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COLLECTIVE BARGAINING FOR PUBLIC SCHOOL TEACHERS IN NORTH
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CONFRONT LOCAL BOARDS OF EDUCATION IN LARGE UNITS

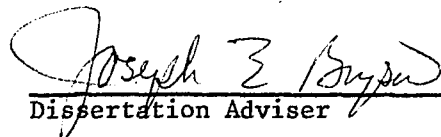
by

Joseph Ralph Sinclair

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the Faculty of the Graduate School at
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Doctor of Education

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Approved by


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APPROVAL PAGE

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The purpose of this study is to investigate and analyze major negotiable issues which are confronting school boards nationwide and which may confront schools boards in large administrative units within North Carolina. The following issues are considered: major national collective bargaining legislation and developing legislative trends involving public school teachers and having implications for North Carolina; the effects of legalized collective bargaining on existing statutes pertaining to management rights; an analysis of the major non-budget issues at the local board level; and an analysis of the major budget issues confronting school boards.

The State of North Carolina at the present time has statutes forbidding the implementation of collective bargaining contracts between public school teachers and school boards. The educational hierarchy is receiving increased pressure from teacher organizations within the state to include the teachers in educational decisions which pertain to their wages, hours, and conditions of employment.

The data for this study are based primarily on recent collective bargaining legislation enacted in other states, developing legislative trends at the state and federal levels, public school laws and personnel policies in North Carolina, and present trends relating to teacher unrest in North Carolina due to the absence of collective bargaining legislation. Pertinent state and federal statutes and proposals are used to supplement the data.

Analysis and review of recent national and state collective bargaining trends indicate an emerging confrontation between teacher organizations and management. Teacher organizations are demanding an input into decisions which affect their conditions of employment.

This dissertation provides an insight into emerging issues which have had little effect on public education in North Carolina. Consequently, public school personnel are not prepared to enter into the negotiations process at this time. This dissertation should help teachers and administrators in North Carolina to obtain a better understanding of the scope of bargaining and the flexibility of collective bargaining legislation.

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CHAPTER I
INTRODUCTION

At the present time, collective bargaining legislation is emerging in many states as a procedure which significantly affects the traditional management prerogatives which have existed for many years. In states which require collective bargaining, representatives of the exclusive teacher bargaining unit negotiate with boards of education over issues relating to conditions of teacher employment.

Collective bargaining statutes vary to a considerable degree from state to state. A vast majority of the states permit some type of negotiations between teachers and management, but the degree to which negotiations are permitted is governed by the respective state statutes. The most extensive collective bargaining usually occurs in states which advocate mandatory negotiations between teachers and management. Other state statutes permit teacher involvement in the form of a "meet-and-confer" procedure.

North Carolina is among the few remaining states which has statutes totally prohibiting public school teachers from entering into a collective bargaining contract with school boards. Although legal challenges to the anti-negotiations statutes have occurred, the law has remained unchanged. As pressure is increased from teacher organizations to legislate provisions which permit negotiations, the United States Congress is considering a collective bargaining law which will include all fifty states under the proposed provisions.

PURPOSE OF THE STUDY

The purpose of the study is to analyze major negotiable issues which are confronting school boards nationwide and which may confront school boards in large administrative units within North Carolina. Major issues included in the study are: (1) major national collective bargaining legislation and developing legislative trends involving public school teachers and having implications for North Carolina; (2) the effects of legalized bargaining on existing statutes pertaining to management rights; (3) an analysis of the major non-budget issues at the school board level; and (4) an analysis of the major budget issues confronting school boards.

The study examines the increasing interest of public school teachers in matters relating to their conditions of employment and the reasons behind this growing involvement. To strengthen involvement, teachers in North Carolina are joining together in organizations which include the North Carolina Association of Educators and the American Federation of Teachers. The growing political involvement of these organizations is studied because of their mutual support of legalized negotiations. The study identifies significant personnel policies in large administrative units which may change if collective bargaining is legalized.

Finally, after these issues have been explored, conclusions are presented which may assist both management and teachers in the acceptance of negotiations in North Carolina.

METHOD OF PROCEDURE

The data for each chapter have been gathered from a variety of material including books, periodicals, newspapers, court cases, and professional journals. In chapter two, a review of the literature is used to identify recent legislative developments in other states which pertain to the collective bargaining process. References to professional journals, newspapers, and court cases are also used to present an overview of the existing conditions relating to collective bargaining in the State of North Carolina.

The research for chapter three is mainly in the public school laws of North Carolina. This includes statutes governing the authority of the State Board of Education, school boards superintendents, and principals. References to the United States Constitution and court cases in North Carolina are presented to supplement the study.

Supporting data in chapters four and five are found in existing personnel policies, state and federal statutes, books, periodicals, and professional journals. Since information contained in these chapters directly involves existing policies and procedures at the local and state levels of education, the assistance of personnel directors in large units in North Carolina has been instrumental in providing a variety of policies which are used in this study.

Each chapter attempts to develop the collective bargaining issues as they relate to the specific matter under study. Because collective bargaining guidelines do not exist in North Carolina at the present time,

the impact of negotiations is based on the significance of other state statutes and on the procedures contained in the proposed federal bargaining bills.

Chapter six provides concluding evidence based on materials presented in the preceding chapters.

LIMITATIONS OF THE STUDY

This study is limited to an examination of the recent major negotiable issues which are confronting school boards nationwide and which may confront school boards in large units within North Carolina. It is further limited in that the historical development of the collective bargaining process at the national level, provisions involving the actual negotiating process at the bargaining table, selection of representatives at the bargaining table, impasse procedures, arbitration, psychological analysis of the bargaining process, basic negotiations theory, and teacher strikes are omitted in this study.

Although public school teachers are classified as public employees, the study is limited specifically to teachers in the public elementary and secondary schools. This excludes administrators and auxiliary staff. Many recent developments have affected public school teachers to some degree. However, only key legislative collective bargaining issues have been selected for the purpose of this presentation.

The study is limited to major issues relating to conditions of employment in large units within North Carolina. For the purpose of this study, large units are defined as those units having more than 20,000 students in their average daily membership. Because large units may be

more involved with complex bargaining in the initial stages of legalized negotiations, the study presents a more objective approach by confining the scope of bargaining to the units of similar size.

In some states, the scope of bargaining may include all conditions of employment not specifically excluded by school boards. However, the study is limited to the scope of bargaining which excludes pre-existing statutes.

Finally, the study is limited by the judgment and interpretation of the material cited. By the gathering of data relating to recent legislative trends in other states, illustrations of developing legislative bargaining trends in North Carolina, and by data from state and federal proposals, the information is interpreted and applied to a situation that will have a significant impact in North Carolina.

DEFINITION OF TERMS

Administrators. The management team which includes school principals, assistant superintendents, associate superintendents, personnel directors, and school board members.

Agency shop. An arrangement under which an employee within the scope of the bargaining unit does not have to become a member of the unit, but must pay a service fee.

A.F.L.-C.I.O. The American Federation of Labor and Congress of Industrial Organizations, a union which represents many labor groups throughout the United States.

A.F.S.C.M.E. The American Federation of State, County, and Municipal Employees. This group is affiliated with the A.F.L.-C.I.O.

A.F.T. The American Federation of Teachers, a national organization of teachers which is affiliated with the A.F.L.-C.I.O.

Arbitration. A procedure whereby parties unable to agree on a solution to a problem indicate their willingness to be bound by the decision of a third party.

Bargaining unit. A group of employees organized as a single unit and having a single representative to the employer.

Budget. An estimate, often itemized, of expected income and expenses, or operating results, for a given period in the future.

Career teacher. A public school teacher employed in the State of North Carolina, who has been successfully employed by a local board of education for three consecutive years.

Collective bargaining. The process by which wages, hours of employment, rules, and working conditions are negotiated and agreed upon by a union with an employer for all the employees collectively whom it represents.

Grievance. An allegation by an employee or by the union that the employer or one of its agents, in the process of implementation of the contract, is guilty of misapplication, misinterpretation or violation of one or more specific provisions of the existent contract.

Impasse. That state in negotiations at which the two parties are, or appear to be, unable to achieve resolution of the issues still on the bargaining table.

Management. The process of coordinating individual and group activity toward group goals. Superintendents, assistant superintendents, associate superintendents, directors of personnel, business managers, and principals can be categorized as members of management.

Management rights. Certain rights, privileges, responsibilities and authority requisite to the conduct of an enterprise by its management.

Mediation. That form of impasse resolution in which a third party meets with the two parties to the dispute, together and/or separately, in order to perform a catalytic function in an effort to effect an agreement.

N.E.A. The National Education Association, a national association of teachers which represents the largest teacher's organization in the United States. The N.C.A.E. is a state affiliate of this organization.

Negotiations. Mutual discussion and agreement of the terms of a transaction or agreement. Negotiations can usually have the same meaning as collective bargaining.

Non-budget issues. Those items relating to conditions of employment for teachers in North Carolina which do not require direct funding for implementation.

N.C.A.E. The North Carolina Association of Educators, a professional organization for public school personnel.

Probationary teacher. A public school teacher employed in the State of North Carolina, who has not earned career status.

Recognition. The accomplishment of the status of collective bargaining agent for a unit of defined extent.

Representation. Exclusive representation means that the bargaining unit recognized by the employer is the sole representative of employees within a defined category.

Scope of bargaining. Bargainable items: the limits, if any, of the appropriate subject matter of bargaining. If such are not set by law, they are determined by the interaction at the bargaining table.

Strike. A concerted work stoppage, usually used as an effect in time of impasse to accomplish a contract on terms acceptable to the union.

Teachers. Instructors who are directly involved in the educational process. This group is composed of classroom instructors who hold certificates in the general area for which they are employed.

Union shop. The form of union security agreement under which one need not be a member of the union on initial employment but must, within a limited period of time, become and remain a member for the duration of the contract, as a condition of continuing employment.

PLAN OF THE STUDY

The projection of collective bargaining for public school teachers in North Carolina cannot be examined without looking at recent legislative trends in labor law that are occurring in other states and in the United States Congress. In like manner, North Carolina cannot afford to copy, without modification, any existing negotiations law developed for another state. Matters involving personnel policies, management rights, and sources of funding vary from state to state because the United States Constitution mandates that the control of public school education lies with the individual states.

Chapter two presents an overview of recent legislative trends occurring in other states and in Congress which pertain to the collective bargaining process. These trends include existing negotiation statutes in other states, proposed collective bargaining legislation at the federal level, growing teacher militancy, and growing citizen concern over concessions gained by teachers as the result of legalized collective bargaining legislation. The impact of these legislative trends is focused on the present situation which exists in North Carolina, with the emphasis on present state laws, unrest in teacher organizations over the absence of collective bargaining legislation, and viewpoints expressed by notable authorities who are concerned over collective bargaining legislation.

Chapter three involves an analysis of the existing statutes in North Carolina which speak specifically to the rights of management over conditions of employment for public school teachers. After presenting the significant laws which exist, projections are made which relate to the effect that collective bargaining legislation may have on these specific statutes.

In chapter four, the study involves an analysis of the major non-budget issues at the school board level. With the passage of collective bargaining legislation, an increased emphasis is placed on these non-budget issues. Effects of negotiations on these issues are discussed in this chapter.

Chapter five is concerned with major budget issues at the school board level in North Carolina. If collective bargaining legislation permits teacher organizations to negotiate over certain pre-existing

conditions, present state policies relating to conditions of employment may become subject to change. However, this chapter examines individual budget items at the school board level which may be affected by the passage of a collective bargaining law that excludes negotiations over pre-existing conditions.

Chapter six provides a summary of school board policy changes that may occur in North Carolina as the result of a new collective bargaining law. Projections are made to indicate the type of bargaining law which may be the most beneficial in terms of implementation for both management and teachers, with the least disruption of the ongoing educational process. Conclusions reached are given in the form of recommendations to leaders who may be involved in the actual bargaining process.

CHAPTER II
MAJOR NATIONAL COLLECTIVE BARGAINING LEGISLATION AND DEVELOPING
LEGISLATIVE TRENDS INVOLVING PUBLIC SCHOOL TEACHERS HAVING
IMPLICATIONS FOR NORTH CAROLINA

There is a growing trend among public school teachers throughout the United States to become more actively involved in decisions relating to conditions of employment. As an integral force within the public employee sector, public school teachers are organizing in force to demand increased representation and involvement in matters relating to employment at the local and state levels of government.¹

In recent years the level of public employee labor relations activity has been increasing nationwide.² Research by national agencies verifies the validity of this statement.³

The United States Department of Labor Statistics indicates a rapid growth in employment and organization of public employees:

In October, 1973, there were 14.1 million public employees, an increase of more than one-half million over the previous year. Not only have the ranks of public employment continued to swell, but the extent of organization has also been growing at an even faster rate. Since 1960, membership in public sector unions and employee

¹Ross A. Engel, "Teacher Negotiation: History and Comment," Journal of Law and Education, 1, No. 3, (1972), 488.

²Summary of State Policy Regulations for Public Sector Labor Relations, (Washington: U.S. Department of Labor, 1975), p. 1.

³'76 Update: Collective Bargaining in Education, (A Joint Publication of the Department of Research and Information Services and Department of Higher Education Services, January, 1976), p. 3.

associations has more than doubled to almost five million. Today, about one-third of the public employee work force is organized, compared to the private sector's organizational level of one-quarter.⁴

Legalized collective bargaining for public school teachers is becoming an important issue in many states as a result of extensive public employee organizational efforts. In the absence of federal statutes, state legislation is enacted in many areas of the United States which provides the framework for formal negotiating procedures between teacher organizations and school board representatives.⁵ Within public employee groups throughout the nation, there is growing concern that each state exercise its prerogative either to permit or to prohibit the right of public employee groups to bargain collectively with their employers. As a result of this states' rights issue, these public employee groups advocate federal legislation which guarantees public employees the right to organize and engage in collective bargaining in every state.⁶

At the present time, legislation at the state level varies from mandatory collective bargaining for public school teachers in states such as Florida, New York, and Michigan, to legislation which forbids collective bargaining in North Carolina, Texas, and Tennessee. Several states have also adopted a meet-and-confer type of legislation which involves teacher organizations and school boards. Reference to specific state coverage is contained in Table I.

⁴Summary of State Policy Regulations for Public Sector Labor Relations, (Washington: U.S. Department of Labor, 1975), p. 1.

⁵Ibid. , p. 2.

⁶Hugh D. Jascourt, Public Sector Labor Relations, (Lexington, Kentucky: The Council of State Governments, 1975), p. 10.

TABLE I
COLLECTIVE BARGAINING COVERAGE BY STATE

<u>STATE</u>	<u>ALL EDUCATION PERSONNEL</u>	<u>PUBLIC SCHOOL TEACHERS</u>
Alaska		Mandatory
California		Meet and Confer
Connecticut		Meet and Confer
Delaware		Meet and Confer
Florida	Mandatory	Mandatory
Hawaii	Mandatory	Mandatory
Idaho		Meet and Confer
Indiana		Mandatory
Iowa	Mandatory	Mandatory
Kansas	Meet and Confer	Meet and Confer
Maine		Mandatory
Maryland		Meet and Confer
Massachusetts	Mandatory	Mandatory
Michigan		Mandatory
Minnesota	Mandatory	Mandatory
Missouri		Meet and Confer
Montana		Mandatory
Nebraska		Meet and Confer
Nevada		Mandatory
New Hampshire	Mandatory	Mandatory
New Jersey	Mandatory	Mandatory
New York	Mandatory	Mandatory
North Dakota		Mandatory
Oklahoma		Mandatory
Oregon	Mandatory	Mandatory
Pennsylvania	Mandatory	Mandatory
Rhode Island	Mandatory	Mandatory
South Dakota	Mandatory	Mandatory
Vermont		Meet and Confer
Washington		Meet and Confer
Wisconsin		Mandatory

Mandatory = Bargaining Required by Law

'76 Update: Collective Bargaining in Education--A Legislator's Guide, (Department of Research and Information Services and Department of Higher Education Services, January, 1976), pp. 5-6.

Federal Legislation

Federally mandated collective bargaining for public service employees including teaching staff is being delayed partially because of a case before the Supreme Court. The issue having nationwide implication is National League of Cities v. Usery, a case in California which challenges the constitutionality of applying the Fair Labor Standards Act to state and local governments.⁷ This case challenges the right of the federal government to interfere with state and local employees.⁸ If the case is decided in favor of the state, a federal collective bargaining law will be delayed. Issues in this case which relate to the National Labor Relations Act are discussed by Michael Brough:

The essential issue in that case is whether and to what degree the federal government's power to legislate under the 'commerce clause' should be limited by the countervailing principles of states' rights inherent in our federal system. If the court declares the FLSA unconstitutional as applied to state and local governments, then passage of federal legislation requiring states to allow public-sector collective bargaining (which legislation would also have to be grounded in the power to regulate commerce) becomes less likely.⁹

Passage of the National Labor Relations Act, known as the Wagner Act, in 1935 gave the United States its first comprehensive federal law regulating labor-management relations.¹⁰ This law has been amended many

⁷National League of Cities Washington Report, Vol. 2, No. 2, (1975), 7.

⁸Ibid.

⁹Michael B. Brough, Employee-Employer Relations in the Public Sector: The Impact of Proposed Legislation, (North Carolina Institute of Government, 1975), p. 7.

¹⁰Patrick J. Hunt, Labor-Management Relations (94th Congress) Issue Brief No. IB74040, (Library of Congress Congressional Research Service, January 14, 1976), p. 1.

times, with the most substantial amendments being the Labor Management Relations Act in 1947, known as the Taft-Hartley Act, and the Labor-Management Reporting and Disclosure Act in 1959, known as the Landrum-Griffin Act, (See Appendix A).

A federal collective bargaining law for public-sector employees is generally supported by teacher organizations because it would require negotiations over certain conditions of employment. Therefore, their involvement in negotiations would be required in every state. Management is opposed to a federal collective bargaining bill because it presents a challenge to the authority which they presently possess over matters relating to conditions of employment for teachers.¹¹

Patrick Hunt, writing for the Library of Congress Research Service, presents the following collective bargaining analysis:

Federal regulation of collective bargaining for state and local public employees is an area where action has been expected for some time, but because of the many controversies surrounding the issue, a consensus has not yet been reached. There were a number of bills introduced and hearings held on this subject in the 93rd and 94th Congresses. The two most controversial areas of legislation are the right to strike and the union security provisions.¹²

Two collective bargaining bills before Congress have been supported by national teacher organizations.¹³ Both proposals include every state in the process of collective bargaining as it relates to public employees.

¹¹John Mathews, "Now, a Federal Law on Teacher Bargaining?" Compact, 9, No. 1, (1975), 13-14.

¹²Hunt, op. cit., p. 1.

¹³Brough, op. cit., p. 2.

A brief overview of each bill is presented to provide a basis for studying similarities and differences between the two proposals.

H.R. 77 amends the National Labor Relations Act by striking out the language that excepts "any state or political subdivision thereof" from the definition of the term "employer".¹⁴ This amendment, introduced by Representative Frank Thompson, will permit labor relations in the public-sector to be placed under the same law that governs the private-sector at the present time. The National Education Association and the American Federation of Teachers now support the use of the National Labor Relations Act for Teachers.¹⁵ This may indicate adversary-type collective bargaining procedures. Therefore, H.R. 77 is the most significant bill at the present time, and it will not make any appreciable movement until the California court case is resolved, (See Appendix B).

The second bill, H.R. 1488, relates in many ways to the National Labor Relations Act.¹⁶ This proposal, known as the Roybal Bill, would establish a separate Federal commission to administer a labor-management relations program for state and local governments which would include wages, hours, and conditions of employment as bargainable issues. The right to strike is not outlawed in the Roybal Bill.¹⁷

Michael Brough, who has conducted extensive research into the proposed federal legislation, analyzes the similarities and differences in

¹⁴Ibid.,

¹⁵Jascourt, op. cit., p. 10.

¹⁶Brough, op. cit., p. 2.

¹⁷Hunt, op. cit., p. 4.

the two bills as they pertain to the National Labor Relations Act. The major similarities in the two bills include:

- (1) obligation on public employers to bargain (when requested to do so) with employee representatives in good faith over wages, hours and terms of employment;
- (2) the right to form, join, or assist employee organizations, free from interference, restraint, or coercion on the part of their employers;
- (3) protection of the right of employees to engage in 'other concerted activity' including strikes;
- (4) the establishment of a mechanism to determine the appropriate unit for bargaining and to test a union's claim that it represents the majority of employees in that unit;
- (5) enforcement of the collective bargaining contract could be obtained in federal court or in state court;
- (6) the facilities of the Federal Mediation and Conciliation Service would be made available to help unions and employers overcome bargaining impasses through the process of mediation.¹⁸

Federal collective bargaining procedures included in H.R. 77 and H.R. 1488 vary in content. The major differences between the two bills include the following comparisons:

- (1) H.R. 77 is more extensive in coverage and is included under the existing National Labor Relations Board;
- (2) H.R. 1488 would be regulated by the National Public Employee Relations Commission which would be established;
- (3) H.R. 1488 alone includes provisions pertaining to pre-existing state statutes. Collective bargaining provisions could not supersede state law pertaining to those issues;
- (4) the list of unfair labor practices submitted by unions would be less extensive under H.R. 1488.¹⁹

The American Association of School Administrators makes a comparison between proposed legislation at the national level and the Wagner Act.

¹⁸Hunt, op. cit., pp. 5-6.

¹⁹Ibid., p. 6.

Significantly, the private sector has been regulated by this Act for the past forty-one years.²⁰ If either bill is passed into law, the legislation would mandate that teachers in all fifty states would have the right to bargain in a collective manner.²¹

The American Association of School Administrators issues further opinions pertaining to the Wagner Act and the pending legislation:

The 1935 Act has been called American Labor's Bill of Rights. If the pending legislation now in the Congress were to be enacted, it is likely that it might be called Educational/Public Employees Bill of Rights.²²

Providing strength for congressional proponents of collective bargaining legislation is a Supreme Court decision, Fiberboard Paper Products Corporation v. National Labor Relations Board (1964).²³ In this decision, the Court stated that collective bargaining does not connote capitulation and that it has a very important function.²⁴ Ross Engel issues an additional view which was advocated by the Court:

The Court commented that although it is not possible to say whether a satisfactory solution can be reached, the national labor policy is founded upon a determination that the chances are good enough to warrant subjecting issues to the process of collective bargaining.²⁵

²⁰"Why Teachers Need a Federal Collective Bargaining Law", Today's Education, 65, No. 1, (1976), 80.

²¹American Association of School Administrators, Helping Administrators Negotiate (Arlington, Va., 1974), p. 1.

²²Ibid.

²³Fiberboard Paper Products Corporation v. National Labor Relations Board, 379 U.S. 203 (1964).

²⁴Engel, op. cit., p. 495.

²⁵Ibid.

The National Education Association and the American Federation of Teachers believe that passage of national collective bargaining legislation is a major priority for Congress.²⁶ Recent trends indicate that unions are united in their support of federal legislation, and the trend is toward the support of a slightly modified version of H.R. 77.²⁷

Although the National Education Association supports the inclusion of public employees under H.R. 77, it outlines a proposal of specific amendments to the National Labor Relations Act to resolve the most urgent issues. The following amendments are advocated by the National Education Association:

- (1) a well-defined impasse mechanism involving mediation, fact-finding, and the right of public employees to strike;
- (2) intervention by the federal courts to enjoin a strike if activities of the strike threaten the public health or safety;
- (3) inclusion of supervisors as public employees who have the right to bargain;
- (4) a policy that provides states with an incentive to enact their own bargaining laws by strengthening the present option of the National Labor Relations Board to delegate regulation of the process to a state which has enacted a statute substantially equivalent to the federal law;
- (5) recognition of present state laws dealing with traditionally bargainable items to continue in effect and that the states should be allowed to enact new laws as minimums.²⁸

Other modified versions of these bills are published in national journals (See Appendix C).

²⁶Jascourt, op. cit., p. 10.

²⁷Brough, op. cit., p. 7.

²⁸"Why Teachers Need a Federal Collective Bargaining Law", Today's Education, 65, No. 1, (1976), 80.

Proponents of the federal legislation on collective bargaining include Terry Herndon, Executive Secretary of the National Education Association; Jerry Wurf, President of the American Federation of State, County, and Municipal Employees; Albert Shanker, President of the American Federation of Teachers; and John Ryor, President of the National Education Association.

Jerry Wurf submits the following response in defense of collective bargaining legislation:

It simply isn't reasonable to ignore 11.5 million people, and state and local governments have had forty years to come up with something. That's time enough.²⁹

John Ryor responds to the subcommittee on Labor-Management Relations of the House Education and Labor Committee:

Much of the public employee unrest has been triggered by local and state governments which have turned deaf ears to employee concerns. Teachers are extremely frustrated by legislative inaction. They are pressing state and federal governments to enact a bargaining law. How much longer must we wait?³⁰

Albert Shanker indicates that the only alternative to collective bargaining is an unfree society:

Collective bargaining has never been sold as an ideal answer to anything, but it is the lesser of a number of evils that exist in the private sector and, in a somewhat modified form, in the public sector. Management and labor have to go through some sort of messy process to find a way of agreeing with each other for a period of time, and the only alternatives are unilateral determination by management--which leads to the imposition of the third party of his views. There are

²⁹National Education Association, "Collective Bargaining for All Teachers", The Reporter, 14, No. 2, (1975), 1-2.

³⁰National Education Association, "The Need Has Never Been Greater for a Federal Collective Bargaining Law for Public Employees", The Reporter, 14, No. 7. (1975), 4.

some differences in the public sector, but these are not adequate justification to abolish or modify the bargaining process. The notion, constantly stated, that in the public sector there is no profit motive is in a sense true. But in a sense it is irrelevant, because there is no question that the public employees bargain just as hard, if not harder, than the private employees.³¹

Robert H. Chanin, Deputy Executive Director and General Counsel for the National Education Association, maintains his support for federal legislation over public sector collective bargaining:

By the 1960's, public employees were actively seeking some measure of control over their working conditions, as reflected in demands for recognition and collective bargaining. Thus, putting the best possible construction on it, the states have had more than 15 years in which to devise workable solutions to the problem. We already have seen the result--a crazy quilt pattern of statute and nonstatute which fails to provide any meaningful legal protection for the greater portion of the public-sector work force...the more likely prognosis is that unless the federal government intervenes, the current chaotic pattern will continue, as will the denial of even minimal rights to millions of public employees.³²

Federal legislation governing collective bargaining continues to maintain a position of much controversy. Hearings on collective bargaining bills have been held in both chambers during the 93rd Congress.³³

In the 94th Congress, hearings have been held by the Labor/Management Relations Subcommittee of House Education and Labor Committee. Two days of hearings were held in November, 1975, on the Thompson Bill. The subcommittee may hold further hearings during the 1976 session of Congress,

³¹Albert Shanker, "Why Teachers Need the Right to Strike", Monthly Labor Review, U.S. Department of Labor, (Sept., 1973), p. 48.

