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PROHIBITING BINDING ARBITRATION: THE PROPOSED CHANGE IN ARTICLE I, SECTION 6

TERRI JO KENNEDY

One of the recurring aphorisms used by the constitution revision commissioners during debate was, "If it ain't broke, don't fix it." The proposals and debate on collective bargaining for public employees dealt with both parts of the caveat: is there a problem in this area, and if there is, should it be solved in the constitution rather than in the statutes?

I. HISTORY OF ARTICLE I, § 6

A brief look at the history of article I, § 6 of the Florida Constitution is necessary to answer these queries. In 1944 an amendment to the 1885 Florida Constitution added these words to section 12 of the declaration of rights:

The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union, or labor organization; provided, that this clause shall not be construed to deny or abridge the right of employees by and through a labor organization or labor union to bargain collectively with their employer.¹

This amendment was intended, and has been held, to prohibit "closed shops" (where only union members can be employed) or "agency shops" (where nonunion employees must pay union dues).² This "right to work" provision was generally hailed by representatives of industry and denigrated by proponents of organized labor.

The 1968 revision of the constitution placed the "right to work" provision in a separate section and revised it to read:

SECTION 6. Right to work.—The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collec-

1. Prior to the 1944 amendment, art. 1, § 12 simply read: "No person shall be subject to be twice put in jeopardy for the same offense, nor compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken without just compensation."

2. *Schermerhorn v. Local 1625, Retail Clerks Int'l Ass'n*, 141 So. 2d 269 (Fla. 1962), *aff'd*, 375 U.S. 96 (1963).

tively shall not be denied or abridged. Public employees shall not have the right to strike.³

The 1968 commission would have added "public or private" to the phrase granting the right to bargain collectively, but the legislature deleted that phrase from the proposal which was finally approved for the ballot.⁴

In 1969, the Florida Supreme Court ruled that the term "employees" in article I, section 6 of the state constitution included persons in the public as well as the private sector.⁵ Chief Justice Ervin, with a footnote reference to the legislative journals during the 1968 revision process, summarily settled the question:

We hold that with the exception of the right to strike, public employees have the same rights of collective bargaining as are granted private employees by Section 6.

. . . .
 . . . A delicate balance must be struck in order that there be no denial of the guaranteed right of public employees to bargain collectively with public employers without, however, in any way trenching upon the prohibition against public employees striking either directly or indirectly or using coercive or intimidating tactics in the collective bargaining process.⁶

This interpretation was followed in 1972 by a warning from the supreme court: if the legislature did not act within a reasonable time to implement this constitutional right by statute, the court would be forced to implement it by rule.⁷ The legislature chose to avoid a direct confrontation between the legislative and judicial branches and, in 1974, adopted the Public Employees Relations Act, part II of chapter 447, Florida Statutes.⁸ The legislature revised the statute substantially in 1977.⁹

II. THE 1977-78 REVISION PROCESS

When the new Constitution Revision Commission began its work, the first question to surface in the labor area was whether there should be collective bargaining in the public sector at all. Oppo-

3. FLA. CONST. art. I, § 6.

4. D'Alemberte, *Commentary*, in 25A FLA. STAT. ANN. 102 (West 1970).

5. Dade Classroom Teachers Ass'n v. Ryan, 225 So. 2d 903 (Fla. 1969).

6. *Id.* at 905-06 (footnote omitted).

7. Dade Classroom Teachers Ass'n v. Legislature, 269 So. 2d 684 (Fla. 1972).

8. Ch. 74-100, 1974 Fla. Laws 134.

9. See ch. 77-343, 1977 Fla. Laws 1476.

nents of collective bargaining, led by Associated Industries of Florida and the Florida School Boards Association, sought to have collective bargaining prohibited for public employees. The Declaration of Rights Committee¹⁰ gave a favorable recommendation to Proposal 110,¹¹ which would have changed article I, section 6 to read:

Section 6. Right to work.—The right of persons to work shall not be denied or abridged on account of membership or nonmembership in any labor union or labor organization. The right of *private* employees, by and through a labor organization, to bargain collectively shall not be denied or abridged. *The legislature may by law permit or forbid collective bargaining by public employees. If such is permitted adequate provision shall be made to exempt all legislative employees and all managerial and supervisory employees; and to limit the scope of bargaining to terms and conditions of employment.* Public employees shall not have the right to strike.

