Progress report: Collective Bargaining Study Committee (1969)

COLLECTIVE BARGAINING STUDY COMMITTEE

Progress Report

December 17, 1969

House Concurrent Resolution 33, Sixty-third Iowa General Assembly, First Session, directed that a "commission be appointed to study the necessity and desirability of enacting legislation providing a framework within which public employees in the state of Iowa could bargain collectively concerning the terms and conditions of public employment and providing a method of resolving disputes in bargaining." The Resolution established a fifteen-member Study Committee to be composed of two members of the Senate appointed by the President of the Senate, two members of the House of Representatives appointed by the Speaker of the House, two members appointed by the Governor to represent the public at large, and the remaining nine members appointed by state agencies and associations.

The following persons were appointed to serve on the Study Committee in accordance with House Concurrent Resolution 33:

President of the Senate appointees:

Senator Lee H. Gaudineer, Des Moines
Senator Edward E. Nicholson, Davenport

Speaker of the House of Representatives appointees:

Representative Floyd H. Millen, Farmington
Representative Charles H. Pelton, Clinton

Governor appointees:

Professor William Buss, Iowa City
Mr. Cecil Reed, Cedar Rapids

State agency and association appointees:

Mr. Maurice E. Baringer, Des Moines, representing the Iowa Executive Council
Mr. George Brown, Des Moines, representing the Iowa State Education Association
Mr. Don E. Bruce, Des Moines, representing the International Brotherhood of Teamsters
Mr. John H. Connors, Des Moines, representing the Iowa Federation of Labor
Mr. Al Meacham, Grinnell, representing the Iowa Merit Employment Commission
Mr. George C. Parks, Iowa City, representing the Iowa Federation of Labor
Mr. Ernest F. Pence, Cedar Rapids, representing the Iowa Association of School Boards

Mr. Van Schoenthal, Des Moines, representing the League of Iowa Municipalities
Mr. Leonard Sheker, Callendar, representing the Iowa State Association of Boards of Supervisors

Shortly after his appointment to the Study Committee by Governor Robert D. Ray, Mr. Reed received a federal appointment to the Federal Manpower Administration and no appointment was made to fill the vacancy created by Mr. Reed's resignation.

Study Procedure

The organizational meeting of the Study Committee was held on August 15, 1969, at which time Representative Charles H. Pelton was elected Committee Chairman and Senator Lee H. Gaudineer was elected Committee Vice Chairman. Following initial review of the subject matter which indicated the complexity of the issues involved in the study, the Study Committee agreed to formulate a list of issues to resolve and base the direction of the study upon these issues.

The members agreed that the Committee should hear persons knowledgeable in the field of labor-management relations and many persons were invited to appear before the Study Committee, including Dr. Robert Helsby, Chairman, New York Public Employment Relations Board.

Present Laws

Presently, Iowa law covers labor boycotts and strikes and guarantees the right to work, but the law has no provision governing labor-management relations and collective bargaining in the public or private sector. An opinion of the Attorney General, dated August 16, 1961, ruled on the issue and concluded, in summary, that a public employer could not enter into collective bargaining or a collective bargaining agreement with public employees because to do so would be to deprive such an employer of the right to exercise the discretion delegated by law in the performance of its public duties. The latest court decision in the state, State Board of Regents v. United Packing House Food and Allied Workers Local 1258, heard in the District Court of Black Hawk County and presently on appeal to the Iowa Supreme Court, stated:

"The Court, the parties, and the Attorney General are all agreed that the law of Iowa permits public employees to organize themselves into unions.

The Court has determined that organized employees, whether through a union or some other association or grouping, may engage in collective bargaining with a public employer such as plaintiff, and that such bargaining is within plaintiff's power as conferred by statute.

The Court has also determined that the parties have the power, although not the duty, to enter into collective bargaining agreement.

The Court has further determined, however, that the defendants as public employees have no right to strike in furtherance of their aims."

Committee Recommendations

The Committee recommends that legislative action be taken to resolve a pending problem in public employment in Iowa. There have been several strikes and threats of strikes by public employees in Iowa within the last two years. Disruptions in public service are unfortunate and any legislative action should have as one important goal the elimination of such disruptions. The Committee does not believe that collective bargaining is the solution for all employment relations problems in public employment, but it does believe that collective bargaining can open a very important channel of communication between public employers and public employees. The number of state collective bargaining statutes, local ordinances, and two federal executive orders enacted and issued during the past few years demonstrates that the problem is by no means limited to Iowa. These legislative and executive actions also reflect the widespread pattern of affirmative response to the problems. The problem is made particularly acute in Iowa by reason of the still unresolved doubts as to whether a public employer even has the power to bargain with a representative of its employees, if it chooses to do so.

The Committee recommends that the existence of such authority should be made clear by appropriate legislation and that public employers and their employees should receive statutory authorization to engage in collective bargaining.

In formulating a collective bargaining bill, the Study Committee members agreed that the following issues be resolved and each is briefly summarized to point out the arguments involved, the approaches considered by the Study Committee, and the final decision and recommendation of the Committee on each issue.

