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Guidelines to assist school board members in collective negotiations with teachers associations are developed from the author's experience as a negotiations consultant to school boards and to management in industry. Particular attention is given to the bargaining process, preparations for negotiation, the initial agreement, third-part intervention, and evaluating the human element in the negotiations process. Four New Jersey enactments related to collective negotiations in education are appended, including the full text of the Red Bank Agreement on Professional Negotiations between the Board of Education and the Teachers Association. (JK)



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A Journal of—
Collective Negotiations

NEW JERSEY STATE FEDERATION OF DISTRICT BOARDS OF EDUCATION

*Cover picture:
Author John Metzler makes a point during the development
of the Red Bank agreement (Asbury Park Press photo).*

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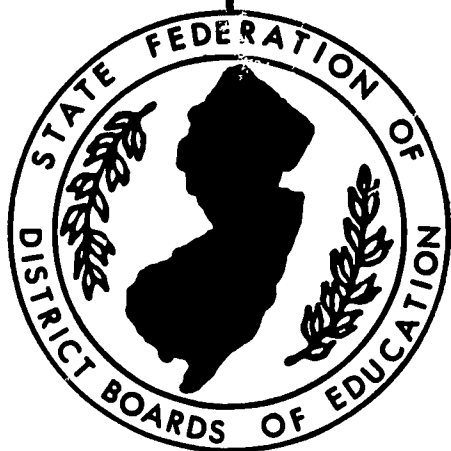
A Journal of—

Collective Negotiations

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by **John Metzler**



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CONTENTS

About the Author	5
Foreword	7
I. THE BARGAINING PROCESS	9
Background and History	
Application to Education	
II. PREPARING TO NEGOTIATE	21
How to Negotiate	
Who Should Negotiate? (Use of consultants, attorneys, administrators, superintendents, etc.)	
Communications During the Negotiations Process	
III. FIRST AGREEMENT	35
Importance and Problems	
The Role of Management in Negotiations	
Protective Features for the Board	
IV. THIRD PARTY INTERVENTION	51
Mediation and Fact-Finding	
Advisory Arbitration	
V. EVALUATING THE HUMAN ELEMENT	65
Human Relations and Contract Negotiations	
The Consultative Process	
The Importance of In-Service Training for Managers	
VI. DIRECTIONS	81
Impact of Educational Technology Upon Employment Relations	
Direction of Negotiations in New Jersey	
APPENDICES	95
A. New Jersey Constitutional Provision for Public Employees	95
B. Decision of the Commissioner of Education in the Case of the Perth Amboy Teachers' Association, etc., v. the Board of Education of the City of Perth Amboy, November 4, 1965	96
C. Red Bank Agreement on Professional Negotiations	107
D. Statement of the State Federation of District Boards of Education of New Jersey at the Public Hearing of the Public and School Employees Grievance Procedures Study Commission	117

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Foreword

THIS monograph is intended to aid boards of education which become involved in negotiations with organizations representing either the teachers or the non-certified personnel of the district, although it deals for the most part with the school board-teachers aspect.

Several chapters have appeared previously as individual columns in **SCHOOL BOARD NOTES** or have been presented as formal addresses by the author. One, "Human Relations and Contract Negotiations," appeared in mid-1961 and was directed to industry. It is used here because the concepts expressed fit the situation so precisely.

At the moment of writing, fourteen states grant school employees the right to bargain collectively. However, there is no such law in New Jersey. The Constitution of New Jersey merely states that public employees have the right to organize and to present their grievances and proposals.

The guidelines for boards in the situation many are facing today are few. Governor Richard J. Hughes appointed the Public and School Employees' Grievance Procedures Commission in 1966 to hold hearings, study and present their findings in the form of recommendations. These are expected in late 1967, with legislation possible soon thereafter.

Despite the lack of legal guidelines concerning such important features as the method of determining the bargaining unit and agent, the scope of bargaining issues, means of resolving an

impasse, and even the process of negotiations itself, many boards of education in New Jersey are faced with the demand to bargain and the prospect is obvious that such demands will increase rapidly.

Under present constitutional provisions, a board can probably refuse to indulge in collective negotiations. The important factor, however, is the effect such refusal will have upon continuing board-staff relations. This monograph is presented as a guide to those boards which do find themselves involved in the process.

It is important to note that this is not a "cookbook" on negotiations. It doesn't concentrate on the "do and don'ts" or the step-by-step "how to" approach. There are many of these available. It does attempt to be an exposition of the basic fundamentals and to provide an understanding of the collective negotiations process in order that a board may utilize the process to improve board-staff relations. The theoretical structure upon which this understanding is built is based upon four major assumptions:

- a) The concept of social conflict, accepting as fact that there is always conflict between those who are managed and those who manage and that no amount of paternalism nor authority will change this, but will only intensify it.
- b) The concept of a need hierarchy embodying all men in their move from satisfaction of physiological to satisfaction of safety needs, from safety to social needs, from social to egoistic needs and that if these needs are not satisfied frustration results. Further, there is acceptance as fact that a need once satisfied is no longer a motivator of behavior.
- c) The concept that only the use of a degree of pressure will secure agreement when there is differing opinion among equals, and negotiations on any question can take place only among equals.
- d) The concept which the sociologists term the "man-boss" relationship—that the subordinate is always looking upward towards his superior within the authority hierarchy and that this results both in inhibited communication up and down the structure and a lack of empathy by the superior with the subordinate.

Chapter One

The Bargaining Process

"NEGOTIATIONS" is defined as "mutual discussion and arrangement of the terms of a transaction or agreement." "Mutual discussion" implies a meeting between two or more parties. Before discussing negotiations, therefore, it is necessary to know where the parties come from. What are the events and the causes of their coming together?

Terms

One of the problems which arises in an article on this subject is certain to be semantics. The vocabulary used will be that of conventional labor-management relations. If the words have an illegal connotation, use those that are legal. The end result, whichever terms are used, will be the same.

To get some idea of how our parties came to meet at the same negotiating table, it is necessary to look at the results of union-management negotiations. To look at the results, we must look to the past as well as the present. There was a long period in American history during which the total forces of society—the government, the law and the courts—combined in an attempt to stamp out and stop the trade union movement. Workers were jailed, leaders were hanged, police brutality was common — yet the movement was not wiped out.

There was a second period during which the government accepted the existence of trade unions but the force of law rested with management—those men of whom George Baer, president of the Reading Company, during a strike in the late 1880's, said: "The problems of the worker will be solved by those Christian men to whom God, in His infinite wisdom, has given the power to control the industry of this nation." Again, although the period was marked by wholesale jailing of workers and their leaders and the use of brute force, the movement remained in existence.

The third period began with the advent of the Wagner Act of 1935 which demanded that management negotiate with those unions chosen by the workers. Its effect wasn't evolutionary—it was convulsive. Bloodshed, murder, conspiracy—all condoned by the elite of our nation—failed to stop America's workers from building a union movement.

These dramatic terms are used intentionally; hopefully, to aid in the destruction of at least some of the myths and cliches by which this situation is judged. It is ridiculous to say that permitting workers to organize unions legally has led to violence—there was more violence when the law did not permit such organization. It is asinine to speak of the disruption of good relationships which occurs if a union is formed—there must already have been disruption, disorganization, frustration, tension and agitation, with all the attendant ills, or there would not have been fertile soil in which that union would grow.

What did the Wagner Act accomplish? Consideration of the hierarchy of industry—from the president of the corporation to the lowliest janitor—makes it apparent that it wrapped those at the bottom in the protection of a law that insists they be permitted to participate in the decisions concerning their hours, wages, working conditions. This includes the rules and regulations which govern them at work and provide them with protection against arbitrary discharge and discipline. This last point is vitally important.

A body of applied law, which the economist Sumner Schlichter, labeled "industrial jurisprudence," now provides these workers—if they are union members—with protection against arbitrary discharge and discipline and with the protection that civil law grants all citizens—the right to be proven guilty rather than to be judged by hearsay, bias, dislike and personal animosity. The result has been such that Dr. Lloyd Reynolds, Sterling Professor of Law at Yale University, has said this is the single

greatest contribution of the union movement, the creation of a "... new type of industrial man," one who need not fear the arbitrariness of his boss. To those who believe that today's workers—or teachers—do not need this protection from those to whom George Baer referred as "the Christian men," and to whom the American Management Association refers as "enlightened management," a quote can be used from one more individual, John Kenneth Galbraith, noted economist, who said in a lecture, "There is no management that believes it maltreats its employees"

More Say Than Majority

The people on the lowest end of the industrial scale now have the protected right to participate in vital decisions concerning their hours, wages and working conditions, and to do this uncoerced and unintimidated. Regardless of how little a union member has to say, regardless of how boss-ridden his union is believed to be, he still has considerably more influence concerning these crucial matters than do the vast majority of people in clerical occupations, in teaching, engineering and all levels of management and supervision. Don't underestimate this. If the psychologists and sociologists who have made this their area of academic concern are correct, mitigation of the frustrations induced by lack of influence on decision making is one of the major problems of management today. It seems likely that it is also the problem of school boards.

Fair Work—Pay Base

A second factor is the determination of a wage. There is nobody—union, management, teacher or school board member—who would disagree with the concept of a fair day's pay for a fair day's work. Their only disagreement revolves around two points: What is a fair day's pay? What is a fair day's work?

Major Myth

A major myth of American industrial folklore is that a formula can be found by which this can be determined. The economist takes the simplest approach, and probably most valid, that anything which is agreed to is fair. How is the agreement reached in unionized America?

Process in Theory

Visualize two wheels which exert pressure upon each other. Each has a source of power which causes it to operate, each has a form of friction which restrains it. The grinding wheels operate

against each other, resulting in a jointly produced product which began the journey between them.

Contract negotiations function in the same manner. A variety of forces flow through and are exerted upon each party, creating pressures which result in a contract. The pressure is the essential point, not the discussion nor the logic. Occasionally, insufficient force is exerted and a strike, a lockout, a boycott or some other form of pressure is introduced into the situation. This has an effect upon both parties, creating additional pressure upon each.

Eventually the pressure induces a contract. Within this context it is plain that a strike, for example, is nothing more than an extension of negotiation.

The Human Unmeasurable

In public employment, however, employees find the right to strike specifically denied. Without the right to strike, they probably tend to rely more heavily upon grievance processes and political activity. School boards, being political creations themselves, often look askance at any political activity and insist it indicates unprofessional conduct. Experience has shown that frustration, real or imagined, often will erupt into a strike situation, regardless of legality. This emphasizes the most important statement which can be made: The measurable and legalistic is everlastingly snarled up with the unmeasurable and human.

On both sides of our negotiating table are humans and mortals, not gods. American industry went through a great period of paternalistic management, characterized by the concept ridiculed with "Papa knows best," and found itself rudely thrown aside by people who wanted to participate in making decisions—people who would rather suffer from mistakes of their own choosing than receive the rewards granted by a benevolent ruler.

"What Have You Done Lately?"

The psychologist, Maslow, produced a theory of needs, referred to as the "hierarchy of needs." He noted the basic physiological needs, stated that when these were satisfied safety needs were aroused, then egoistic and finally needs of self-fulfillment. Douglas McGregor, former president of Antioch College and later a professor of industrial management at Massachusetts Institute of Technology, in applying his concept to methods of motivating workers to greater productivity, said, "A need once satisfied is no longer a motivator of behavior." The late Vice-President Alben Barkley applied the concept in a political story.

An incumbent Congressman, while campaigning, asked a native for his vote. "I don't know," replied the native. "You don't know!" roared the Congressman, then recited a long list of favors he had done for the voter. "I know all that," was the reply, "but what have you done for me lately?" The moral is plain: The teacher, the school administrator, the citizen who becomes a school board member, in each case has needs that are being fulfilled in that activity, and is incessantly creating new needs. It is only the satisfaction of the new needs which will motivate, not those already satisfied. Moralizing about lack of gratitude is time wasting and issue evading. The need hierarchy and its satisfaction applies to all.

If this is accepted, it then seems apparent that those in these three categories are participating in a fluid situation. The laws of economics and the movement within the hierarchy of needs have combined to create a climate in which teachers are insisting upon participating in areas that have traditionally not been theirs in which to participate. Psychologists have demonstrated that it is impossible to face a change without resisting that change, and school boards appear to be proving them correct. Thus we have a swirling of forces meeting and clashing, resulting in open controversy. Conflict is inevitably present in each situation in which some are managed and others manage. Conflict is present unless the goals of both parties coincide—and it is impossible to have total coincidence of goals. It is this inevitable conflict which produces the controversy.

"Immoral, Illegal or Fattening"

From this background, does a more distinct picture evolve of the persons at this new negotiating table? First, we have management represented by the school boards, which appear to be presently going through the historical posture of past managements. Men and women who have sincerely attempted to perform their obligations to the citizens and the administration of the schools now interpret the insistence of the teachers that they participate in areas of decision making which have not historically been theirs, as an infringement upon the natural, normal and legal prerogatives of the management. Furthermore, they see many reasons why such a sharing of decision making is, somewhat in the words of Alexander Woolcott, either "immoral, illegal or fattening." On the other side of the table is a group inculcated with a belief in and a drive for professionalism, which now insists that such drive must be inclusive rather than exclusive; which demands rather than asks, which equates equality of judgment

with professionalism, and which rejects the paternalism of the past. Caught in the midst of this struggle are the school administrators who, regardless of insistence upon the existence of "one great profession"—much as the old-time unionists insisted upon "one great union"—function neither as teachers nor as ultimate authority. Parenthetically, it might be added that pragmatism indicates the "one great profession" to be as unattainable as has been "one great union."

Learning From Industry's Mistakes

The question arises: Will the participants — teachers, school administrators and school boards—learn from the lessons of history? Most evidence would indicate that the present struggle is somewhat comparable with that period in American industrial history when unions were tolerated as entities, but opposed with all the legality management could command. The struggle for power rarely is concluded with one side or the other in total victory or complete rout. If the past is any criterion, one can only sadly project the probability of more insistence upon prerogative, more militancy, more organization of a "union" nature rather than "professional" and, ultimately, escalation to stronger and more powerful organizations if those presently involved should prove incapable of providing solutions. The fact remain, however, that school boards, administrators and teachers have a significant opportunity to learn from the mistakes of their counterparts in private industry.

What occurs at the collective bargaining table? Precisely what the system ordains. If one does nothing but rail at the system, he misses the opportunity to function effectively within it. Negotiations, in general, are a melange of psychology, politics and poker. Each side is accompanied to the table by power and each brings in weakness. The parties must be thoroughly prepared to defend their original positions—and must have a clear view of where they wish to end.

PR Here Too

If each side truly participates in negotiating, there will be movement among the various demands. One will be dropped, another substituted; viewpoints will be expressed, and eventually a compromise settlement will be reached. The skill and technique of the negotiators, or their lack, will have great influence on the relationships among the parties and the morale of the organization. In the beginning, mistakes of strategy and public relations will be made on both sides; each will have a

tendency to rush to the press to justify his position and to prove that all blame rests with the rascals on the other side. Eventually, as occurs in most mature relationships, recognition will grow that all mistakes and all rascals are not the sole province of one party. The less formality demanded in the situation, the better the goals of mutuality will be served.

School boards must learn not only to conduct surveys of wages in the area and in competing districts but also to strive to understand the reason for a particular demand. The questions, "What is the problem that caused this demand? Can we solve the problem so that we can get it out of the way?" will produce a better result than a defensive posture asserting the correctness of the present situation. Boards, as has management, must learn to differentiate between those matters that are convenient, those that are necessary, and those that are a matter of principle upon which an implacable stand must be taken. Careful analysis will prove that most are convenience and few are principle.

The act of contract negotiation can be likened to the stylized dance of courtship occurring in the insect and animal world. There are roles to be played, actors to fill them, and rewards for those that play them well. Recognize the needs that can be satisfied by the act of negotiation itself. Negotiation is an art, not a science, although it demands great preparation and understanding. Search constantly for the compromise solution that will answer the need which triggered the demand—a solution that will permit both satisfaction and face-saving. Keep in mind that the relationship is timeless. Refrain from use of the "killer instinct" to prove stupidity or ignorance on the part of your opponent. If nothing else, it is more apt to backfire upon you than to help you. If you are successful in getting rid of the present leaders who are proving difficult, the next batch is apt to be more so. If you get rid of the present organization, the next one very probably is going to be even more militant.

Utopia will never be achieved, if for no other reason than because "What is measurable and legalistic is everlastingly snarled up with the unmeasurable and human."

Application to Education

CHAOTIC is the only word to describe the state of collective negotiations in education. At the present moment in New Jersey, the only structures or patterns are provided by either the affiliates of the National Education Association or the American Federation of Teachers, AFL-CIO. They have achieved the initiative in providing the accepted vocabulary, the leadership to determine both the subjects for negotiations and the proposed procedure to be used as pressure to induce negotiations and agreement.¹ Boards of education are somewhat in the posture of the prize-fighter who takes time to count the house as his opponent winds up for the knock-out blow.

¹ The recent decision of the New Jersey Superior Court in *Board of Education of Union Beach v. N. J. Education Association*, 96 N. J. Super. 371 (Ch. Div. 1967) prohibits the use of sanctions in the manner heretofore employed by affiliates of the National Education Association. As in this case, the State Association in conjunction with the local organization of teachers would customarily widely circulate a notice of sanctions among teachers colleges, placement directors and other sources of teacher employment in New Jersey and neighboring states. The notice would advise that the sanctioned school district was not a fit place in which to work, that no vacancy should be filled until "a climate conducive to professional service exists," and that a violation of sanctions was a violation of the Code of Professional Ethics for which the offending teacher should be disciplined. Holding that the purpose of such sanctions—to compel the board to comply with teacher demands—was contrary to the N. J. Constitution and unlawful, the Court issued a permanent injunction restraining the defendants from indicating that sanctions were being applied to the board and further enjoining any threats against any teacher accepting a position with the board. The case is now on appeal.

The trial judge in the Union Beach case expressly refrained from restraining the defendants "from exercising the right of free speech concerning what they think the conditions are in the Union Beach school system." The question remains open as to where the line will be drawn between mere free speech as such and an unlawful combination of communication and action aimed at crippling the operation of a school system.

An analysis of the factors involved in collective negotiations between a board of education and its teachers' organizations and those involved in collective bargaining between a company and a union reveals unique major differences. These differences are not unique in the sense that only the education profession can solve them but in the sense that each is present and subject to solution only if recognized, accepted and planned for.

Major Differences

The absence of a profit motive, in addition to the fact that members of a board are elected officials answerable to no one but themselves and the electorate, creates the first observable difference. In education, in the place of the profit motive a board member has only his interest in the educational process of his district. In industry, the profit motive creates pressure which forces management to reach an agreement it might otherwise not desire. Interest in the educational process does not create the same intensity of pressure. Besides, the positions of both parties are more susceptible to moralizing. In addition, there is no member of the board who has the authority, primarily economic, which permits the "boss" to dictate to the members of his team and forces them, in turn, to accept because he is the boss. Finally, each board member normally has a full-time occupation which interferes with meeting frequently and for sustained periods of time. If a board becomes involved in negotiations, the time requirements are heavy, thus almost mandating a style of negotiating which permits year-around bargaining rather than restriction to a two or three month period within any contract term, as is common in industry.

A second area of difference lies in the number of teachers on tenure. If a board should prove successful in refusing to negotiate, in turning back a union organizing activity, or in decisively molding public opinion against the teachers, they cannot exercise coercion to "whip them into line" as can management under the same circumstances with its employees. Although this seems to insure that the frustrations of the teachers will increase rather than decrease, and that turmoil, low morale and attendant poor relationships will be most difficult, if not impossible, to correct without negotiations, there is no guarantee that negotiations in themselves will prove a cure-all.

In addition, teachers have the power to invoke sanctions and thereby exert strong pressure to attain their objectives. It is vital to recognize that in a strike situation pressure is exerted upon

both the institution being struck and the individual employees who are on strike, thus inducing a search for a solution to the conflict. With sanctions, however, pressure is exerted only upon the institution, while any pressure exerted upon the individuals invoking sanctions is of a minor nature. In an orthodox labor-management situation a union frequently will accept considerably less than it demands because its members will not accept the economic pressure of a strike, but a teachers' organization need not take this position because it may be able to invoke sanctions to win issues for which its members would not strike.

A third major difference is encompassed by the definition provided by the National Education Association for "Subjects for Professional Negotiation." These "subjects" can most easily be described by stating that any decision now made by a board or a superintendent would be subject to negotiation with the ultimate right of appeal, in case of an impasse, to a higher authority. In the present relationship between unions and management, the area of management decision-making penetrated by unions is the narrow area of personnel decision-making. The remainder of the very broad range of management decision-making is not only not involved but is generally protected by law. Boards of education, however, are being requested and are agreeing to include teacher organizations as co-determiners on every educational question.

The use of arbitration or "advisory" recommendations is a fourth interesting difference. Unions and management are in general agreement that they will not arbitrate the terms of an agreement although they do agree to arbitrate a dispute concerning the application of their agreement. Both are insistent upon their right to determine their position and upon their right to strike to sustain that position. In education, however, the parties are developing a procedure for some type of arbitration. Although this can only be "advisory" arbitration in New Jersey, it seems apparent that "advisory" arbitration will, in practice, become "compulsory" arbitration.

Rarely, in a dispute between labor and management, is the public as intimately involved as in a conflict between a board and teachers. The NEA recognizes this in their discussions concerning sanctions, noting that the basic need is for public support. Public opinion, however, is volatile and is neither easily characterized nor predicted. Teachers are more subject to public pressure than is the normal industrial worker; while

board members, as elected officials, are peculiarly subject to public reaction. Therefore, one can expect public reaction to be more likely, quicker, and more intense in cases of conflict between school boards and teachers.

The final difference is the organizational dispute between the National Education Association and the American Federation of Teachers, AFL-CIO. Teachers, as did industrial workers from 1935 to 1955, can indulge in a type of auction with both organizations to do the bidding, a situation which invokes a peculiar pressure upon a board of education. The national unions comprising the AFL and the CIO eventually decided their organizational disputes were much too costly and signed a "No Raiding" agreement in 1955. Although rumors abound of a possible merger between the NEA and the AFT, there is little indication that it will occur in the near future, if at all.

Accommodating to these six differences will tax the ingenuity of all participants, provide grist for countless education institutes, create new course work to be included in the required administration curriculum, and add exciting new controversy to the educational scene.

Chapter Two

Preparing To Negotiate

THERE have been many books (as well as innumerable journal articles) written on "how to negotiate". The major problem in attacking this subject is avoiding the insidious "cookbook" trap. The very complexity of human involvement on both sides, the needs and frustrations, the vanities and perceptions, defy a cookbook answer. Therefore, to successfully negotiate, it is necessary to weave into one fabric both theory and practice — to begin from the ivory tower of the academic and end with the pragmatic and agonizingly hammered out agreement.

What are the steps in moving from theory to practice?

- 1) Define and delineate a philosophy of relationships.
- 2) Determine goals, both short and long-term.
- 3) Analyze the demands of the opposing group and attempt to fathom both the reason for the specific demand and the intensity of the need which triggered it.
- 4) Devise demands based upon the philosophy and goals.
- 5) Compare both sets of demands, determining those, if any, which match.
- 6) Of the opposition demands which fail to match with our demands, determine those matters which involve a principle upon which we must be implacable and those matters upon which varying degrees of flexibility can be accepted.
- 7) Participate in the negotiating process, achieving an acceptable agreement.

By listing the questions which you must ask of yourselves, as a board of education negotiating with a teachers organization,

you can consider in detail the first two steps, both of which are theoretical in nature:

Define and Delineate Your Philosophy of Relationships

- a) Do you accept the teachers organization as *equal* to the board in achieving *bilateral* determination of the questions involved?
- b) Do you believe that agreement among equals is reached by reasoned and logical discussion or do you believe that such agreement is the result of varying degrees of pressure exerted by each upon the other?
- c) Do you believe in the concept of social conflict or do you believe that conflict is avoidable among members of "one great profession?"
- d) Do you accept the negotiating relationship with the teachers organization as a timeless relationship — as a marriage with little or no opportunity for divorce or even separation by death?
- e) Do you believe in bilateral determination of *all* educational questions or, if not, can you establish by principle those which should not be negotiable items?

