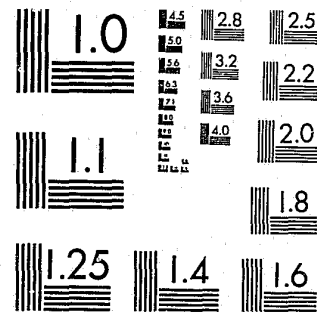


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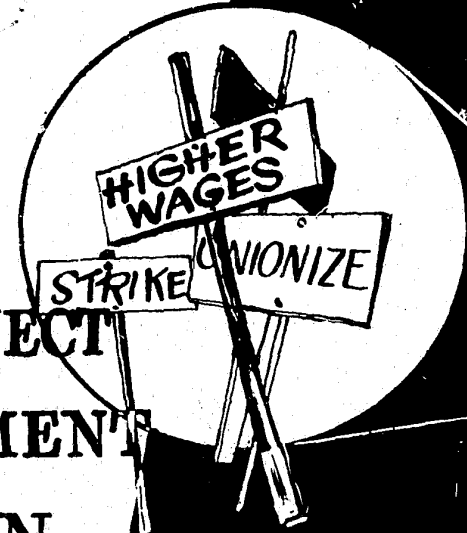
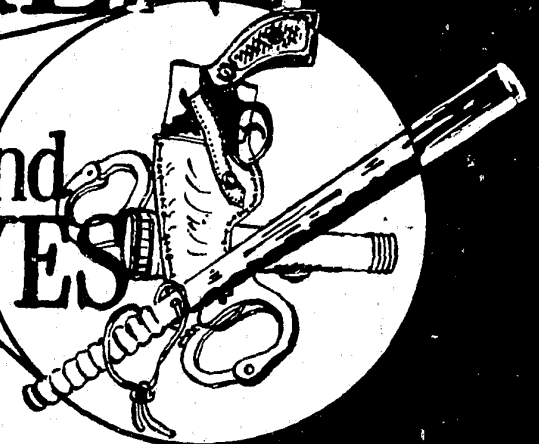
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The POLICE LABOR
MOVEMENT:

PROBLEMS and
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*The Police Labor Movement:
Problems and Perspectives*

U.S. Department of Justice
National Institute of Justice

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Foreword

The Police Labor Movement: Problems and Perspectives, by John H. Burpo, is indeed a timely book on one of our most important domestic issues. In the area of labor-management relations, collective bargaining by public employees is *The Issue* today.

Although most of the crises in the public sector have been local in nature, some, such as the postal strike and the "sick-out" by air traffic controllers in early 1970, have been nationwide, and have demonstrated how disastrous the curtailment of major government services can be. Strikes by teachers have, in some instances, been almost statewide, and several large cities have been seriously affected by such strikes in recent years.

Regrettably, there have been strikes (although sometimes not admitted to be such) by police officers. The author, John Burpo, has developed excellently the history of police labor relations, including the recent strike by Montreal police. An understanding of the underlying reasons for police strikes is invaluable to those who are attempting to provide a method for adjusting such disputes. The author has devoted a considerable portion of this book to the cases of police strikes, because he is aware of the fact that only through a thorough knowledge of problems that have arisen in the past do we have the foresight to solve problems which will arise in the future.

The problem of resolving labor disputes has been complicated by the over-emphasis of the strike as a weapon in labor-management controversies. As the author points out, there is no absolute right to strike, even in the private sector, when the strike or threatened strike will imperil the health or safety of the nation. Hence, those who are

concerned about the resolution of labor disputes in the public sector, and particularly those involving police officers, will do well to avoid thinking in terms of absolutes and to think in terms of alternatives to the strike. In his model statute, John Burpo has provided the alternatives.

The ideal solution, of course, is for the parties themselves to resolve their differences without the intervention of third parties. In order to accomplish this end each side must thoroughly understand the problems confronting the other and make a genuine effort to come to some agreement. Above all, a hardening of positions should be avoided.

Sometimes, however, the parties are unable to resolve the dispute and some means other than a work stoppage for resolving the dispute should be available. Disputes involving police or firemen suffer from this dilemma because not even those most sympathetic to labor's use of the strike as a weapon advocate a strike in the case of a dispute involving police or firemen. To leave the public without fire or police protection would be intolerable.

John Burpo has dealt in detail with the various methods of dispute resolution when the parties have reached an impasse, and even the most casual reader of the book will be impressed by the in-depth study which the author has made of the appropriate statutes of the various states, especially those designed to resolve disputes involving police officers.

Although the book is primarily concerned with police labor problems, the reader will recall problems of recent origin common to all public employees, and the model statute has been drafted so that it is applicable not only to police officers but is of general applicability to all public employees.

Therefore, it should prove valuable to all persons in public service, whether they be management personnel (that is, public employer) or public employees.

The detail the author has gone into concerning a resolution of the impasse is certainly noteworthy. Although the provision for arbitration will probably arouse opposition from some public employers and public employee organizations, it will probably be resorted to far less frequently than might be imagined. It is certainly better than the strike, and we know from past and recent events that the outlawing of strikes does not always prevent them. One of the primary reasons that a strike occurs is from desperation; there being no other recourse. The arbitration provision as a means of resolving the dispute is, in fact, an alternative to the strike, and there is no sound reason for a strike to occur.

The methods for resolving impasses proposed by John Burpo in his model statute certainly are apropos to labor disputes involving police officers and firemen, and it can be strongly argued that they are equally appropriate for the resolution of disputes involving other public employees.

The Police Labor Movement: Problems and Perspectives, by John Burpo, is a well-written, timely publication which should be of considerable value to all concerned with the current problems involving labor relations of police and other public employees.

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Preface

A speaker at the 1969 International Association of Chiefs of Police Convention stated that, in his opinion, unionization of police forces is perhaps not yet recognized as being an important issue facing police administration today. In my opinion, this statement reflects a great miscalculation. Police labor problems, of which unionization is but one facet, will be the major administrative headache facing the police service during the next decade. Hopefully, this book will reflect the significance of these problems, and the need for police chiefs, police employee organizations, government leaders, and the public to do their part in bringing stability to police employee relations where chaos has existed during the sixties.

I would like to acknowledge the valuable assistance of John J. Irwin, Professor, University of Arizona Law School, Tucson, Arizona, who served as a consultant for this publication, provided many meaningful ideas and suggestions concerning the content of this book, and wrote the foreward which appears herein. I would also like to acknowledge the assistance of my able secretary Mrs. Betty M. Hansen, and the technical advice provided by Tucson Police Department Artist Mr. William Condron. I would like to thank my two research assistants from the University of Arizona Law School, Tucson, Arizona, Mr. J. Allen Clark and Mr. George Bromley. Finally, this project would have never been possible without the understanding of my wife, who spent many evenings at home alone while I worked on this book.

The Author

Introduction

From the time a man takes the oath of office and accepts the badge that entitles him to be called a policeman, he assumes a grave responsibility toward the public, his department, his family, and himself. His primary obligation is to protect the lives and property of citizens. This responsibility involves a great degree of discretion on the police officer's part: whether or not to make an arrest, kill a person, or make a search and seizure. Poor judgment by the officer in exercising this discretion can result in a false arrest suit brought against him, a criminal or civil suit filed against him for improper use of deadly force, or the exclusion of critical, incriminating evidence in a criminal trial.

The policeman must keep his private life free from any taint of wrong-doing, for in essence, he does not have a private life. His actions are constantly subject to scrutiny by the public, and any exposed immoral or illegal actions will bring disrepute to his department, family, and himself.

Idealistically, he must not permit his official action² to be controlled by his prejudices or personal animosities. This requirement, however, is not a simple one to fulfill. Human nature being what it is, a policeman often finds his attitudes toward minority groups and persons with diverging ideas or life-styles dictating how he enforces the law.³

At the very best, the policeman's job is one of minimal satisfactions. Active participation in the protection of the lives and property of citizens, such as the apprehension of a murderer, burglar, or dope peddler, affords the officer a sense of job fulfillment. Also, a guaranteed paycheck and pension rights, protected by municipal civil service regulations, assure him a secure, although often inadequate financial

situation.

The negative aspects of the policeman's job are characterized in one word: frustration. The sources of this frustration are inherent in the job. Ten routine police contacts in one night with drunks, arguing spouses, belligerent traffic offenders, and hardened criminals will cause ten frustrating experiences. The very society that employs him for protection impedes his efforts to perform his duties efficiently. A conviction is lost in court because what appeared to be sound, logical police practice turns out to be an illegal arrest or search and seizure; cries of "police brutality" and "law and order" from opposite ends of the philosophical spectrum create uncertainty; and the need for increased financial resources to combat crime is relegated to low-priority status by municipal politicians.

There are other frustrations. Family life suffers because of the unusual hours. Opportunities for promotion to detective, sergeant, and above are restricted because of the limited vacancies and stiff competition in civil service examinations. When a promotion is not attained, and salary reaches the last increment in the civil service classification, incentive is likely to wane. Transfer to another police department at equivalent rank is impossible due to standard civil service policies which require the new officer to start at the bottom of the salary and promotional scale, and work up again. The salary often seems an inadequate return for the nightly risk of crippling physical injury or death.

The job frustrations manifestly outweigh the satisfactions. A midwestern police chief best expresses the dilemma: "The policeman's job is a lousy job unless he is sufficiently compensated to make up for the sacrifices."⁴

The policeman cannot sit back and wait for just compensation to be conferred upon him. The machinery of governmental bureaucracy has traditionally been slow in responding to his economic and job needs. Only through organization into self-help groups has the policeman been able to achieve a modicum of financial and job improvement. Police employee organizations have in the past, and will in the future, be the vehicle that eliminates many of the policeman's job frustrations.

Police labor groups are the catalyst that sparks needed changes in the policeman's working environment. If these organizations are able to cause changes that reduce job frustrations, the implications will be far-reaching. The policeman will gain. The police profession will profit. Most important, the public, whom the policeman serves, will reap the benefits of being protected by competent, motivated men.

Notes

1. This obligation is set forth in the Law Enforcement Code of Ethics.
2. Ibid.
3. President's Commission on Law Enforcement and the Administration of Criminal Justice, The Challenge of Crime in a Free Society, (Washington, 1967), p.102.
4. Interview with William Hanger, Chief of Pontiac, Michigan Police Department, (October 27, 1969, Pontiac, Michigan)

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The Police Labor Movement:
Problems and Perspectives

Chapter I

Historical Overview of the Police Labor Movement

Although the Boston Police Strike of 1919 is popularly conceived to be the historical inauguration of police labor problems, disputes in law enforcement had their origins in Ithaca, New York, in 1889. The Mayor of Ithaca decreased the wages of the police force from twelve to nine dollars per week, causing five members of the Police Department to go on strike. The walk-out lasted for seven days, after which time the Ithaca City Council restored the original wage of twelve dollars per week, resolving the dispute in favor of the striking policemen.

Cincinnati, Ohio experienced a police strike in 1918 after the Chief of Police arbitrarily discharged four officers for participating in a meeting to discuss a pay increase of three hundred dollars per year.² Resenting the capricious action of their Chief, Cincinnati policemen joined the Cincinnati Central Labor Council and walked off the job with the intention of not returning until the four officers were re-instated.³ At the peak of the strike, 450 police officers refused to work. The striking officers were persuaded to return to their jobs after the Cincinnati Public Safety Director, who had affirmed the discharge of three of the four officers,⁴ agreed to consider their re-instatement after thirty days.

The Boston Police Strike of 1919

Because of the loss of several lives, immense property damage incurred and the significance attributed to it by many commentators on police labor relations,⁵ the Boston Police Strike is worthy of discussion. The morale of Boston

policemen prior to the strike was low due to distressingly inadequate working conditions, among which were vermin-infested stationhouses, wages too low for the post-World War I inflationary period, working hours ranging between seventy-three to ninety hours per week, a requirement that officers pay for their uniforms, and the use of favoritism in assigning officers to the best positions.

To combat these sub-standard working conditions, a group of Boston police officers formed an organization affiliated with the American Federation of Labor in July, 1919.⁷ A number of other police groups throughout the country had been affiliating with the Federation since 1913. After issuing an order prohibiting membership in any organization other than a war group, the Commissioner of the Boston Police Department suspended nineteen recalcitrant officers in August, 1919, for engaging in union activity.⁹ These suspensions became the catalyst for a massive walkout by fifteen of the nineteen hundred Boston police officers on September 9, 1919.¹⁰

Looting of shops and stores began on the same day as the strike.¹³ The total property damage of the strike amounted to more than one million dollars, the result of pillaging and looting.¹⁴ The Massachusetts State Guard was summoned on September 10 to protect the City.¹⁵ Three persons were killed on this day when the Guard attempted to suppress a riot in South Boston.¹⁴

Calvin Coolidge, then Governor of Massachusetts, and President Woodrow Wilson issued statements condemning the Boston Police that are still quoted today to support the proposition that police officers should not strike. Coolidge stated that: "There is no right to strike against the public safety by anybody, anywhere, anytime." President Wilson's quote was equally dramatic: "A strike of policemen of a great

city, leaving that city at the mercy of an army of thugs, is a crime against civilization. In my judgment the obligation of a policeman is as sacred and direct as the obligation of a soldier. He is a public servant, not a private employee, and the whole honor of the community is in his hands. He has no right to prefer any private advantage to the public safety."¹⁷

The Boston Police Strike terminated after four days. The Commissioner of the Police Department refused to reinstate any of the striking policemen, and in order to restore the Department to its original strength, he lowered entrance requirements to facilitate easier recruitment.¹⁷ The Commissioner's attitude toward department working conditions altered remarkably after the strike. Salaries were increased by three hundred dollars per year, officers were provided uniforms for the first year without charge, and a pension system was created.

One commentator on the Boston Police Strike has analyzed its impact as follows:

1. The policemen's affiliation with the American Federation was destroyed.
2. More than eleven hundred policemen permanently lost their jobs.
3. Tremendous costs to the Boston community were incurred due to property damage, maintenance of the Massachusetts State Guard, and loss of several lives.
4. Improved benefits and working conditions for members of the Boston Police Department were achieved.

Analysis of the Police Labor Situation Up to 1919

In the incipient stages of the police labor movement, policemen, either as individuals or in employee groups, used the strike as a tool to overcome political and administrative resistance to the improvement of wages and working conditions.²⁰ The strike was employed considerably during this period as a method for protesting grievances when compared to its use today,²¹ probably because of the lack at that time of any established procedures for adjusting job dissatisfactions.²²

From Passivity to Militancy: The Development of Police Employee Groups to the Present

The American Federation of Labor's initial entry into the police field in 1913 was cautious.²³ This wariness, coupled with resistance by police administrators toward AFL-affiliated police groups following the Boston Police Strike of 1919, contributed to organized labor's impotency in police labor relations until the 1940's.²⁴ The void created by organized labor's absence, however, was filled by the successful development of police fraternal and benevolent associations such as the Fraternal Order of Police.²⁵ During the ensuing decades, these associations served primarily as legislative lobbyists for securing improved police welfare and pension benefits.²⁶

Organized labor re-emerged in the forties as a limited participant in the police labor movement. The American Federation of Labor established affiliates in Denver, Colorado; Hartford, Connecticut; and, Flint, Michigan in 1941.²⁷ Other cities which experienced the affiliation of their police departments

with the Federation during the forties were New Britain and New Haven, Connecticut; Joliet, Illinois; Saint Paul, Minnesota; Omaha, Nebraska; Asheville and Durham, North Carolina; Portland, Oregon; Chattanooga, Tennessee; and, the Washington cities of Port Angeles, Spokane, and Tacoma.²⁸ Other than continued affiliation of a few more police departments with the American Federation,²⁹ the police labor scene remained quiescent during the fifties.

It wasn't until the 1960's that police employee organizations emerged from a forty year period of relative dormancy to become a driving force in the quest for better salaries and working conditions. During this decade, militancy became the formula for success. Strikes, sick calls, picketing, and other activities were employed by police employee groups to achieve their economic and job goals. Much to the displeasure of police administrators and municipal leaders, the momentum of these organizations made them increasingly difficult to control.

As the decade came to a close, a variety of police employee organizations, all ostensibly working for increased police benefits, could be identified. Among these groups were the Fraternal Order of Police, International Conference of Police Associations, police unions affiliated with the American Federation of State, County and Municipal Employees, autonomous statewide and local police associations such as the Patrolmen's Benevolent Association, The American Federation of Police, a national police union, and Afro-American associations. These groups can be classified into two basic types, those affiliated with organized labor, and self-reliant local groups generally having some degree of relationship with a state or national organization. These organizations are all taking an active part in the current police labor movement, and their individual significance should be considered.

Police employee organizations are notoriously fragmented,³¹ with only one group enjoying true nationwide status and membership at present, the Fraternal Order of Police (FOP).³² FOP membership spans forty-two states,³³ with its primary strength being in the North Central and Southern states.³⁴ Its ninety thousand members³⁵ belong to eight hundred subordinate lodges.³⁶ Founded in 1915,³⁷ the FOP's original purpose was to achieve civil service protections and better pension benefits for police.³⁸ The scope of its activities subsequently expanded to encompass all financial and job grievances.³⁹ Unlike many rank-oriented organizations, the FOP opens its membership to all policemen, with associate memberships being available to civilians.⁴⁰ Local lodges are completely autonomous from the national organization.⁴¹

The FOP has created two administrative problems. Its mere presence has been banned by some police chiefs.⁴² Regulations prohibiting membership in a fraternal organization have, however, been consistently deemed invalid by state and federal courts during recent years because such prohibitions are a patent restriction on an individual's constitutional freedom of association.⁴³ The FOP practices of bestowing membership to civilians and of soliciting advertising from local merchants have raised the issue of whether or not a policeman can impartially take and give favors to citizens who are potential law violators.⁴⁴ Some police administrators question whether an officer can impartially enforce the law against citizens active in FOP activities, and feel that placing officers in this position potentially compromises the integrity of the department.⁴⁵

The International Conference of Police Associations (ICPA), formerly called the National Conference of Police Associations, has been described as "an association of

associations."⁴⁶ ICPA's principal strength is found in the South.⁴⁷ Organized in 1953,⁴⁸ it has served in the past as a coordinating agency for 275,000 police belonging to various autonomous labor organizations.⁴⁹ Consistent with this function, ICPA has conducted wage and working condition surveys,⁵⁰ and published a monthly newsletter discussing current police labor developments throughout the country. At its 1969 annual conference, the ICPA membership voted to strengthen and expand its authority by taking a more active role in organizing statewide and local police employee organizations.⁵¹

Organized labor has gained a foothold in the police labor movement primarily through the efforts of the American Federation of State, County and Municipal Employees (AFSCME). AFSCME, an off-shoot of the earlier American Federation of Labor police organizations, claims a membership of approximately ten thousand policemen.⁵² Its principal strength lies in Connecticut and Illinois.⁵³ AFSCME's activities center around the traditional union functions of commitment to collective bargaining⁵⁴ and striking.⁵⁵ Unlike other AFSCME affiliates, however, police organizations are precluded by a standard charter provision from striking or refusing "in concert to perform their duties."⁵⁶ AFSCME regards this restriction seriously, as evidenced by its revocation of the Joliet, Illinois police local's charter when that organization went on strike for one day in 1967.⁵⁷ AFSCME does not represent all policemen who belong to organized labor affiliates. Other unions claiming police representation are the Building Service Employees' International; the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America;⁵⁸ and the Meatcutter's Union.⁵⁹

Statewide and local police benevolent associations are found everywhere,⁶⁰ but especially in the North Central and Western states. Except where they are associated with ICPA,

or local groups are affiliated with a state organization, there is virtually no cooperation between these associations in seeking common goals.⁶¹ It is not uncommon among larger police departments for there to be a separate benevolent association for each rank, or combination of ranks. The Detroit Police Department has the Detroit Police Officers Association for patrolmen and the Detroit Police Lieutenants and Sergeants Association. The New York Police Department has a multiplicity of groups, including the Patrolmen's Benevolent Association, the Detectives Endowment Association, Sergeants Benevolent Association, Lieutenants Benevolent Association, and Captains Endowment Association.

The American Federation of Police (AFP) is a relatively new law enforcement association, being chartered in 1966.⁶² Its membership is open to policemen of all ranks. AFP's chief concern is with professionalizing the police service. This goal is sought through making outstanding service awards; providing officers with home-study police science courses; creating professional police standards; offering death benefits, false arrest insurance, and legal counsel for job-connected civil suits; and serving as a placement service for policemen seeking employment with another law enforcement agency.

The most recent development in the police labor movement is the emergence of a national police union affiliated with the American Federation of Labor-Congress of Industrial Organizations (AFL-CIO). The origins of the union can be traced to the 1968 annual meeting of the New York City Patrolmen's Benevolent Association, where the delegates approved a resolution authorizing its officers to commence negotiations with the AFL-CIO for the purposes of affiliation.⁶³ Following a meeting between New York City PBA President John Cassese and AFL-CIO officials, a six-man

committee composed of union presidents⁶⁴ was formed to investigate the possibilities of a police union.⁶⁵ In February, 1969, the special committee recommended to the Executive Committee of the AFL-CIO that a national police union be authorized,⁶⁶ subject to two conditions:

1. That "a satisfactory and appropriate constitutional structure exists, on a national basis, with commitments of national affiliation of police organizations in a representative number of cities;" and,
2. That "satisfactory assurances are received that such an organization will confine itself to its intended jurisdiction and will not encroach upon areas of employment represented by existing AFL-CIO affiliates."⁶⁷

The Executive Committee approved these recommendations and gave final authorization for formation of a police union.⁶⁸ In November, 1969, a committee of thirty policemen representing eleven police departments met in Omaha, Nebraska to draft a constitution for the national union to be submitted to the AFL-CIO for approval.⁶⁹ The new organization, called the International Brotherhood of Policemen, established as its purposes the unification of all policemen into the union, and the pursuit of improved wages, hours and working conditions for police officers.⁷⁰ The constitution contained an express prohibition against strikes by members of the Brotherhood.⁷¹ Due to the national police union's recent origins, it is too early to assess its success or the impact that this organization has on the police labor movement.

Another recent development is the rise of Afro-American police organizations. These groups are more concerned with

the difficulties encountered by the Negro as a policeman than with job conditions, and seem to be another manifestation of the conflict between blacks and whites in America today. Among the cities where Negro police organizations have been formed are Newark, Philadelphia, Chicago, New York, Detroit, Boston, San Francisco, and Saint Louis.⁷² Issues with which these organizations have concerned themselves include white policemen beating black prisoners, use of police dogs in civil disturbances, use of black officers to break up picketing by black construction workers, and alleged prejudicial recruiting practices by police departments.⁷³ The prevailing attitude of these groups⁷⁵ best expressed by a Negro patrolman in San Francisco: "We're black men first, and then we are police officers."⁷⁴

From Passivity to Militancy: The Causes

Unlike past decades, police in the sixties became more demanding and aggressive in pursuit of better salaries and working conditions. This new activism was spectacularly successful. Between 1964 and 1969 police salary scales rose thirty-eight per cent, with the average annual rise being 6.7 per cent.⁷⁵ This increase is especially significant when compared to the 4 per cent annual increase for white collar and factory production workers during the same period.⁷⁶ Militancy in the police labor movement has carried over to the seventies.

The ultimate cause of this militancy is dissatisfaction,⁷⁷ a dissatisfaction stemming from various sources. Law enforcement in the sixties was chaotic, with ghetto riots, campus disorders, and increasing disrespect of police authority by certain elements of American society being commonplace. This unsettling situation, coupled with an

increased crime rate⁷⁸ and seeming indifference of the judiciary to law enforcement problems,⁷⁹ threatened the policeman's traditional notion⁸⁰ that he is the guardian of community lives and property.

During the mid-sixties, the increase in anarchistic attitudes and criminal activity sparked a wave of law and order emanating from the white American working and middle classes.⁸¹ This hysteria partially reinforced the policeman's self-image as the conservator of the public welfare, and made him aware that his pay and prestige were not commensurate with his responsibilities.⁸²

During the Depression years, employment as a police officer was regarded as a secure job with an adequate salary.⁸³ Between 1939 and 1964, however, the policeman saw his salary scale increase half as much as that of factory workers.⁸⁴ Once again, his feelings of public self-importance made him question the significant gap between salary increases in the public and private sectors. Inadequate salaries and job dissatisfactions, compounded by the lack of outlets for the satisfaction of these grievances, created frustration. Self-organization and militant labor activities loomed as the only alternative.⁸⁵ The finger of blame can be levelled at police and city management for their failure to provide meaningful avenues for the correction of job grievances.⁸⁶

A leadership vacuum exists in many police departments throughout the country.⁸⁷ Police administrators are not attuned to the economic and other job needs of their officers. This situation can be attributed to inadequate training in police managerial techniques⁸⁸ and poor communication within the departmental chain of command.⁸⁹ Police departments are structured in a quasi-military fashion,

and many police chiefs attempt to use this structure to run⁹⁰ their departments in a dictatorial, autocratic fashion. In past decades this approach proved to be satisfactory, but today's more intelligent, well-trained officer is unable to accept arbitrary regulations and policies without questioning their justification.⁹⁷

Government officials are equally to blame for the lack of alternatives. At the 1967 Conference of Mayors, AFSCME President Jerry Wurf dramatically stated the case against municipal leaders:

"You (the Mayors) represent our best organizers, our most persuasive reason for existence, our defense against membership apathy and indifference, our perpetual prod of militancy, and our assurance of continued growth... Unions would be unable to sign up a single employee if he were satisfied, if his dignity were not offended, if he were treated with justice..."⁹²

Prior to the middle sixties, politicians told police employee organizations seeking a raise in salaries that policemen didn't deserve a pay increase.⁹³ The law and order hysteria of the mid-sixties, and increased respect toward the policeman by certain elements of the citizenry resulting from this hysteria compelled city officials to change tactics by telling police that they deserve the salary increase, but the city does not have the revenues to pay for it.⁹⁴ The reaction of police employee groups toward this latter attitude is best expressed by a prominent police labor leader: "This (lack of money) is the city council's problem, not the policeman's problem. It is up to the council to go out and find the money."⁹⁵

Another factor contributing to police activism is the

marked change in legislative attitudes during the sixties toward public employees organizing for the purpose of bargaining collectively or negotiating with their employer⁹⁶ to achieve higher salaries and better working conditions. Prior to the 1960's, city and state officials, the judiciary, and other management-oriented persons maintained that permitting public employees to bargain was an infringement upon the government's sovereign power to establish wages for its employees.⁹⁷ President John Kennedy's Federal Executive Order 10988 granting federal employees the right to collectively bargain with their agency employer, coupled with the passage of public employee bargaining statutes in California, New York, and Wisconsin prior to 1962, invalidated the traditional sovereignty argument.⁹⁸ This legislation, combined with reapportioned state legislatures more receptive to the demands of public employee organizations,⁹⁹ paved the way for the passage of collective bargaining statutes in twenty other states by the end of 1969 state legislative sessions.¹⁰⁰ Due to their traditional cohesiveness, police employee groups were well prepared to take advantage of this change in public policy.¹⁰¹ The success of other public employee groups, such as the teachers, sanitation workers and firefighters, in achieving economic benefits through collective bargaining, accelerated the policeman's desire to make full use of his statutory bargaining rights.¹⁰²

Other factors have been attributed to be causes of police activism in labor relations. Among these factors are the increasing desire of rank and file policemen to have a voice in management policies,¹⁰³ the disquiet of white policemen with the growing power of the black community,¹⁰⁴ and the fear that the American tenets of morality and patriotism are eroding.¹⁰⁵

Boston Revisited: The Montreal Police Strike of 1969

Prior to October, 1969, the Boston Police Strike of 1919 stood out as the only police work stoppage resulting in significant damage to community lives and property. On the morning of October 7, 1969, however, the city of Montreal, Canada was thrown into virtual anarchy when 3,700 members of the Police Department went on strike. The issue precipitating the walk-out was the failure of an arbitration board to settle a year-long wage dispute in favor of the police.¹⁰⁶

The strike left Montreal with severely limited law enforcement resources. Forty-seven Montreal officers, mostly command personnel, and two-hundred Quebec Provincial Police (Q.P.P.) were the only personnel available for maintaining order in the city of one and a quarter million people.¹⁰⁷ The five hundred squad cars of the Police Department were either taken or disabled by the striking policemen.¹⁰⁸ The capabilities of the Q.P.P. were undercut by their lack of knowledge of the Montreal metropolitan area,¹⁰⁹ answering false alarm calls placed by the striking policemen,¹¹⁰ having their vehicles and weapons forcefully taken by the strikers, and having their car radios jammed by Montreal policemen. The vulnerability of the city was compounded when the Montreal firefighters voted to strike on the same day because of an adverse arbitration decision.¹¹¹ The firemen's action was mitigated, however, by their decision to maintain emergency teams available for duty.

All of the ingredients for unimpeded crime were present. Before the strikers returned to duty at 12:30 a.m. on October 8, thirty-four armed robberies¹¹² and 456 burglaries¹¹³ were reported. These figures far exceeded the normal quota for these crimes in Montreal for one day. The absence of authority permitted long seething hostilities between various

groups to surface: taxi drivers attacked the office of a limousine service holding an exclusive franchise to provide passenger service at Montreal International Airport; French-Canadian separatists, long in conflict with the English population of Montreal, destroyed and pillaged buildings in the downtown area associated with the "English Establishment", and, social radicals, disturbed with governmental priorities set by the Mayor of Montreal that seemed to exclude consideration of the poor, caused \$200,000 damage to the Mayor's show-case restaurant.¹¹⁴ The phenomenon of mob action impelled honest citizens to participate in the looting and vandalism that took place in downtown Montreal during the evening of October 7.¹¹⁵

The scorecard in terms of human and property damage was not encouraging. Two persons were killed as a result of strike-connected incidents, with forty-nine others being injured or wounded.¹¹⁶ Property losses from vandalism and looting exceeded one million dollars.

The State Legislature of Quebec was in session the day of the Montreal Police Strike.¹¹⁷ During the evening hours, a bill was introduced and passed in the Legislature that required the strikers to return to their jobs immediately or face severe sanctions.¹¹⁸ The passage of this bill prompted Montreal policemen to resume their duties by the early morning of October 8, and order was quickly restored to the city.

Sixteen days after the termination of the Montreal Police Strike, a new contract between the city and police was negotiated to supersede the controversial arbitration award.¹¹⁹ Taking into account fringe benefits, the new agreement provided for salary increases of two-hundred seventy dollars above the award. Pay parity with the Toronto Police Department was achieved.

Notes

1. David Ziskind, One Thousand Strikes of Government Employees, (New York, 1940), p.33.
2. Ibid, p.35.
3. Ibid, p.36.
4. Ibid, p.39.
5. See for examples Robert Sheehan, "Lest We Forget", Police, Sept. - Oct. 1959.
6. Ziskind, One Thousand Strikes, p.39.
7. Ibid, p.41.
8. Hervey Juris, University of Wisconsin, "Police Personnel Problems, Police Unions, and Participatory Management -- The Impact of Police Unions on Law Enforcement and Law Enforcement Problems", In press, 1969, p.14.
9. International Association of Chiefs of Police, Police Unions, (Washington, 1958), p.4.
10. Ziskind, One Thousand Strikes, p.39.
11. Ibid, p.46.
12. IACP, Police Unions, p.4.
13. Ibid.

14. Ziskind, One Thousand Strikes, p.47.
15. IACP, Police Unions, p.4.
16. Ibid, pp.4-5.
17. Ziskind, One Thousand Strikes, p.49.
18. Ibid
19. Ibid, p.50.
20. Ibid, p.51.
21. Ibid, for a discussion of the Rockland, Massachusetts police strike in 1920.
22. Ibid, p.52.
23. J. Joseph Loewenberg, Temple University, "Emerging Sectors of Collective Bargaining, Seminar #3, Labor Relations for Policemen and Firemen", In press, 1968, p.21.
24. IACP, Police Unions, p.6.
25. Juris, "Police Personnel Problems", p.14.
26. Ibid
27. IACP, Police Unions, p.20.
28. Ibid

29. Ibid
30. Juris, "Police Personnel Problems", p.4.
31. Loewenberg, "Emerging Sectors of Collective Bargaining", p.21.
32. Hervey Juris and Kay Hutchison, University of Wisconsin, "The Legal Status of Municipal Police Employee Organizations", In Press, 1969, p.5.
33. Loewenberg, "Emerging Sectors of Collective Bargaining", p.21.
34. Juris, "Legal Status", p.5.
35. Loewenberg, "Emerging Sectors of Collective Bargaining", p.21.
36. Juris, "Legal Status", p.5.
37. Loewenberg, "Emerging Sectors of Collective Bargaining", p.21.
38. Ibid, p.22.
39. Ibid.
40. Ibid.
41. Ibid.

42. Patrick Murphy, "Police Employee Organizations", Masters thesis, City College of New York, 1960, p.25.
43. See American Federation of State, County and Municipal Employees v. Woodward, 406 F. 2d 137 (1969), which gives public employees unlimited freedom of association.
44. International City Managers Association, Municipal Yearbook, (Chicago, 1959), p.165.
45. Ibid
46. Interview with Royce Givens, Executive Director, International Conference of Police Associations; (Washington, D.C., October 29, 1969).
47. Juris, "Legal Status", p.9.
48. Murphy, "Police Employee Organizations", p.27.
49. Loewenberg, "Emerging Sectors of Collective Bargaining", p.22.
50. Ibid
51. Interview with Royce Givens, ICMA.
52. Interview with Donald Wasserman, American Federation of State, County and Municipal Employees; (October 28, 1969, Washington, D.C.)
53. Loewenberg, "Emerging Sectors of Collective Bargaining", p.22.

54. Interview with Donald Wasserman, AFSCME.

55. Loewenberg, "Emerging Sectors of Collective Bargaining", p.23.

56. Ibid.

57. Ibid., p.44.

58. Ibid., p.23.

59. Norman Walker, Federal Mediation and Conciliation Service, personal communication; July 17, 1969.

60. Juris, "Legal Status", p.9.

61. Ibid., p.6.

62. From American Federation of Police Advertising brochure, "While You Have Been Busy Others Have Started to Organize a Police Union".

63. David Burnham, "Police Draft Charter As Militancy Grows", New York Times; Nov. 2, 1969, p.66.

64. The six representatives were presidents of the International Union of Electrical Workers; International Ladies Garment Workers Union; Retail, Wholesale, and Department Store Union; National Maritime Union; Seafarers International Union; and American Federation of Musicians.

65. International Conference of Police Associations, "AFL-CIO Committee to Recommend National Union for Policemen", Notes from the International Office; March, 1969, p.7.

66. Ibid., pp. 11-12

67. Extract from actual recommendation made February 20, 1970, by the Special Committee to the Executive Committee at Bal Harbour, Florida.

68. ICPA, "AFL-CIO Approved Formation of National Police Union", Notes from the International Office, March, 1969, p.12.

69. Burnham, "Police Draft Charter for National Union as Militancy Grows", New York Times; November 2, 1969, p5.

70. Ibid.

71. Ibid.

72. John Darnton, "Color Line a Key Police Problem", New York Times; Sept. 28, 1969, p.69.

73. Ibid.

74. Ibid.

75. See U.S. Department of Labor, Office of Information, Bureau of Labor Statistics, USDL-10-500, p.1.

76. Ibid.

77. Hervey Juris, University of Wisconsin, "The Implications of Police 'Unions' for Policing", In Press, 1969, p.1.

78. See 1968 Uniform Crime Reports for analysis of increased crime in the United States.
79. In 1961 the United States Supreme Court held in the case of Mapp v. Ohio, 367 US 643, that an unlawful search and seizure of evidence by a law enforcement officer would result in that evidence being excluded from use at trial. Other cases hampering the policemen's ability to conduct investigations during the sixties are Miranda v. Arizona, 384 US 436, (1966), which held that a policeman must advise an in-custody suspect of his right to remain silent and right to have a lawyer before commencing interrogation: US v. Wade, 388 US 218 (1967), which held that a suspect is entitled to the presence of an attorney at a lineup; and, Chimel v. California, decided by the U.S. Supreme Court June 23, 1969, which held a policeman could not search incidental to an arrest in a home any further than arm's length from the person arrested.
80. Interview with Chief William J. Gilkinson, Chief of the Tucson Police Department, January 3, 1970, Tucson, Arizona.
81. Juris, "Police Personnel Problems", p.14.
82. ICPA, "Labor Law Developments in the State Capitals", Notes from the International Office, p.6.
83. Murphy, "Police Employee Organizations", p.30.
84. Loewenberg, "Emerging Sectors of Collective Bargaining", p.14.

85. See Juris, "Police Personnel Problems", p.14., for the reasons employees organize.
86. Donald D. Pomerleau, "Unionization, Baltimore Police Department", statement made at the State House; Annapolis, Maryland; March 16, 1967.
87. Pomerleau, "The Eleventh Hour", speech made at the 1969 International Associations of Chiefs of Police Convention; September 29, 1969.
88. Interview with John Flood, President, Cook County Police Officers Association; October 26, 1969, Chicago, Illinois.
89. Interview with Royce Givens, ICPA.
90. Interview with John Nichols, Deputy Superintendent of the Detroit Police Department, October 27, 1969, Detroit, Michigan.
91. Ibid.
92. Loewenberg, "Emerging Sectors of Collective Bargaining", p.4.
93. Interview with William Hanger, Chief of the Pontiac, Michigan Police Department; Oct. 27, 1969, Pontiac, Michigan.
94. Ibid.
95. Interview with Royce Givens, Executive Director, ICPA.