³²Robert H. Chanin, "The Case for a Collective Bargaining Statute for Public Employees", Phi Delta Kappan, 57, No. 2, (1975), 98-99.

³³76 Update: Collective Bargaining in Education, p. 3.

but it is uncertain whether a bill will be reported to the full House for consideration.³⁴

There is considerable controversy among congressmen regarding the strike privileges provided in this legislation. There is concern that the right to strike would seriously disrupt services called for by public service employees such as teachers.³⁵ Therefore, it may be that any final bill reported from Committee would strike this provision but call for improved collective bargaining rights.

During the 1975 American Association of School Administrators Convention, Myron Lieberman, Consultant to the A.A.S.A. Employment Relations Commission, issued an objective opinion regarding teacher negotiations:

The teacher organizations will be pushing to regain protection of their state rights. By fighting against this, administrators could substantially 'blunt' the teacher effort. However, administrators should not be too ready to blame the teacher organizations for all the bad things that come from employee contracts. There is no such thing as a union contract. There is only a contract between the union and management. If these contracts are doing all those bad things to the kids that we keep hearing about, it might be time to take a look at management who agreed to them.³⁶

The battle lines over the issue of federal legislation are already clearly drawn. John Mathews identifies the major forces opposing a federal collective bargaining bill:

Opposing the National Education Association, American Federation of Teachers, and the American Federation of State, County, and Municipal Employees, are the mayors and governors,

³⁴Ibid.

³⁵Don Davies, "The People Want a Seat at the Bargaining Table", Compact, 9, No. 1, (1975), 14.

³⁶"Administrators Warned on Federal Bargaining Laws", A.A.S.A. Convention Reporter, (Dallas, Tx., 1975), pp. 26-27.

the U.S. Chamber of Commerce, the National Association of Manufacturers and the National School Boards Association.³⁷

Opponents of federal legislation are expressing concern over the passage of a national collective bargaining bill. James J. Kirkpatrick presents his dissenting opinions in a recent newspaper editorial:

If the pending legislative proposals are written into Federal law, we will have, for the first time, a national policy specifically authorizing trade unionism and collective bargaining on the part of government workers. Such a time-bomb policy should be rejected out of hand. The stakes are enormous. An estimated 14 million persons now are employed by government--3 million at the federal level, 11 million on state, county, and municipal payrolls.³⁸

Special concern is expressed over the union strength which would govern employees covered under the proposed legislation. Mr. Kirkpatrick indicates that these employees would lose individual identity and become nothing more than puppets who are manipulated at the discretion of the unions.³⁹ Mr. Kirkpatrick believes that governmental agencies are vested with the power to provide vital services to the American people. If these agencies must bargain in each state with unions, as advocated in the proposals, that power may be bargained away to organized labor.⁴⁰

Opponents such as Mr. Kirkpatrick refer to a survey to substantiate beliefs that nationwide collective bargaining legislation is detrimental:

A poll conducted by the Opinion Research Corporation in January, 1975, found overwhelming sentiment against compulsory unionism in government. Even among union members, a lopsided

³⁷Mathews, op. cit., pp. 13-14.

³⁸James J. Kirkpatrick, "Purring Unions Set to Pounce," Greensboro Daily News, (May 6, 1975), p. A-6.

³⁹Ibid.

⁴⁰Ibid.

majority is opposed. The National Governor's Conference strongly condemns Federal intervention. The Advisory Commission on Intergovernmental Relations urges protection of the right 'not to join'.⁴¹

Teachers should realize that collective bargaining is a give-and-take process.⁴² Legalization of a federal negotiations bill may produce concessions from teachers which would not occur without collective bargaining. To insure teachers of collective bargaining expertise, the National Education Association, American Federation of Teachers, and the state and local affiliates allocate massive resources annually for training, information, research, legal and other support service relating to collective bargaining.⁴³

Myron Lieberman offers the following observation as a warning to teacher organizations:

Teachers have said repeatedly that they want to be the same as the private sector, so take all their state benefits and make them win what they can at the negotiating table. If they want to live by the sword, let them die by the sword, too.⁴⁴

Mr. Lieberman also indicates that superintendents and principals should be paying more attention to the drive for nationwide bargaining laws because these administrators may open wide divisions of loyalties in many districts. It is not going to be a situation in which management is all on one side and the employees on the other.⁴⁵

⁴¹Ibid.

⁴²American Association of School Administrators, Helping Administrators Negotiate, p. 2.

⁴³Ibid., p. 1.

⁴⁴"Administrators Warned on Bargaining Laws", op. cit., p. 26.

⁴⁵Ibid.

A federal bargaining law will inevitably result in a new balance of power between public management and public-employee unions. If the balance is a poor one, state and local public managers will have to clean up the mess as best they can.⁴⁶

Opponents of collective bargaining cite the Broward County case in Florida, among others, as reasons for their opposition to the issue.⁴⁷ Guy Fleming, Jr., President of the Georgia School Boards Association, believes that collective bargaining laws have been very disruptive of the schools. The issue will come down to who is going to run the schools-- the elected school board or the teachers.⁴⁸

Don Davies, a former United States Deputy Commissioner of Education, weighs the positive and negative consequences of negotiations. Mr. Davies briefly summarizes the favorable and unfavorable issues at stake in the proposed federal bargaining laws.

Proponents of federal legislation feel that passage is imperative because:

- (1) the civil service system has failed to meet the needs of public employees;
- (2) federal protection of education employees is a logical extension of the government's already considerable role in education;
- (3) collective bargaining can help improve education administration;
- (4) strikes by public employees affect the entire nation, requiring federal legislation to avert disputes that would burden interstate commerce.⁴⁹

⁴⁶Myron Lieberman, "Neglected Issues in Federal Public Employee Bargaining Legislation", Phi Delta Kappan, 57, No. 2 (1975), 104.

⁴⁷"School Dispute Here Reflects Trend", The Atlanta Constitution, (October 25, 1975), p. A-13.

⁴⁸Ibid.

⁴⁹Davies, op. cit., p. 14.

Opponents of federal legislation indicate that collective bargaining may produce negative results because of the following reasons:

- (1) public employees should not have the right to strike;
- (2) taxes would have to be increased to pay for collective bargaining demands;
- (3) collective bargaining by state employees is an area for state control, not the federal government;
- (4) the merit system would disappear under collective bargaining;
- (5) if citizens are the 'employers' of public employees, who will represent the citizens in bargaining?⁵⁰

The national trend among public school teachers is one of increased militancy, demanding a voice in determining the conditions of their employment.⁵¹ The trend in the latter part of the decade of the seventies may focus on the push for increased legislation to provide for new concessions in pay and working conditions.

W. J. Usery, Jr., newly-appointed Secretary of Labor, is alarmed at the potential for conflict in upcoming public-employee talks.⁵² The combination of inexperienced negotiators and the flexibility of negotiations laws from state to state could result in chaos.⁵³ Mr. Usery also believes that the proposed legislation presents a national peril because public-employee strikes are growing in number, and that cities and states are not prepared to meet their demands.⁵⁴

⁵⁰Ibid.

⁵¹"Why Teachers Need a Federal Collective Bargaining Law", op. cit. p. 79.

⁵²"Big Drive Ahead for Pay Raises", U.S. News and World Report, January 5, 1976, p. 62.

⁵³Ibid.

⁵⁴Ibid.

With the prospect of increased teacher unrest, leaders of teacher organizations and representatives of school boards are intensifying their efforts of researching available legal and procedural information which may provide a more constructive method of negotiating.⁵⁵ To illustrate an example, when negotiations are legalized in a state which presently prohibits collective bargaining in the public sector, teacher organizations and school boards may be able to profit by the positive and negative experiences in other states which have been involved with negotiations for several years.

The National Labor Relations Act defines the obligation of bargaining as meeting at reasonable times and conferring in good faith with respect to wages, hours, and other terms and conditions of employment.⁵⁶ Many states have incorporated this definition in their scope of bargaining provisions, (See Appendix A).

Federal bargaining legislation may open a Pandora's box of conflicting interests. Under mandatory collective bargaining at the national level, all conditions of employment may be subjected to negotiations.⁵⁷ The issue of existing state laws is being studied closely by Congress. One solution is for Congress to exempt certain categories of existing state laws.

⁵⁵American Association of School Administrators, Helping Administrators Negotiate, (Arlington, Va., 1974), p. 2.

⁵⁶William F. Kay, "The Need for Limitation Upon the Scope of Negotiations in Public Education, II", Journal of Law and Education, 2, No. 1, (1973), 156.

⁵⁷Hugh D. Jascourt, Public Sector Labor Relations, (Lexington, Kentucky: The Council of State Governments, 1975), p. 10.

John Mathews believes that the exemption of certain categories of existing state laws may not be the ultimate solution. The following example substantiates this opinion:

If the state retirement or tenure laws, for example, were exempted across the board, teachers in states with what they consider good laws would be delighted. Those seeking to better retirement or tenure statutes would oppose the exemption and possibly take a stand against any national law with that provision.⁵⁸

State Legislation

At the present time, most states have included provisions in collective bargaining statutes which exempt certain categories of state statutes from the negotiations process.⁵⁹

Before approving a collective bargaining bill, legislative representatives should understand the constant balance of power that is at stake in the collective bargaining process. Herring and Rossetti present viewpoints which pertain to the balance of power in negotiations:

There is an interrelationship between the teachers and the school board, or their representatives, and their parent groups; between teachers and their association, or union; and between the school board and the public. At the same time, there is a firm commitment to the education of the children and the community. Allegiance to both the parent group and the children is analogous to the allegiance that management has to keep the company functioning on a competitive basis. The phenomenon of allegiance to both the union and the company has been discussed in the psychological literature under the concept of 'dual allegiance' and empirical data have been gathered showing its existence. The question

⁵⁸Mathews, *op. cit.*, p. 15.

⁵⁹John H. Metzler, "The Need for Limitation Upon the Scope of Negotiations in Public Education, I", Journal of Law and Education, 2, No. 1, (1973), 139.

of 'dual allegiance' may lead to conflict within the negotiations setting.⁶⁰

Local boards of education must remember that they presently possess the authority to manage the school system.⁶¹ Arbitrators in several other states indicate that unless management specifically retains its right through provisions in the negotiated agreement, management is required to bargain for specified changes.⁶²

Raymond Glime issues a warning to members of local school boards:

The one thing that no responsible school board can bargain away is its right to manage. The board, not the teachers, is the employer. The board, not the teachers, runs the schools.⁶³

At the present time, each state has its own legislative requirements as to whether collective bargaining is mandatory between teachers and school boards, or whether it is conducted on a meet-and-confer basis, (See Appendix A). Examples are presented to show that although some states continue to operate under general provisions, other states modify their provisions to include specific items in the collective bargaining statutes.

Under a public employee bargaining law which became effective on July 1, 1974, teachers in Massachusetts may engage in collective

⁶⁰Donald J. Herring and Andrew D. Rossetti, "A Structured Plan for Negotiations", A.A.S.A. Academy for School Executives, (1975), p. 1.

⁶¹Raymond G. Glime, Bargaining With Teachers: The Things The Board Should Demand, (June, 1971), p. 23. (Presented at the A.A.S.A. National Academy for School Executives, Asheville, N.C., June, 1975).

⁶²Metzler, op. cit., p. 139.

⁶³Glime, op. cit., p. 23.

bargaining.⁶⁴ General provisions pertaining to the scope of bargaining are defined in the state public employee bargaining law.

Chapter 1078 of the Massachusetts Public Employee Bargaining Law defines the scope of the bargaining in Section 2:

Employees shall have the right to self-organization and the right to form, join, or assist any employee organization for the purpose of bargaining collectively through representatives of their own choosing on questions of wages, hours, and other terms and conditions of employment and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection, free from interference, restraint, or coercion.⁶⁵

Similar legislation includes public school teachers in the State of Michigan. The Michigan Public Employment Relations Act, amended in 1965 from the Hutchinson Act,⁶⁶ requires that the appropriate bargaining unit give public employees full rights to organize, to bargain collectively, and to effectuate the policies of the Act.⁶⁷

Section 15 of the Act includes the following provisions:

The duty of a public employer to bargain includes his obligation to meet at reasonable times 'and to confer in good faith with respect to wages, hours, and other terms and conditions of employment'.⁶⁸

⁶⁴ A Guide to the Massachusetts Public Employee Collective Bargaining Law, (Institute for Government Services--Institute for Labor Affairs, 1975), p. 6.

⁶⁵ Ibid., pp. 23-24.

⁶⁶ Michigan Department of Labor, Annual Report, Vol. 9 (Jan. 1975), p. 153.

⁶⁷ Hyman Parker, Michigan Public Employment Relations Act and Procedures, Rev. 3rd ed; No. 1; Michigan State Univ., 1975), p. 14.

⁶⁸ Ibid., p. 17.

In contrast to Massachusetts and Michigan, the State of California has amended the statutes to include specific items in the collective bargaining law. This state had passed a general provision referred to as the Winton Act.⁶⁹ The Act provided coverage for both certificated and classified employees in public school districts. The Winton Act has now been superseded by the Rodda Act.⁷⁰ As of July 1, 1976, the Rodda Act repeals the Winton Act and governs wages, hours, and seven other terms and conditions of employment which are defined in the Act.⁷¹

Section two of the Rodda Act follows:

...specifically that the scope of representation is limited to wages, hours of employment, specified health and welfare benefits, leave and transfer policies, safety conditions of employment, class size, employee evaluation procedures, and grievance processing procedures.⁷²

The courts have rendered decisions which have had a significant impact on collective bargaining in several states. A decision issued by the New York State Court of Appeals on March 16, 1972, left the door almost wide open as to what has to be negotiated in that state. In *State of New York v. Associated Teachers of Huntington, Inc.* (1972),⁷³ the Court ruled that any matter connected with terms and conditions of employment is classified as a negotiable issue unless some state statute

⁶⁹Summary of State Policy Regulations for Public-Sector Labor Relations, (Washington: U.S. Department of Labor, 1975), p. 1.

⁷⁰S.160 Calif., ch. 961, p. 1.

⁷¹Ibid.

⁷²Ibid.

⁷³Board of Education of Union Free School District No. 3 of the Town of Huntington v. Associated Teachers of Huntington, N.Y. 2nd 122, 331 N.Y.S. 2nd 17, 282 N.E. 2nd 109 (1972).

prohibits the parties from bargaining over it.⁷⁴

The Court decision identifies some specific items which are open to mandatory negotiations:

- (1) board reimbursement for costs of replacing teachers glasses, dentures, etc., lost or damaged through the course of employment;
- (2) reimbursement for loss or damage to clothing or other personal effects, except automobiles;
- (3) reimbursement of fifty percent of tuition or costs for outside courses related to teachers assigned subjects;
- (4) arbitration of disputes arising over the discipline or discharge of tenure teachers.⁷⁵

Since state statutes charge local school boards with the managerial responsibilities of public schools, school board representatives generally oppose the passage of mandatory collective bargaining legislation.⁷⁶ Representatives view this type of legislation as a possible threat to the authority which they presently possess.

The Nebraska Supreme Court refers to the term "conditions of employment" in School District of Seward Education Association v. School District (1972).⁷⁷ The court indicated that management prerogative prevails over the right to hire; to maintain order and efficiency; to schedule work; to control transfers and assignments; to determine the extent of extracurricular activities, and to determine the curriculum, class size,

⁷⁴Hugh D. Jascourt, "The Scope of Negotiations in Public Education: Overview", Journal of Law and Education, 2, No. 1, (1973), 143.

⁷⁵Ibid., p. 144.

⁷⁶John Mathews, "Now, a Federal Law on Teacher Bargaining?", Compact, 9, No. 1, (1975), 13-14.

⁷⁷School District of Seward Education Association v. School District, 199 N.W. 2nd 752, (Nebraska, 1972).

and types of specialists to be employed.⁷⁸

Negotiations may be a power struggle between those vested with authority and the recipients of this vested authority. Herring and Rossetti believe that the function of negotiations, particularly as it relates to public education, is the resolution of differences between labor and management.⁷⁹

Tom James, Associate Director of Communications for the Education Commission of the States, illustrates the flexibility contained in present state statutes governing collective bargaining:

State laws are by no means unanimous...Washington's law specifies that school authorities must meet and confer with teachers regarding salaries, curriculum, textbooks, in-service training, student teaching, noninstructional duties, and a number of personnel policies. Maine's law says merely that teachers and school authorities must meet and confer on educational policies...several states model their scope-of-bargaining provisions on the federal statute covering private-sector bargaining, which allows bargaining on wages, hours, and other terms and conditions of employment. Provisions of this type are usually interpreted to exclude education policy. Other states include under bargaining such things as any mutually agreed-to matter (Kansas), items affecting the performance of professional services (Oklahoma), and anything not in conflict with other statutes (Vermont). Oregon law permits bargaining on matters of direct and indirect monetary benefits to employees.⁸⁰

The activity, rate of change, and nature of labor relations developments in the public sector since 1972 have been so staggering that they

⁷⁸NOLPE School Law Reporter, 13, No. 3, (1973), 28.

⁷⁹Donald J. Herring and Andrew D. Rossetti, "A Structured Plan for Negotiations", A.A.S.A. Academy for School Executives, (1975), p. 1.

⁸⁰Tom James, "The States Struggle to Define Scope of Teacher Bargaining", Phi Delta Kappan, 57, No. 2, (1975), 95.

are equivalent to at least a decade of private-sector labor relations.⁸¹ To illustrate this point, a brief summary of import changes in collective bargaining regulations for public school teachers on a state-by-state basis is presented in Table II for the 1973, 1974, and 1975 calendar years.

The year 1973 brought major changes in negotiations regulations in many states. The most significant changes were the greater acceptance of comprehensive laws covering public employees, the limited right to strike, and the establishment of some form of agency shop. Statutorily authorized bargaining for state employees was implemented in Illinois, and for teaching personnel in Indiana. Montana granted collective bargaining rights to teachers and established procedures to negotiate agency shop. Oregon amended its existing negotiations law and permitted a limited right to strike. Massachusetts also amended its negotiations law and established a new provision enabling certain statutory provisions and personnel policies to be subject to negotiations. Minnesota changed its law to permit a limited right to strike, and Vermont rewrote its collective bargaining law. South Dakota's amendments included a reduction in strike penalties.⁸²

The enactments in 1974 included the adoption of a comprehensive negotiations law for the states of Iowa and Florida. Both laws, effective in 1975, contained a strong management rights clause, a prohibition against agency shop, and antistrike provisions. Maine established

⁸¹Hugh D. Jascourt, Public Sector Labor Relations, (Lexington, Kentucky: The Council of State Governments, 1975), p. 1.

⁸²Ibid.

TABLE II
STATES AFFECTED BY MAJOR COLLECTIVE BARGAINING LEGISLATION IN
1973, 1974, 1975

<u>State and Year</u>	<u>Legislation</u>
Illinois (1973)	Authorized Bargaining Legislation
Indiana (1973)	Authorized Bargaining Legislation
Montana (1973)	Authorized Bargaining Legislation
Oregon (1973)	New Comprehensive Legislation
Massachusetts (1973)	New Comprehensive Legislation
Minnesota (1973)	Enacted Strike Provision
Vermont (1973)	Enacted Strike Provision
Florida (1974)	New Comprehensive Legislation
Iowa (1974)	New Comprehensive Legislation
Maine (1974)	Authorized Bargaining Legislation
Connecticut (1975)	New Comprehensive Legislation
New Hampshire (1975)	Revised Bargaining Legislation
Indiana (1975)	Revised Bargaining Legislation
Montana (1975)	Revised Bargaining Legislation
California (1975)	Revised Bargaining Legislation
Ohio (1975)	Revised Bargaining Legislation
Iowa (1975)	Revised Bargaining Legislation

'76 Update: Collective Bargaining in Education, (Department of Research and Information Services and Department of Higher Education Services, January, 1976).

collective bargaining rights for state employees, including public school teachers.

In 1975, one of the busiest legislative sessions in American history over public-sector collective bargaining occurred.⁸⁴ Over 300 bills were considered on collective bargaining. Approximately 120 of these bills were fairly comprehensive proposals for at least one sector of educational personnel.⁸⁵ Fourteen bills would have curtailed the scope of bargaining, while ten would have expanded the negotiable issues contained in the state statutes.⁸⁶ Over forty states considered collective bargaining bills, and several other debated proposals to modify their existing provisions.⁸⁷ As of January, 1976, thirty-one states had collective bargaining or mandatory meet-and-confer laws for educational personnel, while thirteen states permitted collective bargaining without mandatory provisions contained in their state statutes, as indicated in Table III. Mississippi, South Carolina and Wyoming have no state statutes which govern the issue, and collective bargaining for public school teachers is prohibited in North Carolina, Texas, and Tennessee.⁸⁸

⁸³Ibid., p. 9.

⁸⁴76 Update: Collective Bargaining in Education, (Department of Research and Information Services and Department of Higher Education Services, January, 1976), p. 1.

⁸⁵Ibid.

⁸⁶Ibid.

⁸⁷Tom James, "The States Struggle to Define Scope of Teacher Bargaining", Phi Delta Kappan, 57, No. 2, (1975), 95.

⁸⁸Summary of State Policy Regulations for Public-Sector Labor Relations, (Washington: U.S. Department of Labor, 1975), pp. 73, 95, 96.

TABLE III
STATES WITH NO MANDATORY COLLECTIVE BARGAINING LAWS COVERING
EDUCATIONAL PERSONNEL

Alabama	Louisiana
Arizona	New Mexico
Arkansas	Ohio
Colorado	Utah
Georgia	Virginia
Illinois	West Virginia
Kentucky	

STATES WITH NO COLLECTIVE BARGAINING PROVISIONS

Mississippi

South Carolina

Wyoming

STATES WHICH PROHIBIT COLLECTIVE BARGAINING FOR EDUCATIONAL
PERSONNEL

North Carolina

Tennessee

Texas

(Summary of State Policy Regulations for Public Sector Labor Relations, U.S. Department of Labor, 1975)

During 1975, new laws in five states extended collective bargaining rights to include public school teachers.⁸⁹ Connecticut's law extends to state employees the right of collective bargaining and adds additional provisions to the 1965 law.⁹⁰ Included in the new statute were requirements for binding arbitration, no-strike clause, and agency shop clause. New Hampshire amended its 1969 negotiations law to include mediation and fact-finding procedures.⁹¹ Indiana incorporated a collective bargaining law to include impasse resolution mechanisms.⁹² Montana passed a negotiations law which included all public school teachers.⁹³ California amended its collective bargaining legislation to replace the Winton Act with the Rodda Act. Legislation in Ohio and Iowa provided for amendments in existing negotiation laws.⁹⁴

Six states failed to implement comprehensive collective bargaining legislation.⁹⁵ These states were Colorado, California, New Mexico, North Carolina, Utah, and Washington.

Although several states have specifically defined the scope of bargaining for public school teachers, an example of such implementation is

⁸⁹State Government News, (The Council of State Governments, Vol. 18, No. 8, August, 1975), p. 2.

⁹⁰Ibid.

⁹¹Ibid.

⁹²Ibid.

⁹³'76 Update: Collective Bargaining in Education, pp. 28-29.

⁹⁴State Government News, (The Council of State Governments, Vol. 18, No. 8, August, 1975), p. 2.

⁹⁵Ibid.

the State of Nevada. The Local Government Employee-Management Relations Act governs the collective bargaining rights of public school teachers in Nevada.⁹⁶

Chapter 288.150, which delineates what matters are the subject of collective bargaining, was markedly altered by the 1975 session of the Nevada Legislature.⁹⁷ Under the prior provisions, any matter significantly related to wages, hours, and conditions of employment was a mandatory subject of negotiation. Under the new provisions, the areas that are the mandatory subject of negotiation have been specifically delineated and carefully circumscribed. According to Sally Davis, Commissioner of the Local Government Employee-Management Relations Board, this change in Chapter 288.150 is the most significant "trend" in the Nevada collective bargaining law in recent years. Issues such as salaries, sick leave, insurance, work hours, and dismissal procedures are contained in the new Nevada statute, (See Appendix D).

Legislative trends in other states appear to advocate the establishment of clauses within the collective bargaining agreements which grant public employees a stronger position at the bargaining table. Binding arbitration is a controversial issue which is sought by many teacher organizations to be included in legislative proposals.⁹⁸

Several states which had previously enacted collective bargaining legislation have begun to evaluate their existing negotiations laws to

⁹⁶ Local Government Employee-Management Relations Act, Chapter 288.150, (Nevada, 1975), p. 9597.

⁹⁷ '76 Update: Collective Bargaining in Education, pp. 30-31.

⁹⁸ "Not Enough Money to Go Around", Compact, 10, No. 1, (1976), 14-19.

determine the strengths and weaknesses contained within the statutes. Legislative committees are sometimes created to implement the evaluation.⁹⁹

An example of the effectiveness of the evaluation procedure is illustrated by recent findings in the State of Pennsylvania. In 1970, the Pennsylvania Legislature implemented formalized collective bargaining in the public sector with the enactment of Act 195, the Public Employee Relations Act.¹⁰⁰ A legislative committee concluded in 1974 that the Act was generally working well. In November, 1974, the Special Joint Committee to Study Act 195 ended its 21-month study and released its report recommending no changes in the Act.¹⁰¹

Continuous study of negotiation laws in other states have produced changes in certain provisions contained within the statutes. The State of New York has recently amended its collective bargaining law as it pertains to teachers. The Taylor Law was enacted on September 1, 1967, and was the first comprehensive labor relations law for public employees in New York state.¹⁰² In 1971, the law was amended to exclude management from the bargaining provisions.¹⁰³ In 1974, the Taylor Law was amended

⁹⁹Pennsylvania Labor Relations Board Report, Vol. 38, Harrisburg, Pennsylvania, (1975), p. 1.

¹⁰⁰Pennsylvania Labor Relations Board Report, Vols. 34, 35, 36, 37, Harrisburg, Pennsylvania, (September 18, 1974), p. 1.

¹⁰¹Pennsylvania Labor Relations Board Report, Vol. 38, Harrisburg, Pennsylvania, (1975), p. 2.

¹⁰²What is the Taylor Law? (New York State Public Employment Relations Board, 1974), p. 7.

¹⁰³Ibid.

to eliminate the legislative hearing from school district impasse procedures.¹⁰⁴

The state of Michigan amended Section Ten of the Public Employment Relations Act effective June 14, 1973.¹⁰⁵ The new provision, entitled Act 25 of the Public Acts of 1973, authorized an agency shop provision which required that all employees in a bargaining unit pay the exclusive bargaining representative a fee equivalent to the amount of dues uniformly required of members of the bargaining representatives.¹⁰⁶

In 1975, the Hawaii Legislature made significant changes in their negotiations law. Barbara Stanton, Research Analyst for the Hawaii Public Employment Relations Board, indicated that the Hawaii Revised Statutes, which govern collective bargaining for public school teachers, implemented the deferral concept by which employees could defer incremental and longevity increases in any fiscal year a change in the salary schedule is made. The legislature also passed into law a common expiration date for all contracts in the public sector.

