

May 29, 1975

COPY 1

LEGISLATIVE HISTORY OF R.S. 34:13A-5.4 et seq.
(L. 1974, c. 123)

(New Jersey Employer-Employee Relations Act - 1974 amendments)

PROJECT OF
NEW JERSEY STATE SENATE

Earlier similar bills:

MAY 29 1975

1971 - S2244 - Died in Committee.

185 W. State Street
Trenton, N. J.

1972 - S913 - Recommitted.

1972 - A520 - Conditional veto (not reenacted with recommendations).
Bill with statement and veto message enclosed.

No hearings or reports were located for these bills.

L. 1974, c. 123 - S1087

Horn, Wiley, Feldman, Bedell, Parker, Dwyer, Greenberg, Merlino.

April 16, 1974 - Introduced.

May 7 - Public hearing.

May 9 - Reported with committee amendment.

May 9 - 2d reading.

June 17 - Amended.

June 17 - 2d reading, amended.

June 17 - Passed Senate under emergency resolution,
amended (27-11).

June 24 - Received in Assembly Labor Committee.

July 8 - Reported, 2d reading.

Sept. 30 - Amended.

Sept. 30 - 2d reading, amended.

Oct. 7 - Passed Assembly, amended (58-14).

Oct. 21 - Received in Senate.

Oct. 21 - Assembly amendments passed in Senate (24-8).

Oct. 21 - Approved.

Bill with statement enclosed.

Hearings and reports

974.90 NJ. Legislature. Senate.

E54 Public hearing before Senate Conference and
1974 Coordinating Committee and Assembly Labor Committee
on Senate Bill No. 1087, held 7 May 1974. Trenton, 1974.

974.90 Dodd, Frank J.

E54 Report to the Senate: my objections and
1974a alternatives to S-1087. Trenton, 1974.

34:13A-5.4 et seq.

- 2 -

974.90 Public Employer-Employee Relations Study Commission.
E54 Public hearing before... (constituted under
1975 L. 1974, c. 124) held March 5, 1975. Trenton,
 1975. 81p.

V.F.-N.J.-Government Employees-P.E.R.C.
Selected clippings enclosed.

JRM/PC

CHAPTER 123 LAWS OF N. J. 19 74
APPROVED 10-21-74

[THIRD OFFICIAL COPY REPRINT]

SENATE, No. 1087

STATE OF NEW JERSEY

INTRODUCED APRIL 16, 1974

By Senators HORN, WILEY, FELDMAN, BEDELL, PARKER
and DWYER

Referred to Committee on Conference and Coordinating

AN ACT to amend and supplement the "New Jersey Employer-Employee Relations Act," approved April 30, 1941 (P. L. 1941, c. 100) as said short title and act were amended and supplemented by P. L. 1968, c. 303.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. a. Employers, their representatives or agents are prohibited
2 from:

3 (1) Interfering with, restraining or coercing employees in the
4 exercise of the rights guaranteed to them by this act.

5 (2) Dominating or interfering with the formation, existence or
6 administration of any employee organization.

7 (3) Discriminating in regard to hire or tenure of employment or
8 any term or condition of employment to encourage or discourage
9 employees in the exercise of the rights guaranteed to them by
10 this act.

11 (4) Discharging or otherwise discriminating against any em-
12 ployee because he has signed or filed an affidavit, petition or com-
13 plaint or given any information or testimony under this act.

14 (5) Refusing to negotiate in good faith with a majority repre-
15 sentative of employees in an appropriate unit concerning terms
16 and conditions of employment of employees in that unit, or refusing
17 to process grievances presented by the majority representative.

18 (6) Refusing to reduce a negotiated agreement to writing and
19 to sign such agreement.

20 (7) Violating any of the rules and regulations established by the
21 commission.

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.

22 b. Employee organizations, their representatives or agents are
23 prohibited from:

24 (1) Interfering with, restraining or coercing employees in the
25 exercise of the rights guaranteed to them by this act.

26 (2) Interfering with, restraining or coercing a public employer
27 in the selection of his representative for the purposes of negotia-
28 tions or the adjustment of grievances.

29 (3) Refusing to negotiate in good faith with a public employer,
30 if they are the majority representative of employees in an ap-
31 propriate unit concerning terms and conditions of employment of
32 employees in that unit.

33 (4) Refusing to reduce a negotiated agreement to writing and
34 to sign such agreement.

35 (5) Violating any of the rules and regulations established by the
36 commission.

37 c. The commission shall have exclusive power as hereinafter
38 provided to prevent anyone from engaging in any unfair practice
39 listed in subsections a. and b. above. Whenever it is charged that
40 anyone has engaged or is engaging in any such unfair practice,
41 the commission, or any designated agent thereof, shall have au-
42 thority to issue and cause to be served upon such party a complaint
43 stating the specific unfair practice charged and including a notice
44 of hearing containing the date and place of hearing before the
45 commission or any designated agent thereof; provided that no
46 complaint shall issue based upon any unfair practice occurring
47 more than 6 months prior to the filing of the charge unless the
48 person aggrieved thereby was prevented from filing such charge
49 in which event the 6 months period shall be computed from the day
50 he was no longer so prevented.

51 In any such proceeding, the provisions of the Administrative
52 Procedure Act P. L. 1968, c. 410 (C. 52:14B-1 et seq.) shall be
53 applicable. Evidence shall be taken at the hearing and filed with
54 the commission. If, upon all the evidence taken, the commission
55 shall determine that any party charged has engaged or is engaging
56 in any such unfair practice, the commission shall state its findings
57 of fact and conclusions of law and issue and cause to be served on
58 such party an order requiring such party to cease and desist from
59 such unfair practice, and to take such reasonable affirmative action
60 as will effectuate the policies of this act. All cases in which a
61 complaint and notice of hearing on a charge is actually issued by
62 the commission, shall be prosecuted before the commission or its
63 agent, or both, by the representative of the employee organization
64 or party filing the charge or his authorized representative.

65 d. The commission shall at all times have the power and duty,
66 upon the request of any public employer or majority representative,
67 to make a ***[final]*** determination as to whether a matter in dispute
68 is within the scope of collective negotiations. The commission shall
69 serve the parties with its findings of fact and conclusions of law.
69A **Any determination made by the commission pursuant to this*
69B *subsection may be appealed to the Appellate Division of the*
69C *Superior Court.**

70 e. The commission shall adopt such rules as may be required
71 to regulate the conduct of representation elections, and to regulate
72 the time of commencement of negotiations and of institution of
73 impasse procedures so that there will be full opportunity for
74 negotiations and the resolution of impasses prior to required budget
75 submission dates.

76 f. The commission shall have the power to apply to the Appellate
77 Division of the Superior Court for an appropriate order enforcing
78 any order of the commission issued under subsection c. or d. hereof,
79 and its findings of fact, if based upon substantial evidence on the
80 record as a whole, shall not, in such action, be set aside or modified;
81 any order for remedial or affirmative action, if reasonably designed
82 to effectuate the purposes of this act, shall be affirmed and enforced
83 in such proceeding.

1 2. Section 3 of P. L. 1941, c. 100 (C. 34:13A-3) is amended to
2 read as follows:

3 3. When used in this act:

4 (a) The term "board" shall mean New Jersey State Board of
5 Mediation.

6 (b) The term "commission" shall mean New Jersey Public
7 Employment Relations Commission.

8 (c) The term "employer" includes an employer and any person
9 acting, directly or indirectly, on behalf of or in the interest of an
10 employer with the employer's knowledge or ratification, but a labor
11 organization, or any officer or agent thereof, shall be considered an
12 employer only with respect to individuals employed by such orga-
13 nization. This term shall include "public employers" and shall mean
14 the State of New Jersey, or the several counties and municipalities
15 thereof, or any other political subdivision of the State, or a school
16 district, or any special district, or any authority, commission, or
17 board, or any branch or agency of the public service.

18 (d) The term "employee" shall include any employee, and
19 shall not be limited to the employees of a particular employer
20 unless this act explicitly states otherwise, and shall include any in-

21 individual whose work has ceased as a consequence of or in connection
 22 with any current labor dispute or because of any unfair labor prac-
 23 tice and who has not obtained any other regular and substantially
 24 equivalent employment. This term, however, shall not include any
 25 individual taking the place of any employee whose work has ceased
 26 as aforesaid, nor shall it include any individual employed by his
 27 parent or spouse, or in the domestic service of any person in the
 28 home of the employer, or employed by any company owning or
 29 operating a railroad or railway express subject to the provisions
 30 of the Railway Labor Act. This term shall include any public em-
 31 ployee, i.e., any person holding a position, by appointment or con-
 32 tract, or employment in the service of a public employer, except
 33 elected officials, [heads and deputy heads of departments and agen-
 34 cies, and] members of boards and commissions, [provided that in
 35 any school district this shall exclude only the superintendent of
 36 schools or other chief administrator of the district] *managerial*
 37 *executives and confidential employees.*

38 (e) The term "representative" is not limited to individuals but
 39 shall include labor organizations, and individual representatives
 40 need not themselves be employed by, and the labor organization
 41 serving as a representative need not be limited in membership to
 42 the employees of, the employer whose employees are represented.
 43 This term shall include any organization, agency or person autho-
 44 rized or designated by a public employer, public employee, group
 45 of public employees, or public employee association to act on its
 46 behalf and represent it or them.

47 (f) "*Managerial executives*" of a public employer means per-
 48 sons who formulate management policies and practices, and persons
 49 who are charged with the responsibility of directing the effectua-
 50 tion of such management policies and practices, except that in any
 51 school district this term shall include only the superintendent or
 52 other chief administrator, and the assistant superintendent of the
 53 district.

54 (g) "*Confidential employees*" of a public employer means em-
 55 ployees whose functional responsibilities or knowledge in connec-
 56 tion with the issues involved in the collective negotiations process
 57 would make their membership in any appropriate negotiating unit
 58 incompatible with their official duties.

1 3. Section 6 of P. L. 1968, c. 303 (C. 34:13A-5.2) is amended to
 2 read as follows:

3 6. [(a)] There is hereby established in the Division of Public
 4 Employment Relations a commission to be known as the New Jer-

5 sey Public Employment Relations Commission. This commission,
6 in addition to the powers and duties granted by this act, shall have
7 in the public employment area the same powers and duties granted
8 to the labor mediation board in sections 7 and 10 of P. L. 1941,
9 c. 100, and in sections 2 and 3 of P. L. 1945, c. 32. [There shall be
10 a chief executive officer and administrator who shall devote his
11 full time to the performance of his duties exclusively in the Divi-
12 sion of Public Employment Relations.] [(b)] This commission shall
13 make policy and establish rules and regulations concerning em-
14 ployer-employee relations in public employment relating to dispute
15 settlement, grievance procedures and administration including
16 enforcement of statutory provisions concerning representative
17 elections and related matters *and to implement fully all the pro-*
18 *visions of this act.* The commission shall consist of seven members
19 to be appointed by the Governor, by and with the advice and con-
20 sent of the Senate. Of such members, two shall be representative
21 of public employers, two shall be representative of public employee
22 organizations and three shall be representative of the public in-
23 cluding the appointee who is designated as chairman. Of the first
24 appointees, two shall be appointed for 2 years, two for a term of 3
25 years and three, including the chairman, for a term of 4 years.
26 Their successors shall be appointed for terms of 3 years each, *and*
27 *until their successors are appointed and qualified,* except that any
28 person chosen to fill a vacancy shall be appointed only for the un-
29 expired term of the member whose office has become vacant.

30 The members of the commission, *other than the chairman,* shall
31 be compensated at the rate of [\$50.00] \$100.00 for each *** 6
32 hour *** day***[, or part thereof,]*** spent in attendance at
33 meetings and consultations and shall be reimbursed for necessary
34 expenses in connection with the discharge of their duties *** *except*
34A *that no commission member who receives a salary or other form of*
34B *compensation as a representative of any employer or employee*
34C *group, organization or association, shall be compensated by the*
34D *commission for any deliberations directly involving members of*
34E *said employer or employee group, organization or association.*
34F *Compensation for more, or less than, 6 hours per day, shall be pro-*
34G *rated in proportion to the time involved***.*

35 The chairman of the commission shall be its chief executive offi-
36 cer and administrator, shall devote his full time to the performance
37 of his duties as chairman of the Public Employment Relations
38 Commission and shall receive such compensation as shall be pro-
39 vided by law.

40 *The term of the member of the commission who is designated as*
41 *chairman on the date of enactment of this act shall expire on the*
42 *effective date of this act.*

1 4. Section 7 of P. L. 1968, c. 303 (C. 34:13A-5.3) is amended to
2 read as follows:

3 7. Except as hereinafter provided, public employees shall have,
4 and shall be protected in the exercise of, the right, freely and with-
5 out fear of penalty or reprisal, to form, join and assist any employee
6 organization or to refrain from any such activity; provided, how-
7 ever, that this right shall not extend to **[any managerial executive]**
8 *elected officials, members of boards and commissions, managerial*
9 *executives, or confidential employees, except in a school district*
10 the term managerial executive shall mean the superintendent of
11 schools or his equivalent, nor, except where established practice,
12 prior agreement or special circumstances, dictate the contrary,
13 *** **[or where the number of supervisors to be in the unit is less**
14 *than 12,]* *** shall any supervisor having the power to hire, dis-
15 charge, discipline, or to effectively recommend the same, have the
16 right to be represented in collective negotiations by an employee
17 organization that admits nonsupervisory personnel to membership,
18 and the fact that any organization has such supervisory employees
19 as members shall not deny the right of that organization to repre-
20 sent the appropriate unit in collective negotiations; and provided
21 further, that, except where established practice, prior agreement, or
22 special circumstances dictate the contrary, no policeman shall have
23 the right to join an employee organization that admits employees
24 other than policemen to membership. The negotiating unit shall be
25 defined with due regard for the community of interest among the
26 employees concerned, but the commission shall not intervene in
27 matters of recognition and unit definition except in the event of
27A a dispute.

28 Representatives designated or selected by public employees for
29 the purposes of collective negotiation by the majority of the em-
30 ployees in a unit appropriate for such purposes or by the majority
31 of the employees voting in an election conducted by the commis-
32 sion as authorized by this act shall be the exclusive representa-
33 tives for collective negotiation concerning the terms and conditions
34 of employment of the employees in such unit. Nothing herein shall
35 be construed to prevent any official from meeting with an employee
36 organization for the purpose of hearing the views and requests
37 of its members in such unit so long as (a) the majority representa-
38 tive is informed of the meeting; (b) any changes or modifications

39 in terms and conditions of employment are made only through
40 negotiation with the majority representative; and (c) a minority
41 organization shall not present or process grievances. Nothing
42 herein shall be construed to deny to any individual employee his
43 rights under Civil Service laws or regulations. When no majority
44 representative has been selected as the bargaining agent for the
45 unit of which an individual employee is a part, he may present his
46 own grievance either personally or through an appropriate repre-
47 sentative or an organization of which he is a member and have such
48 grievance adjusted.

49 A majority representative of public employees in an appropriate
50 unit shall be entitled to act for and to negotiate agreements cover-
51 ing all employees in the unit and shall be responsible for repre-
52 senting the interest of all such employees without discrimination
53 and without regard to employee organization membership. Pro-
54 posed new rules or modifications of existing rules governing work-
55 ing conditions shall be negotiated with the majority representative
56 before they are established. In addition, the majority representa-
57 tive and designated representatives of the public employer shall
58 meet at reasonable times and negotiate in good faith with respect
59 to grievances and terms and conditions of employment.

60 When an agreement is reached on the terms and conditions of
61 employment, it shall be embodied in writing and signed by the
62 authorized representatives of the public employer and the majority
63 representative.

64 Public employers shall negotiate written policies setting forth
65 grievance procedures by means of which their employees or repre-
66 sentatives of employees may appeal the interpretation, application
67 or violation of policies, agreements, and administrative decisions
68 affecting them, provided that such grievance procedures shall be
69 included in any agreement entered into between the public employer
70 and the representative organization. Such grievance procedures
71 may provide for binding arbitration as a means for resolving
72 disputes. *Notwithstanding any procedures for the resolution of*
73 *disputes, controversies or grievances established by any other*
74 *statute, grievance procedures established by agreement between*
75 *the public employer and the representative organization shall be*
76 *utilized for any dispute covered by the terms of such agreement.*

1 5. Section 6 of P. L. 1941, c. 100 (C. 34:13A-6) is amended to
2 read as follows:

3 6. (a) Upon its own motion, in an existing, imminent or threat-
4 ened labor dispute in private employment, the board, through the

5 Division of Private Employment Dispute Settlement, may, and,
6 upon the request of the parties or either party to the dispute, must
7 take such steps as it may deem expedient to effect a voluntary,
8 amicable and expeditious adjustment and settlement of the differ-
9 ences and issues between employer and employees which have
10 precipitated or culminated in or threaten to precipitate or culmi-
11 nate in such labor dispute.

12 (b) Whenever negotiations between a public employer and an
13 exclusive representative concerning the terms and conditions of
14 employment shall reach an impasse, the commission, through the
15 Division of Public Employment Relations shall, upon the request
16 of either party, take such steps as it may deem expedient to effect
17 a voluntary resolution of the impasse. In the event of a failure to
18 resolve the impasse by mediation the Division of Public Employ-
19 ment Relations is empowered to recommend or invoke fact-finding
20 with recommendation for settlement, the cost of which shall be
21 borne by the [parties equally] *commission*.

