SETON HALL LEGISLATIVE JOURNAL

VOL. 3 FALL 1977 NO. 1

NEW JERSEY ADOPTS COMPULSORY ARBITRATION OF LABOR DISPUTES IN PUBLIC FIRE AND POLICE DEPARTMENTS: P.L. 1977 c.85

*by Robert H. Messerman**

The New Jersey Employer-Employee Relations Act [1] has been amended to provide for compulsory arbitration of labor disputes in public fire and police departments.[2] The terms "public fire department" and "public police department" have been defined broadly to include virtually all firefighting, law enforcement, and correction personnel.[3] New Jersey now joins a growing number of states which have enacted laws providing for binding arbitration as the terminal step for resolving interest disputes for certain categories of public employees.

Section one of the newly enacted statute clearly spells out the intent of the Legislature. The intent is to provide an alternative procedure for resolving labor disputes for those public employees (police officers and firefighters) who cannot utilize the remedies available to employees in the private sector:

> It is the public policy of this State that in public fire and police departments, where public employees do not enjoy the right to strike, it is requisite to the high morale of such employees and the efficient operation of such departments to afford an alternative, expeditious, effective and binding procedure for the resolution of dis-

---

* B.S., 1960, New York University; Ed.D., 1976, University of Sarasota; J.D., 1963, Temple University; Lecturer in Legal Studies, The Wharton School, University of Pennsylvania; Coadjutant Assistant Professor of Business Law, Rutgers University (Camden).

[1] N.J. STAT. ANN. §§ 34:13A-1 to -13 (West 1965 & Supp. 1978-1979).

[2] An Act providing for compulsory arbitration of labor disputes in public fire and police departments; prescribing a procedure therefor, and the enforcement thereof, and supplementing the "New Jersey Employer-Employee Relations Act," approved April 30, 1941 (P.L. 1941, c.100, C.34:13A et seq.); as said short title was amended by P.L. 1968, c.303, ch.85, 1977 N.J. Adv. Law Serv. (codified at N.J. STAT. ANN. §§ 34:13A-14 to -21).

[3] N.J. STAT. ANN. § 34:13A-15 (West Supp. 1978-1979).

> putes, and to that end the provisions of this act, providing compulsory arbitration, shall be liberally construed.[4]

This article deals with the highlights of the new legislation, along with several other important areas concerning employee relations in the public sector. The following topics are discussed in light of the new law: right to strike; development of dispute settlement legislation; compulsory arbitration; and resolution of contract disputes in the public sector.

Right to Strike

Most state statutes concerned with public employment relations prohibit strikes by public employees.[5] The language of the new statute makes reference to the fact that in New Jersey, "public employees do not enjoy the right to strike."[6] This language seems to indicate at least by inference, if not directly, that strikes by police officers and firefighters are illegal in New Jersey. The New Jersey Employer-Employee Relations Act, and earlier amendments thereto, is void of specific language which makes strikes by public employees illegal.[7] In any event, a number of New Jersey court decisions have held that public employees do not have the right to strike.[8]

As a general proposition, strikes by federal and state public employees are almost universally prohibited either by statute or by judicial decision.[9] New Jersey courts have held that public employees, as agents of the government who serve a public purpose, are entirely different from employees in private industry, in that a strike by the former would contravene the public welfare and paralyze society.[10]

---

[4] *Id.* § 34:13A-14.

[5] *See, e.g.*, MINN. STAT. ANN. § 179.64 (West Supp. 1978); MICH. COMP. LAWS ANN. § 423.201 (Supp. 1978-1979); MO. REV. STAT. § 105.530 (Supp. 1978); N.Y. CIV. SERV. LAW art. 14 § 200 (McKinney Supp. 1977-1978); TEX. REV. CIV. STAT. ANN. art. 5154 c (Vernon Supp. 1978).

[6] N.J. STAT. ANN. § 34:13A-14 (West Supp. 1978-1979).

[7] *But see* N.J. STAT. ANN. § 34:13A-8 (West Supp. 1978-1979) which reads as follows: "Nothing in this act shall be construed to interfere with, impede or diminish in any way the right of *private* employees to strike or engage in other lawful concerted activities." (emphasis added). This section was amended in 1968 by the addition of the above italicized word. *Id.* The intent of the Legislature to exclude public employees from striking was clear, at least inferentially.

