INDUSTRIAL RELATIONS

RESEARCH ASSOCIATION

COLLECTIVE BARGAINING IN THE PUBLIC SERVICE

PROCEEDINGS OF THE 1966
ANNUAL SPRING MEETING

Milwaukee, Wisconsin
May 6-7, 1966

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Twentieth Annual Winter Meeting, Washington, D.C., Friday & Saturday, December 29-30, 1967, Statler-Hilton Hotel

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Edited by Gerald G. Somers

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Preface

Collective bargaining in the public service presents a major challenge for students of industrial relations. The most rapidly growing sector in the union-management field, it is also the most complex. Containing most of the critical problems found in private labor relations, it is also faced with additional issues peculiar to its public status.

A major contribution to an understanding of these issues was made at the IRRA's 1966 Spring Meeting. An overriding question, running through most of the sessions, and emphasized especially in one, was whether the concepts, procedures and lessons of the private sector were applicable to collective bargaining in the public sector. Another general approach to the critical issues was a comparative one, specifically an analysis of the similarities and differences in Canadian and U. S. experience.

Two sessions were devoted to unionism among special groups of public employees: municipal employees and teachers.

The papers presented in a session on manpower problems, jointly sponsored with the Society for Applied Anthropology, are not included in these Proceedings but will be published separately elsewhere.

John W. Macy, Jr., Chairman of the U. S. Civil Service Commission, delivered a major address on "The Federal Employee-Management Program".

The Association is grateful to the speakers and discussants for taking time out of their busy schedules to discuss these issues, and for their prompt submission of manuscripts for these Proceedings.

A special debt of gratitude is owed Robert C. Garnier, President of the Wisconsin IRRA Chapter and chairman of the local arrangements committee in Milwaukee. There is general agreement that the attendance and hospitality provisions at the 1966 meeting set a major goal for future meetings.

June 1966 Gerald G. Somers, Editor

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C O N T E N T S

Collective Bargaining by Public Employees in the U.S.

Allan Weisenfeld

New Jersey State Board of Mediation

The American Bar Association in its 1955 report called attention to a behavioral dichotomy for which there was no longer, if there ever had been, any justification. It said:

> "A government which imposes upon private employers certain obligations in dealing with their employees may not in good faith refuse to deal with its own public servants on a reasonably similar basis, modified, of course, to meet the exigencies of public service."[1]

Between 1956 and 1961 the trade union movement lost over 1,000,000 members in the private sector of the economy.[2] When trade union membership peaked at 17,490,000 in 1956 almost 25% of the total labor force were union members. With the decline of trade union membership in the face of the growth in the labor force, the proportion of trade union members to the total labor force dropped to 22% in 1961 and slightly below that in 1964.

The plea of the American Bar Association for a grant of rights to public employees and the need by the organized labor movement for new blood found a response in Executive Order 10988 which the late President Kennedy signed on January 17, 1962.

This Executive Order created procedures for union recognition and for a degree of collective bargaining. Subsequent to the promulation of the Executive Order, the "Standards of Conduct for Employee Organizations" and the "Code of Fair Labor Practices", were adopted.[3]

The Order and the Code, taken together, approximate a package of rights for public employees entirely comparable to the rights contained in Taft-Hartley. The differences, and they are substantial, are found in the prohibitions against concerted activity, the circumscribed area of bargaining and the strong management rights clause of the Order.

These differences notwithstanding, public employees, in a manner reminiscent of their private counterparts a generation earlier, accepted the grant of self-organization and by virtue of their enrollment in affiliates of the AFL-CIO stemmed the downward trend of

[1]American Bar Association, "Second Report of the Committee on Labor Relations Government Employees", p. 125.
[2]Press Release, "Union Membership, 1964", USDL 4745, 9/16/65.
[3]Federal Register, 5/23/63, p. 5127-5132.

trade union membership. The small recovery, in absolute terms, of trade union membership from the low of 16,303,000 in 1961 was largely attributed to the organizational gains made among public employees. Between 1956 and 1962, the number of government employees increased from 7-1/2 million to more than 9-1/4 million, an increase of 24%. Trade union membership among these employees during this period of time increased from 915,000 to 1,225,000, an increase slightly in excess of 33%. Some 13% of government employees are members of a labor organization.[1]

By the close of 1965, 808 exclusive recognitions were granted by federal agencies to units deemed appropriate for purposes of collective bargaining exclusive of the Post Office Department which has 23,996.[2] In addition, there have been 1,074 grants of formal recognition - the type of recognition accorded an employee organization which enjoyed a substantial and stable membership of not less than 10% of the employees in a given unit, provided no other organization has obtained exclusive recognition for that unit. Formal recognition entitled an organization to be consulted on matters of interest to its members. In the four years since the signing of the Order 429 agreements have been negotiated between federal agencies and unions enjoying exclusive recognition for purposes of collective bargaining on behalf of their members.

These agreements range from the sophisticated, pre-Executive Order, T.V.A. contracts with employee organizations to narrowly drawn documents which reflect recognition of the union as bargaining agent and which reiterate the "management rights" clauses of the Executive Order plus a "savings" clause which provides that such terms as are agreed to are". . . subject to the provisions of any applicable existing or future laws or regulations. . ."

Executive foot-dragging and the failure to adopt procedures that might be effective in resolving impasses in the bargaining over substantive issues have been a common cause of union complaint.

The lack of machinery for the settlement of collective bargaining disputes was noted by AFGE Executive Vice President, Clifford B. Noxon, when he said

> "There cannot be realistic collective bargaining where management makes the final decision and there is no appeal to an impartial board."[3]

[1]Directory of Nat'L & Internat'L Labor Unions in the U.S., 1957 and 1963.

[2]Government Employees Relations Report, Bureau of National Affairs, GERR A-7 (No.112) 11/1/65.

[3]Government Employee Relations Report, B.N.A., GERR A-9 (No.115) 11/22/65.

John W. Macy, Jr., Chairman of the U.S.Civil Service Commission, seems to have anticipated Mr.Noxon when he acknowledged that

> ". . . because the use of mediation is optional with agency management, little use is being made of this effective instrument of cooperation."[1]

Criticism of the failure of the Executive Order to produce the results anticipated for it was leveled from without the federal service as well.

Wilson R. Hart, formerly the labor relations director for the Defense Supply Agency, sadly observed that a hoped for new era of labor-management cooperation in the federal service has not materialized. Reduced to its essence, the tenor of Mr. Hart's views was that, by virtue of conflicting philosophies, there exists an unbridgeable gap between the labor union approach to employee-management relations and the U.S.Civil Service Commission's approach.

Labor predicates its view of effective employee-employer cooperation on the premise that collective bargaining is the cornerstone on which industrial democracy must be built. The Commission's view, as Mr. Hart sees it, ". . . is based on the proposition that the art of public personnel management has been so refined and developed that there is neither need nor justification for strong unions in any public agency where this art is skillfully practiced by personnel managers. . ."[2]

The line seems to be clearly drawn between genuine collective bargaining, on the one hand, and personnel management in the modern mode, on the other.

The U.S.Civil Service Commission apparently is cognizant of the fact that impasses, whatever their underlying causes, have developed in the collective bargaining between public employee organizations and federal agencies, with resulting frictions and frustrations leading to possible breakdowns in relations. The Commission charged by the Executive Order with providing guidance and technical advice to federal agencies issued a letter to all agencies wherein it advised that "Agencies should delegate to management at the negotiating level sufficient authority to negotiate with employee organizations in dispute-solving procedures and authority to use appropriate procedures when mutually agreeable to both parties."[3] The letter called attention to the dispute-solving techniques of fact-finding, mediation and referral to higher authority that have

[1]Government Employee Relations Report, B.N.A., GERR A-7 (No. 112) 11/1/65.

[2]Wilson R. Hart,"The Impasse In Labor Relations in the Federal Civil Service",Industrial & Labor Relations Review, Jan.1966.

[3]Federal Personnel Manual Systems Letter No.711-3, U.S. Civil Service Commission, Washington, D.C., 2/7/66.

been used. The Commission urged the use of mediation for the resolution of difficult issues which remain unresolved after extensive direct negotiations. The letter also suggested more extensive use of advisory arbitration as a technique in settling grievances. Clearly, the euphoria engendered by the promulgation of the Order has in some measure evaporated.

". . .A lot of the bloom has been worn off the idealistic rose," Senator Brewster told the Senate when he introduced his Bill (S.3188) which he said was designed to improve employee-management relations in the federal service.[1]

The Senator caustically observed ". . . that the Civil Service Commission has proved itself, particularly in recent years, and particularly in its top management, to be management-oriented to the point of prejudice, a mere subjunct to the Bureau of the Budget, and no more representative of the aims, needs, desires and aspirations of the rank-and-file federal employee than is the National Association of Manufacturers."[2]

Any serious effort to evaluate the success, or lack of it, in achieving "realistic collective bargaining" in the federal service must be made with the full realization that the phrase has different meaning than when used in reference to bargaining in the private sector of the economy. Within the framework of a market economy, private negotiators enjoy the relative flexibility of electing alternatives including overt economic pressure in the search for agreement. In the public sector no such flexibility of choices is available to negotiators. Reliance on economic strength as an inducement to agree is denied to public negotiators by both custom and law. Further, wage classifications, the number of paid holidays, the extent of annual and sick leave, pensions, and similar substantive items as constitute the heart of private labor agreements are matters for Congressional determination.

Nevertheless, though circumscribed in area, bargaining in the public service is most meaningful. Public employee unions and agency executives emphasize in their negotiations such personnel matters as promotions, demotions, reduction-in-force, disciplinary action, recruitment and training. Matters of safety, sick and annual leave allocations and such working conditions as rest periods, special clothing and wash-up periods are also included in government labor contracts. Much attention in these agreements is focused on union-management cooperation, negotiating committees,

[1]Senator Daniel B. Brewster, Congressional Record-Senate, 4/5/66, p. 7215.

[2]Senator Daniel B. Brewster, ibid.

fact-finding committees, provisions for grievance settlement and advisory arbitration procedure.[1]

It seems reasonable to suggest that if frustrations with current procedures for collective bargaining in the public service persist, unions representing federal employees will ultimately seek legislative relief to obtain ". . . the same 20th Century human rights which workers in private industry have been enjoying for 30 years."[2]

However interesting developments at the federal level may be, the real ferment in the burgeoning growth of trade unionism among public employees is at state and local levels. Currently most of the action is at these levels of government.

The variety of procedures adopted at state levels to cope with public employee labor relations problems is great. Not being saddled by a preemption doctrine, the States are free to experiment and to fashion solutions, if solutions there are, to meet their respective needs.

Sixteen States have enacted legislation extending, in greater or lesser measure, to state and/or local government employees the right of self-organization for the purpose of collective negotiation.[3]

The State laws relating to the public employment relationship range from the simple statement in the 1955 New Hampshire statute which authorizes, but does not require, towns to "recognize unions of employees and make and enter into collective bargaining contracts with such unions" to the sophisticated updated little Wagner/Taft-Hartley type acts for public employees in Wisconsin, Massachusetts, Michigan, Rhode Island and Connecticut. Delaware provides collective bargaining for state employees and for local employees at the option of local governments. The statutes in Maine & Wyoming are applicable only to uniformed municipal fire fighters and provide for arbitration as a medium for the resolution of disputes.

The Michigan law is a little Wagner Act for all public employees other than those in the state classified civil service.[4] Wisconsin,[5] Massachusetts,[6] and Connecticut[7] have Taft-Hartley type statutes covering municipal employees.

[1]Collective Bargaining Agreements in the Federal Service, 1964, B.L.S. Bulletin No. 1451.

[2]Senator Brewster, op.cit.

[3]Alaska, California, Connecticut, Delaware, Rhode Island, Florida, Maine, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, Oregon, Washington, Wisconsin & Wyoming.

[4]Michigan, Act No. 176 of the Public Acts of 1939 as amended.

[5]Wisconsin Statutes, Section III.70, 1959 amended 1962.

[6]Massachusetts, Chapter 763, 1965.

[7]Connecticut Public Act No. 159.

In these four States jurisdiction over representation questions and unfair labor practices involving unions of municipal employees are vested in their respective labor relations agencies.

Massachusetts' State employees are covered by a statute different from that affecting municipal employees.[1] This Statute authorizes the State Director of Personnel and Standardization to establish rules governing recognition of employee organizations. The rules promulgated pursuant to this authority closely parallel federal Executive Order 10988 in form.[2]

The Delaware law contains no reference to unfair labor practices. The State Department of Labor and Industrial Relations is charged with the responsibility for resolving representation disputes.

In Michigan, Wisconsin, Massachusetts and Connecticut certified unions representing municipal employees and the employing agencies may utilize their respective state mediation facilities to help resolve bargaining deadlocks. Disputes not settled by mediation may be referred to impartial fact-finding with recommendations.

In Delaware deadlocks, not involving wages or salaries, affecting either organizations representing state or municipal employees may be referred to the State Department of Labor and Industrial Relations for mediation or, at the option of the parties, to binding arbitration.

Bargaining impasses involving unions representing Massachusetts' State employees which have exclusive bargaining rights may be referred to the State Labor Relations Commission for fact-finding with recommendations.

Teacher organizations have rather strong lobbies in several states and have had considerable success in carving out spheres of influence that resulted in representation and bargaining rights exclusively for educational personnel. In Connecticut, for example, the use of existing state machinery for the resolution of representation disputes is avoided. Instead, such disputes are referred to private arbitration for disposition. Impasses relating to terms and conditions of employment may be referred to the Secretary of the State Board of Education for mediation. If necessary, the matter may be submitted to an impartial board of arbitrators for advisory arbitration.[3] In addition to Connecticut statutes covering school personnel only have been enacted in California, Oregon and Washington. A similar bill is awaiting gubernatorial signature

[1]Massachusetts, Chapter 637, 1964.
[2]Rules 18A, 20A-M, posted by the Massachusetts Director of Personnel & Standardization, Dec. 10, 1965.
[3]Connecticut Public Act No. 298.

in Rhode Island. In Minnesota and New Jersey, however, such limited statutes were vetoed. More than one-quarter of the Nation's teachers are covered by collective negotiation agreements.[1]

Within the past six months we have experienced five strikes of school teachers in such widely dispersed areas as New Jersey, New York, Kentucky and New Orleans.[2]

The competition between affiliates of the National Education Association and the American Federation of Teachers is so heated that teacher strikes threaten to become routine where these organizations compete for teacher support. The ambivalence of N.E.A. affiliates between "professionalism" and "trade unionism" seems to be in the process of being resolved in favor of the latter at least insofar as collective negotiations with school boards are concerned.

Fresh in the memory of New York City commuters is the New Year transit strike. No sooner were the trains back in operation than New Yorkers were, and still are, faced with a threat of a strike by the Sanitation Department employees who are asking wage treatment equal to the generosity extended to transit workers. Earlier this year, the United Federation of Teachers threatened to boycott the opening of the City's schools next fall if the school year was lengthened by two days as proposed. Almost one-half of the City's nurses have resigned as of May 23rd in protest at the failure to obtain a satisfactory agreement.

In the wake of the New York City transit strike and in view of the obvious inadequacy of the Condon-Wadlin Act to cope with public employee strikes, both the State and the City appointed committees to study the problem and to recommend solutions.

By an interesting coincidence both Governor Rockefeller's Committee[3] and Mayor Lindsay's Committee[4] submitted their respective reports on March 31, 1966.

The Rockefeller Committee Report has been attacked by the American Federation State,County & Municipal Employees,AFL-CIO, as a "mad hatters idea"which would "make Condon-Wadlin respectable".[5] Union officials charged that the Committee's proposals ". . . would try to bleed them (the unions) to death to make sure they don't function."[6]

[1]Michael Moskow, "Recent Legislation Affecting Collective Negotiations for Teachers", Phi Delta Kappen, November, 1965.
[2]New York Times, News of the Week in Review Section, 4/3/66.
[3]Governor Rockefeller's Committee was an all public committee.
[4]Mayor Lindsay's Committee was tri-partite in nature.
[5]New York Times, April 10, p. 61.
[6]New York Times, op.cit.

The New York Times editorially hailed the report ". . . as a landmark in a search for a dependable way to bar strikes in the Civil Service." The Times' editorial writer thought it would ". . . be a tragedy if the atavistic opposition of those unions eager to kill all strike penalties and of those legislators who are willing to extend a measure of industrial democracy to public employees. . . prevented enactment of the Committee's proposals."[1]

The New York Times reiterated its approval of the Rockefeller Committee's recommendations on April 28, 1966 and urged legislative action "to replace the worthless Condon-Wadlin Act with an enforceable law barring Civil Service strikes."[2] The Committee's proposals also enjoy the support of the business community and the Civil Service Association.

Space does not permit more than a casual review of recommendations made by these committees. The Rockefeller Committee devoted a substantial portion of its lengthy report to "proving" that since public employees never had the right to strike they were not giving anything up. Further, since strikes by public employees are abhorrent, three deterrents were proposed: injunctions and contempt citations coupled with fines, the application of Civil Service law for participants in work stoppages and slow down which, depending on the degree of individual responsibility could result in demotions, suspensions, including dismissal, and possible loss of representation rights and check-off.

The Rockefeller Committee recognized that deterrents alone do not build a constructive public employment relationship. Therefore, it recommended a variety of collective bargaining procedures, supervised by a public employment relations board, ranging from direct negotiations, mediation, fact-finding and ultimately, if necessary, referral of deadlocked negotiations to the legislative body with jurisdiction over the disputants in a sort of "show cause" proceeding.

The Lindsay Committee Report is in the nature of an endorsement of a memorandum of agreement negotiated between representatives of New York City and unions representing the city's organized employees. Like the Rockefeller Committee, the Lindsay Committee supported the proposition New York City Workers are free to join unions of their own choosing and that the city is obligated to bargain in good faith with organizations certified

[1] New York Times, editorial, 4/8/66.

[2] Ibid, 4/28/66. (This editorial cited a letter to the editor written by a president of an AFSCME unit of State employees who, contrary to the official position of the AFSCME, hailed the Rockefeller Committee proposals as a major step forward for state employees.)

as representing a majority of employees in an appropriate unit. The memorandum of agreement relies on direct negotiations and mediation. If these techniques do not result in agreement the negotiations would be referred to a dispute panel maintained by the Office of Collective Bargaining for further mediation and finally, to fact-finding with recommendations. The union signatories to the agreement waived the right to strike throughout the entire prescribed collective bargaining procedure up to 30 days after the rejection of a fact-finding panel's recommendation.

The Lindsay Committee's Report was received with enthusiasm by the officials of the American Federation of State, County & Municipal Employees which represents the largest number of organized workers directly employed by New York City. A shadow was cast on hope for unqualified acceptance of the program when the 5,000 member Social Service Employees Union, representing Welfare Department caseworkers, threatened to strike if the agreement were put into effect.[1]

Rules of procedure and deterrents against abuse are both necessary and desirable. However, neither elaborate collective bargaining procedures nor harsh deterrents, separately or jointly, necessarily add up to sound employee-employer relations.

We face the brave new world of public employee collective bargaining overly concerned with the spectre of strikes and their presumed threat to state sovereignty.

We sincerely seek to give to public employees a grant of industrial democracy representing a reasonable facsimile of that enjoyed by workers in the private sector of the economy. At the same time we seek assurances that such a grant will not unduly disturb the status quo of employment relations in the public service. Such assurances will be difficult if not impossible to obtain fully. Legal incantations are impotent in the search for certainty where there is no certainty.

A strike by public employees evokes allegations of irresponsibility by labor leaders. Responsibility is a two way street. A viable bargaining relationship in the public service is possible only when the parties participating in the bargaining process accept the principles of collective bargaining which include not only the recognition of their obligations to each other but their joint obligation to the electorate.

Even the most elaborate structures for direct negotiations, mediation and fact-finding surrounded by a wall of deterrents is not likely to deter strong unions of public employees from striking if they feel they are not getting fair treatment.

The best that can be hoped for is that, given adequate procedures and an equitable package of rights and responsibilities similar to those available to employees in the private sector of the economy, the public employee-management labor relations boat will not be unduly rocked.

[1]New York Times, 4/10/66

Collective Bargaining by Civil Servants in Canada

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Introduction

During the last few years a legislative revolution has begun taking place regarding the collective bargaining status of Civil Servants in Canada. The atmosphere seems to resemble that of the Wagner era in the United States in the early 30's, or the Order-in-Council P.C. 1003 period in Canada in the 40's. In 1963, Ontario passed a collective bargaining law requiring arbitration of disputes involving its Civil Servants. In 1964 New Brunswick, and in 1965 Alberta and Manitoba, enacted statutes granting provincial employees the right to engage in collective bargaining, but denied them the right to strike. Also in 1965, the Quebec legislature enacted the new Civil Service Act which gave Civil Servants full collective bargaining rights and also the right to strike. Most important of all and a historical landmark for the Canadian public sector was the introduction of Bill C-170 by the Federal Government into the House of Commons. The bill was presented on April 25, 1966, and passed through the first reading during the same day. It is expected to come up for the second reading in the very near future. The fifty-page bill with its 116 main sections provides for a system of collective bargaining with a qualified right to strike stipulations for Federal Civil Servants. Undoubtedly, the forthcoming Federal legislation and the Quebec successes or failures with its new Civil Service Act will have a significant influence on the future collective bargaining status of public employees in all Canadian jurisdictions.

In the first part of this paper I intend to discuss briefly developments in Saskatchewan and Quebec, the two provinces where Civil Servants have the right to strike. Following this, I will embark on a short legislative sightseeing tour of the other eight provinces. Finally, I will cover the Federal Jurisdiction.

Saskatchewan

Saskatchewan, the Wheat Province, was the first Canadian province which, as early as 1944, gave its Civil Servants full collective bargaining with the right to strike.[1] The election to

[1]The Saskatchewan Experience, A presentation to a conference of Government and Employee Association representatives, Halifax, Nova Scotia, September 25-26, 1963, p. 3.

office of the Co-operative Commonwealth Federation, or (as it is commonly called) the C.C.F., was chiefly responsible for this legislation. In the year 1944, the Trade Union Act of Saskatchewan was enacted. The Act guaranteed to all employees in the Province the right to organize in trade unions, to bargain through spokesmen of their own choosing, and to strike. The Act did not differentiate between public and private employees; it merely stipulated that the Crown is an employer in Saskatchewan. Passage of the Act meant that Civil Servants, like private employees, could gain certifications in the Province.

On March 19, 1945, the Saskatchewan Government Employee's Association gained certification as a bargaining agent for the "employees on the staffs of all departments, boards, commissions and other agencies which were under the control of or were owned and operated by the government of Saskatchewan."[2] Although this certification gave the association exclusive bargaining rights for all government employees, it did not prevent other organizations from attempting, in some cases successfully, to carve out smaller bargaining units from the Association unit.[3]

At present, the Saskatchewan Government bargains with three unions.[4] However, the Saskatchewan Government Employees Association still represents the bulk of provincial Civil Servants. It holds three certification orders, the original 1945 order and two 1962 orders,[5] and it negotiates seven separate agreements with the government. Although the Association is monolithic in its structure, it is forced to recognize the variations in the occupational categories and community of interests of its members during its bargaining procedures.

The collective agreements signed by the principals are very similar to contracts in private industries. They contain provisions "pertaining to working conditions, hours of work and scales of wages."[6] However, there are certain "conditions of employment" that are not within the scope of bargaining. These are: "The terms and conditions of the various Superannuation acts, the Classification Plan, the Group Life Insurance Plan" and some features "of the Merit System Provisions of the Public Service Act."[7]

The Saskatchewan experience with collective bargaining has been very successful. The relations between the Association and the government at the bargaining table seem to be excellent--so

[2]The Saskatchewan Experience, op. cit., p. 3, exhibit 8.
[3]S.J. Frankel, Staff Relations in the Civil Service (Montreal: McGill University Press, 1962), pp. 209, 212.
[4]The Saskatchewan Experience, op. cit., p. 6.
[5]Ibid., exhibits 8, 9, 10.
[6]Ibid., exhibit 3.
[7]Ibid., p. 15.

good, in fact, that when a deadlock seems to be building up "both parties have on occasion resorted to making 'no prejudice' proposals in order to keep things moving and to explore each other's minds."[8] Between the years 1951 and 1962 the number of days spent at the bargaining table never exceeded twenty-six at each negotiation and in 1962 was as low as nine days. According to Mr. Leonard, the Executive Secretary of the Association, there have been no occasions in the past when the Association had even "to consider the strike weapon."[9]

Quebec

Quebec, La Belle Province, is the second Canadian province which gave its Civil Servants full collective bargaining with the right to strike. The overture to collective bargaining by public employees in the Province of Quebec was played in June, 1960, when the old regime of Mr. Duplessis was replaced by a new liberal government. The change-over was of great significance to labour in the Province, especially to public employees. The old government had been strongly anti-labour, and its attitude was reflected in labour legislation and policy. The pendulum moved in the other direction when the new government began enacting legislation favourable to labour.

On July 31, 1964, the Quebec Legislature enacted the labour code which introduced a more liberal labour philosophy in the Province. Inter alia, the code gave the Quebec liquor employees, who were provincial Civil Servants, the right to strike. They were the first group of provincial employees granted such a right, and took prompt advantage of it by going on strike for 76 days. Their timing was excellent; they struck during the Christmas Season. The 1964 Code, however, did not extend collective bargaining and the right to strike to "functionaries contemplated by the Civil Service Act, other than those in the service of the Quebec Liquor Board."[10]

On August 6, 1965, the Labour Code was amended and a New Civil Service Act enacted which gave provincial Civil Servants the right to bargain collectively and to participate in strike action. The Act does not extend the subject-matter of negotiation to such issues as job classifications, appointments, promotions, transfers, and training programs, all of which are still the responsibility of the Civil Service Commission. According to the Civil Service Act the bargaining agent for the provincial employees is the Syndicat Des Fonctionnaires Provinciaux Du Quebec. The Act, in section 69, gives the Syndicat exclusive bargaining rights for all

[8]The Saskatchewan Experience, op. cit., p. 17.
[9]Letter from Mr. Wm. Leonard, Executive Secretary of the Saskatchewan Government Employees' Association, February 8, 1966.
[10]The Quebec Labour Code, 1964, Section 145.

Civil Servants "who are employees within the meaning of the Labour Code," with the exception of those in four categories--teachers, members of professions, university graduates, peace officers--and those in related classifications. The Act authorizes the Lieutenant Governor-in-Council to grant certification to any association representing such categories of employees. The certification is to be granted on the recommendation of a joint committee especially constituted for this purpose.

The Act gives the provincial Civil Servants, with some exceptions, the right to strike. It stipulates, however, that strikes are forbidden "unless the essential services and the manner of maintaining them are determined by prior agreement between the parties by a decision of the Quebec Labour Relations Board."[11] The new legislation has had a significant impact on strike activity among the Civil Servants in the Province. On February 28 of this year, 21,000[12] members of the Union of Provincial Government Employees, which claims to represent 40,000 Civil Servants in the Province, gave their leaders an overwhelming mandate to call a strike. On March 25, 1966, which was the strike deadline, a settlement was reached between the Provincial Government and the Union.

At this point it may be worthwhile examining the forces which brought the Provincial Civil Servants to the verge of a strike. I do not think that the reasons for this can be found solely in the terms of settlement. Probably one of the grounds for the stand of the provincial employees was the inaptitude of the government team in negotiations, and the slowness and delay of the bargaining process.[13]

Another reason for the aggressive stand of the Civil Servants can possibly be attributed to the years under the Duplessis government when any form of union organization was frowned upon. The present situation may be a reaction to those years. Still another factor is undoubtedly the strong feeling of French nationalism enveloping the Province. Nationalistic feeling has resulted in many confrontations between the international unions and the C.N.T.U. in Quebec. The Province was swept by a wave of strikes, some of which were the result of the jurisdictional disputes between the two bodies which were trying to outbid each other in the settlements achieved. There were strikes of bus drivers, liquor employees, postal employees, teachers, and a threatened strike by electric utility workers. Many of these strikes resulted in victories for labour. With each victory the Syndicates

[11] Civil Service Act, Section 75, p. 16.
[12] The Montreal Gazette, March 2, 1966, p. 1.
[13] Ibid., March 1, 1966, p. 9; March 3, 1966, p. 9; March 4, 1966, p. 1.

and their members become more aggressive in their stand. An illustration of this aggressiveness was the large-scale strike threat against the Provincial government.

The impact of the Quebec labour offensive can also be felt at the Federal level. The 1965 Nationwide Postal Strike was led by the Montreal postal workers, who stayed off the job for seventeen days, longer than any of their colleagues in the other Canadian cities.[14] In their militancy the Montrealers were probably influenced by the other successful strikes in the Province of Quebec, especially those of the transportation and liquor employees. The victory of the postal employees gave other Federal employees some food for thought, the outcome of which is examined in the latter part of this paper.

The Other Eight Provinces

Developments in the other eight provincial jurisdictions are not so spectacular as those of Saskatchewan and Quebec; nevertheless significant changes are taking place in some of them. In Ontario,[15] since 1963, the Civil Servants have been able to bargain collectively through the Joint Advisory Council. The majority decisions of the Council are binding on both sides. In case of disagreements, an Arbitration Board is established whose decisions are also binding. In Alberta and Manitoba,[16] Civil Servants also have the right to negotiation, but in case of dissent the final authority rests with the government. In New Brunswick,[17] government employees can negotiate, but they have no right to strike, and the bargaining procedures are not included in the Act but prescribed by regulation.[18] There are no collective bargaining rights provided by law in Prince Edward Island,[19] British Columbia,[20] Nova Scotia,[21] and Newfoundland.[22] In P.E.I. there is a

[14] The Labour Gazette, September 1965, p. 789.

[15] Ontario Public Service Act, Section 19.