Commissioner Jon Moyle moved that, as a second priority, the committee recommend that article I, section 6 not be changed.¹² The committee rejected all other changes to the “right to work” provision.¹³

10. The Declaration of Rights Committee was composed of six commissioners and one alternate commissioner: Chairman LeRoy Collins, Vice Chairwoman Freddie Groomes, Commissioner Dempsey Barron, Commissioner Dexter Douglass, Commissioner Richard Moore, II, Commissioner Jon Moyle, and Alternate Commissioner Charlotte Hubbard.

11. Fla. C.R.C., Declaration of Rights Committee Minutes 5 (Nov. 14, 1977). The italicized portions represent suggested changes. The committee approved Proposal 110 by a three to two vote. Chairman Collins and Commissioners Barron and R. Moore favored the proposal, and Commissioners Groomes and Moyle opposed it.

12. *Id.*

13. The committee members present voted unanimously to reject Proposals 14, 15, and 16. Commissioners Barron and Douglass were not present for the vote. *Id.* at 5-6. For the text of Proposal 14, see discussion *infra*. Proposal 15 would have changed the “right to work” provision to read:

(a) The right of persons to work shall not be denied or abridged on account of membership or non-membership 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. *Binding arbitration with respect to collective bargaining between public employees and a public employer is prohibited, and public employees shall not have the right to strike.*

(b) *Any public employee who strikes against his public employer shall forfeit all rights and benefits to which he is entitled in any public retirement system or public pension plan, except for a return of his accumulated contributions, and shall forfeit any tenure with respect to his employment. The forfeiture provided in this subsection shall not be waived by any public officer, public body, political subdivision, or court.* [Italicized portions represent suggested changes.]

Proposal 16 would have changed the “right to work” provision to read:

(a) The right of persons to work shall not be denied or abridged on account of

Once the committee finished its work, the commission as a whole turned to the labor issues. Commissioner Thomas H. Barkdull, Jr., a member of the 1968 commission, and Commissioner John DeGrove suggested a prohibition of binding arbitration, Proposal 14.¹⁴ As originally recommended, Proposal 14 would have amended article I, section 6 by adding the italicized words:

SECTION 6. Right to work.—The right of persons to work shall not be denied or abridged on account of membership or non-membership 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. *Binding arbitration with respect to collective bargaining between public employees and a public employer is prohibited, and public employees shall not have the right to strike.*

Commissioner Barkdull first considered a ban on binding arbitration after hearing testimony from local government officials at public hearings in Ft. Lauderdale and Ft. Myers in August, 1977.¹⁵ The entire commission also dealt with other proposals in the labor field, including removing the constitutional right of public employees to bargain collectively, providing that striking public employees would forfeit retirement benefits and tenure, and limiting the scope of bargaining in the public sector.¹⁶

There are two kinds of binding arbitration. The first type is called "binding interest arbitration" and is used in the contract negotia-

membership or non-membership 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.

(b) *Any public employee who strikes against his public employer shall forfeit all rights and benefits to which he is entitled in any public retirement system or public pension plan, except for a return of his accumulated contributions, and shall forfeit any tenure with respect to his employment. The forfeiture provided in this subsection shall not be waived by any public officer, public body, political subdivision, or court.* [Italicized portions represent suggested changes.]

14. 15 Fla. C.R.C. Jour. 238 (Dec. 9, 1977). Commissioner Barkdull is senior judge of the Fourth District Court of Appeal. Commissioner DeGrove is director of the FAU-FIU Joint Center for Environmental and Urban Problems.

15. Telephone conversation with Judge Barkdull (May 30, 1978).

16. Proposals 14, 15, 16, 96, and 110. The text of Proposal 96 would have changed the "right to work" provision to read:

SECTION 6. Right to work.—The right of persons to work shall not be denied or abridged on account of membership or non-membership 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. *There shall be no binding arbitration in regard to any matter concerning the collective bargaining process between public employees and public employers.* [Italicized portions represent suggested changes.]

tion phase of collective bargaining. In states where this device is authorized (most frequently in bargaining with police and fire-fighters), one or both of the parties to bargaining can declare an impasse if no agreement can be reached. Then neutral arbitrators are appointed to hear the dispute. The arbitrator (or a majority of the panel) then resolves the conflict, and the arbitrator's decision is binding on both parties. For example, if salaries were in issue, the decision on salary levels reached by the arbitrator would be binding on both employer and employee: the employer would be required to fund that salary level, and the employees would have to accept the salary portion of their contract. Presently, Florida does not have binding interest arbitration, and there has been no serious effort by public employee unions to acquire statutory authority for it.

