; (2) advocate the overthrow of our constitutional form of government; (3) discriminate with regard to membership because of race, color, creed, or national origin; or (4) be subject to corrupt influences.

According to the study preceding this Executive Order, it was discovered that in many departments of the federal government there were successful employee organizations already in existence. To prevent the decline of the successful organizations, it was recommended that these groups be given at least informal recognition. However, the article cited concluded that the heart of Executive Order 10988 is exclusive recognition of an employee organization. To be given exclusive recognition, an employee organization must meet all requirements listed above, and also have the majority of a department's employees in their organization. Once a department's organization is given exclusive recognition, the department's other employee organizations can only be represented informally.

Sovereign Immunity. One of the chief objections to the federal government entering into binding agreements with labor organizations has been that, under United States tradition, sovereign government's powers cannot be subject to bargaining by an administrator without Congress waiving the government's immunity to be sued. Executive Order 10988 was said to avoid the problem of sovereign immunity by omitting any provision binding agencies to agreements negotiated with employee organizations (Section 7 (1)).

^{2/} Information for this discussion is taken from an article by Robert Jacoby, "Collective Bargaining Rights for Federal Employees", New York University Intramural Law Review, Vol. 18, May 1963, pp. 287-310.

Substitutions for the Right to Strike. Even though a government employee organization cannot strike, several other alternatives were mentioned in the article cited as available to an organization in meeting its objectives:

- (1) The fact that Executive Order 10988 was issued indicated some expectation that there would be agreements between management and employees.
- (2) Government employees' organizations carry on extensive lobbying activities in Congress which could result in pressure on management.
- (3) Management officials' careers depend upon favorable publicity, and labor organizations have maintained a good rapport with the press. Employee organizations were said to have the power to make management appear in an unfavorable light.
- (4) Government employees' organizations can picket during off-duty hours.
- (5) Negotiation impasses may also be resolved through the use of such techniques as mediation and fact finding.

Subjects of Negotiations. Since hour and wage laws are determined by the Classification Act System, it may appear that there is very little left for employee organizations to negotiate. However, a list of some areas where negotiations can take place would include: boost in civil service grading; working conditions; grievance procedures; work shifts; promotion standards; disciplinary practices; and employee services.

Arbitration. Under Executive Order 10988, neither advisory nor compulsory arbitration is available to resolve negotiation impasses. The government felt that arbitration would severely hurt the growth of public employee organizations because arbitration would not allow a pattern of normal collective bargaining practices to be developed. Bargainers would tend to rely on arbitration to settle disputes instead of working for a settlement on their own.

Check-Off Authorization. Executive Order 10988 does not provide for withholding organization dues from employees' paychecks. The task force working for the President had urged that Congress allow withholding of employees' pay to insure the stability of the employee organizations. Congress has not permitted check-off authority for dues collections for public employee organizations.

Laws of Other States

A total of 24 states have enacted legislation covering at least some aspects of public employee negotiations in their states. These laws vary considerably in their scope, with some states having legislation covering all public employees (e.g., New York) and other states having separate legislation for different groups of public employees (e.g., Rhode Island). Listed in Table I are the states which have enacted legislation, the statutory citations of these acts, and the employee groups affected by the legislation.

A limited number of copies of these state laws are available to members of the General Assembly in the Legislative Council Office. Summary tabulations of key aspects of these laws are available in several of the publications listed in the selected annotated bibliography contained at the end of this report.

Table I

State Statutes Concerning Public
Employee Negotiations

<u>Alabama</u> ^{3/}	-- Act No. 229, 1967 Session Laws, p. 598 (Fire Fighters)
<u>Alaska</u>	-- Sections 23.40.010 to 23.40.40 Alaska Statutes (Public Employees)
<u>California</u>	-- Sections 3500 to 3509, Government Code, West's Annotated California Codes (Public Employees); Sections 1960 to 1963, Labor Code, 1967 Pocket Part, West's Annotated California Codes (Fire Fighters); and Sections 13080 to 13088, Education Code, 1967 Pocket Part, West's Annotated California Codes (Teachers)

^{3/} Alabama has enacted legislation setting forth a "Policy on Public Employment" which prohibits state employees from establishing labor unions or labor organizations (Title 55, Section 317, as amended, Code of Alabama). Exempted from this policy are teachers, dock employees, and employees of cities and counties (section 317 (3)).

Table I
(Continued)

<u>Connecticut</u>	-- Public Act No. 159, Public Acts of Connecticut 1965, as amended by Public Act 491, Public Acts of Connecticut 1967 (Municipal Employees); and Public Act 298, Public Acts of Connecticut 1965 (Teachers)
<u>Delaware</u>	-- Title 19, Sections 1301 to 1313, Delaware Code Annotated, 1966 Pocket Part (Public Employees)
<u>Florida</u>	-- Ch. 67-900, General Laws of Florida 1967, p. 524 (Fire Fighters)
<u>Illinois</u>	-- Ch. 111 2/3, Sections 301 to 304; 328a, Smith-Hurd Illinois Annotated Statutes (Metropolitan Transit Authority)
<u>Louisiana</u>	-- Ch. 8, Part V -- Title 23, Section 890, Louisiana Revised Statutes, 1966 Pocket Part (Public Transportation Facilities)
<u>Maine</u>	-- Ch. 396, Public Laws of Maine 1965, p. 511 (Fire Fighters)
<u>Maryland</u>	-- Art. 64b, Sections 1 to 4; 7 (s), Annotated Code of Maryland, 1968 Replacement Volume (Metropolitan Transit Authority)
<u>Massachusetts</u>	-- Ch. 161a, Section 19, Massachusetts General Laws Annotated, 1967 Pocket Part, (Metropolitan Transportation Authority); Ch. 763, Acts and Resolves of Massachusetts 1965, p. 555 (Municipal Employees); and Chapter 149, Sections 178b to 178n, Massachusetts General Laws Annotated, 1968 Pocket Part (State and Municipal Employees)
<u>Michigan</u>	-- Section 17.455 (1) to 17.455 (16), Michigan Statutes Annotated, 1968 Supplement (Public Employees)
<u>Minnesota</u>	-- Section 179.50 to 179.60, Minnesota Statutes 1965 (Public Employees); and Chapter 633, Session Laws of Minnesota 1967, p. 1277 (Teachers)

Table I
(Continued)

<u>Missouri</u>	-- Sections 105.500 to 105.530, Revised Statutes of Missouri 1959, 1967 Supplement (Public Employees)
<u>Montana</u>	-- Chapter 250, Laws of Montana, 1967 Session, p. 753 (Employees of Health Care Facilities)
<u>Nebraska</u>	-- Chapter 518, Nebraska Session Laws of 1967, p. 1738 (Teachers)
<u>New Hampshire</u>	-- Chapter 38-A, Sections 38-A:1 to 38-A:4 and 38-A:18, New Hampshire Revised Statutes Annotated, 1967 Supplement, Vol. 1 (Municipal Transit Authority)
<u>New York</u>	-- Chapter 392, McKinney's Session Law News of New York, p. 393 (Public Employees)
<u>Oregon</u>	-- Chapter 720, Session Laws of Oregon 1961, p. 1477 (Employees of Health Care Facilities); Chapter 579, Session Laws of Oregon 1963, p. 1146, as amended by Chapter 543, Session Laws of Oregon 1965, p. 1064 (Public Employees); and Chapter 390, Session Laws of Oregon 1965, p. 795 (Teachers)
<u>Rhode Island</u>	-- Sections 28-9.1 to 28-9.1-14, General Laws of Rhode Island, 1956, 1966 Pocket Supplement (Fire Fighters); Sections 28-9.2-1 to 28-9.2-14, General Laws of Rhode Island 1956, 1966 Pocket Supplement (Policemen); Sections 28-9.3-1 to 28-9.3-16, General Laws of Rhode Island 1956, 1966 Pocket Supplement (Teachers); Sections 28-9.4-1 to 28-9.4-19, General Laws of Rhode Island 1956, 1967 Pocket Supplement (Municipal Employees); and Sections 36-11-1 to 36-11-6, General Laws of Rhode Island 1956, 1967 Pocket Supplement (State Employees)