96. Juris, "Implications of Police Unions", p.5.
97. See IACP Police Unions, pp.36-56 for a discussion of this sentiment.
98. Juris, "Legal Status", p.2.
99. "Coming: Unionized Government", U.S. News and World Report, Vol. 61; August 1, 1966, pp.78-79.
100. See Chapter IV for a discussion of states with collective bargaining statutes.
101. Juris, "Implications of Police Unions", p.5.
102. Ibid.
103. ICPA, "Labor Law Developments in the State Capitals", Notes From the International Office, p.6.
104. Burnham, "Police Draft Charter for National Union as Militancy Grows", New York Times; Nov. 2, 1969, p.66.
105. Ibid.
106. Gerald Clark, "The Day the Police Went Away", Los Angeles Herald-Examiner; Nov. 30, 1969, p.A-3.
107. Ibid.
108. Pamphlet published by the Police Professionalization Foundation, Inc., "Police Unionization, a Look at the Montreal Police Strike", p.1.

109. Clark, "The Day the Police Went Away", Los Angeles Herald-Examiner; Nov. 30, 1969, P. A-3.
110. Police Professionalization Foundation, Inc., "Police Unionization", p.2.
111. Clark, "The Day the Police Went Away", Los Angeles Herald-Examiner; Nov. 30, 1969, p. A-3.
112. Police Professionalization Foundation, Inc., "Police Unionization", p.a.
113. Clark, "The Day the Police Went Away", Los Angeles Herald-Examiner, Dec. 2, 1969, p. A-14.
114. Ibid., Nov. 30, 1969, p. A-3.
115. Ibid., Dec. 2, 1969, p. A-14.
116. Ibid., Nov. 30, 1969, p. A-1.
117. Police Professionalization Foundation, Inc., "Police Unionization", p.3.
118. Ibid., p.4. Bill 61 provided for fines against individual striking officers between \$50 and \$100, and one month imprisonment for each day of striking. Fines against the Executive Committee of the union leading the strike ranged from \$5,000 to \$10,000 and one year of imprisonment for each day of striking.
119. Clark, "The Day the Police Went Away", Los Angeles Herald-Examiner; Dec. 2, 1969, p. A-15.

Chapter II

What The Police Want

Police are no different than other public and private employees. They seek equitable economic benefits and optimum working conditions. Police employee organizations are the vehicle through which these goals are usually sought. Five areas of interest common to all police employee organizations are the quest for:

1. Recognition of the organization;
2. Better economic benefits;
3. Better job conditions;
4. A voice in management policies; and,
5. In some cases, professionalization of the police.

A number of states do not yet have collective bargaining statutes that permit public employees to organize and be recognized as an organization by their employer for the purpose of negotiating for improved benefits. Police employee groups in these states have organized but many have not been recognized by the municipality for the purpose of collective bargaining. Municipalities often allege lack of statutory authority to justify refusing recognition of police employee organizations for the purpose of bargaining. Once recognition is secured from the city, employee organizations will then ordinarily request a dues deduction.³ This deduction is made from the pay check of an employee who belongs to a police organization and is a strong indication of recognition by the municipality, although not always for bargaining purposes. Other incidental recognition issues include taking time off for employee organization business, and use of departmental facilities for that purpose.⁴

The attainment of improved economic benefits is the most significant goal of police employee organizations. Low salaries and a spiralling cost of living have necessitated the pursuit of many forms of economic relief. Among these forms are higher salaries, overtime pay, improved pensions, health insurance benefits, tuition reimbursements, longevity pay, paid holidays, callback pay, jury duty pay, shift differential pay, uniform allowances, meal allowances, permission to work a second job, and severance pay.⁴ To state the case concisely, in the area of economic improvements, the policeman wants "more."

The emphasis is on "more" in the area of job conditions also. Job issues with which police employee organizations have concerned themselves include hours, work weeks, vacations, holidays, sick leave, funeral leave, false arrest insurance, communications, police vehicles, type of uniforms, use of bulletin boards, and grievance procedures. A grievance procedure permits policemen to protest job injustices or dissatisfactions through an orderly process of discussion and appeal to supervisors.

Prior to the restless sixties, police administrators ran their departments without considering the wishes of their officers. The rank and file contributed to this situation by remaining generally apathetic towards administrative policies and programs. During the sixties, however, policemen began to take an interest in how their departments were being run. Many police employee groups demanded a voice in departmental policies and administrative decisions.⁸ Issues which police administrators have traditionally regarded as being their sole concern, but which have become the target of police organizations as well, include the number of patrol shifts,⁹ one versus two men riding in a squad car,¹⁰ promotions,¹¹ recruitment policies,¹² job

assignments, amount of paper work,¹³ performing non-police duties,¹⁴ consultation prior to the implementation of a standard operating procedure,¹⁵ transfers and disciplinary proceedings. In the area of promotions, transfers, and job assignments, police employee organizations have often sought to make seniority the guiding standard of selection.¹⁵

The New York City Police Department fight over the "Fourth Shift" is illustrative of the growing interest of police labor organizations in administrative policy.¹⁷ New York State law formerly provided that the New York City Police Department could have only three patrol shifts. The old law was obsolete in an era when crime was not cognizant of the police work-time boundaries of 8 a.m. to 4 p.m., 4 p.m. to 12 p.m., midnight, and midnight to 8 a.m. An amendment to the law was proposed by the Mayor and Commissioner of Police which would permit an overlapping fourth patrol shift to be used during the hours of greatest criminal activity. The Patrolmen's Benevolent Association fought this development bitterly, mounting an intensive newspaper advertising campaign against the proposed legislation. This campaign was unsuccessful, however, and the New York Legislature granted the Commissioner authority to create a fourth shift.

One avowed purpose of some police labor organizations is professionalization of the police.¹⁶ A midwestern police labor leader has stated that police officers not only can, but are obligated to participate in the professionalization process, because the benefits will not only accrue to the police and their families, but to other public employees and the public as well. Police labor leaders contend that the pursuit and attainment of economic and job improvements will lure more qualified persons into the police service, making for higher quality police departments.¹⁷ Also, some

leaders talk in terms of higher entrance requirements,¹⁸ college educational incentives, and other concepts normally associated with police professionalization.

The Milwaukee Professional Policeman's Protective Association recently sought four-thousand dollars in federal monies to initiate a program for the improvement of Milwaukee police-citizen relationships.¹⁹ One of the purposes of this program was to establish the Milwaukee police organization as one with professional as well as labor concerns. The Association proposal stated that "a central point in the process of professionalization is that the professional organization clearly places public good over private gain."²⁰

Notes

1. Interview with William Hanger, Chief of Pontiac, Michigan Police Department; Oct. 27, 1969, Pontiac, Michigan.
2. Interview with John Flood, President, Cook County Police Officers Association; Oct. 26, 1969, Chicago, Illinois.
3. Ibid
4. J. Joseph Loewenberg, Temple University, "Emerging Sectors of Collective Bargaining, Seminar No. 3, Labor Relations for Policemen and Firemen", In Press, 1968, p.37.
5. Ibid
6. Personal communication from Thomas E. Joyner, Director, Public Employment Research, New York State Public Employment Relations Board; July 14, 1969.
7. Loewenberg, "Emerging Sectors of Collective Bargaining", p.37.
8. Interview with John Flood, President, Cook County Police Officers Association.
9. Speech by Donald D. Pomerleau, "The Eleventh Hour", speech made at the 1969 International Association of Chiefs of Police; Sept. 29, 1969.

10. See ICPA, "Who's Brave Enough to Place the Price", Notes From the International Office, April, 1969, p.8.
11. Interview with William Hanger, Chief of Pontiac, Michigan Police Department; Oct. 27, 1969, Pontiac, Michigan.
12. Pamphlet by William E. Kirwan, "The New York State Police; History and Development of Collective Negotiations", 1969, p.18.
13. See ICPA, "Dallas Police Rap New Organizational Structure", Notes From the International Office, July, 1969, p.7.
14. Kirwan, "The New York State Police", p.18.
15. Ibid., p.19.
16. Interview with John Nichols, Deputy Superintendent of the Detroit, Michigan Police Department; Oct. 27, 1969.
17. See ICPA, "From the State Capitals", Notes From The International Office, May, 1969, p.9.
18. See International Conference of Police Associations Constitution, Article 3, Section 1. Also, Interview with Kenneth Davidson, President of the Pontiac Police Officers Association; Oct. 27, 1969, Pontiac, Michigan.
19. The National Conference of Christians and Jews, "Milwaukee Police Association Calls for Social Action Project", The Hot Line, Vol. 2, Jan., 1970, p.1.

Chapter III

How The Police Get What They Want

Police labor organizations today are not waiting for police and city management to initiate job improvements. Police groups have taken a variety of approaches to attain their goals. When pursuing a particular goal (e.g.; higher salaries, recognition, etc.), a police employee organization's first avenue of approach is ordinarily bargaining, or negotiation, with the public employer. If, because of disagreement with the public employer, negotiation does not give the organization satisfaction, it will employ other methods to achieve its goal. Initially, a mild form of protest will be employed, such as picketing by the officers or their families, lawsuits or legislative lobbying. These forms of protest give the employer notice of the organization's intent to pursue its goal to a satisfactory conclusion. When these activities fail to produce the desired result, a more forceful approach is taken to break the impasse, such as officers writing a greater amount of traffic tickets than usual, or writing no tickets at all. When these methods prove unsuccessful in resolving the disagreement, resort is made to methods involving a complete breakdown of police service: the strike, sick call, more popularly designated as "blue flu", or mass resignation. Because of their frequent use in today's police labor environment, each of these activities merits a close examination.

Collective Bargaining

Four types of negotiation between police employee organizations and their employer have been identified.² These types include informal discussions conducted through normal police administrative channels, lobbying through regular

appearances before the city council, consultations with the chief who in turn makes recommendations to the city council, and direct bargaining between the police labor group and the representatives of the employer. A 1968 University of Wisconsin survey of 347 police departments indicated that twenty-two per cent of the police employee organizations responding relied on the informal administrative approach, eleven per cent lobbied with the city council, fourteen per cent consulted with the chief who then went before the council, forty-five per cent bargained directly with the municipality, and eight per cent engaged in no bargaining activities at all.

Due to the questionable legal validity of direct bargaining with the public employer in the absence of a statute, the other three types of negotiation are used most frequently by police in those states that do not have public employee bargaining statutes. Direct bargaining between the police employee organization and the municipality is generally used in those states where a statute permits this form of negotiation.

Direct bargaining between police employee organizations and public employers is permissible today by constitutional provision, statute case-law, or Attorney General Opinion in twenty-seven states.⁴ The standard public employment bargaining statute provides for the right of public employees to organize and join employee organizations for the purpose of negotiating a contract with their employer. The public employer is given the concomitant right to recognize the public employee organization and is ordinarily mandated to bargain. Both parties must discuss proposals in good faith. The bargaining statute will usually limit the scope of negotiable issues to salaries, hours, and other terms or conditions of employment. Employees are organized according to

"appropriate units", with those employees sharing a community of interests being grouped in one unit. The employees of an appropriate unit may be represented by an "exclusive bargaining agent", an organization chosen by a majority of the unit to represent them in contract negotiations. Supervisory personnel are usually excluded from this scope of the law. Some statutes prohibit certain abusive practices by either the employer or employee. Any meaningful dialogue and resultant changes that are to come about as a result of bargaining are contingent upon the willingness of both parties to discuss problems and feasible solutions openly and in good faith.

When the employee organization and employer fail to reach an agreement on bargainable issues, the law provides machinery for resolving the impasse. Impasse procedures vary from state to state, but the forms identified are mediation, fact-finding, voluntary and advisory arbitration, and, compulsory and binding arbitration. Mediation is an informal procedure by which an impartial third party attempts to resolve the disagreement through discussions with and suggestions to both parties.

Fact-finding is a more formalized impasse procedure in which an outside person conducts hearings to analyze all facets of the dispute, including, but not limited to the need for salary or other job improvements, and the city's ability to effect any changes. Following the hearing, the fact-finder makes recommendations which are submitted to both the employee group and the employer. If the recommendations are accepted by both parties, a contract is made based upon those recommendations. If either or both parties are unable to accept the findings of fact, they are made public. The basis for publicizing the findings is that both parties will be more willing to accept the recommendations of an

impartial third party with the knowledge that refusal to do so might displease the public.

Arbitration is a procedure by which a three-man panel, two persons being representatives of the disputing parties, and the third an impartial person, hold a formal hearing and reach a conclusion based on the evidence presented at the hearing. When arbitration is voluntary, it may be invoked by either the public employee organization or employer. Compulsory arbitration compels the parties to arbitrate when other impasse procedures have failed. When the statute establishes advisory arbitration, the disputing parties do not have to accept the arbitration decision, whereas binding arbitration requires adherence to the panel's conclusions. Three states have binding arbitration statutes for policemen.⁵

Direct bargaining is conducted between representatives of the municipality and the labor group. The city's bargaining team ordinarily consists of top ranking administrative officials, such as the city manager, director of personnel, or director of finance. Larger cities employ labor negotiation specialists whose sole function is to negotiate contracts with police and other public employees.⁷ Elected officials will sometimes participate in the negotiations, and very rarely, the chief of police will be a member of the city team. On the labor side of the bargaining table, negotiations are handled by either the organization's executive board, a selected group of employees, a professional staff negotiator (very rare due to the costs involved), or a private attorney who has been hired to conduct all of the organization's legal matters.⁹

Where the bargaining or impasse procedures result in an agreement between the employee organization and the employer,

a contract is drafted that embodies the terms of the agreement. (See Appendix A for a sample contract negotiated between the City of Elmira, New York and the Elmira Police Benevolent Association) This contract is a binding legal instrument, enforceable in a court of law. Many agreements provide for the resolution of disputes concerning its interpretation by arbitration. Public employment contracts usually specify the renegotiation of the agreement after a certain period of time, usually one or two years. Most state bargaining laws require renegotiation after a certain period of time.¹⁰

When Negotiations Break Down: The Mild Forms of Protest

When a police labor group and municipality are unable to agree concerning changes in economic benefits or job conditions, whether due to bad faith bargaining, a good faith but uncompromising position of either party, or dissatisfaction with impasse procedure recommendations, the police organization will seek its particular goals through other channels. Lobbying in the state legislature has long been a means by which employee groups have sought the attainment of improved benefits. The concept of lobbying originated in the early stages of the police labor movement.¹¹ Its use by police organizations is widespread, and has generally proved to be a successful means of securing better benefits without having to enlist the cooperation of the municipality.¹² Legislative lobbying is conducted by either a state-wide police labor organization representing the interests of many local affiliates,¹³ or where sufficient funds are available, by a local organization itself.¹⁴ Efforts are concentrated upon the same issues that are subject to bargaining, including hours, holidays, pensions, medical insurance, changes in residency requirements, shift

differentials, and credit for military service in promotions and retirement.¹⁵

Lobbying in the state legislatures has three effects upon the bargaining relationship between a public employer and a police employee organization.¹⁶ It can force the city to bargain with the employee organization rather than face the consequences of unfavorable legislation. Where negotiations between the labor group and the municipality have proved unsuccessful, lobbying can be employed to attain the desired goals. Finally, lobbying can be used to the total exclusion of collective bargaining. Today, police labor organizations are trying to have the best of both worlds. They are negotiating with the municipality to obtain as many benefits as possible, and what they fail to achieve through bargaining, they seek through the lobbying process.¹⁷

Picketing by police officers or their families is another mild form of protest. The purpose of picketing is to call to the attention and gain the sympathy of the public, thereby embarrassing the city administration.¹⁸ This method has been used by the New York,²⁰ Detroit,²⁰ and Omaha²¹ police to protest inadequate wage scales. The Boston Police Patrolmen's Association recently picketed police headquarters to challenge the proposed use of name tags sewn on the police uniform.²²

Civil lawsuits have been filed by police labor organizations where their goals have been thwarted through negotiations. Illustrative of the lawsuit approach are the New York City Patrolmen's Benevolent Association attempt to obtain overtime pay for riot duties performed in 1964;²³ an injunction by the same organization to prohibit the New York "Fourth Platoon" law from being used by the Police Department to deploy an overlapping fourth shift in dangerous areas of the Bronx;²⁴ and a civil suit by the Detroit Police

Officers Association contesting the constitutionality of an ordinance requiring all policemen, but not other city employees, to live within the city limits of Detroit.²⁵ Police organizations with substantial financial resources at their disposal are in a better position to pursue this method than a labor group with meager reserves.

One interesting technique used by members of the New Bedford, Massachusetts Police and Fire Association in 1969 to pressure their city employer to raise salaries was a consumer boycott of New Bedford stores.²⁶ Policemen, firemen, and their families shopped in nearby Brockton, Massachusetts, and claimed that the boycott cost New Bedford stores \$7,000.00 over one weekend.

The Work Slowdown and Speed-up: Traffic Tickets

Another device that calls public attention to economic or job grievances of the policeman is the traffic ticket slowdown or speed-up. A slowdown occurs where participating officers write few or no tickets, even for obvious traffic violations. The municipality has cause for alarm when a slowdown takes place, because the result is no deterrence against flagrant traffic offenders, creating a hazard to the driving public,²⁷ and probably more important, a loss of city revenues.

A ticket speed-up results when police officers write an inordinate number of tickets, even for traffic violations that are usually disregarded. Because of overzealous enforcement, this method creates a great deal of public inconvenience and resentment.²⁸

A potential ticket-writing tactic that has not yet been

used by police labor groups, but which was anticipated by police administrators during the 1967 Detroit police dispute is the whiplash approach. Officers stop writing tickets, and when ordered to resume normal ticket writing activity, write an excessive number of tickets for every conceivable traffic violation.²⁹ This method places officers in the position of not being in violation of an order to resume normal ticket writing which generally follows a ticket slowdown, and of creating a rash of citizen complaints, embarrassing the municipality. A modified whiplash tactic was employed recently by the Patrolmen's Benevolent Association of Suffolk, County, New York, when the county refused to grant a pay raise based on a fact finder's recommendation. Ticket writing to the general public decreased by approximately ninety per cent per day, while tickets were issued to county highway department trucks violating traffic laws.³⁰

The Work Stoppage: Strikes, Sick Calls, Mass Resignations

When negotiations, mild forms of protest, and work slowdowns fail to convince the municipality of the need for improved economic or job benefits, police employee organizations resort to the ultimate weapon, the work stoppage. A work stoppage constitutes a complete or partial breakdown in police service where all or some police officers wilfully fail to perform their duties. Four forms of work stoppage can be identified: the strike; sick call, more commonly called the "blue flu" or "Hong Kong" flu; mass resignation; and, attendance of professional seminars.

Police employee organizations are hesitant to simply walk off the job and call their action a strike. Many states and cities, and all police rules and regulation handbooks prohibit a strike.³¹ Policemen do not want to be placed in

the position of conducting themselves in a patently illegal manner. A strike jeopardizes their employment status and often alienates the citizenry at a time when public support can be the force compelling the public employer to acquiesce to police demands for improved benefits. Among the cities where police strikes have occurred during the past decade are Joliet, Illinois;³² Vallejo, California;³³ Oakland, California;³⁴ and, Montreal, Canada.³⁵ No American police strike during this period resulted in significant property damage or loss of life as in the Montreal Police Strike.

There is a broad spectrum of opinion as to whether policemen should have the right to strike. Police administrators are in virtually unanimous agreement that the police should, under no circumstances, be permitted to strike.³⁶ The justifications for this attitude are that a police strike leaves the community defenseless, is illegal, and is not consistent with police professionalism.³⁷

Police labor leaders are reluctant to advocate the strike, some sincerely repudiating this conduct,³⁸ and others seemingly paying lip-service to the no-strike concept. There are some policemen who feel that irrespective of the public importance of the job, there is no distinction between public and private employment, and that the police have a constitutional right to strike equal with that of private employees.³⁹ Two prominent New York labor attorneys, Theodore Kheel and Donald Wollett, take the position that public employees are at a bargaining disadvantage with their employer, and this inequity can only be cured by granting them the strike.⁴⁰ Kheel and Wollett make no distinction between non-sensitive and sensitive areas of public employment, as do some authorities who feel that police and firemen should be precluded from striking, while other public employees could be granted a limited right to strike after bargaining

with the public employer has failed.⁴¹

Due to the adverse legal ramifications of striking, police labor groups have developed more sophisticated forms of work stoppage. The sick call or "blue flu" was conceived by the Pontiac Police Officers Association during its 1966 work stoppage in protest of wage scales.⁴² "Blue flu" involves participating officers calling in sick, with the alleged illness usually being subjective in nature, such as a headache or bad back.

Many other police organizations have employed "Blue flu" since 1966, including the Detroit Police Officers Association in 1967;⁴³ and, the Middletown, Ohio Police;⁴⁴ the Elyria, Ohio Police;⁴⁵ Michigan City, Indiana Police;⁴⁶ the police in five Illinois towns of Cicero, Chicago Heights, Hillsboro, Des Plaines, and Harvey;⁴⁸ the Patrolmen's Benevolent Association in Yonkers, New York;⁴⁹ and, the New Orleans Police,⁵⁰ all in 1969. When a subjective ailment such as a headache or backache is claimed by an officer, it is virtually impossible for police and city administrators to prove malingering. In discussing his department's 1968 "Blue flu" epidemic, a Detroit police official described the difficulty of proving malingering by an officer: (participating officers reported to an examination by city doctors) "It looked like the Battlefield of Antietam. Some of the finest performances of the year were given. Some of the officers should have been awarded Oscars."⁵¹

In the mass resignation, participating officers tender their resignation. This method is an especially effective tactic in many jurisdictions because it avoids the statutory or departmental sanctions imposed for striking or malingering. When an officer resigns, he is doing nothing improper, so long as he follows standard civil service procedures in

doing so. Some of the more recently enacted state laws prohibiting strikes have been drafted to encompass mass resignations by making it a punishable offense for public employees to engage in any concerted activity resulting in a work stoppage for the purpose of achieving better economic benefits or job conditions.⁵² As in the "Blue flu" situation, however, it is difficult to prove a violation, because of the virtual impossibility of showing a subjective intent to conduct a work stoppage rather than resign in good faith.

A unique form of work stoppage was conducted by the Youngstown, Ohio Police and Fire Departments in 1967 to achieve better wages. Officers walked off the job and claimed to be attending a professional seminar to improve their professional knowledge.⁵³

In most police work stoppages, there is a demand by the officers involved, that not only must their financial or job demands be met, but also all participating officers must be permitted to return to work without any sanctions imposed. This tactic gives police officers the protection of being received back in toto.

Distinguishing Work Stoppages

The strike, sick call, and mass resignation all involve a form of work stoppage. When used, a complete or partial breakdown in police service is the result. Some employee organizations attempt to distinguish between a strike and other forms of work stoppage. When asked in November, 1969, whether the no-strike clause of the newly created International Brotherhood of Policemen applies to job actions such as a sick call, John Cassese, former New York Police PBA President

and now active leader of the new union, stated that "... a job action is not a strike." ⁵⁴ A few months earlier, however, Cassese stated at a Washington labor meeting that a 1968 New York City Police "Blue flu" epidemic was illegal under the strike provisions of New York's collective bargaining law. ⁵⁵

A spokesman for the American Federation of State, County and Municipal Employees distinguishes between strikes and sick calls, saying that under certain circumstances, a "Blue flu" might not be improper. ⁵⁶ AFSCME distinguishes "Blue flu" as a work slowdown rather than stoppage.

The viewpoint toward sick calls expressed by John Cassese and AFSCME appears to be an expedient subterfuge for circumventing the illegality of a strike. A sick call by police officers has the equivalent effect of a strike, a complete or partial loss of police service. In both situations, participating officers are wilfully failing to perform their duties.

From The Administrator's Viewpoint: Dealing With Police Labor Organizations

Police and city administrators having to deal with police employee organizations have taken diverse approaches to negate the powerful effect of these groups. Departmental orders prohibiting membership in any police organization, ⁵⁷ or in an organization associated with organized labor, ⁵⁸ picketing, ⁵⁹ or partisan political activity have been imposed by police chiefs in an attempt to stifle labor activities. Because of their questionable constitutionality, these types of regulations are not sound. ⁶⁰ When ticket-writing irregularities have occurred, administrators have established ticket writing quotas, and in the case of the

1967 Detroit police dispute, made mass transfers of the ticket-writing offenders to other divisions within the department. ⁶¹ When work stoppages have occurred, some police administrators have permanently suspended the officers engaging in the stoppage. ⁶² This approach has proved to be impractical, however, because permanent suspensions undermine the effectiveness of already understaffed police departments, ⁶³ exacerbate the labor-management tensions existing as a result of the work stoppage, ⁶⁴ and are easily subject to being voided in court due to the strict legal standards of proof. ⁶⁵ Due to the difficulties created by harsh retaliatory measures, many police administrators have declined to take action against officers engaging in work stoppages. ⁶⁶

Effectiveness of Police Labor Organization Activities

The use of legal, quasi-legal and patently illegitimate activities by police to achieve better economic and job conditions have been spectacularly successful during the past decade. The New York City Patrolmen's Benevolent Association, characteristic of the new militant police labor organization, was instrumental in achieving significant gains for its membership between 1958 and 1969. The salary of patrolmen increased from \$5,800 to \$11,000 per year. Death benefits increased from \$400 to \$16,500, longevity pay was implemented, eleven paid holidays were secured, health and welfare programs were created, increased retirement benefits were secured, and shift differential pay was obtained. ⁶⁷

The nation-wide increase in policemen's salaries between 1964 and 1969 has been considerable, especially in light of salary increases of white collar and factory workers during the same period.

Although factors other than the activities of police

employee organizations share some of the credit for increased benefits, such as the prevailing climate of law and order and mandated state increases in training and personnel standards,⁶⁸ the major impetus for change has followed from the organizations themselves. Looking back on the sixties, police employee groups can feel reasonably satisfied that their efforts resulted in significant gains for the police, and the prospects for achieving even greater heights in the seventies are bright indeed.

Notes

1. Collective bargaining between the public employer and employee can usually take place only pursuant to legislative authority. See Chapter Four for a discussion of collective bargaining laws in the various states.
2. Hervey Juris, University of Wisconsin, "The Legal Status of Municipal Police Employee Organizations", In press, 1969, pp. 11-12.
3. Ibid., p.3. The survey questionnaire was sent to all police departments in cities with populations of 50,000 or more, and to one-in-five cities with a population of less than 50,000. Out of the 467 questionnaires sent, 347, or 74%, of the police departments responded.
4. See Chapter IV for a discussion of collective bargaining laws.
5. The three states that have binding arbitration statutes for policemen are Pennsylvania, Michigan, and Rhode Island.
6. J. Joseph Loewenberg, Temple University, "Emerging Sectors of Collective Bargaining, Seminar No. 3, Labor Relations for Policemen and Firefighters", In press, 1968, p.35.
7. Ibid.
8. Ibid.
9. Ibid.

10. See Wisconsin Statutes Annotated, Section 111.70 (3) (i).
11. Juris, "Police Personnel Problems", p.14.
12. Loewenberg, "Emerging Sectors of Collective Bargaining", p.47.
13. Interview with John Flood, President, Cook County Police Officers Association; Oct. 26, 1969, Chicago, Illinois.
14. Loewenberg, "Emerging Sectors of Collective Bargaining", p.49.
15. *Ibid.*, p.48.
16. *Ibid.*, p.50. See page 50 for a discussion of the effects of legislative lobbying.
17. Interview with Herbert Haber, Director, Office of Labor Relations, New York City; Nov. 3, 1969, New York, New York.
18. Sergeant Floyd Nevling, "The Police Pay Problem: A Solution", Law and Order, Oct. 1969, p.18.
19. "Slowdown Begun by New York City's Firemen; Police to Picket", New York Times, Apr. 7, 1967, p.1.
20. Interview with John Nichols, Deputy Superintendent of the Detroit Police Department; Oct. 27, 1969, Detroit, Michigan.

21. "Omaha Officers State Demonstration Against Low Pay Treatment", Law Officer, Fall, 1969, p.62.
22. International Conference of Police Associations, "Name Tags", Notes from the International Office, Aug. 1969, p.23.
23. See, for instance, PBA of New York City v. City of New York, 282 NY 2d 593 (1968).
24. ICPA, "Fourth Platoon Deployed in New York City as PBA Loses Court Plea", Notes from the International Office, June 1969, p.4.
25. ICPA, "Michigan Court Declares Detroit Ordinance Imposing Residency Requirement Unconstitutional", Notes from the International Office, Dec. 1969, p.5.
26. ICPA, "Police and Firemen Seeking Raise, Try Consumer Boycott", Notes from the International Office, June 1969, p.10.
27. Interview with John Nichols, Deputy Superintendent of the Detroit Police Department.
28. Nevling, "Police Pay Problem: A Solution", p.18.
29. Interview with John Nichols, Deputy Superintendent of Detroit Police Department.
30. Law Enforcement Legal Unit, "Police Labor Relations News", Squad Car Lawyer, a Journal for Police Legal Advisors, Vol. 2, Jan. 1970, p.490.

31. See, for example, Ohio Revised Code, "Labor in Industry", Chap. 4117, Sec. .01, et al.
32. Loewenberg, "Emerging Sectors of Collective Bargaining", p.42.
33. ICPA, "Police Seek Union", Notes from the International Office, Aug. 1969, p.14.
34. Al Stump, "Chief Davis and the Law", Los Angeles Herald-Examiner, Nov. 30, 1969, p. A-3.
35. See "Boston revisited: the Montreal Police Strike of 1969", Chap. 1.
36. Interview with William Hanger, Chief of Pontiac Police Department; Oct. 27, 1969, Pontiac, Michigan
37. See IACP, Police Unions, for these ideas throughout the publication.
38. Interview with Kenneth Davidson, President, Pontiac Police Officers Association; Oct. 27, 1969, Pontiac, Michigan.
39. Interview with John Flood, President, Cook County Police Officers Association; Oct. 26, 1969, Chicago, Illinois.
40. The Bureau of National Affairs, Inc., Public Employee Organization and Bargaining, Washington, 1968, pp.3-4.

41. Governor's Commission to Revise the Public Employe Law of Pennsylvania, "Report and Recommendations", June 1968, p.5.
42. Interview with Kenneth Davidson, President of Pontiac Police Officers Association.
43. Interview with John Nichols, Deputy Superintendent of Detroit Police Department.
44. ICPA, "Middletown, Ohio, Police Stage Two-Day Sick-Call", Notes from the International Office, May 1969, p.10.
45. ICPA, "Elyria Police End Strike to Fight Wave of Crime", Notes from the International Office, July 1969, p.10.
46. ICPA, "Police Sick Calls Hit Chicago Area Suburbs", Notes from the International Office, Aug. 1969, p.11.
47. Ibid.
48. Law Enforcement Legal Unit, "Police Labor Relation News", Squad Car Lawyer, a Journal for Police Legal Advisors, Vol. 2, Jan, 1970, p.490.
49. ICPA, "Yonkers Policemen End Sick-Call", Notes from the International Office, Dec. 1969, p.8.
50. Ibid.
51. Interview with John Nichols, Deputy Superintendent of the Detroit Police Department.

52. See, for example, *South Dakota Compiled Laws Annotated*. Chapter 88, Section 1 (2)
53. Loewenberg, "Emerging Sectors of Collective Bargaining", p.42.
54. David Burrham, "Police Bar Strikes in Proposed Union", *New York Times*, Nov. 3, 1969, p.4.
55. *Ibid.*
56. Interview with Donald Wasserman, American Federation of State, County and Municipal Employees; Oct. 28, 1969, Washington, D.C.
57. See *State Lodge of Michigan v. City of Detroit*, 27 N.W. 2d, 612, 1948, in which the Detroit Police Commissioner successfully prohibited officers from belonging to the FOP.
58. See *Butler v. Monaghan* 28 L.R.R.M., where New York City Police Commissioner prohibited membership in a labor union, this prohibition being upheld by the New York Supreme Court.
59. Tucson Police Department Rules and Regulations 6-9.519 states; "Nor will any member or civilian employee participate in any picket line or take an active part in any demonstration activities unless permission has been granted by the Chief of Police for such act."
60. See Chapter V, "The Right to Organize and Join", for a discussion of constitutional questions related to prohibitions of this nature.

61. Interview with John Nichols, Deputy Superintendent of the Detroit Police Department.
62. *Ibid.*
63. Loewenberg, "Emerging Sectors of Collective Bargaining", p.43.
64. Interview with John Nichols, Deputy Superintendent of the Detroit Police Department.
65. Loewenberg, "Emerging Sectors of Collective Bargaining", p.43.
66. *Ibid.*
67. Speech by John Cassese, past president, New York City PBA, June 18, 1969.
68. Personal communication from Thomas E. Joyner, Director of Public Employment Research, New York State Public Employment Relations Board, June 17, 1969.

Chapter IV

The Law of Collective Bargaining and Striking

This chapter examines all statutory and case law in the 50 states and Washington, D.C., relating to public employee collective bargaining rights and striking. Considerations of public employees' right to organize or join organizations of their own choosing is taken up in Chapter V.

Alabama

Code of Alabama, Title 37, Article 7, Section 450 (1), (2) gives state and municipal firefighters the right to join any labor organization so long as that organization does not advocate the right to strike. Pursuant to this statute, firefighters have the right to present proposals to their employer relative to wages and other conditions of employment. The statute prohibits firefighters from striking or asserting the right to strike.

An Alabama Supreme Court case has held that absent constitutional or statutory authority, a public agency cannot bargain with and enter into an enforceable agreement with employee organizations regarding wages, hours, and other terms and conditions of employment. International Union of Operating Engineers, Local 321 AFL-CIO vs Waterworks Board of Birmingham, Alabama, 55 L.R.N.N. 2950 (1964)

No other public employee bargaining laws are presently in effect in Alabama. During the 1969 legislative session a bill was submitted to the Legislature which would have given state, county, and municipal employees the power to organize for the purpose of negotiating with their employer (H.B. 345).

Collective bargaining in this bill was mandatory on the part of the public employer. When the parties failed to reach an agreement, the statute permitted arbitration on all issues except wages. This bill failed to pass.

Alaska

Alaska statutes, Chapter 40, Section 23-40.010 et al gives state political subdivisions the right to enter into a contract with labor organizations concerning terms and conditions of employment. The statute, however, states that the public employers are not required to do so.

A collective bargaining statute for all public employees was introduced into the 1969 Alaska Legislature, but was held over in the Local Government Committee for further consideration in the 1970 session. This law mandated collective bargaining on the part of the public employer, and when negotiations failed to produce an agreement, mediation, fact-finding, and compulsory, advisory arbitration could be used.

Arizona

There is little legal authority in Arizona pertaining to collective bargaining in the public sector. The only case in this area, Local 266 vs Salt River Project Agricultural Improvement District, 275 P 2d 393 (1954), is of questionable value because it involves employees of an agricultural improvement district. The case held that because of the district's statutory power to "make and execute any necessary contracts", the district could enter into collective bargaining agreements with its employees.

One interesting feature of this case is that the court stated that employees of the district may strike to enforce execution of a collective bargaining agreement made with their employer. The impact of this case on state, county, and municipal employees in Arizona is unclear.

Arkansas

This state has no statutes relating to public employment collective bargaining. The lone case holds that absent statutory authority, a municipality is under no duty to bargain collectively with employees on wages, hours, and working conditions. City of Fort Smith vs Arkansas State Council 38 433 SW 2d 153.

California

California Government Code, Section 3500 et al gives all public employees the right to organize and join employee organizations for the purpose of bargaining with their employer on matters of wages, hours, and other conditions of employment. The statute specifically prohibits bargaining on the "merits, necessity, or organization of any service or activity provided by law or executive order." The public employer is required to meet and bargain in good faith with employee organizations. When bargaining breaks down, the law provides for the mediation of disputes.

This statute erases a long line of past California cases that held public employers could not enter into collective bargaining agreements with their employees without the statutory authority to do so. Nutter vs City of Santa Monica, 168 P 2d 741 (1946); City of Los Angeles vs Los Angeles Building

Construction Trades Council, 210 P 2d 305 (1949); State of California vs Brotherhood of Railway Trainmen, 232 P 2d 857 (1951); and International Association of Firefighters vs City of Palo Alto, 21 California Reporter 219 (1963)

One interesting California case has interpreted certain bargaining legislation as giving public employees the right to strike. Los Angeles Metropolitan Transit Authority vs Brotherhood of Railway Trainmen, 355 P 2d 905. The Los Angeles Metropolitan Transit Authority Act provided that employees may use "concerted activities for the purpose of collective bargaining and other mutual aid or protection." The California Appellate Court held that this provision of the Act gave transit authority employees the right to strike.

Colorado

A 1962 Colorado Appellate case held that a public employer has no right to enter into a collective bargaining agreement absent an express charter provision authorizing it to do so. Fellows vs Catronica 377 P 2d 547 (1962)

House Bill 1015 was introduced into the 1969 Colorado General Assembly Session but failed to pass. This statute was unique in that it permitted public employees to strike after negotiations with the public employer and all impasse procedures had failed. The Governor was empowered to postpone a strike for 40 days where the health or safety of the public threatened. Beside requiring the public employer to bargain with the employee organization, the statute also provided for mediation and fact-finding. The law also contained unfair labor practices.

Connecticut

Connecticut General Statutes Annotated, Section 7-467 *et al* applies to municipal employees only. The public employer is required to bargain with the employee organization on wages, hours, and other conditions of employment. When negotiations fail to produce an agreement, mediation, fact-finding, and advisory arbitration are available to the parties. Arbitration may also be used to resolve disputes concerning the interpretation of contractual agreements between public employers and employees.

Three special features of this law are a provision for unfair labor practices, all police employees must bargain in one unit, and the guidelines for determining supervisory employees are not necessarily applicable to police and firemen.

