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National Center for the Study of Collective Bargaining in Higher Education and the Professions

NEWSLETTER
NATIONAL CENTER FOR THE STUDY OF COLLECTIVE BARGAINING IN HIGHER EDUCATION AND THE PROFESSIONS
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UNIONIZATION AMONG COLLEGE FACULTY—1983

A change in focus from campus organizing to lobbying for statewide enabling legislation appears to have been the primary thrust of faculty unions in 1983. The passage of collective bargaining bills in Ohio and Illinois attest to the success of this strategy on the part of unions.

While successful on the legislative front, however, the organizing of new faculty units was virtually non-existent. Only one new faculty bargaining agent was elected in 1983, with faculty at three instituitons rejecting unionization by voting "no-agent." Additionally, five Yeshiva-related decertifications were also reported. For a complete analysis of all faculty elections, refer to the table on "Summary of Elections - 1983."

AGENTS ELECTED

With the exception of the adjunct faculty at Chemeketa Community College in Oregon, no other faculty group voted to unionize in 1983. However, university librarians at the University of California, systemwide, did elect the AFT as their bargaining agent. In another University of California systemwide election, nurses at the hospitals and clinics elected the California Nurses Association as their agent. This marked the lowest number of newly unionized institutions on an annual basis since the National Center began to collect such data in 1973.

While the number of recognized agents increased by two, this was drastically offset by the decertification of five bargaining agents and institutional structural changes, bringing the total number of recognized agents to 411, a decrease of 12 from 1982. The number of reported contracts was 388, an increase of 11 from the previous year.

"NO-AGENT" ELECTIONS

Three "no-agent" faculty elections were reported: two in the state of Oregon and one in California. At Oregon State University, an NEA/AAUP coalition was defeated with "no-agent" receiving 879 votes to 482 who supported unionization. The unit size at Oregon was 1900. This marks the second loss for the unions at Oregon State; a previous organizing attempt by the AAUP and AFT was defeated in 1977. In another Oregon election, the faculty at Umpqua Community College chose "no-agent" over the OEA/NEA. This is the third setback for unionization at Umpqua, the previous ones occurred in 1979 and 1975. Of the 65 faculty in the proposed bargaining unit, 37 voted "no-agent" while 26 supported the faculty organization.

The third "no-agent" election occurred at the University of San Francisco where faculty at the College of Professional Studies selected "no-agent" by a vote of 112-78 over the AFT. It should be noted, however, that the CFT/AFT does have bargaining unit certifications for the faculty at USF, and that this election only concerned one college within the university.

Scientists and engineers at the University of California Lawrence Livermore National Laboratories voted against a union organizing drive conducted by the Society of Professional Scientists and Engineers/California State Employees Association. The "no-agent" vote was 1,923 while 609 voted for SPSE.

It is difficult to assess the impact of the "no-agent" votes when viewing academic collective bargaining in the macro sense. Whether or not there is a uniqueness to the two Oregon elections or if this was part of an overall "no-agent" trend is difficult to assess at this time.

DECERTIFICATION

Faculty unions at the University of New Haven, Stephens College, Seton Hall University, Cooper Union and Ohio Northern University were decertified during 1983. All were Yeshiva related and left faculty at these institutions unprotected in terms of bargaining under the National Labor Relations Act.

The AFT had been the duly elected bargaining agent at four of the institutions while at the fifth, the NEA held bargaining rights. At four institutions contracts had been previously negotiated although none had an expiration period beyond that of the decertification date.

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SUMMARY OF ELECTIONS - 1983

A. AGENTS ELECTED

INSTITUTION	STATE	UNIT SIZE	VOTE	AGENT ELECTED	2/4 YEAR
Chemeketa Community College	OR	214	111 (OEA/NEA)	OEA/NEA	2
◦Part-time faculty			53 (NA)		
University of California	CA				4
◦Librarians	CA	401	178 (UFL/AFT)	UFL/AFT	
			158 (NA)		
◦Nurses	CA	4,400	2,223 (CNA)	CNA	
			865 (NA)		

