Collective Bargaining and the Right to Strike
in the Public Sector

An Honors Thesis (ID 499)

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The organization of workers for purposes of bargaining collectively is a practice generally accepted by firms in the private sector. Joint determination of working conditions by representatives of labor and management is now so commonplace that such activity rarely receives much attention from the general public. Likewise, work stoppages and other methods of economic warfare are considered by most to be inconvenient but necessary to the continued operation of private sector unions and industries. This tolerant attitude towards private sector unions has not always been the case. It was many years and a number of legislative and judicial decisions before these unions and their actions were accepted as a legitimate aspect of American business practices.

In many ways, public sector unions are now fighting the same sort of hostility which once faced private sector unions. Collective bargaining in public service is not as widely accepted or practiced as it is in the private sector, and many differences between the two sectors make the bargaining relationship very different in practice. Major controversy surrounds the question of the right of public workers to strike or otherwise withhold their services. When such actions do occur, whether legally or illegally, they are sure to evoke emotional outbursts on the part of the media, the general public, the parties directly involved in the dispute, and others somehow interested in the outcome of the dispute. Many factors, such as the economic environment, the special characteristics of public workers and managers, and politics influence the form that labor
relations takes in the public sector. By separating the public and private sectors and examining the critical differences that do exist, it is possible to come to an understanding of how and why labor relations differs from the private to the public sector and the future direction that labor relations is likely to take in the public sector.

Comparing the Public and the Private Sectors

The public and the private sector are two distinct divisions of the economy. The distinguishing feature involves the ownership of productive resources and rewards attendant to such ownership. The private sector encompasses those firms in the economy owned and operated privately. The major goal of the private sector firm is maximization of profit. The public sector, on the other hand, consists of operations supervised by the government or one of its agencies. Since public sector operations are undertaken, at least theoretically, on the behalf of the general public, it is the public who benefits from these operations. These differences are much more complex than they may appear at first glance since there are many factors at work within this sector. These factors can affect many operations and practices in the public sector, not the least of which is collective bargaining.

The Public Sector Economic Environment

The economic environment of the public sector is responsible for the unique nature of public sector labor relations. The function of the public sector is to provide public services -- services which the private sector would not be willing to provide. Adam Smith in The Wealth of Nations stated that one of the duties of the state is the provision...
of services that otherwise would either not be offered or would be offered in insufficient quantity if left solely to the private sector. Simply stated, the services which are provided by the public sector are those which private firms would decline because they are not profitable. The fact that the production of a specific good is not profitable does not mean that the good is not needed by society. The service, whether it be public education or public roads, is one desired and needed by society, and by nature are ones that the public sector must supply.

One other very important aspect of the economic environment facing the public sector is that the motivating forces in this sector are more political than economic in nature. Instead of the proceeds from operations (i.e. profit) and market forces directing the actions of the organization, it is tax revenue that keeps public sector operations running and politics that decides the organizations direction. Public opinion also plays a major role because elected or appointed officials who are in the public eye are often held accountable for agency actions. Public sector firms are ultimately run by one of the levels of government. As a result, the same type of political pressures present within government are brought to bear upon the organization.

Unique Characteristics of Public Sector Managers and Employees

Differences exist between the public and private sectors not only in terms of the economic environment, but also in terms of the people involved. Both public sector managers and public employees have unique characteristics which can affect labor relations.
Public Employer Sovereignty

One unique characteristic of the public employer concerns the concept of "public employer sovereignty." Government holds a unique role in society in that it ultimately holds the final authority on some issues. As a result of this role, certain of the authorities and responsibilities cannot be delegated or even shared. One of the many roles of government is that of caretaker of the public interest, and this view holds that this role would be jeopardized were government to sacrifice some of its sovereign power. This view is applied to labor relations in public employment by claims that, when the government relinquishes its unilateral decision making by engaging in collective bargaining, the sovereign authority of government is impaired. Collective bargaining is thus seen by proponents of this concept as a threat to the sovereignty of government and to the public interest.