[16] The Labour Gazette, August, 1965, p. 694. Alberta Public Service Act, Section 66. The Manitoba Civil Service Act, Section 45.

[17] New Brunswick Civil Service Act, Section 52.

[18] The Labour Gazette, December 1964, p. 1081.

[19] The Prince Edward Island Act Respecting the Civil Service, Section 68.
Letter from B.J. Praught, Executive Secretary, P.E.I. Public Service Association, March 2, 1966.

[20] S.J. Frankel, Staff Relations, op. cit., p. 311.
The Provincial, Summer Issue, 1962, pp. 7, 9.

[21] W. Hewitt, Executive Secretary, Civil Service Federation of Canada, Labour Relations in the Public Service--Pittfalls and Techniques, Public Personnel Association. Eastern Regional Conference, Washington, D.C., April 23, 1963, p. 5.

[22] S.J. Frankel, Staff Relations, op. cit., p. 205,
W. Hewitt-White, op. cit., p. 4.

Joint Council, and in British Columbia a Board of Reference. Both bodies can hear requests made on behalf of employees, but they have no authority to submit binding recommendations. In Nova Scotia informal discussion take place between the government and its employees. As far as I could find out, there is a complete vacuum in Newfoundland.

The Federal Jurisdiction

So far this paper has been confined to provincial developments. The forthcoming part covers the Federal Jurisdiction. It concentrates on the right of government employees to strike. Although the strike issue is discussed within the context of Federal Jurisdiction, the arguments raised are also applicable to provincial Civil Servants.

Over the years the associations of Federal Civil Servants became increasingly dissatisfied with their consultative capacity in the determination of wages and working conditions in the Civil Service, and began demanding collective bargaining legislation. Their growing pressures led to the appointment of "the Preparatory Committee on Collective Bargaining in the Public Service" in August,1963. The Committee, composed of senior government officials, was vested with the task of introducing "an appropriate form of collective bargaining and arbitration"[23] into the public service. This Committee released its findings on July, 1965, in a report commonly known as the 1965 Heeney report. The report contains many challenging issues for discussion, such as the certification, grievance, and conciliation procedures, the prohibition on minority reports of the arbitration tribunal, the limited discretionary powers of the proposed Public Service Staff Relations Board with respect to determination of appropriateness of bargaining units, the methods for revocation of bargaining rights, the restriction of subject-matter for arbitration, and the issue of employer and employee representation at the bargaining table. Unfortunately, time will not permit me to cover these topics. Instead, I intend to confine my coverage to the section of the report concerned with compulsory arbitration.

The Heeney report recommended that the process of collective bargaining be extended to every government agency "not covered by or excluded from the provision of the Industrial Relations and Disputes Investigation Act."[24] The exception to this recommendation are special categories of public servants such as members of the Armed Forces, the Royal Canadian Mounted Police, casual and part-time employees.

[23]A.D.P. Heeney, Report of the Preparatory Committee on Collective Bargaining in the Public Service, Queen's Printer, Ottawa, July 1965, p. 1.

[24]A.D.P. Heeney, op. cit., p. 24.

The report proposes compulsory arbitration for Civil Servants in lieu of strikes. In these recommendations the Heeney Committee was probably guided by the experiences of Australia and the United Kingdom. There, arbitration has been successful in the resolution of disputes in the public service.[25] Another consideration was probably the past attitude of most of the Civil Service organizations who demanded collective bargaining without the right to strike.[26] The implementation of Heeney's arbitration proposals brings up an interesting constitutional question regarding the supremacy of the Queen and of the Parliament. The government in power represents the Queen in Parliament. The Queen cannot be tied by the verdict of a tribunal that owes its existence to her. "There is no way of getting around this legalism...in passing an arbitration act the sovereign expresses an undertaking to be bound by the tribunal rulings, but it can never be more than a tentative undertaking. It would be realistic...to acknowledge the sovereign's supremacy in the proposed act."[27] This legalism poses the problem of how to prevent the government from abusing the sovereign's power which it possesses with respect to arbitration decisions. The Heeney Committee attempts to solve this problem by recommending that collective agreements and arbitration awards be binding on the "employee organizations," and "in normal circumstances on the employer, subject always to the availability of funds provided by Parliament." The Committee further suggests that "where the national interest is at stake...the Governor-in-Council should have the power to amend or set aside an arbitral award but should be required, whenever the power is used, to table the relevant order in council in Parliament and provide Parliament with an opportunity to debate the issue involved."[28] This provision is quite different from that in Australia[29] and the United Kingdom,[30] where the authority of Parliament but not that of the Governor-in-Council is recognized explicitly with regard to arbitration decisions.

The Heeney report, when referring to the possibility of including in the proposed legislation a provision prohibiting strikes,

[25]A. Andras, "Collective Bargaining by Civil Servants," Relations Industrielles, Vol. 13, No. 1, January 1958, p. 47.

[26]See W. Hewitt-White, op, cit., p. 2.

Also J.C. Best, President, Civil Service Asociation of Canada, Paper delivered to the twelfth Annual Conference, McGill University, Industrial Relations Centre. The Government as Employer, Montreal, Quebec, September 8, 1960, p. 57.

[27]S.J. Frankel, A Model for Negotiation and Arbitration Between the Canadian Government and its Civil Servants, Industrial Relations Centre, McGill University, Montreal, 1962, p. 61.

[28]A.D.P. Heeney, op. cit., p. 37.

[29]S.J. Frankel, A Model for Negotiation, op. cit., p. 61.

[30]S.J. Frankel, Staff Relations, op. cit., p. 18.

states that "it would be difficult to justify a prohibition on grounds of demonstrated need." The report further states "that, if a strike should ever occur, the government would not be without means to cope with it. At the present time, most of the employees to whom the proposed system would apply do not have a 'right to strike' and would be subject to disciplinary action by the employer if they were to participate in a strike."[31] Ironically, within a very short period of time following the publication of this report, the 1965 Postal Strike occurred. Some critics of the government claimed that the existence of collective bargaining machinery, even without the strike weapon, would have prevented the 1965 disruption of postal services. It is possible that negotiation would have headed off the walkout by alerting the government to the problems of the postal workers, but this is not at all certain.

Present legislation has no special provisions against strikes by Civil Servants. The only safeguard available to government is disciplinary action. Under the Civil Service Act, employees who stay away from work for more than seven days without a good reason risk having their jobs declared vacant. This provision was not applied against the postal employees, whose strike lasted longer than seven days. The government's handling of the postal emergency was highly ineffective. From the postal employees' point of view the strike was a success, which led to a hardening of their position. Presently they are opposed to the Heeney recommendations for compulsory arbitration. On February 3 of this year William Kay, the President of the Postal Union, threatened a strike vote if the proposed Federal collective bargaining legislation does not give his union the right to strike.[32] Probably the militant stand of the postal workers was an important consideration in the Federal government's willingness to include a right-to-strike provision in Bill C-170.

The postal strike gave other groups of Civil Servants the incentive for looking at the strike weapon as a means of achieving their ends. On July 30, 1965, Toronto Customs and Excise Officers voted to ask their association for permission to hold a strike vote to back demands for a larger pay increase, even though previously their National Association had passed a "no-strike-vote" policy. On August 26, 1965, the convention of the 80,000-member Civil Service Federation adopted a resolution to oppose any legislation that would deny Civil Servants the right to strike.[33] Undoubtedly, the mood of the convention and the passage of this

[31] A.D.P. Heeney, op. cit., p. 37.
[32] The Toronto Globe and Mail, February 7, 1966, p. 1.
[33] The Toronto Globe and Mail, August 27, 1965, p. 5.

resolution were influenced by the Postal Strike.[34]

The attitude of the convention on the strike issue was not unanimous, and three national departmental employee groups representing approximately 30,000 employees objected to the strike resolution. They stated that they would refuse to participate in any strike action if one was ever called. One group, the National Defense Employee's Association, objected even to taking part in the deliberations or the vote on this topic.[35]

The strike resolution of the convention was not interpreted in a very rigid sense by the Federation executive. On February 11, 1966, the Federation and the Professional Institute presented briefs to an ad hoc committee of ministers on collective bargaining legislation, in which they requested assurances that the strike should not be prohibited if the government retains the power "to amend, set aside or suspend operation of the whole or any part of the award." The Federation expressed willingness to reexamine its stand "if the government was prepared to be bound by an arbitration decision."[36] From this one can deduce that in spite of the convention resolution the Federation was willing to modify its positions on strikes. However, the future stand of the Federation on this issue may be influenced by its possible affiliation with the Canadian Labour Congress.

Until now the two largest Civil Service organizations have been independent of the Congress. Probably one of the reasons why these two associations have been reluctant to join the C.L.C. is that the Congress is tied to a political party, the New Democratic Party.

Some Civil Servants felt that the decision of the Congress "to participate in the formation of a new political force in Canada"[37] might endanger their neutrality. To relieve these fears, the President of the Congress, Claude Jodoin, in 1958 and in 1965 officially assured Civil Servants of "the right of any affiliated union of government employees to be free, financially or otherwise, from responsibility for, or identification with, any con-

[34]Mr. Belland, the President of the Postal Worker's Brotherhood, who attended the convention made the following statement concerning strikes: "The postal strike, which tied up mail in several cities including Toronto and Vancouver, and lasted 17 days in Montreal, brought about a review of postal worker's salaries. And that has never been done before. That itself justified the strike." Cited in The Toronto Globe and Mail, August 27, 1965, p.B.6.

[35]The Toronto Globe and Mail, August 27, 1965, p. 5.

[36]The Ottawa Journal, February 17, 1966, p. 34.

[37]Proceeding, Civil Service Association of Canada, Convention, April 30, 1958, Ottawa, p. 71.

gress policy pertaining to political matters."[38] Mr. Jodoin delivered the 1965 declaration at the 24th Triennial convention of the Civil Service Federation of Canada. In the same speech he invited the Federation to join the Canadian Labour Congress. He stated that the Public Service organizations would retain their full autonomy and at the same time would benefit from the advice and counsel of collective bargaining experts in, or retained by, the Congress.

Following Mr. Jodoin's appeal, the 24th convention of the Federation recommended affiliation with the Congress. A resolution was approved calling for all affiliates, national and direct, to join the Canadian Labour Congress. The resolution also stated that when the National Council of the Federation felt the time was ripe the Federation would affiliate as a body.[39]

Taking recent developments into consideration, let us examine some of the pragmatic and theoretical arguments for granting Civil Servants the right to strike. Traditionally it was assumed that since government represents the sovereign power, it must reserve to itself sole authority to determine the working conditions of its labour force. Northrup and Bloom, in their book Government and Labour, rightly point out that "the second premise does not follow the first. The essence of sovereignty includes the right to delegate authority. Hence the sovereign power can delegate or share authority to determine the terms and conditions of employment."[40] There is no real reason why employees in the public sector should be selected for the application of the sovereignty concept. After all, in the final analysis, the supremacy of Parliament and the sovereignty of government principle can apply with equal force to employees in the private as well as the public sector of the economy.

There are a number of arguments propounded for differentiating between the responsibilities of the public as distinguished from those of the private employer:[41] distinct motivation, responsibility to the public, sources of funds, and criteria for payments. The private firm is mainly motivated by the profit concept, whereas the government is concerned with servicing society. Does this distinction in motivation of employers make the needs and aspira-

[38]Address by Claude Jodoin to the 24th Triennial Convention, Civil Service Federation of Canada, Windsor, Ontario, August 25,1965,p.6.
[39]The Ottawa Journal, August 28, 1965, p. 1.
[40]H.R. Northrup and G.F. Bloom, Government and Labor, 1963, R.D. Irwin, Homewood, Illinois, p. 456.
[41]Discussions with Dr. Alton W. Craig of the Canada Department of Labour were beneficial in developing this part of the analysis.

tions of the public employee different from those of the private employee? With respect to the second distinction, the responsibility of the government to the public in terms of its financial operations does not imply that it cannot extend the same financial benefits to its employees as does the private firm. What better machinery is there for determining the needs and demands of Civil Servants, as compared to those of the private sector, than the collective bargaining process? The access to the public purse for settlement of employee demands is not confined only to the government. There are cases in which the distinction between private and public employers as to sources of funds is quite blurred. There are private defence industries, working on a cost-plus basis, and industries in which revenues depend on government regulations or subsidies. Such industries rely on public funds for the purpose of reaching agreements with their employees, and are not subjected to any official restrictions on the terms of their settlements. Even when the private firm has to consider its ability to pay, it is doubtful whether the government, despite its access to the public purse, would be more liberal, as far as wages are concerned, than the large private employer. After all, politicians make the ultimate decisions on wages, and being over-generous to Civil Servants might be considered to be poor politics.

The civil liberty point of view would be another factor to be taken into account when considering the right of Civil Servants to a genuine system of collective bargaining. One could argue that Civil Servants, by being denied participation in the determination of the conditions under which they work, are discriminated against, and are treated as second class citizens.

Some of the arguments in favour of collective bargaining and strike rights for Civil Servants are dismissed on the grounds that the government is in a monopoly position and a stoppage of its services, for which there are no substitutes, is a threat to public health or safety.

The government monopoly argument in a sense is correct, but similar conditions may exist in the case of private firms or utilities whose workers are allowed to strike. In some sectors of government service one can understand the concern over strike possibilities. However, there are many employees in the government who do not perform very essential functions, and whose strike would have much less effect on the welfare of the community than a strike of employees in a private firm. Legislating against strikes of public employees on the ground that their services are essential to the community is overestimating the immediate significance of many of these services. It is logical, for purposes of passing legislation prohibiting certain strikes, to distinguish between emergency and non-emergency disputes, essential and non-

essential services and occupations, rather than to draw the line between the public and private sectors of the economy. This point is recognized by The American Civil Liberties Union Policy statement on civil rights in government employment:

"1. A blanket prohibition of work stoppages by any and all groups of public employees is unnecessary. Only a genuine necessity could justify subjecting a large part of the population to a restraint not imposed upon the bulk of our citizens.

Government has steadily extended into activities of a previously private character. A vast enlargement of government personnel has occurred in recent decades, so that today approximately one-sixth of the American work force is on some public payroll. These facts serve as cautionary reminders that too ready limitations upon the right to strike might create a repressive atmosphere for which no genuine public need may exist.

2. Where maintenance of uninterrupted service is essential to the community, limitations of the right to strike may be appropriate, either by legislative or administrative action. Even in such cases, however, limitations are fully defensible only if and when adequate machinery for handling employer-employee relations had been established."[42]

The proposed Federal Bill C-170, like the Quebec Civil Service Act of 1965, recognizes the distinction between essential and non-essential services, as well as between emergency and non-emergency disputes. Section 79 of Bill C-170 prohibits strikes of employees "whose duties consist in whole or in part of duties the performance of which at any particular time or after any specified period of time is or will be necessary in the interest of the safety or security of the public." The implementation of this section at the administrative level undoubtedly will give insomnia to many an administrator. There are quite a few grey areas, where the essentiality of services is blurred, and is dependent not only on the services performed, but also on the period of time that the public can do without them. It seems that the only way the task of the administrators in this area can be facilitated is through the efforts of a good staff of researchers, who would initiate research projects before crises develop.

An interesting and open-for discussion feature of Bill C-170 is Section 36, which provides alternative methods for dispute settlements. According to this section, the employee bargaining agent has to choose at the time of certification between compulsory arbitration and the right to strike as methods of conflict

[42]American Civil Liberties Union, Policy Statement on Civil Rights in Government Employment, p. 3 (1959).

resolution. The option chosen is binding for three years.[43]

To summarize, the considerations which presumably prompted the government to introduce a bill favouring collective bargaining and the right to strike for some categories of Canadian Federal Civil Servants probably were as follows: the present stand of Civil Service associations advocating the right to strike; the statement by postal employees threatening strike action if their right to strike is not recognized in the new legislation; the new climate introduced by the postal strike, showing to all Civil Servants that a strike can be won; the new Quebec Labour Code permitting Civil Servants to negotiate and to strike; the official endorsement by the Civil Service Federation of the right of its affiliates to associate with the Congress; and finally, the realization that strikes of public employees can be legislated against, but not prevented.

In spite of legal prohibitions, strikes in public service have occurred in the past. Furthermore, recently, when such strikes have taken place, no penalties have been exacted and no punitive actions or reprisals taken against the strikers. Legalizing strikes of public employees could actually lead to fewer strikes in the public service by contributing to a more meaningful and fruitful relationship between the parties and thus reducing some of the causes of illegal strikes.

David Ziskind's study of strikes of United States public servants indicates that when public employees consider their conditions insufferable and a strike the only instrument of action available, they will avail themselves of it despite legislative limitations and the possibility of disciplinary action.[44] A quotation from M.R. Godine may be very appropriate in this context. "A strike is not a matter of right, but a brutal and spontaneous fact precipitated by events."[45]

The right to strike for public servants will not solve all the industrial relations problems in the public service; this would be expecting more than has been accomplished in private industries. However, until we find better solutions than strike action as a means of conflict resolution, we should attempt to bridge the gap between the rights of public and private employees.

The search for strike substitutes will probably continue, but any such search should not be confined to the public sectors but should also include the private sector. Strike alternatives which

[43]Bill C-170, Section 37.

[44]David Ziskind, One Thousand Strikes of Government Employees (New York, Columbia University Press) 1940.

[45]M.R. Godine, The Labor Problem in the Public Service, Cambridge: Harvard University Press, 1951, p. 164.

would not impair the process of collective bargaining will not be easily found, however, in this connection Neil W. Chamberlain's[46] ideas for a "nonstoppage" or "statutory strike" may be a concept worthy of further consideration.

Conclusions

In view of recent developments, these provincial governments that do not have any formal collective bargaining machinery for their employees will probably be subjected in the near future to very strong pressures from Civil Service associations to remedy this void. In 1948, the Federal Industrial Relations and Disputes Investigations Act served as a model for some of the provinces in the enactment of collective bargaining legislation for the provincial private sector. Possibly in 1966, in those jurisdictions where Civil Servants have no recourse to negotiations, the existing provincial collective bargaining statutes for Civil Servants and the proposed Federal Bill C-170 may serve as models for the public sector. Also, the Canadian legislative experiments of providing Civil Servants with the right to strike in the Provinces of Saskatchewan and Quebec and possibly in the Federal Jurisdiction may eventually serve as prototypes and valuable sources of data for the rest of the North American Continent.

[46]Neil W. Chamberlain, Social Responsibility and Strikes, Harper Row Publishers, Inc., New York, 1953, p. 279.
Neil W. Chamberlain, The Labor Sector, McGraw-Hill Book Co., New York, 1965, p. 642.

Proposals for Collective Bargaining in the Public Service of Canada: A Further Commentary

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On April 25, a scant twelve days ago, the Prime Minister of Canada introduced into the House of Commons in Ottawa a measure, known as Bill C-170, the purpose of which is to provide the Public Service of Canada with a system of collective bargaining. The Bill, which contains some interesting provisions, represents some kind of milestone in the development of Canadian legislation governing the relationship between public servants and their employers. The purpose of this paper is to sketch in the background and the principal characteristics of the proposed system.

The background covers over half a century. During this period, the relationship between the Government and its organized employees has passed through two distinct phases. In the first of these, the Government was inclined to clothe itself in the doctrine of sovereignty, the employee organizations were relatively weak and badly divided, the relationship between the two was cold and distant and characterized by the occasional presentation of briefs. In the second phase, which began during the Second World War, there has been an emphasis on forms of joint consultation and a slow but certain drift towards a bargaining relationship.

It may be worth pausing briefly to note the principal developments in this critical second phase, which is now drawing rapidly to a close.

-- In 1944, a year after collective bargaining was made compulsory in defined circumstances for private employers in Canada, the National Joint Council of the Public Service of Canada was established to provide employer and employee representatives with a Whitley-type forum for consultation on conditions of employment.

-- In 1953, as a result of a recommendation made by the National Joint Council, the voluntary revocable check-off was granted to organizations represented on the Council, providing them with financial

stability and a foundation for rapid growth in size and influence.

-- The postwar inflation focussed attention on shortcomings in the machinery of pay determination and, in the early 1950's, gave rise to the first serious demands for a form of collective bargaining. In 1957, with the establishment of an independent Pay Research Bureau, the principal employee organizations were, as a matter of Government policy, given access to the comparative data used in setting rates of pay.

-- It was a natural step from the provision of information to consultation about its interpretation. This came with the Civil Service Act of 1961, which made consultation compulsory at two points in the pay determination process. The law required the Civil Service Commission to consult with employee organizations before making recommendations on rates of pay. It required the Treasury Board, a committee of Cabinet, to do the same before arriving at decisions. The procedure proved to be cumbersome and produced an unhappy experience on all sides, thereby giving point and purpose to the developing demands for an appropriate form of collective bargaining.

Here it is worth noting that, having struggled for twenty-five years to achieve institutionalized forms of joint consultation, the Public Service employee organizations were slow to establish collective bargaining as a policy objective. It was not until the mid-fifties that there developed among the organizations a clear-cut consensus in favour of collective bargaining. And when the consensus arrived, it favoured not the system of collective bargaining prevailing in the private sector, one based ultimately on the right to strike, but rather a system modelled on the type of binding arbitration that had been available to organized civil servants in the United Kingdom since the First World War.

For ten years then, the Government of Canada was under pressure to make available to its employees something almost invariably referred to as "collective bargaining and arbitration". One can only speculate about the reasons, although any objective observer would be bound to say that "white-collar" values and attitudes and a recognition of the special responsibilities of

public servants were important factors. The proceedings of convention after convention made it clear that most organized employees were not prepared to contemplate strike action and regarded arbitration as the only appropriate form of dispute settlement for the Public Service.

It was primarily in response to this point of view that the Government, in 1963, committed itself to the introduction into the Service of a system of collective bargaining and arbitration and moved quickly to establish a committee of senior officials to develop the necessary legislative proposals.

The Preparatory Committee on Collective Bargaining in the Public Service, whose Chairman, Arnold Heeney, is one of Canada's most experienced public servants, was asked by its terms of reference "to make preparations for the introduction...of an appropriate form of collective bargaining and arbitration, and to examine the need for reforms in the systems of classification and pay". It was authorized to put together a staff drawn from both inside and outside the Service. It was empowered to consult with the major employee organizations and to report to Cabinet. In some respects it functioned like an internal Royal Commission.

In May 1964, the Committee recommended that a new system of classification and pay, based on a relatively simple structure of occupational categories and groups, be developed and introduced with all possible speed. The recommendation was approved and referred for implementation to the Civil Service Commission, which moved quickly to launch a crash programme that calls for installation of the new system, in stages, by the middle of 1967. I mention this because it has a bearing on the provisions for collective bargaining now being considered.

In July, 1965, the final report of the Committee, containing detailed proposals for a system of bargaining and arbitration, was handed down and made public. In the period since that time, the Government has had the experience of a rather severe strike in the postal service and an opportunity to receive representations from all of the major employee organizations. One can assume that Bill C-170 is the product of a good deal of thought and effort.

Under the proposed system, bargaining rights would be available to all public servants except those carrying managerial responsibilities and those serving management in a confidential capacity. The inclusion of employees engaged in professional

tasks, which would represent a significant departure from the prevailing norms of industrial relations law as it applies to private industry, is a reflection of the pragmatic position taken by the Preparatory Committee when it said in its report:

> Professional employees in the Public Service...have had a long and responsible history of organization and have played a significant part in the developing processes of consultation over rates of pay and conditions of employment. Although some groups...may not at this time want to make use of the proposed system, there seems to be no good reason why they should be denied access to it.

The system would be administered by a staff relations board, similar in composition to the labour relations boards that operate in the different jurisdictions across Canada. The board would have the power to define bargaining units and to certify employee organizations as bargaining agents, and would also provide an administrative umbrella for the other "third party functions", including the arbitration of disputes and the adjudication of grievances.

For a period of about two years, bargaining units would have to be defined in such a way as to coincide with the occupational groups identified in the new classification structure. This provision also flows from the recommendations of the Preparatory Committee, which was satisfied that, without some predetermination of bargaining units at the outset, the problems of achieving an orderly introduction of bargaining rights would be almost insurmountable.

Under the proposed legislation, bargaining would take place at the centre between the Treasury Board, representing management, and each of the certified bargaining agents, representing employees. Agreements reached would be binding on the parties.

The dispute settlement provisions in the Bill are, so far as I know, quite unique. In applying for certification as a bargaining agent, an employee organization would be required to choose one of two dispute settlement options, one providing for recourse to binding arbitration, the other for a procedure requiring reference to a conciliation board and offering, in defined circumstances, to employees other than those deemed "necessary in the interests of the safety or security of the public", the right to strike. Each bargaining agent would be

bound by the procedure of its choice and would be unable to change its option for a period of three years.

Arbitration, which would be done by a permanent tripartite tribunal modelled on the one that has functioned with success in the British Civil Service, would be binding on both parties. In introducing the Bill, the Prime Minister said that the proposed arbitration process would conform in all but one important respect to the recommendations of the Preparatory Committee. He went on to say:

> Honourable members will recall the Committee's proposal that the Governor in Council should have authority to set aside an arbitration award in...abnormal circumstances. The Government has concluded that to follow this proposal would appear to give to the employer an undue advantage. It is perhaps not surprising that employee organizations in the public service have taken a similar view. The legislation referred to in the resolution, therefore, will contain no provision permitting the Government in its own right to withdraw from an arbitration award. Arbitration will be equally binding on the employer...and the employee...

Collective bargaining is a wide-ranging process that regulates the relationship between management and organized employees. In coming to grips with the concept of collective bargaining in a public service, one of the most difficult problems is to find management and, having found it, to clothe it with the authority it needs to play its part. In a public service setting, managerial authority tends to be divided between a legislature and an executive, between politicians and bureaucrats, between independent commissions and operating departments. Because badly dispersed, it tends to lack substance and definition and almost, at times, to disappear in a forest of checks and balances. One could almost sustain the thesis that collective bargaining has been slow to establish itself in public services because employee representatives have been unable to identify individuals with whom they could really deal.

From this point of view, the Public Service of Canada may be worth watching. For during recent years, as a result of reports handed down in 1962 by the Royal Commission on Government Organization, more commonly referred to as the Glassco Commission, we have been engaged in a massive programme designed to improve the management of the Service and, in the course of this, have taken important steps to clarify and strengthen the sources of mana-

gerial authority, including those in the field of personnel administration. For reasons that can only be described as fortuitous, these efforts have coincided with and been strongly reinforced by the move to provide employees with a system of collective bargaining.

The Glassco Commission, whose terms of reference were not unlike those of the Hoover Commissions in the United States, said in effect that, in the Public Service of Canada, the Treasury Board (a Cabinet Committee whose staff has for years been located administratively in the Department of Finance) should be established as a separate entity and be identified as the focal point of central managerial authority. It said that the independent Civil Service Commission should be permitted to concentrate on the task of staffing the Service in accordance with the merit principle and that a number of the functions which it had in the past performed or shared should be transferred to the Board. Finally, it said that everything possible should be done to permit delegation of authority to deputy ministers and other departmental managers.

Bill C-170, now before Parliament, is to be followed shortly by two other measures, one proposing a major revision of the Civil Service Act, the other proposing important amendments to the Financial Administration Act, the statute from which the Treasury Board derives its authority. The effect of the three measures, if approved by Parliament, will be to implement the Glassco recommendations referred to above and to identify the Treasury Board as "the employer" for purposes of collective bargaining. These measures should go a long way towards solving one of the most difficult problems of providing a public service with a genuine system of collective bargaining.

Panel Discussion: Is Private Sector Industrial Relations the Objective in the Federal Service?

William W. Heimbach

Federal Aviation Agency

As we consider our topic, "Is private sector industrial relations the objective in the Federal service?", I think perhaps it is necessary to consider just what we mean by, "Private sector industrial relations." For example, we can look at some aspects of private sector industrial relations and quickly conclude that they represent the worst possible way for an industrial society to attempt to get along. On the other hand, we also are all familar with many aspects of private sector industrial relations where the conduct of the parties has been very fine. From this perhaps there are those who would say that we should pick and choose parts and pieces from the private sector and then move some of these parts and pieces over to the Federal service for application there. Personally, I think this is an over-simplification. Furthermore, I think it is impractical because there are many of these parts and pieces that plainly will not fit. Finally, I do not think that we necessarily in the Federal service want to emulate the private sector approach because some of the problems are different.

I think it must be remembered that initially industrial relations, such as they were some years ago in the private sector, were born in an atmosphere of conflict. In the early days in industry there were very, very few management representatives who were willing to concede that anything good could possibly come from dealing with unions. Unions were an intrusion, they were trying to interfere with management's prerogative. On the other hand, in the Federal program, by design, a great deal of emphasis has been placed on "cooperation." The program has come to be known as the "Employee-Management Cooperation Program." However, let us not be deceived, this expresses more a hope or a wish than it does a reality. In some respects it may seem strange to say, however, the Federal service remains one of the last strongholds of the autocratic, paternalistic managers. There is a great similarity between the situation the Federal Government is now in as compared to the situation private industry was in back at the time the Wagner Act was passed. Many of the attitudes and feelings present in the Federal managers are not going to be changed over night. It will take years before many of the problems will be overcome.

The Federal manager, for the most part, does not have instilled in him the open hostility as was present throughout industry. Furthermore, and these may sound strange, most Federal managers are accustomed to working cooperatively and are not necessarily the rugged individualists as could be found in industry. Because of this situation, I look forward to the prospect of the Federal managers and the unions being able to open up new avenues in union relations. The Federal managers and the unions both can profit by many of the mistakes made in private industry, yet at the same time many problems can be examined cooperatively in order to work out imaginative solutions. To do this, however, both union and management must understand what is meant by "cooperation." Too often I fear, Federal managers have taken the attitude that "cooperate" means they should try to give the unions as much of what they ask for as they can. On the other hand, the unions too often have thought "cooperation" meant that they were entitled to get much of what they asked for. In my judgment, this kind of approach can only lead to trouble.

