REPORT OF THE
COMMISSION TO STUDY THE RIGHTS OF
PUBLIC EMPLOYEES
To
THE GOVERNOR
And
THE GENERAL ASSEMBLY OF VIRGINIA

COMMONWEALTH OF VIRGINIA
Department of Purchases and Supply
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Report of the

Commission to Study the Rights of Public Employees

to

The Governor and The General Assembly of Virginia

Richmond, Virginia

To: HONORABLE LINWOOD HOLTON, *Governor of Virginia*
and
THE GENERAL ASSEMBLY OF VIRGINIA

1. INTRODUCTION

In recent years throughout Virginia activity has grown concerning public employee working conditions. At the Capitol this activity has taken the form of numerous legislative proposals to provide for labor procedures similar to those found in the private sector. It was realized that the implementation of such procedures would constitute radical departure from public labor relations as they have previously existed in the Commonwealth. It was further realized that in depth examination of public employee matters would be desirable before action should be taken on an issue so vital to the interests of all of the people of Virginia as well as her public employees. As a consequence of these several considerations the General Assembly during its 1972 session approved House Joint Resolution No. 122 as follows:

HOUSE JOINT RESOLUTION NO. 122

Creating a commission to study the Rights of Public Employees.

WHEREAS, the current and preceding sessions of the General Assembly have received for consideration numerous legislative proposals dealing with the right of governmental employees to form employee organizations and to bargain collectively; and

WHEREAS, such proposals raise complex questions with which it is difficult to deal under the pressure of a legislative session, and which should properly be the subject of a careful and studied examination; now, therefore, be it

RESOLVED by the House of Delegates, the Senate of Virginia concurring, That there is hereby created the Commission to Study the Rights of Public Employees. The Commission shall consist of twelve members, five of whom shall be appointed by the Speaker of the House of Delegates and two of whom shall be appointed by the Committee on Privileges and Elections of the Senate. Such appointees may, but need not, be members of the General Assembly. The remaining five members shall be appointed by the Governor from the State at large.

The Commission shall consider and report upon the desirability of enacting legislation to authorize and regulate the formation by public employees, whether State or local, of employee organizations, and the exercise by them of collective bargaining rights. If the Commission finds that such legislation would be desirable, it shall consider the various such proposals heretofore introduced in the General Assembly and include in its report such recommendations for the enactment of legislation as it considers will

best implement its findings. The Commission shall complete its study and make its report to the Governor and the General Assembly not later than January one, nineteen hundred, seventy-three.

All agencies of the State and all its political subdivisions and agencies thereof shall assist the Commission upon request.

The members of the Commission shall receive a per diem allowance of thirty-five dollars for each day or any part thereof devoted to their duties as members of the Commission and in addition shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties, for which and for such expert, technical or clerical assistance as may be required by the Commission, there is hereby appropriated from the contingent fund of the General Assembly the sum of ten thousand dollars.

Pursuant to the terms of the study directive the Governor appointed to serve on the Commission Julian F. Carper of Richmond, George R. Long of Charlottesville, Francis V. Lowden, Jr. of Richmond, Frank W. McCulloch of Charlottesville and J. David Shobe, Jr. of Richmond. The Speaker of the House of Delegates appointed Delegates Claude W. Anderson of Andersonville, Duncan C. Gibb of Front Royal, George H. Heilig, Jr. of Norfolk, James M. Thomson of Alexandria and Benjamin H. Woodbridge, Jr. of Fredericksburg. The Committee on Privileges and Elections of the Senate appointed Senators Coleman B. Yeatts of Chatham and William F. Parkerson, Jr. of Henrico. Mr. Thomson was elected to be the Commission's Chairman and Senator Parkerson its Vice Chairman.

The Virginia Advisory Legislative Council and the Division of Statutory Research and Drafting made staff and facilities available to carry out this study; Laurens Sartoris and Constance D. Sprouse being assigned to assist the members of the study group.

From the outset the Commission was aware that the problems before it were complex in nature and that the advice of interested parties and disinterested experts should be sought. It became standard Commission practice to solicit the views of any person who wished to make his feelings known on any phase of the Commission's charge. The response from the public was vigorous and productive of much meaningful dialogue leading to the conclusions reached in this report. Arguments for almost every conceivable approach to the public labor-management relations question were heard from those favoring the perpetuation of the *status quo* to implementation of full scale collective bargaining on all levels. One hearing was devoted to direct reaction to a "meet and confer" proposal in order to ascertain from all sides the views of those who would be affected by any such change in the law.

Experts from other states which require labor negotiations between public employees and their employing units were invited to address the Commission. We heard from the following witnesses:

(1) Abe Belsky, Executive Director, Pennsylvania Labor Relations Board; (2) Robert G. Howlett, Chairman, Employment Relations Commission, Michigan; (3) Fleming James, Jr., Chairman, Connecticut Board of Labor Relations; (4) Raymond L. Scheib, Chairman, Pennsylvania Labor Relations Board; (5) Morris Slavney, Chairman, Wisconsin Employment Relations Commission; (6) James F. Wildeman, Assistant Attorney General, Pennsylvania Labor Relations Board.

The experiences of public employees in their states were learned to an extent not otherwise feasible. We wish to express our sincere appreciation for the time and effort which they expended on behalf of the Commission and for the knowledge they imparted to its members.

The Commission was also privileged to participate with the members of the Virginia State Bar and Virginia Bar Association in a two day seminar sponsored by the Bar for its members which dealt with matters before the Commission. At this seminar the current state of the law was reviewed and experts apprised the participants of matters relating to federal law and the laws elsewhere, in addition to other practical considerations.

No amount of explanation here is sufficient to describe the incredible volume of printed matter received from all sources on the public labor question. We have reviewed the laws of Virginia and other states, various articles, news clippings, statements, sample legislation, opinions of the Attorney General, letters and anything else on paper that came before us. The considerable complexity of public employee rights is understood by virtue of this vast supply of information which make it apparent that no easy solutions are available.

After lengthy hearings and the receipt of voluminous testimony, both oral and documentary, it is fair to summarize that the Commission unanimously concludes: (1) that the public employees of Virginia both State and local, should enjoy fair and equitable wages, hours and other working conditions; (2) that public employees in this Commonwealth and its political subdivisions should not be permitted to strike; and (3) that each public employee in this Commonwealth should enjoy the same rights and equal treatment as every other public employee in whatever capacity, and by whatever governing body employed.

It is upon these three basic conclusions that we ultimately ground our recommendations.

II. RECOMMENDATIONS

A. The General Assembly should reiterate and implement a policy of fair and equitable wages, hours and other working conditions for *all* public employees in this Commonwealth.

B. The General Assembly should encourage a policy of providing methods whereby public employees, both State and local including those of constitutional offices, may effectively express their views concerning matters which affect them.

C. The General Assembly should enact legislation providing for personnel systems on the State and local level including classified personnel and compensation plans and the settlement of legitimate grievances through the grievance procedures recommended by this Commission.

D. The General Assembly should encourage the State and its local governments to have periodic independent evaluations of their working conditions.

E. The General Assembly should enact legislation to provide what agreements affecting the terms and conditions of public employment shall be enforceable, and when they should be enforceable.

F. The General Assembly should make the provisions of the Right-to-Work Law applicable to public employers and employees.

G. The General Assembly should not adopt piece-meal labor legislation; any such act should be uniformly applicable to all public employees, both State and local.

H. The General Assembly should enact legislation to provide realistic public labor strike deterrents, and repeal those statutes which have not proven effective.

III. DISCUSSION

A. THE GENERAL ASSEMBLY SHOULD REITERATE AND IMPLEMENT A POLICY OF FAIR AND EQUITABLE WAGES, HOURS AND OTHER WORKING CONDITIONS FOR *ALL* PUBLIC EMPLOYEES IN THIS COMMONWEALTH.

Many witnesses appearing before the Commission assigned monetary consideration as among the principal causes, not only for public employee organization, but of the disputes and strikes which have occurred in the states where collective bargaining is required. It is clearly within the power of the General Assembly to remove the causes of unrest related to monetary and like matters and we urge that the necessary steps be taken. We are pleased to see that the Governor's Management Study Implementation Study Commission has recommended for the 1973 Session salary increases for State employees which total $ 38 million.