Pre-existing Conditions

An important trend in the collective bargaining process is the increased concern over pre-existing employment laws, rules, and regulations.¹⁰⁷ Prior to the advent of collective bargaining, public school

¹⁰⁴Ibid.

¹⁰⁵Hyman Parker, Michigan Public Employment Relations Act and Procedures, Rev. 3rd ed; No. 1; Michigan State Univ., 1975), p. 15.

¹⁰⁶Ibid.

¹⁰⁷Ross A. Engel, "Teacher Negotiation: History and Comment", Journal of Law and Education, 1, No. 3, (1972), 492.

teachers in all states were governed by rules and regulations as set forth in state and local law. With the emergence of negotiations, immediate conflicts resulted in states which had no provisions incorporated in a collective bargaining agreement of pre-existing statutes.

An example of conflicts which may result is noted in the case Kerrigan v. City of Boston (1972).¹⁰⁸ The school committee and the teachers had previously negotiated over a trust fund which had been incorporated in the state law. Because this item was governed by state statutes, the city of Boston refused to make payment. Their argument was that items covered under pre-existing statutes could not be subjected to collective bargaining. However, the Massachusetts Supreme Judicial Court ordered payment because it interpreted the trust fund benefits to be wages which were subject to mandatory bargaining. Other decisions in Michigan and New York have upheld similar rulings over pre-existing conditions.¹⁰⁹

As a result of rulings such as these, it may be advantageous for states which have not implemented collective bargaining legislation to seriously consider incorporating in their collective bargaining statutes a provision which governs pre-existing conditions. With this provision spelled out in the negotiations agreement, lengthy delays due to interpretations over this issue in the bargaining process may be avoided.

¹⁰⁸Kerrigan v. City of Boston, 278 N.E. 2nd 387 (Mass., 1972) LLR 68, 617.

¹⁰⁹William F. Kay, "The Need for Limitation Upon the Scope of Negotiations in Public Education, II", Journal of Law and Education, 2, No. 1, (1973), 161-164.

Ross A. Engel indicates that employers are not usually required to negotiate over matters outside their authority:

It is significant that the United States Supreme Court recognized that a party cannot be forced to bargain on certain matters over which neither party has jurisdiction or control. This principle answers objections of those who argue that public employee bargaining is blocked by statutes which may impose budget limitations, by such things as state salary laws and state tenure, retirement and pension laws.¹¹⁰

Anti-Collective Bargaining Movement

There is a movement in several cities throughout the nation to curtail the growing union power within their municipalities.¹¹¹ Public employees, including public school teachers, are being attacked by politicians for what they regard as unreasonable wage demands, pension abuses and poor job performance.¹¹² Congressional leaders are slowing their support for federal bargaining legislation for public employees due, in part, to hardships encountered in cities such as New York, Chicago, San Francisco, Seattle, Washington, and Pittsburgh over rising costs for public employee benefits.¹¹³

One example of public employee unrest is illustrated in the city of Chicago. The only city union that has won collective bargaining rights--The Chicago Teachers Union--is now facing the wrath of citizen groups,

¹¹⁰Engel, op. cit., p. 493.

¹¹¹"Backlash Against City Workers", U.S. News and World Report, Dec. 22, 1975, p. 31.

¹¹²Ibid.

¹¹³James W. Singer, "Labor Report/Outlook for Public Employee Bargaining Rights Appears Dim", National Journal Reports, 1975, p. 1147.

partly as a result of a strike in the fall of 1975.¹¹⁴ A citywide group called the Parents' Union has been established to make both the school board and teachers more accountable to taxpayers.¹¹⁵ Many cities believe that teachers in Chicago are getting too much power over school boards.¹¹⁶

Another example of citizen unrest is in the city of Pittsburgh. A prolonged teacher strike beginning in December, 1975, and extending into 1976 has resulted in citizen concern over the added hardships and interruption of the educational process placed upon students and parents.¹¹⁷ Also, there is a concern over increased benefits for teachers at the expense of the tax-paying public.

When the national economy was expanding each year, most agencies could bear the burden of added salary and fringe benefits for public school teachers. With the recession of the mid-seventies, increased teacher salaries and fringe benefits appear more difficult to obtain.¹¹⁸

National Trends Which Affect North Carolina

Having analyzed the prevailing national trends relating to collective bargaining for public school teachers, the effects of these trends are related to the present situation in North Carolina which involves public school teachers. Many of the national trends which have been

¹¹⁴"Backlash Against City Workers", U.S. News and World Report, Dec. 22, 1975, p. 32.

¹¹⁵Ibid.

¹¹⁶Ibid., pp. 32-33.

¹¹⁷Ibid., p. 32.

¹¹⁸"Municipal Unrest", Greensboro Daily News, Feb. 1, 1976, p. B-4.

discussed are becoming evident in several urban areas throughout North Carolina.¹¹⁹ Although the militancy over these issues is relatively small when compared to other areas of the nation, the explosiveness of such issues may continue to intensify in the near future.¹²⁰

Support for collective bargaining legislation in North Carolina is indicated by the increased organizing efforts of teacher organizations.¹²¹ The American Federation of Teachers and the National Education Association strongly support a negotiations bill and advocate a bargaining position over wages, work hours, and other conditions of employment.¹²² The American Federation of Teachers has organized in Greensboro, Guilford County, High Point, Winston-Salem/Forsyth, Charlotte/Mecklenburg, and Transylvania County School Units.¹²³ Moreover, the American Federation of Teachers is continuing to organize chapters within local school districts in North Carolina and to strive for better working conditions for teachers.¹²⁴

The majority of public school teachers belongs to the North Carolina Association of Educators. 47,600 employees held membership in this

¹¹⁹"Municipal Unrest", Greensboro Daily News, February 1, 1976, p. B-4.

¹²⁰Ibid.

¹²¹Brent Hackney, "NCAE Chief Scoffs at Teachers' Union", Greensboro Daily News, September 28, 1975, p. A-6.

¹²²The North Carolina AFT-Teacher, Vol. 1, No. 2, (1976), p. 1.

¹²³The North Carolina AFT-Teacher, Vol. 2, No. 1, (1976), p. 2.

¹²⁴Ibid.

organization as of January 1, 1976.¹²⁵ The increased involvement of the National Education Association's affiliate, the North Carolina Association of Educators, and the American Federation of Labor-Congress of Industrial Organizations affiliate, the American Federation of Teachers, is apparent in their organizational efforts in conducting collective bargaining workshops to push for legalized negotiations.¹²⁶

The following editorial indicates the interest of the North Carolina Association of Educators in the techniques of negotiations:

A small corps of educators from across the state has been enlisted and trained in methods of organizing local teachers and working for collective bargaining as a campaign for professional negotiating rights by the North Carolina Association of Educators moves into high gear.¹²⁷

The American Federation of Teachers, through its political organization, C.O.P.E. (Committee on Political Educational), is seeking to promote similar objectives in regards to the collective bargaining issue.¹²⁸ Increasing involvement at the local, state and national levels of government may be evident in the near future.

The teachers' organizations in North Carolina are becoming more vocal in their demands for some type of collective bargaining legislation.¹²⁹ A significant issue in the American Federation of Teachers'

¹²⁵North Carolina Education, (February, 1976), p. 25

¹²⁶"North Carolina Teachers Organizing", The Greensboro Record, March 25, 1975, p. A-13.

¹²⁷Ibid.

¹²⁸The North Carolina AFT-Teacher, 1, No. 2, (1975), 1.

¹²⁹Brent Hackney, "NCAE Chief Scoffs at Teachers' Union", Greensboro Daily News, September 28, 1975, p. A-6.

legislative program is the passage of a national collective bargaining bill for public employees.¹³⁰ The passage of such a bill would eliminate the need for establishing a collective bargaining bill designed specifically for public school teachers because the bill would extend National Labor Relations Board coverage to North Carolina Public School Teachers.¹³¹

The North Carolina American Federation of Teachers further defines its goal as it relates to negotiations:

Recognition of the right of teachers and other non-supervisory educational employees to negotiate written agreements with their school boards through organizations or their own choice. Such agreements should cover salaries, fringe benefits, working conditions, and all other matters of interest to teachers. They should include strong grievance procedures for enforcement of the terms of the agreement and for the elimination of inequities suffered by individuals.¹³²

The North Carolina Association of Educators advocates the viewpoint of the National Education Association toward federal collective bargaining legislation.¹³³ Claude Ferrell, Assistant Executive Secretary of the Association, offers the following opinion on preparation for collective bargaining in North Carolina:

It is only reasonable that we should seek to prepare the employees so they might more effectively participate in professional negotiations with their local school boards,

¹³⁰Ibid.

¹³¹"President and Executive Director Attend Nevada Convention", The North Carolina AFT-Teacher, 1, No. 2, (1975), 1.

¹³²Ibid.

¹³³Glenn Keever, "P.N. Has Been a Long Time Coming", North Carolina Education, (Raleigh: North Carolina Association of Educators, (1975), p. 14.

who are well prepared to handle negotiations from the employer's viewpoint.¹³⁴

According to personnel directors in large administrative units, a growing unrest between teacher organizations and governmental agencies appears to be increasing in North Carolina. Teacher militancy throughout the state is on the increase.¹³⁵

Glenn Keever, editor for North Carolina Education, responds to the reasons leading to the teacher unrest:

A great deal of the unrest is directly traceable to an anachronistic state law which prohibits governmental units from effectively negotiating or bargaining with their employees. Designed to reinforce the almost hysterical anti-union sentiment of the state's business and political community, the law is clearly unenforceable in the fact of a united public employee group.¹³⁶

Some observers believe that recent concessions to public employees in other areas of the nation may affect the concerns of teachers in North Carolina. A recent editorial substantiates this sentiment:

In the past both law and custom worked against employee militancy, especially when good economic times yielded fat city and state pay hikes. But the recession, and the erosion of employee organizational loyalty in general, has changed all that. It is impossible to pinpoint the precise arrival of public employee consciousness in North Carolina. Some observers trace it back to the wave of sanitation strikes in Charlotte, Miami, New York, and other cities several years ago. But most single out the successful municipal strike in San Francisco this summer, in which striking police and firemen pried a whopping 13 per cent pay raise from a timid city council and mayor.¹³⁷

¹³⁴"North Carolina Teachers Organizing", The Greensboro Record, March 25, 1976, p. A-13.

¹³⁵North Carolina Education, (February, 1976), p. 32.

¹³⁶Ibid.

¹³⁷Editorial, Greensboro Daily News, February 1, 1976, p. B-4.

Collective bargaining laws in other states have provided public school teachers with an instrument to negotiate for increased salaries.¹³⁸ Therefore, higher salaries may be achieved by legalizing bargaining in North Carolina. At the present time, teachers are frustrated because they do not have an opportunity to negotiate for an increase in salaries.¹³⁹

Dean B. Westmoreland, President of the North Carolina Association of Educators' Board of Directors, believes that teachers are restless and that this is traceable to the fact that there was no salary increase from the last General Assembly.¹⁴⁰ Mr. Westmoreland indicates that the continuing inflationary spiral greatly affects the ability of Tar Heel teachers to keep up with personal financial responsibilities.¹⁴¹

The Legislative Commission of the North Carolina Association of Educators is organizing a lobbying effort for the next session of the General Assembly.¹⁴² Local unit presidents and local unit legislative chairpersons are training for the most intensive lobbying effort in the Association's history. The primary goal is to make salary increases for teachers and other state employees a reality.¹⁴³

¹³⁸Ross A. Engel, "Teacher Negotiation: History and Comment", Journal of Law and Education, 1, No. 3, (1972), 487.

¹³⁹"Teacher Unrest is on Increase", N.C.A.E. News Bulletin, (Raleigh: North Carolina Association of Educators, October, 1975), p. 1.

¹⁴⁰Ibid.

¹⁴¹Ibid.

¹⁴²Brent Hackney, "NCAE Chief Scoffs at Teachers' Union", Greensboro Daily News, September 28, 1975, p. A-6.

¹⁴³"Teacher Unrest is on Increase", N.C.A.E. News Bulletin, (Raleigh: North Carolina Association of Educators, October, 1975), p. 1.

To obtain a better understanding of the present teacher unrest in North Carolina, past legislative actions must be considered. Events in the past ten years which have been significant factors in employment conditions are emphasized.

In 1967, teacher unrest was surfacing because of low salaries throughout the state.¹⁴⁴ Mass rallies and other scattered protests were held in many areas of North Carolina. A ten percent salary increase for the 1967-68 school year and another ten percent increase in 1968-69 eased the unrest until 1971.¹⁴⁵ At that time, more than 2,000 teacher gathered in Raleigh to protest a budget proposal which did not include financial appropriations for teachers.¹⁴⁶ Increased political involvement was noticeable during the 1973 General Assembly.¹⁴⁷ Although a collective bargaining bill was not introduced, noticeable gains such as extended term of employment, a mandatory class size limit, salary improvements, kindergarten expansion, and vast improvements in fringe benefits were implemented for teachers.¹⁴⁸ Although teacher salaries in North Carolina had advanced to eighteenth in the nation, the 1975 General Assembly did not produce any increase in teacher pay. Failure of the General Assembly to provide a pay increase, along with growing inflation and the absence of collective bargaining legislation, again produced increased teacher

¹⁴⁴"Teacher Strike?" North Carolina Education, (November, 1975), p. 32.

¹⁴⁵Ibid.

¹⁴⁶"PACE Unlocks Political Doors", North Carolina Education, (January, 1976), p. 13.

¹⁴⁷"Teacher Strike?" North Carolina Education, (November, 1975), p. 32.

¹⁴⁸Ibid.

unrest and lowered the North Carolina national ranking for teacher salaries to twenty-eighth.¹⁴⁹

The following editorial serves to indicate the seriousness of the present teacher unrest in North Carolina.

It is no secret that the state's political leaders--state and local--have never lost much sleep worrying about the possibility that teachers might strike. They know that the logistics of mounting a statewide teacher strike are mind-boggling, that North Carolina's state system of educational finance places a seemingly insurmountable obstacle in front of the success of such an attempt. They are aware, also, that the current teacher surplus is a concrete intimidation, that thousands of qualified teachers stand ready to fill any vacancy.

But the unrest of 1967, of 1971, is there in teacher ranks. We suspect that, as in 1971, that unrest, that pent up energy, will be focused into political action. The public official, the politician, who chooses to ignore the just needs of teachers--or who again attempts to hide behind 'bad times in the economy'--will, we suspect and hope, feel the brunt of that anger where it counts--at the ballot box.¹⁵⁰

It appears that growing teacher unrest in North Carolina is focused not only toward the General Assembly, but also local school boards and public school administrators.¹⁵¹ Teacher may attempt to become more involved in school board meetings, often questioning traditional policies and procedures affecting conditions of employment.¹⁵² Public School administrators are being made aware of teacher concerns within the school

¹⁴⁹Ibid.

¹⁵⁰Ibid.

¹⁵¹"Workshop Focuses on Building Strong NCAE Locals", N.C.A.E. News Bulletin, November, 1975, p. 3.

¹⁵²"A Sad Excuse", North Carolina AFT-Teacher, November, 1975, p. 7.

itself.¹⁵³ Fringe benefits such as salary supplements and insurance are under constant study by teacher groups with the emphasis on increased benefits which may be granted at the discretion of school boards.¹⁵⁴

The increased flexibility of individual state negotiation laws may affect North Carolina public school teachers. Since public school teachers are prohibited at the present time from entering into a collective bargaining contract with school boards, teachers are studying with interest the flexible negotiation laws enacted in other states.¹⁵⁵ The reasoning behind the study could be the increased optimism that the prevailing statutes may eventually be modified, thus opening an avenue of possible alternatives in which collective bargaining may be implemented.

Some local teacher organization representatives are initiating steps toward formal involvement with school boards in expressing concerns by sitting down and talking with employer representatives.¹⁵⁶ According to personnel directors in large administrative units, the meet-and-confer technique is becoming increasingly apparent in large school districts.

The growing taxpayer unrest that has developed in other states as a result of increased demands of teacher organizations does not appear to be reaching a significant level in North Carolina at the present time.¹⁵⁷

¹⁵³"Triad Female Coaches Contact Wage and Hour Division", North Carolina AFT-Teacher, December, 1975, p. 10.

¹⁵⁴Brent Hackney, "NCAE Scoffs at Teachers' Union", Greensboro Daily News, September 28, 1975, p. A-6.

¹⁵⁵Ibid.

¹⁵⁶"A Sad Excuse", North Carolina AFT-Teacher, November, 1975, p. 7.

¹⁵⁷"Municipal Unrest", Greensboro Daily News, February 1, 1976, p. B-4.

However, the following observation indicates that management in North Carolina should maintain a cautious awareness of the consequences which may occur by granting liberal financial concessions to public employee groups:

The New York City example stands as a model of profligacy other cities ignore at their peril. Ultimately it will be up to the voters and taxpayers to provide an essential check on runaway public unions. Only they can elect officials who, while recognizing the legitimacy of employees' desires for better pay and working conditions, will not also capitulate to absurd or non-negotiable demands. And only they can register their own protests when employee tactics and demands go too far. Public employee organization need not bring to North Carolina the strife it has brought to other states. A willingness to compromise on the part of employees and elected officials, and vigilance on the part of the public, have a good chance of working here.¹⁵⁸

¹⁵⁸Ibid.

CHAPTER III
THE EFFECT OF LEGALIZED BARGAINING ON EXISTING STATUTES
PERTAINING TO MANAGEMENT RIGHTS

This chapter identifies significant statutes which pertain to management rights and the effect that legalized collective bargaining may have on them. The general statutes which prohibit collective bargaining are emphasized, with supporting court cases which uphold the constitutionality of these laws. Support judicial rulings are also included to indicate the reasoning behind the decision which resulted in one general statute being ruled unconstitutional.

Significant North Carolina public school laws which identify the general authority of the State Board of Education, School Boards, school district committees, superintendents, and principals, as they relate to teacher employment are presented in the chapter. The purpose of the overview is to identify the broad powers which governing agencies hold, and the effect which legalized collective bargaining provisions may have on governing agencies. Reference to public school laws are of a general nature, with specific references pertaining to local budget and non-budget issues analyzed in chapters four and five.

The First and Fourteenth Amendments to the Constitution of the United States have provided strength for public employees in North Carolina who have challenged policies and statutes forbidding the right of union organization to employee groups.¹

Provisions contained within the First Amendment follow:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.²

The due process and equal protection clause of the Fourteenth Amendment guarantees the right of association to each United States citizen. The Fourteenth Amendment has been instrumental in overturning traditional policies and statutes which are, in effect, unconstitutional.

Section one of the Fourteenth Amendment follows:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.³

¹Atkins v. City of Charlotte, 295 F. Supp. 1068 (1969).

²"Ten Original Amendments--The Bill of Rights", The World Almanac, (New York, Cleveland: Newspaper Enterprise Association, Inc., 1975), p. 724.

³Edward C. Bolmeier, The School in the Legal Structure, (Cincinnati: The W. H. Anderson Company, 1974), p. 9.

The Fourteenth Amendment is the basis for decisions rendered in three court cases which pertain to the collective bargaining issue in North Carolina.⁴ The issue in each case is discussed in this chapter.

Public Laws of North Carolina

The first North Carolina case which challenges the legality of anti-collective bargaining legislation is Atkins v. City of Charlotte (1969).⁵ This decision is significant because it ruled unconstitutional General Statute 95-97, and upheld General Statute 95-98.⁶

The provisions contained in General Statute 95-97 follow:

No employee of the State of North Carolina, or of any agency, office, institution or instrumentality thereof, or any employee of a city, town, county, or other municipality or agency thereof, or any public employee or employees of an entity or instrumentality of government shall be, become, or remain a member of any trade union, labor union, or labor organization which is, or may become, a part of or affiliated in any way with any national or international labor union, federation, or organization, and which has as its purpose or one of its purposes, collective bargaining with any employer mentioned in this Article with respect to grievances, labor disputes, wages or salary, rates of pay, hours of employment, or the conditions of work of such employees. Nor shall such an employee organize or aid, assist, or promote the organization of any such trade union, labor union, or labor organization, or affiliate with any such organization in any capacity whatsoever.⁷

The United States Department of Labor spoke to the issue of the unconstitutionality of General Statute 95-97:

⁴Michael B. Brough, Employee-Employer Relations in the Public Sector: The Impact of Proposed Legislation, (North Carolina Institute of Government, November 13, 1975), p. 2.

⁵Atkins v. City of Charlotte, 295 F. Supp. 1068 (1969).

⁶Ibid.

⁷Article 12, Department of Labor and Labor Regulations, (Raleigh, North Carolina, 1975), pp. 688-689.

The United States District Court in Charlotte ruled in 1969 that the provisions of law prohibiting public employees from becoming members of nationally affiliated labor unions were unconstitutional.⁸

This ruling is based, in part, on a related case, McLaughlin v. Tilendis (1968),⁹ which upheld the constitutionality of membership within a union.

Eugene Green, an Ohio attorney, summarizes the issues involved in this court decision:

Two Chicago school teachers discharged for attempting to form a union brought a suit for damages against the superintendent of their school district and the members of the board of education. The suit, predicated on the Civil Rights Act of 1871, alleged that the discharges interfered with the teachers' First Amendment right to freedom of association, and their Fourteenth Amendment right to due process. The trial court dismissed the action on the ground that the First Amendment did not provide a right to teachers to form or join a union. The appellate court reversed, proclaiming that the First Amendment confers the right to form and join a labor union.¹⁰

As the result of the rulings in the Atkins case, General Statute 95-99 was ruled to be so related to General Statute 95-97, that it cannot survive the invalidation of that section.¹¹

General Statute 95-99 follows:

Any violation of the provisions of this Article is hereby declared to be a misdemeanor, and upon conviction, plea of guilty or plea of nolo contendere shall be punishable in the discretion of the court.¹²

⁸State Profiles: Current Status of Public Sector Labor Relations, (United States Department of Labor, 1971), p. 69.

⁹McLaughlin v. Tilendis, 398 F. 2nd 287 (1968).

¹⁰Eugene Green, "Concerted Public Employee Activity in the Absence of State Statutory Authorization: II", Journal of Law and Education, 2, No. 3, (1973), 422-423.

¹¹Article 12, Department of Labor and Labor Regulations, (Raleigh, North Carolina, 1975), p. 690.

¹²Ibid.

The courts have held that the Constitution does not require public employees to actively engage in collective bargaining with employee organizations. In a challenge to the constitutionality of General Statute 95-98, the Middle District Court of North Carolina upheld the decision in Atkins v. City of Charlotte.¹³ In the case, Winston-Salem/Forsyth County Unit, North Carolina Association of Educators v. Phillips (1974),¹⁴ the Court upheld the right of employees to freedom of association, equal protection, and due process, but forbade the implementation of contracts between unions and public employers.¹⁵

Glenn Keever, editor of North Carolina Education, presents an overview of the results of this decision:

NCAE mounted a drive for a statewide Professional Negotiations bill--a bill which would have repealed the prohibition against binding negotiations between the public employers and employees--in the 1971 General Assembly. Assembly reaction was so negative the Association could not even succeed in getting a study of the matter. Meanwhile the Winston-Salem/Forsyth agreement of 1967 came under fire from a new board of education which refused to be bound by an earlier board's decision. With the promised aid of the state association, the Winston-Salem/Forsyth County unit took to the federal courts the law preventing binding negotiations. The unit charged the law was unconstitutional, and hopes were high that a federal court would throw out the law and thus clear the way for Professional Negotiations in North Carolina. Those hopes were to be dashed. After more than two years in the courts, the present North Carolina law was upheld.¹⁶

¹³Atkins v. City of Charlotte, 295 F. Supp. 1068 (1969).

¹⁴Winston-Salem/Forsyth County Unit, North Carolina Association of Educators v. Phillips, 381 F. Supp. 644 (1974).

¹⁵Brough, op. cit., p. 2.

¹⁶Glenn Keever, "P.N. Has Been a Long Time Coming", North Carolina Education, (March, 1975), p. 14.

General Statute 95-98 governs state employees, local employees, firemen, and teachers. The statute specifically spells out the actions which are illegal.

General Statute 95-98 follows:

Any agreement, or contract, between the governing authority of any city, town, county, or other municipality, or between any agency, unit, or instrumentality thereof, or between any agency, instrumentality, or institution of the State of North Carolina, and any labor union, trade union, or labor organization, as bargaining agent for any public employees of such city, town, county or other municipality, or agency or instrumentality or government, is hereby declared to be against the public policy of the State, illegal, unlawful, void and of no effect.¹⁷

This dissertation identifies the agencies which possess administrative powers within the public school system of North Carolina. Therefore, these administrative agencies, representing management, operate in an adversary relationship with members of teacher organizations.¹⁸ Statutes which grant these agencies their administrative powers are presented as references to indicate the conflict which may result between the interpretation of pre-existing statutory requirements and legalized collective bargaining legislation. If stipulations are not incorporated in the proposed state or federal negotiations statutes which exclude pre-existing statutes and state policies as negotiable items, much confusion and lengthy delays may result over the issue of negotiable items at the school board level.¹⁹

¹⁷Article 12, Department of Labor and Labor Relations, (Raleigh, North Carolina, 1975), p. 689.

¹⁸Helping Administrators Negotiate, (Arlington, Va.: American Association of School Administrators, 1974), p. 1.

¹⁹John H. Metzler, "The Need for Limitation Upon the Scope of Negotiations in Public Education, I", Journal of Law and Education, 2, No. 1, (1973), 149.

The Constitution of the State of North Carolina defines the responsibilities of the General Assembly and local governments as they pertain to education. Section (2) of Article IX follows:

The General Assembly shall provide by taxation and otherwise for a general and uniform system of free public schools, which shall be maintained at least nine months in every year, and wherein equal opportunities shall be provided for all students. The General Assembly may assign to units of local government such responsibility for the financial support of the free public schools as it may deem appropriate. The governing boards of units of local governments with financial responsibility for public education may use local revenues to add to or supplement any public school or post-secondary program.²⁰

The powers and duties of the State Board of Education are defined by the Constitution of North Carolina. Section (5) of Article IX follows:

The State Board of Education shall supervise and administer the free public school system and the educational funds provided for its support, except the funds mentioned in Section 7 of this Article, and shall make all needed rules and regulations in relation thereto, subject to laws enacted by the General Assembly.²¹

Public School Laws

The public school laws of North Carolina specifically identify the agencies which govern the public schools. The General Assembly grants the State Board of Education the power of general supervision and administration.²²

Section one of General Statute 115-11 follows:

The Board shall have general supervision and administration of the educational funds provided by the State and Federal

²⁰Article 12, Department of Labor and Labor Relations, (Raleigh, North Carolina, 1975), pp. 447-448.