[8] Board of Educ. of Borough of Union Beach v. N.J. Educ. Ass'n, 96 N.J. Super. 371, 233 A.2d 84 (Ch. Div. 1967), *aff'd*, 53 N.J. 29, 247 A.2d 867 (1968); Delaware River and Bay Auth. v. International Organization of Masters, Mates & Pilots, 45 N.J. 138, 211 A.2d 789 (1965); Donevero v. Jersey City Incinerator Auth., 75 N.J. Super. 217, 182 A.2d 596 (Law Div. 1962), *set aside on other grounds*, 79 N.J. Super. 142, 190 A.2d 891 (App. Div. 1963).

[9] *See* Annot., 37 A.L.R. 3d 1147 (1971).

[10] N.J. Turnpike Auth. v. American Fed'n of State, County and Mun. Employees, 83 N.J. Super. 389, 200 A.2d 134 (Ch. Div. 1964); Donevero v. Jersey City Incinerator

> Despite official disapproval, strikes are hardly unknown to public employment. A work stoppage of several weeks took place in June 1836 at the Philadelphia Navy Yard to achieve a ten-hour day, which had become generally established elsewhere in that city. Two of the best-known stoppages in public employment in United States history were the Watertown Arsenal strike in August 1911 over the introduction of the F.W. Taylor method of time study and the strike of the Boston policemen of September 1919, which was broken by the State Guards under the direction of Calvin Coolidge and which contributed significantly to his rise in national office.[11]

The new legislation is an attempt to provide certain categories of public employees with an alternative method of resolving their labor disputes, absent the right to strike which is enjoyed by those in the private sector. To date only police officers and firefighters are covered by this legislation. It remains to be seen whether other classifications of public employees will be included at a later date.

Public employees are generally excepted from coverage under the National Labor Acts.[12] The argument, however, is often presented that when a state statute is patterned after the federal Norris-LaGuardia Act[13] and prohibits the issuance of injunctions against strikes arising out of a labor dispute, except under certain restrictions, such statute acts as a bar to the issuance of an injunction against a strike by public employees.[14] This argument is generally dismissed by the courts since most of these state statutes except public employees from their operation.[15]

As a further proposition, public employees, even in the absence of express statutory prohibition, are generally denied the right to strike against a public employer. New Jersey court decisions have held that the following public employees do not have the right to strike: municipal incinerator

---

Auth.,75 N.J. Super. 217, 182 A.2d 596 (Law Div. 1962), *set aside on other grounds*, 79 N.J. Super. 142, 190 A.2d 891 (App. Div. 1963).

[11] A. Cox & D. Bok, Cases and Materials on Labor Law 968 (7th ed. 1969).

[12] B. Fisher, Introduction To The Legal System 588 (2d ed. 1977).

[13] 29 U.S.C. §§ 101-115 (1976).

[14] *See* School Dist. for the City of Holland, Ottawa and Allegan Counties v. Holland Educ. Ass'n, 380 Mich. 314, 157 N.W.2d 206 (1968).

[15] *See, e.g.*, N.J. Turnpike Auth. v. American Fed'n of State, County and Mun. Employees, 83 N.J. Super. 389, 200 A.2d 134 (Ch. Div. 1964); *see generally* Annot., 37 A.L.R. 3d 1147, 1152 (1971).

employees,[16] highway personnel,[17] river authority employees,[18] and public school teachers.[19] Despite the rule of no right to strike, New Jersey has been plagued recently with strikes by school teachers, work stoppages by public works employees, and sick-outs by police officers.

Several states have enacted "compromise" laws which permit certain categories of public employees to strike. Such laws forbid a strike to occur or to continue if it threatens the health and safety of the public.[20]

Development of Dispute Settlement Legislation

New Jersey history in the area of legislation dealing with the resolution of labor disputes dates back to 1880. Early legislation provided for the establishment of boards of arbitration for use in the settlement of disputes in the manufacturing industry.[21] In 1892, legislation established the State Board of Arbitration.[22] The Board was organized and empowered to arbitrate and mediate, directly if the parties so elected, or to hear appeals from decisions of a local arbitration board. The State Board of Arbitration, however, took positions on major labor issues of the times—especially against the closed

[16] In an action involving municipal incinerator employees of Jersey City, the superior court, law division, held that public employees may not strike or picket against the government, regardless of whether the government is federal or state. The court held that the main reason for the rule is the necessity to safeguard the public health and safety. Donevero v. Jersey City Incinerator Auth., 75 N.J. Super. 217,222, 182 A.2d 596,599 (Law Div. 1962), *set aside on other grounds*, 79 N.J. Super. 142, 190 A.2d 891 (App. Div. 1963).

