STATEMENT

OF

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BEFORE THE
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SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE
ON FEDERAL REGULATION OF STATE AND LOCAL
PUBLIC EMPLOYEE LABOR RELATIONS

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Mr. Chairman, members of the Committee: My name is Albert Shanker and I am President of the American Federation of Teachers, AFL-CIO. AFT membership exceeds 440,000 and we are the fastest growing union in the AFL-CIO. The bulk of our members are classroom teachers employed by public school systems across the country but AFT also represents paraprofessionals, school aides, school secretaries, school librarians, guidance counselors and other educational personnel. In addition, we are active and growing rapidly in the area of higher education and we can currently boast more than 35,000 professors among our ranks. Finally, there are several thousand AFT teachers in private schools.

This Committee is considering two bills--S. 3294 and S. 3295. These bills provide for Federal regulation of labor relations in the public sector at the state and local level. The AFT firmly believes that the time for such regulation has come.

There has been much activity in recent years toward giving state and local public employees basic recognition rights, and thereby eliminating the need for strikes conducted for the purpose of gaining recognition. In most areas where bargaining rights for public employees exist, they are very limited in comparison to those which exist for private sector workers, both with respect to the bargaining process and with respect to who is covered by the various state public employee bargaining laws.

At present, 13 states still have no provision for recognition of public employees for the purpose of collective bargaining or even "meeting and conferring." As the National Labor Relations Act currently excludes from coverage employees of

". . . any State or political subdivision thereof," there is no framework whatever for the exercise of what the AFT believes is a basic right in a democracy--the right of any worker, in the private or public sector, to have a say in determining the conditions under which he or she must work.

In the 37 remaining states, either by statute or by Executive Order, there is some mechanism by which public employees can be heard but the picture can only be described as imperfect at best and repressive at worst.

1 - The coverage of the various state statutes and Executive Orders wanders all over the map. Some states have comprehensive public employee labor relations laws applying to all groups of public employees while others have separate statutes, often granting different degrees of recognition, representation and negotiation rights for different groups of public employees--many even differentiating by location.

2 - In some states, groups of public employees can choose through majority vote an organizational spokesman to speak for them but in others, all organizations purporting to represent public employees in any particular unit must be represented at the discussion table.

3 - In some states, public employees are only given the right to "meet and confer" with their public employers but there is no requirement on the employer to negotiate in good faith and participate in the kind of give and take which solves problems. In other states, there is a duty on both parties to engage in good faith negotiations with a host of impasse resolution services provided but if these fail, the public employer can still do whatever it chooses. Only

in 7 states is there currently even a qualified right to strike for public employees.

4 - In some states (California, Texas, Arizona, South Dakota and most of the Southern States), binding arbitration of grievances of public employees has been held to be illegal while in others the arbitration of grievances has increased stability and lessened strife in public employment.

The AFT believes there is a strong Federal interest in rationalizing this hodgepodge of state public employee labor relations legislation. State and local government is one of the fastest growing sectors in the American economy. Since 1950, employment by states, counties, cities and other local jurisdictions has risen each year, and for the period of the last 20 years, the rate of growth of state and local public employment is more than 2-1/2 times that of the economy as a whole. State and local government spending has an even greater impact on the economy. In 1973, 11.3 million state and local government workers had a payroll of more than $96 billion. The state and local government portion of the GNP has increased 200 percent since 1950, while the total GNP has risen 123 percent. National income statistics also indicate the rapid growth in importance of the state and local government sector. Furthermore, every sign shows that these trends will continue. Today more than half of all new jobs in the United States are in state and local government.

The underlying rationale for the original Wagner Act and the present NLRA is that breakdowns in labor-management relations impede commerce and are contrary to the general welfare of the nation. When these laws were enacted, disruptions of government services due to labor disputes in the public sector were minimal. Over the last 20 years, however, public employees have demanded the same collective bargaining rights as those in the private sector. Clearly, the same rationale

applies now in the public sector as first applied 39 years ago in the private sector and for this reason, a Federal statute governing state and local public employee labor relations is a necessity.

Before commenting on the two proposals being considered by the Committee, I want to state in no uncertain terms that the AFT considers the right to strike to be an absolutely basic element in any system of labor relations which has as its aim the granting of employees that fundamental right of having a say in determining the conditions under which they must work through meaningful collective bargaining. When the right to withhold labor is limited then the word bargaining loses its meaning because the power of employees is dissipated. With the strike tool, the employer is forced to consider alternatives--does the public value the service enough to indicate meeting the demands; how much of a tax increase is the public willing to assume; is the public willing to do without the service for a time? Without the strike, there is no meaningful pressure on the employer to reach agreement with its employees. At present, none of the state public employee labor relations statutes contains an unlimited right to strike, and as stated, there are only 7 states which grant public employees even a limited right to strike. But, strikes do take place, often in spite of heavy fines and jail sentences.