Table I
(Continued)

<u>Vermont</u>	-- Public Act No. 198, Part III, Acts and Resolves of Vermont 1967, p. 355 (Public Employees)
<u>Washington</u>	-- Sections 28.72.010 to 28.72.090, Revised Code of Washington, 1967 Supplement (Teachers); and Sections 41.56.010 to 41.56.900, Revised Code of Washington, 1967 Supplement (Public Employees)
<u>Wisconsin</u>	-- Chapter 111.70, Wisconsin Statutes 1965 (Municipal Employees); and Chapter 111.80 to 111.94, Wisconsin Session Laws 1965-1966, p. 1081 (State Employees)
<u>Wyoming</u>	-- Sections 27-265 to 27-273, Wyoming Statutes 1957, Vol. 7, 1967 Replacement (Fire Fighters)

Comments About Statutes in Other States

Possibly the most difficult aspect of a study of public employee negotiations is to attempt to analyze whether legislation in other states has been successful or unsuccessful in meeting problems of negotiations and work stoppages by public employees. The many problems involved in public employee disputes are discussed in many sources of information. However, while much is reported in regard to the effects of legislation in other states, the reporting often is much more subjective than objective. For this reason it is important to take into consideration the background and the position of the individual offering an opinion relating to a particular dispute or the effectiveness of a state statute under discussion.

The experience with the laws of two states -- New York and Wisconsin -- were discussed at some length at the 1968 annual meeting of the Education Commission of the States held in Denver. It was thought that some of the comments expressed at this meeting regarding these statutes, in particular, would be of interest to members of the General Assembly. The discussions were based on the experience in these states prior to July, 1968, so the remarks may or may not be applicable to the 1968 New York City teachers strike and other threatened strikes occurring since that date.

New York

The "Taylor Act" in the State of New York has been the subject of considerable discussion because of a series of lengthy strikes by public employees in New York City. The question which appears to attract the most attention in regard to this statute is whether the blanket prohibition against all strikes and the severe penalties against strikes actually serve as a deterrent of public employee strikes in New York.

Speaking in a panel discussion at the annual meeting of the Education Commission of the States, Dr. Herbert Johnson, Associate Commissioner for Education Finance and Management in the New York State Education Department, defended the New York law on the basis of the number of agreements reached between school districts and their employees. First, it was reported by Dr. Johnson that, of the 800-plus school districts in the state, approximately 700 written contracts were negotiated between the employers and the employees in 1967. Dr. Johnson stated:

There have been problems about it, of course. The parties haven't always agreed. They have reached some impasses; in about 270 of these cases they have resorted to the mediation which is provided under the law when impasses occur. Out of the 270 mediation cases, some 180 went to the next step, which is fact-finding, and in about 40 of the cases out of the 180 the fact-finders' recommendations were rejected either by the employer or the employee. But the interesting thing is that out of all of these situations, there were only two strikes which occurred -- I have ruled out now New York City -- one lasted two days and the other lasted slightly over a week. These two, in our view, were caused by rather special circumstances which we won't go into here.

But the point is that the law (1) removes the first problem, namely, can there be negotiations? This is the first cause of unrest and unhappiness among employees. It guarantees that they organize and negotiate. (2) It does provide for mediation and fact-finding in cases where impasses occur, and this has been remarkably successful.^{4/}

^{4/} Compact. Vol. 4, No. 2, Denver: Education Commission of the States, August, 1968. p. 28.

Later in the discussion, Dr. Johnson stated that the Condon-Waldin Act, which preceded the Taylor Act, "was generally regarded as unworkable" because the penalties were so severe they were never invoked. The Taylor Act has the same prohibition against strikes, but it provides an "entirely different kind of machinery." Dr. Johnson continued:

First of all, it provides a sensible step-by-step procedure to try to get agreement before the thing reaches that extremity. But if by chance it does, there are some penalties which are then directed not against the individual but against the organization and the officers of that organization and which vary in degree of severity. Most people would, I think, feel that the severity is not so great that it is an absolute bar. In a sense what you have done is to discourage strikes very strongly, and you say you prohibit them, but of course we know that some do occur. It seems to me for our present purposes it is about the right position for us to be in in the State of New York.^{5/}

In addition to the argument that the act has worked well on an over-all basis, proponents of the act also state that in major disputes resulting in strikes by public employees in New York City, including the 1967 teachers strike and the 1968 sanitation strike, the procedures provided by the law were not fully used. Proponents contend, therefore, that "...it is much too early to conclude that the philosophy of the Taylor Law is erroneous or that its procedures will not fulfill its objectives." ^{6/}

Others have argued against the provisions of the Taylor Law. The noted mediator of labor disputes, Theodore W. Kheel was quoted as stating that "the Taylor Law does not work effectively because it purports to provide joint determination when in fact it continues the unilateral determination." Mr. Kheel has recommended that public employees be allowed to strike, but that "techniques for resolving impasses similar to those in Taft-Hartley for the resolution of emergency disputes" be utilized.^{7/}

^{5/} Ibid., p. 30.

^{6/} 1968 Supplement to Report of Task Force on State and Local Government Labor Relations, National Governors' Conference. Chicago: Public Personnel Association. p. 7.

^{7/} Ibid., p. 2. (Quotation from report by Mr. Kheel to Speaker of New York House of Representatives, February, 1968).

The contention was made that cumbersome and inflexible impasse proceedings tend to become impediments to negotiated settlements of disputes. The prohibition against strikes was said to remove the force that produces voluntary settlements and genuine joint determination of conditions of employment. Mr. Kheel noted that major strikes have occurred despite the strike prohibition and the penalties for strikes.^{8/}

Wisconsin

Professor Nathan P. Feinsinger of the University of Wisconsin School of Law has been an advisor to both the governor and attorney general of Wisconsin and has had long experience in the settlement of labor disputes. In a panel discussion at the 1968 annual meeting of the Education Commission of the States, Professor Feinsinger summarized the experience under the Wisconsin statute:

We have had, I think, a very good experience under the statute in Wisconsin, not only in connection with school teachers' problems but with everybody's. First, we have what we call a fact-finding procedure; usually we get the settlement first, and then we pass the terms of the settlement in the shape of facts. What are facts? Facts are what you want to be facts.

Secondly, where it is a first contract, we usually wait to announce the settlement until the contract language has been drafted because there are many problems that arise in transmitting into contract language what you think you have agreed to. Especially if it is a first contract where tempers are likely to run high before you break up the proceeding, be sure that you have what you agreed to in contract language.

Thirdly, we have now on the back burner a voluntary no-strike agreement in two cases, one involving the police and another involving the deputy sheriffs. We had no trouble getting those agreements because, as the unions told me, "Look, we can't strike anyhow, we know that, not the police."^{9/}

^{8/} Ibid., p. 7.

^{9/} Compact, op. cit. p. 27.

