Municipal Law: Right to Strike and Compulsory Arbitration: Panacea or Placebo?

John T. Coughlin

Dennis W. Rader

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RIGHT TO STRIKE AND COMPULSORY ARBITRATION: PANACEA OR PLACEBO?

JOHN T. COUGHLIN* and DENNIS W. RADER**

I. SCOPE OF THIS ARTICLE

The increasing frequency and severity of work stoppages in municipal employment in Wisconsin has resulted in a need to re-examine and analyze Wisconsin's established municipal labor law legislation, policies and procedures. Wisconsin has long had a labor law covering municipal employees. In 1959, Wisconsin became the first state to enact basic legislation covering municipal employees. In 1961, Wisconsin again was the first state to enact mediation and fact-finding procedures for resolving municipal disputes. In 1971, Wisconsin passed legislation that provided for compulsory interest arbitration for law enforcement and firefighting personnel.

Despite the fact that Wisconsin has been in the vanguard of those states enacting municipal labor relations legislation, illegal municipal employee strikes during the 1970's have been increasing at an alarming rate. Consequently, the demand for additional municipal impasse resolution legislation has been increasing in both volume and intensity. Assuming arguendo that there is a causal relationship between the increase in municipal strikes and deficiencies within Wisconsin's current Municipal Employment Relations Act, the ultimate question then becomes "What type of legislative enactment would lessen the number and severity of municipal employees strikes?"

* B.A. 1962, Marquette University; M.S. (management) 1964, University of Illinois; J.D. 1968, Marquette University Law School; member in the law firm of Mulcahy & Wherry, S.C., Milwaukee, Wisconsin; former trial attorney for the National Labor Relations Board and mediator, trial examiner and arbitrator for the Wisconsin Employment Relations Commission.

** B.A. 1963, Holy Cross College, La Crosse, Wisconsin; M.S. (industrial relations) 1974, University of Wisconsin; candidate for J.D. degree at the University of Wisconsin Law School, 1975.
Before attempting to answer this question, let us first examine Wisconsin’s Municipal Employment Relations Act, with special attention being given to the impasse resolution machinery provided therein. Then, for comparative purposes, we will examine impasse resolution legislation in states other than Wisconsin.

II. WISCONSIN’S MUNICIPAL EMPLOYMENT RELATIONS ACT

A. Background Information

As noted, in 1959 the Wisconsin legislature passed the first municipal labor relations law in the United States. Under that law municipal employees were granted the right of self-organization, to affiliate with labor organizations of their own choosing and the right to be represented by labor organizations of their own choice in conferences and negotiations with their municipal employers on questions of wages, hours and conditions of employment. These provisions outlining employees’ rights to organize and negotiate with municipal employers were enacted in the hope of diminishing the threat of municipal employee strikes over recognition issues.

Impasse procedures for municipal sector collective bargaining disputes were not established under the 1959 legislation. Under Wisconsin law at that time the Industrial Commission had the jurisdiction to appoint mediators or fact finders to intervene and facilitate settlement in such disputes. However, under a statutory provision allowing for exchange of services between state agencies, mediation and fact-finding requests were referred to the Wisconsin Employment Relations Board (WERB), the state agency administering the private sector Wisconsin Employment Peace Act.

In 1961 the Wisconsin legislature responded to the growing demand for more workable municipal sector dispute settlement machinery by establishing mediation and fact-finding procedures and empowering the WERB to administer the new legislation.

1. Wis. Laws 1959, ch. 509, § 1, creating Wis. Stat. § 111.70.
3. Wis. Stat. § 20.904 (1959). “State boards and commissions shall cooperate in the performance and execution of state work and shall interchange such data, reports, and other information, and by proper arrangements between the offices, commissions and boards shall interchange such services of the employer.”
Legislative measures to shift jurisdiction over such disputes from the Industrial Commission to the WERB had been suggested in an Attorney General's ruling on mediation procedures in 1960.\(^5\)

In 1971, after several years of threats of strikes in police and firefighter collective bargaining disputes, a special statute providing for compulsory final and binding interest arbitration\(^6\) for law enforcement personnel and firefighters was enacted.\(^7\)

**B. Impasse Resolution Procedures Contained Within the Municipal Employment Relations Act**

The Municipal Employment Relations Act (MERA) contains the following impasse resolution procedures:

1. **Mediation**

Mediation has been defined as "the intercession of an impartial third person in a dispute for the purpose of assisting the parties to resolve their differences voluntarily."\(^8\)

Mediation of municipal disputes is provided for under section 111.70(4)(c)1 of MERA. Although the aforesaid statute provides for mediation by the Wisconsin Employment Relations Commission (WERC), it is the policy of the Commission to encourage the parties to a labor dispute to settle their differences themselves through a continuation of the collective bargaining process. However, if the parties cannot reach agreement after reasonable efforts, the Commission will appoint one of their staff to mediate the dispute. It should be noted that the function of the mediator is to encourage voluntary settlement; the mediator does not have the power to compel the parties to agree.

The 1961 legislation which created the mediation function provided that mediation could be initiated only upon request of both parties to the dispute. In 1971 this provision was amended whereby mediation could be initiated upon request of one or both of the parties or upon initiation of the Commission. It should be noted that although the 1971 enactment does allow either one party of

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6. Interest arbitration refers to arbitration of new contract terms (employee-employer "interests") and arises when there is an impasse in the collective bargaining process. Interest arbitration should be distinguished from grievance arbitration, which is usually the final step in a grievance procedure in which the arbitrator makes a definite decision on an issue in dispute arising under the terms of an existing labor contract.
the commission to initiate mediation, this does not normally occur because mediation is by its nature a voluntary, consensual process. Forced mediation without the approval of one of the parties of the dispute is in all but the most extreme cases ineffective at its very inception.

2. Fact-Finding

Wisconsin's fact-finding procedures are found in section 111.70(4)(c)3 of MERA. Section 111.70(4)(c)3 of MERA provides that either party or the parties may petition the Commission to initiate fact-finding. However, the Commission will insist prior to initiating fact-finding that the parties have been negotiating for a reasonable period of time, that all settlement procedures (if any) established by the parties be exhausted and that the parties are at deadlock with respect to any dispute between them arising out of the collective bargaining process. The Commission determines whether a deadlock, in fact, exists.

Section 111.70(4)(c)3a provides that when the Commission decides "that fact-finding should be initiated, it shall appoint a qualified, disinterested person or 3-member panel, when jointly requested by the parties, to function as a fact finder." Section 111.70(4)(c)3b provides that the fact finder hold a hearing concerning the matters in dispute. The aforesaid section specifically states that, "Upon completion of the hearing, the fact finder shall make written findings of fact and recommendations for solution of the dispute and shall cause the same to be served on the parties and the commission." Under this statute, fact-finding is available to all municipal employees except for law enforcement personnel and firefighters, who have access to final and binding interest arbitration. Finally, it should be carefully noted that the statute does not make the recommendations of the fact finder binding on either of the parties to the dispute. The recommendations of the fact finder are advisory only and only become binding if the parties would voluntarily so agree.

3. Final and Binding Compulsory Interest Arbitration of Disputes Involving Law Enforcement Personnel and Firefighters

Section 111.77 of the Wisconsin Statutes was enacted in 1971 and amended in 1973. The statute currently provides for final and

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9. Milwaukee firemen are an exception to this rule because they do not have access to final and binding interest arbitration but would have the ability to petition for fact-finding.
binding compulsory interest arbitration of collective bargaining disputes involving all law enforcement personnel and firefighters in counties and municipalities other than Milwaukee with a population of 2,500 or more. The Milwaukee police are subject to compulsory final and binding interest arbitration under a specific section of 111.70, Wisconsin Statutes. However, Milwaukee firefighters do not have access to compulsory final and binding interest arbitration under either 111.70 or 111.77 of the Wisconsin Statutes.

Section 111.77 of the Wisconsin Statutes requires at section (1)(a) that the party desiring to modify or terminate a contract must "serve written notice upon the other party to the contract of the proposed termination or modification 180 days prior to the expiration date thereof, or if the contract contains no expiration date, 60 days prior to the time it proposed to make such termination or modification . . . ." The party desiring to modify or terminate the contract must notify the Commission of the existence of a dispute within 90 days after the notice provided for in section (1)(a) quoted above.

Section 111.77 of the Wisconsin Statutes further provides that the current contract existing between the parties continue in full force and effect without the union resorting to strike or the municipal employer to lockout for a period of 60 days after notice is given to the Commission of the existence of a dispute or until the expiration date of the contract, whichever occurs later. In addition, the parties must participate in mediation sessions if requested to do so by the Commission and they must exhaust any type of impasse resolution agreed to by the parties, including binding arbitration.

Either party may petition the Commission to initiate compulsory final and binding interest arbitration of the dispute. The Commission is required to investigate and to determine if an impasse has been reached and may conduct further mediation during such investigation. If the Commission determines that an impasse has been reached, it shall issue an order for arbitration. The Commission then submits a panel of five arbitrators and after the parties alternately strike four of the five, the remaining person is appointed by the Commission as the arbitrator. The arbitrator's expenses are shared equally between the parties.

Section 111.77(4) sets forth two forms of arbitration involving wages, hours and conditions of employment: Form 1 allows the arbitrator to determine all issues in dispute; under form 2, both

parties shall submit their final offer in effect at the time the arbitration petition was filed and the arbitrator then selects one of the two final offers as the final award. Form 2 is utilized unless the parties agree to use form 1.