22 (c) The board in private employment, through the Division of
23 Private Employment Dispute Settlement, and the commission in
24 public employment, through the Division of Public Employment
25 Relations, shall take the following steps to avoid or terminate
26 labor disputes: (1) to arrange for, hold, adjourn or reconvene a
27 conference or conferences between the disputants or one or more
28 of their representatives or any of them; (2) to invite the disputants
29 or their representatives or any of them to attend such conference
30 and submit, either orally or in writing, the grievances of and
31 differences between the disputants; (3) to discuss such grievances
32 and differences with the disputants and their representatives; and
33 (4) to assist in negotiating and drafting agreements for the
34 adjustment in settlement of such grievances and differences and for
35 the termination or avoidance, as the case may be, of the existing
36 or threatened labor dispute.

37 (d) The commission, through the Division of Public Employment
38 Relations, is hereby empowered to resolve questions concerning
39 representation of public employees by conducting a secret ballot
40 election or utilizing any other appropriate and suitable method
41 designed to ascertain the free choice of the employees. The division
42 shall decide in each instance which unit of employees is appropriate
43 for collective negotiation, provided that, except where dictated by
44 established practice, prior agreement, or special circumstances, no
45 unit shall be appropriate which includes (1) both supervisors and
46 nonsupervisors, (2) both professional and nonprofessional em-

47 ployees unless a majority of such professional employees vote for
48 inclusion in such unit or, (3) both craft and noncraft employees
49 unless a majority of such craft employees vote for inclusion in
50 such unit. All of the powers and duties conferred or imposed upon
51 the division that are necessary for the administration of this sub-
52 division, and not inconsistent with it, are to that extent hereby
53 made applicable. Should formal hearings be required, in the
54 opinion of said division to determine the appropriate unit, it shall
55 have the power to issue subpoenas as described below, and shall
56 determine the rules and regulations for the conduct of such hear-
57 ing or hearings.

58 (e) For the purposes of this section the Division of Public Em-
59 ployment Relations shall have the authority and power to hold
60 hearings, subpoena witnesses, compel their attendance, administer
61 oaths, take the testimony or deposition of any person under oath,
62 and in connection therewith, to issue subpoenas duces tecum, and to
63 require the production and examination of any governmental or
64 other books or papers relating to any matter described above.

65 (f) In carrying out any of its work under this act, the board
66 may designate one of its members, or an officer of the board to act
67 in its behalf and may delegate to such designee one or more of its
68 duties hereunder and, for such purpose, such designee shall have
69 all the powers hereby conferred upon the board in connection with
70 the discharge of the duty or duties so delegated. In carrying out
71 any of its work under this act, the commission may designate one of
72 its members or an officer of the commission to act on its behalf and
73 may delegate to such designee one or more of its duties hereunder
74 and, for such purpose, such designee shall have all of the powers
75 hereby conferred upon the commission in connection with the dis-
76 charge of the duty or duties so delegated.

77 (g) The board and commission may also appoint and designate
78 other persons or groups of persons to act for and on its behalf and
79 may delegate to such persons or groups of persons any and all of
80 the powers conferred upon it by this act so far as it is reasonably
81 necessary to effectuate the purposes of this act. Such persons shall
82 serve without compensation but shall be reimbursed for any nec-
83 essary expenses.

84 (h) The personnel of the Division of Public Employment Rela-
85 tions shall include only individuals familiar with the field of public
86 employee-management relations. The commission's determination
87 that a person is familiar in this field shall not be reviewable by any
88 other body.

1 6. Section 10 of P. L. 1968, c. 303 (C. 34:13A-8.1) is amended to
2 read as follows:

3 10. Nothing in this act shall be construed to annul or modify,
4 or to preclude the [renewal or] continuation of any agreement
5 *during its current term* heretofore entered into between any public
6 employer and any employee organization[, nor shall any provision
7 hereof annul or modify any statute or statutes of this State]**,
8 *nor shall any provision hereof annul or modify any pension statute
9 or statutes of this State**.* *~~[Nothing in this act shall be construed
10 to annul the duty, responsibility or authority vested by statute in
11 any public employer or public body except that the impact on terms
12 and conditions of employment of a public employer's or a public
13 body's decisions in the exercise of that duty, responsibility or au-
14 thority shall be within the scope of collective negotiations.]~~ * **~~[It
15 is the right of any public employer to determine the standards of
16 services to be offered; determine school and college curricula;
17 determine the standards of selection for employment; direct its
18 employees; take disciplinary action; maintain the efficiency of op-
19 erations; determine the methods, means and personnel by which
20 operations are to be conducted; determine the content of job classi-
21 fications; take all necessary actions to carry out its mission in emer-
22 gencies; and exercise complete control and discretion over its
23 organization and the technology of performing its work. Decisions
24 of any public employer on the aforesaid matters are not within the
25 scope of collective negotiations; provided, however, that questions
26 concerning the practical impact that decisions on said matters have
27 on employees, such as questions of workload or manning, are within
28 the scope of collective negotiations.]~~ **

1 7. Section 12 of P. L. 1968, c. 303 (C. 34:13A-8.3) is amended to
2 read as follows:

3 12. The commission in conjunction with the Institute of Manage-
4 ment and Labor of Rutgers, The State University, shall develop
5 and maintain a program for the guidance of *public employees and*
6 *public employers* in employee-management relations, to provide
7 technical advice to *public employees and* public employers on em-
8 ployee-management programs, to assist in the development of
9 programs for training *employee and* management personnel in
10 the principles and procedures of consultation, negotiation and the
11 settlement of disputes in the public service, and for the training of
12 *employee and* management officials in the discharge of their em-
13 ployee-management relations responsibilities in the public interest.

1 8. For the purpose of carrying out the amendatory and supple-
2 mentary provisions of this act there is hereby appropriated for
3 the use of the commission for the fiscal year ending June 30, 1974,
4 the additional sum of \$25,000.00.

1 9. This act shall take effect 90 days after enactment.

SENATE, No. 1087

STATE OF NEW JERSEY

INTRODUCED APRIL 16, 1974

By Senators HORN, WILEY, FELDMAN, BEDELL, PARKER
and DWYER

Referred to Committee on Conference and Coordinating

AN ACT to amend and supplement the "New Jersey Employer-Employee Relations Act," approved April 30, 1941 (P. L. 1941, c. 100) as said short title and act were amended and supplemented by P. L. 1968, c. 303.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. a. Employers, their representatives or agents are prohibited
2 from:

3 (1) Interfering with, restraining or coercing employees in the
4 exercise of the rights guaranteed to them by this act.

5 (2) Dominating or interfering with the formation, existence or
6 administration of any employee organization.

7 (3) Discriminating in regard to hire or tenure of employment or
8 any term or condition of employment to encourage or discourage
9 employees in the exercise of the rights guaranteed to them by
10 this act.

11 (4) Discharging or otherwise discriminating against any em-
12 ployee because he has signed or filed an affidavit, petition or com-
13 plaint or given any information or testimony under this act.

14 (5) Refusing to negotiate in good faith with a majority repre-
15 sentative of employees in an appropriate unit concerning terms
16 and conditions of employment of employees in that unit, or refusing
17 to process grievances presented by the majority representative.

18 (6) Refusing to reduce a negotiated agreement to writing and
19 to sign such agreement.

20 (7) Violating any of the rules and regulations established by the
21 commission.

22 b. Employee organizations, their representatives or agents are
23 prohibited from:

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.**

24 (1) Interfering with, restraining or coercing employees in the
25 exercise of the rights guaranteed to them by this act.

26 (2) Interfering with, restraining or coercing a public employer
27 in the selection of his representative for the purposes of negotia-
28 tions or the adjustment of grievances.

29 (3) Refusing to negotiate in good faith with a public employer,
30 if they are the majority representative of employees in an ap-
31 propriate unit concerning terms and conditions of employment of
32 employees in that unit.

33 (4) Refusing to reduce a negotiated agreement to writing and
34 to sign such agreement.

35 (5) Violating any of the rules and regulations established by the
36 commission.

37 c. The commission shall have exclusive power as hereinafter
38 provided to prevent anyone from engaging in any unfair practice
39 listed in subsections a. and b. above. Whenever it is charged that
40 anyone has engaged or is engaging in any such unfair practice,
41 the commission, or any designated agent thereof, shall have au-
42 thority to issue and cause to be served upon such party a complaint
43 stating the specific unfair practice charged and including a notice
44 of hearing containing the date and place of hearing before the
45 commission or any designated agent thereof; provided that no
46 complaint shall issue based upon any unfair practice occurring
47 more than 6 months prior to the filing of the charge unless the
48 person aggrieved thereby was prevented from filing such charge
49 in which event the 6 months period shall be computed from the day
50 he was no longer so prevented.

51 In any such proceeding, the provisions of the Administrative
52 Procedure Act P. L. 1968, c. 410 (C. 52:14B-1 et seq.) shall be
53 applicable. Evidence shall be taken at the hearing and filed with
54 the commission. If, upon all the evidence taken, the commission
55 shall determine that any party charged has engaged or is engaging
56 in any such unfair practice, the commission shall state its findings
57 of fact and conclusions of law and issue and cause to be served on
58 such party an order requiring such party to cease and desist from
59 such unfair practice, and to take such reasonable affirmative action
60 as will effectuate the policies of this act. All cases in which a
61 complaint and notice of hearing on a charge is actually issued by
62 the commission, shall be prosecuted before the commission or its
63 agent, or both, by the representative of the employee organization
64 or party filing the charge or his authorized representative.

65 d. The commission shall at all times have the power and duty,

66 upon the request of any public employer or majority representative,
67 to make a final determination as to whether a matter in dispute
68 is within the scope of collective negotiations. The commission shall
69 serve the parties with its findings of fact and conclusions of law.

70 e. The commission shall adopt such rules as may be required
71 to regulate the conduct of representation elections, and to regulate
72 the time of commencement of negotiations and of institution of
73 impasse procedures so that there will be full opportunity for
74 negotiations and the resolution of impasses prior to required budget
75 submission dates.

76 f. The commission shall have the power to apply to the Appellate
77 Division of the Superior Court for an appropriate order enforcing
78 any order of the commission issued under subsection c. or d. hereof,
79 and its findings of fact, if based upon substantial evidence on the
80 record as a whole, shall not, in such action, be set aside or modified;
81 any order for remedial or affirmative action, if reasonably designed
82 to effectuate the purposes of this act, shall be affirmed and enforced
83 in such proceeding.

1 2. Section 3 of P. L. 1941, c. 100 (C. 34:13A-3) is amended to
2 read as follows:

3 3. When used in this act:

4 (a) The term "board" shall mean New Jersey State Board of
5 Mediation.

6 (b) The term "commission" shall mean New Jersey Public
7 Employment Relations Commission.

8 (c) The term "employer" includes an employer and any person
9 acting, directly or indirectly, on behalf of or in the interest of an
10 employer with the employer's knowledge or ratification, but a labor
11 organization, or any officer or agent thereof, shall be considered an
12 employer only with respect to individuals employed by such orga-
13 nization. This term shall include "public employers" and shall mean
14 the State of New Jersey, or the several counties and municipalities
15 thereof, or any other political subdivision of the State, or a school
16 district, or any special district, or any authority, commission, or
17 board, or any branch or agency of the public service.

18 (d) The term "employee" shall include any employee, and
19 shall not be limited to the employees of a particular employer
20 unless this act explicitly states otherwise, and shall include any in-
21 dividual whose work has ceased as a consequence of or in connection
22 with any current labor dispute or because of any unfair labor prac-
23 tice and who has not obtained any other regular and substantially
24 equivalent employment. This term, however, shall not include any

25 individual taking the place of any employee whose work has ceased
26 as aforesaid, nor shall it include any individual employed by his
27 parent or spouse, or in the domestic service of any person in the
28 home of the employer, or employed by any company owning or
29 operating a railroad or railway express subject to the provisions
30 of the Railway Labor Act. This term shall include any public em-
31 ployee, i.e., any person holding a position, by appointment or con-
32 tract, or employment in the service of a public employer, except
33 elected officials, [heads and deputy heads of departments and agen-
34 cies, and] members of boards and commissions, [provided that in
35 any school district this shall exclude only the superintendent of
36 schools or other chief administrator of the district] *managerial*
37 *executives and confidential employees.*

38 (e) The term "representative" is not limited to individuals but
39 shall include labor organizations, and individual representatives
40 need not themselves be employed by, and the labor organization
41 serving as a representative need not be limited in membership to
42 the employees of, the employer whose employees are represented.
43 This term shall include any organization, agency or person autho-
44 rized or designated by a public employer, public employee, group
45 of public employees, or public employee association to act on its
46 behalf and represent it or them.

47 (f) "*Managerial executives*" of a public employer means per-
48 sons who formulate management policies and practices, and persons
49 who are charged with the responsibility of directing the effectua-
50 tion of such management policies and practices, except that in any
51 school district this term shall include only the superintendent or
52 other chief administrator, and the assistant superintendent of the
53 district.

54 (g) "*Confidential employees*" of a public employer means em-
55 ployees whose functional responsibilities or knowledge in connec-
56 tion with the issues involved in the collective negotiations process
57 would make their membership in any appropriate negotiating unit
58 incompatible with their official duties.

1 3. Section 6 of P. L. 1968, c. 303 (C. 34:13A-5.2) is amended to
2 read as follows:

3 6. [(a)] There is hereby established in the Division of Public
4 Employment Relations a commission to be known as the New Jer-
5 sey Public Employment Relations Commission. This commission,
6 in addition to the powers and duties granted by this act, shall have
7 in the public employment area the same powers and duties granted
8 to the labor mediation board in sections 7 and 10 of P. L. 1941,

9 c. 100, and in sections 2 and 3 of P. L. 1945, c. 32. [There shall be
10 a chief executive officer and administrator who shall devote his
11 full time to the performance of his duties exclusively in the Divi-
12 sion of Public Employment Relations.] [(b)] This commission shall
13 make policy and establish rules and regulations concerning em-
14 ployer-employee relations in public employment relating to dispute
15 settlement, grievance procedures and administration including
16 enforcement of statutory provisions concerning representative
17 elections and related matters *and to implement fully all the pro-*
18 *visions of this act.* The commission shall consist of seven members
19 to be appointed by the Governor, by and with the advice and con-
20 sent of the Senate. Of such members, two shall be representative
21 of public employers, two shall be representative of public employee
22 organizations and three shall be representative of the public in-
23 cluding the appointee who is designated as chairman. Of the first
24 appointees, two shall be appointed for 2 years, two for a term of 3
25 years and three, including the chairman, for a term of 4 years.
26 Their successors shall be appointed for terms of 3 years each, *and*
27 *until their successors are appointed and qualified*, except that any
28 person chosen to fill a vacancy shall be appointed only for the un-
29 expired term of the member whose office has become vacant.

30 The members of the commission, *other than the chairman*, shall
31 be compensated at the rate of [\\$50.00] \$100.00 for each day, or
32 part thereof, spent in attendance at meetings and consultations and
33 shall be reimbursed for necessary expenses in connection with the
34 discharge of their duties.

35 *The chairman of the commission shall be its chief executive offi-*
36 *cer and administrator, shall devote his full time to the performance*
37 *of his duties as chairman of the Public Employment Relations*
38 *Commission and shall receive such compensation as shall be pro-*
39 *vided by law.*

40 *The term of the member of the commission who is designated as*
41 *chairman on the date of enactment of this act shall expire on the*
42 *effective date of this act.*

1 4. Section 7 of P. L. 1968, c. 303 (C. 34:13A-5.3) is amended to
2 read as follows:

3 7. Except as hereinafter provided, public employees shall have,
4 and shall be protected in the exercise of, the right, freely and with-
5 out fear of penalty or reprisal, to form, join and assist any employee
6 organization or to refrain from any such activity; provided, how-
7 ever, that this right shall not extend to [any managerial executive]
8 *elected officials, members of boards and commissions, managerial*

9 *executives, or confidential employees, except in a school district*
10 *the term managerial executive shall mean the superintendent of*
11 *schools or his equivalent, nor, except where established practice,*
12 *prior agreement or special circumstances, dictate the contrary,*
13 *or where the number of supervisors to be in the unit is less than 12,*
14 *shall any supervisor having the power to hire, discharge, discipline,*
15 *or to effectively recommend the same, have the right to be repre-*
16 *sented in collective negotiations by an employee organization that*
17 *admits nonsupervisory personnel to membership, and the fact that*
18 *any organization has such supervisory employees as members shall*
19 *not deny the right of that organization to represent the appropriate*
20 *unit in collective negotiations; and provided further, that, except*
21 *where established practice, prior agreement, or special circum-*
22 *stances dictate the contrary, no policeman shall have the right to*
23 *join an employee organization that admits employees other than*
24 *policemen to membership. The negotiating unit shall be defined*
25 *with due regard for the community of interest among the employees*
26 *concerned, but the commission shall not intervene in matters of*
27 *recognition and unit definition except in the event of a dispute.*

28 . Representatives designated or selected by public employees for
29 the purposes of collective negotiation by the majority of the em-
30 ployees in a unit appropriate for such purposes or by the majority
31 of the employees voting in an election conducted by the commis-
32 sion as authorized by this act shall be the exclusive representa-
33 tives for collective negotiation concerning the terms and conditions
34 of employment of the employees in such unit. Nothing herein shall
35 be construed to prevent any official from meeting with an employee
36 organization for the purpose of hearing the views and requests
37 of its members in such unit so long as (a) the majority representa-
38 tive is informed of the meeting; (b) any changes or modifications
39 in terms and conditions of employment are made only through
40 negotiation with the majority representative; and (c) a minority
41 organization shall not present or process grievances. Nothing
42 herein shall be construed to deny to any individual employee his
43 rights under Civil Service laws or regulations. When no majority
44 representative has been selected as the bargaining agent for the
45 unit of which an individual employee is a part, he may present his
46 own grievance either personally or through an appropriate repre-
47 sentative or an organization of which he is a member and have such
48 grievance adjusted.

