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California's Alternative To Collective Bargaining For Teachers: The Winton Act, 1965-1974, And Proposals For Change

The trend towards collective bargaining by public employees, and in particular, school employees, is a subject of growing nationwide interest. This movement is exerting pressure on the "meet and confer" provisions of the Winton Act, California's method for avoiding and settling disputes between teachers and school boards. This comment attempts to measure the effectiveness of the Winton Act by comparing California's experience with that of states which operate under a collective bargaining system. Additionally, various proposals for change in the present law are examined. The author concludes that certain changes are desirable, including provision for a negotiated agreement between school boards and teacher organizations and binding arbitration of certain disputes. The continued prohibition of teacher strikes is strongly urged.

The specter of schools closed by strikes haunts school boards in California as well as throughout the nation: teachers walking the picket lines, children deprived of their education, school districts and communities torn by strife over conflicting school board and teacher organization positions. Although strikes by teachers are illegal in almost all states,¹ this prohibition has not deterred teacher organizations from threatening to strike and actually striking.²

In recognition of the growing militancy of teacher organizations³ and the need to formalize the relationships between teacher groups and school boards, state legislatures throughout the country have enacted statutes either requiring school boards to negotiate with their

1. Livingston, *Collective Bargaining and the School Board*, PUBLIC WORKERS AND PUBLIC UNIONS 72 (S. Zagoria ed. 1972).

2. There were 631 teacher strikes nationwide during the period 1960 to 1971, involving an estimated 600,375 teachers and a loss of 5,955,689 man-days. National Education Association, *Memorandum on Teacher Strikes, 1970-71*, GOV'T EMPLOYEES RELATIONS REPORTS, REFERENCE FILE—37 71:1055 (1972) [hereinafter cited as GERRF].

3. See Comment, *Collective Bargaining and the California Public Teacher*, 21 STAN. L. REV. 340 (1969).

teachers or authorizing them to do so.⁴ California is among a small group of those states which require school boards to "meet and confer" with their employees⁵—specific regulations for such meeting and conferring being set forth in the Winton Act,⁶ which has governed public school employer-employee relations in California since its passage in 1965.

This comment will review the operation of the Winton Act since its enactment, as interpreted in the courts and implemented in school districts. An attempt will be made to gauge the success of the Act by comparing California's experience with that of other states. A brief overview of the laws of several other states will set the background for a discussion of proposals for change which have been introduced in the California Legislature, as well as other changes that are advocated by organizations representing the public school employers and employees. Finally, the question to be answered is, How can California best protect the rights of school employees and, at the same time, preserve citizen control of the schools and provide an effective education for the children of this state?

CONTROVERSY OVER THE NEED FOR COLLECTIVE BARGAINING

Collective bargaining in the private sector primarily involves the rights and responsibilities of the two parties to the negotiations. Third parties are involved only indirectly since the industrial employer can pass any increase in cost on to the consumer, who then can choose whether or not to buy. In the public sector, and particularly in schools, the problem is more complex since not only is revenue limited by state law,⁷ but the educational consumers, school-children, do not have the choice of whether or not to "buy" the product offered. Therefore, there are two shadow groups whose rights and obligations are directly affected by the results of negotiations between public school employers and employees—the citizen-taxpayers of the community and the children who attend the schools. These interests, coupled with the tradition of local control of the schools in California, are behind the controversy in this state as to whether the Winton Act

4. As of 1972, 24 states had enacted statutes which require negotiations, and four had enacted statutes authorizing such negotiations. Livingston, *supra* note 1, at 63.

5. According to a recent survey, seven states have meet and confer requirements. Cal. School Boards Ass'n, Community College Section, *A Survey of Collective Bargaining in Public Schools*, at 15 (Sept. 1973). One of these, Oregon, subsequently approved a new collective bargaining law. 19 CAL. PUBLIC EMPLOYEES RELATIONS 20 (Dec. 1973) [hereinafter cited as CPER].

6. CAL. EDUC. CODE §§13080-13090.

7. CAL. STATS. 1972, c. 1406, at 2931.

should continue to govern relations between the public school employer and its employees, or whether the Act should be repealed and comprehensive collective bargaining adopted to replace it.⁸

The competing demands for the limited education dollars currently available in California intensify the problem, for when school boards accede to employee demands for an ever-larger share of the education dollar, they are faced with the prospect of reducing elsewhere in the budget⁹ in classroom supplies, special programs, maintenance of buildings, transportation, or extra-curricular activities. It has been estimated that the matters subject to negotiation (even when limited to salaries and fringe benefits) normally cover between 75 and 90 percent of a school district's operating budget.¹⁰ In most school districts in California, other than those few unusually wealthy districts or those in which the rate of growth of the tax base exceeds the rate of growth of educational costs, the only recourse is to ask the voters to approve a tax rate increase, which California voters have been exceedingly reluctant to do in recent years.¹¹

To understand the controversy at all, it is essential to define the difference between collective bargaining and "meet and confer," as used in the Winton Act. The meet and confer process generally can be defined as "discussions leading to unilateral adoption of policy by a legislative body . . . [taking] place with multiple employee representatives rather than an exclusive bargaining agent."¹² Collective bargaining has been defined as

the mutual obligation of the employer and the the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party¹³

The question this controversy presents is whether the meet and

8. The growth of the movement toward collective bargaining in the public schools has been a part of the nationwide interest in collective bargaining in all phases of public employment. Public school employees make up approximately one third of all public employees in the country. D. SULLIVAN, PUBLIC EMPLOYEE LAW 19 (1969).

9. See Livingston, *supra* note 1, at 68.

10. *Id.* at 66.

11. During the 1972-73 school year, 34 school districts held 96 tax elections of which 50 percent failed. During the same period there were 85 bond elections in 32 districts of which 64 percent failed. CAL. AGENCY FOR RESEARCH IN EDUCATION, RESULTS OF TAX, BOND AND LOAN ELECTIONS IN CALIFORNIA SCHOOL DISTRICTS 1972-1973 (Spec. Rep. No. 73-2, 1973).

12. U.C.L.A. Institute of Industrial Relations, Intergovernmental Management Programs, Glossary of Selected Employee Relations Terms, at 12 (1973).

