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Legislative Power to Veto Collective Bargaining Agreements by Faculty Unions: An Overlooked Reality?

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Collective bargaining in higher education has surged in the past decade. Prior to 1960 federal sector employee unions existed but primarily filled the role of lobbying groups in petitioning Congress for greater benefits. Similarly, in state and local government, unions and collective bargaining existed, but in most instances without legal sanction. However, in 1962 President Kennedy signed into law Executive Order 10988, which gave official recognition to federal government unions. The order provided the impetus for federal employee unionism. Shortly thereafter, state legislatures followed the lead of the federal government and began enacting laws allowing state employees to form unions and bargain collectively. By 1981, thirty-eight states allowed discussion between management and public employees to one degree or another.[1]

In higher education the early movement toward unionization of faculty primarily began at two-year colleges. Subsequently, collective bargaining spread to the four year institutions. The effects of collective bargaining on universities and faculty have been the subject of rather extensive debate and is beyond the scope of this paper. In the discussion, however, one important fact has been overlooked by both proponents and critics of collective bargaining: Any part of the bargaining agreement reached by the board of regents and a public university faculty union concerning monetary matters is subject to approval by the state legislature. In other words even though both the union and the regents have painstakingly reached a final contract, the negotiated salary increases mean very little should the legislature choose not to provide the necessary funds.

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[1] Business Week, Apr. 27, 1981, at 116.

This paper discusses a recent court decision in Florida and an earlier one in California that have ruled on the question of whether a collective bargaining agreement negotiated by a public university faculty union is subject to subsequent appropriation of funds by the state legislature. A comparison of state statutes authorizing collective bargaining is presented to ascertain the extent of collective bargaining rights afforded to faculty in public higher education.

Florida: Statutory Limitations of a Constitutional Right to Collective Bargaining

In 1974, the Florida legislature approved the Florida Public Employee Relations Act,[2] an act which implements the constitutional rights of Florida public employees to bargain collectively.[3] The statutory scheme includes a Public Employee Relations Commission to administer public labor matters and enforce the provisions of the act. The act defines unfair labor practices by employees and labor organizations, and establishes step-by-step procedures for negotiation, arbitration, and resolution of impasses between unions and public employees.

Provisions of the act concerning state universities designate the Chancellor of the University System as the Chief Executive Officer. Under the act, the Board of Regents is the public employer for the administrative, faculty, and professional employees of the state universities.

Though the act is very comprehensive, the legislature insisted on checking the powers of public employee unions. Besides proscribing

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[2] Act of May 30, 1974. Chapter 74-100, 1974 Florida Laws 134 (codified as Fla. Stat. Ann. Sections 447.201-.607 (1977). For background see generally Schulman, *The Case of Frustrated or Unsuccessful Public Employee Collective Bargaining: A Review of the Developing Legal Concepts in Florida*, 30 U. FLA. L. REV. 867 (1978); Craver and La Peer, *The Legal Obligations of Governmental Employees and Labor Organizations Under the Recognition-Certification Provisions of the Florida Public Employees Relations Act*, 27 U. FLA. L. REV. 705 (1975); McGuire, *Public Employee Collective Bargaining in Florida, Past, Present, and Future*, UNIVERSITY L. REV., p. 26 (1973); McHugh, *The Florida Experience in Public Employers Collective Bargaining, 1974-1978: Bellwether for the South*, 6 FLA. ST. U. L. REV. 263 (1978).

[3] Section six of the Florida constitution provides that "the right of persons to work shall not be denied or abridged on account or membership or nonmembership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged. Public employees shall not have the right to strike." Fla. Const., Article 1, Section 6 (1968). Although the constitutional provision granted new rights to public employees, the scope of those rights was uncertain until the Florida Supreme Court decided Dade County Classroom Teachers Association v. Ryan. Interpreting the state constitution, the court held that "with the exception of the right to strike public employees have the same rights of collective bargaining as are granted private employees of Section 6." (255 So. 2d 6 (Fla. S. Ct, 1969), 60 LC ¶ 52.117).

the right to strike,[4] the act explicitly subjects agreements involving monetary matters to legislative approval via the appropriations process.