The answers to these questions, and possible others, will determine your philosophy. It is only by sharply defining philosophy that you can lend direction to negotiations. It is the difference between preventive home maintenance and putting pots under the leaks in the roof.

Determine Your Goals, Both Short- and Long-Term

- a) Do you see the negotiating process as an opportunity to improve staff morale?
- b) Should you attempt to use the negotiating process as an opportunity to divorce the staff from the leaders of their organization?
- c) Do you consider your present prerogatives sacrosanct and believe, as such, that they must be protected by all means at your command?
- d) Do you believe the ceremonial aspects of the negotiating process serve a need which should be satisfied?
- e) Do you believe that a teacher can be loyal both to the school system and to the teachers organization?
- f) Do you believe that a militant teacher, a member of a militant teachers organization, can also be a good teacher?

The answers to these two groups of questions will define your philosophy and set your goals.

Paramount Goals

It appears obvious that among the goals of the board participating in the collective negotiating process, these would be paramount:

- a) To provide the best educational process in the specific school district as is possible.
- b) To improve staff morale.
- c) To provide for managerial efficiency in carrying out the managerial function of the board and the administration.
- d) To provide rewards for the excellent teacher.

In relating philosophy and goals to the pragmatics of negotiations it quickly becomes apparent that the major emphasis is upon attitude. Attitude, by far, is more important than skill, more important than strategy or tactics—but this does not negate the importance of strategy and tactics.

To accomplish the translation of theory to practice, we would first list these operating objectives:

- a) Reach an agreement. Be ready to compromise. Start with an easy issue.
- b) There is no requirement to resolve each issue each time. Both parties are bound either to ask for more than they expect or to be willing to settle for less than they ask. Good faith bargaining does not demand agreement.
- c) Develop interpersonal understandings and convictions of good faith.
- d) Remember the personality problems and their potential for creative as well as disastrous effects.

Any listing of tactics would include the following:

- a) Plan strategy in advance—anticipate staff proposals. When negotiating, delay agreeing on those items which you believe the other party considers most important until near the end, using them as leverage to secure those demands upon which you wish to insist.
- b) Be flexible; learn and change.
- c) Avoid emphasis and debate on technicalities and legalisms.
- d) Use broad-base consultative services and procedures.
- e) Assure a friendly, matter-of-fact, equalitarian attitude.
- f) Use simple language and repeat important points in slightly different terms.
- g) Avoid subtleties.

- h) Be calm, patient, tolerant.
- i) Do not misrepresent or whitewash facts.
- j) Concentrate on results, not excuses.
- k) Do not make commitments which you do not intend to keep. Do not make commitments which you do not understand, either as to meaning or application.
- l) When you say "no," be ready to support it with strong, convincing reasons.
- m) Avoid impasses.
- n) Don't let sleeping dogs lie.
- o) Don't agree on anything until you have agreed on everything.
- p) Phrase the agreement quickly after reaching total agreement.

It is vitally necessary to consider the following as long-run procedures:

- a) Develop board-staff relations policy on a continuous basis. Meet the challenge of cooperative planning in advance of time for negotiating.
- b) Maintain a current file on all pertinent school data, particularly for surrounding districts.
- c) Keep all personnel concerned regularly informed of your needs, problems, and progress. Keep constant communication with administrators and develop a dialogue with political officials, recognized interest groups, and the public in general on all educational matters.
- d) Establish careful timetables and schedules for project completion and meetings, allowing sufficient lead time for all needs. Prepare and develop procedures necessary to maintain the timetables and schedules.
- e) Utilize the policy and procedure developed in negotiating to promote the general welfare and interest of the educational program. For example, grievance cases can operate to improve board-staff relations.
- f) Utilize all possible resources in the interest of furthering progress in negotiating and other phases of the board-staff relations program.

The key ingredients in negotiating are full and complete preparation, flexibility, and attitude. To the extent any of these are inadequate, board-staff relations will suffer.

Who Should Negotiate?

THE question of who should negotiate for the board is a constant one. Another way of asking it is, "Which particular profession is best equipped to conduct negotiations?"

It should be obvious that the negotiator must have, natural or cultivated, a particular attitude encompassing flexibility, courtesy, honesty, patience, and even empathy. These are important if the concept is accepted that negotiations can be used to improve board-staff relations, to increase teacher morale and, hopefully, to improve the educational process.

The negotiator must be aware of the over-all educational process as well as the collective negotiations process in education. He must have access to information concerning state board and arbitrators' rulings and interpretations, for it is only by knowing these that he can gauge the effect of a specific wording in an agreement or discern the trends, both in education and negotiations, and assess their value as well as their cost. He should be knowledgeable in the whole body of industrial and social psychology in order to understand the motivations and frustrations of people, their functioning within groups and their probable adherence to objectives posed by organizational desires and institutional loyalty.

Consider the possible use of the superintendent as the negotiator. Traditionally, he has carved out for himself the role of "educational leader," playing down his role of manager. However, the process of negotiations probably will force the role of manager upon him. It does not seem possible that he can avoid this, particularly with the teacher organizations making a concerted drive to invade decision-making areas which traditionally have belonged only to the administration and the board. Observation of the range of teacher demands indicates that, as yet, they see little reason not to insist upon negotiating any issue which they deem desirable.

Under these circumstances, administrators will find themselves constantly fighting, sometimes bitterly, to protect their unilateral decision-making prerogatives, an action which will have the automatic effect of moving them much more closely to the board than to the teacher. The reason is simple: It is the board which will have the final determination as to what to concede in negotiations.

If this analysis should prove correct, it would then seem a very short step to conducting negotiations under the direction or guidance of the superintendent, if not by him personally. Many superintendents already accept this role, particularly for the purpose of negotiating with other than certified personnel. Advertisements already have been noted soliciting persons versed in negotiating, and in grievance and arbitration procedures, to fill positions as assistants to superintendents. Such positions are in existence in several school districts.

Another professional who obviously should be considered is the attorney. It must be emphasized that he should have a primary role in drawing up the agreement which results from negotiations. In a speech delivered at the 1967 October Workshop of the State Federation of District Boards of Education, New Jersey, Irving Evers, attorney for several school boards, expressed this position:

It is the lawyer's function to write and draft agreements but, in connection with negotiating with professional organizations, such agreements should be drawn with the idea in mind that their interpretation in all probability will be by an arbitrator and not necessarily by a court. We must not lose sight of the fact that this eventuality poses problems considerably different from those that might be encountered in a court proceeding, since arbitrators view such agreements in a much different light than do the courts, and they view them in the light of their experience, and with a basic knowledge of what is going on in the labor relations field. Attorneys must keep in mind that any agreement which is prepared is likewise to be subject to change annually and any such agreement will be based upon the relationship between the parties, measured by a yardstick rather than with a micrometer.

As a negotiator, the same requirements should be made upon the attorney as would be made upon the negotiator if he were not an attorney. It is not unusual to find lawyers specializing in one aspect of the law and it should be apparent that negotiations is a specialized field. The attorney who specializes in negotiations between labor and management can easily transfer his skill to negotiations with teacher organizations and boards.

The final professional to be considered is the consultant. Again, he must be subject to the same requirements as the others. In selecting a consultant there is an additional hazard for there

is no organization, such as a bar association, to verify his credentials. Industry has discovered that there are individuals who masquerade as consultants but cannot produce. A good consultant, as a specialist in a narrow and restricted field, can be invaluable. The safest means of securing a consultant is to depend upon the recommendations of those who have been involved with consultants in a professional capacity.

It should be obvious that the question, "Who should negotiate?", is not one to be answered by specifying an occupation. Negotiations can be successfully carried out by a board member, a school administrator, an attorney or a consultant. The profession of the individual is of minor importance, but his knowledge, skill and attitude are the primary considerations. The poor negotiator, whether he be board member or administrator, attorney or consultant, can create an environment hostile to the educational process and costly to the school district.

Communication in the Process

THREE aspects of this topic, within the framework of the relationship between school boards and teachers at this time of increasing teacher militancy and the rapid development of collective representation, need to be considered. They are, (1) the basic questions to be resolved; (2) the problems unique to collective negotiations; and (3) the possible restrictions upon communication. Each of these areas will be analyzed from the posture of the school board.

The first of these, the basic questions to be resolved, includes the following:

With whom are you communicating?

Why are you communicating?

How are you communicating?

When are you communicating?

What are you communicating?

It is difficult to determine which of these should be considered first. To a major degree, they are intertwined. However, in separating them it is possible to analyze more precisely and, when reweaving, to provide a more sharply defined pattern. After all have been considered, a specific problem will be raised to illustrate the impact of these five basic questions upon a given set of circumstances.

Consider the first, "With whom are you communicating?" The answer is, with teachers, teacher organization leaders, the public and the press, mediators and arbitrators, consultants and each other. Obviously, by using some communications media (the newspaper for example), the message will be received by all of these indiscriminately. If the board wants to justify its position with the public, it must realize that the message which justifies may also incite the teachers, with whom relations must continue. With the same set of circumstances, the message received by a mediator who is attempting to aid the parties in resolving an impasse should be different from the message conveyed to an arbitrator who is going to issue a binding, judicial decision. At any specific moment in time, the board must determine what it wants to say, to whom, when, and under what circumstances. Further, the impact upon all parties must be weighed.

Not Self-Satisfaction

In regard to the second basic question, "Why are you communicating?", it is apparent that the answer includes: To educate, to satisfy, to mislead, and to propagandize. Each of these has a distinct purpose during collective negotiations, but there is another, "to satisfy," which is rarely justified or of value. It frequently is used by the board member adamantly opposed to the concept of negotiations, who becomes indignant and even sick when confronted with the necessity of sitting and talking rationally with teacher representatives, and who then issues statements satisfying his own feelings of frustration and opposition. The other purposes all have value, and at one point or another, should and must be served. However, it is important to note that the same communication can serve any or all of these purposes, a fact which is acceptable as long as the communication has been analyzed and its impact justified.

"How are you communicating?" Communication through use of the written and verbal word is obvious but the communication that occurs through attitude and expression is often overlooked. When negotiating face to face, when talking in informal or chance meetings, or when expressing ourselves through press releases or letters to the employees there is a degree of care which disappears with expression or communication by attitude. A strong case can be argued that communication, as expressed by attitude, has the greatest impact in situations such as we are discussing.

The answer to "When are you communicating?", requires

little elaboration. Obviously, communication is taking place all the time, intentionally or unintentionally.

The Unanswerable Element

The final question, "What are you communicating?" possibly the most important of the five, is the unanswerable element. The communication is dependent upon many factors, most of which the party sending the message cannot control, and frequently which he does not even consider. There are certain normal barriers to communication present under all situations, which must constantly be overcome, and which affect what is communicated. These include the following:

We hear what we expect to hear.

We have different perceptions.

We evaluate the source of the communication.

We ignore information that conflicts with what we already know.

Words mean different things to different people.

Words have symbolic meanings.

Our emotional state conditions what we hear.

We don't know how the other man perceives the situation.

Perhaps the application of the basic questions can be more clearly observed in a hypothetical situation, such as the following:

The teachers in a district are determined to sit down with the board to discuss a formal negotiating procedure. Their officers include several relatively new teachers, an elementary teacher with no dependents who has been in the system for 20-odd years, and a disgruntled math teacher from the high school who feels he should have been selected for department chairman. In the past, benevolent paternalism has abounded and the board has always had the glowing feeling which comes from performing a voluntary service to the community while at the same time doing "everything humanly possible" for the teachers. The board members are business and professional men, anti-union by inclination, and shocked that the teachers are both dissatisfied and militantly insistent upon pressing their demands. The teachers have issued public statements, irresponsible and unprofessional from the viewpoint of the board. The press has picked up the possibility of trouble and has been running a daily story of the situation in the local schools, while the parents have begun calling the principal. What are the possibilities for communicating with the teachers?

Obviously a meeting can be held, attended by all the teachers, in order that the administrators or board can speak directly with them. This, however, is "going over the heads" of the leaders of the teachers organization. What message is being communicated to the leaders with this action? That they are considered unimportant? That the board wants to divorce the members from the leaders? Since the board refuses to meet with the elected representatives, must these leaders immediately attempt to instill a more militant and cohesive spirit among the teachers in order to perform their task of leadership and to maintain their role as leaders?

If the meeting is held, should the press be excluded? What can the press then tell its readers, among whom are the teachers, if its source of information is second-hand? Will the board's press release be as widely reported, and as favorably, as the press release of the teachers organization?

If the meeting is held, will all the board members be present? If they are not, does this mean that the meeting isn't really important? Who will speak for the board? Will its speaker begin by justifying the past actions and benevolencies? Will he castigate the teachers because of their show of ingratitude? If the teachers are determined to have collective representation, will such a meeting merely create a situation in which the board will eventually be forced to meet with the organizational leaders, thereby losing considerable psychological advantage through the very act of being forced?

Disregard the mass meeting and consider the first formal confrontation between the board and the teacher organization leaders. The same communication problems arise, but now the reception of the board's message by the teachers will be filtered through the organization leaders. The message to the public will be by press release and filtered through the news media. In such a meeting, words are important, but actions, attitude and general psychological climate are even more so. After the teachers have spent several weeks in preparation for, and in anticipation of, this meeting, what is the effect if the board is late? If the board president abruptly jumps to his feet at 10:45 p.m. and says, "Well, that's all for tonight. Call the superintendent and we'll try to set another meeting before the budget is passed." What is he communicating?

Has the board exhibited a primary concern with good board-staff relations with this new context of collective representation, or has it really indicated that as long as the teachers insist upon collective representation there will be a fight to the death? Has the disgruntled math teacher been reinforced in his beliefs that the board not only makes poor decisions, but also frequently works against achievement of quality education? Has the elementary teacher, she with over 20 years experience and no dependents, become so frightened that she returns to tell the others, "They are harsh and vindictive — we'd better forget this!" or is her message, "They are harsh and vindictive — we must band together even more strongly or we are all lost!"

The complexity created by the five basic questions, in any set of circumstances, is apparent and not easily resolved. Additionally, this is augmented by those problems which are unique to the collective negotiating process taking place between boards and teachers.

School Board Peculiarities

The first problem revolves around the board of education itself and involves factors such as the split board, lack of time for negotiating, and the lack of the profit motive which spurs parties to reach an agreement so much more effectively than the motive of public service. Another factor affecting the board could be political domination, if such occurs, or the problem of reelection and the support needed from elements of the community to accomplish this. A final factor, which might appear contradictory to the domination by a political leader, is the lack of a boss in the industrial sense. In industry, when the boss eventually says, "This is what we are going to do," everybody falls into line. The tugging and pulling within the decision-making apparatus stop. With a board of education, however, this is frequently merely the signal for really beginning the tugging and pulling. Board members, all equals by law, jealously guard that equality and assert themselves on an individual basis with predictable regularity.

The second problem is that communication does not occur in a vacuum. There is usually someone or some group communicating to the same people with whom the board is concerned, but who says precisely the opposite or who is actively working in opposition to the board. They might be members of the teachers organization, individual teachers — disgruntled or not — or that portion of the public which opposes individual board

members, higher taxes, integration or what have you. The free press, legitimately in search of news concerning the public and the taxpayers, must investigate and report upon what it finds. Schools are in the public domain and the news about them is usually of greater importance than news about most local industrial disputes.

Legal Restrictions

The final aspect of the "Role of Communications in Employer-Employee Relationships" is that of possible restrictions upon communication. Any law mandating or permitting collective negotiations will, in itself, probably create certain restrictions. For example, such a law would probably:

- (1) Provide the teachers with the right to organize and to bargain collectively; and possibly for one organization to secure exclusive bargaining rights;
- (2) Provide for the establishment of some state agency to administer the law and carry out its provisions;
- (3) Provide for the means of securing recognition, either by election or card-check;
- (4) Determine the proper subject matters for negotiation;
- (5) Provide a means of resolving an impasse in negotiations through some form or combination of mediation and arbitration; and
- (6) Provide for the signing of a written agreement achieved by good faith bargaining.

How would such a law restrict communication? In the first place, the law would probably insist that the teachers have the right to organize without interference, intimidation, coercion or restraint. In other words, the board would be breaking the law if it aids or approves one organization over another, or if it writes letters which appear to threaten the teachers should they join either organization or the wrong one. The board which suddenly discovers the value of communicating with the teachers at the same time that the teachers suddenly discover the value of a militant organization, will undoubtedly be suspect. Furthermore, if good faith bargaining is required by law, the board which attempts to appeal — on bargainable issues — to the teachers, over the heads of their elected representatives, might very easily be found not to be bargaining in good faith.

Finally, there are some obvious common sense restrictions a board should place upon itself. Once the teachers have selected their representatives, it is absurd to enter into a popularity contest with them. The board will invariably lose and relations

will be strained. Careless words, phrases, press releases and the like whether they come from the board spokesman or the recalcitrant board member whom nobody can quiet, will come back and haunt the proceedings, possibly for years to come. Expect this kind of situation and prepare for it. Recognize that collective negotiations, and communications during the process, can be used to enhance the board cause, to build staff morale, and to create better board-staff relationships. Use it for this purpose rather than for personal satisfaction.

Robert Luse, Director of Publications for the State Federation of District Boards of Education, New Jersey, for the April 1967 issue of SCHOOL BOARD NOTES, wrote an article, titled "Communications During Negotiations" which succinctly provides guidelines to a school board. A few excerpts are as follows:

- (a) Negotiations, like disasters and other crises or emergencies, may create a highly charged news atmosphere. Therefore, special pre-planning of communications is particularly vital.
- (b) Every effort should be made to avoid having individual board members of the negotiating team issue ill-considered statements on their own in the heat of the debate.
- (c) One person who thoroughly understands the issues should serve as the board's press representative.
- (d) Remember that internal communications can play a large role during negotiations; therefore, since board communications during negotiations will be viewed by teachers as propaganda, in some degree, the dissemination of the board's story should start well in advance of negotiations as a part of the continuing communication problem.
- (e) Maximum publicity value should be gained from the settlement, its worth, and key concessions to the teachers' advantage.

Chapter Three

The First Agreement

THE traditional method by which teachers have participated in determining their salaries and working conditions has been through submitting a request to the board. Prior to the request they may or may not have conducted a study to substantiate their position, and may or may not have met with the school administration or the board on a discussion level. After the submission of the request the board has established the policy and the teachers have accepted it, happily or unhappily, possibly with apathy but rarely with enthusiasm. Regardless, rarely has the right of the board to unilaterally establish such policy been challenged.

It is this unilateral establishment of policy which is attacked by collective negotiations. Probably some time will elapse before there is a major shift in teacher-board relations from the traditional unilateral determination of policy to co-determination by means of negotiation. Nevertheless, it is apparent that this is the wave of the future. Reading of the newspapers reveals the increasing militancy not only of teachers, but also of nurses, social workers, firemen, policemen and other government employees. The causes are complex but the trend is so advanced as to probably be irreversible. It is becoming increasingly apparent that most boards will eventually be faced with a demand that they negotiate, that they no longer sit in Olympian majesty and proclaim policy.

When this occurs they will also probably be faced with a demand for a written agreement detailing a procedure for negotiations and the inclusion of policy statements. It is vital to recognize the effect of this.

Once an agreement is reached, the board can no longer try out a policy and then change it easily if it is dissatisfied. Then policy can be changed only through the co-determination of negotiations. No longer will the board be able to determine a new policy or change an old, notify the teachers organization that a new policy is to be established, and execute it. The procedure involved in co-determination must be followed.

Furthermore, the written agreement will probably provide for a form of advisory arbitration, which means that a third party will, for all practicable purposes, have the final say as to what the written agreement specifically means, how it should be interpreted, how it should be carried out, and in some cases, what should be included in it.

The net effect of this is that the *first* written agreement is probably one of the most important documents the board will ever execute with the staff. It must be observed and studied on several levels. For example:

- (a) Does the agreement provide a procedure which will help or hinder board-staff relations? (Don't make the mistake of confusing apathy with good relations. The traditional method induced apathy and little open conflict, and was translated by many boards into "we have good relations with our staff." Collective negotiations may provide a forum for more open conflict but it can also induce better relations than previously existed.) The agreement should provide a mechanism to induce negotiations. For example, the use of advisory arbitration should not be made so easy that it takes the place of negotiations between the primary parties. The agreement should provide for advisory arbitration, but it should also force negotiations to be exhausted before inviting in the third party.
- (b) Does the agreement define as clearly as possible those items of disagreement which are to be turned over to the advisory arbitrator? Normally, the teachers organization will request that all be included. The board must determine if there are any which they desire to exclude. The final determination can be reached only through bargaining and compromise. A recent arbitration ruling by Peter Seitz in a dispute over this question between the

city administration of New York and the police and firemen's organizations might prove to be the landmark decision concerning the proper items for negotiation between a municipal body and municipal employees.

- (c) Each clause separately, and in combination with all other clauses, must be inspected, recognizing that they are all subject to interpretation next year, or the year after, or ten years later by either negotiators or advisory arbitrators who were not present at the original negotiation. Regardless of possible disagreeable consequences, discuss fully with the teachers organization precisely what is meant and not meant by each clause at the time it is agreed upon.
- (d) Finally, because the written agreement does, in effect, remove from the board specific rights which had completely belonged to it, and now confers them upon or shares them with the teachers organization, the agreement should specifically retain all remaining board rights to the board.

This is sufficient to indicate the complexity of the first agreement. Its importance cannot be overemphasized. It should be approached cautiously, recognizing that once established it will prove most difficult to change.

The Role of Management In Negotiations

BEFORE beginning an analysis of the narrow question of the role of management in negotiations, it is necessary to determine the larger questions of (a) what does management do in education? and (b) who is management in education? Unfortunately, these are terms too frequently avoided. It is much more pleasant to think in terms of professionalism—professionals with one pure, overriding goal which transcends all selfish interests and conflicts, working together for the common good of children; professionals who, by their very righteousness, purity and logic, will convince and explain, thereby making unnecessary the giving and following of orders and the other trappings of industrial management.

The essential question is: Is there something so unique about education *and* those who are professionals in education that its

process can function without some individual directing others, some individual coordinating the work of others, someone who plans, organizes and controls the work of others? This is the work of a manager—planning, organizing, directing, coordinating and controlling.

Before any further discussion of the manager and his work, it is necessary to consider the process of decision-making. A comparison of the process of decision-making in industry with the process of decision-making in education reveals a correlation and analysis not frequently considered.

For example, industry essentially operates as does the military, with someone in command possessing the authority to reach a unilateral decision. Regardless of the means by which he reaches that decision—whether by committee recommendations, delegation of authority to others, or advice of associates—he cannot escape the responsibility of having to say eventually, "This is it. This is what we are going to do." In other words, there is no other person who has co-equal status with him. Consequently, when the decision is reached eventually, all those who participated in the process of reaching that decision, regardless of the attitude they might have had previously, now accept it because of the authority of the one in command.

There is, however, one glaring exception to this in industry and that is the area of personnel decision-making. Here the government, by law, has decreed that a union has equal authority with the company to establish hours, wages and working conditions. Consequently, once co-equal status is present, the decision-making process is changed. If there is disagreement among co-equals, how is it resolved? In industry, disagreement among the co-equal parties results in pressure being imposed by one upon the other, including strikes and lockouts.

Effect of Co-Equal Status

This analysis lays bare the crucial factor missed by many who keep insisting that those in education must avoid the mistakes of labor and management in industry. They equate "labor and management in industry" with unionism, strife and conflict, failing to recognize that the proper cause and effect must equate the exercise of co-equal status in decision-making with strife and conflict.

Thus, if we consider strife and conflict in industrial labor-management relations, it is apparent that these occur only in the narrow sphere of personnel decision-making. All other aspects of managerial decision-making, such as budget allocations, means

and methods of production, selection and source of raw materials, do not produce the strife, but the process of reaching a decision in personnel matters does.

It is important to note that both major teacher organizations insist upon co-equal status in decision-making in *all* aspects of every single educational question. Therefore, to those who insist that we in education must find another way, that we in education must not follow the path of labor and management in industry, there is only one answer: It is only possible to avoid the path trod by labor and management if it is possible to avoid co-equal status in decision-making. It is only by this avoidance that strife and conflict can be avoided, for there is no other process by which co-equals reach decisions than the one described here.