13. *Id.* at 4.

confer process as presently in operation under California's Winton Act continues to be a viable alternative to collective bargaining, preserving the rights of both the actual and peripheral parties involved with the issues of employer-employee relations in the schools, or whether, as some have said, the meet and confer approach, although once believed to be a workable compromise between the right of the public to control the political process and the right of employees to bargain collectively, is now obsolete and doomed to disappear altogether, to be replaced by collective bargaining.¹⁴

THE WINTON ACT

A. Provisions of the California School Employer-Employee Relations Law

The Winton Act, the first law specifically dealing with employer-employee relations within the public school systems of California, was passed by the legislature in 1965.¹⁵ Directed toward improvement of communication between public school employers and employees, and improvement of both personnel management and employer-employee relations, the Act guarantees to public school employees the right to join organizations of their own choice and to be represented by such organizations in their relationships with the public school employers. The Winton Act covers all school district employees, classified as well as certificated,¹⁶ and is aimed at affording certificated employees (primarily teachers) a voice in the formulation of educational policy.¹⁷

The scope of representation under this Act includes all matters relating to employment conditions, including, but not limited to, wages and hours.¹⁸ In addition to conditions of employment, the Act required, in its original form, that the public school employer or its representative meet and confer with representatives of certificated employee organizations with regard to

matters relating to the definition of educational objectives, the determination of the content of courses and curricula, the selec-

14. Edwards, *The Emerging Duty to Bargain in the Public Sector*, 71 MICH. L. REV. 885, 933 (1973).

15. The earliest effort of the California Legislature to provide a framework for public employer-employee relations as a whole was the George Brown Act of 1961. CAL. GOV'T CODE §§3525-3536.

16. Classified employees of school districts are all employees other than those required to hold a state certificate or credential. Certificated employees of school districts are those employees required to hold a state certificate or credential and include teachers, supervisory personnel, and administrators.

17. CAL. EDUC. CODE §13080.

18. CAL. EDUC. CODE §13084.

tion of textbooks, and other aspects of the instructional program to the extent such matters are within the discretion of the public school employer or the governing board under the law.¹⁹

The 1970 amendments limited the scope of meet and confer discussions to the *procedures* relating to how the above matters will be decided. The phrase "meet and confer" is defined by the Winton Act as the mutual obligation to exchange freely information, opinions, and proposals, and to make and consider recommendations under orderly procedures in a conscientious effort to reach agreement by written resolution, regulation, or policy of the governing board effectuating such recommendations.²⁰

The 1970 amendments strengthened the meet and confer process²¹ by emphasizing the fundamental concept of the Act, that school boards and school district employees have something worth saying to each other about school operations and that the boards and employees can learn from each other.²²

A unique feature of the Act is the provision for a certificated employee council (originally called negotiating council)²³ to represent all certificated employee organizations. The Act provides that each organization shall be represented in proportion to the number of its members. This does not apply to classified employees, and the school employer must meet and confer separately with representatives of each classified employee organization.²⁴ Although some have theorized that the reason behind the establishment of the certificated employee council was primarily to save time for the school board and allow all such organizations to exchange opinions with each other,²⁵ others have seen a different reason for its existence. According to a past president of the California School Boards Association,

[t]he Winton Act is unique in that the employee council concept permits a majority organization's viewpoint to constitute the official position of the teachers of a district, but at the same time, the statute provides a democratic forum for other employee organizations or individuals to express their own points of view.²⁶

19. CAL. EDUC. CODE §13085, as enacted, CAL. STATS. 1965, c. 2041, at 4660.

20. CAL. EDUC. CODE §13081(d).

21. See *id.*

22. Shannon, *A Bird's-Eye View—The Winton Act*, Ass'n of Cal. School Administrators Management Action Paper, Apr. 10, 1972, vol. 1, no. 8.

23. The 1970 amendments to the Winton Act changed the name from negotiating council to certificated employee council. CAL. STATS. 1970, c. 1413, at 2686.

24. CAL. EDUC. CODE §13085.

25. Comment, *supra* note 3, at 356.

26. *Preserve California's Winton Act*, 32 CAL. SCHOOL BOARDS J. no. 3, at 10 (Mar. 1973).

The Winton Act provides that any action agreed upon in the meet and confer process may be implemented by the school board unilaterally enacting a resolution, regulation, or policy adopting such course of action.²⁷ The Act allows the school board and employee organization representatives to develop a procedure for resolution of persistent disagreements through fact finding with advisory findings and recommendations. A school board has authority to adopt grievance procedures,²⁸ provided final decision in any dispute remains with the board.²⁹ The Act specifically contemplates that the school board has the legal right and duty to make the "final decision with regard to all matters" under consideration in the meet and confer process, and nothing in the Act limits the authority of a school board to take any legislative action it deems necessary.³⁰

B. Interpretation by the Courts

In the years since the enactment of the Winton Act, a number of court cases have dealt with the question of what rights and duties the Act confers on the employer and employees. The major area of controversy has involved the certificated employee council, its scope, composition, and powers. The earliest case was *Berkeley Teachers Association v. Board of Education*.³¹ The board of education passed a resolution establishing a certificated employee council of nine members, elected by all the certificated staff without regard to whether or not they were members of any employee organization.³² The court held that this mode of selection violated the express provisions of the Winton Act, stating that the procedure contemplated by the Act is merely one of ascertainment and verification, and an election is not such a procedure.³³ The court noted that there is no provision for the council to represent all certificated employees, but rather that it be composed of representatives of the various employee organizations, proportionally allotted.³⁴ The court concluded, after a review of the legislative history of the Winton Act, that the legislature intended to bar representational elections from the field of public school employment and expressly rejected the collective bargaining approach of having a single employee organization represent all certificated employees.

27. Shannon, *supra* note 22.

28. A grievance is any dispute concerning the interpretation or application of district policy, rules, and regulations, or of a written memorandum of understanding. U.C.L.A. Institute, *supra* note 12, at 8.

29. CAL. EDUC. CODE §13088; Shannon, *supra* note 22.

30. CAL. EDUC. CODE §13088.

31. 254 Cal. App. 2d 660, 62 Cal. Rptr. 515 (1967).

32. *Id.* at 663, 62 Cal. Rptr. at 517.

33. *Id.* at 668, 62 Cal. Rptr. at 520.

34. *Id.* at 667-68, 62 Cal. Rptr. at 519-20.

