II. A MANAGEMENT PERSPECTIVE*

R. THEODORE CLARK, JR.**

At the outset it is important to note that fiscal limitations on public employers did not start with either the New Jersey "cap" law in 1976 or with Proposition 13 in California in 1978. Fiscal limitations have always been part of the public-sector collective bargaining landscape. Twelve years ago Charles Rehmus wrote an excellent article entitled "Constraints on Local Governments in Public Employee Bargaining" that appeared in the Michigan Law Review.[1] In this article, Rehmus observed that "[t]he financial constraints on local governments constitute the most serious problem they face in coping with public employee collective bargaining."[2] He further noted:

> ". . . Local government administrators are helplessly caught between employee compensation demands, public unwillingness to vote increased operating millage levied on property, and the state legislature's reluctance to allow local governments the freedom to impose income, sales, or excise taxes."[3]

While fiscal limitations are not new, the type of limitations that have been enacted in the past few years are much more restrictive and permit few, if any, escape hatches. Among the most inflexible are the "cap" laws in states like New Jersey,[4] which places a rather absolute limit on the amount a public employer can increase appropriations from one year to the next, and the "lid" laws in states like California,[5] which limit the amount of taxes that a public body can collect. Despite the assertions of some that these limitations give public manage-

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*The comments in this paper should not be viewed as representing any change in the author's frequently expressed opposition to compulsory arbitration. *See, e.g.*, Clark, *Legislated Interest Arbitration—A Management Response,* in Proceedings of the 27th Annual Meeting, Industrial Relations Research Association (Madison, Wis.: IRRA, 1975), 319. Being a pragmatist, the author must perforce accept compulsory arbitration where a legislature has enacted such a law and its constitutionality has been upheld. Given this reality, the issue then becomes one of attempting to make the process work. It is to this latter topic that the remarks in this paper are directed.

**Partner, Seyfarth, Shaw, Fairweather & Geraldson, Chicago, Ill.

[1]Rehmus, *Constraints on Local Governments in Public Employee Bargaining,* 67 Mich. L.Rev. 919 (1969).

[2]*Id.*, at 924.

[3]*Id.*, at 923.

[4]N.J.S.A. 40A:4-45.1 *et seq.*

[5]Calif. Const., Art. XIIIA, as added by Proposition 13, an initiative measure passed by the electorate on June 6, 1978.

ment a stacked deck in wage negotiations, it should be emphasized that public employers for the most part—especially at the local government level—did not sponsor or lobby for these limitations. As a result, when a public employer makes an inability-to-pay argument because of a cap or lid law, arbitrators should not assume that these limitations were self-imposed. To the contrary, most of the restrictive limitations that have been adopted in the past few years have been adopted over the opposition of public employers.

Parenthetically, while public-sector interest arbitrators have expressed concern over the limitations imposed by cap and lid laws, they have not voiced similar concerns about state statutes which prescribe salary and fringe benefit minimums.[6] There are, for example, numerous statutes establishing minimum salaries, pensions, sick leave, insurance benefits, premium pay, tenure, and other terms and conditions of employment of public employees.[7] Since the state legislature is the source of both the "floor" laws and the cap or lid laws, interest arbitrators must, as the Supreme Court noted in a somewhat different context in *Arnett* v. *Kennedy,*[8] ". . . take the bitter with the sweet."[9]

The cap and lid laws that have been enacted obviously affect rather directly a public employer's ability to pay and, in a period of high inflation like the present, public employers will invariably present an inability-to-pay argument based in whole or in part on the existence of such a law. The major question raised in those jurisdictions which have both a cap or lid law and compulsory arbitration is how the interest arbitrator should respond to such an argument.

Substantially all the public-sector interest arbitration statutes require—either explicitly or implicitly—that financial limitations on a public employer's ability to pay must be considered by the interest arbitrator. That was the specific holding of the New Jersey Supreme Court in *New Jersey State Policemen's Benevolent Association Local 29* v. *Town of Irvington.*[10] The court ruled that an

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[6]It would, of course, be beyond the authority of an interest arbitrator to render an award which would reduce or lower a benefit that is prescribed by statute.

[7]For a broad sampling of such legislative enactments, *see* Lieberman, *Memorandum Analysis of Preemption Problems with Proposed Federal Bargaining Legislation for State/Local Employees,* in 593 GERR at E-1 *et seq.* (2-17-75).

[8]416 U.S. 134, 94 S. Ct. 1633 (1974).