Delaware

This state has a collective bargaining law for state, county, and municipal employees. Delaware Code Annotated Title 19, Chapter 13, Section 1301 *et al*. In the case of municipalities, the legislative body must approve the city falling within the scope of the Act. Public employers are required to engage in collective bargaining on issues related to employment relations. Where a dispute cannot be resolved through negotiation, mediation and advisory arbitration can be employed except in the case of a salary dispute. The law prohibits striking by all public employees.

District of Columbia

Metropolitan police are prohibited from striking or conducting themselves in any other way which will interfere with the efficient administration of the police department. D.C. Code Annotated, Section 4-125. A violation of this ordinance is a misdemeanor punishable by a fine of not more than \$300 or imprisonment for not more than six months. The ordinance effectively prevents mass resignation as a form of work stoppage by requiring an officer to give one month's notice of his intention to resign. Failure to give a month's notice is penalized by forfeiture of the officer's salary due him.

Federal Executive Order 11491 regulates collective bargaining between federal employees and their agency employer. This order replaces President John Kennedy's Executive Order 10988. When negotiations between the employer and employee fail to produce an agreement, the Federal Mediation and Conciliation Service must assist the parties in resolving the dispute. If this approach proves unsuccessful, the dispute is reviewed by the newly created Federal Labor Relations Council, which may take whatever action necessary to settle the impasse. The scope of bargainable issues is restricted under the federal executive order. Management retains the right to direct, hire, promote, and transfer employees; to assign, suspend, demote, discharge, or discipline employees; to relieve employees from their duties because of lack of work; to establish the mission, budget, organization, assignment of personnel, and methods of the agency. Federal employees are prohibited from striking or picketing.

Florida

Article 1, Section 6 of the Florida Constitution permits public employees to hold membership in any labor union or employee organization. The right to strike is denied in this constitutional provision. Public employees are also given the right to present proposals to their employer relative to salaries and other conditions of employment through their employee organizations.

Strikes by state, county, and municipal employees are prohibited by statute in Section 839.221 of Florida Statutes Annotated.

Although public employees are given the right to present proposals to their employer pursuant to Article 1, Section 6 of the Florida Constitution, collective bargaining is denied to them. In the case of Dade County vs Amalgamated Association of State Electrical Railway and Motor Coach Employees of America, 157 So 2d 176 (1963), the court held that without statutory authorization a public employer may not bargain collectively with employees.

Georgia

Georgia does not have bargaining legislation for the public sector. A 1962 case denied the Georgia Port Authority the right to enter into a collective bargaining agreement with its employees. International Longshoremen Association vs Georgia Port Authority, 124 SE 2d 733 (1962). Until such time as the Georgia Legislature passes a collective bargaining law, this case will prohibit the negotiation of public employment contracts.

A 1969 Georgia Attorney General's Opinion ruled that state employees can organize and join a labor union. The opinion stated, however, that state employees could not strike or

otherwise interfere with other employees in the performance of their duties. This opinion is consistent with a Georgia statute prohibiting state employees from striking, and containing strong sanctions against strikers. Code of Georgia Annotated, Section 89-1301 et al.

Hawaii

State, county, and municipal employees are prohibited from striking or inducing a strike. Hawaii Revised Statutes, Chapter 86, Section 1 et al. Violators of this prohibition may be dismissed, suspended, or reduced in rank. The strike provisions also provide injunctive relief.

Article 12, Section 2 of the Hawaii Constitution gives public employees the right to bargain collectively. There is no legislation to implement this constitutional provision, creating uncertainty as to how collective bargaining in the public sector should be administered. To correct this uncertainty, the Hawaii Legislature passed a resolution during the 1969 Legislative session to create a temporary commission for the purpose of studying public employment problems. House Concurrent Resolution 95. The Commission is empowered to make a report on labor problems in the public sector and to recommend legislation which would permit employees to bargain collectively.

Idaho

This state has virtually no authority regarding public employee bargaining problems. A 1967 case did hold that the Idaho Commissioner of Labor does not have the power to intercede in a dispute between a public employer and employee. Local Union 283 International Brothers of Electrical Workers

vs Robinson 423 P 2d 999 (1967). The basis for this decision was that the Commissioner of Labor is empowered only to intercede with respect to collective bargaining disputes in the private sector, and that his powers do not extend into matters of public employment.

Illinois

Illinois case law gives public employers and employees the power to engage in collective bargaining and negotiate an agreement. A 1966 Illinois Court of Appeals Case held that the legislative authority to enter into a collective bargaining agreement was not necessary. *Chicago Division of Education Association vs Board of Education*, 222 NE 2d 243 (1966). This case involved a bargaining situation between the school board and a teacher's employee organization. A private taxpayer attempted to intervene to prevent the Board of Education recognizing the employee organization for the purposes of collective bargaining.

Indiana

A 1944 Attorney General's Opinion addressed itself to the right of public employees to join a union and enter into collective bargaining agreements with their employers. Indiana Attorney General Opinion 55.

The opinion stated that public employees have the right to join any organization or union of their choosing. With respect to collective bargaining, however, the Attorney General said that although employee organizations may meet with their employer for the purpose of discussing matters of employment, any collective bargaining agreement negotiated

as a result of those meetings would have no binding effect. The basis for this holding was that legislative authority is necessary to sustain collective bargaining agreements in the public sector.

The 1969 Indiana Legislature did consider a law which would have given state, county, and local employees the right to bargain and enter into agreements with their employers. Senate Bill 303. This proposed law contained a restriction on the scope of bargaining to wages and hours only, a provision for a fact-finding, unfair labor practices, and a restriction on policemen to belong to employee organizations containing only policemen. This law did not pass the legislature.

Iowa

There is no legislation or case law pertaining to collective bargaining and striking in Iowa. Three Attorney General's opinions have indicated that Iowa's governmental units do not have the power to engage in collective bargaining and enter into binding agreements with their employees.

Four bills were proposed to the Iowa Legislature in 1969 relating to striking and collective bargaining, all of which were unpassed. Senate Bill 57 prohibited state, county, and municipal employees from striking. An interesting feature of this bill was that employees could join any labor union of their choosing, but the union could not represent employees for the purpose of bargaining for improved job conditions.

Three proposed bills would have given public employees the right to bargain and enter into agreements with their employers. Senate Bill 61 and House Bill 464 apply to all public employees, while Senate Bill 678 was applicable to

municipal employees only.

Kansas

1964 Kansas Supreme Court case held that collective bargaining contracts between public employers and employees are not valid. Wichita Public Schools Employees Union Local No. 513 vs Wichita, 397 P 2d 357 (1964). The court stated that until such time as legislation is enacted applying to the public sector, collective bargaining is only proper in private industry.

Four bargaining laws were introduced to the Kansas Legislature in 1969. One proposed bill, Senate Bill 383, applied to municipal employees when local legislative bodies voted to fall within the provisions of the act. This bill included fact-finding, mediation, and arbitration on interpretation of contract agreements. The other three featured legislation, Senate Bill 385, House Bill 1369, and House Bill 1573, gave collective bargaining rights to all public employees. None of these bills passed the legislature, but all were held over for consideration in the 1970 session.

Kentucky

The only Kentucky case even remotely concerned with public employment issues considered the question of whether public employers may refuse to recognize a public employee union as bargaining agent for the purpose of discussing grievance procedures. Firemen and Oilers vs Board of Education, 59 L.R.R.M. 2564 (1965). The court avoided the broader question of whether the school board was compelled to recognize the union for collective bargaining purposes

and held that it was permissible for the board to refuse to recognize the union as an exclusive bargaining agent. The tenor of this opinion would indicate that it would be equally permissible for a public employer to refuse to collectively bargain with employees.

Louisiana

Public transportation employees are permitted to enter into collective bargaining agreements with their municipal employers according to Louisiana Revised Statutes 23-890 et al. The scope of negotiations includes salaries, hours, pensions, and other conditions of employment. The municipal employer is required to negotiate with transportation employees. When the parties fail to reach an agreement through negotiations, the law compels arbitration on any and all issues in dispute. The decision of the arbitration board is binding upon the parties.

The Attorney General of Louisiana rendered an opinion in October of 1969 pertaining to the right of policemen to join labor unions and negotiate collective bargaining agreements with their employer. The opinion stated that law enforcement officers do have the right to join any organization of their choosing and to negotiate a contract with their employer. These rights are, says the Attorney General, applicable to all members of the department. This holding is contrary to most collective bargaining statutes, which prohibit police management from participating in, organizing, and negotiating. Finally, the opinion said that these rights do not permit policemen to strike, and when a strike does occur, the officer has committed a "willful neglect of duty."

Maine

Municipal employees may organize for the purpose of bargaining collectively with their employers under Maine Revised Statutes, Title 26, Chapter 9A, Section 961 et al. The statute contains unfair labor practice provisions and provides for mediation and fact-finding when negotiations fail to produce an agreement. Voluntary arbitration is also available, being advisory as to salaries, pensions, and insurance issues, and binding as to all other questions in dispute.

The Maine Firefighters Arbitration Law was repealed during the 1969 legislation session. Formerly, Maine Revised Statutes, Title 26, Section 980, Chapter 424. This law is superseded by the municipal collective bargaining statute.

Maryland

Maryland has no cases directly concerned with collective bargaining or striking of public employees. A number of bills were introduced into the Maryland legislature during the 1969 session in order to correct this deficiency. Senate Joint Resolution 25 requested the Governor to appoint an Advisory Commission on Labor Management Policy for Public Employees in the State of Maryland. The resolution proposed that the Commission study employee-employer relations in the public sector and make any recommendations necessary to improve these relations.

Three bills were introduced pertaining to public employment collective bargaining, including House of Delegates Bill 563, House of Delegates Bill 830, and House of Delegates Bill 321. Two proposed pieces of legislation dealt with the

problem of strikes. House of Delegates Bill 1002 gave the head of any political subdivision the power to seek injunctive relief in the event of work stoppages. House of Delegates Bill 1124 prohibited strikes in the public sector, and required that striking employees could only be reinstated on condition that they not receive additional compensation for one year and lose Civil Service protection for one year. All of these bills failed to receive the required number of votes for passage.

Massachusetts

Massachusetts Law Annotated, Chapter 763, Section 178F gives state employees the right to join a labor organization for the purpose of negotiating a contract with their respective state agency. When a dispute arises pursuant to this section, it may be resolved through fact-finding. Unfair labor practices by the state employer and employee organizations are prohibited.

Municipal employees are given bargaining rights under Sections G through N of the same chapter. The local employer, as in the case of state employers, must bargain with the employee's designated bargaining agent. When the parties failed to reach an agreement the dispute goes to fact-finding, supervised by the State Board of Arbitration and Conciliation. When there is a dispute as to the terms of an agreement between the employer and employee, advisory arbitration is available. Other features of the municipal bargaining act include unfair labor practices and a prohibition against striking.

Michigan

Michigan has a bargaining statute for all public employees. Michigan Statute Annotated, 17.455 (1) et al. This law permits employees to negotiate on wages, hours, and other conditions of employment and requires the public employer to bargain in good faith. The failure to resolve a dispute results in the issues being submitted to mediation. Strikes are prohibited under this statute.

During the 1969 session of the Michigan legislature a bill was passed pertaining to impasse procedures for police and firemen. Michigan Annotated Statutes, Section 17.455 (31 et al.). When mediation and fact-finding fail to produce an agreement, the parties may request arbitration on any and all issues in dispute. The decision of the arbitration panel is binding, and may only be reviewed in circuit court when a claim is raised that the arbitration panel exceeded its jurisdiction, that the decision was not supported by the evidence, or fraud was involved. The Police and Firemen's Arbitration Law expires June 30, 1972, at which time legislators will apparently evaluate the success of the act.

Minnesota

All public employees in Minnesota may bargain with their employer. Minnesota Statutes Annotated, Section 179.50 et al. This right is defined in terms of meeting and concurring rather than bargaining with the employer. When the parties fail to reach an agreement on the matters at issue, the dispute can be referred to a labor conciliator at the request of either party. A conciliator is equivalent to a mediator. When the dispute has still not been resolved by conciliation, it may be referred to an adjustment panel. The

panel, analagous to an arbitration panel, can conduct hearings on any and all issues in dispute, and render advisory recommendations which must be presented before the public employer legislative body for approval. The statute prohibits strikes by all public employees.

Mississippi

This state has no laws or cases pertaining to bargaining and striking in public sectors.

Missouri

Except for law enforcement personnel and teachers, public employees are permitted to join any labor organization for the purpose of presenting proposals to their employers pertaining to salaries and other conditions of employment. Vernon's Annotated Missouri Statutes Section 105.500 et al. The public employer must meet and confer with public employee organizations. The Missouri Statute prohibits strikes by public employees.

The bargaining statute reversed a line of earlier Missouri cases holding that absent statutory authority, negotiating a contract between public employer and employee is prohibited. City of Springfield vs Clouse, 206 SW 2d 539 (1947); Glidewell vs Hughey, 314 SW 2d 749 (1958)

Montana

Montana has no authority on collective bargaining and striking in the public sector. Two bills were introduced into

the 1969 session of the Montana legislature, both of which died in Committee. Senate Bill 256 granted public employers and employees the right to bargain collectively. House Bill 512 prohibited state agencies from entering into collective bargaining contracts with labor unions.

Nebraska

The 1969 Nebraska legislature passed a law giving state, county, and municipal employees the right to negotiate a contract with their employers for the first time. Reissue Revised Statutes of Nebraska 48-801 et al. The public employer in this statute is not required to negotiate with an employee organization. The scope of bargainable issues includes all terms and conditions of employment. Fact-finding is also available through the services of the Court of Industrial Relations.

This statute overruled a prior Nebraska case which indicated that the absence of legislative authority means that public employers are not compelled to bargain with employee organizations.

Nevada

County and city employees are permitted to organize and join employee organizations to bargain with their employer. The public employer is required to negotiate with the organization. Law enforcement officials are permitted to belong only to organizations comprised of other law enforcement officials. When an agreement cannot be reached between the parties, mediation and fact-finding may be employed to resolve the dispute. The impasse procedures are supervised by the

Local Government Employee Management Relation Board. Strikes by employees under this act are not permitted.

Two bills were introduced in 1966 in the Nevada legislature, both of which failed to pass. Senate Bill 407 concerned bargaining for all public employees, and included voluntary binding arbitration on any and all issues in dispute. Assembly Bill 717 also provided collective bargaining rights for public employees, with mediation and fact-finding impasse procedures available.

New Hampshire

New Hampshire Revised Statutes Annotated, Chapter 31, Section 3, gives the towns the discretion to recognize employee unions and to enter into collective bargaining agreements with these organizations.

New Mexico

The lone case in New Mexico holds that where there are no conflicting ordinances or legislation with respect to merit system personnel policies, the public employer and employee may bargain with respect to those matters not covered by such ordinances or legislation. The International Brotherhood of Electrical Workers vs Town of Farmington, 405 P 2d 233 (1965). This case is of virtually no use to public employees and employers interested in negotiating a contract, because most governments establish salaries and other financial benefits by ordinance or statute.

In 1969 a bill was introduced to the legislature giving all public employees the right to bargain with their employers. The public employer was required to enter into negotiations.

If negotiations failed to produce an agreement, the parties could submit the dispute to mediation or to voluntary advisory arbitration. This bill was not passed.

New Jersey

Article 1, Section 19 of the New Jersey Constitution gives all public employees the right to organize for the purpose of presenting grievances and proposals to their employer. This provision has been interpreted as not giving public employees the right to strike. Donevero vs Jersey City Incinerator Authority, 182 A 2d 596 (1962). Another case interpreted this constitutional provision as not giving public employees the right to engage in collective bargaining without legislative authority. New Jersey Turnpike Authority vs American Federation of State, County and Municipal Employees, 200 A 2d 134 (1964).

State, county, and municipal employees were given the statutory authority to bargain in 1968. New Jersey Statutes Annotated, Chapter 303 13A et al. Public employers must bargain with employee organizations, and the law requires that a written grievance procedure be negotiated between the parties. Law enforcement personnel may only join organizations that have membership composed of other law enforcement personnel. Mediation and fact-finding are available in the event that a dispute is not resolved.

New York

New York's Taylor Act, cited as McKinney's Consolidated Laws of New York, Civil Service Law, Section 200 et al., conforms to the standard public employee bargaining act, giving

employees the right to organize for the purpose of negotiating a contract and requiring that the public employer bargain. Impasses are resolved through mediation and fact-finding. The Taylor Act prohibits striking by public employees, and imposes a fine or imprisonment for violators. The act is unusual in that it permits municipalities to create their own collective bargaining legislation as well.

North Carolina

This state prohibits governmental bodies from negotiating a contract with a labor union. General Statutes of North Carolina, Section 95-97 et al. Any contract of this nature is null and void. Violation of the provisions of this act is a misdemeanor.

North Dakota

Teachers are given the power to organize and bargain in this state. North Dakota Century Code Annotated, Chapter 15-38.1. Bargaining is required of the public employer at the request of the teacher employee organization. When the parties reach an impasse, mediation and fact-finding are also available.

Ohio

Ohio prohibits collective bargaining in the public sector by case law. In the case of Building Service and Maintenance Union Local 47 vs Saint Luke's Hospital, 227 NE 2d 265 (1967), the court held that without legislative authority, public employers are under no obligation to bargain collectively and

enter into a contract with their employees.

Public employees in Ohio are prohibited from striking. Ohio Revised Code, Labor and Industry, Chapter 4117, Section .01 et al. A public employee engaging in a strike can be terminated from his employment, but can be reinstated on condition that his compensation not exceed that received by him prior to the strike, that he receive no additional compensation for one year, and that he lose all civil service protection for two years.

The Ohio legislature considered a number of bills in 1969 session related to public employee bargaining. House Bill 88 pertained to the right of firefighters to engage in collective bargaining, while House Bill 603 considered the same rights for policemen. Both of these laws contained compulsory, binding arbitration. Two bills which extended collective bargaining rights to all of Ohio public employees were House Bill 368 and House Bill 670. All of these bills failed to pass during the 1969 session.

Oklahoma

This state has no statutes or cases pertaining to collective bargaining or striking.

Oregon

All public employees may join any organization of their choosing for the purpose of bargaining. Oregon Revised Statutes, Section 243.710 et al. The public employer is not compelled to bargain. A dispute between the parties may be resolved through fact-finding.

Professional or practical nurses working in health care

facilities are given an independent right to bargain collectively. Oregon Revised Statutes 662.715. The legislature felt it was of paramount importance that employee relations in health care facilities be regulated, because the threat of work stoppages would jeopardize the dependable care of the ill and infirm. Employees falling within the provisions of this act are prohibited from engaging in a strike or work stoppage. The act also has unfair labor practices.

Oregon Revised Statutes 342.450 et al regulates labor relations between teachers and school boards. Teachers are permitted, either individually or by committee, to confer, consult, and discuss matters pertaining to salaries and other economic issues with their respective district school board. When a dispute over economic issues arises between teachers and a school board, the services of consultants may be sought to resolve the impasse.

Pennsylvania

Policemen and firemen are the only public employees in Pennsylvania permitted to bargain collectively for improved salaries, hours, pensions, and other working conditions. Purdon's Pennsylvania Statutes Annotated, Chapter 43, Sections 217.1 et al. When the employer and police or fire organizations fail to reach an agreement, the dispute may be submitted to arbitration at the request of either party. The findings of the arbitration panel are binding on both parties as to any and all issues in dispute.

Purdon's Pennsylvania Statutes Annotated, Title 55, Section 563.2 regulates labor relations between Port Authority employers and employees. Collective bargaining is not

mandatory upon the employer. Once negotiations have begun, however, and the parties cannot arrive at a satisfactory conclusion, arbitration is compulsory. The decision of the arbitration board is binding on the parties as to all issues in dispute.

Three bills were introduced into the 1969 legislative session which would have given all public employees the right to bargain collectively. House Bill 1333, House Bill 1344, and Senate Bill 355. House Bill 391 provided injunction guidelines for public employers to follow in the event of a work stoppage by their employees. All of these bills failed to pass.

Rhode Island

State employees in Rhode Island are given the right to organize for the purpose of bargaining collectively for improved wages, hours, and other conditions of employment. General Laws of Rhode Island, 36-11-1 et al. This law excludes state police from the scope of the act. State agencies are compelled to bargain with employee organizations.

Municipal police and firemen both have collective bargaining rights. General Laws of Rhode Island, 28-9-2.2 et al. Arbitration is compulsory when a dispute between the parties is not resolved. The arbitration panel's decision is binding on both parties on any and all issues. Rhode Island is the only state in the country with a compulsory binding arbitration law on all issues including salaries and other economic questions. One interesting feature of the arbitration law is that the arbitrators, when considering a wage increase for police or firemen, may consider the wage rates of skilled employees in local

building trades and industry.

South Dakota

All public employees are given the right to organize or join an employee organization for the purpose of negotiating a contract. South Dakota Compiled Law Annotated, Section 3-18-1 et al. The public employer must meet an employee organization for the purposes of collective bargaining. This law does not provide for the resolution of impasses, having no provisions for mediation, fact-finding, or arbitration.

House Bill 846 introduced into the 1969 legislative session gave municipal police and fire departments the right to bargain, and provided voluntary binding arbitration on any and all issues in the event that the employer and employee organizations were unable to negotiate a contract. The proposed bill failed to receive approval from the South Dakota Legislature.

Tennessee

Tennessee prohibits collective bargaining and striking by case law. In Weakley County Municipal Electric System vs Vick, 309 SW 2d 792 (1958) the Tennessee Supreme Court held that the wages and working conditions of public employees may only be determined by a legislative body, and that public employers are therefore without authority to enter into a collective bargaining agreement with their employees. In City of Alcoa International Brotherhood of Electrical Workers, 308 SW 2d 749 (1958) it was held that public employees may not strike to compel their employer to enter into a collective bargaining agreement, because such conduct

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was unlawful and contrary to the public policy of the state.

Texas

The public policy of Texas concerning employee relations in the public sector is expressly stated in Vernon's Civil Statutes Texas Annotated, Article 5154C. This law states that it is against the public policy of the state for public employers and employees to enter into collective bargaining agreements regarding wages, hours, and terms of employment. The law also prohibits public employers from recognizing an employee organization as a bargaining agent for the purposes of negotiating a contract. The statute punishes strikes by public employees, with the offending employee losing all Civil Service and employment rights for any violations thereof. The statute does not restrict the type of organization to which a public employee may belong.

A Texas Appellate case considered the question of whether picketing is a strike under Article 5154C. Southern Atlantic Longshoremen vs Harris County Naval District, 358 SW 2d 664 (1962). The court held that where the picket line causes other workers to be absent from work because they refuse to cross the line, the picket was an inducement to strike. The statute was construed as prohibiting the inducement to strike as well as striking itself.

Senate Bill 69, introduced into the 1969 legislative session, proposed to give firemen in cities with populations over ten thousand the right to mediate disputes with their employer. This law failed to get through the legislature.

Utah

This state has no statutory provisions or cases concerning contract negotiations and striking in the public sector.

Vermont

State employees in Vermont have available a collective bargaining law. 23 Vermont Statutes Annotated, 901 et al. State police are specifically included within the scope of this act. The law is very explicit as to what are and are not bargainable issues. Bargainable issues include wage scales, work schedules, vacation or sick leave, working conditions, overtime practices, and Civil Service rules. Non-negotiable issues include the statutory mandate and goals of the agency and utilization of personnel. When a dispute arises, the parties may make use of mediation and fact-finding.

Virginia

All public employees in Virginia are prohibited from striking, and persons violating this law are ultimately terminated for 12 months thereafter. Code of Virginia, Section 40-65 et al. This statute does not provide for the striking employee to be rehired, except after a 12 month period.

Washington

Public utility and port district employees are given the right to bargain collectively with their respective employers. Revised Code of Washington Annotated, 54.04.170 (Public Utilities) 53.18.010 et al (Port Districts). In the case of port district employees, a dispute as to who will be the exclusive bargaining agent is submitted to binding

arbitration.

All public employees are given collective bargaining rights by a 1969 statute. Revised Code of Washington Annotated, 44.56.010 et al. The public employer is required to bargain, and the statute contains unfair labor practice provisions. A distinctive feature of this law is that it creates an Interim Committee on Public Employees Collective Bargaining, which is empowered to study the act, its operation, its efficacy as to furthering labor management relations in the public sector and, to submit a report to the Governor and legislature recommending any further action or changes that should be taken with respect to the law.

West Virginia

West Virginia does not have collective bargaining legislation or cases considering public employment issues.

Wisconsin

State and municipal employees are permitted to bargain collectively pursuant to two separate statutory provisions. Under Wisconsin Statutes Annotated, Section 111.80 et al., state employees are afforded this right, and the agency employer is compelled to bargain. The law contains unfair labor practices and attempts to resolve impasses through mediation and fact-finding.

Municipal employees may negotiate a contract with their employer according to the guidelines of Wisconsin Statutes Annotated, Section 111.70. Law enforcement personnel are excluded from the scope of this act. The public employer is not compelled to bargain, but once begun, an impasse may be

resolved through mediation or fact-finding. Law enforcement personnel can utilize the fact-finding provisions of the act. Unfair labor practices are also included.

Wyoming

Wyoming has established a statutory public policy of giving workers the right to organize and bargain collectively with their employer over terms and conditions of employment. Wyoming Statutes Chapter 11, Section 27-239.

Municipal firefighters are permitted to bargain collectively with their employers, and the government is compelled to negotiate. Wyoming Statutes Chapter 11, Section 27-265 et al. Whenever an impasse occurs between the firefighters and the employer, the dispute must be submitted to arbitration. The decision of the arbitration panel is advisory.

Chapter V

First Amendment Problems In Police Labor Relations

The First Amendment of the United States Constitution states that Congress shall make no law abridging the freedom of speech and of the people to peaceably assemble.¹ This constitutional provision applies to the States through the Fourteenth Amendment.² Three First Amendment issues that arise in the field of police labor relations concern prohibitions on joining employee organizations, denying certain rights of free speech and against picketing.

The Right to Organize and Join

Restrictions against policemen organizing and joining employee organizations are found in state statutes,³ municipal ordinances⁴ and departmental regulations.⁵ The prohibitions are broad, including restrictions on the right to belong to the FOP,⁶ to belong to the FOP above a certain rank,⁷ to permit associate members in the FOP,⁸ to join organizations associated with organized labor,⁹ and to belong to a labor group that admits members other than policemen.

Prior to 1968, the trend of state courts was to uphold restrictions of this nature, the justification being that the policeman is in a unique position in society, and may be denied First Amendment rights available to other citizens. An early Mississippi case is illustrative of judicial thinking prior to 1968. In 1944, Jackson, Mississippi policemen notified the Chief of their intention to form a union. The City promptly issued an order prohibiting officers from joining a labor union, saying that an intolerable divided allegiance between police duties and the union would be created. The

order required all policemen to resign from the union. Thirty-four officers did not resign, and were discharged. In considering their dismissals, the Mississippi Supreme Court refused to order reinstatement, saying that the regulation was a valid exercise of administrative power. The court said that a policeman must perform his duties without favoritism, free from any allegiances.

Not all cases prior to 1968 ruled against the policeman's right to join an employee organization. A few state courts held that a policeman does have the right to join any organization of his choosing.¹² These cases, however, were based on a state constitutional or statutory provision clearly giving public employees this right.¹³ Also, public employee collective bargaining statutes broadened the policeman's right to join labor groups. For example, by giving public employees the right to join organizations of their own choosing, the Michigan bargaining law overruled a long line of cases holding that a policeman may be legitimately prohibited by departmental regulation from doing so.¹⁴

Federal circuit court cases in 1968 and 1969 reversed state cases and statutes validating denials of the policeman's right to assemble.¹⁵ Although one case involved teachers and the other public works employees, these cases may be cited for the general proposition that the First Amendment confers a right on all public employees to form and join a union, including policemen. This interpretation has received support from most commentators on public employee labor problems.¹⁶ Although these cases represent the opinions of the Seventh and Eighth Federal Circuits, it is a virtual certainty that they will be followed as authority by most courts in the land today.¹⁷

Free Speech Rights: The Changing Law?

Policeman's rights of free speech have always been narrowly circumscribed. Standard department regulations prohibit officers from publicly criticizing or ridiculing fellow officers or departmental orders. This regulation is justified on the basis that derogatory criticism in a quasi-military organization will undermine the efficiency and morale of the department.

The United States Supreme Court considered the right of public employees to speak out against fellow employees and their employers in Pickering v. Board of Education, 391 U.S. 563. Pickering, a school teacher, had written a letter to a newspaper erroneously criticizing the acts and omissions of the Superintendent and the Board of Education. He was dismissed for this conduct.

In considering whether the teacher could be dismissed for exercising his First Amendment rights, the Court noted that although the statements made were erroneous, they were neither shown nor presumed to have impeded the proper performance of Pickering's duties in the classroom or the operation of the schools generally. The Supreme Court held that absent proof of recklessly or falsely made statements, a teacher may speak out on issues of public importance and not be dismissed for having made those statements.

The Pickering case was put to a severe test in February, 1970, when the Maryland Court of Appeals, the highest state appellate court, considered whether it applied to public statements made by a policeman.¹⁸ On a television interview, Baltimore police officer Eugene Brukiewa replied in the negative to a question as to whether he felt the police commissioner was a competent, efficient administrator. Brukiewa was dismissed from the Department¹⁹ on the basis of

a departmental regulation which prohibited officers from publicly criticizing or ridiculing " . . . the official action of any member of the Department, public official, judge or magistrate."²⁰ Brukiewa's dismissal was upheld in Baltimore City Court, the municipal judge ruling against the policeman's contention that his First Amendment rights of free speech required his dismissal to be overruled. The judge stated that the "utterances were corrosive of confidence in the Police Department and tended to widen the breach between the police and the public. The morale and discipline of the Department had to obviously suffer from the divisive statements."²¹

The Maryland court, in a six-to-one decision, overruled the municipal judge, holding that the Pickering case applies to all public employees, including policemen. The court stated that " . . . Brukiewa did not go beyond the bounds of permissible free speech and that the State cannot discipline him for what he said."²² The court did indicate that discipline could be imposed where the exercise of First Amendment rights imperils the discipline or operation of the police department. The burden of proving that the speech involved affected the public service to such a degree justifying its restriction rested with the state. Finally, the Maryland court ruled that the police regulation prohibiting critical public statements was invalid only insofar as it restricted First Amendment rights.

The effects of this case on the police service might prove to be sweeping. In distinguishing between the Pickering opinion, where a teacher was involved, the lone dissenting judge in Brukiewa noted the gravity of permitting police unabridged First Amendment rights:

" . . . a policeman is directly charged with the

preservation of the public safety and security in a daily struggle with crime, organized and otherwise, upon his life and limb, as well as the lives, bodies, and properties of the citizens within the jurisdiction. To accomplish this primary public duty, discipline and obedience to orders of superiors are of the essence . . . In short, the policeman by the nature of and character of his public employment has the most qualified and limited freedom of speech." ²³

Other police administrators throughout the country have expressed concern over this opinion. (See Appendix B for letter from the Chief of the Tucson Police Department to Commissioner of the Baltimore Police Department expressing concern over this case) It is disconcerting to a chief when his policies and programs may be publicly criticized by officers without being able to restrict such activity. No appeal of the Brukiewa case is presently planned by the Commissioner of the Baltimore Police and the Maryland Attorney General. ²⁴

Picketing

One of the incidental forms of expression protected by the First Amendment is picketing. State jurisdictions have held two ways with respect to the right of policemen to exercise First Amendment rights through picketing. In an Illinois case, picketing by firemen was approved so long as the activity ²⁵ did not interfere with the operation of the department. A North Dakota case held that where striking and picketing were performed by public employees simultaneously, ²⁶ the picketing was illegal due to the illegality of the strike.

In light of the Brukiewa case, picketing by police would seem to be acceptable activity so long as it did not interfere with the efficient administration of the department.

Notes

1. United States Constitution, Amendment I.
2. Gitlow v. New York 268 US 652 (1925). Was the initial case to apply the First Amendment to the states through the Fourteenth Amendment.
3. See Code of Alabama, Title 55, Section 317.
4. See Beverly v. City of Dallas, 292 SW 2d 172, for case examining the validity of a Dallas ordinance prohibiting the formation of unions by city employees.
5. Tucson Police Department Rules and Regulations 6-9.519 states: "Members are prohibited from joining any organization or body, the constitution of which embraces provisions or philosophies of striking to obtain goals in the police service . . ."
6. See Goodwin v. Oklahoma City, 182 P 2d 762 (1947).
7. See Fraternal Order of Police v. Harris, 10 NW 2d 310 (1943).
8. Ibid.
9. See Local No. 201, AFSCME v. City of Muskegon, 120 NW 2d 197 (1963)
10. See Nevada Revised Statutes, Title 23, Chapter 650, Section 9 (3).

11. City of Jackson v McLeod, 24 So 2d 319 (1946).
12. See Le Vasseur v. Wheeldon 112 NW 2d 894 (1962); Also, Beverly v. City of Dallas, 292 SW 2d 172; Also, Potts v. Hay, 318 SW 2d 826 (1958).
13. In the case of Potts v. Hay, the Arkansas Supreme Court held that the State Constitution requiring no person to be denied employment because of membership in a labor union applies to public employees.
14. Michigan Statutes Annotated, 17.455 (9), giving public employees the right to join labor organizations overrules two prior cases, JOP v. Harris, 10 NW 2d 310 (1943) and JOP v Detroit, 27 NW 2d 612 (1948), which denied policemen the right to belong to the JOP.
15. Mc Laughlin v. Tilendis 398 F 2d 289 (1968); also, Engleman v. Woodward, 406 F 2d 137 (1969).
16. See for example, Report of the IACP Special Committee on Police Employee Organizations, "Police Employee Organizations", Police Chief, December, 1969, p.54.
17. The North Carolina Federal District Court held recently that firemen cannot be prohibited from joining a labor union, Atkins v. City of Charlotte, 296 F. Supp. 1068 (1969).
18. Brukiewa v. Police Commissioner of Baltimore City, decided February 13, 1970. See also In re Gioglio 248 A. 2d 570, 1968 and Belshaw vs City of Berkeley 54 Cal. RPTR. 727, 1966, other free speech cases.

19. *Brukiewa* was in fact dismissed and then rehired, with the record of dismissal remaining in his personnel jacket.
20. Baltimore Police Department Rules and Regulations, Rule 1, Section 12.
21. From the majority opinion of the *Brukiewa* case.
22. *Ibid.*
23. From the dissenting opinion of Judge Barnes in the *Brukiewa* case.
24. *City of Rockford v. Local 413, International Firefighters*, 240 NE 2d, 705 (1968).
25. *City of Minot v. General Drivers and Helpers Union No. 74*, 142 NW 2d 612 (1966).

Chapter VI

The Pros and Cons of Organized Labor in the Police Service

During the sixties, police administrators became increasingly concerned that police employee organizations, by challenging the status quo, were threatening the stability of the police service. This viewpoint was best expressed by the Commissioner of the Baltimore Police Department at the 1969 International Association of Chiefs of Police Conference when he stated that "... employee organizations as they exist today represent the greatest deterrent to the professionalization of law enforcement." So long as their activities are conducted within the framework of existing laws, however, the organization of, membership in, and activities of fraternal and benevolent police associations cannot be restricted by police chiefs. Although police leaders do not countenance many of the goals and activities of fraternal or benevolent associations, the prevailing atmosphere is one of grudging acceptance.

The police administrator's concern is greater toward the efforts of organized labor to make inroads in the police service than toward fraternal or benevolent associations. Police chiefs have relied upon a number of tactics to thwart the emergence of AFL-CIO affiliated police organizations. Department regulations prohibiting officers from joining or participating in the activities of organizations affiliated with organized labor are common. Chiefs refuse to recognize the existence of or cooperate with labor unions that purport to represent the interests of policemen.³ A common tactic used by police administrators to combat the incursion of unionism is to raise the spectre of the union-inspired Boston Police Strike.⁴

Police administrators advance many arguments against the presence of organized labor in the police service. Among the more persuasive of these arguments are that police labor unions are illegal, compromise the neutrality of officers, negate efforts toward police professionalization, threaten the authority of the chief, and thrust the police into the political arena.

Legality of Unions and Their Activities

In 1958, the International Association of Chiefs of Police (IACP) prepared a report on organized labor in the police service.⁵ The conclusions in that report indicated that based upon existing statutes and case law, membership in a police union was illegal.⁶ The report also reasoned that the incidents of union activity, collective bargaining, and striking were denied to policemen because collective bargaining violated the sovereignty of the legislative body to determine salaries and other working conditions; and, strikes are illegal by statutes and case law.⁷ Although these conclusions were probably valid in 1958, conditions in the public sector have changed drastically in the intervening twelve years.

Two recently decided federal cases dealt a blow to state laws prohibiting formation of or membership in a public employee union. These cases stand for the proposition that public employees have a First Amendment right to belong to any organization, whether affiliated with organized labor or not. The IACP acknowledged these cases in its most recent examination of police unions, a 1969 Special Committee Report on Police Employee Organizations,⁹ and also noted the trend toward recognizing the policeman's right to organize for the purpose of achieving better economic and job conditions.¹⁰

It was also conceded in the 1969 IACP police union study that collective bargaining rights of policemen are becoming less arguable due to 1962 Federal Executive Order 10988 and the passage of bargaining laws in many states.¹¹

Public employee anti-strike statutes still retain their vitality. The strike argument advanced by police administrators is the sole legal rationale against police unions still in force today. Striking, however, is not an activity confined to police unions. In fact, the major portion of police strikes and other forms of work stoppage have been conducted by employee groups not affiliated with organized labor.¹² The primary cause of work stoppages has not been union affiliation, but rather, the failure of public employers to deal in good faith with their workers' problems.¹³

The Neutrality Issue

Police administrators concerned with the growth of organized labor question whether an officer can remain neutral when he belongs to a police union. The policeman, says the police chief, serves the public first, and his own welfare second.¹⁴ Having this unique role in society, his primary obligation is to the public.¹⁵

When the policeman holds membership in a police union, he owes an allegiance to that organization also. When a conflict in the dual allegiances arises, argues the police administrator, the temptation to place union loyalties above law enforcement duties will be tempting.¹⁶ An oft-cited example of divided loyalties is where a union police officer is called upon to break up a picket line that has become violent against fellow union members.¹⁷ If he takes enforcement action against the

picketers, he will incur their displeasure, but if he fails to act, he has abdicated his sworn duties as a peace officer.

