RIGHTS OF PUBLIC EMPLOYEES

REPORT OF THE

STUDY COMMISSION

To

THE GOVERNOR

And

THE GENERAL ASSEMBLY OF VIRGINIA

House Document No. 28

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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
January, 1974

To: HONORABLE MILLS E. GODWIN, JR., *Governor of Virginia*
and
THE GENERAL ASSEMBLY OF VIRGINIA

I. INTRODUCTION

The deliberations of the Commission to Study the Rights of Public Employees during 1972 resulted in the introduction in the General Assembly of several bills and resolutions relating to the rights of public employees. Those bills and resolutions in the 1973 General Assembly enacted into law have the effect of:

1. including public employers, public employees and any representative of public employees in the State within Virginia's "right-to-work" statute;

2. requiring localities with fifteen or more employees to promulgate grievance procedures and personnel plans for their employees and employees of constitutional officers;

3. requiring the Governor to establish and maintain an employee grievance procedure for State employees, excluding the Department of State Police, local school boards, faculty of institutions of higher learning and employees of the General Assembly; and,

4. expressing the sense of the General Assembly that the public policy requires 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 its employees.

Other legislative proposals which were germinated during the Commission's public hearings in 1972 were not so fortunate and were defeated. Three variations of the so called "meet and confer" bill incorporated as a minority report in the 1973 Commission report were introduced in 1973 (HB 1768, HB 1808 and SB 906), but each was defeated. (See Appendix I for copies of resolutions affecting public employees passed by the 1973 General Assembly.) A more limited bill, House Bill 1891, introduced by Messrs. Thomson, Heilig, Anderson, Woodbridge and Gibb was also defeated in the House of Delegates. This bill would have legalized contracts between public employers and public employees that were entered into after the effective date of the bill. House Bill 1891 providing for a Public Labor-Management Relations Act was amended four times during House of Delegates floor debate. The first amendment excluded from the provisions of the Act anyone confirmed, elected or employed by the General Assembly. The second amendment of the engrossed bill would have changed "responsibly to direct" to "the responsibility to direct". The third amendment agreed to would have added a paragraph in the proposed § 40.1-77.3 preventing the recognition of any employee organization as an exclusive agent of employees and guaranteeing that an employee need not be a member of an organization as a condition of employment. The final amendment would have changed "representative" to "duly elected or appointed

employee representative". As the bill was being engrossed, Mr. Thomson moved to dispense with a further reading of the bill as required by Section II of Article IV of the Constitution and the motion was agreed to unanimously. The vote on the question "Shall the bill (HB 1891) pass" was 46 for and 50 against.

The Commission felt that much work remained to be done after the 1973 General Assembly session. Specifically, the Commission needed to draft a consensus bill, acceptable to the majority of Virginians, which would legally permit the type of contracts already entered into by public school divisions in Virginia with representatives of teachers and by municipalities with other public employees. Further, the new Code provisions mandating grievance procedures for all public employees on both State and local levels created a need to monitor public employers to see whether each employer was following statutory dictates. Finally, House Joint Resolution 208 for the first time stated as a matter of public policy that every public employer should promulgate rules or policies to provide its employees with an opportunity to contribute to the development of policies affecting their working conditions. The Commission felt that the General Assembly should be informed of the State's progress in promulgating employee participation policies so that informed legislative decisions can be made in the future. Therefore, House Joint Resolution 206 was approved during the 1973 Session of the General Assembly as follows:

HOUSE JOINT RESOLUTION NO. 206

Continuing the Commission to Study the Rights of Public Employees.

Agreed to by the House of Delegates, February 15, 1973

Agreed to by the Senate, February 21, 1973

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.

Pursuant to the terms of the study directive, Julian F. Carper of Richmond, George R. Long of Charlottesville, Francis V. Lowden, Jr. of Richmond, Frank W. McCulloch of Charlottesville, J. David Shobe, Jr. of Richmond, Delegates Claude W. Anderson of Andersonville, Duncan C. Gibb of Front Royal, George H. Heilig, Jr. of Norfolk, and James M. Thomson of Alexandria continued as members of the Commission. David A. Sutherland of Fairfax was named to replace Benjamin H. Woodbridge, Jr. of Fredericksburg. Senators Coleman B. Yeatts of Chatham and William F. Parkerson, Jr. of Henrico also continued as members. Mr. Thomson was reelected to the Commission's Chairmanship and Senator Parkerson to its Vice Chairmanship.

The Virginia Advisory Legislative Council and the Division of Legislative Services made staff and facilities available to carry out this study; Laurens Sartoris and Steven L. Micas being assigned to assist the members of the study group.

II. DISCUSSION

The Commission at its first full meeting in July realized that the most efficient manner to proceed would be to divide the Commission into two subcommittees; (1) the first subcommittee studying suggested amendments to legislation affecting the rights of public employees while; (2) the other subcommittee would study the new State agency grievance procedures and those adopted by the State Board of Education and the State Police and how State agencies are complying with the statutes passed by the 1973 General Assembly.

The remainder of the report is divided into the separate subcommittee reports beginning with the report of the Legislation Subcommittee followed by the report of the Subcommittee on Grievance Procedures.

A. Report of Subcommittee on Legislation Commission to Study the Rights of Public Employees

The Subcommittee on Legislation was formed to:

1. Study suggested changes to HB 1891, entitled the Public Labor-Management Relations Act; and

2. Recommend any other legislation it deemed desirable in the area of rights of public employees.

The Chairman of the Commission, James Thomson of Alexandria, appointed himself and William F. Parkerson, Jr. as co-chairmen of the Subcommittee, with Julian F. Carper, Francis V. Lowden, Jr., Duncan C. Gibb and George H. Heilig, Jr. as members.

The Commission heard further testimony from interested citizens regarding the meet and confer legislation incorporated as a minority report in the 1973 report. Interested labor organizations read a statement to the Commission expressing the view that the local option feature of the "meet and confer" bill is ineffective and criticizing an alleged negative attitude of city government toward "meet and confer" legislation. The cities, in effect, challenged some public employees to get a collective bargaining law through the General Assembly before they would talk to any association representing a person in a grievance proceeding. Finally, the Virginia Association of Public Employees presented to the Commission a collective bargaining bill which would include a positive thrust to require parties

to negotiate and bargain in good faith, require a fact-finding board rather than an individual, mandate compulsory arbitration for policemen and firefighters and assure that a recognized employee organization be present at all settlements. A copy of the proposed Coalition of Virginia Public Employees bill is attached to and made a part of this report (see Appendix II).

The subcommittee's deliberations first focused on suggested changes to the "Public Employer Management Relations Act" (HB 1891). The proposed bill permits those localities who wish, to discuss wages, hours, and other terms and conditions of employment with representatives of its public employees and authorizes public employers and public employees to sign memorandum of understanding covering such matters which will be binding only if approved by a majority of the governing body of that locality. Each memorandum of understanding must comply with the "management rights" section outlining certain required features of any memorandum.

The original definition used for "supervisory employee" in § 40.1-77.2 of HB 1891 is the standard definition used in the National Labor Relations Act. The 1973 floor amendment on page 2, line 7 would have changed "responsibly to direct them" to "the responsibility to direct them". Rather than being a grammatical correction, such a substitution would substantially expand the class of supervisors. The amendment would include a number of employees who have the power to direct people, but have no decision-making power and are not generally held accountable for their decisions. "Responsibly" connotes only the real supervisors.

The Commission generally agreed that those employees confirmed, elected or employed by the General Assembly should be excluded from the provisions of the Public Labor-Management Relations Act. The transitory nature of their employment relationship does not justify the need to protect them with the right to collectively contract. At one point, it was suggested that "directly" be inserted before "employed" to make it clearer who is actually employed by the General Assembly. But, such an amendment would leave it uncertain as to who is an "indirect employee".

A third amendment to HB 1891, agreed to on the floor of the House of Delegates, would have added a paragraph consisting of the sentence "Notwithstanding any procedure adopted pursuant to this section, no employee organization shall be recognized as exclusive agent or representative for local employees, provided, however, that it shall not be a condition to employment that an individual be a member of such employee organization." The subcommittee reasoned that the suggested amendment raised many definitional difficulties without really solving any. The major purpose of the bill was to legitimate the type of employment agreements already in effect in the State, particularly in Northern Virginia. The first clause to the amendment is not strictly necessary and would only create further interpretational problems. The second clause of the amendment would be superfluous since such a proposal is already covered by the Virginia "right to work" statute. Language inserted in line 28 would make it clear that the provisions of the Act would apply to "any existing or new contract".

