III. FINAL-OFFER PLUS: INTEREST ARBITRATION IN IOWA

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Much has been written in the past several years about legislated interest arbitration as a means of resolving public-sector labor disputes. As more and more states have enacted such statutes in an effort to avoid strikes and provide finality in the collective bargaining process for their police and firefighters, the volume of literature has likewise grown, with each statutory system and the experience under it coming under close scrutiny.

The conclusions of those analyses have largely followed the same theme. Interest arbitration has generally been recognized as a method of providing some degree of balance in bargaining power while assuring continued delivery of essential governmental services. In that sense, it has proved a viable alternative to the strike. Also, because of the strongly held belief that the private-sector model—free collective bargaining with minimal third-party intervention—is the preferable format for the public sector as well, the preservation of that model has been a second criterion for judging any public-sector dispute-resolution mechanism. By this standard, too, interest arbitration generally has been called successful. The availability of interest arbitration has not, it seems, adversely affected the motivation of bargainers to reach a voluntary agreement; the "narcotic" effect of arbitration, predicted by its critics, has not operated at a level so high as to threaten the free bargaining model.

Against this background, Iowa enacted a comprehensive collective bargaining statute for public employees in 1974, providing yet another opportunity to experiment with modifications on the emerging public-sector model of third-party impasse intervention. Beyond its obvious significance within the state, however, the Iowa statute is of interest on a broader scale because of two unique aspects. First, it is a variation of final-offer-by-issue arbitration: the fact-finder's recommendation on each issue is a third alternative for selection by the arbitrator. Second, and of perhaps greater significance to public-sector collective bargaining generally, it covers all nonfederal public employees

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in the state. Iowa is the first state[1] to grant final and binding arbitration of interest disputes not only to police and firefighters, but to teachers, secretaries, garbage collectors, street-maintenance employees, public-hospital employees—to every nonsupervisory public employee of the state and its political subdivisions. In these respects, the Iowa statute is indeed extraordinary.

My purpose in this paper is to examine the Iowa statute and the experience to date under it. Little has been previously written about this experience, however, so it seems appropriate that this initial effort be restricted to a generalized overview, plus a few comparisons with the recorded experiences in other states. Special attention will, of course, be paid to those areas unique to the Iowa system.

My intent, then, is to review the statutory provisions and their application, to report in a general fashion on the available data as to what is occurring, and to attempt some preliminary conclusions about the effectiveness of Iowa's arbitration law and particularly those elements unique to it. The experience is limited, however, to only two years and a portion of a third, so any judgments must be taken in that light. Two or three years is simply too short a time to draw more than tentative conclusions.

The Statutory Framework

The Iowa Public Employment Relations Act is comprehensive by most applicable definitions of the term. It has broad coverage, as noted above, applying to virtually all public employees in the state. It provides a clear duty to bargain with a designated representative, although the subjects of mandatory bargaining are set forth in a laundry list that provides a more limited scope than the traditional "wages, hours, and other terms and conditions of employment."[2] It establishes an agency, the Public Em-

[1]Maine has arbitration for all public employees, but the award is not binding with regard to salaries, pensions, and insurance. Rhode Island's statute also provides arbitration as a final impasse step for all classes of public employees, but again the award is nonbinding as to wages. The Nevada statute provides that the fact-finding award can be ordered binding by the governor. Finally, Nebraska provides for a binding award for all public employee groups, but those awards are made by the Court of Industrial Relations, not by an arbitrator. The recently enacted Wisconsin statute is the only other law providing binding arbitration, in the traditional sense, to all local government employees except public-safety personnel; the latter are covered by separate statutes.

[2]The mandatory subjects of bargaining are "wages, hours, vacations, insurance, holi-

ployment Relations Board (PERB), to enforce and administer the statute. It provides for the resolution of representation matters (including unit issues) and unfair labor practices. Finally, and of most consequence here, it includes a detailed procedure for the resolution of bargaining impasses, including the stages of mediation, fact-finding, and arbitration.

"Statutory" Versus "Independent" Impasse Procedures

The essential scheme of the Iowa impasse procedure is a carefully timed progression of an impasse through mediation, fact-finding, and final-offer, issue-by-issue arbitration. But before an impasse is reached, and indeed before substantive negotiations even begin, parties negotiating under the Iowa statute are required to "endeavor to agree upon" their own method for resolving any ultimate impasse in their collective bargaining. Failing such an agreement, of course, the statutory scheme then applies; but independence from the statute is not only available to them, but encouraged by the requirement that the first bargaining obligation is discussion of alternative impasse procedures.

It is necessary that this point be made at the outset, as the data that are recorded in the body of this paper include a substantial number of cases where the "statutory" procedures have not been followed. About one fourth of all negotiations begin by agreement on some modification of the statutory scheme, ranging from minor alterations in the size of selection lists for arbitrators to major deviations from the statutory scheme. In the 1976–1977 negotiations between AFSCME and the state, for example, the parties agreed to an impasse procedure for mediation followed by final-offer-package arbitration on all economic issues. And a common form of independent procedures has been the elimination of the fact-finding step. These and other variations are common; but as will be seen from the data, the results of these independent procedures are not what might be expected.

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days, leaves of absence, shift differentials, overtime compensation, supplemental pay, seniority, transfer procedures, job classifications, health and safety matters, evaluation procedures, procedures for staff reduction, in-service training and other matters mutually agreed upon. Negotiations shall also include . . . dues checkoff . . . and grievance procedures. . . ." Section 20.9, Code of Iowa (1977).