B. "NO-AGENT" VOTES

INSTITUTION	STATE	UNIT SIZE	VOTE	AGENT DEFEATED	2/4 YEAR
Oregon State University	OR	1,900	879 (NA)		4
			482 (NEA/AAUP)	NEA/AAUP	
Umpqua Community College	CA	65	37 (NEA)		2
			26 (OEA/NEA)	OEA/NEA	
University of California	CA				4
◦Professional Scientists & Engineers at Lawrence Livermore National Labs.	CA	2,746	1,923 (NA)		
			609 (SPSE/CSEA)	SPSE/CSEA	
University of San Francisco	CA				4
◦College of Prof. Studies	CA	-	112 (NA)		
			78 (AFT)	AFT	

C. AGENTS DECERTIFIED

INSTITUTION	STATE	UNIT SIZE	VOTE	AGENT DECERTIFIED	2/4 YEAR
Cooper Union	NY	55	N/A	AFT	4
Ohio Northern University	OH	145	N/A	NEA	4
Seton Hall University	NJ	350	N/A	AFT	4
Stephens College	MO	120 F/PT	N/A	AFT	4
University of New Haven	CT	130	N/A	AFT	4

D. CHALLENGE TO AGENT STATUS

INSTITUTION	STATE	UNIT SIZE	BARGAINING AGENT	CHALLENGING AGENT	VOTE	2/4 YEAR
Butte College	CA	125	CTA/NEA	IND	55 (CTA/NEA)	2
					52 (IND)	
					2 (NA)	
East St. Louis Community College	IL	45	IFT/AFT	AAUP	24 (IFT/AFT)	2
					17 (AAUP	
					1 (NA)	
Massachusetts Community College System	MA	1,600	MTA/NEA	AFT	830 (MTA/NEA)	2
					483 (AFT)	
					46 (NA)	

E. FIRST CONTRACTS SIGNED IN 1983

INSTITUTION	STATE	UNIT SIZE	AGENT	2/4 YEAR
California State University	CA			4
◦Faculty	CA	18,000	CFA/AAUP/NEA	
◦Academic Support	CA	1,500	UPC/AFT	

Source: NCSCBHEP Research

At the University of New Haven, the AFT had been the bargaining agent since 1979, having replaced an independent association which had organized the faculty in 1975. The initial contract at New Haven had been signed in 1976; however, a successor agreement was never reached since a Yeshiva claim was filed immediately after the U.S. Supreme Court decision. It is believed that the University of New Haven was the first institution to exercise this type of claim.

Stephens College, in Missouri, was successful in having the AFT decertified after four years as the bargaining agent. It should be noted that although an agent had been certified, no contract was ever negotiated at Stephens. The AFT also lost agent status at Seton Hall University, New Jersey, having only enjoyed bargaining rights for approximately one year. An independent faculty association had bargained at Seton Hall since 1972; however, it was replaced in 1982 by the AFT. Subsequent to the AFT being certified, the college filed its Yeshiva claim.

At Cooper Union, New York, the AFT lost agent status; however, it is expected that an appeal will be taken. The AFT and its New York State affiliate had enjoyed bargaining rights for 10 years at Cooper Union although only one contract had been negotiated.The NEA affiliate at Ohio Northern University was also decertified. It was elected in 1979 and signed only one contract there.

Although only eight hundred faculty members were directly affected by the five decertifications, the impact on private sector organizing remains substantial. Unless a union can obtain voluntary recognition status or an employer's pledge not to "Yeshiva" the faculty, it appears virtually certain that any organizing attempt will be futile. (For a complete analysis of the Yeshiva decision (NLRB v. Yeshiva University, 444 U.S. 672 (1980)), see NCSCBHEP Newsletter, Vol 8, No. 1; Vol 9, No. 1; Vol. 10, No. 3; and Vol. 11, No. 3.)

Additional decertification attempts were made at three community colleges in 1983. In those elections the incumbent agents defeated the challenges and maintained certification. At Butte College, California, the CTA/NEA defeated a challenge by an independent organization by three votes, while at East St. Louis Community College, Illinois, the IFT/AFT defeated the AAUP by a vote of 24-17. In the largest of the three elections, the MTA/NEA at the Massachusetts Community College System defeated an AFT challenge by a vote of 830-483. While technically these elections are classified as decertification attempts, none of them resulted in any agent change.