The arbitrator is provided with specific criteria to guide him in his decision. For example, he must give weight to the public interest by examining the financial ability of the unit of government to meet the costs involved and the lawful authority of the employer. These and other factors must be balanced with the employees' interest by consulting the cost of living index and evaluating the wages, hours and conditions of employment with those employees performing similar services in comparable communities. The arbitrator's decision is final and binding.

III. Experience of States Other Than Wisconsin With Municipal Labor Relations Legislation

Now that we have briefly discussed the parameters of Wisconsin's municipal labor law, let us examine the labor law legislation found in other states, with particular emphasis being given to impasse resolution procedures found within that legislation.

A. States Granting Bargaining and Organization Rights

Thirty-seven states have granted municipal employees some form of bargaining and organization rights. Twenty-seven of those states have additional provisions establishing procedures for the resolution of bargaining impasses through mediation or fact-finding; legislation in the other ten states is restricted to coverage of union recognition and bargaining rights. Several states have declared that their laws allowing municipal employee organization and bargaining rights were enacted with the express purpose of alleviating public sector labor conflict.

Under state legislation providing for union recognition proce-
dures, municipal employers can voluntarily recognize their employees' bargaining representative or agree to an election conducted by a neutral third party pursuant to local or state guidelines.

A wide variety of "negotiation models" for the municipal sector have developed. In Kentucky, municipal employees have the right to present proposals on wages, hours and conditions of employment. Under Kansas and California law, municipal employees have the obligation to "meet and confer," to provide an opportunity for the employee organization representatives to set forth their requests and positions on various items. Presently, most states have enacted legislation which authorizes and requires public employers to enter into negotiations with employee groups.

B. States Providing Mediation Services

Mediation procedures vary from state to state. Legislation which provides for mediation only when requested by both parties to the dispute reflects the conviction that mediation is a totally voluntary process and can work only between two parties mutually agreeing to a third party's intervention. Legislation which allows either party to the dispute or the state agency to request mediation represents a judgment that there may be some value in the utilization of a third party neutral despite the disinclination of one of the parties to initially agree to mediation.

Most of the states with comprehensive public employee relations legislation have a state agency with a full staff of mediators which provides service to the parties without cost. Several states manifest a certain reluctance to encourage a third party public intervention in municipal employment disputes but do allow the parties to select a private mediator whose expenses are to be borne by the parties themselves.

C. Fact-Finding Procedures

Fact-finding procedures are available to municipal employees and employers in over twenty states. The fact that there is little

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15. Kansas, GERR 51:2511; California, GERR 51:1411.
17. Michigan, GERR 51:3111; Maine, GERR 51:2811.
19. Alaska, Connecticut, Delaware, Hawaii, Idaho, Kansas, Maine, Maryland, Massachusetts, Michigan, Montana, Nebraska, Nevada, New Jersey, New York, North Dakota,
uniformity among state laws reflects the diverse political and economic factors which underlie state legislation.

The lack of congruity between the states on fact-finding legislation is due in significant part to each state's perception of the collective bargaining process. States with a policy of encouraging collective bargaining in the public sector tend to make fact-finding available only after extensive efforts to negotiate a settlement have been demonstrated. Specifically, those states that require the parties to utilize mediation prior to petitioning for fact-finding are attempting to insure that the parties make at least a visible effort to bargain. Legislative provisions that specify that the impasse be determined by the public agency administering the law prior to acceptance of a fact-finding petition is another indication of the intent to use fact-finding only as a last resort. Some states explicitly encourage the individual to first mediate the dispute for which he has been selected or appointed as a fact finder. The insistence on compliance with such stringent procedural prerequisites prior to fact-finding is demonstrative of many legislatures' intention not to use the fact finder's recommendation as the basis for further bargaining. These strict procedures are geared to give the fact finder's recommendations the quality of decisiveness and finality.

The attempt to influence the settlement of the dispute through the pressure of public opinion is evidenced by legislation calling for publication of the fact finder's report. This report usually is publicized a stated number of days after the principle parties have received such report. Under some fact-finding procedures there is a show cause court procedure whereby the parties are required to present their respective positions to the appropriate legislative body if the recommendations of the fact finder fail to result in an agreement.

Under two states' legislation, fact-finding is available upon request, without previous determination of impasse or mediation effort required. The apparent purpose of such fact-finding legisla-

tion is to provide a terminal procedure for dispute resolution. However, such easy accessibility to the fact-finding procedure can be counter-productive. Under such circumstances there is a threat that the disputants will wait for the fact finder's recommendations in lieu of making serious efforts to bargain. Legislation which explicitly prescribes further bargaining if the impasse continues after the publication of the fact finder's report exemplifies the view that fact-finding is merely an extension of the bargaining process.  

D. Voluntary Interest Arbitration

Voluntary interest arbitration involves a joint agreement between the employer and the union to submit specific collective bargaining issues to a third party for a binding decision. Voluntary arbitration is unlike compulsory arbitration in that the respective parties are free to accept or reject this procedure as a means to resolving a collective bargaining dispute. Voluntary arbitration is also distinct from mediation and fact-finding in that it is not an interim step in the collective bargaining process but is rather a means of final determination of a contract dispute.

Voluntary arbitration is receiving increased attention as a dispute settlement technique in the public sector. The growing number of states which have provided for the use of a voluntary arbitration procedure may be an indication that this type of arbitration is being more seriously considered as an effective municipal sector dispute settlement device. In states where voluntary arbitration is not provided for by formal legislation or case law, it is being utilized on a limited basis by means of provisions in collective bargaining agreements.

E. Compulsory Interest Arbitration Legislation

Several states provide for compulsory interest arbitration as a means for the final resolution of collective bargaining disputes in areas other than police and fire. The Maine statute governing all municipal employees provides for mediation and fact-finding with

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29. At least eight states have enacted compulsory arbitration statutes for firefighters and/or policemen: Massachusetts, Michigan, Pennsylvania, Rhode Island, South Dakota, Vermont, Wisconsin and Wyoming. Such separate legislation will not be considered in the context of general municipal impasse procedures. GERR 51:501.
recommendations prior to the aforementioned employees being able to utilize binding interest arbitration. If the impasse is still unresolved after the fact finder's report has been made, then either party can petition for arbitration. The decision of the arbitration board is binding as to all matters other than those relating to salaries, pensions and insurance. Rhode Island has a similar statute covering municipal employees which provides for binding arbitration of all unresolved collective bargaining disputes "not involving expenditure of money."  

Under Nevada law, parties can mutually agree that the findings and recommendations of the fact finder will be final and binding. If the parties do not so agree, then either one of the parties, prior to fact-finding, may request the governor to order that the fact-finder's report and recommendations on any or all issues be final and binding. The governor exercises this power on a case-by-case basis and his evaluation is made in consideration of the best interests of the state and all its citizens, the possible fiscal impact both within and outside political subdivisions and potential danger to the safety of the people of the state or political subdivision.

F. Right-To-Strike Legislation

Seven states, namely, Alaska, Hawaii, Minnesota, Montana, Oregon, Pennsylvania and Vermont, have extended a limited right to strike to some or all of their municipal employees. A variety of legislative measures have evolved but common legislative concern for the protection of the public health, safety and welfare has produced markedly similar statutory procedures geared to qualify and limit the employees' right to strike.

Right-to-strike legislation could more accurately be described as strike restriction legislation. All of the states except Montana require labor and management to exhaust a series of impasse procedures before a legal strike is allowable. The mandatory use of such a sequence of settlement devices clearly demonstrates that legislators see the strike as a last resort, not a preferred dispute resolution technique.

32. Nevada, GERR 51:3711.
33. For a detailed discussion of the right to strike legislation, see A. ABOUD and G. ABOUD, THE RIGHT TO STRIKE IN PUBLIC EMPLOYMENT, New York State School of Industrial and Labor Relations, Cornell University, Ithaca, New York (1974).
In six states\textsuperscript{34} mediation must be used by the parties after an impasse has been reached. In most instances the law charges the parties to bargain in good faith or to negotiate for a reasonable period of time prior to requesting mediation. Several states also specifically require that mediation efforts continue for a stated number of days. The statutory insistence upon pre-mediation bargaining and a required time period for mediation efforts reflects a legislative preference for negotiated settlements. Such rigid timetables and procedures surrounding the use of mediation in "right-to-strike" legislation appear to be necessary to keep mediation from being a mere perfunctory hurdle in the path to a strike.

Mandatory fact-finding is the next device used in attempting to resolve a dispute prior to the use of the strike. Only if the impasse persists after mediation, may the parties petition for fact-finding.\textsuperscript{35} Once the fact-finding panel has been appointed, the fact finder or fact-finding panel has a stated number of days to submit a report. The technical complexity and rigid timetables which characterize the fact-finding procedure at this stage may be another reason to encourage negotiated settlements. Further delays in the strike effort are built into the procedural machinery by requiring that no strike action take place within a stated period after publication of the fact finder's report.\textsuperscript{36} Several states prescribe a ten day notice of the intent to strike, yet another device to forestall the use of the strike weapon.\textsuperscript{37}

Voluntary binding arbitration is made available to the parties in all the states allowing the strike, usually after mediation or fact-finding efforts have failed. Under certain state legislation\textsuperscript{38} the parties may submit the dispute to binding arbitration at any time during the negotiations.

Several states limit by legislative definition the types of employees who may legally strike. Pennsylvania prohibits police and fire-fighters from striking but has a compulsory arbitration statute covering such personnel.\textsuperscript{39} Montana law covers only nurses in

\textsuperscript{34} Alaska, Hawaii, Minnesota, Oregon, Pennsylvania and Vermont. GERR 51:501 RF-63.