In a speech delivered to the same meeting, Professor Feinsinger considered the question of what is the best way to improve the Wisconsin law. Professor Feinsinger said that he would assume that all strikes are illegal; but that specific sanctions would be provided only in cases where the public interest is really involved. In these cases, it would be desirable to set up machinery to be sure that there is immediate action. A 30-day or 60-day temporary restraining order could be obtained from the courts, during which time "heavy mediation" could take place.^{10/}

Speaking more generally in regard to legislation prohibiting public employee strikes, Professor Feinsinger proposed use of voluntary no-strike agreements involving a pledge given in good faith by the union or employee organization:

Next, I say "Never expose the impotence of a democracy." If you say to the American working man or woman, "You are not going to strike," they will find a thousand ways to beat you. If you can get a voluntary agreement from the workers, that is quite different, not only because it exposes the strikers or the wildcatters to a lawsuit, but also because a strike would violate a pledge given in good faith by the union. By and large, the unions will live up to their pledge, and will take care of the wildcatter and do all possible to prevent it from happening again.

How do you get such a voluntary agreement? There are two ways, I think. One is by sticking it into the contract whereby it becomes legally enforceable by injunction or venue. I don't think that is the best way.

There is another way and this is novel. If a union is reluctant to give its pledge to the employer, to the city for example, that it will not strike because of the risk of a lawsuit, it should, in my judgment, give a pledge to the general public that it will not strike for the duration of the agreement.

Some may say that's a lot of nonsense, that's not even a slap on the wrist. In my opinion it is possible to get such an agreement, an agreement not

^{10/} Compact, op. cit. pp. 22-23.

enforceable by the employer; not enforceable by anybody in the courts, or by compulsion of any kind, but resting entirely on the good faith of the people who give that pledge. I think in the world of today that kind of pledge is much more important than one which is legally enforceable.

As far as I know, this is the first time that this concept has been advanced.11/

11/ Compact, op. cit. p. 23.

RECOMMENDATIONS SUBMITTED
TO THE COMMITTEE

I. Should Legislation be Enacted?

The majority of persons appearing before the committee either stated or implied that state legislation concerning public employee negotiations should be enacted by the Colorado General Assembly. The differences occurred in regard to how specific any legislation should be and, of course, the content of any legislation. Mr. Newman (CEA) expressed the following view toward this question:

If effective channels for peaceful negotiations are to be maintained, the process must be clearly set in the context of statutory provision We believe it is the course of wisdom to establish such a framework for resolving such disputes.... We believe it is the most rational of processes for these differences to be resolved across the bargaining table in an atmosphere of sincere give-and-take where professional interests are not unilaterally determined. Without statutory guidelines setting forth this process, we believe the door is opened wide for raw power plays and serious disruptions.

In contrast with this view, the members of the Colorado Civil Service Commission and its personnel director stated that they were not convinced that there is a need for public employee negotiation legislation, at least at the state level, since negotiations are being conducted now on an informal basis. However, the Commission did present a bill which they would recommend if the committee concluded that legislation was necessary.

Representatives of the Colorado Association of School Boards and the CEA said that the greatest problem facing professional negotiations in Colorado is the lack of rules and guidelines in handling questions such as recognition of bargaining units and the scope of negotiations. A letter from the Colorado State Board of Education reported that the board's position was that: "there is a great need for a statute which prescribes the basic procedures governing the conduct of negotiations."

Exclusions from a Statute

Definition of Management. Professor Linn of Denver University suggested that the following persons or groups be excluded from coverage of the act on the basis of management responsibilities:

Elected officials, the heads of departments and agencies, the members of boards and commissions, managerial employees, negotiating representatives for employing authorities, the immediate personal or confidential assistants and aides of the foregoing persons and all individuals having authority in the interest of the employer to exercise independent judgment to hire, transfer, suspend, lay-off, recall, promote, discharge, assign, reward, or discipline other employees, or who have responsibility to direct employees, to adjust their grievances, or to effectively recommend such action should be excluded from coverage of the act.

Home Rule Cities. Article XX, Section 6 of the state constitution provides, in part, that "the statutes of the state of Colorado, so far as applicable, shall continue to apply to such cities and towns, except in so far as superseded by the charters of such cities and towns or by ordinance passed pursuant to such charters."

The position taken by the Denver city attorney, as presented by Mr. McDermott, personnel director for the Denver Career Service Authority, was that legislation which would attempt to include Denver under a law covering all state and municipal employees for collective bargaining purposes would constitute an "unlawful and unconstitutional" interference with the powers given to Denver to regulate and define the qualifications and terms of tenure of its municipal employees.

Mr. McDermott's conclusion was that: "It would then be expected that any proposal in state law concerning state-wide application of collective bargaining methods would exempt the City and County of Denver.

Colleges and Universities. Persons meeting with the committee or otherwise contacted from the University of Colorado, Colorado State University, Colorado School of Mines, and Colorado State Colleges expressed preference, on behalf of both faculty and administration, to be excluded from state legislation on the subject of public employee negotiations. In a letter from John P. Holloway, Resident Counsel for the University of Colorado stated: "We believe that the establishment of such internal staff and faculty employer-employee relationships is superior to any attempt to establish same on a state-wide basis by general legislation."

The same letter quoted from an official policy statement of April 27, 1968, by the American Association of University Professors:

The Association will therefore oppose legislation imposing upon faculty members in higher educa-

tion the principle of exclusive representation derived from models of industrial collective bargaining. When legislation of this character exists or is proposed, the Association will rather support measures that will encourage institutions of higher education to establish adequate internal structures of faculty participation in the government of the institution.

The spokesman for Colorado State University said that faculty members fear negotiations because they believe it would result in the creation of a "step system" for salaries, which could result in the University not being able to compete for faculty on a nation-wide market. Dean Kuhn of Colorado School of Mines said that faculty members want their salaries based on their ability, not on broad, negotiated scales, with many other types of employees.

Faculty members in the state college system do not have the same type of merit system bargaining procedure as the faculty at the universities and the School of Mines. Dr. Irvine Forkner of Metropolitan State College said that state college faculty members would prefer a merit system over collective bargaining negotiations, if a merit system similar to the other institutions of higher education could be achieved for them. A motion later submitted to the committee by a committee of state college faculty representatives favored the exclusion of state college faculty from state-wide collective bargaining in order that these colleges "may work through their own system-wide personnel regulations and policies."

The committee did not hear from college and university faculty members who are members of the Colorado Federation of Teachers (AFL-CIO). However, Mr. Rapp presented a position paper of three university locals, AFT, concerning collective bargaining for public employees, the conclusion of which follows:

The Colorado Federation of Teachers university locals recommend enabling legislation permitting collective bargaining, when requested by 30% of the bargaining unit, for public employees in Colorado including the teachers at state-supported campuses. An orderly process in law to determine the desire to negotiate and the bargaining agent, and legislation permitting the writing of contracts with latitude provided both parties in determining the content of contracts would be most desirable in Colorado.

Should Legislation be Separate for Different Groups?

The positions taken by various groups and individuals varied to some extent on this question. For sake of brevity, the positions are briefly summarized, rather than quoted in full.

Colorado Education Association. The position of the CEA was that legislation should be separate, at least for teachers, in order to avoid the restrictions of the scope of negotiations to "wages, hours and other terms and conditions of employment" which might be suitable in other areas of public employment. Teachers, however, "will continue to assert their claim of special competence to participate in decision-making over educational programs and services," Mr. Newman said.

Although a separate act for teachers was favored by the CEA, an alternative to creating separate legislation and agency, would be the establishment of a Public Employee Relations Board with separate divisions such as: (1) police and firemen, (2) health and welfare services, (3) transit, (4) education, (5) public utilities. The Board would be authorized to promulgate rules in respect to the scope of negotiations tailored to fit the "realities and traditions" of each category.

The State Board of Education said that a single statute governing all public employees would work, provided that appropriate individualized treatment of the unique public school situation would be insured.