The Timetable

A second comment that must be made at the outset concerns the timing of bargaining and the delivery of impasse procedures under the statute. The duty to bargain, according to the Iowa law, arises upon certification of an employee organization, and the parties are mandated to begin their bargaining "reasonably in advance of the budget making process." Although the parameters of that requirement are vague, the impasse procedures themselves reveal a more definite intent by the legislature to relate the collective bargaining process to the compilation and implementation of public budgets. Beginning with mediation 120 days prior to budget certification, all stages of the impasse procedure are carefully timed to a goal of concluding agreements prior to March 15, the budget-certification date of all political subdivisions. Ten days after the appointment of a mediator, the board must appoint a fact-finder. The fact-finder issues an award 15 days later, and the parties have 10 days to consider it. Then either party can request arbitration. The arbitration provisions likewise include deadlines for submission of final offers, selection of an arbitrator, and, ultimately, issuance of an arbitration award.

Unfortunately, the required degree of adherence to the statutory time limits has been subjected to various interpretations. Although some flexibility to meet the naked realities of administration of the statute has been provided by rule,[3] the ultimate issue, i.e., whether bargaining and impasse resolution *must* be completed by budget certification, remains unsettled even today. The first interpretation of PERB was that the statute required completion "on or about" the employer's budget-certification date.[4] That interpretation was the prevalent theme during the first year's experience.

In the fall of 1976, however, just prior to the inception of bargaining and impasse procedures for the second year's operation of the statute, PERB reconsidered its earlier opinion and ruled, in essence, that the time requirements were "directory" in character and did not absolutely require completion by budget certification. Although the legislature in-

[3]Appointments of mediators and fact-finders become effective on the date of first mediation sessions and date of hearings, respectively. PERB Rules 7.3(3) and 7.4(3), Ch. 660, Iowa Administrative Code.

[4]*Belmond Community School District*, PERB Case No. 558 (Declaratory Ruling, November 14, 1975).

tended bargaining to proceed in advance of final budget determination, arbitration was, according to PERB, available after that date where the parties met the general requirement that bargaining be conducted concurrent with the budget-making process.[5] The second year's experience proceeded under that interpretation.

In January 1978, in the midst of the 1977–1978 bargaining, a district court overturned PERB's directory interpretation and ruled that the availability of arbitration, and perhaps the duty to bargain itself, terminates when the public employer has certified its budget.[6] The court found that, notwithstanding the absence of a specific mandate to complete the process by March 15, that requirement was nevertheless "manifest." Although that decision is now on appeal to the Iowa Supreme Court and remedial legislation is pending before the state legislature, this strict interpretation has pervaded the bargaining and impasse behavior during this third year.

The importance of this explanation is its effect upon the use of the impasse procedures. Although it cannot be measured with any certainty, the existence of these time strictures has undoubtedly and significantly affected the way that the parties behave under Iowa's impasse procedure. Although it is likely that these effects are not so evident at the fact-finding and arbitration steps, the most illustrative evidence of an effect is in the mediation experience. Mediation is requested in a majority of all negotiations and is utilized in nearly half. The primary reason is the artificiality of the impasse deadlines. Particularly in mediation, but to some degree throughout the stages of the impasse procedure, utilization does not necessarily reflect actual bargaining impasses, but merely the passage of time.

The Impasse Procedures

The period for mediation—10 days—is by any standard unreasonably short. As a practical matter, it is often impossible for a mediator even to arrive on the scene within 10 days, let alone provide an opportunity for full use of his[7] skills. In spite of this

[5]*Iowa Association of School Boards and Iowa State Education Ass'n*, PERB Case No. 848 (Declaratory Ruling, November 2, 1976).

[6]*City of Des Moines* v. *Public Employment Relations Board et al.*, No. CE 7-4116 (Polk County District Court, January 9, 1978).

[7]As a matter of style only, the masculine pronoun is used throughout. No ill intent should be ascribed.

restriction, however, PERB has placed heavy emphasis on the use of mediation. The period for mediation has been expanded by making the mediator's appointment effective on the date of his first meeting with the parties and by encouraging reasonable flexibility in meeting the statutory timelines. The cost of mediation, at first borne by the parties, has been absorbed by PERB. And much time has been spent training staff and ad hoc mediators to deliver effective services to resolve disputes short of the adjudicative steps of fact-finding and arbitration. The result is a cadre of federal mediators,[8] PERB staff, and ad hocs, with a 75-percent settlement rate in mediation. In one of the most comprehensive studies of interest arbitration yet undertaken, *Final-Offer Arbitration,*[9] the authors observed a significant reduction in arbitration usage where greater emphasis was placed on mediation. Iowa's experience, as will be seen more evidently below, is entirely consonant with that reported experience.

Any dispute unresolved by mediation results in the automatic appointment of a fact-finder. The fact-finder conducts a hearing and issues written findings and recommendations for the parties' consideration. The most noteworthy aspect of the fact-finding provision is its brevity. The parties are given no choice in the selection of their fact-finder, his appointment being left solely to PERB. Also, there are no standards or criteria for the fact-finder's consideration. He simply conducts a hearing and issues his report. The importance of the fact-finding stage, however, cannot be diminished. His recommendations are ultimately taken before the arbitrator and are placed on an equal footing with the parties' final offers for selection by the arbitrator.

The denouement of the procedure, of course, is final-offer arbitration on an issue-by-issue basis. If the fact-finder's recommendations are rejected, either party may request arbitration. Following such a request, the parties submit their final offers on each issue at impasse, a copy of their agreed-upon articles, and the name of their selected arbitrators for a tripartite panel. In lieu of a tripartite panel, however, the law specifically provides

[8]The Federal Mediation and Conciliation Service has continually given its assistance in meeting the very seasonal demand for a large number of mediators. FMCS currently handles 35 to 40 percent of all public-sector mediation cases.

