

# IN RE *COPPER RIVER SCHOOL DISTRICT*: COLLECTIVE BARGAINING AND CHAPTER 9 MUNICIPAL BANKRUPTCY

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## I. INTRODUCTION

Beginning in the late 1970s, a number of school districts found it difficult to pay salary obligations under collective bargaining agreements with their employees.<sup>1</sup> Taxpayers' revolts, declining enrollment, shrinking state revenues, or other forces beyond a school district's control have often been responsible for this predicament.<sup>2</sup>

State law remedies for a school district unable to pay salaries under its collective bargaining agreements are often unclear and uncertain. Two school districts faced this problem by filing petitions under chapter 9 of the United States Bankruptcy Code ("the Code").<sup>3</sup> San Jose Unified School District, a California school district, filed a chapter 9 petition in 1983 and obtained court approval for rejecting its

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1. See, e.g., Board of Educ. of Chicago v. Chicago Teachers Union Local 1, 430 N.E.2d 1111 (Ill. 1981); Minneapolis Ass'n of Adm'rs and Consultants v. Minneapolis Special School Dist. No. 1, 311 N.W.2d 474 (Minn. 1981).

2. *Id.*

3. 11 U.S.C. §§ 901-946 (1982).

union contracts.<sup>4</sup> Subsequently, the school district settled with its unions, and its bankruptcy proceedings were dismissed.<sup>5</sup> Copper River School District, an Alaska school district, filed a chapter 9 petition in 1986.<sup>6</sup> In April 1988, its reorganization plan was approved by the bankruptcy court.<sup>7</sup> Under the reorganization plan, teachers' salaries were significantly reduced.<sup>8</sup> This article will discuss *In re Copper River School District* and the legal implications of a chapter 9 petition on a school district's collective bargaining agreements.

## II. *IN RE COPPER RIVER SCHOOL DISTRICT: ONE SCHOOL DISTRICT'S EXPERIENCE WITH THE UNITED STATES BANKRUPTCY COURT*

Copper River School District is located in central Alaska. The district covers approximately 25,000 square miles and includes Wrangell-St. Elias National Park. In 1985, the school district served about 500 school children at six school sites.<sup>9</sup>

During the 1985-86 school year, Copper River School District's average teacher salary was the highest in the State of Alaska,<sup>10</sup> the state which had the highest average teacher salaries in the nation.<sup>11</sup> For that school year, the average salary for a Copper River School District teacher was \$49,065.<sup>12</sup> The school district estimated that 57.98% of its operating budget for the 1985-86 school year went to teachers' salaries.<sup>13</sup>

Under the current negotiated agreement with the school district's teachers' union, the school district's salary costs were scheduled to

4. *In re San Jose Unified School Dist.*, No. 583-02387-A (Bankr. N.D. Cal. filed June 30, 1983).

5. *Id.* See also Winograd, *San Jose Revisited: A Proposal for Negotiated Modification of Public Sector Bargaining Agreements Rejected Under Chapter 9 of the Bankruptcy Code*, 37 HASTINGS L.J. 231, 233-34 (1986).

6. *In re Copper River School Dist.*, No. 3-86-00830 (Bankr. D. Alaska filed Dec. 22, 1986).

7. Order Confirming Chapter 9 Plan dated April 8, 1988, *In re Copper River School Dist.*, No. 3-86-00830 (Bankr. D. Alaska filed Dec. 22, 1986).

8. Consent Order Modifying Plan dated April 8, 1988, and attached waiver dated April 8, 1988, executed by Copper Valley Teachers' Association, *In re Copper River School Dist.*, No. 3-86-00830 (Bankr. D. Alaska filed Dec. 22, 1986).

9. ALASKA DEP'T OF EDUCATION, ALASKA EDUCATION DIRECTORY 26 (1986) (copy on file at offices of Alaska Law Review).

10. ASSOCIATION OF ALASKA SCHOOL BOARDS, ALASKA TEACHER SALARY AND BENEFITS FY 1986 AK-1 (1986) (copy on file at offices of Alaska Law Review).