Professor Linn (DU) said that separate legislation should not be enacted for any special occupational or professional group:

A basic, uniform public policy regarding employee relations appears preferable. Limited special treatment may be justified, e.g., it is traditional for those with police authority to be required to constitute a separate unit of employees and be represented by an organization admitting police only to membership. This can be provided in a single law.

Four reasons were listed for this conclusion: (1) there are no significant differences between the conditions and problems at different governmental levels or among the various units of government; (2) there would be greater economy in the administration of a single act; (3) uniformity of policy is desirable; and (4) consistency in interpretation of the law would be assured.

Professor Rentfro (CU) pointed out that in private employment one statute is flexible and broad enough to cover "every shade and description of occupation -- blue collar, technical, professional... -- under one NLRB and one administrative set up." A state act can be as flexible, Professor Rentfro said. In addition, the statute was recommended to cover all governmental bodies -- state government, municipalities, counties, school districts, and special districts.

Civil Service Commission. Mr. Hilty said that the bill presented the Commission could apply to all public employees by adding further provisions for employees not under the state civil service system.

Labor Organizations. The preference of one bill covering all public employees was expressed by representatives of the Colorado Labor Council, the Denver Federation of Teachers, and the American Federation of State, County, and Municipal Employees.

II. Right to Organize and Bargain Collectively

None of the conferees were opposed to inclusion in the law the right of public employees to organize and to bargain collectively. As has been pointed out, there are numerous employee organizations which presently are engaged in negotiation proceedings with public bodies. However, a number of other issues closely related to the right to organize have been mentioned and some differences of opinion have been noted between the various speakers. It should also be noted that the Civil Service Commission proposed legislation would provide generally for certain rights and then provide that the board or commission administering the civil service system to establish, by rule, procedures for the selection of bargaining representatives and rules for the elections. Most of the other suggestions specified these procedures in the statute.

Selection of an Exclusive Bargaining Agent. Professor Linn (DU) suggested that a majority vote in a secret election be used to select an exclusive bargaining agent. The AFSCME (AFL-CIO) bill also used the majority criterion for selection of an employee unit representative.

Recognition Elections. The Denver Federation of Teachers was opposed to the use of membership lists to determine the call for recognition elections, as had been proposed by the Denver Classroom Teachers Association. When 30 percent of the teachers in the school request a new election, an election should be held.

The CSCSEA bill provided that the employee organization would have "unchallenged status" until one-third or more of the state employees in the classified service petition the state employees relations board for a new election. A new election would be held within 120 days.

Also under the CSCSEA bill, the employees' choice of organization would be based on either (a) state-wide election; or (b) on evidence of majority representation on the basis of dues deduction authorization. Under either method, however, the negotiation unit for state employees would be all state employees in the classified service under the CSCSEA plan.

Dues Check-off. Several conferees recommended that dues check-off be included in the recommended legislation. Several jurisdictions, including Denver, Pueblo, and Boulder city governments, and the Denver School Board provide dues check-off at the present time.

A more disputed issue, however, was whether dues check-off should be made for public employee organizations, other than those certified as the exclusive bargaining agent. The CSCSEA bill would provide that the organization certified to represent state employees would have the exclusive right of payroll deduction for dues and economic benefits for members.

The AFSCME bill provided that the public employer shall deduct, on written authorization of the employee, "such amount as the employee shall designate, the terms and conditions of which have been negotiated by the labor organization as recognized by...this Act." It was explained that the bill included this provision specifically, since some governmental agencies may object to check-off and nothing could be done to force an agency to permit check-off in the absence of a state law.

The Denver Classroom Teachers Association suggested the following procedures for guaranteeing the right of "exclusive" recognition of one organization:

- (1) Set up recognition procedures (election);
- (2) Set up length of recognition (2 or 3 years);
- (3) Spell out "Bar" clause (A procedure for decertification of a recognized bargaining group and for holding elections to certify a new bargaining group);
- (4) Allow for flexibility so that all contracts will expire on September 1;
- (5) Spell out negotiating unit determination; and
- (6) Allow for an "agency shop;" (All employees are subject to paying dues to the shop whether or not they belonged to the agency shop.).

Size of the Bargaining Unit

State Employees. The Civil Service Commission suggested that a single bargaining unit be established for state employees if state legislation is adopted. A large number of bargaining units were said to be developing in many jurisdictions, many having little relationship to any substantial community of interest. Negotiations in such a setting could create pure chaos, particularly with an integrated classification and pay plan.

In regard to appeals from dismissal and discipline actions, the Civil Service Commission has constitutional authority, and arbitration or ad hoc hearing panels would create problems and inconsistencies from agency to agency.

City Employees. The Boulder city manager pointed out that experience has shown that once laws are enacted to permit public employee organizations, organizations multiply extremely rapidly, and city managers have difficulties in negotiating with each organization. Therefore, after a certain number of public employee organizations are established, provisions should be made to establish a labor council to bargain with the city manager for all organizations.

The Colorado Municipal League statement recommended local control over the certification and the number of local bargaining units. While legislation could require the local governing body to designate at least one bargaining agent, it was recommended that the statute allow additional exclusive bargaining units to be designated by the local governing body, "taking into account their community of interest and the employees' ability to be adequately represented by an existing certified bargaining unit."

Teachers. In the CEA bill the term "negotiating unit" would mean teachers organized in either of the following classifications:

(a) Central office and building administrators, directors, supervisors and coordinators, and generally all certified personnel holding supervisory power over other teachers; or

(b) Classroom teachers, special teachers, librarians, counselors, psychologists, nurses, social workers, and generally all certified personnel who hold no supervisory power over other teachers.

The board of education could recognize, under the CEA bill, more than one professional organization that represented different negotiating units. Further, a professional organization would not be prohibited from representing more than one negotiation unit if the units would agree on this arrangement. (The bill presented by the CEA would apply only to teachers, not to other employees.)

Mr. Craig, Attorney for the Denver School Board, said that legislation should make the elected representatives of employee groups speak for all employees of that bargaining group, i.e., exclusive recognition. The committee was asked to determine what is a bargaining unit so that teachers would be in one unit and clerical help in another unit, for example.

Requirement to Bargain Collectively

The DCTA recommended that legislation include that good faith negotiations between employer and employee organizations be mandatory, not just permissive. The AFSCME bill contained a similar provision as did the CEA bill, which was limited to organizations representing the teaching professions. The recommendation of the Colorado Municipal League and the state board of education also contained this provision.

Using a different approach, the bill presented by the Civil Service Commission would provide that "public employers shall have the right to enter into collective bargaining agreements with labor organizations on matters concerning employment relations."

Who Would Bargain for Management? Mr. Roth, Colorado Labor Council, said: "The clear delineation of management's bargaining being placed directly in the hands of the school district's superintendent and/or staff -- not in the lap of the Board of Education itself, which should simply set its management guidelines for bargaining -- both procedure and substance." In answer to a question, Mr. Roth said school boards would still set the policy for their negotiators to follow, but school boards themselves should not meet "face to face" with teachers during the negotiations.

Under the AFSCME bill, the chief executive officer of the state or political subdivision, whether elected or appointed, or his authorized representative, would represent the public employer in collective bargaining. The CEA bill would require that the persons designated as responsible for the negotiations develop jointly and approve written negotiation procedures to be used.

Written Contracts. Many conferees recommended that a requirement of a written contract between the employer and the employee organization be included in any recommended legislation.

Length of Contracts. The attorney for the Denver School Board mentioned that a reasonable length for a negotiated agreement should be determined by the parties. Mr. Rapp (DFT), however, recommended that the length of contracts be specified in the statute.