[17] N.J. Turnpike Auth. v. American Fed'n of State, County and Mun. Employees, 83 N.J. Super. 389, 200 A.2d 134 (Ch. Div. 1964).

[18] Delaware River and Bay Auth. v. International Organization of Masters, Mates & Pilots, 45 N.J. 138, 211 A.2d 798 (1965).

[19] Teachers in New Jersey have also been the subject of injunction actions including injunctions against striking. In re Block, 50 N.J. 494, 236 A.2d 589 (1967), (contempt for violation of injunction against strike); Board of Educ. of Borough of Union Beach v. N.J. Educ. Ass'n, 96 N.J. Super. 371, 233 A.2d 84 (Ch. Div. 1967), *aff'd*, 53 N.J. 29, 247 A.2d 867 (1968).

[20] In Alaska, public employees who may not strike include police, fire, correctional, and hospital employees. ALASKA STAT. §§ 23.40.200 (a)(1), (b) (1962). Alaska does, however, permit certain public employees to strike for a limited period. *Id.* § 23.40.200 (a)(2). Included in this category are public utility, sanitation, public school, and other educational institution employees. Strikes by these employees may commence for a limited period after mediation. Injunctive relief may issue upon a showing that the strike has begun to threaten the public health, safety, or general welfare. *Id.* § 23.40.200 (c). All other public employees may strike if a majority of employees in a collective bargaining unit vote to do so by secret ballot. *Accord,* OR. REV. STAT. §§ 243.726-.736 (Supp. 1977). Vermont permits strikes by public employees unless they would "endanger the health, safety or welfare of the public." VT. STAT. ANN. tit. 21, § 1730 (1973).

[21] An Act to provide for the arbitration of labor disputes, ch. CXXXVIII, 1880 N.J. Laws 178 (superseded by N.J. REV. STAT.).

[22] An Act to provide for the amicable adjustment of grievances and disputes that may arise between employers and employees, and to authorize the creation of a state board of arbitration, ch. CXXXVII, 1892 N.J. Laws 238 (repealed 1908).

shop — which made labor reluctant to use the agency.[23] Consequently, the Board ceased to function in 1901. Interestingly, the taking of such a position by a state board of arbitration was not unique to New Jersey.[24]

In 1937, the Newark Labor Relations Board was established. This Board functioned primarily as a mediating agency, but it did not have power to rule on unfair labor practices, or to certify the majority representative, as do most labor relations boards today. In 1941, an anti-injunction act was passed, and the New Jersey State Board of Mediation was established.[25] The primary function of the State Board of Mediation was to assist in the voluntary settlement of labor disputes.[26]

Shortly after World War II, a number of strikes brought about the enactment in New Jersey of legislation prohibiting strikes against public utilities. The Legislature passed the New Jersey Public Utility Labor Disputes Act of 1946[27] which authorized the governor to seize any public utility plant for operation by the state if, in the opinion of the governor, such action was necessary in order to assure continuous service.[28] A fact finding panel was established to conduct public hearings and give non-binding recommendations to the governor.[29] In 1947, as a result of a strike against the New Jersey Bell Telephone Company, which was part of a nationwide work stoppage,[30] the Act was amended to prohibit strikes or lockouts and to provide compulsory arbitration of disputes following seizure of the utility.[31]

[23] N.J. PUBLIC EMPLOYER—EMPLOYEE RELATIONS STUDY COMMISSION, REPORT TO THE GOVERNOR AND THE LEGISLATURE 11 (Feb. 2, 1976).

[24] *Id.* at 12.

[25] An Act to promote the mediation, conciliation and arbitration of labor disputes and the creation of a board of mediation for the promotion thereof, ch. 100, 1941 N.J. Laws 228 (codified at N.J. STAT. ANN. §§ 34:13A-1 to -13 (West 1965 & Supp. 1978-1979)).

[26] *Id.* § 34:13A-6.