I would like to think that we could define this word "cooperate" in different terms. I would like to think we could define "cooperate" more in terms of one side understanding and appreciating the other side's problems. This should not be nearly so difficult in the Government sector as it is in private industry. It is possible within the Federal sector for some real trail-blazing to be done if we approach this problem properly. Let us try to stay problem oriented and remember that union proposals represent their solution to problems, there may be other solutions.

By way of approach, I think there are a few essentials. First of all, I do not think we can get anywhere by trying to create an unrealistic idea that this is one big happy family. We must clearly distinguish between who is management and who is union. Incidentally, at times this seems to be a problem in the Federal service--both for unions and management. Too many times people seem to think that because we distinguish between management and unions, we will create a clash. Well we don't need a clash, but we do need a conflicting or differing viewpoint, coupled with the kind of a cooperative attitude that I defined a moment ago, or we will not get very far. By all means, let us have managers that are proud to represent management's viewpoints and do so with strength and vigor, and let us also have union representatives that proudly represent their organizations and do so fully, and without reservations. This we should be able to do in the Federal service better than it can be done in industry. With

such people on both sides of the table, ideas can be developed that could be really blazing trails in industrial relations.

Perhaps it would be well to talk a little about some of the differences that presently exist in the Federal Government versus private industry in the general area of collective bargaining. First of all, as you know, the area open for bargaining is considerably more restricted in the Federal Government than it is in the private sector. The Federal Government does not bargain wages, although they may approach it in the so-called wage board area. Many other things such as holidays, vacation time, number of hours worked, etc., are matters set by law. Also, such things as pensions and insurance are matters for the legislators rather than the bargainers. Therefore, the perimeters are much more restricted than they are in the private sector. However, I think that history will show that there still remains a number of meaningful areas in which bargaining can take place. As a matter of fact, I think the Federal manager may be in for some awakening as to just what can be done in some union contracts, and may find that a number of things can be done that will greatly interfere with his freedom of action. Nevertheless, Federal managers can do things that will improve Government personnel policies and, at the same time, not set up road blocks for him to manage as has sometimes been the case in the private sector. For example, I think there will be a great deal more bargaining about promotion systems, reduction-in-force procedures, issues involving call-back pay, work schedules, etc. Most important, however, may well be the area of grievance procedures and the use of arbitration. This matter of grievance procedues is one that I want to talk about in more detail.

Unlike private industry, the Federal Government has had in effect a grievance procedure for its employees for some years. As a matter of fact, as a companion order to EO 10988, there was also released EO 10987, and the Order required Government agencies to establish grievance procedures for each agency. By way of follow-up, the Civil Service Commission has released certain guidelines with respect to these grievance procedures. This program perhaps has not been fully effective. I think you all know that the various Government agencies can also negotiate grievance procedures as a part of their union contracts. Strangely, however, from my own experience within the Federal Aviation Agency, union organizations do not seem to be taking full advantage of the provisions of a grievance procedure they may have obtained. It must be remembered that unions can negotiate into this grievance procedure an "end" step providing for

an advisory arbitration. Within FAA we have several contracts that have included advisory arbitration yet we have not yet had one case that has gotten to the arbitration. Frankly, I don't think that we are so good that we just don't have cases. Much of the time the unions seem to rely on contacts with higher authorities within the agencies or contacts with Congress. Yet, potentially, I think the best tool would be to make full use of the grievance procedures including advisory arbitration. I do not think there is any doubt that the most important single thing from private industry that Government industrial relations can best emulate is to establish a strong grievance procedure culminating in arbitration. I hasten to add that Government managers must consider carefully just what scope the arbitrator will have so that they do not become involved in some of the problems as have confronted industry in the past. In other words, I caution contract negotiators on both sides of the table to be sure they know what they are doing when they write such contracts. Above all, when work is done in this area, let it be directed at developing a simple, clean-cut procedure, one that is not burdened down with legalisms and red tape.

Some of you here may wonder why I place such emphasis on the use of a grievance procedure and arbitration. I think the answer is simple. So far in Federal union relationships, we seem to have placed great emphasis on contract negotiations, how much authority certain individuals may have, what to do about impasses, etc., when actually the day-to-day relationships with employees depends on the fair and equitable dealings management has with the work force. Unions are anxious to see that each employee is getting a fair shake. What better way is there to get at these day-to-day problems than through properly administering our relationships and then in certain cases rely on a grievance procedure to settle our differences. Most of private industry has become accustomed to evaluating many of its decisions on the basis of whether or not they could "sell" their actions to a neutral third party. Wouldn't this be a good kind of test for the Federal manager to apply before he takes certain types of action -- disciplinary action, for example. These things will not happen, however, unless there is use made of present possibilities.

I have talked about areas in which management and unions can do some trail blazing in industrial relations. I would like to point out one or two of these areas. The area of merit promotion plans and the area of reduction-in-force, I think, are ideal areas to illustrate the point. First of all, in the private sector, management and unions have gotten into the posture of

resolving many of their problems by relying on seniority. The unions have pushed this, not so much because they think seniority provides all the answers, but more because it is an objective type measure. Now, I suggest management and union representatives of the type I described could certainly come up with some better ways in which objective type standards could be developed than has yet been done. To begin with, the Federal service has a somewhat better merit system than most private employers, also the use of seniority, under certain conditions, isn't all bad either, even though many Federal managers might so consider it. So why not have good healthy discussions about these problems. I, for one, think maybe there could be a trail or two blazed.

I have already talked about an important phase of private industrial relations that deserves the attention of the Federal service. Now I would like to talk about some of the things that have developed in private industry that I think we would do well to avoid in some of our collective bargaining relationships. Of first concern to me are some of the bargaining unit relationships that have developed in the private sector. By that I mean, industry-wide bargaining, or nation-wide bargaining such as exists in private industry. I submit, the Federal Government doesn't need these type of relationship because the same reasons for their existance in the private sector does not exist in the Federal service. Within the private sector, with bargaining for wages, etc., I am sure the unions thought it necessary to seek a broad power base so that they could push the wage and benefit programs more uniformly. Within the Federal sector, these things are accomplished for the most part by the political activity of unions, and they will not solve local employee problems by such action. I think both unions and management within the Federal service will do well to remember the differences of relationships and that nothing can be gained here by following private industry leads.

At this point I would like to talk for a moment or two about some of the problems in the Federal service relating to the problems of the initial union recognition. As some of you know, the rules set up under EO 10988 are different than the rules set up by the NLRB. One of the principle differences being the three levels of recognition established in the Federal service; informal, formal, and exclusive. Under the NLRB there only is the exclusive level. At least with the Federal managers with whom I have talked, there is little or no reason for maintaining the informal level of recognition. Personally, I think it is superfluous. Furthermore, in my judgment, the formal level of

recognition leads to some confusion and as union organizations within the Federal service continue to grow, I think this formal recognition will lead to instability of relationships. So, if we are looking for lessons to be learned from the private sector, I would suggest that the Federal service follow even more closely the NLRB and have only one type of recognition, namely exclusive. I suspect some unions may not initially like this idea, however, I think in time they would concede this would put their organization in a stronger position, and also eliminate some rather costly competition among themselves.

In conclusion, it might be well to examine the question, "Has collective bargaining affected labor-management relations in the Federal service?" I think the answer to this question is "yes." Now having answered the question, I would like to explain.

First of all, the Government agencies that have thought most about their union relationships have been looking at the management levels of organization within their respective agencies. If they have not so looked, they have not really thought much about their collective bargaining. Any agency that does look carefully must conclude that they must be careful to properly delegate managerial responsibility to those individuals that have responsibility to deal with unions. If the supervision is not equipped to handle and accept responsibility for union relationships, they will not be effective. By this I do not mean that we must have an elaborate realignment of authorities, but rather I mean that the individuals dealing with unions must be prepared to find answers. They can not be the type people that would hide behind the regulations. They must accept responsibility and be prepared to make their arguments on the merits of the case. Frankly, I think some agencies within Government are now doing this. Thus, I think the collective bargaining process in the Federal service is forcing us to develop stronger, more forceful management representatives who are acquiring better capabilities to defend management's viewpoints or, perhaps, seek to change this viewpoint. In my judgment, this can not help but improve management effectiveness. This will lead to an improvement of our employee relations because management cannot be completely effective unless it has good employee relations.

Secondly, we are getting input from a source that may largely have been ignored to date. Many Federal managers have not done much by way of soliciting the viewpoints of the employees affected when they contemplate changes in personnel policy. If we are to have strong, forceful Federal managers, we must take advantage

of all good ideas from whatever source they come. Many progressive industries in the private sector have been taking advantage of this source and for quite a few years have been discussing many problems with their employees. Such problems as the expansion and contraction of their work load, disciplinary problems, ways and means to improve effectiveness of their operations as well as other things all have been discussed. Management cannot shift its responsibilities, however, with proper planning they can tap a good source of ideas without creating a condition that could prove cumbersome to it. Incidentally, Federal managers are in a good position to move ahead in this area for reasons that I already have mentioned. Certainly where there has been a proper exchange of ideas to date, steps have been taken to improve employee relationships. I know of several situations within our own agency where discussions with our unions have led to changed and improved ways of doing things.

Thirdly, many Federal agencies will have to look at their methods of communication. All too often Government agencies have relied on orders and directives expecting that they would provide a chanel of communication. Actually, much of the time it just will not work. Employees will not read through these sometimes lengthy documents which may not be easy to follow. As a result, Federal managers will begin to look for more effective ways to pass along information because they will be required to explain their actions. Although the need for orders and directives will still be present, there will be an increasing need to improve the quality of communications. Simple chain-of-command information, better "house organ" information, letters to employees, etc., will get more attention. As you all know, when things are not understood, it will always cause problems. Union organizations, properly, will be calling attention to these problems. For the benefit of all, Government employee communications will improve and I think we have seen the start of this already because of the collective bargaining process.

Panel Discussion: Is Private Sector Industrial Relations the Objective in the Federal Service?

Otto Pragan
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I

My part in this discussion is to take a look at the experience unions in the Federal government have had with collective bargaining under the Executive Order in the past four years.

Not including the pre-Executive Order agreements at TVA, Alaska Railroad and Bonneville, one-third of all civilian employees in the Federal government work today under collective bargaining agreements that were negotiated under the Executive Order (as of July 1965, 738,000 employees were represented in more than 404 agreements).

Deducting the postal employees, whose agency-wide agreement covers 515,000 workers, three-fourths of the remaining 223,000 employees, working under collective bargaining conditions, are wage-board workers, and one-fourth classified employees (171,000 and 52,000 employees respectively).

To express the extent of collective bargaining in these three main groups of the Federal labor force more realistically -- about 85% of the postal employees work under collective bargaining agreements, so do more than one-fourth of the wage-board workers, but only 4% of the classified employees. 1/

Collective bargaining has had its effects on many facets of government unionism -- growth in membership, emphasis on new activities unknown prior to the Executive Order, particularly collective bargaining and, consequently, ambitious training programs for union officers, and changing relationships with the Labor Department, Civil Service Commission and agency heads.

But, since we are merely to look at labor-management relations, I will limit my remarks to the experiences with collective bargaining in the following areas:

1/ AFL-CIO Department of Education, Exclusive Recognition and Collective Bargaining Coverage Under Executive Order 10988, December 15, 1965.

relationship between bilateral collective bargaining and unilateral regulations; authority of local management and agency approval of contracts; and the grievance process and arbitration.

II

Collective bargaining in the Federal service, at the present time, differs from that in private industry, principally in these points: 1) Scope of bargainable issues is limited by laws and regulations; 2) The use of the economic weapon of the strike is not allowed; 3) Arbitration is not final and binding; 4) To become effective the local agreement requires approval by the head of the agency; 5) There is no independent governmental board to decide about complaints relating to unfair labor practices.

When discussing the scope of the negotiated agreement, one runs into a wide spectrum of degrees of coverage: from the "boiler-plate" agreement (a document of generalities, containing mostly a repetition of Executive Order language) over the "rewrite" agreement (containing mostly a reiteration of already effective policies taken from the agency personnel manual) to the genuine collective bargaining agreement (containing negotiated issues relative to the working conditions in the shop or office.

Following this pattern of analysis one hits immediately upon the problem: How much is there of bilateral collective bargaining and how much of unilateral regulations.

The President's Task Force clearly states that "... the attitude of the government should be that of an affirmative willingness to enter /collective bargaining/ relations." 2/ And Section 6(b) of the Executive Order, in describing the collective bargaining rights of the exclusive bargaining agent, explicitly declares that "in exercising authority to make rules and regulations relating to personnel policies and practices, and working conditions, agencies shall have due regard for the obligation imposed by this section..."

But, contrary to the intent of the Task Force and the President, the experience of 3 years of collective bargaining shows that the gulf between bilateral collective bargaining and unilateral regulations has narrowed only very little. The main reason for this slow growth of bilateralism is that the by far greatest number of

2/ President's Task Force, A Policy for Employee-Management Cooperation in the Federal Service, November 30, 1961, p.11.

agreements is negotiated on the local level where the local manager can only negotiate such matters that fall within his administrative discretion. As a matter of fact, the personnel managers at the agency level are exercising their authority in making rules and regulations without any regard for their collective bargaining obligations. Therefore, for all practical reasons, the administrative discretion of the local manager has not been enlarged and his authority to negotiate with the union is too limited for meaningful bargaining. In addition, the "willingness" of the local manager towards bona-fide collective bargaining is, in many cases, not too affirmative.

As a general rule, the management concept of collective bargaining looks like that: The agency regulates most personnel matters uniformly and unilaterally in its personnel manual and in supplementary regulations and directives, and prescribes distinctly the administrative discretion which is left to the local activity head. Then, the local manager is "free" to negotiate with the union, the local implementation of some -- but by no means of all -- policies set by the agency. And, finally, the concluded agreement is subject to review and approval by the agency before it can become effective.

It is very doubtful that this procedure can attain the objectives of the Preamble of the Executive Order namely, to improve employee-management relations within the Federal service "by providing employees an opportunity for greater participation in the formulation and implementation of policies and procedures affecting the conditions of their employment."

Collective bargaining in a democratic society implies that union and management are equal partners in developing personnel policies. In its Preamble, the Executive Order declares that employees should participate in the "formulation and implementation of personnel policies" and adds that this new relationship "contributes to effective conduct of public business."

However, in practice, collective bargaining plays a very minor role in the formulation of personnel policies and government unions have not yet become full partners in determining the working conditions under which their members work.

I would like to comment on the three principal reasons for this status of collective bargaining in government service:

(1) The attitude of government management toward

collective bargaining;

(2) The lack of equal power of the union in the collective bargaining process;

(3) The limited discretion of local management.

The attitude of government management toward collective bargaining: Wilson R. Hart distinguishes between two types of attitudes: The first type believes that "the art of public personnel management has been so refined and developed that there is neither need or justification for strong unions in any public agency where this art is skillfully practiced by the personnel managers." And he cites a Civil Service Commission report stating that, "the lack of employee organization suggests good relations between supervisors and employees." Contrary to this attitude, he points at another attitude which looks at collective bargaining as "a form of democracy" and "that the management of even the best-run establishment, public or private, stands to profit from the cooperation of strong, independent, responsible employee organizations." 3/

The attitude of government management is often reflected in the preambles of the agreements.

Preambles are declarations of objectives and state the reasons for bargaining collectively. Therefore, they reveal the attitudes toward collective bargaining quite clearly.

In several agreements the objectives of collective bargaining are stated as follows: Promotion of effective and efficient work habits; joint obligation of union and management for the maintenance of a strong competitive position in the industry; elimination of waste, combat of absenteeism, conservation of materials and supplies, completion of jobs on time and improving quality of workmanship.

No doubt the attitudes of the writers of such preambles towards collective bargaining can easily be identified.

I am not denying the responsibilities of management and also of the employees in these areas of the managerial functions. These objectives are certainly legitimate aims of labor-management coop-

3/ Hart, Wilson R. The Impasse in Labor Relations in the Federal Service. In: Industrial Labor Relations Review, January 1966, p. 177.

eration, but can hardly be listed as the goals for developing solutions to determine the working conditions of the employees at the activity.

On the other side, I would like to cite the preamble in the agreement of the Morgantown Research Center of the Bureau of Mines and AFGE which is a good example of genuine, bilateral collective bargaining.

Its statement of purpose reads: "The Research Center and Lodge 1995 hereby agree to establish the conference and consultative machinery and procedures provided for conducting negotiations for the following purposes: (1) to provide for fair and reasonable rates of pay, hours and working conditions; (2) to insure the making of appointments and promotions on a merit basis; (3) to promote stability of employment and to establish satisfactory tenure; (4) to provide for improvement and betterment programs designed to aid the employees in achieving their acknowledged and recognized objectives; (5) to promote the highest degree of efficiency and responsibility in the performance of the work and the accomplishment of the public purpose of the Research Center; (6) to adjust promptly all disputes arising between the parties, whether related to matters covered by this agreement or otherwise; and (7) to promote systematic employee-management cooperation between the Research Center and its employees." (Article I, Sec.3)

It is good fortune that the pre-Executive Order wind of the Interior Department has not lost its velocity when the Bureau of Mines negotiated its first agreement under the Executive Order.

The lack of equal power of the union in the collective bargaining process: Under the Executive Order the union has no other power to compel management to make concessions but persuasion. In fact, there is no substitute for the economic power of the strike available to government employees in order to reach a meaningful agreement. No independent governmental body has been established to interpret the Executive Order or the interpretations of the Executive Order by the agencies, or to define the issues that could be legitimate subjects for bargaining. There is no effective machinery to break an impasse during negotiations. (we find some kind of mediation in only one-tenth of all agreements negoiated). And, of course, arbitration is not final and binding.

The limited discretion of local management: The provision in the Executive Order that an agreement, bona-fide negotiated and concluded, must have the approval of higher authority in order to

become effective, curtails the authority of local management to bargain effectively. In addition, it seems to me that Section 7 of the Executive Order is interpreted too narrowly. The intent of the Executive Order requires the approval of the agency head only for the first agreement ("any basic or initial agreement entered into") and not any subsequent or supplemental agreements. In practice, all agencies insist upon this veto right even in case of a grand vote for negotiations or a supplement to the agreement.

The main problem is that agencies issue too many unilateral regulations and do not allow more latitude for bargaining on the local level. The main reason for this difficulty as already mentioned, is the predominance of local bargaining. Agency-wide agreements were negotiated only at two agencies -- the Post Office Department and the Railroad Retirement Board.

In the two cases of agency-wide bargaining the unions can successfully participate in the formulation of personnel policies and, thus, restrict the power of management in issuing unilateral regulations relative to subject matters that can be negotiated. Therefore, it is possible to change the personnel manuals through collective bargaining because the policies contained in the personnel manuals are within the discretion of the highest authority, the head of the agency. Consequently, the Postal Agreement contains a clause that in case of a conflict with the Postal Manual, the provisions of the Agreement will govern.

Several unions have formal recognition at many agencies on the agency level which entitles them to consultation on the same issues that can be negotiated (except grievance procedures and arbitration).

Although formal recognition compels the agency heads to consult with unions, personnel manuals are often revised, that is, personnel policies are being formulated -- without prior consultation. Sometimes, unions are notified of changes that have already been put into effect unilaterally.

Of course, consultation is a two-way process and unions with formal recognition are entitled to approach the agency heads with proposals for changes in polcies and practices at the agency level. The Metal Trades Department has followed successfully the procedure of combining local negotiations at the naval shipyards (local exclusive recognition) with consultation with the Navy Department (national formal recognition).

III

The attitude of many agencies toward negotiating effective grievance procedures reveals perhaps more significantly than any other issue their reservations to the whole collective bargaining process in the Federal government.

Several agencies do not like arbitration, not even advisory arbitration. One agency regards the negotiated grievance procedure solely a machinery for "informal settlement" and insists that the agency procedure be used when an "informal settlement" cannot be reached.

In the 1830's craftsmen at the naval shipyards walked out because no attention was paid to their grievances. Post Office employees sacrificed their jobs in their fight for the right to bring before Congress their grievances against unsafe working conditions. In government and in private industry alike, unions have long fought for a fair and just way to settle grievances. The negotiated grievance procedure is the instrument collective bargaining provides for a fair and just administration of the agreement.

The downgrading of the negotiated grievance machinery has created deep disappointments among unions.

These disappointments stem from three causes:

(1) The dualism of the negotiated procedure and the agency procedure;

(2) The multitude of exclusions from the negotiated procedure and, therefore, the multiplicity of procedures; and

(3) The role of advisory arbitration in the grievance system.

The dualism of the negotiated procedure and the agency procedure: According to most agreements the aggrieved employee has to decide in writing whether to carry his grievance through the negotiated procedure (that may include arbitration) or to follow the procedure provided in the agency's personnel manual (that cannot include arbitration).

Significantly, some agreements call the bilaterally negotiated procedure "union procedure" (a unilateral connotation) as distin-

guished from the "agency procedure."

At the bottom of this dualism is the still strong belief that settling of a complaint is a matter between the individual employe and management. The union is regarded as an outsider. This paternalistic attitude cannot understand that the negotiated grievance procedure is the heartbeat of collective bargaining and that, therefore, a grievance system, unilaterally decreed, is alien to the collective bargaining process.

The Multitude of exclusions from the negotiated procedure and the multiplicity of procedures: The proliferation of the negoiated procedure is a serious handicap because it removes all cases in which the local manager has no final authority from the use of the negotiated grievance procedure.

We can find agreements that contain 15 exclusions from the negotiated procedure. Basically, this difficulty stems from the artificial distinction between a grievance and an appeal.

The Civil Service Commission regards as a grievance a complaint that relates to working conditions whereas an appeal is a request for reversing an adverse action or an administrative decision.

These exclusions fall -- by and large -- into five categories:

(1) Discrimination and national security (since special appeal procedures have been set up by law, no point is made against excluding such cases from the negotiated procedure);

(2) Complaints caused by an alleged violation of a law, Civil Service Commission regulation, agency regulations and directives;

(3) Position and classification cases;

(4) Adverse and disciplinary actions; and

(5) Disputes betwen the union and management as to the interpretation and application of the agreement if not based on an individual grievance.

Except for the Post Office Agreement, procedures to settle cases falling into these categories, as a rule, are not negotiated. The agreements contain merely references to the applicable procedures in the personnel manuals.

The Post Office Agreement, primarily because it is an agency-wide agreement, includes procedures for processing cases in the 2-5 categories. Therefore, arbitration is available not only in the general procedure for handling individual grievances but also in adverse action cases and disputes between union and management.

Since only a negotiated procedure may provide for advisory arbitration, grievances falling in categories 2,3, and 4, which constitute a considerable number, if not the majority of all complaints occurring in labor-management relations, are deprived of being reviewed by an outside arbitrator. Only upon constant prodding by the unions, the Civil Service Commission finally advised the agencies on February 7, 1966 that "Executive Order 10987 authorizes agencies to include the provision for advisory arbitration, where appropriate, in an agency appeals system." 4/ Typically again, the Civil Service Commission left a door open for personnel officers who lack "affirmative willingness" to evade advisory arbitration, "where appropriate."

The role of advisory arbitration in the grievance system: In addition to the limitations casued by the advisory nature of arbitration and its restriction to grievances relating to working conditions, the practice has developed in many installations that the local manager may decide a case twice in two steps of the procedure. The Executive Order states that arbitration is advisory to the agency head which means clearly not to the local installation head. But, in practice, when the union appeals the decision of the installation head to arbitration, it is the same installation head who may or may not accept the arbitration award under advisement. Again, it took great pressure from the unions before the Civil Service Commission issued in February of this year, the "advice" that agencies should provide for final decision on an arbitration award at a higher administrative level than the agency official who made the original decision.

IV

In defining the differences in the scope of collective bargaining in the Federal service and in private industry, it is often pointed out that laws and regulations limit the subject matters that can be negotiated in the Federal service. This, however, is an over simplification because the laws and regulations may allow

4/ U.S. Civil Service Commission, FPM Letter 711-3, February 7, 1966, p. 3.

sufficient room for the participation of the union in both the formulation as well as the implementation of personnel policies. The degree of collective bargaining in such areas relates again to the attitude, I mentioned so often before, whether agency management accepts its obligations fully, positively and in good faith to deal with its unions on a bilateral basis.

Wage and salary determination is a good point in case.

Based on the difficulty and responsibility of work the Classification Act groups all positions in 18 grades. The Civil Service Commission determines the exact content and coverage of each grade, and develops the standards for classifying individuals into a position.

However, in complying with these Civil Service Commission standards, an agency has the authority to determine the appropriate grades and steps for its employees.

In implementing the Civil Service Commission standards, management should provide a role for the union to participate through collective bargaining in developing the policies for a fair and just grade determination. Only in a few cases this practice is followed, e.g., in the agreement between the Labor Department and AFGE.

The Federal Salary Reform act of 1962 will provide a greater participation of unions in salary matters. No doubt, when the comparability principle contained in the law will be put into practice, there will be an opportunity for unions to participate in the determination of the pay that can be considered to be comparable with private industry.

One-fourth of all Federal workers are wage-board employees. The law does not prevent an agency to have equal union participation in determining the wage rates comparable to those in the private sector of a local area.

The wage survey clauses in the agreements give only token participation to the union, mostly by such means as the selection of union members as observers and data collectors by the installation head from lists submitted by the union. Sometimes, the union has also the right to request wage surveys when significant wage raises in the private sector have taken place in the area.

To comply with the intent of the Executive Order, there should be complete bilateral procedures on the local and national levels for selecting the firms, the key jobs and the geographical area to be surveyed as well as for determining the rates of pay. Again, how important it is for management to have an "affirmative" attitude can be seen in the agreement negotiated between the Morgantown West Virginia Research Center, a Bureau of Mines in-

stallation, and the AFGE. 5/ The parties actually negotiated wage rates, using the results of the wage survey as the basis for discussion. The agreement includes the basic hourly rates for the various classifications as well as shift differentials.

V

There are many more practices--or rather lack of practices - that time does not permit me to discuss here.

One of them is the aversion of most agencies to the use of mediation when impasses occur in negotiations. One one-tenth of the agreements contain a clause providing for outside mediation and about one-fourth for fact-finding committees and referral to higher authority in the agency.

There is no need to point out again that bona-fide and meaningful collective bargaining requires equal economic strength of both parties at the bargaining table. In the absence of the strike weapon, of arbitration (even if only advisory) and without recourse to the services of an impartial governmental body, the union is the weaker partner in collective bargaining, indeed.

Another subject for discussion in this connection should be the failure of the procedures recommended in the Code of Fair Labor Practices. Here, too, enough has already been said about the erroneous notion that this procedure can contribute to meaningful, bilateral collective bargaining if it puts the agency, i.e., management, in the role of defendent, judge and jury at the same time.

VI

In summing up this cursory review of some of the practices that are prevailing now in Executive Order collective bargaining, I believe that some, but by far not all, of these practices can be blamed on the Executive Order. The responsibility for the frequent lack of genuine bilateralism in collective bargaining, boiler-plate agreements, narrow scope of issues and meaningless grievance machineries, can be laid directly to a management attitude that discards the very philosophy of the Executive Order.

Federal executives like to use the phrase that the Federal government should be a model employer. However, the model employer under our system of industrial democracy regulates labor-management relations--within the framework of law--by labor-management consensus achieved through collective bargaining.

5/ Agreement of March 10, 1964, between Morgantown Research Center, Bureau of Mines and AFGE, Lodge 1995, Article 4, Section 4.

Government management has a long way to go before this relationship will be achieved. Another Presidential Task Force shall take another look at the experiences under Executive Order 10988. Certain changes will be necessary in the Executive Order, such as final and binding arbitration, a clarification of the scope of collective bargaining and of the discretion of local management, and the establishment of an independent board that would supervise the implementation of the Executive Order; and, finally, the Executive Order should not be afraid to substitute the meaningful terms "union" and "collective bargaining" for the timid terms "employee organization" and "employee-management cooperation."

But as a whole, the Executive Order has been successful. It has brought the principles of collective bargaining to the Federal service. The principal reason it has not achieved fully its goals and objectives, lies in the hesitancy on the management side to give up unilateral regulations for bona-fide collective bargaining.

No doubt, the unions too have not yet acquired all the rules of collective bargaining their counterparts in private industry have learned over the years to master so well. And, both management and labor, will have to use effective consultation on the agency-level in order to make local bargaining more meaningful. In the absence of agency-wide collective bargaining, union participation in the formulation of personnel policies can only be attained by the full use of agency-wide consultation, flowing out of formal recognition on the agency level.

If Executive Order 10988 should not be corrected to make it a more effective tool for carrying out its purpose of bilateral collective bargaining in the Federal service, then, no doubt, the impatience with the managerial attitudes will force the unions to seek relief from Congress.

VII

To answer now the theme of this discussion, it is my opinion that the objectives of collective bargaining in the Federal service are identical to those in private industry. However, I admit that many practices must vary because of the nature of government as an employer and because of the separation of the government manager from the economic resources of government and his lack of control over them. Although this means more legislation and less collective bargaining in the Federal sector, both sectors of our society have in common that formulation as well as implementation of all personnel policies should be arrived at through collective bargaining for the benefit of the employees, the employer and the public.

Panel Discussion: Is Private Sector Industrial Relations the Objective in the Federal Service?

Charles M. Rehmus

The University of Michigan

It is appropriate that a session on the objectives of the Employee-Management Cooperation program in the Federal service should begin with at least brief consideration of the objectives of those government officials who provided the impetus for the promulgation for Executive Order 10988 itself. While it is always dangerous to generalize about other's motives, four over-all objectives have generally been perceived as underlying the Order.