11. *USA Today* reported that Alaska teachers' salaries were 164% of the national average. The newspaper did not report the year on which its statistics were based. *USA Today*, Feb. 19, 1987, at 5A.

12. ASSOCIATION OF ALASKA SCHOOL BOARDS, *supra* note 10.

13. Copper Valley Views, Feb. 5, 1986, at 1 (copy on file at offices of Alaska Law Review).

increase for the following school year.<sup>14</sup> Unless adjustments were made, the highest paid teacher in the Copper River School District for the 1986-87 school year would have cost the school district over \$70,000 in salary, benefits, and extra-duty stipends for a nine-month contract.<sup>15</sup>

The Copper River School District receives virtually all of its revenues from the State of Alaska and has no authority to tax or issue bonds.<sup>16</sup> Unfortunately, its revenues were not sufficient to pay the extraordinarily high salaries which its collective bargaining agreement required. During the 1984-85 school year, the school district had operated with a deficiency of revenues over expenditures of approximately \$433,000.<sup>17</sup> During the 1985-86 school year, the school district's expenditures exceeded revenues by \$308,658. An emergency appropriation from the Alaska Legislature offset that deficit.<sup>18</sup>

In July 1986, in response to sharply declining oil revenues, the governor of Alaska cut state funding to all municipalities and school districts by ten percent.<sup>19</sup> This development substantially increased Copper River School District's severe financial problems.

On September 29, 1986, the school district's accountants prepared a cash-flow projection for the 1986-87 school year. The accountants projected that the school district would be completely out of funds by April 1987 and would end Fiscal Year 1987 with a deficit of \$776,000.<sup>20</sup>

The Copper River School District's collective bargaining agreement with its teachers was not due to expire until June 30, 1987.<sup>21</sup> In November 1985, the school district reopened negotiations with the teachers' union in an attempt to negotiate salaries downward for the

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14. NEGOTIATED AGREEMENT BETWEEN THE BOARD OF THE COPPER RIVER SCHOOL DISTRICT AND THE COPPER VALLEY TEACHERS' ASSOCIATION, JULY 1, 1984 - JUNE 30, 1987 [hereinafter NEGOTIATED AGREEMENT].

15. *Id.*

16. Chapter 14 of the Alaska Statutes describes the state's obligation to fund Alaska school districts. ALASKA STAT. § 14.17.010-14.17.250 (1987 & Supp. 1988).

17. COPPER RIVER SCHOOL DISTRICT, COMBINED FINANCIAL STATEMENTS AND SCHEDULES (June 30, 1985) (copy on file at offices of Alaska Law Review). Total school district expenditure for Fiscal Year 1985 was \$5,196,530. *Id.*

18. Accountants' report filed March 17, 1988, *In re* Copper River School District, No. 3-86-00830 (Bankr. D. Alaska filed Dec. 22, 1988).

19. See Memorandum from Leland L. Dishman, Superintendent of Copper River School District to Copper River School District employees (July 22, 1986) (copy on file at offices of Alaska Law Review).

20. Accountants' report, *supra* note 18.

21. NEGOTIATED AGREEMENT, *supra* note 14.

1986-87 school year.<sup>22</sup> Negotiations were unsuccessful. In July 1986, the school district unilaterally cut all salaries by five percent below the previous year's salaries.<sup>23</sup> An advisory arbitrator subsequently endorsed these salary cuts for teachers.<sup>24</sup>

The teachers' union filed a lawsuit in an effort to force the school district to submit salary cuts to binding arbitration.<sup>25</sup> On December 22, 1986, the Copper River School District filed a petition under chapter 9 of the Bankruptcy Code in the United States bankruptcy court in Anchorage, Alaska.<sup>26</sup> This action automatically stayed all grievances and litigation. The school district, meanwhile, continued to pay salaries at reduced levels.<sup>27</sup>

Prior to filing the petition in bankruptcy court, the school district had considered a number of options to solve the financial crisis which was caused primarily by its high teachers' salary schedule. First, as stated above,<sup>28</sup> it had reopened negotiations in an effort to lower teachers' salaries. These negotiations were unsuccessful.<sup>29</sup> Second, it sought and received a one-time emergency legislative appropriation from the Alaska Legislature.<sup>30</sup> That appropriation solved the 1985-86 budget deficit but did not address the underlying problem — insufficient revenues to pay teachers' salaries under the collective bargaining agreement.