Public Employer Decision Making

Another characteristic of the public employer concerns the decision making process within government. The government is regulated by a series of checks and balances created by the separation of power within government. The purpose of the separation of power is to make certain that no one branch of the government assumes too much power. For the union negotiator, the separation of power is a constant source of frustration and headaches. The diffused nature of the decision making process means that employees may have access to and engage in negotiations with one level of management while the real authority/responsibility for decision making may lie somewhere else along the
chain of command. A good example of such a problem is the case where a union bargains an increase in the monetary compensation of employees, but the proposal is then killed when it is presented for congressional approval. Thus, a front line manager may concede to the demands of labor only to have the agreement voided on down the line.

Environment Facing Public Employers

Finally, the public sector employer faces an environment much different than employers in the private sector. An employer in the private sector must bargain in an unstable environment with an element of uncertainty present. In order to remain competitive and, indeed, in order for the firm to survive, the employer must keep operations at efficient levels by balancing benefits with costs and maximizing the value of the firm. The public employer operates in a relatively risk free environment where consumer needs are politically rather than economically determined, and there is little competition present to keep the employer operating at efficient levels. Such employers rarely have the incentive to maximize the efficiency of their operations. Instead, the tendency is for these employers and managers to merely satisfy their own immediate superiors. Efficiency is not as important to operations, but reports to those higher up the chain of command are very important. When problems then do occur, including labor disputes, these employers may not be interested in resolving the problem the best way, but in solving it in any way. This is likely to be reflected in the bargaining process.

Public Sector Employees

Public sector employees also differ from their private sector
counterparts, but not at all to the same extent as exists among public employers. For the most part, public employers differ from those in the private sector in the same way in which white collar and professionals differ from those in manufacturing industries. For such employees, desires are likely to include topics dealing with the work environment, quality of service, and professional status as well as monetary compensation. Public workers are likely to show a greater desire in sharing in all operations of the organization than many of their private sector counterparts. In many cases, wage and other monetary forms of compensation are not bargained for in the public sector. The response of public workers has been to make demands in other less traditionally negotiated areas. This all affects labor relations both in what sorts of requests are made in bargaining and how these demands are obtained.

Public Employee Unions and Unionization

Public employees tend to differ from their private sector counterparts in some ways, and these differences are reflected in the employee unions and organizations established by public workers. History and past practices in public sector labor relations and the general nature of the labor-management relationship which exists in this sector have guided public employee organizations. These organizations have taken on their special characteristics in order that they may better serve the collective interests of their constituents.

History of the Public Sector Labor Movement

The history of the unionization of the public sector follows a much
different time table than the history of private sector unions. Organized labor's greatest successes in the private sector occurred during the 1930's and 1940's, but during this time there were relatively few successful union efforts in the public sector. The main reason was that public sector employees were just not ready to be unionized. Resistance to unionizing attempts was due in a great part to the differences in relative economic standing between the two different groups of workers. Public employment during this time was characterized by merit hiring, generous fringe benefits, job security, and a fairly assured income. These were not characteristic of the typical private sector job, so public workers had very little incentive to seek any dramatic increase in their economic compensation. Since they already had the edge on private sector employment there was no need to unionize.

Along with a lack of economic incentives there was a certain status of public employment that union organizers had to reckon with. Public employees were usually more highly trained professionals than their blue collar counterparts in the private sector. Joining a union was perceived to be a step down from their current status and a compromising of their professionalism. This situation was very similar to that which faced union organizers in regard to skilled workers in early private sector unionizing attempts. The costs of unionization (lost professional status) exceeded any potential gains, especially since the economic status of public workers provided little incentive to seek additional benefits.
Growth of Public Sector Unions

The 1960's was the start of the first truly major growth in public sector unions. A main contributor to this growth was the emergence of a working class consciousness among some public employees. Certain changes in the name of efficiency occurred, both technological and otherwise, which changed the nature of work in some cases to a more repetitive, less demanding sort of work. When the nature of the work changed, so did the status some of that work had previously held. One of the barriers to unionization in the public sector had been removed.