California Federation of Teachers v. Oxnard Elementary Schools,³⁵ which has been extensively cited in later cases, is probably the most definitive analysis and interpretation of the Winton Act. The teachers' union brought suit to require the elementary school district to deal directly with the union, outside of the negotiating council structure. The court held that the Act is neither discriminatory nor improper because of its establishment of separate regulation of public school employer-employee relations as opposed to those of all other public agency employees.³⁶ Agreeing with the *Berkeley* case, the court determined that the Act did not establish collective bargaining.³⁷

In answer to the teachers' union's claim that the provisions of the Act were discriminatory in that multiple employee groups representing noncertificated employees can meet directly with the employer while multiple certificated employee groups must meet through the negotiating council, the court indicated that the primary difference is that noncertificated employees are concerned almost exclusively with terms and conditions of employment while certificated employees are additionally concerned with educational objectives and the instructional program.³⁸

The question of exclusive representation was considered in *Oxnard*, the court holding that this was not allowed under the Act. The court further pointed out that "a minority organization enjoys greater opportunity under the Winton Act than it would under a statute providing for the election of an exclusive bargaining agent . . ."³⁹ and noted that "if exclusive bargaining were substituted for the negotiating council under existing circumstances, appellants would be left entirely without a voice."⁴⁰ The court also pointed out that the Winton Act does permit direct representation before the board in matters relating to individual grievances.⁴¹

In *Torrance Education Assocation v. Board of Education*⁴² plaintiffs brought an action seeking to prohibit administrators from meeting with teachers on matters of educational policy in traditional teachers' meetings. The court held that the Winton Act does not prohibit school districts from requiring teachers to attend faculty meetings where administrators discuss matters which fall within the permissible

35. 272 Cal. App. 2d 514, 77 Cal. Rptr. 497 (1969).

36. *Id.* at 527, 77 Cal. Rptr. at 509.

37. *Id.* at 521, 77 Cal. Rptr. at 505.

38. *Id.* at 531, 77 Cal. Rptr. at 511.

39. *Id.* at 537, 77 Cal. Rptr. at 514.

40. *Id.* at 534, 77 Cal. Rptr. at 513.

41. *Id.* at 537, 77 Cal. Rptr. at 515.

42. 21 Cal. App. 3d 589, 98 Cal. Rptr. 639 (1971).

subject matter of meet and confer sessions between the school district and the employee organizations.⁴³

In *Los Angeles Unified School District v. United Teachers of Los Angeles*⁴⁴ the district brought an action to enjoin the union from engaging in a teachers' strike. A temporary restraining order and permanent injunction were issued. The court held that California follows and applies the common law rule that public employees do not have the right to strike their public employer in the absence of legislative authority. Declining to go into an extensive analysis of the question, the court followed similar decisions of three other appellate courts in the state.⁴⁵

Although *Oxnard* seemed to have settled the question of whether minority organizations could meet and confer with school boards outside of the certificated employee council structure, *West Valley Federation of Teachers v. Campbell Union High School District*⁴⁶ presented a variation of that theme. The teachers contended that the district board was required to hear proposals by minority organizations at board meetings on the same matters upon which the board was required to meet and confer with the certificated employee council. The teachers' union contended that the Winton Act should be read so as to draw a sharp distinction between the process of meet and confer and the "mere right of making proposals directly to the school board."⁴⁷ *Oxnard* had held that whereas the Act required negotiating through the council where more than one certificated employee organization exists in a single district,

the Act does not preclude one of such organizations from presenting proposals directly to the employer, even though meeting and conferring on such proposals must be accomplished through the negotiating council.⁴⁸

This court, however, interpreted the Act as providing for direct proposals by employee groups at public meetings of the school boards only in cases where there is only one employee organization. In the situations where there is more than one employee organization, the

43. *Id.* at 591, 98 Cal. Rptr. at 640.

44. 24 Cal. App. 3d 142, 100 Cal. Rptr. 806 (1972).

45. *Trustees of the California State Colleges v. Local Teachers*, 13 Cal. App. 3d 863, 92 Cal. Rptr. 134 (1st dist., 1970); *City of San Diego v. American Federation of State, County and Municipal Employees Local 127*, 8 Cal. App. 3d 308, 87 Cal. Rptr. 258 (4th dist., 1970); *Almond v. County of Sacramento*, 276 Cal. App. 2d 32, 80 Cal. Rptr. 518 (3d dist., 1969).

46. 24 Cal. App. 3d 297, 101 Cal. Rptr. 83 (1972).

47. *Id.* at 299, 101 Cal. Rptr. at 84.

48. 272 Cal. App. 2d at 533, 77 Cal. Rptr. at 512.

court held that "the negotiating council is the sole procedural conduit through which employee organizations may exercise their employment relation rights."⁴⁹ The court further held that although the organization has the right to present proposals to the employer,⁵⁰ the school district, in directing that such proposals be referred to the negotiating council, has not refused that right.⁵¹

Following the 1970 teachers' strike in Los Angeles, the board of education and the United Teachers of Los Angeles entered into a written agreement which led to settlement of the strike.⁵² However, in *Grasko v. Los Angeles City Board of Education*⁵³ citizen-taxpayers of the district brought suit to enjoin the Los Angeles Board of Education and the organization representing the teachers from entering into such an agreement. The Superior Court of Los Angeles County issued a permanent injunction, and the court of appeal affirmed, holding that school districts and their governing boards are not authorized to enter into binding agreements with representatives of their employees regarding matters of employment conditions or educational policy. The court held that

under the Winton Act any agreements reached as a result of the meet and confer sessions must be implemented in the form of resolutions, regulations, or policies of the governing board of the public school employer which, except as otherwise provided by law, must be subject to change at the board's pleasure.⁵⁴

In addition, the court found that the termination of the illegal teachers' strike was the consideration for the proposed agreement and that the agreement was invalid since the consideration was not lawful.

It is apparent that the courts have strictly interpreted the Winton Act, declining to read into the Act any rights or prohibitions not specifically set forth. The courts have consistently held that the Act neither establishes nor permits collective bargaining, that strikes, as well as binding written contracts, are prohibited, and that the discussions between the school board and teacher organizations must be conducted through the certificated employee council, although administrators may discuss educational policy with teachers at faculty meetings. The courts have further stated that representational elections and selection of an exclusive representative by teachers is prohibited.

49. 24 Cal. App. 3d at 301, 101 Cal. Rptr. at 86.

50. *Id.* at 300, 101 Cal. Rptr. at 85.

51. *Id.* at 301, 101 Cal. Rptr. at 85.

52. 31 Cal. App. 3d 290, 294, 107 Cal. Rptr. 334, 336-37 (1973).

53. 31 Cal. App. 3d 290, 107 Cal. Rptr. 334 (1973).

54. *Id.* at 303, 107 Cal. Rptr. at 343.

C. California's Experience under the Act

One of the basic questions being asked by citizens and legislators in California, as they ponder the necessity or advisability of changes in the way in which school districts in California deal with their employees, is whether the Winton Act has been effective. Has it improved communications and employer-employee relations between the school district employers and employees? Has it afforded teachers a voice in the formulation of educational policy? Does it continue to be a viable alternative to collective bargaining? Does it adequately preserve the rights of all the parties involved? The answers to these questions can be as varied as the many groups and individuals involved in the matter.