²¹Ibid., p. 451.

²²Ibid.

Governments, except those mentioned in Section 7 of Article IX of the State Constitution, and also excepting such local funds as may be provided by a county, city, or district.²³

The authority of the State Board of Education over certain fiscal affairs are included in General Statute 115-16.²⁴ Section (b) of this Statute follows:

- ...The fiscal affairs of the Board shall also include:
- (1) The preparation and administration of the State school budget, including all funds appropriated for the maintenance of nine months' public school term.
 - (2) The allotment of teachers.
 - (3) The protection of state funds by appropriate bonds.
 - (4) Workmen's compensation as applicable to school employees.
 - (5) Sick leave...²⁵

Also within the jurisdiction of the State Board of Education is the power to regulate teachers' salaries. Section twelve of General Statute 115-11 follows:

The Board shall have power to provide for the enrichment and strengthening of educational opportunities for the children of the state, and when sufficient state funds are available to provide first for the allotment of such a number of teachers as to prevent the teacher load from being too great in any school, the Board is authorized, in its discretion, to make an additional allotment of teaching personnel to county and city administrative units of the State to be used either jointly or separately, as the Board may prescribe. Such additional teaching personnel may be used in the administrative units as librarians, special teachers, or supervisors of instruction and for other special instructional services such as art, music, physical education, adult education, special education, or industrial arts as may be authorized and approved by the Board. The salary of all such personnel shall be determined in accordance with the state salary schedule adopted by the Board.²⁶

²³Public School Laws of North Carolina, (State Board of Education, 1974), p. 19.

²⁴Ibid., p. 26.

²⁵Public School Laws of North Carolina, (State Board of Education, 1974), p. 26.

²⁶Ibid., p. 21.

Although General Statute 115-11 pertains in some degree to conditions of employment, challenges to this law by teacher organizations may be limited due, in part, to the complexity of state funding provisions for public education. Since public school teachers are employed by school boards, negotiations may be conducted between the employee (teachers) and the employing agency (school boards).

Collective bargaining presents a challenge to the authority of school boards.²⁷ To bargain collectively allows teacher organizations to "have a say" in personnel matters previously determined exclusively by management.²⁸

Public school laws of North Carolina presently grant school boards the authority to implement rules and regulations over conditions of employment for teachers in the absence of state statutes and rulings by the North Carolina State Board of Education.²⁹

General Statute 115-27 speaks specifically of the powers vested in local boards of education:

County and city boards of education, subject to any paramount powers vested by law in the State Board of Education or any other authorized agency shall have general control and supervision of all matters pertaining to the public schools in their respective administrative units; they shall execute the schools in their respective administrative units; shall have authority to make agreements with other boards of education to transfer pupils from one administrative unit to another unit when the administration of the schools can be thereby more efficiently and more

²⁷Daniel J. Gatti and Richard D. Gatti, The Teacher and The Law, (New York: Parker Publishing Company, 1972), p. 146.

²⁸Ibid.

²⁹Public School Laws of North Carolina, (State Board of Education, 1974), p. 32.

economically accomplished.³⁰

School board members may argue that because of efficiency and economics, the transfer of pupils from one administrative unit to another is a management prerogative that should not be questioned. Teacher organizations may challenge this issue because they may argue that such action could result in reassignment or elimination of certain teaching positions because of a reduction of students within their administrative unit, but existing as a state statute, this issue may not be subject to negotiations.

General Statute 115-27 is possibly the most significant North Carolina public school law in terms of management rights for local boards of education. Since this provision mandates that local boards of education have general control and supervision over all public school matters within their district, legalized negotiations may challenge local boards to bargain over specific items which would be classified within that provision. Although teacher organizations welcome the opportunity to bargain over their conditions of employment, school boards must remember that they are appointed or elected by taxpayers within their district to provide effective management. Although concessions by management may occur in the collective bargaining process, the right of final control and supervision over public school matters must be maintained by school boards.³¹

³⁰Ibid., p. 32.

³¹Gatti and Gatti, op. cit., p. 142.

School Board Budgets

Budgets must be submitted by school boards for approval by local governmental agencies such as the county commissioners.³² Although collective bargaining issues may eventually be approved by school boards, financial appropriations must have approval of the county commissioners before local funds are allocated to the public school system.

Public school teachers are becoming involved in budget matters at the school board level.³³ An example of teacher involvement occurred in Forsyth County when the County Commissioners granted teachers a one-hundred dollar bonus payment as the result of persistent demands by local teacher organizations.³⁴

Regulations which pertain to the preparation of school budgets are defined by North Carolina law.³⁵ Section one of General Statute 115-80 follows:

County and city boards of education shall file with the appropriate tax levying authorities on or before the fifteenth day of June, on forms provided by the State Board of Education, all budgets requesting funds to operate the public schools, whether such funds are to be provided by the State or from local sources. There shall be no funds allotted for providing instruction to pupils for a term of more than one hundred eighty days either from State or local sources.³⁶

³²Public School Laws of North Carolina, (State Board of Education, 1974), p. 61.

³³The North Carolina AFT-Teacher, 2, No. 1, (1976), 8.

³⁴Ibid.

³⁵Ibid., p. 61.

³⁶Ibid.

In accordance with this law, school boards will be required to complete negotiations before June fifteenth of each year in order to submit requests for financial support to the county commissioners. If these requests are denied, negotiations may again be initiated between teacher organizations and boards of education to arrive at a compromise which would meet the approval of the local tax-levying authorities.

Conditions of Employment

An important law which pertains to conditions of employment for teachers is vested in the school boards. Because of wording in this statute, school boards possess broad powers over conditions of employment.

General Statute 115-45 defines this authority:

County and city boards of education, upon the recommendation of the superintendent, shall have full power to make all just and needful rules and regulations governing the conduct of teachers, principals, and supervisors.³⁷

This statute may also become a central issue between local school boards and teacher organizations. By possessing full power over the conduct of teachers, some school boards and superintendents in previous years have established discretionary rules and regulations, or upheld local school policies, which have required teachers to conform to standards which do not directly relate to the instructional area for which they are employed. An example of a discretionary policy which was eventually revised was a dress code policy for teachers in certain school districts. The school board upheld a teacher in the grievance and forbade strict dress codes for teachers in the school system.

³⁷Ibid., p. 40.

The General Statute 115-45 has been modified in recent years to prohibit excessive jurisdiction over teachers by school boards. The General Assembly in 1973 eliminated the second paragraph of this statute.³⁸

The provisions contained within this former statute follow:

The second paragraph authorized boards of education to investigate and pass upon the character of teachers and school officials and to dismiss them for immoral or disreputable conduct and to investigate and pass upon the fitness of applicants for employment.³⁹

Members of boards of education may argue that they must retain the powers contained in General Statute 115-45 because they are the appointed or elected representatives of the citizens of their district. Therefore, as representatives of the people, they should maintain their power over the implementation of rules and regulations governing the conduct of probationary teachers and auxiliary staff because school employees can have important influence on the attitudes of the students. An argument can also be presented that since the courts have handed down recent decisions which may hold school board members personally liable for their decisions, they are more aware of the constitutional rights of the teacher.⁴⁰

With the implementation of the North Carolina Tenure Law in 1973, state statutes identify thirteen specific reasons for dismissal of career teachers.⁴¹ The provisions included in the Tenure Law (General Statute

³⁸Ibid., p. 40.

³⁹Ibid.

⁴⁰"Individual Liability of School Board Members and School Administrators", School Law Bulletin, Institute of Government, 4, No. 4, (1973), p. 1.

⁴¹Public School Laws of North Carolina, (State Board of Education, 1974), pp. 102-103.

115-142) are the only reasons for which a career teacher may be dismissed.⁴² Therefore, it appears that local boards of education may encounter considerable difficulty in establishing additional codes of conduct for career teachers in their school district. Moreover, probationary teachers cannot be dismissed except for reasons stated in the Tenure Law.⁴³

It appears that provisions established under General Statute 115-45 as they relate to career teacher conduct, may have been superseded by provisions incorporated in General Statute 115-142. To dismiss a career teacher because of reasons permitted in General Statute 115-45 may be a direct violation of General Statute 115-142.

Superintendents and District Committees

City and county superintendents are the chief administrative officers of the public school districts in which they are employed. The superintendents are directly responsible to the school boards.⁴⁴

Section one of General Statute 115-57 defines the duties of superintendents:

It shall be the duty of the superintendent to keep himself thoroughly informed as to all policies promulgated and rules adopted by the State Superintendent of Public Instruction and the State Board of Education, for the organization and government of the public schools. The superintendent shall notify and inform his board of education, the school committees, supervisors, principals, teachers, janitors, bus drivers, and all other persons connected with the public schools, of such policies and rules. In the performance of these duties, the superintendent shall confer, work, and plan with all school personnel

⁴²Ibid.

⁴³Ibid., p. 107.

⁴⁴Ibid., p. 45.

to achieve the best methods of instruction, school organization, and school government.⁴⁵

With the implementation of collective bargaining in North Carolina, the superintendent will maintain an important role on the side of management. State laws mandate the superintendents are the chief administrative officers in local school units.⁴⁶ With this responsibility, superintendents will be instrumental in maintaining the authority to regulate policies governing certain conditions of employment for public school teachers.

Some school districts in North Carolina retain the option of establishing local district committees within the school district.⁴⁷ The district committees are governed by local boards of education and possess only limited authority in most instances.

Teacher organizations may seek to eliminate entirely the involvement of the district committee over matters relating to teacher employment. Moreover, General Statute 115-142 allows no school committee involvement.⁴⁸ Although the establishment of such committees is permitted under North Carolina law, committee involvement in teacher negotiations should not be permitted.

General Statute 115-72 defines the authority of local district committees as it relates to teacher employment:

The district committee, upon the recommendation of the county superintendent of schools, shall elect the principals for the schools of the district, subject to the approval

⁴⁵Ibid., pp. 45-46.

⁴⁶Ibid.

⁴⁷Ibid., p. 49.

⁴⁸Ibid., pp. 100-109.

of the county board of education. The principal of each school shall nominate and the district committee shall elect the teachers for all the schools of the district, subject to the approval of the county superintendent of schools and the county board of education.⁴⁹

Teacher representatives may argue that the election powers of a district committee are duplicating the powers of the school boards. If school boards hold the power to elect teachers, the district committee should not possess the same authority.

Boards of education may argue that the district committees know best what the needs of the particular school district are since members of the committees reside in the immediate area. Therefore, the election of teachers by district committees insures the citizens of the district that teachers are employed who possess the instructional expertise necessary to provide a constructive learning environment for the students of that community.

The School Principal

The local school principal, in accordance with General Statute 115-150, possesses broad jurisdiction over pupils within the school which he administers. North Carolina law mandates that principals shall provide suggestions to teachers for instructional improvement.⁵⁰

Section one of General Statute 115-150 follows:

The principal shall have authority to grade and classify pupils and exercise discipline over the pupils of the school. The principal shall make all reports to the county or city superintendent and give suggestions to teachers for the improvement of instruction. It shall be the duty of each

⁴⁹Ibid., p. 50.

⁵⁰Ibid., p. 113.

teacher in a school to cooperate with the principal in every way possible to promote good teaching in the school and a progressive community spirit among its patrons.⁵¹

Although the regulations in this statute are specifically defined, representatives of teacher organizations may challenge the section which permits principals to grade and classify pupils. They contend that teachers, not the principals, should have this right.⁵² The teachers' rationale to support this challenge is that teachers are employed to instruct and administer techniques within the classroom itself. Therefore, the teachers are more qualified to grade and classify the students under their supervision than the principal who is not in the classroom. However, as long as this provision is included in the public school law, Statute 115-150 will not be subject to negotiations.

Local school principals may counter the teacher allegations by indicating that principals have had the proper training through formal education and experience to make a more objective judgment, when necessary, on the classification of pupils. Principals may argue that the authority of principals is necessary to insure the student a fair evaluation of his classroom performance. An example of a personality clash between a student and teacher is presented to illustrate that the teacher may retain or promote the student because the teacher cannot relate to the personality of the student. In cases such as this, the principal may believe that he must intervene in behalf of the student because classroom performance is not a basis for the final grading or classification.

⁵¹Ibid.

⁵²Gatti and Gatti, op. cit., p. 145.

The general statutes which are examined in this chapter are significant provisions which determine management rights. Negotiations may present a serious challenge to the interpretations of provisions contained within these statutes unless specific items are defined as negotiable and others as nonnegotiable in an initial scope of bargaining provision.⁵³

When collective bargaining laws are passed which permit teacher organizations to negotiate with school boards, certain sections contained within present state statutes may be revised. Laws which grant full authority to school boards, local district committees, superintendents, and principals over conditions of employment for teachers may be altered to include a bargaining clause for teachers. If collective bargaining laws forbid negotiations over pre-existing conditions, challenges to North Carolina state statutes and State Board of Education policy will remain outside the scope of bargaining.

⁵³William F. Kay, "The Need for Limitation Upon the Scope of Negotiations in Public Education", *Journal of Law and Education*, 2, No. 1, (1973), 168.

CHAPTER IV
MAJOR NON-BUDGET ISSUES WHICH MAY AFFECT LOCAL SCHOOL BOARDS
IN LARGE DISTRICTS

School boards in large units are receiving an increasing amount of requests and demands by teachers for improvements in fringe benefits. Some individuals may associate fringe benefits with additional budget appropriations. However, many of these benefits require no additional monetary appropriations from state or local funds.

This chapter examines non-budget issues which may have a direct effect on school boards when collective bargaining arrives in North Carolina. Members of school boards must guard against concessions which may produce a detrimental effect on the total educational program. At the present time, state statutes and the State Board of Education provide local boards with broad powers in the establishment of policies governing non-budget issues in local school units. Larger administrative units in the state have been instrumental in establishing written policies over major non-budget issues. However, many non-budget issues continue to have no written policies regulating them.

Since most collective bargaining laws in other states include the term "conditions of employment" as a negotiable issue, (See Appendix A), local units in North Carolina may be required to include this term in their negotiation procedures. For the purpose of determining major non-budget issues at the local board levels in the state of North Carolina,

a 1971 survey on non-budget issues is utilized to implement this study.¹

In a national survey conducted by the National Education Association, a total of 1,529 collective bargaining agreements involving elementary and secondary school teachers are analyzed.² Twelve non-budget issues are classified as items most prevalent in existing collective bargaining agreements nationwide, as indicated in Table I. These twelve issues are analyzed as they pertain to the State of North Carolina. Additional non-budget issues are studied which may have significant support in the negotiations process. These major non-budget issues are studied as they relate to the jurisdiction of school boards.

Grievance Procedure

Grievance procedures exist in 1,362 out of the 1,529 collective bargaining agreements analyzed in the national study.³ With this item existing in 89.1 percent of all collective bargaining agreements on a nationwide basis, the chances of the grievance procedure being included in negotiations at the school board levels in North Carolina are almost certain.

In a broad sense, grievance means a complaint involving a work situation. It may also indicate that a violation or misrepresentation of any contract or board policy is occurring.⁴

¹"Trends in Negotiable Items for Teachers", Negotiation Research Digest, November, 1972, pp. 13-15.

²Ibid.

³Ibid.

⁴Daniel J. Gatti and Richard D. Gatti, The Teacher and the Law, (New York: Parker Publishing Company, 1972), p. 134.

TABLE IV
 NUMBER AND PERCENT OF COMPREHENSIVE
 AGREEMENTS BY TYPE OF PROVISION

TOTAL NUMBER OF AGREEMENTS ANALYZED	NUMBER	PERCENT
	1,529	100.0
Grievance Procedure	1,362	89.1
Leave of Absence	1,243	81.3
School Calendar	897	58.7
Teacher Transfers	886	57.9
Teacher Evaluation	884	57.8
Pupil Discipline	824	53.9
Length of Teaching Day	819	53.6
Personnel File	749	49.0
Faculty Meetings	720	47.1
Promotions	703	46.0
Subject Area Assignment	695	45.5
Substitute Teachers	580	37.9

("Trends in Negotiable Items for Teachers", Negotiation Research Digest, November, 1972), pp. 13-15.

According to Gatti and Gatti, grievance procedures are especially important to teachers for the following reasons:

- (1) They help you to resolve quickly and equitably, at the lowest possible administrative level, problems you may have in relation to established personnel policies. They help you to avoid delayed remedial action, undesirable publicity and legal expenses which are sometimes incurred by taking your grievances to court.
- (2) In many instances, you cannot ask the court to provide a remedy for your problems unless you have followed the proper procedures provided by your school district. Even though the procedure may be of no use at its initial stages, if administrative review could possibly correct the errors, you must still follow it.⁵

Traditionally, the rights of a teacher have been at the discretion of the local board of education. However, through legalized negotiations, the teacher organizations may bargain for a grievance procedure to insure a more favorable representation for its members.⁶

The Public School Laws of North Carolina do not include provisions which pertain to a grievance procedure. Also, the State Board of Education does not mandate any policies relating to the actual establishment of a grievance procedure. Thus, local boards of education maintain the prerogative of either establishing or prohibiting the implementation of such a procedure.

Duryea, Fisk and Associates discuss the grievance procedure and the Supreme Court:

The United States Supreme Court has described the grievance process, culminating in the arbitration of the disputed issue by a neutral third party, as 'the very heart of the system of industrial self-government'. It is, said the Court, 'a vehicle by which meaning and content is given to the

⁵Ibid., pp. 134-135.

⁶Ibid., p. 145.

collective agreement'. Perhaps no other single aspect of collective bargaining places the tension between the professor's legal status as an employee and his status as a professional so sharply as the terms of the contractual grievance procedure and the manner of its administering.⁷

If national trends are indications, many school districts in North Carolina may be forced to initiate a grievance procedure.⁸ Several larger districts may reconstruct their existing grievance procedure to involve more teacher representation in the actual grievance procedure, (See Appendix E).

More effective administration should be a direct result of involvement by negotiations in structuring a grievance procedure. Administrators may be forced to reach decisions which affect their staff in a fair and open-minded manner. The process of arbitrarily making unfair and biased decisions may be directly challenged through the grievance procedure.

Many educational authorities involved with negotiations in other states agree that a well-constructed grievance procedure can benefit both teachers and administrators.⁹ Lieberman and Moskow indicate the consequences that may occur as a result of inefficient administration:

The superintendent and his staff help to make a binding agreement on certain matters such as grievance procedures. In the old days, these procedures could be changed at will. Under collective negotiations, they cannot be. Administrative mistakes are more likely to be noticed and publicized. If

⁷E. D. Duryea, Robert S. Fisk, and Associates, Faculty Unions and Collective Bargaining, (London: Jossey-Bass Publishers, 1973), p. 68.

⁸"Trends in Negotiable Items for Teachers", Negotiation Research Digest, November, 1972, pp. 13-15.

⁹Edward B. Shils and C. Taylor Whittier, Teachers, Administrators, and Collective Bargaining, (New York: Thomas Y. Crowell Company, 1968), pp. 470-471.

incorporated in an agreement, they can be challenged under the grievance procedure. Furthermore, school budgets are being examined and criticized more carefully. Teachers have always had a stake in these budgets, but they usually lacked the means to analyze them rigorously. Also, relatively minor mistakes may be publicized in order to place additional pressure on the administration.¹⁰

North Carolina's local school districts may profit from mistakes made by units in states where collective bargaining has been established for many years. Local units should take precautions to insure that newly negotiated grievance procedures are precise in content and application.

Shils and Whittier issue precautions to school boards to insure that grievance procedures are well-defined:

Grievance procedures must always have well-defined jurisdictional limits beyond which the parties can't go. This is going to provide protection for school board prerogatives so that the grievance instruments can't be converted into means for negotiating new concessions which could not be secured in the original bargaining. The grievance procedure, therefore, is a quasi-judicial process to insure that laws, rules, and regulations are applied uniformly and fairly to all personnel affected by them in the school system.¹¹

Although administrators indicate they are placed in an adversary position in grievance procedures, the process provides for administrators the challenge of being a conscientious, fair-minded, and efficient instrument in the educational process.¹² Likewise, the grievance machinery provides for teachers the opportunity to perform assigned duties with the

¹⁰Myron Lieberman and Michael Moskow, Collective Negotiations for Teachers, (Chicago: Rand-McNally and Company, 1966), p. 227.

¹¹Edward B. Shils and C. Taylor Whittier, Teachers, Administrators, and Collective Bargaining, (New York: Thomas Y. Crowell Company, 1968), pp. 470-471.

¹²Ibid.

assurance of fair and understanding treatment by those in higher decision-making positions.¹³

According to personnel directors, detailed grievance procedures have been implemented in school districts such as Charlotte/Mecklenburg, Winston-Slaem/Forsyth, Durham, Greensboro, and Guilford County, while other units such as Raleigh have no written grievance procedure, (See Appendix E). Legalized collective bargaining may challenge every large school district in North Carolina to construct and implement a fair and comprehensive grievance procedure for the school teachers within its jurisdiction.

Leave of Absence Without Pay

Regulations providing for leaves of absence are generally included in 1,243 out of 1,529 collective bargaining agreements at the national level.¹⁴ These regulations are included in 81.3 percent of all agreements.¹⁵ Varying interpretations of the definitions of leave without pay may exist in each state. Leave of absence without pay includes provisions which place the responsibility of establishing such procedures with school boards.

For the purpose of clarification, North Carolina has developed procedures for many types of leave provisions that supersede any regulations

¹³Ibid.

¹⁴"Trends in Negotiable Items for Teachers", Negotiation Research Digest, (November, 1972), pp. 13-15.

¹⁵Ibid.

established by local boards of education.¹⁶ Included in the regulations administered by the North Carolina State Board of Education are: sick leave, maternity leave; bereavement leave; professional meetings; leave for community responsibility; personal leave; leaves which are authorized by the State Board of Education, State Textbook Commission, or committee appointment by the Governor; jury duty, military leave; teachers injured during episodes of violence; in-service school projects; and kindergarten in-service workshops.¹⁷

Teacher organizations may not engage in collective bargaining with school boards over these issues because they are regulated by the State Board of Education.¹⁸ However, the State Board of Education does not provide for regulations which govern leaves of absence without pay for educational purposes or leaves of absence without pay for health reasons other than sick leave provisions.¹⁹ These remain at the discretion of school boards and may be negotiable items if collective bargaining is legalized in North Carolina.²⁰

In the absence of state regulations, a regular teacher may be granted a leave of absence without pay for such period as may be granted at the discretion of the superintendent and in accordance with such rules

¹⁶Sick Leave and Substitute Teacher Regulations, (Adopted by the North Carolina State Board of Education, July 1, 1974), pp. 1-9.

¹⁷Ibid.

¹⁸Sick Leave and Substitute Teacher Regulations, (Adopted by the North Carolina State Board of Education, November, 1972), pp. 1-8.

¹⁹Ibid.

²⁰Handbook for Professional Personnel, (Greensboro, NC: Guilford County Schools, 1975), p. 25.

and regulations that may be adopted by the governing board of the administrative unit.²¹ Interpretation of this statement may vary from district to district.

Leave without pay for educational purposes is often requested by teachers in many units. The granting of this leave insures the teachers of employment in a similar capacity within the same school district upon their return from leave. Teachers are emphasizing the importance of this provision because it provides time away from the classroom to fulfill residency requirements for an advanced degree, and provides an opportunity to increase their knowledge by traveling to locations of educational interest. School boards may grant educational leaves of absence for periods of time determined appropriate by the administrative unit, or they retain the option of refusing such educational leaves of absence.²²

Leaves of absence without pay for health reasons may be granted by school boards.²³ Since this provision is not regulated by the State Board of Education, local boards of education may approve or deny such requests. Teachers who suffer physical or mental illness which is prolonged for several months may request a leave of absence without pay for a specified period of time. Ordinarily, medical verification is necessary for such leaves to be considered.²⁴ Teacher organizations may

²¹Sick Leave and Substitute Teacher Regulations, (Adopted by the North Carolina State Board of Education, November, 1972), p. 5.

²²Ibid., p. 8.

²³Ibid., p. 4.

²⁴Ibid., p. 3.

eventually negotiate with school boards over the establishment of uniform policies which permit a leave of absence for health reasons. In determining the length of absence approved with or without pay, due and proper consideration should be given to the welfare of the school pupils and the teacher.²⁵

School Calendar

The third major non-budget item which may become subject to negotiation between school boards and teacher organizations is the school calendar. At the national level, school calendars are negotiable issues in 897 agreements between local boards and teacher organizations, according to the nationwide survey conducted by the National Education Association.²⁶ This represents 58.7 percent of all agreements analyzed nationwide.²⁷

The construction of a school calendar is not totally regulated by local boards of education. North Carolina State Laws mandate certain conditions which must be included in each school calendar.²⁸ Specifically, the public school laws of the state define provisions governing the school term. Regulations contained in this statute supersede any regulation established by school boards, therefore eliminating negotiations at the school board level over provisions specified in this law.

²⁵Ibid., p. 8.

²⁶"Trends in Negotiable Items for Teachers", Negotiation Research Digest, (November, 1972), pp. 13-15.

²⁷Ibid.

²⁸Public School Laws of North Carolina, (State Board of Education, 1974), p. 37.

Section (c) of General Statute 115-36 follows:

There shall be operated in every school in the State a uniform school term for instructing pupils of 180 days. Provided, that the State Board of Education, or the board of education of any administrative unit with the approval of the State Board of Education, may suspend the operation of any school or schools in such units, not to exceed a period of 60 days of said term of 180 days, when in the sound judgment of the State Board of Education, or the board of education of any administrative unit with the approval of the State Board of Education, conditions justify such suspension. Provided, further, that when the operation of any school is suspended the period of suspension shall be deducted from the total of 180 days included for each school year operation, all teachers shall be entitled to normal pay for the days of school of the suspended term, not to exceed a period of 15 school days during the school term.²⁹

In the establishment of a school calendar, additional state regulations must be followed by teachers and school boards. These provisions determine the number of days of annual vacation leave, calendar months of employment, holidays, and teacher work days.

Section (1) of the General Statute 115-157 follows:

Regular State-allotted teachers shall be employed for a period of 10 calendar months and shall be paid monthly at the end of each calendar month of service. Included within the 10 calendar months' employment shall be 1.25 days of annual vacation leave for each month of the 10 months' service which shall be designated by each county and city board of education at a time when students are not scheduled to be in regular attendance. Included within the 10 calendar months' employment each county and city board of education shall designate the same or an equivalent number of legal holidays occurring within the period of employment for academic teachers as those designated by the State Personnel Council for State Employees.³⁰

²⁹ Ibid., p. 37.