Any blanket qualifying provision on the right to strike for public employees appearing in any legislative proposal for the Federal regulation of state and local public employee labor relations will be vigorously opposed by the AFT just as we fight that battle on the state and local levels. Furthermore, if a ban against public employee strikes in general is the price of Federal legislation in this area, it is a price that the AFT would not be willing to pay, no matter how otherwise favorable that legislation might be.

Some opponents of public employee strikes suggest compulsory arbitration as a substitute for the right to strike. Let me point out that we have no objection to employers and employee representatives agreeing in advance to submit differences to binding arbitration. But this is arbitration jointly and voluntarily agreed to, not compulsory arbitration which destroys the bargaining process by removing all incentive for compromise. Furthermore, I want to make clear that this discussion is in reference to what is known as interest negotiation--negotiation of a contract. A negotiated grievance procedure with a top step of compulsory binding arbitration as part of a contractual agreement has long been recognized as a legitimate means of resolving disputes during the life of a collective bargaining agreement. But of course, that initial agreement should always be arrived at by a voluntary process or collective bargaining has no meaning.

The two bills before the Committee take two distinctly different approaches to Federal regulation of public sector labor relations at the state and local level. S. 3294, in extending the NLRA to state and local government workers, will bring about a situation in which private and public sector workers and their employers will be subject to the same labor relations laws. S. 3295 establishes a separate legal structure and enforcement apparatus for public employees.

The AFT strongly supports the former approach--S. 3294--because it reflects a fundamental philosophy which we have been preaching for a long time. That philosophy is that the interests, concerns and problems that public employees have with respect to their jobs are in no basic way different than the interests, concerns and problems of private sector workers. This viewpoint is strengthened by what we believe to be the absolutely absurd situation of the professor of history at New York University having the right to strike, the professor of history at the City University of New York not having the right to strike and the professor of history at the University of Illinois not even allowed to engage in any form of collective negotiation through

a recognized representative. This is true not only of professors but of employees of elementary and secondary schools, transit systems, utilities, nursing homes and hospitals to name a few. The fact is that under the present structure of labor relations in the United States, the extent of an employee's right to have a say in the conditions under which he or she must work depends not at all on what he or she does but whom the employer happens to be--public or private sector.

Certainly the co-existence of distinct legislative and administrative bodies in the public sector is a unique aspect of public employment but our experience in collective bargaining convinces us that any special accommodations that are necessary can easily be accomplished within the labor relations framework of the NLRA if public employees are covered. The AFT does not believe there is any justification for the exclusively public employment body of law and structure envisioned in S. 3295.

At its Tenth Constitutional Convention, in October 1973, the AFL-CIO was presented with a clear choice and strongly endorsed the approach embodied in S. 3294--extending NLRA coverage to state and local public employees. Delegates representing the American Federation of State, County and Municipal Employees did introduce a resolution entitled "Collective Bargaining for Public Employees" which stated in part:

> "RESOLVED, this convention supports a federal collective bargaining law which gives negotiating equity to public employees, while at the same time taking into account the special problems of collective bargaining in state and local government: the problems of impasse resolution and strikes, the budgetary processes, the relationships between the administrative and the legislative arms of the government."

The AFL-CIO Convention Resolutions Committee rejected the AFSCME resolution and approved a substitute. The substitute resolution which was unanimously adopted by the full convention reads in part:

> "WHEREAS, in many areas of federal and state legislation public employees are still excluded from the full benefits of such legislation, or are frequently discriminated against in separate public employee legislation; therefore be it
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> "RESOLVED, that the time has come to recognize that public employees are workers who should enjoy the rights and benefits equal to those guaranteed under law to workers in the private sector, and therefore be it further
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> "RESOLVED, that this convention supports the extension of these rights and benefits--such as the right to collective bargaining, and the right to

economic and social insurance legislation--to all public employees through coverage under existing federal, state and local laws."