Next, the school district asked the Alaska Department of Education whether schools could be closed early due to insufficient revenue.<sup>31</sup> Not surprisingly, the school district was told that closing

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22. See Letter from Leland L. Dishman, Superintendent of Copper River School District to the Copper Valley Teachers' Association (Nov. 27, 1985) (copy on file at offices of Alaska Law Review).

23. Memorandum, *supra* note 19.

24. Copper River School District v. Copper Valley Teachers' Association (1986) (Kienast, Arb.).

25. Copper Valley Teachers' Ass'n v. Copper River School Dist., 3AN-86-14779 Civil (Super. Ct. Anchorage filed Nov. 25, 1986).

26. *In re* Copper River School Dist., No. 3-86-00830 (Bankr. D. Alaska filed Dec. 22, 1986).

27. 11 U.S.C. § 362(a) (1982).

28. Letter, *supra* note 22.

29. It should be noted that the school superintendent for the school district when the chapter 9 petition was filed, Leland L. Dishman, was hired by the school board after the school district's financial crisis was apparent. Although in no way responsible for the school district's fiscal problems, he accepted the challenge of correcting them. The superintendent's leadership was largely responsible for the school district's financial recovery as described below.

30. COPPER RIVER SCHOOL DISTRICT, FY 1986 GENERAL PURPOSE FINANCIAL STATEMENTS 7 (June 30, 1986) (copy on file at offices of Alaska Law Review).

31. Telephone interview by Leland L. Dishman, Superintendent of Copper River School District, with the Department of Education.

schools early was not an option.<sup>32</sup> Finally, the school district made drastic budget cuts, including staff reductions which jeopardized its efforts to obtain accreditation for its high schools by the Northwest Accrediting Association.<sup>33</sup> These budget cuts were not sufficient to balance the school district's budget.

Moreover, it appeared that legal remedies outside the bankruptcy court were uncertain at best. In *Subway-Surface Supervisors v. New York Transit Authority*,<sup>34</sup> the New York Court of Appeals upheld the right of New York City to modify collective bargaining obligations during a fiscal crisis where the city established that the modification served an "important purpose" and was "reasonable and necessary."<sup>35</sup> On the other hand, in *Sonoma County Organization of Public Employees v. County of Sonoma*,<sup>36</sup> the California Supreme Court ruled that legislation voiding cost of living increases for public employees was an unconstitutional impairment of collective bargaining contracts. In that case, the court stated that the state had failed adequately to establish that California's Proposition 13 constituted a financial emergency.<sup>37</sup>

Some jurisdictions have ruled that a political entity's salary obligations may be set aside if requisite funds are not provided by the political entity with the powers of appropriation.<sup>38</sup> Copper River School District's crisis was due in part to a unilateral ten percent decrease in revenues by the State of Alaska for Fiscal Year 1987.<sup>39</sup> Nevertheless, no Alaska case law or statute authorized the school district unilaterally to cut salaries if the state cut funding to the school district.

The Copper River School District's primary goal was to provide an education program to school children of the Copper Valley for the 1986-87 school year. Alaska law gave the school district no clear guidance on how to proceed. Moreover, the school district wished to

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32. See Letter from Steve Hole, Deputy Commissioner of Education, to Leland L. Dishman, Superintendent of Copper River School District (Jan. 28, 1987) (confirming the school district's obligation to keep schools open) (copy on file at offices of Alaska Law Review).

33. See Letter from Carl L. LaMarr, Chairman of Alaska Committee of the Northwest Accrediting Association, to Leland L. Dishman, Superintendent of Copper River School District (Feb. 24, 1986) (copy on file at offices of Alaska Law Review).