The evidence before the Commission indicates that in the area of fringe benefits, such as holidays, vacations, sick leave, retirement plans, etc., public employees probably are comparatively better off than many privately employed citizens. In the area of wages and salaries some public levels lagged behind private levels. We believe the evidence indicates, however, that much progress has been made in recent years in improving the position of public employees relative to their counterparts in private employment and in public employment in other states. This is particularly true of State employees.

There was evidence by a representative of the Virginia Governmental Employees Association that there may be some areas of inequities or disparate treatment of employees. These situations should be ferreted out and eliminated.

While we realize that the manner in which the public funds are to be disbursed is clearly a matter for the General Assembly and other governing bodies, and not us, allocation of public funds for employee compensation should be recognized as an item deserving the highest priority in order to maintain good working relations and efficient government service.

B. THE GENERAL ASSEMBLY SHOULD ENCOURAGE A POLICY OF PROVIDING METHODS WHEREBY PUBLIC EMPLOYEES, BOTH STATE AND LOCAL INCLUDING THOSE OF CONSTITUTIONAL OFFICES, MAY EFFECTIVELY EXPRESS THEIR VIEWS CONCERNING MATTERS WHICH AFFECT THEM.

There was evidence before the Commission, particularly from representatives of various education associations, that often decisions are made affecting working conditions without any opportunity given to those affected to make any suggestions or contributions to the solution of the problem involved or to ameliorate the effect of the decision.

We believe it good practice to consult and communicate with employees concerning problems involving them. There is much that can be learned by administrators in government from those who are carrying out the daily work of any agency. The qualified minds of the talent within the governmental unit are capable of contributing valuable ideas, the routine rejection of which does a disservice to the agency, the public and the employee.

It is human nature for persons to desire a say in matters in which they are involved. The employees of government should be allowed a voice to the maximum degree consistent with the public well-being. A climate of understanding brought about by effective lines of communication in public employer-employee relations will ultimately redound to the public benefit.

C. THE GENERAL ASSEMBLY SHOULD ENACT LEGISLATION PROVIDING FOR PERSONNEL SYSTEMS ON THE STATE AND LOCAL LEVEL INCLUDING CLASSIFIED PERSONNEL AND COMPENSATION PLANS AND THE SETTLEMENT OF LEGITIMATE GRIEVANCES THROUGH THE GRIEVANCE PROCEDURES RECOMMENDED BY THIS COMMISSION.

Employees sometimes have legitimate grievances and one of the usual consequences of collective bargaining is a procedure for resolving them. We believe that this privilege should be extended to all public employees by uniform general law.

We recommend that the Virginia Personnel Act be amended to require that the Governor establish and maintain a uniform employee grievance procedure to afford an immediate and fair method for the resolution of disputes which may arise between an agency and its employees.

The Governor on November 28, 1972, adopted Rule 14 providing for a uniform employee grievance procedure throughout the State agencies. We approve this general procedure and urge that the same, or a similar procedure, be adopted by local governments throughout the Commonwealth. The adoption of such procedure should be required by general law.

The absence of structured job classification and pay plans in some governmental subdivisions was also brought to our attention. It would seem advisable to require that all local governments establish such plans in order that their employees and those of the constitutional offices may be assured of adequate, fair and equal compensation. This recommendation cannot help but serve both the public employer and its employee.

D. THE GENERAL ASSEMBLY SHOULD ENCOURAGE THE STATE AND ITS LOCAL GOVERNMENTS TO HAVE PERIODIC INDEPENDENT EVALUATIONS OF THEIR WORKING CONDITIONS.

The Commission received a written recommendation that there be established a state governmental employee compensation commission. We think the immediate concerns could best be met without such a formalized procedure.

Matters relating to wages, hours and working conditions of all public employees in Virginia require periodic evaluation and review. Sometimes an agency independent of State and local management authority can best review such matters.

We believe that periodic evaluation of government by persons who are totally unconnected with government can provide balance and comparison. Whether these persons be professional consultants or persons serving without compensation, who have no direct interest in public employment, but who have knowledge in the fields of labor relations law, personnel administration and wage, salary and employee benefits administration, their review would provide beneficial results to all units of government. We point to the membership of the recent Governor's Management Study Commission as an example of the type of persons who should serve.

We recommend this procedure to the State government and to each political subdivision of the State.

E. THE GENERAL ASSEMBLY SHOULD ENACT LEGISLATION TO PROVIDE WHAT AGREEMENTS AFFECTING THE TERMS AND CONDITIONS OF PUBLIC EMPLOYMENT SHALL BE ENFORCEABLE, AND WHEN THEY SHOULD BE ENFORCEABLE.

Although there is no statutory authorization for collective bargaining in the public sector in certain areas negotiations have taken place, and are continuing. As of June 5, 1972, there were collective agreements in the following areas with the following groups:

Alleghany County	Sanitation Workers	Laborers Union
Fairfax County	County Workers	AFSCME
Fairfax County	Firemen	IAFF
Arlington County	School Employers	AFSCME
Arlington County	County Workers	AFSCME

There were five master agreements covering teachers in Fairfax, Arlington, Alexandria, Prince William and Newport News. Negotiations were in progress in Powhatan, Page, Waynesboro, Virginia Beach and King George.

The precise legal status of these agreements is unclear. We do not believe this situation to be in the best interests of the public employer or employee, whether State or local. Such agreements should be made enforceable under certain circumstances which apply equally to all.

While not all local governments of the Commonwealth will deem it wise to negotiate with their public employees nor the public employees with the employers, permissive legislation should be enacted so that there will be no doubt as to the rights of the parties, if they do reach an agreement. Such legislation will eliminate the confusion and assure the legitimacy of much of what has already transpired.

F. THE GENERAL ASSEMBLY SHOULD MAKE THE PROVISIONS OF THE RIGHT-TO-WORK LAW APPLICABLE TO PUBLIC EMPLOYERS AND EMPLOYEES.

The judicial trend holds the right of a public employee to join an organization of his choice to be protected under the First Amendment to the Constitution of the United States. We think the General Assembly should clarify that there is no prohibition against union membership. The recent case of Newport News Firefighters v City of Newport News, 339 F Supp. 13 (1972), upheld the right of public employees to join such organizations or unions as they see fit. We recommend that the protection of the Right-to-Work Law be extended to all public employers and public employees in Virginia in order to ensure them the same rights now protected in the private sector.

G. THE GENERAL ASSEMBLY SHOULD NOT ADOPT PIECE-MEAL LABOR LEGISLATION; ANY SUCH ACT SHOULD BE UNIFORMLY APPLICABLE TO ALL PUBLIC EMPLOYEES, BOTH STATE AND LOCAL.

The Commission is aware that committees of the Senate and House of Delegates have been studying certain labor bills applicable to certain categories of public employees.

We believe there should be no special interest groups in the area of public employee relations. Any laws should be of general application and all public employees should enjoy the same rights. All of our proposals speak to all public employees, which, we believe, is the fairest method of dealing with everyone.

H. THE GENERAL ASSEMBLY SHOULD ENACT LEGISLATION TO PROVIDE REALISTIC PUBLIC LABOR STRIKE DETERRENTS, AND REPEAL THOSE STATUTES WHICH HAVE NOT PROVEN EFFECTIVE.

Work stoppages and strikes by public employees should not be permitted. The law currently prohibits such strikes and provides severe penalties for

persons who engage in strikes. Our concern is that the present penalties are so strict as to be unrealistic and thereby counter-productive.

Under the law (§ 40.1-55 et seq. of the Code of Virginia) if an employee participates in an illegal strike he cannot be employed for a twelve month period except by special dispensation of a court. We believe this procedure is unworkable and the public interest suffers if vital employees are restricted from working. It has even forced some political subdivisions to find means to escape the provisions of this law in order to resume regular governmental functions.

We recommend the repeal of the law as it exists and substitution of realistic penalties. For public employees who strike in violation of the law, there would be economic penalties. If an employee organization is involved check-off rights could be suspended or economic sanctions could be imposed. This new law, we believe, would more successfully deter work stoppages than does the present law.

IV. CONCLUSION

Labor management relations in government service are undergoing a series of dramatic changes. State and local governments are searching for methods to establish improved relationships with their employees.

It is the conclusion of this Commission that the status of public employment neither is, nor can be, comparable to the private sector. The differences are due to the nature of government. In a representative system of government, elected officials are granted the authority to establish programs, assess taxes and allocate the funds thus raised to provide the public services needed by all. It is the responsibility of elected officials to determine all spending priorities subject to the check of our democratic processes. Private management may share the decisional process with their employees; but in government, responsibilities cannot be delegated or shared in an unlimited fashion with any one group without diminishing the democratic process. Additionally, one of the primary functions of public management is that of providing essential governmental services. Private management may choose to forego profit, but the public is rarely in a position to withstand the withdrawal of governmental services.