Drawing on the AFT's experience as the pioneer in the establishment of collective bargaining for teachers, we believe there are additional troublesome defects in S. 3295. One of the most serious is found in Section 6 (f) (i). This provision allows for the inclusion of supervisors in the same unit as classroom teachers for the purpose of collective bargaining. We find little comfort in the fact that the section is permissive in the sense that both supervisors and teachers would have to affirmatively vote for such an inclusive unit. There is no provision mandating that such a vote be by secret ballot and even if there were, the situation would just lend itself to pressure from supervisors and administrators to unduly influence that vote. Furthermore, the AFT opposes supervisors and teachers in the same bargaining unit under any circumstances. Our rationale is quite simple. Supervisors are agents of the employer in a school district as anywhere else. Their supervisory authority does not diminish one iota because of inclusion in the bargaining unit and that inclusion always leaves open the possibility of supervisory or employer domination. The AFT is still encountering situations where school principals are serving as the chief agents of our opposition in representation elections with the veiled threat that disciplinary action will follow any outright expression of support for the AFT affiliate. In this regard, we find that the unfair labor practice section in S. 3295 dealing with employer domination /Section 10 (a) (2)/ is significantly weaker than the counterpart provision /Section 8 (a) (2)/ in the NLRA.)[1] Then there is always the question of how can a bargaining agent possibly represent a teacher who files a grievance against his principal if the principal is also in the bargaining unit? Such supervisory inclusion in employee bargaining units in the private sector would be termed simple company unionism.

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[1] Section 10 (a) (2) of S. 3295 reads: "It shall be unlawful for an employer to dominate, interfere with, or assist in the formation or administration of any employee organization."

Section 8 (a) (2) of the NLRA reads: "It shall be an unfair labor practice for an employer to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it....."

Having supervisors in the same bargaining unit as subordinate employees is thus corrosive of the functions of a union. But, it is also subversive of the functions of management for while there is the chance that the managers may subvert the union, there is also the chance that the union may subvert the managers.

An examination of the arguments favoring the option for supervisory inclusion quickly reveals their specious nature. We are surprised that at this late date the argument is still heard that a somehow unique situation exists in public education and that a "community of interest" between all involved in public education gives rise to the need for special provision to allow for supervisory inclusion. The suggestion is that when supervisors and teachers are together in the same organization, collective bargaining will work to solve educational problems and that there will be something called "unity of the profession." In fact, the impression is given that if there is no possibility for supervisors to be included in teacher bargaining units, progress toward finding the solutions to problems in education will be impeded. No evidence is offered to support this viewpoint and we in the AFT can present direct evidence to refute it.

Many of our locals have worked out programs, both contractually and informally, with school boards and supervisory personnel designed to improve the educational system. For example, AFT Local 231 (Detroit, Michigan) recently negotiated a contractual provision requiring the Detroit Board of Education to establish Neighborhood Education Centers which would have a focus on diagnosing specific educational needs of individual students through testing and retesting and providing one-to-one instruction in particular problem areas. AFT Local 279 (Cleveland, Ohio) was successful through collective bargaining in establishing a More Effective Schools program for Cleveland's elementary schools whereby four teachers share three classrooms. The emphasis is on children learning communication and computational skills

through individualized instruction. Other examples of AFT locals having negotiated improvements in educational programs are Chicago, New York, and Duluth. In none of these cases were supervisors in the collective bargaining unit.

This brings us to another point made by some who favor S. 3295 and that is a fear that the language of NLRA with respect to the scope of bargaining might be too limiting. The NLRA reads that "...rates of pay, wages, hours of employment or other conditions of employment..." are mandatory subjects of bargaining. S. 3295 reads that "...the terms and conditions of employment and other matters of mutual concern relating thereto..." are mandatory subjects of bargaining.

We believe that in substance, these two clauses are identical. The essence of collective bargaining is that the parties will discuss matters of mutual concern. We would be curious to see some concrete examples of the kinds of items which are feared would be excluded from bargainability under NLRA because this is a question which goes to the heart of the proper role of collective bargaining for public employees in a democratic society. We have serious reservations about all matters of public policy being subject to collective bargaining. Rather, we think there is a very fine balance between what should be decided in a democracy by the electorate and its representatives and what should be determined by collective bargaining. Working conditions should be negotiable. That which goes beyond should not.

Taking education as a case in point, all conditions of employment should be negotiable. But we would be very uneasy about a situation where collective bargaining could mandate an entire curriculum, for example, and that being voted by 51% of the teachers. In other words, insuring meaningful teacher involvement in the procedures for deciding such questions as textbooks and whether or not there should be homogeneous or heterogenous groupings is a condition of employment and thus should be subject to collective bargaining. It would not be good public policy in our view to make the final decisions on these matters subject to collective bargaining.

The fears with respect to possible limiting interpretations of the NLRA scope of bargaining are not only unfounded, but they are based upon false assumptions.

First, the concern appears to be predicated on a belief that a distinctive element of public employee collective bargaining is its being viewed as a vehicle for securing professional standards, goals and aspirations. Again, this is the kind of thinking that results from viewing public employees as a group distinct and different from those who hold jobs in the private sector. But, under examination, the dichotomy breaks down. Is the airline pilot or the technical engineer any less concerned with the "standards of the practice" than the teacher? Or what about the skilled building tradesman, his union, and construction contractors who demand qualified, trained personnel?