A more subtle change occurred as the gains obtained by unions in the private sector slowly increased and eroded away the superiority of the public sector's relative economic standing. High supplementary compensations and factors such as job security which had once elevated public employment above private industry had declined in importance due to successful negotiations by unions in the private sector. The economic advantage that public employment had previously held was gone, and with it the second barrier to unionizing the public sector.

Finally, many legislative and other government decisions effectively opened the door for increased union activity at all levels of government. Probably the most far reaching of any of these actions was President Kennedy's Executive Order 10988 which authorized limited collective bargaining in the federal services. This and other actions by both the state and federal government laid the groundwork for future collective bargaining in the public services.

Recent History

Many recent events have shown that public sector unions are now
very much a part of public employment. Unions now represent teachers, police, and many other public workers, and take actions from negotiating contracts and handling grievances to initiating work stoppages. Not all of these actions are successful, however, as demonstrated by the much publicized air traffic controllers strike in 1981. The actions of the Reagan administration in handling that strike, and the various reactions of many other groups thereto are likely to affect labor relations in the public sector for some time.

Public Employee Organizations

Employee organizations in the public sector also tend to have characteristics which set them apart from those in the private sector. This is no startling revelation since it is the role of the employee organization to meet the specific needs of its members. As a public sector employee organization attempts to meet the specific needs of its constituents, it is bound to differ in some ways from organizations representing workers in other sectors of the economy. Basically, there are two types of employee organizations in public service -- unions and employee associations.

Public Employee Unions

Unions in the public sector, such as the American Federation of State, County, and Municipal Employees (AFSCME), the Laborers International Union (LIU), and the Service Employees International Union (SEIU), account for the representation of the largest number of state and local government employees. This is mainly because unions tend to be broader in representation in terms of job classifications and geography than are employee associations. There are some of these unions, such as
the AFSCME, whose membership consists entirely of public employees, but
several of the unions which represent public employees originated in
other industries. Unions like the LIU, SEIU, and the Teamsters started
in the private sector and have extended their representation to include
public sector employees. Public sector unions, just as unions in the
private sector, are often closely affiliated with other organizations,
especially the AFL-CIO.

Public Employee Associations

Employee associations differ in many ways from the traditional
union both in terms of their composition and their activities. Employee
associations often evolve from such organizations as employee cooperatives
formed to take advantage of group insurance plans, or sometimes
from social organizations. Associations are generally organized for
one locality, either on a state or local basis, and have very loose,
if any, relationships with other organizations. Employee associations
support and act in support of such measures as merit systems, high
standards of conduct among members, advancement of the image of the
public servant, exchange of information, conducting of research,
processing of grievances, and act as lobbyists. An increasing number
of associations also act as bargaining representatives, but the main
emphasis still lies, in most cases, in lobbying efforts. Many such
associations can be found in major cities and include such groups as
the Assembly of Government Employees (AGE) and its numerous splinter
groups.
Collective Bargaining in the Public Sector

Factors derived from the somewhat peculiar nature of the public sector environment, and factors related to the unique characteristics of public sector managers and workers make their influence well known once the actual bargaining process begins. As in other areas of public sector labor relations, collective bargaining in the public sector also takes on some quirks unique to this sector. These unique aspects are due, in part, to the attitudes of public sector management and, in part, to the views of public employees. As a result, not only is the labor-management bargaining relationship affected, but so are several of the main substantive issues of bargaining.

Opposition to Public Sector Collective Bargaining

To some extent, collective bargaining in public service still meets resistance in some quarters from public sector managers and other government officials. There are three arguments, in particular, which are given in an attempt to limit collective bargaining. These arguments closely parallel some of the unique characteristics of the public sector previously discussed.