There is no question that neutrality is a vital component in maintaining the integrity of any police department. Without a police force that enforces the law fairly and impartially, the whole moral structure of the community is jeopardized.

The notion that membership in a police union threatens neutrality is, however, subject to serious question. The factual record simply does not support this contention. Since organized labor's first efforts to embrace the police, there is not one case of a police department or officer forsaking law enforcement duties for union loyalties. There can be no doubt that if factual evidence were available it would be publicized by police administrators.

There are examples of union police officers taking enforcement action against fellow unionists. During the fifties, the New Haven, Connecticut, Police Department conducted a raid on bingo games conducted by the New Haven Labor Council, with arrests of labor leaders resulting. New Haven officers participating in the raid belonged to a union which was an affiliate of the New Haven Labor Council. In the Connecticut city of Bridgeport, AFSME-affiliated officers broke up an illegal picket¹⁹ conducted by striking unionists during the same period.

Another fallacy of the neutrality argument is that it demeans the ability of sincerely motivated policemen to recognize the public necessity for placing law enforcement duties above union loyalty. A police officer who has been trained in and maintains the tenets of impartial, neutral enforcement will not be swayed by union ties. Any policeman who is swayed has not done so because he feels a primary

concern for his union, but rather, because he lacks total commitment toward his chosen profession.

An analogous present-day situation where the neutrality argument could be raised exists with respect to the FOP. The FOP permits private citizens to be associate members, and it is conceivable that a police officer could be called upon to enforce the law against these persons. Although there have²⁰ been objections to the practice of associate memberships, there has never been a serious drive to prohibit it or to question the integrity of police officers who are called upon to enforce the law against private citizens belonging to the FOP. Once again, policemen who assert the primacy of public duty over personal bias will not be compromised by this situation.

A Threat To Police Professionalization

The advance toward police professionalization became noticeable in the mid-sixties.²¹ It was attempted by seeking qualified police administrators to guide departments, and recruiting²² better educated, more capable men to fill the police ranks. Another manifestation of professionalism was the emphasis on recruiting, promoting, and reassigning officers on the basis of merit rather than political favoritism or seniority.²³

Police chiefs claim that organizations affiliated with organized labor are threatening²⁴ the successful professionalization of the police service. Police administrators view the sole objective of police unions as being financial betterment, with no emphasis on upgrading professional standards.²⁵ The chief is also concerned that the advent of unionization will result in demands for employment

practices based on seniority rather than merit.²⁶ In essence, police administrators believe that the presence of unions in the police service will result in "the struggle for professional status . . . deteriorating into a struggle for immediate financial betterment."²⁷

Police labor leaders advancing the cause of organized labor are equally adamant that unionization will create a healthy environment for police professionalization.²⁸ The classic pro-union argument is that police unions can achieve better salaries and job conditions for officers through a strong bargaining effort, attracting more qualified persons and thereby resulting in a professional police service.²⁹ Other aspects of professionalization that unions purport to offer are boosting morale,³⁰ serving as a watchdog over administrative corruption,³¹ and increasing efficiency within the department through union members' participation in the management process.³²

The concept of professionalism is intangible. It is virtually impossible to gauge the impact that a union has or does not have on police professionalization. One commentator on police labor problems has suggested that unionism and professionalization are not necessarily incompatible.³³ The concept of professionalization (i.e.; improvement of educational standards, entry standards, occupational techniques, and literature) operates on the national or international level, encompassing the police profession as a whole. The level on which police unions function, however, is local in nature. A union is concerned with the employment conditions (i.e.; salaries, hours, job conditions) of one particular law enforcement agency, and is powerless to affect the professionalization process operating on a nationwide basis.

Threatening Management's Ability To Manage

A paramount concern of police administrators is that unions will inhibit their ability to manage.³⁴ A police union will demand, says the chief, that any proposed departmental policies or programs be referred to it for approval before being implemented. This situation would place excessive managerial power into the union's hands, depriving the administrator of effective control over his department.³⁵

The countervailing argument is that police unions should have a voice in departmental policies because these policies have a direct effect on the officers.³⁶ It is only through a participatory voice in managerial decisions by union members that the chief can arrive at a decision that is best for the entire department.

Police unions are without question, attempting to play an active role in the departmental decision-making process. The quest for administrative power is not, however, limited to police organizations affiliated with organized labor. Fraternal and benevolent associations are also demanding a voice in police management policies.³⁷ When a police chief states that police unions are undesirable because they seek to appropriate administrative power, he is not stating the problem in terms of the entire labor picture. All police labor groups, whether AFSCME-affiliated, FOP, or PBA, are struggling for greater voice in management, and police administrators are concerned not only with organized labor's encroachments in this area, but with fraternal and benevolent groups as well.³⁸

The Entry of Organized Labor Into The Political Arena

Police management foresees the inevitability of unionized policemen participating actively in politics.³⁹ The standard administrative attitude is that "if politics are to be kept out of police administration, police must be kept out of politics."⁴⁰ This position is reinforced by a standard departmental regulation prohibiting officers from engaging in partisan politics.⁴¹ Police administrators fear that the policeman's impartiality will be threatened by political participation.

There is no question that police groups affiliated with organized labor are striving to achieve a political foothold in their respective communities. This trend is best characterized by the statement of a policeman attending the 1969 Omaha National Union Organizational Convention: "Right now we're organized in Salt Lake (Utah), so that if the Mayor does not do what we want him to do, we defeat him at the polls. And someday we'll have that nationally."⁴²

The Salt Lake City Police Union Local 470, AFL-CIO, recently perfected an appeal to the United States Supreme Court contesting three city ordinances that restrict any form of political activity by city police or firemen.⁴³ The union's brief contends that prohibiting political activity of police and firemen is a violation of First Amendment political rights, and applies to the States through the Fourteenth Amendment due process clause. If the Supreme Court rules in favor of the union on this issue, there will be no question that policemen, and all other public employees as well, can engage in partisan political activity.

Once again, political activism is not the sole enterprise of police unions. FOP and PBA groups have also manifested an increasing interest in achieving political clout.

Illustrative of this interest is the endorsement of George Wallace during the 1968 presidential campaign by John Harrington, President of the Fraternal Order of Police.⁴⁴ The police administrator's concern with partisan political activity should be focused on all police employee organizations, rather than unions only.

Attitude of Non-affiliated Police Toward Organized Labor

The feelings of non-union policemen toward organized labor are mixed. There is considerable anti-union sentiment among the rank and file. The basis for this negative attitude is that unions often appear more interested in enhancing their power on a national scale rather than taking an interest in local problems;⁴⁵ charge higher dues than traditional police organizations without offering more services;⁴⁶ and do not accomplish anything that cannot already be achieved by fraternal and benevolent organizations.⁴⁷

The limited membership of policemen in organized labor groups speaks for the present attitude toward unions.⁴⁸ There is, however, a rising number of police employee organization spokesmen expressing an interest in union affiliation, especially in the recently organized International Brotherhood of Police Officers. The president of one mid-western benevolent association feels that a police union would significantly improve police labor-management relations.⁴⁹ Other benevolent associations considering affiliation with the national union include the Vallejo, California Police,⁵⁰ the Nassau County New York PBA,⁵¹ and the Beaumont, Texas Municipal Police Association.⁵²

In Retrospect

A commentator on police labor relations has suggested that in their dealings with organized labor, police administrators hide behind pious misconceptions in an effort to legitimize their anti-union stand.⁵³ This observation has merit. The arguments propounded by police chiefs to discredit unions do not truly depict the total police labor picture. Membership in and the activities of unions are rapidly becoming acceptable by statute or case-law. The strike and other forms of work stoppage are employed equally, if not more, by fraternal and benevolent associations. A policeman's neutrality will be compromised by a union only where he is not instilled with the compelling importance of his law enforcement duties. Unions probably do not obstruct the march toward police professionalization because unions operate on the local level of economic needs while professionalization operates on the national or international plane of occupational interests. All police organizations, whether union or unaffiliated, are involved in seeking greater managerial power and partisan politics.

There is no question that union affiliation is going to create administrative headaches for the police chief.⁵⁴ Unions will present new challenges to the labor-management relationship because of organized labor's centralized structure, its financial power, and its emphasis on contract negotiation as a means of achieving desired goals. In spite of these difficulties, police management must discontinue fostering the pious misconceptions of unionism, and face the reality that organized labor in the police service can no longer be ignored.⁵⁵ It is time for a re-evaluation of management attitudes and methods of dealing with police unions.

Whether organized labor will become a powerful voice in the police service during the ensuing years is not subject to

prediction at this time. It played a relatively minor role throughout the sixties. It will be each officer's choice as to whether his economic fate is to be guided by decentralized fraternal or benevolent association, or, by a union affiliated with the AFL-CIO.

Notes

1. Donald D. Pomerleau, "The Eleventh Hour", speech at 1969 International Association of Chiefs of Police Convention; Sept. 29, 1969.
2. Tucson Police Department Rules and Regulations, 6-9.519 states: "Members and civilian employees of the department are prohibited from joining with any organization or body, the constitution of which embraces provisions or philosophies of striking to obtain goals in the police service."
3. International Association of Chiefs of Police, Police Unions, Washington, D.C., 1958, p.22.
4. See, for instance, Robert Sheehan, "Lest We Forget", Police, Sept. - Oct., 1959.
5. IACP, Police Unions.
6. Ibid, pp.35-36.
7. Ibid, p.73.
8. See Mc Laughlin v. Tilendis 398 F 2d 289 (1968), American Federation of State, County, and Municipal Employees v. Woodward 406 F 2d 137 (1969).
9. Report of the IACP Special Committee on Police Employee Organizations, "Police Employee Organizations," Police Chief, Dec., 1969, p.51.
10. Ibid, p.54.

11. Ibid.
12. See Hervey Juris, University of Wisconsin, "The Implications of Police 'Unions' for Policing", In press 1969, p.9.
13. Ibid.
14. Personal communication from Bernard L. Garmire, Chief of Miami, Florida Police Department; February 27, 1970.
15. IACP, Police Unions, p. 72.
16. Donald D. Pomerleau, "Unionization, Baltimore Police Department", speech at the State House, Annapolis, Maryland; March 16, 1967.
17. Carl B. Heustis, "Best Interests of Police Not Served by Unions", Journal of Criminal Law, March-April, 1958, pp. 643-646.
18. Edmund P. Murray, "Should the Police Unionize?", Nation, Vol. 98; June 13, 1969, p. 531.
19. Ibid.
20. Patrick V. Murphy, "Police Employee Organizations", Masters thesis, City College of New York, 1960, pp. 26-27.
21. The 1967 report of The President's Commission on Law Enforcement and Administration of Justice, The Challenge of Crime in a Free Society, made many recommendations concerning police professionalization.

22. IACP Special Committee, "Police Employee Organizations", Police Chief, Dec., 1969, p.54.
23. Interview with William Hanger, Chief of Pontiac, Michigan Police Department. October 27, 1969, Pontiac, Michigan; also with John Nichols, Deputy Superintendent of Detroit Police Department, October 27, 1969, Detroit, Michigan.
24. Pomerleau, speech at Annapolis, Maryland, "Unionization, Baltimore Police Department."
25. IACP Special Committee, "Police Employee Organizations", Police Chief, Dec., 1969, p. 54.
26. Interview with John Nichols, Deputy Superintendent of the Detroit Police Department.
27. IACP Special Committee, "Police Employee Organizations", Police Chief, Dec., 1969, p. 54.
28. IACP, Police Unions, p. 59.
29. Murray, "Should the Police Unionize?", Nation, p. 533.
30. Ibid.
31. Ibid.
32. IACP, Police Unions, p. 62.
33. Juris, "Implications of Police Unions", p. 8.

34. Pomerleau, speech at Annapolis, Maryland, "Unionization, Baltimore Police Department".
35. Ibid.
36. Interview with Arvid Anderson, Director of New York City Office of Collective Bargaining, Nov. 5, 1969, New York, New York; discussing police labor groups generally.
37. See Chapter 7, "The Threat to Management".
38. Interview with William Hanger, Chief, Pontiac Police Department.
39. Pomerleau, speech at Annapolis, Maryland, "Unionization, Baltimore Police Department".
40. Ibid.
41. Tucson Police Department Rules and Regulations, 6-8.401, states that, "Any member or civilian employee of the department is subject to discipline by the Chief of Police and to dismissal, demotion or suspension for . . . engaging in partisan politics."
42. David Burnham, "Police Bar Strikes in Proposed Unions", New York Times; Nov. 3, 1969, p.4.
43. One of the ordinances being contested is Section 14-1-5, Revised Ordinances of Salt Lake City, Utah, states: "No person of the classified civil service of the fire department shall use his official position as authority to influence or coerce the political action of any

person, nor be a member or delegate or alternate to any political convention, or serve as a member of any committee of any political party, or take any active part in the management of any political campaign, nor solicit, collect or receive any assessment, subscription, contribution or dues intended or used for any political purpose whatsoever, nor shall he be obliged to contribute to any political fund or render any political fund or render any political service whatsoever."

44. Max Gunther, "Cops in Politics, a Threat to Democracy?", True: Feb. 1970, p. 118.
45. Interview with Kenneth Davidson, President, Pontiac Police Officers Association; Oct. 27, 1969, Pontiac, Michigan.
46. David Burnham, "Police Draft Charter for National Union as Militancy Grows", New York Times, Nov. 2, 1969, p. 66.
47. Ibid.
48. See Chapter 1, "From passivity to militancy: The development of police employee groups to the present", for a discussion of employee organizations affiliated with organized labor.
49. Interview with John Flood, President, Cook County Police Officers Association; Oct. 26, 1969, Chicago, Illinois.

50. International Conference of Police Associations, "Police Seek Union", Notes from the International Office; Aug. 1969, p. 14.
51. ICPA, "Long Island Ponder Teamster Affiliation", Notes from the International Office; Dec. 1969, p. 5.
52. Ibid, p. 10.
53. Juris, "Implications for Police Unions", p. 7.
54. See Chapter 7 for administrative problems created by police employee organizations.
55. See Chapter 4 for a discussion of collective bargaining laws in the 50 states.

Chapter VII

The Problems Created By Police Employee Organizations

The emergence of police employee organizations in the sixties as a vital force in the public sector created a number of problems for police administrators, city officials, labor leaders, and citizens. It is difficult to classify the recognizable problems as being peculiar to any of these persons, for each problem affects, either directly or indirectly, each of them.

Problems that have created a strain on the police labor movement include:

1. Work stoppages jeopardizing the public safety;
2. Many police employee organizations are becoming increasingly active in political activities;
3. Many police labor groups are seeking a greater voice in what have traditionally been considered management prerogatives;
4. Police employee organizations create general administrative problems for the chief;
5. Lower and middle police management tends to identify with the viewpoint of patrolmen rather than management on labor issues;
6. During a labor dispute, the chief is torn between the demands of his officers, his professional ethics, and the position of the government to whom he is answerable;
7. Collective bargaining effects the Civil Service merit system;

8. Collective bargaining effects the role played by civil service commissions in administering the merit system;
9. Collective bargaining requires the municipality to re-evaluate its revenue sources;
10. Some police employee organizations and city administrators undermine their bargaining relationship by taking unreasonable positions;
11. Negotiations between the police labor group and municipality create general administrative problems;
12. When police organizations seek salary increases and other job benefits, parity, or equal benefits for firemen, comes into issue.

Work Stoppages Threaten The Public Safety

Before October, 1969, the Boston Police Strike stood as the lone symbol of what could happen to a city when police walked off the job. As the Boston experience faded in time and memory, police employee organizations began to employ the strike or other forms of work stoppage more regularly as a means of achieving their economic goals.² Prior to the Montreal Police Strike, police labor groups of the sixties could point to every strike, "blue flu", and mass resignation as an example of achieving economic and job goals, without jeopardizing the lives and property of citizens.

The Detroit "blue flu" epidemic of 1967 was illustrative of this fact. There was no appreciable escalation of crime or property damage during the period when Detroit officers

refused to report for work.³ The situation was kept calm in Detroit due primarily to maximum use of non-striking officers on twelve hour working shifts.⁴

The Montreal strike is a striking, contemporary example of what can occur in a major metropolitan area when an entire police force goes on strike.⁵ The toll in human lives was tragic, three persons being killed from strike-related incidents. The property damage was phenomenal, with one million dollars of destruction caused by looting and vandalism.

The psychology of mob action swept Montreal citizens into a criminal frenzy, in which not only criminals and the poor participated, but, according to one observer, also the "so-called respectable, middle-classed people."⁶ One memorable vignette occurred when a well-dressed man ran down a central Montreal street with a fur coat draped on each arm, shouting, "one for my wife, one for my girl friend."⁷ With only forty-seven non-striking Montreal officers and two-hundred Quebec Provincial Police available to protect a city, the metropolitan area of Montreal was thrown into a virtual state of anarchy.

Reflecting upon the events that occurred in Montreal, it is superfluous to say that the public has a vital stake in the presence of police enforcement for every hour of every day. The lack of total commitment by the police to protect the lives and property of the community courts disaster. A French psychologist studying mob action has noted that lacking the external enforcer of morals and ethics, the police, the amoral impulses of the crowd take over, and the mob will do as it pleases.

Law enforcement in contemporary America has evolved into

a state of sophistication unknown in previous eras. The use of complex technological equipment, combined with the employment of more intelligent, better-educated, and better-trained officers have contributed to making the police field a more exacting science. No degree of sophistication, however, will give the community the protection to which it is entitled when police go on strike.

If an entire American police department were to conduct a work stoppage in a major metropolitan area, the city's welfare would be severely threatened. Crime would go unimpeded. Outside law enforcement agencies, unfamiliar with street locations and crime patterns, would be incapable of coping with the problems that develop. No person or thing would be safe from the clutches of mob action and uncontrolled crime.

The pious assurances of police labor leaders notwithstanding, a Montreal tragedy could occur in the United States. Without the thin blue line standing between stability and chaos, a city could crumble.

When policemen conduct a work stoppage, the usual reason is that all other methods for achieving a better wage or improved job conditions have failed. Negotiations have proven unsuccessful and the forms of protest short of work stoppage have been unavailing. When all avenues of redress have been exhausted, the police see no alternative but strike. The lack of alternatives does not justify this conduct, but does point to the critical need for feasible alternatives to be devised in lieu of the strike.

The Politics of the Police

Historically, the police have attempted to turn local,

county, and state political machinery to their advantage. Legislative lobbying was employed often by police fraternal and benevolent associations after the Boston Police Strike of 1919 to obtain pension and health insurance benefits. During the sixties, lobbying was used by police labor groups to achieve goals that could not be attained through negotiation with the public employer.¹⁰

It was during the past decade that policemen realized the tremendous power attainable through more direct participation in the political process. This new political awareness manifested itself in many ways: the Detroit Police Officer's Association and the Detroit Police Lieutenants' and Sergeants' Association campaigned openly in the 1969 Wayne County Sheriff's race for Roman Gribbs, a white man running against a Negro, through public endorsements, financial contributions and a door-to-door campaign;¹¹ the Cleveland Fraternal Order of Police bought newspaper space during the 1969 mayoral campaign to publish "open letters" to the incumbent mayor candidate, Carl Stokes, for the purpose of questioning his law enforcement policies;¹² and, the New York City Patrolmen's Benevolent Association was instrumental in defeating Mayor John Lindsay's Civilian Review Board proposal in 1966.¹³ Policemen have also been credited with contributing to the successful 1969 elections of Minneapolis Mayor Charles Stenvig,¹⁴ Los Angeles Mayor Sam Yorty,¹⁵ Seattle Councilman Wayne Larkin,¹⁶ and Houston Mayor Louis Welch.¹⁷

The policeman is frustrated in today's environment. His economic status is low, his conduct is scrutinized and castigated by anti-police elements and his sense of morality is becoming passe. Politics allow him to strike back.

The march of the police into politics has alarmed not

only police administrators, but other responsible citizens as well. The attitude of police management is that "if politics are to be kept out of police administration, police must be kept out of politics."¹⁸ Philosophical liberals see policemen espousing political views with the authority of their badge behind them as a frightening trend.¹⁹ One writer has suggested that a unified effort by policemen to control the political machinery could tempt them to mold laws for their own purposes, turning this country into a police state.²⁰

The active presence of police in partisan politics conjures up frightening possibilities. When a police employee organization plays a key role in the election victory of a politician, the politician, according to the traditional rules of American politics, owes a debt. This debt can only be satisfied by giving the police something in return. The temptation might prove too great for the police to press for unreasonable economic benefits, unjust laws, or civil service rules giving them an undue advantage over the police administrator.

When the police become politically active, the door for abuse is left open. The policeman's role in the community is to fairly and impartially enforce the law. When undertaking to endorse candidates and initiate self-serving legislation, the policeman is exceeding the bounds of his role as enforcer in the community.

The Threat to Management

The issue creating the greatest rift between police administrators and employee organizations is whether labor groups should have a voice in what traditionally have been

management affairs. Police chiefs resent the intrusion of subordinate officers into what they consider management prerogatives. Police labor leaders are equally convinced that the rank and file can and should contribute to the management process, since most policy decisions have a direct effect on employees.

Prior to the sixties there was little interest among police groups in administrative decision-making due to their relative passivity. Beyond the scope of wage increases and other economic or job advantages that would accrue to officers individually, labor groups took little initiative. The advent of police groups as militant forces coincided with their clamor for administrative power. Matters previously viewed by administrators as their sole concern, such as promotional standards, consideration for work assignments, the importance of seniority, size of the department, number of officers riding in a squad car, residency requirements, and second jobs, were scrutinized closely by police employee organizations.²¹

The conflict as to what constitutes a management decision is well illustrated by events in Baltimore in 1967. The Police Commissioner was contemplating at that time the redistribution of his patrol force from deployment in equal thirds for each shift, to a plan that would distribute the patrol force in accordance with the ²²correlative relation between time and criminal activity. The proposed change would deploy forty-five per cent of the patrol force during the period of greatest crime activity, four P.M. to midnight, with twenty per cent of the force placed on the midnight to 8 A.M. shift, and the remainder of officers working between 8 A.M. to 4 P.M. Baltimore Police Local 1195, an affiliate of AFSCME, reacted adversely to the new patrol force deployment. The union termed the idea as the "Commissioner's

oppressive proposal to lengthen the term of night duty."²³

The generally low quality of police chiefs has been no small factor in contributing to the demise of the management prerogative philosophy. Samuel Gompers, leader of the American Federation of Labor during the Boston Police Strike of 1919, saw the need at that time for unionization in the police service due to the failure of management to provide just compensation and grievance procedures.²⁴ Management was still falling short forty years later.

Police administrators have failed to heed the obvious need for strong, capable leadership.²⁵ By not seeking improved financial benefits and job conditions for the rank and file, management has created a leadership vacuum that has been filled by police employee organizations. If police administrators had recognized the importance of their position as a vehicle through which officers could attain their goals, the labor situation in the police service would not be in turmoil today.²⁶

The creation of grievance procedures has been a major administrative battleground between police management and employee organizations. When an officer feels he has been treated unjustly, departmental rules and regulations have not been followed by other officers, new policies or problems are unworkable, or the provisions of a contract negotiated between a police employee organization and municipality have not been followed, a grievance procedure offers him the machinery by which to rectify the alleged problem. Most administrators resist the grievance procedure concept. It is chafing to a chief that his decisions, or the decisions of his command staff, will be subject to hindsight scrutiny and possible discredit. From the police labor organization's viewpoint, grievance machinery broadens its power to attack what it

considers to be administrative injustices.

Another source of friction is seniority. Police employee organizations, concerned with achieving the greatest amount of job security for their membership, encourage seniority as the primary criterion for the selection of personnel in promotions, layoffs, reassignments, and special work tasks.²⁷ Selection on the sole basis of seniority is anathema to the police chief who wishes to select the best possible officer on the basis of merit.²⁸ In police departments where a contract has been negotiated between a police organization and municipality, the conflict between strict seniority and strict merit is often resolved through a compromise permitting the chief to make personnel selections that consider seniority but do not exclude merit criteria such as job performance and educational background.²⁹

Police administrators view the interest of employee groups in management decisions as a disturbing trend threatening the efficient management of their departments. Decisions that in the past have been left to their sole discretion are now being reviewed and attacked through collective bargaining and grievance procedures. Many police leaders have refused to recognize the existence of police employee organizations, or the need for allowing participation in the decision-making process.³⁰

Other chiefs have foreseen the day of police autocracy quickly drawing to a close, and that the new breed of policemen no longer says "yes, sir" to an order, but rather, asks "why".³¹ This latter breed of administrator recognizes that a limited degree of participatory management must be granted to police employee groups, and reasonable justification for policies must be given. One chief advocating limited participatory management compares the decision-making struggle to a poker

game. The police chief must deal out his chips (management prerogatives) as slowly as possible, because once all of his chips have been given to the labor group the game is over.³²

Leaders of police organizations are pressing for a piece of the administrative pie. There is a sense of dissatisfaction pervading labor groups with management techniques employed by administrators. One midwestern labor leader has observed that many chiefs with whom he deals at the bargaining table lack any knowledge of fundamental administrative techniques.³³ Police employee organizations believe that management deficiencies can be compensated for through collective bargaining and grievance procedures that will permit them to better control their fate.³⁴

There is no question that police employee organizations are threatening the once inviolable authority of the police chief to make administrative decisions. Many of the issues with which policemen are now concerning themselves could have been resolved to the officers' satisfaction without the impetus of labor organizations if chiefs had only taken the initiative to solve the problems.³⁵ This day is long past, however, and administrators must realize that unilateral decision-making will no longer be palatable to police labor organizations. A degree of participatory management, with the chief still retaining ultimate decision-making control, is certainly the trend today, and will have to be accepted as a facet of police personnel management.

General Administrative Problems

The mere presence of one or more labor groups in a police department creates policy-making problems for the administrator. Beyond the issue of managerial prerogatives,

the police chief is faced with the task of not only creating new programs that will benefit individual officers on the department and the public, but of convincing his personnel that the programs are desirable.

Far-sighted chiefs have instituted programs that increase work efficiency, such as replacement of sworn personnel with civilians for non-police tasks (clerical duties, parking ticket-writing), placing one man in each squad car, instituting computer-controlled deployment of patrol forces, and creating sophisticated communication systems.³⁶ Programs contributing to better police-citizen contacts have been devised, among which are raising the educational requirements of police recruits and compensating, therefore, providing longer, higher quality training programs, and developing supervisory techniques that better control patrol personnel.³⁷ Job enrichment programs have also been conceived to give individual officers a sense of job fulfillment, responsibility, and commensurate salary: Community Relations Units, Family Crisis Units, and combining preliminary and followup investigations into one function.³⁸

These innovative programs would undoubtedly contribute to the betterment of any police department. The majority of these ideas are recommended in the 1967 report by the President's Commission on Law Enforcement and the Administration of Justice.³⁹ The successful implementation of these programs, however, requires the concurrence of officers who must carry them out.⁴⁰

Many policemen reject changes not confirming to their sense of reality,⁴¹ so the initial reaction to these tradition-breaking programs would likely be negative.⁴² Being spokesmen for the officers, police employee organizations would be the nucleus around which opposition would form. The necessity,

therefore, for gaining the support of any labor groups representing a large block of officers is apparent. The failure to seek out this support could result in the dismal failure of progressive ideas.

When a local, unattached police organization is considering affiliation either with organized labor, or with a state or national association, the implications in terms of effect on the relationship between chief and organization are considerable.⁴³ The decision to affiliate with organized labor rather than a state or national benevolent association might make a vast difference in terms of organizational attitudes toward work stoppages, political involvement, and professionalization.⁴⁴ An attitude toward these issues that is compatible with that of the administrator would favorably affect the labor-management relationship, whereas contrasting viewpoints would create the opposite effect. Although the police chief cannot control the fate of an organization's affiliation,⁴⁵ he should maintain close watch over the group's decision, because that decision will directly affect his ability to deal with the organization.

The Lure of Labor to Police Lower and Middle-Management

A phenomenon of the police labor movement that has created administrative headaches for top-echelon police officials is the interest taken by officers at lower and middle supervisory levels, usually sergeants and lieutenants, in militant labor activity. One of the causes of this problem is that public employment bargaining statutes permit supervisors up to certain levels to negotiate a contract with their employer,⁴⁶ giving sergeants and lieutenants the opportunity to meet their employer head-on at the bargaining table. Another contributing factor is that

supervisors have economic and job problems similar to the lowest police ranks.

In states operating under a collective bargaining statute, there is often a fractionalization of police labor organizations, with one group representing patrolmen and detectives, while another serves the interests of supervisors. Employee organizations in the Detroit Police Department are structured in this fashion, with the Detroit Police Officers Association speaking for patrolmen, and the Detroit Police Lieutenants' and Sergeants' Association representing the officers of those ranks. The New York Police Department has even greater fragmentation, with an employee group for every rank up to and including captain.

Lieutenants and sergeants are a vital link in the chain of command, their purpose being to implement policies, orders, and programs. The sergeant is the first line of supervision over patrolmen, and plays a key role in maintaining the control and discipline of subordinates necessary to carry out police functions according to departmental policies.⁴⁷ The lieutenant's role ordinarily is to insure that sergeants and patrolmen under him are properly fulfilling their duties.

The problem of supervisory identification with labor philosophy is especially acute at the sergeant rank. The sergeant is not sufficiently removed from the patrol force in time, friendship ties, and common job interests to vigorously promote the views of management.⁴⁸ The sergeant, who might just last week have been a patrolman, often has close social bonds with the men over whom he now has control, and these bonds are difficult to erase for the sake of management loyalty.

Many of the goals sought by police employee organizations are adverse to the interests of management. The demand for grievance procedures and greater voice in policy-making indicate dissatisfaction among the organization's membership with administrative policies. When a supervisor, either through his employee organization or individual efforts, attacks a policy decision, he is denigrating a policy which he is responsible for implementing at the lowest levels in the chain of command. The problem is best stated by a midwestern police administrator who says when a sergeant or lieutenant expresses dissatisfaction with an order or policy established by their superiors, it is like saying, "Oh, God, protect me from myself."⁴⁹

There is no doubt that police supervisory personnel have employment dissatisfactions. A sergeant or lieutenant as well as patrolmen is equally concerned with improving his economic and job inequities. Taking a position adverse to administrative policies and decisions, however, creates a severe morale problem within the department, because, in essence, management is criticizing management. Also, new programs, policies, and orders cannot be successfully executed without acceptance by middle and lower management.

Police Chief: Man In The Middle

When a labor dispute involving a work stoppage or slowdown erupts, the police chief is torn between three conflicting loyalties. Often having worked his way up through the ranks, his sympathies lie with the police labor organization, but he has no control over the salary and other economic demands of his men. It is up to the legislative body to appropriate the necessary funds to fill

the officers' needs.

The chief has a professional allegiance to maintain the integrity of the department. This allegiance is challenged when a concerted work stoppage or slowdown occurs, because there is undoubtedly a violation of departmental rules and regulations.⁵⁰ It is essential that rules and regulations be consistently enforced in order to maintain morale, discipline, and efficiency,⁵¹ yet mass disciplinary action against the offending officers is impractical. Harsh sanctions engender sympathy for the officers punished,⁵² violate the standard condition demanded by officers conducting a work stoppage that no sanctions be imposed upon them when they return to work, and in the case of permanent suspensions, leave the department severely deficient in manpower, a deficiency that would require years to replenish in terms of proper training and job experience.⁵³

The police chief is answerable to some government official, such as a mayor, city manager, or in some cases, a state governor. Because labor disputes usually result from failure of a police employee organization and public employer to come to terms over economic and job needs, the position of the government is obviously adverse to that of the organization. If the public employer is not willing to make concessions to the labor organization, the work stoppage will continue, jeopardizing the public need for police protection. If the employer determines that a hard-line approach is going to be taken, with all participating officers fired,⁵⁴ the future of the department is clouded. If the employer decides to make any concessions necessary to restore police service, to the point of acceding to the demand for a strong voice in management policies, the chief's power to efficiently guide department operations might be hampered. In all these situations, the police chief can only

advise his superiors on the course of action to take, and must abide by any final decision made, no matter the consequences.

Bargaining In The Public Sector, A Threat To The Merit System?

Negotiation between the police employee organization and the public employer, whether pursuant to or without authority of a public employment collective bargaining statute, will most certainly concern issues of personnel policy, such as standards for recruiting and promoting employees, training, job classification, and evaluation, salaries, fringe benefits and compensation plans. These issues fall within the loosely structured concept of "the merit system." The traditional definition of the merit system is a system "in which comparative merit or achievement governs each individual's selection and progress in the service and in which the conditions and rewards of performance contribute to the competency and continuity of the service."⁵⁵

Police employee organizations are attempting to make all merit system issues negotiable.⁵⁶ Some issues are economic in nature (e.g.; salaries, fringe benefits, and compensation plans) and there is little question today as to their negotiability, while other merit system problems such as recruiting, promotions, training, job classification and job evaluation, still present the dilemma of managerial prerogative.⁵⁷

Opinions vary as to how bargaining between the police labor organization and public employer will affect the merit system. Police organization leaders and other labor-

oriented persons contend that a sound bargaining relationship between employee and employer will enhance the merit system. The merit system as it exists today, says Jerry Wurf, President of AFSCME, impedes the successful resolution of public employees job problems.⁵⁸ Wurf feels that unilateral decision-making by the employer is not conducive to solving merit system issues.⁵⁹ Only through a contractual bargaining relationship between the employee organization and public employer can job problems be satisfactorily resolved.

Arvid Anderson, Director of the New York City Office of Collective Bargaining, concurs with Wurf's view, saying that the merit system will not necessarily lose its vitality as a result of bargaining, but rather, will necessitate a bilateral rather than a unilateral appraisal of employment policies.⁶⁰ Anderson foresees a satisfactory resolution of differences between labor and management in the areas of recruiting, promotions, and training.⁶¹ There will still be conflict, however, regarding job classifications and evaluations, and salaries.⁶²

The attitudes of management span a broad spectrum of opinion. At one end, the feeling is that collective bargaining in the public sector spells doom for the concept of merit.⁶³ The proponents of doom fear that employee organizations will gain control of the personnel system, demand that only members of the organization be hired, and force the standard of seniority upon the employer.⁶⁴

Other municipal administrators see both positive and negative implications. The positive implications are that bargaining will require the employer to assiduously document its stand at the negotiating table in order to present reasonable, factual proposals; and, to develop an articulate,

trained personnel staff capable of negotiating in a professional manner.⁶⁵ Bargaining will be negative in that many merit system concepts once considered non-negotiable will be declared bargainable by labor organizations, placing the employer in a position of resisting the attempted usurpation of management prerogatives.⁶⁶

Another management viewpoint expresses the realization that bargaining is an irreversible trend which must be accepted and accommodated for by the employer.⁶⁷ The public employer must be willing to devote considerable staff time toward examining personnel policies as they relate to the merit system, become more knowledgeable with respect to laws and policies relating to personnel, establish grievance procedures to ferret out employee dissatisfactions, and create better lines of communication for explaining merit system policies.⁶⁸

It is inevitable that bargaining will affect the merit system, because negotiation will generate a dual appraisal of municipal employment policies, rather than the traditional unilateral approach by the employer. Whether the resulting effect upon the merit system will be positive or negative is contingent upon the bargaining relationship between the police employee organization and the municipality. A reasonable attitude by both sides at the bargaining table will result in mutually satisfactory solutions to merit system problems. If one or both of the parties takes an embattled stance, however, the results will be disappointing.

The Civil Service Commission

Bargaining affects not only the merit system, but also the Civil Service Commission or similar agency that regulates

it.⁶⁹ The Civil Service Commission is ordinarily responsible for examining and recruiting potential employees; establishing procedures for training, promotions and job classifications; and making recommendations for salaries, insurance plans and pensions.⁷⁰ If the bargaining relationship between the police employee organization and public employer develops to the extent that all merit system issues are considered negotiable, the role of the Civil Service Commission in establishing personnel standards will be diminished.⁷¹

Spokesmen for labor view the Civil Service Commission as the servant of city government rather than an impartial regulatory agency.⁷² Being controlled by the municipality, labor leaders feel the Commission cannot objectively determine whether its merit system rules are being administered fairly.⁷³ The Civil Service Commission must relegate itself to a position secondary to the negotiations between employee and employer.⁷⁴ Labor leaders contend that only when the commission becomes the servant rather than the master of the employee-employer bargaining relationship can it fill its public service role.⁷⁵

Civil service commissions will not stand idly by to allow their power over the merit system to be reduced.⁷⁶ Advocates of a strong civil service commission are against bargaining over merit system issues. Among the arguments advanced against negotiation by civil service spokesmen are that municipal laws creating employee rights and benefits are more stable and less susceptible to change than a negotiated contract; and, that public employee laws protect the public as a whole, while a contract between the public employee and employer is concerned with the interests of a small portion of society.⁷⁷

Many municipalities are resorting to contract negotiation as a means for increasing the benefits of police and other public employees. Merit system issues such as promotion standards and job classifications have a significant effect on employees, and will undoubtedly become negotiable issues subject to contractual agreement. An examination of public employment contracts verifies that this trend is already taking place. An accommodation must therefore be made that will permit merit system issues to be discussed at the bargaining table without interference from the Civil Service Commission. Complete reappraisal of the Commission's role at the bargaining table must be made.