[9]Stern, Rehmus, Loewenberg, Kasper, and Dennis, Final-Offer Arbitration (Lexington, Mass.: D.C. Heath and Co., 1975).

that the parties can agree to submit the dispute to a single arbitrator. In either case, the parties then agree upon a neutral arbitrator or PERB provides a list of three names from which to strike.

The arbitrator thus chosen may conduct a hearing (although it is not required) and has by statute the ancillary powers to administer oaths, examine witnesses and documents, take testimony and receive evidence, and issue subpoenas to compel the attendance of witnesses and the production of records. The arbitrator has direct authority to petition the district court to enforce his subpoenas. Within 15 days of hearing, the arbitrator or arbitration panel, as the case may be, must select "the most reasonable offer, in its judgment, of the final offers on each impasse item submitted by the parties, or the recommendations of the fact-finder on each impasse item." The award is final and binding.

That is the procedure at a glance. In order to fully understand the decision-making process under the Iowa statute, however, discussion of two other aspects is necessary: (1) the criteria that the arbitrator must consider, and (2) the rigidity of the fact-finding and arbitration steps. The first will be dealt with summarily, the second in more detail.

The arbitrator is required under the statute to consider, in *addition to any other relevant factors,* the following:

a. Past collective bargaining contracts between the parties including the bargaining that led up to such contracts.

b. Comparison of wages, hours, and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and classifications involved.

c. The interests and welfare of the public, the ability of the public employer to finance economic adjustments, and the effect of such adjustments on the normal standard of services.

d. The power of the public employer to levy taxes and appropriate funds for the conduct of its operations.

Much has been written about the importance or unimportance of mandated criteria for the arbitrator's consideration, and I intend to add little to that discussion. Although such standards undoubtedly have some value in assuring that arbitrators pay attention to those matters believed important by the authors of the legislation, I tend to support the observa-

tion of Arvid Anderson[10] that the enumeration of criteria appears designed not so much to limit the arbitrator as to allow him broad discretion in considering whatever factors he deems important as long as attention is given to the other factors. Additionally, of course, the criteria are valuable in assuring that an arbitration award is not summarily reversed on review. And finally, the inclusion of such criteria have shielded arbitration statutes from constitutional attack.

A matter of greater significance is the "rigidity" or "flexibility" of the arbitration proceeding. This facet has gained attention due to the belief that the more unpalatable arbitration is made, the less it will be used. If arbitration requires great risk and the danger of losing more than one can hope to gain, the likelihood of voluntary settlement is increased. Conversely, if arbitration offers no threat of potential loss, the likelihood of voluntary settlement decreases as unions utilize arbitration as a possible opportunity to improve on their gains at the bargaining table. The ultimate fear, of course, is that the arbitration process will have a "narcotic" effect on the bargaining process, even to the extent of becoming a substitute for good-faith negotiations.[11] If the private-sector model of bilateral determination without third-party intervention is to be preserved, the successful arbitration system is one which discourages its own use or, more importantly, one which is not used.

Set against this theoretical backdrop, Iowa's scheme falls somewhere between the rigid, foreboding model (final-offer-package) and the completely flexible model (conventional arbitration). Final offer on an issue-by-issue basis sacrifices rigidity for arbitral discretion; Iowa's addition of the fact-finder's recommendation as a third choice on each issue should theoretically lessen the fear of an untenable award by even another notch.

The Iowa law does, however, have its draconian elements, some clearly expressed in the statute and others the result of PERB decisions on the requirements of good-faith bargaining. With regard to the former, the statute allows only one final offer,

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[10]Anderson, *Compulsory Arbitration under State Statutes*, 22 N.Y.U. Conference on Labor 259 (1969).

[11]*See*, for example, Feuille, Final Offer Arbitration (Chicago: International Personnel Management Association, 1975). Public Employment Relations Library No. 50.

submitted prior to hearing, and prohibits mediation by the arbitrator. These factors have had, in my judgment, a most salutary effect on the bargaining process. Although the parties are free to continue bargaining during the arbitration proceeding, the arbitration itself may not become an extension of the negotiating process. The advantage of such a system is that the parties are less likely to withhold their best position until they reach the arbitration stage. This effect is equally beneficial in avoiding overuse of arbitration and increasing the effectiveness of mediation. Commenting on Wisconsin's 1975 amendment granting the mediator power to compel submission of final offers amendable only by mutual consent, Wisconsin Commissioner Marshall Gratz has noted:

> "Prior to an amendment in 1975 final offers were amendable within 5 days of the arbitration hearing. Besides its ambiguity and nonuniform application, that provision led the parties to hold back and make surprise moves after mediation in order to outflank the other party and it made the parties less likely to let the mediator work with their best offer before sending the matter on to arbitration. Now, however, the mediator has the effective power to require specification of final offers at the close of [mediation]. When alerted of this in advance, each party is on notice that the other can prevent it from improving its final offer once it is submitted. The importance of making, during [mediation] every effort to settle that is going to be made is thereby reinforced."[12]

Arnold Zack has recommended that the optimum arbitration framework would, among other things, preclude the amendment of final offers and mediation by the arbitrator.[13] Writing at a time prior to enactment of the Iowa statute, Zack recognized that voluntary resolution is more likely when the parties are bound by their original offers and that mediation at the arbitration step dilutes the effectiveness of mediation at the earlier stages. Charles Rehmus, discussing the Michigan system where amendment of final offers *is* permitted, has observed that the arbitration hearing is often perceived by the parties as a continuation of the negotiation process.[14] (That is not to say that the Michigan system necessarily results in more arbitration

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[12]Gratz, *A Mediator's View of Interest Arbitration in Wisconsin*, forthcoming in proceedings of the 1977 annual conference of the Society of Professionals in Dispute Resolution.