The final amendment would have modified "representative" in line 28, page 2 of the bill with the words "duly elected or appointed". But the Commission agreed that the use of such words would create definitional difficulties and, in any event, the subcommittee wished to leave the language broad.

The proposed § 40.1-77.5 substantially protects all those rights enumerated in the parallel federal executive order upon which the section was modeled. Even though there was some suggestion that the federal executive order had a broader scope and included a greater number of required contract provisions, it

was the consensus of the Commission that until further evidence was presented to the contrary, the section should remain as it was in the original bill.

The Commission spent a great deal of time seeking a compromise position to the affirmative policy statement in § 40.1-77.1 of the proposed Public Labor-Management Relations Act. Most of the members felt that stating the public policy of Virginia affirmatively was a substantial factor contributing to the bill's defeat. During discussion at a public hearing, it was suggested that the first sentence in § 40.1-77.1 be replaced with a negative policy statement as follows: "Except as specifically provided in this article, it is declared to be against the public policy of Virginia for 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, to 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 written agreements entered into, except as provided in this Act, after the effective date of this Act shall be null and void."

The Commission, however, feels that such an approach is not in line with a modern view toward promoting mutually beneficial public employer-employee relationships. The final approach approved by the Commission, in the interest of proceeding as a united front, was to avoid any implications of a policy statement in § 40.1-77.1. While there were originally no votes cast against inclusion of the amended § 40.1-77.1 without the policy statement, a substitute motion to include in § 40.1-77.1, the negative policy statement was defeated by a vote of six against, five for and one abstention with Messrs. Thomson, McCulloch, Shobe, Sutherland, Heilig and Carper voting against the substitute motion, Messrs. Parkerson, Lowden, Gibb, Anderson and Yeatts voting for the substitute motion with Mr. Long abstaining. The proposed language finally approved would delete line 19 on page 1 and replace "if" for "When" in line 20. In order to prevent misunderstandings as to the scope of the proposed bill, the Commission agreed that the bill should be retitled as the Public Labor-Management Contracts Act. The bill more properly relates solely to contractual matters rather than the broader problems encompassed in a labor relations bill.

The final meetings of the full Commission focused on a "meet and confer" bill as an alternative approach to legitimizing the increasing numbers of professional associations and collective agreements in the public employment sector of the economy. The purpose of the suggested "meet and confer" bill (see Appendix III) is to improve public employer-employee relationships by obligating public employers to discuss grievances and conditions of employment with their employees or their representatives. The provisions of the statute would be administered by a commissioner; most importantly in the procedures outlined for determining appropriate units and representatives and arbitration. The standards for the determination of appropriate units and the election procedures to determine exclusive representatives bring an orderly procedure to practical relationships not addressed in the Public Labor-Management Contracts Act. This expanded version of a "meet and confer" bill, in short, outlines permissible courses of action both for public employers and employees in ordering their work relationships, but nevertheless maintains the existing rights of public agencies to determine the most efficient manner to carry out their operations. Five members of the Commission supported the bill to provide for a meet and confer approach; six members were opposed to this approach; and one member abstained from taking a position. This sharp division in the Commission has been reflected in all its work, consequently, the Commission takes no position on the "meet and confer" bill and each group of members was left to follow its own course on this issue.

III. RECOMMENDATIONS

a. There continues to be no statutory authorization for professional negotiations in the public sector, even though collective agreements between municipalities and school boards and public employees daily become a reality. The number of school divisions having signed master agreements covering teachers has increased at least 100% since the Commission's last report, with 10 school divisions signing agreements with teachers and several others considering such action. Collective agreements have also been signed covering such public employees as county government workers, sanitation workers, firemen and school employees.

There seems to be no justifiable reason to continue to deny legitimacy to those contracts where localities choose to negotiate with public employee associations. The General Assembly does not need to encourage or discourage such bargaining, but should provide an alternative for those localities which choose to order their work relationships with its public employees in such a manner. Recommended legislation is included to allow those public employers who so desire to contract with representatives of public employees (see Appendix IV). Such a step is entirely consistent with the General Assembly's expressed goal to have public employees enjoy comparable wages and benefits to those of employees in the private sector.

b. The General Assembly, in order to make informed and reasonable legislative decisions relating to public employer-employee relations must have a fact finding body to monitor progress throughout the State toward achieving the type of system desired by a majority of Virginians. Further public hearings, testimony from public employers active in employee relations and employees who must work within the framework designed by the General Assembly are needed to decide adequately how the General Assembly should react to events or try to shape them. The present members of the Commission have invested considerable time in gathering facts and judging the attitudes of employers, employees, and citizens. More research, and particularly more active participation by State agencies, local units of government and interested professionals in the information gathering process are necessary in the coming months.

For these reasons, the Commission recommends that its life be extended, so that new legislation or amendments to existing legislation may be promulgated to conform to a changing labor situation (see Appendix V). Since the present membership's efforts have contributed greatly to the decision-making process, they should continue to serve.

B. Report of the Subcommittee on Grievance Procedures Commission to Study the Rights of Public Employees

The Commission to Study the Rights of Public Employees, at its first full meeting, created a subcommittee to study grievance procedures for public employees in Virginia. At that meeting, the Commission directed the subcommittee to analyze:

1. The progress of various State agency grievance procedures;

2. The progress within localities in establishing grievance procedures;

3. The need for local and State machinery for employee participation;

4. The promulgation of rules and policies as set forth in House Joint Resolution No. 208;

5. The status of constitutional officers with regard to grievance procedures; and,

6. The need for consolidating the State agency grievance plan and the State Board of Education plan and the justification for the exclusion of the State Police and the faculty of institutions of higher learning from the State Grievance Procedure. The Chairman of the Commission, Mr. James Thomson, appointed Coleman B. Yeatts, Chatham, and Claude W. Anderson, Buckingham, as co-chairmen; and Frank W. McCulloch, Charlottesville; David A. Sutherland, Fairfax; George R. Long, Charlottesville; and J. David Shobe, Jr., Richmond, as members.

The Subcommittee held three meetings in Richmond following its creation and sought guidance from State officials, the Virginia Association of Counties, the Virginia Municipal League, Department of Education officials, University professors, and other interested persons as to the extent of compliance with the legislative directives establishing grievance procedures and the need for new legislation regarding grievance procedures.

After consideration of the evidence presented during the two meetings, the Subcommittee makes the following recommendations to the Commission.

III. RECOMMENDATIONS

a. The Subcommittee believes there is no need to recommend to the 1974 General Assembly further legislation modifying grievance procedures for public employees. Evidence presented at the Subcommittee meetings established that grievance procedure plans have been created for all State agencies under the Personnel Department, but not for all localities (they have until June 30, 1974 to adopt such procedures), and those localities with grievance procedure plans and all State agencies have not had widespread experience in processing grievances. The available statistics on number of complaints, types of complaints and dispositions are sketchy and give little insight into exactly how the grievance systems are operating. It appears from a sample survey that relatively few employees know there is a grievance procedure. Nevertheless, few instances of employee or employer dissatisfaction with the required systems were reported and acceptance of the requirement of grievance procedures appears to be increasing throughout the State. Therefore, more time should be allowed to establish a "track record" so that a more accurate determination of needed modifications in public employee grievance procedures can be made. The Subcommittee does recommend that each public employer with a grievance plan keep its employees informed about its grievance procedures and conduct continuing reviews to ascertain how its system is being used by its employees and whether it is providing fair resolutions of work-place disputes between public employers and employees.

b. The Commission urges local governing bodies to move with haste to complete their grievance procedure plans so that the General Assembly can obtain a complete picture as to their effect on the judicious resolution of such disputes between public employers and their employees. Further efforts to make employees aware of their grievance system and how to use it effectively and responsibly should be expended periodically by all public employers.

c. Although the grievance procedure plans of the State agencies and the Department of Education differ somewhat in form, the Commission believes that at the present time there is insufficient evidence to justify recommending one consolidated grievance procedure plan.

d. Although House Joint Resolution No. 208 explicitly states that the public policy requires ".... 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," the Commission feels that State programs now in use do not fully comply with the intent of

House Joint Resolution No. 208. (See Appendix VI and section three of Rationale). Real progress has been made in recent years in establishing programs where individual employees can be heard on many issues by public employers at all levels of government. The experiences related by the Department of Personnel show that the various informal programs providing employee input to public employers are valuable in resolving problems and improving relationships in the work-place, but, as yet there are no written regulations mandating certain programs or requiring State agencies to develop any structures or programs to involve employees in the development of policies. The Commission applauds the successful efforts of those State agencies with employee participation plans, but, nevertheless, feels that the documented progress so far does not fully reflect the sense of the General Assembly as outlined in House Joint Resolution No. 208, and efforts should be made by the Personnel Department and all State and local agencies to develop explicit and effective rules and policies to increase employee input.