Employee Protection

Professor Rentfro (CU) said that the right to organize and to bargain collectively should be protected by specific prohibitions against interference, restraint, or discrimination. Similar language protecting the organization and employees was included in the bill submitted by the AFSCME (AFL-CIO). Similar

provisions were recommended in the Colorado Municipal League's statement.

Right to Join or Not Join Organization

Alternative approaches possible in regard to the right to join or not join an employee organization are discussed below:

Closed Shop Contract. A contract requiring an employer to hire only union members and to discharge non-union members and requiring that employees, as a condition of employment, remain union members. (No conferees suggested this approach.)

Agency Shop Contract. A contract between a union and an employer requires employees to pay an amount approximately equal to dues to the union.

Professor Linn and Mr. Breaugh of the DCTA recommended legislation including an agency shop provision.

Open Shop. A shop in which union and non-union workmen are employed indiscriminately. Legislation suggested by the Civil Service Commission, by CSCSEA, and by the CEA would provide for an open shop. The CSCSEA bill would prohibit soliciting memberships without prior approval of the appointing authority.

Suits for Violation

The AFSCME bill included a provision that suits for violation of agreements between a public employer and a labor organization representing public employees may be brought by the parties to such agreement in the Colorado courts.

III. Scope of Negotiations

Questions on the scope of negotiations are discussed generally, in regard to all public employees, then more specifically in regard to school teachers, state employees, and local governmental employees. The recommendations received will be discussed by category of employment.

Public Employees Generally

Professor Rentfro (CU).

Constructive employee relations will be better developed with a broad definition of the scope

of bargaining. It can be kept within reasonable bounds by the parties and by the fact that bargaining involves two sides, and this law would not require either to agree to a proposal it feels outside the scope. Through the exercise of discretion and through experience in negotiations, problems can and will be resolved.

On the other hand, narrowing the scope by statute would invite frustrations and pressures that could thwart the development of constructive bargaining relationships. It would constitute premature and probably unwise limitations that can more wisely be worked out by the parties in the give and take of negotiations.

Colorado Labor Council. At the April 18 meeting, Mr. Roth said that public employee legislation should be left as flexible as possible, including rules affecting any working conditions such as vacations and leave time.

Boulder City Manager. Mr. Tedesco commented that most state statutes did not enumerate management rights. These rights should be carefully defined, including the items that are and are not bargainable. Similarly, Mr. Tedesco said that other state laws state that working conditions and "other conditions of employment" are subject to negotiation. What are the "other conditions of employment," Mr. Tedesco asked.

School Teachers

CEA. Better policy decisions are reached when teachers participate with school boards in respect to decisions relative to educational programs and services, Mr. Newman said. The CEA was said to favor the idea of having curriculum part of teacher negotiations. The CEA believes that most teaching policies should be subject to teacher negotiations.

DFT. Mr. Rapp noted that school boards can change policies of the school system unilaterally and stated that teachers should have the right to negotiate policy matters with school boards. A general law, without specific provisions regarding the scope of negotiations was advocated.

DCTA. Mr. Breaugh said that the committee should not limit, in any way, what is negotiable.

Colorado Labor Council. In his statement, Mr. Roth said that the scope of "working conditions" open for bargaining should be quite broad in the case of teachers "because of the unusual necessity of facing up to the educational program, curriculum and other instructional phases of education as being more closely re-

lated to the teaching process than any other group within the school community."

Colorado Association of School Boards. Mr. Miles said that school boards believe that teachers can make suggestions concerning the curriculum, textbooks, and other matters of school administration, but that boards object to making these matters subject to negotiation.

Denver Public Schools. The Staff Relations Director for the Denver Public Schools, speaking in general terms and not for the superintendent or the board, noted that school administrators would want to limit the scope of teacher-school board negotiations by excluding the topics of curriculum and the choice of textbooks from negotiations. It was also noted that the size of classroom units and the board's promotion policies should not be subject to negotiation.

The attorney for the Denver School Board said that if pupil placement were made a subject of negotiations, the school boards would be delegating some of their constitutional authority.

State Employees

CSCSEA. In its first statement to the committee, the CSCSEA stated that they had been engaged informally for many years in most phases of state employee negotiations and that a formal negotiation procedure can be placed in the law.

The draft bill presented by Mr. Reese specified three levels of negotiations which pertained to the scope of negotiations within state government:

(1) Legislative Matters (i.e., salaries): The employee organization and the Civil Service Commission would enter into formal negotiation on all legislation concerning state employees in the classified service. Annual negotiations would begin 120 days prior to December and would conclude on or before that date. Written agreements reached by the Commission and the employee organization shall be presented to the Governor and the General Assembly on or before December 1.

(2) Civil Service Commission Procedures (i.e., examinations, classification system, discipline): The employee organization and the Commission would enter into formal negotiations relating to procedures under the authority of the Commission on July 1. Written agreement shall be reached on or before September 30 for changes in procedures to be effective January 1.

(3) Grievance Procedure (i.e., transfers, shift assignments, vacation schedules): The standard grievance procedure adopted by the State Employees Relations Board (a three-member, part-time board) shall apply to all departments with employees in the classified service. The grievance procedure shall apply to all working conditions of employees with such departments and divisions.

Civil Service Commission. Three categories of non-negotiable items were mentioned by Mr. Hilty:

(1) Statutory and Constitutional Prohibitions: The bargainable areas are to some extent prescribed by, or may not conflict with the statutes or the constitution of the state or charters or ordinances of cities and counties. Mr. Hilty pointed out that existing statutory limitations may be modified in time.

(2) Management Rights: Management should retain the right to determine the services to be rendered, locations of its operations, establishment of new units and relocation of old units, control and use of equipment, scheduling of operations and number of shifts, process techniques, methods to carry on operations, and introduction of new equipment and methods.

Management should also retain the right to determine budgetary procedures, assignment and transfer of employees, layoff of employees because of lack of work or funds, size of the work force, determination of job content, and discipline and discharge of employees on a reasonable and just basis.

(3) Certain Civil Service or Merit System Management Processes: The constitution should preclude collective bargaining on certain merit problems such as selection, promotion and testing, classification analysis, class evaluation, and discipline and discharge. These processes are the basic tenets upon which the Civil Service system is predicated. (Mr. Hilty's statement expanded further on the procedures used in the processes listed, stating that the techniques used are usually not compatible with the bargaining process.)

Mr. Hilty provided the following list of activities provided to the Civil Service Commission under Article XII, Section 13 of the state constitution which presumably would be considered non-negotiable areas in the view of the Commission:

- (1) Appointments and employment in the state service.
- (2) Promotions to offices in the state service.
- (3) The conduct of selection tests.

- (4) The grading and compensating of employees according to efficient service.
- (5) The removal or disciplining of employees upon charges of misconduct or failure to comply with standards of service.
- (6) The authorization of emergency or temporary employment.
- (7) The making of rules governing employee relations.
- (8) The standardization and classification of positions.
- (9) The determination of standards of efficient service.
- (10) The determination of salary grades of all positions in the classified service.
- (11) The certification of payrolls.
- (12) Varied statutory duties such as training coordination, salary surveys, etc.

Professor Rentfro (CU). The relationship between civil service and collective bargaining was discussed by Professor Rentfro at some length. The experiences of the federal government and some cities and states which have a civil service system were cited. The conclusion reached by Professor Rentfro was that "there will probably be a need for some adaptations and limitations of collective bargaining in this area, but the necessary adjustments can be made." An excerpt of a 1967 report of a special commission appointed by the Governor of Illinois was quoted:

1. The duty to negotiate should extend to wages, hours, and working conditions, but should not extend to rules and regulations concerning examinations, assignments and promotions under a Civil Service system.