There are approximately 1,100 school districts in California. There are two major certificated employee groups, the California Teachers Association and the California Federation of Teachers. In addition there are several smaller statewide groups. School boards are represented statewide by the California School Boards Association, and administrators by the Association of California School Administrators. Each of these groups is likely to come up with a different evaluation of the effectiveness of the Act and different suggestions for change.⁵⁵

In an attempt to determine how the Act has been implemented in California and what effect it has had on employer-employee relations, data dealing with strikes and work stoppages as well as gains in salaries achieved by California teachers since the enactment of the Act will be examined. In addition there will be a review of how some California school districts have operated under the Act.

1. Strikes and Work Stoppages in California Schools

Although strikes by public school teachers have been held to be illegal in California, strikes still do occur. Before 1968, California had never had a teacher strike,⁵⁶ and therefore, at the time of the passage of the Winton Act there had been no experience in the state in dealing with such strikes. However, as of July 1971, there had

55. Although the California Teachers Association was the primary advocate of the Winton Act when it was passed in 1965, that association has recently been among the primary advocates for repeal of the Act and adoption of collective bargaining for public school employees in California. The California Federation of Teachers has long embraced the concept of bilateral determination. It would appear that teachers as a whole have come to the conclusion that the "professional involvement" of the past is no longer an adequate means of influencing the policy decisions of school boards and school managements. ASSEMBLY ADVISORY COUNCIL, REPORT ON PUBLIC EMPLOYEE RELATIONS 124, 125 (1973). Management seems to line up in support of the Winton Act, while generally speaking, the employees line up against it. *Preserve California's Winton Act*, *supra* note 26, at 10.

56. 6 CPER, UNIONIZATION OF MUNICIPAL EMPLOYEES: THE CALIFORNIA EXPERIENCE 120 (Institutional Reprint 353, 1971).

been a total of 30 teacher strikes involving 37,437 teachers.⁵⁷ During the period from September 1971 to January 1974 there were seven additional teacher strikes reported.⁵⁸ Although the statistics are not available for a year-to-year comparison, the nationwide pattern tends to show an increase in the number of teacher strikes each year.⁵⁹ In contrast, the statistics in California do not reveal such a trend.

Despite the prohibition on strikes, few teacher groups in California have suffered actual penalties for ignoring the ban. School districts seem to have no problem obtaining injunctions against the strikes;⁶⁰ but, in contrast with other states, there seem to be no instances in which teachers have been found in contempt of court for ignoring the injunction, or where school districts have attempted to bring such actions against their employees.⁶¹

While there were three strikes in California in the fall of 1973,⁶² there were 38 in Michigan and 22 in Pennsylvania.⁶³ Several school districts in California indicated, however, that they averted strikes virtually at the last moment by adopting comprehensive settlements with employees.⁶⁴ In addition to strikes and threats of strikes, California teachers have used several other weapons in disputes with school districts. As of March 1973, nine districts in California were under statewide sanction imposed by the California Teachers Association,⁶⁵

57. Statistics for the period 1960 to 1971 list 30 teacher strikes in California, but 1968 was the first year in which strikes were reported. National Education Association, *supra* note 2, at 71:1057.

58. It is reported that there were six teacher strikes in 1968 and three times as many in 1969. CPER, *supra* note 56. There were four strikes in 1969-70, three in 1970-71, one in 1971-72, and three in 1972-73. 16 CPER 42 (Mar. 1973); 6 CPER 29-30 (Aug. 1970); GERR RF 71:1054.

59. Nationwide there were 18 teacher strikes in the 1965-66 school year, 34 strikes in 1966-67, 114 strikes in 1967-68, 131 strikes in 1968-69, 181 strikes in 1969-70, and 130 strikes in 1970-71. GERR RF 71:1055.

60. See, for example, *Los Angeles Unified School Dist. v. United Teachers of Los Angeles*, 24 Cal. App. 3d 142, 100 Cal. Rptr. 806 (1972).

61. In Youngstown, Ohio, teachers ignored two injunctions in 1973, but went back to work on September 28 with a ratified contract. Despite the settlement the school board says it will press contempt of court charges against the teachers. Teachers in Greenburgh Central District of New York returned under injunction after a strike of nearly three weeks on September 25, 1973. They will each lose an average of \$1,200 under a Taylor Law provision that permits a fine of two days' salary for each day on strike. On September 26, 1973, a strike of teachers in Highland, Indiana, was enjoined for the second time. Seven teachers were found in contempt of court, were jailed for two days, and were considered formally suspended from their jobs. 524 GERR B-17 (Oct. 1973).

Some California school districts have been moving in that direction. In the fall 1973 strike of teachers in the Pajaro Unified School District there were indications that after settlement the teachers may still face contempt of court citations. Cal. School Boards Ass'n Newsgram, Dec. 20, 1973, at 1.

62. 19 CPER 49 (Dec. 1973); Cal. School Boards Ass'n Newsgram, Dec. 20, 1973, at 1.

63. 524 GERR B-19 (Oct. 1973); 520 GERR B-13, B-14 (Sept. 1973).

64. 19 CPER 50 (Oakland Unified School District Board), 52 (Berkeley Unified School District), 53 (San Bernardino Unified School District) (Dec. 1973).

65. 16 CPER 46 (Mar. 1973).

and one more was added to the list in May of 1973.⁶⁶ The teachers' association urges teachers to seek employment elsewhere than those districts under sanction, notifies college and placement service of the "inadequate professional climate" existing in such districts, and in its publications describes these districts as "unfit place[s] to teach."⁶⁷ Typical reasons for imposition of sanctions include a failure to meet and confer in a good faith effort to reach agreement with teachers regarding salaries and working conditions, unilateral action by the board, and failure to recognize teachers as partners in educational planning and policy development.⁶⁸

Another tactic which has recently come into use by teachers is the "slowdown," which was used during the last week of school in spring 1973 by Fremont teachers who were unhappy with a district salary offer. One half of the 1,300-member teaching staff joined in the action. The slowdown consisted of a refusal by the participants to engage in any nonclassroom activities such as faculty meetings and after school playground supervision. Most participants simply departed the school grounds immediately after students were dismissed. The school board retaliated with a decision to dock the pay of teachers who participated in the slowdown, and approximately 500 teachers were so docked. The teachers' association reportedly was considering a lawsuit against the district for the action.⁶⁹ Nevertheless, considering the fact that it is likely that teachers in other states also employ similar tactics, the use of strike statistics should be valid; and it can be said that California, with more than 1,100 school districts, has had relatively few teacher strikes in comparison with other states with much smaller numbers of school districts.⁷⁰

2. *Salaries of California Public School Teachers*

A brief look at teachers' salaries in California over the past decade may give some basis for evaluation of whether or not the Winton Act has resulted in teachers being adequately compensated for their work. California has always had a reputation for paying teachers well. During the last decade California has consistently been among the three leading states in the area of teachers' salaries, and in the last few

66. 18 CPER 19 (Aug. 1973).