The Problem of Money

"When the City Council says, 'We don't have the money,' that's the Council's problem, not the policeman's.⁷⁸ It is up to the Council to go out and find the money." This statement by a ranking police labor official graphically points up a never-ending struggle of most city governments. The city employee needs and deserves a salary increase, but the municipality lacks the financial resources to satisfy the need. The problem is especially acute for cities in states where arbitration awards are binding on both the public employee and employer.⁷⁹

A 1968 Pennsylvania labor dispute between Fort Pitt Lodge Number One of the Fraternal Order of Police, representing Pittsburgh policemen, and the City of Pittsburgh is an extreme case of a municipality's financial plight resulting from bargaining. The Pittsburgh police were seeking a \$2,000 salary increase from the city, plus other additional benefits. The City of Pittsburgh contended that the police demands would require additional expenditures of

7.5 million dollars, and the city's revenues were not adequate to meet this increase. Most important, the city claimed it lacked the statutory power to impose new taxes that would broaden its financial structure and bring in the revenues necessary to satisfy the police proposals. The City of Pittsburgh was willing to offer a \$500 per year increase for all officers. The FOP would not accept this offer.

The parties having failed to reach an agreement through bargaining, the salary dispute proceeded to a three man arbitration panel. Under Pennsylvania law, the findings of an arbitration panel in a police or fire dispute are binding on both parties.⁸⁰ By vote of two to one, the panel held that the need for police salary increases was overwhelmingly demonstrated.⁸¹ The panel stated that the Pennsylvania Legislature had manifested an intent to provide for the orderly adjustment of police and fire wages by a binding arbitration. If the Legislature did not pass laws giving the City of Pittsburgh statutory authority to broaden its tax base, it would be frustrating the purpose of the Police and Firemen Arbitration Act. The arbiters awarded Pittsburgh policemen a two thousand dollar increase over a two-year period, plus other incidental benefits. (See Appendix C for a copy of this arbitration decision and award.)

The problem presented to the City of Pittsburgh is obvious. It was compelled to pay money to its police by a state law that it was unable to obtain through tax increases because of other state laws. Most municipalities are not caught in such an extreme situation, but do have to consider the problem of raising the necessary revenues to increase employee wages, while considering the psychological effect increased taxes will have on the citizenry.

The Unreasonable Stance

When police employee organizations seek to negotiate with public employers for improved benefits, there is often a tendency for both parties to be unreasonable. This situation is unfortunate, because it undermines their bargaining relationship and threatens a successful resolution of the issues.

In states that do not compel negotiation by collective bargaining statute, city administrators often refuse to discuss police problems with employee organizations. A tactic used by some midwestern cities in 1969 was withholding recognition of a labor organization as bargaining agent for the police, and denial of requests for dues deduction and grievance procedures.⁸² Although public employment bargaining statutes compel the employer to bargain in "good faith,"⁸³ it is a simple matter for municipal representatives to sit at the bargaining table with closed minds. The failure of city leaders to meet the police half-way in establishing a meaningful dialogue forces employee organizations to resort to lobbying, lawsuits, picketing, work slowdowns, and where these fail, work stoppages.

The leaders of some police labor organizations are equally culpable of irresponsibility. Although a large number of police labor leaders are willing to subordinate the interests of the organization to those of the department and the city, there are some leaders whose sole concern is the power and prestige of the employee organization.⁸⁴ Events illustrating irresponsible conduct by police employee organizations include the statement by a New York Patrolmen's Benevolent Association spokesman that City Hall was responsible for the rising crime rate, and he would go over the authority

of the Police Commissioner and Mayor to issue "get tough" guidelines to New York policemen;⁸⁵ and a statement by the President of the FOP calling for a national police strike to muster support for the police.⁸⁶

An uncompromising, unreasonable position taken by police employee organizations or public employers does not promote a stable relationship at the bargaining table. If work slowdowns and stoppages are to be averted, it is imperative that both sides make sincere efforts toward resolving labor disputes. The benefits of a reasonable attitude will accrue to the police, the employer, and the public.

Problems at the Bargaining Table

When a police employee organization and public employer agree to negotiate economic and job problems, the path to successful negotiations is beset with difficulties. Initially, the parties must determine whether they have the legal authority to bargain collectively, and once an agreement has been reached, whether the employer is empowered to honor the contract terms. These questions are no longer an issue in states with public employment collective bargaining statutes.⁸⁷ Other states, however, either prohibit bargaining in the public sector by statute or case-law,⁸⁸ or are silent on the matter.⁸⁹

Once the legal climate is determined to be favorable, three other problems arise. The municipality might have to bargain with a multiplicity of police labor groups. One or both sides could be represented by persons inexperienced in labor negotiations. Finally, each side will be trying to gain every possible advantage over the other at the

bargaining table.

In states with bargaining statutes, many departments have different bargaining units for each rank or combination of ranks.⁹⁰ From the public employer's perspective, the fragmentation of police ranks into separate bargaining units results in each rank represented wanting to negotiate a separate contract. Protracted negotiations signify the use of city personnel and their time, or as in New York City, the creation of a separate office of labor relations which requires funding and staffing. From the police administrator's view, excessive fragmentation means permitting all officers involved in negotiations to take time off from work for this purpose.⁹¹ The chief must also spend valuable time attending negotiating sessions, or delegate a member of his personal staff to be present, in order to protect the interests of police management. One police chief in New York state bemoaned the fact that he was not present at negotiations between the members of his department and the city: "They negotiated my whole contract. I wasn't there and nobody took care of me."⁹²

Collective bargaining in the public sector is comparatively new, resulting in a lack of experienced labor negotiators throughout the country. Arvid Anderson, formerly Director of the Wisconsin Employment Relations Board, and now Director of the Office of Collective Bargaining in New York City, sees a noticeable difference between the bargaining ability of police employee organizations in Wisconsin and New York City, with the latter groups showing more sophistication.⁹³ In Colorado, where a collective bargaining statute for public employees was proposed in 1969 to the General Assembly, legislators opposing the bill cited inexperience of municipal officials in bargaining compared to the expertise of public employees

as one reason for rejecting the legislation. ⁹⁴

When the parties are seated at the bargaining table, each side will seek to achieve its proposals with a minimum of compromise. The police will ask for "more," the city for "less," and somewhere between the proposals and counter-proposals a suitable agreement will be made. The issues of merit system policy and management prerogatives are raised at the bargaining table, and it is here that the struggle for administrative power is played out. Experienced police and city negotiators have learned that one method of achieving goals is to withhold concessions that would otherwise be made, in order that the concession may be traded at a later stage in negotiations for a concession on the other side. ⁹⁵

Negotiating a contract takes on special significance when it is understood that the contract will control, for the period of its stated duration, the relationship between the police employee organization and public employer. A police administrator recently noted that in his state, where collective bargaining for public employees is law, legal sanctions and departmental regulations are no longer relevant. ⁹⁶ The contract controls everything. The police administrator must understand this fact, and the correlative importance of contract negotiations, if he is to retain managerial control of his department.

The Parity Issue

Police and firemen receive equal salaries and other job benefits in many cities. This unified arrangement is termed "parity". Parity is facilitated in some cities by combining police and fire services into a department of public safety. ⁹⁷

There has been a trend in recent years toward "disparity" through an increase in police salaries and other benefits over those of firemen. ⁹⁸ Factors contributing toward preferential treatment for police include realization by the public of the need for a highly-trained, qualified police force; the wave of law and order that swept across the nation during the sixties; and, the elevation of recruiting, training and professional standards within the police service.

One of the rationales favoring parity is firemen work more hours than policemen. ⁹⁹ It is not unusual in some cities for the police to work a forty-hour week while firemen work fifty hours or more, with some of this time spent sleeping at the fire station. ¹⁰⁰ In Hamden, Connecticut, a parity city, the firemen's work week was recently reduced from fifty-six to forty-two hours with sleeping privileges being retained. ¹⁰¹ The Hamden Police Benevolent Association then requested the city government for a fifteen per cent pay increase over firemen's salaries because of the reduction in fire working hours.

Parity creates problems for the city administrator. If a salary increase is proposed for police, firemen must be given equal consideration. If a contract between a police employee organization and public employer is negotiated, the employer must look forward to negotiating an equivalent contract with the fire association.

Firemen understandably argue in favor of parity. A 1969 speech by the President of the International Association of Fire Fighters focused on firemen's disapproval of disparity. ¹⁰² The President stated that unequal treatment favoring policemen would result in second-rate fire departments, leading to a deterioration of fire services. Tight budgets and the public

outcry for law and order were credited as the forces behind disparity. He forecast that firemen throughout the nation would strike to force parity upon municipalities. Other arguments in favor of parity are that firemen receive highly technical training, perform many non-fire functions such as first aid and rescuing pets, and are subject to great hazards in the performance of their duties.¹⁰³

Although there have been situations where police and firemen have cooperated to achieve parity,¹⁰⁴ police employee organizations ordinarily attempt to divorce police and fire salaries. Some of the arguments favoring disparity are that police incur a larger number of job-connected injuries, spend a greater proportion of working hours performing official duties,¹⁰⁵ and lose more personnel because of inadequate salaries.

The parity issue has created bitter feelings between police and fire services in cities where firemen have sought parity. Recent efforts prompted by the International Association of Fire Fighters (IAFF) to achieve parity by referendum were made in Saginaw, Michigan; Albuquerque, New Mexico; San Diego, California; and, Tucson, Arizona.¹⁰⁶ In the 1967 Tucson parity fight, firemen conducted an intensive publicity campaign to achieve a twenty-five dollar salary increase at the polls that would give them equal pay with police.¹⁰⁷ Many of the facts publicized by the firemen as justification for salary hikes were proved to be false by the police and news media, and Tucson voters rejected parity.¹⁰⁸ The results of IAFF parity efforts in Saginaw, Albuquerque, and San Diego were similar.¹⁰⁹

Examining the functions of police and firemen, a similarity exists insofar as both are uniformed services performing an essential community service. The similarity ends at that

point. Firemen deal mainly with things, the extinguishment of fires threatening the destruction of community lives and property. This job is unquestionably fraught with danger, but the knowledge and skills required to perform it competently are mechanical in nature.

The policeman, however, must have the ability to deal with people. He is continually thrust into personal contact with citizens, among whom are hardened criminals, militant youths, and irate citizens.

Employment demanding attentiveness to human behavior requires the hiring and training of educated, intelligent personnel. The President's Commission on Law Enforcement and the Administration of Justice made several recommendations in 1967 reflecting the need for high quality police service. Among the recommendations were the recruitment of college-educated personnel,¹¹⁰ with all police departments striving for the recruitment of persons holding a baccalaureate degree;¹¹¹ the immediate requirement that all supervisory personnel have college degrees;¹¹² recruitment and promotional incentives rewarding college education financially;¹¹³ and, four-to-six month training programs¹¹⁴ giving recruits sound knowledge in law, psychology, police discretion, role of the police, community mores, and scope of the criminal justice system.¹¹⁵

City administrators must recognize the distinct difference between police and fire services, and between the quality of personnel necessary for each to provide efficient service to the community. Police and fire salaries must be divorced, with the former being elevated proportionally over the latter to reflect the variances in personnel, training, and function. Only when disparity is achieved will city administrators be able to bargain independently

with police and firemen employee organizations. Improvements in benefits can be considered on their individual merits, precluding the parity argument that when police are given a salary increase, equal consideration to firemen must necessarily follow.

Notes

1. See Chapter 1, "The Boston Police Strike of 1919."
2. See Chapter 3, "The work stoppage: strikes, sick-calls, mass resignations", for a discussion of work stoppages.
3. Interview with John Nichols, Deputy Superintendent of the Detroit Police Department, Oct. 27, 1969, Detroit, Michigan.
4. Ibid.
5. See Chapter 1, "Boston revisited: The Montreal Police Strike of 1969", for a discussion of this point.
6. Gerald Clark, "The Day the Police Went Away", Los Angeles Herald-Examiner, Dec. 2, 1969, p. A-14.
7. Ibid.
8. Ibid.
9. See Chapter 3, "The mild forms of protest."
10. Ibid.
11. Max Gunther, "Cops in Politics, A Threat to Democracy?", True, February, 1970, p. 33.
12. Ibid.
13. Ibid., p. 34.

14. *Ibid*, p. 33.
15. *Ibid*, p. 35.
16. *Ibid*.
17. *Ibid*.
18. Donald D. Pomerleau, "Unionization, Baltimore Police Department", speech at the State House, Annapolis, Maryland, March 16, 1967.
19. Gunther, "Cops in Politics?", p. 118.
20. *Ibid*.
21. J. Joseph Loewenberg, Temple University, "Emerging Sectors of Collective Bargaining, Seminar No. Three, Labor Relations for Policemen and Firemen", In press, 1968, pp. 37-38.
22. Pomerleau, speech at Annapolis, Maryland, "Unionization, Baltimore Police Department."
23. *Ibid*.
24. *Ibid*.
25. Interview with John Nichols, Deputy Superintendent of the Detroit Police Department; October 27, 1969, Detroit, Michigan.
26. *Ibid*.

27. Patrick Murphy, "Police Employee Organizations", masters thesis, City College of New York, 1960, p. 52.
28. Interview with John Nichols, Deputy Superintendent of the Detroit Police Department.
29. Provision XI (D) of the contract negotiations between the City of Detroit and Detroit Police Officers Association states: "The department is in accord with the principle that seniority should be a major factor in filling job openings, provided the employee is fully qualified otherwise. However, it is recognized that the integrity of the department or its performance as the conservator of the public safety must not be jeopardized through artificial constraints resulting from the application of the principle of strict seniority."
30. Interview with John Nichols, Deputy Superintendent of the Detroit Police Department.
31. *Ibid*.
32. Interview with William Hanger, Chief of the Pontiac, Michigan Police Department; October 27, 1969, Pontiac, Michigan.
33. Interview with John Flood, President, Cook County Police Officers Association, October 26, 1969, Chicago, Illinois.
34. *Ibid*.

35. Interview with John Nichols, Deputy Superintendent of the Detroit Police Department.
36. Hervey Juris, University of Wisconsin, "Police Personnel Problems, Police Unions, and Participatory Management--the Impact of Police Unions on Law Enforcement and Law Enforcement Problems", In press, 1969., p.7.
37. Ibid, p. 8.
38. Ibid, pp. 10-12.
39. See The Challenge of Crime in a Free Society, report by The President's Commission on Law Enforcement and the Administration of Justice.
40. See O. W. Wilson, Police Administration, New York, 1963, p. 5.
41. Arthur Niederhoffer, Behind the Shield, The Police in Urban Society, New York, 1967, p. 26.
42. Juris, "Police Personnel Problems", p. 12.
43. Juris, University of Wisconsin, "The Implications of Police 'Unions' for Policing", In press, 1969. p. 14.
44. Ibid, pp. 14-15.
45. See Chapter V for a discussion of the constitutional right of assembly available to policemen and other public employees today.

46. See Chapter IX, "The Organization and Exclusion of Supervisory Personnel, Where is the Line Drawn?"
47. Wilson, Police Administration, p. 174.
48. Interview with Donald D. Pomerleau, Commissioner of the Baltimore Police Department, October 30, 1969, Baltimore, Maryland.
49. Interview with John Nichols, Deputy Superintendent of the Detroit Police Department.
50. Tucson Police Department Rules and Regulations 6-8.401 provides that "Any member or civilian employee of the department is subject to discipline by the Chief of Police and to dismissal, demotion or suspension by the Chief of Police for committing any of the following offenses . . . :
- 5. Absence from duty without leave ...
 - 25. Feigning sickness or injury to escape duty..."
51. See Wilson, Police Administration, pp. 173-176 for a discussion of police discipline.
52. Interview with John Nichols, Deputy Superintendent of the Detroit Police Department.
53. Interview with William Hanger, Chief of the Pontiac, Michigan Police Department.
54. Some municipalities have fired all officers participating in a work stoppage. Interview with William Hanger, Chief of the Pontiac, Michigan Police Department.

55. O. Glenn Stahl, Public Personnel Administration, New York, 1962, p.28.
56. See Chapter II for a discussion of the issues with which police employee organizations are concerning themselves.
57. See this chapter, "The Threat to Management."
58. "Personnel Opinions", Public Personnel Review, Vol. 27, January, 1966, p. 52.
59. Ibid.
60. Ibid, p. 56.
61. Ibid.
62. Ibid, p.57.
63. Ibid, p. 55.
64. Ibid.
65. Ibid, pp. 53-54.
66. Ibid, p. 53.
67. Ibid, pp. 57-58.
68. Ibid, p. 58.
69. Juris, "The Implications of Police Unions", p. 15.

70. "Personnel Opinions", Public Personnel Review, p. 54.
71. Juris, "The Implications of Police Unions", p. 15.
72. "Personnel Opinions", Public Personnel Review", p. 52.
73. Ibid, p. 56.
74. Ibid, p. 53.
75. Ibid.
76. Juris, "The Implications of Police Unions", p. 15.
77. "Personnel Opinions", Public Personnel Review, p. 59.
78. Interview with Royce Givens, Executive Director, International Conference of Police Associations; October 29, 1969, Washington, D.C.
79. Three states have binding arbitration statutes for police and firemen, these states being Michigan, Pennsylvania, and Rhode Island.
80. Purvon's Pennsylvania Statutes Annotated, Chapter 43, Section 217.7A, states: "The determination of the majority of the board of arbitration thus established shall be final on the issue or issues in dispute and shall be binding upon the public employer and the policemen or firemen involved."
81. In The Matter of Fort Pitt Lodge No. One of the Fraternal Order of Police and City of Pittsburgh, "Re 1968 Contract Arbitration under Compulsory Arbitration Act of 1966,

Opinion and Award."

82. Interview with John Flood, President, Cook County Police Officers Association.
83. Connecticut General Statutes Annotated 7-469 provides that "The municipal employer . . . through appropriate officials or their representatives, shall have the duty to bargain collectively."
84. Interview with Donald D. Pomerleau, Commissioner, Baltimore Police Department.
85. Pomerleau, speech at 1969 IACP Convention, "The Eleventh Hour!", September 29, 1969.
86. Ibid.
87. See Chapter IV for a discussion of state public employment collective bargaining statutes.
88. Ibid.
89. Ibid.
90. See this chapter, "The lure of labor to police lower and middle-management."
91. Robert E. Denman, speech at 1969 IACP Convention, September 29, 1969.
92. Ibid.

93. Interview with Arvid Anderson, Director of the New York City Office of Collective Bargaining; November 5, 1969, New York, New York.
94. Report by the Colorado Legislative Council to the Colorado General Assembly, Public Employee Negotiations, December, 1968, p. xxiii.
95. Interview with Herbert Haber, Director of the New York City Office of Labor Relations; November 5, 1969, New York, New York.
96. Interview with John Nichols, Deputy Superintendent of the Detroit Police Department.
97. Murphy, "Police Employee Organizations", p. 118.
98. Ibid., p. 119.
99. Loewenberg, "Emerging Sectors of Collective Bargaining", p. 14.
100. Ibid., p. 16, for a discussion of firemen and police hours.
101. International Conference of Police Associations, "Hamden, Connecticut, Police Want 15% More, Seek to Break Parity with Firemen", Notes from the International Office, June, 1969, p. 11.
102. ICPA, "Fire Fighters President Hits Disparity with Police Pay, Warns that Inferior Service, Labor Unrest Will Follow", Notes from the International Office, December, 1969, p. 4.

103. Robert Grant and Dr. Paul Saenz, "The Police-Fire Parity Issue", Police Chief, September, 1968, p. 56.
104. The Indianapolis, Indiana, Fire Fighters Association and the Indianapolis Police Fraternal Order of Police combined forces in 1969 to seek a \$1,700 pay raise for firemen, and an \$1,800 increase for policemen, so that both salaries would equal \$8,000. See ICPA, "Indianapolis Unions Cooperate -- Police, Firemen Seek Parity", Notes from The International Office, July, 1969, p. 4.
105. Grant and Saenz, "The Police-Fire Parity Issue", pp. 53-59.
106. Ibid, p. 59.
107. Ibid, p. 54.
108. Ibid, p. 56.
109. Ibid, p. 59.
110. The President's Commission on Law Enforcement and the Administration of Justice, The Challenge of Crime in a Free Society, U.S. Government Printing Office, Washington, D.C., p. 109.
111. Ibid.
112. Ibid, p. 110.
113. Ibid, pp. 108 and 111.

114. Ibid, p. 112.

115. Ibid.

Chapter VIII

Bringing Stability To The Police Labor Movement

Identifying the problems created by police employee organizations is a simple task. Finding the means to resolve them is not such an easy matter. The problems created by police militancy during the sixties have had an unsettling effect on the labor-management relationship. The rank and file policeman, chief, public employer, and public have been affected by this militancy. If a measure of stability is to be achieved in the police labor movement during the seventies, all those affected must understand what their role will be in bringing order out of disorder.

The Chief and Work Stoppages

When a strike, blue flu or mass resignation hits a police department, the chief is faced with three key decisions:

1. What his position in the labor dispute will be;
2. What he can do to terminate the dispute; and,
3. What course of action he will take with respect to officers participating in the work stoppage.

How the chief decides these questions will affect the relationship with his men for many years.

A work stoppage forces the police administrator to take a position in the dispute. He is faced with three alternatives. He may join the public employer on the basis that he is answerable to government officials. He may side with officers engaged in the work stoppage on the grounds that he is their

leader. The police chief has a third alternative, to remain neutral and serve as an impartial arbitor between the disputing parties.

By taking a stand on either side, the chief will undoubtedly alienate the other, thus losing future support and confidence of the rejected party. The best approach the police administrator can follow is to remain unequivocally neutral during the work stoppage. By remaining impartial, he can communicate freely with both government officials and officers conducting the work stoppage. The possibility of open discussion with both sides enables the chief to serve as an unbiased arbitor trying to reconcile the dispute.

There is no question that neutrality is a difficult task for some police chiefs. In many communities, the chief is a political appointee who holds his position at the pleasure of the party in power.³ A chief who values his position will find it more expedient to support the public employer in the dispute if he realizes that remaining uncommitted will incur the wrath of the employer.

A strong police administrator will have no trouble maintaining his neutrality. In the long run, this approach is to his advantage. The officers will appreciate the chief's concern for their position in the work stoppage, and long after the dispute is resolved, will recall that their leader attempted to resolve the dispute to the satisfaction of both sides.

When a work stoppage occurs, the police chief's foremost concern should be restoring normal police operations.⁴ The public's stake in around-the-clock police protection deserves nothing less than total commitment by the chief toward this end. While the work stoppage is continuing, he

must arrange for manpower commitments from other local law enforcement agencies so the city's protection is insured. In the past, sheriff deputies, officers from adjacent communities, and state police have been relied upon to fill the void left by striking officers.⁵

There are two approaches the chief may follow to restore normal police operations. First, he can seek an injunction from a court of competent jurisdiction, compelling the officers to return to their jobs. The injunction is a powerful tool. Many statutes, ordinances, and police department regulations prohibiting a strike are not sufficiently broad to prevent "blue flu" or mass resignation. Where this legal deficiency exists, the injunction ordering officers to return to work is extremely effective, because a refusal to obey results in contempt of court, punishable in most states by fine and imprisonment. Appendix D contains injunction forms that should be used in event of a police work stoppage.

The second step toward restoring full departmental operations is informal discussions with police labor leaders. If one of the causes of the dispute can be remedied by the chief, such as the creation of grievance procedures, he should make strong efforts in this direction. Where the elements creating the dispute are beyond his control, such as salary increases, the chief should discuss the problem with his men and convey their side to appropriate government officials. The chief's role should be keeping the lines of communication between the parties open. The advantage of having a neutral chief during the dispute is readily apparent when considering the importance of informal discussions.

After the work stoppage has terminated, the police administrator faces his most trying task, deciding whether to

take punitive measures against the officers who participated. Most police departments have a regulation prohibiting officers from striking, and some departments prohibit all forms of concerted refusal to work.⁹

There are three schools of thought concerning the sanctions that should be taken against striking officers. One attitude is that regulations prohibiting a strike should be strictly enforced.¹⁰ Striking by police is an abdication of professional responsibilities, and should be punished accordingly.

Another view is that the chief should be aware of all legal options available for punishing striking officers,¹¹ but should use them with discretion.¹² Suspending all officers who engaged in a work stoppage will severely deplete the department's strength, so punishments should be brought to bear only against those officers who incited the stoppage.

The third point of view also expresses the fear that wholesale suspensions will destroy the department. It departs from the previous attitude in that sanctions against any officer are regarded unfavorably.¹² Suspensions create unnecessary sympathy for those suspended, giving disgruntled personnel an additional cause celebre to rally other officers.

In light of police labor practicalities, not taking punitive action against any police officer who engages in a work stoppage is probably the best. When a police labor organization conducts a stoppage, the standard demand is that no sanctions be imposed upon the officers involved once the normal police operations are restored. When the other terms of dispute have been resolved, the public employer must agree to the no-sanction requirement or face a continuation of the work stoppage. The chief will be

committed to this agreement as well.

This position does not signify that offending officers will go unpunished. Many states provide for civil or criminal punishment, or both, against individuals and organizations engaging in public employment strikes.¹³ Some states make work stoppages an unfair labor practice, with the participating organization receiving a substantial fine and loss of exclusive bargaining status.¹⁴ Police administrators should leave sanctions in the hands of state courts and labor agencies. In this way officers will not be given a cause that may be used to create further labor unrest.

In the final analysis, the most important consideration is not knowing how to deal with work stoppages, but in assuring that the labor-management relationship never deteriorates to where a work stoppage is necessary. Only when police administrators, government officials, and police labor leaders contribute toward orderly police labor relations will work stoppages be averted.

New Approaches By The Police Administrator

The finger of blame for employee dissatisfactions must first be leveled at the police chief. He is in a position to correct many job dissatisfactions. When officers manifest their discontent through work slowdowns or stoppages, the chief must reappraise his labor-management policies to determine whether or not there is something he can do to make employment conditions more satisfactory for his men. There is much that can be done.

The prime requisite for successful relations between the chief and his officers is that he be well-versed in

sound personnel practices. Arbitrary, capricious administrative policies serve no purpose other than alienating subordinates. There are many educational avenues open for improving management skills. The Federal Bureau of Investigation Academy in Washington, D.C.; the Northwestern Traffic Institute in Evanston, Illinois; the Southern Police Institute in Louisville, Kentucky; and the many regional management institutes conducted by the International Association of Chiefs of Police offer the police chief a variety of opportunities for learning the most recent advances in police administration. The chief should also require that his top-echelon staff receive training from one of these sources.

Many police chiefs react negatively to police employee organizations. Efforts are made to obstruct labor group initiatives at every turn. Tactics resorted to by police chiefs to achieve this purpose include prohibiting membership in an organization,¹⁵ harassing leaders,¹⁶ and refusing to recognize and cooperate with the group.¹⁷

This inflexible attitude is undesirable in today's police labor environment. An uncooperative chief will cause police labor organizations to take the initiative in seeking economic and job benefits through collective bargaining or militant activity.¹⁸ By sitting back, the chief will see his men not only achieve better wages, but also make unpalatable inroads on his administrative prerogatives. By recognizing any police labor organizations within the department, however, and developing a spirit of mutual cooperation in resolving employment problems, the chief will lay the foundation for stable labor-management relations.

Permitting membership in a police employee group is a

legal necessity today.¹⁹ Developing a compatible relationship with these organizations, however, is not. The chief's initiative is necessary to develop a spirit of cooperation. By launching a six-point program, the police administrator can virtually insure orderly labor relations within his department. The six programs include:

1. Aggressively pursuing the economic and job needs of his men through discussions with city administrators;
2. Giving officers a stake in policies and programs of the department;
3. Opening lines of communication;
4. Creating a grievance procedure;
5. Giving lower and middle management ranks more responsibility; and,
6. Sharpening bargaining skills.

Many of the needs of police employee organizations fall beyond the scope of the chief's authority. Changes in salaries, hours, sick leave policies, holidays, vacations, health and pension benefits, entrance level requirements and promotional systems must ordinarily be made by the legislative body or the civil service commission. The initiatives for making these changes, however, can and should come from the chief. If he fails to respond to this responsibility, police labor groups will fill the leadership vacuum.

The administrator must continually evaluate whether economic and job conditions in his department meet contemporary standards.²⁰ If there are deficiencies he should discuss the problem areas with government officials, and make the necessary recommendations. If the public employer fails to

heed the police administrator's advice, the blame will fall on it, not the chief.

The Baltimore, Maryland Police Department is a classic study of what can be achieved for policemen when a chief is responsive to the economic and job needs of his men. When Donald D. Pomerleau was appointed Commissioner in 1966, morale on the Baltimore Police Department was at a low point. Officers were underpaid, used inadequate equipment, worked a six-day week, were permitted no lunch break, and received straight pay for overtime.²¹ Commissioner Pomerleau, realizing Baltimore policemen wanted and deserved a change in their employment conditions, sought out the governmental bodies empowered to effect the necessary changes. Since 1966, Baltimore police salaries have risen to fifteenth highest in the nation,²² five hundred new cars were purchased,²³ the work-week was reduced to five days, a thirty-minute lunch break was permitted, and time and a half pay for overtime was achieved.²⁴ It was through Commissioner Pomerleau's personal efforts that these changes were secured.

The second program that will lead to compatible labor relations, giving members of police employee organizations a stake in management affairs, will come hard for many administrators. The traditional philosophy is that "we" manage, "they" follow.²⁵ This view is unfortunately an inaccurate appraisal of a police department structure. The police chief and all officers in the chain of command are "us".²⁶ If anybody is "they", it is the public employer from whom most employment changes must be sought.

There is no question that the ultimate decision and policy-making authority resides in the office of the chief. Being responsible for the performance and quality of his department, he should always have the final word as to

whether a particular decision, policy, or program will be implemented.

Since administrative and operational units of the police department, however, are both striving toward the same goal, protecting the lives and property of citizens, it would seem that each has valuable ideas to offer for achieving this goal. At the planning stages, the chief should seek out the opinions of officers all the way down the chain of command to determine whether proposed plans will meet with acceptance. O. W. Wilson, the foremost educator in the field of police administration, was explicit on the necessity of participatory management:

"The wise leader wins the support of his force to his policies, plans, and procedures before placing them into effect... Since subordinates who share in the development of procedures usually understand and approve them, the wise leader promotes their participation at every opportunity..."²⁸

The day of autocracy in the police service is past. It is time for police administrators to realize that the cooperation of officers is best enlisted through open discussions. By soliciting the understanding and cooperation of a majority of officers, any new program or policy is guaranteed success.

The experience of Pontiac, Michigan Police Chief William Hanger is illustrative of the lengths to which police administrators can permit officers to participate in management decisions and still retain managerial control.²⁹ Chief Hanger was dissatisfied with his department's promotional guidelines. He submitted a request to the Pontiac Police Officers Association to draft a new promotion policy for the department. The policy drafted and submitted by the

Association was identical to what Chief Hanger wanted in the way of a promotional system. The Association's plan was adopted for use by the Pontiac Police Department, and since its inception there have been no complaints among Pontiac officers concerning promotions.

Opening lines of communication is another effective means of creating a stable labor environment. Communication between the police administrator and his officers gives each an understanding of the other's problems. Two-way communication is best facilitated by periodic, informal discussions. An informal discussion offers three decided advantages: officers are able to express their needs and dissatisfactions; more time-consuming and costly methods of achieving changes in employment conditions, such as lobbying and collective bargaining, are avoided; and, police officers develop a better understanding of management problems.³⁰

Another approach to improved communication is the publication of a departmental newsletter. A periodic news journal discussing proposed departmental policies and programs forestalls a common complaint among the rank and file that they hear of major departmental changes for the first time through the news media.³¹ The newsletter also serves as another vehicle for the chief to explain policy changes.

A chief committed to a sound relationship with his labor organizations must establish machinery for the resolution of grievances. When an officer feels he has been treated unjustly by a fellow or superior officer, departmental policies have not been followed to his detriment, new policies are unfair, or the provisions of the contract negotiated between his employee organization have not been followed, a procedure that will fairly and expeditiously resolve the

grievances must be employed. The benefits are two-fold: the aggrieved officer has an outlet for his dissatisfactions, and the chief can pinpoint trouble areas within the department.

Many police departments do not need formal grievance procedures because job problems are satisfactorily resolved on an informal basis through discussions between the aggrieved officer and his superiors.³² The police administrator must evaluate whether his officers have adequate informal outlets for job injustices. If not, a formal grievance procedure should be created.

Standard police grievance procedures permit the aggrieved officer to attempt adjustment of the problem on an informal basis with his immediate supervisor. If the grievance cannot be resolved at this level, an appeal can be made to a command officer. Where no satisfaction is achieved here, further appeals may be made to a higher command officer, and, finally, to the chief. When these methods have not resolved the grievance to the officer's satisfaction, he may seek an arbitration decision. At all stages of the grievance procedure, the complaining officer has the right to the presence and aid of an agent of his employee organization, called a steward. (See Appendix E for a police grievance procedure)

The Saint Louis Police Department has a novel approach to grievances. A police captain, elected by all non-supervisory personnel, serves as a personnel relations representative.³³ All officers may take their complaints to him in confidence when a satisfactory resolution of grievances cannot be made within the ordinary chain of command. The personnel relations representative is empowered to take corrective action where there is a breach of sound

administrative practice or departmental regulations.

The identification of police lower and middle-management with the patrolman's viewpoint often impedes the chief's efforts to carry out departmental programs and policies.³⁴ Without the cooperation of supervisors whose job it is to maintain control of subordinates, management directives go unheeded. This difficulty can best be resolved by giving lower and middle supervisory ranks more management responsibility.³⁵

Giving a sergeant the authority to regulate his men's days off, vacations, and areas of work responsibility, and to initiate disciplinary action against them, makes him more than a figurehead leader. He becomes a decision-maker, who must take action not always compatible with his subordinates' desires. By forcing lower management to take on additional responsibility, the community of interests existing between it and patrolman will be weakened.

The trend toward collective bargaining in the public sector has necessitated the development of sharpened bargaining skills. It is essential that the police administrator or his representative be present at the bargaining table to guard against management prerogatives being negotiated away, and to insure that contract provisions are drafted to his advantage. The police chief should keep in mind that once a contract is negotiated, it will control his relationship with the officers.

Following is a check-list of contract issues to which the police administrator should pay particular attention. The failure to insert a provision giving him final authority in these areas will result in a loss of managerial control.³⁶

1. Bulletin boards: Management should retain control

over the material placed on department bulletin boards because uncontrolled use might be abused by police employee organizations to the detriment of department policies or programs.

2. Grievances: For the chief's protection, any grievance should be submitted in writing and signed, and officers should be permitted to file personal grievances only. Such a provision discourages the filing of frivolous and rumor grievances.
3. Hours of work: The administrator must control the scheduling, increase and decrease of work hours, otherwise he will not be able to control department operations.
4. Leaves of absence: The conditions under which an officer may take a leave of absence should be specified. This provision is especially significant in order to control the circumstances under which an officer may take a leave of absence for conducting employee organization business.
5. Promotion: The administrator must retain the right to determine the criteria to be considered in making promotions. Recognition of seniority can be included in the contract, but only as one among many other considerations, such as physical fitness, performance, education, knowledge, training, ability, and efficiency.
6. Strikes: The contract should specifically prohibit work stoppages, with a broad definition for this activity. A provision should also be included requiring the employee organization, in the event of a work stoppage to make good faith efforts

to halt the work stoppage. The employee organization, usually the instigator of a work stoppage, would be placed in the uneasy position of violating the contract if it did not try to halt a work stoppage.

7. Transfers: Like promotions, seniority must not be the key consideration for transferring personnel from one assignment to another.
8. Vacations: Due to operational contingencies that may arise, the police administrator should retain the right to set vacation periods, and to rescind them where circumstances dictate.
9. Overtime: Since the administrator must be vigilant with respect to budgetary expenditures, firm guidelines for overtime pay should be established. Overtime provisions should include that overtime is to be approved by a supervisor, the rate to be paid, who is eligible, and whether it applies to court and school attendance.
10. Outside employment: It is essential that the chief control the nature and amount of outside employment, since a policeman's second job can reflect adversely upon the department (e.g.; an officer working in a liquor store where unlawful sales to minors might take place). The contract should specify the number of hours that may be worked, and approved and prohibited types of employment.

By launching a six-point program that includes pursuing the officers' employment needs, allowing participation in management decisions, encouraging communication, creating grievance procedures, giving lower supervisors more responsibility, and sharpening bargaining skills, the police

administrator forestalls the need for strong police employee organizations. A labor group only achieves power when the chief abdicates his administrative responsibilities, creating a leadership vacuum. The officers are forced to rely on their own initiatives for attaining better economic and job conditions. By developing a spirit of cooperation with employee organizations, however, the police administrator is fostering a stable labor environment in which job problems can be resolved with a minimum of friction.

New Approaches By The Public Employer

The public employer plays a key role in contributing to stable police labor relations. Economic and merit system problems may only be changed by initiative of the legislative council or civil service commission. Disinterest by these bodies in police economic and job problems will undoubtedly lead to work stoppages. By making a sincere effort to discuss police needs with employee organizations, and to satisfy these needs where practicable, the employer will be fulfilling its responsibilities not only to the police, but to the public as well, to whom it owes the maintenance of high-quality police service.