Employee organizations should be free to offer suggestions to the Civil Service Commission or the Legislature for revision or improvement in the rules, and employees should be able to raise complaints about their application.

2. Even though a grievance procedure is provided by a Civil Service law or regulation, an employee organization and an employing agency may

negotiate a procedure for handling grievances arising under their agreement. Any employee with a grievance must designate which of these procedures he wishes to follow at the time he presents his grievance, but he may not use both.

Local Government Employees

Mr. Tuffield of the International Association of Fire Fighters (AFL-CIO) said fire fighters feel that every rank of fire fighters, even the chief administrative officers, are employees because the higher officers have worked their way through the ranks. Fire fighters believe that everything is subject to negotiation and that the civil service commission should not be the negotiators for management. The police and firemen in several cities, by tradition, have asked for salary increases, through charter arrangement, from the electorate.

IV. Administration of the Law

The numerous suggestions received regarding administration of the act might be considered as involving two alternatives: (1) administration being related to one of the existing state agencies; or (2) the creation of a new agency to handle the act.

Existing Agency Approach

Mr. Roth of the Colorado Labor Council suggested that a division of the Industrial Commission be given authority as the determining agency, and would "save time, effort, and money." This proposal would require special staff relating to public employment, together with modifications in the filing of strike notices, the invigorating or activating of the arbitration provisions of the Labor Peace Act in an effort to make advisory awards prior to the effecting of a work stoppage, and the enforcement of penalties against unfair labor practice charges.

Legislation submitted by the Civil Service Commission would use the present practices and existing agencies for negotiations at the state and local levels of government. However, in the event the employer and employee representatives cannot agree, a State Employees Labor Relations Board "may be established and may be called upon to aid in arriving at an agreement...." The board could designate a mediator for the dispute. This board could be composed of three members, one from labor, another from government management, and a third from the general public.

Another feature of the Civil Service Commission bill was that the selection and certification of bargaining representatives for classified employees and the rules of procedure in the election process would be handled by the existing board or commission administering a civil service system. The procedures would be as follows:

(1) Any board or commission administering a civil service system for public employees would establish, by rule, procedures for the selection and certification of the collective bargaining representative of the classified employees under such system.

(2) The rules shall include, but not be limited to, (a) provisions for the designation of the bargaining unit; (b) an election process for employee selection of the bargaining representative; and (c) the specification of practices which will be prohibited as improper influences on that election process.

(3) Any board or commission which issues rules pursuant to this section could obtain court process in enforcement of such rules and court process against any practice found to be in violation of the rules.

New Agency Approach

The CSCSEA recommendation was for a three member, part-time board, paid on a per-diem basis, that would be appointed by the governor, confirmed by the Senate, to serve five-year, staggered terms. This board could also handle non-state public employee disputes. Duties of this board would be:

a. To certify recognition of employee organizations.

b. To establish a standard grievance procedure that would apply to departments regarding working conditions.

c. To establish a panel of certified arbitrators for resolving disputes relating to working conditions.

d. Assist in appointment of fact finders on impasses between the state employee organization and the Civil Service Commission.

Professor Rentfro recommended the creation of a Public Employee Relations Board to administer the statute and to provide qualified mediation and fact finding services to aid in the collective bargaining process and the resolution of impasses.

This function might be performed by an enlarged or modified industrial commission, but it would require a separate office or division expert in this field. Professor Rentfro's statement asked:

What function would such a Board perform?
Among others it would:

- a. Determine appropriate bargaining units based upon an identifiable community of interest among the employees involved.
- b. Conduct secret ballot elections to determine the majority wishes of employees.
- c. Certify exclusive bargaining representatives based on election results.
- d. Hear and determine unfair labor practice charges filed against employing agencies or employee organizations.
- e. Appoint mediators or fact finders as required by the parties and the necessities that may arise.

Professor Linn stated that:

Experience at both the federal and state levels indicate the need for agency service in determining the exclusive representative of employees in an appropriate bargaining unit and in administering the act. This work can be assumed by one or more existing agencies or a new agency can be created. A separate Public Employees Relation Board, free from established attitudes and interests respecting employment relations, would seem desirable.

The CEA bill would create an Educational Negotiation Commission, consisting of three members with experience and background in public educational programs and activities, to be appointed by the governor to serve five-year staggered terms. The commission would have customary powers such as the holding of hearings and making rules. The operation of this proposed commission is described in the following section relating to the administration of the law. Briefly, however, the commission would assist in the settlement of school disputes with the following responsibilities:

- (1) Appoint a mediator if agreement is not reached between the parties within 150 days before the submission date of the next budget.

(2) If settlement is still not reached, either party to the disputes may cause an ad hoc board of arbitrators to be convened. The commission may be requested to appoint a chairman of this board, or it would appoint the entire board if one side of the dispute failed to name a member to the board.

Mr. Breaugh suggested the creation of a state-supported Public Employee's Mediation Board that would:

- A. Provide mediation and arbitration service;
- B. Hear and rule on unfair labor charges and other disputes; and
- C. Have the power to enforce the law -- both with employer and employee organizations.

Other Comments Concerning Administration of the Act

The State Board of Education told the committee that the commission administering the act, whether it is a new or an existing agency, "should be appropriately constituted to ensure familiarity with and expertise in the special problems related to the public school employees." However, the board stated that it did not want to become involved in jurisdictional or punitive actions.

Colorado Municipal League. The executive committee of the Colorado Municipal League affirmed the statement submitted by the League staff to the effect that the state should not be concerned with administration of an act on the local level:

Elaborate and complicated state administration should be avoided. Municipal officials are concerned about preserving a proper balance between state and local relationships in the area of public employer-employee relations. In line with our previous comment, we do not favor initial establishment of state administrative machinery to supervise and enforce the bargaining process between local units of government and their employees.

More specifically, in regard to state versus local administration, the League statement held that local governing bodies should be allowed to certify and determine the number of local bargaining agents for negotiation purposes, although a statute could set some guidelines for the local governing body. Further, the League's statement suggested that formal resolution of grievances and negotiation disputes not be spelled out in the statute or be enforced at the state level. Grievances and negotiation disputes should be left to local bargaining determination.

V. Resolution of Disputes

Alternatives suggested for the resolution of disputes include: (1) use of binding arbitration; (2) use of mediation service; (3) the establishment of procedures for fact finding with recommendations; and (4) inclusion of each of these techniques for at least some points of the disputes.

Opposition to binding arbitration came from several sources. As noted under the section concerning the right to strike, representatives from organized labor were opposed to this approach. Mr. Bailey (Denver Public Schools), Mr. Wright (Aurora city manager), and Mr. Tedesco (Boulder city manager) said that binding arbitration should not be provided or should be limited since it would have the effect of delegating a policy matter that is the responsibility of the elected school board or city council. Mr. Tedesco said that mandatory compulsory arbitration should be limited. A city manager cannot commit the city council to a budget, for example. At the same time there must be a division point of responsibility to prevent public employee organizations from going directly to the city council on all matters.

Professor Linn suggested use of mediation and fact finding, with recommendations, in the resolution of interest disputes arising out of demands for new contract terms. Binding arbitration was suggested in the resolution of rights disputes stemming from the interpretation or application of a negotiated agreement. Compulsory arbitration of interests disputes may become an essential provision of the law in the absence of the right to strike, Professor Linn added.