STRIKES AND LEGISLATION

Strikes

Three strikes were reported in 1983, two of which were classified as fall "back-to-school" strikes. The faculty at Compton Community College, California, engaged in a 21-day stoppage. The AFT is the recognized bargaining agent for the 80 full-time and 30 part-time faculty in the unit. The faculty at St. Clair Community College, Minnesota, struck for three days. The NEA represents the 110 faculty in the unit. The third strike occurred at the University of Hawaii where faculty took part in a statewide coalition work stoppage which lasted for two days. The NEA/AAUP coalition represents some 2800 faculty at the nine campus system.

Strikes continue to be infrequent in academic collective bargaining. (For a complete analysis of work stoppages in higher education, the reader is referred to NCSCBHEP Newsletter, Vol. 11, No. 5.)

Legislation

Ohio and Illinois both passed comprehensive collective bargaining acts making this the first time in five years that any state enacted enabling legislation in this area. A unique feature of both the Ohio Collective Bargaining Law, Senate Bill No. 133 and the Illinois Educational Labor Relations Act is the authorization of a limited right to strike. Preconditions have been established requiring exhaustion of all impasse procedures and giving adequate notice. Of particular interest in the Ohio statute, is a provision which defines the term "supervisor" so as to forego any possibility of Yeshiva claims. Specific reference is made to faculty members of state universities and colleges. Department and division heads are classified as supervisors; ". . . however, no other faculty member or group of faculty members is a supervisor solely because the faculty member or group of faculty members participate in decisions with respect to courses, curriculum, personnel or other matters of academic policy." The Illinois Act also defines supervisor and professional employee, although not to the same extent as found in the Ohio bill. It is interesting to note the impact of the Yeshiva Decision on the legislative process in both bills.

Although no further collective bargaining laws were enacted, bills supporting enabling legislation for public employees including state universities and college systems were introduced in at least eight other states. In all but Washington State, the bills were either killed in committee or defeated in a floor vote. In Washington, the bill passed both houses of the state legislature; however, it was vetoed by the governor. The unsuccessful bills included: Maryland (S.B. 60, H.B. 722), Virginia (S.B. 407), West Virginia (S.B. 252), Missouri (S.B. 442), Indiana (H.B. 1094), North Dakota (H.B. 1448), Washington State (S.B. 3042), and Wisconsin (S.B. 174).

Additional bills relating to public sector labor relations were also introduced; however, none provided for comprehensive enabling legislation. With the passage of the Ohio and Illinois Acts, the number of states with public sector collective bargaining statutes authorizing college faculty the right to bargain now totals 31 plus the District of Columbia.

SUMMARY AND CONCLUSIONS

The number of institutions engaged in academic collective bargaining with recognized bargaining units during 1983 remain constant. Four hundred and eleven bargaining agents were identified at colleges and universities engaged in collective bargaining. While this represents a decrease of 12 from the previous year, five of these were related to Yeshiva decertifications of private colleges. Additional losses occurred as a result of school mergers and closings.

While the number of reported contracts increased by 11, this is attributed to two new contracts at CSU and a decrease from 46 to 23 of agents without collective bargaining agreements.

As in the past, two-year public colleges led all institutional categories in terms of recognized bargaining agents with 272. Only 11 private two-year institutions were identified as engaging in collective bargaining activities.

The number of four-year private institutions with recognized bargaining agents continues to diminish: from 69 in 1983 to 58 in 1984. It should be noted that at the time of the Yeshiva Decision, approximately 90 private colleges were engaged in academic collective bargaining.

No significant increase was reported in public sector bargaining. Only two new four-year agents were added while the number of two-year agents decreased by one.

Although legislation has been introduced to overturn Yeshiva, no changes in this area are expected in the near future. As was stated last year, the pending decisions at Boston University and Polytechnic Institute of New York should be controlling for future cases.

Thus, in 1983, we saw a shift in the strategy of union activity. Coming to grips with the reality of apparent shrinking support nationally for union organizing efforts and burdened with the additional problems associated with Yeshiva claims, unions were forced to seek legislation which would give them a more favorable climate in which to operate. Although success in this area has been limited, it would appear to be the one viable option unions must have if they are to remain an integral partner in higher education employment relationships.