Secondly, the National Labor Relations Board has steadily given wider and wider interpretations of the meaning of "other conditions of employment." Construction and maritime union contracts often specify qualifying standards that must be met and apprenticeship programs are frequently established through the collective bargaining agreement. But, perhaps more to the point, several AFT contracts in higher education, negotiated pursuant to the conditions of the NLRA, have provisions governing faculty workload, assignment of courses and scheduling, prescribing teaching duties, and considering academic freedom (course content and textbook selection) to be a condition of employment. Furthermore, many of the public school teacher contract items which I referred to earlier as relating to remedial programs, staff ratios, and educational facilities were negotiated pursuant to state public employee bargaining statutes which contained language in the sections on bargainability identical to that found in the NLRA. Thus, the AFT believes S. 3294 to be adequate with respect to definition of mandatory subjects of bargaining.

S.3295 provides for an elaborate system of mediation and factfinding to come into operation whenever there is a bargaining impasse. The NLRA does not contain

the detailed language present in S. 3295 but the trained staff of the Federal Mediation and Conciliation Service is made available to assist in the resolution of all labor disputes. If the FMCS is expanded to meet the increased demand that the passage of S. 3294 would most probably result in, the NLRA provisions would be adequate. Obviously, NLRB staffing needs would also increase with public employee coverage by NLRA. In this regard, even though we believe the NLRB is presently understaffed, the personnel problems involved in an extension of NLRA coverage to public employees would be far easier to solve than the problem of staffing the entirely new public employee agency called for by S. 3295.

Another strong reservation we have about S. 3295 relates to Section 12 entitled "Applicability." This section says that the Public Employment Relations Commission created by the bill will have the power to cede jurisdiction to states which establish their own systems of public employee labor relations provided they are "substantially equivalent" to the system created by S. 3295. We have already enumerated some of our objections to S. 3295. We also believe that there are serious problems with every state public employee labor relations statute currently on the books. Some are better than others but none provides for true collective bargaining rights for public employees. Of course, the real question with a section such as this lies in the meaning of "substantially equivalent." In the debate in the House of Representatives on extending NLRA coverage to employees of non-profit hospitals, an amendment was offered which would have required the NLRB to cede jurisdiction to states in certain circumstances. The same "substantially equivalent" language was found in the amendment and its sponsor suggested that he viewed a compulsory arbitration statute to meet this equivalency test. We do not agree and we have touched on the evils of compulsory arbitration earlier in this testimony. But the point is that this section of S. 3295 is dangerous and opens the door to those who would seek to deny public employees true collective bargaining rights.

A review of the testimony of those in favor of either S. 3294 or S. 3295 shows a basic agreement on the facts surrounding the right to strike issue. Certainly, legal prohibitions and stiff penalties have not stopped public employee strikes though on many occasions employers have leaned on strike prohibitions and have not bargained in good faith simply because they believed their employees would honor the prohibition. In fact, that tendency, itself a result of strike bans, has probably caused a significant number of public employee strikes. There is the fact that not all public employee strikes have resulted in an emergency situation. Actually, most have not and the general duration of public employee strikes has been short. Furthermore, it is clear that there are many private sector strikes which are more damaging to the community health or safety than public sector strikes.

On the other hand, some have said that judges are in the best position to assess the impact of any particular strike on the public interest and to fashion an appropriate remedy. Our experience with injunctions and the stiff, punitive fines which follow when public employees feel sufficiently aggrieved to violate them, leads us to the conclusion that a clear directive should be given to the judiciary, parallel to language in the Norris-LaGuardia Act, that they are not to use their considerable powers to intervene in a labor-management dispute on the side of the employer. The AFT has seen judicial wrath at work many times--for example, in Detroit and Philadelphia. In neither of those cases was school board intransigence in negotiations and bad faith bargaining taken into account. The size of the fines were staggering and actually threatened to break the union. If these kinds of fines stick, how ready will public employers be to bargain in good faith the next time around?

On the issue of strikes, AFT prefers the language of the NLRA with no opening for the kind of punitive fines that destroy collective bargaining and which do not

limit strikes in the first place.

In conclusion, the AFT strongly supports S. 3294. The framework for collective bargaining provided by the NLRA has proved successful over the years and it will not be too soon when the benefits of that Act are extended to public employees. We vigorously oppose S. 3295 because we find no logic in treating public sector workers any differently than their private sector counterparts and because of the numerous provisions of that bill which will only work against the development of meaningful collective bargaining for public employees.