49 A majority representative of public employees in an appropriate
50 unit shall be entitled to act for and to negotiate agreements cover-

51 ing all employees in the unit and shall be responsible for repre-
52 senting the interest of all such employees without discrimination
53 and without regard to employee organization membership. Pro-
54 posed new rules or modifications of existing rules governing work-
55 ing conditions shall be negotiated with the majority representative
56 before they are established. In addition, the majority representa-
57 tive and designated representatives of the public employer shall
58 meet at reasonable times and negotiate in good faith with respect
59 to grievances and terms and conditions of employment.

60 When an agreement is reached on the terms and conditions of
61 employment, it shall be embodied in writing and signed by the
62 authorized representatives of the public employer and the majority
63 representative.

64 Public employers shall negotiate written policies setting forth
65 grievance procedures by means of which their employees or repre-
66 sentatives of employees may appeal the interpretation, application
67 or violation of policies, agreements, and administrative decisions
68 affecting them, provided that such grievance procedures shall be
69 included in any agreement entered into between the public employer
70 and the representative organization. Such grievance procedures
71 may provide for binding arbitration as a means for resolving
72 disputes. *Notwithstanding any procedures for the resolution of*
73 *disputes, controversies or grievances established by any other*
74 *statute, grievance procedures established by agreement between*
75 *the public employer and the representative organization shall be*
76 *utilized for any dispute covered by the terms of such agreement.*

1 5. Section 6 of P. L. 1941, c. 100 (C. 34:13A-6) is amended to
2 read as follows:

3 6. (a) Upon its own motion, in an existing, imminent or threat-
4 ened labor dispute in private employment, the board, through the
5 Division of Private Employment Dispute Settlement, may, and,
6 upon the request of the parties or either party to the dispute, must
7 take such steps as it may deem expedient to effect a voluntary,
8 amicable and expeditious adjustment and settlement of the differ-
9 ences and issues between employer and employees which have
10 precipitated or culminated in or threaten to precipitate or culmi-
11 nate in such labor dispute.

12 (b) Whenever negotiations between a public employer and an
13 exclusive representative concerning the terms and conditions of
14 employment shall reach an impasse, the commission, through the
15 Division of Public Employment Relations shall, upon the request
16 of either party, take such steps as it may deem expedient to effect

17 a voluntary resolution of the impasse. In the event of a failure to
18 resolve the impasse by mediation the Division of Public Employ-
19 ment Relations is empowered to recommend or invoke fact-finding
20 with recommendation for settlement, the cost of which shall be
21 borne by the **[parties equally]** *commission*.

22 (c) The board in private employment, through the Division of
23 Private Employment Dispute Settlement, and the commission in
24 public employment, through the Division of Public Employment
25 Relations, shall take the following steps to avoid or terminate
26 labor disputes: (1) to arrange for, hold, adjourn or reconvene a
27 conference or conferences between the disputants or one or more
28 of their representatives or any of them; (2) to invite the disputants
29 or their representatives or any of them to attend such conference
30 and submit, either orally or in writing, the grievances of and
31 differences between the disputants; (3) to discuss such grievances
32 and differences with the disputants and their representatives; and
33 (4) to assist in negotiating and drafting agreements for the
34 adjustment in settlement of such grievances and differences and for
35 the termination or avoidance, as the case may be, of the existing
36 or threatened labor dispute.

37 (d) The commission, through the Division of Public Employment
38 Relations, is hereby empowered to resolve questions concerning
39 representation of public employees by conducting a secret ballot
40 election or utilizing any other appropriate and suitable method
41 designed to ascertain the free choice of the employees. The division
42 shall decide in each instance which unit of employees is appropriate
43 for collective negotiation, provided that, except where dictated by
44 established practice, prior agreement, or special circumstances, no
45 unit shall be appropriate which includes (1) both supervisors and
46 nonsupervisors, (2) both professional and nonprofessional em-
47 ployees unless a majority of such professional employees vote for
48 inclusion in such unit or, (3) both craft and noncraft employees
49 unless a majority of such craft employees vote for inclusion in
50 such unit. All of the powers and duties conferred or imposed upon
51 the division that are necessary for the administration of this sub-
52 division, and not inconsistent with it, are to that extent hereby
53 made applicable. Should formal hearings be required, in the
54 opinion of said division to determine the appropriate unit, it shall
55 have the power to issue subpoenas as described below, and shall
56 determine the rules and regulations for the conduct of such hear-
57 ing or hearings.

58 (e) For the purposes of this section the Division of Public Em-

59 ployment Relations shall have the authority and power to hold
60 hearings, subpoena witnesses, compel their attendance, administer
61 oaths, take the testimony or deposition of any person under oath,
62 and in connection therewith, to issue subpoenas duces tecum, and to
63 require the production and examination of any governmental or
64 other books or papers relating to any matter described above.

65 (f) In carrying out any of its work under this act, the board
66 may designate one of its members, or an officer of the board to act
67 in its behalf and may delegate to such designee one or more of its
68 duties hereunder and, for such purpose, such designee shall have
69 all the powers hereby conferred upon the board in connection with
70 the discharge of the duty or duties so delegated. In carrying out
71 any of its work under this act, the commission may designate one of
72 its members or an officer of the commission to act on its behalf and
73 may delegate to such designee one or more of its duties hereunder
74 and, for such purpose, such designee shall have all of the powers
75 hereby conferred upon the commission in connection with the dis-
76 charge of the duty or duties so delegated.

77 (g) The board and commission may also appoint and designate
78 other persons or groups of persons to act for and on its behalf and
79 may delegate to such persons or groups of persons any and all of
80 the powers conferred upon it by this act so far as it is reasonably
81 necessary to effectuate the purposes of this act. Such persons shall
82 serve without compensation but shall be reimbursed for any nec-
83 essary expenses.

84 (h) The personnel of the Division of Public Employment Rela-
85 tions shall include only individuals familiar with the field of public
86 employee-management relations. The commission's determination
87 that a person is familiar in this field shall not be reviewable by any
88 other body.

1 6. Section 10 of P. L. 1968, c. 303 (C. 34:13A-8.1) is amended to
2 read as follows:

3 10. Nothing in this act shall be construed to annul or modify,
4 or to preclude the [renewal or] continuation of any agreement
5 *during its current term* heretofore entered into between any public
6 employer and any employee organization[, nor shall any provision
7 hereof annul or modify any statute or statutes of this State].
8 *Nothing in this act shall be construed to annul the duty, responsi-*
9 *bility or authority vested by statute in any public employer or*
10 *public body except that the impact on terms and conditions of em-*
11 *ployment of a public employer's or a public body's decisions in*
12 *the exercise of that duty, responsibility or authority shall be within*
13 *the scope of collective negotiations.*

1 7. Section 12 of P. L. 1968, c. 303 (C. 34:13A-8.3) is amended to
2 read as follows:

3 12. The commission in conjunction with the Institute of Manage-
4 ment and Labor of Rutgers, The State University, shall develop
5 and maintain a program for the guidance of *public employees and*
6 public employers in employee-management relations, to provide
7 technical advice to *public employees and* public employers on em-
8 ployee-management programs, to assist in the development of
9 programs for training *employee and* management personnel in
10 the principles and procedures of consultation, negotiation and the
11 settlement of disputes in the public service, and for the training of
12 *employee and* management officials in the discharge of their em-
13 ployee-management relations responsibilities in the public interest.

1 8. For the purpose of carrying out the amendatory and supple-
2 mentary provisions of this act there is hereby appropriated for
3 the use of the commission for the fiscal year ending June 30, 1974,
4 the additional sum of \$25,000.00.

1 9. This act shall take effect 90 days after enactment.

SPONSOR'S STATEMENT

Section 1 of this bill gives the Public Employment Relations Commission unfair labor practice jurisdiction, enables the commission to determine whether matters in dispute are within the scope of collective negotiation, and enables the commission to regulate the time and conduct of negotiations and impasse procedures.

Section 2 defines the terms managerial executives and confidential employees; such personnel will not have the right to join an employee organization.

Section 3 provides for a full-time chairman for PERC.

It is the purpose of sections 4 and 6 of this bill to clarify the scope of negotiations between public employers and employee organizations. The importance of some clarification was emphasized by the Supreme Court in *Burlington County College Faculty Association v. Board of Trustees, Burlington County College*, 64 N. J. 10 (1973), and in *Dunellen Board of Education v. Dunellen Education Association*, 64 N. J. 17 (1973).

The clarification set out in section 4 of this act is for the purpose of resolving the tension which exists between statutory provisions for the settlement of controversies and disputes which preceded the enactment of the Employer-Employee Relations Act and the existence of contractual procedures for the resolution of grievances arising under a collective agreement, including provi-

sions for binding arbitration. Under the addition to section 4 of this act, an employee organization may negotiate and utilize procedures for the resolution of grievances, and both parties may arbitrate disputes within the definition of "grievance" in their collective negotiation agreement.

Section 6 is intended to give greater guidance to PERC and to the courts in making the determination whether a particular issue is within the scope of negotiations. Section 6 provides that guidance without enacting a list of negotiable subjects. Questions concerning the scope of negotiations will still be resolved on a case-by-case basis, but both the administrative agency charged with enforcing this act and the courts will be aided by the statutory standard that the impact on terms and conditions of employment of the exercise of statutory duties by a public employer is negotiable.

SENATE COMMITTEE AMENDMENTS TO
SENATE, No. 1087

STATE OF NEW JERSEY

ADOPTED MAY 9, 1974

Amend page 3, section 1, line 67, omit "final".

Amend page 3, section 1, line 69, after ".", insert new sentence as follows:

"Any determination made by the commission pursuant to this subsection may be appealed to the Appellate Division of the Superior Court."

Amend page 9, section 6, lines 8 to 13, omit in their entirety and insert in lieu thereof:

"It is the right of any public employer to determine the standards of services to be offered; determine school and college curricula; determine the standards of selection for employment; direct its employees; take disciplinary action; maintain the efficiency of operations; determine the methods, means and personnel by which operations are to be conducted; determine the content of job classifications; take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organization and the technology of performing its work. Decisions of any public employer on the aforesaid matters are not within the scope of collective negotiations; provided, however, that questions concerning the practical impact that decisions on said matters have on employees, such as questions of workload or manning, are within the scope of collective negotiations."

[OFFICIAL COPY REPRINT]

SENATE, No. 1087

STATE OF NEW JERSEY

INTRODUCED APRIL 16, 1974

By Senators HORN, WILEY, FELDMAN, BEDELL, PARKER
and DWYER

Referred to Committee on Conference and Coordinating

AN ACT to amend and supplement the "New Jersey Employer-Employee Relations Act," approved April 30, 1941 (P. L. 1941, c. 100) as said short title and act were amended and supplemented by P. L. 1968, c. 303.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. a. Employers, their representatives or agents are prohibited
2 from:

3 (1) Interfering with, restraining or coercing employees in the
4 exercise of the rights guaranteed to them by this act.

5 (2) Dominating or interfering with the formation, existence or
6 administration of any employee organization.

7 (3) Discriminating in regard to hire or tenure of employment or
8 any term or condition of employment to encourage or discourage
9 employees in the exercise of the rights guaranteed to them by
10 this act.

11 (4) Discharging or otherwise discriminating against any em-
12 ployee because he has signed or filed an affidavit, petition or com-
13 plaint or given any information or testimony under this act.

14 (5) Refusing to negotiate in good faith with a majority repre-
15 sentative of employees in an appropriate unit concerning terms
16 and conditions of employment of employees in that unit, or refusing
17 to process grievances presented by the majority representative.

18 (6) Refusing to reduce a negotiated agreement to writing and
19 to sign such agreement.

20 (7) Violating any of the rules and regulations established by the
21 commission.

22 b. Employee organizations, their representatives or agents are
23 prohibited from:

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.

24 (1) Interfering with, restraining or coercing employees in the
25 exercise of the rights guaranteed to them by this act.

26 (2) Interfering with, restraining or coercing a public employer
27 in the selection of his representative for the purposes of negotia-
28 tions or the adjustment of grievances.

29 (3) Refusing to negotiate in good faith with a public employer,
30 if they are the majority representative of employees in an ap-
31 propriate unit concerning terms and conditions of employment of
32 employees in that unit.

33 (4) Refusing to reduce a negotiated agreement to writing and
34 to sign such agreement.

35 (5) Violating any of the rules and regulations established by the
36 commission.

37 c. The commission shall have exclusive power as hereinafter
38 provided to prevent anyone from engaging in any unfair practice
39 listed in subsections a. and b. above. Whenever it is charged that
40 anyone has engaged or is engaging in any such unfair practice,
41 the commission, or any designated agent thereof, shall have au-
42 thority to issue and cause to be served upon such party a complaint
43 stating the specific unfair practice charged and including a notice
44 of hearing containing the date and place of hearing before the
45 commission or any designated agent thereof; provided that no
46 complaint shall issue based upon any unfair practice occurring
47 more than 6 months prior to the filing of the charge unless the
48 person aggrieved thereby was prevented from filing such charge
49 in which event the 6 months period shall be computed from the day
50 he was no longer so prevented.

51 In any such proceeding, the provisions of the Administrative
52 Procedure Act P. L. 1968, c. 410 (C. 52:14B-1 et seq.) shall be
53 applicable. Evidence shall be taken at the hearing and filed with
54 the commission. If, upon all the evidence taken, the commission
55 shall determine that any party charged has engaged or is engaging
56 in any such unfair practice, the commission shall state its findings
57 of fact and conclusions of law and issue and cause to be served on
58 such party an order requiring such party to cease and desist from
59 such unfair practice, and to take such reasonable affirmative action
60 as will effectuate the policies of this act. All cases in which a
61 complaint and notice of hearing on a charge is actually issued by
62 the commission, shall be prosecuted before the commission or its
63 agent, or both, by the representative of the employee organization
64 or party filing the charge or his authorized representative.

65 d. The commission shall at all times have the power and duty,

66 upon the request of any public employer or majority representative,
 67 to make a ***[final]*** determination as to whether a matter in dispute
 68 is within the scope of collective negotiations. The commission shall
 69 serve the parties with its findings of fact and conclusions of law.
 69A **Any determination made by the commission pursuant to this*
 69B *subsection may be appealed to the Appellate Division of the*
 69C *Superior Court.**

70 e. The commission shall adopt such rules as may be required
 71 to regulate the conduct of representation elections, and to regulate
 72 the time of commencement of negotiations and of institution of
 73 impasse procedures so that there will be full opportunity for
 74 negotiations and the resolution of impasses prior to required budget
 75 submission dates.

76 f. The commission shall have the power to apply to the Appellate
 77 Division of the Superior Court for an appropriate order enforcing
 78 any order of the commission issued under subsection c. or d. hereof,
 79 and its findings of fact, if based upon substantial evidence on the
 80 record as a whole, shall not, in such action, be set aside or modified;
 81 any order for remedial or affirmative action, if reasonably designed
 82 to effectuate the purposes of this act, shall be affirmed and enforced
 83 in such proceeding.

1 2. Section 3 of P. L. 1941, c. 100 (C. 34:13A-3) is amended to
 2 read as follows:

3 3. When used in this act:

4 (a) The term "board" shall mean New Jersey State Board of
 5 Mediation.

6 (b) The term "commission" shall mean New Jersey Public
 7 Employment Relations Commission.

8 (c) The term "employer" includes an employer and any person
 9 acting, directly or indirectly, on behalf of or in the interest of an
 10 employer with the employer's knowledge or ratification, but a labor
 11 organization, or any officer or agent thereof, shall be considered an
 12 employer only with respect to individuals employed by such orga-
 13 nization. This term shall include "public employers" and shall mean
 14 the State of New Jersey, or the several counties and municipalities
 15 thereof, or any other political subdivision of the State, or a school
 16 district, or any special district, or any authority, commission, or
 17 board, or any branch or agency of the public service.