34. 44 N.Y.2d 101, 375 N.E.2d 384, 404 N.Y.S.2d 323 (1978).

35. *Id.* at 110, 375 N.E.2d at 389, 404 N.Y.S.2d at 328 (quoting *United States Trust Co. v. New Jersey*, 431 U.S. 1, 25 (1977)).

36. 23 Cal. 3d 296, 591 P.2d 1, 152 Cal. Rptr. 903 (1979).

37. *Id.* at 313-14, 591 P.2d at 10, 152 Cal. Rptr. at 912-13.

38. See, e.g., *United Faculty of Florida v. Board of Regents*, 365 So. 2d 1073 (Fla. Dist. Ct. App. 1979).

39. Accountants' report, *supra* note 18.

avoid costly litigation with an uncertain outcome and a lengthy appeals process. Chapter 9 appeared to be the school district's best option.

Copper River School District operated under the jurisdiction of the United States bankruptcy court from December 1986 until April 1988.<sup>40</sup> At that time, a reorganization plan was approved by the bankruptcy court which permitted the school district to pay salaries at reduced levels.<sup>41</sup> The reorganization plan included a stipulation by the teachers that all litigation and grievances would be dismissed and that no salary increases of any kind would be required unless agreed to in a new collective bargaining agreement.<sup>42</sup> The school district's bankruptcy petition caused considerable furor. Members of NEA-Alaska, the state's largest teachers' union, picketed the federal bankruptcy court on the day of a critical hearing, and a number of local NEA-Alaska affiliates took out advertisements in a state newspaper protesting the school district's action.<sup>43</sup> Moreover, the teachers' union vigorously challenged, unsuccessfully, the school district's bankruptcy petition at every turn. The teachers' union was the only creditor group to challenge the school district's right to file the petition under chapter 9.<sup>44</sup>

Nevertheless, the school district's decision did not adversely affect the quality of education. During the 1986-87 school year, the first year the school district was in bankruptcy, the school district's standardized test scores rose significantly to be among the highest in the state.<sup>45</sup> By reallocating resources from salaries to other areas of the school budget, under the jurisdiction of the bankruptcy court, the school district's per pupil expenditures actually increased.<sup>46</sup>

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40. *In re Copper River School Dist.*, No. 3-86-00830 (Bankr. D. Alaska filed Dec. 22, 1986).

41. Consent Order Modifying Plan, *supra* note 8, and Order Confirming Plan, *supra* note 7.

42. Waiver, *supra* note 8.

43. Anchorage Daily News, May 26, 1987.

44. The chapter 9 petition filed by the San Jose Unified School District was also vigorously opposed by the teachers' union. As an indication of the extent of the opposition, the San Jose Unified School District pleading index alone is nine pages long. *In re San Jose Unified School Dist.*, No. 583-02387-A (Bankr. N.D. Cal. filed June 30, 1983).

45. COPPER RIVER SCHOOL DISTRICT SUPERINTENDENT'S REPORT (Mar. 5, 1988) (copy on file at offices of Alaska Law Review).

46. COPPER RIVER SCHOOL DISTRICT, COMPARISON OF STUDENT EXPENDITURES TO TOTAL REVENUES FY 1984-FY 1988 (unpublished graph) (copy on file at offices of Alaska Law Review).

## III. LEGAL IMPLICATIONS OF A CHAPTER 9 PETITION

In some ways, a chapter 9 petition is the municipal equivalent of a private party's petition to reorganize under chapter 11 of the United States Bankruptcy Code.<sup>47</sup> Reorganization, however, is the only option under chapter 9.<sup>48</sup> There are no provisions for liquidating a local political subdivision.