67. *Id.*; 16 CPER 46 (Mar. 1973).

68. 18 CPER 19 (Aug. 1973); 16 CPER 46 (Mar. 1973).

69. 18 CPER 20 (Aug. 1973).

70. During the 11-year period of July 1960 through June 1971, while California had 30 teacher strikes, there were 25 in Connecticut, 68 in Illinois, 153 in Michigan, 46 in New Hampshire, 32 in New York, 72 in Ohio, and 80 in Pennsylvania. GERR RF 71:1057.

years second only to Alaska.⁷¹ The average annual salary on a national basis for full-time public school teachers in 1970-71 was estimated to be \$9,218.⁷² The average salary in California during that period for elementary and secondary teachers was \$11,022.⁷³

Based upon median figures, during the period 1961 to 1965, prior to adoption of the Winton Act, salaries rose an average of \$307 per year. In the years since the adoption of the Act, 1965 to 1973, the median salary in California rose by an average of \$590 per year.⁷⁴ To summarize, California teacher salaries are generally higher than the nationwide average; they have been rising at a steady rate over the years and at a somewhat faster rate since 1965.

3. Implementation of the Act by Local Districts

During the years since enactment of the Winton Act, efforts toward fair and effective implementation have resulted in some frustrations among the parties involved. In a joint statement on the subject, the California School Boards Association and the California Association of School Administrators⁷⁵ said,

On the whole . . . the Winton Act, with its meet and confer concept, has emerged in the minds of a growing number of educators, board members, and citizens as being superior to the collective bargaining laws in force in some other states.⁷⁶

The statement also notes that the presence of the Act has not solved all the problems in this area and that some smaller districts, which did not feel the need for written policies while relationships were reasonably harmonious, have found that without written policies serious misunderstandings eventually develop. Further, in some districts that have written policies in compliance with the Winton Act, problems have been encountered because of a lack of sensitivity to the intent of the Act or a failure to provide for a workable meet and confer process.⁷⁷ It is apparent that at the present time there are few districts in California that have failed to adopt some policy in compli-

71. *Hearings Before the California Senate Committee on Education on the Winton Act: Past, Present, and Future*, Dec. 6, 1972, at 126.

72. GERR RF 71:1075.

73. CAL. AGENCY FOR RESEARCH IN EDUCATION, *TEACHERS' SALARIES AND SALARY SCHEDULES*, 1972-73 at x (doc. no. 11, 1973).

74. *Id.*; STATE DEPT OF EDUCATION, *SALARIES OF CERTIFICATED EMPLOYEES IN CALIFORNIA PUBLIC SCHOOLS*, 1972-73 at 9 (1973).

75. The California Association of School Administrators is now merged with the Association of California School Administrators.

76. CAL. SCHOOL BOARDS ASS'N & CAL. ASS'N OF SCHOOL ADMINISTRATORS, *EMPLOYER-CERTIFICATED EMPLOYEE RELATIONSHIP 1* (Dec. 1970).

77. *Id.*

ance with the Winton Act.⁷⁸ However, the degree of cooperation or friction in the districts varies widely.

a. Meeting and Confering

There were many districts in California that had been meeting with their teachers in regard to salaries and working conditions long before the legislature adopted the Winton Act. These meetings, however, primarily involved the teachers and classified personnel presenting their requests or demands to the board of education, after which the board took unilateral action. Many of these relationships did result in teachers obtaining substantial and fair salary increases and fringe benefits, despite the lack of formal meet and confer sessions.⁷⁹ Following the legislature's adoption of the Winton Act, these districts complied with the Act, forming certificated employee councils; and gradually, over the years, a number of them learned to use the meet and confer process to achieve satisfactory relations between the school board and the teachers, with each party presenting proposals and reacting to those of the other party.

Other districts in California have used the Winton Act as a vehicle to move in the direction of collective bargaining, coming to comprehensive agreements signed by both the school board and the negotiating council.⁸⁰ While the courts have declared such agreements to be illegal and void,⁸¹ where all sides are satisfied no legal challenges have arisen and the parties have abided by the agreement.⁸²

b. Resolution of Persistent Disagreements—Factfinding

The provision for factfinding as an aid in expediting negotiations between teachers and school boards, added to the Winton Act by the 1970 amendments, has been implemented in a number of districts in the last few years. The Act as amended requires that school boards and teacher representatives jointly reach agreement on specific procedures for the resolution of "persistent disagreements" that arise during

78. *Id.*

79. Interview with Dr. B. Phillip Bowman, Deputy Superintendent and board representative, Vallejo Unified School District, Vallejo, Calif., Jan. 2, 1974.

80. 6 CPER 29 (Aug. 1970).

81. *Grasko v. Los Angeles City Board of Education*, 31 Cal. App. 3d 290, 298, 107 Cal. Rptr. 334, 339 (1973).

82. The first known collective bargaining agreement in education in California was signed in April of 1970 by the Santa Maria High School Faculty Association and the Santa Maria Joint Unified School District. 6 CPER 29, 30 (Aug. 1970). By December of 1970, when the Oakland Board of Education and the Oakland Certificated Employee Council signed a comprehensive master contract, it was reported that there were almost a dozen such agreements in California. 8 CPER 42 (Mar. 1971).

negotiations and specifies that such procedures may include factfinding. In the absence of agreed procedures, the Act provides the procedure.⁸³ According to the California Teachers Association's Department of Professional Negotiations, at least 70 California school districts have used factfinding in the past or are currently engaged in it.

Most districts which adopted their own impasse procedures have closely followed those provided in the Winton Act with a three-member factfinding panel, composed of a representative of the teachers, a representative of the board, and a neutral party selected by the other two.⁸⁴ In some districts the selection of the neutral member is a major stumbling block in factfinding; often many months pass before the parties can come to agreement on a third member. In at least one district, court action was required to resolve the impasse, and a number of districts have sought the services of the state conciliation service.

The most common subject of disagreement brought to factfinding is salaries. However, other items sent to factfinding include fringe benefits, school board refusal to approve an agreement with teachers reached by its representatives, adoption of district policy, and the implementation of the meet and confer process.⁸⁵ Even when boards have acted unilaterally on salaries, teachers have continued negotiations for modifications after factfinding, with a number of districts being able to come to agreement after completion of the process.