One, and only one, of these objectives is stated in the preamble to E. O. 10988. It states that participation of employees in the formulation and implementation of personnel policies affecting them "contributes to the effective conduct of public business." Certainly, more effective conduct of the public business is an important and legitimate objective of government. Whether employee participation through union organization, as contemplated by the Order, is in fact achieving that result is the question we are examining today.

Three other objectives of the framers of the Order can be guessed at, and can be briefly described. The first of these grew out of a response to a political challenge. When then-Senator Kennedy was running for the Presidency in 1960, he was asked by a representative of a union of Federal employees about his attitude toward collective bargaining in the Federal service. He replied, much as any candidate might, that he had always favored a greater voice for Federal employees in the making of personnel policies and that, if he were elected President, he would appoint a task force

to advise him on what might be done further to develop relationships of this kind. I take it that this campaign promise led directly to the Goldberg Task Force and thence to E. O. 10988 itself.

Probably a more fundamental objective in creating the employee-management cooperation program was to answer a philosophical challenge being raised against the Federal government during the late 1950's. Representatives of the business community and the American Bar Association had questioned the Federal government somewhat as follows: "For 30 years now, government has insisted that private employers bargain collectively with representatives of their employees. If Federal employees want to organize, why isn't sauce for the goose sauce for the gander? Suitably modified to meet the exigencies of public service, why should not the Federal government treat its own employees in the same fashion in which it forces private employers to deal with theirs?" There was no good answer to this question--and I think the Executive Order was in substantial part intended to meet this philosophical challenge.

Finally, it is generally recognized that a basic objective of the Order was to head off Congressional action. During the 1950's, bills had been repeatedly introduced in the Congress which would have established collective bargaining systems in the Federal service. Some of the features of these bills were deemed highly objectionable by Federal personnel managers, and, of course, such details could be eliminated if a voluntary Administration program were initiated instead. Moreover, if the Federal government in promulgating its own program found that substantial mistakes had been made, it was thought that it would be far easier to change an Executive Order than to obtain amendment of an Act of Congress.

In brief summary then, these seem to me to have been the four primary objectives of those who planned and pressed for the promulgation of the Executive Order. The latter three have clearly been met. President Kennedy was elected and kept his promise. Pressure for Congressional action was largely eliminated, at least for a few years.[1] Finally, the Federal government can say that it now bargains collectively with union representatives where employees choose to organize. Only the first objective remains in doubt. Are we developing a system of "industrial democracy" in the Federal Civil Service in which unions have an important and significant role? Are we achieving a more effective conduct of the public business therefrom? It is to this question, and the closely related one of whether the appropriate model for labor-management relations in the Federal service is the labor relations system that we have developed in the private sector, that I will now turn. I will speak generally on these subjects, leaving it to my colleagues on the panel who work in the field on a day-by-day basis to go into some of the specific issues which are confronting them.

In one sense the Executive Order clearly did not contemplate that labor relations in the Federal service would emulate private industrial relationships. The scope of bargainable issues was severely circumscribed

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1. Recently, bills have been introduced in both Houses of Congress that would enact into law the basic features of the existing program, but would set up binding procedures for resolving negotiating impasses, make grievance arbitration awards binding, and would require modifications making government union-management relations more like those in the private sector. For example, see S.3188, H.R.14093, H.R.14137 and H.R.14253, 89th Cong., 2nd Sess. (1966).

and delimited by the requirement of the Order that an extremely strong "management rights" clause be included in every collective bargaining agreement negotiated by the Federal government. Section 7 of the Order requires that administration of all matters covered by agreements is governed by the provisions of existing and future laws and regulations, including the policies of the Federal Personnel Manual and agency regulations. In addition, it is specifically stated that management officials of Federal agencies retain the right to hire, fire, promote, demote, discipline and direct the work of Federal employees; to maintain the efficiency of government operations; to determine the methods and means by which such operations are to be conducted; and finally, in emergencies to take any other actions necessary to carry out their mission. Literal interpretation of this clause leaves immense power in the hands of Federal managers. It seems clear, despite the pressures of collective bargaining or what the content of bargained agreements might be, that government administrators retain final decision-making authority and that the framers of the Order intended that this be so. One cannot construe this language otherwise than to feel that it was intended that Federal managers should not give away in collective bargaining many of the "rights" which have been negotiated away by private industry in the last generation.

It is in the context of this management rights clause, and its implications for the scope of bargaining, that negotiations in the Federal service take place. Fundamentally, the goals of unions negotiating with Federal managers are no different than the goals of unions generally. They seek agreement that all areas of personnel policy that are discretionary with agency management are subject to joint determination during the bargaining process. Moreover, they seek language ensuring that in these discretionary areas

personnel administration will take place on a standard and uniform basis during the life of the contract. Most unions active in the Federal service are constantly pressing for this kind of expanded role in the formulation and administration of personnel policy--in a significant sense the same kind of "more" that Samuel Gompers talked of so long ago. Nor is the institutional role of Federal managers in the bargaining process any different than that of their counterparts in the private sector. In general, they both resist substantial expansion of the subjects appropriate for joint decision-making as long as they can, making concessions in some obvious areas and compromising in others as the pressures of bargaining dictate.

Frankly, I do not see that there is anything wrongful or illegitimate in the institutional positions of either of the parties to bargaining in the Federal service, or that it represents a breakdown in the employee-management cooperation program. Wilson Hart has suggested recently that this condition of affairs represents an impasse in labor relations and that it is a perversion of the intent of those who drafted the Executive Order.[2] He believes that Federal managers should affirmatively encourage unionization among the employees they supervise, if the intent of the "employee participation" objective of the Order is to result. He further believes that disagreements arising in Federal bargaining ordinarily result from an agency's refusal to negotiate in good faith. I cannot agree with either of these positions unless union-management relations in the Federal service are to be judged by standards wholly foreign to those we use in analyzing private sector industrial relations.

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2. Wilson R. Hart, "The Impasse in Labor Relations in the Federal Civil Service," IX Industrial and Labor Relations Review 175-189 (January 1966).

To Hart's argument on encouraging unionization, I would simply say that this appears to be a peculiar definition of the management "neutrality" in the face of union organization that is required by the Order and by the supplementary codes and standards. I am even more concerned, however, over the implications of the second point--that disagreement in the course of the bargaining process represents "bad faith" negotiating on someone's part.

Such a protest ignores the possibilities of creative conflict which are inherent in all industrial relationships and the essentiality of a certain level of conflict if labor and management are to retain their institutional identities. The union which is in constant and complete agreement with management has ceased to be a union--it has abdicated its essential role. This is equally true of management. Institutional independence is asserted by acts of criticism, conflict and competition. It is out of this conflict, out of the process by which both parties are forced to adjust and compromise, that viable industrial relationships are created. They will, of course, not develop in a year or two, or necessarily even in a decade, but I think some kind of adversary pulling and hauling of this kind is essential if mature relationships are ever to be reached.

Thus I do not view the conflict between labor and Federal management over the scope of bargaining or over the desirability of particular compromises as hurtful in the long-run or contrary to the intent of those who framed the Executive Order. A number of them had wide experience in private sector negotiations and anticipated that relationships would evolve gradually. One of the most knowledgeable of the framers, in a discussion that took place during the Task Force proceedings, commented that he did not think they needed to specify all of the areas of bargainability

in too great detail. As support for this position he noted that the Steelworkers contracts took many years to develop, starting from practically nothing.

I would make a somewhat similar comment about those who have written articles to show that collective bargaining in the Federal service must essentially come to little or nought because there are so few "gut" issues about which the parties can negotiate.[3] Many have said that collectively bargained agreements covering Federal employees seem to be little more than unimportant bits of paper covering only minor issues of no great consequence to employees. Such comments ignore the amount of genuine and creative problem-solving that I believe is actually taking place in Federal negotiations, much of which is not reflected in the language of the contracts that have been negotiated. From personal experience I know of at least a half-dozen situations where legitimate grievances among substantial groups of employees in various Federal agencies have been resolved by mutual agreement in the course of the bargaining process. I know of situations where existing agency policies were unclear and were being administered differently and discriminatorily among groups of employees in the same agency. These policies were clarified and administrative problems resolved simply because of the urgent pressure exerted by the unions in the course of collective bargaining. In both of these kinds of situations the result was a major change in personnel administration that was often not reflected in collectively bargained agreements. In other situations, a change in administrative practice is reflected in the fact that the agreement appears simply to re-state existing agency policy. By this means government activities have

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3. For example, B.V.H. Schneider, "Collective Bargaining and the Federal Civil Service," 3 Industrial Relations 97-120 (May 1964).

agreed that they will in the future abide by their own regulations!

Developments of this kind, I believe, presage a bright future for collective bargaining in the Federal sector, and an important and viable role for the unions active therein. Parenthetically however, I must add that it is my personal opinion that there is nothing illegal or immoral in management facing the possibility of organization and remodeling its personnel practices to the point where employees no longer feel a desire to organize. Unions, of course, may resent such tactics. To them I can only state a further opinion that few managers are so perceptive or accomplished that they can, by virtue alone, prevent unionization if it is otherwise to come to them.

There is one further area in which I believe collective bargaining is bringing an important change to the employee-management relationship in the Federal service. The change can be perceived only slightly as yet but in the long run I think it will be one of the most substantial developments of all. Here I refer to the fact that the Executive Order permits the negotiation of contractual grievance procedures which may culminate in advisory arbitration. Over half of the agreements negotiated thus far with Federal agencies contain such provisions.

Many have argued that a negotiated grievance procedure that ends in binding voluntary arbitration is the greatest single thing that the individual employee obtains through the collective bargaining process. To the extent that this is true in the private sector--that "due process" has been brought to the work site--the potential effect of negotiated grievance procedures is at least as great in the Federal service. Traditionally, government managers have been largely the sole judges of the reasonableness

and fairness of their own acts. Under conditions of a negotiated grievance and arbitration procedure, management must now look at its own acts, not in the light of its own feelings of fairness and equity, but in light of the question, "Is the reasonableness and fairness of our act defensible to an outsider?" The working relationship in private industry is much different than it was a generation ago simply because of this change in standards by which management's acts are judged. I suggest the strong possibility that a similar change may come in time in the Federal employment relationship.

In conclusion, I would say that it is impossible to venture a flat "yes" or "no" to the question, "Is private sector industrial relations the objective in the Federal service?" Clearly the scope of bargainable issues is less today than it is in the private sector and probably will always be. The exigencies of public service make this almost inevitable. Yet, at the same time, out of the evolutionary process in which strong unions inexorably push for "more" and management resists undue encroachment upon its obligation to manage, there will evolve a meaningful relationship. In this new relationship Federal employees should in many cases find their working relationship more satisfying simply because they will know more about why things are done and because they have had a voice in the decisions that affect their working life. From this, in time, along with the framers of the Order I hope that a more effective conduct of the public business will result.

I am not surprised, however, that this millennium has not been reached in four years. In fact, I would have been astonished if it had. The present imperfect state of private sector industrial relationships is at least 30 years old and much maturation is yet to come. Social institutions do not develop so rapidly,

and social progress does not come so fast. In time, however, I do expect that labor relations in the Federal service will come to be more like those in the private sector, although never wholly like them.

Conceivably, unions and management in public relationships may even improve on private sector experience in several important areas. For example, can they find means of giving seniority some appropriate role in job assignment decisions, and yet not destroy the principles of merit promotion? Can they develop bargaining systems in which local on-the-job problems are resolved and yet allow negotiations to cover the subjects that are normally involved in national bargaining? Can they negotiate meaningfully on important issues, absent the possibility of a strike to force changes in position? Can they find a role for neutral arbitration and fact-finding in bargaining impasses which does not destroy bargaining itself? If they can do these things, if they can solve any of these or similar problems, then they will have made a significant contribution to private sector relationships.

The private sector is certainly not the perfect model for union-management relationships. It is far preferable that both public and private systems should profit from the failures and successes of the other.

Employee-Management Cooperation in the Federal Service

John W. Macy, Jr.
U. S. Civil Service Commission

In directing your professional attention at this conference to the issue of industrial relations in the public sector, you perform an appropriate and timely public service. The issue of employee-management relationships in public employment is properly receiving increased attention by thoughtful public officials at all levels of government. With the employment of public agencies continuing to rise to meet public needs, study of the problems inherent in these relationships must be intensified and viable solutions more actively sought.

The magnitude of this issue is strongly emphasized in quantitative terms when it is learned that one out of every six employees in this country today is on the public payroll. Ten and one-half million men and women are engaged in a great variety of tasks in support of public policy.

The growth of union members among the ranks of these employees has been evident in recent years. Union leaders have stepped up organizational efforts to bring the benefits of trade unionism to the government worker. The critical nature of labor disputes in public enterprise has been dramatically brought to the citizens' attention through the interruption of vital services of transportation and education. The consequences of such disputes have brought demands for new study by experts and decisions by public authorities. There is a growing recognition of the potential trouble in government service if solutions cannot be developed which satisfy both the aspirations of the employees and the needs of the public for efficient and uninterrupted services.

During the past few weeks I have reviewed with interest the recommendations of Mayor Lindsay's study panel regarding the New York City situation and of Governor Rockefeller's advisory group, headed by George W. Taylor, at the New York State level. Both groups have diligently sought to define policies and methods for achieving peaceful solutions in disputes between public employees and the government in its role as employer. The fact that they both emphasize problems of deadlock and strike is understandable in the immediate climate of their studies.

It is understandable, too, that the solutions proposed by the two groups differ substantially from each other. The body of useful experience in labor relations involving public employees is still limited, particularly in the diversity and complexity of contemporary government operations. Certainly there are no panaceas available now -- nor in all likelihood in the future. Principles that have worked in the private sector are obviously available for reference. But we must recognize that it is remarkably difficult to fit or adapt principles of labor relations formulated in private experience to the conditions of public service. The framework and conditions differ significantly.

Your meeting here provides an appropriate forum in which to offer a commentary on employee-management relationships which have emerged in the Federal service after slightly over four years of experience under the policies established by President Kennedy in Executive Order 10988.

I should point out that the Federal program was not conceived in an atmosphere of crisis or emergency. There was a genuine need on the part of executive management for a general statement of Government-wide executive policy. There was a proper demand from employee organizations for a statement of rights and privileges to reinforce their status and role in dealings with management on terms and conditions of employment. The purpose and main theme of the Federal program has been to achieve constructive cooperation between management and employee organizations. It has produced some excellent results, beneficial to both parties. On the other hand, it certainly has not operated without difficulties and some dissatisfaction on both sides.

Environment of Labor-Management Relations in the Federal Service

There are obvious similarities between labor-management relations in the public service and in private employment. The aspirations of working people are much the same everywhere. The responsibilities of Government supervisors and managers are not unlike those of their counterparts in private industry. The dissimilarities are perhaps not equally as obvious. So let me take a few minutes to outline some characteristics of the Federal service which have a bearing on the employee-management program and certain of its arrangements.

Size and Diversity. The most obvious characteristic, I think, is the size and diversity of the Federal work force: 2½ million employees, in 60-odd departments and agencies, with some 1800

principal offices and installations located all over the world. This excludes the Post Office Department, which alone has about 34,000 offices, and it excludes of course a host of smaller offices and duty stations in the other departments and agencies.

In the Federal service we have formal dealings with over 100 different employee organizations, ranging from the traditional craft and industrial unions affiliated with AFL-CIO to the so-called Government unions which exist in particular departments, such as in the Postal Service and the Internal Revenue Service, and others which have large membership across departmental lines.

The fact that the work force is spread all over the world is not an academic consideration. As our employee-management cooperation program has unfolded in recent years, I can recall significant problems relating to workers on the Alaska Railroad, guards in the Panama Canal Zone, and teachers in the schools for military dependents in Western Europe.

Congressional Relationships. A unique characteristic of the Federal service, too, is the important influence and direct participation of employee organizations in the legislative process. They long have testified before the committees of Congress on personnel legislation and have worked closely with committee staffs in offering their version of proposed bills. They hold large-scale rallies to influence pay legislation. And they have ready access to committees and Members of Congress to air their complaints and grievances, access which is guaranteed by the Lloyd-LaFollette Act of 1912.

Statutory and Regulatory Policies and Controls. This long history of Congressional relationships is responsible, in part, for the extensive coverage by statute of the principal areas of Federal personnel policy and procedure. The basic rules governing hiring, pay, hours, leave, job classification, performance rating, fringe benefits, retirement, and major disciplinary actions are set by law in the Federal service. In most cases these are supplemented by Civil Service Commission Regulations -- and when drafting such regulations, Commission staff members consult with employee organizations as well as agency management. Finally, the great size and spread of the principal departments and agencies has brought about departmental personnel policies and procedures which further implement the laws and Commission regulations.

All May Join. The right to join unions is not of recent vin-

tage in the Federal service. It has been a tradition for half a century, based on the Lloyd-LaFollette Act of 1912. And organization membership extends up through the supervisory and managerial ranks in many of the departments. About one-third of Federal employees, 762,000, belonged to organizations at the time of the Task Force study in 1961. (I should note that almost 500,000 of these were in the Post Office Department.) On the other hand, even with this long tradition of a free right to join, and with the extensive involvement and success of organizations in obtaining beneficial legislation, a large majority of employees outside the Post Office Department, some 84 percent, have in the past shown little interest in joining employee organizations or in entering collective relationships with management.

No-Strike Tradition. Finally, a principal characteristic in Federal employment has been the no-strike tradition. It is based in law, Public Law 330 of 1955, which requires individual employee affidavits at the time of employment, renouncing the right to strike, and provides for automatic removal and other penalties for violation. More importantly, it has been an accepted tradition embodied in the constitutions or subscribed to by all the recognized employee organizations.

Of course, even law and tradition are not absolute guarantees against strikes or work stoppages. A jurisdictional strike by a Tennessee Valley Authority union in August 1962 required the dismissal of some 85 sheet metal workers in Kentucky. In December 1964, a work stoppage was threatened by teachers in the military dependents' schools in Europe, and was averted only after firm action by the Department of Defense. By and large, however, the no-strike tradition is not only professed but is followed by employee organizations in the Federal service.

Policies of the Federal EMC Program

Within the framework I have outlined, our aim has been to establish principles which would strengthen and regularize relations between agency management and employee organizations in the executive branch. There has certainly been no desire or attempt to change relationships between the organizations and the Congress, which are stable and of long standing.

The right of employee organizations to be recognized and to meet and deal with agency management is clearly provided in the Executive Order which established our program. In some respects these rights exceed those existing in the private sector, and in

some respects they are less. Formal recognition and rights of consultation are granted to organizations having as little as 10 percent membership in the unit. Exclusive recognition and the right to negotiate agreements is authorized for organizations which represent a majority of employees in the unit. Informal recognition and the right to be heard is available to organizations of any size.

Emphasis is on decentralized arrangements and on dealings as close to the work site as possible, so as to ensure meaningful communication and cooperation between the parties who are immediately affected. Under unusual circumstances, as for example in the Post Office Department, exclusive recognition and negotiation at the national level is practicable as well as at the regional and local levels.

The subject matter and scope of consultation or negotiation is limited so as to operate within the framework of laws and regulations -- as I mentioned, the employee organizations already have direct participation in the making of laws and regulations. The rights of consultation and negotiation also exclude such areas of discretion and policy as an agency's mission, its budget, its organization and the assignment of its personnel, and the technology of performing its work. These are basic elements of the public officials' responsibility to interpret and administer the law. Agency management retains rights similar to those of management in the private sector, the rights to hire, fire, maintain the efficiency of operations, and so forth. Even with these limitations, the scope for consultation or negotiation ranges widely over a variety of personnel policies, practices, and working conditions which affect the well-being of employees and are within the discretion of responsible management.

The system places emphasis on direct, bilateral relationships between agency management and employee organization representatives. The Department of Labor provides technical assistance by arranging for advisory arbitration of disputes relating to unit and majority determinations. The Civil Service Commission provides technical guidance and assistance on other matters. Recognizing that both management and the organizations were relatively inexperienced in formal labor-management relations, it was decided that during the developmental stages any provision for third-party rulings would unnecessarily limit flexibility of the parties to establish relationships suited to particular situations. Similarly, no provision was made for third-party final determinations on negotiation impasses, on the principle that it would tend to

weaken the obligation of the parties to work out their differences by hard, serious negotiation. The program provides, instead, for agency management and the employee organizations to develop their own techniques, short of arbitration, to assist in negotiation and the avoidance of impasses.

On the other hand, where grievance procedures are concerned -- and this is an area where the Presidential Task Force had found significant deficiencies in past practices -- the parties are authorized to negotiate arrangements for advisory arbitration in their grievance and appeal procedures.

One other policy is worthy of mention. Since membership in some organizations extends up through the supervisory and managerial ranks, we have had to take note of the potential for conflict of interest if such personnel hold leadership positions in rank-and-file organizations. The need, of course, is to rule out evils which could result from an absence of arm's-length bargaining, or from restraint of free competition among unions for recognition. There is the further practical need to see that agencies maintain in their management and supervisory officials concepts of management responsibility similar to those of managers in the private sector.

Program Achievements and Problems Remaining

As a general summation after four years of experience, I would say that splendid progress has been made in establishing meaningful relationships within the framework I have described. The agencies have accepted the program as an important part of the job of managing the Federal work force. The employee organizations have gained responsible status, a stable and increasing membership, and representation rights that ensure substantial participation in the policy-setting process within the departments.

Principal benefits have been achieved, as expected, at the local installation level. Civil Service Commission inspectors make on-site inquiries about the status of the program, both to local union leaders and to agency officials, as a part of their regular inspections of personnel management. These inspections cover several hundred installations each year. The reports are that relationships are cooperative in the vast majority of situations. Agency officials report specific improvement in communication between management and employees -- communication both ways -- and significant benefits, for example, in such areas as safety practices, tours of duty, health and working conditions, and con-

trol of sick leave abuse. As I mentioned, before the EMC program was inaugurated the lack of adequate grievance machinery was a major source of employee dissatisfaction; today it is rare to hear a complaint about the procedures in this most fundamental area of employee-management relations.

The extent of the program is indicated by the number of recognized units. The Post Office Department has 7 national and some 24,000 local exclusive units covering 525,000 employees. In the rest of the Government, there are 831 exclusive units covering 320,000 employees. In all, 750,000 employees currently are covered by negotiated agreements. In addition to exclusive units there are some 12,000 units of formal recognition in the Post Office Department, which involve the right of consultation, and over 1,000 such units in the other departments and agencies.

Altogether, the program has broken a great deal of new ground. Inevitably it gave rise to some immediate problems, and a great deal of time and expense was involved in management and employee organization training and in handling initial disputes regarding appropriate units. These early difficulties have largely been resolved and largely forgotten. Some employee organizations were naturally reluctant to accept various of the program limitations and turned to the courts for relief. However, in two cases which reached the U. S. Court of Appeals this year the validity of the Executive Order was upheld and it was established that the program did not create any judicially enforceable rights.

I think the principal problems and dissatisfactions remaining can be boiled down to a few:

First, Conflict of Interest. A few of the Government unions have found it very difficult to adapt to the policy that supervisory or managerial officials may not hold leadership roles in rank-and-file organizations. There is general consistency in most agencies' approach to conflict-of-interest questions, but there are some variations. Differences in organization, in delegations of authority, and in the type of work properly account for most variations. However, it remains a knotty question, and I think we can expect some adjustments in this area as we move along.

A different but related question concerns the propriety of exclusive recognition and negotiation rights for units made up entirely of supervisors. This is a matter not covered by the order. General practice is to grant formal recognition and consultation rights only; but exclusive units of supervisors have been estab-

lished in some agencies, and this raises doubt as to proper policy and causes employee organizations to press for exclusive recognition of supervisors in other agencies.

Second, the Scope of Consultation and Negotiation. There have been problems in determining which matters are open to negotiation and which are not. There have been some organization complaints about the order's exclusion of matters of organization, mission, budget, and so forth. And there are complaints that some agencies do not delegate adequate authority for negotiation to their local managers. While these problems are still with us, they are being worked out one by one as they come to light. The problems are complicated, of course, by the fact that the large agencies deal with scores of different organizations representing fragments of their total employee population.

Third, Negotiation Impasses. Some agencies, such as the Post Office Department, have developed an effective system through which apparent impasses at the local level are referred to the regional level, or to the national level if necessary, and are considered successively by management and employee representatives at each level. The few not settled in this way are ultimately resolved by the Postmaster General himself.

A few agencies have negotiated provisions for mediation or fact-finding. The program is still weak in this area, I believe, and we recently have given some strong encouragement to the departments with a view to wider use of these techniques. I might say that there is a practical problem involved in extensive use of mediation -- the limitation on the number of skilled mediators who are also equipped to operate within the framework of civil service laws and regulations.

Another very practical problem occurs in deciding what is and what is not an impasse worthy of third-party attention, in terms of its intrinsic substance and the seriousness with which the parties regard the issue. In truth, there probably are very few which are important enough for the organization, if it were acting in private industry, to give serious thought to the strike alternative.

We are continuing to watch the matter of negotiation impasses closely. It may be that the agencies and organizations are reaching a stage of experience where impasses of substance are involved and where special measures would be warranted, to develop a body of trained personnel for mediation or fact-finding work.

Fourth, and last of the significant dissatisfactions which persist, is the question of setting up a central Labor-Management Panel, a "little NLRB" or some similar third-party arrangement, to give authoritative interpretations of the order and to consider charges of unfair labor practices. This is not so much a problem as it is a proposal which is revived periodically by some union leaders. It is a proposal that was considered but not adopted when the program was drafted in 1961, and has been considered again, I guess, every year since. So far we have been unable to see any necessary or really useful purpose a central authority would serve except in rare situations. Conversely, there is good indication that if there were free access to such a body it would weaken the bilateral relationships that have been established in the departments, which have been the main emphasis and value of the program as it has developed so far.

Conclusion

In conclusion, let me say as I did at the beginning that the program for employee-management cooperation in the Federal service has had some excellent results. It is not an unqualified success. To my way of thinking, there have been few "unqualified successes" in world history.

Yet in the short period of four years we have indeed made progress. We have traveled a good distance, far enough so that I feel sure we are on the right road. I would not like to see us go back and start over again, to try another route, nor do I see such a prospect.

For we have achieved a working system and it has produced broad areas of cooperative agreement, with the public interest remaining as the paramount consideration. We surely are not without problems, and we may well make adjustments in the program as we go along. But I hope I leave with you tonight the feeling I hold with deep conviction, that labor-management relations in the Federal service is striving, and with increasing success, to blaze a trail of industrial democracy that is worthy of our national Government and the American people.

The American City and Its Public Employee Unions
INTRODUCTION

Jean T. McKelvey
Cornell University

Our meeting today is being conducted under most appropriate auspices. Wisconsin was the first state in the country to adopt legislation to protect the rights of municipal employees to bargain collectively. Milwaukee and District Council 48, AFSCME, have recently negotiated a model municipal collective bargaining agreement, copies of which have been provided to the participants in this session.

Public employment is today the fastest growing sector of our economy. Within this sector, state and local government employment is expanding the most rapidly, having doubled since 1950. Now numbering some 8,000,000, state and local government employment is expected to exceed 12,000,000 by 1975 -- an increase of 69%, which is twice the rate of expansion projected for any other category of employment in our economy.

Union membership in the governmental sector is likewise expanding, having almost doubled in the past decade from 915,000 to 1.5 million members. In 1962 80% of United States cities with populations of over 10,000 reported the presence of one or more employee organizations among their employees, and the number is undoubtedly higher today.

The result of this explosion in employment and union organizing activity has been, as one might expect, an increase in public employee strike activity which is reminiscent of the post-World War II wave of strikes in private employment.

The response of state and local government to this surge of public employee unionism, while initially one of restriction or repression, has increasingly become one of accommodation and experimentation. The vacuum in our labor relations statutes is being rapidly filled. Some 15 states have enacted laws authorizing or mandating procedures for collective bargaining between local governments and some or all of their employees. Seven of these were first enacted in 1965. Eleven of these 15 were enacted, or amended in 1965 and 1966.

The most comprehensive of these statutes are those of Wisconsin, Connecticut, Minnesota, Michigan and Massachusetts. Currently the legislative battle of greatest interest is that being waged in New York State.

In addition to acting under statutory procedures, local and state governments have also been responding through judicial decisions, administrative and executive action, and ad hoc arrangements of various kinds. Throughout these endeavors one notes an effort to adapt some aspects of private collective bargaining to the public employment sector.

While the legal and organizational developments in this field have been dynamic, and the pace of events has been accelerating, research in public employment labor relations, both of a substantive and an analytical nature, has been sadly lagging. To give just one example, let me cite the 100-page report of the Blue Ribbon panel to Governor Rockefeller which contains almost no references to the experiences of other states and municipalities. Even the staff reports yield only mere summaries of the laws of other states, and these are in part incomplete or out of date.

It is therefore still accurate, I believe, to characterize the field of public employment labor relations, as Russell Smith did in 1962, as "A Neglected Area of Research and Training." In an effort to remedy this neglect our panel this morning has been asked to suggest areas for research and to report on some research which is currently under way.

Municipal-Collective Bargaining: New Areas for Research

Eli Rock*

Labor Arbitrator, Philadelphia

The subject of this paper, and its presentation here today, merit a few introductory statements relating to genealogy.

During most of the decade of the 1950's there were probably three cities in the United States that had undertaken serious steps towards evolving a system of reasonably orderly collective bargaining for their "regular municipal employees." The latter phrase excludes teachers as well as the employees of public authorities, both of which groups were subject to the jurisdiction of bodies that were independent or semi-independent of the normal municipal authorities.

The three cities were New York, Cincinnati and Philadelphia. In each of these cities, absent any state legislation, efforts had been made during the 1950's to overcome the complete gap of rules, concepts, and intelligent experience relating to the pursuit of collective bargaining at the municipal government level. My own involvement was then with the City of Philadelphia's problems. Mr. Sidney Salsburg, who is one of our discussants here today, was at the time a staff member of the New York City Department of Labor, which was actively charged with the problem of attempting some order out of the chaos of that City's municipal labor relations.