[27] An Act concerning labor disputes in public utilities; providing for collective bargaining; enlarging the duties of the State Board of Mediation; and providing for seizure and operation of public utilities by the State, ch. 38, 1946 N.J. Laws 87 (current version at N.J. STAT. ANN. §§ 34:13B-1 to -29 (West 1965)).

[28] *Id.* § 34:13B-13.

[29] An Act concerning labor disputes in public utilities; enlarging the duties of the State Board of Mediation; and providing for seizure and operation of public utilities by the State, ch. 38, secs. 8-12, 1946 N.J. Laws 87 (repealed 1950).

[30] N.J. PUBLIC EMPLOYER-EMPLOYEE RELATIONS STUDY COMMISSION, REPORT TO THE GOVERNOR AND THE LEGISLATURE 12 (Feb. 2, 1976).

[31] An Act to amend the title of "An act concerning labor disputes in public utilities; providing for collective bargaining; enlarging the duties of the State Board of Mediation; and providing for seizure and operation of public utilities by the State," approved March twenty-sixth, one thousand nine hundred and forty-six (P.L. 1946, c. 38), so that the same shall read "An act concerning labor disputes in public utilities; providing for collective bargaining; enlarging the duties of the State Board of Mediation; providing for seizure and operation of public utilities by the State; providing for compulsory arbitration of labor disputes in public utilities; and providing penalties for the violation thereof"; and to supplement the body of said act, ch. 47, sec. 2, 1947 N.J. Laws 160.

Subsequently, in 1949, the Act was declared to be unconstitutional on the grounds that the Legislature had improperly delegated powers to arbitration boards insofar as the Act did not prescribe standards to govern the administrative bodies in determining their awards.[32] Immediately thereafter, the Act was amended to add five statutory standards.[33] In 1950, the Act's provision for fact finding panels was deleted[34] as being unnecessary in light of the provisions for compulsory arbitration.[35]

A Wisconsin statute,[36] which provided for compulsory arbitration of labor disputes in public utilities, was declared unconstitutional by the United

---

[32] State v. Traffic Tel. Workers' Fed'n of N.J., 2 N.J. 335, 66 A.2d 616 (1949).

[33] An Act concerning labor disputes in public utilities, supplementing "An act concerning labor disputes in public utilities; providing for collective bargaining; enlarging the duties of the State Board of Mediation; providing for seizure and operation of public utilities by the State; prohibiting certain acts for the duration of such seizure and operation; providing for compulsory arbitration of labor disputes in public utilities; providing penalties and injunctive relief for the violation thereof; and providing for declaratory and other relief with respect thereof," approved March twenty-sixth, one thousand nine hundred and forth-six (P.L. 1946 c. 38), as the title of said act was amended by chapter seventy-five of the laws of one thousand nine hundred and forty-seven, and repealing section six of chapter forty-seven of the laws of one thousand nine hundred and forty-seven, ch. 308, sec. 1(b), 1949 N.J. Laws 995.

[34] An Act concerning labor disputes in public utilities, amending "An act concerning labor disputes in public utilities; providing for collective bargaining; enlarging the duties of the State Board of Mediation; providing for seizure and operation of public utilities by the State; prohibiting certain acts for the duration of such seizure and operation; providing for compulsory arbitration of labor disputes in public utilities; providing penalties and injunctive relief for the violation thereof; and providing for declaratory and other relief with respect thereof," approved March twenty-sixth, one thousand nine hundred and forty-six (P.L. 1946 c. 38), as the title of said act was amended by chapter seventy-five of the laws of one thousand nine hundred and forty-seven, amending section eight of chapter forty-seven of the laws of one thousand nine hundred and forty-seven as said section was amended by chapter seventy-five of the laws of one thousand nine hundred and forty-seven, repealing sections eight to twelve, inclusive, of chapter thirty-eight of the laws of one thousand nine hundred and forty-six, and repealing section three of "An act concerning labor disputes in public utilities, supplementing 'An act concerning labor disputes in public utilities; providing for collective bargaining; enlarging the duties of the State Board of Mediation; providing for seizure and operation of public utilities by the State; prohibiting certain acts for the duration of such seizure and operation; providing for compulsory arbitration of labor disputes in public utilities; providing penalties and injunctive relief for the violation thereof; and providing for declaratory and other relief with respect thereof,' approved March twenty-sixth, one thousand nine hundred and forty-six (P.L. 1946, c. 38), as the title of said act was amended by chapter seventy-five of the laws of one thousand nine hundred and forty-seven, and repealing section six of chapter forty-seven of the laws of one thousand nine hundred and forty-seven," approved June sixteenth, one thousand nine hundred and forty-nine (P.L. 1949, c. 308), ch. 14, sec. 3, 1950 N.J. Laws 38.