18 (d) The term "employee" shall include any employee, and
 19 shall not be limited to the employees of a particular employer
 20 unless this act explicitly states otherwise, and shall include any in-
 21 dividual whose work has ceased as a consequence of or in connection
 22 with any current labor dispute or because of any unfair labor prac-

23 tice and who has not obtained any other regular and substantially
 24 equivalent employment. This term, however, shall not include any
 25 individual taking the place of any employee whose work has ceased
 26 as aforesaid, nor shall it include any individual employed by his
 27 parent or spouse, or in the domestic service of any person in the
 28 home of the employer, or employed by any company owning or
 29 operating a railroad or railway express subject to the provisions
 30 of the Railway Labor Act. This term shall include any public em-
 31 ployee, i.e., any person holding a position, by appointment or con-
 32 tract, or employment in the service of a public employer, except
 33 elected officials, [heads and deputy heads of departments and agen-
 34 cies, and] members of boards and commissions, [provided that in
 35 any school district this shall exclude only the superintendent of
 36 schools or other chief administrator of the district] *managerial*
 37 *executives and confidential employees.*

38 (e) The term "representative" is not limited to individuals but
 39 shall include labor organizations, and individual representatives
 40 need not themselves be employed by, and the labor organization
 41 serving as a representative need not be limited in membership to
 42 the employees of, the employer whose employees are represented.
 43 This term shall include any organization, agency or person autho-
 44 rized or designated by a public employer, public employee, group
 45 of public employees, or public employee association to act on its
 46 behalf and represent it or them.

47 (f) "*Managerial executives*" of a public employer means per-
 48 sons who formulate management policies and practices, and persons
 49 who are charged with the responsibility of directing the effectua-
 50 tion of such management policies and practices, except that in any
 51 school district this term shall include only the superintendent or
 52 other chief administrator, and the assistant superintendent of the
 53 district.

54 (g) "*Confidential employees*" of a public employer means em-
 55 ployees whose functional responsibilities or knowledge in connec-
 56 tion with the issues involved in the collective negotiations process
 57 would make their membership in any appropriate negotiating unit
 58 incompatible with their official duties.

1 3. Section 6 of P. L. 1968, c. 303 (C. 34:13A-5.2) is amended to
 2 read as follows:

3 6. [(a)] There is hereby established in the Division of Public
 4 Employment Relations a commission to be known as the New Jer-
 5 sey Public Employment Relations Commission. This commission,
 6 in addition to the powers and duties granted by this act, shall have
 7 in the public employment area the same powers and duties granted

8 to the labor mediation board in sections 7 and 10 of P. L. 1941,
9 c. 100, and in sections 2 and 3 of P. L. 1945, c. 32. [There shall be
10 a chief executive officer and administrator who shall devote his
11 full time to the performance of his duties exclusively in the Divi-
12 sion of Public Employment Relations.] [(b)] This commission shall
13 make policy and establish rules and regulations concerning em-
14 ployer-employee relations in public employment relating to dispute
15 settlement, grievance procedures and administration including
16 enforcement of statutory provisions concerning representative
17 elections and related matters *and to implement fully all the pro-*
18 *visions of this act.* The commission shall consist of seven members
19 to be appointed by the Governor, by and with the advice and con-
20 sent of the Senate. Of such members, two shall be representative
21 of public employers, two shall be representative of public employee
22 organizations and three shall be representative of the public in-
23 cluding the appointee who is designated as chairman. Of the first
24 appointees, two shall be appointed for 2 years, two for a term of 3
25 years and three, including the chairman, for a term of 4 years.
26 Their successors shall be appointed for terms of 3 years each, *and*
27 *until their successors are appointed and qualified*, except that any
28 person chosen to fill a vacancy shall be appointed only for the un-
29 expired term of the member whose office has become vacant.

30 The members of the commission, *other than the chairman*, shall
31 be compensated at the rate of [\\$50.00] \$100.00 for each day, or
32 part thereof, spent in attendance at meetings and consultations and
33 shall be reimbursed for necessary expenses in connection with the
34 discharge of their duties.

35 *The chairman of the commission shall be its chief executive offi-*
36 *cer and administrator, shall devote his full time to the performance*
37 *of his duties as chairman of the Public Employment Relations*
38 *Commission and shall receive such compensation as shall be pro-*
39 *vided by law.*

40 *The term of the member of the commission who is designated as*
41 *chairman on the date of enactment of this act shall expire on the*
42 *effective date of this act.*

1 4. Section 7 of P. L. 1968, c. 303 (C. 34:13A-5.3) is amended to
2 read as follows:

3 7. Except as hereinafter provided, public employees shall have,
4 and shall be protected in the exercise of, the right, freely and with-
5 out fear of penalty or reprisal, to form, join and assist any employee
6 organization or to refrain from any such activity; provided, how-
7 ever, that this right shall not extend to [any managerial executive]
8 *elected officials, members of boards and commissions, managerial*

9 *executives, or confidential employees*, except in a school district
10 the term managerial executive shall mean the superintendent of
11 schools or his equivalent, nor, except where established practice,
12 prior agreement or special circumstances, dictate the contrary,
13 *or where the number of supervisors to be in the unit is less than 12*,
14 shall any supervisor having the power to hire, discharge, discipline,
15 or to effectively recommend the same, have the right to be repre-
16 sented in collective negotiations by an employee organization that
17 admits nonsupervisory personnel to membership, and the fact that
18 any organization has such supervisory employees as members shall
19 not deny the right of that organization to represent the appropriate
20 unit in collective negotiations; and provided further, that, except
21 where established practice, prior agreement, or special circum-
22 stances dictate the contrary, no policeman shall have the right to
23 join an employee organization that admits employees other than
24 policemen to membership. The negotiating unit shall be defined
25 with due regard for the community of interest among the employees
26 concerned, but the commission shall not intervene in matters of
27 recognition and unit definition except in the event of a dispute.

28 Representatives designated or selected by public employees for
29 the purposes of collective negotiation by the majority of the em-
30 ployees in a unit appropriate for such purposes or by the majority
31 of the employees voting in an election conducted by the commis-
32 sion as authorized by this act shall be the exclusive representa-
33 tives for collective negotiation concerning the terms and conditions
34 of employment of the employees in such unit. Nothing herein shall
35 be construed to prevent any official from meeting with an employee
36 organization for the purpose of hearing the views and requests
37 of its members in such unit so long as (a) the majority representa-
38 tive is informed of the meeting; (b) any changes or modifications
39 in terms and conditions of employment are made only through
40 negotiation with the majority representative; and (c) a minority
41 organization shall not present or process grievances. Nothing
42 herein shall be construed to deny to any individual employee his
43 rights under Civil Service laws or regulations. When no majority
44 representative has been selected as the bargaining agent for the
45 unit of which an individual employee is a part, he may present his
46 own grievance either personally or through an appropriate repre-
47 sentative or an organization of which he is a member and have such
48 grievance adjusted.

49 A majority representative of public employees in an appropriate
50 unit shall be entitled to act for and to negotiate agreements cover-

51 ing all employees in the unit and shall be responsible for repre-
52 senting the interest of all such employees without discrimination
53 and without regard to employee organization membership. Pro-
54 posed new rules or modifications of existing rules governing work-
55 ing conditions shall be negotiated with the majority representative
56 before they are established. In addition, the majority representa-
57 tive and designated representatives of the public employer shall
58 meet at reasonable times and negotiate in good faith with respect
59 to grievances and terms and conditions of employment.

60 When an agreement is reached on the terms and conditions of
61 employment, it shall be embodied in writing and signed by the
62 authorized representatives of the public employer and the majority
63 representative.

64 Public employers shall negotiate written policies setting forth
65 grievance procedures by means of which their employees or repre-
66 sentatives of employees may appeal the interpretation, application
67 or violation of policies, agreements, and administrative decisions
68 affecting them, provided that such grievance procedures shall be
69 included in any agreement entered into between the public employer
70 and the representative organization. Such grievance procedures
71 may provide for binding arbitration as a means for resolving
72 disputes. *Notwithstanding any procedures for the resolution of*
73 *disputes, controversies or grievances established by any other*
74 *statute, grievance procedures established by agreement between*
75 *the public employer and the representative organization shall be*
76 *utilized for any dispute covered by the terms of such agreement.*

1 5. Section 6 of P. L. 1941, c. 100 (C. 34:13A-6) is amended to
2 read as follows:

3 6. (a) Upon its own motion, in an existing, imminent or threat-
4 ened labor dispute in private employment, the board, through the
5 Division of Private Employment Dispute Settlement, may, and,
6 upon the request of the parties or either party to the dispute, must
7 take such steps as it may deem expedient to effect a voluntary,
8 amicable and expeditious adjustment and settlement of the differ-
9 ences and issues between employer and employees which have
10 precipitated or culminated in or threaten to precipitate or culmi-
11 nate in such labor dispute.

12 (b) Whenever negotiations between a public employer and an
13 exclusive representative concerning the terms and conditions of
14 employment shall reach an impasse, the commission, through the
15 Division of Public Employment Relations shall, upon the request
16 of either party, take such steps as it may deem expedient to effect

17 a voluntary resolution of the impasse. In the event of a failure to
18 resolve the impasse by mediation the Division of Public Employ-
19 ment Relations is empowered to recommend or invoke fact-finding
20 with recommendation for settlement, the cost of which shall be
21 borne by the [parties equally] *commission*.

22 (c) The board in private employment, through the Division of
23 Private Employment Dispute Settlement, and the commission in
24 public employment, through the Division of Public Employment
25 Relations, shall take the following steps to avoid or terminate
26 labor disputes: (1) to arrange for, hold, adjourn or reconvene a
27 conference or conferences between the disputants or one or more
28 of their representatives or any of them; (2) to invite the disputants
29 or their representatives or any of them to attend such conference
30 and submit, either orally or in writing, the grievances of and
31 differences between the disputants; (3) to discuss such grievances
32 and differences with the disputants and their representatives; and
33 (4) to assist in negotiating and drafting agreements for the
34 adjustment in settlement of such grievances and differences and for
35 the termination or avoidance, as the case may be, of the existing
36 or threatened labor dispute.

37 (d) The commission, through the Division of Public Employment
38 Relations, is hereby empowered to resolve questions concerning
39 representation of public employees by conducting a secret ballot
40 election or utilizing any other appropriate and suitable method
41 designed to ascertain the free choice of the employees. The division
42 shall decide in each instance which unit of employees is appropriate
43 for collective negotiation, provided that, except where dictated by
44 established practice, prior agreement, or special circumstances, no
45 unit shall be appropriate which includes (1) both supervisors and
46 nonsupervisors, (2) both professional and nonprofessional em-
47 ployees unless a majority of such professional employees vote for
48 inclusion in such unit or, (3) both craft and noncraft employees
49 unless a majority of such craft employees vote for inclusion in
50 such unit. All of the powers and duties conferred or imposed upon
51 the division that are necessary for the administration of this sub-
52 division, and not inconsistent with it, are to that extent hereby
53 made applicable. Should formal hearings be required, in the
54 opinion of said division to determine the appropriate unit, it shall
55 have the power to issue subpoenas as described below, and shall
56 determine the rules and regulations for the conduct of such hear-
57 ing or hearings.

58 (e) For the purposes of this section the Division of Public Em-

59 ployment Relations shall have the authority and power to hold
 60 hearings, subpoena witnesses, compel their attendance, administer
 61 oaths, take the testimony or deposition of any person under oath,
 62 and in connection therewith, to issue subpoenas duces tecum, and to
 63 require the production and examination of any governmental or
 64 other books or papers relating to any matter described above.

65 (f) In carrying out any of its work under this act, the board
 66 may designate one of its members, or an officer of the board to act
 67 in its behalf and may delegate to such designee one or more of its
 68 duties hereunder and, for such purpose, such designee shall have
 69 all the powers hereby conferred upon the board in connection with
 70 the discharge of the duty or duties so delegated. In carrying out
 71 any of its work under this act, the commission may designate one of
 72 its members or an officer of the commission to act on its behalf and
 73 may delegate to such designee one or more of its duties hereunder
 74 and, for such purpose, such designee shall have all of the powers
 75 hereby conferred upon the commission in connection with the dis-
 76 charge of the duty or duties so delegated.

77 (g) The board and commission may also appoint and designate
 78 other persons or groups of persons to act for and on its behalf and
 79 may delegate to such persons or groups of persons any and all of
 80 the powers conferred upon it by this act so far as it is reasonably
 81 necessary to effectuate the purposes of this act. Such persons shall
 82 serve without compensation but shall be reimbursed for any nec-
 83 essary expenses.

84 (h) The personnel of the Division of Public Employment Rela-
 85 tions shall include only individuals familiar with the field of public
 86 employee-management relations. The commission's determination
 87 that a person is familiar in this field shall not be reviewable by any
 88 other body.

1 6. Section 10 of P. L. 1968, c. 303 (C. 34:13A-8.1) is amended to
 2 read as follows:

3 10. Nothing in this act shall be construed to annul or modify,
 4 or to preclude the [renewal or] continuation of any agreement
 5 *during its current term* heretofore entered into between any public
 6 employer and any employee organization[, nor shall any provision
 7 hereof annul or modify any statute or statutes of this State].
 8 **[Nothing in this act shall be construed to annul the duty, responsi-*
 9 *bility or authority vested by statute in any public employer or*
 10 *public body except that the impact on terms and conditions of em-*
 11 *ployment of a public employer's or a public body's decisions in*
 12 *the exercise of that duty, responsibility or authority shall be within*

13 *the scope of collective negotiations.】* It is the right of any public*
14 *employer to determine the standards of services to be offered;*
15 *determine school and college curricula; determine the standards*
16 *of selection for employment; direct its employees; take disciplinary*
17 *action; maintain the efficiency of operations; determine the methods,*
18 *means and personnel by which operations are to be conducted;*
19 *determine the content of job classifications; take all necessary*
20 *actions to carry out its mission in emergencies; and exercise com-*
21 *plete control and discretion over its organization and the technology*
22 *of performing its work. Decisions of any public employer on the*
23 *aforesaid matters are not within the scope of collective negotia-*
24 *tions; provided, however, that questions concerning the practical*
25 *impact that decisions on said matters have on employees, such as*
26 *questions of workload or manning, are within the scope of collective*
27 *negotiations.**

1 7. Section 12 of P. L. 1968, c. 303 (C. 34:13A-8.3) is amended to
2 read as follows:

3 12. The commission in conjunction with the Institute of Manage-
4 ment and Labor of Rutgers, The State University, shall develop
5 and maintain a program for the guidance of *public employees and*
6 *public employers* in employee-management relations, to provide
7 technical advice to *public employees and public employers* on em-
8 ployee-management programs, to assist in the development of
9 programs for training *employee and management personnel* in
10 the principles and procedures of consultation, negotiation and the
11 settlement of disputes in the public service, and for the training of
12 *employee and management officials* in the discharge of their em-
13 ployee-management relations responsibilities in the public interest.

1 8. For the purpose of carrying out the amendatory and supple-
2 mentary provisions of this act there is hereby appropriated for
3 the use of the commission for the fiscal year ending June 30, 1974,
4 the additional sum of \$25,000.00.

1 9. This act shall take effect 90 days after enactment.

SENATE AMENDMENTS TO
SENATE, No. 1087
[OFFICIAL COPY REPRINT]

STATE OF NEW JERSEY

ADOPTED JUNE 17, 1974

Amend page 9, section 6, line 7, after "State"]", insert ", nor shall any provision hereof annul or modify any pension statute or statutes of this State".

Amend page 10, section 6, lines 13-27, omit these lines in their entirety.

[SECOND OFFICIAL COPY REPRINT]

SENATE, No. 1087

STATE OF NEW JERSEY

INTRODUCED APRIL 16, 1974

By Senators HORN, WILEY, FELDMAN, BEDELL, PARKER
and DWYER

Referred to Committee on Conference and Coordinating

AN ACT to amend and supplement the "New Jersey Employer-Employee Relations Act," approved April 30, 1941 (P. L. 1941, c. 100) as said short title and act were amended and supplemented by P. L. 1968, c. 303.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. a. Employers, their representatives or agents are prohibited
2 from:

3 (1) Interfering with, restraining or coercing employees in the
4 exercise of the rights guaranteed to them by this act.

5 (2) Dominating or interfering with the formation, existence or
6 administration of any employee organization.

7 (3) Discriminating in regard to hire or tenure of employment or
8 any term or condition of employment to encourage or discourage
9 employees in the exercise of the rights guaranteed to them by
10 this act.

11 (4) Discharging or otherwise discriminating against any em-
12 ployee because he has signed or filed an affidavit, petition or com-
13 plaint or given any information or testimony under this act.

14 (5) Refusing to negotiate in good faith with a majority repre-
15 sentative of employees in an appropriate unit concerning terms
16 and conditions of employment of employees in that unit, or refusing
17 to process grievances presented by the majority representative.

18 (6) Refusing to reduce a negotiated agreement to writing and
19 to sign such agreement.

20 (7) Violating any of the rules and regulations established by the
21 commission.

22 b. Employee organizations, their representatives or agents are
23 prohibited from:

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.

24 (1) Interfering with, restraining or coercing employees in the
25 exercise of the rights guaranteed to them by this act.

26 (2) Interfering with, restraining or coercing a public employer
27 in the selection of his representative for the purposes of negotia-
28 tions or the adjustment of grievances.

29 (3) Refusing to negotiate in good faith with a public employer,
30 if they are the majority representative of employees in an ap-
31 propriate unit concerning terms and conditions of employment of
32 employees in that unit.

33 (4) Refusing to reduce a negotiated agreement to writing and
34 to sign such agreement.