> Upon execution of the collective bargaining agreement, the chief executive shall, in his annual budget request or by other appropriate means, request the legislative body to appropriate such amounts as shall be sufficient to fund the provisions of the collective bargaining agreement. If less than the requested amount is appropriated, the collective bargaining agreement shall be administered by the chief executive officer on the basis of the amounts appropriated by the legislative body. The failure of the legislative body to appropriate funds sufficient to fund the collective bargaining agreement shall not constitute, or be evidence of, any unfair labor practice.[5]

The legislative perogative to appropriate less money than that necessary by the chief executive for pay increases in collective bargaining agreements was recently at issue in *United Faculty of Florida, et. al. v. Board of Regents.*[6] The United Federation of Faculty (UFF) represents approximately 5,000 faculty and professional employees of the State of Florida. In 1976, UFF entered into a two-year collective bargaining agreement with the Florida Board of Regents. The contract included a reopening clause allowing the parties to "negotiate certain monetary items for the 1977-78 portion of the two-year contract,"[7] thus making any financial agreement subject to legislative approval.[8]

The parties were unable to agree concerning salary increases, so a hearing was held before a special master,[9] as required by state law.[10] Negotiations subsequent to the special master's recommended order still proved unsuccessful.[11] The act requires legislative hearings to resolve the matter when either party rejects the special master's recommendation.[12]

Legislative hearings were avoided when on May 17, 1977, shortly before scheduled legislative hearings, the parties reached agreement. The contract required salary increases of 8.85 percent, totalling $6,647,905.[13] In June, a special session of the Florida Legislature approved the 1977-78 General Appropriations Act. The bill specifically required the agreement to be administered by the Board of Re-

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[4] F.S.A. § 447.505.
[5] F.S.A. § 447.309(2).
[6] 365 So. 2d 1073 (Fla. DC App., 1979), 1979-80 PBC ¶ 36, 488.
[7] *Id.* at 1074.
[8] F.S.A. § 447.309(2).
[9] 365 So. 2d 1073, 1074.
[10] F.S.A. § 447.403.
[11] 365 So. 2d. 1073, 1074.
[12] F.S.A. § 447.403(2)(c).
[13] 365 So. 2d 1073, 1074, 1076.

gents,[14] yet only appropriated $5,096,591. of the $6.6 million requested. The Florida statute requires an accompanying letter of intent in such cases. The letter prohibited pay increases exceeding 7.1 percent.[15]

The UFF protested, calling upon the Board to provide the agreed pay increases by allocating certain funds. After being rebuffed by the Board, the UFF petitioned for review, maintaining that "sufficient monies were appropriated in several line items of the Appropriations Act to allow implementation of the collective bargaining agreement between the parties."[16]

The District Court of Appeals of Florida unanimously affirmed the Board's position, rejecting the petition for review. The court applied four primary lines of analysis.

First, the court rejected the UFF's argument that a legislative letter of intent does not bind the Board. The court said since Florida statutes require such letters to be prepared by the Chairmen of the House and Senate appropriations committees,[17] they enjoy the force and effect of law. Additionally, even if the letter of intent had not been dispositive, it certainly indicated the legislature's will.[18]

Second, the court pointed out that the legislature did not appropriate an indeterminant amount of money which the Board could spend in its discretion. Instead, the requested $6.6 million was for bargaining unit salary increases, and the legislature appropriated $5.1 million for that purpose, and no more.[19]

Moreover, the legislature prescribed a 7.1 percent ceiling on salary increases for members of the bargaining unit. An attempt by the Board to allocate raises at an 8.85 percent level would have been "in blatant disregard of legislative strictures clearly articulated by the Appropriations Act and the letter of intent."[20]

In its third line of analysis, the court dealt with the UFF's strongest argument. The union argued that the Appropriations Act did not prohibit the use of other appropriated funds for funding the collective bargaining agreement. This contention received short shrift from the court, which noted that the absence of such a prohibition does not license the Board to spend appropriated funds as it wishes.[21]

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[14] *Id.* at 1074.
[15] *Id.* at 1077.
[16] *Id.* at 1074.
[17] F.S.A. § 216.181(1).
[18] 365 So. 2d. 1073, 1077.
[19] 365 So. 2d. 1073, 1078.
[20] *Id.*
[21] "For a ruling that each and every collective bargaining agreement is entitled to its alloca-

Finally, the court repudiated the argument that legislative failure to fund the agreement at the level requested constituted an impairment of contract obligations forbidden by the Florida Constitution. Florida statutes allowing collective bargaining by state employees specifically grant a legislative perogative to appropriate less than the amount requested to fund the agreement.