[13]Zack, *Final Offer Selection—Panacea or Pandora's Box?* 19 N.Y. L. Forum 567 (1974).

[14]Rehmus, *Is a "Final Offer" Ever Final?* in Arbitration—1974, Proceedings of the 27th Annual Meeting, National Academy of Arbitrators, eds. Barbara D. Dennis and Gerald G. Somers (Washington: BNA Books, 1975).

awards, but only in more arbitration hearings.) In any event, the Iowa law permits neither amendment of final offers nor mediation by the arbitrator.

In addition to this statutory rigidity, PERB has issued two rulings designed to direct the emphasis in the Iowa scheme toward good-faith bargaining and away from dependence on the adjudicatory steps. First, it has defined an impasse item in a manner which, it is hoped, is more restrictive on the arbitrator's discretion and draws a more significant distinction between conventional arbitration and final offer by issue.[15] Second, it has declared that good-faith bargaining requires that no proposal be offered at fact-finding which has not previously been made to the other side in the course of negotiations.[16] The rationale is straightforward: withholding movement during negotiations and mediation for the sole purpose of enhancing one's position before a fact-finder derogates the obligation to bargain in good faith.

To summarize, the Iowa impasse procedure includes mediation, fact-finding, and final-offer-by-issue arbitration, with the fact-finder's recommendation on each issue one of the alternative choices for the arbitrator. The parties are given the opportunity to agree upon procedures different from these, and in either event are given the option of submitting their dispute to a single arbitrator or a tripartite panel. The timelines under which the procedures operate are strict, and once a final offer is submitted, it may not be amended. The arbitration has a strong judicial flavor, and the arbitrator is not permitted to mediate. The award is binding on both parties.

Legal Challenges

For purposes of this short section, I include under this heading both attacks on the statute itself and appeals of arbitration awards. The section is short because there have been few of either.

In an opinion issued shortly after enactment of the law, the attorney general of Iowa ruled that the arbitration provisions met constitutional scrutiny. The constitutional issue has never

[15] *West Des Moines Education Ass'n,* PERB Case No 805 (Declaratory Ruling, October 8, 1976), *rev'd* in *West Des Moines Education Ass'n* v. *PERB,* No. CE 6-3344 (Polk County District Court, February 2, 1977).

[16] *Eastern Iowa Community College and Eastern Iowa Community College Higher Education Ass'n,* PERB Case No. 973 (Declaratory Ruling, April 18, 1977).

been subsequently addressed by the courts. Although a constitutional attack was included in the challenge to PERB's ruling on the relationship between bargaining and the employer's budget certification, the court did not reach that issue.[17]

Judicial review of arbitration awards is available under the statute, but is limited. Specifically, an arbitrator's award may be declared invalid or unenforceable "if its implementation would be inconsistent with any statutory limitation on the public employer's funds, spending, or budget or would substantially impair or limit the performance of any statutory duty by the public employer." In the single case where an arbitrator's decision was challenged in the district court, the award was upheld.[18]

Experience Under the Statute

Although the Iowa law was enacted in 1974, the duty to bargain did not become effective until July 1975.[19] Additionally, the statutory bargaining scheme, including most particularly the impasse procedures themselves, were geared for bargaining in advance of the budget-making process to a collective bargaining agreement to be implemented at the start of the next fiscal year. The result is that, although a few contracts were negotiated for the 1975 fiscal year, for the most part bargaining under the statute commenced in the late fall of 1975, in anticipation of contracts which would become effective in July 1976. Recorded data, then, span only a period of two years, and are identified as negotiations taking place during the 1975–1976 and 1976–1977 periods. Data for 1977–1978 are, at this writing, incomplete and will not be included in the tables. To the extent, however, that trends may be seen from the partial information now available, those trends will be noted in a separate section.

Table 1 shows the progression of cases through the impasse procedures and the stage at which settlement was reached. The first observation to be made about the data is that there is an accurate measure of the universe. Because the Iowa law does not permit voluntary recognition, the number of bargaining rela-

[17] *Supra* note 6.

[18] *Maquoketa Valley Community School District* v. *Maquoketa Valley Education Ass'n*, No. CE-296 (Delaware County District Court, November 3, 1977).

[19] The duty to bargain for the state government and its employees was not effective until July 1, 1976. Section 20.29, Code of Iowa (1977).

tionships at any given point is known. The figures shown represent the number of certifications issued as of January 1 of 1976 and 1977, respectively, with the 1977 figure adjusted downward to reflect the two-year contracts which would not have been reopened in the 1976–1977 period. January 1 was chosen because the statutory impasse procedures were not available to employee units organized after that date, again due to the time parameters of the impasse procedures.

Of this universe, then, Table 1 demonstrates the progression of cases to collective bargaining agreements. As is immediately seen, the two years show a remarkable consistency. Although all the numbers have increased with the number of negotiations occurring, the relative percentages among them have been generally stable.[20]

In each of the two years, about one fourth of the negotiations have settled without contact with PERB, i.e., with no request for third-party assistance. The remaining three fourths have made at least an initial request, usually for mediation (a few impasse procedures negotiated by the parties have eliminated media-

TABLE 1

Utilization of Impasse Procedures Under Iowa PERA

	1975–1976	1976–1977
Number of negotiations	421	571
Settlements without request for third-party assistance	116	210
Requests for mediation	305	361
Cases settled prior to mediation	109	100
Number of mediations	195	261
Cases settled at mediation	145	185
Number of fact-findings conducted	44	60
Cases settled at fact-finding	26	33
Arbitrated settlements	25[a]	41[a,b]

[a]This number is greater than the number of cases unresolved in fact-finding due to arbitrations conducted under impasse procedures which eliminated fact-finding as an impasse step.