35 (5) Violating any of the rules and regulations established by the
36 commission.

37 c. The commission shall have exclusive power as hereinafter
38 provided to prevent anyone from engaging in any unfair practice
39 listed in subsections a. and b. above. Whenever it is charged that
40 anyone has engaged or is engaging in any such unfair practice,
41 the commission, or any designated agent thereof, shall have au-
42 thority to issue and cause to be served upon such party a complaint
43 stating the specific unfair practice charged and including a notice
44 of hearing containing the date and place of hearing before the
45 commission or any designated agent thereof; provided that no
46 complaint shall issue based upon any unfair practice occurring
47 more than 6 months prior to the filing of the charge unless the
48 person aggrieved thereby was prevented from filing such charge
49 in which event the 6 months period shall be computed from the day
50 he was no longer so prevented.

51 In any such proceeding, the provisions of the Administrative
52 Procedure Act P. L. 1968, c. 410 (C. 52:14B-1 et seq.) shall be
53 applicable. Evidence shall be taken at the hearing and filed with
54 the commission. If, upon all the evidence taken, the commission
55 shall determine that any party charged has engaged or is engaging
56 in any such unfair practice, the commission shall state its findings
57 of fact and conclusions of law and issue and cause to be served on
58 such party an order requiring such party to cease and desist from
59 such unfair practice, and to take such reasonable affirmative action
60 as will effectuate the policies of this act. All cases in which a
61 complaint and notice of hearing on a charge is actually issued by
62 the commission, shall be prosecuted before the commission or its
63 agent, or both, by the representative of the employee organization
64 or party filing the charge or his authorized representative.

65 d. The commission shall at all times have the power and duty,

66 upon the request of any public employer or majority representative,
67 to make a ***[final]*** determination as to whether a matter in dispute
68 is within the scope of collective negotiations. The commission shall
69 serve the parties with its findings of fact and conclusions of law.
69A **Any determination made by the commission pursuant to this*
69B *subsection may be appealed to the Appellate Division of the*
69C *Superior Court.**

70 e. The commission shall adopt such rules as may be required
71 to regulate the conduct of representation elections, and to regulate
72 the time of commencement of negotiations and of institution of
73 impasse procedures so that there will be full opportunity for
74 negotiations and the resolution of impasses prior to required budget
75 submission dates.

76 f. The commission shall have the power to apply to the Appellate
77 Division of the Superior Court for an appropriate order enforcing
78 any order of the commission issued under subsection c. or d. hereof,
79 and its findings of fact, if based upon substantial evidence on the
80 record as a whole, shall not, in such action, be set aside or modified;
81 any order for remedial or affirmative action, if reasonably designed
82 to effectuate the purposes of this act, shall be affirmed and enforced
83 in such proceeding.

1 2. Section 3 of P. L. 1941, c. 100 (C. 34:13A-3) is amended to
2 read as follows:

3 3. When used in this act:

4 (a) The term "board" shall mean New Jersey State Board of
5 Mediation.

6 (b) The term "commission" shall mean New Jersey Public
7 Employment Relations Commission.

8 (c) The term "employer" includes an employer and any person
9 acting, directly or indirectly, on behalf of or in the interest of an
10 employer with the employer's knowledge or ratification, but a labor
11 organization, or any officer or agent thereof, shall be considered an
12 employer only with respect to individuals employed by such orga-
13 nization. This term shall include "public employers" and shall mean
14 the State of New Jersey, or the several counties and municipalities
15 thereof, or any other political subdivision of the State, or a school
16 district, or any special district, or any authority, commission, or
17 board, or any branch or agency of the public service.

18 (d) The term "employee" shall include any employee, and
19 shall not be limited to the employees of a particular employer
20 unless this act explicitly states otherwise, and shall include any in-
21 dividual whose work has ceased as a consequence of or in connection
22 with any current labor dispute or because of any unfair labor prac-

23 tice and who has not obtained any other regular and substantially
 24 equivalent employment. This term, however, shall not include any
 25 individual taking the place of any employee whose work has ceased
 26 as aforesaid, nor shall it include any individual employed by his
 27 parent or spouse, or in the domestic service of any person in the
 28 home of the employer, or employed by any company owning or
 29 operating a railroad or railway express subject to the provisions
 30 of the Railway Labor Act. This term shall include any public em-
 31 ployee, i.e., any person holding a position, by appointment or con-
 32 tract, or employment in the service of a public employer, except
 33 elected officials, [heads and deputy heads of departments and agen-
 34 cies, and] members of boards and commissions, [provided that in
 35 any school district this shall exclude only the superintendent of
 36 schools or other chief administrator of the district] *managerial*
 37 *executives and confidential employees.*

38 (e) The term "representative" is not limited to individuals but
 39 shall include labor organizations, and individual representatives
 40 need not themselves be employed by, and the labor organization
 41 serving as a representative need not be limited in membership to
 42 the employees of, the employer whose employees are represented.
 43 This term shall include any organization, agency or person autho-
 44 rized or designated by a public employer, public employee, group
 45 of public employees, or public employee association to act on its
 46 behalf and represent it or them.

47 (f) "*Managerial executives*" of a public employer means per-
 48 sons who formulate management policies and practices, and persons
 49 who are charged with the responsibility of directing the effectua-
 50 tion of such management policies and practices, except that in any
 51 school district this term shall include only the superintendent or
 52 other chief administrator, and the assistant superintendent of the
 53 district.

54 (g) "*Confidential employees*" of a public employer means em-
 55 ployees whose functional responsibilities or knowledge in connec-
 56 tion with the issues involved in the collective negotiations process
 57 would make their membership in any appropriate negotiating unit
 58 incompatible with their official duties.

1 3. Section 6 of P. L. 1968, c. 303 (C. 34:13A-5.2) is amended to
 2 read as follows:

3 6. [(a)] There is hereby established in the Division of Public
 4 Employment Relations a commission to be known as the New Jer-
 5 sey Public Employment Relations Commission. This commission,
 6 in addition to the powers and duties granted by this act, shall have
 7 in the public employment area the same powers and duties granted

8 to the labor mediation board in sections 7 and 10 of P. L. 1941,
9 c. 100, and in sections 2 and 3 of P. L. 1945, c. 32. [There shall be
10 a chief executive officer and administrator who shall devote his
11 full time to the performance of his duties exclusively in the Divi-
12 sion of Public Employment Relations.] [(b)] This commission shall
13 make policy and establish rules and regulations concerning em-
14 ployer-employee relations in public employment relating to dispute
15 settlement, grievance procedures and administration including
16 enforcement of statutory provisions concerning representative
17 elections and related matters *and to implement fully all the pro-*
18 *visions of this act.* The commission shall consist of seven members
19 to be appointed by the Governor, by and with the advice and con-
20 sent of the Senate. Of such members, two shall be representative
21 of public employers, two shall be representative of public employee
22 organizations and three shall be representative of the public in-
23 cluding the appointee who is designated as chairman. Of the first
24 appointees, two shall be appointed for 2 years, two for a term of 3
25 years and three, including the chairman, for a term of 4 years.
26 Their successors shall be appointed for terms of 3 years each, *and*
27 *until their successors are appointed and qualified*, except that any
28 person chosen to fill a vacancy shall be appointed only for the un-
29 expired term of the member whose office has become vacant.

30 The members of the commission, *other than the chairman*, shall
31 be compensated at the rate of [\\$50.00] \$100.00 for each day, or
32 part thereof, spent in attendance at meetings and consultations and
33 shall be reimbursed for necessary expenses in connection with the
34 discharge of their duties.

35 *The chairman of the commission shall be its chief executive offi-*
36 *cer and administrator, shall devote his full time to the performance*
37 *of his duties as chairman of the Public Employment Relations*
38 *Commission and shall receive such compensation as shall be pro-*
39 *vided by law.*

40 *The term of the member of the commission who is designated as*
41 *chairman on the date of enactment of this act shall expire on the*
42 *effective date of this act.*

1 4. Section 7 of P. L. 1968, c. 303 (C. 34:13A-5.3) is amended to
2 read as follows:

3 7. Except as hereinafter provided, public employees shall have,
4 and shall be protected in the exercise of, the right, freely and with-
5 out fear of penalty or reprisal, to form, join and assist any employee
6 organization or to refrain from any such activity; provided, how-
7 ever, that this right shall not extend to [any managerial executive]
8 *elected officials, members of boards and commissions, managerial*

9 *executives, or confidential employees*, except in a school district
10 the term managerial executive shall mean the superintendent of
11 schools or his equivalent, nor, except where established practice,
12 prior agreement or special circumstances, dictate the contrary,
13 *or where the number of supervisors to be in the unit is less than 12*,
14 shall any supervisor having the power to hire, discharge, discipline,
15 or to effectively recommend the same, have the right to be repre-
16 sented in collective negotiations by an employee organization that
17 admits nonsupervisory personnel to membership, and the fact that
18 any organization has such supervisory employees as members shall
19 not deny the right of that organization to represent the appropriate
20 unit in collective negotiations; and provided further, that, except
21 where established practice, prior agreement, or special circum-
22 stances dictate the contrary, no policeman shall have the right to
23 join an employee organization that admits employees other than
24 policemen to membership. The negotiating unit shall be defined
25 with due regard for the community of interest among the employees
26 concerned, but the commission shall not intervene in matters of
27 recognition and unit definition except in the event of a dispute.

28 Representatives designated or selected by public employees for
29 the purposes of collective negotiation by the majority of the em-
30 ployees in a unit appropriate for such purposes or by the majority
31 of the employees voting in an election conducted by the commis-
32 sion as authorized by this act shall be the exclusive representa-
33 tives for collective negotiation concerning the terms and conditions
34 of employment of the employees in such unit. Nothing herein shall
35 be construed to prevent any official from meeting with an employee
36 organization for the purpose of hearing the views and requests
37 of its members in such unit so long as (a) the majority representa-
38 tive is informed of the meeting; (b) any changes or modifications
39 in terms and conditions of employment are made only through
40 negotiation with the majority representative; and (c) a minority
41 organization shall not present or process grievances. Nothing
42 herein shall be construed to deny to any individual employee his
43 rights under Civil Service laws or regulations. When no majority
44 representative has been selected as the bargaining agent for the
45 unit of which an individual employee is a part, he may present his
46 own grievance either personally or through an appropriate repre-
47 sentative or an organization of which he is a member and have such
48 grievance adjusted.

49 A majority representative of public employees in an appropriate
50 unit shall be entitled to act for and to negotiate agreements cover-

51 ing all employees in the unit and shall be responsible for repre-
52 senting the interest of all such employees without discrimination
53 and without regard to employee organization membership. Pro-
54 posed new rules or modifications of existing rules governing work-
55 ing conditions shall be negotiated with the majority representative
56 before they are established. In addition, the majority representa-
57 tive and designated representatives of the public employer shall
58 meet at reasonable times and negotiate in good faith with respect
59 to grievances and terms and conditions of employment.

60 When an agreement is reached on the terms and conditions of
61 employment, it shall be embodied in writing and signed by the
62 authorized representatives of the public employer and the majority
63 representative.

64 Public employers shall negotiate written policies setting forth
65 grievance procedures by means of which their employees or repre-
66 sentatives of employees may appeal the interpretation, application
67 or violation of policies, agreements, and administrative decisions
68 affecting them, provided that such grievance procedures shall be
69 included in any agreement entered into between the public employer
70 and the representative organization. Such grievance procedures
71 may provide for binding arbitration as a means for resolving
72 disputes. *Notwithstanding any procedures for the resolution of*
73 *disputes, controversies or grievances established by any other*
74 *statute, grievance procedures established by agreement between*
75 *the public employer and the representative organization shall be*
76 *utilized for any dispute covered by the terms of such agreement.*

1 5. Section 6 of P. L. 1941, c. 100 (C. 34:13A-6) is amended to
2 read as follows:

3 6. (a) Upon its own motion, in an existing, imminent or threat-
4 ened labor dispute in private employment, the board, through the
5 Division of Private Employment Dispute Settlement, may, and,
6 upon the request of the parties or either party to the dispute, must
7 take such steps as it may deem expedient to effect a voluntary,
8 amicable and expeditious adjustment and settlement of the differ-
9 ences and issues between employer and employees which have
10 precipitated or culminated in or threaten to precipitate or culmi-
11 nate in such labor dispute.

12 (b) Whenever negotiations between a public employer and an
13 exclusive representative concerning the terms and conditions of
14 employment shall reach an impasse, the commission, through the
15 Division of Public Employment Relations shall, upon the request
16 of either party, take such steps as it may deem expedient to effect

17 a voluntary resolution of the impasse. In the event of a failure to
18 resolve the impasse by mediation the Division of Public Employ-
19 ment Relations is empowered to recommend or invoke fact-finding
20 with recommendation for settlement, the cost of which shall be
21 borne by the [parties equally] *commission*.

22 (c) The board in private employment, through the Division of
23 Private Employment Dispute Settlement, and the commission in
24 public employment, through the Division of Public Employment
25 Relations, shall take the following steps to avoid or terminate
26 labor disputes: (1) to arrange for, hold, adjourn or reconvene a
27 conference or conferences between the disputants or one or more
28 of their representatives or any of them; (2) to invite the disputants
29 or their representatives or any of them to attend such conference
30 and submit, either orally or in writing, the grievances of and
31 differences between the disputants; (3) to discuss such grievances
32 and differences with the disputants and their representatives; and
33 (4) to assist in negotiating and drafting agreements for the
34 adjustment in settlement of such grievances and differences and for
35 the termination or avoidance, as the case may be, of the existing
36 or threatened labor dispute.

37 (d) The commission, through the Division of Public Employment
38 Relations, is hereby empowered to resolve questions concerning
39 representation of public employees by conducting a secret ballot
40 election or utilizing any other appropriate and suitable method
41 designed to ascertain the free choice of the employees. The division
42 shall decide in each instance which unit of employees is appropriate
43 for collective negotiation, provided that, except where dictated by
44 established practice, prior agreement, or special circumstances, no
45 unit shall be appropriate which includes (1) both supervisors and
46 nonsupervisors, (2) both professional and nonprofessional em-
47 ployees unless a majority of such professional employees vote for
48 inclusion in such unit or, (3) both craft and noncraft employees
49 unless a majority of such craft employees vote for inclusion in
50 such unit. All of the powers and duties conferred or imposed upon
51 the division that are necessary for the administration of this sub-
52 division, and not inconsistent with it, are to that extent hereby
53 made applicable. Should formal hearings be required, in the
54 opinion of said division to determine the appropriate unit, it shall
55 have the power to issue subpoenas as described below, and shall
56 determine the rules and regulations for the conduct of such hear-
57 ing or hearings.

58 (e) For the purposes of this section the Division of Public Em-

59 ployment Relations shall have the authority and power to hold
 60 hearings, subpoena witnesses, compel their attendance, administer
 61 oaths, take the testimony or deposition of any person under oath,
 62 and in connection therewith, to issue subpoenas duces tecum, and to
 63 require the production and examination of any governmental or
 64 other books or papers relating to any matter described above.

65 (f) In carrying out any of its work under this act, the board
 66 may designate one of its members, or an officer of the board to act
 67 in its behalf and may delegate to such designee one or more of its
 68 duties hereunder and, for such purpose, such designee shall have
 69 all the powers hereby conferred upon the board in connection with
 70 the discharge of the duty or duties so delegated. In carrying out
 71 any of its work under this act, the commission may designate one of
 72 its members or an officer of the commission to act on its behalf and
 73 may delegate to such designee one or more of its duties hereunder
 74 and, for such purpose, such designee shall have all of the powers
 75 hereby conferred upon the commission in connection with the dis-
 76 charge of the duty or duties so delegated.

77 (g) The board and commission may also appoint and designate
 78 other persons or groups of persons to act for and on its behalf and
 79 may delegate to such persons or groups of persons any and all of
 80 the powers conferred upon it by this act so far as it is reasonably
 81 necessary to effectuate the purposes of this act. Such persons shall
 82 serve without compensation but shall be reimbursed for any nec-
 83 essary expenses.

84 (h) The personnel of the Division of Public Employment Rela-
 85 tions shall include only individuals familiar with the field of public
 86 employee-management relations. The commission's determination
 87 that a person is familiar in this field shall not be reviewable by any
 88 other body.