Coverage

The issue of coverage relates primarly to the necessity and desirability of drafting separate bills to cover school district employees, state employees, county employees, and city employees or drafting an all-inclusive bill. The Committee recommends the drafting of a comprehensive bill wherein provisions may be made for particular categories of employees that have bargaining considerations which are unique to that category of public employees.

The Study Committee recommends that the effective date of the bill for coverage of state employees be delayed for one year with the provision that the Governor may, by executive order,

delay the effective date for one additional year. This delay is recommended to allow time for the merit employment system to implement policies necessary to coordinate the functions of the merit system with that of collective bargaining.

Mandatory or Permissive Legislation

Permissive legislation enables the public employer and the public employee or his representative to bargain collectively upon the mutual consent of the public employer and the public employee or employee organization. Mandatory legislation requires one party to bargain upon a request of the other party. As used in this context, the term "mandatory" is misleading in that it does not require public employees to organize. The arguments in support of permissive legislation are that this approach will allow the public employer and public employee to initiate collective bargaining in a more orderly manner and that because the present law does not permit or disallow collective bargaining, the logical approach is to permit collective bargaining by statute and later enact mandatory legislation, if it is deemed desirable and necessary.

The argument in support of a mandatory bill is that if either the public employer or the public employee desires to bargain collectively, he should be allowed to do so, and that if permissive legislation were enacted, refusal of the public employer to bargain may lead to strikes and other coercive action by public employees which would, in effect, provide no solution to the growing problem of public employee unrest in the public sector.

The Study Committee recommends that the bill presented be a mandatory collective bargaining bill.

Public Employee Rights

The Study Committee recommends that public employees be granted the right to form, join, or assist employee organizations. This right should be made clear by statute, as well as the right to refrain from engaging in such activities.

Exclusive Representation

The Study Committee recommends that the bill include a provision providing for exclusive representation of public employees. The result is that only one employee organization will represent all employees in a particular bargaining unit in collective bargaining negotiations. This provision does not provide that employees within that unit are required to join the employee organization. Also, the exclusive representative should not be allowed to discriminate against employees who did not support it and every employee should have the right to present grievances to his employer. The practical consideration in adopting the concept of exclusive representation is that the public employer will bargain with one employee organization, rather than two or more employee

organizations representing employees within a single bargaining unit.

Unfair Labor Practices

The issue of unfair labor practices is primarily a judicial question. The Study Committee recommends particular practices be designated as unfair labor practices in the bill, and provide that any actions under these sections of the bill, be brought in the district court.

State Agency

Prior to determining the necessity of establishing a state agency to administer the collective bargaining bill, the members of the Study Committee considered the necessary functions of such an agency. The Study Committee recommends that a state agency be established to perform the following functions:

1. Determine appropriate bargaining units.

2. Implement statutory impasse procedures.

3. Conduct representative elections.

It is essential that a third party be involved in determining appropriate collective bargaining units within the various levels of government, or within governmental departments and agencies. The third party is responsible for making the final determination with regard to the employees to be included or excluded within a particular unit. A single administrative agency with jurisdiction over all levels of government authorized to bargain collectively has the advantage of being more economical, assuring uniformity of policy, and reducing confusion over interpretation of law.

The Study Committee also agrees that it will be necessary for the agency to provide assistance in fact-finding and mediation, whether the parties agree upon their own impasse procedures or the impasse procedure of the bill are implemented. To assist the negotiating parties, the agency will maintain a list of persons qualified to act as fact finders and mediators. This list will be available to all parties upon request.

The Study Committee recommends that the agency be an autonomous board to be placed within an existing administrative agency for the purposes of administration. The board will consist of three members appointed by the Governor, with each member serving a term of six years. The purpose of the Study Committee recommendation is to reduce the costs and expenses of establishing a state agency.

Collective Bargaining

Collective bargaining does not mean that the employer must agree or make concessions. The employer and employee organ-

ization are both expected to make good faith attempts to reach a joint agreement, but the employer is not expected to agree to conditions of employment which it regards as contrary to the public interest. The Study Committee agrees that the bill provide that collective bargaining requires an attempt by both parties to reach mutual agreement concerning conditions of employment but with no obligation to make concessions or reach agreements.

Determination of Appropriate Bargaining Units

The determination of appropriate bargaining units is important to assure some uniformity in the creation of bargaining groups. The Study Committee recommends that the determination of the appropriate bargaining unit be left to the discretion of the board. The Study Committee also recommends that the bill provide guidelines to enable the agency to make proper determinations.

Scope of Collective Bargaining

The Study Committee recognizes the existence of many complex problems in this area. It is essential, that principles of the merit system be retained, thus restricting the subjects of collective bargaining. Also, it is mandatory that managerial prerogatives be retained. The Study Committee also recognizes that the scope of collective bargaining must exclude any infringement upon the authority of the public employer to perform the duties and responsibilities placed upon his office by the law.

The Study Committee recommends that the scope of employment include wages, salaries, and other economic benefits, hours and periods of service, and other conditions of employment.