\textsuperscript{35} The parties may initiate the strike action without fact-finding in Alaska and Minnesota but such activity would still be subject to court injunction if it would threaten the public's health, safety and welfare.

\textsuperscript{36} Vermont, GERR 51:5411; Oregon, GERR 51:4611; Hawaii, GERR 51:2011.

\textsuperscript{37} Oregon and Hawaii require ten day notices. Montana law, although it has no mandatory impasse procedures, requires that employees give thirty days notice of their intent to strike.

\textsuperscript{38} Alaska, GERR 51:1111; New Jersey, GERR 51:3911; Oregon, GERR 51:4611.

\textsuperscript{39} Pennsylvania, GERR 51:4711.
health care facilities and has no procedural devices for "the de-
fusing" of a dispute prior to a strike. Alaska divides public em-
ployees into three categories. The first group, employees "whose
services may not be given up for even the shortest period of time," are not allowed to strike. This group includes policemen, firemen, prison guards and hospital employees. The second group, those employees "who may stop working for a period of time but not for
an indefinite period of time," consists of public utility and sanita-
tion workers, snow removal personnel and school employees. These employees may strike after mediation attempts have failed and it has been ascertained that such a strike will not threaten the public health, safety and welfare. The third group consists of all other public employees, which employees have an unlimited right-to-strike if they first exhaust mediation procedures. An interesting feature of the Alaska legislation is the strike vote—a device bor-
rowed from the private sector to insure that the strike is the prefer-
eence of the unit membership. Employees in the second group may strike only when a majority of the unit votes by secret ballot to do so. Minnesota restricts the right to strike to "non-essential em-
ployees," those employees whose services do not threaten the pub-
lic health, safety and welfare. Furthermore, the right-to-strike is
limited to situations in which the employer does not submit to
arbitration after mediation and fact-finding has failed, or refuses
to implement an arbitration award it had previously agreed to accept.

In all seven states with right-to-strike legislation, except Mon-
tana, the right to strike is subject to court injunction even after the complicated and tedious procedural requirements for a legal strike have been met. The highly complex and intangible factors which affect the "public health, safety and welfare," and which provide the basis for an evaluation of "essential employees and services," are not easily and uniformly identifiable. The legislative criteria for enjoining a strike—threats to the public health, safety and wel-
fare—are vague and cause the law to be unevenly enforced by the judiciary. Hawaii's limitation of the criteria for enjoining strikes

40. Montana, GERR 51:3511.
41. Alaska, GERR 51:1111.
42. Minnesota, GERR 51:3211. The Minnesota Public Employment Relations Board has the power and duty to determine that employees are "essential" and hence have no right to strike if the Board judges that such employees' duties involve work or services essential to the health or safety of the public and the withholding of such services would create a clear and present danger to the health or safety of the public.
to "threats to the public health and safety," deleting "welfare," is somewhat more restrictive but still very unpredictable. Montana's operational definition of public health and safety in terms of accessibility to health care facilities displaces judicial discretion as the determinate factor in allowing strikes in that state. Under the current right-to-strike legislation found in the aforementioned seven states, the public health, safety and welfare are not defined, nor have legislatures set up criteria by which such interests are to be determined.

It should be carefully noted that only Pennsylvania, of the seven states that have enacted right-to-strike legislation, experienced significant strike activity prior to passing such legislation. In fact, before Pennsylvania's passage of its right-to-strike legislation, the "Governor's Commission to Revise the Public Employee Laws of Pennsylvania" stated in its report that, "The collective bargaining process will be strengthened if [the] qualified right to strike is recognized. . . . In short we look upon the limited and carefully defined right to strike as a safety value that will in fact prevent strikes." Thus, it is apparent that the Governor's Commission was attempting to find viable solutions to the same question that is currently before the Wisconsin State Legislative Committee formed in July of 1974; namely, what is the best method for resolving collective bargaining impasses in municipal employment? Therefore, let us now examine the provisions of the Pennsylvania law to see how that state has attempted to facilitate impasse resolution.

1. The Pennsylvania Act

Enacted in 1970, the Pennsylvania Public Employee Relations Act (PERA) grants a qualified right to strike to all municipal

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44. Pennsylvania, GERR 51:4711.
(including teachers) and state employees, except police and firemen who are covered under another statute. The police and firemen are prohibited from striking under any circumstances but have access to compulsory binding arbitration as a final impasse procedure.

The Pennsylvania legislation requires that detailed impasse procedures be exhausted before a strike can be legalized. If negotiations do not result in an agreement after twenty-one days or within a period no later than one hundred and fifty days before the employer’s “budget submission date,” both parties are required by law to make written request for mediation services from the Pennsylvania Bureau of Mediation. If no settlement is reached after twenty days of mediation or within one hundred and thirty days prior to the twenty days of mediation or within one hundred and thirty days prior to the employer’s budget submission date the Bureau of Mediation must so inform the Pennsylvania Labor Relations Board, the state agency responsible for the administration of the Act. The Board then may appoint a fact finder or a three member fact-finding panel to hold a hearing and make written findings of fact and recommendations must be made to the Board and the parties within forty days after the notification of the failure of mediation. The parties must accept or reject the fact finder’s recommendations but if they are not accepted within ten days such recommendations are made public. The parties are required to notify the Board and each other of their final acceptance or rejection of such recommendations within five to ten days after publication. The full cost of mediation and half the cost of the fact-finding is paid by the state, the remaining costs being divided equally between the parties. Any failure of the parties to submit to the statutorily required mediation or fact-finding is considered a refusal to bargain in good faith, subjecting the delinquent party to an unfair labor practice charge.

The Pennsylvania law further provides that public employees other than police and fire personnel, court house employees and guards of prisons and mental hospitals, may strike under certain limited circumstances. First, as noted previously, the statutory requirements of negotiation, mediation and fact-finding must be fulfilled as procedural conditions. Second, the strike must not create a clear and present danger or threat to the public’s health, safety or welfare. If the above noted conditions are met, the employees are then free to engage in strike activity. Employer unfair labor practices however are expressly excluded as justification for an unlawful strike. Instead, the Act provides for expedited procedures
to investigate and resolve an unfair labor practice charge made during the impasse proceedings.

Pennsylvania law prescribes no direct penalties for an illegal strike but the employer can bring contempt charges against employees refusing to comply with court orders. Employees convicted of contempt of court can legally be suspended, demoted or discharged by their employer. Both employees and labor organizations guilty of contempt are subject to court imposed fines, which fines are determined by the gravity of the illegal act and the ability of the parties to pay.

Pennsylvania's prior experience with a wide variety of illegal strikes in the public sector is reflected in its legislative provisions on sympathy strikes and secondary boycotting. The Act makes it a prohibited practice for public employees, not on strike, to honor picket lines set up by another group of employees and subjects such employees to fines and discharge penalties. This legislation, while recognizing employees' right to strike over a dispute directly related to their interests, attempts to avoid massive sympathy strikes which could paralyze a municipality.

In language similar to the Taft-Hartley legislation in the private sector, the Pennsylvania law makes a strike or boycott against a public employer over a jurisdictional matter an unfair labor practice. The law also prohibits any employee or employee organization from attempting to influence other employees to force a public employer to boycott another business or to recognize an uncertified employee organization.

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PICKETING. Public employes, other than those engaged in a non-prohibited strike, who refuse to cross a picket line shall be deemed to be engaged in a prohibited strike and shall be subject to the terms and conditions of Article X pertaining to prohibited strikes.

GERR 51:4711.


(b) Employee organizations, their agents, or representatives, or public employes are prohibited from: (7) Engaging in, or inducing or encouraging any individual employed by any person to engage in a strike or refusal to handle goods or perform services; or threatening, coercing or restraining any person where an object thereof is to (i) force or require any public employer to cease dealing or doing business with any other person or (ii) force or require a public employer to recognize for representation purposes an employe organization not certified by the board.

GERR 51:4711.

48. Id.
G. Combination Right-to-Strike and Compulsory Interest Arbitration Legislation

1. The Canadian Plan

One of the forms of compulsory interest arbitration which has received copious amounts of publicity in recent years is the "Canadian Plan," a part of the Public Service Staff Relations Act of 1967 covering labor relations in the Canadian Federal Service. Under this law, employees have a choice of the process for resolution of their collective bargaining dispute. The labor organization must choose one of two procedures for resolving an impasse situation: (1) conciliation which includes the right to strike if conciliation efforts fail; (2) final and binding arbitration if a negotiated agreement cannot be reached. The choice of an impasse resolution procedure must be made by the labor organization before any bargaining takes place. Under both procedures, however, the parties must first bargain in good faith prior to the actual utilization of the chosen procedure. Also, under both procedures, conciliation services are available at any time during the negotiations. If the labor organization has elected to take the conciliation (right-to-strike) option and agreement has not been reached after preliminary conciliation efforts have been made, a formal conciliation board may then be appointed. This body acts as a fact-finding board and issues its recommendations to the parties. If the parties cannot agree after such recommendations, the union is then free to strike.

It should be carefully noted that the right to strike is not given to all employees. The Public Service Staff Relations Board designates which employees shall be prohibited from striking. Employees are forbidden to strike if their jobs consist, in whole or in part, of duties, the performance of which at any particular time or after any specific period of time, is or will be necessary to the safety or security of the public. The percentage of employees so designated in any given unit can be a factor which could directly influence the union's ability to effectively use the strike weapon. The result is that the right to strike under the "Canadian Plan" is not without qualifications; only "non-designated" employees may strike and then only after the required impasse procedures have been utilized.

