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# Public Employment Relations

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# FOREWORD

# PUBLIC EMPLOYMENT RELATIONS SYMPOSIUM: COLLECTIVE BARGAINING IN THE CALIFORNIA SCHOOLS*

**Senator Albert S. Rodda****

My purpose is to provide some brief historical background and to comment about the critical issues which are affected by the collective bargaining legislation. I'll begin my discussion with reference to the original Winton Act.[1] I was in the legislature when the Winton Act was passed, and I voted against it, although as a freshman senator in 1958 I was committed to collective bargaining for teachers. I was once president of Local 31 of the California Federation of Teachers in Sacramento, which had influenced my thinking on this issue.

As a former teacher, I was of the opinion that teachers should have an opportunity to negotiate in a more meaningful way with administrators and school board members. I was supportive of the Winton Act in concept and of collective bargaining in principle. Nevertheless, I voted against the Winton Act because of the manner in which the members of the negotiating council were chosen. There was no provision for exclusive representation, and in the Senate the word "confer," unqualified by a requirement of good faith, was substituted by amendment for the word "negotiate," which was contained in the Assembly version of the bill. The Winton Act was law which provided for a "negotiating council" which merely conferred and which did not provide for exclusive representation; so I voted "no."

The Winton Act was not implemented very well in some districts; consequently, about 1970, Senator Newton Russell (then an Assemblyman) introduced a bill which would have significantly amended the Winton Act. The bill was sponsored by the California School Boards Association. I introduced another bill. We finally reached a consensus, and the Russell bill

* The text of this foreword is based on a speech delivered by Senator Albert S. Rodda at U.C.L.A. in the Fall of 1975; these remarks are reprinted with the permission of Senator Rodda.

** California State Senator, Third District; author of S.B. 160, *enacted as* 1975 Cal. Stats., ch. 961, § 2, at 2247.

1. 1965 Cal. Stats., ch. 2041, § 2, at 4660 (repealed 1975).

became law. My bill was dropped, the bills were amended so that they were identical, and the Winton Act was amended by the Russell-Rodda Act.[2] It is the Winton-Russell Act which was amended by S.B. 160.[3]

The Russell Act was substantive in some respects. In the first place, it contained a definition of "impasse." Futhermore, it introduced language into the Winton Act requiring the parties to confer in a conscientious manner in an effort to reach an agreement, which strengthened the bare meet-and-confer provision. There was no provision for a written contract, but there was provision for mediation. There was provision for fact-finding, but not for publication of the recommendation of the factfinder. Even that legislation fell short of true collective bargaining. The Russell Act contained the same provisions relating to strikes as did the original Winton Act—reference to the Labor Code[4] section which courts have interpreted to deny the right of concerted action or the strike.[5] Again, there was no provision for exclusive representation. The absence of a contract provision became an issue in the Los Angeles teachers strike,[6] which occurred about the same time the Russell Act went into effect.

At that time, the California Teachers Association (CTA) did not favor collective bargaining for teachers, while the California Federation of Teachers (CFT) did. The following year, however, the CTA changed its historic position of opposition to one of support. In the same year Senator Dymally authored a substantive collective bargaining bill which was sponsored by both the CTA and the CFT. It was legislation that would have covered employees in the public education system from kindergarten through university; the bill was considered in the Senate Education Committee and died there. I voted against it because I believed that we should try to make the newly enacted Russell amendments work.

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2. 1970 Cal. Stats., ch. 1412, § 1, at 2680 (repealed 1975); 1970 Cal. Stats., ch. 1413, § 1, at 2683 (repealed 1975).

3. S.B. 160, Reg. Sess. (1975), *enacted as* 1975 Cal. Stats., ch. 961, § 2, at 2247 (adding CAL. GOV'T CODE §§ 3540-3549.3 (West Supp. 1978)).

4. CAL. LAB. CODE § 923 (West 1971).

5. Pasadena Unified School Dist. v. Pasadena Fed'n of Teachers, 72 Cal. App. 3d 41, 137 Cal. Rptr. 883 (1977); Los Angeles Unified School Dist. v. United Teachers, 24 Cal. App. 3d 142, 100 Cal. Rptr. 806 (1972); *see generally,* City of San Diego v. Am. Fed'n of State, County & Mun. Employees, Local 127, 8 Cal. App. 3d 308, 87 Cal. Rptr. 258 (1970); Almond v. County of Sacramento, 276 Cal. App. 2d 32, 80 Cal. Rptr. 518 (1969).

6. 1 CAL. J. 127 (1970).