Return to consideration of the role of management in education. Only as this role is understood and accepted does the role of management in negotiations become clear. The role of management—whether in education or elsewhere—is to make sure that the goals of the organization are met. The educational manager both devises a set of guidelines to aid him and performs specific tasks to accomplish these goals.

E. Wight Bakke, Professor of Economics and Director of the Labor and Management Center, Yale University, has differentiated between the employment relationship of the teacher to the board and the professional relationship of the teacher to the educational system. He points out that an employment relationship, from the employer's point of view, imposes certain organizational and managerial responsibilities and that to meet them the employer must pay primary attention to the following operating principles:

- (a) Efficiency
- (b) Authority
- (c) Minimal cost and opportunity cost
- (d) Discriminating supervisory evaluation

Dr. Bakke insists that these four principles, whether in school or elsewhere, are the "...concern of managers prior to any principles of operation concerned with satisfying the human interests or declared professional interests of the people they employ." He goes on to say, "The operating of an organization, be it school or factory, is . . . the result of a necessary condition for getting cooperation in the production of goods or services with limited resources that have to be allocated among many alternative uses for those resources."¹

¹ See page 46 for footnote references.

Robert L. Saunders, School of Education, Auburn University, states that the role of the administrator includes the following tasks: (1) budget making, (2) staffing, (3) administering pupil personnel, (4) administering staff personnel, and (5) planning and maintaining school plants."²

The outlines of both the necessary guidelines and the necessary tasks begin taking form. The manager in education, following guidelines such as those of Dr. Bakke, performs the tasks itemized by Dr. Saunders. The answer to the second question then becomes obvious. It is only necessary to ask, "Who does this?" to answer the question, "Who is the manager in education.

In theory, and usually in practice, those areas of the managerial function in education which fall within the policy-making sphere are performed by the board of education. The tasks of management which entail carrying out the policy are performed by the administrators. Management in education is, therefore, jointly performed by the administrators and the board.

Where—the Administrator?

It seems apparent that the pressure of teacher militancy will have the inevitable effect of forcing the board and administrators more closely together. It doesn't seem probable that the mantle of management can be assumed and removed by school administrators as circumstances make desirable. If the teachers select representatives, the administrator cannot hold a dual leadership role in the area preempted by the teacher-selected representative. Nor does it seem probable that administrators can perform the managerial function required of them while continuing to be themselves represented by the organization which militantly leads the teachers. The desires of the administrators, the teachers or the teacher organizations cannot control the force released by the process of collective negotiations, nor can an exercise in semantics disguise the result.

Dr. James Kuhn, Columbia University, believes that the unilateral managerial function of the school administrator will be sharply curtailed. He says, "I would argue that to try to limit the scope of collective bargaining is useless." Kuhn points to the history of labor-management relationships in industry and says he has seen nothing that would suggest "... any chance of growing limits and saying 'collective bargaining will go this far and no further.'" He indicates his belief that the present limits on the scope of negotiations in the private sector are related to the reluctance of unions to become involved in the managerial

function rather than to the difficulty of expanding the limits in the face of a law which reads "hours, wages and working conditions."

Dr. Kuhn insists that any claim to an absolute, unilateral right to manage is an empty claim and that it is impossible to set aside educational policy as something that does not affect conditions of work. I am not in agreement, but he does emphasize the problems involved. He has one statement which I wish to quote in full and with which I am in total agreement:

Further, even under the best of circumstances, to maintain management's right to manage, you're going to have to have very able managers and you're going to have to be on your toes all the time. Any poor administration, any poor enforcement of the agreement, any ill-advised or poorly prepared arbitration, or poorly prepared grievance settlement, any loose supervision or hasty negotiations can result in a wider scope if the teachers want to move in that direction. Whether the administrator likes it or not, he's going to have to defend his prerogative constantly.

Dr. Kuhn concludes that while there are no boundaries to the scope of negotiations, there are probably real limits because of the practicalities of what the teacher organizations want to negotiate and the problems they wish to assume or avoid.³

Dr. Bakke, in his article, posed the question: "Is it inevitable and is it appropriate that teachers participate through collective representatives in joint determination and administration with superintendents and school boards of the terms of their employment relationship?" He answered his own question with a simple, "Yes." However, recall that he differentiated between the employment relationship of the teacher to the board and the professional relationship of the teacher to the educational system. His answer of "Yes" clearly referred to the employment relationship, for he added later: "Whatever may be the ultimate arrangements by which . . . due weight is given to *consultation* with teachers in the development of overall educational programs and educational policy, the point on which we are now focused is how the terms of employment of teachers shall be determined."

Dr. Oscar Knade and I, in separate articles in the April, 1967, issue of *School Board Notes*, the official publication of the State Federation of District Boards of Education, New Jersey, and also in a jointly written article, laid out a procedure by which teachers can be guaranteed consultation on educational pro-

grams and policy, while at the same time removing these issues from the pressure-cooker of negotiations.^{4 5}

There is no specific form or structure that a process of consultative participation must follow. The system can and should be tailored to fit the school district and its personnel. One example of both a structure and the means of insuring or guaranteeing to the teachers their participation uses a committee approach. It is apparent that decisions must be reached on many problems, some of which contain situations in which the educational managers need not be concerned with "How is the answer reached?" but merely with "What is the answer?" An example of this can be textbook selection. This type of problem can be assigned to committees with the understanding that their recommendation will be accepted.

There are other problems which may entail factors over which the committee has no control and the educational managers can say, "Your recommendation will probably be accepted, although there is the possibility that it will not be."

Finally, there are those problems upon which several different committees work on aspects of the whole and the educational manager must retain to himself the prerogative of making final determination, weaving together the complex issues into one solution.

The formal structure by which this can be accomplished can be negotiated and written into the agreement between the board and the teachers organization or it can be made a matter of board policy. In order to insert the guarantee to the teachers that the formal structure will be followed, it is merely necessary to agree that the outside agency, such as advisory arbitration, can investigate and determine if the structure to which the parties had previously agreed was followed. The educational question being determined by the process would not be settled by the outsider but would remain within the local educational community.

It must be re-emphasized that a committee approach is only one of a variety of possibilities for structured consultative participation. Educators and board members, being creative, should have little difficulty in tailoring a plan to a specific school district.

The purpose of this discussion is to provide a means by which the managerial function may perform as efficiently as possible for the ultimate good of the educational process. The legal prerogatives of the board and of the administrators, in and of themselves, have no value except as they add to the educational process. The contribution of the teachers to the educational process is manifest.

Unquestionably, their means and methods of making that contribution change and will continue to change over the years. Collective negotiations or bargaining is going to be one of those means by which they make their contribution.

However, there is a tremendous difference between issues involved in the employment relationship and those in the professional relationship of the teacher to the educational system. That which Bakke defines as the employment relationship very readily lends itself to the pressure of negotiations. It is doubtful if the professional relationship does so. Mixing and confusing the two relationships can produce only anguish and conflict, by which the educational process can be severely shaken.

The essential role of management in negotiations, therefore, is to make every possible effort to separate these relationships, to negotiate if necessary upon the problems of the employment relationship and to devise a means by which the demands of the teachers in the professional relationship are satisfied.

Bakke points out that agreement is "...going to be hammered out and choices made to meet the particular circumstances, to satisfy the kinds of people who make the decisions in particular localities, in accordance with the relative skill and power they have to make their decisions stick."

To the same point, Kuhn said:

... if some issue is very important to you, fight very hard to preserve it. When I say fight, I think you're really going to have to use some of the strong techniques and attitudes. The teachers, if they feel very strongly—and I think you're going to have to try to gauge how strongly they feel—are going to respond, probably, in very much the same way. Get it down to a specific situation, decide whether you want the scope wide or whether you want it narrow, and then work very hard to see that you keep it where you want it.

Performing this role of management in negotiations requires a series of tasks:

- (a) Preparing for the organization of the teachers in the school district;
- (b) Preparing for the negotiating sessions;
- (c) Preparing for the continuing board-staff relationship within the new process—collective negotiations.

Preparation for the organization of the teachers in the school district involves several factors. One, of course, is that of attitude. Administrators and boards alike must learn to live with the

fact that their decisions will be subject to question, as will their actions. They must learn to live with the fact that demands will be pressed and that the allocation of available funds will be argued. Finally, they must learn to live with the fact that this does not necessarily work to the detriment of the educational process, it merely adds a new dimension.

Robert E. Doherty, an Associate Professor at the New York State School of Industrial and Labor Relations, Cornell University, points out that "It may be that formal bilateral determination of the conditions of employment would have a meritorious effect." He emphasizes the managerial problem that collective negotiations will add to the factors now weighed by the administrators and boards, with this statement:

The problem is how to balance the interests of teachers, which certainly include their right to influence school policy and the conditions of their employment, with the interests of a society which is relying on the public schools today, more heavily than ever before, to help bring about broad social improvements.⁶

Preparation for the negotiating sessions involves many considerations. One is the composition of the negotiating team for the school management. Should it be comprised of board members, of school administrators, or a mixture of both? One point is evident. The agreement should never be negotiated without the constant availability of administrators to the management negotiating team to discuss the ramifications of any demand or proposed solution which involves the tasks necessary to carry out the managerial functions.

Obviously the policies established by the board must be reviewed and considered. Regardless of the issues still to be settled concerning the scope of negotiations, the following policies are almost certain to be questioned:

Salaries and schedules	Fringe benefits
Assignment	Extra-curricular duties
Rating	Working conditions
Promotion	

Other policies which quite possibly will become issues are:

Recruitment	Supervision
Selection and hiring	In-service training
Tenure	Dismissal

In addition to determination of the negotiating team and review of policies probably involved, the school management

must determine its philosophies and goals. This must come first before any other steps are taken. Goals are both short and long range. If the philosophy and goals are firmly established, the board can delegate the task of negotiating to any competent individual or group. Only if they cannot agree among themselves or find themselves incapable of comprehensively defining their philosophy and goals must they totally involve themselves in the process of negotiations.

The final area to be considered is that of preparation for the continuing board-staff relationship which now will take place within the new relationship established by collective representation. It cannot be overemphasized that there are two aspects to this situation. One involves the legal problems which arise from the organization of, and the demands made by, teachers and the use of pressure to accomplish these. The second is the inescapable fact that, regardless of anything else, the relationship between the board and the staff will continue in a timeless fashion and the drive for quality education must continue within this new structure.

The school management must constantly consider continuing board-staff relationships, and must achieve their improvement within the collective negotiating process. When a legal solution is sought to a problem because of the inability of the parties concerned to resolve that problem, all other efforts stop until that legal solution is achieved. It is rarely, if ever, that quality education is an outcome secured by a legal solution to a board-staff problem.

The best theories of management and supervisory practice must be sought out and applied. The research accomplished by psychologists concerned with the forces that exist between those who manage and those who are managed must become known and utilized. The school administrators must learn new skills to perform their managerial functions—skills which can no longer be based upon authoritarian assumptions. None of this is impossible, but it does require change. And change, unfortunately, is always met with resistance.

To summarize, the role of management in negotiations is this:

- (a) To make every effort possible to separate the employment relationship of the teacher to the board from the professional relationship of the teacher to the educational process; and
- (b) To negotiate upon the problems of the employment rela-

tionship and to devise means by which the demands of the teachers in the professional relationship are satisfied.

To perform this role, management must:

- (a) Prepare for the organization of the teachers in the school district;
- (b) Prepare for the negotiating sessions; and
- (c) Prepare for the continuing board-staff relationship within the new structure of collective representation.

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Protective Features For the Board

IN this section, the range of protective features which a board should consider in drawing up an agreement will be discussed. Although comment has been made concerning several of these in other portions of this journal, it appears wise to draw them together for analysis in one chapter.

One series of clauses falls within the category concerned with retention of the managerial function, a second is concerned with third party intervention, while those remaining must be assigned to a general classification.

Retaining the Managerial Function

The management of the school district must retain flexibility. Flexibility can be restricted by means of descriptive words—adjectives which actually create an implied, if not direct, prohibition. It can occur by the board's agreeing to phrases such as "professional negotiations" rather than merely "negotiations" or "educational channels" rather than "channels." It can be created by prior agreement that third parties must have a knowledge of public education. The listing of all such phrases is unnecessary since, with practice in searching for them, such restrictive adjectives become obvious.

Flexibility also is restricted by agreement upon a specific number of board members to participate on a committee or negotiating team. If the board, at a later date, finds that the task of negotiating is onerous, one which should or could better be performed by others on its behalf, freedom to make such a change is gone.

The board also should retain control over the future. Agreement not to introduce new policy without prior agreement or negotiation with the teachers' organization cannot help but be unduly restrictive. At this moment in time, on the threshold of the introduction of a new educational technology involving video tape and television, computers and computerized education, school management should not commit itself to a procedure which makes it impossible for it to initiate action.

The right to introduce educational technology, to experiment and improvise, can be protected by a clause asserting the board's right to do so. This can be a specific part of a "board rights" clause, one performing the same function as a "management rights" clause does in labor-management agreements. The language also should assert that the board retains all rights which it has not specifically conceded by the agreement it has reached with the teacher organization.

Third Party Intervention

Within the category of third party intervention, several matters must be of concern. The first is the definition of a grievance, which has the effect of determining those matters which can be carried to a third party. If the definition is loose there is little restriction, regardless of whether the subject matter of the grievance is covered by the terms of the agreement or not. With a narrow definition only matters affecting the application or inter-

pretation of the agreement or of policies to which the board already has agreed can go to the third party.

The selection of members of a panel, or of the third party, also should be unrestricted. Once again, there should be no prior agreement that such individuals have knowledge of, or come from, the field of education. The selection of a panel member by each party should be totally free and uncontrolled by the other. In addition, neither party should be able to stop the process of mediation, fact-finding, arbitration or whatever practice is to be followed by the simple expedient of refusing to agree upon a third party. If the parties to the dispute either cannot or refuse to agree, provision should be made for the arbitrary selection of the third party by an outside agency such as the American Arbitration Association.

The third party during this procedure, however, should be restricted to considering only the question or questions submitted to him and his only criterion, in the case of a grievance, should be the specific agreement itself. The third man should not be permitted to add to, or subtract from, the agreement previously reached by the parties.

Contract language should be devised by which the individual teacher agrees that if the grievance procedure is used by that teacher, no other means will be used once the grievance procedure is exhausted. This is particularly true if a form of arbitration is provided as the terminal step. It is possible that a teacher might exhaust the remedies permitted by the grievance procedure and, if the board is upheld, then attempt to pursue the matter with either the Commissioner of Education or the courts. It seems probable that the teacher cannot be forbidden to take such action, but he can agree to forego voluntarily the one procedure if the other is used.

Finally, provision must be made to share the cost of third party intervention. Each party should assume the obligation for the expense of its own case and divide equally the cost of the third man. If an individual teacher is not a member of the organization or does not care to have the organization represent him, the same cost arrangement must prevail, with the individual teacher assuming the same share as would have been borne by the organization.

General Protective Features

If a board does not desire a non-tenure teacher to be able to appeal, through the grievance procedure, the failure of a board

to grant a tenure contract, specific provision must be made for this.

If the board does not desire certain certificated or other personnel to be a part of the same bargaining unit as the teachers, this must be covered in the clause granting recognition to the bargaining organization.

If an orderly procedure is provided for bargaining to a conclusion, the board should secure agreement from the teacher organization that sanctions, strikes or any other form of pressure will not be used during the bargaining process. Further, the same agreement should apply to grievances if a terminal step involving arbitration has been agreed upon.

If legislation fails to restrict the subjects for negotiation, the board, if it desires restriction, must do so by agreement. If the subjects for negotiation are not restricted there is little reason to secure a tight definition of grievance.

If the board desires to restrict the right of the teacher organization representatives to enter school buildings during the school day, or the right of the organization to use bulletin boards or the internal communication system, such restriction should be written into the agreement.

Finally, in anticipation of future negotiating sessions or third party hearings occurring during the school day, the board might require that the cost of substitutes, if such are necessary, be borne by the teacher organization. If the teacher organization uses school district equipment, supplies or labor, requirement that the actual cost of such use be borne by the organization is possible.

These appear to be the major protective features which a board might desire in an agreement with the teacher organization. They should be negotiated into the first formal agreement, since to get them into later agreements will entail "buying" them quite dearly.

Chapter Four

Third Party Intervention

REGARDLESS of the type of third party intervention, the question of its use is difficult to assess. It must be noted that the experts in the field insist that it is best for the primary parties to achieve their own agreement.

At the start of the relationship between a board and the teacher organization, it is quite possible that the teacher organization will be anxious to invoke a third party to make the final decision in case of an impasse. However, if the history of labor-management relations is any criterion, they will discover quite soon that this is not a panacea. Frequently their arguments and logic, so persuasive to themselves, will fail to sway the third party and the decision will go against them. Eventually the bloom will fade. However, by that time the process will be so ingrained that, coupled with society's normal refusal to permit public employees the right to strike as a means of resolving an impasse, third-party intervention will be part of the fabric of collective negotiations in education.

The primary methods of third-party intervention consist of mediation, fact-finding, fact-finding with recommendations, and binding arbitration voluntarily agreed to by the parties. The term "advisory arbitration" has come into the vocabulary of the practitioners but in actuality it appears to be nothing more than "fact-finding with recommendations."

Compulsory arbitration, legally required, has been generally contrary to public policy in America. Recently, in the railroad disputes Congress invoked a type of compulsory arbitration—otherwise the question has been one for the parties to negotiate and agree upon. Over 95% of the existing contracts between unions and management provide for arbitration of a grievance while practically none provide for the arbitration of an impasse in negotiations. This has been due to the equal insistence of both management and labor.

In education, however, there is a strong trend to third-party intervention in both grievance and negotiation impasses.

Mediation

The process of mediation is age-old. It is merely a method by which an impartial third-party attempts to aid other parties in resolving a dispute. The mediator, with neither power nor authority, cannot compel anyone to do anything. This is possibly his greatest strength. It is difficult to refuse to cooperate with the individual whose only function is to aid and who has, himself, nothing to gain, regardless of the decision.

Mediation has been described by Theodore Kheel, one of the outstanding practitioners in the nation, as "a process of taking one block and putting it upon another until eventually the structure is built." The secret and the skill, however, lie in knowing which block to place where.

Normally the mediator will first bring the parties together to discuss the areas of disagreement and agreement. Once he has had the participants themselves delineate their differences, he is quite apt to separate them and begin separate discussion with each in an attempt to discern any possible areas of flexibility. As he works through these, he is also deciding which problems will produce the most implacable stand, and these he reserves for later discussion.

When the time comes to attack the seemingly implacable problems the mediator is quite apt to request the parties to reduce the size of their negotiating teams and to permit a smaller number of persons to meet with him. He may do this more than once.

The skill of the mediator is evidenced as he produces a variety of options which might solve the problems. Eventually, in a remarkable majority of cases, the mediator is able to decide for himself the solution to which both parties will agree, and

he then offers it as a proposal to them. If he cannot find the answer acceptable to both, he will rarely make any suggestion. If the problem is one which, in effect, does not require either party to commit suicide, the mediator can usually achieve a solution.

Fact-Finding

The process of fact-finding is more apt to be judicial in nature. Unlike the arbitrator, the fact-finder usually cannot issue a binding determination. However, again, his stature or acceptance gives him considerable authority.

The very word "fact-finding" indicates that facts are present upon which a decision can be based. Therefore, the primary parties must present the facts to the third party. If the issue is salaries, each must produce evidence supporting his position. If the issue is the proper subject matter for bargaining, again each will have to present evidence. In all cases, the fact-finder will bring in his own knowledge and expertise to judge and add to the evidence offered.

Eventually the fact-finder will issue his findings. He may do this to only the parties, if such was the agreement, or he may make them public. Obviously, in a dispute between a board and a teacher organization, the issuance of a public recommendation will exert strong pressure upon both to accept.

Several aspects are important. It is vital to secure as experienced a mediator or fact-finder as is possible. He should be brought into the situation only if the parties themselves cannot hammer out the agreement. Ample time should be given to this. If they are unsuccessful, then the next step should be mediation. Only if mediation is unsuccessful—and this decision should be made by the mediator — should additional third-party intervention take place.

Advisory Arbitration

Four Problems

IT might be interesting to inspect arbitration as it relates to collective negotiations. Arbitration is defined as "...the hearing and determining of a dispute between parties by a person or persons chosen or agreed to by them." It has been applied to all forms of disputes, ranging from misunderstandings between neighbors concerning a property line, to disagreements among sovereign nations. A more publicized, although not a primary use has been between labor and management. Even before the formation of the American Federation of Labor in 1886, early unions urged its use. The popularity of arbitration, however, grew slowly until the end of World War II. Today, over 90% of existing agreements provide for the arbitration of disputes concerning the application of the agreement.

Very few companies or unions desire arbitration to be used either to determine a new contract or to revise the terms of an existing agreement. To date, public policy, as expressed by the laws of the land, has agreed that the parties should settle their dispute and, if they are unable to do so, a show of strength is to be used by both or either to induce settlement. Only in those disputes affecting the welfare of the nation, or in certain types of intra-state disputes, is a form of compulsory arbitration invoked by government decree. In certain disagreements, normally those involving municipal or government employees, a strike as a show of strength is expressly forbidden. Frequently, in disputes of this latter type, no provision is made for an appeal from the decision which is made by the municipality or agency and which is unsatisfactory to the employee.

President John F. Kennedy's Executive Order 10988, which granted government employees the right to bargain collectively, also provided for advisory arbitration. In the event of an unresolved dispute the advisory arbitration is conducted before the question reaches the top authority of the agency, who then has to study it, along with the record of the case, prior to making a final determination. In New Jersey, at present, only a form of advisory arbitration, as opposed to binding, can be used, inasmuch as boards of education are expressly forbidden from delegating or relinquishing their authority or responsibilities.

If advisory arbitration is to be used between teachers and boards, there are four immediate problems:

- (a) At what point or step in the negotiation or grievance procedure should advisory arbitration take place?
- (b) Where do the arbitrators come from?
- (c) How easily should either party be able to declare negotiations exhausted and invoke arbitration?
- (d) What issues and problems should be submitted to advisory arbitration?

It is obvious that advisory arbitration can occur prior to the submission of the problem to the full board, thus permitting the board to be the final arbiter, as has been its prerogative. In effect, this would mean that the board, possibly through a committee or through its administrative officials, would be involved as a participant in failing to reach a solution and then would assume the role of judge to determine the proper answer. It is also obvious that teacher organizations will not be satisfied with this procedure and will make every effort to demand an appeal provision permitting them to question and reach beyond the board for a final answer.

It then follows that advisory arbitration will probably fit into the procedure after solution has escaped the joint efforts of the board and teachers organization and will, in effect, be the final word. Although this final word is only advisory in nature it is likely that such "advisory final word" will rarely be ignored.

Therefore, it is apparent that if advisory arbitration is used, it will be the final determinant of an unresolved grievance, a negotiation impasse, or of the meaning of the agreement negotiated between the parties.

The second problem, "Where do the arbitrators come from?" does not lend itself as readily to analysis. Obviously, the arbitrators can come from anywhere. The true problem is: "Where *should* the arbitrators come from?" This issue has been confused by the argument raging over the terms "labor-oriented" and "education-oriented," by the fact that both the National Education Association and the American Federation of Teachers have tended to make one or the other an article of faith, and because boards have traditionally allied themselves with the NEA and have had, concurrently, an antipathy to unions.

The NEA insists that all arbitration be conducted by educators — whether from the State Department of Education, the ranks of college presidents or other educational specialists.

The AFT believes in the arbitrator experienced in resolving conflicts between unions and management who is usually secured through the State Department of Mediation. The important question, "Who can best study, judge and resolve the dispute?" is forgotten in the strife of the ideological battle.

An arbitrator doesn't exist in a vacuum. He brings with him his past experience, training and education, his articles of faith concerning the educational process, his prejudices and concepts of right and wrong. Experienced arbitrators, recognizing this, achieve a high degree of objectivity and frequently will rule themselves out of a specific case either because they feel themselves ill-prepared to judge it or because they recognize a conflict of interest. It is obvious that the selection of an arbitrator can be a crucial factor in determining the final answer to the problem submitted for arbitration.