³⁰ Ibid., pp. 123-124.

Additional regulations specified in General Statute 115-157 provide for teacher work days in excess of the 180-day term for students. The total number of work days shall not exceed 200 days in a school year.³¹

State regulations governing annual vacation leave and holidays for public school teachers are specified in the public school laws of North Carolina. Section (6) of General Statute 115-157 defines these provisions:

The provisions for annual vacation leave and holidays referred to in this section shall apply to such persons employed by the county and city boards of education during the days designated by each county and city board of education as vacation days. Vacation days shall not be used for extending the term of employment of individuals and shall not be cumulative from one fiscal year to another fiscal year.³²

School boards presently determine the content of the school calendar which includes provisions set forth in the three General Statutes. Each school board determines the beginning and concluding dates of the school year, with the specified number of vacation days, holidays, and teacher work days contained within, (See Appendix F).

According to personnel directors in large administrative units, teacher organizations are demanding an increased involvement in the establishment of a school calendar. Organizations believe that the school calendar is a condition of their employment; therefore, teacher should assist in deciding the calendar which is most beneficial to them.³³

³¹Ibid., p. 124.

³²Ibid., pp. 124-125.

³³"Trends in Negotiable Items for Teachers, Negotiations Research Digest, (November, 1972), pp. 13-15.

Personnel officials indicate that some school boards are presently involving the teacher organizations in their district with the construction of the school calendar.

Teacher Transfers

The fourth major non-budget item is teacher transfers. 57.9 percent of all agreements contained in the nationwide survey by the National Education Association included the issue as a negotiable item.³⁴

Many large school districts in North Carolina have established written regulations which provide for teacher transfers. Some districts maintain provisions which allow teachers who wish to transfer to submit letters to the personnel director indicating their desire to transfer to another school and the reasons for making the request.³⁵ As an example, a legitimate reason for making a transfer request may involve hardship. If a teacher travels fifty miles each day to a teaching assignment, he or she is usually justified in requesting a teaching assignment nearer the place of residence. If the request is received by the personnel director, he may notify school principals of the request and the reason for the transfer request. If vacancies occur in the academic area for which the teacher is certified, serious consideration should be given to the request for transfer, (See Appendix G).

Since this is an example of a procedure used by some school boards, teacher organizations may eventually seek to negotiate a contract which

³⁴Ibid.

³⁵Handbook for Professional Personnel, (Greensboro, NC: Guilford County Schools), pp. 27-28.

contains more specific regulations which allow the teachers priority consideration in the event of vacancies. This rewards an experienced teacher who wishes to continue his or her instruction in a school near his or her place of residence.³⁶

Administrators may argue that they should maintain the authority to determine which teachers should be transferred to their school. Because of a difference in the teaching environment, the cultural and experience background may not be conducive to a positive learning situation in another school. This situation may not be controlled if teacher transfers are negotiated in a contract between local boards of education and teacher organizations. Policies affecting the transfer of probationary teachers and the voluntary transfer of career teachers may become a major issue when negotiating non-budget items at the school board level.

The North Carolina Tenure Law includes provisions for involuntary career teacher transfers. General Statute 115-142 provides that career teachers shall not be transferred to lower paying positions without their consent. Legislation further mandates that career teachers are subject to involuntary transfers due to district reorganization or decreased enrollment.³⁷

Provisions contained in General Statute 115-142 are pre-existing conditions and may not be subject to collective bargaining between teacher organizations and school boards. However, transfer procedures not governed by state law or State Board policy may eventually be subject to

³⁶Ibid., p. 27.

³⁷Public School Laws of North Carolina, (State Board of Education, 1974), p. 103.

negotiations. As a result of these negotiations, teachers may have provisions spelled out in their contracts which do not permit transfers unless these provisions are agreed upon in the collective bargaining agreement.

Teacher Evaluation

According to the national survey conducted by the National Education Association, collective bargaining agreements contain regulations which include teacher evaluation in 57.9 percent of all school districts which have collective bargaining agreements.³⁸ Since teacher evaluation procedures are included in a majority of collective bargaining agreements in other states, emphasis is placed on this issue because of the possible inclusion of this item in future collective bargaining agreements in North Carolina.

At the present time, the North Carolina Tenure Law does not include provisions for the implementation of teacher evaluations, but school boards usually require the periodic evaluation of the teacher's classroom performance by the principal yearly.³⁹ For clarification purposes, probationary teachers are personnel employed for three years or less in a local school district and who have not previously attained career status in another school system in North Carolina.⁴⁰ Career teachers are those employed for more than three consecutive years in a local

³⁸"Trends in Negotiable Items for Teachers", Negotiation Research Digest, (November, 1972), pp. 13-15.

³⁹Handbook for Professional Personnel, (Greensboro, NC: Guilford County Schools, 1975), p. 27.

⁴⁰Public School Laws of North Carolina, (State Board of Education, 1974), p. 101.

school district in North Carolina.⁴¹

Local school principals are usually responsible for the evaluation of teachers assigned to their school.⁴² At the conclusion of the evaluations, the principal and the teacher review the evaluation, with the teacher having the right of self-evaluation. Afterwards, the evaluations are placed in the teacher's personnel file to become part of the permanent record.⁴³

Local school boards determine the procedures for the implementation of teacher evaluations.⁴⁴ These procedures often vary from district to district. Previously, teachers have had little input into the method of evaluation and the criteria for evaluation. At the present time, many large school districts are revising their teacher evaluation forms to include provisions which relate directly to their instruction competency, (See Appendix H).

Gilbert Weldy presents items pertaining to teacher evaluations which may be included in a collective bargaining agreement:

- (1) procedures for establishing the criteria for an evaluation system and their regular review;
- (2) requirements for announcing visits to classes;
- (3) prohibitions on the use of mechanical devices or recording equipment;
- (4) requirements that the teacher be fully aware that he is being observed and evaluated;
- (5) requirements for the length and frequency of observations;

⁴¹Ibid.

⁴²Handbook for Professional Personnel, (Greensboro, NC: Guilford County Schools, 1975), p. 27.

⁴³Ibid., p. 26.

⁴⁴Ibid., p. 27.

- (6) requirements for conferences before and after visits;
- (7) requirements and format for written observation reports;
- (8) provisions for the maintenance of the teacher's file of his record of service;
- (9) provisions for the teacher to disagree with or dispute the substance of his evaluation;
- (10) prohibitions against having any unauthorized persons attempt to provide evaluation of the teacher's service;
- (11) careful procedures for pointing out deficiencies, making suggestions for improvement, assisting the teacher in overcoming deficiencies;
- (12) procedures for handling complaints against teachers;
- (13) review of dismissal decisions.⁴⁵

When collective bargaining is legalized for public school teachers in North Carolina, teacher organizations should be cautious when negotiating over procedures for teacher evaluations. Rigorous, formalized procedures of evaluation, as indicated by Mr. Weldy, are in effect in many states which have collective bargaining laws.⁴⁶ These procedures may place teachers in an uncomfortable situation. Passage of such procedures could mean that teachers are more threatened and more intimidated by observations than ever before. Since teacher evaluation forms are matters which are at the discretion of school boards, teacher organizations may attempt to include evaluation forms in the scope of bargaining.

Pupil Discipline

According to the National Education Association survey, pupil discipline is negotiated in 824 of 1,529 contracts.⁴⁷ Provisions relating

⁴⁵Gilbert R. Weldy, Administering a Negotiated Contract, (Reston, Virginia: NASSP, 1973), pp. 22-23.

⁴⁶Ibid.

⁴⁷"Trends in Negotiable Items for Teachers", Negotiations Research Digest, (November, 1972), pp. 13-15.

to pupil discipline are contained in 53.9 percent of collective bargaining agreements surveyed nationwide.⁴⁸

The issue pertaining to discipline as a negotiable item may be limited in North Carolina because of state and federal rulings which have an impact on the subject. Since 1975, changes in discipline procedures for students in the public schools of North Carolina have become necessary because of a Supreme Court decision. As a result of a Supreme Court decision, Baker v. Owen (1975), both teachers and administrators must follow procedural rules before corporal punishment can be initiated.⁵⁰ The Baker decision involving the Guilford County School System has upheld the use of corporal punishment as long as Court-approved guidelines are implemented, (See Appendix I). Teachers and administrators are bound by the Supreme Court to abide by procedures established in accordance with the decision.⁵¹ The decision upholds, in part, the North Carolina Statute which allows principals and teachers to use reasonable force in exercising lawful authority within the public schools.⁵²

Section two of General Statute 115-146 follows:

Principals, teachers, substitute teachers, voluntary teachers, teachers' aides and assistants and student teachers in the public schools of this state may use reasonable force in the exercise of lawful authority to restrain or correct pupils and maintain order. No county or city board

⁴⁸Ibid.

⁴⁹Baker v. Owen, 44 USLW 3237.

⁵⁰Thomas J. Flygare, "Procedural Due Process Now Applies to Corporal Punishment", Phi Delta Kappan, (January, 1976), pp. 345-346.

⁵¹Ibid., p. 345.

⁵²Ibid.

of education or district committee shall promulgate or continue in effect a rule, regulation or by law which prohibits the use of such force as is specified in this section.⁵³

The laws of North Carolina further provide assistance for teachers injured during an episode of violence.⁵⁴ The 1973 General Assembly included classroom discipline under the coverage.

Section (A) of General Statute 115-159.1 follows:

Any teacher as defined in G.S. 135-1(25) who while engaged in the course of his employment or in any activity incidental thereto, suffers any injury or disability resulting from or arising out of any episode of violence by one or more persons shall be entitled to receive his full salary during the shortest of these periods: one year, or the continuation of his disability, or the time during which he is unable to engage in his employment because of the injury. An episode of violence shall be defined to mean but shall not be limited to any acts of violence directed toward any school building or facility, or to any teacher or any student by any person including but not limited to another student. These benefits shall be in lieu of all other income or disability benefits payable under Workmen's Compensation to such teacher only during the period prescribed herein.⁵⁵

Acts of violence are a serious concern for all teachers. To alleviate the possibility of violence in schools, teachers may support negotiations which contain provisions which permit and support the use of security guards in the schools. Since this is a budget term, it is discussed in chapter five.

Additional regulations contained in General Statute 115-147 provide principals and superintendents with the authority to suspend or

⁵³Public School Laws of North Carolina, (State Board of Education, 1974), pp. 110-111.

⁵⁴Ibid., p. 126.

⁵⁵Ibid., p. 126.

dismiss pupils.⁵⁶ This issue could become a negotiable subject because state rulings do not include a provision for the right of teachers to exclude students from classroom instruction.

With coverage extended to public school teachers under two North Carolina statutes, the issue over whether discipline should become a negotiable item may not receive substantial support except for an exclusion provision for classroom teachers. Administrators may provide strong opposition to any proposal which seeks to negotiate disciplinary procedures in the schools.

Length of Teaching Day

Public school teachers employed in states which permit collective bargaining have negotiated provisions governing the length of the teaching day in 53.6 percent of all agreements, according to the National Education Association survey on teacher negotiations.⁵⁷ The clauses which are contained in collective bargaining agreements usually mandate a specified number of hours that teachers are required to work each day.⁵⁸

In 1973, the North Carolina State Board of Education adopted a requirement which would have required a uniform length of school day for public school personnel.⁵⁹

⁵⁶Ibid., p. 111

⁵⁷"Trends in Negotiable Items for Teachers", Negotiations Research Digest, (November, 1972), pp. 13-15.

⁵⁸Ibid.

⁵⁹Glenn Keever and Bernadine Moses, "The State Board of Education: People and Powers!" North Carolina Education, 5, No. 5, (January, 1975), 8.

...when the Board adopted a requirement that local school systems implement an eight-hour day for staff members. A check with the Attorney General found that the length of the school day--except six hours of instruction for children--is entirely up to local boards of education. The Board rescinded its earlier action and left the school day for local boards to decide.⁶⁰

If these proposals had been enacted into policy, it would have provided teachers with a set number of hours that they would have been required to work, in the same manner as business and industry.

General Statute 115-35 delegates the authority to regulate the time of opening and closing of schools to local boards of education.⁶¹ This prerogative is therefore a management right of county and city boards of education.

Section (e) of General Statute 115-35 follows:

Fixing Time of Opening and Closing Schools--The time of opening and closing the public schools shall be fixed and determined by county and city boards of education in their respective administrative units. Different opening and closing dates may be fixed for schools in the same administrative unit but all schools using the same buses for transportation of pupils must open and close at the same time.⁶²

The Public School Laws of North Carolina contain a general provision which governs the length of school day for public school teachers.⁶³

Although Statute 115-35 provides general regulations over the length of school day, the law indicates minimum requirements rather than a uniform maximum length of school day regulation.

⁶⁰Ibid.

⁶¹Public School Laws of North Carolina, (State Board of Education, 1974), p. 37.

⁶²Ibid.

⁶³Ibid.

Section (a) of General Statute 115-36 follows:

The length of school day shall be determined by the several county and city boards of education for all public schools in their respective administrative units, and the minimum time for which teachers shall be employed in the school room or on the grounds supervising the activities of children shall not be less than six hours: Provided, the several county and city boards of education may adopt rules and regulations allowing handicapped pupils, kindergarten pupils, and pupils attending the first, second, and third grades to attend school for period less than six hours. The superintendent of the several county and city boards of education, in the event of an emergency, act of God, or any other conditions requiring the termination of classes before six hours have elapsed, may suspend the operation of any school for that particular day without loss of credit to the pupil or loss of pay to the teacher.⁶⁴

In North Carolina, some teachers who support a length of school day regulation are concerned about the working hours being different from school to school. Teachers indicate that extra-curricular activities are included as part of the teacher work day.⁶⁵ The goals of the American Federation of Teachers include a program to make extra-curricular activities and duties optional and voluntary for teachers, and paid at an equitable rate.⁶⁶ With the present regulations, teachers cannot be assured of the amount of time to be spent at school each day.

Teacher organizations may actively pursue a negotiated agreement which stipulates a maximum length of school day provision in the absence of state regulations. Since General Statute 115-37 permits local boards of education to establish provisions at the present time, teachers may seek to bargain with school boards over this issue in the near future.

⁶⁴Ibid.

⁶⁵The North Carolina AFT-Teacher, (November, 1975), p. 3.

⁶⁶Ibid.

Teacher Personnel File

Collective bargaining agreements which contain provisions for the establishment of teacher personnel files are included in 49 percent of all negotiated agreements surveyed by the National Education Association.⁶⁷ These files contain any complaint, commendation, or suggestion for correction or improvement about the teacher.

The Public School Laws of North Carolina contain provisions which require the superintendent to maintain a personnel file for each teacher.⁶⁸ State regulations also require that the complaint, commendation, or suggestion shall be signed by the person who makes it and shall be placed in the teacher's file only after reasonable notice to the teacher.⁶⁹ The teacher's denial or explanation of the statements shall also be placed in the file.⁷⁰

General Statute 115-142 establishes procedures for inspection of the personnel file. Paragraph two of Section (b) follows:

The personnel file shall be open for the teacher's inspection at all reasonable times but shall be open to other persons only in accordance with such rules and regulations as the board adopts. Any preemployment data or other information obtained about a teacher before his employment by the board may be kept in a file separate from his personnel file and need not be made available to him. No data placed in the preemployment file may be introduced as evidence at a hearing on the dismissal or demotion of a teacher.⁷¹

⁶⁷"Trends in Negotiable Items for Teachers", Negotiations Research Digest, (November, 1972), pp. 13-15.

⁶⁸Public School Laws of North Carolina, (1971), p. 96.

⁶⁹Ibid.

⁷⁰Ibid.

⁷¹Ibid.

School boards cannot establish policies which differ from provisions included in the North Carolina State Statutes which pertain to the teacher's personnel file because state statutes supersede school board policy. Therefore, negotiations between teacher organizations and school boards over the teacher's personnel file will not be a major issue.

Faculty Meetings

The survey conducted by the National Education Association indicates that provisions governing regular faculty meetings are contained in 47.1 percent of collective bargaining agreements nationwide.⁷² Staff and departmental meetings within an individual school are a part of the regular school day.⁷³

There are no provisions contained in the General Statutes or North Carolina State Board of Education policies which govern faculty meetings. Therefore, teachers in most North Carolina public schools are required to attend faculty meetings at the discretion of the local school principals. In the absence of North Carolina General Statutes and State Board policy, school board policy could establish provisions for faculty meetings. Many teachers may argue that hastily-called faculty meetings extend the length of time that they must remain at school after the instruction day has concluded. Delays in attending to duties and responsibilities outside of school often occur as a result of these meetings. The Guilford County Board of Education adopted a statement pertaining

⁷²"Trends in Negotiable Items for Teachers", Negotiations Research Digest, (November, 1972), pp. 13-15.

⁷³Handbook for Professional Personnel, (Guilford County Schools, 1975-76), p. 3.

to the length of faculty meetings.⁷⁴ Policies regulating faculty meetings for the Guilford County Schools are as follows:

Staff and departmental meetings within an individual school are a part of the regular school day. All professional personnel are expected to attend, participate in, and remain for the duration of each meeting. It is believed that, as a rule, faculty or in-service meetings at the end of the workday should not exceed an hour in length.⁷⁵

Teachers in North Carolina may advocate a voice in determining the number and length of faculty meetings within a specified period of time. An example could be one faculty meeting per week, conducted at the conclusion of the school day on Monday, and lasting no longer than one hour. Emergency meetings would remain at the discretion of the principal.

School boards may encounter demands by teacher organizations to negotiate over the time and length of faculty meetings when collective bargaining is legalized in North Carolina.

Promotions

Regulations for teacher promotions are contained in 46 percent of all collective bargaining agreements according to the National Education Association national survey.⁷⁶ Promotion is advancement in rank or position. This could include an advancement from a regular teaching assignment to the position of department head.

⁷⁴Ibid.

⁷⁵Ibid.

⁷⁶"Trends in Negotiable Items for Teachers", Negotiation Research Digest, (November, 1972), pp. 13-15.

Under collective bargaining, the school administration may regard promotion policies as an administrative prerogative.⁷⁷ John H. Metzler, Professor of Industrial Relations at Neward College of Engineering, presents the following observation in defense of school administrators:

In areas of promotion, assignment and transfer, the teachers might have the right to negotiate a mechanism for drawing their desires and aspirations to the administrator for his consideration. They might have the right to grieve the action taken by the administrator on the grounds that he acted either capriciously or discriminatorily. However, the decision as to who should be promoted, transferred or assigned is one which should be made in a broad context of criteria and, therefore, retained to the administration and the board.⁷⁸

Lieberman and Moskow present an observation which pertains to promotion policies:

Teachers may resent appointments from outside the system or allegedly biased appointments from within it. The school administration may regard an administrative appointment as an administrative prerogative. It may contend that it would be just as wrong for the teacher organization to codetermine the procedures for choosing administrative representatives as it would be for the school administration to codetermine the procedures for choosing the organizational representatives.⁷⁹

Proper certification is a prerequisite for teacher employment and promotion in North Carolina.⁸⁰ Many teachers are now eligible for promotion into regular teaching positions as the result of the elimination

⁷⁷John H. Metzler, "The Need for Limitation Upon the Scope of Negotiations in Public Education, I", Journal of Law and Education, 2, (January, 1973), 153.

⁷⁸Ibid.

⁷⁹Myron Lieberman and Michael Moskow, Collective Negotiations for Teachers (Chicago: Rand-McNally and Co., 1966), pp. 239-240.

⁸⁰Public School Laws of North Carolina, (State Board of Education, 1974), p. 120.

of minimum test scores. Until 1975, a minimum test score on the National Teachers Examination was required by the North Carolina State Board of Education for teachers to obtain teacher certification.⁸¹ In August, 1975, a three-judge federal panel ruled that North Carolina's use of the National Teacher Examination was unconstitutionally discriminatory.⁸² This voided the requirement that teachers had to achieve a minimum score of 950 in order to receive certification.⁸³

The court found that the teacher test had a disparate impact on Blacks, and was therefore automatically suspect under the Fourteenth Amendment to the United States Constitution.⁸⁴

Some 15,000 persons who completed degrees since 1964, but failed to obtain the minimum score of 950 on the NTE, are now eligible for certification.⁸⁵ This could have affected promotions in educational systems throughout the state because certain scores were required to obtain a certificate in specific areas of concentration.

General Statutes and North Carolina State Board of Education policies do not contain provisions for teacher promotions. According to personnel directors in large administrative units, many school boards do not have written policies relating to teacher promotion. Therefore, teacher organizations may actively seek to include promotional procedures

⁸¹National Education Association, "Teacher Exams Must Go--Carolina Court", The Reporter, 14, No. 7, (December, 1975), 12.

⁸²"Court Voids North Carolina Teacher Score Rule", Greensboro Daily News, August 28, 1975, p. A-1.

⁸³Ibid.

⁸⁴Ibid.

⁸⁵Myron Lieberman and Michael Moskow, op. cit., pp. 239-240.

in negotiations with school boards when collective bargaining is legalized in the State.

Subject Area Assignment

The survey conducted by the National Education Association indicates that negotiated contracts contain subject area assignment regulations in 45.5 percent of public school collective bargaining policies nationwide.⁸⁶ Subject area assignments are teaching duties in the academic area for which the instructor is qualified and certified.

Two public school laws pertain to the issue of subject area assignment in North Carolina. General Statutes 115-37 and 115-146 regulate to some degree subjects taught in public schools.

General Statute 115-37 follows:

County and city boards of education shall provide for the efficient teaching in each grade of all subjects included in the outline course of study prepared by the State Superintendent of Public Instruction, which course of study shall include instruction in Americanism, government of the State of North Carolina, government of the United States, fire prevention, harmful or illegal drugs including alcohol at the appropriate grade levels. Nothing in this Chapter shall prohibit city or county boards of education from operating a nongraded system in which pupils are taught at their individual learning levels.⁸⁷

Provisions contained in General Statute 115-146 require teachers to teach as thoroughly as possible all subjects and issues which statutes require.⁸⁸ In large school districts, many schools are accredited by

⁸⁶"Trends in Negotiable Items for Teachers", Negotiations Research Digest, (November, 1973), pp. 13-15.

⁸⁷Public School Laws of North Carolina, pp. 37-38.

⁸⁸Ibid., p. 111.

both the State and Southern Associations.⁸⁹ This signifies that state and regional qualitative and quantitative educational standards are constantly being met in the areas of purposes and objectives, program, personnel, school plant and facilities, coordination and evaluation.⁹⁰

School districts which are fully accredited may escape the challenge of negotiations over subject area assignments because of the stringent requirements established by the accrediting agencies. Districts which are not accredited and continue to assign teachers to subject outside of their area of certification may encounter a stronger challenge by teacher organizations which seek to establish negotiated agreements to insure teachers of assignments in their area of certification.

Substitute Teachers

Negotiated contracts contain provisions which include substitute teacher regulations in 38 percent of collective bargaining agreements surveyed by the National Education Association.⁹¹ Substitute teachers are personnel employed to administer classroom procedures while the regular teacher is away from his or her instructional assignment.

The Public School Laws of North Carolina do not contain provisions for substitute teachers except in General Statute 115-146. In this statute, the authority and duties of substitute teachers are defined in

⁸⁹Educational Directory, (Raleigh, NC: North Carolina Department of Public Instruction, 1975).

⁹⁰Handbook for Professional Personnel, 1975-76, p. 1

⁹¹"Trends in Negotiable Items for Teachers", Negotiations Research Digest, (November, 1972), pp. 13-15.

a general provision.⁹²

The North Carolina State Board of Education requires that all substitute teachers shall be approved in accordance with regulations of the county or city board of education.⁹³ Substitute teachers shall be paid at the rate of twenty dollars per day either from local or state funds.⁹⁴

Since requirements which determine the eligibility of substitute teachers to obtain employment are at the discretion of school boards, qualifications may vary from system to system. Certain large districts which have an abundance of certified personnel residing in the general area may encourage the employment of substitute teachers who hold valid North Carolina Teacher's Certificates.⁹⁵

Teacher organizations may believe that it is in the best interest of the students and the profession to negotiate for regulations which require that school boards employ only certificated personnel when available. Management may argue that citizens of the school community who have had extensive experience as successful substitute teachers should not be excluded from employment because they do not hold a teacher's certificate.

⁹²Public School Laws of North Carolina, (1974), pp. 110-111.

⁹³Sick Leave and Substitute Teacher Regulations, (Adopted by the North Carolina State Board of Education, July, 1974), p. 4.

⁹⁴Ibid.

⁹⁵Handbook for Professional Personnel, 1975-76, p. 29.

Other Non-Budget Issues

The twelve non-budget issues which have been studied as they pertain to the State of North Carolina may become important issues when collective bargaining is legalized in the state. The national survey indicates that these issues are most significant in negotiated contracts in states which permit collective bargaining for public school teachers.⁹⁶ Additional non-budget issues are briefly examined because of their inclusion in many collective bargaining agreements.

Contracts

Contracts are signed by teachers who are employed in regular teaching positions.⁹⁷ These documents are furnished to school boards by the State Superintendent of Public Instruction and must be signed by all teachers before salaries are to be paid.⁹⁸ The term used in the contract which identifies the type of teacher employment is general in nature, (See Appendix J).

Section two of paragraph one in the Contract for Professional Service follows:

That said certificated person, having been duly elected to perform professional services in the public schools of said school administrative unit, subject to any special conditions set forth below, agrees to discharge faithfully all the duties imposed on such persons by the laws of North Carolina and by the rules and regulations of the Board of Education of said school administrative unit.⁹⁹

⁹⁶"Trends in Negotiable Items for Teachers", Negotiations Research Digest, (November, 1972), pp. 13-15.

⁹⁷Public School Laws of North Carolina, (1971), p. 95.

⁹⁸Ibid.

⁹⁹Contract for Professional Service--North Carolina Public Schools.

State teacher contracts are necessarily general in nature to provide flexibility of teacher assignments and teacher duties. Furthermore, all teachers sign a standard contract for their initial employment.¹⁰⁰

Although some teachers may advocate a more detailed contract which spells out the regulations, duties, and teaching assignment, Edward C. Bolmeier, Emeritus Professor of Education at Duke University, indicates that it is very unusual for the legislature to spell out in detail the duties of teachers:

Although the state legislature is empowered to prescribe the duties of teachers, it is very unusual for the legislature to spell out in detail what the teacher may or must do in or out of the classroom. Usually the statutory provisions pertaining to duties of teachers are stated in broad terms with express or implied delegation of authority to local school boards to determine the assignment of duties for teachers. Not only is a school board given authority to determine the duties of teachers; it is usually authorized to redelegate such functions to the proper school administrators, such as the superintendent of schools or the school principal who ultimately determines with the board's approval, what the "regular" and "extra" assignments of teacher shall be.¹⁰¹

According to Dr. Bolmeier, courts have generally ruled that extra-classroom duties are reasonably interrelated with the other duties of the teacher.¹⁰² Therefore, the duties are binding even though not specifically stated in writing.¹⁰³

¹⁰⁰Public School Laws of North Carolina, (1971), p. 95.