[35] N.J. PUBLIC EMPLOYER-EMPLOYEE RELATIONS STUDY COMMISSION, REPORT TO THE GOVERNOR AND THE LEGISLATURE 13-14 (Feb. 2, 1976).

[36] WIS. STAT. ANN. §§ 111.50 -.64 (West 1974).

States Supreme Court in 1951.[37] The statute was struck down on grounds that it sought to abrogate the right to strike which was protected for workers in interstate commerce.[38] Consequently, the New Jersey Public Utility Labor Disputes Act has virtually remained dormant since 1953.

During the mid 1960's, a number of states enacted legislation dealing with collective bargaining and labor relations in the public sector. In 1968, the New Jersey Legislature adopted the New Jersey Employer-Employee Relations Act[39] which continued the previously authorized dispute settlement role of the State Board of Mediation in the private sector[40] and established the Public Employment Relations Commission (PERC) for the resolution of disputes in the public sector.[41] PERC's functions were to be for determination of negotiating units and agents for employee representation,[42] and mediation and fact finding in negotiating disputes between public employers and their employees.[43]

Compulsory Arbitration

With the enactment of the Compulsory Arbitration Act for firefighters and police officers, New Jersey has joined a growing number of other states which have adopted binding arbitration as the terminal step for resolving interest disputes for certain categories of public employees.[44] In New Jersey, as well as in several other states, the arbitrator may select a form of "final-offer" as the award.[45] Some states do not require the arbitrator to adopt a final-offer award, but allow him to develop an award on his own. When an arbitrator develops his own award, this is known as conventional arbitration.

---

[37] Amalgamated Ass'n of St., Elec., Ry. and Motor Coach Employees of America, Div. 998 v. Wis. Employment Relations Bd., 340 U.S. 383 (1951).

[38] *Id.* at 391.

[39] An Act to amend the title of "An act to promote the mediation, conciliation and arbitration of labor disputes and the creation of a board of mediation for the promotion thereof," approved April 30, 1941 (P.L. 1941, c.100), so that the same shall read "An act concerning employer-employee relations in public and private employment, creating a board of mediation, a public employment relations commission and prescribing their functions, powers and duties," and to amend and supplement the body of said act and making an appropriation, ch. 303, 1968 N.J. Laws 891 (codified at N.J. STAT. ANN. §§ 34:13A-1 to -13 (West 1965 & Supp. 1978-1979)).

[40] *Id.* § 34:13A-4.

[41] *Id.* § 34:13A-5.2.

[42] *Id.* § 34:13A-6 (d).

[43] *Id.* § 34:13A-6 (b).

[44] [1977] 1 PUBLIC EMPLOYEE BARGAINING (CCH) ¶ 4015.

[45] N.J. STAT. ANN. § 34:13A-16c (2), (3) (West Supp. 1978-1979); CONN. GEN. STAT. ANN. § 7-471 (West 1967); IND. CODE ANN. § 22-6-4-11 (Burns Supp. 1977); IOWA CODE ANN. § 20.22 (West 1978); MASS. ANN. LAWS. ch. 150E, § 7 (Michie/Law. Co-op 1976);

Conventional arbitration allows the arbitrator to fashion the award according to his best judgment, limited only by the provisions in the parties' stipulation to arbitrate and by any state law provisions with respect to standards to be applied by the arbitrator. Conventional arbitration typically permits an arbitrator considerable discretion in ruling on each issue in dispute since the arbitrator is not bound to select the position of either side.

Final-offer package arbitration forces the arbitrator to choose either the entire final-offer of the employer on all issues in dispute or the entire final-offer of the union on the same issues. Final-offer, issue-by-issue arbitration forces the arbitrator to choose between the final-offer positions of each party on each issue. Additionally, the package arbitration may be divided into economic and non-economic proposals and separate choices may be made in each of those categories.