III. RATIONALE

1. Progress of various State agency grievance procedures.

Mr. Garber, Director of Personnel, presented evidence to the Commission showing that grievance procedures for large and small State agencies are fully operational. The method for choosing the arbitration panel differs somewhat between large and small agencies, but each system complies with the requirements of § 2.1-114 of the Code of Virginia. Each employee is given a copy of the procedures and there has been no general expression of dissatisfaction about the system. The procedures incorporate a right to representation, and those grievants utilizing the panel procedure frequently hire attorneys to represent them. (See Appendix VII) The normal procedure for removals and demotions under the Personnel Act is somewhat more formal than for other grievances, but any agency may use the grievance procedures if it desires.

The types of grievances, numbers and dispositions are indicated by the figures in Appendix VIII. Although the number of complaints is small, it is the opinion of the Commission that the system is working effectively for those grievances processed. Forty-six percent of the complaints were settled in favor of the employee at the agency level, but when it got to the panel, 75% were settled in favor of the grievant.

Pursuant to legislation and after consultation with interested parties, the State Board of Education has designed a grievance resolution mechanism which is in effect in all school divisions unless an individual procedure has been approved by the Board. In addition to exceptions for equivalent procedures, a "grandfather clause" allows grievance procedures in effect when the regulations were promulgated to continue until 1974 or the duration of the agreement. There are now ten school divisions using a previously agreed upon grievance procedure. The two major differences between the State Board of Education's procedures and grievance procedures for all other State employees are that: (1) The State Board of Education's plan provides for binding arbitration by a panel of three, two selected without restriction by the parties, and a third, absent agreement, from a list supplied by the American Arbitration Association, and (2) the State Board of Education's plan excludes supervisors from the grievance procedures. Since the procedures have been mandatory only since July 1, 1973, the State Board has no report as to its effectiveness in expeditiously solving employee grievances.

There may be realistic reasons for the current differences in the Board of Education's and the State Department of Personnel's plans, such as traditional local autonomy, differences in employee needs, and strong community pressures, but each procedure can be administered impartially and result in

speedy and fair resolution of disputes if used conscientiously. Since so little data is available concerning the operation of each system, the Subcommittee recommends that each system be operated separately and that each applicable agency keep detailed records documenting the use of the system for a later determination of effectiveness. It is much more important to have a workable, accepted grievance procedure that is being used than a forced, uniform system.

2. The progress within localities in establishing grievance procedures.

Statistics compiled by the Virginia Municipal League establish that although the deadline set by the General Assembly is June 30, 1974 and compliance with § 15.1-7.1 of the Code of Virginia is, therefore, not yet complete, nevertheless, most localities have moved quickly and forcefully to establish grievance procedures. One-half of all the cities and urban counties within the Virginia Municipal League have adopted grievance plans, one-fourth are in the process of doing so and one-fourth have made no significant progress toward implementation of grievance procedures. Facets of the grievance procedures' development and implementation which require further study and operational experience include: the mechanics of the procedures, variations in grievance procedures, expertise in processing claims, and varying rules and capabilities of different units of government.

The degree of progress in the counties of the State in complying with the requirements of § 15.1-7.1 varies. Some counties inherited grievance procedures from previously negotiated Memoranda of Agreement; others have developed them and have submitted them to the State Department of Personnel for evaluation to determine if they parallel the grievance procedure adopted by the State and thus comply with the statute; and still others, almost hopelessly at a loss as to how to go about developing a grievance procedure, await the training and instruction seminars to be offered beginning in January, 1974.

A training program on grievance procedures designed to encourage local governments to respond to the need for grievance procedures has been organized and will begin its statewide program in January, 1974. The training program is also designed to encourage a common type of plan throughout the State, and to develop the management expertise to make the plan effective. An Intergovernmental Personnel Act grant has recently been given to the State to defray the costs of the program.

Another crucial problem at both the State and local government levels is that very few covered employees know there is a grievance process. In a group of one hundred public employees questioned only five knew of the availability of grievance procedures. The planned training programs aim to remedy this situation also.

Although some of the processes for receiving employee suggestions outlined in the next section of this report might produce personnel policy proposals, there was no evidence of any procedure for employee input on the basic personnel policies affecting employee work activities, the interpretation and application of which is the subject matter of the grievance procedure.

3. The need for local and State machinery for employee input and promulgation of rules and policies as set forth in House Joint Resolution No. 208.

The Department of Personnel's presentation reported that programs are being operated by State agencies employing 75% of the State's work force which provide some form of employee input. Such programs include employee councils, employee committees, task forces to study policy changes, conferences and seminars between managers and employees, suggestion programs and attitude and morale surveys, but each of these programs is

generally utilized by only a few agencies. There is, as yet, no written regulation of the Department of Personnel as to specifically how each agency should develop programs mandated by House Joint Resolution No. 208, but each agency is now aware of problems in encouraging employee input. Few individual public employers have written policies requiring employee input programs, but rather the majority provide such mechanisms as a matter of grace. The Commission, although aware of the types of programs being used in the State, could not determine exactly the amount of input from employees received through programs noted above, and it received no evidence that any public agency had instituted any new formal plan pursuant to House Joint Resolution No. 208.

The State Board of Education feels that teacher committees concerning the school calendar, textbooks, curriculum, and hours and wages, and the grievance procedure itself substantially comply with the dictates of House Joint Resolution No. 208. The State Board does not, however, require certain programs or uniformity, leaving to each localities' good faith to determine how House Joint Resolution No. 208 should be implemented. The State Board of Education expects to issue a more complete report documenting programs consistent with House Joint Resolution No. 208 by January 1974.

Although localities appear to be within the purview of House Joint Resolution No. 208, the Subcommittee was not able to ascertain whether any local governing bodies had begun programs to increase employee input.

The Commission feels the Department of Personnel has moved positively and in good faith to educate all State agencies in their need to involve employees in decisions which directly affect them. Certainly problems still exist in changing long held management attitudes, but all State agencies have shown awareness and diligence in beginning to use valuable employee suggestions to efficiently carry out the public's business. This report is not intended to be critical, but rather should be viewed only as an encouragement for mutually beneficial efforts on the part of both public employers and employees to create programs to increase employee input.

4. The status of constitutional officers with regard to grievance procedures.

Although representatives of the Compensation Board reported that they know of no such grievance procedures, time constraints prevented the Commission from determining precisely whether any constitutional officers are using grievance procedures for their employees. However, it is difficult to determine the exact duty of constitutional officers regarding grievance procedures because of the ambiguous language of § 15.1-7.1 and lack of relevant legislative history. A member of the Subcommittee, and prime architect of § 15.1-7.1 at the last session of the General Assembly, related to the Commission that the section, as passed, should be interpreted to require any locality with fifteen or more employees, including all employees of all constitutional officers, to promulgate both a grievance plan and personnel plan that shall be binding on both employees of that locality and all employees of constitutional officers within that locality. The Commission favors such an

interpretation and does not recommend any amendments to § 15.1-7.1 at this time.

Respectfully submitted,

JAMES M. THOMSON *	GEORGE R. LONG
WILLIAM F. PARKERSON, JR.	FRANCIS V. LOWDEN, JR.
CLAUDE W. ANDERSON	FRANK W. MCCULLOCH *
JULIAN F. CARPER *	J. DAVID SHOBE, JR. *
DUNCAN C. GIBB	DAVID A. SUTHERLAND *
GEORGE H. HEILIG, JR.	COLEMAN B. YEATTS

* Individual comments attached.