Use of fact finding was suggested by the CSCSEA in regard to issues concerning salaries and civil service procedures, while disputes relating to grievances would be handled by arbitrators. The statement of CSCSEA is as follows:

1. In relation to matters at issue under VI-1, economic issues for civil service employees, the State Employees Relations Board is empowered to appoint a fact finder at the request of either party or both. The fact finder to be mutually acceptable to both parties. The fact finder is empowered to make recommendations to the Governor and the General Assembly for resolution of the issue or issues. The cost of fact finding shall be borne equally by the parties, except that if the State Employees Relations Board determines either party has breached its duty to negotiate in good faith, that party shall pay the full cost of fact finding.

2. In relation to matters at issue...concerning civil service procedures, the State Em-

ployee Relations Board is empowered to appoint a fact finder if both parties agreed that an impasse had developed.

Upon the results of fact finding, the State Employee Relations Board shall require that both parties agree in writing to the findings which the State Employee Relations Board determines to be acceptable to both parties consistent with the public interest.

3. In relation to the standard grievance procedure involving matters at issue with departments and divisions relating to working conditions, the employee organization and the appointing authority of such department shall select a mutually acceptable arbitrator from a panel of certified arbitrators provided by the State Employee Relations Board. The decision of the certified arbitrator shall be final.

Proposals submitted by the Denver Classroom Teachers Association (Mr. Breaugh) would:

1. Provide for binding arbitration in grievances.

2. Provide for mediation and fact finding in negotiations. Make it possible for mutually-agreed-upon, binding arbitration in negotiation (see note 4 below).

3. Provide teachers with the right to strike. Don't try punitive anti-strike legislation -- that won't work. However, put in three (3) other provisions:

A. Compel the use of mediation and fact finding before an employee organization can strike.

B. No employer can request a court injunction to prevent or end a strike unless they have exhausted all means and made every effort at good-faith negotiations. (Mr. Breaugh explained that limitations on injunctive relief should only be in effect during the period of contract negotiations, and that employers could seek injunctive relief if employees broke their contract.)

C. No court injunction to prevent or stop a strike may be issued unless the strike definitely endangers the public safety.

4. Provide for a strike limitation.

A. Limit the length of a strike to three weeks (15 working days).

B. If agreement has not been reached by this time, then make binding arbitration compulsory on both sides. The strikers, of course, return to work during the arbitration sessions.

C. If, after mediation and fact finding have been used, and agreement has not been reached, either party may request compulsory, binding arbitration, and this would have the same effect as forcing binding arbitration on the other party.

Compulsory binding arbitration was said to involve a controversy since neither teachers nor school boards are willing to accept compulsory binding arbitration. Mr. Breaugh felt that the power of binding arbitration would serve as a check on both management and labor and that a tough policy on either side would be prevented.

Compulsory advisory arbitration was suggested by the CEA, with a mediation stage preceding the establishment of an arbitration panel. The CEA bill provided that if a board of education and professional organization fail to agree on terms and conditions of a contract by 150 days prior to the district's budget submission date, the Education Negotiations Commission would be called to appoint a mediator for the dispute. The commission would maintain a list of at least ten disinterested persons with experience in dealing with problems of public education who are willing to serve as mediators.

If a settlement is not reached by the mediator within 15 days, or if the parties do not agree on the appointment of a mediator, either party may, by written notification to the other, cause an ad hoc board of arbitrators to be convened. Under this procedure, each party would name one member to the board, and these two persons would select a third person to serve as chairman. If these two persons are unable to agree on a chairman, the Education Negotiations Commission would designate a chairman. The board of arbitrators would have the power to make findings of fact and recommendations for settlement.

The bill provided that the findings and recommendations of the board of arbitrators would be advisory only and would not be binding on either side until adopted by the board of education and ratified by majority vote of each negotiating unit involved in the dispute.

The CEA bill also contained provisions relative to sharing of costs and expenses of mediation and arbitration and for paying the cost of election and certification of the negotiating agents.

VI. Right to Strike

Views presented to the committee may be placed in three general categories:

- (1) Inclusion of prohibition of public employee strikes, at least for certain employees;
- (2) Placing a limitation on the duration of public employee strikes; and
- (3) Do not include the issue of strikes in legislation. Do not attempt to prohibit strikes or to grant the right to strike, but concentrate on the achievement of good bargaining procedures. The use of provisions similar to the Taft-Hartley injunctions and cooling-off period was suggested. Perhaps related to this alternative was the position that the right to strike should not be limited and binding arbitration should not be used.

The first CSCSEA statement to the committee said that it was "...their strong conviction that the wholesale transfer of industrial-style collective bargaining -- with the right to strike as the enforcement weapon -- is neither workable nor desirable from the standpoint of the government, the employees working for that government or for the great public interest." The CSCSEA pointed out, however, that legislation that prohibits the right to strike does not prevent strikes.

Prohibitions of Strikes. The Civil Service Commission bill would provide that no public employee could strike whose jobs affect public health, safety, or welfare, or recognize a picket line of a labor organization while in the performance of his official duties.

Another method of prohibiting strikes, at least in certain areas of governmental services, was outlined in the statement of the Colorado Municipal League. Consistent with the other suggestions in the League statement, local control would be retained in regard to determination of what are "essential and vital areas of service" in which strikes would be prohibited. The statement follows:

The 1947 Labor Peace Act should be amended to protect the public from strikes by public employees engaged in essential and vital areas of service. What is meant by "essential and vital areas of service" will vary from unit to unit in various areas of the state and should be left by statute for determination by the appropriate local governing body subject only to judicial review. This allows maximum bargaining potential between public employers and employees in acquiring additional experience and innovation in the public employee labor relations field.

Limit the Duration of Strikes. An example of the second approach of a limited right to strike is from the statement of Mr. Breaugh (DCTA) to provide a three week limitation on the length of a strike:*

A. Limit the length of a strike to three weeks (15 working days).

B. If agreement has not been reached by this time, then make binding arbitration compulsory on both sides. The strikers, of course, return to work during the arbitration sessions.

C. If, after mediation and fact-finding have been used, and agreement has not been reached, either party may request compulsory, binding arbitration, and this would have the same effect as forcing binding arbitration on the other party.

The attorney for the Denver School Board, Ben Craig, suggested that there should be more civilized means of settling labor disputes other than the use of force. If strikes are permitted teacher strikes should be limited to periods when a contract is not in effect. Mr. Craig also stated that, if strikes are prohibited, legislation must provide other effective alternatives to the strike.

Since some penalties might be added to a statute if limitations were placed on the right to strike, Professor Linn advised the committee that:

If strikes are proscribed, enforcement of strike prohibitions should be neither repressive nor automatic. Vindictive and specific penalties are not effective deterrents to strikes. Courts of equity must find basis in fact for ex-

*See also pages 33-34 for related recommendations of Mr. Breaugh pertaining to the resolution of disputes.

exercising its discretion to allow injunctive relief. Compulsory arbitration of interests disputes may become an essential provision of the law in the absence of the right to strike.

The approach of not including prohibitions against the right to strike in legislation, but instead concentrating on the collective bargaining procedures was advocated by Professor Rentfro, among others.

Professor Rentfro said that authorities on this subject:

...have concluded that the better practice is not to prohibit all strikes in the public services. Rather, provide the machinery for protecting the public welfare in much the same manner as the federal Taft-Hartley law provides for the enjoining of those strikes which imperil the national health or safety. Thus, strikes of this character involving police, fire or sanitation workers could be enjoined for a cooling off period while negotiations continued. This point of view would then have any further impasse resolved by binding arbitration... Those who would outlaw all strikes by public employees agree that such an approach is wrong and ineffective without further provision for alternative procedures for settling honest and legitimate issues which might cause a strike. Fact-finding with public recommendations is one approach. Secretary of Labor, Willard Wirtz, has pointed out that a sound policy of public employment relations must assure a reasonable and fair procedure -- with independent third party determination if necessary -- for settling collective bargaining disputes. Most authorities agree that limitations upon the right to strike in our society cannot rightfully or successfully be imposed without finding and implementing a mutually satisfactory alternative....