Quite by chance, Mr. Salsburg and I happened to meet one day (perhaps it was at an IRRA meeting) and discussed some of the mutual, pressing problems in the two cities. Out of this meeting grew a proposal, prepared by the two of us, for a major program of research in the entire field of municipal labor relations, dealing with areas which, from our experience in both public and private industry labor relations, appeared to us urgently to require such research. In time we were able to obtain university sponsorship for the program--that is to say, a university willingness to attach its name to the program, and later to administer the program, provided funds could be obtained for the purpose.

*This paper is largely based on a research prospectus prepared in 1959 by the author and Sidney Salsburg, Chrysler Corporation.

Beginning in 1959 the program was submitted to various foundations. Our batting average on the latter was .000, and in due course Mr. Salsburg and I hung up our spikes, as it were, on the whole effort.

Some years later I happened to show our research prospectus, which had been gathering dust in Mr. Salsburg's and my files, to our Chairman of today, Professor Jean McKelvey. The result was an invitation to present a paper at this meeting, based essentially on our 1959 research prospectus. The paper will therefore not reflect research efforts, nor developments in the whole field, since 1959. Nevertheless, Professor McKelvey appeared to feel that the 1959 document had validity here today--not as sentimental retrospection into what might have been (although Mr. Salsburg and I, at least, will always believe that the foundations missed a golden opportunity for a major and timely contribution in an area of high and urgent public concern) but rather as a framework for needed research, and other efforts, which is still applicable today.

Subject to some necessary editing, and a few changes, my paper is therefore based on the research prospectus which Mr. Salsburg and I had prepared in 1959.

Turning, then, to the substance of the matter, it should not be necessary today, as it was in 1959, to stress both the growing strength of unionism among municipal employees, the rise in the total number of employees at the local government level, and the increased drive toward meaningful union participation in the determination of wages, hours and working conditions--as contrasted to the role played by the public unions in the decades before the 50's. Nor is it necessary to belabor any longer the unbelievable lack of guidance, legislation, research and training which has hitherto marked this complex field. The area is one which, both conceptually and functionally, would have taxed the best minds of our nation, working leisurely and from the several disciplinary bases; it has, until relatively recently, received virtually none of their attention.

There was and is need for research and other types of programs at all levels of government, but the basic need with which we are here concerned is one directed toward labor relations at the level of local government--municipalities, towns and counties. Several factors underscore the need for intensive and comprehensive study at the local government level: the greater diversity of practices; the greater influence

of local leaders and local political figures over the conduct of labor relations; the greater impact of unionization in terms of more intensive pressure for recognition and demands for bargaining rights; and the lack of resources for exploration of the public service labor relations problems by individual local governing bodies. Again, local government deserves special attention because the total number of employees in this category of public service exceeds that of any other level of government, and the number is also rising faster than in any other area. Nor is the labor relations spotlight on local government lessened by the major crisis, financial and otherwise, which today confronts virtually every major metropolitan center in the country.

Some of the special problems of labor relations in the public service (further ones would be illuminated by the research effort itself) which apply with particular relevancy to the local scene, and thereby further point up the need for a research effort oriented in that direction are the following:

1. The continuing confusion as to the concept and theory of public employee labor relations--legal and otherwise. Arguments relating to the nature of government have been advanced, and still are being advanced in many areas of the country, as raising fundamental barriers to the normal exercise of the bargaining agent's role in determining wages, hours and working conditions. Special problems still exist with respect to recourse to written contracts, exclusive recognition, checkoff and arbitration clauses--forms taken for granted in private industry.

2. The argument which surrounds the right to strike.

3. The importance of "politics" as a decision-making factor in collective bargaining and, in the case of political appointees, as a determinant of employee attitudes towards unions.

4. The diversity of authority in collective-bargaining matters--as within the executive branch of government (for example, a mayor versus a civil service commission), as between the executive branch and the legislative branch, as between the local government and the state government.

5. Similarly, the multiplicity of participants on the union side, and its damaging effects on the grievance or contract negotiation processes.

6. The role and effect of a civil service commission and a merit system on collective bargaining requirements and attitudes, or the effect of the latter on the former.

7. The restrictive nature of the taxing process, as the income source of government.

8. The absence of profit motive and "profit and loss" consciousness as a factor in collective bargaining attitudes of management and supervision.

9. The status of "semi-military" groups, such as police and prison guards.

There are also other problems which confront the practitioners in this field, arising from a lack of training and guidance.* Bearing in mind that there is much local government in this country outside the major metropolitan centers, and that even many of those centers are still groping and stumbling to find their way, there would seem to be little question that these additional problems of training and guidance still require urgent investigation and effort.

All of the above, as well as other problems, appeared to us to point to the following as a framework of issues and subject-matter requiring intensive investigation and research--with the caveat, again, that the research program itself would doubtless point up needed revisions and additions in the framework.

A. Basic questions relevant to an overall clarification and direction of collective bargaining in the public service.

1. The experience or need in the public service for compulsory recognition, exclusive bargaining, written contracts, method of determining bargaining units and bargaining agents, check-off, union security and a general definition of unfair labor practices. What problems have arisen in these areas? What are the legal barriers? Which of these forms and techniques are adaptable to the public service? What type of agency should administer such programs, and who should appoint it?

2. Labor-management "weapons" in the public service. What is the validity of and what has been the experi-

*For a fuller treatment of these aspects, see Eli Rock, "Practical Labor Relations in the Public Service," Public Personnel Review, the quarterly Journal of the Public Personnel Association, April, 1957.

ence under "no strike" laws? Under voluntary no strike contractual pledges? What effect have anti-strike laws had on attitudes of unions and administrators attempting to establish a bargaining relationship? What effective alternative weapons exist? What is a proper evaluation of the "political action" weapon? What has been the experience under legislatively-prescribed fact-finding? Under arbitration?

3. Appropriate bargaining units as related to the procedure and subject-matter of bargaining. What has been the experience under prevailing rate laws and other forms of craft-preferential rate setting? What has been the experience and effect on collective relations under a civil service commission with authority to establish a balanced, overall wage structure? What has been the general experience with collective bargaining under the industrial form of unionism as opposed to craft unionism in the public service? What are the special experiences and problems in connection with police and fire unionism?

4. Bargaining rights of supervisors in the public service. What has been the experience and effect of supervisory inclusion in bargaining units of subordinates? Experience and effect of alternative approaches? What are the factors making for supervisory and union resistance to supervisory exclusion from bargaining units? What is the relationship of this problem to the larger problem of "role-definition" for union and management in the public service?

5. Experience and effect of management division of authority. Within the governmental framework there is a multiple division of authority, both legal and political. What is the effect of such division on collective relations, including the ability to conclude a bargain? Within the executive branch, as between a mayor, civil service commission, personnel director or budget director--each of which may have separate "legal" authority? As between the executive branch and the legislative branch? As between local government and state government? What is the effect of the division of authority, as well as lack of continuity, between an incoming and an outgoing "administration"? What is the role of the politically powerful department

head? What, if any, corrective measures are possible or desirable?

6. The essential nature of the union's role and functions in the public service. Apart from its function in seeking annual improvements in wages and fringes, what role does the union play in the formulation and administration of policy in other aspects of public personnel relations? What, if anything, is its part in testing and selection, job evaluation and job classification, promotions and transfers, performance rating, injury and disability, leaves of absence? What role does it play before a Civil Service Commission? What role does it play in the administration of pension programs? At what stage or stages of the annual budget preparation and budget enactment process does it or should it make its influence felt regarding the "annual items" of collective bargaining? What is the experience with "continuous" bargaining on working conditions (and even wages) rather than annual bargaining? How is the union's role affected by the existence of multiple unions within a single bargaining unit? What is the experience with "conference" type bargaining, where the several unions under a non-exclusive bargaining pattern, or separate craft unions, bargain with public officials through a "conference" of unions? Ultimately, what is and what can be the essential overall role of a union in the public service?

B. Ingredients and pre-requisites of successful labor relations in the public service.

Based particularly on the experience of cities that will be considered successful, what techniques, attitudes and procedures can be regarded as having made the major contributions? What were former obstacles that were overcome? What are the effects of a successful relationship? To what extent can such relationships contribute to greater efficiency and increased "professionalization" of the public service? Does a special basis exist in the public service for a revival of "labor-management cooperation committees" of the type sponsored by the War Production Board during World War II?

C. Specialized examination of various aspects of working conditions--economic and non-economic.

Comparing fringe benefits as well as wages, have private industry employees fared better than public employees in the same locality? What is the comparison as between organized and unorganized public employee of the same municipal employer? What is the practice, in municipal employment, regarding such non-economic matters as seniority? Grievance procedures? So-called "working rules"? If important differences exist in comparison with private industry, what, if any, are the effects on the basic employment relationship?

D. The extent and influence of unaffiliated unions in the public service.

What are the special factors of public service which have given such widespread rise to this form of unionism? How does the behavior of such unions vary from that of affiliated unions? The extent of white collar membership versus blue collar membership in unaffiliated unions? The extent to which such unions have broken down or perpetuated barriers to effective bargaining? The likely future trend of this form of unionism in the public service?

E. Membership of white collar workers in unions.

To what extent do white collar workers in public service belong to unions in larger numbers than do other "downtown" office workers. What are the special factors of public service making for white collar membership? What is the likely trend of such membership as public unions increasingly assert the prerogatives and methods of private unions? What special problems stem from the abnormally high proportion of white collar employees in the public service?

F. Experience and effect on the municipality of collective relations between semi-autonomous agencies and public employee unions.

When private transit facilities have been transferred to public ownership or to semi-autonomous transit authorities, how have the practices and bargaining relationships under private ownership been affected by the changeover to public employment? What are the legal problems involved in continuing past collective bargaining relation-

ships? What problems arise where the relationships are altered? What is the effect on the parent municipality's relationships with its own employees where the municipality underwrites the monetary results of collective bargaining by a transit authority or, similarly, by a semi-autonomous Board of Education? What is the effect on the relations with other city unions where the publicly-owned transit facility continues previous practices such as exclusive bargaining or the union shop?

The specific machinery for the implementation of this type of a research program is probably less important. An audience such as this one may, however, be interested in a brief description of the rather detailed implementing steps which we drew up at the time.

It appeared to us that the project should proceed in three main stages. In the first stage, the staff, in consultation with a number of experts in related fields, would draw up a working theoretical framework of collective bargaining for the public service. Preliminary to, and as part of the latter, there would be a compilation of all then-available literature, legislation and experience on the subject of labor relations at the local governmental level. There would next, also at this stage, be further examination and necessary refinement of the specific components of the overall problem which would be researched.

The second stage of activity would center mainly on the gathering of further data necessary for successful completion of the program. In this whole field, to an extent unrealized, there have been myriad variations in the method and pattern of collective bargaining by the cities and hamlets around the country, many or most of which may not yet have reached the light of day, in any detail. It appeared to us that any intelligent approach to a problem such as this, with its national scope, would have involved a maximum effort toward gathering that experience, and the establishment of perhaps a national clearing house or library of such information; the same purpose could also have been served by establishing a number of centers, or sub-centers, in universities around the country. In any event, the second stage of our program contemplated the circulation, first, of comprehensive questionnaires to some 1500 local government entities around the country, intended to elicit detailed information as to their particular local experiences and approaches. The questionnaires,

in varied form, would go to public officials, union officials and other local sources. Recognizing the inadequacies of questionnaires, but based in part on the information thus received, there would then be field surveys in depth, in a smaller but still considerable number of communities, by staff carefully trained for that purpose. Here, too, the work could be carried on to a large degree by universities in particular areas, who might become interested in a cooperative or coordinated effort with the research center of the program.

Having completed what would have been the first relatively complete and current collection of the form and practice of local government labor relations in the United States, the project would then have proceeded to its third stage. This would have involved collating and evaluating the collected data, and publication in monograph or article form of a series of special studies on selected problems and practices--some limited to individual cities or areas, others general and related to subject-matter rather than locality.

In addition, at this stage, a series of conferences would be undertaken, involving top national figures in the several, related diciplines. The purpose of the conferences, in simplest terms, would be an attempt, on the basis of all of the data and writings up to then gathered and prepared by the staff, and utilizing the best available minds in the country, to formulate a new, hopefully workable and hopefully sensible, final theory or concept of collective bargaining for the infinitely complex problem which is collective bargaining in local government.

Thereafter, and as the end product of the whole program, a volume or a series of volumes on local government labor relations would be published, embodying the articles and studies previously issued, and proposing in detail, the carefully-formulated rules and guideposts for the conduct of labor relations in local government in the United States.

The program, as described, was projected for a two-year period, which was probably conservative. In addition, should the problems have warranted it, and assuming available funds, our planning also envisaged the possibility of a continuing center for the study and teaching of local government labor relations--one which would have encouraged further research as the needs developed, provided specialized teaching at the graduate level, and furnished training and teaching to management and labor practitioners in the field, all of which would be closely geared to the developing knowledge and experience being gathered at the center itself.

All of this, however, was proposed in the context of 1959. With the developments which have occurred since 1959, the imple-

mentation of any such research effort as that described here would now obviously be subject to some substantial revisions. For example, some 15 states today have some form of definitive-type legislation on the subject of government bargaining, whereas in 1959 there were none. Numerous, additional local governments have acted on the subject. Only within recent weeks, New York has come forth with the Wagner-Lindsay Panel report and agreement at the New York City level, and the Rockefeller Panel report at the state level. There has also been a great deal of additional research effort by scholars around the country.

Insofar as the informational-gathering aspect of our project is concerned, therefore, it is likely that much more data and experience are now at hand, either as a result of the work and efforts of some of the bodies charged with administering the new state acts, or as a result of the investigative efforts of individual researchers within or across state lines. Even in that connection, however, it must be pointed out that the great majority of states, some of them large ones, still do not have basic legislation, and that for many of those which do, the experience is relatively new. But apart from that, and even recognizing the very substantial advances in this field which are represented by the various state acts as well as the two recent New York reports, it would be foolhardy to minimize the complexity of the problems and the work which remain.

It is a hard fact for New Yorkers to face, but there is a rather substantial, and sometimes differing set of problems outside of the borders of that state. Even referring to the New York efforts, however, it should be noted that the report of the Rockefeller Panel is replete with references to the need for further research, as well as experimentation, in various, designated areas; particular reference might be made, as an example, to the report's treatment of the appropriate unit question and the highly-complex interrelationship between that problem and the scope-of-bargaining question. The new program of the Wagner-Lindsay panel is, of course, as yet untested.

With or without the New York developments, I remain convinced that, for the country as a whole, we are far from having arrived at stable and workable concepts or answers for this whole field.

The state acts establish the basic rights to organize, to be recognized and to bargain--which are the essential starting point --but fundamental problems of implementation will remain. As only one illustration, let me mention an experience not long ago with a smaller city which was embarked on a program similar to that provided by the state acts. The problem there was that the union of the non-uniformed employees was willing to embark on a

program of orderly bargaining with the executive branch, in place of the former loose and unsatisfactory pattern of lobbying, with the city council. The police and fire unions were not so disposed, however, since they felt that their stronger political power would probably continue to net them, through the lobbying channel, a disproportionate share of the budgetary pie--as it had in the past. Moreover, they were unwilling to relinquish representation rights for supervisors, which would probably have been at least partially required under a more conventional program of recognition and bargaining.

There was obviously no way to force the two uniformed organizations to request bargaining certification under the new procedures if they chose not to do so, and no way of preventing them from exercising their rights as citizens to continue to deal directly with members of the legislative branch. The executive branch,which was anxious for at least an opportunity to prove that bargaining with the executive could be made to work, and which recognized that the police and fire lobbying methods represented a threat to the entire new bargaining structure, as well as to the hopes for achieving a more soundly balanced wage program, was without effective recourse.

It seems to be clear that there will continue to be an extended period of tension, crisis, trial-and-error, adoption of new techniques, and rejection of old or not-so-old. Within that climate, it would appear evident that the need will be great, for a long time to come, for both large scale, continued research efforts and for expanded teaching and training programs. Much better answers will be necessary for the teachers and trainers, vis-a-vis those whom they teach and train, than have thus far been available, and those will only be obtainable by continued adherence to a framework of research which will seek solutions at the heart and the essentials of this whole problem--involving, among other things, the basic issues of bargaining structure, bargaining procedure, bargaining subject-matter, and resolution of impasses. Or, it may very well be that at some future date we will conclude, that in using the private industry pattern and procedure as our point-of-departure for public employee bargaining, we have erred; and that the evolution of some fundamentally different approach will be required, which will yet give full outlet to the reasonable aspirations of the public employee towards meaningful participation in determination of his working conditions through a union of his choosing--an objective which, plainly, can no longer be questioned in a western democracy such as ours.

Adaptations of Union Structure for Municipal Collective Bargaining

Alice H. Cook
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A number of circumstances surround and distinguish the unions in government from their counterparts in private industry. These special environmental factors raise the question of the degree to which a distinctive structure and government are characteristic of unions in government employment.

Among these are, first, the general lack of any union security provisions comparable to the union shop. Second, the strike is under interdict and while an equivalent substitute is much discussed and advocated, at this point even the question of what such a substitute may be is open to discussion. Third, a substantial group of government employes, although by no means a majority, have tenure under civil service regulations and are consequently not dependent upon the union for such services as hiring or job protection. Fourth, the question of representation rights is treated variously, in some cases permitting "informal" as well as "formal" recognition, while exclusive representation for the agent of the majority although generally settled in the affirmative is not a matter of course. Fifth, rivalry for representation rights is not limited to unions and, particularly among the professional employes of government, a number of longstanding civil service associations as well as professional societies vie for recognition.

Although wide variations and many exceptions exist as to the force with which these factors operate in given situations,* some substantial weight from each falls upon labor relations and consequently upon labor organizations in the public service. Unions in this sector are bound to behave differently therefore from those in private employment.

My present research which is by no means concluded, indeed only well begun, is directed to discovering how significantly these factors affect the structure and functioning of public

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*Some leaders of public employees' union insist that governmental labor relations should and very soon will closely resemble those in private employment.

employee unions. My immediate concern is with unions in municipal employment and my study so far has been confined to two large unions in New York City, the United Federation of Teachers and District Council 37, AFSCME. I selected these unions because my earlier study had been made with the factor of size as a major variable.*

In undertaking the investigation I judged first that the lack of union security would create an elementary problem, that of retaining members.

This instability of membership could have a number of effects. It might produce response to criticisms and demands of non-members in the hope that they would thereby join the union. It could generate more grievances and more willingness on the part of the union to press borderline cases as well as more service to individuals processing their own grievances. One might look for more autonomy in the subordinate units of the organization. One might expect more contact between members and officers and in general more response to this contact. In a word, the unions could be expected to roll with every punch.

Second, since the collective bargaining process has great influence over internal political functioning,** I was on the lookout for any evidence of the forces it has generated. At best I was aware that if collective bargaining, new as it is, was already at work molding union structure, the process would still be in transition.

Third, particularly in the case of the teachers, a special element had to be weighed--that of "professionalism", whatever this means in assessing the behavior of an organization and its members. Nevertheless a membership which has a high degree of formal education, is accustomed to voluntary activity in its middle-class practice, is individualist and competitive in personality and behavior, and is influenced to some degree by the model of the "professional association" will unquestionably produce its own type of union.

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*Alice H. Cook, Union Democracy: Practice and Ideal. NYSSILR, Cornell University, Ithaca, 1963.

**Alice H. Cook, "Dual Government in Unions: A Tool for Analysis" ILR Review, April 1962.

Finally, both of these organizations are large and have grown rapidly, achieving size, power and recognition within the past five years. Both are therefore in transition from small to large organizations, from volunteer to bureaucratic structures.

Inevitably, these factors are so intertwined that in some of their manifestations, the individual threads are inextricable.

II

Some description of the size and structure of the two unions reveals that while in many respects they are alike, their differences are considerably more striking than their similarities.

Both have large memberships: the UFT pushes 40,000 and represents over 53,000 employes; the Council counts something over 40,000 members and represents perhaps as many as 70,000 workers.*

Structurally, the teachers have a single, undifferentiated local union. The only subordinate bodies are the school chapters with provision for comparable "functional" chapters for non-classroom teachers. The total number of individual units within the union comes to about 1,000.

Chapters receive guidelines from the local** which they can follow in setting up their activity. They elect members to the Delegate Assembly; the chapter chairman handles grievances in the first and second steps; in schools where the union represents more than 50% of the teachers, the chapter is directed by the contract to hold a monthly "consultation" with the principal on school affairs.

The Council's structure is very different. As its name implies, it is an affiliated body of some 53 local unions, each with its own officers, bylaws and sometimes with elaborate internal subdivisions. One large local has over 30 chapters of its own. No count has been made of the number of subordinate units into which council members are organized but a rough estimate suggests perhaps 2,000. Five local unions have memberships of several thousand each and together make up more than half of the Council membership. Each local lays claim to some degree of

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*Some recently "won" representational rights are presently in litigation from a rival union.

**See, Etta Miller, Handbook for Chapter Chairmen, UFT, New York, 1963.

autonomy, depending upon its size, its members, its seniority and the special nature of its bargaining relationships. While some of the substantially run their own affairs, others are almost wholly dependent on Council staff for functioning. The Council retains almost two-thirds of the dues, but the locals nevertheless receive $1.25 per capita, a sum sufficient to give them considerable functional independence if they desire to exercise it. Some of these locals are "industrial" in structure, including all employes of a single city department or agency. Many are "craft", i.e., occupationally determined, including in their jurisdictions workers within a single title or "class of position". The locals' main links to the Council run through the staff.

The Teachers' officers are all elected in direct vote. All but the president and his assistant are employed part time and remain as classroom teachers.* Here is one of the points where professional identification has political significance for the union.

In the Council less stress altogether is laid on rank-and-file participation. The Executive Director is elected by Council delegates rather than by direct membership vote.

Both unions have large professional staffs which have grown rapidly within the immediate past. In recruiting them, both unions have found it difficult, though for different reasons, to find suitable candidates from among their own members.**

Staff members in both unions have formed their own unaffiliated associations and bargain with the unions which employ them.

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*The part time officers themselves are of two minds about the practice: they feel desperately overworked in their dual functions, while at the same time they are jealous of their "superior" communications and consequent sensitivity to the problems of the classroom teacher.

**The difficulty in persuading teachers to become staff members in view of the attractive remuneration for union work would seem to rest with the advantages of tenure and pensions when they remain in the school and conceivably with the perceived low status attached to union organizing as compared with the professional rank of teacher. In the Council, the problem is associated both with the security of city employment as contrasted with what up till recently has been the marked insecurity of work with the union, but also with the rapid increase in membership among poorly prepared minority groups who have not yet developed their own competent leaders.

In both unions, more or less formally organized and readily identifiable factions operate continuously and not just in elections. Perhaps more important is the fact that their presence is considered inevitable and even desirable.

So far as communications are concerned, the Teachers lay great stress on at least four separate devices which bring the rank-and-file member in direct contact with headquarters. The entire staff is available to answer several hundred daily direct phone inquiries. One fulltime officer directs in addition a "network" of volunteers, headed up in five borough directors who in turn can call district captains who each contact about a dozen chapter chairmen. Within a matter of a few hours the union can reach its members on any critical issue.* A third information link is a systematic circulation of chapter chairmen with a mimeographed weekly sheet, "Last Week at the UFT", mailed so as to be on the UFT's school bulletin board on Monday morning. In addition the union puts out its own bi-weekly issue of the United Teacher, a 12-16 page journal as well as other leaflets, brochures and circulars. Besides all these, the divisional vice-presidents send out regular, often frequent mailings to the chapter chairmen in their jurisdictions. And finally the agenda of every formal meeting of the union--the Delegate Assembly, the Executive Board, Divisional Committees, etc.--sets aside 10 minutes during which the chairmen answer any question raised by a member. Once or twice during the year the president makes a swing through the five boroughs holding "Meet Your President" sessions for two hours or so to which every teacher in the area is invited. He makes no formal presentation, instead spending the whole time fielding members' questions.

The Council relies on a more conventional set of communication links. These are chiefly the staff, assigned as they are to individual locals in a day-to-day service capacity. The Council also publishes a bi-weekly paper.

The bargaining behavior of the two unions is importantly determined by the regulations laid down by the employing city

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*The "network" was established during an earlier period when the union was almost entirely staffed by volunteers. It operates now as an alarm system in strikes, for legislative campaigns and for quick circulation of information on other critical matters. It operates mainly "downward"; the telephone answering is by contrast "upward", from member to staff.

agencies. The Teachers bargain with the Board of Education, which though entirely dependent financially on the city and the state, is autonomous in its labor relations. The Council's labor relations are governed mainly by two executives orders issued by Mayor Wagner in 1957 (No. 38) and 1959 (No. 49), and the subsidiary interpretations of these orders issued by the City Personnel, Budget and Labor Departments.*

As noted earlier neither union has any direct protection of the kind provided by maintenance of membership. Nevertheless, the checkoff is available in all city agencies and in addition both unions have negotiated the right to operate the welfare programs provided by the city for both union and non-union members, a position which presumably gives them some advantage in reaching non-members in a persuasive if not a coercive way.

Both unions are subject to the punitive Condon-Wadlin Act which under heavy penalities forbids strikes by employes of any governmental institution within the state. Yet both have engaged in strikes and continue to insist upon their right and intention to use this weapon in the future, if in their judgment the need should arise.**

The Teachers administer four contracts covering all but one group of professional employes of the Board of Education, the Guidance Counsellors. The Council bargains for titles and has agreements (though only one contract) covering 75-80% of its members. Hence a substantial minority of its members are without the benefits of collective bargaining.

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*See, New York City, Employee Relations Program, New York, 1963.

Soon after Mayor Lindsay's inauguration a tri-partite committee made recommendations to revise the city's labor relations system. The Report of the Tri-Partite Panel on Collective Bargaining Procedures in Public Employment (Reprinted and available from District Council 37, 68 Trinity Place, New York City) March 31, 1966. Within the same week, a Governor's Committee, headed by George Taylor issued a report which in some important details runs counter to the tripartite panel's recommendations.

**One union leader puts his view this way: "I'm interested in avoiding strikes, but not in giving up the right to them." The new recommended labor code in the city, it is worth noting, implicitly accepts the right to strike.

The Teachers bargain as a local union under a negotiating team of the top elected officers with some subordinate bargaining committees set up to deal for working conditions within particular categories of the school system: elementary, junior high school, etc. All four contracts have common terminal dates.

The Council bargains, as it is certified to represent city-wide titles.* Local unions in a few cases handle their own bargaining but more commonly the Council's Research Department takes the initiative in forming ad hoc committees of representatives of a given title from several local unions. Thus the hospital local may have members covered by as many as five or more agreements. In effect it is the Council which bargains.

Now some comments both as regards the points on which I was seeking light as I began the study and some matters which go beyond them.

III

The first point had to do with possible responses to the lack of any union security provisions in government employment.

I have already noted the elaborate upward and downward systems of communication within the UFT. Since nothing quite comparable exists within the Council, some question arises as to whether the operative factor here is not "professional unionism" or the enthusiasm and vitality often found in new organizations rather than the lack of union security. Another outstanding characteristic of the UFT may stem from the same source. Volunteer activity

*One of the Council's major problems has been to wait out the long periods necessary to win not one but a series of representation elections covering a title distributed widely throughout city agencies. The most serious and important instance was that of the clerical workers. Although the Council had representation certificates for clericals in a number of city departments it had to wait for a "city wide majority" before it had authority to bargain for the title. It took nine years for the Council to win this absolute majority, a time during which several thousand clerical workers continued their union membership waiting for a contract.

carried the union in its formative years and although bureaucratization has taken place with the achievement of bargaining and size, volunteers remain an outstanding factor in the union's operation.

Perhaps more decisive for government unions are two other elements: the existence of accepted opposition groups within these unions and the kind of emphasis put upon political activity. In neither case, it must be noted, is the opposition oriented to broad ideological systems; rather it crystallizes around internal union issues. In the Council one line of disagreement runs between what might be called the "civil service mentality" of a conservative minority and the "trade union view" advocated by the leaders. On the one hand are exhortations to "go slow", "play along with the boys at City Hall", coupled with an exegetical searching of the rules for legalistic loopholes and interpretations as grounds for appeals. The "trade unionists" by contrast look toward building labor relations to conform to the private industry model.

In the Teachers' a major disagreement has to do with the degree of rank-and-file control which can be exercised in a large organization. It is expressed in objections to "going easy on the Board" and not being sufficiently "militant" in promoting and handling grievances. On the other hand, a new conservative current, deep and powerful, was washed in as membership grew and thousands of teachers followed the crowd into the organization. In respect to many purely trade union or civil rights issues this group perceives the leaders not as being too slow or hesitant but as overly militant, miles ahead of their members and in danger of getting out of sight entirely.

Criticisms such as these, latent in all large organizations, come to the surface as major political factors in the less tightly controllable circumstances of unions in government employment.

Both unions are committed to programs which have elements of institutional reform in them. The Teachers won the contractual right to regular consultation with school officials, both principals and superintendents, an achievement which gives both chapter and top leadership the possibility of bringing forward administrative and educational proposals.

Council officers likewise recognize that their union can exercise leverage on public policy and administration. Specifically they see many of their members as underprivileged, undereducated members of minority groups while the departments with which they deal are the very agents for providing health, welfare and housing programs for the city's disadvantaged. Recently, the union persuaded the Hospitals Department to undertake a program for in-service training of low skilled hospital workers to prepare them to fill the hundreds of unoccupied technical and quasi-professional posts, a service of enormous potential to its members and of great promise to the health services used mainly by the city's poor.

The pressure toward political action of all kinds has always been essential to unions in government employment. To some extent, this activity was seen as the best, though never a really adequate, alternative to the strike. Although these unions do not on principle forego the strike, they nevertheless lay great emphasis on political activities in all their explicit as well as subtle forms.