DISSENT

It is our belief that each of the Commissioners has endeavored to find solutions to the imponderable questions which confront the people of Virginia with respect to the rights of public employees. We regret that we cannot join in the majority report.

The ultimate issue is whether organization of employees and collective bargaining shall be favored by the public policy or whether some other course is preferable. We believe all the Commissioners desire that legitimate interests of public employees be adequately protected and also agree that work stoppages in the public sector are intolerable. Organization and collective bargaining is meaningless without the concurrent right of economic action and always leads to work stoppages whether lawful or not. Therefore, we believe that logically, at least, all the Commissioners are committed to "some other course" for Virginia.

In keeping with the foregoing, last year some of us proposed a package of bills designed to provide an alternative:

(1) to insure public employees fair compensation and adequate benefits (a policy to which we thought the Commonwealth was already committed);

(2) to insure a neutral tribunal in which employees could have their grievances fairly heard and equitably settled (the bill for uniform grievance and arbitration procedures);

(3) to provide by policy some form of communications whereby employees might make known their ideas and might better be informed of public policy and the reasons therefor; and

(4) as a necessary corollary to the "other course" to include a statement of policy that collective bargaining was not the favored process in Virginia. (This was contained in the proposal which later became H. B. 1891 at the General Assembly Session in 1973).

Although public employee collective bargaining was not to be favored, the facts are that it exists in Virginia and no doubt will continue to exist. In the light of that reality H. B. 1891 also made collective bargaining agreements valid under certain circumstances and with certain restrictions on their contents.

In the course of the final preparation of H. B. 1891 in 1973, the statement of policy mentioned in (4) above was left out. H. B. 1891 did not pass the General Assembly in 1973.

By a vote of 6 to 5 with one abstention, the Commission recommends that the Legislature reconsider H. B. 1891 substantially as it was introduced in the General Assembly in 1973. We think the omitted statement of policy against public employee collective bargaining was an essential part of the program we had offered.

We thought the program we offered should be given a chance to prove its feasibility and still hold to that view.

Accordingly, we do not concur in the legislation the majority now proposes and we do not join in the majority report.

Respectfully,

FRANCIS V. LOWDEN, JR.

WILLIAM F. PARKERSON, JR.

CLAUDE W. ANDERSON

COLEMAN B. YEATTS

DUNCAN C. GIBB

Individual Comment

Across the nation a rapidly growing number of public employees and their employers are adopting collective negotiations to order their working relationships. State legislatures are increasingly enacting enabling laws, and despite some highly publicized strikes, millions of public employees are now covered by agreements responsibly and peaceably negotiated.

Virginia is not immune to these currents flowing in our national life. Indeed in the education field the number of such agreements in Virginia has doubled in the past year. Thus more public employees and employers here also are accepting the basic principle and finding that it works.

The requests of other public employees for such recognition and negotiations, however, have been refused. The laws and the practices concerning employee rights are uneven and unclear. A growing coalition of public employee associations and unions is now urging adoption of legislation establishing a) the rights of employees who so choose, to select representatives who will be recognized for collective negotiations, and b) the procedures to implement that policy. This request seems to me reasonable, timely and in line with the best modern management objectives and public employment experience. It is the logical development of the Virginia General Assembly's recognition in House Joint Resolution No. 208 in 1973 that employee input is a desirable if not essential ingredient in "the development of policies which directly or indirectly affect the working conditions of the employees." (House Joint Resolution No. 208)

The longer we delay to provide the orderly processes for employees to make these choices, the more we invite other forms of action by employees seeking to be heard or pressures for federal laws to fill the void left by this Commonwealth and a number of other States. It seems to me preferable for Virginia to enact its own form of enabling legislation and not wait for a different code to be imposed upon it. I therefore join the distinguished chairman and other members of this Commission who recommend affirmative legislation now based on the "meet and confer in good faith" approach set forth in the draft "Public Labor-Management Relations Act" submitted in this report.

FRANK W. MCCULLOCH

Mr. Thomson and Mr. Carper endorse the foregoing statement of Mr. McCulloch.

Individual Comment

Generally, I concur with the intent of the recommendations contained in this report. The report differs from the 1973 issue in that it contains comments upon the activities of public employers in the field of grievance procedures and employee input which were recommended after the first year of the Commission's studies. It also contains references to the complexities of designing and implementing legislation, regulations and/or rules regarding employer-employee relationships. Members of the Commission and witnesses who testified or submitted data used language pointing to the complexities just mentioned.

After having studied the matter for two years there are still differing views within the Commission. However, there is little or no disagreement about positive action being required of public employers regarding grievance procedures and employee input. I wish to emphasize the importance of that phase of our study and associate myself fully with the recommendations contained therein. Progress in that area should be reported upon regularly.

Much was made of possible inferences or implications which might be drawn from our recommendations. I feel obliged to state that the need for more far-reaching legislation at this time was not affirmatively shown. The Commission struggled with such a proposal or proposals throughout its studies but cannot make a conclusive recommendation collectively.

I do agree that the Commission or a similar group should continue to study the area of employee rights for the purposes of recording progress and providing a forum for those interested.

Lastly, I would commend to all a close reading of House Joint Resolutions 122 and 208.

J. DAVID SHOBE, JR.

Individual Comment

All the members of this commission are prepared to recommend legislation legitimating and limiting memoranda of agreement where public employers wish to enter them with representatives of their employees. I believe our members differ significantly only as to whether this legislation should be prefaced by a policy statement and as to whether such a statement should favor or oppose such memoranda.

I find such a policy statement irrelevant, since groups of public employees are in fact organizing and are being recognized, one way or another.

I am concerned that legislation legitimating and limiting agreements with employee representatives necessarily implies establishment of a procedure for selecting those representatives. Without such a procedure, we may find municipalities accepting collective bargaining, with whatever problems that may present to them as employer, but continuing to deal with an organization which no longer, if it ever did, faithfully represents the interests of a majority of the included employees.

The fact of employee representation alone, apart from any sanction of legislation, calls for a procedure to determine both the unit to be represented and the organization to act as representative. Legislation establishing such procedures is needed now to forestall disruptive jurisdictional disputes among competing organizations and to prevent troublesome expressions of employee dissatisfaction with their purported representatives.

For this reason, I add my strong recommendation for the bill presented as a "meet and confer bill." If employees are being represented by organizations in discussing wages and conditions of labor, as they are, then it is traditional in our way of life that the representation be legitimated by an election; and be subject to change if those represented become dissatisfied with their mode of representation.

As to the requirement that a public employer "meet and confer" with a duly elected employee organization, this to me is no more than common courtesy and good managerial sense — to hear out the views and positions of the great number of employees. My understanding of the relevant court decisions is that a requirement to "meet and confer" does not mean that an employer must grant any request or make any concession to show good faith; it means only that he must genuinely hear out the positions and give them fair consideration.

If employees are organized, they will make their views known either at the conference table or elsewhere. I am not afraid to provide a legitimate and orderly means of expressing those views.

DAVID A. SUTHERLAND

APPENDIX I

HOUSE JOINT RESOLUTION NO. 206

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.

HOUSE JOINT RESOLUTION NO. 207

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. 208

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. 209

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.

APPENDIX II

HOUSE BILL NO. _____

Offered

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 40.1-77.24 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.

Patrons —

Referred to the Committee on Labor

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 40.1-77.24 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; and the Commonwealth has a basic obligation to protect the public health, welfare and safety by assuring orderly, efficient and uninterrupted operations of government;

(2) Recognition by public employers of the right of public employees to organize and full acceptance of the principle and procedure of collective negotiations between public employers and public employee organizations, and can alleviate various forms of strife and unrest and contribute to efficient public service;

(3) 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 fact that the public employer was established by and run for the benefit of all the people and its authority and mandate derive not from contract or the profit motive inherent in the principle of free private enterprise, but from the Constitution and laws of the Commonwealth; and

(4) 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 responsibility and 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 employers and public

employees through their representatives to enter into discussions in good faith with affirmative willingness to resolve grievances and disputes relating to wages, hours, grievance procedures, 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 to 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, except in the case of municipal, firefighters or policemen, any person employed by any public agency having authority to do the following in the interest of the employer: (i) to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, and discipline other employees; or (ii) to responsibly direct them; or (iii) to adjust their grievances; or (iv) to effectively 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) "Instructional school board employees" shall include administrators and teachers as defined in this paragraph. Administrator shall mean any person who makes or recommends educational policy or who directs, controls, supervises or evaluates school operations or personnel. A teacher means any person who is certified and employed according to classroom teachers salary scales. Excluded from these is the Division Superintendent of Schools.