1 6. Section 10 of P. L. 1968, c. 303 (C. 34:13A-8.1) is amended to
 2 read as follows:

3 10. Nothing in this act shall be construed to annul or modify,
 4 or to preclude the [renewal or] continuation of any agreement
 5 *during its current term* heretofore entered into between any public
 6 employer and any employee organization[, nor shall any provision
 7 hereof annul or modify any statute or statutes of this State]**,
 8 *nor shall any provision hereof annul or modify any pension statute*
 9 *or statutes of this State**.* **[Nothing in this act shall be construed*
 10 *to annul the duty, responsibility or authority vested by statute in*
 11 *any public employer or public body except that the impact on terms*
 12 *and conditions of employment of a public employer's or a public*

13 *body's decisions in the exercise of that duty, responsibility or au-*
 14 *thority shall be within the scope of collective negotiations.】* **【*It*
 15 *is the right of any public employer to determine the standards of*
 16 *services to be offered; determinc school and college curricula;*
 17 *determine the standards of selection for employment; direct its*
 18 *employees; take disciplinary action; maintain the efficiency of op-*
 19 *erations; determine the methods, means and personnel by which*
 20 *operations are to be conducted; determine the content of job classi-*
 21 *fications; take all necessary actions to carry out its mission in emer-*
 22 *gencies; and exercise complete control and discretion over its*
 23 *organization and the technology of performing its work. Decisions*
 24 *of any public employer on the aforesaid matters are not within the*
 25 *scope of collective negotiations; provided, however, that questions*
 26 *concerning the practical impact that decisions on said matters have*
 27 *on employees, such as questions of workload or manning, are within*
 28 *the scope of collective negotiations.*】***

1 7. Section 12 of P. L. 1968, c. 303 (C. 34:13A-8.3) is amended to
 2 read as follows:

3 12. The commission in conjunction with the Institute of Manage-
 4 ment and Labor of Rutgers, The State University, shall develop
 5 and maintain a program for the guidance of *public employees and*
 6 *public employers* in employee-management relations, to provide
 7 technical advice to *public employees and public employers* on em-
 8 ployee-management programs, to assist in the development of
 9 programs for training *employee and management personnel* in
 10 the principles and procedures of consultation, negotiation and the
 11 settlement of disputes in the public service, and for the training of
 12 *employee and management officials* in the discharge of their em-
 13 ployee-management relations responsibilities in the public interest.

1 8. For the purpose of carrying out the amendatory and supple-
 2 mentary provisions of this act there is hereby appropriated for
 3 the use of the commission for the fiscal year ending June 30, 1974,
 4 the additional sum of \$25,000.00.

1 9. This act shall take effect 90 days after enactment.

ASSEMBLY AMENDMENTS TO

SENATE, No. 1087

[SECOND OFFICIAL COPY REPRINT]

STATE OF NEW JERSEY

ADOPTED SEPTEMBER 30, 1974

Amend page 5, section 3, line 31, after "each", insert "6 hour".

Amend page 5, section 3, lines 31, 32, after "day", omit ", or part thereof,".

Amend page 5, section 3, line 34, after "duties", and before the period insert "except that no commission member who receives a salary or other form of compensation as a representative of any employer or employee group, organization or association, shall be compensated by the commission for any deliberations directly involving members of said employer or employee group, organization or association. Compensation for more, or less than, 6 hours per day, shall be pro-rated in proportion to the time involved."

Amend page 6, section 4, line 13, omit "or where the number of supervisors to be in the unit is less than 12,".

ASSEMBLY REPRINT

SENATE, No. 1087

[SECOND OFFICIAL COPY REPRINT]

(with Assembly amendments adopted September 30, 1974)

STATE OF NEW JERSEY

INTRODUCED APRIL 16, 1974

By Senators HORN, WILEY, FELDMAN, BEDELL, PARKER
and DWYER

Referred to Committee on Conference and Coordinating

AN ACT to amend and supplement the "New Jersey Employer-Employee Relations Act," approved April 30, 1941 (P. L. 1941, c. 100) as said short title and act were amended and supplemented by P. L. 1968, c. 303.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. a. Employers, their representatives or agents are prohibited
2 from:

3 (1) Interfering with, restraining or coercing employees in the
4 exercise of the rights guaranteed to them by this act.

5 (2) Dominating or interfering with the formation, existence or
6 administration of any employee organization.

7 (3) Discriminating in regard to hire or tenure of employment or
8 any term or condition of employment to encourage or discourage
9 employees in the exercise of the rights guaranteed to them by
10 this act.

11 (4) Discharging or otherwise discriminating against any em-
12 ployee because he has signed or filed an affidavit, petition or com-
13 plaint or given any information or testimony under this act.

14 (5) Refusing to negotiate in good faith with a majority repre-
15 sentative of employees in an appropriate unit concerning terms
16 and conditions of employment of employees in that unit, or refusing
17 to process grievances presented by the majority representative.

18 (6) Refusing to reduce a negotiated agreement to writing and
19 to sign such agreement.

20 (7) Violating any of the rules and regulations established by the
21 commission.

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.

22 b. Employee organizations, their representatives or agents are
23 prohibited from:

24 (1) Interfering with, restraining or coercing employees in the
25 exercise of the rights guaranteed to them by this act.

26 (2) Interfering with, restraining or coercing a public employer
27 in the selection of his representative for the purposes of negotia-
28 tions or the adjustment of grievancees.

29 (3) Refusing to negotiate in good faith with a public employer,
30 if they are the majority representative of employees in an ap-
31 propriate unit concerning terms and conditions of employment of
32 employees in that unit.

33 (4) Refusing to reduce a negotiated agreement to writing and
34 to sign such agreement.

35 (5) Violating any of the rules and regulations established by the
36 commission.

37 c. The commission shall have exclusive power as hereinafter
38 provided to prevent anyone from engaging in any unfair practice
39 listed in subsections a. and b. above. Whenever it is charged that
40 anyone has engaged or is engaging in any such unfair practice,
41 the commission, or any designated agent thereof, shall have au-
42 thority to issue and cause to be served upon such party a complaint
43 stating the specific unfair practice charged and including a notice
44 of hearing containing the date and place of hearing before the
45 commission or any designated agent thereof; provided that no
46 complaint shall issue based upon any unfair practice occurring
47 more than 6 months prior to the filing of the charge unless the
48 person aggrieved thereby was prevented from filing such charge
49 in which event the 6 months period shall be computed from the day
50 he was no longer so prevented.

51 In any such proceeding, the provisions of the Administrative
52 Procedure Act P. L. 1968, c. 410 (C. 52:14B-1 et seq.) shall be
53 applicable. Evidence shall be taken at the hearing and filed with
54 the commission. If, upon all the evidence taken, the commission
55 shall determine that any party charged has engaged or is engaging
56 in any such unfair practice, the commission shall state its findings
57 of fact and conclusions of law and issue and cause to be served on
58 such party an order requiring such party to cease and desist from
59 such unfair practice, and to take such reasonable affirmative action
60 as will effectuate the policies of this act. All cases in which a
61 complaint and notice of hearing on a charge is actually issued by
62 the commission, shall be prosecuted before the commission or its
63 agent, or both, by the representative of the employee organization
64 or party filing the charge or his authorized representative.

65 d. The commission shall at all times have the power and duty,
66 upon the request of any public employer or majority representative,
67 to make a ***[final]*** determination as to whether a matter in dispute
68 is within the scope of collective negotiations. The commission shall
69 serve the parties with its findings of fact and conclusions of law.
69A **Any determination made by the commission pursuant to this*
69B *subsection may be appealed to the Appellate Division of the*
69C *Superior Court.**

70 e. The commission shall adopt such rules as may be required
71 to regulate the conduct of representation elections, and to regulate
72 the time of commencement of negotiations and of institution of
73 impasse procedures so that there will be full opportunity for
74 negotiations and the resolution of impasses prior to required budget
75 submission dates.

76 f. The commission shall have the power to apply to the Appellate
77 Division of the Superior Court for an appropriate order enforcing
78 any order of the commission issued under subsection c. or d. hereof,
79 and its findings of fact, if based upon substantial evidence on the
80 record as a whole, shall not, in such action, be set aside or modified;
81 any order for remedial or affirmative action, if reasonably designed
82 to effectuate the purposes of this act, shall be affirmed and enforced
83 in such proceeding.

1 2. Section 3 of P. L. 1941, c. 100 (C. 34:13A-3) is amended to
2 read as follows:

3 3. When used in this act:

4 (a) The term "board" shall mean New Jersey State Board of
5 Mediation.

6 (b) The term "commission" shall mean New Jersey Public
7 Employment Relations Commission.

8 (c) The term "employer" includes an employer and any person
9 acting, directly or indirectly, on behalf of or in the interest of an
10 employer with the employer's knowledge or ratification, but a labor
11 organization, or any officer or agent thereof, shall be considered an
12 employer only with respect to individuals employed by such orga-
13 nization. This term shall include "public employers" and shall mean
14 the State of New Jersey, or the several counties and municipalities
15 thereof, or any other political subdivision of the State, or a school
16 district, or any special district, or any authority, commission, or
17 board, or any branch or agency of the public service.

18 (d) The term "employee" shall include any employee, and
19 shall not be limited to the employees of a particular employer
20 unless this act explicitly states otherwise, and shall include any in-

21 individual whose work has ceased as a consequence of or in connection
 22 with any current labor dispute or because of any unfair labor prac-
 23 tice and who has not obtained any other regular and substantially
 24 equivalent employment. This term, however, shall not include any
 25 individual taking the place of any employee whose work has ceased
 26 as aforesaid, nor shall it include any individual employed by his
 27 parent or spouse, or in the domestic service of any person in the
 28 home of the employer, or employed by any company owning or
 29 operating a railroad or railway express subject to the provisions
 30 of the Railway Labor Act. This term shall include any public em-
 31 ployee, i.e., any person holding a position, by appointment or con-
 32 tract, or employment in the service of a public employer, except
 33 elected officials, [heads and deputy heads of departments and agen-
 34 cies, and] members of boards and commissions, [provided that in
 35 any school district this shall exclude only the superintendent of
 36 schools or other chief administrator of the district] *managerial*
 37 *executives and confidential employees.*

38 (e) The term "representative" is not limited to individuals but
 39 shall include labor organizations, and individual representatives
 40 need not themselves be employed by, and the labor organization
 41 serving as a representative need not be limited in membership to
 42 the employees of, the employer whose employees are represented.
 43 This term shall include any organization, agency or person autho-
 44 rized or designated by a public employer, public employee, group
 45 of public employees, or public employee association to act on its
 46 behalf and represent it or them.

47 (f) "*Managerial executives*" of a public employer means per-
 48 sons who formulate management policies and practices, and persons
 49 who are charged with the responsibility of directing the effectua-
 50 tion of such management policies and practices, except that in any
 51 school district this term shall include only the superintendent or
 52 other chief administrator, and the assistant superintendent of the
 53 district.

54 (g) "*Confidential employees*" of a public employer means em-
 55 ployees whose functional responsibilities or knowledge in connec-
 56 tion with the issues involved in the collective negotiations process
 57 would make their membership in any appropriate negotiating unit
 58 incompatible with their official duties.

1 3. Section 6 of P. L. 1968, c. 303 (C. 34:13A-5.2) is amended to
 2 read as follows:

3 6. [(a)] There is hereby established in the Division of Public
 4 Employment Relations a commission to be known as the New Jer-

5 sey Public Employment Relations Commission. This commission,
6 in addition to the powers and duties granted by this act, shall have
7 in the public employment area the same powers and duties granted
8 to the labor mediation board in sections 7 and 10 of P. L. 1941,
9 c. 100, and in sections 2 and 3 of P. L. 1945, c. 32. [There shall be
10 a chief executive officer and administrator who shall devote his
11 full time to the performance of his duties exclusively in the Divi-
12 sion of Public Employment Relations.] [(b)] This commission shall
13 make policy and establish rules and regulations concerning em-
14 ployer-employee relations in public employment relating to dispute
15 settlement, grievance procedures and administration including
16 enforcement of statutory provisions concerning representative
17 elections and related matters *and to implement fully all the pro-*
18 *visions of this act.* The commission shall consist of seven members
19 to be appointed by the Governor, by and with the advice and con-
20 sent of the Senate. Of such members, two shall be representative
21 of public employers, two shall be representative of public employee
22 organizations and three shall be representative of the public in-
23 cluding the appointee who is designated as chairman. Of the first
24 appointees, two shall be appointed for 2 years, two for a term of 3
25 years and three, including the chairman, for a term of 4 years.
26 Their successors shall be appointed for terms of 3 years each, *and*
27 *until their successors are appointed and qualified,* except that any
28 person chosen to fill a vacancy shall be appointed only for the un-
29 expired term of the member whose office has become vacant.

30 The members of the commission, *other than the chairman,* shall
31 be compensated at the rate of [~~\$50.00~~] \$100.00 for each *** 6
32 *hour *** day****[, or part thereof,]*** spent in attendance at
33 meetings and consultations and shall be reimbursed for necessary
34 expenses in connection with the discharge of their duties *** *except*
34A *that no commission member who receives a salary or other form of*
34B *compensation as a representative of any employer or employee*
34C *group, organization or association, shall be compensated by the*
34D *commission for any deliberations directly involving members of*
34E *said employer or employee group, organization or association.*
34F *Compensation for more, or less than, 6 hours per day, shall be pro-*
34G *rated in proportion to the time involved***.*

35 *The chairman of the commission shall be its chief executive offi-*
36 *cer and administrator, shall devote his full time to the performance*
37 *of his duties as chairman of the Public Employment Relations*
38 *Commission and shall receive such compensation as shall be pro-*
39 *vided by law.*

40 *The term of the member of the commission who is designated as*
41 *chairman on the date of enactment of this act shall expire on the*
42 *effective date of this act.*

1 4. Section 7 of P. L. 1968, c. 303 (C. 34:13A-5.3) is amended to
2 read as follows:

3 7. Except as hereinafter provided, public employees shall have,
4 and shall be protected in the exercise of, the right, freely and with-
5 out fear of penalty or reprisal, to form, join and assist any employee
6 organization or to refrain from any such activity; provided, how-
7 ever, that this right shall not extend to **[any managerial executive]**
8 *elected officials, members of boards and commissions, managerial*
9 *executives, or confidential employees, except in a school district*
10 the term managerial executive shall mean the superintendent of
11 schools or his equivalent, nor, except where established practice,
12 prior agreement or special circumstances, dictate the contrary,
13 *** **[or where the number of supervisors to be in the unit is less**
14 *than 12,]* *** shall any supervisor having the power to hire, dis-
15 charge, discipline, or to effectively recommend the same, have the
16 right to be represented in collective negotiations by an employee
17 organization that admits nonsupervisory personnel to membership,
18 and the fact that any organization has such supervisory employees
19 as members shall not deny the right of that organization to repre-
20 sent the appropriate unit in collective negotiations; and provided
21 further, that, except where established practice, prior agreement, or
22 special circumstances dictate the contrary, no policeman shall have
23 the right to join an employee organization that admits employees
24 other than policemen to membership. The negotiating unit shall be
25 defined with due regard for the community of interest among the
26 employees concerned, but the commission shall not intervene in
27 matters of recognition and unit definition except in the event of
27A a dispute.

28 Representatives designated or selected by public employees for
29 the purposes of collective negotiation by the majority of the em-
30 ployees in a unit appropriate for such purposes or by the majority
31 of the employees voting in an election conducted by the commis-
32 sion as authorized by this act shall be the exclusive representa-
33 tives for collective negotiation concerning the terms and conditions
34 of employment of the employees in such unit. Nothing herein shall
35 be construed to prevent any official from meeting with an employee
36 organization for the purpose of hearing the views and requests
37 of its members in such unit so long as (a) the majority representa-
38 tive is informed of the meeting; (b) any changes or modifications

39 in terms and conditions of employment are made only through
40 negotiation with the majority representative; and (c) a minority
41 organization shall not present or process grievances. Nothing
42 herein shall be construed to deny to any individual employee his
43 rights under Civil Service laws or regulations. When no majority
44 representative has been selected as the bargaining agent for the
45 unit of which an individual employee is a part, he may present his
46 own grievance either personally or through an appropriate repre-
47 sentative or an organization of which he is a member and have such
48 grievance adjusted.

49 A majority representative of public employees in an appropriate
50 unit shall be entitled to act for and to negotiate agreements cover-
51 ing all employees in the unit and shall be responsible for repre-
52 senting the interest of all such employees without discrimination
53 and without regard to employee organization membership. Pro-
54 posed new rules or modifications of existing rules governing work-
55 ing conditions shall be negotiated with the majority representative
56 before they are established. In addition, the majority representa-
57 tive and designated representatives of the public employer shall
58 meet at reasonable times and negotiate in good faith with respect
59 to grievances and terms and conditions of employment.

60 When an agreement is reached on the terms and conditions of
61 employment, it shall be embodied in writing and signed by the
62 authorized representatives of the public employer and the majority
63 representative.

64 Public employers shall negotiate written policies setting forth
65 grievance procedures by means of which their employees or repre-
66 sentatives of employees may appeal the interpretation, application
67 or violation of policies, agreements, and administrative decisions
68 affecting them, provided that such grievance procedures shall be
69 included in any agreement entered into between the public employer
70 and the representative organization. Such grievance procedures
71 may provide for binding arbitration as a means for resolving
72 disputes. *Notwithstanding any procedures for the resolution of*
73 *disputes, controversies or grievances established by any other*
74 *statute, grievance procedures established by agreement between*
75 *the public employer and the representative organization shall be*
76 *utilized for any dispute covered by the terms of such agreement.*

1 5. Section 6 of P. L. 1941, c. 100 (C. 34:13A-6) is amended to
2 read as follows:

3 6. (a) Upon its own motion, in an existing, imminent or threat-
4 ened labor dispute in private employment, the board, through the

5 Division of Private Employment Dispute Settlement, may, and,
6 upon the request of the parties or either party to the dispute, must
7 take such steps as it may deem expedient to effect a voluntary,
8 amicable and expeditious adjustment and settlement of the differ-
9 ences and issues between employer and employees which have
10 precipitated or culminated in or threaten to precipitate or culmi-
11 nate in such labor dispute.