Nevertheless Virginia must recognize the right of public employees to have an opportunity to have their grievances fairly heard and equitably settled, and to enjoy wages and benefits which are comparable to those of employees in the private sector. Efforts must be made to develop new systems whereby the justifiable claims of public employees may be articulated, weighed and provided.

The foregoing recommendations have been made in an effort to reach this goal.

It is our final recommendation that this Commission be continued in existence further to study the rights of public employees; a problem which is as difficult and important as any which the General Assembly will be called to consider. If the above mentioned recommendations are implemented, some group should be available to evaluate their success and recommend future action as needs may require. The members of this Commission are willing to accept this responsibility.

Respectfully submitted,

* James M. Thomson, *Chairman*

** Wm. F. Parkerson, Jr., *Vice Chairman*

** Claude W. Anderson

*** Julian F. Carper

** Duncan C. Gibb

**** George H. Heilig, Jr.

George R. Long

** Francis V. Lowden, Jr.

*** Frank W. McCulloch

***** J. David Shobe, Jr.

** Benjamin H. Woodbridge, Jr.

** Coleman B. Yeatts

* The undersigned do not feel that the recommendations of the Commission will entirely accomplish the desired results. We have, however, been willing to support this report in the hope that the recommendations will be effective. As a result we have appended the "meet and confer" bill which has been drafted by the staff and studied by the Commission.

While this draft may not be perfect we intend to continue our work on this measure. The continuation of the Commission's study will give us an additional period in which to refine the published draft and to conform it to the needs of Virginia, if and when the occasion arises.

James M. Thomson

Julian F. Carper

** The undersigned members of the Commission to Study Rights of Public Employees, in accordance with House Joint Resolution No. 122, hereby report to the General Assembly their separate findings and recommendations.

The evidence which came before the Commission led the undersigned to conclude that the process of collective bargaining is not the solution to labor relations in the public sector.

It is the view of the undersigned that the State of Virginia must recognize the right of public employees to have an opportunity to have their grievances fairly heard and equitably settled, and to enjoy wages and benefits which are comparable to those of employees in the private sector. While we believe that a system of collective bargaining is not appropriate for the public service, we believe efforts must be made to develop new systems whereby the justifiable

claims of public employees may be articulated, weighed and secured. To that end we have joined in the Commission Report.

Wm F. Parkerson, Jr.

Coleman B. Yeatts

Claude W. Anderson

Benjamin H. Woodbridge, Jr.

Duncan C. Gibb

Francis V. Lowden, Jr.

*** With two exceptions noted below, I am in full accord with the recommendations of this report. These proposals to improve the pay, provide fair grievance procedures, review working conditions, make collective contracts enforceable, revise the unworkable strike penalties and encourage better communications reflect a proper concern for the welfare of public employees and for the efficiency of the public service.

Beyond this concern, however, I hope there may soon develop a broader understanding that these steps are not enough. To meet the insistent and growing claim of public employees for the freedom to choose to be represented by employee organizations in discussions affecting their working conditions, I believe more will be needed. Material benefits and carefully circumscribed complaint procedures are no substitute for a meaningful, collective voice.

I associate myself, therefore, with Chairman Thomson's personal recommendation that most serious consideration be given to the perfection and adoption in Virginia of legislation that would grant "meet and confer" rights to those employee units that choose it. This would clarify a legal situation that is now muddled. It would provide guidelines and orderly procedures where employees elect such a course.

In addition, I have the following reservations to specific items in our report:

1) I do not subscribe to the proposal (F) to extend to public employment the so-called Right-to-Work Law. We heard no testimony on it. It is not clear to me that it serves Virginia's best interests to forbid public bodies to agree to union support clauses in contracts with their employees. In any case the prohibition seems premature in the absence of legislative assurances of the basic rights to make such contracts. The positive guarantees in the R-T-W law of the right to organize and join unions are desirable. But applying them to public employment would merely affirm what the courts already hold the Constitution protects.

2) I agree that legislation affecting public employees across the board is preferable. But I see no objection in principle to the intitial adoption of collective negotiations laws confined to special, highly-organized groups, like teachers, fire-fighters and policemen. The laws of a number of states have evolved successfully in this way. The fact that many public employees do not desire such representation should not bar those who are ready and eager from having this freedom of choice. And the narrower experience could be instructive in the broader fields. I therefore do not subscribe to recommendation G.

3) I support the principle that public employee strikes should be banned. I also agree that the unworkable sanction in the present Virginia law relating to such strikes should be replaced. On these grounds, I join in recommendation H as proposing an improvement in the present law.

By itself, however, or even in conjunction with the other recommendations we make, I question whether this proposal will be an adequate response to the rising requests of public employees for recognition and contracting rights. I note that the N. Y. law upon which this proposal is based is part of a more comprehensive legislative framework. That larger design guarantees to public employees the right to be recognized by and to bargain with their public employers. It also establishes constructive mediation and conciliation procedures to aid in the resolution of bargaining disputes and avert the pressures that lead to strikes. These two affirmative provisions in the law contribute to whatever success the Taylor Law in New York has enjoyed.

Our recommendation, by contrast, includes neither. We do propose in other ways to improve the lot of public employees. But not their bargaining rights or dispute resolution procedures. I believe this will lessen the proposal's long-run effectiveness as a strike deterrent. As a persuader in this sensitive area of human relations, would it not be well to consider the "carrot" as well as the "stick" provisions of the Taylor Law?

Frank W. McCulloch

Mr. Carper endorses the foregoing statement of Mr. McCulloch

**** STATEMENT OF GEORGE H. HEILIG, JR.

For the most part, the undersigned fully concurs in the recommendation of the Commission but would like to take this opportunity to express further personal beliefs and feelings in regards to the work of the Commission.

It is conceded by everyone that the rights, duties and relationships among the parties in the field of public employment are of tremendous complexity. Because of this complexity and in view of the fact that evidence received by the Commission from states such as Wisconsin, New York, Michigan, Pennsylvania and Connecticut indicated that collective bargaining legislation seemed to have created more problems than it solved, it is my sincere feeling that further study by this Commission is warranted in order to explore this entire area further.

Admittedly, the above states as mentioned have economic climates much different from that of Virginia and, for that reason alone, it is my feeling that legislation can be refined to meet the needs of Virginia, if and when the occasion requiring same should arise.

The recommendation of the Commission to improve wages, provide fair grievance procedures, review working conditions, sanction collective agreements, review the unworkable strike penalties and encourage better communicating, reflect proper concern for the welfare of public employees and for the efficiency of the public service. It is my earnest desire that our State and local jurisdictions implement the substance of our recommendations as quickly as humanly possible. I sincerely hope that the recommendations will be fully effective although it is probably too much to hope that, even if fully implemented, they will entirely accomplish the desired result. Furthermore, because of the possibility that federal legislation may come about to regulate the entire sphere of public employment if the states do not act and because of

several recent court decisions in other states which suggest a constitutional right of public employees to engage in collective bargaining, I deem it wise for this Commission to continue its work on the appended "meet and confer" legislation so as to have available a workable, effective and acceptable piece of legislation regulating public employer-employee relations throughout Virginia, without being forced into such an arrangement through federal legislation or by judicial decree and guidelines. It is my feeling that the majority of Virginians approve the recommendations of this Commission. It is, however, also my opinion that most Virginians would like the opportunity to solve our own problems rather than have them solved, perhaps by federal legislation or by guidelines forced upon us by the courts, as has happened to Virginia in recent years.

Because we heard no testimony nor received any evidence on the proposal to extend the Right-to-Work Law to public employment, I express no opinion for or against such proposal at this time. I would like to explore this area further during the additional work of the Commission.

I support the principle that strikes by public employees should be completely prohibited and applaud the Commission's efforts in removing the unworkable sanction in the present law.

George H. Heilig, Jr.

***** Having affixed my signature to the Report, I would like to make a brief additional statement.

First, I strongly agree with the latter portion of the Report recommending that the study in this important field be continued. I do not feel that sufficient evidence has been gathered to enable the members, individually or collectively, to file a conclusive report.

I cannot wholly agree with all conclusions in Section III, that ". . . . public employees *probably* (emphasis added) are comparatively better off than many privately employed citizens"; nor can I agree that ". . . . much progress has been made in recent years in improving the position of public employees relative to their counterparts in private employment. . . ."