In states where collective bargaining by public employees is operative, the employer is required to recognize police employee organizations as the bargaining agent for the purpose of negotiating.³⁷ In states where public employee bargaining has not yet met with legislative sanction, recognition for any purpose remains discretionary. An arbitrary denial of recognition by the public employer in these latter states, cutting off labor-management dialogue, forces police employee organizations to seek recourse through the

undesirable means of work slowdown or stoppages. By recognizing a police labor group, the public employer lays the foundation for low-key, rationale discussions that can resolve the police economic and job problems.

In collective bargaining states, contract negotiations automatically follow recognition by the employer. In those states where public sector bargaining is either prohibited or uncertainty exists as to its use, the public employer may, and often does, refuse to bargain. Irrespective of the legal authority to bargain, however, every employer faced with employee organization demands should meet with the organization and discuss police problems in good faith. The lack of authority to bargain a contract does not prohibit an employer from meeting the police group informally to discuss problems and implementing necessary changes by legislation. Once again, the failure of the public employer to discuss informally or to bargain in good faith where law permits, will drive the police to disruptive methods for achieving economic and job goals.

Where state law allows bargaining in the public sector, the employer must develop a negotiating team that can cope with police representatives. The creation of an office of labor relations is desirable for this purpose. This agency is staffed by individuals having a special expertise in public employment bargaining, ensuring that the employer is not at a disadvantage at the bargaining table.

Few city and state governments can afford the luxury of a full-time labor relations staff, however, and rely on the services of available personnel. In this situation, the best alignment for a bargaining team is one or two spokesmen having the authority to make contractual commitments, usually a mayor, city manager, councilman, or other leading

government figure. A supplementary staff capable of offering advice in specialized areas should also attend, these individuals including the personnel director, the city attorney, the budget director, a representative of the civil service commission, and a police department spokesman. The police representative would not necessarily be present to advocate the employer's position, but to protect the interests of police management.

When a mutual determination is made to commence contract negotiations, the public employer should lay the ground rules for conducting talks. The rules should be reasonable, and meet with approval from the police labor organization. Factors to be considered in scheduling negotiating sessions include:³⁸

1. Time (of year): Negotiations should begin early in the fiscal year to avoid rush at the end, and to facilitate the passage of necessary legislation.
2. Place: Meetings should be conducted on neutral ground which is free from interference and has space available for private caucuses.
3. Time (of day): The time schedule should be convenient for all persons having a stake in attending the sessions.
4. Duration: A time limit on daily meetings should be set in order to avoid an overcrowded agenda and fatigue.

The employer negotiating team must prepare in advance of negotiations. A set of proposals and counterproposals should be formulated, accompanied by factual data to support these proposals.³⁹ A tactical plan should be established before

sitting down at the bargaining table.⁴⁰ The public employer's negotiating strategy should include:

1. Listening seriously to the police proposals and discussing them openly;
2. Making counterproposals where there is a point of difference;
3. Easing some counterproposals, especially on minor points where there is no disagreement;
4. Where feasible, offering improved economic or job benefits to the police;
5. Offering a contract and stating that this offer is the best that can be made under the circumstances;
6. Providing the employee group with assurances that if it objects to certain features of the proposed contract, further discussions can be held;
7. Making other concessions to the police organization where feasible, and then standing firm;
8. Proposing the necessity of not publicizing proposals and counterproposals made during the negotiations.

Somewhere between the proposals and counterproposals, an agreement will be made allowing both parties to come away from the bargaining table with dignity and satisfaction.

The scope of negotiability on merit system issues, and the traditional role of the civil service commission in administering personnel policies must be reconsidered by the

public employer. Where a police employee organization makes proposals concerning a change in recruiting, promotion, job classification, and other merit system practices consistent with sound public personnel management, these ideas should be given good faith consideration by the employer. Although the civil service commission should not abdicate its responsibility as overseer of merit system standards, it also should not cover its position to the point of cutting off dialogue between the police organization and employer. A bilateral approach to merit system problems will encourage thoughtful suggestions from both labor and management, and the reward will be higher quality personnel policies.

Where parity exists between police and fire services, the employer must evaluate the desirability of creating disparity. Due to the need for better personnel, training, and compensation programs in police rather than fire services, serious consideration should be given toward disparity.⁴⁷ Although severe resistance will be encountered from firemen who will suffer the impact of disparity, the public employer will benefit in the long run. Disparity will encourage the entrance and retention of more educated, intelligent police officers that are essential to provide the public with service it needs and deserves. Also, the employer may then consider the economic and other employment needs of police and fire services independently. Independent consideration relieves the employer of giving the same benefits to one service that it gave to the other through contract negotiation or legislation.

Finally, the government's revenue base must be appraised to determine whether it is adequate to compensate for increased economic benefits resulting from collective bargaining. Where law permits, taxes should be imposed that will bring in necessary revenues, yet distribute the tax

burden equitably throughout the community. Where the statutory basis for obtaining new revenues does not exist, it is the public employer's duty to seek broader taxing powers from the state legislature.

New Approaches By Police Employee Organizations

The police discovered in the sixties that through organization and militant activity a great deal of power could be wielded to attain improved salaries, insurance and pension benefits, and other incidents of job security. This newly discovered power was not always exercised with the utmost discretion. When the police found their needs could not be satisfied through normal channels of communication, more forceful tactics were employed, tactics which created animosity between employer and employee, and raised serious legal and public responsibility questions.

The full blame for conducting work slowdowns and stoppages cannot rest entirely upon police employee organizations. In most cases, these activities were resorted to as a last alternative, after the public employer had failed to respond to police needs. The seventies, however, will require fresh appraisal by police employee organizations as to their role and responsibility in the police labor movement. Increased sophistication in dealing with labor problems by police administrators and public employers during the next decade will cause employee organizations to re-evaluate whether militancy is the key to attaining improved benefits.

If police chiefs and public employer are going to make efforts toward developing a stable labor environment, police employee groups must reciprocate. Police organizations should encourage informal meeting sessions with their chief.

At these meetings, dissatisfactions that can be remedied by the chief, such as the creation of grievance procedures, should be raised and discussed openly. Economic and merit system issues beyond the chief's power should also be brought to his attention. He will thus be given the opportunity to confront the employer with the need for improved police salaries and other benefits. Labor representatives should try to understand management's point of view at these meetings, and realize that certain needs cannot be immediately satisfied for legitimate reasons.

Informal discussion sessions should also be arranged with government officials. Problems of an economic nature, or which require civil service action, can be raised at this time.

When the time for bargaining a contract draws near, police employee organizations should also prepare proposals based upon factual data, and a strategy for achieving these proposals. The strategy will be similar to that of the employer with initial proposals, counter-proposals, and final proposals being determined in advance.

At all stages of discussion and bargaining with police and government administrators, police labor groups should be reasonable. If the police employee organizations are reasonable in seeking improved benefits, and police and government officials respond likewise, satisfactory agreement is assured. To act reasonably does not foreclose taking an interest and suggesting changes in areas that have long been considered the province of management or the civil service commission. If employee organizations see deficiencies in police administrative practices or merit system policies, these matters should be brought to the attention of appropriate persons. Being spokesmen for the

police, labor organizations are obligated to raise job problems affecting their membership.

When labor and management are willing to discuss matters of mutual interest reasonably, a stable relationship will result. The disruption created by threatened and accomplished work stoppages will be averted. It is the duty of police employee organizations, to both the employer and public, to avoid work stoppages. Conducting a work stoppage condones illegality and jeopardizes the public's right of police protection. The memory of Montreal, 1969, should dissuade responsible labor leaders from exhorting their membership to strike.

Two other areas deserving attention by police employee organizations are involvement in politics, and the interest of lower and middle management in labor activities. Politics should never be the bedfellow of police. By contributing to a politician's victory through endorsements, contributions, and door-to-door campaigning, a doubt is created in the minds of the public as to the extent of influence the police might have on that person. Most policemen would not abuse the right to be active in partisan politics, but the few officers who would take advantage of their political power jeopardize the integrity of the entire police service. It is because of this possible abuse that policemen must forego the right to be politically active.

There is no question that sergeants and lieutenants are as deserving of better salaries, pensions, grievance procedures, and other job benefits as patrolmen. Before engaging in disruptive tactics to achieve these goals, supervisory personnel should keep in mind that:

1. They are a part of management, and any actions contrary to the interests of management are a

reflection on themselves;

2. Salary increases and other benefits snowball. When the patrolmen receive benefits, the public employer must increase the benefits of other ranks in order to maintain the proper balance between salary and job responsibility; and,
3. Most states with public employee bargaining statutes permit lower and middle supervisory personnel to bargain a contract. Keeping in mind the standard of reasonableness, sergeants and lieutenants can also achieve their job goals with a minimum of disruption and maximum of satisfaction.

Notes

1. Interview with William Hanger, Chief of the Pontiac, Michigan, Police Department; October 27, 1969, Pontiac, Michigan.
2. Ibid.
3. Interview with John Flood, President of the Cook County Police Officers Association; October 26, 1969, Chicago, Illinois.
4. R. Bruce Holmgren, "Seven Steps to Strike-free Relations", Chicago-Kent Police Law Reporter, September, 1969, p. 2.
5. Interview with William Hanger, Chief of the Pontiac, Michigan, Police Department.
6. See Florida Statutes Annotated, Section 839.221.
7. See Arizona Revised Statute 12-863, where contempt of court is punishable by a fine up to one thousand dollars and imprisonment up to six months.
8. Interview with William Hanger, Chief of the Pontiac, Michigan, Police Department, and interview with John Nichols, Deputy Superintendent of the Detroit, Michigan, Police Department, October 27, 1969, Detroit, Michigan.
9. Many departments regulate striking by a provision prohibiting absence from duty without leave approved by a supervisor, Tucson Rules and Regulations, 6-8.401.

10. Interview with Donald D. Pomerleau, Commissioner of the Baltimore Police Department, October 30, 1969, Baltimore, Maryland.
11. Holmgren, "Seven Steps to Strike-free Relations", pp. 15-16.
12. Interview with William Hanger, Chief of the Pontiac, Michigan, Police Department; and John Nichols, Deputy Superintendent of the Detroit, Michigan, Police Department.
13. See South Dakota Compiled Law Annotated, Section 3-18-34.
14. See Maine Revised Statutes, Title 26, Chapter 9A, Section 964 (A) (2) (C).
15. Tucson Police Department Rules and Regulations 6-9.519 prohibits officers from joining any organization whose constitution embraces the strike as a means of obtaining goals.
16. Interview with John Flood, President, Cook County Police Officers Association.
17. Ibid.
18. Pamphlet by William E. Kirwan, "The New York State Police; History and Development of Collective Negotiations", 1969, p. 27.
19. See Chapter V, "The Right to Organize and Join".

20. Donald D. Pomerleau, speech at the 1969 IACP Convention, "The Eleventh Hour!", September 27, 1969.
21. Interview with Donald D. Pomerleau, Commissioner, Baltimore Police Department; October 30, 1969, Baltimore, Maryland.
22. Law Enforcement Legal Unit, "District of Columbia Personnel Office Police Pay Survey Results", Squad Car Lawyer, 1970, p. L-1.
23. Interview with Donald D. Pomerleau, Commissioner, Baltimore Police Department.
24. Pomerleau, speech at the 1969 IACP Convention.
25. Hervey Juris, University of Wisconsin, "The Implications of Police 'Unions' for Policing", In press 1969, p. 7.
26. Ibid.
27. Ibid.
28. O. W. Wilson, Police Administration, (New York, 1963), p. 15.
29. Interview with William Hanger, Chief of the Pontiac, Michigan, Police Department.
30. International City Managers Association, Municipal Police Administration, (Chicago, 1961), pp. 162-163.
31. Curtis Brostrom, speech at the 1969 IACP Convention, September 29, 1969.

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32. J. Joseph Loewenberg, Temple University, "Emerging Sectors of Collective Bargaining, Seminar No. 3, Labor Relations for Policemen and Firemen", In press 1969, p. 53.
33. Curtis Broston, speech at 1969 IACP Convention.
34. See Chapter VII, "The Lure of Labor to Police Lower and Middle-management."
35. Interview with Donald D. Pomerleau, Commissioner of the Baltimore Police Department.
36. Kirwan, "The New York State Police", pp. 29-30.
37. See Chapter IV for a discussion of state public employment bargaining laws.
38. Kirwan, "The New York State Police", p. 27.
39. *Ibid*, p. 28.
40. *Ibid*.
41. See Chapter VII, "The Parity Issue", for a discussion of the reasons for disparity in favor of the police.
42. See this chapter, "New approaches by the public employer", for a discussion of bargaining strategies.

Chapter IX

Collective Bargaining: Voice Of The Future ¹

The sixties brought about a rapid disintegration of resistance toward collective bargaining in the public sector.² Where permitted by state law, negotiating a contract is today a constitutionally accepted principle.³ Platitudes denouncing public employment bargaining as an infringement on legislative sovereignty no longer seem relevant.

The Need For Collective Bargaining In The Public Sector

After reflecting on the instability of public employment labor relations in the sixties, the need for a statute giving policemen and other public employees the right to negotiate with their employer for improved job benefits is obvious. Over the past twenty years, the rise in public employment has been phenomenal, with nearly five and one-half million employees being added to state and municipal work forces during that period.⁴ By 1975, the hiring of three million more employees is anticipated, bringing the total of public employees to twelve million.⁵ Coupled with this rise will be the increased organization and activities of public employee organizations for the purpose of obtaining satisfactory conditions of employment.

With legislative machinery to regulate the relationship between public employee and employer, stability is created where unrest has been common. It is not realistic for public employers to assume labor disputes will not occur in their communities.⁷ Labor disruptions are happening nationwide, with police, firemen, sanitation workers, teachers, and other public employees seeking improved benefits, and taking whatever

measures necessary to attain them. State collective bargaining legislation provides orderly procedures for the termination of complex labor disputes. Without statewide control, the resolution of disputes is left to the vagaries of local management practices, employee organization pressure tactics, and judicial and administrative decisions.

Work stoppages are the ultimate result of labor disputes, and pose a threat to both the labor-management relationship and the public welfare. Collective bargaining laws contain three features that lessen the possibility of work stoppages. One of the major issues leading to work stoppages, refusal of the employer¹⁰ to recognize a public employee organization, is prevented. All state bargaining laws require the employer to recognize an employee organization representing the majority of employees within a particular job classification. Impasse procedures which encourage the disputing parties to reach an agreement by mediation, fact-finding, or arbitration when negotiation fails to produce a result are another feature of bargaining statutes reducing the likelihood of work stoppages. Finally, penalties are normally imposed against individuals participating in and the employee organization instigating the work stoppage. Organizational penalties are especially severe, including stiff fines and loss of accreditation as the exclusive bargaining agent.

One writer has noted some positive implications encouraged by collective bargaining.¹¹ The grouping and organization of employees who share similar job interests, called an appropriate unit, will require employers to make a realistic distinction between who is labor and who is management.¹² Bargaining will lead to the negotiation of grievance procedures, bringing employee dissatisfactions into the open.¹³ It will result in the negotiation of educational

incentive plans so that the imbalance in the public service between education and compensation will be corrected.

Among the more speculative implications of collective bargaining are raising entry level standards through negotiation;¹⁵ and, bargaining for career economic incentive plans that would permit an employee to remain in a position he performs well, rather than be forced into a supervisory¹⁶ position he cannot handle in order to receive better pay. These two implications are speculative because they deviate from traditional government personnel practices, and will encounter resistance from both labor and management.¹⁷

One other consideration militating in favor of state legislation if states fail to take the initiative in passing collective bargaining laws for public employees is the likelihood of federal government intervention.¹⁸ Federal intervention could be easily achieved by the addition of a few words in the definition of "employer" in the Taft-Hartley Act.¹⁹ This law presently controls labor relations in the private sector. Federal regulation of state and local government employment problems would be undesirable. The National Labor Relations Board, regulatory agency under the Taft-Hartley Act,²⁰ would not be able to cope with the increased work load. Intervention would also create resentment at the state and local level, as do many other federally controlled programs.

The Attitudes Toward Collective Bargaining

The prevailing attitude toward collective bargaining is favorable. There seems to be a growing realization among those involved with public employment labor problems that a bargaining statute offers the solution to many ills that have beset the public sector. The Colorado Legislative

Council, a continuing research agency for the Colorado General Assembly, submitted a study of public employment labor problems to the 1969 legislative session.²¹ The Council based its report on information supplied by a cross-section of persons in public service, including attorney generals, city attorneys, scholars, civil service members, politicians, employee organization spokesmen, and city managers.²² The Council observed that with very few exceptions, all these persons were favorable to some form of legislation that would permit contract negotiations between Colorado public employees and employers.²³ The major disagreements among the consultants arose with respect to the substantive provisions of the proposed legislation.²⁴ The Council recommended that a collective bargaining law be passed in Colorado, and submitted legislation to the General Assembly for approval. This recommendation went unheeded by the Colorado General Assembly, however.

Persons and organizations identifying with labor are consistently favorable toward collective bargaining legislation.²⁵ AFSCME is firmly committed to collective bargaining, and its efforts are geared toward organizing public employees, offering bargaining assistance to local affiliates and promoting bargaining laws at the federal and state levels.²⁶ AFSCME feels the only means by which public employees can have a voice in their destiny is through collective bargaining.²⁷ A spokesman for the International Conference of Police Associations is also in favor of bargaining, but notes that for every state with legislation in this area, there is a different type of law.

Resistance to collective bargaining tends to gather in public service administrative positions. Administrators fear that bargaining will undermine their power to control

employees, because it will make management prerogatives and civil service issues negotiable.²⁹ These fears seem unjustified in light of new participatory management concepts which encourage employees to express job dissatisfactions, yet give management the power to make final decisions on policy considerations.

One attitude of police administrators in the past maintained striking was a necessary adjunct of collective bargaining.³⁰ This view undoubtedly came from experiences in the private sector, where striking and collective bargaining go hand in hand. Going into the seventies, however, this attitude no longer prevails, probably due to the realization by chiefs that public employees are sanctioned for striking, whereas private employees are not. Police administrators opposed to collective bargaining justify their attitude on the basis that a strong leader is able to secure better salaries and other job benefits for officers, so bargaining will be unnecessary.³¹ This attitude is idealistic, however, presupposing that the police chief will have the necessary leadership capabilities to obtain his men's needs, and that the public employer will be receptive to police problems.

The Elements of A Sound Collective Bargaining Statute

In states where public employment collective bargaining legislation does not exist, the ultimate decision as to whether such a law will be enacted rests with the state legislative body. State legislators with foresight should anticipate the growing trend toward public sector bargaining, and encourage the passage of such legislation. Where bargaining legislation is contemplated, there are several drafting considerations of which the legislator must be aware.

Attention must first be given to the question of what employees will be included within the scope of the act. The statute can be broad, including all state, county and municipal employees; can limit participation to employees of one or a combination of political subdivisions; or, can limit employees by profession, excluding teachers, police, firemen, or other public employees.

The question of who is the public employer must be considered. The employer might be, depending on the government and the issue involved, the civil service commission, the state or municipal legislative body, or agency administrator. This provision, therefore, must be left unnecessarily broad to cover all these political entities.

Every bargaining statute should contain a provision granting public employees the right to organize. In order to overcome the objection of the "closed shop" argument, that the statute will lead to all public employees being required to join the same labor organization, every employee should be given the right to join or not join any organization. Exclusion of supervisory personnel should be considered. Provision should be made for classifying employees into appropriate units, so that groups of employees having a community of job interests will bargain together. Also, procedures must be devised for choosing and accrediting an employee organization as the bargaining agent of an appropriate unit for the purpose of entering into negotiations with the public employer.

The legislation should contain unfair labor practices, prohibiting employers, employees, and employee organizations from engaging in these practices. Employer prohibitions can include, among other things, interference with the formation or administration of an employee organization,

refusing to bargain in good faith with an employee organization, discriminating against an employee for bringing unfair labor charges against the employer, and refusing to adhere to the provisions of a collective bargaining agreement. Prohibitions against employees and employee organizations include coercing the public employer's choice of bargaining representatives, attempting to induce a public employer to discharge or discriminate against an employee for membership or nonmembership in a particular labor organization, refusing to bargain and violating provisions of a collective bargaining agreement with the employer.

The scope of the negotiable issues is a vital statutory component. This provision will establish what issues are and are not bargainable between the employee and employer.

A work stoppage by an employee or employee organization can be made an unfair labor practice, prohibited separately, or not prohibited at all. This latter approach has been suggested but never followed in public employment bargaining statutes.³² The definition of work stoppage should be sufficiently broad to cover all forms of concerted labor activity tantamount to a strike, including not only direct stoppages, but sympathy strikes conducted in support of issues not affecting the negotiating parties as well. Penalties should be imposed for violation of the work stoppage provision, and procedures set forth to compel cessation of the stoppage by court order.

The legislation should require good faith collective bargaining by the public employer, with provisions for the time and place of negotiations. The act must insure negotiations are commenced long before the beginning of the next fiscal year so that time for impasse procedures and budgetary implementation of any agreement are reflected. Once an

agreement has been concluded, the statute should require a written contract and mandatory procedures by which the employer implements the agreement.

In the event the parties are unable to reach an agreement by collective bargaining, impasse procedures can afford other means of resolving the dispute. All, or a combination of mediation, fact-finding, and the various forms of arbitration may be considered for use as impasse procedures.³³ There should be time limits on the use of each procedure.

A final consideration is that an agency be delegated to regulate the provisions of the act, with its powers being specified. A state agency already in existence can be responsible for administering the act, or a new one can be created for this purpose. This agency can be authorized to make necessary rules and regulations, to dispose of appropriate unit questions, supervise exclusive bargaining agent elections and certify the winner, to administer the unfair labor practices provisions, to supervise impasse procedures, and to study problems of public employment.

Statutory Problems

Drafting a collective bargaining statute presents special problems, among which are:

1. What the permissible scope of negotiations should be;
2. Whether or not to include provisions defining and punishing unfair labor practices;
3. Whether or not to prohibit public employment strikes, and if so, what the sanctions for striking should be;

4. Whether or not to use mediation and fact-finding, or just one impasse procedure to the exclusion of the other;
5. Whether or not to use arbitration, and if so, whether it should be binding or advisory; and,
6. What level of supervisory employees will be excluded from bargaining due to their close identification with management.

Every state enacting legislation in this field has approached these problems differently, making for a broad diversity in the content of public employment bargaining statutes. This diversity has created controversy as to which is the best means for resolving these special problems.

Scope of Negotiations

The failure of the bargaining statute to define the scope of negotiable issues creates a dilemma. The problem is especially acute in New York State, where the Taylor Act does not distinguish between bargainable and non-bargainable issues.³⁴ In New York City, public employee organizations have attempted to bargain on not only matters of wages, hours, and conditions of employment, but on the mission of their respective agencies as well.³⁵ The New York Uniformed Firemen's Association and Uniformed Fire Officer's Association demanded recently that the City increase the firefighting force by 2,500 men, contending the size of the force has a practical impact on firemen.³⁶ New York City officials resisted this and other attempts to impinge upon what they considered to be management prerogatives.³⁷

The scope of bargainable issues must be unequivocally clear in the statute. Failure to include this provision will lead to constant struggle between labor and management over what is and is not bargainable. This struggle will detract from the main goal of the statute, orderly negotiation of economic and job improvements. A good statutory provision will permit negotiation on wages, hours, and "other terms and conditions of employment",³⁸ permitting merit system and management prerogatives issues to be negotiated by agreement of the parties as terms and conditions of employment.

Unfair Labor Practices

The states are divided on including unfair labor practices in a statute.³⁹ In states where no provision is made, public employees claim employers are given an unfair advantage by not being restrained from capricious abuses against employees and employee organizations for engaging in labor activities.⁴⁰ An unfair labor practice provision would benefit public employers as well, since it would keep the activities of employee organizations within the bounds of propriety. Sanctions against employee organizations committing unfair labor practices, such as loss of accreditation as the exclusive bargaining agent, are extremely effective. Without accreditation, an organization loses its power since it is denied the opportunity of being the employees' spokesman at the bargaining table.

Most states with an unfair labor practices provision include prohibitions against every conceivable form of employer, employee and employee organization abuse that could arise.⁴¹ States with especially comprehensive provisions include Connecticut, Maine, and Massachusetts.⁴²

Strike Sanctions In Public Employment

There are four statutory problems related to strikes, including whether strikes should be prohibited at all, what the definition of "strike" should be, whether they should be included as an unfair labor practice, and what sanctions should be imposed upon strikers.

There has long been an assumption that employees in the public sector cannot strike. The basis for this view is that public employees provide government services, and a government on strike would be intolerable.⁴³ The public and private sectors differ in that the latter permits strikes by employees which are enjoyable only where national emergencies are involved.⁴⁴

The no-strike concept in public employment has been assailed in recent years. Labor commentators have noted that the only tool available to private employees for better salaries and job conditions is the strike, and by denying this weapon in the public sector, employees are thrown at the mercy of their employers.⁴⁵ In 1968, the Governor's Commission to Revise the Public Employee Law of Pennsylvania concluded that public employees, with the exception of policemen and firemen, should be given the limited right to strike after all bargaining and impasse procedures had been exhausted, and so long as no threat to the public health, safety, and welfare existed.⁴⁶ The 1969 Colorado Legislative Council Report on Public Employee Negotiations realized the difficulty of preventing a public employee strike. The Council recommended that when collective bargaining and impasse procedures failed to produce an agreement, public employee organizations could strike, except where the strike posed a threat to the public safety, in which case the Governor could order a forty day postponement.⁴⁷

A strike would be a desirable tool for most types of

public employees to wield in the event that satisfactory agreement could not be reached. The strike compels resolution of a dispute between employer and employee, something most bargaining statutes fail to accomplish. This view is contrary to prevailing opinion, however, and strike prohibitions in the public sector are likely to continue.

In the case of vital public services, however, such as police, firemen, and possibly sanitation workers, the strike weapon poses a grave public threat. The spectre of Montreal recalls the horrors of a police strike.⁴⁸ For public employees providing essential services, striking must be prohibited, with other alternatives devised to insure final resolution of disputes.⁴⁹

Some statutes contain narrow definitions of strike, prohibiting only "participation in any strike or asserting the right to strike against the state, county, or any municipality."⁵⁰ Where work stoppages are to be prohibited, such a restrictive definition is totally ineffective because it cannot control more sophisticated strike forms such as "blue flu" and mass resignation. The definition must be comprehensive enough to encompass all types of concerted work stoppage. An illustrative statute is found in Michigan, where "strike" is defined as:

" . . . the concerted failure to report for duty, the wilful absence from one's position, the stoppage of work, or the abstinence in whole or in part from the full, faithful and proper performance of the duties of employment, for the purpose of inducing, influencing or coercing a change in the conditions, or compensation, or the rights, privileges or obligations of employment." ⁵¹

Some bargaining statutes classify strikes as an unfair labor practice, with an accompanying sanction for engaging in the practice.⁵² while other states prohibit them independently.⁵³ In states where the strike is not an unfair labor practice, methods of redress against strikers include injunction, fines, and imprisonment. The injunction is often not sought in localities where organized labor is powerful, due to the possibility of sympathy strikes by other employee groups in the area.⁵⁴ Fines and imprisonment are only imposed at the court's discretion. Making the strike an unfair labor practice furnishes public employers with more weapons to avert a work stoppage, including cease and desist orders from a state regulatory agency, decertification of striking employee organizations and suspension of mediation and fact-finding rights.

The most perplexing issue with respect to work stoppages is the sanctions to be imposed against striking employees and employee organizations. Three points of view are expressed on this question: strike sanctions should be mandatory, discretionary, and non-existent. The attitude supporting mandatory strike sanctions is best reflected by an Ohio statute, which prohibits striking by public employees, terminates employment of a striker, and permits persons in violation of the law to be reinstated only on condition that their compensation not exceed the amount paid prior to the strike; that no salary increase be granted for one year following reinstatement; and, that civil service protection be withdrawn for two years.⁵⁵ The justification for this type of law is that automatic penalties are vital for maintenance⁵⁶ of essential services and protection of the public interest.

The need for discretionary strike punishment is advocated

by many persons in public service. One city official regards the Ohio statute as "Draconian law".⁵⁷ A police administrator notes that mandatory restrictions will not stop officers from walking off the job when there is no other recourse.⁵⁸ Arvid Anderson, of the New York City Office of Collective Bargaining, best articulates this point of view: "There are no absolute guarantees against all strikes in a free society."⁵⁹ Anderson feels mandatory sanctions are self-defeating, because they drive able men out of public employment. Discretionary judicial power, says Anderson, strikes the true balance between the need for no work stoppages in public employment, and the need for equitable salaries and job conditions. The last viewpoint, that public employees not be punished for striking, is usually expressed by those who maintain public employees have the right to strike.⁶⁰

Strike sanctions against police and fire services are undoubtedly vital for protection of the public. Whether sanctions become outmoded in other types of public employment remains to be seen. The trend is slowly moving in that direction. Where sanctions are imposed, they should be discretionary. Imposing automatic penalties does not allow punishment to fit the individual circumstances of each case. To deprive persons in public service of pay increases, promotions, and civil service protections creates alienation and drives them elsewhere in search of employment. The loser will be the employee, the employer, and most important, the public.

The Use Of Mediation And Fact-Finding

Mediation and fact-finding procedures vary considerably

from state to state. Some public employment bargaining laws use both procedures following the failure of the parties to reach an agreement by negotiation.⁶¹ Other state laws permit mediation only,⁶² or fact-finding only.⁶³ Michigan suffers from an ambiguous statute for police and firemen which does not clarify whether fact-finding must automatically follow mediation, or whether the parties may skip fact-finding altogether and proceed to arbitration.⁶⁴

Mediation and fact-finding are both desirable methods to resolve labor disputes. Mediation provides an informal means by which the mediator may discreetly approach and feel out both parties in an attempt to reconcile their differences. The mediator must obviously be an individual who commands the confidence of both parties.

Fact-finding is accorded great respect by both labor and management in the public sector as a sound method for resolving disputes. Fact-finding is regarded as a workable alternative to the strike.⁶⁵ One objection to this procedure where it is the last step in the impasse process is employee organizations must accept the recommendations of the fact-finder, or receive no improved benefits at all, while employers can reject the recommendations with impunity, leaving the dispute unresolved.⁶⁶ This concern can be avoided by including arbitration as a further impasse procedure.

Mediation and fact-finding should both be included in a bargaining statute. Mediation permits the parties to resolve a dispute informally, through a third party. Fact-finding encourages agreement because reluctance by either party to accept the findings will result in their being made public. If the findings are reasonable, the recalcitrant party will look bad in the eyes of the community.

Some statutes permit fact-finders to mediate during the course of fact-finding.⁶⁷ This arrangement has created problems in Michigan, where inexperienced fact-finders have been accused of mediating when they should be fact-finding.⁶⁸ The nature of mediation requires that confidential disclosures be made by the parties to the mediator, while fact-finding involves a more formal, objective procedure. It is possible that confidential disclosures acquired during mediation would⁶⁹ be used by the fact-finder to arrive at his recommendations. The mediation and fact-finding roles should therefore be separated, with the fact-finder having no power to mediate.

The Ultimate Strike Alternative: Binding Arbitration

Some bargaining statutes provide for advisory arbitration,⁷⁰ or binding arbitration as to issues other than salaries and other economic issues requiring approval by a legislative body. These forms of arbitration are unsatisfactory when employee organizations or employers refuse to accept the advisory recommendations of an arbitration panel, or the issue concerns salaries and other economic questions, because the dispute is not resolved. Only through a conclusive resolution of all issues can labor disputes in the public sector be terminated, avoiding the possibility of work stoppages. Binding arbitration in all issues in dispute offers this assurance.

Many public employers and employee organizations regard binding arbitration with disdain. Management justifies its opposition for three reasons:

1. Arbitration deprives government of its legislative obligation to set wages, insurance and pension benefits, and other matters requiring legislative

action;⁷²

2. It deprives management of its ability to manage;⁷³

3. Arbitration panels often award above what the government is able to pay.⁷⁴

These arguments do not stand up under the force of recent cases and logic. Although there is a long line of case law holding that arbitration of salaries, insurance benefits and pensions⁷⁶ is an unconstitutional delegation of legislative power, a recent state supreme court case taking the opposite view is more convincing. In the case of Fire Fighters Local 946 v. City of Laramie, 437 P.2d, 295 (1968), the Wyoming Supreme Court considered the constitutionality of the state's collective bargaining law for firemen which contains compulsory, binding arbitration in the event an agreement cannot be concluded through negotiation. In disposing of the employer's contention that the law constituted an unlawful delegation of legislative authority, the court said a municipality only has such powers as are given it by the state legislature. The legislature is empowered to set the salaries of firemen, and may also establish the manner by which salaries are to be determined. Arbitration of wages is one means by which salaries can be set. The court also noted that when the legislature sees fit to permit collective bargaining, a necessary incident of bargaining is the resolution of disputes where the parties fail to agree. Otherwise, there would be no bargaining, because the employer could arbitrarily dictate the terms for wages and other matters of employment.

Other justifications for opposing binding arbitration are fallacious. Arbitration does not lessen management's ability to manage any less than a fact-finding recommendation

would. The only difference is the employer can disregard the fact-finder's recommendation while acceptance of binding arbitration is mandatory.

The fear of exceedingly high arbitration awards is unwarranted. Many governments have abused their employees for years by paying low wages. Arbitration is an ideal tool for restoring the public employee to a position of economic dignity. The problem of discovering financial resources to implement an arbitration award is the employer's burden. If, in the past, government had shown the foresight to provide its employees with equitable benefits and sought new sources of financial revenue, the satisfaction of arbitration awards would be no problem.

The argument advanced by labor and management that binding arbitration restricts freedom of bargaining is a subterfuge to avoid an imposed decision. Arbitration is always the last resort in a labor dispute. The employer and employee have ample opportunity to conclude an agreement by negotiation, and if that fails, some combination of mediation and fact-finding. If an agreement has not been reached at this point the parties have abused their bargaining freedom. When bargaining has been abused, there is a public interest, especially in the case of police and firemen, in bringing the dispute to a halt. Binding arbitration dictates this result.

Several states have experimented with binding arbitration on all economic and job issues in police and fire disputes. Rhode Island adopted such a law in 1963,⁷⁷ Pennsylvania in 1968,⁷⁸ and Michigan in 1969.⁷⁹ The Rhode Island law is the only one which is compulsory as well as binding. The Pennsylvania statute has resulted in many agreements between police employee organizations and municipalities, some without

arbitration and others through the arbitration procedures.⁸⁰ Since the passage of the Pennsylvania law, salary increases for policemen in that state have ranged from six hundred dollars to seventeen hundred dollars per year.

There is a great need for binding arbitration in a collective bargaining statute, especially for the resolution of police and fire disputes. Work stoppages will be averted and disputes forced to conclusion.

The Organization and Exclusion of Supervisory Personnel: Where is the Line Drawn?

A problem related to supervisory personnel that does not easily suggest a statutory remedy is the rank at which police and fire supervisory personnel should be excluded from organizing and bargaining. Most bargaining statutes exclude supervisory personnel from the act, and include a procedure⁸² for determining what is and is not a supervisor. Some states, New York being the most notable example, make no provision for the exclusion of supervisors.⁸³ Police and fire supervisors are given special consideration in the administration of bargaining laws, military structure of these services compared to other public employees. It is critical that the bargaining law make the supervisory exclusion, or management would be organizing and bargaining against the public employer. This situation would pit management against management, a most discouraging prospect.

In the case of police and firemen, the statute must make clear at what specific rank supervisors will be excluded from the scope of the act. Due to the varying size of police and fire departments, a certain amount of discretion must be left to the agency regulating the statute, but some guidelines

must be established. The most likely supervisory ranks for exclusion would be those playing an integral part in policy-making, because setting policy is an exclusive management function. The cut-off rank would vary with each department's size. In a medium-sized department, a captain would be actively engaged in policy-making functions, while a captain in a large department would have more limited management responsibilities.

Notes

1. This chapter will not confine itself to a discussion of police only, because collective bargaining today is a concern of all public employees.
2. See Chapter I, "Collective bargaining".
3. Editorial, "Public Management at the Bargaining Table", Public Personnel Review, October, 1966, p. 296.
4. Bureau of National Affairs, Inc., Public Employee Organization and Bargaining, (Washington, D.C., 1968) p.2.
5. Ibid.
6. International Conference of Police Associations, "Labor Law Developments in the State Capitals", Notes from the International Office, November, 1969, p. 5.
7. Report by the Colorado Legislative Council to the Colorado General Assembly, Public Employee Negotiations, 1968, p. xiii.
8. Ibid.
9. ICPSA, "Labor Law Developments", p. 5.
10. Report to the Colorado General Assembly, Public Employee Negotiations, p. xiii.
11. See Hervey Juris, University of Wisconsin, "The Implications of Police 'Unions' for Policing", In press 1969.

12. Ibid, p. 12.
13. Ibid.
14. Ibid.
15. Ibid, pp. 10-11.
16. Ibid, p. 11.
17. Ibid, p. 12.
18. BNA, "Public Employee Organization and Bargaining", p. 2.
19. Ibid, p. 25.
20. Ibid.
21. Report to the Colorado General Assembly, Public Employee Negotiations, 1968.
22. Ibid, pp. 39-41.
23. Ibid, p. xii.
24. Ibid.
25. Interview with Donald Wasserman, American Federation of State, County and Municipal Employees; October 28, 1969, Washington, D.C.
26. Ibid.
27. Ibid.