Currently in Florida, when parties in contract negotiation reach an impasse, a special master (called a factfinder in many states) is appointed and conducts a hearing. The master then recommends a solution to the legislative body (the employer), which has final, unfettered authority to accept, modify, or reject the report. Section 447.403(4)(d) of the Florida Statutes provides: "Thereafter the legislative body shall take such action as it deems to be in the public interest, including the interest of the public employees involved."¹⁷ The legislature serves as the legislative body for statewide bargaining units such as those within the state university system. School boards, county commissions, and city councils are examples of legislative bodies for smaller bargaining units. Frequently in Florida the legislative body has rejected the special master's recommendation.¹⁸ Thus, Florida law provides for only an *advisory* report while states using binding interest arbitration impose a *mandatory* decision by an outside, neutral party.

The second type of binding arbitration is called "binding grievance arbitration." This is currently authorized by section 447.401 of the Florida Statutes.¹⁹ It occurs during the contract administration phase of the collective bargaining process. An individual or a group of employees can file a grievance against the employer's application of the terms of the contract. The final step of the grievance procedure is final disposition by an impartial person (arbitrator) who is

17. (1977).

18. In 1975, 78% of all special masters' reports in Florida were rejected by the employer (the legislative body); in 1976, 84% were rejected; and in 1977, 75% were rejected. Florida State University College of Law, Public Labor Law Research Project (as yet unpublished). For further information, contact Professor William McHugh, Florida State University College of Law.

19. (1977).

mutually selected by the two parties. This type of arbitrator may not alter any part of the contract, but his decision as to application or interpretation of the contract is binding on both parties. For example, an arbitrator could decide that homeroom duty is or is not subject to a contract provision that teachers shall perform no more than two hours per day of nonteaching duties.²⁰

Proposal 14, the Barkdull-DeGrove proposal, would prohibit binding interest arbitration. It received seventeen ayes and fourteen nays on the first vote.²¹ Nineteen affirmative votes were needed to adopt a proposal, so it failed. However, a few minutes later a verification of the vote was requested because one commissioner's vote was incorrectly recorded. On the second vote, Proposal 14 was adopted nineteen to thirteen.²²

Commissioner LeRoy Collins then offered Proposal 110, which would have left to the legislature whether public employees should be allowed to bargain collectively.²³ Under this proposal, the legislature would also have been required to exempt legislative, managerial, and supervisory employees from collective bargaining. Finally, collective bargaining in the public sector would have been limited constitutionally to "terms and conditions of employment" rather than to the traditional "wages, hours, terms and conditions of employment." Although the Declaration of Rights Committee had recommended Proposal 110 favorably, it failed before the entire commission by a vote of twenty-three to five.²⁴

Commissioner Barkdull then presented Proposal 15, which would have required forfeiture of retirement benefits (except for the employee's contributions) and tenure by any striking public employee.²⁵ This was defeated by a vote of twenty-eight to four.²⁶ Pro-

20. As originally suggested, Proposal 14 prohibited binding arbitration but did not specify which type of binding arbitration. On December 9, 1977, Commissioners Barkdull and DeGrove offered an amendment to clarify Proposal 14. The phrase "with respect to collective bargaining" was deleted and replaced by the phrase "to resolve impasse in collective bargaining negotiations concerning wages, hours and terms and conditions of employment." 15 Fla. C.R.C. Jour. 238 (Dec. 9, 1977). The comments of commissioners demonstrate that this change was meant to clarify that binding arbitration in contract administration, as authorized by statute, is not prohibited but rather only binding "interest" arbitration. Transcript of Fla. C.R.C. proceedings 40-41 (Dec. 9, 1977); Transcript of Fla. C.R.C. proceedings 37-39, 47 (Jan. 9, 1978).

21. 15 Fla. C.R.C. Jour. 238 (Dec. 9, 1977).

22. *Id.* at 239.

23. Commissioner Collins served as Governor of Florida from 1955 through 1960 and later served as Under Secretary of Commerce in the Johnson Administration in Washington. He was special master for the impasse proceedings between United Faculty of Florida and the Board of Regents in 1977, the first such proceeding for a statewide bargaining unit.