> That statute operates to make all collective bargaining agreements subject to the approval, through the medium of appropriations, of the legislative body. That the Legislature might not provide full funding for the collective bargaining agreement was a contingency well know to the parties before, during, and after negotiations.[22]

California: The Legislature's Inalienable Power of Appropriation

California courts, even before the enactment of a comprehensive statute, resisted initiatives to force legislative appropriation of money to pay for faculty salary increases authorized by the state board of regents. The regents of the University of California recommended pay increases of approximately seven percent for the 1970-71 fiscal year. Governor Reagan's proposed budget provided for a five percent salary increase. However, the legislature failed to provide funds for any salary increases for academic personnel. A class action suit was filed against the state on behalf of accademic personnel.

The state appellate court ruled in *California State Employees Association v. Flournoy*[23] that although the state constitution empowered the regents with authority to establish faculty salaries, the constitution did not grant authority to the regents or anyone else to compel the legislature to appropriate money for those salary increases.[24]

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tion off the top of the employer's aggregate appropriations would inevitably bring a least two such agreements into irremediable collisions." Fla. App., 365 So. 2d 1073, 1078.

[22] 365 So. 2d 1073, 1078.

[23] 32 Cal. App. 3d 219, 108 Cal. Rptr. 251 (1973).

[24] "(A)lthough, as petitioners allege, the Regents may be granted salary-fixing authority by the state constitution, there is nothing to suggest that they additionally are granted authority to compel the California Legislature to appropriate money to pay any faculty salary increases which the regents may have authorized or 'fixed.' " *Id.* at 233, 108 Cal. Rptr. 251, 262. "Thus it is apparent that the legislature could not, and did not, delegate to the Trustees any salary-fixing authority which could not be entirely frustrated by legislative failure to appropriate funds." 32 Cal. App. 3d 219, 234; 108 Cal. Rptr. 262.

Only one other court has considered the question of whether a collective bargaining agreement negotiated by a public employee association is subject to subsequent appropriation of funds by the state legislature. In State of Delaware v. American Federation of State, County, and Municipal Employees Local 1726 [298 A.2d 362 (Del. Chanc Ct., 1972), 1 PBC ¶ 10, 316.], the collective bargaining agreement between the union of public employees and the Division of

The faculty members also argued that the refusal to appropriate was tantamount to an unlawful bill of attainder, thus violating the state constitution. The court distinguished refusal to spend funds from a bill of attainder. The hallmark of a bill of attainder is the singling out of a group or an individual by a legislatively mandated decree of punishment. A simple refusal to spend state funds was not the same as a legislatively mandated decree of punishment directed at college faculties.[25]

State Statutes: A Limited Right of Collective Bargaining for Higher Education Faculty

An analysis of state laws indicates that thirty-one states in some way provide for collective bargaining by faculty in higher education. Of these, the vast majority (twenty-two) have implemented a general and comprehensive public employee bargaining statute, covering all state employees including faculty in higher education. Two states, California and Maine, have enacted a specific higher education statute while the other seven states provide for collective bargaining based on non-legislative authority as, for example, by Attorney General Opinion in Louisiana.

Historically, the right of public employees to strike has been prohibited, even though the prohibition is frequently ignored. The sentiment of state legislatures, however, still runs strong as the state statutes in only five states grant a limited right to strike; for example,

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Adult Corrections of the Department of Health and Social Services of the State of Delaware called for the department to assume the costs of family coverage of a Blue Cross and Blue Shield health insurance plan. The department subsequently refused to provide the health insurance, contending that the state legislature had not appropriated the necessary funds.

The Delaware Court of Chancery held that the agreement entered into under the collective bargaining statute did not bind the legislature to appropriate the necessary funds. The court ruled that "[o]ur constitution forbids the expenditure of public funds without appropriation, and the power to appropriate cannot be delegated." Thus, it did not matter that the statute authorizing collective bargaining by public employees was silent on the issue. Nor did it matter that the particular agreement of the parties, contrary to past agreements, did not contain a clause specifically stating that it was subject to legislative approval.