¹⁰¹Edward C. Bolmeier, The School in the Legal Structure, (Cincinnati: The W. H. Anderson Company, 2d Ed., 1973), p. 203.

¹⁰²Ibid., p. 204.

¹⁰³Ibid.

North Carolina General Statute 115-142 mandates the use of a standardized contract for teachers in the public schools.¹⁰⁴ Since contracts are defined by state laws and regulations, negotiations between teacher organizations and school boards over the content or type of contract does not appear likely.

Curriculum

In collective bargaining, teacher organizations attempt to include almost every conceivable item that either directly or indirectly affects their terms and conditions of employment.¹⁰⁵ It is not uncommon for a teachers' organization to persist in demanding an equal voice in curriculum matters.¹⁰⁶

Reynolds C. Seitz, Professor of Law at Marquette University, offers the following viewpoint on public school negotiations:

It appears that school boards and administrators in the field of elementary and secondary education that neglect giving teachers a realistic role in academic matters are going to be confronted with legislation which gives teachers the right to negotiate on such matters. It seems also that in areas where legislation now gives teachers the right to bargain on 'conditions of employment' many courts will be persuaded that the connotation of the phrase should include the right to bargain on a broad range of academic matters.¹⁰⁷

Dr. Seitz indicates that some of the statutes which may be passed may delimit "conditions of employment" by including some specific language

¹⁰⁴Public School Laws of North Carolina, (1974), p. 100.

¹⁰⁵John J. Metzler, "The Need for Limitation Upon the Scope of Negotiations in Public Education, I", Journal of Law and Education, 2, No. 1, (1973), 145.

¹⁰⁶Ibid.

¹⁰⁷Reynolds C. Seitz, "Scope of Bargaining Under a Statute Providing for Negotiations on 'Conditions of Employment'", NOLPE School Law Journal, 1, No. 1, (Fall, 1970), 28.

restraining management rights.¹⁰⁸

Teachers are free to discuss controversial topics, ideas, and philosophies in the classroom which relate to the particular subject area.¹⁰⁹ Teachers have a duty to present both sides of a controversy and to calculate the discussion's potential consequences.¹¹⁰

In advocating curriculum planning, textbook adoptions, and teaching methods as part of the negotiations process, Gatti and Gatti believe that through teacher involvement, the board of education is able to utilize the knowledge and professional expertise of the people who really are aware of the needs and desires of students.¹¹¹

For the purpose of this study, curriculum includes the following categories: course content, curriculum change procedures, program development procedures, scope and sequence in curriculum, curriculum committees, curriculum guides, and evaluation of curriculum.¹¹² A recent study of school board opinion concerning negotiability of curriculum matters indicates that twenty-three percent of these members believe that curriculum should be clearly negotiable, while an overwhelming majority believe that this issue should remain a management prerogative.¹¹³

¹⁰⁸Ibid., p. 29.

¹⁰⁹Daniel J. Gatti and Richard D. Gatti, op. cit., p. 76.

¹¹⁰Ibid.

¹¹¹Ibid., p. 159.

¹¹²"A Look at Curriculum Instruction", National School Boards Association Research Report, Report No. 1975-2, (1975), p. 4.

¹¹³"What School Board Members Say", National School Boards Association Research Report, Report No. 1975-2, (1975), p. 10.

John H. Metzler issues a warning to administrators and legislators:

The two largest teachers' organizations contend that any school board policy or practice even remotely affecting teachers' interests and livelihoods is or should be negotiable. Where, as in most states statutes are silent, bitter disputes as to negotiability usually must end up in the courts. If laws are not revised to restrict the scope of bargaining, anticipate a welter or court decisions as time marches on.¹¹⁴

North Carolina does not have a precedent established because other states are divided over the issue of opening the negotiations process to curriculum matters. Administrators and school boards argue that curriculum matters should not be negotiable because they are charged by law with the organization and implementation of curriculum within the public schools.

Teacher Qualifications

Teacher qualifications are negotiated in some areas which do not have statutes governing the certification of instructional personnel. The North Carolina State Board of Education, under General Statute 115-153, has full authority over all matters of teacher certification.¹¹⁵ Since North Carolina State Laws regulate teacher qualifications as they pertain to certification, collective bargaining between school boards and teacher organizations over teacher certification is not negotiable.

¹¹⁴John H. Metzler, "The Need for Limitation Upon the Scope of Negotiations in Public Education", Journal of Law and Education, 2, No. 1, (1973), 143.

¹¹⁵Public School Laws of North Carolina, (1974), pp. 120-121.

Dismissal and Resignation

Dismissal and resignation of career teachers is specifically defined in General Statute 115-142.¹¹⁶ Since provisions which regulate the dismissal of a probationary teacher are not specifically defined by North Carolina Public School Law, this issue may become a negotiable item between teacher organizations and local boards of education.

Part (2) of Section (m) in General Statute 115-142 follows:

The board, upon recommendation of the superintendent, may refuse to renew the contract of any probationary teacher or to reemploy any teacher who is not under contract for any cause it deems sufficient: provided, however, that the cause may not be arbitrary, capricious, discriminatory or for personal or political reasons.¹¹⁷

Although teacher organizations may attempt to negotiate for additional probationary teacher dismissal regulations with school boards, the dismissal procedures of career teachers will not be negotiable because of state laws which regulate this issue. Resignation procedures for both probationary and career teachers are defined in the Tenure Law and will not be subject to negotiations.

Non-budget issues such as parent-teacher conferences, professional meetings, exchange teaching leave, binding arbitration, fact finding and duration of collective bargaining agreements are examples of additional items which could eventually be subject to negotiations. The subjects are not analyzed in the study because the issues are either contained in broader provisions or are not relevant to present situations which exist in North Carolina at the present time.

¹¹⁶Ibid., pp. 100-107.

¹¹⁷Ibid., p. 107

CHAPTER V
MAJOR BUDGET ISSUES WHICH MAY AFFECT SCHOOL BOARDS
IN LARGE DISTRICTS

School boards in North Carolina determine many budget issues which are necessary for the operation of the public schools within the district. Traditionally, school boards have constructed the budget without input from teacher organizations. Since budget issues have been a management prerogative, school boards have maintained full control of the process of budget implementation. North Carolina State Law requires school boards to present the budget for approval by governmental agencies such as the county commissioners.¹

Section (a) of General Statute 115-80 follows:

...County and city boards of education shall file with the appropriate tax levying authorities on or before the fifteenth day of June, on forms provided by the State Board of Education, all budgets requesting funds to operate the public schools, whether such funds are to be provided by the State or from local sources. There shall be no funds allotted for providing instruction to pupils for a term of more than one hundred eighty days either from State or local sources...²

Approval of the budget request is important because it includes items which may be implemented only with the approval of local funds. Procedures for implementing budget expenditures differ from the implementation of non-budget items because of the involvement by local tax-levying

¹Public School Laws of North Carolina, (State Board of Education, 1974), p. 61.

²Ibid.

authorities.

Chapter five examines collective bargaining as it relates to budget issues which are under the jurisdiction of school boards. Collective bargaining between teacher organizations and school boards over matters which are regulated by state laws and State Board of Education policy may not be negotiable issues because the authority of school boards is superseded by state laws and State Board of Education policies.

For the purpose of clarification, examples of major budget issues are presented which are regulated by state law and State Board of Education policy. The following budget items are not regulated by school boards: state teacher salary, retirement, certain leave with pay provisions, salary increments for experienced teachers, workmen's compensation, authority for payroll deductions for group insurance and credit union loans, payroll deductions and investment in United States Savings Bonds, and the disability salary continuation plan.³

Large administrative units are receiving increased pressure from teacher organizations to provide additional financial support for the purpose of improving fringe benefits and establishing better working conditions.⁴ Increased involvement by teacher organizations in Greensboro, High Point, and Guilford County indicate that public school teachers are attempting to improve conditions of employment by voicing concerns to

³Public School Laws of North Carolina, (State Board of Education, 1974).

⁴"A.F.T. Goals", The North Carolina AFT-Teacher, 1, No. 2, (December, 1975), 3.

school boards.⁵

For the purpose of determining major budget issues which may confront school boards in North Carolina, the negotiations survey conducted by the National Education Association is utilized to indicate items which require financial assistance.⁶ Twelve major budget items are contained in many collective bargaining agreements in states which permit negotiations.⁷ The twelve items are analyzed in relation to school boards in North Carolina. Additional budget issues are studied because of possible significance in the collective bargaining process.

Salary Supplements

North Carolina has a statewide salary scale for public school teachers, (See Appendix K). Therefore, state salary for public school teachers may not be a negotiable issue because state salary scales are regulated by state law.⁸ In some large administrative units, supplements to the state salary scale are included as a fringe benefit.⁹ According to the nationwide survey conducted by the National Education Association, salaries are a negotiable item in 91.1 percent of all units which have collective

⁵"Greensboro Gets Supplement Hike", N.C.A.E. News Bulletin, 6, No. 2, (August, 1975), 4.

⁶"Trends in Negotiable Items for Teachers", Negotiations Research Digest, (November, 1972), pp. 13-15.

⁷Ibid.

⁸Public School Laws of North Carolina, (State Board of Education, 1974), p. 117.

⁹Ibid., p. 61.

bargaining agreements.¹⁰ Therefore, the salary issue is the item contained in more agreements than any other budget or non-budget issue.¹¹

North Carolina State Laws contain provisions for the establishment of salary supplements by school boards. Regulations are contained in General Statute 115-80.

Paragraph six of Section (a) follows:

Notwithstanding any other provision of this chapter, when necessity is shown by county and city boards of education, or particular local conditions demand, for adding or supplementing items of expenditure in the current expense fund, including additional personnel and/or supplements to the salaries of personnel, the board of county commissioners may approve or disapprove, in part or in whole, any such proposed and requested expenditure. For those items it approves, the board of county commissioners shall make a sufficient tax levy to provide the funds...¹²

In Harris v. Board of Commissioners (1968),¹³ General Statute 115-80 was upheld to be valid in the requirement that a tax levy was not required to be submitted to the vote of the people for the purpose of supplementing teachers' salaries.¹⁴ Therefore, a majority vote of the commissioners is required for additional revenue to enact or increase salary supplements.

General Statute 115-49 also defines the authority of school boards to regulate salary supplements. This statute allows school boards to pay a

¹⁰"Trends in Negotiable Items for Teachers", Negotiations Research Digest, (November, 1972), pp. 13-15.

¹¹Ibid.

¹²Public School Laws of North Carolina, (State Board of Education, 1974), p. 61.

¹³Harris v. Board of Commissioners, N.C. App. 258, 161 S.E. 2nd 213, (1968).

¹⁴Public School Laws of North Carolina, (1974), p. 63.

higher salary than the state-adopted salary scale permits, provided certain conditions are met.¹⁵

Salary supplements could eventually become the major negotiable issue at the local level. In large administrative units at the present time, representatives of teacher organizations are demanding additional supplements based, in part, on the following reasons:

...the rationale for the supplement increase is simply that teachers are feeling the effects of inflation and have had a significant decrease in buying power over the last several years.¹⁶

In support of salary supplements, Mike Britt, NCAE president in the Winston-Salem/Forsyth Administrative Unit, indicates that the cost of living has risen by more than twenty-one percent during a period when teachers have had only 7.5 percent salary increase.¹⁷ Mr. Britt indicated that the fact is even more disturbing when an analysis of the Endicott Report of 1973 showed that teachers were already lower in beginning salary than nine of eleven fields that require a college degree.¹⁸

At the present time, local school units which grant salary supplements to teachers provide these with no additional employment assignments, (See Appendix L). Under conditions which involve collective bargaining, administrators may demand that local supplements be provided only for those teachers who, under written agreement, consent to perform additional

¹⁵Ibid., p. 41.

¹⁶"\$200 Increase in Local Pay Requested", NCAE News Bulletin, 6, No. 4, (November, 1975), 3.

¹⁷Ibid.

¹⁸Ibid.

school-related duties.

Leave With Pay

Certain types of leave with pay provisions are contained in 87.6 percent of all agreements surveyed nationwide by the National Education Association.¹⁹ Since statutes or state policies supersede school board authority, the provisions contained within may not be negotiable.

The North Carolina State Board of Education has adopted leave with pay regulations which supersede school board policies.²⁰ The items which are specifically defined and regulated by the State Board of Education are mentioned in chapter four. However, school boards maintain some management prerogative in certain leave with pay provisions.²¹

The regulations pertaining to maternity leave are provided in the policies adopted by the State Board of Education.²² However, there is a provision contained in the regulation which provides school boards with an option.²³ In the first sentence of the state regulation, it is stated that maternity leave shall normally not exceed six months.²⁴ According to personnel directors in large administrative units, school boards have

¹⁹"Trends in Negotiable Items for Teachers", Negotiations Research Digest, (November, 1972), pp. 13-15.

²⁰Sick Leave and Substitute Teacher Regulations, (State Board of Education, 1972), pp. 1-8.

²¹Ibid., pp. 5-8.

²²Ibid., pp. 3-4.

²³Ibid.

²⁴Ibid., p. 3.

interpreted the work "normally" to indicate that pregnant teachers may be permitted a leave in excess of six months, while others retain the six-month stipulation as the absolute maximum amount of time a teacher may remain on leave. The United States Court of Appeals for the Sixth Circuit ruled in Cleveland Board of Education v. La Fleur (1974),²⁵ that mandatory termination procedures of maternity rules violate the Due Process Clause of the Fourteenth Amendment.²⁶ Therefore, arbitrary cutoff dates have no valid relationship to the State's interest in preserving continuity of instruction, as long as the teacher gives advanced notice of pregnancy.²⁷ Teacher organizations may eventually seek to negotiate with school boards over this terminology. Under present State Board of Education policy, the regular teacher who is on maternity leave is paid full salary for days during the year in which pregnancy causes temporarily disability, or complications caused by pregnancy.²⁸ For the days of disability the interim teacher in the regular teacher's position is allowed substitute pay.²⁹

At the discretion of the superintendent of the administrative unit, teachers may be allowed to attend professional meetings.³⁰ Funding to

²⁵Cleveland Board of Education v. La Fleur, No. 72-777, 465 F 2nd 1184, 1974.

²⁶"Syllabus", NOLPE School Law Journal, 3, No. 2, (Fall, 1973), 49.

²⁷Ibid.

²⁸Ibid.

²⁹Ibid., p. 5.

³⁰Ibid., p. 6.

provide substitutes while these teachers are absent is usually provided by the local school if such revenue is available and the principal concurs that the meeting is worthwhile.³¹ In some instances, school funds are not available and the teacher must pay the substitute.

Teacher organizations may attempt to negotiate for additional local funding to allow teachers to attend professional meetings without having to pay their substitute from the teacher's own funds. At the present time, a substitute teacher shall not be paid from state funds unless the regular teacher voluntarily accepts the obligation and the amount paid to the substitute teacher is deducted from the pay of the regular teacher.³²

Health Insurance

Local units which permit collective bargaining in other states contain health insurance benefits as a negotiable item in 86.7 percent of all agreements surveyed by the National Education Association.³³ This is the third-most negotiated budget item contained in collective bargaining agreements.³⁴

In North Carolina, a division of health benefits is established by the Board of Trustees of the Teacher's and State Employee's Retirement System.³⁵ Hospital and medical insurance are regulated by state law.

³¹Ibid.

³²Sick Leave and Substitute Teacher Regulations, (North Carolina State Board of Education, 1972), p. 6.

³³"Trends in Negotiable Items for Teachers", Negotiations Research Digest, (November, 1972), pp. 13-15.

³⁴Ibid.

³⁵Public School Laws of North Carolina, (State Board of Education, 1974), p. 389.

General Statute 135-33 follows:

The Board of Trustees of the Retirement System shall formulate, establish and administer for teachers and State employees a program of hospital and medical care benefits to the extent that funds for such benefits are specifically appropriated by the General Assembly. Such a program may be provided by the Board either directly or through the purchase of contracts therefore, or any combination thereof, as in its discretion it may deem wise and expedient. In awarding any contracts pursuant to this section, the Board shall give consideration to the total or overall cost of complete family coverage by teachers and State employees...³⁶

Teachers employed in each school district in North Carolina are provided hospitalization coverage and major medical insurance under a group insurance plan.³⁷ This is in accordance with a contract between North Carolina Blue Cross and Blue Shield and the Board of Trustees of the Teachers' and State Employees' Retirement System, in behalf of the State of North Carolina.³⁸ The plan allows teachers who wish to participate in a hospitalization plan with low-option group insurance for the individual employee. The North Carolina General Assembly also allows individual school boards to provide, at their discretion, additional payments for high-option coverage of the individual teacher.

Another health benefit provided for by legislative action in North Carolina is the disability salary continuation plan.³⁹

³⁶ Ibid.

³⁷ A Program of Hospital and Medical Benefits for Teachers and State Employees of the State of North Carolina, (Durham: N.C. Blue Cross and Blue Shield, Inc., 1973), p. 1.

³⁸ Ibid.

³⁹ Public School Laws of North Carolina, (State Board of Education, 1974), p. 389.

General Statute 135-34 follows:

The Board of Trustees of the Retirement System shall formulate, establish and administer for teachers and State employees with one or more years of service a program of disability salary continuation benefits to the extent that funds for such benefits are specifically appropriated by the General Assembly...Benefits provided under this program of disability salary continuation shall not be reduced in any manner as a result of social security payments received with respect to any dependent or dependents of the disabled employee or as a result of compensation received from the Veterans Administration of the United States for disease or disability incurred while a member of the armed forces of the United States.⁴⁰

Since the funds for the disability salary continuation plan are specifically appropriated by the General Assembly and a higher option is not provided in the plan, demands for a higher option by teacher organizations may be subject to negotiations at the school board level.

Some large school districts which have additional revenue available include high-option hospitalization coverage as a fringe benefit for their teachers.⁴¹ Since this option is retained by school boards, teacher organizations may determine that this option should eventually be subjected to the collective bargaining process.

Extra-Duty Pay

Provisions for extra-duty pay may include supervision at athletic contests, parent-teacher meetings, and school-community events held after the conclusion of the instructional day. 73.9 percent of all agreements between local school boards and teacher organizations include extra-duty

⁴⁰Ibid.

⁴¹Handbook for Professional Personnel, (Greensboro, NC: Guilford County Schools, 1975-76), p. 25.

pay as a negotiable item according to the survey conducted by the National Education Association.⁴²

The State of North Carolina does not provide regulations in statutes or State School Board policies which pertain to extra-duty pay for public school teachers. Therefore, school boards have the prerogative of establishing policies relating to this issue. Policies may vary over pay for extra duty in large units in North Carolina. However, many administrative units do not have policies which govern this issue. As an example, one school within a system may provide payment for gatekeepers and supervisors at athletic contests while another school in the same system includes these extra duties as part of the overall teacher workday. Discrepancies such as these cause teacher organizations to demand uniform regulations for all teachers in the same school system.

School administrators may argue that extra-duty events are part of the school day. The North Carolina Public School Teacher's Contract indicates that "professional services" are to be performed by employees who sign the contract.⁴³ Since this is a general term contained in the contract, school administrators may argue that professional services include extra duties.

If extra pay becomes a negotiable item, school boards may be required to request additional local monies from county commissioners to provide payment for teachers involved with extra duties. Also, salary supplements may be revised to award teachers with extra pay for these duties while

⁴²"Trends in Negotiable Items for Teachers", Negotiations Research Digest, (November, 1972), pp. 13-15.

⁴³Contract for Professional Service, North Carolina Public Schools.

eliminating portions of the supplement for those teachers who are unwilling to assume extra-duty responsibilities.

Class Size

The survey conducted by the National Education Association indicates that 58.1 percent of all collective bargaining agreements contain provisions regulating class size.⁴⁴ Class size is the number of students assigned to a class.⁴⁵

A 1973 amendment to the Public School Laws of North Carolina defined maximum class size limits for public schools.⁴⁶ General Statute 115-59 identifies the class size maximum.

Section (e) of Statute 115-59 follows:

Upon receipt of the allotments, local boards of education shall organize schools and assign teachers to achieve the following class size maximums:

- (1) No more than 26 students per teacher in average daily membership for grades one through three.
- (2) No more than 33 students per teacher in average daily membership for the upper elementary grades.
- (3) No more than 35 students per class except as permitted by local boards of education and no more than 150 students per day in average daily membership for teachers in high schools and junior high schools except as permitted by regional accrediting agencies.⁴⁷

Since provisions for maximum class size are regulated by state law, this issue may not become a negotiable issue. However, local funds are

⁴⁴"Trends in Negotiable Items for Teachers", Negotiations Research Digest, (November, 1972), pp. 13-15.

⁴⁵Michael B. Brough, Materials on Labor Relations in the Public Sector, (North Carolina Institute of Government, May, 1976), p. III-1.

⁴⁶Public School Laws of North Carolina, 1974, p. 47.

⁴⁷Ibid.

sometimes available to employ additional personnel to further reduce the maximum class size defined by state law. As an example, state regulations require no more than 26 students per teacher in grades one through three.⁴⁸ If a local administrative unit employs additional early childhood teachers from local funds, the class size maximum may be reduced to 25 students per teacher.

Technically speaking, state law defines maximum class size, but does not contain provisions which allow for local units to further reduce the class size limits in the district. With school boards holding the authority to implement this process, teacher organizations may view this issue as a negotiable item at the local level.

School administrators may indicate that class size is not a condition of employment. Therefore, management would advocate that class size is outside the scope of bargaining. Douglas W. Howlett, former member of the negotiating committee for the Cherry Hill, New Jersey, Education Association, offers the following observation on class size:

The question of class size is one of the issues found within the 'area of silence' in the state statutes. Is the determination of class size clearly within the jurisdiction of management, or does it substantially affect a teacher's working conditions? The answer to this question will determine whether or not class size should be included as a proper subject for negotiations between school boards and organized teacher groups.⁴⁹

⁴⁸Ibid.

⁴⁹Douglas W. Howlett, "Class Size: A Mandatory Bargainable Issue?" NOLPE School Law Journal, 3, No. 2, (Fall, 1973), 1.

Duty-Free Lunch Period

The issue of a duty-free lunch period for public school teachers is gaining momentum in larger administrative units in North Carolina.⁵⁰ The issue concurs with the national trend of duty-free lunch periods for teachers.⁵¹ The survey conducted by the National Education Association indicates that a duty-free lunch provision is included in 57.8 percent of all collective bargaining agreements.⁵²

North Carolina State Law and policies of the State Board of Education do not include provisions which pertain to duty-free lunch periods for public school teachers. In the absence of state regulations, school boards may adopt regulations pertaining to duty-free lunch periods for teachers.

Teacher organizations are placing increased emphasis on the necessity of duty-free lunch periods.⁵³ Organizations indicate that employees in other occupations are allowed to eat lunch without the added burden of supervisory duties. Organizational leaders also indicate that teachers can perform instructional duties in a more effective manner if a period of time is allowed away from students during the work day. One proposal for the elimination of the problem would be for the rescheduling of teaching assignments for the purpose of assigning certain teachers fewer instructional duties and including lunchroom supervisory duties in schedules,

⁵⁰Mary Nesbitt, "A.F.T. Distorts the Facts", North Carolina Education, (December, 1975), p. 22.

⁵¹"Trends in Negotiable Items for Teachers", Negotiations Research Digest, (November, 1972), pp. 13-15.

⁵²Ibid.

⁵³Nesbitt, op. cit., p. 22.

thus allowing for a duty-free lunch period for all teachers.

In the following statement, Lieberman and Moskow provide information pertaining to the "right-to-eat" laws:

In some states, legislation mandates a duty-free lunch period for all teachers. These laws are often called the 'right-to-eat' laws. Where they do not exist, teachers are often required to supervise students during their lunch hours.⁵⁴

Mary Nesbitt, a Buncombe County Representative to the North Carolina General Assembly, presents the following opinion on duty-free lunch periods for teachers:

The duty-free period is a classic example of a decision that must be negotiated locally...Teachers must understand that no new law is needed to provide for a duty-free period. It can be provided under present laws but must be worked out locally with each school being given the opportunity to devise a plan which respects the rights of teachers and protects the best interests of pupils.⁵⁵

Since the issue of a duty-free lunch period is not governed by state statutes or State School Board policy, the item may become a negotiable issue between teacher organizations and school boards when collective bargaining is legalized in North Carolina.

Duty-Free Planning Periods

Public school teachers are indicating a desire for duty-free planning periods during the instructional day. The National Education Association indicates that 52.7 percent of all collective bargaining agreements

⁵⁴Myron Lieberman and Michael Moskow, Collective Negotiations for Teachers, (Chicago: Rand-McNally and Company, 1966), pp. 223-224.

⁵⁵Nesbitt, op. cit., p. 22.

surveyed contain provisions for duty-free planning periods.⁵⁶

A policy which permits duty-free planning periods would require a period of time set aside during the instructional day which public school teachers would utilize to prepare lesson plans for future classroom instruction, evaluate student assignments, and prepare additional information for the purpose of improving instruction. The proposal would include elementary and secondary school teachers.

State statutes and State Board of Education policies do not contain provisions which relate to the issue of duty-free planning periods. Therefore, teacher organizations support the establishment of policies which permit planning periods for public school teachers.⁵⁷ Planning periods provide teachers an opportunity to utilize school materials and facilities to plan an improved instructional program. Planning periods also provide teachers with an opportunity to undertake assignments which would otherwise be completed after school hours. The goals of the American Federation of Teachers include a guaranteed duty-free planning period each day for each teacher.⁵⁸

To provide each teacher with a planning period may require the employment of additional certified personnel to maintain the state law which governs class size. Furthermore, it appears that organizational patterns would be changed at the elementary level to restructure self-contained classrooms in a manner which allows teachers to leave students

⁵⁶"Trends in Negotiable Items for Teachers", Negotiations Research Digest, (November, 1972), pp. 13-15.

⁵⁷"A.F.L.-C.I.O. Endorses A.F.T.'s Goals", The North Carolina AFT-Teacher, (November, 1975), p. 3.

⁵⁸Ibid.

for a lengthy period of time. The restructuring program could be accomplished by employing special teachers who relieve regular teachers for such classes as physical education, music, and art.⁵⁹

School boards will be confronted with demands for negotiations over the duty-free planning period issue. Negotiations for the implementation of planning periods will probably require the allocation of extra funds for the purpose of employing additional certified personnel.