24. 15 Fla. C.R.C. Jour. 239 (Dec. 9, 1977).

25. For text of Proposal 15, see note 13 *supra*.

26. 15 Fla. C.R.C. Jour. 239 (Dec. 9, 1977).

posals 16 and 96 (similar to Proposals 15 and 14) were withdrawn by the sponsors.²⁷

Three months later, the central question of whether public employee collective bargaining should be guaranteed by the state constitution was revived by Commissioner Kenneth Plante.²⁸ He proposed an amendment which would have changed the "right to work" provision by prohibiting *any* collective bargaining by public employees.²⁹ The Plante amendment received eighteen votes, one short of the requirement for passage.³⁰ Although individual commissioners changed their votes at various times, the Plante amendment was never able to attract more than eighteen votes.

Thus, the commission left undisturbed public employees' right to work and to bargain collectively. The major change endorsed by the commission was the insertion of a constitutional prohibition against binding arbitration in the contract negotiation phase of public employee collective bargaining.

III. IMPACT OF THE PROPOSED AMENDMENT

Article I, section 6, as proposed by the Constitution Revision Commission, would read as follows, with the italicized words reflecting the suggested changes:

SECTION 6. Right to work.—The right of persons to work shall not be denied or abridged on account of membership or non-membership 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. *Binding arbitration is prohibited to resolve impasse in collective bargaining negotiations concerning wages, hours and terms and conditions of employment between public employees and a public employer.* Public employees shall not have the right to strike.³¹

27. 15 Fla. C.R.C. Jour. 239 (Dec. 9, 1977). For the text of Proposals 16 and 96, see notes 13 and 16 respectively *supra*.

28. Commissioner Plante is a Republican state senator from Oviedo who has served his central Florida district since 1967. He was also serving as minority leader of the senate during the revision commission proceedings.

29. Commissioner Plante's amendment would have changed the "right to work" provision to read:

The right of persons to work shall not be denied or abridged on account of membership or non-membership 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 *collectively bargain or strike.* [Italicized portion represents suggested change.]

30. 27 Fla. C.R.C. Jour. 527 (Mar. 7, 1978).

31. Fla. C.R.C., Rev. Fla. Const. art. I, § 6 (May 11, 1978).

Should the voters of Florida adopt the main document proposed by the Constitution Revision Commission, which includes the binding arbitration provision, several results would follow. The first—a not inconsequential result—would be the end of any confusion as to whether Florida's constitution was intended to grant public employees the right to bargain collectively. The record reflects that the commission specifically rejected removing this constitutional grant from the state's fundamental charter.³² While the court decisions, the existence of the Public Employees Relations Act, and the fact that bargaining is actually taking place throughout the state would seem to have settled the question, opponents of collective bargaining for public employees (notably local government employers) have continued to assert that the court misinterpreted the 1968 constitution. This would no longer be possible under the proposed revision.

Second, Florida would become the first state to prohibit binding interest arbitration in its constitution. Only three other states specifically authorize collective bargaining for public employees in their constitutions.³³ Only one state, Pennsylvania, speaks to binding interest arbitration in its constitution, and Pennsylvania authorizes rather than prohibits it:

Notwithstanding the foregoing limitation or any other provision of the Constitution, the General Assembly may enact laws which provide that the findings of panels or commissions, selected and acting in accordance with law for the adjustment or settlement of grievances or disputes or for collective bargaining between policemen and firemen and their public employers shall be binding upon all parties and shall constitute a mandate to the head of the political subdivision which is the employer, or to the appropriate officer of the Commonwealth if the Commonwealth is the employer, with respect to matters which can be remedied by administrative action, and to the lawmaking body of such political subdivision or of the Commonwealth, with respect to matters which require legislative action, to take the action necessary to carry out such findings.³⁴

Eighteen states currently have some form of statutory binding interest arbitration.³⁵ State high courts have reacted to the proposal

32. See 27 Fla. C.R.C. Jour. 527 (Mar. 7, 1978).

33. HAWAII CONST. art. XII, § 2; N.J. CONST. art. I, § 19; PA. CONST. art. III, § 31.

34. PA. CONST. art. III, § 31.

35. ALASKA STAT. § 23.40.200 (1972) (for essential state workers, including policemen, firefighters, correctional employees and hospital employees); CONN. GEN. STAT. §§ 7-472, -473c, -474 (1977) (municipal employees); IOWA CODE ANN. § 20.22 (West Supp. 1978) (all public employees); LA. REV. STAT. ANN. § 23-890 (West Supp. 1978) (municipal transit em-

in vastly different manners: some have found binding interest arbitration constitutional,³⁶ and some have determined it to be impermissible under the state constitution.³⁷ The proposed Florida Constitution, if adopted, would foreclose such a challenge.