[9]*Id.,* at 154, 94 S.Ct. at 1644.

[10]80 N.J. 271, 102 LRRM 2169 (1979).

interest arbitrator must "take account of a municipality's cap law constraints prior to the rendition of an award."[11] Nevertheless, I get the very definite impression that many interest arbitrators wish that ability-to-pay arguments would simply disappear. Russell Smith at the 1971 meeting of the National Academy of Arbitrators, after commenting on the serious problems confronting arbitrators in attempting to assess an inability-to-pay argument, candidly observed that the inability-to-pay criterion, "if deemed to be relevant or required by law to be taken into consideration, is likely to be taken less seriously than others, such as comparison data."[12] My own impression is that the attitude of many arbitrators toward the inability-to-pay criterion ranges from indifference to hostility.[13] I also have the feeling in some cases that while a public employer's ability to pay is considered, it is considered in form only and not in substance.[14]

It is my position that ability to pay is a valid interest-arbitration criterion, especially in the context of cap or lid laws, and that interest arbitrators are duty bound to give it serious consideration when it is raised. My reasons for so contending are several.

In the first place, public-sector interest arbitrators are *not* free agents who can do whatever they please. In this regard, public-sector interest arbitration must be differentiated from private-sector interest arbitration. Interest arbitration in the private sector is not legislatively mandated; rather, it is voluntarily consented to by the parties. Moreover, private-sector interest arbi-

[11] *Id.*, 102 LRRM at 2177. *Accord, Town of Arlington* v. *Bd. of Conciliation and Arbitration*, 370 Mass. 769, 352 N.E.2d 914, 93 LRRM 2494 (1976) (an interest arbitrator "is bound to apply the statutory standards in reaching a decision").

[12] Comment by Russell A. Smith, in Arbitration and the Public Interest, Proceedings of the 24th Annual Meeting, National Academy of Arbitrators (Washington: BNA Books, 1971), 180, at 185.

[13] There are some arbitrators, to be sure, that have accorded appropriate weight to the ability-to-pay criterion. *See, e.g., City of Council Bluffs, Iowa and Council Bluffs Assn. of Professional Fire Fighters Local No. 15* (Fact Finder Gundermann 1979) ("What is relevant to this dispute is evidence relating to the City's ability to pay, for if the City does not first have the ability to pay, comparability becomes meaningless"); *Mayor and Council of Baltimore and IAFF Local 734* (Impartial Chr. Galfand 1979), discussed at note 36 *infra; Parma Education Assn.*, 52 LA 800 (Teple 1969). *See generally* Berkowitz, *Arbitration of Public-Sector Interest Disputes: Economics, Politics, and Equity*, in Arbitration—1976, Proceedings of the 29th Annual Meeting, National Academy of Arbitrators (Washington: BNA Books, 1976), 159, at 168 (Ability to pay "is the one criterion that comes closest to getting at the economic realities, and I shall argue that in the public sector it deserves more weight than it has received in the past").

[14] *See, e.g., City of Mount Vernon*, 49 LA 1229, 1233 (Chr. McFadden 1968), in which the panel stated that it would "not ignore" the city's financial condition, but stated that its function was to recommend "a settlement that is fair and equitable." The panel further observed that the city "must raise whatever revenues are necessary in the manner which it deems best."

trators are usually given wide latitude—typically without any explicit standards—in rendering an award.[15] As a result, interest arbitrators in the private sector are literally given the authority to write the parties' contract with virtually no strings attached.

This contrasts sharply with the role and function of public-sector interest arbitrators. The prevailing judicial view is that public employers in the absence of legislative authorization do not have the authority to submit unresolved collective bargaining disputes to interest arbitration. For example, the Ohio Court of Appeals in *Xenia City Board of Education* v. *Xenia Education Association*[16] held that a voluntary agreement to submit unresolved collective bargaining issues to binding interest arbitration was null and void. The court ruled that such an agreement ". . . conflicts with and abrogates the board's duties and responsibilities to enter into new collective bargaining agreements for the employment of teachers and other school personnel and to manage the schools in the public interest. . . ."[17] As a result, in substantially all jurisdictions public-sector interest arbitration must be legislatively sanctioned.