There was a great deal of momentum being generated for legislation because of the CTA support of collective bargaining. The rivalry between the two organizations, the CTA and the CFT, for collective bargaining legislation for public employees in the public education sector became very intense. In addition, the economies imposed upon higher education by Governor Reagan had the effect of intensifying union activity within the two systems of higher education, especially in the State College and University system, where the whole concept of collegiality had not developed to the extent it had on the University of California campuses. As a result, the California State University faculty moved toward an approach to the problem of employee-employer relations which was oriented toward the union model—the collective bargaining model. Looking at the membership lists of teacher organizations during those critical years, you find dramatic increases, which created more pressure. The CFT had long supported collective bargaining, which meant that the school administrators and the school board members were fighting a rather difficult and almost losing battle on this issue.

Following Senator Dymally's effort, Senator Moscone became involved as principal author of legislation in 1973. The bill was S.B. 400, and included within its coverage employees in public education from kindergarten through the university system. There were five critical issues: (1) the inclusion of the two segments of higher education; (2) definition of scope; (3) language with reference to strike; (4) the agency shop; and (5) management rights. When the Moscone bill was under consideration, supported by teachers in all segments of public education, the administrators and the school board members testified to the effect that it lacked certain language they thought was important and that the language contained in the bill was too far-reaching in some respects. Their concerns included the absence of language with reference to strike, the wide-open definition of scope of bargaining, provision for the agency shop, and the lack of the provision with respect to management rights. The bill was opposed by the Regents of both the University of California and the State College system. I suggested to Senator Moscone, when the bill was presented to the Senate Education Committee, that he try to work a compromise.

The bill came back before the Senate Education Committee the following week, but without a compromise. The administrators and school board members were not the only uncom-

promising individuals. The uncompromising people were also the teachers, because they had political muscle in the legislature, and knew that this legislation would not likely become law because Governor Reagan would not sign it under any circumstances. I voted for the bill. It went to the Governor and he vetoed it.

In 1972, I chaired Senate Education Committee interim hearings on this subject, but when the Moscone bill was under consideration in 1973, I did not introduce legislation because I wanted a compromise or consensus piece of legislation to be considered seriously, and I knew what was going to happen with respect to the Moscone legislation. I suspected that no one would think about a compromise bill, so why waste my time? In that year, however, I assigned Mr. John Bukey to do the principal work in reference to collective bargaining. Mr. Jerry Hayward, Mr. Bukey, both consultants to the Senate Education Committee, and I met in my constituency with school board members and school administrators at their request. They said that they wanted to cooperate in an effort to improve the existing law because they recognized it had significant deficiencies. I said, "Well, there's no point in my undertaking that kind of task unless you are willing to make some compromises; I have to work with the teacher groups; you're going to have to work with the teacher groups; we're all going to have to work together." They agreed to such an arrangement.

At that time, I asked John Bukey to study the findings of the interim committee hearings, to look at the legislative proposal made by the local group, to consult with the teachers in the various segments of education, and to try to develop a legislative consensus. The idea was to obtain comments from all parties so that I could affirm that all groups had had an opportunity to examine the legislation, to understand the intent, and to respond in a constructive way.

I stated in response to the proposal made by the local group that I would struggle to achieve a "consensus." I determined that if I could obtain consensus in the Senate, I would oppose amendments in the other house which would substantively change the provisions of the legislation. If such amendments were made, they would create a bias and there would be no consensus. The bill developed pursuant to that effort was S.B. 1857, and the year was 1974.

Fortunately, we did develop a degree of consensus and John Bukey and I conferred with people throughout the state on the legislation. The United Teachers of Los Angeles (UTLA)

supported the bill despite the fact that it retained the Winton Act language with reference to strikes, that it had a restricted definition of scope of bargaining, and that it did not include provision for the agency shop. The associations also accepted the management rights language. However, some teachers confronted me with the charge that the bill was an outright betrayal of their interests. I argued that the bill contained some substantive improvements when compared to the existing law. The bill provided for a written contract, for exclusive negotiation, and for impasse negotiations, including mediation and public factfinding with recommendations. I also noted the positive aspects of the creation of a state employment relations board and the possibility of including binding arbitration of contract disputes.

Meanwhile the courts had been interpreting the Winton Act with conflicting results. These various constructions were helpful in stimulating, among the school administrators and school board members, a desire for a law which could be interpreted in a uniform manner and which would improve negotiations with teachers. They did not reach that position overnight. The leadership representing the school boards and the school administrators had to travel about the state educating their members and urging them to take a more positive attitude toward the legislation. Without that effort the bill would not have attracted the kind of support that emerged. The teachers, from their perspective, were not totally negative, but the two principal organizations, the CTA and the CFT, remained opposed to the legislation throughout 1974.