I do feel that amendments to the Virginia Personnel Act should first be made and the results of the refinements thereof be given a chance and evaluated.

In setting forth guidelines for State agency heads and other public employers, I would urge the use of the word "shall", rather than "may", and would further urge that a time-table be established in which those employers might promulgate grievance procedures and the like.

J. David Shobe, Jr.

APPENDIX

HOUSE JOINT RESOLUTION NO. —

Expressing the sense of the General Assembly relating to public employee compensation and benefits.

Whereas, the public employees of this Commonwealth and all agencies and political subdivisions thereof render conscientious and meritorious service to the people for which service these public employees should be fairly, equitably and adequately compensated; and

Whereas, it is recognized that the performance of government is conditioned upon the employment of well qualified public employees; and

Whereas, if well qualified persons are to continue to serve, salaries and benefits need to be competitive with the levels of same in the private sector; now, therefore, be it

Resolved by the House of Delegates, the Senate concurring, That the public policy of this Commonwealth shall require that all public employees enjoy wages, hours, benefits and other working conditions commensurate with their service to the public. Recognizing such to be public policy, implementation thereof, within the limits of public resources, is a matter of legislative priority.

HOUSE JOINT RESOLUTION NO. ____

Expressing the sense of the General Assembly relating to public employee participation.

Whereas, it is the right of every public employee to know the conditions of his employment and the reasons for decisions which may affect him; and

Whereas, the public is better served when the knowledge and experience of its employees can be called on in the development of policies which affect its employees; now, therefore, be it

Resolved by the House of Delegates, the Senate concurring, That it is the sense of the General Assembly of Virginia that the public policy require every public employer to promulgate and implement such rules or policies as will provide to its employees an opportunity to contribute to the development of policies which directly or indirectly affect the working conditions of the employees.

HOUSE JOINT RESOLUTION NO. ____

Expressing the sense of the General Assembly relating to independent evaluations of public employee matters.

Whereas, from time to time adjustments in the wages, hours, benefits and other working conditions of public employees need to be made; and

Whereas, evaluations of policies, procedures and programs are often best carried out by persons who themselves are not affected by the matters on which judgments are rendered; and

Whereas, it is vital that when adjustments are effected in matters relating to public employees there be a sound basis therefor; now, therefore, be it

Resolved by the House of Delegates, the Senate concurring, That it is the public policy to encourage the utilization by the various public employers of disinterested citizens to make periodic evaluations of the wages, hours, benefits

and other working conditions of their public employees. It is the sense of the General Assembly that to be of real value these evaluations should be objective and made by qualified citizens unconnected with government.

HOUSE JOINT RESOLUTION NO. ____

Continuing the Commission to Study the Rights of Public Employees.

Whereas, the General Assembly in nineteen hundred seventy-two did approve House Joint Resolution No. 122 creating the Commission to Study the Rights of Public Employees; and

Whereas, such Commission has considered with diligence the matters relating to the present and future status of the rights of all the public employees of this Commonwealth; and

Whereas, the Commission has prepared a report thereby submitting certain recommendations to the General Assembly; and

Whereas, there yet remain many areas for further study and consideration in the employment relations field which is in a constant state of flux; now, therefore, be it

Resolved, by the House of Delegates, the Senate concurring, That there is hereby continued the Commission to Study the Rights of Public Employees under the provisions of House Joint Resolution No. 122 of 1972. The present members of the Commission shall continue as members of the Commission; provided, that if any member be unwilling or unable to serve, or for any other reason a vacancy occur, his successor shall be appointed in the same manner as the original appointment was made. The Commission shall complete its study and make its report to the Governor and the General Assembly not later than January one, nineteen hundred seventy-four.

All agencies of the State and all its political subdivisions and agencies thereof shall assist the Commission upon request.

The members of the Commission shall receive a per diem allowance of thirty-five dollars for each day or any part thereof devoted to their duties as members of the Commission and in addition shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties, for which and for such expert technical or clerical assistance as may be required by the Commission, there is hereby appropriated from the contingent fund of the General Assembly the sum of ten thousand dollars.

[The following bill draft is that referred to in certain of the qualifying statements]

A BILL

To amend the Code of Virginia by adding in Article 3 of Chapter 4 of Title 40.1 a section numbered 40.1-58.1 relating to the applicability in the public sector of any person's right to work.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia be amended by adding in Article 3 of Chapter 4 of Title 40.1 a section numbered 40.1-58.1 as follows:

§ 40.1-58.1. As used in this article, the words, "person," "persons," "employer," "employees," "union," "labor union," "association," "organization" and "corporation" shall include but not be limited to public employers, public employees and any representative of public employees in this State.

A BILL

To amend and reenact § 2.1-114, as amended, of the Code of Virginia, and to amend the Code of Virginia by adding a section numbered 15.1-7.1 relating to personnel matters for State and local employees.

Be it enacted by the General Assembly of Virginia:

1. That § 2.1-114, as amended, of the Code of Virginia be amended and reenacted and that the Code of Virginia be amended by adding a section numbered 15.1-7.1 as follows:

§ 2.1-114. Duties of Governor as Chief Personnel Officer. — The Governor shall establish and maintain:

(1) A roster of all employees in the service of the Commonwealth, in which there shall be set forth as to each employee, the employing agency, the class title, pay and status, and such other data as may be deemed desirable to produce significant facts pertaining to personnel administration.

(2) A classification plan for the service of the Commonwealth, and he shall from time to time, make such amendments thereto as may be necessary. The classification plan shall provide for the grouping of all positions in classes based upon the respective duties, authority, and responsibilities. The Governor shall allocate each position in the service of the Commonwealth to the appropriate class title therein, and make reallocations from time to time.

(3) A compensation plan for all employees, and he shall, from time to time, make necessary amendments thereto. The compensation plan shall be uniform; and for each class of positions there shall be set forth a minimum and a maximum rate of compensation and such intermediate rates as shall be considered necessary or equitable.

(4) A system of service ratings, for all employees in the service of the Commonwealth, based upon the quality of service rendered.

(5) An open register, or employment file, of the applications of all persons seeking employment in the service of the Commonwealth. Applications shall be rated on the basis of relative merit and classified in accordance with their suitability for the various classes of positions in the service of the Commonwealth, and a record thereof shall be maintained in the open register.

(6) An appeal procedure which shall assure all persons employed under this chapter a full and impartial inquiry into the circumstances of removal *and demotion.*

(7) An employee grievance procedure to afford an immediate and fair method for the resolution of disputes which may arise between an agency and its employees.

The Governor shall promulgate such rules, not in conflict with this chapter, as he may consider necessary to provide for the administration of the

classification plan, the compensation plan and the system of service ratings, and to govern minimum hours of work, attendance regulations, leaves of absence for employees, and the order and manner in which layoffs shall be made.

The Governor shall, from time to time, investigate the operation and effect of this chapter and of the rules made pursuant thereto, and he shall make, to the General Assembly, a biennial report regarding the operation of the chapter, and such special reports as he may consider desirable.

§ 15.1-7.1. Notwithstanding any other provision of law to the contrary, the governing body of every county, city and town and the office of every constitutional officer shall establish by June thirty, nineteen hundred seventy-four a grievance procedure for its employees to afford an immediate and fair method for the resolution of disputes which may arise between such public employer and its employees and a personnel system including a classification plan for service and uniform pay plan.

Every such grievance procedure shall conform to like procedures established by the Governor pursuant to § 2.1-114 and shall be submitted to the Director of Personnel appointed pursuant to § 2.1-113 for approval. Failure to comply with any provision of this section shall cause the grievance procedures adopted by the Commonwealth to be applicable in accordance with such rules as the Director of Personnel may prescribe.

A B I L L

To amend the Code of Virginia by adding in Chapter 4 of Title 40.1 an article numbered 6 containing sections numbered 40.1-77.1 through 40.1-77.7 providing a Public Labor-Management Relations Act.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia be amended by adding in Chapter 4 of Title 40.1 an article numbered 6 containing sections numbered 40.1-77.1 through 40.1-77.7 as follows:

Article 6

Public Labor-Management Relations Act

§ 40.1-77.1. It is declared to be the public policy of Virginia that when any official or group of officials of the State, or of any county, city or town, or of any other political subdivision of the State, shall enter into a written agreement with any person, association or labor organization respecting wages, hours or any other conditions of employment of public employees, such agreement shall be enforceable only if it substantially conforms with the provisions of this article. The provisions of this article shall not apply to any contract or agreement in force on the effective date hereof, but shall apply in all respects to contracts or agreements entered into thereafter and to any renewal or extension of the same. This article shall not apply to individual contracts of employment.