Public Employer Sovereignty

The first of these arguments concerns the concept of public employer sovereignty. It is argued that allowing a special group of individuals to have extra influence in the determination of public policy compromises the sovereign authority of the state. This argument is merely the residual rights theory of management as it applies to government, and as such it is outdated. Contracting for the services of public employees would not unduly infringe upon the authority of government to determine public policy. The "managerial rights" of government
would remain in the hands of government, while the rights of the worker to have some say in the conditions under which his services would be exchanged would also be protected. The fact that some of the decision making process would become a joint venture rather than being in the exclusive domain of government should not cause so much alarm. In fact, this would not even be a new idea. Government has shown little reluctance to enter into contracts with private industries where the conditions of the contract are arrived at by mutual agreement. Since entering into these contracts have not demonstrated a loss of the government's policy making authority, why should entering into an agreement with public workers constitute such a loss? Public employees are in fact a part of government. Since it is these people who will implement the policies of government, there is actually little reason why they should be excluded from the decision making process. The policy determination of government is probably very well protected by the collective bargaining agreement. Without such means for making their desires known it is likely that public employees would undertake much more drastic measures, such as strikes and other job actions. These actions would greatly impair the activities of government.

The Nature of Public Service

Another argument presented against collective bargaining in public employment concerns the nature of public works and public services. Public works are, by their very nature, essential to the continued well being of society, and no group should have the right to so infringe upon society. Public services are services to the people of society, and collective bargaining would give unions and workers too
much influence on these essential services. This is not a truly valid argument in that who is to say what is an essential service and what is not?\textsuperscript{16} Many private sector industries and services are also necessary to the well being of society, in some cases even more so, as can be argued in reference to hospitals and other privately owned institutions. A strike by private sector steel workers, truckers, coal miners, etc., can and has caused problems in the past as essential services were cut off. Division along the lines of the essential nature of public works is a division which cannot truly be justified.

Responsibility of Government to the General Public

The final argument concerns the government's responsibility to the general public, and it is the closest to being a valid argument of any of the three. It is the duty of government to protect the rights and interests of all, and not single out one group to favor at the expense of another.\textsuperscript{17} Collective bargaining is thus viewed as relying heavily upon the interests of the public workers at the expense of the public. As such this would be a valid argument were it not for the actions of special interest groups in the political arena. It is the goal of special interest groups to have their constituents heard by government and to have government act in their behalf, frequently to the detriment of some other group. Employee organizations also have a constituency to be served. Allowing special interest groups to lobby without allowing public employees to pursue their own goals is to favor the special interest group at the expense of the public employees. Again, it would probably in the interests of government to allow collective bargaining if it is
the public interest they wish to serve. Without collective bargaining, public employees really have very few options as to how to make their wishes known. A strike is one of these ways, and that type of action would impose a major amount of influence on the public interest. By engaging in collective bargaining and coming to a mutually agreed upon contract government can avoid the potentially disastrous effect of employee job actions, while the union can limit the unilateral decision making of "management".

Advantages and Disadvantages to Public Sector Bargaining

From the perspective of the public sector union and the workers they represent there can be seen a number of advantages and disadvantages to bargaining in an environment like the public sector.

Advantages

A few of the advantages available to union bargaining representatives seem simplistic in nature, but there is a definite advantage present. First of all, public sector employers do not have the option of relocating their operations so as to avoid unions and collective bargaining. Privately owned and operated firms often will consider moving to an area where union influence is not as strong, but public services cannot be moved in this way. Another advantage public sector unions have is that information on their employer or employers current and projected condition is easily obtainable. Financial records, projected future expenditures and budget proposals, and comparative data with other agencies are all available as part of the public record, and unions can thus make an accurate assessment of which proposals have the best chances of acceptance.
Monopoly of the Public Services

One very important bargaining advantage possessed by public sector unions concerns the monopolistic nature of public services. Public sector labor can sometimes exert more pressure than can their private sector counterparts because there are generally few good substitutes available for public services, and any withholding of these services will immediately be felt by those depending upon the service. This increases the incentive for public employers and managers to settle with the union and avoid any action by the union which might result in their having to face an angry public.