(4) "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.

(5) "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, including each public institution of higher education.

(6) "Governing body" means the legislative body of the public employer or the body possessing legislative powers.

(7) "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.

(8) "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.

(9) "Commissioners" means the members of the Virginia Public Employment Relations Commission established by §40.1-77.3 of this article.

(10) "Commission" means the Virginia Public Employment Relations Commission established by §40.1-77.3 of this article.

(11) "Recognized employee organization" means an employee organization which the Commission has certified or a public employer who has voluntarily recognized as representing a majority of the public employees in an appropriate unit.

(12) "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, confer and negotiate in good faith with respect to wages, salaries, hours, grievance procedures, and other terms and conditions of employment, and the execution of a written agreement incorporating the terms agreed upon by both parties.

(13) "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.

(14) "Mediation" means efforts by an impartial third party to assist in resolving 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.

(15) "Fact-finding" means investigation of such a dispute by a board with such fact-finder submitting a report to the parties describing the issues involved. The report shall contain recommendations for settlement and may be made public. The fact-finding board shall consist of three members.

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

(17) "Compulsory arbitration for policemen and firefighters" means a procedure whereby both public employer and public employee organizations submit, with respect to policemen and firefighters (public safety employees) their dispute over the interpretation or application of the terms of an existing agreement or over the negotiation of a new memorandum of agreement to an arbitration board.

(18) "Strike" means the concerted action of public employees in (a) failing to report for duty, (b) willful absence from one's position without satisfactory cause, (c) the stoppage of work, or (d) the abstinence in whole or in part from full and proper performance of the duties of employment, or in any manner substantially 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.

§40.1-77.3. Administration of public employee matters.

(a) There is hereby created an independent Commission, to be known as the Virginia Public Employment Relations Commission, which shall consist of three members appointed by the Governor, by and with the advice and consent of the Senate from persons representative of the public. Not more than two members of the Commission shall be members of the same political party. Each

member shall be appointed for a term of six years, except that of the members first appointed, one shall be appointed for a term of two years, one for a term of four years and one for a term of six years. A member appointed to fill any vacancy shall be appointed for the unexpired term of the member to be succeeded.

(b) The Commissioners shall receive $50.00 per day to be fixed within the amount available therefor by appropriation, in addition to an allowance for expenses actually and necessarily incurred by them in the performance of their duties.

(c) The Commissioners shall administer the provisions of this article and exercise such authority and responsibility as is delegated by its terms.

(d) The Commissioners may employ persons, including but not limited to a general counsel, hearing examiners, mediators, and representatives of employee organizations and public employers to serve as technical advisors, as they may from time to time deem necessary for the performance of their functions, prescribe their duties, fix their compensation and provide for reimbursement of expenses within the amounts made available therefor by appropriation.

(e) In addition to the authority provided elsewhere, the Commissioners may:

(1) Make studies and analyses of, and connect information relating to conditions of employment of public employees throughout 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 or employee organization practices as provided in §40.1-77.15 of this article, 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 entering of an order directing the public agency or employee organization to meet, confer and negotiate 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 pursuant to this article or with meeting, conferring and negotiating in good faith. The Commissioners shall exercise exclusive jurisdiction of the power granted to them 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, fact-finders and arbitrators.

(6) Hold such hearings, make such inquiries, and issue such findings, conclusions, certifications and decisions, as may be necessary, to carry out properly their 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 their staff or any person appointed by them 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 its 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, conferring, negotiating and bargaining in good faith with public employers or their designated representatives with respect to grievances, 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 organizations, provided such organizations do not include nonsupervisory employees. The Commission shall certify for recognition a supervisory organization for the purpose of meeting and conferring as defined in §40.1-77.2. Whenever a majority of supervisors in an appropriate unit select an organization, the Commissioners shall determine within the definitions of this article 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, discharge or take disciplinary action against 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 or have the right to represent any employees for the purpose of meeting and conferring with a public employer, until such time as the Commission has certified such employee organization, or the public employer upon a showing satisfactory to it that a majority of the employees in an appropriate unit desire such representation has voluntarily recognized that organization as the exclusive representative of the employees in an appropriate unit.

(b) (i) An employee organization may file with the Commission 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 public employer concerning wages, hours and other terms and conditions of employment.

(ii) The employee organization shall submit to the Commission 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 Commission shall promptly forward a copy of the petition to any employee organization then certified and recognized and to the public employer, and the public employer shall then submit to the Commission a list of the employees in the unit alleged to be appropriate.

(iv) The Commission shall check the membership rolls and authorization cards submitted by the employee organization against the list of employees submitted by the public employer. If the Commission determines that at least thirty per centum of the employees on the list have indicated a desire to be represented by the employee organization, it shall proceed to determine whether the unit is appropriate in accord with the procedures set forth in §40.1-77.8 of this article. If the public employer fails to submit to the Commission a list of employees within fourteen days after a receipt of a copy of the petition from the Commission, 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 Commission determines in accordance with the procedures set forth in §40.1-77.8 of this article that the unit is appropriate, it 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 of this article.

(c) (i) A group of employees may file with the Commission 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 Commission, 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 Commission shall promptly forward a copy of the petition to the public employer and to the employee organization, and the public employer shall then submit to the Commission a list of the employees in the unit.

(iv) The Commission shall check the written evidence submitted by the petitioner against the list of employees submitted by the public employer. If the Commission 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 of this article.

(d) (i) A public employer may file with the Commission a petition alleging that a question concerning representation exists because an employee organization has presented to it a claim to be recognized or 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 circumstances and such other evidence upon which it bases its good faith doubt.

(ii) Upon receipt of such a petition, the Commission shall promptly forward a copy of the petition and written statement and other evidence in support thereof to the employee organization.

(iii) The Commission 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 Commission determines that there is such a claim for recognition or reasonable cause for the public employer's good faith doubt, the Commission 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 of this article.

(e) (i) An employee, group of employees, employee organization or public employer may file with the Commission 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 Commission as the representative of the employees in the unit.

(ii) Upon the receipt of such a petition, after forwarding a copy thereof together with a copy of the supporting statement promptly to the other directly interested parties, the Commission shall proceed to determine whether the unit is appropriate in accordance with the procedures set forth in §40.1-77.8 of this article. If the Commission determines that an employee organization has been or is currently being recognized by a public employer in a unit which is not appropriate, it 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 of this article, the Commission shall, at its discretion, conduct such investigations or hold such hearings as it may deem necessary; provided, however, that the Commission 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 of this article.

(b) In determining the appropriateness of any unit, the Commission shall take into consideration, along with other relevant factors, the principles of efficient administration of government, the existence of a community of interest among employees, the history and extent of employee organization, geographical location, the provisions of §40.1-77.5, and the recommendations of the parties involved. In applying these standards, 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) all employees of the Commonwealth or any county, city, town or municipality thereof engaged in work primarily of a clerical nature;

(iv) instructional employees of a county or city school board;

(v) college or university professors, including department heads with teaching duties;

(vi) sanitation workers employed by a public employer; and

(vii) all employees of the Commonwealth or any subdivision thereof, or of any county, city, town, or municipality thereof or of any subdivision of such public employers not included in (i), (ii), (iii), (iv), (v) or (vi) above.

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

(c) For all other unit determinations the Commission shall:

(1) take into consideration but shall not be limited to the following: (a) an identifiable community of interest among employees and (b) the import of fragmented units upon efficient labor-management relations.

(2) In institutions of higher learning, the members of the faculty under the jurisdiction of the local governing board of each public institution of higher education, respectively, shall constitute a separate unit.

§40.1-77.9. Election procedures. (a) The ballot in any election directed under §40.1-77.7(b) of this article shall include the name of the employee organization which filed the petition, the name of any employee organization then certifed or recognized as the exclusive representative of the employees in the unit and a choice of "no representative". In addition, after the Commission has certifed that a question concerning representation exists, upon a written request submitted to it prior thereto, it 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 Commission 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 of this article.

(c) An employee organization shall be certified as the exclusive representative of the employees in the unit if it receives a majority of the valid ballots cast.