[25] 32 Cal. App. 3d 219, 224-5; 108 Cal. Rptr. 251, 255-6 (1973). The Association contended, among other things, that the refusal of the legislature to appropriate funds for salary increases of academic employees was: "because of the existence of the political and social conditions in the . . . campuses and the disturbances and unrest engendered thereby, which resulted, at times, in force, violence, and unlawful practices by the students, and which the State Legislature arbitrarily and without any factual basis attributes to the action or inaction of the academic employees [and] [t]he sole reason for the Legislature's denial of the funds . . . was to punish the academic employees for the existence of the political and social conditions on state campuses which it wrongfully attributes to petitioners." 32 Cal. App. 3d 219, 223-4, 108 Cal. Rptr. 251, 255.

the Alaska statute provides that public employees in the class to which faculty in higher education belong may strike for a limited time (to be determined by the "interests of health, safety, or welfare of the public")[26] if a majority of the employees in that collective bargaining unit vote by secret ballot to do so. Only Montana recognizes an absolute right of public employees to strike by virtue of the state supreme court's interpretation of the collective bargaining statute.[27]

In keeping with the historic reluctance of state legislatures to grant excessive power to public employee unions, only two states, New York and Rhode Island, require arbitration. The statutes of nine states provide binding arbitration at the option of the parties, while Oregon specifies a limited form of arbitration.

The most remarkable conclusions to be drawn from the analysis of the laws of the fifty states are in the area of legislative veto of collective bargaining agreements. Of the thirty-one states that have made some provision for collective bargaining by public employees, twenty-one have a statute explicitly stating that the financial terms of any agreement are subject to approval of the state legislature. Of the remaining ten states, only four have a statute allowing public employees unions; provisions for public employee collective bargaining in the other six are based on non-legislative authority. In other words, none of the state statutes granting collective bargaining rights to public employees has attempted to reduce the power of the legislature to control the appropriation of funds. Apparently, the legislatures in the ten states which did not specify that a public employee collective bargaining agreement is subject to appropriation of funds by the legislature felt that it was not necessary, because the constitution in each state stipulates that only the legislature has the power to appropriate state funds. The constitution of Iowa is typical: "No money shall be drawn from the treasury but in consequence of appropriation made by law."[28] The table on the following pages presents a summary of the major provisions of the public sector bargaining laws of the different states.

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[26] Alaska Stat. § 23.40.200.

[27] State Dept. of Highways v. Public Employees Craft Council, 529 P. 2d 785 (1974).

[28] Iowa Const. Art. 3 § 24.

STATE LAWS GRANTING BARGAINING RIGHTS TO HIGHER EDUCATION FACULTY

	Collective Bargaining for Faculty in Higher Education	Legislative Veto	Right to Strike	Impasse Broken by Binding Arbitration
Alabama	None	N/A[1]	N/A	N/A
Alaska	General Public Employee Statute Alaska Stat. §23.40.070	Yes §23.40.215	Limited right to strike[2] §23.40.200	No[3]
Arizona	Atty. Gen. Opin. allows all public employees to "meet and discuss" Op. Atty. Gen. No. 74-11 (R-24) May 20, 1974	No reference[4]	No reference	No reference
Arkansas	Atty. Gen. Opin. holds no statute bars state from recognizing a public employees' union[5] Op. Atty. Gen. 77-79 (1977)	No reference[6]	No[7]	No reference

[1] In this table "N/A" or "Not Applicable" is used under the last three categories ("Legislative Veto," "Right to Strike", and "Binding Arbitration") when the state in question has no provision for public employee collective bargaining. On the other hand, "No Reference" is used under the last three categories when the state in question makes some provision for public employee collective bargaining (be it statute, court opinion, attorney general opinion, or executive order), but the provision makes no reference to the category in question.

[2] In this table "limited right to strike" means that public employees have the right to strike only under circumstances enumerated in the public employee collective bargaining statute. For example, Alaska provides that public employees in the class to which faculty in higher education belong may strike for a limited time (to be determined by the "interests of health, safety, or welfare of the public") if a majority of the employees in that collective bargaining unit vote by secret ballot to do so.

[3] Under the category of "Binding Arbitration", "No" means that although the state in question might allow some sort of arbitration, it does not provide for binding arbitration.

[4] Although no specific legislative veto appears in the Opinion of the Attorney General, the Arizona Constitution provides that the "Legislative shall make such appropriations, to be met by taxation, as shall insure the proper maintenance of all State educational institutions. . ." Ariz. Const. art. 11, §10 (1910).

[5] The opinion also states that no statute bars the state from bargaining with a public employees union, nor from reducing an agreement to writing. *Op. Att'y Gen.*, 1977-79 (1977). The Arkansas Supreme Court, however, earlier ruled that state employers are under no legal duty to bargain collectively with employees. Fort Smith v. Council, 433 S.W. 2d 153 (1968).