12 (b) Whenever negotiations between a public employer and an
13 exclusive representative concerning the terms and conditions of
14 employment shall reach an impasse, the commission, through the
15 Division of Public Employment Relations shall, upon the request
16 of either party, take such steps as it may deem expedient to effect
17 a voluntary resolution of the impasse. In the event of a failure to
18 resolve the impasse by mediation the Division of Public Employ-
19 ment Relations is empowered to recommend or invoke fact-finding
20 with recommendation for settlement, the cost of which shall be
21 borne by the [parties equally] *commission*.

22 (c) The board in private employment, through the Division of
23 Private Employment Dispute Settlement, and the commission in
24 public employment, through the Division of Public Employment
25 Relations, shall take the following steps to avoid or terminate
26 labor disputes: (1) to arrange for, hold, adjourn or reconvene a
27 conference or conferences between the disputants or one or more
28 of their representatives or any of them; (2) to invite the disputants
29 or their representatives or any of them to attend such conference
30 and submit, either orally or in writing, the grievances of and
31 differences between the disputants; (3) to discuss such grievances
32 and differences with the disputants and their representatives; and
33 (4) to assist in negotiating and drafting agreements for the
34 adjustment in settlement of such grievances and differences and for
35 the termination or avoidance, as the case may be, of the existing
36 or threatened labor dispute.

37 (d) The commission, through the Division of Public Employment
38 Relations, is hereby empowered to resolve questions concerning
39 representation of public employees by conducting a secret ballot
40 election or utilizing any other appropriate and suitable method
41 designed to ascertain the free choice of the employees. The division
42 shall decide in each instance which unit of employees is appropriate
43 for collective negotiation, provided that, except where dictated by
44 established practice, prior agreement, or special circumstances, no
45 unit shall be appropriate which includes (1) both supervisors and
46 nonsupervisors, (2) both professional and nonprofessional em-

47 ployees unless a majority of such professional employees vote for
48 inclusion in such unit or, (3) both craft and noncraft employees
49 unless a majority of such craft employees vote for inclusion in
50 such unit. All of the powers and duties conferred or imposed upon
51 the division that are necessary for the administration of this sub-
52 division, and not inconsistent with it, are to that extent hereby
53 made applicable. Should formal hearings be required, in the
54 opinion of said division to determine the appropriate unit, it shall
55 have the power to issue subpoenas as described below, and shall
56 determine the rules and regulations for the conduct of such hear-
57 ing or hearings.

58 (e) For the purposes of this section the Division of Public Em-
59 ployment Relations shall have the authority and power to hold
60 hearings, subpoena witnesses, compel their attendance, administer
61 oaths, take the testimony or deposition of any person under oath,
62 and in connection therewith, to issue subpoenas duces tecum, and to
63 require the production and examination of any governmental or
64 other books or papers relating to any matter described above.

65 (f) In carrying out any of its work under this act, the board
66 may designate one of its members, or an officer of the board to act
67 in its behalf and may delegate to such designee one or more of its
68 duties hereunder and, for such purpose, such designee shall have
69 all the powers hereby conferred upon the board in connection with
70 the discharge of the duty or duties so delegated. In carrying out
71 any of its work under this act, the commission may designate one of
72 its members or an officer of the commission to act on its behalf and
73 may delegate to such designee one or more of its duties hereunder
74 and, for such purpose, such designee shall have all of the powers
75 hereby conferred upon the commission in connection with the dis-
76 charge of the duty or duties so delegated.

77 (g) The board and commission may also appoint and designate
78 other persons or groups of persons to act for and on its behalf and
79 may delegate to such persons or groups of persons any and all of
80 the powers conferred upon it by this act so far as it is reasonably
81 necessary to effectuate the purposes of this act. Such persons shall
82 serve without compensation but shall be reimbursed for any nec-
83 essary expenses.

84 (h) The personnel of the Division of Public Employment Rela-
85 tions shall include only individuals familiar with the field of public
86 employee-management relations. The commission's determination
87 that a person is familiar in this field shall not be reviewable by any
88 other body.

1 6. Section 10 of P. L. 1968, c. 303 (C. 34:13A-8.1) is amended to
2 read as follows:

3 10. Nothing in this act shall be construed to annul or modify,
4 or to preclude the [renewal or] continuation of any agreement
5 *during its current term* heretofore entered into between any public
6 employer and any employee organization[, nor shall any provision
7 hereof annul or modify any statute or statutes of this State]**,
8 *nor shall any provision hereof annul or modify any pension statute*
9 *or statutes of this State**.* ***[Nothing in this act shall be construed**
10 *to annul the duty, responsibility or authority vested by statute in*
11 *any public employer or public body except that the impact on terms*
12 *and conditions of employment of a public employer's or a public*
13 *body's decisions in the exercise of that duty, responsibility or au-*
14 *thority shall be within the scope of collective negotiations.]** **[*It**
15 *is the right of any public employer to determine the standards of*
16 *services to be offered; determine school and college curricula;*
17 *determine the standards of selection for employment; direct its*
18 *employees; take disciplinary action; maintain the efficiency of op-*
19 *erations; determine the methods, means and personnel by which*
20 *operations are to be conducted; determine the content of job classi-*
21 *fications; take all necessary actions to carry out its mission in emer-*
22 *gencies; and exercise complete control and discretion over its*
23 *organization and the technology of performing its work. Decisions*
24 *of any public employer on the aforesaid matters are not within the*
25 *scope of collective negotiations; provided, however, that questions*
26 *concerning the practical impact that decisions on said matters have*
27 *on employees, such as questions of workload or manning, are within*
28 *the scope of collective negotiations.*]****

1 7. Section 12 of P. L. 1968, c. 303 (C. 34:13A-8.3) is amended to
2 read as follows:

3 12. The commission in conjunction with the Institute of Manage-
4 ment and Labor of Rutgers, The State University, shall develop
5 and maintain a program for the guidance of *public employees and*
6 public employers in employee-management relations, to provide
7 technical advice to *public employees and* public employers on em-
8 ployee-management programs, to assist in the development of
9 programs for training *employee and* management personnel in
10 the principles and procedures of consultation, negotiation and the
11 settlement of disputes in the public service, and for the training of
12 *employee and* management officials in the discharge of their em-
13 ployee-management relations responsibilities in the public interest.

1 8. For the purpose of carrying out the amendatory and supple-
2 mentary provisions of this act there is hereby appropriated for
3 the use of the commission for the fiscal year ending June 30, 1974,
4 the additional sum of \$25,000.00.

1 9. This act shall take effect 90 days after enactment.

[OFFICIAL COPY REPRINT]
ASSEMBLY, No. 520

STATE OF NEW JERSEY

INTRODUCED JANUARY 31, 1972

By Assemblymen HORN, FORAN, SINSIMER, HURLEY, LITTELL,
KIEHN, FAY, BASSANO, GARIBALDI, PELLECCCHIA, JACK-
MAN, BLACK, FLORIO, KEAN, MEGARO, ROBERTSON,
BARBOUR, YATES, DAWES, BEDELL and MABIE

Referred to Committee on State Government

AN ACT to supplement the "New Jersey Employer-Employee Re-
lations Act," approved April 30, 1941 (P. L. 1941, c. 100) as said
short title was amended by P. L. 1968, c. 303.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. a. Employers, their representatives or agents are prohibited
2 from:

3 (1) Interfering with, restraining or coercing employees in the
4 exercise of the rights guaranteed to them by this act.

5 (2) Dominating or interfering with the formation, existence or
6 administration of any employee organization.

7 (3) Discriminating in regard to hire or tenure of employment
8 or any term or condition of employment to encourage or discourage
9 employees in the exercise of the rights guaranteed to them by this
10 act.

11 (4) Discharging or otherwise discriminating against any em-
12 ployee because he has signed or filed an affidavit, petition or com-
13 plaint or given any information or testimony under this act.

14 (5) Refusing to negotiate in good faith with a majority repre-
15 sentative concerning terms and conditions of employment of em-
16 ployees in the appropriate unit or concerning grievances of said
17 employees or representative or refusing to process grievances
18 presented by the majority representative.

19 (6) Refusing to reduce a negotiated agreement to writing and
20 sign such agreement.

21 *[(7) Violating any of the rules and regulations established

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.**

22 by the commission regulating the conduct of representation
22A elections.]*

23 b. Employee organizations, their representatives or agents are
24 prohibited from:

25 (1) Interfering with, restraining or coercing employees in the
26 exercise of the rights guaranteed to them by this act.

27 (2) Interfering with, restraining or coercing a public employer
28 in the selection of his representative for the purposes of negotia-
29 tions or the adjustment of grievances.

30 (3) Refusing to negotiate in good faith with a public employer,
31 if they have been recognized or certified as the exclusive repre-
32 sentative of employees in an appropriate unit.

33 (4) Refusing to reduce a negotiated agreement to writing and
34 sign such agreement.

35 *[(5) Violating any of the rules and regulations established
36 by the commission regulating the conduct of representation
36A elections.]*

37 c. The commission is empowered to prevent anyone from engag-
38 ing in any unfair practice listed in subsections a. and b. above. This
39 power shall be exclusive and shall not be affected by any other
40 statute. Whenever it is charged that anyone has engaged or is en-
41 gaging in any such unfair practice, the commission, or any desig-
42 nated agent thereof, shall have authority to issue and cause to be
43 served upon such party a notice of hearing containing the date and
44 place of hearing before the commission, or any designated agent
45 thereof. In any such proceeding, the rules of evidence prevailing
46 in courts of law or equity shall be followed but shall not be con-
47 trolling. Evidence shall be taken at the hearing and filed with the
48 commission. If, upon all the evidence taken, the commission shall
49 determine that any party charged has engaged or is engaging in
50 any such unfair practice, the commission shall state its finding of
51 fact, and issue and cause to be served on such party an order re-
52 quiring such party to cease and desist from such unfair practice,
53 and to take such reasonable affirmative action as will effectuate the
54 policies of this act. All cases in which a notice of hearing on a
55 charge is actually issued by the commission, shall be prosecuted
56 before the commission or its agent, or both, by the representative
57 of the employee organization or party filing the charge*[, and, in
58 addition thereto, or in lieu thereof, if the Attorney General sees
59 fit, by a deputy attorney general especially assigned to this type
60 of case]*.

61 d. The commission shall have the power to apply to the Appellate
62 Division of Superior Court for an order enforcing any order of the

63 commission issued under subsection c. hereof, and its findings of
64 fact, if based upon substantial evidence on the record as a whole,
65 shall not, in such action, be set aside or modified; any order for
66 remedial or affirmative action, if reasonably designed to effectuate
67 the purposes of this act, shall be affirmed and enforced in such
68 proceeding. A party to an order of the commission may, after the
69 order is delivered to him, commence an appropriate action in the
70 court aforesaid for the confirmation of the order or for its vacation,
71 modification or correction in accordance with the rules of the afore-
72 said court. Such confirmation shall be granted unless the order is
73 vacated, modified or corrected.

1 2. This act shall take effect immediately.

ASSEMBLY, No. 520

STATE OF NEW JERSEY

INTRODUCED JANUARY 31, 1972

By Assemblymen HORN, FORAN, SINSIMER, HURLEY, LITTELL, KIEHN, FAY, BASSANO, GARIBALDI, PELLECCCHIA, JACKMAN, BLACK, FLORIO, KEAN, MEGARO, ROBERTSON, BARBOUR, YATES, DAWES, BEDELL and MABIE

Referred to Committee on State Government

AN ACT to supplement the "New Jersey Employer-Employee Relations Act," approved April 30, 1941 (P. L. 1941, c. 100) as said short title was amended by P. L. 1968, c. 303.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. a. Employers, their representatives or agents are prohibited
2 from:

3 (1) Interfering with, restraining or coercing employees in the
4 exercise of the rights guaranteed to them by this act.

5 (2) Dominating or interfering with the formation, existence or
6 administration of any employee organization.

7 (3) Discriminating in regard to hire or tenure of employment
8 or any term or condition of employment to encourage or discourage
9 employees in the exercise of the rights guaranteed to them by this
10 act.

11 (4) Discharging or otherwise discriminating against any em-
12 ployee because he has signed or filed an affidavit, petition or com-
13 plaint or given any information or testimony under this act.

14 (5) Refusing to negotiate in good faith with a majority repre-
15 sentative concerning terms and conditions of employment of em-
16 ployees in the appropriate unit or concerning grievances of said
17 employees or representative or refusing to process grievances
18 presented by the majority representative.

19 (6) Refusing to reduce a negotiated agreement to writing and
20 sign such agreement.

21 (7) Violating any of the rules and regulations established by the
22 commission regulating the conduct of representation elections.

23 b. Employee organizations, their representatives or agents are
24 prohibited from:

25 (1) Interfering with, restraining or coercing employees in the
26 exercise of the rights guaranteed to them by this act.

27 (2) Interfering with, restraining or coercing a public employer
28 in the selection of his representative for the purposes of negotia-
29 tions or the adjustment of grievances.

30 (3) Refusing to negotiate in good faith with a public employer,
31 if they have been recognized or certified as the exclusive repre-
32 sentative of employees in an appropriate unit.

33 (4) Refusing to reduce a negotiated agreement to writing and
34 sign such agreement.

35 (5) Violating any of the rules and regulations established by
36 the commission regulating the conduct of representation elections.

37 c. The commission is empowered to prevent anyone from engag-
38 ing in any unfair practice listed in subsections a. and b. above. This
39 power shall be exclusive and shall not be affected by any other
40 statute. Whenever it is charged that anyone has engaged or is en-
41 gaging in any such unfair practice, the commission, or any desig-
42 nated agent thereof, shall have authority to issue and cause to be
43 served upon such party a notice of hearing containing the date and
44 place of hearing before the commission, or any designated agent
45 thereof. In any such proceeding, the rules of evidence prevailing
46 in courts of law or equity shall be followed but shall not be con-
47 trolling. Evidence shall be taken at the hearing and filed with the
48 commission. If, upon all the evidence taken, the commission shall
49 determine that any party charged has engaged or is engaging in
50 any such unfair practice, the commission shall state its finding of
51 fact, and issue and cause to be served on such party an order re-
52 quiring such party to cease and desist from such unfair practice,
53 and to take such reasonable affirmative action as will effectuate the
54 policies of this act. All cases in which a notice of hearing on a
55 charge is actually issued by the commission, shall be prosecuted
56 before the commission or its agent, or both, by the representative
57 of the employee organization or party filing the charge, and, in
58 addition thereto, or in lieu thereof, if the Attorney General sees
59 fit, by a deputy attorney general especially assigned to this type
60 of case.

61 d. The commission shall have the power to apply to the Appellate
62 Division of Superior Court for an order enforcing any order of the
63 commission issued under subsection c. hereof, and its findings of
64 fact, if based upon substantial evidence on the record as a whole,

65 shall not, in such action, be set aside or modified; any order for
66 remedial or affirmative action, if reasonably designed to effectuate
67 the purposes of this act, shall be affirmed and enforced in such
68 proceeding. A party to an order of the commission may, after the
69 order is delivered to him, commence an appropriate action in the
70 court aforesaid for the confirmation of the order or for its vacation,
71 modification or correction in accordance with the rules of the afore-
72 said court. Such confirmation shall be granted unless the order is
73 vacated, modified or corrected.

1 2. This act shall take effect immediately.

STATEMENT

Between February 19, 1969 and July 16, 1970, the Public Employment Relations Commission (PERC) received 121 charges of unfair labor practices. PERC heard and ruled on some of these charges; others were resolved without a hearing. Some of these rulings were in favor of the employer; others were in favor of the employees.

In July of 1970, the New Jersey Supreme Court declared that PERC does not have the authority under the New Jersey Employer-Employee Relations Act (C. 303, P. L. 1968) to rule on unfair labor practice cases and to enforce remedial orders it deems appropriate.

As a result of the Supreme Court ruling, PERC has discontinued processing 35 unfair labor practice charges that were under consideration at the time of the Supreme Court ruling.

It was generally understood by employee and employer organizations that the legislation which established PERC also granted that commission enforcement power in cases of unfair labor practices.

This legislation grants PERC the power to receive, hear, and act upon charges of unfair labor practices and to enforce its decisions in such cases. The legislation includes the right of the commission to seek, when necessary, help from the courts for the enforcement of the commission's rulings.

SENATE STATE GOVERNMENT AND FEDERAL AND
INTERSTATE RELATIONS COMMITTEE

STATEMENT TO
ASSEMBLY, No. 520

STATE OF NEW JERSEY

DATED: APRIL 18, 1972

This bill would strengthen the enforcement powers of the Public Employment Relations Commission to prevent employers or their representatives from interfering, restraining or coercing employees in the exercise of their rights guaranteed to them by the New Jersey Employer-Employee Relations Act (P. L. 1941, c. 100).

The strengthening of PERC would occur through the supplemental provisions of this bill, which grants PERC the power to receive, hear, and act upon charges of unfair labor practices and to enforce its decisions in such cases. This bill includes the right of the commission to seek, when required, help from the courts for the enforcement of the commission's rulings.