While the prevailing majority view is that compulsory public-sector arbitration laws do not constitute an unconstitutional delegation of legislative authority,[18] this does not detract from the fact that there has been a delegation of legislative authority to public-sector interest arbitrators and that such arbitrators are exercising delegated legislative authority. As the Rhode Island Supreme Court noted in *City of Warwick* v. *Warwick Fire Fighters:*[19] ". . . we find that the legislature delegated to each of the arbitra-

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[15]*See generally* Elkouri and Elkouri, How Arbitration Works, 3d ed. (1974), 745–796. Elkouri and Elkouri note, however, that "[s]ometimes the parties will specify, in their stipulation for arbitrations, the standards to be observed." *Id.*, at 745.

[16]52 Ohio App. 2d 373, 370 N.E.2d 756, 97 LRRM 2327 (1977).

[17]*Id.*, 370 N.E.2d at 758. *Accord, Trotwood-Madison Teachers Assn.* v. *Trotwood Madison Board of Education,* 52 Ohio App.2d 39, 367 N.E.2d 1233, 96 LRRM 3148 (1977) (". . . we do not believe that the board of education itself may abandon its discretionary authority to enter into agreements with employees"). *See also Maryland Classified Employees Assn., Inc.* v. *Anderson,* 97 LRRM 2179 (Md. Ct. App. 1977) (". . . the prevailing rule . . . [is that] absent such authorization it is invalid for a municipality or charter county to attempt to bind itself in the exercise of legislative discretion over compensation of its employees").

[18]*See, e.g., City of Detroit* v. *Detroit Police Officers Assn.,* 294 N.W.2d 68, 105 LRRM 3083 (Mich. S.Ct. 1980), and the cases cited at note 3 therein. *Contra, Greeley Police Union* v. *City Council of Greeley,* 191 Colo. 419, 553 P.2d 790, 93 LRRM 2382 (1976); *Sioux Falls* v. *Sioux Falls Fire Fighters,* 89 S.D. 455, 234 N.W.2d 35, 90 LRRM 2945 (1975); *Salt Lake City* v. *International Association of Fire Fighters,* 563 P.2d 786, 96 LRRM 2383 (Utah S.Ct. 1977).

[19]*Warwick* v. *Warwick Regular Firemen's Assn.,* 106 R.I. 109, 256 A.2d 206, 71 LRRM 3192, 3195 (1969).

tors a portion of the sovereign and legislative power of the government, particularly the power to fix the salaries of public employees, clearly a legislative function." Rather than being responsible solely to the parties, as would be the case in the private sector, a public-sector interest arbitrator—both in fact and in law—is an extension of the legislature and, as such, is an agent of the legislature in establishing wages and conditions of employment.

It should come as no surprise, then, that the courts have routinely held that public-sector interest arbitrators are public officials. The Rhode Island Supreme Court in the *Warwick Fire Fighters* case held that a public-sector interest arbitrator "is a public officer," and as such "constitute[s] an administrative or governmental agency."[20] The Oregon Appellate Court, in *Medford Firefighters Assn. Local 1431* v. *City of Medford,*[21] ruled that an interest arbitrator appointed by the state PERB "acts in a public capacity."[22] Sometimes the public capacity in which an interest arbitrator acts is explicitly set forth in the applicable statute. For example, the Connecticut teachers statute specifically provides that an interest arbitrator "shall be representative of the interests of the public in general."[23]

Further recognition that public-sector interest arbitrators are public officers whose duties are akin to administrative agencies is evidenced by the standard of judicial review that the courts are increasingly adopting with respect to compulsory arbitration awards. For example, the New Jersey Supreme Court has stated that "the judicial oversight available should be more extensive than the limited judicial review had under [the New Jersey Arbitration Act]."[24] The court held that judicial review of a compulsory arbitration award "should extend to consideration of whether the award is supported by substantial credible evidence present in the record," noting that "[t]his is the test normally applied to the review of administrative agency decisions and is particularly appropriate here."[25]

If it is candidly recognized—as it must be—that public-sector interest arbitrators are public officials carrying out delegated

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[20] *Id.*, 71 LRRM at 3194.
[21] 40 Or.App. 519, 595 P.2d 1268, 102 LRRM 2633 (1979).
[22] *Id.*, 102 LRRM at 2635.
[23] Conn. Gen. Stat. Ann. §10-153f(c)(1).
[24] *Division 540, Amalgamated Transit Union* v. *Mercer County Improvement Authority,* 76 N.J. 245, 386 A.2d 1290, 98 LRRM 2526 (1978).
[25] 98 LRRM at 2530. *Accord, City of Detroit* v. *Detroit Police Officers Assn., supra* note 18.