Professional Growth/In-Service Training

Local administrative units conduct workshops and courses to provide professional growth for public school teachers employed in the system.⁶⁰ The survey by the National Education Association indicates that 49.3 percent of collective bargaining agreements nationwide have provisions which pertain to professional growth/in-service training.⁶¹

Professional growth/in-service training provides teachers with the opportunity to obtain credit for the renewal of teacher certificates without having to enroll in programs and courses offered by institutions of higher education.⁶² In large administrative units within the state, a director of staff development is available to assist faculties and individuals in the assessment of collective and individual needs, and the

⁵⁹Nesbitt, op. cit., p. 22

⁶⁰Public School Laws of North Carolina, (State Board of Education, 1974), p. 41.

⁶¹"Trends in Negotiable Items for Teachers", Negotiations Research Digest, (November, 1972), pp. 13-15.

⁶²Handbook for Professional Personnel, (Greensboro, NC: Guilford County Schools, 1975-76), p. 45.

implementation of program procedures.⁶³

The State Board of Education partially funds the budget which underwrites local professional growth/in-service training activities.⁶⁴ Therefore, the availability of opportunities for professional growth is largely dependent upon state funding.⁶⁵ Four professional growth options are generally available to the teacher at the local level. Included in the options are special interest workshops, in-service courses, educational travel, and individualized activities.⁶⁶

North Carolina Law requires school boards to provide for the professional growth of teachers; General Statute 115-46 follows:

County and city boards of education are authorized to provide for the professional growth of teachers while in service and to pass rules and regulations requiring teachers to cooperate with their superintendent for the improvement of instruction in the classroom and for promoting community improvement.⁶⁷

According to staff development directors, teacher organizations are generally supportive of the professional growth/in-service training programs. Local administrative units which offer a wide variety of in-service courses will be less likely to have this item presented as a negotiable issue. Since professional growth/in-service training programs are planned

⁶³Educational Directory, (North Carolina State Department of Public Instruction, 1975).

⁶⁴Handbook for Professional Personnel, (Greensboro, NC: Guilford County Schools, 1975-76), p. 45.

⁶⁵Ibid.

⁶⁶Ibid.

⁶⁷Public School Laws of North Carolina, (State Board of Education, 1974), p. 41.

at the local level, negotiations over the issue may be within the scope of bargaining when collective bargaining is legalized in North Carolina.

Teacher Facilities

For the purpose of the dissertation, teacher facilities are defined as areas designated for teacher planning and lounge areas. 45.1 percent of collective bargaining agreements in other states contain regulations which pertain to teacher facilities.⁶⁸

North Carolina General Statutes 115-78 and 115-79 outline the objects of expenditure for the operation of the public schools. However, statutes directly pertaining to the establishment and regulation of teacher facilities in the public schools are not defined. General Statute 115-80 defines the rules for preparation for school budgets.⁷⁰ A general provision contained in this statute may be viewed by teacher organizations as a basis for negotiating over improved teacher facilities because the provision allows school boards the prerogative of requesting additional funds for the maintenance and improvement of school facilities.

Paragraph four of General Statute 115-80 follows:

When funds accruing by law to the board of education are not sufficient to repair, maintain and insure properly the school plants of an administrative unit, it shall be the duty of the board of county commissioners in which such unit is located to supplement these funds by a tax levy and said board is so directed and authorized.⁷¹

⁶⁸"Trends in Negotiable Items", pp. 13-15.

⁶⁹Public School Laws of North Carolina, 1974, pp. 57-59.

⁷⁰Ibid., p. 61.

⁷¹Ibid.

Examples of facilities for teachers include the establishment of conference rooms and teacher lounges for the purposes of relaxation and instructional planning.

Although the subject of teacher facilities may become a negotiable issue in the future, the issue does not appear to be a major area of concern in North Carolina at this time.

Non-Classroom Duties

Non-classroom duties are defined as tasks performed by the teacher during the instructional day which do not pertain directly to the instructional process in the classroom. Examples of these tasks may include hall duty, bus supervision, attendance coordinators, and supervisory duties in the student commons area. The National Education Association survey indicates that 40.4 percent of all negotiated agreements contain provisions for non-classroom duties.⁷²

Traditionally, teachers in North Carolina have accepted non-classroom duties as part of the teaching assignment. One solution to the abolishment of non-classroom duties would be to employ auxiliary personnel such as security guards who are trained in discipline control.

School administrators indicate that non-classroom duties are part of the teaching responsibility. Administrators refer to General Statute 115-46 as evidence of state law which governs the duties of teachers.⁷³

⁷²"Trends in Negotiable Items", pp. 13-15.

⁷³Public School Laws of North Carolina, (State Board of Education, 1974), pp. 110-111.

Section one of General Statute 115-146 follows:

It shall be the duty of all teachers, including student teachers, substitute teachers, voluntary teachers, teachers' aides and assistants when given authority over some part of the school program by the principal or supervising teacher, to maintain good order and discipline in their respective schools...⁷⁴

Since General Statute 115-146 defines the duties of teachers in broad terms, teacher organizations may interpret the statute to allow for the flexibility of negotiating over non-classroom duties, essentially because of the authority of assignment granted to the local school principal. However, John H. Metzler indicates that the board and administration should not relinquish their management rights:

The board and administration must retain sufficient flexibility to utilize new or experimental educational ideas and programs...The board should not, therefore, define the length of the work day, or teacher hours or teaching load, in terms which might prevent change from taking place.⁷⁵

The issue of non-classroom duties may develop as a negotiable item which will confront school boards of large school districts in North Carolina in the near future.

Teacher Aides

The National Education Association indicates that collective bargaining agreements contain provisions for teacher aides in 32 percent of all units surveyed nationwide.⁷⁶ Teacher aides are personnel usually

⁷⁴Ibid.

⁷⁵John H. Metzler, "The Need for Limitation Upon the Scope of Negotiations in Public Education, I", Journal of Law and Education, 2, No. 1, (1973), 153.

⁷⁶ "Trends in Negotiable Items", pp. 13-15.

employed to assist the regular teacher in areas related to the instruction program of the school.

Large administrative units in North Carolina usually classify teacher aides into several categories. Examples of classifications include kindergarten aides, general or clerical aides, library aides, physical education aides, and cultural arts aides. The General Statutes of North Carolina do not contain provisions which regulate the funding and allocation of all teacher aides. Aide positions which are allocated by federal, state and manpower funds may not be subject to negotiations by teacher organizations because school boards do not have direct jurisdiction over the funds. However, local funds are administered by school boards after approval of the county commissioners and may be subject to negotiations.⁷⁷

Teacher organizations are advocating additional financial appropriations for teacher aides to relieve the regular teacher of tasks which can be performed by non-certificated personnel.⁷⁸ Furthermore, the use of aides allows the teacher to devote additional time to the instructional program. The American Federation of Teachers is advocating increased spending for auxiliary personnel by guaranteeing at least one full-time aide for each school department.⁷⁹

⁷⁷Public School Laws of North Carolina, (State Board of Education, 1974), p. 61.

⁷⁸"A.F.L.-C.I.O. Endorses A.F.T.'s Goals", The North Carolina AFT-Teacher, (November, 1975), p. 3.

⁷⁹Ibid.

Management may acknowledge that aides are important to the educational program, but due to limited local funding, it would not be feasible to employ aides for each department. Furthermore, the allocation of additional general aides for each school would provide teachers with assistance in non-instructional matters. The issue of negotiations over the allotment of teacher aides is questionable. However, the issue does not appear to be a primary item of negotiable concern at the present time.

Other Major Budget Issues

Twelve major budget issues have been examined as they relate to the public schools of North Carolina. The issues are studied because of their inclusion as major budget items contained in many negotiated agreements in states which permit collective bargaining.⁸⁰ Therefore, the twelve issues may eventually rank as the most important negotiable budget issues in North Carolina. Additional major budget issues are studied because of the possible effect of school boards.

Retirement

Very few school administrative units in states which permit collective bargaining include retirement as a negotiable item.⁸¹ Only two percent of all units surveyed by the National Education Association include retirement as a negotiable item.⁸²

⁸⁰"Trends in Negotiable Items", pp. 13-15.

⁸¹Ibid.

⁸²Ibid.

The General Statutes of North Carolina specifically define all regulations and funding procedures of the retirement system.⁸³ All public school teachers are required, upon employment, to join the retirement system. Chapter 135 of the Public School Laws of North Carolina contains provisions which govern the operation of the retirement system for teachers and state employees.⁸⁴

School boards hold virtually no jurisdiction over retirement matters which pertain to public school teachers. Therefore, retirement will not be a negotiable issue when collective bargaining is legalized in North Carolina.

Life Insurance

The North Carolina Retirement System provides a form of life insurance for the beneficiary of an employed teacher who dies before the age of retirement.⁸⁵ Beneficiary benefits are regulated by state law and do not permit school board authority over provisions described in the statute.

Section (L) of General Statute 135-5 follows:

Upon receipt of proof, satisfactory to the Board of Trustees, of the death, in service, of a member who had completed at least one full calendar year of membership in the system, there shall be paid to such person as he shall be nominated by written designation duly acknowledged and filed with the Board of Trustees, if such person is living at the time of the member's death, otherwise to the member's legal representatives, a death benefit. Such death benefit shall be equal to the greater of (1) the

⁸³Public School Laws of North Carolina, (State Board of Education, 1974), pp. 336-390.

⁸⁴"Trends in Negotiable Items", pp. 13-15.

⁸⁵Ibid.

compensation on which contributions were made by the member during the calendar year preceding the year in which his death occurs, or (2) the compensation on which contributions were made by the member during the 12-month period ending on the last day of the month preceding the month in which his death occurs; subject to a maximum of fifteen thousand dollars.⁸⁶

Due to negotiations, school boards may eventually provide life insurance benefits in addition to benefits defined in General Statute 135-5. If school boards provide additional life insurance, negotiations between teacher organizations and school boards may be permitted. However, negotiations over provisions contained in General Statute 135-5 will remain outside the scope of bargaining.

Experience and Professional Preparation Increments

Experience and professional preparation increments are frequent matters of negotiation in states which permit collective bargaining.⁸⁷ The frequency in negotiation is due to the jurisdiction of school boards over increment matters.

The North Carolina General Statutes and the State Board of Education regulate all matters pertaining to experience increments and professional preparation increments, (See Appendix M). General Statute 115-11 defines the powers and duties of the State Board of Education which include the full authority to certify and regulate the grade and salary of teachers and other school employees.⁸⁸

⁸⁶Public School Laws of North Carolina, (State Board of Education, 1974), p. 357.

⁸⁷"Trends in Negotiable Items", pp. 13-15.

⁸⁸Public School Laws of North Carolina, (State Board of Education, 1974), p. 21.

Since teacher certification is regulated at the state level, school boards do not hold discretionary powers over the matter. Therefore, teacher organizations will not be permitted to negotiate with school boards over experience and professional preparation increments.

Decrease in Staff Due to Funds

Most school boards in states which permit collective bargaining do not include decrease in staff due to funds within the scope of bargaining.⁸⁹ In New York, agencies have ruled that a local school board decision to curtail staff did not constitute a negotiable item.⁹⁰

In North Carolina, certain teaching positions in local school districts are funded only on a year-to-year basis. Teachers employed in limited funded positions may be terminated if funding is not provided for local units by the designated agencies of state and federal programs.

General Statute 115-142 specifies that if a career teacher is dismissed because of a school reorganization or a decrease in enrollment, he or she is placed on a priority list for teacher employment for three years after dismissal.⁹¹ A provision has been added that requires a teacher on this priority list to be removed from the list if he is offered a position in the school system for which he is certified and refuses it.⁹² The next person on the list then has the first opportunity for the

⁸⁹"Trends in Negotiable Items', pp. 13-15.

⁹⁰Hugh D. Jascourt, "The Scope of Negotiations in Public Education: Overview", Journal of Law and Education, (January, 1973), p. 143.

⁹¹Public School Laws of North Carolina, (State Board of Education, 1974), p. 103.

⁹²Ibid.

next job that becomes available.

Since provisions are included in the North Carolina Tenure Law for decreases in career teaching positions due to district reorganization or decreased enrollment, negotiations over the issue will not be a factor at the school board level. However, provisions which pertain to probationary teachers may become negotiable between teacher organizations and school boards.

Additional budget issues such as pay period, (G.S. 115-157), tax-sheltered annuities, (G.S. 115-153.1), and workmen's compensation, (G.S. 115-160) are specifically defined in the General Statutes of North Carolina.⁹³ Therefore, the issues will remain outside the scope of bargaining.

⁹³Public School Laws of North Carolina, (1974), pp. 121-127.

CHAPTER VI

SUMMARY AND CONCLUSIONS

The legal structure traditionally has granted local school boards and administrative personnel firm control over educational policy including the terms and conditions of employment. Collective bargaining is becoming an accepted procedure for providing public school teachers with an input in their terms and conditions of employment. Increased concern over wages and fringe benefits serves as one example of the growing trend toward the unionization of teacher groups. With the increased unionization activities come the increasing demands for collective bargaining with school boards. Collective bargaining laws in thirty-one states require either mandatory collective bargaining or mandatory meet-and-confer requirements for teacher organization and school boards.

The national trends in public school teacher negotiations have undergone a tremendous change in the last ten years. In the mid-1960's, very few states had legislated public-sector collective bargaining laws. From the mid-1960's to the beginning of the decade of the seventies, many states adopted initial negotiations laws for public school teachers. From 1972 through 1976, the national trend included not only additional implementation of initial collective bargaining legislation for several states, but amendments to existing statutes which were implemented by prior legislative action.

In many ways, the national trends are reflected in the present teacher unrest in North Carolina. As indicated in the study, North Carolina trends which are emerging include the following:

1. Increased teacher unrest over conditions of employment;
2. The emergence of the American Federation of Teachers in several large school districts;
3. More political involvement in teacher-related activities by the North Carolina Association of Educators and the American Federation of Teachers;
4. Unified demands by both organizations for collective bargaining legislation either at the state or federal level;
5. Increased unrest and unionization by other public-sector employees in North Carolina;
6. Increased involvement by teacher organizations over management decisions made by school boards.

At the present time, existing statutes in North Carolina do not permit any form of collective bargaining for public school teachers. The statute has withstood challenges by public employees to its constitutionality. In the Atkins case, the Court upheld one statute, but ruled that two related statutes were unconstitutional. The Phillips case in 1974 also upheld the constitutionality of the statute. State legislation which prohibits collective bargaining for public employees is General Statute 95-98.¹ The statute mandates that any agreement between the governing authorities and public employees is illegal, unlawful, void, and of no effect.²

Data obtained in the study indicate that the Public School Laws of North Carolina contain statutes which govern the operation of the public schools. Significant statutes which define management rights of public

¹Article 12, Department of Labor and Labor Regulations, (Raleigh, North Carolina, 1975), p. 689.

²Ibid.

school administrative agencies follow:

1. General Statute 115-11: Powers and duties of the State Board of Education;
2. General Statute 115-12: Chief administrative officer of the State Board of Education;
3. General Statute 115-16: Controller to be administrator of fiscal affairs;
4. General Statute 115-59: Authority of State Board of Education to allocate teachers;
5. General Statute 115-35: Authority of county and city boards of education;
6. General Statute 115-80: Rules for preparation of school budgets;
7. General Statute 115-45: Local board authority over conduct of teachers;
8. General Statute 115-57: Duties of superintendent toward school personnel;
9. General Statute 115-72: Duties and powers of local school committees;
10. General Statute 115-150: Authority and duty of principal generally.³

The study generally refers to non-budget issues as non-cost items to school boards. However, such issues may eventually involve certain cost factors for local boards of education.

The purpose of the study has been to investigate and analyze major negotiable issues which are confronting school boards nationwide and which may confront school boards in large administrative units in North Carolina. Therefore, based on this study, the following conclusions were reached:

³Ibid., pp. 5-8.

1. Teachers are seeking an input into school board policies and state legislative proposals which affect conditions of employment;
2. State statutes and State Board of Education policies may eventually be outside the scope of collective bargaining; however, new legislation should be implemented for clarification purposes to specifically exclude state statutes and State Board policies from the negotiations process;
3. Emerging trends in other states indicate there are major non-budget items which may become negotiable issues in North Carolina. They are:
 - a. grievance procedures
 - b. leaves of absence without pay
 - c. school calendars
 - d. teacher transfers
 - e. teacher evaluations
 - f. maximum length of teaching days
 - g. personnel files
4. Emerging trends in other states indicated there are major budget items which may become negotiable issues in North Carolina. They are:
 - a. local administrative unit salary supplements
 - b. certain leave prescriptions with pay provisions
 - c. health insurance
 - d. extra pay for extra duty
 - e. duty-free lunch periods
 - f. duty-free planning periods
 - g. teacher facilities

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McLaughlin v. Tilendis, 398 F. 2nd 287, (1968).

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APPENDIX A

CHAPTER II

STATE COLLECTIVE BARGAINING LAWS AFFECTING EDUCATION

November, 1975

<u>State and Statutory Reference</u>	<u>Scope of Bargaining</u>
ALABAMA	
ALASKA...A14.20.550 through A14.20.610	Matters pertaining to employ- ment and fulfillment of pro- fessional duties
ARIZONA	
ARKANSAS	
CALIFORNIA...SB160,1975	Wages, hours, 7 other terms and conditions of employment as defined in act, Certificated may consult only on educational objectives, course content, curricula, textbook selection. School board has final authority on employee relations
COLORADO	
CONNECTICUT...10-153a through 10-153g	Salaries and other conditions of employment about which either party wishes to meet and confer
DELAWARE...Tit. 14, Ch. 40, 4001-4013	Salaries, employee benefits and working conditions must be bar- gained. May meet and confer on other matters as defined in act
FLORIDA...447.001 through 447.023	Wages, hours, terms and condi- tions of employment. Extensive management rights

State and Statutory ReferenceScope of Bargaining

HAWAII...89-1 through 89-17

Wages, hours, other terms and conditions of employment. Specific exclusions. Extensive management rights

IDAHO...33-1271 through
33-1276

Specified in agreement. School board "necessary action" protected

ILLINOIS

INDIANA...Ch. 4, IC 22-6
(HB 1298, 1975)

Wages, hours and other terms and conditions of employment. Extensive management rights listed

IOWA...SF 531 of 1974

Wages, hours, terms and conditions of employment, including health safety, evaluation, in-service training, mutually agreed upon matters. Retirement excluded. Extensive management rights listed

KANSAS...72-5413 through
72-5425

Terms and conditions of professional service

KENTUCKY

LOUISIANA

MAINE...Tit. 26, 961 through
972

Must bargain wages, hours, working conditions and grievance arbitration. Must meet and confer on educational policies.

MARYLAND...Art. 77, 160

Salaries, wages, hours and other working conditions

MASSACHUSETTS...Ch. 150-E,
1-15, 1974

Wages, hours, standards of productivity and performance and other conditions of employment

MICHIGAN...423.201 through
423.216

Wages, hours and other terms and conditions of employment

State and Statutory ReferenceScope of Bargaining

MINNESOTA...179.61 through 179.87	Matters pertaining to terms and conditions of employment and grievance procedures. Employer is not required to negotiate inherent managerial policy
MISSISSIPPI	
MISSOURI...105.500 through 105.540	Proposals relative to salaries and other conditions of employment
MONTANA...HB 481, 1975; 59-1601 through 1616	Wages, hours, fringe benefits, other conditions of employment. Extensive management rights listed
NEBRASKA...79-1287 through 79-1295	Employment relations and mutually agreed to matters
NEVADA...288-010 through 288-280	Wages, hours, conditions of employment. Written notice of negotiation to employer by January 15 if funds involved. Required scope restricted to 20 items. Extensive management rights listed
NEW HAMPSHIRE...Ch. 273-A	Wages, hours, and other conditions of employment. Merit system, managerial prerogative protected
NEW JERSEY...34:13A-1 through 34:13A-13	Grievances and terms and conditions of employment
NEW MEXICO	
NEW YORK...Taylor Act: Secs. 200-214, Civil Service Law	Terms and conditions of employment; grievance procedures
NORTH CAROLINA	
NORTH DAKOTA...15-38-1.01 through 15-38-1.15	Terms and conditions of employment; employer-employee relations, salaries, hours. Extensive management rights listed

State and Statutory ReferenceScope of Bargaining

OHIO

OKLAHOMA...509.1 through
509.10

Items affecting the performance
of professional services

OREGON...243.711 through
243.795

Including but not limited to
salaries, benefits, hours, terms
and conditions of employment

PENNSYLVANIA...Tit. 43, 1101.101
through 1101.2301

Wages, hours and terms and con-
ditions of employment. Exten-
sive management rights listed

RHODE ISLAND...28-9.4-1 through
28-9.4-19

Hours, salary, working condi-
tions, all other terms and con-
ditions of employment

SOUTH CAROLINA

SOUTH DAKOTA...3-18-1 through
3-18-20

Wages, hours and other terms
and conditions of employment

TENNESSEE

TEXAS

UTAH

VERMONT...Tit. 16,1981 through
2010

Salaries, related economic
conditions of employment,
grievance procedures, other
mutually agreed items not in
conflict with statutes. Exten-
sive management rights

WASHINGTON...41.56.010 through
41.56.950

Grievance procedures, wages,
hours, working conditions.
Excludes matters delegated to
other authority by ordinance,
resolution or charter

WEST VIRGINIA

WISCONSIN...111.70 through
111.71

Wages, hours, and conditions of
employment. Extensive manage-
ment rights listed

WYOMING

State and Statutory Reference

DISTRICT OF COLUMBIA.....

Scope of Bargaining

Public employees have bargaining rights by executive order of the Commissioner of D.C.

('76 Update: Collective Bargaining in Education, A Legislator's Guide, Department of Research and Information Services and Department of Higher Education Services, January, 1976, pp. 12-45.)

APPENDIX B

CHAPTER II

H. R. 77

94th Congress (1st Session)

IN THE HOUSE OF REPRESENTATIVES

January 14, 1975

Mr. Thompson introduced the following bill, which was referred to the
Committee on Education and Labor

A BILL

To provide that employees of States and
political subdivisions thereof shall be
subjected to the provisions of the National
Labor Relations Act.

1 Be it enacted by the Senate and House
of Representatives of the United States of
2 America in Congress assembled,
3 That paragraph (2) of section 2 of the National
4 Labor Relations Act (29 U.S.C. 152(2) is
amended by striking out "or any State or
5 political subdivision thereof",.

APPENDIX C

CHAPTER II

A MODEL BILL ON COLLECTIVE BARGAINING FOR PUBLIC
EMPLOYEES

(The following model bill on collective bargaining for public employees appears in Guide for Legislative Action and State Collective Bargaining Laws, by Carl J. Megel, Director of Legislation for the American Federation of Teachers)

AN ACT relating to collective bargaining for public employees. Be it enacted by the General Assembly of (name of state).

SECTION 1. This Act shall be known as the Public Employees Collective Bargaining Act.

SECTION 2. In enacting this Act it is the intention of the General Assembly to promote the practice and procedures of collective bargaining for all public bodies, agencies and institutions in this state and the representation by public employees in the collective bargaining process through their duly chosen representatives.

SECTION 3. As used in this Act, unless the context otherwise requires:

(1) "Commissioner" means the Commissioner of Labor of (name of state).

(2) "Employer" means (name of state), the various counties, cities, school districts, road districts, water districts, fire protection districts, drainage districts, sanitation districts, sewer districts, housing authorities, zoning commissioners, joint city-county agencies and all other political corporations and subdivisions of (name of state) now or hereafter created, whether herein specifically mentioned or not, and includes any person acting as an agent of an employer within this definition.

(3) "Employee" means any employee of any employer.

(4) "Labor Organization" means any organization or labor union, craft union or any voluntary unincorporated association designed, in whole or in part, to represent employees and which is constituted for the purpose, in whole or in part, of collective bargaining and of dealing with employers concerning grievances, wages, hours and other terms or conditions of employment, or for other mutual aid or protection of its members in connection with their employment.

(5) "Person" includes one or more individuals, partnerships, associations or organizations, corporations, legal representatives or other agents for legal entities.

SECTION 4. Employees have the right to self-organization to form, join or assist labor organizations; to bargain collectively through representatives of their own choosing over questions concerning wages, hours and other terms and conditions of employment; to engage in other forms of concerted activities for the purpose of collective bargaining or for their mutual aid or protection; and also have the rights to refrain from any or all such activities, except as any of these rights may be specifically limited or modified by other provisions of this Act.

SECTION 5. Employers, employees and all persons are prohibited from:

(1) Interfering with, restraining or coercing any employee or person in the exercise of rights provided in Section 4 above.

(2) Encouraging or discouraging membership in any labor organization by discrimination in regard to hiring, transfers, promotions, tenure or other conditions of employment.

(3) Discriminating against an employee or any person in regard to hiring, transfer, promotion, tenure or other terms or conditions of employment because such employee or person has given testimony or information in any hearing or conference relating to any matter presented or arising under this Act.

SECTION 6. The procedures to be followed for a labor organization to be certified as the representative of employees shall be as follows:

(1) In order to insure the full exercise of the rights granted to employees, the Commissioner shall resolve questions concerning employee representation by a labor organization by conducting a secret-ballot election designated to ascertain the free choice of employees when petitioned to do so by the employer or at least one labor organization. Where the majority of the employees participating in an election vote to designate a labor organization as their representative, that labor organization shall be certified by the Commissioner as the exclusive bargaining representative for the employees in the grouping or unit designated by the Commissioner pursuant to the terms of subsection (2) of this section.

(2) Prior to any secret-ballot election conducted by the Commissioner under this Act, the Commissioner shall decide in each instance which employee grouping or unit, including without limitation one or more departments, or any subdivisions or classifications thereof, will assure to employees the fullest freedom in exercising the rights herein granted consistent with the efficient operations of the public service and to designate such grouping or unit as appropriate for the purposes of collective bargaining.

(3) The Commissioner shall make and issue an official report of the results of any election conducted pursuant to the provisions of this Section and, where appropriate, certify the labor organization receiving the majority of votes cast in the election as the exclusive bargaining representative for the grouping or unit of employees as designated by the Commissioner, such certification to remain in effect for a period of not less than two (2) years from its date, and thereafter until such time as it is determined that the certified representatives does not represent a majority of the employees in the appropriate unit.

SECTION 7. Upon the completion of negotiations with a labor organization representing a majority of the employees in a collective bargaining unit, if a settlement of the negotiations is reached, the employer

and labor organization shall reduce the same to writing, in the form of a collective bargaining contract.

SECTION 8. The procedure which shall be followed in the event of a deadlock in negotiations between the parties shall be as follows: (instead of making a specific recommendation on this point, the AFT suggests that the procedure may include fact finding, arbitration or some other form of mediation).

Carl J. Megel, Guide for Legislative Action and State Collective Bargaining Laws, as quoted in Compact (Denver, Colorado: Education Commission of the States, February, 1975), pp. 20-21.