[6] The article entitled "Legislative Department" of the Arkansas Constitution, Art. 5 §29 provides that "[n]o money shall be drawn from the treasury except in pursuance of a specific appropriation made by law."

[7] The Arkansas Supreme Court has held in dicta that there is no right to strike for public employees. Potts v. Hay, 318 S.W. 2d 826 (1958).

	Collective Bargaining for Faculty in Higher Education	Legislative Veto	Right to Strike	Impasse Broken by Binding Arbitration
California	Higher Education Employees Statute Cal. Gov't. Code §3560 (West)	Yes §3572	No reference	No
Colorado	Supreme Court Opinion holds collective bargaining agreements in public sector not to be invalid per se, notwithstanding no express statutory authorization[8]	No reference[9]	No reference	No reference
Connecticut	Public Employee Statute, specifically including faculty in higher education Conn. Gen. Stat. §5-270	Yes §5-278	No §5-279	No
Delaware	Public Employee Statute Del. Code Tit. 19, §1301 et seq.	Yes[10]	No Tit. 19 §1312	No
Florida	Public Employee Statute Fl. Stat. Am. §447.201	Yes §447.309	No §447.505	No.
Georgia	None	N/A	No[11] Ga. Code Ann. §89-1301	N/A
Hawaii	Public Employee Statute, specifically including faculty in higher education Haw. Rev. Stat. §89-1	Yes §89-10(b)	Limited right to strike §89-12	At option of parties §89-11
Idaho	None	N/A	N/A	N/A

[8] Littleton Educational Assn. v. Arapahoe County School District No. 6, 191 Colo. 411, 553 P.2d 793 (1976).

[9] In the article entitled "Legislative Department" of the Colorado Constitution, art. V, §33 provides: "No Money shall be paid out of the treasury except upon appropriations made by law."

[10] The Delaware Supreme Court has held that public employees collective bargaining agreements are inherently subject to legislative veto. State v. American Federation of State, County, and Municipal Employees, Local 1726, 298 A.2d 362 (1972).

[11] Strikes by public employees are prohibited by Ga. Code Ann. §89-1301.

	Collective Bargaining for Faculty in Higher Education	Legislative Veto	Right to Strike	Impasse Broken by Binding Arbitration
Illinois	Executive Order allows state employees to meet and negotiate in good faith.[12]	Yes: negotiations on wages, etc. are subject to laws regarding appropriation of state funds.	No reference	No reference
Indiana	None[13]	N/A	N/A	N/A
Iowa	Public Employee Statute Iowa Code Ann. §20.1 et. seq.	Yes[14]	No §20.12	At the option of the parties §20.22
Kansas	Public Employee Statute Kan. Stat. §75-4301	Yes §75-4300(c)	No §75-4333(c)(5)	No
Kentucky	None	N/A	N/A	N/A
Louisiana	Atty. Gen. Opin. allows collective bargaining for all state employees Op. Atty. Gen. April 3, 1972	No reference	No reference	No reference

[12] Exec. Order No. 6, (September 4, 1973).

[13] Indiana's comprehensive statute on collective bargaining in the public sector, Ind. Code Ann. §22-6-4-1, which specifically excluded faculty members of any university, was declared unconstitutional for unrelated reasons in Indiana Education Employment Relations Board v. Benton Community School District, 365 N.E.2d 752 (1977).

[14] Iowa Code Ann. § 20.17(6) states:

> No collective bargaining agreement or arbitrators' decision shall be valid or enforceable 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. A collective bargaining agreement or arbitrators' award may provide for benefits conditional upon specified funds to be obtained by the public employer, but the agreement shall provide either for automatic reduction of such conditional benefits or for additional bargaining if the funds are not obtained or if a lesser amount is obtained.

	Collective Bargaining for Faculty in Higher Education	Legislative Veto	Right to Strike	Impasse Broken by Binding Arbitration
Maine	Higher Education Employee Stat. Me. Rev. Stat. tit. 26 §1021	Yes[15]	No Tit. 26 §1027(2)(c)	No.
Maryland	None	N/A	N/A	N/A
Massachusetts	Public Employee Statute Mass. Gen. Laws Ann. Ch. 150C	Yes Ch. 150E §7(b)	No Ch. 150E §9(a)	At option of parties Ch. 150E §9
Michigan	Public Employee Statute Mich. Comp. Laws[16] Ann. §423.201	No reference[17]	No §423.202	No
Minnesota	Public Employee Statute Minn. Stat. Ann. §179.61	Yes §179.66(6) §179.74(5)	Limited right to strike[18] §179.64	At option of parties §179.64
Mississippi	None	N/A	N/A	N/A