The amendments suggested by PERC, deleting "Violating any of the rules and regulations established by the commission regulating the conduct of representation elections" which would prevent the abuse of unfair labor practices. Without the proposed amendments, PERC could be open to the anomalous position of having approved an election and then be challenged on some technicality of rule violation that has no bearing on the election procedure.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

February 22, 1973

ASSEMBLY BILL NO. 520 OCR

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14(b) of the Constitution, I herewith return Assembly Bill No. 520 OCR, with my objections, for reconsideration.

Assembly Bill No. 520 OCR would amend Chapter 303 of the Laws of 1968 (itself in large part an amendment to the private sector mediation law) to add certain enumerated unfair practices to the authority of the Public Employment Relations Commission ("P.E.R.C.") established pursuant to Chapter 303. The bill is limited to this area of unfair practices. However, in striving for this limitation the bill provides language which could be construed to override all existing law relating to civil service in Title 11 and the education laws of Title 18A to make P.E.R.C. the exclusive agency for handling unfair employer-employee labor practice complaints. Overriding all other laws goes beyond the usual approach in the private sector law. Moreover, we must be careful to preserve the rights of our public employees under the existing civil service merit system. Destruction or substantial erosion of our civil service laws would be, in my opinion, ill-conceived, detrimental to our dedicated employees and could, under certain circumstances, violate the New Jersey Constitution.

While Chapter 303 of the Laws of 1968 cries out for drastic changes, this bill in its present form would accentuate the existing deficiencies. The numerous serious problems which have arisen under Chapter 303 are not dealt with in this bill. Experience on the municipal, county and state levels of government has shown that Chapter 303 has serious deficiencies and needs substantial revision, rather than the piecemeal approach evinced by Assembly Bill No. 520 OCR.

Despite differing views, it is obvious to those administering the complex functions of government in modern society that there are significant differences between labor relations in the public sector and in the private sector. For instance, it is obvious that in the public sector the purpose of operations of government is service. These services cannot be provided on a profit basis and funds are not easily raised, or at least revenues are not readily increased. We must be continually mindful of the fact that any substantial revenues are raised through taxation, and our taxpayers today are under a very heavy burden. The authority of a public employer to bargain is quite different from that of a private

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

ASSEMBLY BILL NO. 520 OCR

-2-

employer. The public employer is in reality the public. At the State, county and municipal levels final approval of the budget must be received from the respective legislative bodies which must in turn seek approval ultimately of the taxpaying public. Furthermore, most governmental functions are essential today, whether it be police, fire protection, road maintenance, tax collection, mailing of checks for unemployment, welfare or medicaid, or motor vehicle licensing and inspection services.

A brief review of the history of Chapter 303 of the Laws of 1968, which was enacted in some haste, is appropriate: Chapter 303 was actually engrafted on the private sector mediation law (C. 100, P.L. 1941), and some of the sections of Chapter 303 are common to that law. Thus, instead of having a separate law for private sector labor problems and a separate law for public sector labor problems, as do many states, including New York, New Jersey has a hybrid law which was artificially contrived and constructed by an intermeshing and commingling of two laws. In my view, such a situation is not conducive either to good government or to effective personnel relations. Former Governor Richard Hughes recognized this and the many deficiencies contained in Chapter 303. Indeed, the bill which became Chapter 303 (Senate Bill No. 746 of 1968) was returned on September 10, 1968, by Governor Hughes, without his signature with extensive recommendations for amendments. Only three days later this bill repassed both houses and became law over the conditional veto and recommendations therein of the then Governor Richard J. Hughes. Since that time many legislators have indicated to me serious regrets about having enacted legislation that was not understood and so woefully inadequate, and which to date has caused the most serious problems and had greatest impact at the municipal level in its relatively limited lifetime. Experience at other levels of government is gradually evolving and showing a similar pattern.

In my view, comprehensive total revision of the P.E.R.C. law is needed. However, I recognize that there may be some difficulties in achieving the total revision necessary. It seems obvious that if there is to be an unfair practices section within the present framework of the law, and I believe one is necessary, then it is essential to correct those deficiencies in Chapter 303 which would be

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

ASSEMBLY BILL NO. 520 OCR

-3-

compounded if unfair practices were adopted without changes. The amendments which I suggest today are only those which constitute a first step and are related to the unfair practices problem, including clarifying procedural steps and providing time limitations on filing complaints. For instance, a board made up of public members, as I advocate, rather than partisans, should not be confronted with an apparent conflict of interest situation as can occur under the present structure. Likewise, it is necessary to differentiate between management personnel and non-management personnel.

I agree, as did former Governor Richard J. Hughes in his veto message covering Chapter 303, with the concept that an effective employer-employee relations law in the public sector, as well as in the private sector, should provide for unfair practices violations, although a review of the illegal work stoppages in New Jersey indicates that the overwhelming majority of those situations were caused by differences of opinion between the parties and not because of unfair practices. In addition, the reference to the grievance procedures as an unfair practice should be stricken because Chapter 303 of the Laws of 1968 provides for such grievance procedures in Section 7 (N.J.S. 34:13A-5.3).

Without these limited revisions which I suggest today as a minimum, I believe there will eventually be chaos in public sector employer-employee relations in New Jersey should Assembly Bill No. 520 OCR be adopted in its present form.

Accordingly, I herewith return Assembly Bill No. 520 OCR for reconsideration and recommend that it be amended as follows:

1. Page 1, Title, Line 1: After "An Act to" insert "amend and".
2. Page 1, Title, Line 3: After "303" insert "and amending P.L. 1968, c. 303"
3. Page 1, Section 1, Line 15: After "sentative" insert "recognized or certified as the exclusive representative of employees in an appropriate unit".
4. Page 1, Section 1, Line 16: Delete "the appropriate" and insert "that".
5. Page 1, Section 1, Lines 16-17: Delete "or concerning grievances of said employees or representative".

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

ASSEMBLY BILL NO. 520 OCR

-4-

6. Page 1, Section 1, Line 18: After "representative" insert "provided, however, that the performance by an employer of any duty imposed upon it by law shall not be construed as a refusal to negotiate in good faith, and whenever a public employer is obligated by law to submit a budget, it shall not be considered an unfair practice or a refusal to negotiate in good faith on the part of the public employer who, pursuant to that obligation to submit a budget, includes a specific amount for increased salaries and changes in fringe benefits."
7. Page 2, Section 1, Line 32: After "unit" insert "concerning terms and conditions of employment of employees in that unit."
8. Page 2, Section 1, Line 37: After "empowered" insert "as hereinafter provided".
9. Page 2, Section 1, Line 38: Delete "This".
10. Page 2, Section 1, Line 39: Delete in its entirety.
11. Page 2, Section 1, Line 40: Delete "statute".
12. Page 2, Section 1, Line 43: After "party" insert "or person a complaint stating the charges in that respect and containing".
13. Page 2, Section 1, Line 45: After "thereof" insert "provided that no complaint shall issue based upon any unfair practice occurring more than 4 months prior to the filing of the charge unless the person aggrieved thereby was prevented from filing such charge by reason of service in the armed forces, in which event the 4 months period shall be computed from the day of his discharge."
14. Page 2, Section 1, Lines 45-47: Delete "rules of evidence prevailing in courts of law or equity shall be followed but shall not be controlling" and insert "provisions of the Administrative Procedure Act (C. 52:14B-1 et seq.) shall be applicable."
15. Page 2, Section 1, Line 50: Delete "finding" and insert "findings" in lieu thereof.
16. Page 2, Section 1, Line 51: After "fact" insert "and conclusions of law".
17. Page 2, Section 1, Line 51: After "party" insert "or person".
18. Page 2, Section 1, Line 52: After "party" insert "or person".
19. Page 2, Section 1, Line 53: Delete "affirmative".
20. Page 2, Section 1, Line 56: Delete "representative".
21. Page 2, Section 1, Line 57: Delete "of the employee organization or" and after "charge" insert "or his authorized representative."
22. Page 2, Section 1, Lines 61 and 62: Delete "Appellate Division of Superior".
23. Page 2, Section 1, Line 62: After "Court for an" insert "appropriate".

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

ASSEMBLY BILL NO. 520 OCR

-5-

24. Page 3, Section 1, Line 63: After "hereof," insert "in accordance with the Rules of Court."

25. Page 3, Section 1, Line 63: Delete "and its findings of".

26. Page 3, Section 1, Lines 64 through 73: Delete in their entirety.

27. Page 3, Section 1, after Line 73: Insert new Sections 2, 3, 4, 5 and 6 as follows:

"2. Section 3 of P.L. 1941, chapter 100 (C. 34:13A-3) is amended to read as follows:

3. When used in this act:

(a) The term "board" shall mean New Jersey State Board of Mediation.

(b) The term "commission" shall mean New Jersey Public Employment Relations Commission.

(c) The term "employer" includes an employer and any person acting, directly or indirectly, on behalf of or in the interest of an employer with the employer's knowledge or ratification, but a labor organization, or any officer or agent thereof, shall be considered an employer only with respect to individuals employed by such organization. This term shall include "public employer" and shall mean the State of New Jersey, or the several counties and municipalities thereof, or any other political subdivision of the State, or a school district, or any special district, or any authority, commission or board, or any branch or agency of the public service.

(d) The term "employee" in the private sector shall include any employee, and shall not be limited to the employees of a particular employer unless this act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of or in connection with any current labor dispute or because of any unfair labor practice and who has not obtained any other regular and substantially equivalent employment. This term, however, shall not include any individual taking the place of any employee whose work has ceased as aforesaid, nor shall it include any individual employed by his parent or spouse, or in the domestic service of any person in the home of the employer, or employed by any company owning or operating a railroad or railway express subject to the provisions of the Railway Labor Act. [This term shall include public employee, i.e. any person holding a position, by appointment or contract, or employment in the service of a public employer, except elected officials, heads and deputy heads of departments and agencies, and members of boards and commissions, provided that in any school district this shall exclude only the superintendent of schools or other chief administrator of the district.]

(e) The term "public employee" shall include any public employee, and shall not be limited to the employees of a particular public employer unless this act explicitly states otherwise.

This term shall include any person holding a position, by appointment or employment in the service of a public employer, except elected officials, heads and deputy heads of departments and agencies, members of boards and commissions, other managerial executives, confidential employees, individuals employed as supervisors and members of the organized militia.

(f) The term "representative" is not limited to individuals but shall include labor organizations, and individual representatives need not themselves be employed by, and the labor organization serving as a representative need not be limited in membership to the employees of, the employer whose employees are represented. This term shall include any organization, agency or person authorized

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

ASSEMBLY BILL NO 520 OCR

-6-

or designated by a public employer, public employee, group of public employees, or public employee association to act on its behalf and represent it or them.

(g) The term "confidential employee" means one whose access to confidential personnel files or information concerning the administrative operations of a public employer and functional responsibilities or knowledge in connection with the issues involved in the collective negotiations process would make membership in any appropriate negotiating unit incompatible with his official duties.

(h) The term "supervisor" means any individual having authority, in the interest of the public employer, to hire, transfer, suspend, lay off, recall, evaluate, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

(i) The term "managerial executive" refers to persons who formulate management policies and practices, and to those who are charged with the responsibility of effectuating and making operative such management policies and practices."

3. Section 6 of P.L. 1968, c. 303 (C. 34:13A-5.2) is amended to read as follows"

"6.(a) There is hereby established in the Division of Public Employment Relations a commission to be known as the New Jersey Public Employment Relations Commission. This commission, in addition to the powers and duties granted by this act, shall have in the public employment area the same powers and duties granted to the labor mediation board in sections 7 and 10 of chapter 100, P.L. 1941 and in sections 2 and 3 of chapter 32, P.L. 1945. There shall be a chief executive officer and administrator who shall devote his full time to the performance of his duties exclusively in the Division of Public Employment Relations.

(b) This commission shall make policy and establish rules and regulations concerning employer-employee relations in public employment relating to dispute settlement, grievance procedures and administration including enforcement of statutory provisions concerning representative elections and related matters. The commission shall consist of [7] 3 public members to be appointed by the Governor, by and with the advice and consent of the Senate, one of whom shall be designated as Chairman by the Governor. [Of such members, 2 shall be representative of public employers, 2 shall be representative of public employee organizations and 3 shall be representative of the public including the appointee who is designated as chairman.] Of the first appointees, [two] one shall be appointed for [2 years] 1 year, [two] one for a term of [3] 2 years and [three] one, [including the chairman,] for a term of [4] 3 years. Their successors shall be appointed for terms of 3 years each, and until their successors are appointed and qualified, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the member whose office has become vacant.

The members of the commission shall be compensated at the rate of [\$50.00] \$100.00 for each day, or part thereof, spent in attendance at meetings and consultations and shall be reimbursed for necessary expenses in connection with the discharge of their duties."

4. The terms of office of the present members who are representative of public employers and public employees on the New Jersey Public Employment Relations Commission shall terminate on the effective date hereof. The public members of the commission in office on the effective date of this act shall continue in such office until the expiration of their respective terms.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

ASSEMBLY BILL NO. 520 OCR

-7-

5. Section 7 of P.L. 1968, chapter 303 (C. 34:13A-5.3) is amended to read as follows:

"7. Except as hereinafter provided, public employees shall have, and shall be protected in the exercise of the right, freely and without fear of penalty or reprisal, to form, join and assist any employee organization or to refrain from any such activity; provided, however, that this right shall not extend to any supervisor or managerial executive. [except in a school district the term managerial executive shall mean the superintendent of schools or his equivalent, nor, except where established practice, prior agreement or special circumstances, dictate the contrary, shall any supervisor having the power to hire, discharge, discipline, or to effectively recommend the same, have the right to be represented in collective negotiations by an employee organization that admits nonsupervisory personnel to membership, and the fact that any organization has such supervisory employees as members shall not deny the right of that organization to represent the appropriate unit in collective negotiations.] Except in the case of a written agreement made prior to the effective date of this act, no supervisor, confidential employee, or managerial executive shall have the right to be represented in collective negotiations. The fact that any employee organization has any supervisory, confidential employee or managerial executive as members shall not deny the right of the organization to represent the public employees in an appropriate unit; and provided further, that, except where established practice, prior agreement, or special circumstances dictate the contrary, no policeman shall have the right to join an employee organization that admits employees other than policemen to membership. The negotiating unit shall be defined with due regard for the community of interest among the employees concerned, and the joint responsibilities of the public employer and public employees to serve the public. Voluntary determination and agreement of unit composition shall not be made in conflict with the provisions of this act. [but the commission shall not intervene in matters of recognition and unit definition except in the event of a dispute.]

Representatives designated or selected by public employees for purposes of collective negotiation by the majority of the employees in a unit appropriate for such purposes or by the majority of the employees voting in an election conducted by the commission as authorized by this act shall be the exclusive representatives for collective negotiation concerning the terms and conditions of employment of the employees in such unit. Nothing herein shall be construed to prevent any official from meeting with an employee organization for the purpose of hearing the views and requests of its members in such unit so long as (a) the majority representative is informed of the meeting; (b) any changes or modifications in terms and conditions of employment are made only through negotiation with the majority representative; and (c) a minority organization shall not present or process grievances. Nothing herein shall be construed to deny to any individual employee his rights under Civil Service laws or regulations. When no majority representative has been selected as the bargaining agent for the unit of which an individual employee is a part, he may present his own grievance either personally or through an appropriate representative or an organization of which he is a member and have such grievance adjusted.

A majority representative of public employees in an appropriate unit shall be entitled to act for and to negotiate agreements covering all employees in the unit and shall be responsible for representing the interests of all such employees without discrimination and without regard to employee organization membership. [Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established. In addition, the majority representative and designated representatives of the public employer shall meet at reasonable times and negotiate in good faith with respect to grievances and terms and conditions of employment.]

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

ASSEMBLY BILL NO. 520 OCR

-8-

For the purposes of this act, to negotiate collectively is the performance of the mutual obligation of the employer and the majority representative of the employees to meet at reasonable times and negotiate in good faith with respect to the terms and conditions of employment, and the execution of a written agreement signed by the authorized representatives of the public employer and the majority representative incorporating any agreement reached; provided that such obligation does not compel either party to agree to a proposal or require the making of a concession and provided further that such obligation does not compel either party to negotiate with respect to obligations or duties imposed upon it by law.

When an agreement is reached on the terms and conditions of employment, it shall be embodied in writing and signed by the authorized representatives of the public employer and the majority representative.

Public employers shall negotiate written policies setting forth grievance procedures by means of which their employees or representatives of employees may appeal the interpretation, application or violation of policies, agreements, and administrative decisions affecting them, provided that such grievance procedures shall be included in any agreement entered into between the public employer and the representative organization. Such grievance procedures may provide for binding arbitration as a means for resolving disputes."

6. Nothing in this act or the act to which this is a supplement shall conflict with, impair, supersede or abrogate the provisions of either Title 11, Civil Service of the Revised Statutes, or Title 18A, Education, of the New Jersey Statutes, or the rules and regulations issued pursuant thereto, or to deny to any individual public employee his rights provided thereunder. Any right of appeal granted under Title 11 or Title 18A to any public employee shall be exclusive, any law or agreement to the contrary notwithstanding.

28. Page 3, Section 2, Line 1: Delete "2" and insert "7".

Respectfully,

/s/ WILLIAM T. CAHILL

GOVERNOR

[seal]

Attest:

/s/ Jean E. Mulford

Acting Secretary