(d) In any election conducted under §40.1-77.7 of this article 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.

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

(f) 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 final year of the term, not to exceed three years, of a lawful memorandum of agreement, where the petition has been filed under §40.1-77.7 of this article not sooner than one hundred twenty days and not later than ninety days prior to the budget submittal date of the employing agency; 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 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 conferred and obligations imposed by this article and by the memorandum of agreement for the balance of the term not to exceed three years.

§40.1-77.10. Objections to elections. (a) The Commission 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, an employee in the unit, or employee organization on the ballot, or an employer, may file with the Commission 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.

(c) Upon receipt of objections under this section, the Commission 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 Commission has reason to believe that such objections are valid and affected the outcome of the election, it shall order a hearing on the matter at which all parties in interest may be represented.

(d) If, after a hearing, the Commission determines that the outcome of the election was affected by objectionable conduct within the meaning of this section, it shall set aside the election and direct that a new election be held. If, after its investigation or after a hearing, the Commission determines that no party engaged in objectionable conduct or that such conduct did not affect the outcome of the election, it shall immediately certify the results of the election.

§40.1-77.11. Rights accompanying certification.

(a) A public employer shall extend to an employee organization certified or voluntarily recognized pursuant to this article, the exclusive right to represent the employees in the appropriate unit involved in meet and confer processes and in the settlement of grievances and the right to unchallenged representation status, consistent with §40.1-77.7 of this article; provided, however, that the right of any employee in the unit to settle personal grievances with his employer shall not be abridged. The representative of the employee organization shall be entitled to be present at such settlement. No grievance adjustment reached shall conflict with the Memorandum of Understanding.

(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 candidates 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 grievance arbitration of unresolved grievances and disputed interpretations or application of such agreement.

§40.1-77.13. Implementation of a memorandum of agreement. When agreement is reached by the representative of the public employer and the recognized employee organization, they shall jointly prepare a memorandum of agreement and, within fourteen days present it to the governing body and the employee organization for determination. The governing body and employee organization, as soon as practicable, shall consider the memorandum and take appropriate action. When a settlement is reached with an employee organization, the public employer or the representative of the public employer and the employee organization shall execute and implement the agreement in an appropriate manner.

§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, 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 submittal date of the public employer. In the absence or upon failure of dispute resolution procedures contained in memoranda agreements, resulting in an impasse, either party may request the assistance of the Commission or the Commission may render such assistance on its own motion, as provided in subsection (b) of this section.

(b) On the request of either party, or upon its own motion if the Commission determines an impasse exists in meet and confer proceedings between a public employer and a recognized employee organization, the Commission 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 it. No person who has served as a mediator under this section shall also serve as an arbitrator and/or fact-finder in the same dispute between the parties.

(c) If the impasse persists twenty days after the mediator has been appointed, a fact-finding board of three members shall be established. One member shall be selected by the public employer, one member selected by the employee organization, and a third impartial member selected by the other two members from a list of five fact-finders supplied by the American Arbitration Association. The fact-finding board shall conduct a hearing, may administer oaths, and may request the Commission 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 Commission.

In the case of Policemen and Firefighters, if an impasse has been reached, the matter shall be submitted to arbitration for final decision as defined in § 40.1-77.1(15). The arbitration board shall consist of one representative chosen by the public employer, one representative chosen by the employee organization and a third impartial party chosen by both from a list of five arbitrators supplied by the American Arbitration Association. The decision shall be final and binding upon the parties.

(d) 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 of the Code of Virginia.

(e) The costs for mediation services provided by the Commission shall be borne by it from funds provided by law. All other costs, including that of fact-finding services and arbitration, 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 with, restrain, or coerce public employees in the exercise of rights granted in § 40.1-77.4 of this article;

(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, confer, negotiate and bargain in good faith with representatives of recognized employee organizations, selected as required in § 40.1-77.7.

(6) Deny the rights accompanying certification and formal recognition granted in § 40.1-77.11 of this article;

(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 and arbitration endeavors as provided in § 40.1-77.14 of this article.

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

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

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

(3) Refuse to meet, confer, bargain and negotiate in good faith with a public employer when such public employee organization has been selected as provided in § 40.1-77.7 of this article;

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

(5) Engage in a strike.

§ 40.1-77.16. Violations of prohibited practices.

(a) Any controversy concerning prohibited practices, with the exception of paragraph five of subsection (c) of § 40.1-77.15 of this article, may be submitted to the Commission by charges in writing. If following an investigation by the Commission 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 Commission of a written notice, together with a copy of the charges. The charged party shall have fifteen days within which to file with the Commission and to serve upon the other party a written answer to such charges. The Commission 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 Commission shall separate its employees investigating and prosecuting charges hereunder from those hearing or ruling upon such claims, and may use its rule-making power to assign the hearing function in the first stage to a hearing officer and to make any other procedural rules it deems necessary to carry on this function.

(b) The Commission shall state and serve upon the parties to the proceeding its findings of fact and conclusions of law upon all the testimony and shall either dismiss the complaint or determine that a prohibited practice has been or is being committed and order appropriate relief. If the Commission finds that the party charged has committed or is committing a prohibited practice, following a reasonable time in which adjustment is sought to be effected, the Commission 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.

(c) Any party aggrieved by a final order of the Commission 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 within fifteen days praying that the order of the Commissioners be modified or set aside, with copy of the complaint filed on the Commissioners, and thereupon the aggrieved party shall file in such court the record in the proceedings, certified by the Commissioners. Findings of the Commissioners 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 Commission 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 Commission and shall be accompanied by two copies of the employee organization's constitution and by-laws. A filing by a national or international employee organization of its constitution and by-laws shall be accepted in lieu of a filing of such documents by each subordinate organization. All changes or amendments to such constitutions and by-laws shall be promptly reported to the Commission.

(b) Every employee organization shall file with the Commission an annual report and an amended report whenever changes are made. Such reports shall be in a form prescribed by the Commission 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 Commission, 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; and

(c) The constitution or by-laws 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 should be prohibited.

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

(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 election; 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 Commission 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 by-laws 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, sixty days after written notice thereof from the Commissioner, have such recognition suspended. 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 or other appropriate court of record. Complaints of violation of this article shall be filed with the Commissioner.

(g) Any employee organization filing regularly with the United States Department of Labor as a labor organization under the provisions of the Labor Management Reporting and Disclosure Act (The Landrum-Griffin Act) need only file copies of those reports with the Commission to satisfy the requirements of this section.

§ 40.1-77.23. 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.

§ 40.1-77.24. 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.

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

Official Use By Clerks

Passed By

The House of Delegates

with amendment
without

Date:_____

Clerk of the House of Delegates

Passed by the Senate

with amendment
without

Date:_____

Clerk of the Senate

APPENDIX III

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 is 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 and contribute to efficient public service;

(3) the Commonwealth has a basic obligation to protect the public health, welfare, and safety by attempting to assure the orderly, efficient 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 fact that the public employer is established by and run for the benefit of all the people and its authority and mandate derive not from contract or 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 responsibility and 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, and to be represented by such organizations in their employment relations and dealings with public agencies, or to refrain from such activities.

§ 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", except in the case of municipal and county firefighters and policemen, 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. In the case of municipal and county firefighters and policemen, "supervisory employee" includes only officers with the rank of Captain and above.

(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 public authority, board, or commission, whether incorporated or not and whether chartered or not, including all public institutions of higher education.

(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 the Commission has certified or the public employer has voluntarily recognized, as selected by a majority of the public employees, in an appropriate unit.

(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 resolving 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 shall contain recommendations for settlement and may be made public.

(13) "Voluntary grievance arbitration" means a procedure wherein both parties jointly agree to submit their dispute over the interpretation or application 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.

(14) "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.

(15) "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 and exercise 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 throughout 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 him properly to carry out his 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 pursuant to this article or with meeting and conferring. The Commissioner shall exercise exclusive 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, make such inquiries, and issue such findings, conclusions, certifications and decisions 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 attandance 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 his affairs hereunder, 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 organizations to meet with public employers, provided such organizations do not include nonsupervisory employees. The Commissioner shall not certify for formal recognition any 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 or 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, or the public employer upon a showing satisfactory to it that a majority of the employees in an appropriate unit desire such representation has voluntarily recognized that 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 public employer 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 any employee organization then certified or recognized and to the public employer, and the public employer 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 public employer. 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 public employer 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 employee organization 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 an employee organization has presented to it a claim to be recognized, or 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 circumstance and such other evidence upon which it bases its good faith doubt.