Prior to the enactment of the new legislation, PERC's procedures provided that in the event of an impasse in negotiations, either party individually, or both parties jointly, could request the appointment of a mediator.[46] In the event of a continuing impasse after mediation efforts, fact finding could be invoked.[47] The fact finder would conduct a hearing and thereafter issue a report containing findings of fact and recommendations for settlement, all of which were non-binding on the parties.[48]

The New Jersey Compulsory Arbitration Act now provides for finality where negotiating impasses heretofore existed. The new Act provides for the parties to mutually agree upon a terminal procedure to resolve their disputes. Six alternative terminal procedures that PERC will approve include:

1. Conventional arbitration of all unsettled items.
2. (a) Last offer of the employer as a single package, or
   (b) Last offer of the employees' representative as a single package.
3. (a) Last offer of the employer on an issue-by-issue basis, or
   (b) Last offer of the employees' representative, issue-by-issue.
4. If there is a fact finder's report
   (a) Last offer of the employer as a single package,
   (b) Last offer of the employees' representative as a single package, or
   (c) Fact finder's recommendations as a single package.
5. If there is a fact finder's report
   (a) Last offer of the employer on an issue-by-issue basis,

---

MICH. COMP. LAWS ANN. § 423.231 (1978); MINN. STAT. ANN. § 179.09 (West 1966); WIS. STAT. ANN. § 111.77(4) (West 1974).

[46] N.J. STAT. ANN. § 34:13A-6(b) (West Supp. 1978-1979).

[47] *Id.*

[48] *Id.*

(b) Last offer of the employees' representative on an issue-by-issue basis, or
(c) Fact finder's recommendations on an issue-by-issue basis.

6. (a) Economic Issues
   (1) Last offer of the employer as a single package, or
   (2) Last offer of the employees' representative as a single package,
   (b) Noneconomic Issues
   (1) Last offer of the employer on an issue-by-issue basis, or
   (2) Last offer of the employees' representative on an issue-by-issue basis.[49]

In the event that the parties cannot mutually agree on the procedure to be used, then the procedure set forth in alternative six, *supra*, shall be used, namely, last offer on economic issues as a single package, and issue-by-issue on the other items.[50]

The New Jersey Compulsory Arbitration Act gives the parties the flexibility of a number of alternative methods for reaching finality not provided in other states' statutes. A study published in 1975 reviewed the compulsory arbitration statutes dealing with public safety employees in three states.[51] The study compared the applicable statutes of Pennsylvania, Michigan, and Wisconsin. All three of the statutes were sought by organizations representing the employees involved, but each of the arbitration systems differed from the others in many aspects.

Under the Wisconsin procedure, heavy emphasis was placed on the function of mediation in resolving impasses, but under the Pennsylvania Act, no importance whatsoever was given to mediation.[52] Michigan adopted an intermediate position.[53] The key distinction involved the form of arbitration. Pennsylvania, which was the first of the three states to adopt arbitration, selected conventional arbitration.[54] Michigan originally selected conventional arbitration, but subsequently revised it to provide that the arbitrator had to choose the position of one of the parties on each economic issue.[55] In Wisconsin, the arbitrator was required to select the position of either party in its entirety without modification.[56] Although the Wisconsin statute permitted the parties to substitute conventional arbitration for final-offer ar-

---

[49] N.J. STAT. ANN. §§ 34:13A-16c (1)-(6) (West Supp. 1978-1979).

[50] *Id.* §§ 34:13A-16d(1), (2).

[51] J. STERN, C. REHMUS, J. LOEWENBERG, H. KASPER, & B. DENNIS, FINAL-OFFER ARBITRATION: THE EFFECTS ON PUBLIC SAFETY (1975).

[52] *Id.* at 2.

[53] *Id.*

[54] *Id.*

[55] *Id.*

[56] *Id.* at 3.

bitration if they so agreed, final-offer arbitration was used when no agreement was reached thereon.[57]

The New Jersey Compulsory Arbitration Act allows the parties to choose any workable, mutually compatible procedure as long as it provides for finality. Perhaps the flexibility contained in this statute will be a model for the drafters of future compulsory arbitration legislation.