[15] Me. Rev. Stat. tit. 26, §1026(1) states:
It shall be the obligation of the university, academy, vocational-technical institutes or state schools for practical nursing and the bargaining agent to bargain collectively. . . . Cost items in any collective bargaining agreement of vocational-technical institutes or state schools for practical nursing employees shall be submitted for inclusion in the Governor's next operating budget within 10 days after the date on which the agreement is ratified by the parties. *If the Legislature rejects any of the cost items submitted to it, all costs items submitted shall be returned to the parties for further bargaining. Cost items shall include salaries, pensions and insurance.* Although it is not clear whether the italicized language of the statute refers to all cost items or only those concerning agreements of vocational-technical institutes and nursing schools, it is submitted that there is no valid reason to limit the applicability of the legislative veto to these two categories.

[16] The wording of the Michigan Act appears to be a "meet and confer" statute. In actuality, Mich Comp. Laws Ann. § 423.215 *requires* the public employer to bargain collectively, even though this duty is defined merely as "the mutual obligation . . . to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment."

[17] Although there is no reference to a legislative veto in the statute itself, the state constitution vests the power to appropriate money for state colleges and universities in the legislature. Mich. Const. art. 8, § 4 (1963).

[18] Minn. Stat. Ann. §179.64 prohibits strikes by public employees unless, *inter alia*, the legislature disapproves the collective bargaining agreement.

	Collective Bargaining for Faculty in Higher Education	Legislative Veto	Right to Strike	Impasse Broken by Binding Arbitration
Missouri	None[19]	N/A	N/A[20]	N/A
Montana	Public Employee Statute Mont. Rev. Codes Ann. §39-31-101	Yes §39-31-102	Yes[21]	At option of Parties §39-31-310
Nebraska	Pubic Employee Statute §48-801 et. sy.	Yes §48-837 §48-810.01	No §48-831(3)	No
Nevada	None	N/A	N/A[22]	N/A
New Hampshire	Public Employee Statute, specifically including faculty in higher education N.H. Rev. Stat. Ann. §273-A	Yes §273-a:(3) (II)(b) §273-A:12(V)	No §273-A:13	At option of parties[23] §273-A:12(V)
New Jersey	Public Employee Statute N.J. Stat. Ann. §34:13A	No reference[24]	No[25] §34:13A-A	No
New Mexico	None	N/A	N/A	N/A

[19] Missouri has a public employee collective bargaining statute which, however, specifically excepts "all teachers of all Missouri schools, colleges, and universities," Mo. Ann. Stat. §105.510. (Vernon).

[20] The public employee statute referred to in note 19 *supra* prohibits strikes among the employees covered by that statute.

[21] Although the statute itself makes no reference to the right of public employees to strike, the Montana Supreme Court has recognized such a right in State Dept. of Highways v. Public Employees Craft Council, 529 P.2d 785 (1974).

[22] Although Nevada has no statute addressing the issue of collective bargaining by faculty in higher education, it does have one covering municipal employees and teachers. The statute prohibits strikes by those groups.

[23] The statute provides that the parties may opt for any impasse resolution, presumably including binding arbitration.

[24] There is no specific provision in the statute for a legislative veto. However, the Constitution provides that "[t]he legislative power shall be vested in a Senate and General Assembly," N.J. Const. art. 4, §191, and that "[a]ll bills for raising revenue shall originate in the General Assembly." N.J. Const. art. 4, §6, para. 1.

[25] Although the statute does not specifically prohibit public employees from striking, N.J. Stat. Ann. §34:13A-8 was amended by substituting "Nothing in this act shall interfere with the rights of *private employees* to strike" for "nothing in this act shall interfere with the right of *employees* to strike." (Emphasis added). Moreover, the New Jersey Supreme Court has held that public employees do not have the right to strike. Union Beach Board of Education v. New Jersey Education Association, 53 N.J. 29, 247 A.2d 867 (1968).