[b]Two cases remain unresolved for the 1976–1977 period.

[20]Table 2 shows the method of settlement of all cases during the two-year period, expressed in percent of total number of negotiations.

tion; but even there the agency has provided mediation services with the parties' consent or at their later request). This figure —three fourths of all negotiations resulting in a request for assistance—is generally larger than that reported in other jurisdictions. The explanation, however, is not difficult; the high percentage of mediation requests is caused in large part by the statutory time-frame in which bargaining occurs. For a myriad of reasons, most negotiations do not begin until late October or early November. But because the statutory impasse procedures must be implemented on or about November 15 (". . . 120 days prior to the employer's certified budget submission date . . ."), mediation is often requested when it is neither necessary nor desired. So the request is received, but the parties continue to negotiate and in many cases reach agreement without intervention by the mediator.

Indeed, as can be seen in Table 1, an additional one fourth of all negotiations have settled in this manner, after a request for mediation but before the mediator's arrival. This raises the number of cases that settle with no third-party assistance to approximately one half.

As an aside, and to give full credit to the excellent mediation services in Iowa's public sector (FMCS, PERB staff, and ad hoc), I must note that many of these cases do entail some contact with the mediator. Thus, although the category "cases settled prior to mediation" means that no mediation session was conducted, it does include many cases where the mediator contacted the parties, and some where settlement was reached with the mediator's assistance, even though that assistance was given only by telephone. So, while I have chosen to restrict the categories of "number of mediations" and "cases settled at mediation" to only those where actual meetings took place, and have chosen not to create a category such as "telephonic resolutions" or the like, I do recognize, in deference to our mediators, that credit for a portion of those settlements rightfully belongs to them.

Notwithstanding the large number of mediation requests, then, one half of all negotiations settled without third-party assistance. This number, though, is also lower than that reported in other states.[21] The reasons, in my judgment, are evident from the statute itself and the bargaining climate in Iowa.

[21] *See,* for example, Stern *et al., supra* note 9.

First, as was mentioned concerning the large number of mediation requests received by PERB, many requests are received when the negotiations are still progressing, and inevitably mediators enter some of those cases. Mediation is requested not necessarily because impasse has been reached, but because the statutory date for requesting mediation has arrived. Second, and closely related to the first, the parties in many instances lack significant bargaining experience. In the first year particularly, mediators reported time and again that what had been described as an insoluble impasse was resolved in only a very few hours of mediation.

The slight increase in "prerequest" voluntary settlements in the second year is likely attributable to the emphasis placed on meeting the timelines in the law. During the first year, when there was uncertainty over the degree of importance of the timetable and a declaratory ruling requiring relatively strict adherence, a larger percentage of the total negotiations requested mediation. In the second year, following a PERB decision that the time parameters were directory and arbitration was available after the budget-certification date, more negotiations settled without submission of a request for mediation.

With regard to the remainder of Table 1, the results of the two years are nearly identical. Mediation occurred in nearly one half of all negotiations and mediators have settled three fourths of the cases they have entered. That number, surprisingly high, is again largely attributable to the same factor which pervades all these statistics: the timing of the impasse procedures (coupled perhaps with the inexperience of first-time bargainers). In any event, in 1975–1976, only 12 percent of the total negotiations remained unresolved after mediation, and only 13 percent in 1976–1977.

To fully understand the disposition of the remaining cases, one must remember that the parties are permitted to negotiate impasse procedures other than those in the statute. About one fourth of those reaching impasse advance under "independent" procedures, while the remainder follow the statute. But even of this minority who deviate, most operate essentially by the statutory method, employing only minor departures such as expanding the size of the list of arbitrators, calling for a list of fact-finders, or some other minor modification in the statutory procedure. The remainder, about 12 percent of all parties who reach impasse, eliminate fact-finding as an impasse step.

In each of the two seasons examined, then, about 10 percent of the universe went to fact-finding. And of those, about half were resolved at that stage, either by acceptance of the fact-finder's recommendations or by further negotiation after issuance of his report. My own observation is that the percentage of cases where both parties adopted the fact-finder's report without modification was higher in the first year than in the second. In the second year it was more likely that the parties used the fact-finder's report as a catalyst to, or the basis for, a negotiated settlement. That, however, is only a "seat of the pants" speculation, from my own observations, and not an empirically based conclusion.

These results of fact-finding must be observed carefully in light of the inclusion of the fact-finder's recommendation on each issue as an alternative for the arbitrator's forced-choice selection. Professor Kochan recommended elimination of fact-finding in New York police and fire disputes;[22] Lawrence Holden called it the cornerstone of the Massachusetts procedure.[23] How one views these data (coupled, of course, with more subjective opinions reached from personal observations) determines into which camp the Iowa fact-finding is placed. Viewed negatively, fact-finding resolved only about 5 percent of all negotiations, and a mere 12 percent of the cases which used third-party services. Viewed positively, however, fact-finding has resolved over half the total cases employing it. For the combined two-year period, a full 53 percent of all fact-findings resulted in settlement, notwithstanding the availability of arbitration.