NEW COLLECTIVE BARGAINING LEGISLATION—1983

Set forth below are the relevant portions of the Ohio and Illinois statutes as they pertain to collective bargaining in higher education:

OHIO COLLECTIVE BARGAINING LAW - SENATE BILL 133

(AMENDED SUBSTITUTE SENATE BILL NO. 133)

AN ACT

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

...(C) "Public Employee" means any person holding a position by appointment or employment in the service of a public employer, including any person working pursuant to a contract between a public employer and a private employer and over whom the National Labor Relations Board has declined jurisdiction on the basis that the involved employees are employees of a public employer,...

(D) "Employee Organization" means any labor or bona fide organization in which public employees participate and which exists for the purpose, in whole or in part, of dealing with public employers concerning grievances, labor disputes, wages, hours, terms and other conditions of employment....

(F) "Supervisor" means any individual who has authority, in the interest of the public employer, to hire, transfer, suspend, lay-off, recall, promote, discharge, assign, reward, or discipline other public employees; to responsibly direct them; to adjust their grievances; or to effectively recommend such action, if the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment; provided, however:

(1) Employees of school districts who are department chairmen or consulting teachers shall not be deemed supervisors;...

(3) With respect to faculty members of a state institution of higher education, heads of departments or divisions are supervisors; however, no other faculty member or group of faculty members is a supervisor solely because the faculty member or group of faculty members participate in decisions with respect to courses, curriculum, personnel, or other matters of academic policy.

(G) "To Bargain Collectively" means to perform the mutual obligation of the public employer, by its representatives, and the representatives of its employees to negotiate in good faith at reasonable times and places with respect to wages, hours, terms and other conditions of employment and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement, with the intention of reaching an agreement, or to resolve questions arising under the agreement. This includes executing a written contract incorporating the terms of any agreement reached. The obligation to bargain collectively does not mean that either party is compelled to agree to a proposal nor does it require the making of a concession....

(I) "Professional Employee" means any employee engaged in work which is predominantly intellectual, involving the consistent exercise of discretion and judgment in its performance and requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship; or an employee who has completed the courses of specialized intellectual instruction and is performing related work under the supervision of a professional person to qualify himself to become a professional employee.

Sec. 4117.03

(A) Public employees have the right to:

(1) Form, join, assist, or participate in, or refrain from forming, joining, assisting, or participating in, except as otherwise provided in Chapter 4117. of the Revised Code, any employee organization of their own choosing.

(2) Engage in other concerted activities for the purpose of collective bargaining or other mutual aid and protection.

(3) Representation by an employee organization.

(4) Bargain collectively with their public employers to determine wages, hours, terms and other conditions of employment and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement, and enter into collective bargaining agreements.

(5) Present grievances and have them adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of the collective bargaining agreement then in effect and as long as the bargaining representatives have the opportunity to be present at the adjustment.

(B) Persons on active duty or acting in any capacity as members of the organized militia do not have collective bargaining rights.

(C) Nothing in Chapter 4117. of the Revised Code prohibits public employers from electing to engage in collective bargaining, meet and confer, discussions, or any other form of collective negotiations with public employees who are not subject to Chapter 4117. of the Revised Code pursuant to Division (C) of Section 4117.01 of the Revised Code.

Sec. 4117.14.

(A) The procedures contained in this section govern the settlement of disputes between an exclusive representative and a public employer concerning the termination or modification of an existing collective bargaining agreement or negotiation of a successor agreement, or the negotiation of an initial collective bargaining agreement....

(C) In the event the parties are unable to reach an agreement, they may submit, at any time prior to 45 days before the expiration date of the collective bargaining agreement, the issues in dispute to any mutually agreed upon dispute settlement procedures which supersedes the procedure contained in this section....

(D) If the parties are unable to reach agreement within 7 days after the publication of findings and recommendations from the Fact-Finding Panel or the collective bargaining agreement, if one exists, has expired, then the:...

(2) Public employees other than those listed in Division (D) (1) of this section have the right to strike under Chapter 4117. of the Revised Code provided that the employee organization representing the employees had given a 10-day prior written notice of an intent to strike to the public employer and to the Board; however, the Board, at its discretion, may attempt mediation at any time.

Sec. 4117.15

...(C) No public employee is entitled to pay or compensation from the public employer for the period engaged in any strike.

Sec. 4117.16.