	Collective Bargaining for Faculty in Higher Education	Legislative Veto	Right to Strike	Impasse Broken by Binding Arbitration
New York	Public Employee Statute N.Y. Civ. serv. Law §201.1 (McKinney)	Yes[26] §204-a	No §210	Yes[27] §209(4) (c)(vi)
North Carolina	None	N/A	N/A	N/A
North Dakota	Atty Gen Opin Allows public employee collective bargaining Op. Atty. Gen. Jan. 13, 1956	No reference[28]	No reference	No reference
Ohio	None	N/A	No Ohio Rev. Code Ann. §4117.02	N/A
Oklahoma	None	N/A	N/A	N/A
Oregon	Public Employee Statute, specifically including faculty in higher education Or. Rev. Stat. §243.650	Yes[29] §243.702(2)	Limited right to strike §243.726	Required for parties not allowed to strike §243.742
Pennsylvania	Pubic Employee Statute, Pa. Cons. Stat. Ann. Tit. 43 §1101.101 et. org.	Yes Tit. 43 §1101.901	Limited Right to Strike[30] Tit. 43 §1101.1001	At option of parties[31] Tit. 43 §1101.804

[26] New York requires that agreements between public employers and employee organizations contain the following clause:

> It is agreed by and between the parties that any provision of this agreement requiring legislative action to permit its implementation by amendment of law or by providing the additional funds therefor, shall not become effective until the appropriate legislative body has given approval. § 204-a(1).

[27] Although binding arbitration is allowed only as a last resort, it is available at the option of either party or on the motion of the Public Employee Relations Board.

[28] § 186 of the North Dakota Constitution requires that "[a]ll public moneys . . . shall be paid out and disbursed only pursuant to appropriation first made by the Legislature."

[29] Although there is no explicit legislative veto in the statute, Or. Rev. Stat. §243.702(2) implies one. It states that every reasonable effort must be made to conclude negotiations "at a time to coincide, as nearby as possible, with the period during which the appropriate legislative bodies may act on the operating budget of the employers."

[30] Public employees have the right to strike after exhaustion of all negotiation procedures, unless such strike creates a clear and present danger to the health, safety, or welfare of the public.

[31] Such binding arbitration is subject to legislative veto. Pa. Cons. Stat. Ann. §1101.804.

	Collective Bargaining for Faculty in Higher Education	Legislative Veto	Right to Strike	Impasse Broken by Binding Arbitration
Rhode Island	Public Employee Statute R.I. Gen. Laws §36-11-1 et. seq.	No reference[32]	No reference	Yes[33] §36-11-9
South Carolina	None	N/A	N/A	N/A
South Dakota	Public Employee Statute S.D. Compiled Laws Ann. §3-18-1 seq. et.	Yes §3-18-7	No §3-18-10	At option of parties §3-18.15.2
Tennessee	None[34]	N/A	N/A	N/A
Texas	None	N/A	No Tex. Labor Code Ann. §5154(c)	N/A
Utah	None[34]	N/A	N/A	N/A
Vermont	Public Employee Statute specifically referring to higher education employees Vt. Stat. Ann. Tit. 3 §901 et. seq.	Yes Tit. 3 §982	No Tit. 3 §903(b)	At option of parties[35] Tit. 3 §925
Virginia	None	N/A	No[36] Va. Code §40.1-55	N/A

[32] Although the statute does not expressly recognize a legislative veto, art. 4 § 2 of the Rhode Island Constitution vests the legislative power of the state in the General Assembly.

[33] Binding arbitration is instituted as a last resort, but it is required. There is no binding arbitration on the issue of wages.

[34] Tennessee statutes allow collective bargaining by public employees only in the area of primary and secondary school education. Education Professional Negotiations Act, Tenn. Code Ann., Section 49-5501 *et seq.* (1978). As to other fields of public employment, the state's "sunshine law", however, contains this curious provision:

> local governmental entity shall be open to the public whether or not the negotiations by the state or local governmental entity are under the direction of the legislative, executive or judicial branch of government. Nothing contained in this section shall be construed to require that planning or strategy sessions of either the union committee or the governmental entity committee, meeting separately, be open to the public. Nothing contained in this section shall be construed to grant recognition rights of any sort. Tenn. Code Ann. § 8.4421.

[35] Binding arbitration is subject to legislative change. Vt. Stat. Ann. Tit. 3 §925(i).

[36] Va. Stat. Ann. §40.1-55 provides that any public employee who strikes is deemed to have terminated his job.