(ii) Upon receipt of such a petition, the Commissioner shall promptly forward a copy of the petition and written statement and other evidence in support thereof to the employee organization.

(iii) 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 such a claim for recognition or reasonable cause for the public employer'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, after forwarding a copy thereof together with a copy of the supporting statement promptly to the other directly interested parties, 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 take into consideration, along with other relevant factors, the principles of efficient administration of government, the existence of a community of interest among employees, the history and extent of employee organization, geographical location, the provisions of § 40.1-77.5, and the recommendations of the parties involved. In applying these standards, the Commissioner shall:

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

(i) employees of a police department below the rank of Captain;

(ii) employees of a fire department below the rank of battalion chief;

(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;

(v) college or university professors, including department heads with teaching duties employed by a public institution of higher learning;

(vi) sanitation workers employed by a public employer unit; and

(vii) all employees of the Commonwealth or any subdivision thereof, or of any county, city, town or municipality thereof or of any subdivision of such public employers not included in (i), (ii), (iii) or (iv) above.

(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 seeks to represent both professional and nonprofessional employees, unless a majority of such professional employees vote for inclusion in such unit.

§ 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 upon a written request submitted to him prior thereto, 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 other 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 shall be certified as the exclusive representative of the employees in the unit if 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 final year of the term, not to exceed three years, 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 agreement 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 estimate 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 this section, 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 conferred and obligations imposed by this article and by the memorandum of agreement for the balance of its term, not to exceed three years.

§ 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 his 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 certification or recognition.—(a) A public employer shall extend to an employee organization certified or voluntarily recognized pursuant to this article, the right to represent all the employees in 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 in the unit to settle personal grievances with his employer shall not be abridged; and provided further, that the recognized employee organization shall be given an opportunity to be present at such adjustment.

(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 mandated by federal or State law, (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 candidates 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 voluntary arbitration of unresolved grievances and disputed interpretations or applications 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 public employer, and the representative of the public employer, and the employee organization shall execute and implement the agreement 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 upon its own motion or on application by any party 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 shall 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 facts 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 recommendations of 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 to:

(1) interfere with, 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 selected 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;

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

(9) fail wilfully 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 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 when such public employee organization has been selected 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, although such precedents may be considered and applied where not inconsistent with this article.

§ 40.1-77.16. Violations of prohibited practices.—(a) Any controversy concerning prohibited practices may be submitted to the Commissioner by charges in writing. 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 charged party shall have seven days within which to file with the Commissioner and serve upon the other party 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 shall separate his employees investigating and prosecuting charges hereunder from those hearing or ruling upon such claims, and he may use his rule-making power to assign the hearing function in the first stage to a hearing officer and to make any other procedural rules he deems necessary to carry on this function.

(b) The Commissioner shall state and serve upon the parties to the proceeding his findings of fact and conclusions of law upon all the testimony and shall either dismiss the complaint or determine that a prohibited prac-

tice has been or is being committed and order appropriate relief. If the Commissioner finds that the party charged has committed or is committing a prohibited practice, following a reasonable time in which adjustment is sought to 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 any other party, 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, and such courts shall have jurisdiction to determine on review of the record the issue of fact and law and appropriate remedy presented by any petition of the Commissioner or an aggrieved party and shall have power to enter a decree it deems just and proper under the terms of this article.

§ 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;

(6) a financial report and audit; and

(7) such other pertinent 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, sixty days after written notice thereof from the Commissioner, have such recognition suspended by their public employers unless and until such organizations have come into compliance. 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 or other appropriate court of record. 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.

APPENDIX IV

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 40.1-77.7, providing a Public Labor-Management Contracts Act.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is 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 Contracts Act

§ 40.1-77.1. If 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 any existing or new contract. 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 or confirmed, elected or employed by the General Assembly; (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.

APPENDIX V

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, the General Assembly in nineteen hundred seventy-three did approve House Joint Resolution No. 206 continuing the Commission to Study the Rights of Public Employees: and

Whereas, such Commission has faithfully and energetically pursued its duties in studying the past, present, and future of public employer-employee relations in Virginia; and

Whereas, the Commission has prepared a report for the General Assembly which includes legislative recommendations; and

Whereas, the Commission deems it desirable to continue to study the State's progress in complying with the legislation already enacted into law including requirements for promulgation of grievance procedures and new developments in Virginia in the field of public employment relations; 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 nineteen hundred seventy-two and House Joint Resolution No. 206 of nineteen hundred seventy-three. 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 occurs, 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-six.

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

The members of the Commission shall receive a per diem allowance of fifty 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 expense 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.

APPENDIX VI

Position of John W. Garber
Director of Virginia State Personnel

House Joint Resolution No. 208 states, ". . . 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.

The following policies in the State's larger agencies, including 75% of the State's work force, provide employee input as specified in the above Resolution.

- An expanding effort is being made in the Management Training Program to improve the amount of employee participation in State government through implementation of new management techniques.
- Meetings and/or seminars between Personnel Departments and employees are held to discuss contemplated changes in procedures or to formulate new policies. These meetings, usually held in groups of 12-13, have proven to facilitate policy development and implementation.
- A task force approach has also been used in matters of policy changes.
- Conferences or sessions are held on a regular basis by Personnel Departments to provide employees a chance to air their problems, to make suggestions, and to ask questions.
- Employees can use the formal suggestion plan to express their ideas and suggestions. Some agencies use a portion of their private funds to provide small cash awards for the winning suggestions. An employee committee selects the winning awards from all of the submitted suggestions.
- Attitude and morale surveys have been conducted to ascertain problem areas among employees. Once these areas are located, group meetings are held to discuss the problems.
- Data from the Management Manpower Assessment Survey have been used to locate areas in which managers should be concerned.
- Self-study efforts have been made to gather recommendations for improvement.
- Employees are appointed to serve on committees which affect their working environment.
- Employee councils have been formed of employees elected by their fellow workers to represent them and make their problems or complaints known to management. These councils hold monthly meetings and the make-up is changed bi-annually.
- Several employee organizations exist including Virginia Government Employees Association, League of Social Workers, Employee Benefits Association, Virginia Public Health Association.
- House Organs include sections for questions and answers and provide space for suggestions.

10-15 minutes are devoted at the beginning of the work day for a safety session and a chance to air problems and to make suggestions.

APPENDIX VII

Employee Representation during the Grievance Procedure

SMALL AGENCIES

Represented by

	Attorney		Fellow employee		Relative		No one	
Level which represented	2nd	3rd	2nd	3rd	2nd	3rd	2nd	3rd
Number represented	1	2			1			

LARGE AGENCIES

Represented by

	Attorney				Fellow employee				Relative				No one			
Level which represented	NS	2nd	3rd	4th	NS	2nd	3rd	4th	NS*	2nd	3rd	4th	NS	2nd	3rd	4th
Number represented		2	3	4	1	3	3			2	2		5	19	10	2

*Not Shown

APPENDIX VIII

Analysis of Grievances Filed under the Commonwealth of Virginia's Uniform Grievance Procedures

To assess the use and adequacy of the Uniform Grievance Procedures since their incorporation December 1, 1972, a survey of all State agencies was undertaken October 1, 1973. This report summarizes the findings of that survey.

Of the 87 agencies reporting, 23 large and 47 small agencies reported no grievances. A total of 53 grievances were filed during the reporting period, December 1, 1972—September 31, 1973, by 3 small and 14 large agencies. Forty-five (85%) of these grievances were settled prior to arbitration.

Comments by the agencies regarding the adequacy of the procedures were favorable. It was indicated that the procedures provided a means for a full and fair hearing of grievances at all stages and that they permitted expression of grievances without fear.

It is recognized that whereas agency personnel departments consider the procedures adequate in resolving employee grievances, some employees may be skeptical. The results of this survey illustrate that skepticism is unwarranted. Of the 37 grievances settled prior to a panel hearing, 17 (46%) were settled in favor of the grievant. For those 8 grievances which were submitted for arbitration by a panel hearing, 6 (75%) were settled in favor of the grievant. Not only do these statistics demonstrate the responsiveness of management in reaching settlements prior to arbitration but they also show that the settlements are equitable.