It appears that the procedures for factfinding, when administered in good faith, usually result in concessions by both parties and, at the least, further negotiations toward a settlement. It has been shown that when district boards and teacher associations have, in good faith, decided to try to make the Winton Act work and have endeavored to conscientiously meet and confer in an effort to come to an agreement, a variety of methods of implementation have been successful. When the parties do not make that good faith effort, or when the Act is not implemented, obviously, it cannot be evaluated.

SCHOOL EMPLOYER-EMPLOYEE RELATIONS LAWS IN OTHER STATES

Before considering the current proposals for change in the law regulating public school employer-employee relations in California, it would be appropriate to take a brief look at the current laws regulat-

83. 12 CPER 52 (Mar. 1972).

84. *See id.* at 53.

85. *Id.* at 53, 54.

ing public school employer-employee relations in some states which use a collective bargaining procedure. Michigan, New York, and Pennsylvania have enacted collective bargaining laws for all public employees, including teachers. The differences between these three collective bargaining laws and the Winton Act are striking. All three apply to all public employees, including school employees, whereas the Winton Act is aimed at school employees specifically. Each of the laws mandates collective bargaining on the industrial model, provides for exclusive representation by the majority employee organization in a particular unit, as opposed to California's proportionally representative council, and envisions a binding written agreement as the culmination of the bargaining process. Strikes are authorized in Pennsylvania, prohibited but not punished in Michigan, and strictly prohibited with penalties imposed for violations in New York. Each of these acts provides for a state agency to administer its provisions.

In spite of the large number of agreements negotiated in states like Michigan, the frequent strikes in that state are not indicative of peaceful labor relations. There were 400 collective bargaining agreements negotiated there during the law's first full year of operation with negotiations breaking down in only 15;⁸⁶ but in 1967, the second year, there were 36 strikes in the state's 531 school districts.⁸⁷ In 1970-71 there were 28 teacher strikes;⁸⁸ and over the entire period July 1960 through June 1971, Michigan had 153 strikes—the largest number of any state.⁸⁹ In the fall of 1973, schools in 38 school districts were closed by strikes in the first week of school.⁹⁰ It should be noted that Michigan has about half as many school districts as California.

The acknowledged breakthrough that served as a forerunner for contemporary bargaining activities in Michigan schools and elsewhere was the 1961 recognition of the United Federation of Teachers as the exclusive bargaining agent for public school teachers in New York City.⁹¹ However, it was not until 1967 that New York adopted a collective bargaining law. In the first five years 12,000 agreements were negotiated.⁹² A unique feature of this law is a provision for legisla-

86. C. SCHMIDT, H. PARKER & B. REPAS, *A GUIDE TO COLLECTIVE NEGOTIATIONS IN EDUCATION* 2, 18 (1967).

87. Allen, *School Disputes in Michigan*, JOINT CONFERENCE OF THE ASS'N OF LABOR MEDIATION AGENCIES AND THE NAT'L ASS'N OF STATE LABOR RELATIONS AGENCIES, *PUBLIC EMPLOYEE ORGANIZATION AND BARGAINING* 73 (1968).

88. GERR RF 71:1054.

89. GERR RF 71:1057.

90. 524 GERR B-18, 19 (Oct. 1973); 520 GERR B-14 (Sept. 1973).

91. C. SCHMIDT, H. PARKER & B. REPAS, *supra* note 86, at 3.

92. Educators Negotiating Service, *Annual Report on New York's Taylor Law*, at 3 (special report, May 1973).

tive hearings as a further step in the settlements of disputes; however the hearings have resulted more as a pressure point, forcing the parties into more realistic bargaining positions, than as an actual settlement vehicle.⁹³ In the period July 1960 through June 1971, there were only 32 teacher strikes in New York.⁹⁴ In the 1970-71 school year there were nine. In the fall of 1973 there were four strikes in the first month of school.⁹⁵ A report on the first five years under the law states that the experience has demonstrated "that employees can be given a meaningful voice in determining their terms and conditions of employment without unduly jeopardizing the legitimate interests of the government and the public."⁹⁶ It appears that the fact that New York has had fewer strikes than Michigan can be attributed to the strict enforcement of the penalties provided in the New York law for punishment of strikers.

Since the passage of the Pennsylvania law in 1970, there has been a dramatic increase in the number of strikes by teachers in that state. During the 11-year period, July 1960 through June 1971, there were a total of 80 teacher strikes.⁹⁷ Nearly half of these were in the first year after the passage of the collective bargaining law.⁹⁸ In the fall of 1973 there were 22 strikes during the first week of school.⁹⁹ In a resolution calling for an investigation of the act, the Pennsylvania Legislature claimed that strife between the principal parties, particularly school teachers and boards, has broadened and deepened. It also questioned whether the interests of citizens were being endangered and the rights of children ignored due to the emphasis on collective bargaining. The legislators asked, "Is the fundamental duty and obligation of the state to provide [the children] the opportunity for a good education in the total comprehension of that word being neglected?"¹⁰⁰ Pennsylvania's record since the passage of the collective bargaining law is not impressive.

PROPOSALS FOR CHANGE

In the past several years there have been a number of proposals for change in the law governing public school employer-employee relations. Two major bills were introduced in the 1973 session of the

93. *Id.* at 4.

94. GERR RF 71:1057.

95. 524 GERR B-20 (Oct. 1973).

96. Educators Negotiating Service, *supra* note 92, at 1.

97. GERR RF 71:1057.

98. GERR RF 71:1054.

99. 520 GERR B-13 (Sept. 1973).

100. Educators Negotiating Service, Mar. 1973, at 120.

California Legislature.¹⁰¹ Additionally, a number of bills which were aimed at only minor changes in the existing law were introduced. The major employer and employee organizations have their own proposals as well. Some proposals advocate scrapping the Winton Act and substituting collective bargaining on the industrial model, including the right to strike.¹⁰² Others stop short of supporting true collective bargaining, but favor some major changes in the present method of resolving employer-employee differences.¹⁰³ Still others support the methods presently mandated by the Winton Act with only minor changes.¹⁰⁴

A. Proposals for Collective Bargaining

1. Assembly Bill 1243—Collective Bargaining Act for Public Employment

In June of 1972 the California State Assembly adopted a resolution authorizing appointment of a five-member council on public employee relations to review the effectiveness of the present statutes pertaining to public employer-employee relations. In its report on March 15, 1973, the council recommended adoption of the Collective Bargaining Act for Public Employment,¹⁰⁵ which was subsequently embodied in Assembly Bill 1243, introduced in April 1973. The legislature has not completed action on this bill as of this writing. Virtually all of the recommendations of the council are included in the bill.