28. Interview with Royce Givens, Executive Director, International Conference of Police Associations; October 29, 1969, Washington, D.C.
29. See Chapter VII, "The Threat to Management".
30. Roy E. Hallady, "Police Unions --Programs of Negation", Police, November-December, 1961, p. 64.
31. Interview with Donald D. Pomerleau, Commissioner, Baltimore Police Department; October 30, 1969, Baltimore, Maryland.
32. See Governor's Commission to Revise the Public Employee Law of Pennsylvania, Reports and Recommendations, June, 1968, where this recommendation was made, but was not followed by the Pennsylvania legislature.
33. See Chapter III, "Collective Bargaining".
34. Interview with Arvid Anderson, Director of the New York Office of Collective Bargaining; November 5, 1969, New York, New York.
35. BNA, Public Employee Organization and Bargaining, p. 10.
36. Ibid, p. 7.
37. Ibid, p. 7 and 10.
38. See California Government Code, Section 3504.
39. See Chapter IV for a discussion of the states that do and do not have unfair labor practices in their collective

bargaining statutes.

40. Pamphlet by William E. Kirwan, "The New York State Police: History and Development of Collective Negotiations", 1969, p. 31.
41. See this chapter, "The Elements of a Sound Collective Bargaining Statute" and "Statutory Problems" for a discussion of unfair labor practices.
42. See Chapter IV for a discussion of those states having unfair labor practices.
43. See International Association of Chiefs of Police, Police Unions, (Washington, 1958), pp. 46-47 for an expression of this view.
44. National Labor Management Relations Act of 1947, sections 206-210.
45. Frank Misliviel, "Municipal Employees' Unions The Climb Up Labor's Ladder", Duquesne Law Review, Vol. 4, 1965-66, p. 145.
46. Governor's Commission on Public Employee Law, Reports and Recommendations, p. 5.
47. Report to the Colorado General Assembly, Public Employee Negotiations, p. xix.
48. See Chapter I, "Boston revisited: the Montreal Police Strike of 1969".

49. See this chapter, "The Ultimate Strike alternative; compulsory binding arbitration".
50. See Florida Statutes Annotated 839.221 (A).
51. Michigan Statutes Annotated 17.455 (1).
52. Maine Revised Statutes, Title 26, Chapter 9A, section 964 (21) (C).
53. South Dakota Compiled Law Annotated, Section 3-18-2.
54. "Lessons from Wisconsin," Public Administration Review, November-December, 1965, p. 303.
55. Ohio Revised Code, Chapter 4117, Section .01 et al.
56. Eugene Berrodin, "At the Bargaining Table", National Civil Review, July, 1967, p. 394.
57. Interview with Thomas Gallagher, Assistant City Attorney, Detroit, Michigan; October 27, 1969, Detroit, Michigan.
58. Interview with John Nichols, Deputy Superintendent of the Detroit Police Department; October 27, 1969, Detroit, Michigan.
59. Interview with Arvid Anderson, Director of the New York City Office of Collective Bargaining.
60. Berrodin, "At the Bargaining Table," p. 394.
61. See Maine Revised Statutes, Title 26; Chapter 9A, section 965 (E) (2) and (3).

62. See California Government Code, Section 3505.2.
63. See Massachusetts Laws Annotated, Chapter 763, Section 178 (J).
64. Interview with William Hanger, Chief of the Pontiac, Michigan, Police Department, October 27, 1969, Pontiac, Michigan.
65. ICPA, "Fact-Finding, Seen as Imperfect but Useful Tool," Notes from the International Office, March, 1969, p. 3.
66. BNA, Public Employee Organization and Bargaining, p. 4.
67. See Connecticut General Statutes Annotated, Section 7-473 (A).
68. ICPA, "Fact-Finding Seen as Imperfect but Useful Tool," p. 4.
69. Ibid.
70. Delaware Code Annotated, Title 19, Chapter 13, Section 1310.
71. Maine Revised Statutes, Title 26, Chapter 9A, Section 965 (E) (4).
72. Jerry Belenker, "Binding Arbitration for Government Employees," Labor Law Journal, April, 1965, p. 235.
73. Ibid.

74. ICPA, "Pittsburgh's Mayor to Seek Ceiling on Arbitration Awards," Notes from the International Office, February, 1969, p. 6.
75. J. Joseph Loewenberg, Temple University, "Emerging Sectors of Collective Bargaining, Seminar No. 3, Labor Relations for Policemen and Firemen," In press 1969, p. 46.
76. See, for example, Everett Fire Fighters Local No. 350 v. Johnson, 278 P 2d 662 (1955).
77. General Laws of Rhode Island, 28-9.22 et al.
78. Purdon's Pennsylvania Statutes Annotated, Chapter 13, Sections 217.1 et al.
79. Michigan Statutes Annotated, Section 17.455 (31 et al.).
80. Floyd Nevling, "Police Pay Problem: A Solution," Law and Order, October, 1969, p. 23.
81. Ibid.
82. See Connecticut General Statutes Annotated, Section 7-471 (2).
83. Interview with Arvid Anderson, Director of the New York Office of Collective Bargaining.

Chapter X

Model Public Employment Labor Relations Statute

This chapter is written for the benefit of state legislators interested in drafting a public employment collective bargaining law for passage in states where this type of legislation has not yet been enacted. This model statute has attempted to combine the best features of public employment bargaining legislation available today, with the principles that have been stated throughout this book. Where this model statute is used as a guide for a state collective bargaining law, it can be adapted to local needs and variations. Pertinent comments follow each section of the statute.

Model Public Employment Labor Relations Statute

Section 1-1 Statement of Policy

The purpose of this act is to promote orderly, constructive relationships between all public employees and their employers through the satisfactory resolution of disputes concerning wages, hours, and other terms and conditions of employment, subject, however, to the rights of citizens of this state to keep inviolate the guarantees of their health, safety, and welfare. Unresolved disputes between public employees and their employers that threaten or result in work stoppages are injurious to the public, and statutory machinery must be created to minimize such disputes, and to provide for their speedy resolution. Taking into consideration the conflict between rights of the public at large and the necessity for harmonious relations between public employees and their employers, the Legislature has determined that

optimum labor-management relations in the public sector may best be accomplished by (1) granting to public employees the right to organize and freely choose their representatives; (2) requiring public employers to negotiate and bargain in good faith with employee organizations representing public employees, and enter into written agreements evidencing the results of such bargaining; and, (3) establishing procedures that will provide for the speedy disposition of impasses between employer and employee, thereby protecting the rights of the public employee, the public employer, and the public.

Nothing contained herein shall be deemed to supersede the provisions of existing state law and the charters, ordinances, and rules of local public agencies which establish and regulate a merit or civil service system, or which provide for other methods of administering employer-employee relations. This chapter is intended, instead, to strengthen merit, civil service, and other methods of administering employer-employee relations through the creation of uniform, orderly methods of communication between employees and the public agencies by which they are employed.

Comment: This section is intended to reflect the need for stable employer-employee relations in the public sector. The policy statement expresses the necessity of averting work stoppages and satisfactorily resolving public employment disputes through bargaining and impasse procedures. The first paragraph mentions good faith negotiations, a theme that runs throughout the statute. The last paragraph of the section indicates that this act is not to conflict with local employment laws and policies, but rather to fortify them.

Section 1-2 Definitions

For the purposes of this act:

1. "Public Employer" means (a) the state of _____, (b) a county, city, town, village or any other political subdivision, (c) a school district or any governmental entity operating a public school, college or university, (d) a public improvement or special district, (e) a public authority, commission or public benefit corporation, or (f) any other public corporation, group, or instrumentality or unit of government which exercises governmental powers under the laws of this state.

2. "Public employee" means any employee of a public employer, except officials elected by popular vote or appointed to fill vacancies in elective offices, members of boards and commissions and heads of agencies appointed by the Governor, heads of agencies appointed by boards and commissions, or, in general, those who serve at the pleasure of an elected or appointed official.

3. "Employee Organization" means any association or organization which has as its primary purpose the representation of public employees in collective negotiation with public employers on matters pertaining to wages, hours, and other terms and conditions of employment; but, the meaning does not include any organization or association which (a) discriminates with regard to the terms or conditions of membership because of race, color, sex, creed, or national origin, or, which (b) asserts the right to strike against any public employer or to assist or participate in any such strike.

4. "Strike" means the concerted failure by two or more public employees or an employee organization to report for duty, the willful absence from one's position, the stoppage of work, or the abstinence in whole or in part from the full, faithful and proper performance of the duties of employment,

for the purpose of inducing, influencing, or coercing a change in the condition, or compensation, or the rights, privileges or obligations of employment. Nothing contained in this act shall be construed to limit, impair, or affect the right of any public employee to express or communicate a view, a grievance, complaint or opinion on any matter related to the terms, conditions or compensation of public employment or their betterment, so long as the same is not designed to and does not interfere with the full, faithful, and proper performance of the duties of employment. The threatened or actual use of the technique of "mass resignation", or "sick calls" is specifically included in the definition of a strike under this section.

5. "Strike against a third party" means the withholding of labor or services from the public employer during required working hours, or the refusing to handle, install, use, or work on particular materials, supplies, equipment, products, or any other matter or thing for the purpose of coercing, intimidating, influencing, compelling, or inflicting damage upon a third party who is not the public employer and who is engaged in a labor dispute, or for the purpose of bringing the public employer who is not a party to the labor dispute into a concerted plan to coerce, intimidate, influence, compel, or inflict damage upon a third party who is not their public employer and who is engaged in a labor dispute; or the willful failure to report for duty, the willful absence from their positions, or the willful stoppage of work during required working hours for the purpose of partaking in activities aimed at coercing, intimidating, influencing, or compelling a third party who is not their public employer to perform a particular act or to refrain from performing a particular act.

6. "Supervisory employee" means any individual having

authority, in the interest of the public employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or to adjust their grievances, or, to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. All department heads shall be deemed supervisory employees under this act. Employees of police departments of the rank of sergeant or above, and of fire department employees up to the rank of department head, shall only be deemed "supervisory employee" in accordance with Section 1-8 of this chapter.

7. "Department head" means any employee appointed to head a department or division of the public employer pursuant to statute, ordinance, or resolution for an unspecified term by the executive head or body of the public employer or their agents.

8. "Board" means the State Labor Relations Board as established by this chapter.

9. "Collective negotiation" means meeting, conferring, consulting and negotiating in a good-faith effort to reach agreement with respect to wages, hours, and other terms and conditions of public employment, and the reduction of any such agreement to writing.

10. "Budget submission date" means the date by which, under law or common practice, a public employer's proposed budget, or a budget containing proposed expenditures applicable to such public employer, is submitted to the public employer's legislative body for final action.

11. "Appropriate unit" means a group of public employees with a community of interests recognized by the public employer

or designated by the board pursuant to Section 1-6 of this chapter as appropriate for representation by an employee organization for purposes of collective negotiation.

12. "Exclusive bargaining agent" means the employee organization designated by the board as the representative of a majority of employees in an appropriate unit, or the employee organization which has been so recognized by the public employer, for the purpose of negotiating a contract with the public employer.

13. "Membership dues deduction" means the obligation or practice of the public employer to deduct from the wages of a public employee, with his consent, an amount for the payment of his membership dues in an employee organization and includes the obligation or practice of transmitting such sums to an employee organization.

14. "Chief legal officer" means (a) in the case of the state of _____ or a state public authority, the attorney general of the state of _____, (b) in the case of a county, city, town, village, or other political subdivision, the county attorney, corporation counsel, city attorney, as the case may be, and (c) in the case of any such public employer not having its own attorney, or any other public employer, the corporation counsel of the city in which such public employer has its principal office, and if such principal office is not located in a city, the county attorney of the county in which such public employer has its principal office.

Comment: Sub-section (1) encompasses all types of public employers, including educational, improvement district and public authority employers.

Sub-section (2) defines a public employee and removes elective and appointive officials in charge of governmental

or departmental operations from the scope of the act. The purpose of this exclusion is to insure that politicians and political appointees do not become involved in the bargaining process.

Primary and secondary strikes are defined by sub-sections (4) and (5). Striking under (4) is defined as broadly as possible in order to prevent all forms of work stoppage. Mass resignations and sick calls such as "blue flu" are specifically included within the definition of strike. The purpose of (5) is to restrict sympathy strikes by public employees conducted against employers other than their own. All public employees have been prohibited from striking under this particular statute.

Supervisory personnel are excluded from coverage under this statute, and sub-section (6) provides a definition characterizing supervisors as policy-making employees. Due to their unique organizational structure, police and fire employees are given special consideration under the supervisory definition. Department heads are designated as supervisors in (6) and are defined in sub-section (7).

An independent state agency is created to administer the provisions of the statute, and this agency is introduced in sub-section (8).

The term "collective negotiation" has been employed in sub-section (9) rather than the traditional terminology of "collective bargaining". This change has been made to reduce the negative psychological impact the latter term has due to its association with disruptive labor tactics in the private sector. The term "good-faith" is raised again in this definition.

The public employer's budget submission date, defined in sub-section (10) is especially significant due to the time

limits established throughout the statute in which bargaining and impasse procedures must take place before the budget submission date.

The appropriate unit and exclusive bargaining agent, both significant factors in determining what organization shall represent what group of employees, are defined in sub-sections (11) and (12).

Section 1-3 Rights and Obligations of Public Employees and Public Employers

1. Public employees, except department heads and supervisory employees, shall have the right of self-organization. This right shall include the right to form, join, or assist any employee organization to negotiate collectively through representatives of their own choosing on questions of wages, hours, and other terms and conditions of employment and engage in other concerted activities other than strike or strikes against a third party for the purpose of collective negotiation or other mutual aid or protection. Public employees shall also have the right to refrain from forming, joining or assisting any employee organization. Public employees who are not members of the employee organization which represents the appropriate unit to which they belong shall have the right to represent themselves with respect to any terms and condition of employment. Any agreement made with such individual employees shall not be inconsistent with the terms of any agreement then in effect between the public employer and the employee organization representing the appropriate unit.

2. Public employers shall recognize any employee organization duly certified as the exclusive bargaining agent

of an appropriate unit as provided under Section 1-7 of this chapter. Public employers shall have the right to enter into binding agreements with employee organizations, subject to the provisions of this chapter.

3. Employee organizations certified under the provisions of Section 1-7 and public employers, through their respectively designated representatives, shall have the mutual obligation to confer and negotiate together in good faith. This obligation includes the duty of meeting at a reasonable time and place, including meetings appropriately related to the budget-making process, and the duty to reduce any agreement reached to writing. However, this obligation does not compel either side to reach an agreement or to make a concession, if such failure to agree or to make a concession is in good faith.

Comment: This section permits public employees and employers to bargain, requiring both to do so in good faith. Sub-section (1), by giving employees the right to not join organizations and to represent themselves, with respect to employment problems, forecloses the possibility of a closed shop in the public sector. Sub-section (3) states that agreement is not compelled by bargaining, paving the way for the impasse procedures in Sections 1-10 and 1-11, where the parties fail to conclude a contract through negotiation.

Section 1-4 Prohibited Acts

1. It shall be prohibited practice for any public employee or employee organization to:

- a. Interfere with, restrain or coerce, or discriminate against any public employee in the exercise of their rights as guaranteed in Section 1-3 of this chapter;

- b. Restrain, coerce, or interfere with the public employer in the selection of its representatives for the purposes of collective negotiations, mediation, fact-finding, arbitration, or the adjustment of grievances;
 - c. Cause or attempt to cause a public employer to discriminate against a public employee for membership or non-membership in an employee organization;
 - d. Violate the provisions of any written agreement entered into pursuant to this chapter;
 - e. In the case of an exclusive bargaining agent, refuse to negotiate in good faith with the designated representatives of the public employer;
 - f. Interfere with, restrain, or coerce any elected official or administrative officer of a public employer in the conduct of his public or private business or affairs for the purpose of affecting the outcome of any matter under this chapter; and,
 - g. Engage in, induce, or encourage any public employee to engage in a strike, or strike against a third party.
2. It shall be a prohibited practice for any public employer to:
- a. Interfere with, restrain or coerce public employees in the exercise of their rights as

guaranteed in Section 1-3 of this chapter;

- b. Dominate or interfere with the formation or administration of any employee organization or interfere with the selection of its representatives for the purposes of collective negotiations, fact-finding, mediation, arbitration, or the adjustment of grievances;
- c. Encourage or discourage membership in any employee organization by discrimination in regard to hiring or conditions of employment;
- d. Refuse to negotiate in good faith with the designated representatives of the employee organization recognized or certified as the exclusive bargaining agent of an appropriate unit under the provisions of this chapter;
- e. Discharge or discriminate against a public employee or person seeking public employment because he filed charges or gave testimony under the provisions of this chapter; and,
- f. Violate the provisions of any written agreement entered into pursuant to this chapter.

3. Any dispute concerning violations of the provisions of this section shall be submitted to the Board pursuant to the provisions of Section 1-5.

Comments: This section contains unfair labor practices, prohibiting the many forms of employer, employee, and labor organization abuse that could conceivably arise with a collective negotiation statute. The strike has specifically been included as an unfair labor practice under sub-section (1) (g); giving the public employer and Board broader powers under Section 1-5 to control work stoppages conducted by

employees.

The closed shop is discouraged once again by restrictions on public employees in sub-section (1) (c) and on employers in (2) (c).

The theme of bargaining in good faith appears again in the unfair labor practices section under sub-sections (1) (e) and (2) (d).

Section 1-5 Procedures and Punishments for Violation of Section 1-4

1. A written complaint alleging a violation of Section 1-4 may be made to the Board by a public employer, public employee, employee organization, or any other person presenting a complaint in good faith within 60 days after the complaining party has knowledge of the violation. Whenever a complaint that a practice prohibited by Section 4 has been committed by a public employer, public employee, or employee organization, the Board shall consider the complaint in accordance with the following procedure:

- a. When a complaint is made to the Board that a prohibited practice has been or is being committed, the Board shall refer such complaint to its agent who shall furnish a copy of the complaint to the party charged with a violation of section 1-4. The agent shall conduct an investigation of the charges made in the complaint and make a report to the Board. Upon receiving a report from its agent, the Board shall either dismiss the complaint, or order further investigation or a hearing.

If a hearing is ordered the Board shall set the time and place for such hearing, which time and place may be changed by the Board at the request of one of the parties involved for cause shown. Any complaint may be amended with the permission of the Board.

- b. The party complained against shall have the right to file an answer to the original or amended complaint within five (5) days after receipt of a copy of the complaint, or within such other greater time as the Board may allow. The party complained against shall have the right to appear in person at the hearing, or otherwise to defend against such complaint. At the discretion of the Board, any person may be allowed to intervene in such proceeding. In any hearing the Board shall not be bound by the technical rules of evidence prevailing in the courts. A transcript of the testimony taken at any hearing before the Board shall be filed with the Board.
2. If the Board determines that a prohibited practice has been or is being committed it shall state its findings of fact and shall issue and cause to be served on the party committing the prohibited practice an order requiring it or him to cease and desist from such prohibited practice, and shall take such further action as it deems necessary or appropriate, including but not limited to:
 - a. Withdrawal of the certification of an employee organization as an exclusive bargaining agent

for a period of up to twelve (12) months;

- b. Denial of membership dues deductions for a period of up to twelve (12) months;
 - c. Reinstatement of a public employee discriminated against or discharged in violation of Section 4, with or without back pay; or,
 - d. If either party is found to have refused to negotiate collectively in good faith, ordering fact-finding or arbitration, and directing the party found to have refused to negotiate in good faith to pay the full costs of fact-finding or arbitration, as the case may be.
3. If the Board determines that a prohibited practice has not been or is not being committed, it shall state its findings of fact and shall issue an order dismissing the complaint.
 4. In the event of a violation of sub-section 1 (g) of Section 1-4, it shall be the duty of the public employer involved to:
 - a. Forthwith notify its chief legal officer; and,
 - b. Provide such chief legal officer with facilities, assistance, and data as will enable him to carry out his duties under sub-section (5) of this section.
 5. Where a violation of sub-section (1) (g) of Section 1-4 has occurred or is occurring, the chief legal officer involved shall file a complaint with the Board alleging violation, and the Board shall forthwith institute proceedings to determine if a violation

has occurred or is occurring. The employee organization or public employee involved shall have the burden of proving that no violation of sub-section (1) (g) of section 1-4 occurred. In determining whether an employee organization or public employee has violated sub-section 1 (g) of Section 1-4, the Board shall consider:

- a. Whether the employee organization or public employee called the strike or strike against a third party, or tried to prevent it;
 - b. Whether the employee organization or public employee made or is making good faith efforts to terminate the strike; and,
 - c. Whether the public employer engaged in acts that tended to provoke the strike.
6. If the Board finds that an employee organization certified as an exclusive bargaining agent pursuant to section 1-7 has been or is violating sub-section 1 (g) of section 1-4, it shall be mandatory for the Board to withdraw certification of the employee organization as an exclusive bargaining agent for a period not exceeding twelve (12) months.
7. Any public employee found to have violated sub-section (1) (g) of section 4 shall be deemed to have abandoned and terminated his public employment and shall no longer hold such employment, or be entitled to any of the rights or emoluments thereof, except if appointed or reappointed as hereinafter provided. The Board may authorize the appointment or re-appointment, or employment or re-employment of a public employee who has lost his position under this

sub-section, and pursuant to such appointment, reappointment, employment, or re-employment, the Board may impose all or any of the following conditions:

- a. The public employee's compensation shall in no event exceed that received by him immediately prior to the time of such violation;
 - b. The compensation of the public employee shall not be increased until after the expiration of one year from such appointment or reappointment, employment or re-employment, and,
 - c. The public employee shall be on probation for a period of one year following such appointment or reappointment, employment or re-employment, during which period he shall serve without tenure or civil service protection and at the pleasure of the public employer.
8. Notwithstanding any other provisions of this section where it appears that public employees or an employee organization are about to do, or are doing, an act in violation of sub-section 1 (g) of Section 1-4, which act prevents a clear and present danger to the public health and safety, the public employer may apply to the court of record of the jurisdiction where the strike takes place, for a temporary restraining order or injunction to be effective until the Board has time to act on the matter, or until the expiration of thirty (30) days. Any restraining order or injunction issued by the court under this sub-section shall prohibit only

such specific act or acts as shall be expressly found by the court to pose such clear and present danger.

9. The Board shall have the power to petition the court of record in the jurisdiction where the violator of a prohibited practice resides, or where the violation took place, whichever is appropriate for the enforcement of its orders, and for appropriate temporary relief or restraining orders. The Board shall certify and file in the court a transcript of the entire record of the proceeding, including the pleadings and testimony upon which such order was entered, and the findings and order of the Board. Upon such filing, the court shall cause notice to be served upon the party failing to obey the Board's order, and thereupon shall have jurisdiction of the proceeding, and shall have power to grant such temporary relief or restraining order as it deems just and proper. The parties before the court shall be the Board and the party charged with the commission of the prohibited practice. No objection that has not been urged before the Board, its members or agents shall be considered by the court except that the failure or neglect to urge an objection shall be excused because of extraordinary circumstances. The findings of facts by the Board, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to address additional evidence, and shall show to the satisfaction of the court, that such additional evidence is material, and that there were reasonable grounds for the failure to provide such evidence at the hearing before the Board, its members or agent, the court may order

such additional evidence to be taken before the Board and to be made a part of the transcript. The Board may modify its findings as to the facts or make new findings by reason of additional evidence so taken and filed, and it shall file such modified or new findings which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order.

10. In the event any public employer, public employee, or employee organization refuses to obey any order issued by the court of record of competent jurisdiction under sub-sections (8) and (9) of this section, the punishment for such failure to obey may be:
 - a. In the case of the public employee, by a fine not to exceed five hundred dollars (\$500), or by imprisonment not exceeding thirty (30) days in the county jail, or both. The employee organization shall be prohibited from paying any fine imposed upon the employee;
 - b. In the case of an employee organization, by a fine not to exceed ten thousand dollars (\$10,000) for each day in violation of a court order; and,
 - c. In the case of the public employer, by a fine not to exceed five hundred (\$500), or by imprisonment not to exceed thirty (30) days imposed upon the person or persons responsible for such failure to obey.

In fixing the amount of this fine, the court shall

consider all the facts and circumstances directly related to the failure to obey, including but not limited to:

- a. The extent of the willful defiance to or disregard of the court's order;
- b. The impact of any strike on the health, safety, or welfare of the public; and,
- c. The ability of the public employee, employee organization, or other person to pay a fine.

Comment: This section concerns itself first with procedures for bringing alleged violations of Section 1-4 to the attention and disposal of the Board. Sub-sections (1), (2), and (3) are applicable to any unfair labor practice violation, with (1) setting forth procedural guidelines for initiating and conducting hearings, and (2) giving the Board power to impose sanctions for any violation of Section 1-4.

Sub-sections (4) through (8) establish guidelines for dealing with the strike prohibition under sub-section (1) (g) of Section 1-4. The chief legal officer of the public employer is compelled to bring the work stoppage before the Board, and the Board must examine the situation. A finding that a strike has, in fact, occurred compels the Board to withdraw an employee organization's certification as exclusive bargaining agent, a harsh yet realistically meaningful provision that will force an employee organization to reconsider any participation in a work stoppage. Striking employees automatically lose their status as public employees, but may be reinstated upon the conditions set forth in sub-section (7). Employees should almost always be reinstated, and the discretionary conditions of re-employment should be invoked by the Board

only in cases of flagrant abuse. Sub-section (8) affords injunctive relief to a public employer faced with a work stoppage.

Where any order of the Board is not followed, sub-section (9) permits the Board to petition the local trial court in the applicable jurisdiction for enforcement of the order. The trial court is given civil contempt powers under sub-section (10) to punish violation of its orders under the injunction provision of sub-section (8) and of sub-section (9).

Section 1-6 Determination of Appropriate Unit

1. An employee organization and the public employer may, subject to the approval of the Board, establish an appropriate unit by mutual agreement.
2. If an employee organization and the public employer are unable to agree on the appropriate unit within a reasonable time, but in any event not longer than sixty (60) days after the commencement of discussions concerning the appropriate unit, the failure to reach such agreement shall be held to constitute a dispute. In such case either party may petition the Board to resolve the dispute through a determination of whether the particular group of employees constitutes an appropriate unit.
3. The following factors shall be considered by the Board in determining whether a particular group of employees constitutes an appropriate unit:
 - a. The community of interest among employees;
 - b. Such other factors, consistent with the provisions and purposes of this chapter, as

the Board may determine to be appropriate.

Comment: This section permits an employee organization and public employer to agree on an appropriate unit, subject to the Board's approval. A disagreement on this matter places the determination in the Board's hands. Sub-section (3) sets forth the primary consideration for determining appropriate units, whether the employees in question have a community of job interests.

Section 1-7 Determination of Bargaining Agent

1. Employee organizations shall be granted recognition by a public employer to the extent which they represent employees of the public employer in an appropriate unit. Informal recognition shall be granted to any employee organization regardless of the recognition granted to any other employee organization. Informal recognition shall give an employee organization the right to meet with, confer, and otherwise communicate with the public employer or its designated representatives on matters of interest to its members. Formal recognition shall be granted to any employee organization representing a majority of the employees in an appropriate unit. Formal recognition shall give an organization status as an exclusive bargaining agent and the right to meet with, confer, and otherwise communicate with the public employer or its designated representatives with the object of reaching a written agreement applicable to all employees of the unit.
2. When an employee organization presents to the public employer satisfactory evidence that more than fifty

per cent of the employees in an appropriate unit wish to be represented for purposes of collective negotiations by an employee organization, the public employer shall post in a conspicuous place a notice of intent to grant formal recognition to the petitioning employee organization. If no claims for formal recognition from any other employee organization are presented to the public employer within fifteen days following the posting of such notice, the Board, upon notification, shall issue forthwith a consent certification designating the employee organization so presented as the formal bargaining agent of the employees in the unit.

3. If no employee organization is granted formal recognition pursuant to sub-section (2) of this section the following procedures shall be followed:
 - a. A public employee, a group of public employees, or an employee organization may notify the public employer that thirty per cent or more of the public employees in an appropriate unit desire to be formally represented for collective negotiation purposes by a designated employee organization and may request the public employer to consent to an election.
 - i. If the public employer consents, the public employee, group of public employees or employee organization may petition the Board to conduct an election. Such petition shall include a description of the unit deemed to be appropriate, the basis upon which it was determined that thirty per cent or more of the employees

desired to be represented and a concurrence by the public employer. The Board shall, on the basis of the petition, order an election to be held; and may investigate, or conduct hearings to determine the validity of the matter contained in the petition before conducting an election and issuing an order of certification.

ii. If a public employer refuses to consent to an election the party making the request may file a petition with the Board alleging that thirty per cent or more of the public employees in an appropriate unit wish to be formally represented for collective negotiation purposes by a designated bargaining agent, and requesting an election. The Board shall send a copy of the petition to the public employer and provide for a hearing upon due notice. If, following such hearing, the Board deems the allegation in the petition to be valid, and the unit to be appropriate, it shall order an election. If it finds to the contrary it may dismiss the petition or permit an amendment to the petition in accordance with procedures established by the Board.

iii. If a public employer receives a request from an employee organization or group of employees requesting formal recognition for purposes of collective bargaining, the public employer may file a petition for an election with the Board. The Board shall

then consider the petition in accordance with the procedures set forth in sub-section 3 (a) (ii).

- b. Representation elections shall be conducted by secret ballot at such times and places convenient to the parties selected by the Board, subject to the following:
- i. The Board shall give at least ten days notice of the time and place of such election.
 - ii. The Board shall establish rules and regulations concerning the conduct of any election including but not limited to regulations determining who is eligible to vote and guaranteeing the secrecy of the ballot.
 - iii. A bargaining agent may not be certified unless it receives a majority of the valid votes cast.
 - iv. The ballot used in any secret ballot election shall include "no representative" among the choices. The organization receiving a majority of the valid votes cast shall be certified as the bargaining agent. If the choice "no representative" receives a majority of the valid votes cast, then the public employer may not formally recognize any bargaining agent for at least twelve (12) months thereafter. If no choice receives a majority vote then a run-off secret ballot election shall be conducted between the top two

choices.

v. The Board shall certify the results of said election within five working days after the final tally of votes if no complaint is filed by any party alleging that a prohibited practice under Section 1-4 existed in connection with said election. If such a complaint is filed and the Board has reason to believe the allegations are valid, it shall set a time and place for hearing the matter after due notice. Any such hearing shall be conducted within fifteen (15) days of the date of receipt of such complaint. If as a result of such hearing the Board finds the election was affected by a "prohibited practice", as defined in this by Section 1-4 of this chapter, it may order a new election. If the Board determines that no prohibited practice existed, or if it existed, did not affect the outcome of the election, it shall immediately certify the election results.

vi. No election shall be held in an appropriate unit pursuant to this section, where in the preceding twelve-month period a valid election shall have been held.

4. If certified, pursuant to this section, an exclusive bargaining agent shall have the right to unchallenged formal representation status until the expiration of one year from the date of certification, except as

provided in sub-section (5) of this section.

5. Until one-hundred and eighty-seven (187) days before the budget submission date, the exclusive bargaining agent may be challenged by:
 - a. An employee organization, public employee, or group of employees who alleges that thirty per cent or more of the employees in an appropriate unit assert that the certified representative no longer represents the majority of employees in the unit; or,
 - b. A public employer who has reason to believe that the certified representative no longer represents a majority of said public employer's employees in an appropriate unit.
6. The challenging party under sub-section (5) of this section shall file a petition setting forth its allegations with the Board. The Board shall investigate such petition, and if it has reasonable cause to believe that a question of representation exists, shall provide for a hearing upon due notice. If the Board finds that there is a question of representation, it shall order that an election be held pursuant to sub-section (3) (b) of this section.
7. No provisions of this chapter shall prevent any individual public employee or group of employees from presenting grievances to their public employer and to have them adjusted without the intervention of the bargaining agent, so long as the adjustment is not inconsistent with the terms of a collective negotiation

agreement then in effect, and provided further, that the bargaining agent is given an opportunity to be present at such adjustment.

Comment: This section establishes procedures for determining what employee organization will serve as exclusive bargaining agent for an appropriate unit for the purpose of negotiating a contract with the public employer. Organizations are accorded informal and formal representation status under sub-section (1). An organization with formal status is an exclusive bargaining agent and therefore has the right to enter into contract negotiations.

Informal status is recognized in order to give other employee organizations the opportunity to discuss job problems with their employer.

Sub-sections (2) and (3) (a) consider the various methods by which an organization may become an exclusive bargaining agent. The manner in which a representation election is to be conducted is set forth in (3) (b).

Exclusive bargaining agent status may not be challenged for one year except as provided in sub-section (5). A challenge under this sub-section can only be made prior to one hundred and eighty-seven days before the budget submission date. This figure is the latest time under section 1-9 by which negotiations between employer and employee organization may be initiated, and a challenge to an organization's formal status after this time would disrupt the bargaining process.

Section 1-8 Determination of Supervising Employees

1. The Board shall have the power to determine whether

a supervisory employee is excluded under section 1-3. In determining whether a supervisory employee shall be excluded, the Board shall consider, among other things, whether the principal functions of the position are characterized by not fewer than two of the following factors:

- a. Performing such management control duties as scheduling, assigning, overseeing, and reviewing the work of subordinate employees;
 - b. Performing such duties as are distinct and dissimilar from those performed by the employees supervised;
 - c. Exercising judgment in adjusting grievances, applying other established personnel policies and procedures, and enforcing the provisions of a collective negotiation agreement;
 - d. Establishing or participating in an establishment of performance standards for subordinate employees and taking corrective measures to implement these standards.
2. The above criteria for supervisory employees shall not necessarily apply to police and fire departments.

Comments: This section is concerned with determining whether any particular class of employees is supervisory or not. An affirmative finding would exclude the employees in question from the scope of the statute. As stated in sub-section (2), determining criteria under sub-section (1) does not necessarily apply to police and fire services due to their different type of organizational structure.

Section 1-9 Scope of Collective Negotiation

1. Collective negotiation shall extend to wages, hours, and other terms and conditions of employment, including:
 - a. Terms establishing procedures for the adjustment of grievances through informal discussion, formal review, arbitration, or other agreed-upon methods, subject to the provision of this chapter; and,
 - b. Terms and conditions relating to the subject of civil service or merit legislation dealing with public employment so long as any agreed-upon terms are consistent with such existing laws and any regulations authorized thereunder.
2. Collective negotiations shall not deprive the public employer of the right to:
 - a. Carry out the statutory mandate and goals of the agency, or of public educational institutions, or whatever public purpose the employer serves, and to utilize personnel, methods, and means in the most appropriate manner possible;
 - b. Take whatever actions may be necessary to carry out its responsibilities in situations of emergency, including riots, military actions, natural disorders or civil disorders; and, suspend any collective negotiation agreement for the duration of the emergency;
 - c. Contract and subcontract any functions or services;
 - d. Exercise any other rights provided for under this chapter.
3. Whenever wages, or any other matter requiring an appropriation of money by any public employer are included as a matter

of collective negotiations pursuant to this Act, it is the obligation of the exclusive bargaining agent to serve written notice of request for collective negotiations on the public employer at least one hundred and eighty-seven (187) days prior to the budget submission date of the next fiscal year.

4. After negotiations have continued between the public employer and an exclusive bargaining agent for a period of seventy-five (75) days without an agreement being reached; or, if the parties mutually agree that further negotiation will not produce an agreement; or, if the parties fail to reach agreement at least one hundred and twenty-seven (127) days prior to the budget submission date, an impasse will be deemed to exist. When such an impasse occurs, the impasse procedures under Section 1-10 of this chapter will go into immediate effect.

Comment: This section considers what and when the public employer and exclusive bargaining agent may negotiate. Sub-sections (1) and (2) set forth the scope of bargainable issues. Sub-section (1) (b) goes further than most public employment bargaining statutes, explicitly permitting negotiations on merit system issues. Sub-section (2) allows the employer to still retain managerial control.

This bargaining statute is drafted to allow a maximum of one hundred and twenty days for the impasse procedures under Section 1-10 and 1-11, plus seven more days for legislative planning of the contract prior to the budget submission date. Sub-section (3) of this section requires that negotiations be initiated at least six weeks before this one hundred and twenty seven day period begins to toll, giving the parties suitable time to bargain a contract prior to the impasse procedures.

The impasse procedures of Section 1-10 automatically go into effect when any one of the three conditions under 1-9 (4) is present.

Section 1-10 Impasse Procedures

1. When an impasse exists pursuant to Section 1-9 between the public employer and exclusive bargaining agent, the parties shall mediate the dispute. The public employer and exclusive bargaining agent shall notify the Board within two days from the beginning of the impasse that an impasse does exist. The Board shall appoint a mediator within two days thereafter. The mediator shall have fourteen (14) days within which to resolve the dispute between the public employer and the exclusive bargaining agent. Not less than fifteen (15) days after his appointment the mediator shall report to the Board his success or failure to resolve the dispute. The public employer and exclusive bargaining agent shall bear equally the costs of mediation.
2. When mediation fails to resolve the dispute between the public employer and exclusive bargaining agent, fact-finding shall be employed. Within two (2) days after receiving the mediator's report, the Board shall submit to the public employer and exclusive bargaining agent a panel of three qualified disinterested persons from which list the parties shall select one person to serve as the fact-finder and notify the Board of their choice. If the parties fail to select the fact-finder within five (5) calendar days of receipt of the list, the Board shall appoint the person who shall serve as fact-finder within one day thereafter. The person selected or appointed as fact-finder may establish dates and place of hearings

which shall be convenient and accessible to both parties. Any such hearings shall be conducted in accordance with rules established by the Board. The fact-finder, with the approval of the Board, shall have the power to issue subpoenas obtained in accordance with established judicial requirements and to administer oaths. Upon completion of the hearings, in no case later than twenty-five (25) days from the date of appointment, unless such period is extended for no more than three (3) days by the Board for good cause shown, the fact-finder shall make written findings of fact and recommendations for resolution of the dispute and shall cause the same to be served on the public employer and the exclusive bargaining agent. If after ten (10) days from the date of the submission of the findings of facts and recommendations, no agreement is reached, the facts and recommendations shall be made public. The cost of fact-finding procedures shall be shared equally by the public employer and the exclusive bargaining agent except as provided in Section 1-5. Compensation for the fact-finder shall be in accordance with a schedule of payment established by the Board.