It is hoped that communication of these data will alleviate such fears as may exist among State employees and provide greater trust in the procedures.

The survey also requested recommendations for the improvement of the procedures. These recommendations will be considered and future discussions with agency heads will determine the need for modifications and/or expansion of the grievance procedures.

Number of Agencies Reporting

	No Grievances	Grievances	
Large Agencies	23	14	37
Small Agencies	47	3	50
Total	70	17	87*

* 10 Agencies not under grievance procedure

2 Agencies not responding

REPORT - Rights of Public Employees
Appendix VIII (cont.)

Grievances settled prior to and by Panel Hearings for Large and Small Agencies

	Settled Prior to Panel Hearing		Settled by Panel Hearing		Not Settled
	Settled in Favor of Grievant	Settled in Favor of Agency	Settled in Favor of Grievant	Settled in Favor of Agency	
Small Agencies	1 Suspension 1	0	0	1 Merit increase 1	1 Classification and Pay 1
Large Agencies	4 Classification & Pay 4 Working Conditions and Schedule 1 LWOP vs. Separation 1 Responsibilities 2 Probation 1 Compensatory Time 2 Disobeying Rules 16	1 Failure to Follow Instructions 1 Sex, religion, and national origin discrimination in not being promoted 2 Working conditions and Schedule 1 Record of counseling placed in personnel jacket 1 Improper use of funds 3 Merit Rating 4 Promotion & Pay 1 Policy 1 Neglect of duties 1 Probation 4 Work Assignment 20	5 Removal 1 Compensatory Time 6	1 Removal 1	2 Policy 1 Merit Increase 1 Promotion 1 Classification (employee left State service prior to settlement) 1 Pay 1 Work Schedule 7
Total	17	20	6	2	8

REPORT - Rights of Public Employees - Appendix VIII (cont.)

NATURE OF GRIEVANCES FILED WITHIN LEVELS OF SETTLEMENT FOR LARGE AND SMALL AGENCIES

Level at which Griev. Settled	LARGE AGENCIES		SMALL AGENCIES	
	Settled in Favor of Grievant	Settled in Favor of Agency	Settled in Favor of Grievant	Settled in Favor of Agency
2nd	3 Classification and Pay 3 Working cond.& schedule 1 LWOP vs. separation 1 Responsibilities 1 Compensatory time 1 Discipline 1 Disobeying rules [11]	1 Sex, religion, & national origin discrimination in not being promoted. 3 Promotion and Pay 1 Working conditions 1 Counseling placed on personnel file 1 Improper use of funds 2 Merit rating [9]	1 Suspension [1]	[0]
3rd	1 Removal 2 Probation 1 Working Conditions 1 Discipline 1 Classification [6]	1 Failure to Follow Instructions 1 Work schedule 4 Work assignment 1 Promotion & Pay 1 Merit rating 1 Policy 1 Probation 1 Neglect of duty [11]	[0]	1 Merit Increase [1]
4th	4 Removal 1 Compensatory time [5]	1 Removal [1]	N.A.	N.A.
Not Settled	2 Policy 1 Merit Increase 2 Promotion and Pay 1 Classification - left State employment before settled 1 Work Schedule [7]		1 Classification and Pay [1]	
Total	52		3	

COMMENTS

1) State Pen. Farm - Department of Welfare and Institutions:

> "There have been no formal grievances presented by employees of this Institution since this Procedure became effective. Personal grievances are being handled on an individual basis by the employees' supervisors. However, there have been many group discussions held with employees for this purpose.
>
> We have found that by having periodical group meetings, we have been able to learn of grievances or problems that do not normally come to the attention of the administration, particularly with custodial officers. The present grievance procedure would seem satisfactory when employees wish to express individual grievances but group meetings, as well as staff meetings, have been far more effective."

2) James A. Smith, Jr., Half-Way House - Welfare and Institutions:

> "There have been no grievances made in our program that were not settled through employee supervisor discussion. I can see no changes in the policy or procedures."

3) Frank W. Huddle, Personnel Supervisor, Southwestern State Hospital, Mental Health and Mental Retardation:

> "It is the opinion that current grievance procedure is adequate and provides a full and fair hearing through all stages of the procedure to all employees."

4) Lynchburg Training School and Hospital; Mental Health and Mental Retardation:

> "The grievance procedure as written appears to be fine and working satisfactorily at this institution."

5) Virginia Treatment Center, Mental Health and Mental Retardation:

> "While the mechanics of the Grievance Procedures appear to be fair to both the grievants and the agency, only actual use of these procedures can provide proof of these assumptions.
>
> We, therefore, yield the question of comments and/or suggestions to our colleagues who have had experience in the use of these procedures."

6) William S. Allerton, M.D., Commissioner, Department of Mental Health and Mental Retardation:

> "This new procedure seems to be a satisfactory mechanism for resolving employee grievances. However, since in the entire Department of Mental Health and Mental Retardation there have been only two nonremoval grievances which have gone beyond the first step, and have not resulted in hearings, it is difficult at this time to put forth any suggestions for the improvement of the grievance procedure."

7) William T. Coppage, Virginia Commission for the Visually Handicapped:

> "Copies of the procedure were given to all employees on

December 4, 1972 and each person employed since that time has also been given a copy."

8) Gunston Hall:

"No suggestions for improvement.

We have a close employee-supervisor relationship, with the Head of the State Agency seeing and talking with all employees several times daily; and there has been an absence of grievances."

9) State Air Pollution Control Board:

"The procedure is untried in this Agency but appears to be satisfactory method to grievance evaluation and solution."

10) D. R. Brimmer, Personnel Supervisor,
Christopher Newport College; College of William and Mary

"Christopher Newport College has not received any grievances from employees during the period December 1, 1972, to September 30, 1973, under Rule 14 of the Virginia Personnel Act. We have carefully reviewed the procedures and have distributed them to all classified employees. They are considered adequate, in our opinion, and do provide the innate right that permits the employee to voice his/her grievance without fear."

RECOMMENDATIONS

1) William S. Allerton, M. D., Commissioner, Department of Mental Hygiene and Hospitals:

> "We would like to request that the Department of Mental Health and Mental Retardation be authorized to institute a formal six month probationary period for new employees, similar to that in effect for Merit System covered positions. As you know, the employees in our Mental Hygiene Clinics and Centers are in Merit System covered positions, and therefore are not eligible to resort to the grievance procedure during their first six months of employment if they are terminated due to unsatisfactory work or adjustment. We feel this should be a uniform procedure throughout the entire agency as it seems inappropriate that new employees, who have to be terminated due to an inability to adjust to the work situation, have access to the grievance mechanism."

2) H. LeRoss Browne, University of Virginia:

   a) Would like to change first sentence of policy section, "A grievance shall be a complaint of dispute of an employee . . ." to read:

      A grievance shall be a complaint of dispute of an *employee* . . . to emphasize that it is not available to applicants.

   b) Under second step, line 5, would like definite period of time stated for the fully completed Grievance Form to be delivered by the grievant to his immediate supervisor.

   c) Under third step, line 8, suggests changing: "The grievant may have an employee of his choice . . ." to read:
      The grievant may have a representative of his choice . . .

   d) Under fourth step, last paragraph under selection of the panel, would like clarification of the number of members and "who decides" on the number.

      The sentences in question read: "The panel shall be composed of three (3) or five (5) members and shall be chosen in the following manner: one (1) or two (2) members shall be selected by the agency head, and one (1) or two (2) members by the grievant."

   e) Under the paragraph on selection of the Panel Chairman would like to change "Copies of the grievance form shall . . ." to:

      Copies of the grievance forms shall . . .

      He asks, "aren't there two forms? "

   f) Paragraph preceding "*NOTE*": Change "Copies of the decision shall be transmitted to the Director of Personnel . . . "
      to read: Copies of the decision shall be transmitted to the STATE Director of Personnel to distinguish from Agency Personnel Director.

3) Department of Taxation:

The uniform procedure does not provide for a time limitation from the date of occurrence which prompted action to date of initiation of first step action.

It is recommended that the First Step of the procedure be revised to state that:

> "An employee who has a grievance shall discuss the problem directly with his *immediate* supervisor within thirty (30) *calendar* days following the occurrence which prompted the grievance. The grievance need not be presented in writing at this step."