The Teachers are extending their lines of cooperative association to a variety of organizations concerned with public education. They are deeply involved in the reapportionment and proportional representation campaigns in city and state,seeing in them the possibilities of an ultimately more favorable realignment of political forces on school issues. In helping at the formative stage to bring about the structural political changes, they foresee a new grouping of power in school affairs in which parents, public affairs and teacher organizations will have a decisive voice,as well.

The Council took advantage of the combination of dynamic circumstances let loose at the time the new mayor moved into office to exert its influence in behalf of a new policy. The result has been that the union has led in persuading the mayor to re-structure the city's labor relations, a matter still in process but one over which the Council will undoubtedly have a good deal to say.

As to the effects of bargaining on union structure, the picture is particularly interesting.

In the Council,the city's insistence on bargaining by citywide titles has had the effect of restructuring all or part of several local unions both by calling for the formation of new locals or the movement of workers from an "industrial" local to one with occupational jurisdiction. In some instances where for political reasons industrial locals have been left in tact, the Council has set up "policy committees" within them, in which representatives of a variety of titles meet to coordinate information about their respective contracts.

Even where local structures have not been disturbed, bargaining nevertheless has a marked centralizing effect on the union, simply because its exercise is the responsibility of Council staff and this deprives the locals of an important source of local vitality.*

In the UFT, bargaining and local structure are relatively congruent. The Board's own organization has permitted the union to introduce bargaining patterns which actually tend to strengthen certain subordinate structures of the local. By permitting separate negotiation of divisional working conditions each vice-president heads a subordinate bargaining team working on specific demands generated in the divisional committees. These committees have stable year-round functions of drafting policy, nominating

*See, George Brooks, Sources of Vitality in the American Labor Movement, Bulletin #41, NYSSILR, Cornell University,1960

Executive Board members, policing the general application of the agreement, etc.

So far as grievance handling is concerned, in both unions the process follows a track in its early stages distinct from that of negotiations. This procedure provides an important role for first line union representatives, and to this extent somewhat counter-influences the flow of power to the fulltime executive. But as such it does not differ greatly from the circumstances of grievance handling in private labor relations. More significant for these unions are the political pressures which operate in this field. One is the ease with which the member may withdraw--or threaten to withdraw--from the union if he feels his case is handled carelessly. The other is the ready availability of rival organizations to which he may go for the limited kind of protection he needs, assuming that protection is the major benefit he sought in joining a union. The unions tend therefore to offer a good deal of personal attention to an aggrieved member and even to non-members.** They may assist members whose grievances represent borderline cases and even offer advice to individuals whose cases the union has rejected, on procedures if not on substance.

Institutional survival dictates the provision of many other services quite peripheral to the conduct of union affairs. Among these are certain buying discounts, travel programs, advice to persons about to go on pension, insurance benefits, etc. The unions ambivalently use them as inducements to join and as enticements to retain membership.

The distinctive elements of union functioning which these two cases reveal provide a good deal of evidence--in grievance processing, in tolerance of factionalism, in communications and in the provision of services--that the union is under pressure to respond to the demands of individual members and minority groups. Moreover, the formative pressures of the collective bargaining system and the structure of the city agencies themselves have a decided effect on the unions' creation and use of staff departments and the assignment of staff responsibilities. The historic concern of unions in government employment with political issues and institutions continues to operate in a more complex and sophisticated way with the result that the unions are seeking and to some extent have already achieved a position from which they in their turn are effectively influencing the government's labor relations and structures, regulations, administration and even their goals and purposes.

**The grievance director of the teachers' union freely admits that his personal philosophy strongly supports giving assistance even when the union has advised against further processing of the case. "We give help even when we turn down a case. We don't know how not to help a teacher! What else have we got but service?"

The American City and Its Public Employee Unions

DISCUSSION

Arvid Anderson
Wisconsin Employment Relations Board

The fundamental question for study posed by the excellent papers of Eli Rock and Alice Cook and throughout the conference, is whether the principles and practices of collective bargaining which have been developed during the past three decades in private employment and which are premised on the right to strike, can be transferred, either in whole or in part to public employment. Based on our four year experience in Wisconsin in some 442 cases involving representation, complaint, arbitration, mediation and fact finding questions, we think the tentative answer is yes, even though the right to strike is prohibited.* On the premise that the decisions affecting employment terms in the public service, including wages, hours and conditions of employment, are essentially political decisions as contrasted to the private sector where such decisions are primarily economic, Wisconsin has enacted a collective bargaining statute for its municipal employes which provides machinery under a state agency for the determination of questions of representation, establishes certain unfair labor practices for municipal employers and municipal labor organizations, makes available mediation services, and, in the event of impasses, provides for fact finding with public recommendations which are non-binding, as an alternative to the right to strike. The premise being that since the decisions in public employment are primarily political decisions, that a system of collective bargaining based upon informed persuasion rather than on the use of economic weapons will be persuasive upon the body

*237 election cases, 25 complaint cases, 4 arbitration cases, 74 mediation cases, and 102 fact finding cases, from 2-15-62 to 3-31-66. Formal recommendations have been issued in only 32 fact finding cases, the majority having been resolved short of fact finding by mediation. A summary of the Wisconsin experience to date, by Professor James Stern and Graduate Assistant Edward B. Krinsky, will appear in the October, 1966 issue of the Cornell Industrial Relations Review.

politic and upon the employe organizations.

Turning to some of the very practical areas of research suggested by Mr. Rock, I would point out:

(1) That there now exists the opportunity to study in several states and in a number of municipalities, criteria and procedures for establishing bargaining units, as well as such basic questions as exclusive recognition, the check off, grievance arbitration clauses and provisions for written agreements.

(2) Strikes do occur in public employment despite laws which prohibit strikes and despite procedures for dealing with them. The threat of a strike, even though it is prohibited by statute, may have a decisive influence on the outcome of the bargaining. Whether such a subjective question as to what extent the threat of an illegal strike influences collective bargaining can be evaluated definitively by research, is somewhat doubtful.

Those who seek absolute guarantees against strikes in the public service will find a "yes" answer in a police state. What can be done, what should be done is to develop procedures which make strikes unnecessary; and which provide effective means of dealing with those which occur. I refer to procedures to resolve the causes of strikes, the representation question, grievances over working conditions and disagreements over new contracts.

(3) Politics as the decision-making factor in public employment is deserving of considerable research, and I am somewhat puzzled by the dearth of interest to date by political scientists, with a few notable exceptions such as Charles Rhemus, in the emerging role of public employe unions.

The question of focused bargaining authority is closely related to politics and the relationship between the executive branch and the legislative branch, or between the civil service commission and either the executive or legislative branches of the government. For example, the Common Council of the City of Kenosha has voted to reduce the work-week of firemen, but this action was in turn vetoed by the Mayor. Efforts to override the Mayor's veto failed by one vote. The Fire Fighters then requested mediation. It seems obvious, however, that unless the Mayor participates in mediation

sessions that such sessions are not likely to resolve the dispute. This problem illustrates the essential difference between government and private employment, in that government in a democracy is premised on divided authority, while decision-making in private employment is centralized.

The State of Connecticut has attempted to fix the responsibility for negotiations in the executive or his representative, with agreements being subject to the approval of the legislative body. In turn, the budget-making authority is required to appropriate the funds to implement the collective bargaining agreement. Whether the negotiating authority is fixed in the executive or the legislative body or a bargaining team composed of representatives of each, is a political decision to be made by each local unit of government. The Secretary of Labor has recently stated that what is needed are governmental employer bargaining teams which can say, "I will" or "I won't" instead of "I can't".

Closely related to the question of politics, is the subject of good-faith bargaining, which concerns both public employers and public employe organizations. It is unrealistic to expect or even to encourage public employe organizations to abandon traditional methods of lobbying and other means of public and political persuasion to secure protective legislation affecting their terms and conditions of employment. However, where a system of collective bargaining is practiced and protected by statute, public employe representatives and public employers will have to learn, if collective bargaining is to work effectively, to respect, except in unusual cases, the tentative agreements made at the collective bargaining table and not seek to upset those decisions or to improve upon them before the legislative body when the tentative agreements are presented to that body for its approval.

(4) The scope of bargaining is affected by the statutory authority to bargain and by the authority of the negotiators. As mentioned in both papers, the legally recognized subject matter of public employe bargaining may include or exclude wages and union security, two of the four legs supporting the collective bargaining table, the others being seniority and union security. But the scope of bargaining in municipal employment

need not necessarily be limited to the authority of the department or agency head. Might it not be possible to give the authority to bargain to department or agency heads or their representatives over wages, hours and working conditions, which are normally established by the legislative body, on condition that any tentative agreements reached by the department head are subject to the ratification of the legislative body? This is now in effect what is done by the negotiating committees of the legislative body. For example, fiscally dependent school boards who bargain with teachers and non-professional employes, must get their funds from a city council or the state. Might not the same practice work at other levels of government?

The scope of bargaining is also affected by the type of bargaining unit. Should the bargaining unit be developed along patterns established in private employment as evidenced by the industrial unions, craft and professional organizations, or should bargaining units be established based upon occupational groups as well as crafts and professions, also taking into consideration the geographical location of the employes?

One of the major difficulties encountered in administering the Wisconsin Statute has been the limitation on the authority of the WERB to establish appropriate bargaining units, which has resulted in fragmentation and bargaining problems particularly for employers.

(5) Whether or not the merit system is incompatible with collective bargaining is a legitimate area of research. Several of the state statutes, the Federal Executive Order and municipal systems limit the subject matter of bargaining so as to avoid conflicts with civil service systems by protecting the fundamental purpose of civil service systems, to examine and appoint candidates. However, the authority of civil service systems to prepare pay plans and to review discipline and discharge actions, for example, are challenged by the collective bargaining process. The City of Milwaukee and District Council 48 has reached an interesting accommodation of the City Service Commission's ultimate authority to review discipline and discharge actions by providing for the appointment of neutral private arbitrators to make advisory recommendations to the City Service Commission as to whether or not a particular discipline or dis-

charge action was for just cause.

(6) Budget deadlines, the taxing power, and income aids from state and federal sources have an impact on the collective bargaining process in public employment. The necessity of adopting budgets and tax schedules also has meant that in many instances municipal employers have placed the offered increased benefits into effect at the new budget year, regardless of whether an agreement has been reached. Aside from the question whether such practice could in certain circumstances be considered bad-faith bargaining, the impact that such deadlines have on the bargaining process are worthy of research. The question of annual bargaining and annual budgeting needs to be reviewed. I think it is of significance that Milwaukee has entered into a three-year collective bargaining agreement. Obviously the agreement must be implemented in each budget year, but the stability of this contract permits more realistic preparation for bargaining and better contract administration.

Mrs. Cook's paper is an excellent analysis of the impact which collective bargaining, to date, has had upon two very large labor organizations. Her paper mentions what has been the Wisconsin experience to date, that some employe organizations have limited experience with the process of collective bargaining, but are well versed in lobbying and other political techniques. It remains to be seen whether they will learn the collective bargaining process, and exercise the responsibility required of exclusive bargaining representatives to represent without discrimination all of the employes in the bargaining unit regardless of membership.

If union security agreements are authorized in the public service, will it be necessary to enact Landrum-Griffin, bill of rights and fiduciary responsibilities provisions for public employe organizations? This problem may become of practical significance in the immediate future if the Wisconsin Legislature votes to override the Governor's veto of an agency-shop bill.

What I have tried to say in this commentary is that there is an increasing and continuing need for research on the impact of collective bargaining in the public service at the municipal level, and that such research can be of benefit in shaping the developing relation-

ship between public employes and their public employer. I hope the foundations will listen to the two outstanding major papers which have been given here today, but I suspect that like too many sermons, these pleas were directed to those who are not in attendance. Regardless of whether the foundations sponsor such studies, I would like to make the heretical suggestion to this audience, which has been accustomed to subsidies from affluent foundations, that it is possible to conduct some research on the questions raised above without substantial support by foundations, but it may require working nights, weekends and during vacation periods.

The American City and Its Public Employee Unions

DISCUSSION

W. D. Heisel
City of Cincinnati

These two fine papers complement each other very well. Mr. Rock urges more research into the local government labor relations problem--including, I was glad to note, researching management as well as unions. Mrs. Cook immediately complies with his request by describing a good start on her research in New York. His questions must have been apropos to produce such prompt compliance.

The role of the commentator is not easy. The audience's hearing is just as good as his; repetition of the speaker's remarks is therefore unnecessary. Agreement with the speaker makes the program sound like a mutual admiration society. Disagreement, though often merited, is considered discourteous. Fortunately I think you would agree that disagreement with both of these papers this morning would be difficult.

I will turn, then, to the only avenue available to me other than complete silence. I will take a few minutes to underscore and emphasize some of the points covered by our speakers.

First, I think it should be clear to my colleagues in local public management that a growing number of state legislatures will be furnishing us with ground rules for our union relations. Mr. Rock has pointed out that some have already done so. Others considered such legislation in 1965, but did not enact it. Certainly their success in 15 states is all the stimulus the unions need to concentrate on this phase of their campaign for equal status at the bargaining table. In my opinion the question is not whether state legislatures will enact ground rules, but merely what ground rules they will enact.

Any local government manager, therefore, has the obligation, whether he likes it or not, to enter the political arena in his state capitol and fight for fair, workable legislation. Let's face the fact that the unions have and will continue--very

naturally-- to propose legislation most favorable to their cause as they see it. Last year in Ohio, for example, the unions presented a perfectly horrible bill. It made no provisions for exclusion of supervisors. Appropriate bargaining units would be decided by the state industrial commission, whose sole function now is handling workmen's compensation. Then it provided no meaningful guidance to the industrial commission to help it make its decisions. It permitted strikes, and provided no machinery to solve impasses.

In 1965, this or any other labor bill did not have a chance in the Ohio legislature. We in management could sit back and watch it die. But 1967 will be different. A little thing called reapportionment is upsetting the legislative applecart. A legislative leader recently predicted that over half of the 1965 House members would not return in 1967. Representation from urbanized counties will be higher. As a result, I certainly would not bet against some kind of labor bill in the next session.

How wonderful it would be if someone had followed Mr. Rock's 1959 research suggestions, so that we could go to our legislatures with facts instead of hypotheses! We could make a better case for solid ground rules. Probably, too, there would be far fewer differences of opinion without labor counterparts on what the ground rules should be.

But we didn't get the research, so we don't have the facts. Nevertheless, we have experience, judgment, and (I hope) intelligence. We can and, in my opinion, must go to the legislatures and attempt to sell our views. I do not mean to imply that management should oppose "ground rule" legislation per se; rather, management should work for good legislation. I consider such representation just as much a part of my job as negotiating with unions.

Next, I would like to suggest the need for research in union attitudes. I am not close to any jurisdiction which changed its union relationships as a result of state "ground-rule" law. But as a distant observer, I sense a militancy on the part of unions which gained the benefits of such legislation. In some cases, this may have resulted from a reaction from previously-dominant anti-union management attitudes. But I am confident this was not always the situation. Therefore I would be interested in research on what happens within a union which gains equality at the bargaining table through "ground-rules" legislation.

Finally, I would like to see some research in the propriety of the adversary relationship between public employee unions and public management. I have no reason to suggest this area of research, other than the fact that we all seem to be concerned with the transferability of techniques borrowed from private industry. We recognize government as different, but thus far we have not been able to put our finger on the significance, if any, of these

differences. Unions tend to measure their success less in terms of benefits obtained for members than in terms of obtaining the trappings of industrial unionism--the right to contract, to strike, to exclusive representation. In private industry, union gains are management's losses; the more paid out in payroll and fringe benefits, the less remains for owners. This is not true in public administration. Hence I am raising the question of whether there are actually two sides to the government bargaining table. The point I am trying to make is that when a researcher tackles Mr. Rock's prospectus, he should not restrict his search for answers within the framework of the adversary relationship.

If I knew the answers to these questions, research into them would not be necessary. Undoubtedly some research has taken place, or is in progress, which bears on these questions. Mrs. Cook's studies in New York, for example, would be a good basis for studying union attitudes if New York adopts something similar to the Wagner-Lindsay report. I believe these areas of research are important, as are Mr. Rock's suggested areas. The results of such studies would, I hope, bring the objectivity to both sides which is now all too frequently lacking.

The American City and Its Public Employee Unions
DISCUSSION

Sidney W. Salsburg
Chrysler Corporation

Usually an author hopes his words will endure through the years. After re-reading our proposals of some seven or eight years ago, listening to Eli Rock today and to some of the comments at other sessions, I find myself in the strange position of regretting that too much of what we had to say then is still valid.

It is unfortunate that this meeting did not take place some half-dozen years ago. Then, it might have generated sufficient interest to promote somewhat liesurely, in-depth research into the basic issues; resulting in proposed solutions which could have had considerable influence on actual practice because bargaining patterns and practices were not yet established. However, we cannot recapture the intervening years. Nor will we be able to recapture any more that slide by. Unless research in this area is undertaken soon, future studies will involve little more than the attempt to record and understand a system, without the possibility of influencing the practice of collective relations in the public service.

Without organized and detached research, the search after solutions is likely to follow a pattern of hopeful legislation or the use of ad-hoc committees--tripartite, 1/ bipartite or (whatever the word is) nopartite--with the solutions being sought most likely oriented toward the immediate problem, those that canker, rather than at the basic underlying issues.

1/ In the past, government has represented the public interest on tripartite panels. Now, where such panels consider public employment matters, government is a partisan member and the neutrals are selected by one or both partisans. Who, then, represents the public?

We can look at the work of the Tripartite Panel To Improve Municipal Collective Bargaining Procedures in New York City as a case in point; namely, that ad-hoc committees are faced with the need to resolve immediate problems and, if they are tripartite, the need to achieve agreement. This latter need makes the task an almost impossible one--what we get is collective bargaining, which is a different matter from pursuit of answers to basic issues.

The Public Members, strongly endorsing the Memorandum of Agreement developed by the Panel, said they regarded it "to be a precedent-making document, well designed to remove the important causes of conflict between the City and its employees." 2/ Although the Panel did recognize some of the basic problems such as matters subject to bargaining and the problem of city-wide issues, it managed to assume away or avoid more difficult matters. For example, its treatment of the strike. State law to the contrary, the Panel has given to the unions the right to strike. 3/ It is true that the Public Members observe that "strikes of public employees continue to be barred by existing state laws." They "are aware that changes in these laws are under consideration"; and that "the problem of strikes of public employees is a matter for legislative policy." It would appear that the Public Members believed the Panel could confer this right because they "sought by agreement to develop procedures designed to make strikes unnecessary, /ed. - with an innocence that belies their years, they look to fact-finding to make strikes unnecessary should an impasse occur/ and have left to other forums the problem of dealing with other contingencies." 4/

What they have done is to assume away the issue, with a caveat that should the problem recur, it is the legislature's to solve.

2/ "Statement of Public Members of Tripartite Panel to Improve Municipal Collective Bargaining Procedures." March 31, 1966. Page 1.
3/ Ibid. Page 2. "The Memorandum of Agreement, by specific terms bars the right to strike during the life of a contract" and for a limited time thereafter.
4/ Ibid. Page 3.

In their statement, the Public Members assume that if the agreed to procedure is not followed, "the inevitable result will be the replacement of this collective bargaining system by a coercive and less democratic method of fixing the terms and conditions of public employment." The history of the relationship in New York City public employment would indicate otherwise. Granting of certification in New York City government had been in the context that the strike was unlawful. Strikes and threats of strike have brought not more coercion, but less.

The establishment of relations does not mean that bargaining, even where there are good intentions by two sides, can be carried on successfully. The New York City Panel recognized there may be many parties to a municipal bargain but sought to resolve the issue, again in the context of fact-finding. 5/

This is not solely a problem in New York City. It exists in most cities and is recognized -- after the fact, if not before. For example, Detroit's labor relations director has stated that he can't reach a final resolution in many areas because neither he nor the Mayor can commit the city. In explaining his position, he said the big problem that unions face in dealing with the city is that more than 90 per cent of their demands will require legal action before they can be granted. "'On most of these things, we are not going to be able to bargain until we go through the proper legal technicalities. . .'" Everytime there is an agreement negotiated with a union there will have to be changes made in ordinances, council approval given on some items and even amendments to the charter that will require voter approval. 6/

To those who know government, this comes as no surprise. However, the frustrations to both the city's negotiator and the unions involved is apparent. And the relationship between the parties can very likely deteriorate rapidly and even permanently unless a solution -- a long-term solution -- is found to this particular problem.

5/ Memorandum of Agreement, City of New York and certain unions, March 31, 1966. Page 6.
6/ Detroit News, March 13, 1966.

Another issue that may go by default is that of union security. The issue is not included in the New York City agreement nor in the Public Members' statement. Whether it will become an issue there remains to be seen. However, it is in Detroit where the issue of the union shop may be resolved, on narrow legal grounds it would seem, by the State Mediation Board under whose jurisdiction the state law on municipal labor relations falls.7/

Whatever the role of the mediation agency, and it has an important role in collective bargaining, it would hardly seem the place for this kind of basic issue to be resolved. This is one which involves the Civil Service structure itself and is therefore an issue which needs intensive study.

Another matter which may be resolved by the course of events before full assessments of the issues are made is the role of civil service agencies and the merit system in the collective bargaining process. At least one large government employee union is seeking to limit the role of civil service agencies to recruitment and to displace them in the areas of establishment of wages and other conditions of employment.8/

Professor Cook's study of union structure indicates some matters which are very much related to the search for solutions to the problems of collective bargaining in the public service. She observes that unions in the public service are found to behave differently from those in private employment. This is related to the fact that labor relations in the public service by its nature is different in structure and behavior from that in private employment. She further observes that some union leaders believe governmental labor relations can and will very closely resemble those in private employment. This desire, I believe, is a precursor of

7/ A.G. Legatt, Director of Detroit's Labor Relations Bureau told the City Council, officials of the State Labor Medistion Board indicated that the new state law permitting recognition of unions as the bargaining agents for city employees might supersede Detroit statutes.

He said, "'One official told me that in the absence of any strong language prohibiting the union shop, the new state law, in his opinion, would be interpreted as permitting the union shop.'"

"A spokesman for the state (mediation) board said the 'personal' opinion of the officials is that the demand appears to be legal. He said, however, the board has nothad occasion to rule formally on the issue."Detroit News,3/17/66.

8/ Such a statement by the AFSCME was reported as appearing in an issue of the Michigan AFL-CIO News. Detroit News,4/3/66. This view was expressed by John D. Zinos, AFSCME representative, in his remarks as a discussant on this panel.

conflict whose resolution may require seeking structural changes in government so as to accommodate collective bargaining in the private employment image.9/

Professor Cook has concluded, "The unions are seeking and to some extent have already achieved a position from which they, in turn, are effectively influencing the government's labor relations and structures, regulations, administration and even their goals and purposes." It is to be expected that once collective bargaining exists, attitudes and practices in the field of employee relations must change to accommodate the new situation. However, in order to achieve an accommodation to the end that public and private employment labor relations be the same, more than the employee relations structure will have to be changed; structural changes in government will be required. This kind of change, and change in government goals and purposes should be clearly evidenced so that they may not be offered to the public as means to increase the efficiency or effectiveness of government, but should clearly be labeled as devices to accommodate the desire for a particular kind of relationship. The possibility that the offering may be coated comes from the interplay of political accommodation between the politician-employer and the organized employee, arising out of the political activity which, as Professor Cook has observed, has "always been essential to unions in government employment."

To conclude, practitioners in the field of public employment labor relations, legislators and the general public need guidance. Unfortunately, we cannot rely on our current crop of labor relations experts to provide advice in this field based on their past experience. For most, the experience is related to private employment labor relations which differ markedly from that in the public service. Without the benefit of investigation in this area, this past experience is not going to lead to solution of the problems.

9/ Based on the situation as it now exists, such a desire is likely to lead only to increased conflict.

The American City and Its Public Employee Unions
DISCUSSION

Jesse Simons
United States Lines Company

These comments are in response to Professor Cook's examination of structural adaptations of unions to the requirements of the collective bargaining process in the public sector.

Regretfully, the paper defines the environment of public bargaining briefly and statically. It then proceeds with some suddenness, but comprehensively and cogently, to describe, analyze and compare the structure, internal procedures, organization, functioning, composition, history, power relationships of union sub-groups, and the leadership-membership relationship within two large New York City employee organizations--the Teachers' Union and District Council 37, S.C.& M.W.U. Professor Cook's observations, while marking the beginning of what one is certain will ultimately prove to be a contribution to our knowledge of union institutions and sub-cultures, unfortunately does not view or analyze these institutional properties as derivatives of the dynamics of the bargaining process. Rather, the paper is primarily descriptive and there is too little analysis of the factors causing particular configurations, specific institutional procedures and relationships.

Some brief consideration is given to the absence of union security provisions as causing particular, but different, responses of the two unions to the problem of maintaining their membership rolls.

But beyond that, the two unions considered are viewed statically; as existing within a rigid environment characterized, in the second paragraph of Professor Cook's paper, by an absence of union security clauses, written contracts and the legal right to strike; by an ill-defined and limited definition of the scope of bargaining; by the impact of civil service law and procedures on hiring and job security. The environment of civil service unions generally, she correctly observes, are characterized by the absence (until recently) of an equivalent of an N.L.R.B., to establish and administer rules governing unit determination, certification, decertification and the respective representation rights of exclusive majority bargaining agents and those of minority agents, and the corollary to this, the presence of constant, intense rivalry among civil service organizations.

This environmental description is accurate, so far as it goes, but it is not complete. However, to add additional factors so as

to complete the description of an entire sub-culture would, I fear, lead even further away from the subject at hand.

Rather, I will use a few comments of Professor Cook's paper as a starting point to present for your consideration observations based on my experience as Director of the Labor Management Institute of the American Arbitration Association, which acted as secretariat and sponsor of continuing tripartite discussions designed to develop agreement on the re-structuring of municipal collective bargaining in New York City. I hope, perhaps presumptuously, that my comments will challenge and stimulate Professor Cook and others to further research and analysis along the lines so cogently and comprehensively set forth in Eli Rock's splendid paper.

The opening sentences of the paper of Professor Cook affirm that the Public service unions are surrounded by an environment that distinguish them from their counterparts in the private sector. True! Both the environment and the unions may be distinguished; but the central question is to what extent are public sector bargaining and civil service unions distinguishable, and to what extent are they similar? Is the trend toward greater similarity or lesser? Are these unions and the environment fixed, or are they undergoing rapid change and, if they are changing, why?

It is suggested that public sector bargaining is more and more coming to resemble private sector bargaining. Albeit with certain special and most complex characteristics.

That no environment is static, and that it is changing continuously, is a cultural and anthropological cliche. Our problems, as collective bargaining students or practitioners, is to close the gap between the changes, and our perception of them. Words about, and analysis of, an environment do not cause change; all they do is announce to the world what has already occurred--perhaps decades after it has happened. Such a lag between real processes and relationships, and our vision of them, occurs because often our perception is myopically distorted by preconceptions and myths.

An example of such a lag is the issue of sovereignty and delegation of power in connection with public sector bargaining. A myth is no less a palpable reality than a law, regulation, institution or relationship. That government can contract to purchase things, services, sign personal service contracts, agree on terms for employing consultants, sub-contract and sub-sub-contract such services, and can negotiate and renegotiate such contracts and agreements, bargain over their terms, arbitrate their interpretation and application (as was the case in 1847 in New York State, which arbitrations were upheld in the New York State

Court of Appeals)* establishes government's legal right to enter into binding written contracts covering the terms and conditions of work of its employees. Yet these facts existed comfortably, cheek by jowl with the myth that government was without the legal authority to do so. Myths die hard. This one has persisted despite the existence of written contracts in New York City with the Transit Workers' Union, the Teachers' Union, S.C. & M.W.U. and S.S.E.U. The subordinate myth that arbitration of grievance disputes over interpretation of agreements was contrary to law also has been disposed of, first, by the fact that these contracts provide for binding arbitration of grievances by jointly selected arbitrators and, second, by the court's decisions one hundred years ago upholding arbitration awards disposing of disputes arising out of commercial agreements.

That it served the government, as an employer, to perpetuate such myths, one can well understand. That the leaders, attorneys and teachers of public workers acquiesced for so many years to these myths is indeed bewildering. However, these myths are evaporating under the impact of growing organization and strength of public workers' unions, and by the requirements of government officials to manage their employer-employee relations.

Before leaving the matter of myths, I feel impelled to deal with one more. Much has been said about the objectivity and essential fairness of government administrators vis-a-vis employee wages and benefit policies, because they are not subordinate to profit-oriented, unit-cost-conscious corporation boards of directors and not beholden to dividend-hungry stockholders.

Elected officials, either in the executive or legislative arm, are acutely aware that tax increases, induced by unmanaged increases in labor costs, are fatal to their continuing survival.

The electorate, on whose whim and judgment the survival of an officeholder is dependent, zealously protects its pocket-book, peers vigilantly at budget and tax policy, holds accountable the executive or legislative representatives, and blithely tosses them out of office, in marked contrast to the cautious and restrained actions of stockholders and boards of directors. The public official is subject to continuous scrutiny, accountability and recall, compared to which the corporate manager's life is an idyllic sanctuary.

*Brady v. the Mayor, etc., of Brooklyn, 1 Barb. 584 Supreme Court 1847

*The Mayor, etc., of New York, 1 Barb. 325, on Appeal 4 How. Pr. 446, 1847

Such pressures are as coercive in their effect as cost-consciousness, profits, etc. These pressures are as manifest at the public sector bargaining table as in private sector negotiations. However, the elected public official, in contrast to his private sector counterpart, must cope with an irrepressible electorate, stimulated by an often irresponsible and ill-informed press, radio and T.V. and a permanently organized opposition of "minority stockholders" who are well-financed and led by sophisticated leaders versed in the arts of demagoguery, petard-hoisting and polemics.