If the labor organization takes the arbitration option, it loses its right to strike. If conciliation efforts fail and the parties remain

49. For a complete study of labor relations in Canada see H. W. ARTHURS, COLLECTIVE BARGAINING BY PUBLIC EMPLOYEES IN CANADA: FIVE MODELS, Institute of Labor and Industrial Relations, University of Michigan—Wayne State University (1971).
at impasse, either or both the parties may request final and binding arbitration. However, the scope of the final and binding arbitration is not unlimited. Conditions of employment not directly related to rates of pay, hours of work, leave entitlement, and standards of discipline are subject to arbitration. However, the processes governing appointment, transfer, promotion, demotion, lay-off, discharge, discipline and classification are not arbitrable.

2. The Oregon Plan

Oregon has one of the most comprehensive public employee bargaining laws in the United States. All Oregon public employees are covered except policemen, firemen, and guards at prisons and mental institutions. Statutory insistence upon a reasonable period of negotiations prior to mediation and the rigid timetable and procedures required for mediation and fact-finding makes the statute similar to other right-to-strike legislation. In a further attempt to bring public pressure on the parties, the statute specifically requires that a fact-finding report be publicized five days after it is received by the parties. At any time during the negotiations or subsequent impasse procedures the parties may submit the dispute to voluntary binding arbitration.

The right to strike is limited to employees whose bargaining unit has been certified by the Oregon Public Employment Relations Board. The municipal employer and employees of the aforementioned certified units must not have previously agreed to resolve the impasse by voluntary binding arbitration. A thirty day “cooling off” period after publication of the fact finder's report is required and a ten day notice of the intent to strike must be given to the public employer and the Board. The statute allows the public employer to petition the circuit court for an injunction against the strike when it “creates a clear and present danger or threat to the health, safety or welfare of the public.”

Now that we have surveyed existing impasse resolution procedures in Wisconsin and in other states, we will now focus our attention on proposed legislation relating to resolution of collective bargaining disputes.

50. Oregon, GERR 51:4611.
IV. PROPOSED IMPASSE RESOLUTION LEGISLATION

A. Proposed Federal Right-to-Strike Legislation—The Clay-Perkins Bill


One of the most discussed congressional proposals for a national law establishing collective bargaining rights for state and local government employees is House of Representatives bill 8677, also known as the Clay-Perkins bill.

This bill was introduced in the House of Representatives in 1973 by Representatives William Clay (Democrat-Missouri) and Henry Perkins (Democrat-Kentucky) and is endorsed by the Coalition of American Public Employees, whose members include the American Federation of State, County and Municipal Employees, the National Education Association, the International Association of Firefighters, and the National Treasury Employees Union. Included in the bill are all of the provisions public employee unions have endeavored to enact in state labor legislation. Under the bill, organization and collective bargaining rights would be established for public employees, with mandatory agency shop provisions included. Supervisors would be permitted to organize and bargain but not in the same unit as non-supervisors. The scope of bargaining would be very broad, requiring bargaining over “conditions of

51. Presently there is no comprehensive federal legislation covering state and local employees and the question whether public employee relations should be under federal rather than state legislation has become a controversial issue in itself. It is argued that local government labor relations legislation should be allowed to evolve in response to historical and political preference on the state level. The counter argument is that the vast difference in public employee labor legislation from state to state creates unrest among public employees. Compromise solutions have been formulated which propose a more flexible federal-state system whereby the states would be given a chance to develop their own legislation.


52. Another bill, H.R. 9730, introduced by Rep. Frank Thompson, Jr. (D.-N.J.), would merely repeal the present Taft-Hartley exemption for employees of state and local government, thereby making them subject to Taft-Hartley and the jurisdiction of the National Labor Relations Board. This bill would significantly change public labor relations in several aspects. Since § 7 of the Taft-Hartley bill protects the right to engage in concerted activities, which of course includes the strike, enactment of this legislation would give public employees a clear right to strike. Furthermore, mediation and fact-finding, impasse resolution techniques which have become a mandatory part of much public employee labor relations legislation, would be relegated to voluntary procedures. This proposal, which would bring all American employees, public and private, under one national labor policy is premised on the belief that the differences between the two sectors do not justify separate legislative consideration.
employment and other matters of mutual concern related thereto.” Also included in the bill is an access clause which guarantees a union’s right to use employer’s facilities for an incumbent union’s business. Contrariwise, the bill severely restricts access and usage of such facilities to union organizations challenging the incumbent union. The proposed bill would be administered by a new agency, the National Public Employment Relations Board.

2. Impasse Resolution Procedures

Under the Clay-Perkins proposal, either party may request mediation from the Federal Mediation and Conciliation Service if a collective bargaining impasse has been reached. If an impasse is certified by the Federal Mediation and Conciliation Service, a mediator is then appointed. If after fifteen days the mediator is unable to effect a settlement, either party would have the right to request fact-finding, including written recommendations by a fact finder. The fact finder’s recommendations would be advisory only, unless within five days after giving or receiving the fact-finding request, the union notifies the employer in writing that it desires that the fact finder’s recommendations be binding. If the union does not request that the fact finder’s recommendations be binding on the parties, those recommendations are then privately submitted in writing to the parties and the Federal Mediation and Conciliation Service. Subsequently, either the Federal Mediation and Conciliation Service, the fact finder, the employer or the union may then make such findings and recommendations public if the dispute is not settled within ten days after the receipt of said findings and recommendations from the fact finder.

If the union has not requested that the fact finder’s recommendations be binding upon both the employer and the union, the union has the right to participate in a strike rising out of or in connection with a labor dispute. The strike may be enjoined only on the basis of a finding that it poses a clear and present danger to the public health or safety. The union may also be enjoined by the court from striking if it has failed to make a reasonable effort to utilize the mediation and fact-finding procedures provided for in the act.

Proposed State of Wisconsin Legislation—Assembly Bill 758

The Wisconsin Council of County and Municipal Employees, District Council 48 of the American Federation of State, County and Municipal Employees and the Wisconsin Education Council
introduced Assembly Bill 758 on March 28, 1973. Its provisions allow employees the option to strike or request compulsory arbitration thereby making it similar in that respect to the above described "Canadian Plan". The arbitration provisions of the bill are in large part patterned after the Wisconsin arbitration statute for law enforcement and firefighter personnel.

Assembly Bill 758 would not replace the existing comprehensive municipal labor statute (MERA) but would significantly change the impasse resolution procedures existing under the law. The right to strike would be added to present municipal employee rights and that right could be exercised after certain mediation and notice requirements are fulfilled in accordance with appropriate rules adopted by the Wisconsin Employment Relations Commission. All municipal and county employees would have the right to strike except law enforcement personnel and firefighters who would continue to be covered under present special legislation for these groups. The alternative to the strike under Bill 758 is final and binding arbitration. At the time the union gives notice of its intention to begin negotiations on a new contract, or reopen an existing contract, it must certify to the employer and the Wisconsin Employment Relations Commission whether, in the event of a deadlock in negotiations, it will strike or submit the issues in dispute to binding arbitration.

Under the arbitration alternative, two forms of arbitration are available. Under the first form, if the parties consent, the arbitrator may determine all the issues in dispute. If the parties do not so agree then the second form is used. Form two provides that the arbitrator will select the final offer of one of the parties. The criteria to guide the arbitrator in his decision are the same as under the present police and fire arbitration statute.\(^\text{53}\)

53. Wis. Stat. § 111.77(6) (1971), applicable to collective bargaining units composed of law enforcement personnel and firefighters, provides as follows:

In reaching a decision the arbitrator shall give weight to the following factors:

(a) The lawful authority of the employer.
(b) Stipulations of the parties.
(c) The interests and welfare of the public and the financial ability of the unit of government to meet these costs.
(d) Comparisons of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:

1. In public employment in comparable communities.
2. In private employment in comparable communities.
(e) The average consumer prices for goods and services, commonly known as the cost of living.
Bill 758 establishes a time schedule for contract re-openings and requires a reasonable period of negotiations and mediation. The parties would be able to utilize voluntary binding arbitration and there is a requirement of reasonable notice of the intent to strike.

Prior to a presentation of an evaluation on the above described legislative impasse resolution procedures, let us first examine the unique political context of municipal labor relations vis-a-vis labor relations in the private sector.

V. THE ULTIMATE QUESTION—WHO HOLDS THE POWER?

A. Bargaining in Municipal Employment

Many of the traditional concepts of bargaining developed in the private sector are not applicable in the municipal sector. The parties to municipal bargaining are not limited by the private sector constraints of prices, market competition and profits. The private employer's response to employee wage demands will always be made within the parameters of profitability. The elected officials will approach and consider requests for employee wage demands, not so much on the basis of economic motives, but rather by weighing their decision with the anticipated political support for that decision. The revenues to support the increased wage package, local taxes, are not derived from cold economic market factors. What is defined in the private sector as pure economics—the monetary wage package—becomes a highly controversial political issue in the municipal sector.  

B. Identification of the Interest Groups

If we accept the "normal American political process" as the (f) The overall compensation presently received by the employed, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(h) Such other facts, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

54. This examination of the political context of municipal labor relations is at best a brief exposition of the political factor which is always present in the world of municipal labor relations. Any in-depth analysis of the political processes found within the municipal labor relations context is certainly beyond the scope of this article and would seem to be more appropriately within the technical ambit of social scientists.