It can be expected that the arguments for and against binding interest arbitration will follow those expressed during the commission debate. The major argument raised against binding interest arbitration is that it takes fiscal decisionmaking out of the control of elected officials and gives it to nonelected "outsiders," who are not subject to the wrath of the voters. Commissioner Jan Platt, a city councilwoman from Tampa, ably expressed this view:

An increasing number of jurisdictions have enacted compulsory binding arbitration statutes for settling disputes in the public employees collective bargaining process. This places in the hands of private persons not answerable to the voters the ultimate authority to set taxes, to force elected officials to reduce services or reallocate spending priorities in the means they believe to be in the best interest of the public. Thus, compulsory binding arbitration usurps the legislative prerogative, diminishes accountability to voters, and erodes the value of the voting franchise.

To disrupt this direct responsibility and relationship between the electors and the elected would seriously cripple the ability of the elected body to analyze and prioritize their community needs.

A third party would step into the process to substitute its judg-

ployees); ME. REV. STAT. tit. 26, § 965(4) (Supp. 1978) (municipal employees and teachers), § 979-D(4) (Supp. 1978) (state employees); MASS. GEN. LAWS ANN. ch. 150E, § 9 (West Supp. 1978) (police and firefighters); MICH. COMP. LAWS ANN. §§ 423.231-.244 (1978) (local police, firefighters, and emergency service personnel); MINN. STAT. ANN. § 179.69(3) (West Supp. 1978) (essential public employees); NEB. REV. STAT. §§ 48-801 to 838 (Cum. Supp. 1976) (government employees); NEV. REV. STAT. § 288.200 (1977) (local government employees); N.Y. CIV. SERV. LAW § 209(4) (McKinney Supp. 1977) (local police and firefighters); OR. REV. STAT. §§ 243.742-.762 (1977) (police, firefighters, and guards at correctional facilities and mental hospitals); PA. STAT. ANN. tit. 43, §§ 217.4-.7 (police and firefighters), 1101.805 (correctional officers and court employees) (Purdon Supp. 1978); R.I. GEN. LAWS §§ 28-9.1 to 4-1 (firefighters, police, teachers, and municipal employees), 36-11-9 (state employees) (Supp. 1977); UTAH CODE ANN. §§ 34-20a-7 to 9 (Supp. 1977) (firefighters); WASH. REV. CODE § 41.56.450-.470 (1976) (uniformed personnel); WIS. STAT. ANN. § 111.77 (West Supp. 1977) (police and firefighters); WYO. STAT. ANN. § 27-10-105 (1977) (firefighters).

36. *Dearborn Firefighters Union, Local 412 v. City of Dearborn*, 201 N.W.2d 650 (Mich. Ct. App. 1972); *City of Amsterdam v. Helsby*, 332 N.E.2d 290 (N.Y. 1975); *City of Warwick v. Warwick Regular Firemen's Ass'n*, 256 A.2d 206 (R.I. 1969); *State v. City of Laramie*, 437 P.2d 295 (Wyo. 1968). This list is indicative rather than exhaustive.

37. *Greely Police Union v. City Council*, 553 P.2d 790 (Colo. 1976); *City of Sioux Falls v. Sioux Falls Firefighters, Local 814*, 234 N.W.2d 35 (S.D. 1975); *Salt Lake City v. International Ass'n of Firefighters*, 563 P.2d 786 (Utah 1977). This list is indicative rather than exhaustive.

ment for that of the elected body. The control of the taxing authority and the appropriations authority would effectively be transferred from the citizens to nonelected third-party arbitors. Public control of the public purse could be transferred to the union control in this process.