It is intended, at this point, to attempt to advance in a tentative way, a theoretical construct, designed to illuminate that which distinguishes the bargaining process and environment in the public sector from that of the private. Provided these propositions correspond to the reality, they should throw some light on the changing behavior and structure of unions in the public sector. Bargaining institutions adapt themselves to the exigencies of the bargaining process, to the ebb and flow of bargaining power, evolving forms and processes, by trial and error, sloughing off what is ineffective and retaining what has proven useful.

In trying to describe the essential properties of the bargaining process in New York City, it ought to be remembered that New York is unique. Of that there is no doubt. However, the uniqueness of New York with respect to public sector bargaining is that it expresses today what will be the essential characteristics of collective bargaining in civil service ten years from now in other communities. While New York's experience foreshadows the future, it is well to remember that in New York everything is larger, usually more intense and frequently more complicated.

With this held in mind, let me suggest that collective bargaining in the public sector can be best understood and managed when it is recognized that the employees, despite any appearances to the contrary, are actually bargaining with the taxpayers. The government officials whom they confront at the work place, in the grievance session, at an arbitration hearing, and across the bargaining table, are not the archetype employer. They are confronting a surrogate-employee, a stand-in, an agent in behalf of and beholden to, and the servant, especially on Election Day (and every day is Election Day) of the taxpayer-as-electorate. Public sector bargaining is really three-party negotiations. The public official or executive is required by the demands of the bargaining situation, and is both obligated and empowered by law, to make policy decisions on employee wages and benefits, yet he is neither the sovereign, the proprietor nor the final authority. Frequently, public officials have delusions to the contrary; however, they are short-lived. Though he acts, and must act, as if he were something which he is not, namely the employer, the public official's negotiating

objectives and decisions are as profoundly influence as are his private counterparts by costs! He differs from his private counterpart however in that his decisions are significantly determined by threats to political survival and future political aspirations.

But his constituency - the taxpaying electorate - the employer-can be consulted only in November every two or four years. Thus, the public official, as surrogate-employer, must, and can only, make intuitive speculations, and must rely on hunch to determine his principal's acquiescence, acceptance, or approval of his bargaining decisions which increase costs. Such increase is ultimately expressed either in increased taxes or decreased services. A most unenviable situation.

These interpretations of the proprietor's preferences are expressed at the bargaining table in agreements in which the costs, though high, are regarded by the public manager as less costly than the cost (to him and the electorate) of the cost of disagreement; or these speculations as to the employer's judgment leads to bargaining decisions by public officials that the cost of disagreement is less costly to him and the electorate, than the cost of agreement.

This attempt to conceptualize bargaining in the public sector needs refinement. For instance, not all of a public official's constitutents are affected equally - voters with no children are not directly affected by cessation of work in the schools; it is the welfare recipients, or the nature - and sports-lovers who are vitally affected by cessation of services of a welfare or park department.

Generally, such considerations will not be foreign to public service bargaining decisions. Probably they played a role in New York City, when decision was made to accord the transit employees an 18% increase for two years to get the subways running again. Here, of course, virtually the entire constituency of the public official was directly affected, even those who customarily use taxis and private cars. Retail and wholesale business, manufacturing, banks and virtually all commercial activity was slowly grinding down. To permit continuation of this mounting cost of disagreement was greater even than the staggering cost of agreement. Thus, the decision to settle - a decision based on speculation as to the ultimate judgment of the employer which, at the time, was walking and would, in the future, be paying.

Could the strike have been broken by providing alternative means of transportation? The answer is probably yes, but at a political risk of the greatest dimension. One can conclude that such a cost was also conceived to be a greater cost than the alternate costs of increased taxes, fares or political reprisal.

Another refinement, and one not to be lightly disregarded, is that an increasingly large portion of the electorate consists of the public employees themselves. Employees bargaining with public

officials are simultaneously an organized and powerful segment of that same official's constituency, exercising an influence which is growing rapidly and constantly. Thus, the official who is employer-surrogate, negotiates with employees who are also a part of his constituency, and who simultaneously are, in part, the employer. The elected official can ignore this, but at his peril.

This opens up another aspect of this complex bargaining pattern. Employees are taxpayers, and their wage and benefit provisions are a derivative of governmental tax programs. Yet, it is rare to find employee organizations actively advocating revenue programs designed to meet the costs of the benefit programs achieved through bargaining. The union leaders' constituents want from their unions and their union leaders increased benefits, not advice on personal disbursements in the form of higher taxes.

One can well ask why the labor movement generally has not supported the efforts to organize public employees with the same generous donations of manpower and money as were extended to early efforts to organize steel and auto? Why, one could ask, are they either often silent on the issue of the growing militancy of public employees, or on the right of employees in civil service to refuse to settle at a level they judge to be unsatisfactory? Perhaps the answer resides in the understandable desires of union leaders in the private sector to serve their respective constituencies. Is it possible that the leaders of private sector unions recognize that improvement of public sector employees' benefits ultimately results in diminuition of income or levels of service affecting private sector employees; co-relatively, minimum costs in the public sector mean little or no tax increase.

Such considerations affect not only inter-union affairs, but also the policy determinations of labor as a whole in the political process, where the private sector employees, of course, have a controlling voice, as yet.

There are other aspects to this attempt at defining the framework of public sector bargaining. But perhaps enough has been said so that the original formulation may be restated in more condensed form.

Bargaining over wages and working conditions in the public sector takes place in an arena in which employees confront a faceless employer who, en masse one might say, is moved and swayed almost only by crude self-interest. This is an employer who finds it dificult, if not impossible, to deprive itself so as to advance some other interest. To wrench from such an employer, whose outlook is basically and essentially reactionary vis-a-vis its own employees, is at best most difficult and has required, and will require, the utmost effort, determination and courage. This component of the bargaining situation is the dominant force determining public unions' structure and processes.

The bargaining picture in the public sector is complicated by

the fact that the employer registers its judgment--its bargaining judgment, if you please--only every two or four years. However, in the interim fundamental bargaining judgments are expressed, or more accurately refracted, through public officials who are both servant and spokesman of the electorate-as-employer, who perforce must operate on hunch as to their principal's preference. The employer-as-electorate include the public employees who play an increasingly large, and simultaneously unenlightened, role on the whole on revenue and fiscal matters. They, and the balance of the electorate, know with acuity where their immediate narrow interests as employer-taxpayer lies. These factors make for a more complex process of managerial decision-making, as to the cost of agreement vs. the cost of disagreement for which present laws, procedures and concepts are inadequate.

Society, to date, has determined that public employees shall not have the legal right to refuse to work under conditions they find unacceptable. Because of this, and because public sector bargaining is coming to resemble private sector bargaining, there is a need to develop new procedures to deal with bargaining deadlocks and to avoid illegal strikes. Such procedures must include an alternative to the strike if collective bargaining in the public sector is to continue to exist. Time does not permit an examination of this problem, or of the recent efforts to meet it expressed in the plan developed jointly by the City of New York and its employee organizations and the Taylor Committee Recommendation.

In summary, public sector bargaining may be looked at as having four stages of evolution. Naturally, all four may exist in any one jurisdiction, and different jurisdictions may present different combinations of these stages.

First, we see public employees as simple hat-in-hand petitioners; in the second stage, they appear as lobbyists on the fringes of legislatures, in the ante-chambers of mayors and governors, pleading their cause.

With the growth of civil service unions, the expansion of labor organizations generally and with the increased role played by labor, inclusive of public employees, in the nominating and internal processes of party politics and with increased organized strength at the polls, the third stage begins. The major characteristic of bargaining in this stage is the threat to exercise reprisal at the polls or in the primary, or to give or withhold financial support. When such stratagems are employed to reach terms and conditions of employment, the largest, most aggressive and most sophisticated organizations are advantaged and other public service employee organizations' benefits are slotted below in a descending pattern which, though orderly, is replete with gross inequities that stagger the imagination.

The fourth stage, now being entered, is difficult to define. All previous stages are continued in atrophied but discrete form, yet are being overlaid by the bargaining procedures and strategies

common in the private sector. Such strategies include the use of professional representatives, legal talent, economists and statisticians, reasoned or merely eloquent appeals to the public prepared by trained public relations persons, sophisticated internal systems of communication, training and education leading to coherent, disciplined responses by the membership, the use of time as a bargaining tactic, the no-contract, no-work stratagem, and the threat and use of slow-downs, demonstrations, work-stoppages and strikes over the terms of new contracts or recognition.

This fourth stage has arrived in New York City, and it is becoming the norm. It is spreading, and will continue to do so, because it is the form most suited to meet current bargaining requirements. As such, it will be found emerging in one community after another.

Practitioners and students in the field of public sector bargaining would be well-advised to adjust their vision so as to focus on these structural and procedural adaptations of municipal employee organizations to the exigencies of negotiations.

The American City and Its Public Employee Unions

DISCUSSION

John C. Zinos

Milwaukee District Council, American Federation of State, County and Municipal Employees, AFL-CIO

I have spent an interesting day and one-half listening to what I am sure are erudite expositions on a subject matter that is very close to hearts of the people I am privileged to represent.

This morning we have been discussing the American City and its Public Employee Unions. We have heard Dr. Cook's learned treatise on the adaptations of union structure for municipal collective bargaining and Eli Rock's proposals for research.

As one of the discussants of these two important presentations let me say at the outset that we in the labor movement, in the public section of the labor movement, may be criticized, in view of the preceding presentations, as oversimplifying the problems of complying with and enforcing the state and federal laws on public employee collective bargaining.

Perhaps because of our lack of sophistication our approach may be criticized. I profoundly hope that the academic and progressive-minded friends of labor will not abandon us because of our insistence upon pure and simple trade unionism even in, what they deem to be, so complex a matter.

We can not agree that our union should be or must be structured to compliment the structure of our employer. We are clearly not dealing with an industry-wide structure such as steel or auto.

The multiplicity of governmental structures within our jurisdiction conflicts with the need for orderly, uniform and non-ambivalency in our union structures. Our structure, which admittedly has changed, throughout our union is now designed to reflect the basic needs of our members--not our employers. We have rejected what Dr. Cook so aptly refers to as the "civil service mentality" in favor of a trade union approach. Much of our effort is in the direction of helping our employers assume a posture and procedure that employers in the private sector have developed--efficient, straightforward and uncomplicated.

Our entire approach, then, is what we consider to be pragmatic. An approach based upon the uncomplicated theory that we are engaged in a struggle, the same struggle to be sure in which our brothers and sisters in the rest of the labor movement are involved. Having stated that basic premise, let me hasten to add that we are not touting Marxism. We are espousing Gomperism, and even that with one possible refinement--an accelerated political participation. As an aside, let me add that there are those in our movement who finally see the nucleus for the formation of a national Labor Party in our union.

Eli Rock raised a plethora of subjects to be researched, a gold mine for the academic spelunker. Some of the stalagmites such as the argument which surrounds the right to strike, the diversity of authority in collective bargaining matters--as within the executive branch of government--as between the executive branch and the legislative branch--as between the local government and the state government--the role of the civil service commission and a merit system on collective bargaining requirements and attitudes--can be blasted into academically marketable treatises. I will forgo that adventure, as our union has a greater need for our talents, by making a few flat assertions of our position. In all but police protective services we will never abandon the right to strike. We recognize but one authority with which to bargain, that is, the agent of the legislative branch whomever he may be. Civil service should be confined to and limited by contract language, if necessary by revision of state statutes or ordinances, to the sole task of examining and certifying new hires.

As to his proposition that there is a difference between earnings of a private corporation and the revenue produced by the taxing process and that the latter is restrictive in nature, we contend that both produce an economic pie. We want our fair share of this pie--no more no less.

Representing the Teachers' Interests

Wesley A. Wildman
The University of Chicago

Collective negotiations in public education are providing in substantial volume some of the most exciting and dramatic experience we have had to date in the broader field of collective bargaining in the public service. I must warn the reader that given the rigorous space limitations imposed in this forum, the attempted canvass of the subject which follows will perforce seem cryptic and, perhaps, even superficial.

A Brief Overview

The major organizations representing teachers are doing quite well. The National Education Association has great strength in all areas of the country outside of the very largest cities; over 90% of the nation's nearly 1,700,000 public school teachers are enrolled either directly in the NEA or in state or local affiliates thereof. The American Federation of Teachers has been gaining ground rapidly, and it is impressive to note that it now holds exclusive representation rights for teachers in New York, Philadelphia, Detroit, Cleveland, Boston, and, before too long, Chicago may be added to the list. AFT membership presently stands at around 120,000.

In an attempt to provide some data on relationships between teacher organizations and school managements at the local level, our staff recently undertook a survey of the 6,000 largest school systems in the United States or all those with a 1963-64 school year enrollment of 1,200 or more.*

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*For a full report of the findings of this survey, see Charles R. Perry and Wesley A. Wildman, "A Survey of Collective Activity Among Public School Teachers," Educational Administration Quarterly (University Council for Educational Administration, Ohio State University), Vol. 2, No. 2, Spring, 1966.

As part of the questionnaire employed in this survey, we defined a limited number of relationship forms under which most types of school board-school administration/teacher organization interactions could be included. Of the four models we included in our questionnaire, two represented relatively informal or non-bargaining types of interaction (e.g., "testimony" of the teacher organization at a regular board meeting, or "consultation" with a superintendent), while the other two denoted more formal or "true" negotiation types of relationships, defined in part as meetings between the superintendent or the board and the teacher organization for the express purpose of developing mutually acceptable policies on salaries or working conditions.

The administrations of nearly 1,700 of the responding districts claimed to be participating in "formal" negotiating relationships. This figure seemed to us surprisingly high, and it should be noted that responses to that far less than perfect research tool, the survey questionnaire, do not give us certainty as to how many of these relationships are firmly based on a commitment to mutual agreement as a prerequisite for action. Affiliated education associations were reported as representing teachers in a vast majority of these "formal" relationships, but the strength of the NEA affiliates in terms of these relationships lies quite heavily in smaller districts. The AFT's proportionately greater strength in larger school districts reduces significantly the differential between the two organizations in numbers of teachers represented in "formal" relationships.

As part of our survey, we requested copies of all written documents or policy statements at the local level relating to teacher organization-school management relationships. The criterion we used for identification of negotiation "agreements" or, more accurately, documents relating to collective negotiations in education, was the existence of some basis in written policy for the recognition of one or more organizations as representative of teachers on employment issues. A total of 419 of all of the documents we received met this standard. Only 36 of these were jointly signed, the remainder being unilateral board policy. Only 17 contained detailed provisions regarding salaries, hours, or other conditions of employment. Since completion of our survey, additional agreements containing much substantive material have

been negotiated; for example, Rochester, N.Y.(NEA), Newark, N.J.(NEA), Yonkers, N.Y.(AFT), and Detroit, Mich.(AFT).

In "complete" agreements which have been bargained to date, salaries, grievance procedures, and sick leave are among the most widely dealt with subjects. Other subject matter which has been bargained includes sabbatical leaves, transfer and assignment policy, after-school assignments, the school calendar, insurance, dismissal policy, organization of classes, length of the school day, and services and facilities.

Most of the more "professional" matters included in the definitions of the scope of bargainable subject matter contained in some agreements such as the structure of in-service programs, instruction and curriculum, and the health and safety of children have not yet become the subjects of written bilateral agreements on any scale. Curricular and methodological subject matter is just now beginning to receive attention in some of the most recent written agreements. For instance, the New Haven contract provides the right to teachers to "meet and consult" on textbook selection and for the purpose of developing recommendations to the Board "in the field of educational programs."

Conflict in Bargaining in Education

There are differences of opinion between the two major teacher organizations (or affiliates thereof) as to the applicability to or appropriateness for the schools of the essentially adversary power relationship of collective bargaining with its emphasis on compromise and concession-making on matters over which there is conflict between the parties. Many within the diverse NEA structure are not sure about the inevitable inherency, nature, and depth of conflict in schools and are somewhat uncomfortable using the idea of power and opposed interests to discuss the relationship of one segment of the educational fraternity vis-a-vis the other. The outlook of the AFT is more homogeneous and certainly easier to characterize. The AFT accepts as an operating given the existence of significant conflict in most school systems, declares the need of teachers for power to wield in that conflict,and sees collective bargaining on the industrial model as the appropriate means for gaining the power and handling the conflict.

Those working on our project have assumed that the existence of conflict is, in the final analysis, an empirical question, and we have made the essential focus of our fieldwork the identification of those areas in which boards and/or administrations and the leaders of teacher organizations have, with both good will and all relevant facts, had differences of opinion which were resolved or on which resolution was attempted, in a negotiating relationship. Space limitations dictate that I do no more at this point than merely mention briefly the more significant areas of conflict which have appeared to date in negotiations in education.

First, we might mention the "working conditions" issues which involve the establishment of procedures and standards for day-to-day decision-making within the system. For instance, to what extent should seniority be used as a criterion in decisions on assignments, promotions, and transfers? What is optimal or maximum class size? To what extent should teaching assignments and non-teaching assignments be rotated as a matter of equity within the teacher group as opposed to being distributed in accordance with the principal's judgment of relative ability or potential contribution to the overall school program, etc.? The use of non-teaching time presents yet another area in which conflict has arisen between teachers and those who supervise them. Also, we might note that teachers have manifested a desire in collective negotiations to gain greater authority over decisions on ratings, discipline, and dismissals.

On issues such as these teacher views on what is right and just have conflicted in negotiations with the desires of the administration to exercise its traditional unilateral responsibility to staff, assign, and in general administer the educational enterprise. We have found that in schools, just as in industry, bargaining on these matters has in some instances substituted centralized decision-making for decentralized decision-making on the management side. It is school principals who have lost significant discretion in the process; as a result, administrators in some systems are actually undertaking organization as a means of securing a stronger voice in the new decision-making processes of collective bargaining.

Moving to financial issues, it is not difficult to find a number of examples of conflict between teachers as a group and the

community at large over the total support of education; this conflict may or may not be reflected in a local negotiation relationship. In many instances we have found the teacher group and the board and the administration to be in agreement on the desirability of obtaining greater total support for the school system, but in conflict nonetheless over tactics and strategy to be employed to maximize resources in the short run. In the "money" area, though, it is the question of allocation of available resources among competing needs which has proved to be the major source of conflict in negotiations between teachers and school boards and administrations. Given acceptance of "quality education" as a goal to be achieved in the allocation of available funds, it is still possible for the parties to reach different and conflicting judgments as to how the goal can best be achieved. For instance, in various negotiating relationships, teacher salaries have been suggested (in some cases successfully) as having prior claim on existing funds over such other items in the educational budget as textbooks, building maintenance, adult education, kindergartens, increased special education, etc. Also, differences of opinion have arisen among boards, superintendents, and teacher organizations as to how total funds appropriated for staff compensation should be distributed. For instance, are the interests of quality education better served by more highly paid teachers or by more staff to reduce class size? Should salaries be increased at the bottom of the schedule to facilitate recruiting as opposed to increases at the top as a means of rewarding or retaining long service teachers? Only one step removed from these questions are problems which have arisen over the appropriate level of administrator-teacher salary differentials.

Eighty percent of the impasses in education bargaining which we have been able to identify to date have involved salary issues.

The Impasse and the Strike

In collective negotiations in education, as in the rest of public employment, a key problem, of course, is that of the impasse and whether effective and meaningful collective bargaining can result in the absence of the incentives to settlement provided by the strike option.

Despite the persuasiveness of the "working mother" argument, I am not one who feels that it is an unmitigated disaster for children to miss an occasional day of school as a result of a teacher strike; nor do I feel that a strike by teachers in any given school system must necessarily be in conflict with a proper concept of professional behavior and concern for the teaching craft. However, as a matter of long run public policy, the grant of the strike power in education or to public employees generally would seem to make little sense. Most governmental operations have been established by the public as monopolies which provide products and services for which there are seldom close, readily available substitutes. The still viable and powerful sanctions of the competitive market are not often operative to provide a measure of discipline to the behavior of the parties and to guarantee that the resulting deal will not be altogether at someone else's expense. It seems true that teacher strikes or the threat of same have been responsible for gain, but no one to my knowledge has done a cost-benefit analysis of these situations for the community as a whole, focusing on the totality of needed services or the impact on those who provide them. Clearly, it would seem that if the strike right is granted in public employment, large and strong organizations will benefit at the expense of the relatively small and unimportant organizations or at the expense of the unorganized and possibly the public at large. In any event, practically speaking, it would not seem that the public is about to grant power to strike against monopolies that it itself establishes to provide relatively essential services.

It may be argued that while budgetary and other basic decision-making which takes place in education or in government generally should have reference to standards of reason and not power, it is still a fact of life that organized and articulate groups have more than their share of influence at the expense of the unorganized and the inarticulate. True, but not necessarily right. The contribution which collective bargaining in education, and in public employment generally, can make will be to hasten the rationalization and de-politicalization of important aspects of the governmental decision-making process. Where there is conflict, impasse procedures which provide for fact finding, mediation, and arbitration based on principle and exhaustively researched

facts can have a significant and salutary impact on public employing agencies and governmental decision-makers on the local or at the state level.

As we refine the tools of impasse resolution, I think we will find the acceptance rate of recommendations to be high. Substitution of impasse procedures for the strike will undoubtedly have some impact on the process of bargaining, but the costly, time-consuming, and possibly embarrassing nature of resort to the ultimate procedures will, hopefully, provide some deterrent to addiction.*

It would seem that perhaps collective bargaining is going to play a different role and have a somewhat different impact in education and public employment generally than in the private sector. Like it or not, some variant of the fully "administered society" is likely to find its first full expression in the realm of government employee bargaining.

AFT locals and NEA affiliates continue to strike, threaten strike, and "sanction," for the most part in jurisdictions which have not granted full collective bargaining rights and which do not provide impasse resolution procedures as a substitute for the strike. Many who were close to recent teacher strikes such as

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*I am not persuaded that resort to such novelties as "either-or" arbitration where the strike is precluded in public or private employment will yield collective bargaining which is "genuine" in terms of the results which obtain in negotiations where the strike option is present [see Carl M. Stevens, "Is Compulsory Arbitration Compatible with Bargaining?" Industrial Relations, Vol. 5, No. 2 (Feb. 1966)]. It is true that having "either-or" arbitration available will provide motivation and incentive for the parties to make concessions and compromises and "move" generally in an attempt to reach agreement. However, their bargaining behavior will be largely an attempt to outguess each other and /or the potential arbitrator, and will be wholly governed by the decisional principles or criteria which they anticipate the arbitrator will use if and when he gets the job of choosing the more reasonable of the two final proposals on an either-or basis. Thus, the results of such bargaining, whether the arbitrator ultimately gets in the act or not, are likely to correspond very closely to the award which would have resulted from more familiar forms of arbitration not involving the necessity of either-or selection.

those which took place in Newark, are of the opinion that the availability of collective bargaining and terminal impasse procedures would have prevented those work stoppages.

Legislation

Seven states now have statutes relating to collective negotiations in the schools. In some jurisdictions teacher bargaining is provided for in separate legislation; in others teachers are included with other employees under legislation providing rights for municipal employees generally.

The California legislation requires only that boards of education "meet and confer" (not bargain in good faith) with a negotiating council composed of representatives of all the teacher and administrator organizations who serve in numbers proportional to the membership of their organizations. The scope of discussable subject matter is extremely broad. The local boards themselves are required to adopt rules and regulations for the administration of the statute. Our evidence to date on the operation of the law in several school districts in California is inconclusive. The legislation is under strenuous attack from the AFT and several court cases are underway to test various aspects of the law.

As is the case in California, the Oregon and Washington legislation is quite rudimentary in form. In Oregon, all certificated personnel below the rank of superintendent elect directly a committee to "confer, discuss, and consult in good faith" with the board on "salaries and related economic policies affecting professional services." In Washington state, an organization seeking representation rights must, according to the Attorney General's interpretation, accept administrators as well as teachers to qualify as "an employee organization" under the statute, and must (evidently), if it wins an election majority, represent all the certificated employees of the district below the rank of superintendent. Problems have arisen resulting from the fact that some local affiliates of the Washington Education Association and the AFT are traditionally teacher-only organizations. Under the Washington law, organization representatives have the right "after using established administrative channels, to meet, confer and negotiate with the board" on a wide variety of matters including curriculum and textbook selection as well as salaries and

working conditions. Both the Oregon and Washington statutes provide a form of advisory arbitration, or, if you wish, fact finding with recommendations, in the event of impasse.

The laws of Michigan, Wisconsin, and Massachusetts, while they differ in a number of important respects, are relatively comprehensive statutes providing to all public employees (including teachers) within their ambit many or most of the organization, election, and bargaining right protections and procedures afforded to private sector employees under the National Labor Relations Act.* The outstanding difference, of course, is the prohibition of the strike and the substitution of fact finding and mediation in the event of impasse.

In Connecticut, administrators and teachers may vote separately in an election to determine whether they shall bargain as a single unit, or be represented separately, with either group having a veto over being joined with the other in a single bargaining unit. The unified approach has been adopted in a majority of the elections held to date. Several contracts have already been bargained in districts where the units include both teachers and administrators; the documents contain salary schedules for both groups. In the years which lie immediately ahead, Connecticut will, as others have noted, provide something of a laboratory in which to test the claims of some NEA affiliates that inherent conflict between administrators and teachers in many school districts is minimal, problems which do exist can be solved intraorganizationally, and that collective negotiations and the profession generally will be strengthened by keeping administrators and teachers in the same unit.

Among many of those knowledgeable in private sector industrial relations, and within the union movement in education, it has become an almost automatic litmus paper test of one's devotion to the principle of "true" collective bargaining in education to subscribe to the idea of teacher-only units, free from all administrator influence or domination. The issue is, I think, though, somewhat complex. Traditional collective bargaining is, after all,

*It should be noted by way of possible exception that the Wisconsin Employment Relations Board has recently decided that there is no mandatory, enforceable duty to bargain under the Wisconsin statute.

in essence, an affirmation of and adaptation to the status quo; generally it leaves the entire control (managerial) structure of the organization wholly intact, operating only to moderately modify its behavior. If teacher organizations are truly interested in changing significantly the pattern of lay control of education in this country or in diminishing the power of administrators and placing the relationship of administrators to teachers on a truly collegial basis, one might expect that a prime tactic would be the early absorption of the administrative hierarchy into the more numerous and potentially powerful teacher group.

Miscellaneous Issues

I want to conclude now with brief observations on some miscellaneous, but not necessarily unimportant, current issues on the teacher bargaining scene.

The single issue of apparently greatest significance as between the NEA and AFT at present is the question of the affiliation of teachers with organized labor. The NEA's position is that teachers as a group should not be identified with any particular segment of American society or the social or political program thereof. Whether affiliation with organized labor has the potential for biasing the classroom behavior of the teacher is a question on which our researches have divulged little, and is a problem which will always be difficult if not impossible to research adequately. In this connection, it has been charged that recent attempts by the AFT to induce school boards to boycott books published by the strikebound Kingsport Press in Tennessee is improper and represents the kind of illicit use of power which will result if teachers align themselves with the larger labor movement. Both the New York and Cleveland boards have voted a form of boycott on books printed by Kingsport, although effectuation of the New York action has been blocked by injunction.

On the issue of the closed or union shop, there have been attempts by administrators to encourage or insist on membership in the NEA or its affiliates and, occasionally, AFT locals have signed and attempted to enforce union shop clauses. Sporadic litigation has resulted over the past decade from these efforts but at this time--formally, at least--both organizations seem to be espousing the open shop. The only development of significance

in this regard of which I am aware has transpired recently in New York where the Union has been given the responsibility for administering, for all teachers in the system, whether Union members or not, a new welfare agreement which has been reached with the Board of Education. The granting by the New York Board of this responsibility to the Union would seem to have some quasi-union security implications.

A sub-issue between the AFT and the NEA has been the question of whether or not state labor relations agencies with primary experience in private sector industrial relations should administer a statute relating to collective negotiations in education. In Wisconsin, the Wisconsin Employment Relations Board has been responsible for the administration of the law with fact finders being chosen ad hoc. I am not aware of any evidence to date which indicates widespread dissatisfaction within the educational profession of WERB's handling of school problems under the Act. In Michigan, the Labor Mediation Board has responsibility for administering the new statute. Experience to date has been that on unit determination questions and the conduct of elections, their staff with private sector experience has encountered no difficulties and evidently managed to satisfy the parties adequately. In Michigan, though, a cadre is receiving special training to develop expertise in the handling of mediation problems in school systems. In Connecticut, the parties to the election (in the absence of any guidance from the statute) have frequently designated the American Arbitration Association to conduct elections on an ad hoc basis from district to district. The statute does provide, though, that the mediation function in Connecticut be exercised by the Secretary of the State Board of Education. All of these different approaches seem to be "working" in some sense, and only experience will tell which are the most viable. The probability is, in my judgment, that all differing approaches will continue to be relatively satisfactory, and that the issue will not be of great ultimate significance.

With regard to the future, all that seems really certain is that collective negotiations in education, with an essentially healthy admixture of variety and competition, will continue to provide an abundance of rich and exciting experience which will be of the greatest possible research significance to those concerned with the extension of collective bargaining to public employment in our society.

Representing the Teachers' Interests
DISCUSSION

Peter Schnaufer
American Federation of Teachers, AFL-CIO

Public sector collective bargaining is, very definitely, upsetting some cherished private sector collective bargaining notions. Those old textbook bromides offered so seriously by Slichter, Chamberlain, Dunlop, Reynolds, Harbison, Meyers, and others are often quite successfully ignored by public employees in their rush to power.