§ 40.1-77.2. As used in this article:

(1) "Public employer" or "employing agency" means the Commonwealth of Virginia or any agency or department thereof including State universities and colleges; and every political subdivision or district, and every town, city, county or municipal corporation, and every public school board, or school division.

(2) "Public employee" means any person employed by a public employer, including teaching personnel, except those persons (a) elected by popular vote or appointed to office by the Governor of this State; (b) part-time or casual employees who work less than thirty hours per week; (c) supervisory employees; and (d) confidential employees.

(3) "Supervisory employee" means any person having authority in the interest of the employer, (a) to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees; (b) responsibly to direct them; (c) to adjust their grievances; or (d) effectively to recommend such action, provided that in connection with the exercise of the foregoing authority there is required the use of some independent judgment as opposed to the exercise of such authority in a routine or clerical nature.

(4) "Teaching personnel" means those persons holding regular teaching certificates of this State, and who are employed by any school board or school division, except that superintendents of schools, assistant superintendents,

principals, certified professional employees who represent a board of education at meetings with teaching personnel or who are directly responsible to a board of education for personnel relations or budget preparation, certified teaching personnel employed in an administrative capacity and temporary substitutes are excluded.

(5) "Confidential employee" means any person whose job includes responsibilities on behalf of the employer in connection with the public employer's personnel policies and practices.

(6) "Governing body" means the body of the public employer possessing legislative powers and the power to appropriate public funds.

§ 40.1-77.3. The governing body of any public employer may elect to have its representative or representatives discuss wages, hours, and other terms and conditions of employment of its employees with its employees or any representative thereof.

§ 40.1-77.4. If agreement is reached pursuant to § 40.1-77.3, the parties thereto may prepare a written memorandum of such understanding which shall not be binding until adopted or modified by the governing body in the regular course of legislative business.

§ 40.1-77.5. Every memorandum of understanding, adopted or adopted as modified in conformance with § 40.1-77.4, shall expressly state: "Management officials of the public employer retain the right to: (a) direct employees of the agency; (b) hire, promote, transfer, assign, and retain employees in positions with the public employer, and to suspend, demote, discharge, or take other disciplinary action against employees; (c) relieve employees from duties because of lack of work or for other legitimate reasons; (d) maintain the efficiency of the operations entrusted to them; (e) determine overall objectives and policies and the methods, means and personnel by which operations are to be conducted; and (f) take whatever actions may be necessary to carry out the mission of the public employer in situations of emergency."

§ 40.1-77.6. To the extent that such memorandum is adopted in conformance with this article, and is in force and effect, it shall be enforceable by an interested party in the appropriate court of record in this Commonwealth.

§ 40.1-77.7. Nothing herein shall deprive any individual employee of his right at any time to present a grievance to his employer and to have the same adjusted.

A BILL

To amend the Code of Virginia by adding in Chapter 4 of Title 40.1 an article numbered 6 containing sections numbered 40.1-77.1 through 40.1-77.19 relating to public employer-employee relations by providing uniform and orderly methods for dealings between public agencies and associations of their employees; and to appropriate funds therefor.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia be amended by adding in Chapter 4 of Title 40.1 an article numbered 6 containing sections numbered 40.1-77.1 through 40.1-77.19 as follows:

Article 6

Public Labor - Management Relations Act

§ 40.1-77.1. Findings and purpose. The legislature hereby finds and declares that:

(1) The people of this Commonwealth have a fundamental interest in the development of harmonious and cooperative relationships between government and its employees;

(2) recognition by public employers of the right of public employees to organize and full acceptance of the principle and procedure of full communication between public employers and public employee organizations can alleviate various forms of strife and unrest;

(3) the Commonwealth has a basic obligation to protect the public by attempting to assure the orderly and uninterrupted operations and functions of government;

(4) the status of public employees neither is, nor can be, completely comparable to that of private employees, in fact or law, because of inherent differences in the employment relationship arising out of the unique phenomenon that the public employer was established by and run for the benefit of all the people and its authority derives not from contract nor the profit motive inherent in the principle of free private enterprise, but from the Constitution and laws of the Commonwealth; and

(5) this difference between public and private employment is further reflected in the constraints that bar any abdication or bargaining away by public employers of their continuing legislative discretion and in the fact that Constitutional provisions as to contract, property and due process do not have the same force with respect to the public employer-employee relationship as with labor relations in the private sector.

It is the purpose of this article to obligate public agencies, public employees, and their representatives to enter into discussions with affirmative willingness to resolve grievances and disputes relating to wages, hours, and other terms and conditions of employment, acting within the framework of the law. It is also the purpose of this article to promote the improvement of employer-employee relations within the various public agencies of the Commonwealth and its political subdivisions by providing a uniform basis for recognizing the right of public employees to join organizations of their own

choice, or to refrain from joining, and be represented by such organizations in their employment relations and dealings with public agencies.

§ 40.1-77.2. Definitions. As used in this article:

(1) "Public employee" means any person employed by any public agency excepting those persons classed as legislative, judicial, or supervisory public employees; elected and top management appointive officials; and certain categories of confidential employees including those who have responsibility for administering this article as a part of their official duties.

(2) "Supervisory employee" means any person employed by any public agency having authority, in the interest of the employer, (i) to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or (ii) responsibly to direct them, or (iii) to adjust their grievances, or (iv) effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

(3) "Confidential employee" means any person employed by any public agency whose unrestricted access to confidential personnel files or information concerning the administrative operations of a public agency, or whose functional responsibilities or knowledge in connection with the issues involved in the meet and confer in good faith process, would make his membership in the same organization as a rank-and-file employee incompatible with his official duties.

(4) "Public agency" or "public employer" means the Commonwealth of Virginia, its agencies and every governmental subdivision; school division; public and quasi-public corporation; public agency; town, city, county, and any other political subdivision; and authority, board, or commission, whether incorporated or not and whether chartered or not.

(5) "Governing body" means the legislative body of the public employer or the body possessing legislative powers. In the case of school divisions, it means the school boards to the extent of their supervisory authority granted by the Constitution.

(6) "Representative of the public employer" and "designated representative" means the chief executive officer of the public employer or his designee, except where the governing body provides otherwise.

(7) "Employee organization" means any organization which includes employees of a public agency and which has among its primary purposes representing such employees in discussions with that public agency over grievances and wages, hours, and other terms and conditions of employment.

(8) "Recognized employee organization" means an employee organization which has been certified as representing a majority of the nonsupervisory employees of an appropriate unit by the Commissioner.

(9) "Meet and confer in good faith" means the process whereby the chief executive of a public agency, or such representatives as it may designate, and representatives of recognized employee organizations have the mutual obligation personally to meet and confer in order to exchange freely information, opinions, and proposals, to endeavor to reach agreement on matters within the scope of discussions, and to seek by every possible means to implement agreements reached.

(10) "Memorandum of agreement" means a written memorandum of understanding arrived at by the representatives of the public agency and a recognized employee organization, which may be presented to the governing body or its representative and to the membership of such organization for appropriate action.

(11) "Mediation" means effort by an impartial third party to assist in reconciling a dispute regarding wages, hours, and other terms and conditions of employment between representatives of the public agency and the recognized employee organization through interpretation, suggestion, and advice.

(12) "Fact-finding" means investigation of such a dispute by an individual, panel, or board with such fact-finder submitting a report to the parties describing the issues involved. The report may contain recommendations for settlement and may be made public.

(13) "Advisory arbitration" means interpretation of the terms of an existing or a new memorandum of agreement or investigation of disputes by an impartial third party whose decision is not binding upon the parties.

(14) "Voluntary arbitration" means a procedure wherein both parties jointly agree to submit their dispute over the interpretation of the terms of an existing agreement to an impartial third party whose decision may be final and binding or advisory and nonbinding, depending on the nature of the initial agreement.

(15) "Strike" means the failure by concerted action of public employees to report for duty, the wilful absence without satisfactory cause from one's position, the stoppage of work, or the abstinence in whole or in part from the full, faithful, and proper performance of the duties of employment, or in any manner interfering with the operation of any public agency, for the purpose of inducing, influencing, or coercing a change in the conditions or compensation or the rights, privileges, or obligations of employment.