The use of arbitration in collective negotiations will be further considered in subsequent issues of the "Journal." The insistence of the NJEA upon its use, if nothing else, is sufficient to make it important for detailed inspection.

The Arbitrator

What Factors Determine Acceptability?

A PRIMARY factor in resolving the problem of where arbitrators should come from is the basic philosophy concerning advisory arbitration. The arbitrator should be acceptable to both parties. If one acceptable to both cannot be found, a mechanism must be established to insure the selection. This creates the question: What factors determine the acceptability of an arbitrator to either or both parties?

The answer requires a clear understanding of how the parties perceive the role of the arbitrator, which in turn is based upon delineation of the philosophy. In law, for example, the adversary system prevails. When two parties are in dispute, each retains an attorney who presents the individual positions to the very best of his ability. Each attorney is expected to use every legality and technique at his command in order to insure that his client will win.

Compare this adversary system with the folklore of education which insists that all participants—except students—are part of

a community who join together to reach decisions. This community consists of teachers, administrators, state department and county educational bureaucrats, and professional organization representatives, all of whom function as one to achieve an answer or conclusion to any and all educational problems. Because this myth provided for neither conflict nor self-interest, provision was not made for union representatives in the peaceful community. In actuality, the myth disguised the conflict. Decisions were reached with few overt symptoms of dissatisfaction only because authority rested with the boards and, through them, the administrators.

This, then, brings us face to face with the philosophical problem: Will advisory arbitration in the educational process follow the adversary system of both law and industrial practice or can it create a new and unique means of resolving, without conflict, disputes among persons who disagree? However, there is conflict present between teachers and boards. The other members of the educational world will be required either to affiliate with one of the antagonists as partisans or to tread a path of uneasy neutrality. It is important to remember that one can be neutral but lack objectivity, that one can be neutral but have a favorite, that one can be neutral but aid an antagonist by acts of either omission or commission.

This "Journal" believes boards and teacher organizations must eventually look upon advisory arbitration as an adversary proceeding, one which can be won not only by facts, but also by technicalities, by techniques, and even by the selection of the arbitrator. Regardless of the means by which the case is won, as long as the practices are legal, justice will have been served. Therefore, to return to the question, "What determines the acceptability of an arbitrator to either or both parties?" the answer can only be: "The acceptability of an arbitrator is best determined by the possibility of his agreeing with the reasoning of the party deciding his acceptability."

Obviously an arbitrator can be acceptable to one party and unacceptable to the other. If the two parties are to find an arbitrator acceptable to both, they must either select an individual whose reasoning processes are unknown to one or both of the parties or they must fail to recognize the importance involved in the selection of an arbitrator and merely blindly agree.

It must be recognized that the title of "arbitrator" is not conferred as is a degree. Although there is no certified course of study, no state licensing bureau which determines criteria for

the selection of arbitrators, agencies such as the Federal Mediation and Conciliation Service, the New Jersey State Board of Mediation and the American Arbitration Association have developed criteria by which they select persons they deem qualified. In New Jersey, however, former Commissioner Raulinger ruled that the State Board of Mediation cannot become involved in educational disputes and the Federal Mediation and Conciliation Service has not made its services available.

Therefore, among those agencies which have established criteria for selecting persons to function as arbitrators, only the American Arbitration Association¹ can be used. Fortunately, the AAA has developed a national panel of educators who are also experienced arbitrators to be available for educational disputes.

The only other organized source of possible arbitrators is the State Department of Education but there is no evidence they have trained or experienced personnel available. Other sources of possible arbitrators can be college presidents or administrators, professors, prominent laymen or local citizens.

To summarize the "Journal's" position on the question under consideration:

- (a) Arbitrators can be secured from several sources but at this time the only consistent source of experienced arbitrators in New Jersey is the American Arbitration Association.
- (b) The subject matter in dispute should be a factor in determining the acceptability of an arbitrator.
- (c) A mechanism is necessary to insure the selection of an arbitrator in the event the primary parties cannot agree.

How Easy Should It Be To Get To Arbitration?

IN analyzing the use of advisory arbitration in the educational process, it has been relatively easy to determine that such arbitration probably will be used as the final determinant of an unresolved grievance, a negotiation impasse, or in determining the meaning of the agreement negotiated between the parties. It is interesting to note that only one of these three, the negotiation impasse, creates a problem. Our third point to be con-

¹ American Arbitration Association, 140 West 51st Street, New York, N. Y. 10020.

sidered, therefore, is "How easily should either party be able to declare negotiations exhausted and invoke arbitration?"

There should be no difficulty in determining when a grievance is unresolved, particularly since the grievance procedure is not, or should not be, used for negotiations. The same is true when the question arises of determining the meaning of the agreement negotiated between the parties. However, the very technique and practice of negotiating creates difficulty in determining when an impasse has been reached. Moreover, the value of teacher participation in vital decision-making will be lost if either party can too quickly or easily escape the pressure of the negotiating process by retreating into arbitration. Once the concept is accepted that the best settlement for both the community and the parties involved is that settlement which the parties themselves achieve, it becomes obvious that caution must be present to insure that a mechanism is not inadvertently established by which the parties can too easily avoid their responsibility of reaching an agreement.

When two equal parties resolve their differing positions, one or the other, and usually both, must make concessions and modifications in their original positions. This can prove difficult because the participants are normally convinced of the justice of their position. However, there is no formula, no rule, no eternal truth by which the "rightness" of a position is established. Rather, because a party has the authority to establish a position, that position has traditionally been considered the one and only true position.

What causes these equal parties—these sovereign nations—to be willing to modify the positions they have established and which they are convinced are right and just? The answer lies in the pressure that is created when negotiations among equals takes place, a pressure that causes each to eventually weigh the inflexibility of his position against the consequences of not changing it and determining it possible to make a modification.

After frequent weighing of position and consequent changes, the parties eventually reach a merging of their two separate positions into one which both accept and both participated in developing. It is this settlement that is considered best because the immediate parties participated in reaching it. Neither party should be able to escape this pressure, this weighing of position and consequent modification, until it is beyond question that such procedure is not going to produce a settlement.

This process can take place, however, *only* if ample time is

provided for the negotiating process. Meeting a few hours an evening a week is both insufficient and irresponsible. Flexibility of position can only occur if ample time at one lengthy meeting, as opposed to several of short duration, is provided in order that all possible options can be fully explored by the two parties. Provision must be made, at least occasionally during each negotiating period, either for the members of the board to be available during the school day or for both negotiating teams to be available on Saturdays and Sundays. The cost of this is a legitimate cost and each party should expect to bear the expense of having its own negotiators available as required.

This produces our first rule of thumb: Advisory arbitration should not be permitted until after several lengthy negotiating sessions have occurred.

To follow our concept that the best settlement is that which the parties themselves reach, means that we must devise methods to cause the parties to desire to modify their positions in negotiations themselves, rather than turn the problem over to an outsider. Both boards and teacher organizations have a unique opportunity to create new means of settlement. It will be interesting to see if they do so.

There are many possible methods, but only one—that of using a mediator—will be explored at this time. This can easily be transformed into a pressure upon both parties by the expedient of devising a procedure which creates an expense. Means by which this can occur range from retaining a mediator from the American Arbitration Association at a daily cost, to establishing a sum of money to be paid a charity or scholarship fund for each day mediation is required, when no other charge is involved.

This leads to a second rule of thumb: Advisory arbitration should not be permitted until after mediation, with a consequent expense to both parties, occurs.

Neither of these rules will trigger a flag when an impasse has been reached. Rather, they will establish a mechanism by which an impasse probably will be avoided.

In establishing our two rules of thumb, however, we have also created two principles:

- (a) An impasse in negotiations should not be permitted to block negotiations; and
- (b) Advisory arbitration should not be permitted to be used to block negotiations.

These leave us with one final problem: If neither strikes nor sanctions are permitted or desired, how can either party be

restrained from declaring an impasse for the purpose of a negotiating technique?

The only answer appears to be advisory arbitration of the specific question: Does an impasse exist? If the two rules are followed the probabilities of an impasse occurring are substantially reduced. In addition, the parties themselves will normally reach settlement without an impasse. Therefore, there is little reason why this question should go to an arbitrator.

If it does reach him, it is necessary to insist that the arbitrator decide only the question, "Does an impasse exist?", and that he cannot expand it to decide what the proper settlement of the negotiating impasse should be. Obviously, the question as to whether an impasse exists should not be submitted to an advisory board including representatives from both parties, but to an individual with no connection with either party.

What Issues Should Be Submitted To Arbitration?

THE fourth question, and probably the most important concerning the use of advisory arbitration in the relations between school boards and teacher organizations is this: What issues and problems should be submitted to advisory arbitration?

There seems little good reason for refusing to submit a grievance to advisory arbitration if the term "grievance" is defined so as to encompass only a complaint by an employee of a violation, misinterpretation or inequitable application of any of the provisions of the agreement reached between the teachers' organization and the board, or a claim by him that he has been unfairly or inequitably treated by reason of any act or condition which is contrary to established policy or practice. With this definition of grievance, an advisory arbitrator is merely functioning as a judge in a matter in which the board has previously determined the policy. It does mean, however, that the board can no longer both determine a policy and also "judge" whether it is being followed without such judgment being subject to question.

Consideration concerning submission of any other issue to advisory arbitration immediately raises other points:

- (1) If an impasse is reached in negotiations, should the question causing the impasse be submitted to arbitration, thereby removing the issue from local lay control? With local lay control of the educational program, the citizens can reshape or influence a school board by the elective process. Obviously this is not true of an arbitrator.
- (2) The philosophy of local lay control is deep-seated and is peculiar to America. Should it be thrown aside and replaced by a concept that states, in effect, that the professional educators of the school district, assisted and advised by educators outside the district, have an equal voice with the elected representatives of the citizens and taxpayers of the district in determining the proper educational structure of the community?
- (3) If an impasse is reached in negotiations, how is such impasse to be resolved? It appears obvious that society is opposed to permitting an impasse in negotiations between teacher organizations and boards to be resolved as it is in industry, *i.e.*, by a strike. Therefore, it seems apparent that means will be attempted to either outlaw a strike or make it so unprofitable that it will not be used.

The asking of these questions should not be construed as an attack upon the professional educators. It is the opinion of this writer that a philosophy which has guided public education from its inception should not be overthrown by the militancy and pressures engendered by the negotiating process. If a new philosophy is to emerge, it should do so by discussion and study in the schools of education, by debate among the academicians and theorists, followed by experimentation, report and eventual acceptance.

Whether one desires it or not, it appears possible that legislation might insist that an impasse in negotiations go to arbitration, advisory or binding. Under this circumstance, the proper subject matter for negotiation is of vital concern. There need be less fear of outside control of the schools if such subject matter consists only of salaries and other conditions of employment. These lend themselves to factual and objective evaluation. If, however, the subject matter for negotiations is permitted to be as broad and unfettered as "all questions of educational concern," "all questions of mutual concern" or any terminology

meaning the same, it is apparent that a revolution in public education will have occurred—quietly, and almost unrealized.

First, the professional educator, employed by the community to educate the young as the community desires within the framework of society's requirements, will have become an equal to the community in controlling that education; and, second, the final determination of any question between the community and the professional educator will be resolved by an arbitrator from outside the community and, conceivably, by an arbitrator who is also a professional educator.

This writer must emphasize that he has not as yet determined for himself if he believes these two revolutionary situations to be good or bad, but he does believe that they should not result as the creation of conflict, whether such conflict be called "collective bargaining" or "professional negotiations."

In summary: (1) Grievances, if the term is defined precisely and restrictively, should be subject to advisory arbitration; and (2) If society demands that an impasse in negotiations be resolved by arbitration, the subject matter for negotiations should consist only of salaries and other conditions of employment. All other educational questions should be excluded from the conflict and pressure of negotiations, although means should and must be found to insure the participation of the professional educator in a vital and meaningful manner in determining the answers.

Chapter Five

Evaluating The Human Element

(Originally published as, "Human Relations and Collective Negotiations," by the author in *Personnel Administration*, July-August, 1961.)

A DISCUSSION of human relations and contract negotiations presupposes the presence of a union. Note the trail that such a supposition blazes for us. Whyte and Garfield have pointed out, and empirical evidence supports their view, that "The union organization arose, as it generally does, out of a variety of worker dissatisfactions. . . ."¹

It is necessary to examine these dissatisfactions. It may be belaboring a point to assert that they arise because of unsatisfied needs. However, if we take an over-all view of industrial process and organization we are led to a view by McGregor:

"The people comprising an industrial organization are seeking through their membership in that organization to satisfy needs for food, shelter, power, prestige, social approval, knowledge, achievement, love, activity and dozens more. And they work or restrict output, cooperate or fight, join unions or refuse to join them, obey rules or disobey them, invest money in the organization or withdraw it, formulate policy, give orders, delegate responsibility or keep it—and whatever else they do—because they perceive that by doing so they will best satisfy their needs."²

It is apparent that these needs are not being satisfied on the job. Since it is only by the satisfaction of man's needs that he can

¹ See page 72 for footnote references.

be motivated to produce, it also follows that satisfying needs off the job will not provide production on the job.

Such need satisfaction is achieved only by the emotional involvement of the worker, which in turn requires his participation in decision-making. This discussion of participation recognizes that worker goals must parallel management goals and interests to be effective. Acceptance of this belief involves a substantial change in management philosophy and an entirely different concept of leadership. Not only the individual but also his group memberships and situations must be considered. The industrial leader, if he shifts from the authoritarian concept, then accepts Bellows' position and conceives leadership as the ability to arrange "...the situation so that mutual goals and understanding meld people into harmonious teams."

Consideration of various ideas, theory and research requires investigation of several separate paths, drawing from them and focusing them upon one point—contract negotiations. Possibly the nearest analogy would be that of the spokes upon a wagon wheel joined together at the hub. Now it is necessary to investigate another path, a different spoke.

The "Poverty of Power"

Turn first to our power or authority concept. Without investigating the subtle nuances of rationalization, we can accept the belief that authority achieved by rewards and sanctions is the basic belief of industrial organization. What is frequently unrecognized is that the use of such sanctions results in the creation of countervailing sanctions and group opposition.

Several authors have discussed the "poverty of power." It is apparent that the employer has the use of the sanctions of firing, lockout, incentive pay, promotion, and discipline. The employee, as a group member, retaliates with quitting, striking, slowdowns, and industrial sabotage. The weight of sanctions is rarely concentrated on one side or the other, a situation which forces the employer to secure acceptance of authority from the employee. This is the basic point that results in the ineffectiveness of sanctions as a primary means to weld together all the members of the industrial organization with "mutual goals and understanding . . . into harmonious teams."

We might discuss either an authoritarian or a soft approach, or even compromise with "fair but firm." However, once we accept the fact that force breeds counterforce, we must recognize that these offer only a short-range solution. Boyd Leedom,

formerly Chairman of the National Labor Relations Board, recognized this by saying, "Since hostility is likely to beget hostility, I raise the question as to whether this attitude may in turn be at least partly responsible for the union conduct that many people regard as quite unreasonable even though lawful."¹ This is also recognized by those accepting the "mirror" theory of labor relations, the belief that a union reflects the attitude of the company rather than vice versa.

Satisfying Needs

Again it is necessary to shift paths and return to needs and their satisfactions. The basic needs of food, clothing and shelter have, in large part, been satisfied by industry today. However, a need once satisfied is no longer a motivator of behavior. Misunderstanding of this concept can be a basic cause of much of our industrial dissatisfaction and strife. "Man is a wanting animal—as soon as one of his needs is satisfied another appears in its place. This process is unending. It continues from birth to death." There is no backlog of thankfulness, of gratitude, to make people docile and accepting. Although management has accepted the necessity of satisfying basic needs, it has failed to recognize that, once satisfied, such basic needs wither. Thereafter, there is a developing necessity to satisfy the variety of needs we describe as social, egoistic, self-fulfilling or whatever classification we may ascribe to them. Because of this lack of recognition the ills of industrial relationships are mistakenly blamed upon indolence, hostility, laziness, uncooperativeness, or agitation.

It is also important to note that this very basic error applies to all segments of the industrial organization, including unions. Union leaders are convinced, and to a large degree rightly so, that, through unions, workers secure participation in management decisions affecting them. Joseph D. Keenan, Secretary-Treasurer of the International Brotherhood of Electrical Workers, AFL-CIO, in a recent speech concerning paternalism and employee representation plans, said:

"But workers soon found this was not the answer. They still did not have an effective voice in determining the conditions under which they worked. The employer was still the feudal autocrat, with the power to make the final decision.... True industrial democracy means the end of arbitrary action on the

¹ See Page 72 for footnote references.

part of management. It means giving workers a method for settling their grievances on a basis of equality, and giving them an effective voice, through their unions, in decisions affecting their working lives."⁶

It is obvious that the unionized worker does participate to a much greater degree than his non-union brother in such decisions. However, the amount of vital participation the union member has in these areas appears to be lessening. Marquart develops the thesis that "... collective bargaining is becoming ever more institutionalized and removed from effective control or participation by rank-and-file union members; ... unions tend to become more conservative in outlook and bureaucratized in structure ...; (and) often unintentionally, help perpetuate what industrial sociologists call the 'dehumanization of the work process'."⁷ Widick develops the same general idea in discussing why industrial management frequently would rather deal with international union representatives than with local leadership when he writes, "At this point capable international UAW bargainers entered the picture and immediately won a closer hearing from the company, which is inclined by considerations of prestige, and prefers for reasons of policy, to deal with the international rather than with the local."⁸ Ross states it in a slightly different fashion: "They (international union representatives) are better insulated from rank and file pressure. Democracy in the union, like competition in the product market, is universally the object of reverence but is not especially enjoyable to those who must reckon with it."⁹ If Marquart, Widick and Ross are correct, it is apparent that the satisfaction union members secure through active participation in decision-making is lessening.

Therefore, if we can agree that physiological and safety needs are being satisfied and can no longer be used as a major motivational device, but that social and egoistic needs are not being satisfied by industrial management in particular, and to a lesser degree, by unions, the stage is then set to develop an understanding of the proper place of human relations in contract negotiations.

It is recognized that contract negotiation is but one part of collective bargaining, which is conceived to be a continuous process. However, the contract negotiation is the focal point of this year-long relationship. It either sets the tone for employer-employee interactions or, more frequently, illuminates the paucity of applied human relations.

There is little question that the purpose of a business enterprise in a free-enterprise economy is the production or sale of goods or services at a profit. It is interesting, and even important, to discuss industrial social responsibility, community relationship or corporate image, but unless the fundamental purpose of making a profit is achieved the enterprise will cease to exist. Walter Reuther has said, ". . . there is no such thing as an answer to labor's problems in a vacuum, nor are there answers to management's problems in another vacuum. We can find answers to our problems only as we find answers to common problems."¹⁰ Paul Phillips, President of the United Papermakers and Paperworkers of America, AFL-CIO, stated: "It is rarely recognized, but just as employees organize and join unions to help themselves, they are at the same time organizing a force with a vested interest in the survival of the enterprise."¹¹ The vast majority of unions with which industrial management comes into contact recognizes and endorses this basic purpose of business — profit-making. Conflict, therefore, is confined within the framework of the capitalist economy, not dependent upon the introduction of a differing ideology.

Human Relations and Negotiation

The first step in contract negotiation is the determination of company philosophy. If management looks upon the union as an outside force separate from its employees, if its philosophy is defensive, if it perceives the union as attacking its sacred prerogatives and challenging the natural and sacrosanct sphere of authority, it is obvious that the concept of human relations is lacking. Under these circumstances, the company adopts a "take it or leave it" type of bargaining or attempts to convey the impression that what comes out in the union contract is only what management was planning to give anyway. In labor relations there are few impressions more easily discerned than this, nor more costly.

Regardless of their skill in communications, in devising suggestion systems, in paternalistically giving the "feel" of participation, sincerity of motive is lacking and the success of company policy is dependent upon employee acceptance of sincerity of motive. It is under these circumstances that, "Every rationalization and every sidestepping technique in the book are used to dilute the participation of workers. . . . Yet genuine participation, to the point of deep emotional involvement of all members of the organization, is about the only source of satisfaction in

the industrial setting for a considerable number of powerful human needs."¹²

A company with this philosophy will attempt to emulate the General Electric system of collective bargaining which stresses constant communication with the worker and his family, exploratory sessions with the union, an initial offer from the firm in the negotiation, and a refusal, even in the face of a strike, to make any major compromise or change in their position. However, few companies are in the identical position of G. E. Not only is it a mammoth corporation with extended financial reserves, but its major union represents a minority of its employees. The company normally is in the position of being able to whipsaw one union against another. It appears obvious that such tactics will prove unsuccessful for a company neither in this economic position nor having the economic power on its side during a contract negotiation.

Consider now the industrial management with an opposite philosophy; one which sincerely believes that bargaining rests not only upon legal and economic grounds, but also upon a social and emotional basis. They understand that an amalgam of economics and human relations is vital for a mutually satisfactory relationship. They recognize the union as an institution composed of their employees participating in vital decisions concerning their work and life.

Their approach to the contract negotiation will be cognizant of its ceremonial aspects. The members of the union negotiating committee spend time in preparation. They feel an importance in their task and expect to find it necessary to argue and persuade management. Prior to the first negotiation meeting, there have been meetings of the membership of the union — employees of the company in which there has been active participation in developing contract demands. The workers have emotionally involved themselves in the situation. They have argued among themselves, there have been recriminations and name-calling, and from conflicting demands by the various employee interest groups a relatively satisfactory list is constructed. The first meeting with the company is expected to be exploratory; the company is not expected to concede any points of importance; the committee expects to persuade.

It is obvious, under these circumstances, that a company will not "give" a pay increase. They also will emotionally involve themselves in this "ceremonial dance of courtship" and argue and present their viewpoint. "Human relations research has

amply demonstrated that people are more satisfied with solutions to their problems if they themselves have an opportunity to participate in reaching those solutions."¹³ In another article Whyte and Garfield said, "The most effective way of making an agreement acceptable to people is to involve them in the process of reaching agreement."¹⁴

We can recognize that normal human behavior, as management perceives it, ". . . is not a consequence of man's inherent nature. It is a consequence rather of the nature of industrial organizations, of management philosophy, policy, and practice."¹⁵ We can recognize that within some situations, varying amounts of authority are required; that individuals do not resist authority simply because it is authority, but because their goals are not consistent with the goals and interests of management. Can the employee, under these circumstances, have a dual loyalty to both his union and the company? Studies by Stagner,¹⁶ among others, point out that employees not only can have a dual loyalty but that in most cases they do. If this is accepted, it must then be accepted that the creative leader can provide the situation which results in like goals and interests. The requirement of Simon, that "The employer can tolerate genuine participation in decision-making only when he believes that reasonable men, knowing the relevant facts and thinking through the problem, will reach a decision that is generally consistent with his goals"¹⁷ can then be met. The industrial management, to successfully create this situation, must not only be honest and fair but must have the appearance of honesty and fairness within all situations.

Such a management will consistently refrain from arbitrary actions and behavior which cause uncertainty as to continued employment or which reflect favoritism and discrimination. They will refrain from unpredictable administration of policy and will create confidence that the employee will get the best possible break from the organization. Efforts toward the organizational goal will be directly associated with the satisfaction of personal needs. Such a management will accept the union as an organization by which its employees can actively participate in vital decisions concerning their welfare and will seek areas in which to push such mutual participation.

Under these circumstances, ideas normally discussed as application of human relations research to the industrial situation, performance appraisal, participation and consultative management, decentralization and delegation, job enlargement and ro-

tation, function in a created situation in which they can produce the desired results. Within this situation social, egoistic and self-fulfillment needs may be satisfied on the job, rather than off. As a final emphatic point, within this created situation there stretch limitless, rather than limited, possibilities for motivation.

None of this can be achieved by slick salesmanship or gimmickery, by "communications" or manipulation, but only by genuinely accepting employees as partners with an effective voice.