APPENDIX D

CHAPTER II

SCOPE OF MANDATORY BARGAINING FOR PUBLIC SCHOOL TEACHERS IN
THE STATE OF NEVADA

- 288.150 Negotiations by employer with recognized employee organization:
Subjects of mandatory bargaining; matters reserved to employer
without negotiation.
2. The scope of mandatory bargaining is limited to:
- (a) Salary or wage rates or other forms of direct monetary compensation.
 - (b) Sick leave.
 - (c) Vacation leave.
 - (d) Holidays.
 - (e) Other paid or nonpaid leaves of absence.
 - (f) Insurance benefits.
 - (g) Total hours of work required of an employee on each work day or work week.
 - (h) Total number of days' work required of an employee in a work year.
 - (i) Discharge and disciplinary procedures.
 - (j) Recognition clause.
 - (k) The method used to classify employees in the bargaining unit.
 - (l) Deduction of dues for the recognized employee organization.
 - (m) Protection of employees in the bargaining unit from discrimination because of participation in recognized employee organizations consistent with the provisions of this chapter.
 - (n) No-strike provisions consistent with the provisions of this chapter.
 - (o) Grievance and arbitration procedures for resolution of disputes relating to interpretation or application of collective bargaining agreements.
 - (p) General savings clauses.
 - (q) Duration of collective bargaining agreements.
 - (r) Safety.
 - (s) Teacher preparation time.
 - (t) Procedures for reduction in work force.

MANAGEMENT RIGHTS IN THE STATE OF NEVADA

3. Those subject matters which are not within the scope of mandatory bargaining and which are reserved to the local government employer without negotiation include:

- (a) The right to hire, direct, assign or transfer an employee, but excluding the right to assign or transfer an employee as a form of discipline.
- (b) The right to reduce in force or lay off any employee because of lack of work or lack of funds, subject to paragraph (t) of subsection 2.
- (c) The right to determine:
 - (1) Appropriate staffing levels and work performance standards, except for safety considerations;
 - (2) The content of the workday, including without limitation workload factors, except for safety considerations;
 - (3) The quality and quantity of services to be offered to the public; and
 - (4) The means and methods of offering those services.

6. This section does not preclude, but this chapter does not require the local government employer to negotiate subject matters enumerated in subsection 3 which are outside the scope of mandatory bargaining. The local government employer shall discuss subject matters outside the scope of mandatory bargaining but it is not required to negotiate such matters.

7. Contract provisions presently existing in signed and ratified agreements as of May 15, 1975, at 12 p.m. shall remain negotiable.

APPENDIX E
CHAPTER IV
WINSTON-SALEM/FORSYTH COUNTY SCHOOLS
GRIEVANCE PROCEDURE
Professional Staff

Definitions

1. Grievance

Any formal written claim to his (their) immediate superior by a professional staff member or group of members that there has been a violation of his (their) contract(s), of North Carolina law, of policies and regulations of state agencies, of school board policy, or of administration regulations, shall be a "grievance".

2. Professional Staff Member

Any member of the professional educational staff below the level of Assistant Superintendent.

3. P. R. & R. Committee

The standing committee of a professional association which addresses itself to both the rights and the responsibilities of the professional staff.

4. Professional Association

The Forsyth County unit of the North Carolina Association of Educators or other representative organizations as currently duly constituted and recognized as functional within the Winston-Salem/Forsyth County School System.

Purpose

The purpose of this grievance procedure is to provide for equitable solutions to problems which may arise affecting professional staff members.

Procedure

- A. The settlement of a grievance will be as informal and confidential as may be appropriate for the grievance involved. The procedure to be followed in dealing with a grievance will be as follows: Timeliness. A grievance shall be filed within sixty (60) calendar days after disclosure of the facts giving rise to it.

Level I. - The professional staff member or members filing the grievance will discuss it first with the school principal or appropriate superior. The principal or appropriate superior will provide a written summation of the discussion(s) and the decision which he renders to the aggrieved staff member within six (6) school days following the completion of the discussion(s).

Level II. - If the grievance is not resolved at Level I to the satisfaction of the person or persons filing it, the grievance may be submitted to the Superintendent within fifteen (15) school days after the written decision is provided at Level I. The Superintendent or his representative will evaluate the merits of the grievance, and will, at the request of the person or persons submitting it, involve the P. R. & R. Committee of a professional association selected by the person or persons making such request, in the investigation before making the decision. Within fifteen (15) school days after receipt of the grievance, the Superintendent will inform the person or persons who submitted the grievance of his decision and of any action taken by him with respect to it in writing. In the event a grievance is filed at such time that school is dismissed for summer vacation before the procedure is satisfactorily completed, the designated number of days governing this process will be construed as calendar days rather than school days.

Level III. - If the grievance is not satisfactorily resolved at Level II, the person or persons submitting it may within fifteen (15) calendar days after the Superintendent's decision, appeal to the Board of Education. The Board of Education will hear the grievance and notify the person or persons submitting it of the Board's decision within twenty (20) calendar days after receipt of the grievance by the Board. The Board of Education will conduct its hearings in such a manner as to insure a full and fair consideration of the grievance.

- B. A grievance shall be deemed waived if the person or persons submitting it shall fail to act within the time specified above.

- C. All meetings will be in executive session and final decisions will not be released to news media.

Code 220
June, 1973

APPENDIX F

CHAPTER IV

DURHAM CITY SCHOOLS CALENDAR

1975 - 1976

DATE	EXPLANATION	V.	H.	WD.
Aug. 18-22	Preschool work days			5
Aug. 25	Pupil Orientation Day			1
Aug. 26	1st day of 180 days			
Sept. 1	Labor Day		1	
Sept. 23	20th day (1st month)			
Oct. 7	30th day			
Oct. 9-10	Work Days			2
Oct. 23	40th day (2nd month)			
Nov. 7	NCAE District 9 Meeting			1
Nov. 21	60th day (3rd month)			
Nov. 26	Work Day			1
Nov. 27	Thanksgiving		1	
Nov. 28	In lieu of Veterans Day		1	
Dec. 22-23	Vacation	2		
Dec. 24-26	Christmas		3	
Dec. 29-31	Vacation	3		
Jan. 1	New Year's Day		1	
Jan. 2	Vacation	1		
Jan. 7	80th day (4th month)			
Jan. 21	End of 1st semester			
Jan. 22-23	Work Days			2
Jan. 26	Work Day			1
Feb. 9	100th day (5th month)			
Mar. 8	120th day (6th month)			
Mar. 9	Work Day			1
Apr. 6	140th day (7th month)			
Apr. 16	Vacation	1		
Apr. 19	Easter Monday		1	
Apr. 20-23	Vacation	4		
Apr. 28	150th day			
Apr. 30	Work Day			1
May 13	160th day (8th month)			
May 31	Memorial Day		1	
June 11	Last day for students			
June 14-16	Additional days	$\frac{1}{2}$		$2\frac{1}{2}$
June 17	Vacation	1		
TOTALS		$12\frac{1}{2}$	9	$17\frac{1}{2}$

V. = Vacation Days

H. = Holidays

WD.= Work Days

APPENDIX G

CHAPTER IV

GUILFORD COUNTY BOARD OF EDUCATION

TEACHER TRANSFER POLICY

The following are reasons and procedures for transfer from one school to another:

- (1) Hardship - As a matter of fairness, every effort will be made to find a teaching position convenient to the teacher's home. If a teacher cannot be so placed, a future request for transfer will be considered as vacancies occur in the teacher's area of certification.

Procedure - Request for transfer should be made in the spring only after the matter has been discussed with the teacher's present principal. The next step should be a written request to the Superintendent giving the reason for requesting the transfer. The teacher should give his area of certification and a brief description of present duties and length of service in that school. The teacher shall name the geographic area and list in order his choice of schools.

The Personnel Director shall send copies of the teacher's request to all schools named and urge principals to give the teacher primary consideration should a vacancy occur in this area of certification. The normal procedure for employing personnel should be followed in completing the transfer.

All parties concerned will receive written notification of the decision from the Assistant Superintendent for Personnel.

- (2) Decline in enrollment - Should a school lose a teacher(s) due to decline in enrollment or loss of federal, state, or local funds, every effort will be made to relocate the teacher(s).

Procedure - The Superintendent will notify the principal of the loss in staff. The Assistant Superintendent for Personnel will consult with the principal to determine if a teacher would like to be considered for transfer. The teacher will be notified of vacancies in the system and interviews will be scheduled.

Should there be no volunteers, the length of service in the school and/or school system plus convenience shall be considered in the decision. If arrangements are satisfactory with all parties concerned, the necessary forms will be completed for approval of the Superintendent or his designee.

APPENDIX H

CHAPTER IV

EVALUATION OF THE EDUCATOR

Guilford County Schools

PHILOSOPHY

The Board of Education and the administration of the Guilford County Schools believe:

- Evaluation should promote awareness of the strengths and weaknesses of all certificated personnel covered by G.S. 115-142.
- Evaluation should provide for growth and improvement and should encourage beneficial change.
- Evaluation of personnel should be directed to the total educational process so that children may develop to the best of their abilities.
- Evaluation should be constructive, fair and equitable. For it to remain on a professional level, it must also be confidential.
- Evaluation should be a continuous process, not limited to a single assessment, thus providing for on-going communication between the evaluator and evaluatee.

PURPOSE

The purpose of evaluation of professional personnel is to improve the quality of instructional, administrative and supervisory services in the Guilford County School System. Through the cooperative effort of educators at all levels, evaluation of teachers was implemented for this expressed purpose in the Guilford County Schools prior to the enactment of the North Carolina Teacher Tenure Law.

After this law became effective on July 1, 1972 evaluation of professional personnel became an integral part of the decision to grant career status after one serves a probationary period under the provisions of G.S. 115-142. This law and the policy of the Board of Education provide for a periodic evaluation once career status is obtained.

Another purpose of the evaluation is to provide an official written record of a professional employee's performance on the job which shall become part of the employee's personnel file as stipulated in G.S. 115-142.

The personnel file is open for the employee's inspection at all reasonable times and open to other persons only in accordance with rules and regulations adopted by the Guilford County Board of Education.

PROCEDURE

All professional personnel covered by the provisions of G.S. 115-142 shall be evaluated by their immediate supervisor or by persons to be named by the Superintendent.

Probationary teachers are to be evaluated each year. After obtaining career status the professional employee is to be evaluated a minimum of once every three years. The immediate supervisor may evaluate each year and an employee may request an evaluation. A copy of the evaluation is to be filed with the Personnel Office for placement in the personnel file.

A copy of the evaluation form should be given to the employee prior to the evaluation. The employee shall be notified well in advance of the evaluation conference with the evaluator. The evaluatee should do a self-evaluation on Part II of the form prior to the conference. This will serve as the basis for discussion during the conference but does not have to be filed with the evaluator's report.

Evaluation forms are to be filed with the Personnel Office each year on dates designated by the Superintendent. For all probationary personnel Parts I and II shall be completed. Career personnel have the option of requesting the evaluator to complete and file Part II of the form.

Any questions in regard to the evaluation of professional personnel in the Guilford County School System may be directed to your immediate supervisor or Assistant Superintendent for Personnel.

GUILFORD COUNTY SCHOOLS

EVALUATION OF PROFESSIONAL PERSONNEL

Covered Under North Carolina Law 115-142
 System of Employment for Public School Teachers

This record form must be filed with the Superintendent by persons to be named and by deadline dates to be designated by the Superintendent. The person being evaluated is requested to sign this sheet, not to indicate approval but to show that he has seen the sheet and any attachments. He must be given a copy of this sheet and the attachments, if any, and he is entitled to file with the Superintendent such statements or explanations which he may desire. This should be done promptly.

Name _____ School _____

Position _____

Status of Educator (Check Appropriate Box)	PROBATIONARY			CAREER
	1	2	3	
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

THE EVALUATION
 Part I

- 1. ___ ACCEPTABLE (Part II or additional comments optional for career personnel)
- *2. ___ ACCEPTABLE WITH RESERVATION (Part II required, additional comments and/or explanations may be attached to this sheet)
- *3. ___ UNACCEPTABLE (Part II required, additional statements and/or explanations must be attached to this sheet)

THIS RECORD IS RELATED TO THE FOLLOWING

- 1. ___ Continuation of probationary status
- 2. ___ Recommended for career status
- 3. ___ Continuation of career status
- 4. ___ Other (please specify) _____

Signed: _____ Date: _____
 (Person filing record/position)

Signed: _____ Date: _____
 (Staff member being evaluated/position)

* ___ Check () if adding attachments

Part II

	STRONG	SATISFACTORY	NEEDS IMPROVEMENT	UNSATISFACTORY
I. PERFORMANCE OF EDUCATOR				
a. MASTERY OF SUBJECT MATTER-demonstrates a sound, up-to-date, functional knowledge of subject area				
b. TECHNIQUES-uses effective and varied methods and techniques				
c. PREPARATION AND ORGANIZATION-shows evidence of good planning				
d. PROVISIONS FOR INDIVIDUAL DIFFERENCES-recognizes and provides for individual needs of students; helps each student to experience success				
e. FACILITY-maintains a well arranged and functional facility				
f. PUPIL MANAGEMENT-maintains discipline and an atmosphere of mutual respect				
g. PUPIL MOTIVATION-stimulates interest in the educational process				
h. PUPIL EVALUATION-is careful and fair in evaluating pupil progress				

COMMENTS: _____

II. PROFESSIONAL TRAITS

a. ABILITY TO WORK WITH OTHERS-works well with others, shares ideas, and is open to suggestions				
b. PROFESSIONAL IMPROVEMENT AND GROWTH-is continuously growing through study, travel and participation in educational activities				
c. DEPENDABILITY-is reliable and trustworthy				
d. USE OF ENGLISH-shows ability to speak and write correctly, clearly, and effectively				

COMMENTS: _____

III. PERSONAL TRAITS	STRONG	SATISFACTORY	NEEDS IMPROVEMENT	UNSATISFACTORY
a. GENERAL HEALTH-is physically and emotionally able to perform duties				
b. ENTHUSIASM-demonstrates genuine interest in the job				
c. INITIATIVE-has self-reliance and is willing to take the first step in activities; approaches tasks with imagination				
d. PUNCTUALITY-is prompt and observes all time schedules				

COMMENTS: _____

Signed: _____ Date: _____
 (Person filing record/position)

Signed: _____ Date: _____
 (Staff member being evaluated/position)

RECOMMENDATIONS FOR IMPROVEMENT: _____

APPENDIX I

CHAPTER IV

AMENDMENT TO STUDENT CONDUCT REGULATIONS PERTAINING TO THE
USE OF CORPORAL PUNISHMENT IN THE GUILFORD COUNTY SCHOOLS

Pursuant to a Judgement entered June 13, 1975, by the United States District Court, Middle District of North Carolina, Greensboro Division, in "Baker vs. W. C. Owen, Principal, et al," the following minimal due process requirements of the Fourteenth Amendment should be followed by personnel in the Guilford County Schools in the administration of corporal punishment pursuant to North Carolina General Statute §115-146:

(a) Except for those acts of misconduct which are so anti-social or disruptive in nature as to shock the conscience, corporal punishment may never be used unless the student was informed beforehand that specific misbehavior could occasion its use and, subject to this exception, it should never be employed as a first line of punishment for misbehavior. The requirements of an announced possibility of corporal punishment and an attempt to modify behavior by some other means--keeping after school, assigning extra work, or some other punishment-- will insure that the child has clear notice that certain behavior subjects him to physical punishment.

(b) A teacher or principal may punish corporally only in the presence of a second official (teacher or principal), who must be informed beforehand and in the student's presence of the reason for the punishment. The student need not be afforded a formal opportunity to present his side to the second official; this requirement is intended only to allow a student to protest, spontaneously, an egregiously arbitrary or contrived application of punishment.

(c) An official who has administered such punishment must provide the child's parent, upon request, a written explanation of his reasons and the name of the second official who was present.

Adopted by the Guilford County Board of Education, September 11, 1975.

APPENDIX J

CHAPTER IV

CONTRACT FOR PROFESSIONAL SERVICE

NORTH CAROLINA PUBLIC SCHOOLS

STATE OF NORTH CAROLINA,
..... COUNTY

PROBATIONARY

THIS AGREEMENT entered into between the Board of Education of the _____ School Administrative Unit and _____, who now holds, or is (name as it appears on back of certificate) entitled to hold, a North Carolina _____ Certificate No. _____ (kind of certificate), now in force, in accordance with and subject to the provisions of the school law applicable thereto, which are hereby made a part of this contract, WITNESSETH:

That said certificated person, having been duly elected to perform professional services in the public schools of said school administrative unit, subject to any special conditions set forth below, agrees to discharge faithfully all the duties imposed on such persons by the Laws of North Carolina and by the rules and regulations of the Board of Education of said school administrative unit.

This contract is for the 19__ - 19__ school year.

That, in consideration of this agreement, said Board of Education promises to pay the above-named person for services rendered during the life of this contract the sum to which he is entitled according to the State Salary Schedule plus the local supplement, if any, applicable thereto, with State-supported positions being subject to the allotment of personnel by the State Board of Education and subject to the condition that the amount paid from State funds shall be within the allotment of funds made to said administrative unit for salaries, and with federal and locally-supported positions being subject to the availability of federal and local funds, and subject further to the condition that when the position for which the employee is employed, whether a State, federal, or locally-supported position, is terminated this contract shall be terminated.

That assignments to duties will be made by the superintendent of schools.

That said Board of Education has authorized, in a regular or in a called meeting, its Secretary to execute this contract.

Special conditions: _____

_____	_____ Board of Education
(Employee)	By _____, Secretary
_____	_____
(Employee's Address)	
_____	_____
(Date)	(Date)

NOTE: This form shall be used in the employment of all professional employees, as defined in G.S. 115-142. A copy of this contract shall be kept on file in the office of the superintendent and a copy furnished the employee.

CONTRACT FOR PROFESSIONAL SERVICE

NORTH CAROLINA PUBLIC SCHOOLS

STATE OF NORTH CAROLINA,
..... COUNTY

CAREER

THIS AGREEMENT entered into between the Board of Education of the _____ School Administrative Unit and _____, who now holds, or is (name as it appears on back of certificate) entitled to hold, a North Carolina _____ Certificate No. _____ (kind of certificate), now in force, in accordance with and subject to the provisions of the school law applicable thereto, which are hereby made a part of this contract, WITNESSETH:

That said certificated person, having been duly elected to perform professional services in the public schools of said school administrative unit, subject to any special conditions set forth below, agrees to discharge faithfully all the duties imposed on such persons by the Laws of North Carolina and by the rules and regulations of the Board of Education of said school administrative unit.

That, in consideration of this agreement, said Board of Education promises to pay the above-named person for services rendered during the life of this contract the sum to which he is entitled according to the State Salary Schedule plus the local supplement, if any, applicable thereto, with State-supported positions being subject to the allotment of personnel by the State Board of Education and subject to the condition that the amount paid from State funds shall be within the allotment of funds made to said administrative unit for salaries, and with federal and locally-supported positions being subject to the availability of federal and local funds, and subject further to the condition that when the position for which the employee is employed, whether a State, federal, or locally-supported position, is terminated this contract shall be terminated.

That assignments to duties will be made by the superintendent of schools.

That said Board of Education has authorized, in a regular or in a called meeting, its Secretary to execute this contract.

Special conditions: _____

_____ Board of Education

(Employee)

By _____, Secretary

(Employee's Address)

(Date)

(Date)

NOTE: This form shall be used in the employment of all professional employees, as defined in G.S. 115-142. A copy of this contract shall be kept on file in the office of the superintendent and a copy furnished the employee.

APPENDIX K

CHAPTER VI

STATE SALARY SCHEDULE FOR PUBLIC SCHOOL TEACHERS

<u>Index</u>	<u>Monthly</u>	<u>Annual 10 Months</u>	<u>Type of Certificates</u>	
			<u>Class G</u>	<u>Class A</u>
1.545	\$ 1,256	\$ 12,560	14	-
1.512	1,229	12,290	13	-
1.480	1,203	12,030	12	-
1.448	1,177	11,770	11	-
1.416	1,151	11,510	10	13
1.383	1,124	11,240	9	12
1.351	1,098	10,980	8	11
1.320	1,073	10,730	7	10
1.287	1,046	10,460	6	9
1.253	1,019	10,190	5	8
1.223	994	9,940	4	7
1.192	969	9,690	3	6
1.160	943	9,430	2	5
1.128	917	9,170	1	4
1.095	890	8,900	0	3
1.063	864	8,640	-	2
1.032	839	8,390	-	1
1.000	813	8,130	-	0

ADD: \$30 per month to the above schedule for a person holding a six-year certificate in the area or subject taught.

ADD: \$120 per month to the above schedule for a person holding an earned Doctor's Degree in the area or subject taught.

APPENDIX L

CHAPTER VI

TEACHER SUPPLEMENT FOR THE GREENSBORO CITY SYSTEM

1975-76

<u>Experience</u>	<u>Total Supplement</u>	<u>Payment Breakdown</u>			<u>Daily Rate</u>
		<u>First</u>	<u>Second</u>	<u>Third</u>	
A-0	\$ 564.00	\$ 186.00	\$ 186.00	\$ 192.00	1.86
A-1	584.00	192.00	192.00	200.00	1.92
A-2, G-0	606.00	199.00	199.00	208.00	1.99
A-3, G-1	622.00	205.00	205.00	212.00	2.05
A-4, G-2	645.00	212.00	212.00	221.00	2.12
G-3	661.00	217.00	217.00	227.00	2.17
G-4	684.00	225.00	225.00	234.00	2.25
A-5	693.00	228.00	228.00	237.00	2.28
G-5	703.00	231.00	231.00	241.00	2.31
A-6	719.00	237.00	237.00	245.00	2.37
A-7	742.00	244.00	244.00	254.00	2.44
A-8	764.00	251.00	251.00	262.00	2.51
G-6	767.00	252.00	252.00	263.00	2.52
A-9	787.00	259.00	259.00	269.00	2.59
G-7	790.00	260.00	260.00	270.00	2.60
G-8	813.00	267.00	267.00	279.00	2.67
G-9	835.00	275.00	275.00	285.00	2.75
A-10	848.00	279.00	279.00	290.00	2.79
G-10	861.00	283.00	283.00	295.00	2.83
A-11	871.00	287.00	287.00	297.00	2.87
A-12	897.00	295.00	295.00	307.00	2.95
G-11	929.00	306.00	306.00	317.00	3.06
G-12	958.00	315.00	315.00	328.00	3.15
A-13	1,061.00	349.00	349.00	363.00	3.49
G-13	1,067.00	351.00	351.00	365.00	3.51
A-14	1,206.00	397.00	397.00	412.00	3.97
G-14	1,228.00	404.00	404.00	420.00	4.04
A-15	1,306.00	430.00	430.00	446.00	4.30
G-15	1,313.00	432.00	432.00	449.00	4.32
G-16	1,413.00	465.00	465.00	483.00	4.65

APPENDIX M

CHAPTER VI

EXPERIENCE INCREMENTS

Definition of Experience

1. Full-time work in payroll status of not less than six calendar months within one fiscal year (July 1 to June 30) in an organized school is defined as a year of experience. This would exclude a tutor, a one-teacher private school, or an instructor teaching one or two hours per week in some other institution.
2. Two years of part-time work in payroll status in an organized school for not less than one-half time for six calendar months or more during a fiscal year may be combined for a salary increment.
3. Full-time work in payroll status in an organized school for less than six calendar months within one fiscal year may be combined with full-time experience of less than six calendar months in other fiscal years to accumulate experience of six calendar months or more and thereby qualify for a salary increment at the beginning of a subsequent fiscal year.
4. Service as a teacher's aide, paraprofessional employee and substitute teaching done on a daily basis is not recognized for experience credit.
5. Credit for a year of experience gained in one school year in two or more school administrative units shall be allowed unless the State Superintendent of Public Instruction has been advised that the contract of the person involved was wilfully breached during the school year.
6. Professional experience in an organized school located outside the state will be allowed if documented in writing and provided the above criteria have been met. Experience for 120 actual teaching days (students must be present) in those states which pay on a daily basis may also be counted for increment purposes.

(State Salary Schedule, 1975, Issued by the Office of the Controller, State Board of Education, Raleigh, North Carolina), pp. 3-4.

APPENDIX N
LETTER OF INQUIRY

January 26, 1976

Public Employment Relations Board
State of New York
50 Wolf Road
Albany, New York 12205

Dear Sir:

I am conducting a study of state collective bargaining laws and am interested in securing information about New York Statutes. Would you please send me any available information pertaining to statutes governing collective bargaining for public school teachers in your state.

Your assistance will be greatly appreciated.

Sincerely,

Joseph Ralph Sinclair
P. O. Box 26
McLeansville, NC 27301

APPENDIX O
PROPOSAL FOR SCOPE OF MANDATORY BARGAINING AS IT PERTAINS TO
PUBLIC SCHOOL TEACHERS IN THE
STATE OF NORTH CAROLINA

Section I.

Matters relating to conditions of employment for public school teachers in the State of North Carolina are subject to mandatory bargaining under the following conditions:

- a. Matters relating to conditions of employment are not negotiable if they are defined in general statutes or State Board of Education policies.
- b. Matters relating to conditions of employment are subject to mandatory bargaining if they are policies or procedures listed in subsection (c) in which school boards have authority to implement and have jurisdiction over.
- c. The scope of mandatory bargaining is limited to:
 1. Nonpaid leaves of absence
 2. Grievance procedures
 3. Salary supplement
 4. Total hours of work required of a teacher on each work day at school
 5. School calendar
 6. Maximum insurance benefits
 7. Teacher evaluation

8. Teacher facilities
 9. Recognition clause
 10. The method used to classify teachers in a bargaining unit
 11. Deduction of dues for the recognized employee organization
 12. Protection of teachers in the bargaining unit from discrimination because of participation in recognized employee organizations consistent with this section
 13. Duration of collective bargaining agreements
 14. Payment for extra-curricular activities
- d. Final acceptance of budget matters is subject to approval of County Commissioners or local governmental agency responsible for appropriating requested revenue.

Section II.

Those subject matters which are not within the scope of mandatory bargaining and which are reserved to local boards of education without negotiation include:

- a. The right to hire, direct, assign or transfer a teacher, but not excluding the right to assign or transfer a teacher as a form of discipline;
- b. The right to reduce in work force because of lack of funds, career teachers being subject to General Statute 115-142 (e) (1) 1;
- c. The right to determine:
 1. Appropriate staffing levels and work performance standards, except for safety considerations
 2. The content of the workday, including workload factors
 3. The quality and quantity of services to be offered to the

public

4. Methods for offering these services

Section III.

The local board of education is entitled to take whatever measures necessary to carry out its responsibilities in situations of emergency such as military action, natural disaster, civil disorder, or riots. Such actions may include the suspension of the collective bargaining agreement for the duration of the emergency.

Section IV.

The school board may discuss subject matters which are outside the scope of mandatory bargaining as defined in this section, but it is not required to negotiate such matters.