(16) "Professional employee" means any person whose primary duty consists of the performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship and who customarily and regularly exercises discretion and independent judgment in the performance of such function; provided, however, that persons employed as teachers and who hold certificates in compliance with § 22-204 shall be excepted from this definition.

§ 40.1-77.3. Administration of public employee matters.

(a) The Commissioner shall administer the provisions of this article assuming such authority and responsibility as is delegated by its terms.

(b) The Commissioner may employ persons, including but not limited to hearing examiners, mediators, members of fact-finding boards, and representatives of employee organizations and public employers to serve as technical advisers to such fact-finding boards, as he may from time to time deem necessary for the performance of his functions. The Commissioner shall prescribe their duties, fix their compensation, and provide for reimbursement of their expenses within the amounts provided by law.

(c) In addition to the authority provided elsewhere, the Commissioner may:

(1) Make studies and analyses of, and collect information relating to conditions of employment of public employees through the Commonwealth.

(2) Provide technical assistance and training programs to assist public employers in their dealings with employee organizations.

(3) Request from any public agency such assistance, services, and data as will enable it properly to carry out its functions and powers.

(4) Establish procedures for the prevention of improper public employer and employee organization practices as provided in § 40.1-77.15, provided that in the case of a claimed violation of paragraph (5) of subsection (b) or paragraph (3) of subsection (c) of such section, procedures shall provide only for an entering of an order directing the public agency or employee organization to meet and confer in good faith. The pendency of proceedings under this paragraph shall not be used as the basis to delay or interfere with determination of representation status purusant to this article or with meeting and conferring. The Commissioner shall exercise exclusive nondelegable jurisdiction of the power granted to him by this paragraph.

(5) Establish, after consulting with representatives of employee organizations and of public agencies, panels of qualified persons broadly representative of the public, to be available to serve as mediators, members of fact-finding boards, and arbitrators.

(6) Hold such hearings and make such inquiries, as he deems necessary, to carry out properly his functions and powers.

(7) For the purpose of such hearings and inquiries, administer oaths and affirmations, examine witnesses and documents, take testimony and receive evidence, compel attendance of witnesses and the production of documents by the issuance of subpoenas, and delegate such powers to any member of his staff or any person appointed by him for the performance of such functions.

(8) Make, amend, and rescind, from time to time, such rules and regulations, including but not limited to those governing the internal organization and conduct of affairs, and exercise such other powers, as may be appropriate to effectuate the purposes and provisions of this article.

§ 40.1-77.4. Public employee rights. Public employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of meeting and conferring with public employers or their designated representatives with respect to grievances and wages, hours, and other terms and conditions of employment. Public employees also shall have the right to refuse or fail to join or participate in the activities of employee organizations and shall not be compelled to pay any dues, fees or other charges of any kind to an employee organization.

§ 40.1-77.5. Supervisory employees. Supervisory employees may form, join, and participate in the activities of employee organizations, provided such organizations do not include nonsupervisory employees. The Commissioner shall not extend formal recognition to a supervisory organization for the purpose of meeting and conferring with respect to grievances and conditions of employment, but a public agency may consult or otherwise communicate with such an organization on appropriate matters. The Commissioner shall determine whether an individual is to be considered a supervisory or confidential employee for meet and confer purposes.

§ 40.1-77.6. Public employer rights. Nothing in this article is intended to circumscribe or modify the existing right of a public agency to:

(1) direct the work of its employees;

(2) hire, promote, assign, transfer, and retain employees in positions within the public agency;

(3) demote, suspend, or discharge employees for proper cause;

(4) maintain the efficiency of governmental operations;

(5) relieve employees from duties because of lack of work or for other legitimate reasons;

(6) take actions as may be necessary to carry out the mission of the agency in emergencies; and

(7) determine the methods, means, and personnel by which operations are to be carried on.

§ 40.1-77.7. Procedures for raising a question concerning representation. (a). No employee organization shall be recognized by any public employer nor shall have the right to represent any employees for the purposes of meeting and conferring with a public employer, until such time as the Commissioner has certified such employee organization as the exclusive representative of the employees in an appropriate unit.

(b) (i) An employee organization may file with the Commissioner a petition alleging that a question concerning representation exists because at least thirty per centum of the employees in an appropriate unit have indicated they desire to be represented by such employee organization for the purposes of meeting and conferring with the governing body concerning wages, hours and other terms and conditions of employment.

(ii) The employee organization shall submit to the Commissioner, at the time of the filing of such a petition, written authorization cards signed and dated by at least thirty per centum of the employees in the unit alleged to be appropriate, which cards shall indicate that the employee has designated the employee organization as the representative of the employee for the purposes of meeting and conferring with the public employer.

(iii) Upon the receipt of such a petition, the Commissioner shall promptly forward a copy of the petition to the public employer and the governing body shall then submit to the Commissioner a list of the employees in the unit alleged to be appropriate.

(iv) The Commissioner shall check the written authorization cards submitted by the employee organization against the list of employees submitted by the governing body. If the Commissioner determines that at least thirty per centum of the employees on the list have indicated a desire to be represented by the employee organization, he shall proceed to determine whether the unit is appropriate in accord with the procedures set forth in § 40.1-77.8. If the governing body fails to submit to the Commissioner a list of employees within fourteen days after a receipt of a copy of the petition from the Commissioner, it shall be conclusively presumed that at least thirty per centum of the employees in the unit alleged to be appropriate have indicated a desire to be represented by the employee organization.

(v) If the Commissioner determines in accordance with the procedures set forth in § 40.1-77.8 that the unit is appropriate, he shall certify that a question concerning representation exists and promptly direct that an election be conducted among the employees in the unit in accord with the procedures set forth in § 40.1-77.9.

(c) (i) An employee or group of employees, but not an employee organization, may file with the Commissioner a petition alleging that a question concerning representation exists because at least thirty per centum of the employees in an appropriate unit, as to which an employee organization has been certified or is currently being recognized, have indicated that they no longer desire to be represented by such employee organization.

(ii) The petitioner shall submit to the Commissioner, at the time of the filing of such a petition written evidence signed and dated by at least thirty per centum of the employees in the unit which evidence shall indicate that such employees no longer desire to be represented by the employee organization.

(iii) Upon the receipt of such a petition, the Commissioner shall promptly forward a copy of the petition to the public employer and the public employer shall then submit to the Commissioner a list of the employees in the unit.

(iv) The Commissioner shall check the written evidence submitted by the petitioner against the list of employees submitted by the public employer. If the Commissioner determines that at least thirty per centum of the employees on the list have indicated they no longer desire to be represented by the employee organization, he shall certify that a question concerning representation exists and promptly direct that an election be conducted among the employees in the unit in accord with the procedures set forth in § 40.1-77.9.

(d) (i) A public employer may file with the Commissioner a petition alleging that a question concerning representation exists because it has a good faith doubt that an employee organization certified or previously recognized continues to represent a majority of the employees in an appropriate unit. The public employer shall file, together with such a petition, a list of the employees in the unit and a written statement of the reasons and such other evidence upon which it bases its good faith doubt.

(ii) Upon the receipt of such a petition, the Commissioner shall promptly conduct an investigation of the petition and of the written reasons and other evidence submitted by the public employer in support of its petition. If, as a result of the investigation, the Commissioner determines that there is reasonable cause for the governing body's good faith doubt, he shall certify that a question concerning representation exists and promptly direct that an election be conducted among the employees in the unit in accordance with the procedures set forth in § 40.1-77.9.

(e) (i) An employee, group of employees, employee organization or public employer may file with the Commissioner a petition alleging that a question concerning representation exists because an employee organization has been or is currently being recognized by a public employer in a unit which is not appropriate. The petitioner shall file, together with such a petition a written statement of reasons why such unit is inappropriate. No petition may be filed under this subsection if the employee organization has been certified by the Commissioner as the representative of the employees in the unit.

(ii) Upon the receipt of such a petition, the Commissioner shall proceed to determine whether the unit is appropriate in accordance with the procedures set forth in § 40.1-77.8. If the Commissioner determines that an employee organization has been or is currently being recognized by a public employer in a unit which is not appropriate, he shall decertify the employee organization as the representative of any employees in that unit until such time as the employee organization has established that it represents a majority of the employees in an appropriate unit in accord with the procedures set forth in this article.

(iii) Nothing herein shall be construed so as to prevent an employee organization from simultaneously filing petitions under subsections (b) and (e) of this section.