legislative power, it necessarily follows that they have an obligation to give meaning and effect to other legislative enactments such as cap and lid laws. In this regard, the Supreme Court has repeatedly ruled that administrative agencies are required to give effect to competing legislative policies. For example, in *Southern Steamship Co.* v. *NLRB,*[26] the Court stated:

> ". . . the Board has not been commissioned to effectuate the policies of the Labor Relations Act so single-mindedly that it may wholly ignore other and equally important Congressional objectives. Frequently the entire scope of Congressional purpose calls for careful accommodation of one statutory scheme to another, and it is not too much to demand an administrative body that it undertake this accommodation without excessive emphasis upon its immediate task."[27]

By analogy, public-sector interest arbitrators have not been commissioned to single-mindedly focus on what is a reasonable wage and wholly ignore the effect of a cap or lid law on an employer's ability to pay. Where a public employer makes an inability-to-pay argument, arbitrators must seriously consider it without placing excessive emphasis upon comparability data.

In analyzing the interrelationship between cap and lid laws, on the one hand, and interest arbitration, on the other, it is helpful to consider cap and lid laws as limitations on the authority or discretion that an interest arbitrator would otherwise have. In this regard, limitations on an arbitrator's authority are not a new phenomenon—they have been around for a long time in rights arbitration. Many contracts, for example, provide that in discipline cases the arbitrator is limited to deciding whether there is cause for discipline, with the specific limitation that if the arbitrator finds cause, he/she shall not have the authority to disturb or modify the penalty meted out by the employer. Another example is the following provision in the collective bargaining agreement between the Illinois Board of Governors of State Colleges and Universities and the Illinois Federation of Teachers:

> "Where the administration has made an academic judgment such as a judgment concerning application of evaluation criteria in decisions on retention, promotion, or tenure, and a judgment concerning the academic acceptability of a sabbatical proposal, the arbitra-

[26] 316 U.S. 31, 62 S.Ct. 886 (1942).
[27] *Id.*, at 47, 62 S.Ct. at 894.

> tor shall not substitute his/her judgment for that of the administration."[28]

Although many more examples could be cited, arbitrators have not had any real difficulty in complying with such contractual limitations on their authority, even though they might have reached a different result if the limitation in question had not been contained in the parties' agreement.[29] Similarly, public-sector interest arbitrators should treat statutory limitations on their authority in the same way that they would treat contractual limitations on their authority in rights arbitration.

Rights arbitrators get their authority from the parties' agreement, and it is elementary arbitral law that they may not add to, subtract from, or ignore any of the provisions of the contract.[30] As Harry Platt observed many years ago,

> ". . . While both parties have presented strong equitable arguments in support of their respective positions, the Arbitrator's decision here must necessarily rest not on broad moral principles but rather on the rights and obligations imposed by the contract. A contract freely entered into through collective bargaining is not only binding on its makers but on an Arbitrator as well and he cannot, under the guise of construction, ignore its plain terms or rewrite it to suit his own notions of equity. . . ."[31]

By analogy, since interest arbitrators get their authority from the legislature, they likewise may not add to, subtract from, or ignore applicable legislative provisions. The admonition of Justice Douglas in *Enterprise Wheel & Car*—one of the *Steelworkers Trilogy*—that an arbitrator "does not sit to dispense his own brand of industrial justice" is just as applicable to interest arbitration as it is to rights arbitration.[32]

Having established, I hope, that interest arbitrators must give serious consideration to ability-to-pay arguments where they are raised, let me turn now to an examination of the implementation

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[28]1979–1982 agreement between the Board of Governors of State Colleges and Universities and the AFT Faculty Federation—B.O.G. Local 3500, Art. 16, §10(b)(2), at 41.

[29]*See, e.g., Lucky Stores, Inc.*, 53 LA 1274, 1278 (Eaton 1969).

[30]*See, e.g., Champion Papers, Inc.*, 69-1 ARB ¶8341 (Coffey 1968); *Page Milk Co.*, 76-1 ARB ¶8076 (Quinn 1975). The rule applies even though the contract does not contain a specific limitation on the arbitrator's authority. *See, e.g., Emerson Electric Co.*, 72-2 ARB ¶8674 (Erbs 1973) ("While the agreement does not seem to have the usual clause restricting the power of the arbitrator, . . . the arbitrator recognizes that he is restricted to construing the agreement as written"). *Accord, Viviano Macaroni Co.*, 70-2 ARB ¶8478 (Kindig 1970).