55. R. A. DAHL, A PREFACE TO DEMOCRATIC THEORY 145 (1956) defines the normal
locus within which municipal employment bargaining takes place, we have to identify the interest groups in the bargaining relationship. The two principals to the bargaining, the elected officials/municipal employer and the employee organization, are most clearly defined and isolated. The third interest group, more difficult to circumscribe and identify during the bargaining process, is the public. It is not strictly speaking an "interest group" in the sense that it has a limited and specifically stated goal but the force of public opinion is often an essential factor in determining the bargaining power of the two principals. A fourth group, the courts and arbitrators, are parties normally outside the municipal bargaining and political process but who are on occasion interjected into that process. Ordinarily, in municipal government no one group has "the power". So long as the power is balanced among the elected officials and the union they will be encouraged to negotiate and engage in bargaining to their mutual benefit. Neither party will be able to unilaterally impose terms of a contract upon the other so long as the public is a factor in the final agreement. The public's interest in responsible municipal fiscal policy and its concern about the tax rate in the community provides elected officials with a strong bargaining position vis-a-vis the employees' collective bargaining representative. On the other hand, the municipal union's bargaining position is supported by the public's need for the continuation of efficient government services. Neither of the two principals operate in a vacuum; both depend upon the support of the public for their bargaining power. Although the public is not a direct party to the negotiations, the final agreement between the municipal employer and the municipal union is in significant part the expression of the will of that public.

1. Municipal Employer

Elected boards and officials on the municipal level have often been characterized as having potentially unlimited power over local fiscal matters and the formation of public policy. The more correct statement would be that the electorate hypothetically has unlimited control over the elected officials and, hence, over the decisions affecting municipal government. The relatively short term of municipal officials, usually two to four years, helps insure that their decisions will be made with one eye on their chances in the American political process as one in which there is a high probability that an active and legitimate group in the population can make itself heard effectively at some crucial stage in the process of decision.
the upcoming election. This system of linking the actions of public officeholders to the ballot box politicizes decisions which in another context would be purely economic. The uncertainty of elected officials’ political future keeps them closely tethered to the public’s preferences. Elected officials are required to walk a fine line, guarding against unnecessary public expenditures and taxes on one hand but alert to the need for adequate services to the community on the other.

By the very nature of the political process, the municipal employer cannot act in a vacuum. The municipal employer, as an interest group, can dominate only in a situation where the municipal bargaining process does not function properly. Prior to the enactment of legislation giving municipal employees the right to join labor organizations, it might have been argued that the municipal employers had the lion’s share in the decision making process. Clearly, if labor organizations—the countervailing interest group in the municipal bargaining process—were prohibited by law, there potentially could be a misallocation of bargaining power. However, the potential for such a misallocation has been greatly reduced by Wisconsin’s present comprehensive labor law and the rapid growth of municipal unions.

2. Municipal Labor Organization

Municipal unions have had to change the bargaining tactics and techniques developed by their trade and industrial union cousins in the private sector. Traditionally, private sector unions have not become involved in local politics but have concentrated their political and lobbying activity on the federal level. Contrariwise, because control over wages and working conditions of municipal employees is affected by state legislation and local government policies, municipal unions have placed a much greater emphasis upon state and local political activity. Municipal unions have realized that employee wage demands are just one of many made upon the public purse and that in order to get their piece of the pie they have to engage in the municipal bargaining process. The public’s concern for adequate community services and support for reasonable wage requests can give the union an enviable bargaining position. Municipal unions and their members, by utilizing local politics as a bargaining tool, have a power option not enjoyed by private sector unions. These municipal unions, by participating in the political bargaining process, can develop a bargaining weapon comparable to the right to strike enjoyed by employees in the private sector. However, granting the right to strike to municipal
employees has been questioned on the basis that it would give that interest group a favored position among other interest groups in the municipality.

What is wrong with strikes in public employment is that because they disrupt essential services, a large part of a mayor's political constituency will press for a quick end to the strike with little concern for the cost of the settlement. The problem is that because market restraints are attenuated and because public employee strikes cause inconvenience to voters, such strikes too often succeed. Since other interest groups with conflicting claims on municipal government do not, as a general proposition, have anything approaching the effectiveness of this union technique—or at least cannot maintain this relative degree of power over the long run—they are put at a significant competitive disadvantage in the political process. Where this is the case, it must be said that the political process has been radically altered. And because of the deceptive simplicity of the analogy to collective bargaining in the private sector, the alteration may take place without anyone realizing what has happened.56

Similarly, granting the municipal union the power to impose final and binding interest arbitration on the municipal employer would appear to be subject to the same critique, i.e., that the union would be able to distort the normal political process. This power would enable the union to sidestep the municipal bargaining and political process and substitute the decision of an outside arbitrator for the will of the public. Although the union would not be in a position to unilaterally determine its members' financial gain, it could effectively remove the decision making power from its normal context. Compulsory binding interest arbitration could create an imbalance in the municipal power structure and preempt the right of the public to determine its fiscal priorities.

3. Public

The public, that general body of citizens for whose benefit government services are provided, is the ultimate decision maker in the municipal bargaining process. In that process, the support of the public tips the scales either for the municipal employer or for the employee organization. Both principal parties are straw men without the support of the general public. Since the municipal government officials are the elected representatives of the public,

their political future depends on how well they reflect the public's interest in bargaining with various interest groups. The elected officials' concern should be to carry out the intent and design of the public. The concern of the municipal union is to present its demands in a fashion acceptable to and compatible with the public's wishes. Decisions made by elected officials without public support must be distinguished from those made with full support of the public. The difference between the two is fundamental. Elected officials are frequently blamed for their refusal to submit to the municipal union's demands. Such criticism is valid only if they are acting contrary to the public's wishes. If the elected officials are acting in accord with the wishes of the public, their actions are quite defensible. Conversely, if the public supports the municipal union's proposals, the elected officials' acceptance of these proposals is also politically defensible.

4. Courts and Arbitrators

The function of the courts in the municipal bargaining process is unpredictable and varies from one jurisdiction to another. For example, under Oregon law the courts can determine under what conditions the strike is legally allowable and ultimately whether to impose compulsory interest arbitration upon the municipal employer and the union. In many right-to-strike states the courts decide whether the public health, safety and welfare would be threatened by a strike and thereby determine when the right to strike should be granted. In several states with no right to strike, the courts have followed the policy that the strike will not be enjoined in the absence of a showing of irreparable harm. By applying the private sector anti-injunction statute to public employees, the courts have demonstrated their willingness to participate in the municipal government's decision making process.

In Wisconsin the question of whether an illegal strike is, per se, enjoinderable by reason of the fact it has been declared illegal by statute or judicial decision, has not been finally determined. In *University of Wisconsin v. Wisconsin Teaching Assistants Assoc.*, Dane County Circuit Judge William Sachtjen held that

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it was not necessary to prove that actual harm had been caused in order to justify the granting of an injunction. Contrariwise, in *City of West Allis v. West Allis-West Milwaukee Education Association,* Circuit Judge William I. O’Neil refused to grant an injunction in the absence of any showing of violence or disruption of the orderly conduct of the affairs of the municipality.

Although the court’s statutory role differs from state to state, it appears that courts have been exercising more discretion in issuing injunctions and have been more actively involved in attempting to mediate collective bargaining disputes. These developments reflect a growing tendency of the courts to become more vigorously enmeshed in the municipal bargaining process.

An arbitrator in a compulsory final and binding interest arbitration situation performs a function quite similar to the courts by providing a decision from without the municipal bargaining system. As an outside party, the arbitrator may be able to view the collective bargaining dispute more objectively than the interested parties and consequently be able to issue an award which they would find at least palatable. On the other hand, an arbitrator who is not as aware of the intricacies of the dispute as are the parties, may render a decision which neither management nor the union could tolerate due to its total impracticability. Finally, an arbitrator’s award which establishes the municipal employees’ level of remuneration often adversely affects the elected officials’ and ultimately the public’s ability to select and order the municipality’s fiscal priorities.

Now that we have briefly examined the political environment within which municipal labor relations functions, let us now proceed to evaluate the previously described legislative impasse resolution procedures, while keeping in mind the political interaction with those procedures.

VI. **Evaluation of Legislative Impasse Resolution Procedures**

**A. Evaluation of Wisconsin Legislation**

1. **Mediation under Wisconsin Law**

   The fact that mediation is provided in the event of an impasse between a municipal employer and employee union in over half of the fifty states reflects the acceptance this impasse resolution pro-

procedure has gained in the municipal labor relations sector throughout the country. Its potential to encourage and mature the collective bargaining process recommends it not only as an impasse procedure but also as a tool for educating parties inexperienced in bargaining. In that its primary purpose is to aid the parties in achieving a voluntary and mutually acceptable agreement, mediation is more properly characterized as an extension of, rather than a substitute for, collective bargaining.

The mediator can perform several different functions. He may be able to convey additional information to the parties, helping each side arrive at a more realistic estimation of the other's true position. He may try to persuade the parties that they have incorrectly estimated the benefits of agreement or the costs of disagreement. Mediation also provides a face-saving mechanism for one or both parties when they have become locked into a position from which there seems no graceful retreat. The involvement of the mediator provides the parties with a means of rationalizing previously held positions. Finally, a creative mediator can frequently offer compromise solutions that have not occurred to either of the parties, or which neither party, as a matter of principle, can propose. The potential for reaching a mutually acceptable agreement coupled with a minimal risk of injury to the parties has made mediation the least controversial of the impasse procedures developed in the public sector.