Nevertheless, there are important distinctions between chapter 9 and chapter 11. First, all chapter 9 proceedings are voluntary.<sup>49</sup> A governmental entity may not be forced into a chapter 9 proceeding involuntarily.<sup>50</sup> Second, in chapter 9, only the debtor has the power to propose a reorganization plan.<sup>51</sup> Third, no trustee is appointed in a chapter 9 proceeding.<sup>52</sup>

Finally, and perhaps most importantly, the bankruptcy court has limited authority to interfere with the political responsibilities of a municipality that has elected to reorganize under chapter 9. Section 904 of the United States Bankruptcy Code states:

Notwithstanding any power of the court, unless the debtor consents or the plan so provides, the court may not, by any stay, order, or decree, in the case or otherwise, interfere with—

- (1) any of the political or governmental powers of the debtor;
- (2) any of the property or revenues of the debtor; or
- (3) the debtor's use or enjoyment of any income-producing property.<sup>53</sup>

This restriction is in direct contrast to the long shadow of control a court's statutory authority casts over the right of a chapter 11 debtor to operate while under the jurisdiction of the bankruptcy court.<sup>54</sup> Thus, a school board's authority to make decisions, including decisions to hire and fire staff members, to employ attorneys and accountants, and to undertake any other governmental act, is undiminished by the fact that the municipality is under the jurisdiction of the bankruptcy court.

Under United States bankruptcy law, most school districts would qualify to avail themselves of chapter 9 protection. The Code only permits insolvent municipalities to file a chapter 9 petition if they are

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47. Compare 11 U.S.C. §§ 901-946 (1982) with *id.* §§ 1101-1174.

48. See *id.* §§ 901-946.

49. *Id.* §§ 301, 921.

50. *Id.* § 921. Cf. *id.* § 303 (creditors have ability to begin an involuntary chapter 7 or chapter 11 proceeding against a private entity).

51. *Id.* § 941.

52. *Id.* § 901 (sections 1104 through 1106 of the Bankruptcy Code regarding trustees are not incorporated into chapter 9).

53. *Id.* § 904.

54. See, e.g., *id.* § 363.

generally authorized to be a debtor under state law.<sup>55</sup> "Municipality" is defined broadly as a "political subdivision or public agency or instrumentality of a State."<sup>56</sup> In several cases, bankruptcy courts have held that a municipality's broad grant of statutory authority under state law provides sufficient state authorization for a municipality to file for bankruptcy even though no specific statute grants a municipality the power to file a chapter 9 petition.<sup>57</sup> A municipality's general authority over its financial affairs is often sufficient state authorization to allow the municipality the protection offered by the Bankruptcy Code.<sup>58</sup> For example, the Copper River School District's school board, although given broad powers to manage and control the school district, is not specifically authorized by state law to file a chapter 9 petition.<sup>59</sup> Nevertheless, the teachers' union's motion to dismiss the school district's bankruptcy petition was denied.<sup>60</sup>

Once under the jurisdiction of the bankruptcy court, a school district may alter its relationship with its public employees' unions under chapter 9. Municipal debtors are specifically granted the right to reject executory contracts.<sup>61</sup> An unexpired collective bargaining agreement is an executory contract.<sup>62</sup>

Prior to 1984, the standard a debtor must meet in order to have a collective bargaining agreement rejected was unclear. Rejection of executory contracts other than collective bargaining agreements was governed by the "business judgment" rule.<sup>63</sup>

Although collective bargaining agreements are considered executory contracts under section 365 of the Code, traditionally a standard higher than the "business judgment" rule has been used to determine whether a collective bargaining agreement may be rejected.<sup>64</sup> Some controversy remained regarding the standard to be applied, however, because of its significant reverberations throughout the management/labor relationship. One line of reasoning required that the debtor

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55. *Id.* § 109(c).

56. *Id.* § 101(29).

57. *See, e.g., In re Pleasant View Util. Dist.*, 24 Bankr. 632 (M.D. Tenn. 1982).

58. *In re Drainage Dist. No. 7*, 21 F. Supp. 798, 805 (E.D. Ark. 1937).

59. Copper River School District is a regional education attendance area organized pursuant to title 14, chapter 8, of the Alaska Statutes. ALASKA STAT. §§ 14.08.010-14.08.011 (1988). The powers and duties of a regional school board are listed in sections 14.08.101 and 14.08.111. *Id.* §§ 14.08.101, 14.08.111 (1988).