- ¹ Sidney Garfield and Wm. F. Whyte, "A Human Relations View of Collective Bargaining," in Geo. P. Schultz and John R. Coleman, *Labor Problems: Cases and Readings* (New York, McGraw Hill Book Co., 1959), p. 154.
- ² Douglas M. McGregor, "Toward a Theory of Organized Human Effort in Industry," in Arthur Kornhauser, ed., *Psychology of Labor-Management Relations*, proceedings of Industrial Relations Research Assn., Sept. 7, 1949, p. 113.
- ³ Roger Bellows, *Creative Leadership* (Prentice-Hall, Inc., 1959), p. ix.
- ⁴ Quoted in "Collective Bargaining Today," in Proceedings, Third Annual Industrial Relations Conference, Industrial Union Dept., AFL-CIO, June 15-16, Phila., Penna., p. 22.
- ⁵ D. M. McGregor, "The Human Side of Enterprise," in G. P. Schultz and J. R. Coleman, *op. cit.*, p. 134.
- ⁶ Quoted in "Collective Bargaining Today," *op. cit.*, p. 92.
- ⁷ Frank Marquart, "New Problems For the Unions," *Dissent*, Vol. VI, No. 4, Autumn, 1959, p. 377.
- ⁸ B. J. Widick, "The UAW: Limitations of Unionism," *Ibid.*, p. 450.
- ⁹ Arthur M. Ross, quoted in Frank Marquart, *op. cit.*, p. 380.
- ¹⁰ In "Collective Bargaining Today." *op. cit.*, p. 14.
- ¹¹ *Ibid.*, p. 35.
- ¹² D. M. McGregor, "Toward A Theory of Organized Human Effort in Industry," in A. Kornhauser, ed., *op. cit.*, p. 118.
- ¹³ Wm. F. Whyte, "The Impact of the Union on the Management Organization," in Arensberg, et. al., *Research In Industrial Human Relations* (New York, Harper & Brothers, 1959), p. 181.
- ¹⁴ S. Garfield and Wm. F. Whyte, *op. cit.*, p. 157.
- ¹⁵ D. M. McGregor, "The Human Side of Enterprise," in G. P. Schultz and J. R. Coleman, *op. cit.*, p. 133.
- ¹⁶ Ross Stagner, "Dual Allegiance to Union and Management (A Symposium), 1. Dual Allegiance as a Problem in Modern Society," *Personnel Psychology*, Vol. VII, July 1954, pp. 41-47.
- ¹⁷ Herbert A. Simon, "Authority in Employee Relations," in S. Garfield & Wm. F. Whyte, *op. cit.*, p. 127.

The Consultative Process

(Co-authored with Dr. Oscar W. Knado, Jr.)

ONE question has recurred frequently as teachers and boards of education have plunged headlong into the maelstrom created by the conflict of collective negotiations: Can teachers and boards resolve their differences by utilizing mechanisms which involve less pressure and conflict than the collective bargaining process developed by labor unions and management? One area in which special mechanisms might be used in the negotiating process is in formulating agreements as to the scope of negotiations and teacher participation in decision-making.

Teacher organizations insist upon the right to negotiate "all matters which affect the quality of the educational program," or "all matters of mutual concern." Negotiation, however, requires pressure and conflict. It is impossible to negotiate with either absent. Two questions then emerge: Should an issue such as an alleged need for additional remedial reading teachers be resolved by conflict and pressure, by militancy and muscle? Does an attempt to resolve such an issue via the negotiations process serve the educational program as effectively as submitting the issue to study by the professional staff and taking such action as the study indicates is necessary? The important determinant should be: What procedure would result in a better educational decision? The procedure which best accomplishes this is the one which should be followed.

What is the essential difference between resolving an educational issue by negotiations as compared to professional study and action based upon the study? In the first place, if an issue is settled by negotiations, and the settlement is agreed to by both parties, action is taken. Something is done. However, one may ask: Was the settlement merely an accommodation of power—a compromise, or does it have educational validity? The making of a thorough study offers another approach with a greater potential of achieving educational validity. Much too frequently, however, a study is used to delay, or produces results that are uncertain, disguised or disputed and the action eventually taken is unsatisfactory to the teachers participating in the study.

If this analysis is correct, indications are that boards and administrators have failed to utilize the decision-making process in a creative manner. The professional expertise of the teacher must become an integral and vital part of educational decision-making. This has been said so often by so many that it has no more weight than any other cliché. Its mere repetition, whether by national or state school boards associations, teacher groups or any other professional organization, appears to have little influence in the pragmatic environment of a school system.

If it were possible to enforce the concept that the teacher, as a member of the professional staff, must have an active voice in determining educational questions—a voice at least as decisive as that of a consultant to the board—educational issues might then be removed from the arena of conflict which is negotiations.

How can this be accomplished? The solution is to utilize the negotiations process, including advisory or binding arbitration, in combination with an agreed-upon structure for consultative decision-making.

Numerous authorities in the fields of private and public administration have written that administrative decision-making requires broad consultation with those who have pertinent knowledge or opinions, regardless of their titles or status. Use of the consultative process in school board and administrative decision-making on educational matters provides a means of giving teachers a voice in determination of educational policy and could eliminate the need to bargain over these matters.

What is meant by the consultative process or consultative decision-making? Consultative decision-making is the process of informing and influencing decisions with data, opinions and advice. It is both a deliberate search for help and willingness to listen to unsolicited ideas. School boards and administrators who use the consultative process say, in effect, "We know we don't have all the answers, or perhaps even all the information, and we are sure we are not the only source of good ideas. So we must seek out those people who have pertinent information and thoughtful opinions and ask them to provide alternatives or react to our assessment of the problem. We must be certain to check out our perceptions with the people who will put our eventual decision to work. Their reactions and advice will be crucial if our decision is to be workable and have its desired effect."

Few school board members or administrators would object to

this style of decision-making. In fact, most educational decision-makers probably would say they use the consultative process as a matter of course. Perhaps so, but the odds are that their use of consultation is irregular, haphazard and without plan. In order to aid decision-making effectively and to give teachers the voice they want in resolving educational problems, consultation must be continuous, planned and structured.

It is the lack of structured consultation that causes teachers to want to negotiate "all matters of mutual concern." Structured consultation provides arrangements whereby individuals and groups interested in or affected by impending action have opportunities to influence the decisions to be made. These arrangements cannot be subject to the transitory relationships between administrators and staff or to the prevailing mood of the decision-maker. They must be built into the school system by contract. They may be the result of school board policies requiring consultation, they may be established in written procedures developed and initiated by the superintendent and his staff, or they may be negotiated with the teachers' organization.

Policies or rules requiring consultation may provide that certain phases of planning for programs, school plant or personnel development shall be open to ideas, suggestions, and informed opinions from persons other than the superintendent's immediate staff. They also may include the establishment of various advisory and study groups, such as committees, councils or cabinets, which have regular, specified meetings. The advantages to the board are that the use of such devices assures the superintendent of consultative service and, in effect, provides a measure of protection for both the school system staff and the school system itself from whimsical, unilateral, arbitrary and uninformed decisions.

Consideration should be given to how talent in the district can best be organized for consultative services, distributing responsibilities, determining membership on various consultative groups and, of great importance, specifying to what extent the board or superintendent must take into account or accept a group's recommendations and advice before reaching a decision.

Perhaps a board of education, faced with a teacher demand to "negotiate all matters of mutual concern," will find teachers willing to negotiate a formal structure for guaranteed consultation as an acceptable alternative to negotiating textbook selection, staff orientation procedures or the like. This would cer-

tainly be a far better procedure than settling such issues accompanied by the pressure that sits at the negotiating table.

Given the acceptance by both parties of the mechanism for structured consultation, and its incorporation into the agreement, disputes as to whether teachers have had sufficient involvement in determining educational policies can be resolved within the grievance procedure. The questions, "Was the professional staff involved sufficiently in the educational decision-making process? Did their views carry sufficient weight? If not, how can this situation be remedied?" can be placed by the teachers' organization into the grievance procedure with the right of final determination by an arbitrator. If the arbitrator agrees with the aggrieved teachers, he can suggest further study, a change in the make-up of the committee, or he can take such action as is necessary in a specific situation to insure that the opinions of the professional staff are heard. If he agrees with the administration that sufficient weight has been given the opinions and recommendations of the professional staff, the teachers have the verdict of the impartial outsider.

If this procedure were followed, an educational issue could be settled by the professional staff, including teachers, without recourse to a "muscle and miliancy" settlement. The important contribution is that a mechanism will have been created and, if it functions as proposed, the board and the professional staff will be assured not only of closer teacher-board cooperation in educational policy development but, in the long run, of better educational programs for the children served by the school district.

Importance of In-Service Training

SUCCESSFUL management training begins with that which is already being done by the school administrators. It is not a specialty necessarily conducted by an outsider, but merely a systematized application to present procedures.

As an example of determining the feasibility of a training program, analyze the tasks of the manager, whether in education

or industry. It can be quickly determined that, among his other duties, he also does the following:

- a. Conducts conferences;
- b. Counsels subordinates and others;
- c. Organizes committees for cooperative planning;
- d. Conducts training programs on new requirements and techniques.

Although the efficiency with which he carries out these tasks can be improved by non-formal training, the educational manager is apt to be doing his job but failing to articulate what is being done so that it can be accomplished on a systematic basis.

The responsibility for in-service training in education should rest with the superintendent or with those he designates. All administrators will not require identical training and therefore their needs must be analyzed to determine individual requirements. Once this is accomplished, a second analysis is required to determine the variety of programs which can be adapted and tailored to fit the individual situation. These might range from formal university courses to in-service, non-formal programs.

In effect, two major programs should be established:

- a. *Individual Participative Planning*—This involves individual appraisal conducted jointly with a superior, and mutual determination of the best training required for future growth and value to the school district, as well as the satisfaction of the individual concerned.
- b. *Organized Program Planning*—This involves the systematized and formal training needs, such as course work leading to proper certification, in-service non-formal training to improve skills and techniques, group sensitivity training, and such others as determined necessary for that specific situation.

Primary emphasis is upon the word "systematic." Systematic analysis and determination are vital. Such analysis can easily begin by meeting with the group to be involved in order to discuss the needs of the system. It is a short step from the needs of the system to the needs of the individual. Usually the group itself suggests the type of training programs which are most needed and which will be most helpful. From these, other suggestions will naturally evolve. To be successful, however, the program must be continuous and sustained.

In industry the vast majority of in-service training programs are conducted on company time at company expense. Inasmuch

as the training of educational managers is desirable and will benefit the school system by increased operational efficiency, there is ample justification to carry it out during the school day with all expense borne by the school district.

There are several non-formal training courses which probably would evolve from a discussion by a group of educational managers concerned with improving their own efficiency and the operation of their schools. One of these would be conference leadership. The conference which is called to solve a problem cannot be permitted to create additional problems. If a poor leader fails to properly recognize or accept all members of the conference or permits it to degenerate into a competitive struggle between departments or factions within the school, the reason for the conference will not have been met.

Somewhat parallel to conference leadership is leadership for cooperative planning. This may become considerably more important inasmuch as collective negotiations is creating additional pressure for participation by the staff in determining policy and curriculum.

A third area which would benefit from increased efficiency is that of methods of individual appraisal by school administrators. The administrator is required to make recommendations concerning tenure, promotion and, frequently, the granting of increments. The more persons making such appraisals within one system, the more likelihood there will be of a variety of criteria used and a plethora of individual prejudices and biases employed. An in-service training course to create a conformity of means of making judgment in this area appears overdue.

Other programs which come easily to mind include possible courses on training and training techniques, means of conducting supervisory conferences on operational problems, and training in the technical knowledge required to supplement non-formal training. Merely as an outgrowth of collective negotiations, training for administrators is necessary on the meaning and interpretation of the agreement, the administration of the agreement, human relations in supervision, means and methods of preparing and handling grievance and arbitration cases, and even training in collective negotiations itself.

Many management people, in and out of education, have a tendency to turn from management training because they fail to realize they already are doing it in one form or another. Non-formal in-service training programs complement the formal.

Management training is an untapped source of value to a school district. Systematizing and organizing have the inevitable effect of improving the efficiency of the operation. Training will aid in overcoming one of the serious weaknesses in education—the lack of a management team. Finally, it will aid in providing more objective criteria for the selection of potential management replacements in addition to providing a source of personnel.

Chapter Six

Directions

Impact of Educational Technology Upon Collective Negotiations

IT is interesting to note that both areas of this topic broke upon the general consciousness of the educational community and the public at approximately the same time. Investigation of the impact of the one upon the other requires consideration of somewhat disparate factors. Based upon these factors, prediction is possible if one is satisfied with a predictive validity equal to that of the gypsy fortune-teller who jumps indignantly to her feet in surprise as the police burst into her door.

Some of the writers on the new technology insist that it will make less, or no more difference to the teacher-pupil relationship than the introduction of books, which permitted large numbers of students to read assignments rather than sit at the feet of the master to learn by listening.

Certain aids have been available to the teacher for some time, including the phonograph, radio, workshops, films and, more recently, tape recorders. None have revolutionized education. To these are now added television, video tape, and computerized instruction. Computers are now utilized not only for the storage and distribution of information and materials, but for testing, guidance and evaluation of students. There are talking typewriters, language laboratories and new uses for microfilm. The "systems" approach involved in the development of educational

technology applied to education is near at hand. The computer can now provide lessons tailored to individual needs so that a student can regulate the rate of learning in terms of his own ability to progress. Information can be imparted by the computer in writing, through still pictures, moving pictures, voice or combinations of these. Responses can be made by pushing buttons, operating typewriter keyboards, by voice, or by using other alternatives made possible by the electronics industry. Both students and teachers can be supplied with a record of progress at any point in the curriculum. It is already possible for a student to telephone a computer and obtain a formula, receive language instruction, see a film, or conduct a chemical experiment. If this were not sufficient, there are on the drawing board plans for computers which can have 800 or more terminals and provide a multiplicity of courses in order that several courses can be taught to several groups at several locations at the same time. Theoretically, they can displace the teacher.

The factors encouraging the growth of educational technology are many and diverse. One of the most important is the massive infusion of government funds, directly through grants and legislation and, indirectly, by means such as the establishment of the Educational Research Information Center by the United States Office of Education, intended to provide information on current educational research to teachers, administrators, commercial organizations, public officials, and other interested parties. The annual expenditures in this country on education amount to about 6 percent of our Gross National Product, with a current level of over \$40 billion. Within 10 years they are expected to reach \$60 billion. The federal government makes a probable total contribution of approximately \$9 billion and this amount, and its proportionate share of the whole, is expected to increase.

This obviously represents a vast market and the industrial firms which are planning on penetrating it read like a "Who's Who in American Industry." Major electronic firms have either merged with or absorbed major publishing houses. Prominent and respected educators have been enticed into the firms in positions concerned with research and development to better combine the development of the necessary soft and hard ware. Industry is expending vast sums of money from which a return can be achieved only by creating the proper equipment or systems, convincing the educational community of their value, and aiding in their introduction.

The ongoing effort to reform the education system by both those inside and outside of the educational community creates a pressure producing receptivity to change. The civil rights movement has forced recognition that public schools have been failing to provide any sort of worthy education to an intolerably large segment of the population. In addition, there has been general criticism from the white middle-class that their children need to learn vastly more and, further, that education has failed to develop in their children a love of learning, a knowledge of how to learn, how to develop independence of thought, or use of intuition and imagination. The greatest value of the computer to the civil rights movement and the white middle-class parent may be its impersonality and its infinite patience while concurrently failing to register disapproval or disappointment.

The present high cost of education, as it is perceived by the local taxpayer who exerts pressure upon his local board of education, can have an effect which encourages the introduction of technology. This might occur in the face of the present extraordinarily high cost of introducing computerized programming if the system holds out the promise of lower payroll costs or that per pupil cost of operation can be substantially decreased.

The increasing pressure to measure the results of education will have an effect. With computerized programming, one teacher can be measured against another, one program, one school, one system, against all. We are a nation with a belief in the infallibility of measurement — the more precisely devised, the more acceptable — regardless of validity. Industry spends untold millions on measurement devices to aid them in selecting personnel for hiring and promotion, in determining those in lower management to be chosen for advanced training, and in determining those in middle management — and their wives — who will best fit into the corporate family. Parents who bow before the validity of the difference of a few points on an I.Q. scale, who accept that 98% in geography is infinitely better than 96%, who are convinced that a particular teacher is not really doing the best possible job with their child, believe in measurement with the fervor of a convert. Computerized education can be measured.

There is also the possibility, if not the probability, that research will indicate that computerized education is more effective in providing quality education. The military establishment has used it extensively and produced some startling results. The emphasis upon individualized instruction, for learning at one's

own pace, and the need for assistance to the under-privileged child combine to exert a most persuasive influence.

The very massiveness of the problem of storing and retrieving information appears to make inevitable the use of the computer. As an example, one set of figures states that there will be more technical knowledge produced in the next 25 years than has been accumulated in the entire history of mankind up to now. The United States is now producing at the rate of 25,000 technical papers, 400 books, and 3,500 articles per week.

Among the studies prepared for the National Commission on Technology, Automation, and Economic Progress, published in February of 1966, is the prediction that the present "educational establishment" will eventually and inevitably be replaced by a new establishment — one resting upon a scientific-technological base. This, they say, will take place within the next decade and will end in complete domination of educational thinking by the new "educational establishment" which finds the use of the computer acceptable and desirable.

Finally, if the snow-ball effect caused by those who follow the crowd, with little thought of the meaning or impact of any new program, is considered, it is obvious there are many influences to encourage the continued growth of technology. It is a rare article or book which even hints that educational technology will not become a major force in American education. The only disagreement is on the question of time, ranging from five years to possibly twenty-five.

There are, of course, factors which will inhibit the growth of educational technology. The obvious one is cost. Figures and estimates vary, but even the smallest is substantial. The cost of constructing a good computerized program appears to run from \$2,000 to \$6,000 per student hour. Another example indicates that a computer renting for \$100,000 a year has a total direct operations cost of \$300,000 to \$400,000 per year. If we recognize that salaries alone generally account for 75% of the total school budget, and in some cases, 90%, it is obvious that school income, as presently constructed, permits little leeway for the enormous dollar commitment necessary to accelerate the pace of change. Those who attack the frills of education, and in this context frills might easily be defined as any cost item, will be in an uproar at the dollar cost of technology. No computer manufacturer has begun to solve technical problems inherent in producing machines at a cost that can compete with conventional modes of instruction.

A second inhibiting factor is the lack of communication between industry and education. Educators have had difficulty in agreeing among themselves on the ends of education and have totally failed to convey whatever agreement they have found to industry. Satisfactory hardware and programs cannot be devised without an understanding of the end to be achieved.

Another factor, possibly a crucial one, is ignorance about the process of instruction and learning. This, it seems, is a greater obstacle to computer-assisted instruction than the technological problems involved. Without accurate knowledge of the process of instruction the problem of "software," that which is placed into the computer by the programmer, is almost unsolvable.

The changes that will take place in education will undoubtedly be resisted, if for no other reason than that change is always met with resistance. However, it seems apparent that true individualized instruction might very easily cause schools which have been structured primarily for administrative reasons, rather than learning, to change. The role and function of the teacher will change. Those who have seen themselves historically as the "dispensers of information" and been satisfied in this role, might not care to become moderators, coordinators, or diagnosticians, although it is insisted that they are now more "professional."

One writer insists that computers will not be introduced at a rapid pace until something or some way is found to deal realistically with a seemingly impenetrable element — two million teachers. To those who point to the many innovations which have been accepted by the teachers, there are others who insist that teachers have always been ready to buy new instructional aids which possessed no threat to them — papers, magazines, exercise books, text books and the like. However, there appears to be a distinct reluctance to use radio, tape recordings, phonograph or films, let alone the new technological developments.

Charles Silberman described it this way:

Reform is impeded by the professional educators themselves, whose inertia can hardly be imagined by anyone outside the schools, as well as the anti-intellectualism of a public more interested in athletics than in the cultivation of the mind. The most important bar to change, however, is the fact that the new curricula and, in particular the new teaching methods, demand so much more of teachers than they can deliver.

Professor Jerrold Zacharias insists:

It is easier to put a man on the moon than to reform the public schools.

The majority of educational institutions have been structured for stability of operation and not for rapid adaptation and change, resulting in the classic time gap of 35 to 50 years between the invention and mass adoption of a new educational practice. For more than 200 years our schools have operated on the theory that a local school system ought to make its own curriculum and run its own affairs. Commissioner Harold Howe quite realistically summed up many of the problems with this statement:

My guess is that the businessman will find the education field difficult to attack in an organized way, because decision-making is so highly dispersed. The education system of the United States is not a system at all. It is a non-system. And being such, decisions about what to spend and what to spend it on are not centralized decisions at all. The public schools are managed by some 25,000 operating school boards. Their domains range in size from more than one million pupils down to a dozen. Each board prizes its autonomy and has to be dealt with individually. To compound the difficulty, decision-making within any school system may be obscure or diffuse.

Regardless, when the factors encouraging the growth of educational technology are weighed against those which inhibit, there seems little reason not to agree that within the time limits predicted, five to twenty-five years, a variety of forms of computerized instruction and "systems" educational plans will be in effect.

To relate this to collective negotiations in education, a discussion of assumptions is necessary. This writer does not accept as an article of faith that there is something so unique about the educational process *and* those who function within it that comparison with the collective bargaining process functioning in the private sector of the economy is impossible. Rather, the assumption can be made that the *process* of collective negotiations in education is comparable to the *process* of collective bargaining between industry and labor—not that all the factors are the same—and that the needs, the motivation and resultant frustration of those functioning within each process is com-

parable. No amount of tortured semantics can disguise or confuse the sameness.

With this in mind, consider the reaction of workers, both organized and unorganized, to industrial change. If nothing else, the Hawthorne experiments of approximately 1930 document the resistance to change which occurs with the unorganized worker. Reaction to change by the organized is easier to observe.

It is obvious that much of organized labor resists the introduction of technology which poses a threat. The reaction might range from outright refusal to use new equipment, such as frequently occurs in the construction trades, to control over or a penalty upon its introduction, such as happens in the printing industry. Infrequently a situation is observed, such as that with the United Mine Workers when their then president, John L. Lewis, after years of opposition, did an about-face and accepted the introduction of new machinery. The output of coal, as well as the profit of the mineowner and the pay of the mineworker, increased. However, the number of working miners was drastically reduced. Another example is the containerization program in shipping and the resultant decrease in the number of working dockworkers.

It is also possible to point to the Lithographers Union, which embraced technology, supported research, and encouraged its introduction into the industry.

Obviously, in each case certain unique factors exist. As to the Lithographers, they are so few in number that it appears that nothing can pose a threat to their job security and income. With the dockworkers, there was heavy outside pressure exerted upon them, including that from both the federal and state governments. Their leaders were forced to make concessions to advancing technology. The pressure upon Mr. Lewis is a bit more obscure; however, one fact stands out: Mr. Lewis had total control of his union, did not fear for re-election, and consequently could reach a decision without concern for the political implications to himself. Most unions, however, subject to the political pressure of the membership, mirror their feelings of insecurity, their needs and frustrations, and refuse to be the short-run sacrifice for society's long-run gain.

What is revealed by an analysis of the state of collective negotiations in education? The winning of the New York City election in 1961 by the American Federation of Teachers undoubtedly was the turning point. Since then, approximately fourteen states have passed legislation guaranteeing teachers the right

to organize and negotiate. There is every expectation that several additional states will follow suit within the next year. The competition between the AFT and the NEA is reminiscent of that between the AFL and the CIO prior to about 1953.

There is little doubt that the spread of militancy among teachers is increasing at a rapid rate. Unnumbered board members and superintendents, who last year were bragging of their excellent relationship with their teachers, this year are wandering about dazedly, saying, "Do you know what happened to us this year?" According to recent figures by the NEA, one-fifth of the nation's school districts have adopted negotiations agreements and they expect this number to be doubled before the end of 1967. The agreements themselves are rapidly becoming more complex, more lengthy, and the negotiators more sophisticated concerning the entire process.

It can be expected that the two teacher organizations will not react with patterns that can be generalized as AFT or NEA. Rather, local units of each will react as they perceive their self-interest to require and their power to influence decision-making make possible. There is no doubt that the teachers possess strongly inculcated codes of professionalism and desire these to be recognized. However, it is doubtful if the motivation induced by concepts of professionalism will counterbalance the motivation induced by the need for security if the teachers in any specific situation perceive their economic position, economic advancement, or positional status to be threatened.