Resolution of Contract Disputes in the Public Sector

In recent years, collective bargaining in the public sector has experienced rapid development and expansion. Public employees are voicing their dissatisfaction by strikes, work-stoppages, sick-outs, and other forms of job actions. The Public Employer-Employee Relations Study Commission, in its report dated February 2, 1976, said:

> Employee unrest that expresses itself by job action (strikes, sick-outs, etc.) is to be expected when a marked expansion in collective negotiations takes place in the midst of inflationary pressures, declining employment, budget stringency, and growing taxpayer resistance. The consequence has been an intense search for appropriate means for resolving public employment problems and disputes in a manner that will be fair and attentive to the needs of both public employees and public management and, at the same time, consistent with the public interest.[58]

The Study Commission concluded that impasses in labor negotiations in the public sector present special problems because of certain distinctive characteristics of government operations, namely:

1. Such government processes as elections, referenda, legislation, and court decisions are themselves means for settling disputes and conflicts of interest.
2. With three branches of government (executive, legislative, and judicial) as well as the voters sharing governmental powers, employer authority is often divided, overlapping, and somewhat ambiguous.
3. Decisions on public expenditures are subject to certain procedures and constraints, including approval by legislatures and votes of approval by the electorate in the case of some school district budgets, thus raising questions of budget authority, budget deadlines, the availability of funds, and uncertainty of

---

[57] *Id.*

[58] N.J. PUBLIC EMPLOYER-EMPLOYEE RELATIONS STUDY COMMISSION, REPORT TO THE GOVERNOR AND THE LEGISLATURE 23 (Feb. 2, 1976).

legislative and judicial approval of negotiated terms and conditions of employment.

4. Governments have sovereign powers, which include the power to compel compliance with laws and court decisions as well as the power to levy taxes, subject to approval under democratic processes and written constitutions.
5. The voters or their representatives, whose approval is often necessary, have a direct interest in the results of collective bargaining both as consumers of public services and as taxpayers.
6. For many public services, government is a monopolistic supplier, with no feasible substitute service or alternative source of supply (e.g., police, firemen, custodial care, licensing bureaus, etc.), so that the economic pressures of loss of customers, loss of employment, and loss of profits cannot be relied upon to induce negotiated settlements of labor disputes.[59]

The New Jersey Compulsory Arbitration Act provides for both mediation and fact finding with recommendations for settlement.[60] Prior to the enactment of the new amendment in New Jersey, if an impasse continued after mediation and after the fact finding process, no further remedies or procedures were available to the parties to aid in resolving the impasse. As a result, public employee unrest thereafter manifested itself by job actions in order to exert pressure on public employers.

Whether or not the new amendment will be the answer for New Jersey remains to be seen. The arbitration study referred to above analyzed six years of experience in Pennsylvania, five years in Michigan, and two years in Wisconsin, with binding arbitration as the means of resolving impasses in negotiations in the case of police officers and firefighters.[61]

Several conclusions drawn from the experience in those states are:

> Today, in the public sector, interest arbitration is emerging as a politically acceptable means of resolving impasses endorsed by those unions with the greatest power to disrupt the health and safety of the community. It has not had an adverse economic effect so far as can be determined, nor has it damaged the bargaining process. The evidence suggests that it would be wise to consider its adoption in other areas in which there is dissatisfaction with alternative methods of dispute resolution.

---

[59] *Id.* at 23-24.

[60] N.J. STAT. ANN. § 34:13A-16b (West Supp. 1978-1979).

[61] J. STERN, C. REHMUS, J. LOEWENBERG, H. KASPER, & B. DENNIS, FINAL-OFFER ARBITRATION: THE EFFECTS ON PUBLIC SAFETY (1975).

. . . .

> Finally, it should be noted that in each jurisdiction, the parties and the neutrals tended to prefer their own procedure to those of other states with which they were not familiar. It seems, therefore, that the ideal solution is the one designed by the parties themselves for their own use.[62]

What Lies Ahead

There appears to be a cross current of activity in the area of public employment relations with respect to rights or lack of rights of public employees to strike and the adoption of compulsory binding arbitration. Pennsylvania public employees, with the exception of police officers, firefighters, court attendants, and prison guards, have limited rights to strike.[63] Several media representatives have been outspoken against the right of public employees to strike and have suggested compulsory binding "final best offer" arbitration.[64] At the other end of the spectrum, New Jersey teachers attending the New Jersey Education Association convention in Atlantic City were asking for legislation that would allow public employees to strike legally.[65]

Ideally, labor law is designed to control and govern the continuous process by which labor and management decide the terms and conditions of employment. This is achieved through the collective bargaining process. The New Jersey Legislature has now recognized that without the right to strike, labor in the public sector (police officers and firefighters) has to be given some other tool with which to resolve its disputes—binding arbitration. Although arbitration of labor disputes in the private sector has become routine in recent years, particularly in the area of resolving grievances, to a great extent, arbitration is still in its infancy in the public sector.