This proposed legislation is a comprehensive collective bargaining bill which would cover all public employees, including those of the public schools, and would grant to the employees the right to strike. It provides for repeal of three statutes now governing public employee relations¹⁰⁶ and stipulates that negotiated agreements would prevail over conflicting state or local statutes, charter provisions, ordinances, resolutions, or regulations adopted by a public employer. In addition, it establishes a Public Employment Relations Board, provides for exclusive representation of employees by one organization,

101. A.B. 1243, 1973-74 Regular Session; S.B. 400, 1973-74 Regular Session.

102. Cal. Teachers Ass'n, Policy on Proposed Collective Bargaining Laws for Teachers (Nov. 1970).

103. Cal. School Boards Ass'n, Informational Packet on Proposed Amendments to Employer-Employee Relations Statutes (Dec. 10, 1973).

104. Ass'n of Cal. School Administrators, Special Report, vol. 3, no. 2 (Sept. 1973).

105. ASSEMBLY ADVISORY COUNCIL, REPORT ON PUBLIC EMPLOYEE RELATIONS (1973).

106. Meyers-Milias-Brown Act, CAL. GOV'T CODE §§3500-3510 (local government employees); George Brown Act, CAL. GOV'T CODE §§3525-3536 (state employees); Winton Act, CAL. EDUC. CODE §§13080-13090 (school district employees). Also CAL. LABOR CODE §§1960-1963 (firefighters).

and specifies adoption of procedures which would in effect establish the agency shop.¹⁰⁷

Agreements reached through bargaining may include procedures for final and binding arbitration of rights under the negotiated agreement in the event of disputes between the parties. Specific procedures for mediation and fact-finding in interest disputes (that is, in negotiating a new agreement) are also set forth. Furthermore, the refusal of either party to accept the recommendations of the factfinder or their refusal to reach some agreement would permit the strike or lockout to be used. Any person affected by the strike or lockout may seek a court injunction to bar the action, and the court may enjoin either action if public health or safety is threatened. If injunctive relief is granted, the parties are required to accept the factfinder's recommendations.

Governor Ronald Reagan is on record against giving public employees the right to strike. Should the bill reach the Governor's desk, it is anticipated he will veto it.¹⁰⁸

2. Senate Bill 400—Collective Negotiations Act for Public Education

Although Senate Bill 400 was vetoed by the Governor after passage by the legislature in 1973,¹⁰⁹ in view of its support by both houses of the legislature it may well be reintroduced. It provided a framework for uniform recognition and collective negotiation processes between policy-making boards and appropriate employee organizations. The bill would have covered local school districts, the University of California, and the California state university and college system. This bill was also characterized as a collective bargaining bill, but was silent on the right of public school employees to strike. It would have repealed the Winton Act and established a state agency to administer the new act, would have provided for exclusive representation of employees, and would have required all classroom teachers of a school district to be in one negotiating unit, with classified and certificated personnel prohibited from being part of the same unit.

The scope of negotiations under this bill would have included

107. An agency shop is a union security arrangement to eliminate free riders without requiring all employees in a bargaining unit to become members of the union as a condition of employment. Employees in the unit must either join the union or pay a service charge (usually equivalent to union dues) to the collective bargaining agent. U.C.L.A. Institute, *supra* note 12, at 2.

108. See Governor's Message on Collective Bargaining Veto, JOURNAL OF THE CALIFORNIA SENATE 6974 (1973).

109. *Id.*

terms and conditions of service and other matters which affect the working environment of employees. It also would have provided for a comprehensive written document to incorporate agreements negotiated. In the event of impasse, procedures were provided for mediation and factfinding resulting in advisory recommendations. Binding and final arbitration was to be used only when there was a comprehensive written agreement.

B. Proposed Major Changes in the Winton Act

1. Senate Bill 1857—Public Educational Employer-Employee Relations

The most recent proposal for change in this area is Senate Bill 1857 which was introduced on March 13, 1974. It can best be characterized as an attempt to provide a new framework for public school employer-employee relations in California without moving all the way to collective bargaining on the industrial model. Although the bill provides for repeal of the Winton Act and replacement with this measure, it carries over many of the provisions and much of the wording of the Winton Act, leading to the conclusion that it is actually an extensive revision of the Act rather than an entirely new concept.

Like the other bills which have been introduced, this measure provides for exclusive representation of employees in a unit by a single organization and establishes a state commission to administer the act, the Educational Employment Relations Commission, with members to be appointed by the Governor. It allows execution of a written document incorporating any agreements reached if requested by either party, such agreement to become binding upon both parties when accepted by the public school employer. Supervisory and management employees are excluded from the bargaining unit, although supervisory employees may form their own unit.

This bill changes the Winton Act language of "meet and confer" to "meeting and negotiating." The scope of representation is similar to the present Act, but defines terms and conditions as limited to health and welfare benefits, leave and transfer policies, safety conditions, and procedures for evaluating employees and processing grievances. Like the present Act, this measure provides that certificated employees may negotiate on *procedures* relating to educational objectives, curriculum, and textbook selection. All matters not enumerated are reserved to the employer and may not be the subject of meeting and negotiating. The measure provides for mandatory mediation and

factfinding. Parties may agree to binding arbitration of grievances. It is provided that Section 923 of the California Labor Code does not apply to public education, in effect continuing the prohibition on strikes.

2. Other Proposals

Since the 1970 amendments to the Winton Act, nearly every session of the legislature has seen some proposals for further change, a few of which, minor in nature, have been incorporated in the Act.¹¹⁰ In addition, there have been a number of legislative committee hearings and studies of the Act and its effectiveness.¹¹¹ In recent years the California School Boards Association, along with the Association of California School Administrators, has been the major defender of the Act. However, at its annual convention in 1973 the delegate assembly of the school boards group adopted a new position which advocates major changes in the Winton Act, although stopping short of advocating collective bargaining.¹¹² In its new position the California School Boards Association advocates substitution of exclusive representation for the present certificated employee council, with an election process to determine which organization shall represent the unit.¹¹³ According to the recommendations, the scope of meeting and conferring should be limited to wages, hours, and working conditions with all other rights reserved to management. In the event of persistent disagreement, the association suggests mandatory mediation, factfinding with recommendations made at a public meeting of the board, and a provision allowing binding arbitration of grievances but no arbitration of substantive matters within the scope of meeting and conferring. Any agreement reached between the representatives of the teachers and the governing board should be reduced to a "memorandum of understanding" which would be binding upon the parties when approved by the governing board. Like the proponents of collective bargaining, the school boards' group advocates creation of a state agency to administer the law. It further recommends that strikes be specifically prohibited.

110. The major revisions in the Act were made in 1970, CAL. STATS. 1970, c. 1412, at 2680, c. 1413, at 2684, c. 504, at 987, and c. 875, at 1612. Other provisions added include CAL. STATS. 1971, c. 1179, at 2247, and CAL. STATS. 1972, c. 211, at 441, c. 666, at 1232, c. 1108, at 2116.