Impasse Procedures

The Study Committee has considered the problem of impasses in collective bargaining negotiations and the procedures to be implemented to resolve an impasse in collective bargaining. The Committee agrees that any collective bargaining agreement should be concluded by the efforts of the parties involved. The Committee recommendation provides that the parties, prior to the negotiation or bargaining with regard to the terms and conditions of employment, shall first bargain with regard to impasse procedures to be implemented in the event that an impasse in negotiations results. The Study Committee recommendation provides for the use of mediation and fact-finding. The bill also provides fact-finding and mediation procedures to be implemented by the third party in the event that the parties fail to agree upon impasse procedures within a specified period of time. One argument in favor of such an approach is that the inclusion of the fact-finding and mediation provisions within the bill will induce the parties to agree upon their own impasse procedures, and insure retention of collective bargaining procedures by the public employer and appropriate bargaining units. This approach will also insure greater participation at the local level. Another reason for including fact-finding and mediation within the bill and regulating them by the third

party, is to insure that an impasse will not result by the failure of the party to agree to impasse procedures.

Strikes

The issue of strikes stimulated considerable discussion among the members of the Committee. If there is a "no strike" provision, the public employees and the employee organizations have no economic lever against the public employer, thus reducing the effective bargaining position of the public employee and employee organizations. However, if strikes are allowed, the services provided at all levels of government to the general public are halted. The Committee recommends that the bill contain a "strike" provision, with several qualifications. A strike is allowable and legal only after the exhaustion of all impasse procedures and a period of a designated number of days elapses.

The Study Committee also recommends that strikes be prohibited in the area of public employment providing essential services to the general public. "Essential services" means any service which is necessary for the public health, safety, and welfare, including but not necessarily limited to services provided by policemen, firemen, security personnel at state institutions, and peace officers.

Strike Sanctions

The Study Committee reviewed the penalty provisions of other states relating to illegal strikes and decided that existing penalty provisions are generally ineffective. The possibility of imposing monitary penalties created a rather difficult problem in that unions may conceivably have any number of members and the imposition of a monitary penalty would be discriminatory against the smaller unions and impose no effective penalty upon the larger ones.

The Study Committee recommends that the penalty provision provide for the imposition of penalties at the discretion of the presiding judge, upon consideration of the responsibility of all parties involved and the circumstances of the illegal strike. The Study Committee also recommends that illegal strikes be enjoined and that authority be provided for a court to impose penalties upon employees participating in an illegal strike.

As of December 16, 1969, the Study Committee has not completed its deliberations. It is anticipated that the Committee will complete its deliberations by January 12, 1970, the date the next session of the General Assembly convenes. This report contains only those conclusions reached to date and is submitted for this purpose.

POSITION STATEMENT OF IOWA ASSOCIATION OF SCHOOL BOARDS
(Presented to Iowa Legislative Council with report of Collective Bargaining Study Committee)

The Iowa Association of School Boards supports the right of public employees to collectively negotiate with respect to salaries and other economic matters and that legislation should be enacted to implement this right.

It is felt, however, that public education requires different personnel employment procedures and practices than those required by other public employees. This is borne out by our support of previous legislation dealing with teachers only--such as Senate File 648.

Therefore, the Iowa Association of School Boards cannot support the proposed umbrella bill as approved by the majority of the committee without incorporating certain alternatives as follows:

1. The association strongly favors prohibiting strikes or sanctions and therefore would urge the incorporation of the following section:

   "It shall be unlawful for an employee or employee organization to induce, instigate, authorize, ratify, or participate in a strike against a public employer or engage in any concerted refusal to render service or to impose sanctions against any public employer including but not limited to the causing or encouraging of anyone not to seek employment by a public employer."

2. The bill should also provide for penalties for strikes or sanctions in addition to the injunctive remedy in the following way:

   "Any employee organization which violates the provisions of the Section dealing with strikes may be denied by the public employer the right to be certified as an exclusive representative for a period of 24 months following the date of such violation. However, such remedy shall not be available to the public employer if it has concurrently been guilty of any violation of Section 15."

3. Considering that school district problems are local, there is no need for a state agency. Therefore, as an alternative, the Senate File 648 approach which provides for local mediators and fact-finders should be implemented as a substitute for the sections providing for a state agency.

4. Personnel performing management duties should be negotiated with separately from other employees. The following sentence should therefore be added on to the definition of "collective bargaining unit," which is Section 3(5):

> "Provided, however, administrative or supervisory personnel shall not belong to the same unit as the other employees of a public school district, and it shall be unlawful for certificated employees of a public school district to belong to the same unit as the non-certificated employees."

Also, the following would be added as a definition in Section 3:

> "Administrative and supervisory personnel of a public school district shall mean those individuals having authority to hire, transfer, suspend, promote, discharge, assign or direct employees and other persons whose primary duties are the performance of administrative functions for the school district."

5. Education Policies should not be negotiated and therefore the language "conditions of employment" in the Section dealing with Scope of Negotiation should not embrace any educational policy matters.

6. The School Board has the final responsibility in decision making and therefore the statute should in no way provide for or authorize compulsory arbitration procedure.

Ernest F. Pence, Representative
Iowa Association of School Boards
December 13, 1969