(A) Whenever the public employer believes that a lawful strike creates clear and present danger to the health or safety of the public, the public

employer may petition the Court of Common Pleas having jurisdiction over the parties to issue a temporary restraining order enjoining the strike. If the court finds probable cause to believe that the strike may be a clear and present danger to the public health or safety, it has jurisdiction to issue a temporary restraining order, not to exceed 72 hours, enjoining the strike.

Should a Court issue a temporary restraining order, the public employer shall immediately request authorization of the State Employment Relations Board to enjoin the strike beyond the effective period of the temporary restraining order. The Board shall determine within the effective period of the temporary restraining order whether the strike creates a clear and present danger to the health or safety of the public....

Sec. 4117.23.

(A) In the case of a strike that is not authorized in accordance with this chapter, the public employer may notify the State Employment Relations Board of the strike and request the Board to determine whether the strike is authorized under Chapter 4117. of the Revised Code. The Board shall make its decision within 72 hours of receiving the request from the public employer.

(B) If the Board determines that the strike is not authorized then the public employer:

(1) May remove or suspend those employees who one day after notification by the public employer of the Board decision that a strike is not authorized continue to engage in the non-authorized strike; and

(2) If the employee is appointed or reappointed, employed, or reemployed, as a public employee, within the same appointing authority, may impose the following conditions:

(a) The employee's compensation shall in no event exceed that received by him immediately prior to the time of the violation.

(b) The employee's compensation is not increased until after the expiration of one year from the appointment or reappointment, employment or reemployment.

(3) Shall deduct from each striking employee's wages, if the Board also determines that the public employer did not provoke the strike, the equivalent of 2 days' wages for each day the employee remains on strike....

ILLINOIS EDUCATIONAL LABOR RELATIONS ACT

SECTION 1

Policy: It is the public policy of this State and the purpose of this Act to promote orderly and constructive relationships between all educational employees and their employers. Unresolved disputes between the educational employees and their employers are injurious to the public, and the General Assembly is therefore aware that adequate means must be established for minimizing them and providing for their resolution. It is the purpose of this act to regulate labor relations between educational employers and educational employees, including the designation of educational employee representatives, negotiation of wages, hours and other conditions of employment and resolution of disputes arising under collective bargaining agreements.... Recognizing that harmonious relationships are required between educational employees and their employers, the General Assembly has determined that the overall policy may best be accomplished by (a) granting to educational employees the right to organize and choose freely their representatives; (b) requiring educational employers to negotiate and bargain with employee organizations representing educational employees and to enter into written agreements evidencing the result of such bargaining; and (c) establishing procedures to provide for the protection of the rights of the educational employee, the educational employer and the public.

SECTION 2

... (g) "Supervisor" means any individual having authority in the interests of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, reward or discipline other employees within the appropriate bargaining unit and adjust their grievances, or to effectively recommend such action if the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment. The term "supervisor" includes only those individuals who devote a preponderance of their employment time to such exercising authority....

(k) "Professional employee" means, in the case of a public community college, State college or university, ... (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance....

SECTION 3

Employee rights: (a) It shall be lawful for educational employees to organize, form, join, or

assist in employee organizations or engage in lawful concerted activities for the purpose of collective bargaining or other mutual aid and protection or bargain collectively through representatives of their own free choice and, except as provided in Section 11, such employee shall also have the right to refrain from any or all such activities.

(b) Representatives selected by educational employees in a unit appropriate for collective bargaining purposes shall be the exclusive representative of all the employees in such unit to bargain on wages, hours, terms and conditions of employment. However, any individual employee or a group of employees may at any time present grievances to their employer and have them adjusted without the intervention of the bargaining representative as long as the adjustment is not inconsistent with the terms of a collective bargaining agreement then in effect, provided that the bargaining representative has been given an opportunity to be present at such adjustment.

SECTION 4

Employer rights: Employers shall not be required to bargaining over matters of inherent managerial policy, which shall include such areas of discretion or policy as the function of the employer, standards of services, its overall budget, the organizational structure and selection of new employees and direction of employees. Employers, however, shall be required to bargain collectively with regard to policy matters directly affecting wages, hours and terms and conditions of employment as well as the impact thereon upon request by employees representatives.

To preserve the rights of employers and exclusive representatives which have established collective bargaining relationships or negotiated collective bargaining agreements prior to the effective date of this Act, employers shall be required to bargain collectively with regard to any matter concerning wages, hours or conditions of employment about which they have bargained for and agreed to in a collective bargaining agreement prior to the effective date of this Act.