In Wisconsin the steady annual increase in the number of requests for mediation over the last decade testifies to the willingness of the parties to utilize this procedure. The continued high percen-

<table>
<thead>
<tr>
<th>Received per Year</th>
<th>Strikes per Year</th>
<th>Fact-Finding Requests per Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>1964-65</td>
<td>16</td>
<td>2</td>
</tr>
<tr>
<td>1965-66</td>
<td>41</td>
<td>2</td>
</tr>
<tr>
<td>1966-67</td>
<td>47</td>
<td>3</td>
</tr>
<tr>
<td>1967-68</td>
<td>63</td>
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<td>1968-69</td>
<td>89</td>
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<td>1969-70</td>
<td>147</td>
<td>13</td>
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<td>1970-71</td>
<td>149</td>
<td>13</td>
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<tr>
<td>1971-72</td>
<td>177</td>
<td>5</td>
</tr>
<tr>
<td>1972-73</td>
<td>214</td>
<td>21</td>
</tr>
<tr>
<td>1973-74</td>
<td>211</td>
<td>27</td>
</tr>
<tr>
<td></td>
<td>1154</td>
<td>102</td>
</tr>
</tbody>
</table>

Compiled from annual reports of the Wisconsin Employment Relations Commission. The statistics are based on fiscal years beginning July 1 and ending June 30.
tage of disputes which are settled through mediation, without re-
sort to the strike, is one of the brighter aspects of municipal labor
relations all too often passed over and forgotten. Even when
strikes do occur, the impasse is invariably resolved by a renewed
bargaining effort by the parties. Frequently, the renewed bargain-
ing is coupled with the help of a mediator.

Mediation, since it is geared to continue the bargaining process
and not become a substitute for it, is consistent with the wider
scope of bargaining combined with municipal politics which was
described in the previous section of this article. Giving parties the
right to use mediation favors no one specific group nor does it
increase or decrease pre-existing power positions. As a procedure
designed to facilitate the bargaining process between the parties,
its goal is to operate within the given political power structure
rather than to alter it. Mediation is not only consistent with the
normal functioning of municipal government but can foster the
development of efficient and responsible decision making in local
politics.

2. Fact-Finding under Wisconsin Law

Theoretically, fact-finding in its final stages is a strike substi-
tute procedure by which disputed issues are set forth, analyzed and
presented to the municipal employer and the union by the fact
finder along with his recommendation for settlement. The fact-
finding process was designed to allow both parties, the municipal
employer (elected officials) and the municipal union, to test the
public support for their position by citing the fact finder's recom-
mendations as justification for their bargaining posture. Suppos-
edly, neither the elected officials nor the union are placed in a
decision-making position without the support of the public, the
ultimate employer.

However, the increase in the number of municipal employee
strikes raises doubts about the effectiveness of fact-finding as an
alternative to strike. The number of fact-finding petitions over the
past five years has significantly decreased, while the number of
municipal strikes has risen sharply. This factual reality has raised

63. A comparison of the number of cases settled through mediation with the number
of strikes reveals that in the past ten years over ninety percent of all mediation cases were
resolved without resort to strikes, and over fifty percent of the disputes were resolved
without resorting to fact-finding. Id.
64. Compare the number of strikes and fact-finding requests as outlined in note 62,
 supra.
serious questions regarding fact-finding's effectiveness as a strike alternative and as an impasse resolution technique. While a portion of the decrease in the total number of fact-finding petitions initiated after November 11, 1971 can be attributed to the exclusion of law enforcement personnel and firefighters from fact-finding procedures subsequent to that date, this fact does not account for the dramatic reduction in the utilization of this procedure.

The conclusion that fact-finding is falling into a state of relative atrophy is without question. However, the reasons for this phenomena are difficult to ascertain with any sort of precision. What rationale in the collective minds of the parties that causes them not to utilize fact-finding either as a dispute resolution mechanism and/or as a substitute for a strike is susceptible at this time only to speculation. Without entering into a prolonged discourse on the genesis of the relative disuse of fact-finding, there is one seemingly plausible explanation for its decrease.

Fact-finding as a theoretical model was intended to allow a neutral third party to objectively analyze dispute matters and then come forward with non-binding recommendations for their resolution. The fact finder's recommendations can then be made public by either party. It was thought that by permitting the fact finder's recommendations to be made public that either the municipal employer or the union would be able to rally the citizenry of a municipality to put pressure on one or both of the aforementioned parties to accept those recommendations. However, in many instances the fact finder's recommendations have little or no effect on an apathetic citizenry, resulting in the removal or diminution of public pressure as an essential element in the fact-finding machinery. This result many times causes unions to reject this mechanism as either a substitute for strikes or as an effective impasse resolution technique.

3. Compulsory Final and Binding Interest Arbitration under Wisconsin Law

As noted previously in this article, compulsory final and binding interest arbitration is statutorily available only to law enforcement personnel and firefighters. The aforesaid statute allows either the municipal employer or the union to file for arbitration. Wisconsin's experience with the above described arbitration

suggests that it is compatible with collective bargaining and has not hindered the achievement of negotiated settlements. In about two-thirds of the 173 negotiations in 1973, the parties reached agreement without mediation. In the remaining one-third of the negotiations mediation was used, either upon direct request of the parties or in the course of the Commission's investigation. Three-fourths of the disputes that involved the use of mediation were resolved without the need for arbitration.6

There has been widespread compliance with the interest arbitration statute by both management and unions. Many municipal employers have been opposed to the statute but there appear to be no instances of management's refusal to carry out arbitrators' awards.

However, a practical problem has arisen under the law. The statute provides that either the municipal employer or the union

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66. COLLECTIVE BARGAINING AGREEMENTS OF POLICEMEN, FIREFIGHTERS, AND COUNTY LAW ENFORCEMENT OFFICERS IN WISCONSIN, BY METHOD OF SETTLEMENT, 1968 — FIRST QUARTER 1974

<table>
<thead>
<tr>
<th>Method of Settlement</th>
<th>1972a</th>
<th>1973</th>
<th>1974b</th>
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</thead>
<tbody>
<tr>
<td>All settlements</td>
<td>143</td>
<td>100</td>
<td>173</td>
</tr>
<tr>
<td>Direct negotiations</td>
<td>103</td>
<td>72</td>
<td>117</td>
</tr>
<tr>
<td>Third party assistance</td>
<td>40</td>
<td>28</td>
<td>56</td>
</tr>
<tr>
<td>Mediation</td>
<td>29</td>
<td>20</td>
<td>40</td>
</tr>
<tr>
<td>Fact-finding</td>
<td>4</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>Arbitration</td>
<td>7</td>
<td>5</td>
<td>16</td>
</tr>
</tbody>
</table>

(a) The arbitration statute became effective Apr. 20, 1972. Therefore, the disputes over contracts for calendar year 1972 which had not been resolved by direct negotiations or by mediation or fact-finding awards prior to that date were resolved by arbitration awards under the newly enacted law.

(b) It is estimated that most contracts for 1974 had been negotiated by Apr. 1, 1974, or had been referred to the Wisconsin Employment Relations Commission for third-party assistance of one form or another, although a few unsettled disputes over new contracts may have been included in the category of direct settlements which, subsequent to that date, were referred to the Commission for assistance. Of the forty-nine negotiations referred to the Commission for third-party assistance by Apr. 1, 1974, twenty-five had been settled by mediation and one by arbitration, and twenty-three were still pending at some step of the procedure.

NOTE: The number of settlements was calculated from the questionnaires and adjusted to reflect the response rate of seventy-one percent and the number of two-year agreements. The number of mediations and of fact-finding and arbitration awards was derived from State records. State figures were adjusted to cover calendar rather than fiscal years, as municipal agreements are negotiated on calendar-year basis.

Quoted from Stern, Final-Offer Arbitration—Initial Experience in Wisconsin at 40, note 65, supra.
may amend their final offer within five days of the hearing. This language has proven to be ambiguous and has created problems for both parties. In allowing either party to manipulate the process of revising their final offer, the chance that the parties would be able to settle without arbitration has been diminished. A provision requiring that the final offers be mutually exchanged through the arbitrator, not less than five days before the hearing, would promote orderly progress prior to the arbitration hearing and possibly increase the number of pre-hearing settlements.

Despite occasional difficulties experienced with the law, final offer arbitration appears to have functioned satisfactorily during its initial years. Neither unions nor municipal employers have been clamoring for repeal of the statute. Such acceptance of the present legislation reflects a policy judgment that the public's right to continued protective services outweighs the union's right to strike and the municipal employer's right to bargain every term of the contract. The success of final offer arbitration in the protective services does not automatically recommend such a procedure for all municipal employee impasse situations. The municipal employer may be willing to trade some of its bargaining power for an assurance of uninterrupted protective services. However, the municipal employer may decide that statutory protection of services other than law enforcement and fire via compulsory interest arbitration is not worth the required price in terms of a loss of its power to "carve out" the final terms of its collective bargaining agreement with the union.

B. Evaluation of Right-to-Strike Legislation

Right-to-strike legislation has produced varied results. Most of the states passing such laws have had little or no strike activity before or after the adoption of right-to-strike legislation. Montana passed a right-to-strike law for nurses in 1970 but has had no strikes since passage of the law. Prior to the law there had been only one public employee strike in that state, a 1969 nurses' strike at a state hospital. In Alaska there have been several work slowdowns but only one strike since 1973. Prior to 1972 there is no record of any public employee strikes. In Vermont there has been no strike activity before or after the passage of its right-to-strike legislation in 1967. Minnesota has had two strikes under its right-

68. Letter from James A. Witt, Deputy Commissioner of the Alaska Department of Labor, July 16, 1974.
to-strike legislation, one in 1973 and one in 1974, with no indication of strike activity prior to 1971. As of August 1, 1973, Hawaii has had only two strikes by public employees since the law became effective in July, 1970.