	Collective Bargaining for Faculty in Higher Education	Legislative Veto	Right to Strike	Impasse Broken by Binding Arbitration
Washington	Public Employee Statute Wash. Rev. Code Ann. §41.56.010 et. seq.[37]	No reference[38]	No §41.56.120	No §41.56.100
West Virginia	Atty. Gen. Opin allows public employees to engage in discussions and agreements Op. Atty. Gen. July, 1962 and June 21, 1974	No reference[39]	No reference	No reference
Wisconsin	Public Employee Statute Wis. Stat. Ann. §111.01 et. org.	Yes §111.92	No §111.89	No
Wyoming	None	N/A	N/A	N/A

[37] Washington also has a statute establishing a Board to hear personnel matters of the state colleges and universities. Wash. Rev. Code Ann. §28B.16.010 *et. seq.*

[38] There is no specific provision for a legislative veto. However, art. VIII, § 4, amend. 11 of the Washington Constitution states: "No moneys shall ever be paid out of the treasury of this state, or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law."

[39] The West Virginia Constitution, art. 10 § 3 states:

"No money shall be drawn from the treasury but in pursuance of appropriation made by law. . .; nor shall any money or fund be taken for any other purpose than that for which it has been or may be appropriated. . ."

Impact on Collective Bargaining

The effect of the court decisions in Florida and California is to increase the authority of state legislatures in faculty bargaining with a corresponding loss of influence by the board of regents. It is interesting that in recent years the trend in public labor relations has been in the opposite direction: the executive branch or its delegated agency has been gaining responsibility for labor relations, with a corresponding reduction of influence by the legislative branch of government.[29]

In the case of faculty collective bargaining, there are good reasons why a board of regents is better equipped to handle labor relations than the legislature. First, the administrators of the university system are best able to adopt an integrated position in preparation for negotiations and in implementing the resulting bargaining agreement. For example, a board of regents, working with the governor's office, can coordinate the monetary features of labor contracts with the preparation of the governor's budget and with the chief executive's overall legislative program. Second, it is primarily the regents who will have to live with the agreement and participate in its administration. They are in the best position to anticipate administrative problems that may be created by faculty union bargaining demands on workloads and other grievances which affect the managerial responsibility of the regents. Third, regents control of bargaining allows the board to develop a unified labor relations policy and to present the union with a single management position within the guidelines set by the governor's office.

Since boards of regents have had past responsibility for both the negotiation and administration of faculty labor contracts, these recent court rulings may tend to destabilize existing bargaining relationships. Institutional or informal arrangements need to be developed to insure the effective delegation of authority in labor relations from the state legislature to the regents who have the responsibility for managing a state's university system. Two steps can be taken to deal with this problem: (1) prior commitment of the state legislature through consultation with the regents, and (2) the enactment of legislation which would minimize the role of the legislature on non-monetary bargaining issues and limit their power to ratify labor contracts.

Labor negotiators representing the board of regents should attempt to secure the commitment of legislators to a proposed contract by consulting with them in advance, even to the extent of accepting

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[29] Burton, "Government Bargaining and Management Structure", 2 INDUSTRIAL RELATIONS 123 (1977).

guidelines laid down by the legislature. This procedure would improve communications between the board of regents and the legislature and still permit legislators to participate in establishing labor relations policy.

Regents' authority for labor relations can be further supported by the enactment of legislation which would assign all responsibility for the conduct of faculty collective bargaining to the regents.[30] Features of such legislation could enhance regents' bargaining authority, such as provisions that: (1) the state legislature can only review those portions of a negotiated agreement which require funds for implementation or are in conflict with the existing law; (2) purely administrative matters, such as union security, grievance procedures, and workloads would not be subject to legislative veto; (3) if the legislature does reject a contract provision which requires funds for implementation, it may only return the rejected agreement to the regents for further negotiations and finally, (4) that the state legislature be prohibited from amending labor agreements or from participating directly in labor negotiations.

An act embracing these provisions, voted by a state legislature, would be entirely consistent with the recent court rulings we have cited. The legislature would retain complete control of the "purse strings." Such a law would more clearly support and define the bargaining authority of the regents. Along with measures to improve communications between the regents and the state legislature, such a law would represent an important move toward coordinating the roles of the regents and the legislature in state university system labor relations.

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[30] There is legislative precedent for such a proposal. The state of Connecticut has a labor relations law which assigns all responsibility for labor negotiations to the chief executive on his designee in every unit of local government. See "An Act Establishing a Municipal Employee Relations Act," as reprinted in *Government Employee Relations Report,* Reference File-1; Sections 51:1611.