Factors which will influence this produce a contradictory picture. For example, what will be the result of the combined dire shortage of teachers and the increasing pupil population? The competition for the tax dollar, already evident in teacher negotiations, will become more severe if local boards consider the introduction of technology financed by local funds. The acceptance, or lack of acceptance, of a new role by the teachers, one which is changed from that of the classroom instructor to that of including the much broader duties of managing an array of new teaching tools, will undoubtedly have an effect. The struggle to decide who shall determine what goes into the software, the material used to program the instructional courses of the computer, undoubtedly will be fierce. Finally, the array of necessary new jobs—computer operator, director of data processing, junior programmer, key punch and testing supervisor, key punch operator, programmer, programming manager, senior systems analyst—is awesome. The problem of pegging them to a spot

on the salary scale is even more so. In addition, in the larger school districts the position of educational engineer will emerge, with a salary undoubtedly competitive with industry.

In a computerized system, the teacher will not be valued for what is now considered professional competence, but instead will be responsible for certain specific educational objectives. He will be dependent upon support personnel and there will be little need for the instructor who attempts to do it all himself rather than utilize readily available resources. The output of the teacher will be more easily measured and he will be forced to either become more competitive or to devise means to protect himself against measurement.

The teacher, and the entire educational establishment, will be intimately concerned with the question of accepting outsiders into the educational system, an action they have opposed quite effectively. Legislative battles concerning proper certification will rage in many states.

This is the combination of factors to be considered in attempting to analyze the effect of educational technology upon collective negotiations. They have ranged from the factors encouraging the growth of technology to those inhibiting it. Included are assumptions that the needs of the people within the educational community are comparable to the needs of those within the industrial complex, that the process of collective negotiations is comparable to the process of collective bargaining and, finally, observation of the present state of collective negotiations in education.

Predictions based upon these have, to repeat an earlier statement, the validity achieved by a gypsy fortune-teller, as do all predictions based upon expert opinion. Regardless, here they are:

1. The process of collective negotiations in education, which would have increased rapidly under any circumstances, will be speeded by the advent of educational technology.
2. Teacher organizations will attempt, and be relatively successful in such attempts, to add additional cost to the introduction of educational technology. This need not be construed as a penalty proviso, but rather as a means of providing protection to organization members. Undoubtedly there will be a demand for local school boards to pay for new training required to learn new skills and a reduction in teaching time in order that such learning can take place during the school day, rather than infringe upon

the teacher's time. There also will be extra pay demanded for the extra skill acquired on school time at school district expense.

3. It would seem natural that the teachers will insist upon some form of job protection control over a possible change in position from that of classroom instructor to a newly created job, and protection from the changes emerging from educational technology. For example, what problems of both income and teaching load will occur if a teacher produces a series of video tapes comprising an entire course? If the tapes are then used with several groups of students simultaneously—or for several years—should we not expect a demand for a reduced teaching load and possibly, as has become common in commercial television, residual rights?
4. It should be expected that the teachers' organization, and the teachers, will attempt to influence state legislatures to mandate that all such newly created positions be filled first by persons possessing a teaching certificate. If unsuccessful on the state level, they will attempt to insist upon the same provision through negotiations with the local board of education.
5. Based upon the exhaustive cost of introducing computerized programming and other aspects of technology into local systems, and relying upon the inability of local boards to entertain such possibilities, it would seem that many local teacher units will secure extensive propaganda mileage by insisting the local boards make such introduction.
6. A variety of conflicts will erupt if the board should seriously consider and begin planning to budget technology money. Disputes will arise concerning the type of hardware, the proper software, the filling of the newly created positions, pegging of new salaries on the salary scale, and plain competition for the funds needed for teacher salary increases as compared to the money required for the introduction of technology.
7. Without restriction imposed by legislation on the subjects of negotiation between teacher organizations and boards—or without federal or state funds specifically earmarked for the development of educational technology with local school systems—the teacher organizations in most cases will be strong enough to severely inhibit the introduction of such technology if they so desire. Their need for security

probably will outweigh their concepts of professionalism, and inhibition is very apt to occur.

8. Finally, the safest prediction of all, and one which has as high a degree of validity as is possible to achieve. Regardless of the position taken by any party to any side of any controversy concerning the introduction of educational technology into the educational system, each and every party concerned will have ample research to which he can point to document his position and will stoutly insist that the only motivating factor influencing his position is professionalism. Each party will be sincere in their beliefs and statements, creating many conflicts based upon "principle," the most difficult to resolve.

Directions For New Jersey

ATTEMPTING to predict the direction of negotiations in New Jersey at this moment in time cannot help but be hazardous. It is apparent that the demand by teacher organizations to participate in collective negotiations will intensify. Non-certified employees in many communities also are insisting upon negotiations resulting in agreements. The direction that the courts will take if no law is passed is uncertain. Further, although the structure of a law is partially discernible, its final form is unclear.

The Public and School Employees Grievance Procedure Study Commission, appointed by Governor Richard J. Hughes, issued an "Interim Report to the Governor and the Legislature," dated April 6, 1967. The intent of the report was to provide a basis for interim legislation to be effective until the Commission issued a final comprehensive report. However, the Legislature failed to pass the suggested interim legislation.

The Commission recommended legislation along these four general lines:

- a. Giving employers the responsibility of meeting with employees through representatives of their own choosing for the mutual resolution of grievances and proposals.
- b. Giving encouragement to public employers and representatives of public employees, empowering them to use the

facilities of appropriate public and private agencies and individuals. Appropriate agencies or individuals could include the American Arbitration Association, the State Board of Mediation, the State Commissioner of Education, and county and local government officials. The State Board of Mediation should be empowered to offer its services and the acceptance of its offer, or the use of any agency or individual, should be with the mutual acquiescence of all the parties.

- c. "Public employer" includes the state or a county, municipality, school district, department, board, commission, institution, agency or authority created by any thereof. "Public employee" includes the holders of any office, position or employment with any public employer.
- d. In order to underline the interim character of the recommended legislation, it should provide for its expiration on June 30, 1968, with the expectation that comprehensive legislation will replace it.

The Commission intentionally failed to provide answers or guidelines to several important issues: The question of exclusive representation by one bargaining organization, the proper subject matter for negotiations, the steps to be taken if mediation fails or if the parties cannot settle upon a mediator, the right to strike and subsequent penalty if no right exists and public employees do strike.

There is considerable dispute as to the constitutionality of exclusive representation. The Commission appears to favor it; however, there are several legal experts who tend to believe that Article I, Section 19 of the New Jersey Constitution prohibits exclusive bargaining rights. Obviously, the primary determination will rest with the office of the Attorney General.

There also is opposition to the idea of establishing one group of mediators to serve all public employee disputes. According to *Shield*, the newspaper of the civil service employees' organization, the NJEA has taken sharp exception to this possible proposal by the Commission. In the news account the NJEA bluntly stated that it would oppose any legislation in this field rather than accept a mediation service which served all public employees.

There is considerable agitation within both teacher organizations and the civil service employees' organization to secure the right to strike. It seems apparent that if legislation forbids

the teachers the right to strike, some procedure will be substituted involving third party intervention, including a penalty upon those who do strike. The major danger lies in making it so easy to fail to negotiate and to turn all problems over to a third party that the primary parties will fail to resolve any disputes. Negotiations, under these circumstances, can quickly degenerate into the pattern presently existing in the railroad industry in which the parties exchange charges and epithets in the newspapers and await the outsiders' direction.

If legislation is not enacted, the relations between boards and their employees will continue to operate as in a jungle. Interestingly enough, the jungle primarily benefits the AFT, for once a law is passed it seems probable that the NJEA will urge its local affiliates to follow immediately the procedure to secure bargaining rights. The NJEA represents the teachers in the vast majority of New Jersey's 595 school districts and it would be expected that they would secure representation rights in the greater number of districts.

If the New Jersey Legislature does insist that no organization can secure exclusive bargaining rights, the boards will continue to be in a position to be whipsawed by the competing organizations. The minority organization in any district will find it advantageous in the search for members to insist upon negotiating and pressing demands which will favor them in the competitive struggle.

All groups of public employees, including teachers, maintenance and cafeteria personnel, custodians, bus drivers, secretaries and nurses, probably will have the right to organize a bargaining unit. Without exclusive representation, there can be minority organizations—any number of them—within each group of employees. In such case, not only will the board be in an unenviable position but in many districts chaos will result, and in most districts efficiency, at the very least, will suffer.

Any attempt to summarize the direction of negotiations in New Jersey probably should contain the following salient points:

- a. Boards will be required to negotiate in good faith with units of their employees. Probably some form of a written agreement will be required.
- b. Boards will be forbidden from interfering with, restraining, or coercing their employees in the selection of bargaining representatives.
- c. There will be a form of third party intervention but it

may not be binding arbitration. It is almost certain to include mediation and possibly fact-finding with public recommendations.

- d. Boards probably will decide, eventually, that they should not be involved in the negotiating process and will delegate the task to the school administrators, attorneys or consultants. In the larger districts even the superintendent will not involve himself in actual negotiations.
- e. Regardless of the wording of the law, the scope of negotiations will be a constant source of dispute.
- f. For a few years after the passage of any law there will be a great deal of turmoil in board-staff relations. It will appear more serious than it actually is because the disputes will be concentrated in one area one year and in another the next. However, newspaper headlines will convey to the casual reader the concept that teacher-board disputes are widespread and continuous.
- g. There will be an initial period of difficulty as both boards and teachers adjust themselves to a relationship between organizations, rather than between an employer and a single employee. Until a new balance of power is achieved by the parties and they learn to function within the adversary relationship without personal animosity, relationships will be awry.

The outline of possible legislation will become less murky when the final report of the Public and School Employees Grievance Procedure Study Commission is issued, as is now planned, between November 15 and December 1, 1967.

Appendix A

1947 New Jersey Constitution

Article I, Section 19

Persons in private employment shall have the right to organize and bargain collectively. Persons in public employment shall have the right to organize, present to and make known to the State, or any of its political subdivisions or agencies, their grievances and proposals through representatives of their own choosing.

Appendix B

PERTH AMBOY TEACHERS' ASSOCIATION, ALICE O'BRIEN, individually and as president of the Perth Amboy Teachers' Association, EDITH KRAHE, individually and as vice-president of the Perth Amboy Teachers' Association, CAROL DAISEY, individually and as treasurer of the Perth Amboy Teachers' Association, FLORENCE L. SEQUINE, individually and as secretary of the Perth Amboy Teachers' Association, BETTYE MALLOY, HELEN WARGA, EDNA R. TRUEMAN, KENNETH CAMPBELL, JR., SARA SOKOLOW, JOSEPH A. GERAGHTY, VERONICA V. SMITH, PATRICIA ANN REILLY, HELEN CUPRZINSKI and MARIE R. McCORMICK.

PETITIONERS,

v.

BOARD OF EDUCATION OF THE CITY OF PERTH AMBOY IN THE COUNTY OF MIDDLESEX,

RESPONDENT.

For the Petitioners, Cassel R. Ruhlman, Jr., Esq.

For the Respondent, Alfred D. Antonio, Esq.

Petitioners are members of the Perth Amboy Teachers' Association (hereinafter referred to as the Association), an organization comprised of professional staff employees in the Perth Amboy Schools. They contend that their employer-respondent Board of Education has entered into an agreement with a rival organization, the Perth Amboy Teachers Union Local 857 AFL-CIO (hereinafter referred to as the Union), which is beyond the scope of its authority and *ultra vires* and which should therefore be set aside.

A hearing of this appeal was held on November 26, 1965, at the State Department of Education, Trenton, before the Assistant Commissioner in charge of Controversies and Disputes. The president of the Association, petitioners herein, called as the only witness, gave testimony with respect to the membership and function of her group, its current relations with respondent, and the fact of a recent strike by members of the Perth Amboy Teachers' Union. Three exhibits were received: (1) a letter addressed to the witness from the chairman of the New Jersey State Board of Mediation enclosing a notice of election; (2) a copy of an Interlocutory Injunction issued by Judge David D. Furman on November 12, 1965, restraining the Union from strike actions or activities; and (3) a copy of an agreement between respondent and the Union dated November 12, 1965. The remainder of the hearing was given over to argument of counsel. A brief of petitioner was received. Counsel for respondent waived filing of a brief.

Also made part of the record was a telegram received from counsel for the Union. After receipt of this Petition of Appeal, the Commissioner directed that the Union be invited to participate in the matter. On November 19, 1965, the Assistant Commissioner of Education extended such an invitation by telephone conversation with the president of the Union. Letter confirmation addressed to the Union president was sent the same day as follows:

This will confirm my telephone conversation with you on the above date.

"The Commissioner of Education has received a Petition of Appeal filed by certain named teachers in the Perth Amboy School District against the Board of Education of Perth Amboy, copy of which I enclose for your information. Although the group which you represent is not named as a party, it appears to the Commissioner that your organization may have an interest in this litigation and may wish to participate in it. Hearing of the appeal has been set down for Friday, November 26, at 10 a.m. at the State Department of Education, 225 West State Street, Trenton. I shall appreciate knowing from you as soon as possible whether your organization wishes to enter an appearance and be heard on this appeal. If your answer is in the affirmative, may I also request that you advise me of the name and address of the attorney or other person who will represent you."

On November 26, prior to the opening of the hearing, the following telegram, addressed to the Assistant Commissioner, was received and subsequently read into the record:

As counsel for and on behalf of Perth Amboy Teachers Union, Local 857 AFL-CIO, this is in answer to your letter of November 19 addressed to Mr. Robert Bates, President of Local 857. The subject matter of the Petition of Appeal does not raise any issue cognizable by the Commissioner of Education of falling within the legal ambits of the jurisdiction of the Commission. All rights of individual teachers have been zealously safeguarded in the agreement between the Board of Education of Perth Amboy and Local 857. The leadership of this Local, with the interests of the students paramount, achieved the end of a long curtailment of work; any interference with the arrangements under which teaching was resumed will, undoubtedly, result in a more aggravated struggle which may be beyond the power of the leadership of the Union to control. Furthermore, arrangements have been made with another and co-equal department of the State, to wit, the New Jersey State Board of Mediation, to handle the mechanics of the settlement adjustment. Your Department has no right or jurisdiction to interfere with, censor, or in any way supervise the activities of the Department of Labor. The arrangements under which the dispute in Perth Amboy was settled is identical with similar arrangements presently obtained in many school districts of this State and which have not been interfered with by your office. Since we do not believe that your office has any jurisdiction to entertain the Petition of Appeal or to make any determinations with respect thereto or to interfere with the peaceable arrangements made between the Perth Amboy Board of Education and Local 857, we must respectfully decline to participate in any form in this proceeding.

Samuel L. Rothbard

Although the Commissioner considers the Union to have been a proper party to these proceedings and would have preferred to have had the benefit of its position and argument, he does not consider it to be a party whose participation is essential. Nor does he find any validity in the Union's claim that the matter herein is not within the jurisdiction of the Commissioner of Education. This appeal is grounded on actions of a local school district board of education with respect to its employees. There can be no question that such an action falls within the ambit of the Department of Education. Counsel for both parties herein acknowledge the jurisdiction of the Commissioner to hear this appeal.

The comprehensive nature not only of the Commissioner's jurisdiction but his responsibility also to review the actions of local boards of education has been stressed by the Supreme Court of New Jersey in several opinions. *Laba v. Newark Board of Education*, 23 N.J. 364 (1957); *In re Masiello*, 25 N.J. 590 (1958); and *Booker v. Plainfield Board of Education*, 45 N.J. 161 (1965) in which the Court said in referring to R.S. 18:3-14:

"That statute provides that the Commissioner shall decide all controversies and disputes under the school laws or under the rules and regulations of the State Board or of the Commissioner. Its comprehensive terms were liberally implemented by the opinions of this Court in *Laba v. Newark Board of Education*, 23 N.J. 364, 381-384 (1957) and *In re Masiello*, 25 N.J. 590, 605-607 (1958), where we stressed the Commissioner's overriding responsibility 'to make certain that the terms and policies of the School Laws are being faithfully effectuated.'"

See also *Kopera v. West Orange Board of Education*, 60 N.J. Super. 288 (App. Div. 1960), involving a wage dispute between a teacher and a board of education in which the Court, referring to the *Masiello* case *supra*, said:

"* * * the Commissioner must determine whether the action under review is violative of the law and, if it is, 'the proper discharge of his duty requires corrective action.'"

Boards of education are given broad discretionary power for the day-to-day operation of the public schools. They may make rules and regulations for the employment, compensation and dismissal of personnel (R.S. 18:6-27), for the proper conduct, equipment and maintenance of the public schools (R.S. 18:6-17), and for their own government and the transaction of business (R.S. 18:6-19). They may grant leaves of absence with or without pay or extended sick leave to employees as they see fit. (R.S. 18:13-23.12); may fix the initial compensation of teachers and grant or withhold salary increments (R.S. 18:13-13.4, 18:13-13.7); and may retire a teacher at any time after age 62 is reached (R.S. 18:13-112.45). The controversies which arise from the exercise of these and other powers of boards of education have been adjudicated in the first instance by the Commissioner of Education under the authority of R.S. 18:3-14 for more than 60 years. The instant matter is a dispute between a local board of education and its employees and as such cannot be other than a controversy under the school laws and therefore subject to the mandate of R.S. 18:3-14. It is the responsibility and duty of the Commissioner of Education, therefore, to hear and decide this appeal.

The Perth Amboy School District is governed by the provisions of Chapter 6 of Title 18. Within the school system there are two competing organizations of teachers. According to the testimony, the Perth Amboy Teachers' Association, petitioners herein, is open to all members of the professional staff including teachers, nurses, supervisory and administrative personnel. The Perth Amboy

Teachers' Union apparently is limited to classroom teachers. It appears that members of the Union called a strike against the Board of Education beginning Monday, November 1, 1965. An *ex parte* restraining order was issued later that same day by the Chancery Division, Middlesex County. On November 8 and 9 the Commissioner received reports from two members of his staff who visited the Perth Amboy schools at his direction. These reports disclosed that the striking teachers had ceased to picket the school in compliance with the order of the Court, but had not returned to work. On November 8 the Board of Education ordered the high school closed. On November 12, the Court issued an interlocutory injunction extending the strike restraint indefinitely. (Ex. P-2) Later that same day the Board of Education entered into an agreement with the Union. (Ex. P-3) Testimony disclosed that petitioners were not consulted and did not participate in the formulation of the agreement. There is nothing in the record to show how and by whom it was prepared or adopted. It is signed by the president of the Board of Education and by the president of the Union and reads as follows:

Article 1, Paragraph 19 of the Constitution of the State of New Jersey provides, 'public employees have the right to organize and present grievances and proposals through representatives of their own choosing.'

Nothing herein shall be construed as abrogating the rights of any individual or organization respecting this constitutional provision. It is understood that the inherent management of the Perth Amboy Public School system is vested in the Perth Amboy Board of Education.

Pursuant to the foregoing, the New Jersey State Board of Mediation and the Honorable Mayor James J. Flynn, Jr., recommend a resumption of normal school operations in Perth Amboy on the following basis:

1. A. The New Jersey State Board of Mediation will conduct an election among eligible classroom teachers for the purpose of determining the wishes of these teachers respecting representation in the Perth Amboy School System.

B. Said election to be conducted on December 3, 1965.

C. The State Board of Mediation will certify the results of said election to all interested parties.

2. A. The organization receiving the most votes in the election will be authorized to negotiate with the Perth Amboy Board of Education on all matters of salary, working conditions and the welfare of its members.

B. Nothing in this section shall in any way abrogate the right of any individual or organization to negotiate as provided in the preamble above.

3. The Perth Amboy Board of Education and Local 857 agree to meet and discuss in a spirit of good faith all items of salary, working conditions and the welfare of its members.

Nothing in this section shall in any way abrogate the right of any individual or organization as provided in the preamble above.

4. A. The Perth Amboy Board of Education and the organization receiving the most votes in Section 1 above will discuss and develop machinery for processing teachers' grievances.

Nothing in this section shall in any way abrogate the right of any individual or organization as provided in the preamble above.

B. It is mutually agreed that said machinery shall contain a provision that unresolved grievances may be referred by either side to a referee. Said referee to be appointed from a panel submitted by the New Jersey State Board of Mediation. The referee shall make recommendations respecting the resolution of the grievance.

C. The expenses for this procedure are to be shared equally between the Board of Education and the appellant.

5. It is hereby mutually agreed that there shall be no reprisals against students or teachers who participated in the current disputes.

6. It is hereby agreed that the Board of Education shall grant to Local 857 the right to check-off.

7. All items pertaining to salary, working conditions, and welfare of its members that are mutually agreed upon by the Board of Education and the teacher representatives shall be adopted by resolution of the Board of Education.

8. All schools will be operative on Monday, November 15, 1965, and the leadership of the Union will urge and recommend all teachers report for work in the usual fashion.

9. Attorneys for both sides shall petition the court for permission to discontinue the pending suit relative to the present controversy.

Date:
11/12/65

Subsequently, petitioner received a letter dated November 22, 1965, signed by the chairman of the State Board of Mediation enclosing the following notice of election. It can be fairly assumed that each classroom teacher whose name appeared on the list furnished to the Mediation Board by respondent received a similar communication.

NOTICE OF ELECTION TO

Eligible Classroom Teachers in the Perth Amboy School System
An election will be held to ascertain whether the teachers of the Perth Amboy School System wish to be represented by the Perth Amboy Teachers Union, Local 857 as their representative.

ELIGIBILITY TO VOTE

CLASSROOM TEACHERS, EXCLUDING PRINCIPALS,
SUPERVISORS, CLERICAL EMPLOYEES, DOCTORS,
NURSES, PSYCHIATRISTS, ATTENDANCE OFFICERS
AND CUSTODIANS.

TIME AND PLACE OF ELECTION

DATE: DECEMBER 3, 1965
TIME: BETWEEN HOURS OF 3:30 P.M. AND 6 P.M.
PLACE: ROOM 118, PERTH AMBOY HIGH SCHOOL

SECRET BALLOT

The election will be by SECRET BALLOT. Voters will be allowed to vote without interference, restraint or coercion. Electioneering will not be permitted at or near the polling place.

A violation of these rules should be reported immediately to the Chairman or his agent in charge of the election.

STATE OF NEW JERSEY
NEW JERSEY STATE BOARD OF MEDIATION
SAMPLE BALLOT

1. Mark an X in one square only.
2. Fold your ballot to conceal the X and personally put it in the ballot box.
3. If you spoil your ballot, return it to the Board's Agent and obtain a new one.

MARK AN "X" IN THE SQUARE OF YOUR CHOICE
DO YOU WISH TO BE REPRESENTED BEFORE THE PERTH
AMBOY BOARD OF EDUCATION IN MATTERS PERTAIN-
ING TO THE WELFARE OF TEACHERS BY:

PERTH AMBOY TEACHERS UNION, LOCAL 857
OTHER ORGANIZATION (SPECIFY)
NONE

Petitioners contend that respondent is without authority to enter into or authorize such an agreement with one group of employees. They argue further that respondent has no authority to permit the New Jersey State Board of Mediation to conduct the subject election, to participate in the settlement of disputes or the establishment of grievance procedures between respondent and its employees. They contend that the broad powers assigned to the State Board of Education and the Commissioner of Education by the Legislature to control and supervise public education preclude the intervention of the State Board of Mediation in public school matters. They claim in any event that the State Board of Mediation is restricted by the law which created it, to intervention only when agreed to by all interested parties and that, therefore, absent the consent of the Association, the Mediation Board is powerless to intervene. Finally, they say that the agreement gives preferential treatment to members of the Union and is therefore unfair and discriminatory with respect to other professional staff employees.

Respondent says it has not violated any law by entering into this agreement with the Union. It states that it was not forced into the agreement but agreed to it as a practical expedient which would permit the Union to save face and end the strike with its harmful effect on the pupils. It takes the position that the "so-called election" is not one in fact but is merely a show of strength; that the Board has not called an election nor will it conduct it or take part in it; and that the election will change or accomplish nothing of any significance. It maintains that no matter what the outcome of the election may be, the Board will continue, as it has in the past, to confer and negotiate with representatives of both groups and with employees who are members of neither organization. It contends that it has done no more than permit the use of a part of the school facilities between certain hours on a specific date by the representative of a State agency, the State Board of Mediation, and made available a complete list of employees of the school district.