[31]*Bay City Shovels, Inc.*, 10 LA 761, 764 (Platt 1948).

[32]*Steelworkers* v. *Enterprise Wheel & Car Corp.*, 363 U.S. 593, 80 S.Ct. 1358, 46 LRRM 2423 (1960).

of the ability-to-pay criterion in practice. I would agree with the following two observations that Arnold Zack made at the New York University Conference on Labor a number of years ago. First, ". . . the neutrals should be properly concerned with the interrelated subjects of the costs of the compensation package and whether funds are, will be, or can be made available to finance it."[33] Second, ". . . [t]he employer must bear responsibility for the full operation of the governmental unit, and his perspective must be broader than merely concern over the wages of his staff."[34] My concern is that many interest arbitrators would appear to inadequately consider the effect of their awards on other employees and/or the public employer's overall operations. As Howard Block perceptively observed at the 1971 meeting of the National Academy of Arbitrators:

> "In many, if not most, inability-to-pay situations, the impasse is not due to the economic cost of reaching an agreement with the employee group directly involved in the negotiations. . . . The underlying problem for management is to avoid a settlement figure with one group which arouses unrealistic expectancies among large numbers of other employees who are being pressed to go along with a uniform wage policy pegged at a lower rate."[35]

In assessing a public employer's inability-to-pay argument, at least five considerations should be taken into account. First, if the public employer has already settled with one or more bargaining units and the employer is proposing the same basic wage settlement for the unit involved in the interest-arbitration proceeding, the uniform wage policy being proposed by the public employer, as Howard Block has noted, ". . . merits a high degree of support from interest neutrals."[36]

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[33]Zack, *Ability to Pay in Public Sector Bargaining,* in Proceedings of the NYU 23rd Ann. Conf. on Labor (1970), 403, at 416.

[34]*Id.,* at 411–412.

[35]Block, *Criteria in Public Sector Interest Disputes,* in Arbitration and the Public Interest, Proceedings of the 24th Annual Meeting, National Academy of Arbitrators (Washington: BNA Books, 1971), 161, at 173.

[36]*Id. See also Mayor and Council of Baltimore and IAFF Local 734,* AAA Case No. 14 39 0365 79 J (1979), in which Harry Galfand, the Impartial Chairman, held that the results of the city's negotiations with eight other unions was a "critical factor" in accepting the city's final offer that extended to firefighters what the city had previously negotiated with those eight other unions, noting: ". . . I am not saying that we are absolutely bound to award no greater increase to the Firefighters than the others are scheduled to receive. We are, however, bound to consider the relationship of Firefighters' increases to those of other City employees, and to decide whether some variation is valid and, if so, whether a variation to the extent requested is in order. . . .

"This need to maintain equality, especially when financial conditions have forced the other City employees to accept what is probably less than they are entitled to as well, is one of the most influential factors in the shaping of my decision. . . ." *Id.,* at 5–6, 9.

Second, if the employer has bitten the bullet and taken significant actions to reduce expenditures and to ensure that the misery is being distributed across the board, an interest arbitrator should think twice before rejecting the employer's inability-to-pay argument. If the interest arbitrator awards more than the employer contends it can afford in these circumstances, it necessarily means—assuming the contention is factually premised—that the additional funds will have to come out of somebody else's hide.

Third, consideration should be given to what the employees would have received if they had had the right to strike. As Albert Shanker commented following a New York City teachers' strike in 1975 that lasted less than one week, "A strike is a weapon you use against a boss who has money."[37] At the 1976 meeting of the National Academy of Arbitrators, Monroe Berkowitz observed that public-sector neutrals "must be able to suggest or order settlements of wage issues that would conform in some measure to what the situation would be had the parties been allowed the right to strike and the right to take a strike."[38] Applied in the context of an inability-to-pay argument, interest arbitrators should not award more than the employees would have been able to obtain if they had the right to strike *and* the employer had the right to take a strike.

Fourth, serious consideration should be given to the employer's ability to attract and retain employees. If the evidence shows that the employer has had no difficulty in recruiting new employees and that employee turnover is within or below normal bounds, it would be more than appropriate to give significant weight to the employer's inability-to-pay contention.[39]

Fifth, public-sector interest arbitrators should be hesitant to accept without close scrutiny an argument that employees should be awarded a normal wage increase if the employer is picking up the full cost of increases for energy and other com-

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[37]Quoted by Dorf, *Mediation and Final Offer Arbitration: A Management Counsel's View,* in Interest Arbitration (1980), 31, 32, proceedings of an IMLR Conference on March 26, 1980.