No Limitations on the Right to Strike -- No Compulsory Arbitration. Speakers associated with the AFL-CIO (Colorado Labor Council, AFSCME, and the Denver Federation of Teachers) were in agreement that the right of public employees to strike should not be limited and compulsory arbitration should not be used. The suggestion that teacher strikes be limited to 15 working days was said to be unrealistic. The DFT was opposed to any form of binding arbitration.

Mr. Roth said:

The right to strike must be preserved. If any alternatives are to merit consideration, they will

have to be both new and creative and have the effect of keeping the disputing parties at the bargaining table to solve their own disputes. Any substitute that gives either the union or management the opportunity to avoid the responsibilities of collective bargaining cannot be allowed. This is why compulsory arbitration is not an alternative.

Mr. Ulmer representing the American Federation of State, County, and Municipal Employees stated that a good public employee negotiation bill will do much to negate the possibility of a strike in the public sector. A strike was said to be an employee right that cannot be legislated out of existence.

APPENDIX A

CONFEREES MEETING WITH THE COMMITTEE

Statements Concerning Public Employees in General

Peter Dye, Assistant Attorney General

Professor J. P. Linn, University of Denver School of Law

Commissioner Albert Mangan, Labor Member, Colorado Industrial Commission

Professor William Rentfro, Center for Labor Education and Research, University of Colorado

Herrick Roth, Colorado Labor Council, AFL-CIO

Dr. Harry Seligson, Professor of Industrial Relations, University of Denver

Doug Ulmer, American Federation of State, County, and Municipal Employees, AFL-CIO

State Employees

R. Y. Batterton, Commissioner, Colorado Civil Service Commission

Cy Burris, President, Colorado Civil Service Commission

W. F. Hilty, Personnel Director, Colorado Civil Service Commission

Harry Reese, Executive Secretary, Colorado State Civil Service Employees' Association

William Welsh, Commissioner, Colorado Civil Service Commission

Del Wilson, Colorado State Civil Service Employees' Association

City and County Employees

Councilman Edward Burke, Denver City Council

Colorado Municipal League (prepared statement)

Ron Cook, Colorado State Association of County Commissioners

John Cresswell, City Attorney of Englewood

Stanley Dial, City Manager of Englewood

La Mont E. Does, Mayor, City of Lafayette (prepared statement)

Austin Gibbons, Police Protective Association, Denver

Gordon Hinds, City Attorney of Pueblo

George Kelly, Administrative Assistant to the Mayor of Denver

F. Arnold McDermott, Personnel Director, City of Denver
Career Service Authority

Ted Tedesco, City Manager of Boulder

Fred Tuffield, Local 858, International Association of
Fire Fighters, AFL-CIO

Bob Wright, City Manager of Aurora

Education -- Primary and Secondary

James Bailey, Denver Public Schools

Neal Breaugh, Denver Classroom Teachers Association

Dr. W. Henry Cone, Education Commission of the States

Ben Craig, Attorney, Denver School Board

Colbert Cushing, Colorado Education Association

Colorado Department of Education (prepared statement)

Bernard Jacques, Colorado Education Association

Robert McCall, Education Commission of the States

Frank Miles, Colorado Association of School Boards

David McWilliams, Denver Public Schools

Wendell Newman, Colorado Education Association

Richard Rapp, Denver Federation of Teachers, AFL-CIO

Higher Education

Dr. Irvine Forkner, Professor of Business Administration,
Metropolitan State College

John P. Halloway, Resident Counsel, University of Colo-
rado (prepared statement)

Dr. Truman H. Kuhn, Dean of Faculty, Colorado School of
Mines

W. J. McGregor, Personnel Director, Colorado State Uni-
versity

Professor Courtland Peterson, University of Colorado
(prepared statement)

SELECTED ANNOTATED BIBLIOGRAPHY

Collective Negotiations in Public Employment -- Which Way?

Boulder: Center for Labor Education and Research, University of Colorado, 1968.

The publication was prepared for participants attending the public employee negotiations conference at the University of Colorado on June 28-29, 1968. Included in the publication are summaries of recommendations of reports on public employee negotiations in Illinois and New Jersey; a brief history of public employee negotiations with brief summaries of selected state legislation; and speeches given at different conferences pointing out the various views of collective bargaining in public employment.

Compact. Vol. 2, No. 4, Denver: Education Commission of the States, August, 1968.

This particular issue of Compact is devoted to the annual meeting of the Education Commission of the States which was devoted to teacher negotiations. Of interest is the text of various conferees speeches discussing teacher negotiations, various panel discussions on problems of education negotiations, a questionnaire on teacher militancy on page 55, and suggested model teacher negotiation legislation on pages 52-54.

Goldberg, Joseph P. "Labor-Management Relations Laws in Public Service" Monthly Labor Review. Vol. 91, No. 6, Washington D.C.: Department of Labor, Bureau of Labor Statistics, June 1968, pp. 48-55.

The article contains a brief description of various governmental approaches to collective bargaining in public service. In addition, on pages 54 and 55 of the article, there is a table of selected state laws.

Linn, John Phillip and Nolte, M. Chester. "Background Materials on Collective Bargaining for Teachers" Denver: Education Commission of the States, 1968.

The materials in this publication were compiled for the annual meeting of the Education Commission of the States.

The materials are divided into two sections -- "Background Materials on Teacher Militancy, Current Status of Legislation, and Contents of Teacher Negotiation Laws" and "Issues Facing Legislators in Dealing with Governmental Employee Relations". Of possible interest to members of the General Assembly is a compilation of "Basic Questions Faced by Legislators" which begins on page 29. Questions discussed are: (1) the problem (p. 31); (2) who shall be covered? (p. 32); (3) separate legislation for teachers? (p. 32); and (4) what is negotiable? (p. 42).

"Opinions of State Labor Officials Relating to Adjustment of Public Employee Disputes" Sacramento: Department of Industrial Relations, Division of Labor Statistics and Research, State of California, 1968.

The pamphlet contains replies to a questionnaire sent to 30 states, Colorado is not included, concerning public employee negotiations. In the questionnaire, questions were asked on subjects such as: (1) ban on strikes; (2) penalties for engaging in strikes; (3) opinions on adjusting public employee disputes; and (4) any additional comments. In addition to the results of the questionnaire, two tables are included which summarize the state laws of the 30 selected states.

Report and Recommendations June 1968 -- Governor's Commission to Revise the Public Employee Law of Pennsylvania. Harrisburg: Department of Labor and Industry, Commonwealth of Pennsylvania, 1968.

The report contains a brief summary of the commission's recommendations and an explanation of the committee's recommendations.

Report on Collective Bargaining by Municipalities. Augusta, Maine: Legislative Research Committee, Publication 103-18, 1968.

The report contains a brief committee report concerning collective bargaining in municipalities, and a copy of the proposed legislation granting negotiations to municipalities.

Schmidt, Charles T. Jr. "Representation of Classroom Teachers" Monthly Labor Review. Vol. 91, No. 7, July 1968, pp. 27-36.

The article presents two case studies of the selection of bargaining representatives in Michigan. On page 36 of the article there is a brief summary of the case studies which show the education association's evaluation towards collective bargaining as indicated by the success of the Grand Rapids Education Association defeating the Grand Rapids Federation of Teachers in an exclusive representation election, whereas in the case of Detroit the Detroit Education Association was unable to become the exclusive bargaining agent a few years earlier.