For instance, the local AFT in Thornton Fractional Township, a suburban school district south of Chicago, broke every rule of bargaining discipline and control during its recent strike. They insisted on public negotiations, and, with only our belated and begrudging encouragement, turned this into one of the factors that led to complete victory. They wanted to, and they did, negotiate in a fishbowl. Everyone sat in; lawyers, wives, rank and filers, parents, reporters, and, on the critical eve, even a class of high school seniors studying the dynamics of employee-employer relationships.

The old shaggy-headed professor, the enterprising labor educator, and the traditional "no nonsense" international rep would all frown at such a transgression of good bargaining procedure. They would insist that such a set-up would cause both parties to grandstand, to make statements for the record, and to rigidify their positions for the benefit of their constituents, and all in such a way as to make give-and-take impossible. But they would have been proven wrong. The Thornton negotiators soon forgot the audience. Caucusing, as always, gave them the privacy they needed and, for that final deal, the corridor was still available. Furthermore, fishbowl negotiations increased the pressure for settlement; the physical presence of an audience that wished settlement was hard to ignore.

It would seem that this example, and a number of others that could be given, might be the basis for a research hypothesis that what the labor-management experts have been putting into their books, and teaching in their classes, has not always, or even usually, been techniques developed functionally from the logic of the situation. Often, apparently, they have been developing labor-management principles from the absolutely unnecessary and dysfunctional caution, biases, and customs of the practitioners.

The American bread-and-butter unionists,
and their counterparts on management's side, might be losing ground because of an unwillingness to innovate, to think through again, those very practices that have earned them the reputation as being

among the world's greatest negotiators. The business unionist might be guilty of failure to modernize.

Be that as it may, the lesson here is that, in the field of education, the AFT must spend at least as much time rethinking the principles of the labor movement as the NEA spends learning them. Fortunately, moving away from a perhaps somewhat rigid set of principles is probably more invigorating and less dangerous than moving towards them. NEA local officials have already demonstrated a rather remarkable capacity for suddenly changing from morally opposing a labor practice to blindly using it; how else can their bungling of their recent strike in Newark be explained.

This type of analysis is especially helpful when considering Mr. Wildman's question about admitting administrators into the bargaining unit. There is absolutely nothing sacred about the private employment experience in this area, which is generally read to say that they should be kept out (but an exploratory study which the AFT just completed indicates that many, if not most, other internationals admit them, although sometimes surreptitiously).

This question must be viewed anew. Administrators do have talents that could be effectively used at the bargaining table. They have more free time, more contacts, more machines, and more office help under their command. They are, at least in the frame of reference of the ambitious, more apt to be apt. In general, they would add a row of wheeler-dealers and operators to the teacher ranks, a new deal which would have its advantages, especially since most teachers, when it comes to uses of power, err on the side of being too nice and too theoretical.

Furthermore, the working out of intra-organizational conflicts in an all-inclusive bargaining unit, as Mr. Wildman points out, would not be that difficult. Teachers are already experienced at balancing the interests of teachers holding bachelor's degrees with the interests of teachers holding master's degrees (the question of increments between lanes), the demands of the newer teachers with the demands of the older teachers (the question of increments and percentages between steps), and the position of those who coach with those who do not (the question of extra pay for extra work). In most cases, salary demands for administrators could be juggled successfully by teachers in the same way they juggle these other demands.

Finally, employee power, if everything else is equal, is best left undivided. Teachers who complain about their principals crossing their picket line could probably prevent this, if they so desired, by letting them personally participate in every aspect of bargaining. Such participation should develop a willingness to picket. Articulated self-interest, and not sympathy for others, is still the prime mover of men.

Such arguments, which lead to the conclusion that principles and teachers can co-exist in the same organization, falter when

the focus shifts from the administrator in the total unit to the administrator in a particular school. It is here that the conflict of interest burns most intensely. A principal, or even all the principals, probably would not intimidate the city-wide teacher president of the all-inclusive union, but in too many cases the principal will, knowingly or unknowingly, intimidate the teachers (or just a few teachers) in his own building.

If the principal is a member, he will, in the absence of a ban on such, attend school chapter meetings. This makes it nearly impossible for a member to discuss openly any complaints he has about the way the school is operated. Furthermore, a teacher who is dependent upon a principal for class assignments, approval of transfer, provision of much-needed supplies, etc., is unlikely to risk the wrath of such a person by opposing him when the chapter discusses how their delegate (or delegates) to the local union meeting will vote on the question of the salary differential for administrators.

Even if the administrator is barred from such chapter meetings, he still retains a claim on membership. He pays his dues, in most cases, for practical, and not theoretical, reasons. He wants to be one of the boys. He wants his side heard. He wants protection. Or he wants not to be powerless when the teachers around him are becoming powerful. All of this is, of course, very human and very understandable.

There has never been an AFT local with a higher relative percentage of principals than of teachers, except after the local has grown strong, or where the principals use the organization primarily for their own purposes. Where the local is weak or struggling, and under teacher control, the number of principals who join is small or non-existent. This is not to say that in any given school system there are not some principals who want to belong to a teacher's union only because they believe in the principle of teacher unionism, but it is to say that such principled principals are invariably less numerous than principals who operate--in their bargaining unit affiliations--primarily according to self-interest.

For these reasons, the grievance procedure--in particular--operates less fairly in a system with an all-inclusive unit, even if the administrator is barred from school level meetings. Willy-nilly, the administrator often uses his claim to membership when he is confronted with a grievance. In New York City, the beginning of a meeting between almost any principal and a representative of the union who is there to process a grievance prompts this cliche from the former, "Ask Charlie Cogen or Dave Selden* about me. We go way back to the days when being a member of the teachers union was an act of courage. I've <u>always</u> supported you fellows."

*The former president and the former staff man of the NYC union.

Even worse than this pathetic pleader-leader is the administrator who insists that his membership gives him a right to buttonhole the school or downtown union rep and press his side of the story when a serious grievance is filed against him, implicitly or explicitly demanding that the union not process the grievance, or not process it too strenuously. If asked whether he thinks this is ethical, the administrator will reply, with some logic, that he, too, is a member, and has a right to representation.

Just recently, in a small, but majority status, local of ours, a teacher was fired for allegedly not keeping effective class discipline. As soon as it became apparent that the teacher was planning to appeal the dismissal, the principal who fired the teacher began to build support within the local for his own case (which may or may not have been justified, but that is beside the point, the employee is entitled to effective representation in any event). On the night when the local was to decide whether to support the dismissed teacher or not, the principal showed up and carried the day.

This has occurred enough times in AFT locals across the country to bring me to the conclusion that, until the nature of school supervision changes, the process, if not the goals, of the teacher union movement demands that no one member have meaningful authority over another, and that the process of representation not be complicated and subverted by having a properly defined member of the management grievance team claiming representation on the union side.

I would favor, at least on some kind of more extensive trial basis, separate locals or a separate international for administrators. Principals and other administrators have an employee interest. It demands representation. There is no reason why the labor movement should not represent this interest also. It seems that once you remove the administrator from the meeting rooms and the lines of communication within the local teachers union, the functional, if not the emotional, reasons for his exclusion fade.

A separate local, or a separate local within a separate international, removes the administrator at the building level from the position of expecting representation from the local teacher's organization, and gives him at the same time an organization built upon self-interest that sharpens his own sense of bargaining and of the need to live with bargained rules. Union fraternity thus becomes a two-way street, operated upon the higher and harder pavements of the city central, the state and national AFT, and the national AFL-CIO, where the responsibility for cooperation falls upon men and women neither fearful of reprisals from, nor functionally antagonistic to, one another.

Although it is true that with separate locals conflicts may develop in one school district between the AFT teachers local and

the AFT principals local, these conflicts would in most cases be no different than conflicts between the AFT teachers local and, say, (1) the local of the school janitors (State-County of BSEIU) or (2) the AFT school clerks local. For example, the teachers' local may claim that the administrators' local is undercutting it in negotiations. But there is nothing in this dispute that pits the teacher against his superior as a superior; the opportunity for intimidation or a confusion of roles springing from the supervisory function is not present. The dispute is rather a typical employee-against-employee conflict of interest.

The only event that seems to challenge the propriety of separate locals or a separate international is the picket line. Teachers claim that administrators will not leave their posts and march because they feel a responsibility to manage the schools, and supervise the children therein. Experience, at very best, does not conteract these claims. Principals do cross the teachers' picket line, and this action probably springs from the predominance of the management responsibility, as opposed to the involvement in employee bargaining discussed earlier, which raises the administrator above his managerial habits.

This conflict does not have to occur, especially where principals are well organized into separate units and have a stake in the outcome. The only place where such a picket-line confrontation between sister locals has occurred has been in East St. Louis, where an AFT principals' local did cross, but the reasons given by each side fall differently on the ear of the beholder, and, in addition to such conflicting claims, the situation did not have all the elements outlined above.

In the absence of any definitive evidence, the idea of separate locals or a separate international is certainly worthy of a try (or perhaps as a starter, a division of administrator locals with restricted rights in the national organization as a prelude to a separate international), especially since throwing them out now would probably cause an irreparable breach, one based more on (sometimes) petty hatreds resulting from pre-collective bargaining injustices than on any inherent and immutable conflict.

Representing the Teachers' Interests
DISCUSSION

James G. Solberg
Carey & Solberg, Menomonie, Wisconsin

I come to you not as an expert; not as a school board member with broad experience in collective bargaining; not as a scholar in the field of industrial relations; not as a lawyer skilled in labor law.

Instead, I come as a voice from the hinterlands; from Menomonie, Wisconsin--population 8000 wonderful people; from a strictly rural area; the country boy in the big city.

Up where I come from, double breasted suits aren't coming back in style; they never went out of style.

Although I come from the small school district, I would like to believe our problems are the same as those of the larger city boards. We are all the same type of creatures with similar powers and duties; with a common objective--education of our youth; and as to the accomplishment of this goal we all must make our annual report to the public.

Basically, school boards are not opposed to teacher membership in representative organizations nor to collective bargaining within the established ground rules. Collective bargaining can be a strong cooperative force towards the improvement of the educational processes.

When we speak of collective bargaining in public education, it probably should be collective bargaining in quotation marks, followed with a question mark in parenthesis, because there is a difference in the very framework of the relationships of governmental units and its employees as compared to private industry and its employees.

Some of the catagories of the differences are as follows:

1. Powers and duties of school districts and boards.
2. Public policy and public interest.
3. Motives.
4. Common and statutory law of labor relations.

These differences must be recognized in any discussion of collective bargaining in public education and I, therefore, will briefly discuss each item of difference.

Powers and Duties of School Districts and Boards

School districts are creatures of our state legislature; they are subdivisions of the state exercising the educational functions of the state. To the school boards of each school district are delegated certain powers and upon them are imposed certain duties

and obligations pertaining to these educational functions. We have such discretionary powers as may be reasonably necessary to carry out our duties or that can be reasonably implied from the powers granted to us by the state legislature.

Some say that a school district is like a private corporation with the electors being the stockholders and the school board being the board of directors. Erase such comparison from your mind if it is to be the justification for the position that collective bargaining in the public service should be the same as in private enterprise. First, the electors are not like stockholders because they are a part of the school district and responsible to it as a matter of law and not as a matter of choice as in the case of a stockholder of a corporation. Next, the board of education simply does not have the power, discretion, control or latitudes of those of a board of directors.

Because of the limitation of powers and duties, school boards cannot sit at the bargaining table with the full latitude of granting the requests or demands of its employees as does the administrative body of a private employer.

Public Policy and Public Interest

In addition to representing our state legislature, school boards also represent the people of our district. We are answerable to them as well as to the state. Do not think for a minute that the people of our school districts are not concerned. We live with them. We are not 300 miles away in the shelter of the state capitol; we are not 1500 miles away at the national capital. We see our constituents every day of the week. We do not have the insulating buffer of distance. They talk to us, ask us questions, express opinions, express their feelings, talk about us, criticize us fact to face. Let's be frank, we are under the gun.

They see our product and know exactly what it is costing them. It is in bold print in their local tax statement.

This is good because schools do belong to the people and the students in those schools belong to the people.

It is said that school boards establish educational policy. This is not completely true. We can suggest and urge, but at the local level, educational policy is public policy and in a democracy, only the people can make public policy. There is a vested public interest in education and because of this vested interest, school boards must act within some frame-work of policy as indicated to us by the public. When at the bargaining table, this does impose restrictions on school boards that are not placed on the administrative body of the private employer.

Motives

Consider next, the difference in the motives of a governmental unit and a private enterprise. The key distinction is profits. In private enterprise labor sees the fruits of their labors and

rightfully they seek a greater share of such fruits. This is not the case in public education. We have only one motive--the education of our youth. To this a good school board member is fully dedicated. We are completely satisfied that our teachers are likewise dedicated. Naturally, they have economic interests as well and this school boards do recognize.

We honestly believe that in Wisconsin at least, we have enjoyed most harmonious relations with our teaching staffs on a voluntary basis. School districts have recognized the economic inequalities of the teaching profession, and during the past 10 or 15 years have almost annually adjusted the salary schedules upwards. We have improved the facilities in which teachers work and the instructional tools with which they work. We recognize the law of supply and demand and the competition for good teachers. We want good teachers and know that we must compensate adequately to attain them.

We do have a common goal, or motive. We are proud of how the teaching profession has cooperated in the attainment of this goal; however, because profits are not the common goal in education, collective bargaining in public education is and must be different. It probably is more a matter of human relations rather than labor relations.

Common and Statutory Law of Labor Relations

Under the common law, the great weight of authority holds that public employees, in absence of statute, have no right to organize, join, or be represented by a union and may be discharged for such activity. The common law does not recognize a right of a municipal employee to bargain collectively with a public employer. Courts have uniformly held that state private employment peace acts regulating labor relations in private industry are inapplicable to public employer-employee relations and that Congress has consistently excluded public employers from the operation of a National Labor Relations Act.

The Courts and legislatures, in consistantly denying the public employees the collective bargaining rights given to employees of private employers, have emphasized that government, unlike business, is run by and for the benefit of all the people rather than for certain groups. The profit motive, inherent, and properly so, to the principal of free enterprise, is absent in the public employment field and the pressures and needs that long ago gave rights to labor acts in the private employment field do not exist in public employment.

President Franklin D. Roosevelt, a recognized friend of labor, said in a letter addressed to the president of the National Foundation of Federal Employers:

> "... all governmental employees should realize that the process of collective bargaining as usually understood cannot be transplanted to the public service. It has its distinct and insurmountable limitations when applied to public personnel manage-

ment....particularly I want to emphasize my convictions that militant tactics have no place in the functions of any organization of governmental employees..."

These are some of the differences. Now then, how should or must school boards then approach the bargaining table?

Obviously, we approach it with very serious limitations; limitations of delegated powers; limitations involving public interest; limitations of law; limitations involving our primary objectives and goals. Teachers' organizations must recognize these limitations. Do not be overly critical of the boards of education because of these limitations. Don't storm in on us with the attitude of "it shall be this way or else". Please remember that some of these limitations leave us with no alternatives.

It is here where I will start firing from the hip and I know that in the opinions of the teachers and their organizations, I will be the loser in any popularity contest. The invitation to present the views of a school board member on this subject was with the understanding that I would speak frankly. As to my own beliefs, they may be right or wrong and I trust that you will hear me out in that spirit.

School boards feel that in many instances there is a breakdown of understanding on the part of teachers and their representative organizations of the limitations imposed on school boards, of our problems and of our responsibilities and goals. We wonder if they fully realize that our money comes only from taxes--from the people we represent. In Wisconsin, the tax burden for our local schools rests primarily on real estate. How much more can we raise taxes? The salary increases granted by our school district for the coming year may require about a one mill tax rate increase. For a home owner with a house assessed at $15,000 this represents a $15.00 increase in taxes. This alone is not too significant, but consider this in light of similar increases over several years; $10.00 in 1963; $15.00 in 1964; $10.00 in 1965; $15.00 in 1966. It is cumulative; it shows up on the tax statement and we do hear from the public.

Remember too, that there is a violent competition going on for the use of the tax dollar. We in public education represent only one governmental function seeking the elusive tax dollar.

Remember too, that, because of the population explosion and the explosion of knowledge, we are also faced with using more and more of the tax dollar for bricks and mortar, more teachers and a lowering of the teacher-student ratio, and other operating expenditures.

The entire field of collective bargaining in public education requires enabling legislation. Duties and powers of the school board must be revived. For example, in Wisconsin we have the individual teacher contract law in our statutes which provide that the school board has the duty to contract annually with each individual teacher and each contract when made remains subject to modification by mutual agreement of the individual teacher and the school board.

Our legislature in adopting the Wisconsin Public Employment Peace Act, did not modify the individual contract statute nor did they make it a prohibited practice for a governmental employer to refuse to bargain collectively. In other words, it would appear that there is no mandatory duty of the school board in Wisconsin to meet and bargain collectively.

To strengthen collective bargaining in public education, it would seem that you should first go to your legislatures. They must change the common law by enactment of statutory law. Please do not come before us with "it's this way or else" demands.

You may say that you do this at the local level to establish your point. We say, please do not use us as tools--as means to an end. Use your persuasive powers on your legislator. If you ever hope to have collective bargaining of the type you apparently want, it will be by the legislature, not the school boards.

There is another matter which may be of concern to school boards and public opinion in the future in this particular field of collective bargaining. What I say may be fact or it may be fiction, however, I can assure you that there is a concern about it.

As of now there are two major, recognized representative teachers' organizations. Each is diligently engaged in all out efforts to enroll members and establish representative rights. This is natural and proper.

A question is now being asked by those concerned: In search for membership and support, is it possible that each is attempting to give evidence to potential members that it can and does obtain bigger and better benefits for the teachers than does the rival organization?

If this be true or so develops in the future, does this mean the making of demands the fulfillment of which go beyond the powers of the school boards? Does this mean that the school boards are being used as a tool or a means to an end?

If this be the case, we then express a very serious concern for future progress in public education, because this surely can tend to destroy public support of education.

Consider the progress that has been made possible during the past 20 years because of the fantastic support given education by the public. Prior to World War II, the public was generally indifferent about education. What we then had was good enough: Old inadequate buildings, limited curriculum, small, inefficient school districts, poorly paid teachers. These were of little concern to the public.

Something happened in the middle forties; the public became more concerned about public education. Small school districts were consolidated, citizens went to the polls time after time and voted yes in support of school bonds for construction of modern school buildings; they approved budget increases to provide more operating funds. This support of the public was fantastic, resulting in an unprecedented improvement of our educational processes.

They went beyond the furnishing of brick and mortar. They authorized extensive expansion of the school curriculum, furnished new and expensive instructional tools and approved annual salary increases for teaching personnel.

As school board members, we are observing a lessening of this type of support. Bonding referendums are being voted down; board actions involving increased school expenses are subject to closer scrutiny. We are noting a return to the "make do" attitude of the years prior to the 40's.

This is serious, because we still have a long way to go in public education. Knowledge is doubling almost every 10 or 20 years requiring us to teach students more and more in less and less time. We absolutely must not level off at this point; however, we can only keep advancing as the public will permit us, understand us and cooperate with us. We have the ability, but we must have the cooperation.

How does all of this involve collective bargaining? Only this way: So long as the demands of the teachers are reasonable and in good faith, we believe the public will continue to cooperate with school boards in economic matters involving the teachers. However, if the demands at the bargaining table are motivated by a power play involving not so much the teachers as professional persons, but instead, the two teacher organizations, each trying to out do the other, then I am afraid that the public is going to offer increasing resistance, and public support may then lessen.

Who then is damaged? Not the teachers, not the teachers' organizations, not the public, but rather, the children and this all at a time when we will require more public support to keep abreast with this explosion of knowledge that we are experiencing.

If we are meeting across the bargaining table with the education of our youth as our primary goal, you, the teachers' organizations, will find reasonable and open minded board members. We are concerned about economic factors involving the teachers because we want to obtain for our students the best teachers possible. To do this, the teaching profession must be economically attractive.

Are we really negotiating each year as to matters that have reasonable expectations of up-grading the economic and professional stature of the teachers? Or, instead, are we really negotiating on matters which may be short-sighted.

Should we not consider negotiating on matters that would be to the economic advantage of both the teacher and the public. For example, we constantly hear from the public that teachers are being adequately compensated for the amount of time they work during a 12 month period. The teachers rightfully reply that it is not by their choice that they have a short work year.

Could we gain public support if we were to work toward a goal of making the teaching position one of a full year employment and then increase the teacher's compensation accordingly? We know

this involves problems for both the school district and the teachers but can't we seek solutions?

Also, we hear strong protests from the public as to paying teachers strictly on a salary schedule where only two factors are involved--years of experience and the education degree of the teacher. The public is willing to pay a good teacher a top salary, but salary schedules do not permit this and when the school board suggests merit compensation, we find a solid front of opposition. Is merit really a dirty word?

Certainly, we know that the problem of rating the teaching ability of a teacher is most difficult, but can we not sit down and attempt to seek a solution? It cannot be impossible, especially in an age when the impossible is being accomplished daily.

In just these two areas--full time teaching jobs and higher pay for quality, we have reason to believe that the public will support the school boards and the teachers. We are then at the bargaining table with common goals, the primary one being to better educate our children and at the same time also improve the economic status of the teacher.

We are not opposing the right of teachers to bargain with us. We believe we understand and appreciate your problems. Do you understand and appreciate our problems? Cannot we solve each of our problems by working cooperatively toward the attainment of common goals. Instant progress may not be possible, but we have reason to believe that we can experience a steady, gradual and long lasting growth so long as we can maintain public support.

If your requests are solely for the benefit of teachers, we will face public opposition at all levels. If what you request, or what we can cooperatively attain, results in a tangible improvement of the education of our children, even though it incidentally benefits teachers, we will receive public support,and you will experience well-founded, long-term economic and professional growth.

Representing the Teachers' Interests
DISCUSSION

Arnold Wolpert
National Education Association

Dr. Wildman, friends, colleagues, adversaries; ladies and gentlemen all. I compliment Dr. Wildman on the excellent presentation. Not only on the presentation, but on the thoughtful research and scholarship which back it up. Analysis of his remarks reveals no single point upon which issue can really be taken. Dr. Wildman, the University of Chicago, and the special project which he has reported have made a major contribution to the development of mature, responsible processes of interaction within the educational community.

I do want to comment on six points made by Dr. Wildman:

1. The NEA is doing very well, thank you. Our latest membership count reports a net increase in NEA membership this year of 44,236. We are now less than 15,000 away from the million mark. At this date, our affiliated state associations enroll in excess of 1,600,000 teachers. The annual increase in this category is 60,000, more than one half of the total membership in the AFT in all 50 states. The NEA and its affiliated associations continue to pile up increasing majorities in membership and are widening the gap with AFT.

The NEA is doing equally well in contests for negotiating rights. Dr. Wildman has mentioned seven states. Let me give you late facts on those seven states.

In Connecticut there have been 32 elections. NEA affiliates have won 30. In the total number of teachers represented through election contests, NEA outclasses AFT by 8 to 1. In addition, 74 smaller NEA affiliates have won negotiating rights by board stipulation. The remaining 70 Connecticut associations are working on it.

Let's cross the country to Washington State. Ninety-nine elections have been held in that state under its new law. NEA units have won 98; an independent association the other. Not one Washington State election has favored AFT. Indeed, the one former AFT negotiating unit, Bremerton Junior College, was dumped by an NEA-WEA local unit in an election just two months ago.

In Oregon the AFT has been trounced at every turn. The most significant election was Portland, where all 9 seats on a negotiating council went to NEA-local sponsored representatives.

In California the negotiating councils are now in operation. Nowhere in that state have teachers backed the AFT in membership tests. In the entire state we have been able to identify only 13 minority council seats allocated to AFT members, even though the law requires that they be allocated proportionate to membership. In Los Angeles the union has won only 1 seat out of a council of 9. The remaining 8 have gone to NEA affiliates. Incidentally, the vast bulk of California local associations will be negotiating directly rather than through councils. The councils are created to provide proportional representation when teachers are divided into competing organizations. This is the case in only a limited number of districts.

In Wisconsin there have now been 26 elections among towns of any size. Of these, 20, including the big ones, have gone NEA; 6 have gone AFT. In addition, more than 100 NEA-WEA affiliates have won negotiating rights by stipulation.

The new Massachusetts law is still untried. There have, however, been two elections in that state. The AFT has won Boston against an unaffiliated local teachers league. The other election, Lowell, has been won by an NEA local.

Perhaps the most competitive test has been in Michigan, labor's stronghold and the home base of industrial unionism with which AFT is affiliated and from which it gets so much of its money. Here are the results as of today. Sixty-seven elections have been held. NEA affiliates have won 48; AFT 19. Even thought AFT started out with a headstart advantage of 10,500 in a Detroit election in 1964, they have added only 4,589 more through 18 election victories while NEA affiliates, through 48 wins, have won 15,335. Through the election route alone, AFT has now been headed in Michigan.

Most Michigan teacher associations have won negotiating rights through stipulation. NEA units have won 395; the AFT 1. The sum total of Michigan teachers officially represented by NEA units is 51,845; the total represented by AFT units, including Detroit, is 15,777.

Teachers are clearly saying, in all contests, that professional associations can do the job they want done and can do it

better. The AFT has only one act--and the NEA is winning the applause.

2. Elections are not the only way to settle contests among teachers. In fact, the impact of competitive, conflicting, polarizing elections probably does more harm than good and injects into education a far greater degree of disruption than of solution. In the private sector, the corollary to an election victory in a bargaining contest is a union shop. If, as Dr. Wildman suggests, we reject the concept of union shop or coercion in public education, then we need to take a good solid look at how best to select a negotiating agent--and the election has serious limitations.

I submit that the ballot of membership is the most significant and persuasive ballot a teacher can cast. The organization which has a clear majority in membership should be recognized as the exclusive negotiating agent for all teachers. Membership may be officially verified in a number of ways while safeguarding the privacy and security of the list.

Secret-ballot elections to determine the majority organization should be required only when there is a legitimate question of representation raised by competing organizations, each of which claims majority support substantiated by credible evidence.

3. Dr. Wildman suggests that the agreements examined by his research are unclear. Agreed. Wildman's investigation covered a transition period, when teachers were seeking the right to negotiate. They had to fight for this in a way indigenous to their time and circumstance. They fought first for a process so that they might then fight for substance. We are now beginning to see substance enacted in those districts where process was won and in those states where law guarantees process.

Much content has been developed since Dr. Wildman's study. In Newark, in Rochester, in New Haven, in Stratford, and now developing elsewhere, there are detailed, significant contracts. A four-step grievance procedure ending in compulsory arbitration in Stratford; a 15-minute relief period away from the students each day (a "comfort" period) for all elementary teachers, and elimination of onerous clerical and administrative duties in Rochester; a fully-paid health plan in New Haven, are illustrations of real breakthroughs.

I believe that we will find contract content on educational

or pedagogical matters developing not as a hard set of limits or selections or restrictions. We will begin to find contracts reporting procedure to deal with educational policies and questions. For example, I do not expect a contract to detail a discipline policy. I do expect to find contracts stipulating a negotiated process for developing and applying a discipline policy. The "new dimensions" of professional negotiation will be the negotiating of other processes of good-faith interaction and working procedure for dealing with educational issues.

4. One point of difference reported by Dr. Wildman is NEA's insistence upon educational channels contrasted to AFT's proposals for using existing labor machinery. While at this point there may be no clear evidence to support either position, enough balderdash has been perpetuated to give real concern.

It is true that in Michigan, where labor laws and labor agencies rule, NEA has out-performed the union. But, this does not make those rules or procedures right or even acceptable. In many instances, they are wrong. When special teachers, consultants, assistant department heads, counselors, maternity leavers, and others who have real common interest and cause with teachers are disenfranchised under the operation of labor law or the ruling of a labor mediation board, something is wrong. Labor mediation boards have tended to impose industrial interpretations, concepts, and/or relationships upon public school teachers. This has been neither appropriate nor fair. That we have not complained does not make the situation right.

A far better process is the Connecticut one. A more workable concept is being proposed in New York. A special governor's commission in New York State has proposed a negotiating process for public employees, including teachers but not limited to them. The New York State proposal suggests that a special, independent, adjudicating agency be established to handle negotiation impasses which develop in the public sector. The agency is to be separate from the state labor mediation board and from the state education commissioner's office. It would perform similar functions for civil servant organizations of state, city, community, district, and special political sub-divisions. It is an interesting proposal with much promise.

5. Comment is merited on the observation that public-sector negotiation will not duplicate private-sector bargaining. How very true.

That is why professional negotiation is superior in the public school arena. Professional negotiations envisions the use of reason and political power rather than those of economic battle. Sanctions, because of their flexibility and variety, because of their carefully controlled application, and because of their political impact, are so much more appropriate and so much more effective than the economic tactics used by labor. Besides that, they are legal.

6. The position of administration and the views of organi - tions toward administrators is an important issue.

The NEA holds that local option should prevail. Connecticut is a working example of a good approach. Whenever there is a question on whether to limit the negotiating unit to classroom teachers only or to include all educators other than the superintendent, the question is simply put on the ballot. Everytime this question has been on the ballot, Connecticut teachers have voted to "include them in."

On this issue the experience of our Canadian colleagues is most significant and fortuitous. Three decades ago, the teachers of Canada chose a militant and aggressive course. They succeeded in legislating the right to negotiate and, indeed, to set standards for admission to teaching at the same time that they set standards for admission to associations.

In Canada, they have not differentiated between "employer" and "employee" or between "management" and "labor" but rather between "education" and "administration." Included in the negotiating units are all those people who are most directly concerned with the teaching process--the educators. This includes, in addition to teachers, principals, consultants, specialists, and other personnel directly and primarily concerned with the teaching act. Those who are not included in negotiating units--who are separated into the units of administration--are the central administrative staffs. This, I believe, is an excellent classification system to consider.

I once again pay respect to the helpful research reported by Dr. Wildman, and his excellent summarization presented today.

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