Contrariwise, Pennsylvania is unique inasmuch as there had been a marked intensification of strike activity prior to passage of the right-to-strike legislation. Several major teachers' strikes in 1967 and 1968 had focused public attention on the growing tension in municipal employee relations and resulted in the appointment of a "Governor's Committee to Revise Public Labor Relations Law." In 1970 the legislature passed the right-to-strike law, relying on the recommendations of the aforementioned Governor's Committee that "a limited and carefully defined right-to-strike [would be] a safety value that would in fact prevent strikes." That expectation did not materialize. Instead, strikes increased dramatically in number and duration after the passage of the legislation.

The growing labor conflict under the Pennsylvania legislation is exemplified by the two Philadelphia teachers' strikes during the 1972-73 school year. The first strike took place in September of 1972 and lasted twenty-three days. The teachers returned to work under their old contract but when the parties failed to reach agree-

70. ABOUD and ABOUD at 20, note 33, supra.
71.

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</thead>
<tbody>
<tr>
<td>All workers</td>
<td>4</td>
<td>10</td>
<td>13</td>
<td>38</td>
<td>29</td>
<td>71b</td>
<td>61b</td>
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<tr>
<td>Teachers</td>
<td>—</td>
<td>7</td>
<td>4</td>
<td>26</td>
<td>11</td>
<td>64</td>
<td>38</td>
</tr>
</tbody>
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(b) Source: Memo, Pennsylvania Department of Mediation, undated.

**AVERAGE DURATION OF PENNSYLVANIA TEACHER STRIKES (1966-73)**

<table>
<thead>
<tr>
<th>Year</th>
<th>Duration (in days)</th>
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<tbody>
<tr>
<td>1966-67</td>
<td>1.6</td>
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<tr>
<td>1967-68</td>
<td>6.2</td>
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<td>1968-69</td>
<td>3.7</td>
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<td>1969-70</td>
<td>11.0</td>
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<td>1970-71</td>
<td>7.0</td>
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<td>After Act 195</td>
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<td>1970-71</td>
<td>6.9</td>
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<td>1971-72</td>
<td>9.5</td>
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<td>1972-73</td>
<td>14.5</td>
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Right-to-strike

In January of 1973 the teachers struck again. At this point, the Philadelphia Board of Education sought a court injunction against the teachers. The court, finding that the strike "constituted a clear and present danger or threat to the health, safety and welfare of the public" issued the injunction. The teachers ignored the injunction and continued their strike until late February, 1973.

The public concern over the wide-spread strike activity caused the Pennsylvania legislature to re-evaluate the 1970 legislation. Neither municipal employers nor unions have advocated a return to a ban on strikes. More attention has been focused on the reasons why unions, and especially teacher unions, have little fear of using the strike. Pennsylvania state law, which requires that schools be open a minimum of one hundred eighty days in order to qualify for state aid, forces school boards to make up school days lost through strikes. As a result, teachers are generally assured of receiving pay for one hundred eighty days of teaching and seldom run any risk of losing pay by going on strike.

A comparison of right-to-strike legislation reveals that the effect of such legislation upon the number of strikes is related to the level of strike activity prior to enactment of the legislation. States which had little or no municipal employee strikes prior to passage of right-to-strike legislation did not experience a flurry of strikes subsequent to the aforementioned legislation but have continued to have a minimum of such strikes. The situation differs, however, in Pennsylvania which had been experiencing an already high number of strikes prior to enactment of its right-to-strike legislation. Passage of right-to-strike legislation did not reduce the number of strikes. Instead, strike activity increased sharply after the right to strike was legalized.

The Pennsylvania experience demonstrates that right-to-strike legislation does not necessarily reduce the number of strikes in a situation where there is already a high level of strike activity. Any state which is experiencing a growing number of municipal employee strikes and is considering enacting right-to-strike legislation in the hope of reducing such strikes should seriously consider the experience of Pennsylvania under their law. It might be of great value for a state such as Wisconsin, where there are a growing number of municipal employee strikes and where right-to-strike legislation is currently under consideration, to intensively study the

experience of Pennsylvania prior to any enactment of right-to-strike legislation.

C. Right to Strike and Compulsory Binding Interest Arbitration Combination

Legislation incorporating both the right to strike and compulsory arbitration has taken several diverse forms. The right to choose between strike or compulsory binding interest arbitration varies from jurisdiction to jurisdiction. The restrictions upon the right to strike and arbitration differ under each legal framework.

1. Canadian Public Service Staff Relations Act

Neither the right to strike nor the arbitration alternatives appear to have had a harmful effect on the bargaining process in Canada. As of March 31, 1970, 114 units had the opportunity to choose between arbitration and conciliation coupled with the right to strike. The majority of the units reached agreement without the aid of a conciliator. Fourteen units chose conciliation and the right-to-strike route but only one unit actually went on strike. The other 13 reached agreement through direct negotiations or by assistance from a conciliation board. Only four of the 100 units that initially chose the arbitration route eventually utilized the procedures. If success of a system is to be judged by its ability to encourage negotiated settlements, it appears that both alternatives under the "Canadian Plan" should be rated favorably.

However, a significant part of this success under the "Canadian Plan" must be attributed to the built-in limitations on the right to strike and arbitration. The union's power to exert crippling pressure on the employer is severely restricted by the power of the Public Service Staff Relations Board to designate certain employees who shall be prohibited from striking. The Board will deny the right to strike to any employee whose services are necessary to public health and security. This restriction on the right to strike significantly limits the strike option and promotes collective bargaining.

Another limitation found in the "Canadian Plan" is the exclusion of several issues from arbitration thereby making the union's arbitration option less cosmic. Matters relating to employee ap-

72. See H. W. Arthurs, Collective Bargaining by Public Employees in Canada: Five Models at 39, note 49 supra. The authors recognize that the statistics available under the Canadian Plan are over four years old, but more recent figures were not available.
pointment, transfer, promotion, demotion, lay-off, discharge, discipline and classification are not arbitrable and eliminate the use of arbitration as an impasse procedure on those items. This system results in allowing the employer to keep control over many of his management decisions unless the union is willing to strike over non-arbitrable items.

Even though the union has the right to choose the impasse procedure, the aforesaid limitations on both the strike and arbitration option work to offset this advantage. Consequently, it appears that the "Canadian Plan" does not give any one party an undue power position in the negotiating relationship.

2. The Oregon Statute

The Oregon law combines the right to strike with compulsory arbitration in a manner quite dissimilar to the Canadian law. Under the Oregon legislation, the court makes the choice whether the union may strike or go to compulsory and binding interest arbitration. The court becomes the sole arbiter of the danger or threat to the health, safety or welfare of the public and can enjoin a strike if such danger or threat exists. Upon enjoining a strike, the court can order the parties to compulsory interest arbitration. Arbitration quite clearly becomes the substitute for the strike under this law.

Theoretically, the parties' uncertainty as to whether they will be faced with compulsory arbitration or a strike should encourage them to settle their contract dispute through collective bargaining. A weak union would be wise to strive for a negotiated settlement lest it be faced with a strike it could not mobilize. Likewise, a strong union would be motivated to negotiate the terms of a settlement in the hope it could achieve a result superior to the one imposed by an arbitrator. Conversely, a weak employer would prefer a negotiated settlement to a strike it could not handle and strong management would attempt to negotiate a better settlement than it would probably receive from an arbitrator. The uncertainty of the procedures and the courts' total discretion over the matter would appear to encourage both parties to be equally zealous to negotiate a settlement rather than be subject to the jurisdiction of the court and possibly an arbitrator.

Though the court makes the determination of the danger or threat to the health, safety or welfare of the public, the employer has some flexibility in the use of the procedures. Practically speaking, if the employer prefers and is willing to undergo a strike rather
than submit to final and binding arbitration, he would not initiate an injunction petition. The employer's decision to petition for an injunction must be carefully weighed. The price of having the strike enjoined is the surrender of the power over the final determination of the contract terms. The value of having continuous municipal service must be balanced with the cost an arbitration award will impose upon the municipality.

There had been one public employee strike in 1968 and five in 1973 before the new law became effective on October 5, 1973. There have been no strikes since passage of the legislation but it is uncertain whether this reduction in strike activity has been affected by the legislation.\footnote{73 Letter from Melvin H. Cleveland, Executive Secretary of the Oregon Public Employee Relations Board, August 9, 1974.}

This legislation does alter the bargaining process to the extent that the courts have the decision-making power over the form of impasse procedure to be utilized. The courts insulate the employer and the public from strikes endangering the public health and safety but give the union the assurance of an arbitrated contract. As a result, the decision-making center under this legislation shifts from the public form of the municipal government process to the courts and the arbitrator.

3. Clay-Perkins Bill

This bill gives the union the choice of striking or forcing the employer to accept final and binding fact-finding, said fact-finding being a euphemism for compulsory interest arbitration. Placing in the hands of the union the unlimited power to choose the impasse procedures is to grant those unions power they do not presently have in the municipal or private sectors. The only limitation upon the union's right to strike is the possibility that the strike may be enjoined if there is a clear and present danger to the public health and safety. The union has the exclusive right to choose between the strike or binding fact-finding. Either of the above alternatives contains a certain element of risk. If the union strikes, said strike might be enjoined by the court. If the union chooses to proceed to final and binding fact-finding, the fact finder may not grant them as much as they could have secured through collective bargaining.