A second element that can be examined to judge the value of fact-finding is the reduction in the number of issues between fact-finding and arbitration, as well as a comparison of the number of arbitrated issues in cases where fact-finding was eliminated by mutual agreement of the parties. Preliminary studies seem to show that the number of issues is significantly reduced at fact-finding.[24] A more detailed and complete analysis has been undertaken, however, by University of Iowa professors

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[22]Kochan, Ehrenberg, Baderscheider, Jick, and Mironi, An Evaluation of Impasse Procedures for Police and Firefighters in New York State (Ithaca: New York State School of Industrial and Labor Relations, Cornell University, 1976).

[23]Holden, *Final Offer Arbitration in Massachusetts: One Year Later,* 31 Arb. J. 26 (1976).

[24]1 Iowa Public Employment Relations Bulletin (IPERB) No. 3 (Winter 1977); 2 IPERB No. 1 (Fall 1977).

Daniel Gallagher and Richard Pegnetter[25] and will be reported soon. That study will show, in a more conclusive manner than I can attempt from my cursory examination, that fact-finding has succeeded in significantly reducing the number of issues at impasse.

The bottom line, however, in all this discourse is arbitration. The number of cases going to arbitration, as a percentage of all negotiations, was 5.9 percent in 1975–1976 and 7.2 percent in 1976–1977 (see Table 2). These figures are, of course, most important. The use of arbitration in Iowa has remained, by comparison with other states, extremely low. In their comprehensive examination of the Pennsylvania, Michigan, and Wisconsin experiences, Stern *et al.* found a use of arbitration ranging from a high of approximately 30 percent in Pennsylvania to a low of 11 percent of Wisconsin.[26] Iowa has remained well below 10 percent.

I have no easy explanation for this low use of arbitration. I would like to believe that it results from the rigidity of the Iowa arbitration procedure and PERB's emphasis on providing intense and continuing mediation assistance. But the conventional wisdom would suggest that the Iowa final-offer procedure is not rigid enough. As against the incidence of its usage, conventional arbitration is thought to be the least repulsive, and thus most utilized, and final-offer-package the most repulsive, and thus least utilized. This appears to be supported by the experiences in Pennsylvania, Michigan, and Wisconsin. By that logic, how-

TABLE 2

Method of Settlement—All Cases

	1975–1976		1976–1977	
	Number	Percent	Number	Percent
No third-party services	225	53.5	310	54.3
Mediation	145	34.4	185	32.4
Fact-finding	26	6.2	33	5.8
Arbitration	25	5.9	41	7.2
Totals	421	100	569	99.7[a]

[a]Two cases remain unresolved.

[25]The Gallagher and Pegnetter paper is now under review for publication.
[26]*Supra* note 9.

ever, Iowa is an anomaly. Although its arbitration has a nonbargaining, adjudicative character (no mediation by the arbitrator, no amendment of final offers), it should be less repulsive than final-offer-package, because the arbitrator's selection is on an issue-by-issue basis and the fact-finder's recommendation is an available choice on each issue. Assuming the fact-finder's report is reasonably close to an acceptable settlement, there is clearly less theoretical danger in proceeding to arbitration than under a package-final-offer system.

Yet the numbers indicate otherwise; less than 50 percent of the fact-finding cases and less than 8 percent of all negotiations go to arbitration. The full explanation may remain unknown, but I can posit some logical reasons for this unusually low arbitration usage: the emphasis placed, by the statute and PERB, on negotiations and mediation as opposed to adjudication; the short period for which statistics are available (the percentage did rise in the second year, though moderately); the early inexperience of most bargainers; and the economic climate in which bargaining has occurred.

This last factor deserves further comment. Iowa's political subdivisions have in recent years operated in a rather predictable fiscal environment. They have not suffered the fiscal crises of many other jurisdictions, and growth in revenues has been modest, but certain. This is particularly true for schools, and will be discussed a little later. Suffice it at this point that the state has enjoyed a surplus and its political subdivisions, with only one or two exceptions, have likewise enjoyed a reasonable measure of economic health. The result has been that budgets have grown sufficiently to avert extreme employee discontent, but with calculable limitations which put both sides on notice of the parameters of the possible. The significance of this phenomenon to the bargaining process is difficult to assess, but that it has had an effect is certain.

This, at any rate, is the general record of the Iowa arbitration statute. Approximately half of all negotiations have settled without outside assistance. Another third settled through mediation. And the remainder have entered the more formal adjudicative impasse machinery, with approximately 7 percent requiring an arbitration award.

Comparison by Type of Employer

Tables 3.1 and 3.2 show the stages of settlement by type of employer—city, county, school district, and state. By far, of course, most of the bargaining in Iowa has been by teachers. Seventy-six percent of all first-year negotiations and 68 percent of all second-year negotiations involved school districts, the vast majority of which were teacher disputes. Thus, the small number of negotiations of nonschool employers cannot be used to "prove" much by comparison. With that caveat, nonetheless, some observations can be made from the apparent differences in how various employer-employee groups have used the impasse procedures. Iowa, after all, is the first opportunity to observe the operation of an interest-arbitration procedure available to the full range of nonfederal public employees.