60. Order signed July 27, 1987, *In re Copper River School District*, No. 3-86-00830 (Bankr. D. Alaska filed Dec. 22, 1986).

61. 11 U.S.C. § 901 (1982).

62. *NLRB v. Bildisco*, 465 U.S. 513 (1984).

63. *In re Minges*, 602 F.2d 38 (2d Cir. 1979).

64. *Bildisco*, 465 U.S. at 523-24.

show that economic collapse would be virtually inevitable absent rejection of the contract.<sup>65</sup> Alternatively, courts required only a showing that the collective bargaining agreement was burdensome to the estate and that the balance of equities was in favor of rejection.<sup>66</sup>

The United States Supreme Court affirmed a higher standard for the rejection of a collective bargaining agreement in *National Labor Relations Board v. Bildisco & Bildisco*.<sup>67</sup> The Court did not, however, adopt the test urged by the labor union that in order to reject a collective bargaining contract, the debtor must demonstrate that the reorganization would fail absent rejection of the contract.<sup>68</sup> This is the strict standard which had previously been adopted by the Second Circuit in *Brotherhood of Railway and Airline Clerks v. REA Express, Inc.*<sup>69</sup> Instead, the Court opted for a more lenient standard permitting collective bargaining agreements to be rejected in bankruptcy proceedings where the agreement is shown to burden the bankruptcy estate and, after careful scrutiny, the equities are in favor of rejection of the labor contract.<sup>70</sup> The equities to be considered are only those equities which relate to the success of the reorganization.<sup>71</sup> The Court also encouraged bankruptcy judges to insure themselves that "reasonable efforts to negotiate a voluntary modification have been made and are not likely to produce a prompt and satisfactory solution."<sup>72</sup>

The legislative history of the Code, as expressed by a 1978 United States Senate Report, indicates that the power to reject a collective bargaining agreement was included specifically to allow a municipal debtor to deal with its collective bargaining agreements.

Within the definition of executory contracts are collective bargaining agreements between the city and its employees. Such contracts may be rejected despite contrary State laws. Courts should readily allow the rejection of such contracts where they are burdensome, the rejection will aid the municipality's reorganization and in consideration of the equities of each case. On the last point, "[e]quities in favor of the city in chapter 9 will be far more compelling than the equities in favor of the employer in chapter 11. Onerous employment obligations may prevent a city from balancing its budget for some time. The prospect of an unbalanced budget may preclude

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65. *Brotherhood of Railway, Airline and Steam Clerks v. REA Express, Inc.*, 523 F.2d 164 (2d Cir.), cert. denied, 423 U.S. 1017 (1975).

66. *Shopmen's Union No. 455 v. Kevin Steel Prod., Inc.*, 519 F.2d 698 (2d Cir. 1975); see also *In re Brada-Miller Freight Sys., Inc.*, 702 F.2d 890 (11th Cir. 1983); *NLRB v. Bildisco*, 682 F.2d 72 (3d Cir. 1982).

67. 465 U.S. 513 (1984).

68. *Id.* at 525.

69. 523 F.2d 164, 167-69 (2d Cir.), cert. denied, 423 U.S. 1017 (1975).

70. *Bildisco*, 475 U.S. at 525-26.

71. *Id.* at 527.

72. *Id.* at 526.

judicial confirmation of the plan. Unless the city can reject its labor contracts, lack of funds may force cutbacks in police, fire, sanitation, and welfare services, imposing hardships on many citizens. In addition, because cities in the past have often seemed immune to the constraint of "profitability" faced by private businesses, the wage contracts may be relatively more onerous than those in the private sector." *Executory Contracts and Municipal Bankruptcy*, 85 Yale L.J. 957, 965 (1976) (footnote omitted). Rejection of the contracts may require the municipalities to renegotiate such contracts by state collective bargaining laws. It is intended that the power to reject collective bargaining agreements will pre-empt state termination provisions, but not state collective bargaining laws. Thus, a city would not be required to maintain existing employment terms during the renegotiation period.<sup>73</sup>