SECTION 5

Illinois Educational Labor Relations Board: (a) There is hereby created the Illinois Educational Labor Relations Board consisting of 3 members, no more than 2 of whom may be of the same political party, who are residents of Illinois appointed by the Governor with the advice and consent of the Senate....

(h) The Board shall adopt, promulgate, amend or rescind rules and regulations in accordance with "The Illinois Administrative Procedure Act" as now or hereafter amended, as it deems necessary and feasible to carry out this Act....

SECTION 10

Duty to bargain: A public employer and the exclusive representative have the authority and the duty to bargain collectively as set forth in this section. (a) Collective bargaining is the performance of the mutual obligations of the educational employer and the representative of the educational employees to meet at reasonable times and confer in good faith with respect to wages, hours and other terms and conditions of employment, and to execute a written contract incorporating any agreement reached by such obligation, provided such obligation does not compel either party to agree to a proposal or require the making of a concession.

(b) The parties to the collective bargaining process shall not effect or implement a provision in a collective bargaining agreement if the implementation of that provision would be in violation of, or incosistent with, or in conflict with any statute or statues enacted by the General Assembly of Illinois....

(c) The collective bargaining agreement negotiated between representatives of the educational employees and the educational employer shall contain a grievance resolution procedure which shall apply to all employees in the unit and shall provide for binding arbitration of disputes concerning the administration or intepretation of the agreement. The agreement shall also contain appropriate language prohibiting strikes for the duration of the agreement. The costs of such arbitration shall be borne equally by the educational employer and the employee organization....

SECTION 11

Non-member fair share payments: When a collective bargaining agreement is entered into with an exclusive representative, it may include a provision requiring employees covered by the agreement who are not members of the organization to pay to the organization a fair share fee for services rendered. The exclusive reprsentative shall certify to the employer an amount not to exceed the dues uniformly required of members which shall constitute each non member employee's fair share fee. The fair share fee payment shall be deducted by the employer from the earnings of the non member employees and paid to the exclusive representative....

Agreements containing a fair share agreement must safeguard the right of non-association of employees based upon bonafide religious tenets or teaching of a church or religious body of which such employees are members. Such employees may be required to pay an amount equal to their proportionate share, determined under a proportionate share agreement to a non-religious charitable organization mutually agreed upon by the employees affected and the exclusive representative to which such employees would otherwise pay such fee. If the affected employees and the exclusive representative are unable to reach an agreement on the matter, the Illinois Educational Labor Relations Board may establish an approved list of charitable organizations to which such payments may be made.

SECTION 12

Impasse procedures: ... If after a reasonable period of negotiation and within 45 days of the scheduled start of the forthcoming school year the parties engaged in collective bargaining have reached an impasse, either party may petition the Board to initiate mediation. Alternatively, the Board on its own motion may initiate mediation during this period....

If the parties engaged in collective bargaining fail to reach an agreement within 15 days of the scheduled start of the forthcoming school year and have not requested mediation, the Illinois Educational Labor Relations Board shall invoke mediation.

The costs of fact finding and mediation shall be shared equally between the employer and the exclusive bargaining agent.

Nothing in this Act prevents an employer and an exclusive bargaining representative from mutually submitting to final and binding impartial arbitration unresolved issues concerning the terms of a new collective bargaining agreement.

SECTION 13

Strikes: Educational employees shall not engage in a strike except under the following conditions:

(a) they are represented by an exclusive bargaining representative;

(b) mediation has been used without success;

(c) at least 5 days have elapsed after a notice of intent to strike has been given by the exclusive bargaining representative to the educational employer, the regional superintendent and the Illinois Educational Labor Relations Board.

(d) the collective bargaining agreement between the educational employer and educational employees, if any, has expired; and

(e) the employer and the exclusive bargaining representative have not mutually submitted the unresolved issues to arbitration.

If, however, in the opinion of an employer a strike is or has become a clear and present danger to the health or safety of the public, it may initiate in the circuit court of the county in which such danger exists an action for relief which may include, but is not limited to, injunction. The court may grant appropriate relief upon the finding that such clear and present danger exists. An unfair practice or other evidence of lack of clean hands by the educational employer is a defense to such action....

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