Respondent further says that any grievance machinery that it develops will of necessity apply equally to all groups. It admits, however, that it is bound by this agreement to submit unresolved grievances to a referee appointed by the State Board of Mediation. Because the referee's authority is limited to recommendations, with all final decisions resting with the Board of Education and ultimately with the Commissioner of Education and State Board, it finds nothing improper in this arrangement.

Finally, respondent asks the Commissioner to consider its position and the practicalities of the situation. It says that it is caught in the middle of a war between two local groups of employees, which in turn is part of a larger issue between the two state organizations of teachers. It notes the "thinly veiled threat" expressed in the Union's telegram *supra*, and agrees with counsel for petitioner that the Commissioner should not be put in fear of threats nor should his decision be colored by them. Respondent maintains, however, that there is a practical necessity to operate its schools harmoniously in order that its pupils may not suffer and that the agreement will accomplish that purpose without giving anything to the Union or taking anything away from the Association.

The issue raised by this appeal is whether the Perth Amboy Board of Education may enter into the specific Agreement set forth above.

Section 1 of the Agreement provides for an election "among eligible classroom teachers for the purpose of determining the wishes of these teachers respecting representation in the Perth Amboy School System." The election is to be conducted by the New Jersey State Board of Mediation and that Board is to certify the results of the election to all interested parties.

Under the New Jersey Constitution persons in public employment have the right to organize and to have representatives of their own choosing. N.J. Constitution (1947) Art. I, *par.* 19. There is no doubt that the constitutional right of employees to organize and to have their own representation is one which must be given full recognition by governmental authorities. *N.J. Turnpike Auth. v. Amer., etc., Employees*, 83 N.J. Super. 389 (Ch. Div. 1964). An election among employees to determine their wishes with respect to representation would appear to be incident to the exercise of their legal right to organize and to choose representatives. Consequently, it is not impermissible for a local Board of Education to recognize and permit the conduct of elections for representation among its employees.

In the instant case, the Agreement calls for the utilization of the State Board of Mediation in conducting and supervising the election. The Office of the Attorney General has heretofore ruled that the State Board of Mediation has no authority to participate in labor disputes involving public employees. In Formal Opinion 1952, No. 11 of the Attorney General, it was stated that "labor disputes involving public employees are not legally the subject of negotiation between employer and employee, and they are therefore, not within the powers of mediation vested in the Board of Mediation." Since the instant election procedure is an ingredient of a labor dispute involving public employees, the Commissioner is constrained to hold that those provisions of Section 1 of the Agreement, which contemplate the participation of the State Board of Mediation in the election procedure, may not be enforced.

The Agreement provides, in Section 2, that the organization receiving the majority of the votes at the election will be authorized to negotiate with the Board of Education on all matters of salary, working conditions and the welfare of its members. It further specifies that this shall in no way "abrogate the right of any individual or organization to negotiate" as provided in the introductory preamble to the Agreement. This preamble refers to the constitutional provision which accords to public employees the right to organize and to present grievances and proposals through their chosen representatives. It further emphasizes that the Agreement shall not be construed as abrogating the rights of any individual or organization with respect to the constitutional provision and that "it is understood that the inherent management" of the local school system is vested in the local Board of Education.

The critical issue in construing this provision of the Agreement is whether or not it grants to the successful organization the right of exclusive representation and collective bargaining. The Commissioner holds that the Agreement does not so provide and cannot be thus construed. This issue has been raised and settled by our courts. In *N.J. Turnpike Auth. v. Amer., etc., Employees, supra*, it was contended by the Union local that it had the right to bargain collectively with the New Jersey Turnpike Authority. The court held to the contrary, viz:

"Public employees have many desires similar to those of persons in private employment, to wit, fair rates of pay, impartial opportunities for advancement, safe working conditions, review of grievances, and reasonable hours of work. Nothing in the Constitution or statutes of this State renders unlawful the organization of public employees for their mutual interest. Further, they may have representatives of their own choosing present their 'grievances and proposals' to the proper authorities; however, the public interest is always paramount.

"The right to organize does not carry with it the right to collective bargaining. The term 'collective bargaining' is conspicuously absent from the rights conferred upon public employees by virtue of the N. J. Const., *Art. 1, par. 19*. The Attorney General of New Jersey has aptly set forth the reasons therefor, in a memorandum opinion dated October 20, 1954, in response to an inquiry from the South Jersey Port Commission:

"The concept of collective bargaining, as generally understood and applied in the field of private industry, implies bargaining sanctions and weapons not admissible to public employees, such as the right to strike, and other incidents of the private employment relationship not appropriate in the public employment field. It also implies two bargaining entities of co-equal status, each with unlimited power to enter into binding commitments. This does not apply in the case of the State in relation to its employees.'" 83 *N.J. Super.* at 397.

Thus it is settled that no particular employee-representative or organization can claim or assert the right to speak for all employees merely because it represents a majority or a particular percentage of the employee force. Moreover, no employees may bargain collectively with their governmental employers. The local Board of Education is therefore without authority to engage in "negotiations," in the sense of collective bargaining, with any employee organization which is successful at a representation election. The local Board of Education may, and indeed must, deal with such employee-representatives, as well as all employees or employee-representatives who desire to make known their views involving matters of common concern. As stated by the court in *N.J. Turnpike Auth. v. Amer., etc., Employees, supra*, at 397, [the Board] is under an affirmative duty to meet with its employees or their chosen representatives and consider in good faith the 'grievances and proposals.'

It would not be proper for the Board of Education herein to meet with the successful employee organization—or, for that matter, any employee-representative—unless the Board were specifically informed with respect to the individual employees actually represented by the organization or the spokesman. The Constitution, it is to be emphasized, grants to public employees the right to choose their representatives and to present their views through those selected.

As stated in *N.J. Turnpike Auth. v. Amer., etc., Employees, supra*:

"It should be emphasized that any one or more representatives may speak only for those employees who chose them. The Turnpike has no right to recognize a representative of only a segment of its employees as agent for all of the employees of the Turnpike. Therefore, if five separate groups of Turnpike employees each have a different representative, all five representatives are entitled to recognition." 83 *N.J. Super.* at 397-398.

It is therefore not sufficient for an employee organization merely to "represent" a particular number of employees in order to deal with the Board of Education. It must, in some suitable manner, designate those individual employees for whom it purports to speak. It is noted that the election which is proposed to be conducted pursuant to the Agreement calls for secret balloting. Such a secret ballot election, while indicative of the numerical strength behind a given representative, does not serve to inform the Board as to which employees a particular representative in fact represents. Effective and proper representation should be accomplished by presenting the Board with a membership list or some other designation sufficient to inform the Board as to the identity of the persons whose grievances it must consider. For these reasons the Commissioner determines that Section 2, as well as Section 3 of the Agreement, may not be enforced except in the foregoing manner.

Section 4 of the Agreement provides that the Board of Education and the organization receiving the most votes as a result of the election "will discuss and develop machinery for processing teachers' grievances." It is further provided that this shall not abrogate the right of any individual or organization as provided in the preamble to the agreement.

A local board of education has the power to create grievance procedures and an orderly framework within which the complaints of its employees may be presented and resolved. Such procedures are necessary and desirable in order to facilitate and assure the smooth and efficient operation of the local school system. In the formulation of grievance procedures, it is appropriate that the local Board of Education take into account and give due consideration to the views of its employees with respect to such procedures. In the final analysis, however, any decision reached by the Board with respect to grievance procedures must be the result of its independent judgment, taking into full consideration, *inter alia*, the proposals of its employees. *Cf. N.J. Turnpike Auth. v. Amer., etc., Employees, 83 N.J. Super.* at 397. Consequently, the Commissioner determined that Section 4A of the Agreement cannot be implemented except in a manner which will require the Board of Education to consider the views and proposals of the employees or organizations which are presented to it and only on the basis of what the Board considers, as an exercise of its discretion and independent judgment, to be suitable for the school district.

Section 4B of the Agreement recites that, "It is mutually agreed that said machinery shall contain a provision that unresolved grievances may be referred by either side to a referee. Said referee to be appointed from a panel submitted by the New Jersey State Board of Mediation. The referee shall make recommendations respecting the resolution of the grievance."

The Commissioner will not comment on whether or not it is proper for a grievance procedure adopted by a local board of education to utilize third parties to assist in the resolution of employee-employer differences. It may, under appropriate circumstances, be desirable for a board of education to utilize such persons as consultants, mediators or referees. It is to be emphasized,

however, that in this area, as well as others committed to the discretion of the local board, final decisions must reflect the independent judgment of the local board. *N.J. Turnpike Auth. v. Amer., etc., Employees, supra.*

This particular provision of the Agreement specifies that the referee is to be appointed from a panel furnished by the New Jersey State Board of Mediation. Certainly, the provision for a referee, in this context, is in connection with labor disputes involving public employees. As previously noted, the State Board of Mediation does not have jurisdiction to participate in the resolution of labor disputes involving public employees. The Commissioner holds, therefore, that, insofar as Section 4B of the Agreement provides for the participation of the State Board of Mediation in the process of selecting a referee, it cannot be followed.

Section 6 provides that the Board of Education shall grant to Local 857 "the right of check-off." The right of check-off ordinarily means that the Board of Education, with the consent of individual employees, would deduct dues from school employees' wages and remit such amounts to the organization representing the employee.

The right of check-off has been granted to private employees in the *Taft-Hartley Act*, 28 U.S.C.A. 159. There is no specific statute granting or denying to public employees the right of check-off. In the absence of such statute, the Commissioner must seek to determine the intention of the Legislature.

The Legislature has seen fit to enact certain statutory provisions for authorizing deductions from school employees' salaries. The statutes require withholding from compensation for income tax, social security and pension purposes; other statutes permit deductions from salary for hospital service and group insurance plans and the purchase of United States Government bonds and stamps (*R.S. 18:5-50.6*); for summer payment plans (*R.S. 18:5-50.19*); for additional death benefit coverage (*R.S. 18:13-112.80*) for the purchase of supplemental annuities from the Supplemental Annuity Collective Trust (*R.S. 52:18A-112*); and for contributions to United Fund charities (*R.S. 52:14-15.9c*). The existence of these statutes authorizing specific and limited deductions from compensation indicates, under the principle of *expressio unius est exclusio alterius*, that the Legislature intended to limit the power to make salary deductions to those enumerated by law. In fact, under *R.S. 18:5-50.6* and *R.S. 18:5-50.19* the Legislature specifically provided that a school board is "empowered and directed" to deduct specific fees. This indicates that without legislative authorization, boards of education are not empowered to make deductions from school employees' salaries. Several bills which have been introduced in the Legislature from time to time seeking to authorize deductions for check-off have not been enacted into law. In addition, this Department, which is charged with the enforcement of the school laws, has consistently interpreted Title 18 to mean that deductions may not be taken from school employees' salaries unless specifically authorized by statute. The Commissioner holds, therefore, in the absence of enabling legislation, that the Board of Education is not authorized to grant the right to check-off and that Section 6 of the Agreement cannot be enforced.

Section 7 of the Agreement provides that, "All items pertaining to salary, working conditions, and welfare of its members that are mutually agreed upon by the Board of Education and the teacher representatives shall be adopted by resolution of the Board of Education."

We again emphasize that the Board has an affirmative duty to meet with the representatives of all of its employees, and that it has an obligation to take

into account and give full consideration to their "grievances and proposals." The concerns of employees may pertain to such items as salary, working conditions, and the general welfare of employees. It is reiterated, however, that any final decision with respect to these, as well as other items affecting employees and the school district in general, must reflect the independent judgment of the Board. To the extent that this judgment coincides with the proposals, wishes or views of employees, there would be nothing to prevent the Board from implementing its decision. Section 7 of the Agreement does not appear to be inconsistent with these principles and may be applied in accordance therewith.

Section 5 of the Agreement provides that there shall be no "reprisals" against students or teachers who participated in the "current dispute." The Commissioner must stress that in the evolution of this dispute, teachers employed by the local board of education participated in unlawful picketing and an unlawful strike. It has been repeatedly held by our courts that strikes by public employees are prohibited. *Delaware River and Bay Auth. v. International Org., etc.*, 45 N.J. 138, 142 (1965); *N.J. Turnpike Auth. v. Amer., etc., Employees, supra*, 83 N.J. Super. at 395; *Donevero v. Jersey City Incinerator Auth'y*, 75 N.J. Super. 217, 222 (Law Div. 1962) rev'd. on other ground; *McAlleer v. Jersey City International Auth'y*, 79 N.J. Super. 142, 146 (App. Div. 1963). Strikes against government cannot be tolerated. *Norwalk Teachers' Association v. Board of Education*, 138 Conn. 269, 83 A. 2d 482 (Sup. Ct. Err. 1951). Picketing by public employees in furtherance of an illegal purpose is prohibited. *Delaware River and Bay Auth. v. International Org., etc., supra*, 45 N.J. at 150. The Commissioner deplors in strongest possible terms the unlawful activities on the part of teachers in picketing and striking in complete defiance of the law.

It is within the discretion of the local Board of Education to ascertain what, if any, measure should be taken against individuals to assure the continuation of a sound educational system within its district. A board of education may not by agreement create self-imposed reins on its statutory powers or abdicate its primary responsibility to maintain effective discipline within the school system. With respect to the current controversy, which has witnessed a serious interruption of schooling, the Board must not be unmindful of State regulations regarding the minimum number of days required in the school year and it must, of course, enforce compulsory attendance laws. Its paramount obligation is the enforcement of the public school laws and it may not shirk this responsibility. The Commissioner does not imply that Section 5 of the Agreement is inconsistent with the foregoing principles but he does hold that the Board of Education may not act, with respect to teachers and students individually involved in the current controversy, in a manner inimical to its paramount duty under the public school laws.

The Commissioner remands this matter to the Perth Amboy Board of Education to proceed in accordance with this opinion.

COMMISSIONER OF EDUCATION

NOVEMBER 4, 1965

Appendix C

AGREEMENT

on
PROFESSIONAL NEGOTIATIONS
between
the
RED BANK BOARD OF EDUCATION
and
RED BANK TEACHERS ASSOCIATION

Negotiated: August 28, 1966

Adopted by Board of Education:

Adopted by Teachers Association:

PREAMBLE

The Board of Education of Red Bank, New Jersey, and the Red Bank Teachers Association do hereby agree that the welfare of the children of Red Bank Public Schools is paramount in the operation of the schools and will be promoted in as many effective methods as is possible, including but not restricted to the following:

I. RECOGNITION

- A. The Board of Education recognizes the Red Bank Teachers Association for purposes of professional negotiation as the official representative of those employees of the Red Bank School District, including those with tenure, on probation, and on interim but not per diem appointments, who have been certified by the Association as members thereof in good standing and certified by the State Board of Education.
- B. The Red Bank Teachers Association shall certify to the Board of Education the names of members in good standing.
- C. This recognition shall not impair the rights of any employee or group of employees under Section 19 of Article I of the New Jersey Constitution.

II. DEFINITION OF TERMS

- A. **TEACHERS:** Unless otherwise stated, all members of the teaching profession.
- B. **TEACHING PROFESSION:** All members of the profession—classroom teachers, supervisors, principals, and administrators—operating in publicly supported institutions of elementary, secondary, and higher education.
- C. **BOARDS OF EDUCATION:** Governing bodies of publicly supported institutions of elementary, secondary, and higher education.
- D. **PROFESSIONAL CHANNELS:** The administrative channels of a school system or institution.
- E. **IMPASSE:** Persistent disagreement between the parties requiring the use of mediation or appeal procedures for resolution.
- F. **TEACHER-BOARD RELATIONS COMMITTEE:** The continuing committee formed by the Agreement for the purpose of carrying out the provisions of the Agreement. This committee will be composed of no more than six (6) representatives of the Board of Education, six (6) representatives of the Red Bank Teachers Association and the Superintendent of Schools, and no less than three (3) representa-

tives from the Board of Education, three (3) representatives from the Red Bank Teachers Association, and the Superintendent of Schools. The number up to six (6) and the persons who shall constitute the representatives of each side shall be selected by each side. At least one-half of the Board represented shall be members of the Board.

G. CHANNELS FOR MEDIATION AND APPEAL: Advisory and fact-finding channels that may be used to resolve differences in the event of an impasse.

H. GOOD FAITH: To act in harmony with the accepted sense of professional responsibility; to be faithful to one's duty or obligation; to act with good motives and intent; to refrain honestly from taking any unconscionable advantage of the other; to make an honest effort to ascertain the true facts and to reach a decision on the basis of such facts; to act without fraud, collusion, or deceit.

I. PROFESSIONAL NEGOTIATIONS: A set of procedures to provide an orderly method for teachers organizations and school boards through professional channels to negotiate on matters of common concern, to reach agreement on these matters, and to establish channels for mediation and appeal in the event of an impasse.

J. SUBJECTS OF PROFESSIONAL NEGOTIATIONS: The matters of joint concern to a local professional organization and a local school board are included in the broad aim to achieve better schools and a better education for every child. This includes salaries, teaching conditions, summer school salaries when applicable, protection of teachers, leave pay, leave of absence, grievance procedure, community support for the schools and personnel policies. All or any one of these may be the subject of professional negotiations.

III. PRINCIPLES

A. Attaining objectives

1. Attaining of objectives of the educational program of the district requires mutual understanding, cooperation among the Board, the Superintendent, his staff and the professional teaching personnel.
2. To this end, free and open exchange of views is desirable and necessary, with all parties participating in deliberations leading to the determination of matters of mutual concern.

B. Professional Teaching Personnel

1. It is recognized that teaching is a profession requiring specialized qualifications, and that the success of the educational program in the district depends upon the maximum utilization of the abilities of teachers who are reasonably well satisfied with the conditions under which their services are rendered.
2. It is further recognized that teachers have the right to join, or not to join, any organization for their professional or economic improvement but that membership in any organization shall not be required as a condition of employment.
3. It is further agreed that neither the Association nor the Board will discriminate against any person covered by this Agreement on the basis of race, creed, color, national origin, sex, marital

status or membership or participation in, or association with the activities of any employee organization.

C. *Teacher Participation*

The Board, the Board and Superintendent, or designated representatives of the Board and/or administrative staff will meet with the representatives of the Association, following the procedure required by this Agreement, for the purposes of discussion and to reach agreements.

IV. PROCEDURES

A. *Meetings*

1. When a matter has been identified as a proper subject for professional negotiation by either the Board or the Association, the initiating group shall make this known to the Superintendent and discuss it with him, usually after school hours.
2. After meeting with the Superintendent, either the Board or the Association, upon written request, can convene a meeting of the Teacher-Board Relations Committee.
3. Requests for the meetings should contain specific statements as to the reason for the requests and, to be considered under the terms of this Agreement, must be proper subject matter for discussion under the provisions of the Agreement.

B. *Directing Requests Regarding Non-Budgetary Matters*

1. Requests from the Association will be made directly to the Superintendent or his designated representatives. Requests from the Superintendent or the Board or their representatives will be made to the President of the Association.
2. A mutually convenient meeting date shall be set within fifteen (15) working days, exclusive of officially Board designated holidays or vacations, excluding summer vacations, of the date of such request.

C. *Budgetary Requests*

1. Concerning subjects of negotiations, the resolution of which will require consideration in the budget of the school district, the Association will present its requests on or before the first Thursday in October of each year. The Board shall respond in writing at or before the first meeting of the Teacher-Board Committee which must be held on or before the first Thursday in November of each year.

D. *Exchange of Facts, Views*

1. Facts, opinions, proposals and counterproposals will be exchanged freely during the meeting or meetings in an effort to reach mutual understanding and agreement.
2. The Teacher-Board Relations Committee will meet as provided in Paragraph B, this section, titled "Directing Requests Regarding Non-Budgetary Matters," to study the financial resources of the district, tentative budgetary requirements and allocations, trends in salary schedules and fringe benefits wherein they are pertinent to the subject of negotiation.

E. *Requests for Assistance*

1. The participants may call upon competent professional and lay representatives to consider matters under discussion and to make suggestions.

2. All participants have the right to utilize the services of consultants in the deliberations.

F. Agreement

When the participants reach agreement, it will be reduced to writing and become a part of the official minutes of the Board. When necessary, provisions in the agreement shall be reflected in the individual teachers' contracts. The agreement shall not discriminate against any member of the teaching staff regardless of membership or non-membership in any teachers organization.

V. MEDIATION AND APPEAL

If the procedures outlined in Section IV, titled "Procedures," should not result in an agreement satisfactory to both parties, and recognizing that the best interests of the community, the school system, the educational process and all participants therein, will best be served by making every effort to resolve all disputes as near the local level as is possible, the following procedure will be followed in the event that agreement is not reached unless the Board shall in its option elect to proceed directly to the Advisory Board, Section E hereafter:

- A. The Association representatives and the Board representatives shall present separate reports stating their points of agreement and disagreement to the full Board. A mutually convenient meeting date shall be set within ten (10) work days, exclusive of officially Board designated holidays or vacations falling within the normal school year, of the date of such requests. It is specifically understood and agreed, however, that no hiatus in this procedure shall be occasioned by the occurrence of the regular summer vacation.
- B. Facts, opinions, proposals and counterproposals will be exchanged freely during the meeting or meetings in an effort to reach mutual understanding and agreement. The Association Welfare Committee, the Board and the Superintendent will act, as far as possible, as a committee of the whole, reviewing all matters pertinent to the issues which are the subject of negotiation.
- C. Paragraph E of Section IV, title "Procedures," applies in these circumstances.
- D. Paragraph F of Section IV, titled "Agreement," applies in these circumstances.
- E. Advisory Board: In case of disagreement about the meaning or application of this Agreement, or if an impasse is reached during professional negotiations the procedure will be as follows, however, the subject of whether or not an impasse exists will never be submitted to arbitration:
 1. The matter will be submitted to an Advisory Board which will convene within fifteen (15) calendar days after the request of either party to the other, if such time limit can possibly be met. Wherever possible, the Advisory Board will undertake to mediate the dispute in an effort to resolve the difference between the parties before conducting hearings.
 2. To insure that such Advisory Board will convene with all possible dispatch, the Board and the Association shall each designate a member of the Advisory Board within three (3) calendar days of receipt, by certified mail, of the request by one party upon the other, for the appointment of such Advisory Board.

3. The two so designated advisors will designate a third member who shall be chairman. If the two named advisors fail to agree upon a third member to function as chairman within eight (8) calendar days of the request which had been made by certified mail of one party upon the other, either of the two so designated advisors is empowered to request the State Commissioner of Education to: appoint the third member if he will do so, or to convene a totally new committee, or to appoint one individual to study the situation and function as a committee of one, to make an advisory recommendation, or to take such other action as he deems best to resolve the dispute. In exceptional circumstances, either the Association or the Board can request the Commissioner to make such appointment from persons not involved in Monmouth County. In the event the Commissioner of Education refuses to act as requested herein, the two parties shall mutually request the American Arbitration Association to submit a roster from which a third party can be selected. Each party to this agreement retains the right to reject all names on the first roster with the further understanding that if they cannot reach agreement on names submitted on the second roster that such appointment will be made directly by the American Arbitration Association.
 4. The chairman, whether appointed by the two advisors, the State Commissioner of Education, or the American Arbitration Association, shall then convene the Advisory Board as closely to the desired fifteen (15) calendar day period as is practicable.
 5. The Board and the Association, during an additional fifteen (15) calendar day period after receiving the advisory recommendations, will meet in an attempt to reach agreement on the recommendations submitted to each. No items other than those submitted as advisory recommendations will be considered or introduced into these series of meetings.
 6. If such agreement is reached, paragraph F of Section IV, titled "Agreement" will apply in these circumstances and neither the Board nor the Association will publicize the recommendations of the Advisory Board.
 7. If such agreement based upon the advisory recommendations is not reached, either the Board or the Association is free to follow any course of action legally its right.
 8. The Advisory Board shall limit itself to the issues submitted to it and shall consider nothing else.
- F. In recognition of the fact that full, complete and orderly channels have been established for the peaceful and just settlement of all disagreements arising under the terms of the Agreement, the Association, therefore, agrees to take no concerted action as described or defined by the word "sanctions" against the school board or the school district except as agreed in sub-section 7, paragraph E, this section.