[38]Berkowitz, *supra* note 13, at 169. *See Sibley County Sheriff's Employees' Assn. and County of Sibley, Minn.,* PERB Case No. 80-PN-1256-A (Arb. Fogelberg, April 29, 1981) in which the arbitrator, in selecting the employer's final offer on salary adjustments, noted that "[w]ere these employees allowed to strike, it is highly unlikely that the ultimate settlement would equal their final demands now submitted to arbitration."

[39]"The existence of long waiting lists of applicants eager for the jobs lends credence to the . . . assumption [that] wages and conditions are sufficient to attract the required number of people. These are reflections of real market conditions that should be given due consideration." Berkowitz, *supra* note 13, at 172.

modities or supplies. While this argument may have some attraction at first blush, a deeper examination of the facts usually demonstrates its fallacies. It is instructive, for example, to determine on a before-and-after basis what percentage of the employer's operating budget is devoted to wages and benefits and what percentage is devoted to supplies and commodities. If there has been no decrease in the percentage of the budget spent on wages and benefits, the argument loses whatever persuasiveness it might have had. Moreover, while the employer probably has no alternative but to pay the going rate for gasoline and oil, the employer might be buying less as a result of energy conservation projects.

Conclusion

Obviously, there is tension between public-sector compulsory arbitration laws, on the one hand, and cap and lid laws, on the other. In grappling with this tension, public-sector interest arbitrators would do well to remember that they are agents of the legislature and that, in carrying out their delegated legislative authority, they must attempt to give effect to *both* legislative policies. If public-sector interest arbitrators fail to fulfill this dual responsibility, there are, in my judgment, four possible consequences.

First, public-sector interest arbitration laws may be amended to provide, as the Financial Emergency Act for the City of New York does,[40] that interest arbitrators must accord substantial weight to the employer's financial ability to pay when considering demands for increases in wages or fringe benefits and that this determination is subject to de novo judicial review.

Second, employers will increasingly favor granting public employees, including those in the uniformed services, the right to strike in lieu of compulsory arbitration.[41]

Third, there will be more efforts to seek judicial review of interest arbitration awards. While arbitrators can take some

[40]N.Y. Local Fin. Law, ch. 201 (Consol.) (Supp. 1978).

[41]Recently Detroit Mayor Coleman Young specifically advocated granting all public employees, including police and firefighters, the right to strike in lieu of compulsory arbitration. With respect to compulsory arbitration he noted that interest arbitrators in cases involving the City of Detroit had "ignored the factor that says 'The interest and welfare of the public and the financial ability of the unit of government to meet those costs.' " Address of Mayor Coleman A. Young to Legislative Forum on New Directions for Public Employee Labor Relations, Lansing, Mich., Dec. 4, 1979, at 10.

comfort from the New Jersey Supreme Court's decision in *Town of Irvington* in which the court confirmed the arbitrator's award, that same court in a companion decision issued on the same day in *Atlantic City* v. *Laezza*[42] strongly suggested that arbitration awards would be subject to invalidation if the hardships visited upon the public employer were "sufficiently severe."[43]

Fourth, compulsory arbitration laws may be repealed. This already happened in Massachusetts when the electorate adopted Proposition 2½ on November 4, 1980.

In many respects, the final verdict on compulsory arbitration in the public sector rests in the hands of interest arbitrators.[44] If they discharge their responsibilities in a balanced and reasoned way, taking into account and giving proper weight to an inability-to-pay argument where raised, the chances for its survival will be greatly enhanced.

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[42]80 N.J. 255, 403 A.2d 465, 102 LRRM 2409 (1979).

[43]*Id.*, 102 LRRM at 2414.

[44]The following comments of Monroe Berkowitz are apropos: ". . . If arbitration of disputes is to be considered a success, it must not prevent strikes at the expense of contributing to the decline of the quality of life in the public sector. It must be alive to the importance of the effects of decisions on the economic survival of governments.

"If arbitrators cannot operate in such a fashion and make these decisions, either because they are too fundamentally political or because they are unwilling to assume the burden of moving into an unfamiliar economic world, then we must resort to alternatives." Berkowitz, *supra* note 13, at 173.