*Bildisco* prompted Congress to adopt section 1113 of the Code as part of the 1984 bankruptcy legislation.<sup>74</sup> Section 1113 modifies both the substantive standard and the procedure necessary to reject a collective bargaining agreement. In order to reject the collectively bargained contract, the debtor must first propose those modifications to the union representative which are "necessary to permit the reorganization of the debtor" and which treat all affected parties "fairly and equitably."<sup>75</sup> In addition, the court must find that the union refused to propose modifications without good cause and that the balance of the equities "clearly favors rejection."<sup>76</sup> This is a higher standard than that set forth in *Bildisco*, but it probably does not rise to the economic survival standard required in *Brotherhood of Railway, Airline and Steam Clerks v. REA Express, Inc.*<sup>77</sup>

Due to the location of section 1113 in the Bankruptcy Code, however, the statutory standard of section 1113 does not apply to petitions under chapter 9. The standard outlined in *Bildisco*, therefore, remains good law with regard to proceedings under chapter 9.<sup>78</sup> Thus, it appears that a municipal debtor has an easier burden than a private debtor when persuading a court to permit the rejection of a collective bargaining agreement.

The law is not developed in this area. Prior to *In re Copper River School District*, only one school district utilized chapter 9 to reject collective bargaining agreements. In 1983, the San Jose Unified School District, a California school district with enrollment of approximately

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73. S. REP. NO. 989, 95th Cong., 2d Sess. 112 (1978), reprinted in App. 3 L. KING, COLLIER ON BANKRUPTCY § V at 112 (15th ed. 1988).

74. Pub. L. No. 98-353 (1984).

75. 11 U.S.C.A. § 1113(b)(a)(A) (Supp. 1988).

76. *Id.* § 1113(c).

77. See L. KING, COLLIER ON BANKRUPTCY § 365.03[1] (15th ed. 1988).

78. *Id.*

30,000 students, filed a chapter 9 petition.<sup>79</sup> That school district's financial crisis arose from an enrollment decline, with a consequent reduction in revenues, as well as property tax limits contained in California Proposition 13.<sup>80</sup>

Prior to filing its chapter 9 petition, an arbitrator had ordered the San Jose Unified School District to restore wages withheld when the school board voted to defer a wage increase. The school district's fiscal impossibility defense was rejected by the arbitrator. The bankruptcy court granted the school district's request to reject its collective bargaining agreements approximately two months after the school district filed its chapter 9 petition. Nearly a year after the bankruptcy petition was filed, the school district reached a comprehensive settlement with its unions, and the bankruptcy proceedings were dismissed prior to the approval of a reorganization plan.<sup>81</sup>

In contrast to *In re San Jose Unified School District*, the Copper River School District was formally discharged from bankruptcy in April 1988 under a reorganization plan which reduced teachers' salaries.<sup>82</sup> The teachers' union waived claims for higher salaries and accepted salary freezes and reductions during a hearing on the school district's motion to reject its collective bargaining agreement with the teachers.<sup>83</sup> The court indicated that absent the significant concessions made by the teachers' union, rejection of the collective bargaining agreement could have been appropriate.<sup>84</sup> Further, the court noted that the standards set forth in *Bildisco* would have been the test for determining whether the collective bargaining agreement could have been rejected by the school district.<sup>85</sup> A reorganization plan was then approved which included the teachers' union's waiver of salary claims pending the execution of a new collective bargaining agreement and the dismissal of all grievances and litigation.<sup>86</sup>

A school district considering chapter 9 as a vehicle for adjusting collective bargaining agreements should consider not only the legal implications, but the political implications of such action as well. Shortly after the Copper River School District was discharged from bankruptcy, legislation was introduced in the Alaska Legislature prohibiting an Alaska regional school board from filing a petition as a

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79. Winograd, *supra* note 5, at 232.