When analyzed in terms of the municipal bargaining concepts discussed in the previous section of this article, this bill clearly gives the union the decision-making power. The right to strike
gives the union, as one interest group among many in the local government bargaining process, a tool other groups do not have; the right to pressure the employer by withholding services thereby removing collective bargaining decisions from the normal governmental decision-making context. This power of the union to “force the employer” to capitulate via the strike is tempered only by the interjection of a third party (the courts) into the municipal bargaining process. A strike could be enjoined by court action only if it were determined that the strike would harm the public health and welfare. Whether the courts, acting as a proxy for the public, can always determine when the public interest is being threatened is not easily answered. The wide variance of court decisions in strike situations demonstrates that there is no predictable norm which courts follow. The elected officials, as representatives of the public, are deprived of any choice over the impasse procedures to be utilized in the dispute. The court’s ability to enjoin the strike merely spares the public from the total disaster of a crippling strike which would clearly harm the public health and safety.

The fact-finding provision allowing the fact finder to make final and binding recommendations on all of the issues poses a greater threat to collective bargaining than final offer type of arbitration. All the fears about compulsory interest arbitration could be realized under this kind of provision which is disguised as fact-finding. By providing that the fact finder can render a final and binding decision on each and every issue, vis-a-vis final offer arbitration where the decision maker must choose either the employer’s or the union’s offer in toto, the respective parties are less inclined to seriously bargain prior to the fact-finding hearing in hopes of benefiting from an anticipated fact finder’s compromise between the parties’ extreme positions.

4. Assembly Bill 758

In all right-to-strike states except Montana, municipal employee strikes are enjoinable by the courts when the public health and welfare are threatened or endangered. The courts, under most right-to-strike laws retain the right to intervene in the event of a strike and, in effect, become the decision making party when the interests of one group, municipal employees, must be balanced with the interests of the general public. Under Assembly Bill 758 the courts would have no power to intervene even if the strike were harming the health and safety of the public. Under the proposed bill, the union has an unlimited right to strike without regard for
the health and welfare of the public. It can be seriously questioned whether the responsibility for the well-being of the community should be entrusted to a non-elected group with potentially conflicting interests.

A comparison of Assembly Bill 758 with the Canadian law reveals some startling differences between the two. Under the Canadian law, the public interest is safeguarded by limiting the right to strike to those employees in a unit who are not essential to the public health and security. Those employees designated by the administrative agency as "essential to the public's health and security" are never allowed to strike. Under Assembly Bill 758 there is no provision excepting designated essential employees from exercising the right to strike. The "Canadian Plan" builds into the designated employee determination process a guarantee that the public will not be deprived of essential services. The total absence of such safeguards under Assembly Bill 758 makes the public vulnerable to municipal employee strikes regardless of the effect on the public's health and safety.

Under the proposed arbitration provisions of Assembly Bill 758, all unresolved issues are arbitrable. This means the union, by choosing the arbitration option, would be able to remove from the bargaining process any unresolved issues relating to management rights or control over the work force. In contrast, the employer's interests are more effectively protected under the Canadian Plan which excludes all processes governing appointment, transfer, promotion, demotion, lay-off, discharge, discipline and classification from arbitration.

The exclusive grant to the municipal union of the option of an unlimited right to strike or binding interest arbitration can only work to the public's detriment. Weak unions, with little bargaining experience or membership interest, would be given a free ride to the arbitrator's chair. The bargaining strengths attained by long and arduous union organization and conscientious membership involvement would be handed to inexperienced unions by legislative fiat. On the other hand, the right of the union to strike, without fear of court injunction, is a powerful tool in the hands of strong unions. When the union has the power to achieve more by striking than it could receive from the arbitrator it would obviously take the strike route. The municipal employer would be handcuffed in both instances. Weak unions can force arbitration upon strong employers and strong unions could strike and paralyze a community.

The power which Assembly Bill 758 would give to municipal
unions would seriously impair the municipal collective bargaining process described in a previous section of this article. The municipal union's bargaining power would be enhanced by an unrestricted right-to-strike thereby allowing it to withhold public services in hopes of causing that public to put pressure on its elected officials to cede to its demands. Extending to unions the alternate right to compulsory arbitration would also alter the political process in municipal government by allowing the unions to remove the decision-making power from the normal bargaining context. The lack of any recognition of employer and public interest under the proposed legislation would shift the decision-making power from elected officials to one interest group, namely, the union. Such a result would be an unfortunate distortion of the normal American political process in municipal government.

The policy reasons for giving all municipal employees the right to compulsory and binding interest arbitration are not necessarily the same as those which support arbitration legislation for law enforcement and firefighter personnel. The public's need for continuous and uninterrupted service from its law enforcement and firefighter personnel may well justify that a bargaining impasse be resolved at the expense of the employer losing some of its control over bargaining the final terms of the agreement. This right of the municipal employer to bargain the terms of the agreement with its essential employees and their union is traded for the assurance that impasses will be resolved and essential services continued. The obvious importance of police and fire protection makes the above described trade-off a reasonable exchange. Contrariwise, to extend arbitration rights to all municipal employees would be to make a policy judgment that prompt and final resolution of all municipal labor disputes is more important than the municipality's right to be the architect of the terms of the final contract. In addition, a municipal employer may be willing to take an illegal strike rather than allow an arbitrator to decide items affecting the employer's management rights. Similarly, the employer may value its right to set fiscal priorities to be more important than suffering the inconvenience of a work stoppage. The cost to the public of not coming to agreement in law enforcement and firefighter disputes is greater than the cost of impasses in other municipal employment disputes. The price a municipality is willing to pay for its essential services may be greater than the price it will pay to insure less essential services. Any legislative granting of compulsory final and binding interest arbitration to municipal employees reflects a policy deci-
sion that a municipal employer’s prerogative to set its own management and fiscal priorities are secondary to the employees’ preference for an arbitrator’s decision over a bargained agreement.

VII. CONCLUSION

Assuming, for the sake of argument, that Wisconsin’s existing Municipal Employment Relations Act is in need of modification, the previous review of the current or proposed impasse resolution legislation in Wisconsin and other states generates the following observations:

First, the legalization of strikes is no panacea which can guarantee a reduction in the frequency or duration of strikes. Pennsylvania’s experience after enacting a law which provides the right-to-strike is clearly on point. As noted previously, Pennsylvania’s strike activity which was high prior to the legalization of strikes increased after their legalization. Likewise, Wisconsin has undergone an increase in strike activity. It could well be argued that to legalize strikes would be to ingest an attractively packaged placebo with questionable benefits flowing therefrom.

Second, any law legalizing the right to strike should limit by legislative definition the types of employees who may legally strike. The aforesaid legislative definition should be built around the concept of allowing the right-to-strike only to non-essential employees whose withholding of their services does not threaten the public health, safety or welfare.

Third, strikes would not be legal until the parties had bargained in good faith to impasse, exhausted all contractual impasse resolution techniques and submitted their dispute to mediation by a neutral third party.

Fourth, strikes that threaten the community’s health, safety and welfare would be enjoined by the courts and failure by an employee and/or union to comply with the court’s orders would subject the aforesaid parties to definite and significant monetary penalties; an employee who would act contrary to the court’s injunction order would be subject to suspension, demotion or discharge by his or her employer.

Fifth, strikes involving a prohibited practice situation, vis-a-vis a contract dispute, should be considered illegal and hence enjoinable by the courts; however, prohibited practice situations that are laden with strike overtones should result in an expedited hearing and decision making process by the Wisconsin Employment Rela-
Sixth, employees may strike only when a majority of the striking unit vote by secret ballot in favor of the strike.

Seventh, it would be a prohibited practice for municipal employees not on strike to honor picket lines set up by another group of employees; those employees who would violate this prohibition would be subject to fines or discharge.

Eighth, if strikes are legalized then state aids to schools should be prorated so that the municipal school district loses only an amount of state aid proportionate to days of school not held or made up.

Ninth, a combination right-to-strike/compulsory arbitration law should contain the following provisions:

(a) Either the municipal employer or the municipal union has the right, upon reaching bargaining impasse, to elect to either strike or lockout if they meet the qualifications set forth in the above numbered paragraphs or proceed to compulsory binding interest arbitration.  

(b) Only monetary items should be subject to arbitration; pure language and policy issues would not be arbitrable by law.

(c) Final offer compulsory interest arbitration would be utilized unless the parties voluntarily agreed to have the arbitrator decide on each and every item of dispute.

It should be noted that compulsory interest arbitration legislation, like the right to strike, has certain potentially negative aspects. Specifically, compulsory interest arbitration standing alone does not insure that a strong, militant union upon receiving an unfavorable arbitration award would not go out on strike in an effort to compel the municipal employer to capitulate to its demands. While it is acknowledged that such an action by a union under the above described circumstances would be paramount to committing a per se illegal act, the direct prohibition against strikes in the current Municipal Employment Relations Act has not prevented certain unions from striking.

In addition, it should be noted that even if under normal circumstances binding arbitration does prevent strikes, this result is not without a price. Both the municipal union and the municipal employer, by being subject to compulsory interest arbitration cede their traditional collective bargaining right to be the exclusive ar-

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75. Obviously, paragraph No. 6 would not apply to a lockout by an employer.
chitects of their collective bargaining agreement to a third party outside their bargaining relationship. Whether the municipal unions perceive that the ceding of this exclusive right to a third party is worth it in terms of potentially being able to secure rights and benefits beyond those which they could derive from bargaining is a question which they must answer. Likewise, the municipal employer must decide whether it too desires to cede final decision making power to a third party arbitrator in exchange for the likelihood that compulsory interest arbitration reduces the probability of strikes thereby diminishing the potential disruption of community services.