Politics and the Public Sector Manager

Another advantage public employees enjoy in their bargaining relationship comes about because of the political aspects of public sector employers. A high turnover rate exists among public managers, and because of this, such managers are usually more interested in meeting short term goals than in planning for any long term benefits. In terms of bargaining, this means that public managers generally have less incentive to resist union demands that have a long term impact since these are of minor concern to them. The underlying reason for this attitude is that public sector managers are affected politically by their actions instead of economically. In private firms, managers must work towards the economic goals of long range profitability in order for the business to even survive. Public sector managers, however, do not have the fear of going out of business. Public sector managers also do not stand to gain economically from the operations of their organizations. Instead
of these incentives, public managers act in ways which are politically expedient. Managers in the public sector are much more likely to resist those demands by labor which would necessitate an increase in taxes, since this could have political implications in the form of public opinion. Also, public managers are much less likely to show resistance to demands whose costs are not immediately realized. Unions and labor bargaining representatives may, therefore, find it easier to obtain many forms of compensation where the costs are not obvious or short term in nature.

Public Employee Loyalty and Freedom of Speech

Also related to aspects of the labor-management relationship in the public sector is the fact that public employees have little, if any, obligation of loyalty to their employer. Where a private sector worker can be, and has in the past been, fired for issuing damaging statements about his employer, public workers are fully protected by the fifth amendment of the U.S. Constitution. Public services, being under governmental control and supervision, are open to criticism by anyone because of the fifth amendment rights to freedom of speech. Public employees possess this right as do all other citizens. Even if the statement should later prove to be false, no action can be taken where the falsity is found to be due to negligence or ignorance on the part of the employee who issued the statement. This provides for a major advantage when the right to speak out is used as a political lever to help sway public opinion or otherwise bring political pressure to bear.
Public Sector Strikes

One final advantage available to public sector unions and employees as a bargaining tool is the potential that a strike can have as a bargaining weapon. In some ways the strike has the potential for being a more formidable tactic for the public worker than for private sector unions. For many government services there are few good substitutes available for the service. When the service is denied by a public employee job action, then the public has few available alternatives to turn to in place of the service. The greater the inconveniences to the public brought about by the strike, the greater is the pressure upon the public employer to make concessions and end the work stoppage. Unions can also time strikes in the public sector so that they occur when they are the most politically effective. This also increase the incentive for an early settlement. In short, the effectiveness of the public sector strike depends upon public opinion and consequent political pressure that would coerce management in the public sector to concede to the demands of labor.

Disadvantages

So far it may seem that labor has controlling advantages in terms of the public sector bargaining relationship, but some very definite disadvantages also face unions in the public sector.

The Political Process and Decision Making

All improvements in the levels of benefits to public employees must be obtained through the political process. Public managers have far less authority and flexibility in their decision making than do
private sector managers, and the decision making process may take place far removed from the actual agency. The process which must be followed to satisfy the wants and desires of labor is a time consuming, oftentimes frustrating, process which many times does not yield the desired results. But this is the environment in which the public sector operates, and the process must be followed to properly implement any agreement reached.

Public Opinion

Just as public opinion can influence the public sector manager, so does it influence the public worker. Taxpayers who benefit from paying less for public services far outnumber the employees who stand to gain from more benefits. The net result of this fact can be argued two different ways. First, it may be that union demands must be such that they do not require large increases to the public through taxes. Public opinion to the tax increase could be strong enough that such a demand would not be granted. Another view holds that the number of taxpayers who share the cost of the increase is actually an advantage to labor. The increased cost should prove to be hardly noticeable when spread among so many taxpayers. Public opinion can cause a stumbling block to union bargaining efforts, but it does not always.

Public Sector Strikes

As previously discussed, the strike has great potential power to the public worker. Unfortunately for the public worker, this can be a power which is less effective and even dangerous to utilize than was originally presumed. Private sector strikes have as their greatest
influence the economic loss and possibility of going out of business for the owners and managers of the firm. The government is not going to go out of business as the result of a strike. The potential for loss is not at all the same. The strike may also be dangerous in that many public sector strikes are illegal. The air traffic controllers found this out the hard way in their 1981 strike. While the strike is not prohibited in all areas of public service, in those areas where it is prohibited it acts as a serious damper on union power.