§ 40.1-77.8. Procedures for determining the appropriateness of the unit. (a) In determining the appropriateness of any unit under § 40.1-77.7, the Commissioner shall, at his discretion, conduct such investigations or hold such hearings as he may deem necessary; provided, however, that the Commissioner shall be required to appoint a hearing examiner who shall hold a hearing as to the appropriateness of a unit if any party in interest files a motion requesting such a hearing within seven days after the receipt of a petition filed under § 40.1-77.7.

(b) In determining the appropriateness of any unit, the Commissioner shall:

(1) consider the following units to be presumptively appropriate:

(i) employees of a police department;

(ii) employees of a fire department;

(iii) teachers in the employ of a school board;

(iv) all employees of the Commonwealth or any county, city, town or municipality thereof engaged in work primarily of a clerical nature;

(2) not determine that any unit is appropriate if such unit includes both teachers holding a certificate in compliance with § 22-204 of the Code of Virginia and other employees;

(3) not determine that any unit is appropriate which is based on the fact that all employees in the unit perform functions identified with a particular craft or trade;

(4) not determine that any unit is appropriate which seeks to represent both professional and nonprofessional employees;

(5) not determine as appropriate any unit not set forth in § 40.1-77.8 (b) (2) unless:

(i) the governing body agrees that such a unit is appropriate and good reason exists for representation in such a unit; or

(ii) extraordinary circumstances exist which would seriously impair the rights guaranteed in § 40.1-77.4 if the employees were required to be represented only in a unit set forth in § 40.1-77.8 (b) (1).

§ 40.1-77.9. Election procedures. (a) The ballot in any election directed under § 40.1-77.7 (b) shall include the name of the employee organization which filed the petition, the name of any employee organization then certified or recognized as the exclusive representative of the employees in the unit and a choice of "no representative." In addition, after the Commissioner has certified that a question concerning representation exists, he shall permit any employee organization that has obtained, from at least ten per centum of the employees in the unit, signed and dated authorization cards indicating that the employee has designated the employee organization as the representative of the employee for the purposes of meeting and conferring with the governing body, an opportunity to appear on the ballot.

(b) The ballot in any election directed under § 40.1-77.7 shall include only the name of the employee organization certified or recognized and the choice of "no representative."

(c) The Commissioner shall certify the results of the election within five working days after the final tally of votes unless timely objections to the election are filed in accordance with the provisions of § 40.1-77.10.

(d) An employee organization may not be certified as the exclusive representative unless it receives a majority of the valid ballots cast.

(e) In any election conducted under § 40.1-77.7 where the initial ballot contains three or more choices and no choice receives a majority of the valid votes cast, a run-off election shall be conducted among the two choices which received the highest and the next highest number of ballots.

(f) No election shall be conducted in any unit during which in the preceding twelve-month period an election shall have been conducted.

(g) No election shall be conducted during the term of any lawful memorandum of agreement covering the employees in the unit set forth in the petition, except that an election may be conducted during the term of a lawful memorandum of agreement where no election has been conducted during the preceding twelve-month period and where, during the final year of the memorandum of understanding, a petition has been filed under § 40.1-77.7 not sooner than one hundred twenty days nor later than ninety days prior to the budget submission date; provided, however, that any memorandum of understanding in effect on the date of the election shall remain in full force and effect until its expiration date. Should, under the circumstances set forth in § 40.1-77.10 (g), any employee organization, other than the employee organization which is party to the memorandum of agreement, be certified as the exclusive representative of the employees, it shall assume all rights and obligations imposed by the memorandum of agreement and by this article.

§ 40.1-77.10. Objections to elections. (a) The Commissioner shall develop rules and regulations governing the conduct of all parties to an election to ensure that employees are able to express their choice on the ballot freely and without restraint and on the basis of true and accurate information.

(b) Within five working days after the tally of ballots, any person may file with the Commissioner objections to the election alleging that one or more of the parties to the election engaged in conduct which prevented employees from expressing their choice freely and without restraint or that one or more of the parties to the election published or otherwise communicated to the employees false or inaccurate information. In the case of objections alleging the publication or other communication of false or inaccurate information, the objections shall also contain an allegation that the charging party had no opportunity to properly rebut such information.

(c) Upon the receipt of objections under this section, the Commissioner shall withhold certification of the results of the election, forward copies of the objections to all parties, and promptly begin an investigation of the charges. If, on the basis of the investigation, the Commissioner has reason to believe that such objections are valid and affected the outcome of the election, he shall order a hearing on the matter at which all parties may be represented.

(d) If, after a hearing, the Commissioner determines that the outcome of the election was affected by objectionable conduct within the meaning of this section, he shall set aside the election and direct that a new election be held. If, after its investigation or after a hearing, the Commissioner determines that no

party engaged in objectionable conduct or that such conduct did not affect the outcome of the election, he shall immediately certify the results of the election.

§ 40.1-77.11. Rights accompanying formal recognition.

(a) A public employer shall extend to an employee organization certified pursuant to this article, the right to represent the employees of the appropriate unit involved in meet and confer proceedings and in the settlement of grievances and the right to unchallenged representation status, consistent with § 40.1-77.7; provided, however, that the right of any employee who is not a member of such organization to settle personal grievances with his employer shall not be abridged.

(b) A public employer may extend to such an organization the right to membership dues deduction, upon presentation of dues deduction authorization cards signed by individual employees.

(c) A reasonable number of representatives of formally recognized employee organizations may be given time off without loss of compensation during normal working hours to meet and confer with public employers on matters falling within the scope of discussions.

§ 40.1-77.12. Scope of a memorandum of agreement. The scope of a memorandum of agreement may extend to all matters relating to employment conditions and employer-employee relations, including, but not limited to, wages, hours, and other terms and conditions of employment except, however, that the scope of a memorandum of agreement shall not include proposals relating to (i) any subject preempted by federal or State law or by municipal charter, (ii) public employee rights defined in § 40.1-77.4, (iii) public employer rights defined in § 40.1-77.6, (iv) the authority and power of any civil service commission, personnel board, personnel agency, or its agents established to set and administer standards dealing with the impartial recruitment of candidates, to conduct and grade merit examinations, and to rate condidates in the order of their relative excellence from which appointments or promotions may be made to positions in the competitive division of the classified service of the public employer served by such civil service commission or personnel board or (v) any subject inconsistent with any provision of this article. A memorandum of agreement may contain a grievance procedure culminating in advisory or voluntary arbitration of unresolved grievances and disputed interpretations of such agreement.

§ 40.1-77.13. Implementation of a memorandum of agreement. If agreement is reached by the representative of the public employer and the recognized employee organization, they shall jointly prepare a memorandum of understanding and, within fourteen days, present it to the governing body for determination. After receiving a report from the chief financial officer of the public agency as to the effect the terms of such memorandum will have upon the agency, the governing body, as soon as practicable, shall consider the memorandum and take appropriate action. If a settlement is reached with an employee organization, the governing body or the representative of the public employer shall implement the settlement in an appropriate manner. If the governing body or the designated representative rejects a proposed memorandum, the matter shall be returned to the parties for further deliberation.

§ 40.1-77.14. Resolution of disputes arising in the course of discussions.

(a) Public employers may include in memoranda of agreement concluded with recognized employee organizations a provision setting forth the

procedures, not to include provision for binding arbitration, to be invoked in the event of disputes which reach an impasse in the course of meet and confer proceedings. For purposes of this section, an impasse shall be deemed to exist if the parties fail to achieve agreement at least ninety days prior to the budget submission date of the public employer. In the absence or upon the failure of dispute resolution procedures contained in agreements, resulting in an impasse, either party may request the assistance of the Commissioner or the Commissioner may render such assistance on his own motion, as provided in subsection (b) of this section.

(b) On the request of either party, or upon his own motion, if he determines an impasse exists in meet and confer proceedings between a public employer and a recognized employee organization, the Commissioner shall aid the parties in effecting a voluntary resolution of the dispute, and appoint a mediator or mediators, representative of the public, from a list of qualified persons maintained by him which persons may be employees serving on the Commissioner's staff.

(c) If the impasse persists twenty days after the mediator has been appointed, the Commissioner shall appoint a fact-finding board of not more than three members, each representative of the public, from a list of qualified persons maintained by him. The fact-finding board shall conduct a hearing, may administer oaths, and may request the Commissioner to issue subpoenas.

It shall make written findings of facts and recommendations for resolution of the dispute and, not later than twenty days from the day of appointment, shall serve such findings on the public employer and the recognized employee organization. If the dispute continues ten days after the report is submitted to the parties, the report may be made public by the Commissioner.