Even though only a small proportion of the arbitration provisions have been litigated, for the most part, the validity of statutory provisions for arbitration involving public employees has been upheld.[66] A New York statute requiring binding arbitration between cities and their organized fire and police forces was held to be constitutional.[67] Several other cases have

---

[62] *Id.* at 196-97.

[63] PA. STAT. ANN. tit. XLIII, §§ 1101.101-.2301 (Purdon Supp. 1977-1978).

[64] "No More Strikes By Public Employees," #2977, Sept. 7 & 8, 1977; "The School Board's Turn," #2987, Sept. 27 & 28, 1977; "Upper Darby School Strike Over," #2990, Oct. 4 & 5, 1977; KYW-TV and Radio Editorials, Philadelphia, Pa.

[65] Courier-Post (Camden), Nov. 12, 1977, at 3, col. 2.

[66] *See generally* Annot., 68 A.L.R. 3d 885 (1976).

[67] Amsterdam v. Helsby, 37 N.Y.2d 19, 332 N.E.2d 290, 371 N.Y.S. 2d 404 (1975).

similarly upheld the constitutionality of police and fire arbitration laws.[68] The states of Colorado, South Dakota, and Utah, however, have struck down compulsory arbitration provisions for uniformed personnel.[69] Principal constitutional objections have centered on improper delegation of legislative or taxing authority, conflicts with home rule charters, lack of due process, and lack of criteria for awards.[70]

Time will tell what route the New Jersey Compulsory Arbitration Act will follow. Several questions which ultimately must be answered are: (1) Will the Act withstand a possible constitutional attack? (2) Will the Act successfully carry out its intention of providing an alternative procedure for public employees who do not have the right to strike? (3) If so, will the Act be expanded to include all public employees?

With respect to question one, it is the opinion of this writer that the answer will be in the affirmative. Since compulsory arbitration in the public sector has certainly come of age, and since this amendment has broad options and is to be liberally construed, it seems certain that the New Jersey courts will find this Act constitutional.

Question two is not as easy to answer. No statute can by itself carry out the intention of the Legislature. The burden is on the parties who fall within the purview of the Act to make it work. If the parties can live with the provisions of this amendment and not look for a panacea through an arbitration award, but rather work toward reaching meaningful negotiated agreements, then and only then will the statute be successful. Opponents of compulsory arbitration argue that it encourages the parties to withhold agreement in the negotiation and mediation stages in the hope of winning before an arbitrator.

The third question is an interesting one in that there is an active move by the teachers in New Jersey to have a legal right to strike as opposed to being granted compulsory binding arbitration as an alternative solution. This writer believes that question three will also be answered in the affirmative after several years of experience with police officers and firefighters. Compulsory binding arbitration will be expanded to include all public employees.

---

[68] *See, e.g.*, Soergel v. Township of Middlesex, 63 Lab. Cas. 67,491, *aff'd*, 64 Lab. Cas. 67,894 (1970); Dearborn Firefighters Union Local 412 v. City of Dearborn, 42 Mich. App. 51, 201 N.W.2d 650 (1972); Harney v. Russo, 435 Pa. 183, 255 A.2d 560 (1969); City of Warwick v. Warwick Regular Firemen's Ass'n, 106 R.I. 109, 256 A.2d 206 (1969); State *ex rel.* Fire Fighters Local 946 v. City of Laramie, 437 P.2d 295 (Wyo. 1968).

[69] In Colorado, a provision of a city charter amendment providing for compulsory binding arbitration of unresolved labor disputes between the police union and the municipality was held unconstitutional. Greeley Police Union v. City Council of Greeley, 553 P.2d 790 (Colo. 1976). *Accord,* City of Sioux Falls v. Sioux Falls Firefighters Local 814, 234 N.W.2d 35 (S.D. 1975); Salt Lake City v. International Ass'n of Firefighters Locals 1645, 593, 1654 and 2064, 563 P.2d 786 (Utah 1977).

[70] *See* [1977] 1 PUBLIC EMPLOYEE BARGAINING (CCH) ¶ 4000.