Comments: This section mandates the impasse procedures of mediation and fact-finding where the parties fail to reach agreement through negotiation. The section establishes time limitations on both procedures, and the parties must bear equally the costs of both methods, except where one of them is compelled by the Board to bear all the costs under Section 1-5 (2) for having committed an unfair labor practice. Pressure is placed on the parties to accept the findings of fact because failure of either to do so results in the findings being made public under sub-section (2).

Section 1-11 Arbitration

1. After findings of facts have been made public as provided in sub-section 2 of Section 1-10 above, and the public employer and exclusive bargaining agent are unable to reach an agreement, then either party to the dispute in accordance with (a) and (b) of this sub-section, and after giving written notice to the other party containing specifications of the issue or issues in dispute, may request the appointment of a board of arbitration, but such request shall be made:
 - a. Ten, but no later than twelve, calendar days after the findings of facts have been made public; or,
 - b. At least sixty-two (62) days prior to the budget submission date.
2. The Board of Arbitration shall be composed of three persons, one appointed by the public employer, one appointed by the exclusive bargaining agent, and a third member to be agreed upon by the public employer and exclusive bargaining agent, or to be selected according to provisions of this paragraph. The member of the Board of Arbitration representing the public employer and the exclusive bargaining agent shall be named within three (3) days from the date of the request for the appointment of such Board. The two arbitrators chosen shall mutually agree on the selection of a third arbitrator. If, after a period of three (3) days from the date of the appointment of the two arbitrators appointed by the public employer and the exclusive bargaining agent, the third arbitrator has not been selected by them, the Board shall furnish a list of three arbitrators from which the third arbitrator shall be selected by the two arbitrators already chosen.

The arbitrator appointed by the public employer shall eliminate one name from the list within two days after publication of the list, following which the arbitrator appointed by the exclusive bargaining agent shall eliminate one name from the list within two days thereafter. The individual whose name remains on the list shall be the third arbitrator and shall act as chairman of the board of arbitration. No member of the arbitration board may have previously been a mediator or fact-finder.

3. The arbitration board shall, acting through its chairman, call a hearing to be held within five (5) days after the date of the appointment of the chairman and give at least three (3) days notice in writing of the time and place of such hearing to each of the other two arbitrators, the public employer and the exclusive bargaining agent. The hearing shall be informal and the rules of evidence prevailing in judicial proceedings shall not be binding. The arbitrators may administer oaths and require by subpoena the attendance and testimony of witnesses, the production of books, records, and other evidence relative or pertinent to the issues presented to them for determination. The Board of Arbitration shall have the power to petition the court of record in the jurisdiction for the purpose of compelling observance of subpoenas. Upon completion of the hearings, in no case later than twenty-five (25) days from the date of commencement of the hearings, unless such period is extended for no more than three days by the Board for good cause shown, the arbitrators shall make a written decision, a copy of which shall be mailed or otherwise delivered to the public employer and the exclusive bargaining agent. A majority decision of the arbitrators on any and all issues in dispute shall be final and binding upon the public employer and the

exclusive bargaining agent.

4. The Board of Arbitration shall consider, among others, the following factors in arriving at a decision:
 - a. Comparison of wage rates or hourly conditions of employment of the employee group in question with wage rates or hourly conditions of employment maintained for the same or similar skills under the same or similar working conditions in the area involved;
 - b. Comparison of wage rates or hourly conditions of employment of the employee group in question with wage rates or hourly conditions of employment of like employment groups in governmental entities of comparable size;
 - c. Interest and welfare of the public;
 - d. Comparison of peculiarities of employment in regard to other trades or professions, specifically:
 - i. Hazards of employment;
 - ii. Physical qualifications;
 - iii. Educational qualifications;
 - iv. Mental qualifications;
 - v. Job training and skills.
5. The costs of arbitration shall be borne equally by the public employer and exclusive bargaining agent.
6. Orders of the Board of Arbitration shall be reviewable by a court of competent jurisdiction where the dispute arose, but only for the following reasons:
 - a. That the arbitration panel was without or exceeded

its jurisdiction;

- b. That the order is unsupported by competent, material, and substantial evidence on the whole record; or,
- c. That the order was procured by fraud, collusion, or other similar and unlawful means.

The pendency of such proceeding for review shall not automatically stay the order of the arbitration panel, but only by order of the court of competent jurisdiction.

7. During the pendency of proceedings before the arbitration panel, existing wages, hours, and other conditions of employment shall not be changed by action of either party without the consent of the other, but a party may so consent without prejudice to his rights or position under this chapter.

Comments: Due to its length, the arbitration impasse procedure is placed in a section separate from mediation and fact-finding. The arbitration is voluntary in that it may only be initiated by request of either party to the dispute once fact-finding has failed. Once the public employer or exclusive bargaining agent invokes arbitration, the other party is compelled to participate. The decision is binding as to any and all issues in dispute, including economy matters requiring implementation by a legislative body.

Sub-section (2) establishes the machinery for choosing the three-man arbitration panel. Once the panel has been selected, sub-section (3) offers guidelines for conducting arbitration hearings. Some of the factors the Board of Arbitration should consider in making its decision are set forth in sub-section (4). The arbitration award is only

appealable for lack of jurisdiction or evidence, or unlawful procurement of a decision by unlawful means. This latter requirement discourages frivolous appeals of arbitration decisions that will hold up legislative implementations.

Section 1-12 Implementation of Collective Bargaining Agreement

1. Notwithstanding the provision of any general statute or special act to the contrary, the budget-appropriating authority of the public employer shall appropriate whatever funds are required to comply with the agreement made between the public employer and exclusive bargaining agent pursuant to sections 1-9 and 1-10 of this chapter.
2. Pursuant to section 1-11, where the decision of the Board of Arbitration requires that the public employer, or exclusive bargaining agent, or both, take some affirmative action, the parties shall cause the decision to be reduced to a written contract, and take whatever measures necessary to fulfill the contract. In the case of the public employer, this obligation includes the duty to enact any legislation, adopt any resolutions, and promulgate any rule or regulation necessary to implement the provisions of such agreement.
3. An agreement between the public employer and an employee bargaining agent shall be valid and enforced under its terms when entered into in accordance with the provisions of this Act and signed by the Chief Executive Officer of the State or political subdivision or his representative. No publication thereof shall be required to make it effective. The procedure for the making of an agreement

between a public employer and employee organization provided by this chapter shall be the exclusive method of making a valid agreement for public employees represented by a labor organization. The term of the agreement shall in no case be longer than two (2) years.

Comments: This section insures that any agreement concluded through negotiation, mediation, or fact-finding, or compelled through arbitration, will be implemented by the appropriate government body of the public employer. Any decision of the Board of Arbitration must also be reduced to a written contract under sub-section (2).

Section 1-13 Powers of the Board

The Board shall have the following powers pursuant to this chapter:

1. To hear unfair labor practice charges brought by the public employer, public employee, employee organization, or other person pursuant to Section 1-4;
2. To impose sanctions for unfair labor practices against public employers, public employees, and employee organizations pursuant to Section 1-4;
3. To determine appropriate units pursuant to Section 1-6;
4. With respect to bargaining agents pursuant to Section 1-7:
 - a. To certify exclusive bargaining agents;
 - b. To conduct elections for the purpose of certification;

- c. To conduct hearings on certifications;
 - d. To conduct hearings on bargaining agent election irregularities;
 - e. To conduct hearings on challenged certifications;
5. To determine supervisory employees pursuant to Section 1-8;
 6. To appoint a mediator pursuant to Section 1-10;
 7. To supervise fact-finding pursuant to Section 1-10;
 8. To furnish a list of arbitrators pursuant to Section 1-12;
 9. To request from any public employer, public employee, employee organization, and any other persons, where said public employer, public employee, employee organization and other persons are authorized to provide such assistance, services, and data as will enable the commission to properly carry-out its functions;
 10. To make studies and analyses of conditions of employment of public employees throughout the state, and provide said studies and analyses to public employers, public employees, employee organizations, and other interested persons. These studies and analyses may concern, but not be limited to:
 - a. Problems involved in public employee representation and negotiations;
 - b. Conditions of public employment that are open to negotiation in whole or in part;

- c. Conditions of public employment that require administrative or legislative approval;
 - d. Conditions of public employment that are for determination solely by the qualified electors of the state or any political subdivision thereof, or the appropriate legislative body.
11. To make available to public employers, public employees, employee organizations, mediators, fact-finders, arbitrators, and other interested persons, any statistical data relating to salaries, hours, and other conditions of employment to assist them in resolving issues of negotiation.
 12. To make, amend, and rescind, from time to time, such rules and regulations as may be necessary to carry out the purposes and provisions of this chapter.

Comments: This section simply sets forth the powers of the Board that have been created through the first twelve (12) sections. Sub-sections (10) and (11) empower the Board to study and disseminate data relating to conditions of public employment.

Appendix A

Agreement Between The City of Elmira, New York and
Elmira PBA, 1967

AGREEMENT

This Agreement, entered into this 21st day of December, 1967, by and between the City of Elmira, New York (hereinafter referred to as the City) and the Police Benevolent Association, Elmira, New York, Inc., (hereinafter referred to as the Association).

I. Association Recognition

The City recognizes the Police Benevolent Association, Elmira, New York, Inc., as the exclusive collective negotiating agent of the employees of the Elmira Police Department, who are members of the Association.

II. Strike Affirmation

The Police Benevolent Association hereby affirms to the provisions of Section 207, paragraph 3 of the Public Employees Fair Employment Act, that it does not assert the right to strike against any government, to assist or participate in any such strike, or to impose an obligation to conduct, assist, or participate in such a strike.

III. Dues Checkoff

Any individual who is a member or who may become a member of the Association and upon written authorization on the part of the employee, the City agrees to deduct Association dues from the wages of all Association members.

IV. Rates of Pay

1. The official salary schedule for the year 1968, for all members of the Elmira Police Department, as represented by this Association shall read as shown in Annex A of this document.

2. All employees as represented by this Association shall be entitled to any salary and wage increases granted to the City.

3. All members of this Association shall move from the minimum step in the pay range to the maximum step in annual increments. Payment of such annual increments shall be the anniversary date of appointment to the Police Department. Any salary and wage increase granted by the City, shall not act as a substitute to the annual increment.

4. The effective date for all salary and wage increases will be April 1, 1968.

V. 8% Contribution to the State Retirement System

The City of Elmira will continue the 8% contribution to the New York State Retirement System on behalf of all members of this Association, who are members of the New York State Retirement System.

VI. Holidays

1. Each member of this Association shall be paid for ten (10) holidays per year regardless of the number of holidays worked.

2. The rate of pay for the purpose of holiday pay shall be calculated at the rate of 1/10th of the bi-weekly salary for each day.

3. The holiday pay to be paid in a lump sum on the first pay day in the month of December, and will reflect the pay of the step and bracket of the employee at the time of payment.

4. Compensatory time off shall be allowed to any member of this Association who so elects in lieu of holiday pay, regardless of the number of holidays worked.

5. Choice of election of such option to accept holiday pay or compensatory time off shall be made by the employee prior to January first of each year.

6. The following days shall be designated as holidays for policemen covered by this agreement.

- | | |
|---|---------------------|
| 1. New Years Day | 6. Labor Day |
| 2. Lincoln's Birthday | 7. Columbus Day |
| 3. Washington's Birthday | 8. Veterans' Day |
| 4. Memorial Day | 9. Thanksgiving Day |
| 5. Independence Day | 10. Christmas Day |
| 7. <u>Veterans' Day and Memorial Day:</u> | |

Any member of this Association entitled to a leave of absence or equivalent time off for Veterans' Day or Memorial Day under the provisions of Section 63 of the Public Officers Law, may elect to forego such benefits, and elect in lieu thereof to receive payment for equivalent time off, such payment to be included in the lump sum payment made for holiday pay as hereinbefore provided. An election under this section shall be made at the same time that election must be made by each member in accordance with the other provisions of this section.

VII. Longevity Increments

1. Each member of this Association shall receive a longevity increment at the ten (10) and fifteen (15) year level of service, such longevity increment to be commensurate with his pay grade.

2. Payment of longevity increments to be reflected in the first pay following the anniversary date of the members appointment to service with the City of Elmira.

VIII. 25 Year Retirement Program

1. All members of the New York State Retirement System, who are represented by this Association, shall be allowed the privilege of participating in the 25 year New York State Retirement program. Effective date for the provisions of this paragraph to be January 1, 1968.

2. The provisions of this paragraph shall be administered according to Section 384 of the Policemens and Firemens Pension Law of the New York State Retirement System.

IX. 1/60th Additional Retirement Allowance

1. All members of the New York State Retirement program, who are represented by this Association, shall be allowed the privilege of participating in the 1/60th additional retirement allowance for each year of additional service over 25 years. Effective date for the provisions of this paragraph to be January 1, 1968.

2. The provisions of this paragraph shall be administered according to Section 384 of the Policemens and Firemens Pension Law of the New York State Retirement System.

X. Accidental Death Benefit

1. The Accidental Death Benefit Ordinance as amended

by the New York State Legislature, shall continue in full force and effect.

2. The provisions of this paragraph shall be administered in accordance with Council resolution adopted April 11, 1966 and is Annex B of this document.

XI. Payment For Unused Vacation

1. Any member of this Association whose employment is voluntarily terminated, shall receive the monetary value of accumulated and unused vacation time, or time allowances granted in lieu of overtime compensation standing to the credit of said employee or officer at the time of his separation from service.

2. Such compensation will be paid to the legatee or distributee of said officer or employee who dies in service.

3. Provisions of this paragraph shall be administered in accordance with Council ordinance adopted July 23, 1962 and payment for same shall be at the rate of 1/10 of the bi-weekly salary for each day.

XII. Hospitalization Insurance

1. The existing contract providing Blue Cross and Blue Shield coverage with the Extended Benefit Rider shall continue in full force and effect.

2. The City shall assume 50% of the cost per individual and the employee 50% of the cost.

XIII. Sick Leave

When any member of this Association is absent from duty on account of sickness, full pay for lost time shall be granted at the rate of sixty (60) working days each year,

plus two (2) additional working days per year for each year of continuance service with the City of Elmira.

XIV. Vacation

Full pay shall be granted all members of this Association during their annual period of vacation which shall consist of twenty (20) working days for all members.

XV. Additional Leave of Absence

1. A leave of absence not to exceed one (1) working day with full pay shall be granted for death of brother-in-law, sister-in-law, grandparents, grandchildren, nephew, nieces, aunts and uncles.

2. Each member of this Association shall be allowed three (3) days leave of absence with full pay in the event of death of the employee's father, mother, sister, brother, wife or husband, child, father-in-law, or mother-in-law, foster or step-parent.

3. This additional leave of absence under this section is in addition to any annual vacation, holidays and sick leave.

XVI. Release Time

1. An up to date list of the names of all eight (8) Directors of the Police Benevolent Association shall be kept on file with the Chief of the Police Department. There shall be two (2) Directors on each of the four (4) shifts. Each Director will be allowed to use up to one (1) hour of each day to perform his duties with regard to the Police Benevolent Association. This time will be limited to proper Association business and to the Director's normal working hours.

2. The City will give released time with pay to officers and delegates designated by the Association for union business. This time shall be limited to a maximum of three (3) men at any one time, and to the specific purpose for which the time was granted. In no event will released time with pay exceed five (5) calendar days for any single purpose.

3. The City shall give released time with pay to officers and delegates designated by the Association for the purpose of attending the New York State Police Conference Convention. This time shall be limited to a maximum of two (2) men at any one time, and to the period of the conference plus reasonable travel time if such is needed.

XVII. Hours of Work

1. The basic work day of the Police Department as covered by this Agreement shall consist of the following tours of duty per day:

- | | | |
|-------------------|---|-------------------------|
| (a) First Relief | - | 11:45 P.M. to 7:45 P.M. |
| (b) Second Relief | - | 7:45 A.M. to 3:45 P.M. |
| (c) Third Relief | - | 3:45 P.M. to 11:45 P.M. |

2. This work schedule shall not interfere with the special time schedule governing other Bureaus of the Police Department, and Special Assignments such as Telephone Operator and Patrol Driver.

XVIII. Work Schedules

1. Work schedules for the following calendar year shall be presented no later than December first of each year.

2. Work schedules may be amended or changed at the direction of the Chief of Police, to insure continued security

of the community.

XX. Out of Title Work

1. When a member of this Association assumes the responsibility of a higher rank, he shall be compensated for working in that position, for the time worked which shall reflect the difference between his regular salary and the salary of the particular grade of responsibility which he is assuming.
2. Compensation for out of title work shall commence the first day following a ten (10) day working period.

XX. Filling of Vacancies

When a vacancy occurs in a competitive class of the Police Department and a Civil Service eligibility list is in existence for the particular grade in which the vacancy exists, it shall be filled immediately.

XXI. Clothing Allowance

1. Upon appointment to the Police Department the employee will be furnished the following items by the City of Elmira:

1. One (1) dress overcoat
2. One (1) dress uniform (two pair trousers)
3. One (1) dress uniform hat
4. One (1) raincoat
5. Six (6) shirts (3 short sleeve and 3 long sleeve)

6. One (1) .38 special service revolver and ammunition
7. One (1) claw
8. One (1) baton
9. One (1) Sam Browne waiste belt with holster, claw case, and shell container (loop or box type)
10. One (1) helmet (crowd control)

All clothing and equipment must be furnished to insure uniformity, and all members will maintain their clothing and equipment in a uniform manner.

2. Replacement of any of the above items of clothing or equipment will be at the determination of the Chief of Police and Council Ordinance adopted October 28, 1945.

XXII. Residence Requirements

The Residency requirements for the members of the Elmira Police Department shall be within the limits of the County of Chemung.

XXIII. Compensatory Time Off

1. Any member of this Association who reports for Recorder's Court, Motor Vehicle hearings, Criminal Court, Grand Jury proceedings, and District Attorney interviews, etc., which is spent during the off duty hours of any member of the Police Department, shall be compensated for any time spent in the courts or hearings.

2. The member will be compensated for his time, portal to portal, with a minimum of two (2) hours.

XXIV. Grievance and Arbitration Procedure

In the event of a dispute between the parties to this agreement, either party shall have the right to resolve the dispute according to the provisions of the Grievance Procedure, which is Annex C of this document.

XXV. Duration of Agreement

This agreement shall remain in full force and effect commencing on the 1st day of January, 1968 and terminating on the 31st day of December, 1968.

XXVI. Saving Clause

If any Article or Section of this agreement should be held invalid by operation of law or by any tribunal of competent jurisdiction, or if compliance with or enforcement of any Article or Section should be restrained by such tribunal, the remainder of this Agreement shall not be affected thereby, and the parties shall enter into immediate collective negotiations for the purpose of arriving at a mutually satisfactory replacement for such Article or Section.

XXVII. Effective Date

This agreement shall commence on the 1st day of January, 1968 unless otherwise indicated herein.

XXVIII. Agreement

The foregoing constitutes an entire agreement between the parties and no verbal statement shall supersede any of its provisions.

In Witness Whereof, the parties have caused this Agreement to be executed by their duly authorized

representatives.

The City of Elmira

By _____
Carl F. Sanford,
City Manager

Police Benevolent Association, Inc.
By _____
Marion A. Pirozzolo
President

State of New York)
County of Chemung) SS.
City of Elmira,)

On this 21st day of December, 1967, before me, the subscriber, personally appeared Carl F. Sanford, who, being by me duly sworn, deposes and says: That he is the City Manager of the City of Elmira, the municipal corporation named in and which executed the foregoing instrument; that he knows the Seal of said City and that the Seal affixed to said instrument is such corporate seal, and that it was so affixed by order of the Council of said City and that he signed his name thereto by like order.

Notary Public

Annex A

Police Benevolent Association
Official Salary Schedule 1968

Patrolman Starting	\$ 6,000.00
Patrolman 2nd Year	6,250.00
Patrolman 3rd Year	6,500.00
Patrolman 4th Year	6,750.00
Patrolman 5th Year	7,000.00
10 Year Longevity	7,250.00
15 Year Longevity	7,500.00
Police Officers	
Police Sergeant	8,100.00
Police Lieutenant	8,750.00
Police Captain	9,450.00
Deputy Police Chief	10,200.00
Police Chief	11,200.00



Appendix B
CITY OF TUCSON

The Sunshiny City



Department of Police
P.O. Box 1071

REFERENCE:

24 February 1970

Mr. Donald D. Pomerleau
Commissioner
Baltimore Police Department
Baltimore, Maryland

Dear Commissioner Pomerleau:

It has come to my attention through my legal advisor, John H. Burpo, that the Maryland Court of Appeals ruled against you in the Brukiewa Case. My interpretation of the holding in that case is that a police officer has unbridled freedom of First Amendment rights, and a departmental regulation prohibiting an officer from making public remarks that criticize or ridicule the official actions of another departmental member may only be employed when it can be shown that the remarks undermined the efficiency and morale of the police department.

This decision will undoubtedly have a grave effect upon police administration in this country. The holding of the Brukiewa Case requires proof of loss of morale and efficiency be shown, and these are intangible elements virtually impossible to prove. Therefore, police officers are being given the virtually unbridled freedom to speak out publicly against members of the department.

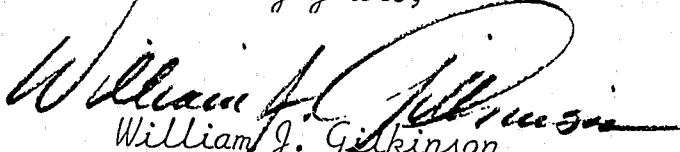
Being a leading police administrator you are well aware of the implication of this decision. A police department is a

Mr. Donald D. Pomerleau
24 February 1970
Page two

quasi-military organization and requires that effective discipline be maintained for it to function smoothly. If officers are permitted to publicly criticize and ridicule the actions of superior officers, discipline will undoubtedly break down. I strongly urge you to take this case up to the United States Supreme Court on a writ of certiorari. A favorable ruling in the high court will be a great benefit to the police service in this country. Notwithstanding the fact that you would be the appellant, I believe that there is a federal constitutional question involved in this case that would give the Supreme Court jurisdiction.

Your consideration in this matter will be greatly appreciated.

Sincerely yours,


William J. Gilkinson
Chief of Police

WJG:bh

(Letter from Chief William J. Gilkinson, Tucson Police Department, to Commissioner Donald Pomerleau, Baltimore Police Department, 1970)

Appendix C
Pittsburgh JOP Arbitration Award, 1968

Before

Theodore W. Kheel, Esq., Chairman
Burrel Cohen, City Member
William Cavanaugh, Union Member

In The Matter Of	)	Re 1968 Contract
Fort Pitt Lodge No. 1 of the	)	Arbitration Under Compulsory
Fraternal Order of Police	)	Arbitration Act of 1966
and	)	Opinion and Award
City of Pittsburgh	)	

Appearances:

For Fort Pitt Lodge No. 1,
Fraternal Order of Police

Arthur D. Gatz, Jr., Esq.
Stanford A. Segal, Esq.

For City of Pittsburgh

Marion K. Finkelhor, City Solicitor
William Salem, Fiscal Officer
Martin A. Hamburger, Asst. City Solicitor

Pursuant to Pennsylvania Act. No. 111 of 1968 providing for binding arbitration for police and fire personnel in Pennsylvania, the Fraternal Order of Police, Fort Pitt Chapter, and the City of Pittsburgh submitted to the undersigned Board of Arbitration eleven unresolved issues of salary,

hospitalization and other conditions of employment. In addition, the City sought to have arbitrated certain adjustments in the trial board procedures of the Bureau of Police. The Union maintains that this request is not arbitrable since the trial board procedures were established by the State Legislature and the Board of Arbitration does not have the power to require the State Legislature to change the law. The City contends that the mandate for "binding arbitration" must include the power to bind the State Legislature to effectuate the purposes of the Police and Fire Arbitration Act both in connection with the City's ability to tax to raise the funds necessary to pay for any increases granted to the police as well as its request to modify the trial board procedures. Alternatively, the City argues, the Board cannot impose any increase beyond the City's capacity to pay regardless of the merits of the claim.

Hearings were held in Pittsburgh during which time the parties were given the opportunity to present all of the facts and arguments they deemed relevant. In addition the parties submitted briefs on the legal questions which were stated as follows:

"1. What is the power of the Board of Arbitration to bind the Pennsylvania Legislature on matters included within a municipal arbitration decision.

"2. To what extent is the determination or award of the Board of Arbitration limited by the existing revenues and taxing authority of the municipality."

The Chairman wishes to note that the presentations on both sides were excellent and that all the relevant facts and arguments necessary for the Board to make a decision were placed in the record.

On the wage and other financial issues, the City's position was summarized as follows:

"1. The wage and other demands of the Union estimated at 7.5 million dollars cannot be divorced from the fiscal problems of the City of Pittsburgh. Estimates of potential revenue are inadequate to meet the Union demands.

"2. Under existing fiscal conditions, the City offer of a \$500 per annum base increase to all police officers and a 10% differential in higher ranks is reasonable and is in accord with police salaries in other Pennsylvania communities.

"3. The Union package, estimated at seven and one-half millions of dollars, would adversely affect other City services and would require substantial and oppressive tax adjustments.

"4. The City of Pittsburgh is not a Home Rule City and lacks the broad taxing power and revenue base to impose new taxes to meet Union demands."

The Union in turn based its case mainly on comparative information regarding the level of wage payments to other police organizations in cities of similar size throughout the nation, payments to other employees of the City in Pittsburgh, and statistics bearing on living costs which admittedly have risen substantially since the Pittsburgh Police last received an increase.

The Board of Arbitration met in executive session upon the conclusion of the hearings and does now herewith present its decision on the issues in dispute. As the neutral member, the Chairman cast the controlling vote. The views expressed herein represent his views and not necessarily

those of the other members of the Board.

Opinion

It does not seem to me that this Board is the appropriate body to decide the legal questions bearing on the obligation of the State Legislature to pass legislation that might be necessary to effectuate the award. We are a Board of Arbitration and should proceed as such. It seems to me that the decision on the wage and other financial questions must be based on the same considerations that would govern any arbitration as they affect the police, the City, and the public which must ultimately pay the bill. Consequently, I feel that the Board must disregard the argument that the police should not receive any increase beyond the City's present capacity to pay the cost if the police are otherwise entitled to such an increase. On the trial board procedures, I nevertheless have reservations which would delay any decision on this issue. But I do not believe that I should at this time withhold decision on the wage and other financial issues until these questions are resolved. I have therefore decided to proceed with the wage and other financial issues and will be prepared to receive further testimony and arguments from the parties on the trial board procedures at a later date.

One fact clearly emerges from the record, and that is the clear equity in favor of a significant increase in pay for the policemen of Pittsburgh. It was also evident that the City administration sympathized with the need for higher police salaries. It opposed increases in excess of the offer of \$500 it had made in negotiations simply and solely because it lacked the power to raise even the revenues to pay for that increase.

CONTINUED

3 OF 4

I have said that I do not believe that this Board should decide whether or not it has the power to mandate the State Legislature to grant the taxing authority the City needs to pay for the increases the police are entitled to receive. But it is obvious that at the least the State Legislature, which passed the Arbitration Act last year pursuant to the Constitutional change voted by the people, has an obligation to empower the City to effectuate the award. If it fails to do so, it will frustrate the purposes of a law it passed designed to provide for the orderly and equitable adjustment of the wage and other financial claims of police and firemen without resort to any form of job action. In my opinion, the case for the adjustments we are awarding in this decision is overwhelming. It thus becomes imperative for the State Legislature of the Commonwealth of Pennsylvania to provide the City of Pittsburgh with the resources it requests so that this award, covering a two-year period, can be financed without reducing essential City services and also to make it possible at the same time for the City to grant other municipal employees the salary and wage adjustments which they may be entitled to receive.

Award

In order to assure stable relationships, it is our decision that this award shall cover a period of two years, commencing January 1, 1969. All of the adjustments granted herein shall be effective as of January 1, 1969, except as stated.

1. An increase of \$1300 per year shall be granted as of January 1, 1969.

2. An increase of \$700 per year shall be granted as of January 1, 1970.

3. A clothing allowance of \$200 per year shall be granted as of January 1, 1969 for on duty clothing police are required to purchase.

4. A 10% pay differential in rank shall be granted as of January 1, 1969.

5. Equal pay for women shall be granted as of January 1, 1969.

6. Ingrade pay shall be granted as of January 1, 1969 to policemen who act out of grade over ten days.

7. All patrolmen in the detective and inspection branch as of January 1, 1969 shall be made third grade detectives after 90 days in their respective divisions.

8. A payment of \$5.00 shall be granted as of January 1, 1969 for all Magistrate, Grand Jury and Court trials including the Juvenile Court.

9. All other requests of the Union to change existing benefits not covered herein shall be deemed denied and such benefits shall continue in effect without change.

Dated: November 14, 1968

Theodore W. Kheel, Chairman

Burrell Cohen, City Member

William Cavanaugh, Union Member

Appendix D

Injunction Application and Order for Work Stoppages

State of _____) SS.
County of _____)

In the _____ Court of
_____ County, _____

City of _____, By _____

_____, Mayor

Cause No. _____

Vs

_____, President

_____, Vice President

_____, Secretary

_____, Treasurer, Individually

and as representatives of that class

known as the _____

Association, Local _____.

(2 SCL 145)

Verified Application For Restraining Order Without
Notice and Injunction

Plaintiff herewith makes application to this court for a temporary restraining order to issue without notice a preliminary injunction and permanent injunction enjoining all the officers and members of the _____ Association, Local _____, from engaging in, or lending their support to any strike or similar concerted efforts designed to effect the failure of the officers and men of the _____ Department of the City of _____ to report for duty at their regularly scheduled hours, or threatening to do the same, in support thereof would show the Court:

1. That plaintiff is a municipal corporation of the State of _____.

2. That the defendants named herein are representatives of that class known as the _____ Association, Local _____, and by naming said members as aforesaid all of that class known as _____ Association, Local _____, are separately and severally made defendants herein.

3. That the statutes of the State of _____ charge the plaintiff with the duty of providing _____ protection for the property located in said municipality and the individuals residing in said municipality.

4. That the petitioner, City of _____, has reason to believe that certain members of the aforesaid class known as the _____ Association, Local _____, are or are about to engage in a strike or concerted refusal to work.

5. That _____ protection is essential to the public health, safety, and welfare of the citizens of _____.

6. That irreparable injury or harm to the persons and property located within the corporate limits of petitioner would exist since there would not be adequate _____ protection in the event that a strike and/or concerted efforts at staying away from work is permitted.

7. That petitioner has no adequate remedy at law in the circumstances set forth herein.

8. That the gravity and possible consequences of the circumstances set forth herein are of such a grave nature as to require that a restraining order issue without notice.

Wherefore, petitioner prays that the defendants and all of that class known as the _____ Association, Local _____, be restrained without notice from striking and/or engaging in, or lending their support to, any concerted refusal to perform their duties as _____ of the City

of _____. That after the issuance of said restraining order without notice, and during the pendency, a hearing be had on a temporary injunction to be issued in this matter, pending a final hearing on a permanent injunction.

Attorney for the City of _____

Verification

_____, being first duly sworn, on oath deposes and says that he is the Chief of the _____ Department, City of _____, State of _____, and that he has read the foregoing Complaint and knows the contents thereof, and that the same are true to the best of his knowledge, information and belief.

Chief

Subscribed and Sworn to before me this ____ day of _____, 19____.

Notary Public

My Commission Expires: _____

2 SCL 146

Appendix D (Continued)

State of _____) SS.
County of _____)

In the _____ Court
County of _____

City of _____ By _____

Mayor

vs

Cause No. _____

_____, President

_____, Vice President

_____, Secretary

_____, Treasurer, Individually

(2 SCL 147)

and as Representatives of that class

known as the _____

Association, Local _____

Order for Permanent Injunction

This matter coming on for hearing before _____, Judge, on the plaintiff's application for a Temporary Injunction herein, and all parties being present, and the parties agreeing and stipulating thereto that today's hearing and evidence presented shall be submitted to the Court on plaintiff's application for permanent injunction, and defendant in opposition submits their evidence and the Court having heard all evidence submitted now finds that:

1. That the defendants and the class that they represent are _____ in the City of _____ and therefore are city employees.

2. That the defendants, individually and as a class are Municipal employees and do therefore do not have the legal right to strike or join in a concerted refusal to work.

3. There is an impending threat that the above named defendants are or are about to strike or join in a concerted refusal to report to work.

4. That if the defendants, individually and as a class are allowed to strike or to engage in a concerted refusal to report to work that plaintiff will suffer irreparable injury and/or damage in that residents of the city of _____ will not be provided with adequate _____ protection.

It is therefore ordered, adjudged, and decreed that the defendants, individually and as a class are hereby restrained from striking or joining in a concerted refusal to report for work, and that a permanent injunction issue against them, restraining them from doing said acts, until further order of this Court.

It is further ordered, adjudged, and decreed by this Court that a copy of this order be served on the defendants within a reasonable time hereafter.

All of which is adjudged, ordered, and decreed by the court on the _____ day of _____, 19____.

Judge

Appendix E

Grievance Procedure from Section IX of a Contract Negotiated Between the City of Detroit and Detroit Police Officers' Association

IX. Grievance Procedure

A. Every employee of the department shall have the right to present grievances in accordance with the procedure provided herein.

B. The informal resolution of differences or grievances is urged and encouraged to be resolved at the lowest possible level of supervision.

C. Immediate supervisors, commanding officers, and reviewing officers shall consider promptly all grievances presented to them and, within the scope of their authority, take such timely action as is required.

D. Grievances shall be processed according to the following procedure:

Step 1-a. An employee who believes he has been dealt with unjustly or believes that any provision of this agreement has not been applied or interpreted properly may discuss his complaint with his immediate supervisor, with or without the presence of his steward. The parties shall discuss the complaint in a friendly manner and shall make every effort to reach a satisfactory settlement at this point. The employee shall have the right to discuss the complaint with his steward before any discussion takes place with the supervisor. The supervisor shall make arrangements for the employee to be off his job for a reasonable length of time in order to discuss the complaint with the steward.

Step 1-b. If the matter is not satisfactorily settled, a grievance may be submitted in written form by the Steward to the immediate supervisor. The written grievance shall set forth the nature of the grievance, the date of the matter complained of, the names of the employee or employees involved, so far as diligent effort will allow, and the provisions of this agreement, if any, that the grievants claim have been violated. The supervisor's answer shall set forth the facts he took into account in answering the grievance. His written answer shall be presented to the steward within five (5) calendar days after receipt. Acceptance or rejection of the supervisor's answer will be written on the grievance form by the steward.

Step 2. If the grievance is not satisfactorily adjusted at Step 1, it shall be referred to the Chief Steward, who shall appeal such grievance to the Commanding Officer. The Commanding Officer shall discuss the grievance with the Steward and/or the Chief Steward and the aggrieved employee (s) and render a written answer within five (5) calendar days of his receipt of the grievance.

Step 3. If not satisfactorily settled, the grievance shall be referred to the Grievance Committee of the Association, which may appeal it to a Reviewing Officer. A meeting to discuss the grievance shall be held between the Grievance Committee and the Reviewing Officer within five (5) days after receipt, and a written decision rendered within five (5) days of the meeting.

Step 4. If not satisfactorily settled, the grievance may be referred to the Commission. A meeting between the Commissioner and/or his designated representatives and a committee of the association composed of the President, the Vice-President, and the members of the Grievance Committee

shall be held within five (5) days, after referral to the Commissioner, to discuss the grievance. If not satisfactorily adjusted at this meeting, the Commissioner shall give his written answer within five (5) days of the meeting.

E. Notwithstanding any other provisions herein, individual employees may present their own grievances to the employer and have them adjusted without the intervention of the steward or association officers; provided, however, that the employer has given the steward or association officers notice and an opportunity to be present at such adjustment. In no event shall any such adjustment be contrary to or inconsistent with the terms of any agreement between the employer and the association.

F. Notification within a reasonable time shall be given to the steward or association officers of any disciplinary action taken against any employee which may result in official entries being added to his personnel file.

G. The steward or another representative of the association shall have the right to be present and, if requested by the employee, to represent the employee at all levels of disciplinary proceedings, including Trial Board proceedings. This shall not include the right to be present during administrative processes in preliminary stages of investigation.

H. Before any employee shall be required to make any written statement or written reply pertaining to any alleged misconduct on his part, the matter shall first be discussed between the employee and his commanding officer. The employee shall have twenty-four (24) hours after such conference to make the written statement. This shall not apply to the completion of the preliminary complaint report.

I. Grievances affecting a large number of employees may be treated as a policy grievance and entered at the third step of the grievance procedure by the association.

J. Grievances shall be filed within thirty (30) days of the event, occurrence or knowledge of the facts giving rise to the grievance. Grievances not appealed in writing to the next step within ten (10) days of receipt of the last decision shall be considered settled on the basis of the last decision. All time limits of the grievance procedure may be shortened or extended by mutual agreement.

END