(d) If the parties have not resolved the impasse by the end of a forty day period commencing with the date of appointment of the fact-finding board, (i) the representative of the public employer involved shall submit to the governing body or its duly authorized committee(s) a copy of the findings of fact and recommendations of the fact-finding board, together with his recommendations for settling the dispute; (ii) the employee organization may submit to the governing body or its duly authorized committee(s) its recommendations for settling the dispute; (iii) the governing body or such committee(s) shall forthwith conduct a hearing at which the parties shall be required to explain their positions with respect to the board; and (iv) thereafter, the governing body shall take such action as it deems to be in the public interest, including the interest of the public employees involved.

(e) Meet and confer proceedings and mediation, fact-finding, and arbitration meetings and investigations shall not be subject to the provisions of Chapter 21 of Title 2.1.

(f) The costs for mediation services provided by the Commissioner shall be borne by him from funds provided by law. All other costs, including that of fact-finding services, shall be borne equally by the parties to a dispute.

§ 40.1-77.15. Prohibited practices; evidence of bad faith.

(a) Commission of a prohibited practice, as defined in this section, among other actions, shall constitute evidence of bad faith in meet and confer proceedings.

(b) It shall be a prohibited practice for a public employer or its designated representative wilfully to:

(1) interfere, restrain, or coerce public employees in the exercise of rights granted in § 40.1-77.4;

(2) dominate, interfere, or assist in the formation, existence, or administration of any employee organization;

(3) Encourage or discourage membership in any employee organization, agency, committee, association, or representation plan by discrimination in hiring, tenure, or other terms or conditions of employment;

(4) Discharge or discriminate against an employee because he has filed any affidavit, petition, or complaint or given any information or testimony pursuant to any requirement of this article, or because he has formed, joined, or chosen to be represented by any employee organization;

(5) Refuse to meet and confer in good faith with representatives of recognized employee organizations as required in § 40.1-77.7;

(6) Deny the rights accompanying certification or formal recognition granted in § 40.1-77.11;

(7) Blacklist any employee organization or its members for the purpose of denying them employment because of their organizational activities; or

(8) Avoid mediation and fact-finding endeavors as provided in § 40.1-77.14; or

(9) Fail willfully and arbitrarily to abide by the terms of a memorandum of agreement implemented pursuant to § 40.1-77.13.

(c) It shall be a prohibited practice for public employees or employee organizations wilfully to:

(1) Interfere with, restrain, or coerce public employees in the exercise of rights granted in § 40.1-77.4;

(2) Interfere with, restrain, or coerce a public employer with respect to rights protected in § 40.1-77.6 or with respect to selecting a representative for the purposes of meeting and conferring;

(3) Refuse to meet and confer in good faith with a public employer as required in § 40.1-77.7;

(4) Avoid mediation and fact-finding efforts as provided in § 40.1-77.14;

(5) Engage in a strike; or

(6) Fail willfully and arbitrarily to abide by the terms of a memorandum of agreement implemented pursuant to § 40.1-77.13.

(d) In applying this section, fundamental distinctions between private and public employment shall be recognized, and no body of federal or State law applicable, wholly or in part to the private employment, shall be regarded as binding or controlling precedent.

§ 40.1-77.16. Violations of prohibited practices.

(a) Any controversy concerning prohibited practices may be submitted to the Commissioner. If following an investigation by the Commissioner, it appears that a prohibited practice may have been committed, proceedings against the party alleged to have committed a prohibited practice shall be commenced by service upon it by the Commissioner of a written notice, together with a copy of the charges. The accused party shall have seven days within which to serve a written answer to such charges. The Commissioner's

hearing shall be held promptly thereafter and at such hearing, the parties shall be permitted to be represented by counsel and to summon witnesses in their behalf. Compliance with the rules of evidence shall not be required. The Commissioner may use his rule-making power to make any other procedural rules he deems necessary to carry on this function.

(b) The Commissioner shall state his findings of facts upon all the testimony and shall either dismiss the complaint or determine that a prohibited practice has been or is being committed. If the Commissioner finds that the party accused has committed or is committing a prohibited practice, following a reasonable time in which adjustment may be effected, the Commissioner shall petition the Circuit Court of the city of Richmond if the employer be the Commonwealth, or the appropriate court of record in the case of any other employer, to grant relief, and shall file in such court the record in the proceedings. Any person aggrieved by a final order of the Commissioner granting or denying in whole or in part the relief sought may obtain a review of such order in such court by filing a complaint praying that the order of the Commissioner be modified or set aside, with copy of the complaint filed on the Commissioner, and thereupon the aggrieved party shall file in such court the record in the proceedings, certified by the Commissioner. Findings of the Commissioner as to the facts shall be conclusive unless it is made to appear to the satisfaction of the court that the findings of fact were not supported by substantial evidence.

§ 40.1-77.17. Internal conduct of public employee organizations.

(a) Every employee organization which has or seeks recognition as a representative of public employees of this Commonwealth and of its political subdivisions shall file with the Commissioner a registration report, signed by its president or other appropriate officer, within one hundred twenty days after the effective date hereof. Such report shall be in a form prescribed by the Commissioner and shall be accompanied by two copies of the employee organization's constitution and bylaws. A filing by a national or international employee organization of its constitution and bylaws shall be accepted in lieu of a filing of such documents by each subordinate organization. All changes or amendments to such constitutions and bylaws shall be promptly reported to the Commissioner.

(b) Every employee organization shall file with the Commissioner an annual report and an amended report whenever changes are made. Such reports shall be in a form prescribed by the Commissioner and shall provide the following information:

(1) The names and addresses of the organization, any parent organization or organizations with which it is affiliated, the principal officers, and all representatives;

(2) The name and address of its local agent for service of process;

(3) A general description of the public employees or groups of employees the organization represents or seeks to represent;

(4) The amounts of the initiation fee and monthly dues members must pay;

(5) A pledge, in a form prescribed by the Commissioner, that the organization will conform to the laws of the Commonwealth and that it will accept members without regard to age, race, sex, religion, or national origin; and

(6) A financial report and audit.

(7) Such other information as the Commissioner may require.

(c) The constitution or bylaws of every employee organization shall provide that:

(1) Accurate accounts of all income and expenses shall be kept, an annual financial report and audit shall be prepared, such accounts shall be open for inspection by any member of the organization, and loans to officers and agents shall be made only on terms and conditions available to all members.

(2) Business or financial interests of its officers and agents, their spouses, minor children, parents, or otherwise, that conflict with the fiduciary obligation of such persons to the organization shall be prohibited.

(3) Every official or employee of an employee organization who handles funds or other property of the organization, or trust in which an organization is interested, or a subsidiary organization, shall be bonded. The amount, scope, and form of the bond shall be determined by the Commissioner.

(d) The governing rules of every employee organization shall provide for: periodic elections by secret ballot subject to recognized safeguards concerning the equal right of all members to nominate, seek office, and vote in such elections; the right of individual members to participate in the affairs of the organization; fair and equal treatment of its members; the right of any member to sue the organization; and fair and equitable procedures in disciplinary actions.

(e) The Commissioner shall prescribe such rules and regulations as may be necessary to govern the establishment and reporting of trusteeships over employee organizations. Establishment of such trusteeships shall be permitted only if the constitution or bylaws of the organization set forth reasonable procedures.

(f) An employee organization that has not registered or filed an annual report, or that has failed to comply with other provisions of this article, shall not be recognized for the purpose of meeting and conferring with any public employer regarding the terms and conditions of work of its members. Recognized employee organizations failing to comply with this article may have such recognition revoked by the Commissioner. All proceedings under this subsection shall be conducted in accordance with rules promulgated by the Commissioner. Prohibitions shall be enforced by injunction upon the petition of the Commissioner to the Circuit Court of the City of Richmond. Complaints of violation of this article shall be filed with the Commissioner.

§ 40.1-77.18. Severability. If any section, subsection, sentence, part or application of this article be held unconstitutional by a court of last resort such holding shall not affect any other section, sentence, part or application which can be given effect without the part so held invalid.

§ 40.1-77.19. The provisions of this article shall not apply to any contract or agreement in force on the effective date hereof, but shall apply in all respects to contracts or agreements entered into thereafter and to any renewal or extension of the same.

2. There is hereby appropriated from the general fund of the State treasury a sum sufficient to be expended in accordance with this act.