VI. COSTS

In recognition of the fact that this Agreement provides opportunity for utilizing the services of individuals not a party to the Agreement, and to use them in an advisory or consultant basis by either of the parties unilaterally or jointly, it is agreed that:

- A. If such individual is retained by one party in the behalf of that party, the fees and expenses will be wholly borne by the party making such retention.
- B. If such individual is retained by both parties jointly, as a mutually agreeable consultant or advisor, the fees and expenses of the individual will be equally shared by the Board and the Association.
- C. If any individual or committee is appointed under the terms of this Agreement by the State Commissioner of Education or the American Arbitration Association, the fees and expenses of such individual or committee will be equally shared by the Board and the Association.

VII. GENERAL

- A. Subject matter which is not covered by the definition for "Subjects for Professional Negotiations."
 - 1. In the event the Association or the Board desires to make any proposal the subject matter of which is not covered by the terms of this Agreement, the initiating group shall make this known in writing to the Superintendent of Schools, who shall meet with the party making the proposal within ten (10) working days of receipt of said written communication by him. After hearing the matter, the Superintendent of Schools shall formally communicate his judgment or opinion concerning the proposal to the Board and Association within ten (10) working days, and is free to communicate or confer with either party in the interval.
 - 2. After the Superintendent has formally communicated his judgment or opinion concerning the proposal to the Board and the Association, either the Board or the Association, upon written request, can convene a meeting of the Teacher-Board Relations Committee. Requests for the meetings should contain specific statements as to the reason for the requests.
 - 3. Requests from the Association will be made directly to the Superintendent or his designated representative. Requests from the Superintendent or the Board or their representatives will be made to the President of the Association. A mutually convenient meeting date shall be set within fifteen (15) working days, exclusive of officially Board designated holidays or vacations, of the date of such request.
 - 4. Facts, opinions, proposals and counterproposals will be exchanged freely during the meeting or meetings in an effort to reach mutual understanding and agreement. The Teacher-Board Relations Committee will meet as provided in Section IV, paragraph B, titled "Directing Requests Regarding Non-Budgetary Requests," to study, if necessary, the financial resources of the district, tentative budgetary requirements and allocations, trends in salary schedules and fringe benefits and all other matters pertinent to the issue under negotiation.
 - 5. The participants may call upon competent professional and lay representatives to consider matters under discussion and to make suggestions. All participants have the right to utilize the services of consultants in the deliberations.
 - 6. When the participants reach agreement, it will be reduced to writing and become a part of the official minutes of the Board. When necessary, provisions in the agreement shall be reflected in

the individual teachers' contracts. The agreement shall not discriminate against any member of the teaching staff regardless of membership or non-membership in any teachers organization.

7. If such procedure does not result in agreement, the Association representatives and the Board representatives shall present separate reports stating their points of agreement and disagreement to the full Board. A mutually convenient meeting date shall be set within ten (10) work days, exclusive of officially Board designated holidays or vacations falling within the normal school year, of the date of the first written statement presented to the full Board. It is specifically understood and agreed, however, that no hiatus in this procedure shall be occasioned by the occurrence of the regular summer vacation.
 8. Facts, opinions, proposals and counterproposals will be exchanged freely during the meeting or meetings in an effort to reach mutual understanding and agreement. The Association Welfare Committee, the Board and the Superintendent will act, as far as possible, as a committee of the whole, reviewing the financial resources of the district, tentative budgetary requirements and allocations, trends in salary schedules and fringe benefits and other matters.
 9. Paragraph E of Section IV, titled "Procedures," applies in these circumstances.
 10. Paragraph F of Section IV, titled "Agreement," applies in these circumstances.
 11. The Association and the Board agree that any subject matter negotiated under the terms of this paragraph A of Section VII titled "General" which is not resolved by the parties is not subject to advisory arbitration. In the event of an impasse in this section, either party may request the services of a moderator from the American Arbitration Association and upon agreement by the other party, the two shall join together in requesting the appointment by the American Arbitration Association, the cost of such moderator to be borne equally by the parties.
- B. Meetings between representatives of the Association and the Board made at the request of either party under the provisions of subsections (1) and (2), paragraph A titled "Meetings," of Section IV titled "Procedures" of this agreement will pertain only to matters defined under the term "Subjects for Professional Negotiations" as defined in Section II titled "Definitions" or under the provisions of paragraph A, this section VII titled "General" and shall not apply to the kind of topic that is dealt with.
1. The Grievance Procedure, which is expressly removed from the provisions of Section V, entitled "Mediation and Appeal" of this Agreement.
 2. Any matter for which there is a method of review prescribed by law or by any rule or regulation of the State Commissioner of Education having the force and effect of law, it being the understanding and agreement of the parties that matters may be negotiated which could be treated under statutory procedures under the definition "Controversy or Dispute" and that neither party waives its right to follow the procedures under such laws, rules

and/or regulations to resolve such differences. However, both parties by mutual agreement may elect to employ the procedures utilized herein, though alternative areas of consideration are available in the State Department of Education.

3. Any matter on which the Board of Education is without the legal authority to act.
 4. Any topic which is dealt with through the usual school activities such as faculty or workshop meetings and other intra-communicative media within the school system.
- C. In order to retain the designated classification of "official" representative of the teachers of the Red Bank Public Schools, used and interpreted by the Agreement, the Association agrees to give the Board a properly certified membership list no later than February 1st of each year this Agreement is in effect, beginning with February 1, 1967.
- D. The Board of Education reserves to itself sole jurisdiction and authority over matters of policy and retains the right, in accordance with applicable laws and regulations, (a) to direct employees of the school district, (b) to hire, promote, transfer, assign, and retain employees in positions within the school district, and to suspend, demote, discharge, or take other disciplinary action against employees, (c) to relieve employees from duties because of lack of work or for other legitimate reasons, (d) to maintain the efficiency of the school district operations entrusted to them, (e) to determine the methods, means and personnel by which such operations are to be conducted; and (f) to take whatever actions may be necessary to carry out the mission of the school district in situations of emergency. Where policies have been or shall be adopted by the Board of Education in any or all of these areas, questions and issues arising thereunder shall be subject to the Grievance Procedure, subject to the term "grievance" as defined in the Grievance Procedure, and, where appropriate, Section IV hereof. In the absence of existing policy the parties may initiate negotiation proceedings toward adoption of policy, but no grievances may be processed hereunder until the adoption by resolution of the Board of Education of such policy.
- E. Both parties recognize that the rights of minority groups and of individuals must be respected. Special privileges for meeting with the Board cannot be granted only to majority groups. These same privileges must be granted to minority groups and individuals if they so request.
- F. In the event either party during any period of negotiations or grievance adjustment under the terms of this Agreement charges the other party with "bad faith," or uses any term or statements whose meaning can be construed to mean "bad faith," defined as the opposite of "good faith" as defined under paragraph H, Section II titled "Definition of Terms," the party so charging agrees to either retract its charge publicly or to submit its charge to a fact-finder from the American Arbitration Association who will make a public announcement of his findings. The cost of such fact-finder is to be borne by the loser.
- VIII. CONFORMITY TO LAW — SAVINGS CLAUSE**
- A. If any provision of this Agreement is or shall at any time be contrary to law, then such provisions shall not be applicable or performed or enforced, except to the extent permitted by law.

- B. In the event that any provision of this Agreement is or shall at any time be contrary to law, all other provisions of this Agreement shall continue in effect.
- C. It is understood that, under the rulings of the courts of New Jersey and the State Commissioner of Education, the Board of Education is forbidden to waive any rights or powers granted it by law.
- D. The grievances of a non-tenure teacher which arise by reason of his not being re-employed will not be the subject of the Grievance or Negotiation Procedure. Upon the request of such non-tenure teacher, the Board will hear the arguments of such affected non-tenure teacher in closed session and will indicate only its decision to affirm or deny the recommendation of the administration. The Association agrees not to impose sanctions of any kind in the event of an adverse decision in such case and will consider it a closed matter.
- E. In the event legislation is enacted in the State of New Jersey affecting the terms of the Agreement, the parties agree to meet under the provisions of Section IV, titled "Procedures" and Section V, titled "Mediation and Appeal" to re-negotiate such changes.

IX. DISCUSSIONS BASED UPON BUDGETARY DEMANDS

- A. The provisions of this Agreement shall be effective upon the receipt by the Board of a resolution from the Association and the incorporation of such resolution into the Official Minutes of the Association stating its acceptance of the terms of the Agreement, and upon resolution of the Board of Education and the incorporation of such resolution into the Official Minutes of the Board.
- B. Either the Board or the Association may, between February 15th and April 1st of any year, request the other to consider additional topics for inclusion under "Subjects for Professional Negotiations," under the provisions of Section IV titled "Procedures" and Section V titled "Mediation and Appeal."

REVISED GRIEVANCE PROCEDURE POLICY

December 14, 1965—the Board believes in the right of an employee, who feels he has a grievance, to be free to carry his appeal, if he wishes, to the ultimate authority of the school system—namely, the Board of Education, and further, to be able to appeal to an Advisory Board if unable to resolve his grievance at the Board level. The Board also believes in supporting the authority of the school administration to render decisions at the level of responsibility officially assigned to them in the organizational structure. An individual teacher, with respect to his personal professional grievances, shall be guaranteed the right to appeal on policies and administrative decisions affecting him and shall be assured freedom from restraint, interference, coercion, discrimination, or reprisal in presenting his appeal.

1. Definition

A "Grievance" shall mean a complaint by an employee in the bargaining unit (1) that there has been as to him a violation, misinterpretation or inequitable application of any of the provisions of the Agreement or (2) that he has been treated unfairly or inequitably by reason of any act or condition which is contrary to established policy or practice governing or affecting employees, except that the term "grievance" shall not

apply to any matter as to which (1) a method of review is prescribed by law or by any rule or regulation of the State Commissioner of Education having the force and effect of law, or by any by-law of the Board of Education or (2) the Board of Education is without authority to act. As used in this definition, the term "employee" shall mean also a group of employees having the same grievance.

2. Procedure

- a. The employee shall present his complaint, in writing, to his immediate supervisor or building principal, whichever is applicable, and this initial complaint shall make known the full details of his grievance.
- b. The employee, in the event of an unfavorable decision to the employee, may appeal a decision to each next higher authority in turn. The sequence shall be (starting at the lowest appropriate level): supervisor, building principal, superintendent, board of education. The complete file shall be transmitted by the administration at each stage of the proceedings.
- c. The supervisor and building principal shall render a written decision within one week of receiving the complaint.
- d. The superintendent shall review the materials submitted to him. He must discuss the issue with all the involved parties present, and shall render a written decision within ten days after receiving the file from the building principal.
- e. To carry an appeal to the Board, an employee shall submit to the Board Secretary a request, in writing, that the Board hear the matter. The President shall determine whether to schedule the appeal for an executive session at the next regular meeting or at a special meeting, either of such meetings to be no later than three weeks after the date of the receipt of the written request. The employee, the building principal and the superintendent shall attend. The Board shall review the case and render a written decision within one month from the date of the receipt of the written request.
- f. At each stage of the appeal, the employee may supplement, in writing, the original complaint with any relevant matter.

3. Provision for Appeal to an Advisory Board

- a. If the employee is not satisfied with the decision of the Board of Education, such grievance may be submitted to an Advisory Board as provided for in paragraph E, section V titled "Mediation and Appeal," of the Agreement on Professional Negotiations in existence between the Red Bank Board of Education and the Red Bank Teachers Association.
 - b. Both parties will attempt to present all evidence at the Board level.
 - c. If an Advisory board is convened under this "Grievance Procedure Policy" its attention is specifically directed to sub-paragraph 8, paragraph E, Section V titled "Mediation and Appeal" of the Agreement on Professional Negotiations agreed to by both the Board of Education and the Red Bank Teachers Association.
4. An employee may have a legal representative and/or other representative in attendance when meeting with the superintendent and/or the Board of Education and/or the Advisory Board, if convened as provided

in paragraph 3, titled "Provision for Appeal to an Advisory Board," of this Grievance Procedure Policy.

5. The Board agrees that it will apply to all substantially similar situations the decision of an Advisory Board sustaining a grievance and the Association agrees that it will not bring or continue, and that it will not represent any employee in, any grievance which is substantially similar to a grievance denied by the decision of an Advisory Board.
6. If an Advisory Board is convened under this "Grievance Procedure Policy" the Red Bank Board of Education is responsible only for the cost of its designated advisor and one-half the cost of the third man who shall function as chairman.

Appendix D

STATEMENT ON BEHALF OF THE STATE FEDERATION OF DISTRICT BOARDS OF EDUCATION PREPARED FOR THE PUBLIC HEARING BEFORE THE PUBLIC AND SCHOOL EMPLOYEES' GRIEVANCE PROCEDURE COMMISSION, MARCH 15, 1967

Dr. Bernstein and members of the Public and School Employees' Grievance Procedure Commission:

I am Mrs. Ruth H. Page, Executive Director of the State Federation of District Boards of Education. The Federation is grateful for the opportunity of appearing before you to present its views on the controversial subject of the relationship of public employees to boards of education and governing bodies.

It is now well known that teachers in New Jersey and elsewhere have become increasingly militant in the past few years. Typically, they demand increased economic benefits and seek the right for broad participation in policy determination, once held to be the sole prerogative of the board of education. Teachers are rapidly insisting upon the use of formal procedures, not unlike collective bargaining, to ensure them a voice in policy making. They demand recognition of their organizations as exclusive agents representing them and have resorted to pressure tactics in some cases to force acceptance of their proposals.

School board members in New Jersey recognize that there are constitutional and legal limitations upon their powers to accede to some of the demands teachers make. Many boards have tried with varying success to develop policies cooperatively with their teachers, and many regularly consult their staff members concerning policies which affect their welfare. Nevertheless, there has been a sufficient number of disputes which have caused disruption of school systems and consequent demoralization of those affected, to make members of the State Federation of District Boards of Education realize that some legislation is necessary to specify procedures which boards may use to provide meaningful participation of staff members in the formulation of policy on matters which concern their welfare.

There has been unrest among public employees in other areas of government and despite the law and injunctions against them, strikes have occurred. The State Federation of District Boards of Education believes that in today's world the school system and the education of children, as well as all areas and agencies of government, will be better served if a law is devised permitting negotiations between public employees and their employers. **THE STATE FEDERATION OF DISTRICT BOARDS OF EDUCATION RECOMMENDS, THEREFORE, THAT LEGISLATION DEVISED BY THE COMMISSION COVER ALL PUBLIC EMPLOYEES OF THE STATE UNDER A SINGLE STATE AGENCY.**

While we believe such legislation should develop procedures for all public employees, my presentation will, naturally, be concerned with the need for and the application of such legislation to public school employees. In this respect, the Federation wishes to offer a number of suggestions.

The Attorney General's formal opinion No. 11 of 1952 holds that the New Jersey State Board of Mediation has no jurisdiction over disputes arising between political subdivisions of our government and their employees, since such disputes cannot "legally be made the subject of negotiations between the employees and the employer." The Attorney General cited an earlier opinion of a previous Attorney General, dated January 12, 1944, in which the view was expressed that in the absence of any law on our statute books which authorizes such a bargaining agreement, governing bodies "have not the power to engage in any such undertaking."

Nevertheless, the American Federation of Teachers advocates the use of collective bargaining, and its local affiliates urge the practice upon local boards. The National Education Association recommends professional negotiations, a process very like collective bargaining. The New Jersey Education Association concurs and its local affiliates similarly urge this practice. Boards themselves enter practices, called by one name or another, which are actually euphemisms for collective bargaining, from which boards are enjoined by the previously cited ruling of the Attorney General.

THE STATE FEDERATION OF DISTRICT BOARDS OF EDUCATION RESPECTFULLY SUGGESTS THAT LEGISLATION DEALING WITH RELATIONSHIPS IN PUBLIC EMPLOYMENT PROVIDE, WITHIN THE LIMITATIONS IMPOSED BY THE CONSTITUTION, A MEANS FOR PUBLIC GOVERNING BODIES AND BOARDS OF EDUCATION TO NEGOTIATE WITH THEIR EMPLOYEES.

In the absence of any more effective practice, it would seem that the legislated process should follow that which is used in collective bargaining or so-called professional negotiations, which is practically the same thing. Such limitations as are necessary because of the unique character of public employment should be imposed on the process. **THESE MIGHT INCLUDE PROVISION FOR ADOPTION BY RESOLUTION OF THE FINAL AGREEMENT AS A DECISION BY THE GOVERNING BOARD.**

Once the principle of negotiations in public employment becomes accepted, it immediately becomes necessary to determine who will negotiate for the employees.

THE STATE FEDERATION OF DISTRICT BOARDS OF EDUCATION PROPOSES THAT EXCLUSIVE RECOGNITION BE PERMITTED FOR NEGOTIATING PURPOSES BUT THAT INDIVIDUAL RIGHTS GUARANTEED BY THE NEW JERSEY CONSTITUTION BE PROTECTED.

Without provision for exclusive representation, it is quite possible that boards in our largest districts could be called upon to negotiate with 20 or more groups, an almost impossible and certainly an unworkable task. The Federation agrees, however, that individual employees or minority groups should be able to present their proposals to the board and have their grievances processed independently of the negotiating unit. The board would not be required to negotiate with such groups. We would suggest that some provision be made so that the exclusive negotiating unit would have the privilege of observing when a grievance was processed independently of the negotiating unit.

There is some question as to who should be represented in negotiating groups. The union believes administrators and supervisors should be excluded from a teacher negotiating unit. The makeup of various agencies in public employment is such that it would be difficult to legislate the composition of a negotiating unit.

THE STATE FEDERATION OF DISTRICT BOARDS OF EDUCATION RESPECTFULLY SUGGESTS THAT RECOMMENDED LEGISLATION PROVIDE THAT UNIT DETERMINATIONS BE MADE AT THE LOCAL LEVEL RATHER THAN SPECIFICALLY SPELLED OUT IN STATE LAW. Each clear-cut unit, such as classroom teachers, principals, etc., should have the right to decide for itself by secret ballot the negotiating agency the members wish to represent them.

THE STATE FEDERATION OF DISTRICT BOARDS OF EDUCATION FURTHER SUGGESTS THAT REPRESENTATION ELECTIONS BE HELD AT A SPECIFIED TIME OF THE YEAR TO DETERMINE NEGOTIATING UNITS AND THAT ANY AGREEMENT SHOULD HAVE A MAXIMUM DURATION OF TWO YEARS, THE TIME TO BE RELATED TO THE EXTENT OF THE AGREEMENT IN FORCE. No further election could be held during the duration of the agreement.

Teacher organizations list a wide variety of subjects as suitable for negotiations. The Federation emphatically believes that educational matters should not be thrown into the conflict of negotiations. Matters relating to children's welfare should not be settled with muscle and militancy. Such policies should be determined by the board after consultation with teachers. Boards need the expert advice of teachers and they should set up their own consultative machinery for determination of educational policies.

THE STATE FEDERATION OF DISTRICT BOARDS OF EDUCATION STRONGLY URGES THAT SUBJECTS FOR NEGOTIATIONS BE LIMITED TO MATTERS OF SALARY AND OTHER TERMS OF EMPLOYMENT.

Admittedly, even this description is subject to debate. Nevertheless, there is good precedent in the history of collective bargaining for this limitation, and boards and staff can exercise their creative abilities in arriving at satisfactory resolutions of questions as they arise.

If this limitation is unacceptable to the Commission and the Commission desires to broaden the list of subjects for negotiations, then **THE STATE FEDERATION OF DISTRICT BOARDS OF EDUCATION WOULD URGE THAT ONLY DISPUTES RELATING TO SALARIES AND OTHER TERMS OF EMPLOYMENT BE SUBJECT TO APPEAL PROCEDURES.** The Federation's reasoning on this point should be obvious. The Federation firmly believes teachers should be consulted on all curriculum matters. Decisions concerning these matters must not be subject to pressure or conflict.

THE STATE FEDERATION OF DISTRICT BOARDS OF EDUCATION FAVORS THE USE OF MEDIATION AND/OR FACT-FINDING IN CASE OF AN IMPASSE IN NEGOTIATIONS. Until such time as it is proven that these measures are insufficient to secure agreement, **THE STATE FEDERATION OF DISTRICT BOARDS OF EDUCATION OPPOSES THE USE OF ARBITRATION.** It is almost impossible to provide for arbitration which, in effect, is the use of a person from outside the local community to determine a major cost reflected in the local tax structure, without making the use of arbitration so easy as to negate the actual use of negotiations between the primary parties. The State Federation of District Boards of Education believes that such negotiations are good for the educational process and should be encouraged. Providing for arbitration will discourage, rather than encourage, negotiations.

THE STATE FEDERATION OF DISTRICT BOARDS OF EDUCATION IS, HOWEVER, IN FAVOR OF THE USE OF ADVISORY ARBITRATION IN RESOLVING A GRIEVANCE OF AN INDIVIDUAL EMPLOYEE. If advisory arbitration is permitted, the term "grievance" must be defined so that it relates only to the application or interpretation of the contract as it applies to the individual employee. This procedure is in practice in agreements between the various unions and the agencies of the federal government.

The right of an individual to institute a grievance and carry it to arbitration without recourse to any negotiating agent must be retained. Cost incurred in advisory arbitration must be borne by the parties to the dispute. The cost should be borne equally by the parties involved and each party should also bear the cost it has incurred to prepare and present its case.

ONCE AGREEMENT IS REACHED IN NEGOTIATIONS BETWEEN THE PARTIES, AN AGREEMENT TO THAT EFFECT SHOULD BE WRITTEN AND SIGNED. THE AGREEMENT SHOULD COVER A SPECIFIED PERIOD OF TIME AND SHOULD BE ENFORCEABLE UPON BOTH PARTIES. Negotiations should be restricted to one specified time interval rather than being permitted throughout the school year.

If legislation such as recommended by the State Federation of District Boards of education is instituted, there is no reason for the use of any pressure tactics which disrupt the normal school operation. **THEREFORE, STRIKES, REPORTING LATE, SICK LEAVES, LEAVING EARLY, REFUSAL TO PERFORM DUTIES AFTER REGULAR TEACHING HOURS AND ANY OTHER CONCERTED ACTIVITY WHICH IS DISRUPTIVE TO THE EDUCATION OF CHILDREN SHOULD BE EITHER FORBIDDEN OR MADE SO EXPENSIVE THAT THEY DO NOT OCCUR.**

FINALLY, THE STATE FEDERATION OF DISTRICT BOARDS OF EDUCATION RECOMMENDS THAT AN INDEPENDENT AGENCY, SUCH AS IS RECOMMENDED IN NEW YORK AND EXISTS IN WISCONSIN, BE ESTABLISHED BY THE LEGISLATURE TO PROVIDE FOR THE ADMINISTRATION OF THE LEGISLATION AND TO HANDLE REPRESENTATIVE ELECTIONS AND APPEAL PROCEDURES. THE AGENCY SHOULD BE KNOWN AS THE "PUBLIC EMPLOYMENT RELATIONS BOARD." Its membership should be made up of people competent in the various fields of public employment. Among its duties would be the responsibility to:

- (a) Oversee elections for the purpose of determining proper units for negotiating, with such elections to be held at a specified period during the school year in order to minimize disruption of the educational process;

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- (b) Develop criteria for the selection of mediators with special competencies in the various fields of public employment and assign such personnel to disputes.

The Public Employment Relations Board might properly come under, the jurisdiction of the Department of State in the Executive Branch of the state government.

The suggestions which we offer have been arrived at as a result of a five year study of the problems boards face in dealing with their teachers. In our efforts to suggest ways of resolving these problems, we have been mindful of the differences between public and private employment and of the body of legal restrictions which has heretofore influenced our efforts to resolve our difficulties with our employees.

We sincerely hope an equitable, legal means can be found for resolving problems which will preserve the rights and dignity of public employees and will provide adequate protection for the public whom the boards of education and the various governing bodies represent.