The community college system was included in the original version of the bill. That was my decision. However, I excluded the two segments of higher education—the University of California and the State University and Colleges system, because there were differences in their internal governance, which were of such a nature that they justified either a separate bill or their inclusion in a bill which would cover all state employees. The inclusion of the community colleges was justified because of the similarity of governmental organization and finance to the kindergarten-twelfth grade schools. They were included despite problems with the community college academic senates or faculty councils and their involvement in decisions affecting educational policy. I hoped we could resolve that issue. However, during the 1974 session I could not reach agreement with the community colleges; so I deleted them from the legislation, which eventually became S.B. 1857.

The legislation, the first product of the consensus effort, moved to the Assembly in 1974, after approval by the Senate. The bill was supported by school board associations, school administrators, the UTLA, the Classified School Employees of Los Angeles, and a few chapters of CTA and the CFT local in San Francisco. It was opposed by the faculty of the University of California and the State University and Colleges system because they wanted a comprehensive bill. They were afraid that if a bill which excluded them became law they might be left out permanently. S.B. 1857 failed in the Assembly Ways and Means Committee by one vote, after approval by the Assembly Education Committee.

The following year, 1975, I introduced S.B. 160, which was virtually identical to S.B. 1857. I did so with grave reservations because Speaker Moretti had introduced in 1974 a comprehensive bill, A.B. 1243, encompassing all public employees; this bill died in the Senate Policy Committee. In the same year, 1974, Senator Dills had introduced—and I had voted for—legislation (S.B. 32) to provide collective bargaining for local government employees. The Dills' bill was approved by the Senate and moved to the Assembly, where it died because the Speaker was determined to enact a comprehensive bill. The significance of this action is that total emphasis was placed on the enactment of comprehensive, not piecemeal legislation. The Moretti bill was assigned to interim hearings, and I was on the joint committee that conducted these hearings. The Assembly leadership, Senator Dills, and the new Governor were committed to comprehensive legislation, as were all teacher organizations throughout 1975.

As the 1975 session proceeded, I accepted amendments to S.B. 160 which modestly broadened the definition of scope, and I also introduced compromise language with reference to agency shop agreements. It is important to understand that an agency shop agreement under the provisions of the bill is a matter which may be negotiated. If a school board wishes to allow it, it may introduce such a provision into the contract; the issue would then have to be submitted to all affected employees for a vote. If the affected employees vote yes, every employee in that unit must pay a service-rendered cost fee. The legislation does not provide, however, for compulsory membership and does not authorize a union shop.[7] Furthermore, if

7. CAL. GOV'T CODE § 3543 provides, in part:
Public school employees shall also have the right to refuse to join or

different employee organizations compete in a representation election, only the winning organization may have the right of dues deduction. If an organization does not want to compete for the right of exclusive representation, it may state that its purpose is to be only an educational association, and it may then have the right of dues deduction for its membership. Some organizations have objected to this language because of opposition to exclusive negotiation and to membership protection provisions.

After the adoption of these amendments, especially those which broadened the definition of scope and authorized agency shops, and after the defeat of all the collective bargaining bills, the teacher groups, namely the CFT and CTA, began to be more responsive to S.B. 160. During the entire negotiations the school administrators and the school boards had accepted the bill as amended and did everything they could to achieve its enactment. Because the bill finally had the support of the major elements of the educational community, I was able to achieve favorable action by the Legislature and place the bill on the Governor's desk.

One major amendment was introduced to satisfy the Governor; the membership of the Educational Employment Relations Board was changed. The Board was to have had five members originally, but we reduced the membership to three, all of whom were to be appointed by the Governor. It was recognized that these individuals might function in the future as the administrators of a law affecting *all* public employees in the state; if so, the Board membership could then be expanded. If this amendment had not been accepted, we would not now have public school collective bargaining law.

We all kept faith with each other, and it was that kind of conscientious effort that solved a very difficult problem. The school boards and the school administrators wanted the law because of the Winton Act's wide open definition of scope as interpreted by the courts; they wanted a negotiating council

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> participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the public school employer, except that once the employees in an appropriate unit have selected an exclusive representative and it has been recognized pursuant to Section 3544.1 or certified pursuant to Section 3544.7, no employee in that unit may meet and negotiate with the public school employer.

CAL. GOV'T CODE § 3543 (West Supp. 1978) (enacted as 1975 Cal. Stats., ch. 961, § 2, at 2253).

which spoke for the majority of the teachers; they wanted a law that could be interpreted by a state board—the Educational Employment Relations Board—so that everyone concerned could know that the rules and regulations were statewide. I think that the law also has provisions which are for the benefit of the teachers. They recognized this; thus, they fully supported it.

The new law is no panacea. Its success will largely be determined by the objectivity of its administration by the Board. The educational community has acted responsibly; the legislature has acted responsibly; it is now the obligation of the Board to act responsibly.