80. CAL. CONST. art. XIII-A.

81. Winograd, *supra* note 5, at 237-99.

82. Order Confirming Plan, *supra* note 7, and Consent Order Modifying Plan, *supra* note 8.

83. Waiver, *supra* note 8.

84. Transcript of confirmation hearing on March 24, 1988, *In re Copper River School Dist.*, No. 3-86-00830 (Bankr. D. Alaska filed Dec. 22, 1986).

85. *Id.*

86. Consent Order Modifying Plan, *supra* note 8.

debtor under chapter 9 of the United States Bankruptcy Code.<sup>87</sup> NEA-Alaska listed bankruptcy restrictions as a legislative priority for the 1987 Alaska legislative session.<sup>88</sup> The organization supported legislation requiring a school district declaring bankruptcy to be placed under state receivership.<sup>89</sup>

Although no legislation restricting a school district's right to file a chapter 9 petition was passed by the Alaska Legislature,<sup>90</sup> the fact that legislation was introduced and supported by Alaska's largest teachers' organization is an indication of the political response which could take place if a school district avails itself of the jurisdiction of a United States bankruptcy court.

Indeed, there appears to be a growing trend toward state intervention into the affairs of financially troubled school districts. According to a recent article in *The American School Board Journal*, New Jersey, Texas, Kentucky, New Mexico, and West Virginia have developed procedures for state intervention in local school districts.<sup>91</sup> For example, Kentucky law permits the state superintendent for public instruction, with the concurrence of the state board of education, to intervene in the operations of an educationally "deficient" school district if it fails to implement and approve education improvement plans adopted by the state.<sup>92</sup>

If a school district maintains a sound educational program and is simply overwhelmed by economic factors beyond its control, state intervention hardly seems justified. State intervention or takeover would merely add an additional layer of bureaucracy by removing control of the district to the state level. Such removal would thereby eliminate the flexibility afforded by local control. Moreover, there is no indication that state control would be more effective than local school boards in dealing with financial concerns. Thus, chapter 9, which allows a school board to adjust its debts while maintaining local control of the schools, is preferable to state takeover legislation in cases involving purely financial difficulties.

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87. H.B. 562, 15th Leg., 2d Sess., 1988 Alaska Sess. Laws.

88. NEA-ALASKA, NEA-AKTIVIST 1 (Mar. 1987).

89. *Id.*; H.B. 562, 15th Leg., 2d Sess., 1988 Alaska Sess. Laws.

90. H.B. 562 was sent to the House Health, Education and Social Services Committee. The Committee took no action with regard to the bill during the session.

91. Reecer, *Jersey City Stands Firm Against Charges of Academic Bankruptcy*, 21 AM. SCHOOL BOARD J. 21 (Nov. 1988).

92. KY. REV. STAT. ANN. § 158.690(4) (Baldwin 1987). *See also* W. VA. CODE § 18-2E-5 (1988) (pertaining to West Virginia "takeover" legislation).

#### IV. CONCLUSION

Chapter 9 of the United States Bankruptcy Code is a reasonable option for insolvent school districts to reorganize their financial affairs. Federal bankruptcy law permits municipal debtors to reject burdensome collective bargaining agreements if necessary and stays litigation and administrative proceedings which may hinder a school district's reorganization. In the absence of clear state law remedies, chapter 9 is an effective means for an insolvent school district to reduce salaries and balance its budget.

A school district should consider the political implications of relief under chapter 9. Public employees' unions may attempt to close the door to bankruptcy court by supporting state legislation prohibiting a school district from filing a chapter 9 petition or providing for the takeover of a school district by the state if the school district does take such action. Unless adequate state remedies are provided for responding to a school district's financial crisis, such developments would be unfortunate. Local school boards, like private corporations and individuals, should be afforded an opportunity to adjust their debts under the United States Bankruptcy Code. To the extent chapter 9 gives a school district the means to reorganize its financial affairs and start afresh, the municipal bankruptcy statutes enhance and protect the local control of school districts by popularly elected school boards.