Managerial Attitudes towards Public Sector Bargaining

Many times the characteristics of the union itself may prove a disadvantage in bargaining since public manager attitudes towards bargaining may be adversely affected. There are a number of factors which may interact to influence management's attitude towards bargaining, but three factors in particular can affect managerial attitudes which are directly related to the unique characteristics of that union. These factors are the affiliation status of the union, the age of the specific bargaining unit, and the presence of multiple bargaining units.

Union Affiliation Status

There is one very definite difference in the attitudes of public managers concerning collective bargaining that can be traced to union affiliation. Those public sector managers that deal with employees belonging to bargaining units affiliated with the Teamsters exhibited significantly less positive attitudes towards collective bargaining than such managers working with members of other unions.27 There are
several reasons for this influencing effect on managerial attitudes. Teamsters have been noted for their more militant and aggressive relationships with management in other sectors of the economy, and the greatest number of public sector job actions have been taken by Teamster members. Teamster membership in public employment consists almost exclusively of non-professional, blue collar laborers, which are more likely to take job actions than are professionals or white collar employees. Also, the Teamsters have been extremely effective in curtailing many of management's traditional prerogatives, and this has likely caused some negative influence on management's attitudes.

Age of Bargaining Units

The main influence exerted by the age of bargaining units concerns those effects that time familiarity have on attitudes. In general, the longer the time period in which management has dealt with a particular bargaining unit, the better the relationship that exists. As time progresses the relationship matures, and both sides become aware of the need for cooperation in bargaining. Over time, other changes occur in such factors as union and management leadership and negotiating personnel and in external factors such as the economic climate. These will also influence bargaining attitudes.

Multiple Bargaining Units

One final influencing factor on management's attitudes towards bargaining concerns the presence of multiple bargaining units. The attitudes public sector managers display towards bargaining and the
contract process tend to be less positive as managers are required to deal with more bargaining units. The tasks that management are required to perform as their part of the bargaining process become more complicated and time consuming as more bargaining units must be dealt with. Eventually the bargaining process becomes irritating to managers, and the overall attitudes of management begin to decline as a result.

Special Characteristics of Bargaining

As might be expected, the factors which affect the party's attitudes and approaches to collective bargaining are further reflected in the topics and problem areas of bargaining. Collective bargaining itself covers a multitude of topics dealing with the conditions of employment such as wages, fringe benefits, paid vacations, pension plans, job security, and so on. Several larger topics are central to the bargaining process, however, and help to generate the effectiveness of any subsequent bargaining. These topics include, but are not limited to, bargaining unit determination, the scope of bargaining, and the duty to bargain in good faith.

Bargaining Unit Determination

Determination of the appropriate bargaining unit is the necessary first step for effective collective bargaining. In fact, certification of the appropriate bargaining unit is often a prerequisite for bargaining to take place. In most cases, some board, commission, or administrative agency is responsible for determining the appropriate unit. This determination is based on a specific set of criteria. These criteria
are patterned after those of the National Labor Relations Board, namely such factors as compatibility of duties and working conditions among bargaining unit members, desires of employees, history of bargaining, and employee structure. Several states have opted for more specific legislation on the topic so as to prevent excessive numbers of bargaining units. In these cases, the legislation sets down what specific occupational categories will compose a bargaining unit rather than setting guidelines for others to follow. In either case, it is recognized that the establishment of the bargaining unit will affect much of what will occur in later bargaining.

Scope of Bargaining

The scope of bargaining is very important to the process since it determines the topics open to negotiation. In general, it has been the case that those items which are policy items are not negotiable while non-policy items are open to negotiation. The resulting problem is the separation of policy items from non-policy items. The end result has been that many federal and other employees now operate under a limited form of bargaining where several very important monetary items are determined unilaterally by management. The increased usage of interest arbitration in public service labor relations introduces some new problems in regard to the scope of bargaining. Arguments over the arbitrability, both in interest and rights arbitration, of a topic are much more common in the public sector than the private, and much of the reason for this is the willingness of public management to admit neutrals to the bargaining process. Just as management in the public sector has resisted what they have felt
was union intrusion into topics of policy, they have also resisted
the idea that some neutral might determine some of the organization's
policy. In any case, the debate over the scope of bargaining is
likely to continue for some time.