Most of the fluctuations from year to year and between city and county can likely be attributed to the smallness of the numbers. For example, the number of county cases settled without third-party intervention in 1975–1976 is much lower than the corresponding figures for other groups, and even much lower than its own corresponding rate for 1976–1977. But little can

TABLE 3.1

Method of Settlement by Employer Group
(Expressed in Actual Number of Cases)

	1975–1976			
	Schools	City	County	State
No third-party services	168	41	16	—
Mediation	121	15	9	—
Fact-finding	20	4	2	—
Arbitration	12	7	6	—
Totals	321	67	33	—
	1976–1977			
	Schools	City	County	State
No third-party services	202	64	44	0
Mediation	147	25	10	3
Fact-finding	22	5	6	0
Arbitration	15	18	6	2
Totals	386	112	66	5

be concluded from this, in my judgment. There were only 33 county units bargaining in that period, and the higher use of impasse procedures could reflect late certifications that forced a premature propulsion into the impasse procedures, less experience on both sides of the county bargaining table, or a number of other variables in combination. The point, again, is that further analysis would not likely be fruitful in any event, as the raw numbers to be dealt with are so small. As the volume of data grows in the next few years, the variations may very well disappear, and most certainly will at least decrease.

One phenomenon is most obvious from these tables, however. School disputes, the bulk of the reported cases, show an extremely low use of arbitration—less than 4 percent in each of the two reported periods. The significance of this percentage cannot be overstated. It alone accounts for the overall low use of interest arbitration in the state. The other groups have used arbitration at an overall average rate of about 14 percent, a figure that more closely parallels the experience in other states. But education, which constitutes the majority of Iowa bargaining relationships at this time, has made little resort to arbitra-

TABLE 3.2

Method of Settlement by Employer Group
(Expressed in Percent)

	1975–1976			
	Schools	City	County	State
No third-party services	52.4	61.2	48.4	—
Mediation	37.7	22.4	27.3	—
Fact-finding	6.2	6.0	6.1	—
Arbitration	3.7	10.4	18.2	—
Totals	100	100	100	—
	1976–1977			
	Schools	City	County	State
No third-party services	52.3	57.1	66.6	0
Mediation	38.1	22.3	15.2	60
Fact-finding	5.7	4.5	9.1	0
Arbitration	3.9	16.1	9.1	40
Totals	100	100	100	100

tion, resulting in an average arbitration usage under 4 percent for the two years reported. This low use of arbitration in school disputes is a phenomenon difficult to explain. I can at best speculate that two factors provide the rationale for it: the bargaining history of teachers in Iowa, and the system of funding in Iowa's schools. The first is likely less important than the second.

Iowa was not, prior to passage of the bargaining law, heavily organized in the public sector, with two exceptions: firefighters and teachers. But even with respect to firefighters, few contracts were negotiated, due to the relatively small number of larger cities and the traditional use of volunteer departments in smaller communities. Teachers, however, were well organized even before the inception of formal collective bargaining, and a great number of school districts had bargained with their employees for years prior, although the form of that bargaining ranged from genuine negotiations to an annual presentation of teacher-committee recommendations to the local school board. In any event, there was some experience. More important, the basis for bargaining relationships was established. The degree to which this history has determined the pattern of teacher bargaining is unknown, but that it has had some effect can be stated with relative certainty.

The second factor, however, is the more likely determinant of the high rate of voluntary settlements in Iowa education. Iowa's schools are financed through a foundation system which has largely fixed the level of local tax support. Increases in available funds come primarily from state aid and are dependent upon student enrollment and an annual growth factor tied to various economic variables, including the level of state general-fund revenues and the consumer price index. School budgets, through this foundation formula, have grown steadily and predictably, providing a reasonable range for settlement. In fact, many teacher negotiations center as much on mutual agreement on available funds as on the allocation of those funds. With a small, but generally adequate, growth in the "pie," dividing it has not been particularly difficult in most cases. An excellent example is a clause providing that an established percentage of all "new" money will be allocated to salaries. By this method, wage rates are increased according to a predetermined formula for distribution of future funds, and without further bargaining.

Another bargaining benefit of this funding system is the par-

tial removal of the bargaining process from the political arena. The school board need not have as great a concern about local taxpayer reaction when the bargaining outcome has no immediate impact on property-tax assessments. The result is that bargaining is conducted in an atmosphere less pervaded by the school-board member's concern over taxpayer reaction. Whether this is good or bad is a matter of personal opinion, but clearly it is an atmosphere more conducive to peaceful negotiations.

In summary, a breakdown of settlements by employer groups shows a rather uniform distribution of settlements through all categories, with the overwhelming exception that arbitration has been used much more frequently in disputes outside the field of education. Arbitration has occurred in less than 4 percent of all school negotiations, a phenomenon likely attributable to the state's system of funding.

"Independent" Procedures and the Elimination of Fact-Finding

I have previously mentioned the apparent success of fact-finding in settling disputes and reducing the number of arbitrated issues. Fact-finding can also be reviewed, however, by a comparison of cases where it is used with those in which it has been eliminated as an impasse step. Table 4 displays the method of settlement of all disputes, with a division between negotiations that have proceeded under the statutory impasse method and those that have proceeded under independent procedures. One could reasonably expect that the negotiations conducted under independent procedures would result in more voluntary settlements for two reasons. First, the ability to even agree to a variation from the statutory scheme should be at least suggestive of a relationship more conducive to settlement.[27] Second, because a common deviation from the statutory scheme is the elimination of fact-finding, the use of arbitration should decrease under independent procedures under the theory that more uncertainty and inflexibility means less use. If the fact-finder's report is at all within the range of expected settlement, its effect could be predicted to make arbitration more attractive

[27]Anderson, MacDonald, and O'Reilly, *Impasse Resolution in Public Sector Collective Bargaining—An Examination of Compulsory Arbitration in New York*, 51 St. John's L. Rev. 453 (1977).

by reducing the danger of an award egregious to either side.