Public employment is a privilege conferred upon the employee by the taxpaying public through their elected representatives. Should tax levies get out of hand or [expenditures] beyond control, there is swift retribution at the polls. Expenditures mandated by binding arbitors are responsible and answerable to no one. This prohibition must be included in the constitution.³⁸

In contrast, persons favoring the use of binding interest arbitration in the public sector argue that it is a middle solution between the advisory recommendation of a special master and a chaos-producing strike by public employees. They believe that collective bargaining will only work if both employers and employees feel the process can resolve disputes fairly without strikes. Public employees in Florida already are constitutionally prohibited from striking. Therefore, it is argued that there should be an alternative giving employees a more legitimate role than they now have. As it is, the special master's report is only advisory. The final decision rests with one party to the bargaining—the employer. Commissioner Yvonne Burkholz, an officer of the public employee union FEA-United, summed up this philosophy:

Up until a few months ago, really almost in the last month or two, we have not had definitive decisions rendered by the courts of this state in any area of collective bargaining. The process is extremely new. The process is maturing. The process is just beginning to become a way to maintain labor management harmony, labor management peace—the goal of all of us—perhaps my goal more than many of you in the State of Florida.

. . . And now we have this proposal before us which would preclude one of the tools that might be used sometime in the future.³⁹

The other argument against prohibiting binding interest arbitration involves philosophical questions about what should and should not be part of the state constitution. Many commission members believed that the constitution should address only broad policy questions and that specific implementation of those guidelines

38. Transcript of Fla. C.R.C. proceedings 59-60 (Dec. 9, 1977).

39. *Id.* at 66-67.

should be left to statutes drawn by the legislature. They argued that the commission could not foresee the progress of collective bargaining for the next twenty years (when another revision commission will be convened). Many states have begun to use binding interest arbitration in some situations only after eight to ten years of a factfinding system similar to Florida's.⁴⁰ However, this argument failed to persuade a majority of the commissioners, as it failed most other times it was used.

Thus, the proposal as approved by the commission would prohibit two of the three conflict resolution mechanisms available in the public sector: strikes and binding interest arbitration. Only the special master's advisory report would remain available in Florida, unless some new mechanism is devised in the years ahead. Leonard Carson, chairman of the Florida Public Employees Relations Commission, summed up the impact of the commission proposal:

Being realistic, employer-employee conflict can no more be eliminated than can crime or poverty. The conditions can be controlled, however, so that the public interest in the orderly and uninterrupted operations and functions of government can be assured. The proposals cited [Proposals 14 and 96 on binding arbitration] obviously eliminate the alternatives and place greater pressure on effective implementation of the present impasse procedures.⁴¹

Should reliance on special masters' reports to the legislative body prove inadequate in resolving conflicts between public labor and public management in Florida in the next two decades, a constitutional amendment would be necessary as a prerequisite to any form of binding interest arbitration.⁴² Enough commissioners believed

40. Memorandum from Professor William F. McHugh, Florida State University College of Law, to Talbot D'Alemberte, Constitution Revision Commission Chairman (Jan. 4, 1978) [hereinafter cited as Memorandum].

41. Letter from Leonard Carson, chairman of PERC, to Commissioner Yvonne Burkholz (Dec. 7, 1977) (distributed to members of Constitution Revision Commission).

42. In his memorandum to Chairman D'Alemberte, Professor William F. McHugh outlined some of the forms of binding arbitration which could be used to resolve impasse in contract negotiations:

Some states are currently experimenting on a limited basis with last best offer interest arbitration issue by issue; while others are experimenting with last best offer interest arbitration by package. These two approaches are designed to discourage the parties from over using [*sic*] arbitration and to encourage true bargaining while at the same time prohibiting the right to strike. They also limit the arbitrators' discretion to reduce encroachment upon the sovereign authority of public officials, a major argument against interest arbitration. Still other states authorize the parties to voluntarily agree to interest arbitration on such terms as they deem appropriate, thus leaving the decision to local authorities.

that binding interest arbitration is sufficiently threatening to the orderly operation of government to recommend a prohibition in the constitution rather than reliance on legislative action.

IV. CONCLUSION

Adoption of the proposal proscribing binding arbitration would place Florida in a unique position among the several states. Those who favor the proposal stress the need to preserve popular sovereignty by preserving the role of elected officials as the ultimate decisionmakers in the bargaining process. Those who oppose the proposal emphasize the need for allowing continued flexibility in the legislative process in order to deal with public labor problems in the years ahead. Extensive public debate on this proposal is needed and can be expected.

Memorandum, *supra* note 40. Since all these mechanisms provide that the arbitrator's report will be binding, they would be constitutionally impermissible in Florida.