111. ASSEMBLY ADVISORY COUNCIL, *supra* note 55; *Hearings Before the California Senate Committee on Education*, *supra* note 71; *Hearings Before the California Assembly Committee on Education on Tenure, Communications, Strikes, and the Winton Act*, 1969.

112. Cal. School Boards Ass'n, *supra* note 103, app. c.

113. *Id.*

In contrast to the position of the school boards' association, the California Teachers Association, although an original supporter of the Winton Act, now favors its repeal and the adoption of a collective bargaining law covering teachers. It has supported both Senate Bill 400 and Assembly Bill 1243. The association advocates written bilateral contracts, grievance procedures that culminate in binding arbitration, resolution of impasse through mediation, factfinding with recommendations and voluntary arbitration, the right to strike, establishment of a state agency to administer the law, provision for exclusive representation based upon membership, and removal of any obligation to represent nonmembers who do not pay a fee sufficient to compensate the organization for such representation.¹¹⁴ The California Federation of Teachers has consistently advocated collective bargaining on the industrial model.

C. *Proposed Modifications of the Winton Act*

There are still a number of persons and groups involved with employer-employee relations in the public schools of California who think that the Winton Act is adequate with only some minor modifications needed. The Association of California School Administrators suggests changes in four areas of the public school employer-employee relations law—the scope of meet and confer, the establishment of a regulating agency, some clarification of impasse resolution, and a change in representation of classified employees.¹¹⁵ The Association suggests that the scope of meet and confer be limited to “all matters relating to salaries, hours of work, health and welfare benefits, leaves of absences, other economic fringe benefits and grievance resolution procedures.”¹¹⁶ The group also favors establishment of a regulating agency to be appointed by the State Superintendent of Public Instruction¹¹⁷ to determine appropriate bargaining units and unfair employee relations practices, which shall be specifically defined. In the area of impasse resolution the Association suggests limitation of matters subject to such procedures and a provision for rapid resolution of impasse by strict state law if the parties cannot determine their own procedures. Finally, the Association proposes that classified employees should be represented by a council constituted on the basis of proportional representation, like the present certificated employee council under the

114. Cal. Teachers Ass'n, *supra* note 102.

115. Ass'n of Cal. School Administrators, *supra* note 104.

116. *Id.*

117. All other proposals for a state regulatory agency provide for appointment by the Governor.

Winton Act, and therefore recommends retention of the certificated employee council.¹¹⁸

CONCLUSION

The question posed in the introduction of this comment was, How can California best protect the rights of school employees and, at the same time, preserve citizen control of the school and provide an effective education for the children of this state? From the management's viewpoint, the Winton Act's meet and confer approach leaves the final decision of all matters in the hands of the citizens through their elected officials, the school trustees. From the point of view of the employees, however, this approach affords little protection for the rights of teachers and other employees, for no matter how much meeting and conferring goes on, the school board has the ultimate power to make the decision in all cases. Furthermore, even if an agreement is reached, the board has the right to change its policy unilaterally.

The collective bargaining approach, on the other hand, requiring the parties to come to a bilateral agreement in writing which is binding on both parties, with binding arbitration in the event of disputes, would appear to give adequate protection to the rights of the employees. However, this approach would tend to dilute the influence of citizens on school policy since, unless the scope of bargaining is strictly limited, virtually all decisions regarding the operation of the schools could conceivably be made over the bargaining table rather than at public school board meetings.

The review of the California experience under the Winton Act and the experience of other states under collective bargaining acts show that although there have been a number of disputes and strikes in California, the track record of collective bargaining states does not evidence peace and tranquility in the area of employer-employee relations. Generally speaking, those states which have legalized strikes by teachers have had more strikes than those in which strikes are illegal, although it appears that no law, even a punitive one such as New York's, can totally eliminate strikes.

It appears that if the aim is both to provide an effective education for the children of this state by teachers who feel that their rights are protected and their needs considered and to maintain the concept of local community control of the schools, a middle ground must be

118. *Hearings Before the California Senate Committee on Education*, *supra* note 71, at 142-45.

found. Almost all the parties involved have come to agreement on some changes. These include exclusive representation of employees in a unit, to be determined either by membership count or election, a provision for mediation and factfinding with recommendations, establishment of a state regulatory agency to administer the law, and a provision for a written agreement, binding when approved by the school board. It appears from the positions of the majority of interested groups and individuals that these changes would be acceptable.

In addition to the foregoing suggestions for change, if the right of citizens to have a say in the administration of the schools is to be maintained, then the scope of meeting and conferring must be strictly defined. Whereas in the private sector defining the scope as wages, hours, and working conditions might be adequate, in the schools the situation is quite different. Teachers, as professionals, justifiably want their views considered in all phases of the educational program. However, considering and asking the advice of the employees on how to proceed with an educational program, and negotiating every program change with employees, are two different matters. Therefore, it seems vital if community control of the schools is to be maintained, that any new law which provides for binding agreements also limit the subject matter of those agreements.

Binding arbitration has been viewed unfavorably by some groups, especially school boards, since they see this as a method of removing the decision-making power from the elected representatives of the people and placing it in the hands of a neutral party who need not answer to any constituency. Binding arbitration of interests could have this effect, and is therefore undesirable because it would result in an imposed settlement on both parties, rather than a bilateral agreement. This would defeat the whole purpose of the proposed changes in the law, in a sense substituting unilateral decisions by a neutral for unilateral decisions by the school board. However, binding arbitration of grievances would not have this effect, but would, in the event of an impasse in interpreting previously agreed upon policy, allow a neutral party to make the final decision rather than giving one of the disputing parties that right as the present law provides.

Because of the unique nature of schools, the fact that the ultimate concern must be for the education of the children, and the fact that the major employee group, teachers, is composed of professionals, it seems advisable that there be a separate statute governing public school employer-employee relations, rather than including schools in a general public employee relations law. Because of the nature of the

enterprise, and the effect of a strike on the relationship with students, it is vital that strikes by public school employees continue to be prohibited.

This writer recommends that a separate statute continue to govern public school employer-employee relations in California. It should include exclusive representation of employees in a unit, a provision for mediation and factfinding with recommendations and binding arbitration of grievances, establishment of a state regulatory agency to administer the law, a provision for a written agreement binding on both parties after approval by the school board, and a strictly defined scope of meeting and conferring. The prohibition of strikes should be continued. If all the parties involved then enter into their discussions in good faith, in an honest and conscientious attempt to cooperate for the good of the schools and the children, these changes would protect the rights of all the parties as well as promote improvements in education.

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