Bargaining in Good Faith

One final issue under the topic of public sector collective
bargaining concerns the duty of the two parties to bargain in good
faith. Most of the legislative actions and judicial decisions on
this issue have been made under the assumption that it was the
public employer which needed to be encouraged to bargain in good
faith, but these decisions and actions apply equally to labor and
management. The bargaining obligation in public sector labor relations
may be broken down into two broad categories. These are the obligation
to engage in collective negotiations and the obligation to meet and
confer.

Collective Negotiations

The obligation for parties to bargain in good faith has been
adopted by those states and agencies closely following the pattern
followed by the private sector. These agencies have tried to adopt
the meaning of the National Labor Relations Act, section 8(d). An
example of such legislation follows:

"Both sides must enter into discussion with an open
and fair mind, and a sincere purpose to find a basis of
agreement touching wages, and hours and conditions of
employment, and if found to embody it in a contract as
specific as possible, which shall stand as a mutual guaranty
of conduct, and the guide for the adjustment of difference."33

This and other subsequent rulings have established the meaning of
good faith bargaining in these agencies.
Meet and Confer

The obligation to meet and confer has been adopted by those states who feel management's prerogatives would not be satisfactorily protected without some limitations on the obligation when applied to the public sector. Many such statutes exist, and a typical example provides that the parties:

"Shall meet, confer and discuss such proposals relative to salaries and other conditions of employment, and upon completion of discussions, the results shall be reduced to writing and be presented to the appropriate administrative, legislative, or other governing body in the form of an ordinance, resolution, bill or other form required for adoption, modification, or rejection."

There are two major differences between the two obligations. First, to meet and confer means that there will be an increased reliance on the political process and the problems which may result. If these problems are not realized, then the desires of both parties as stated in the proposal will come about much as planned, but the final results are much less predictable. This is also not an obligation to bargain in good faith since the final decision making authority remains in the hands of management. Management is not required to bargain, merely to discuss the issues. The union or labor organization is thus at a considerable disadvantage under such a statute.

Strikes in the Public Sector

In public sector labor relations, the issue which is most controversial and elicits the most attention is the strike issue. In the past, public sector workers have frequently resorted to the work stoppage in an attempt to exert pressure on public sector management.
These employee actions have met with varying degrees of disfavor from public sector management, and have had mixed results as to being successful. An examination of the past history of strikes to implications and possible alternatives thereto will show it is to the advantage of both parties to adopt a less extreme form of dispute settlement.

Public Sector Strike Activity

A brief study of recent strike activity in the public sector reveals some not too startling but important facts. The number of strikes engaged in by public employees increased sharply during the 1960's, just as the growth of unions themselves was on the upswing. Strike incidence, however, is by no means uniform throughout the public sector. There is a much higher incidence of strikes among local government employees, especially teachers, than there is among federally employed workers.35

In spite of any increased strike activity, there is still less of this activity in government than in private industry. Several reasons account for this. The private sector is a much larger sector of the economy, so more strike activity is to be expected. Also, the fact that many public workers are legally prohibited from striking has an effect on the number of strikes by public workers that occur. Public sector strikes seem to draw the most media attention despite the larger amount of activity in other sectors. As a result, the general public may perceive there is an enormous amount of strike activity in the public sector. In response, many attempts to bar strike activity in the public sector by legislative action or the courts have been taken.
Although such prohibitions obviously limited the strike undertaken
by PATCO and the air traffic controllers, this has not always been the
case. The postal workers strike in the early 1970's is a good example
of an illegal strike which was not prosecuted. Alternatively, the
enactment of collective bargaining provisions has not demonstrated
any increase in strike activity either, as is often claimed by
public sector managers. If elimination of the strike is desired,
there must be some more effective way of doing it.