Strangely, the data reveal just the opposite. For the combined period, those using independent procedures were over *six times* more likely to conclude their disputes in arbitration. Remember also that the use of fact-finding prior to arbitration has evidenced a significant reduction in the number of issues going to arbitration. Both these phenomena are contrary to what might be expected. Further study may be necessary before any definitive explanation can be attempted. Perhaps it is simply that fact-finding is invaluable in the process, a conclusion which would be consistent with Holden's evaluation of the Massachusetts experience.[28] But again, that would seem to be at odds with the generally prescribed belief that the use of arbitration should inversely correlate with its lack of predictability.

One last observation about fact-finding in the Iowa law is its effective transformation of the arbitration proceeding into a "show cause" hearing on why the fact-finder's recommendations should not be affirmed by the arbitrator. I state that not necessarily because the hearings have been conducted with that

TABLE 4

Method of Settlement: Statutory vs. Independent Procedures

	1975–1976	
	Statutory Procedures	Independent Procedures
No third-party services	184	41
Mediation	117	28
Fact-finding	26	—
Arbitration	7	18
Totals	334	87
	1976–1977	
	Statutory Procedures	Independent Procedures
No third-party services	253	57
Mediation	140	45
Fact-finding	31	2
Arbitration	16	25
Totals	440	129

[28] *Supra* note 23.

tenor, but because the arbitrator has selected the fact-finder's recommendations in well over three fourths of all cases. This approximates the figures reported in New York by Arvid Anderson, where 70–75 percent of all issues decided by an arbitrator result in affirmation of the fact-finder's recommendation.[29]

If an explanation is to be found for the apparent success of fact-finding, it is likely due to this high rate of acceptance of fact-finders' reports by arbitrators. Although arbitration should become more palatable when the result becomes more predictable, it is possible that as the predictability approaches certainty, the attractiveness of arbitration diminishes, and its costs simply outweigh its probable benefits. Stated in other terms, the cost of disagreement may exceed the cost of agreement when the odds are 4-to-1 against any significant gain in arbitration. In any event, all preliminary data indicate that fact-finding is an effective mechanism in the Iowa impasse procedures.

A Look at the Third Year

At this writing the final tally is not in for the 1977–1978 bargaining period. It is, however, a certainty that two significant findings from the previous two years remain valid. First, fact-finding has continued its successful role in the statutory impasse procedures; although the use of fact-finding declined somewhat in the third year, it continues to settle a full one half of the cases utilizing it.

Second, the percentage of disputes requiring an arbitration award as the terminal step remains low, and in fact will likely be smaller than the previous years. The projection for the third year is that arbitration will be used in about 5.5 percent of all negotiations.

Other Observations

A few remaining observations are in order and will be offered without long explanation, either because no explanation is necessary or because they are personal observations without detailed statistical support.

First, there have been no strikes during the course of these three years of bargaining under the act. Because there were only

[29] *Supra* note 27.

a few during the several years preceding enactment of the statute, however, the absence of strikes cannot necessarily be attributed to it.

Second, it appears from my perusal of the arbitration awards that arbitrators have shown a conservatism on both economic and noneconomic matters. On economic items, it appears that arbitrated settlements generally are slightly less than negotiated settlements. On noneconomic matters, arbitrators show a marked tendency to leave "trail blazing" into new fringe-benefit areas to negotiators.

Finally, there has been no general outcry against arbitration. Few appeals of arbitration awards have been taken. In total, arbitration has been accepted, even if in some instances grudgingly, by both management and labor.

Conclusions

The Iowa impasse procedure has now operated for two complete bargaining seasons and most of a third. The statute provides for mediation, fact-finding, and a modified form of final-offer-by-issue arbitration, with the fact-finder's recommendation an alternate selection for the arbitrator on each issue. The arbitration proceeding is moderately rigid and judicial, not permitting amendment of final offers or mediation by the arbitrator. The results are encouraging, particularly when viewed as the first full-blown experiment with legislated arbitration for public employees other than those in the "essential" services. Low usage of arbitration, particularly among teachers and other educational employees, has left a high proportion of voluntary settlements, although the time parameters have resulted in an overuse of mediation. Fact-finding shows a surprisingly high success ratio both in resolving disputes prior to arbitration and reducing the number of arbitrated issues, results contrary to Kochan's findings in New York and suggestive of a fact-finding role more similar to that reported by Holden in Massachusetts —that of being "the primary stage of a two-step arbitration proceeding" and "the cornerstone of the entire impasse procedures." Further study may be necessary, and time itself may be a significant factor, but the role of fact-finding as it looks today may be reported as successful.

It is possible, of course, that the use of arbitration will escalate as the process becomes more familiar to the parties. It is admit-

tedly too early to tell. Although a slight increase in cases going to arbitration is apparent in the second year, the third year may likely not continue that trend. Further complications and changes in the timetable may also put a conclusion even farther into the future, as the time parameters of the impasse procedures continue to have an effect on the utilization of arbitration.

The greatest difficulty in administration of the statute has been the time limits under which bargaining must occur. Because of their budget-making constraints, cities have felt it necessary to conclude bargaining by March 15 for a contract to commence on July 1. Other parties have resisted because of the inherent difficulty, in a time of inflation and rapidly changing economic conditions, in starting wage negotiations eight months in advance of the expiration of the current agreement. Additionally, the timing of the process has presented difficulties for schools. Finally, the prospect of appointing several hundred mediators, followed by tens of fact-finders and a few dozen arbitrators in near simultaneous fashion, has been a unique problem for PERB, the administering agency.

Nevertheless, on the basis of the experience to date the Iowa procedure has worked well. It has been an effective alternative to the strike in providing a balance of bargaining power to ensure good-faith negotiations and the continued delivery of governmental services.