Opposition to the Right to Strike

The main opposition to the public employees right to strike comes
from the public sector managers. This opposition is based on the same
factors as those which cause managers to resist collective bargaining,
namely public employer sovereignty, the essentialness of public service,
and the responsibility government has to the public as a whole. These
arguments were not persuasive with regard to collective bargaining, nor
are they persuasive with regard to the strike.

Economic Justification of the Strike

There is an important economic implication of denying public employees
the right to engage in a work stoppage. In order for the rights of
public workers under collective bargaining to be upheld there must be
some sort of cost or incentive for managers to bargain seriously.
In a situation where there is no such disagreement cost (i.e. incentive)
involved, the collective bargaining process will not work for the
workers. Under such circumstances, the worker has no bargaining
leverage at all. There must be some incentive for management to come
to an agreement, and once an agreement is made to abide by it. The
usual incentive is some cost to management associated with non-compliance or disagreement. The withholding of labor services, as takes place under a strike, imposes a great cost because operations of the organization must cease or be significantly cut back. Consequently, the strike is seen by many to be necessary in order to make employers, even government employers, bargain in good faith and come to some agreement.

Disadvantages of Public Sector Strikes

The public sector strike, however, has a few disadvantages which can keep it from being effective. While strikes in the private sector impose costs upon management by preventing the organization's operation, strikes in the public sector exert no economic pressure. Government and public service organizations can actually save money during a strike because of unpaid wages. Granted, some political pressure can be exerted by a public service strike, but such pressure is much less predictable. Public opinion is the driving force behind such political pressure, and employees and unions in the public sector must be careful that public opinion does not shift against the striking workers. Another important consideration is that any pressure brought to bear be exerted on the real policy makers, and not just on first line managers and supervisors. Those with the authority to make changes must be pressured for those changes to occur.

Supporters of the Strike

Despite the problems attendant to public sector strikes, there are those who staunchly defend the right of public employees to strike. These
supporters fall into one of three categories. The first category consists of those unions and union members in the public sector who feel that the strike and the coercive power attendant thereto is the best possible means to their desired goals. Public sector employers who have not yet confronted strong union opposition and, consequently, would rather face the unpredictability of these unions' strike attempts than to be legislatively forced to bargain comprise the second category. Finally, there are the academicians, politicians, and citizen groups who support the strike as a political weapon to be preserved for the protection of the people as a whole. The factor that all of these groups have in common is their support of the right of public employees to strike; only the rationale for that support differs.

Alternatives to the Strike

The strike has significant potential as a bargaining tool in the public sector, but the problems involved with the strike make it a very risky and unpredictable tool to use. There are a number of alternatives to the strike that perform the same basic function as the strike weapon does, namely, that of protecting the right of public workers to bargain effectively. These alternatives also have the added advantage of protecting the rights of public sector employers as well as the general public. Such alternatives are not equal in effectiveness, however, and each possesses its own unique advantages and disadvantages over other methods of dispute resolution.

Fact Finding

One form that dispute resolution can take is fact finding. When fact finding is used, the two parties to a dispute select a neutral
third party to act to investigate the dispute and to submit recommendations as to the proper course of action. It is not the job of the fact finder to reach a compromise on the dispute. The resultant fact finding report consists of the fact finders recommendations for settlement based upon his/her determination of what the facts and circumstances of the case warrant along with the justification for each recommendation. It is important to note that the fact finder's report is advisory and not binding in nature. One or both of the parties to the dispute may reject the recommendations of the fact finder. The fact finder's report, however, will become a part of the public record, and if one party has taken an unreasonable stance in bargaining this will soon become apparent to all. In public service industries sensitive to public opinion, the threat of publication is particularly effective as an incentive to bargain in good faith.

Probably the main advantage of fact finding is that any final settlement which is reached is done by the actual parties to the dispute. Whether the fact finding recommendations are adopted or merely prompt the parties to a settlement, those closest to the situation formulate the final agreement. The political pressure resulting from publishing the report may serve to quicken the agreement process.

Several disadvantages also characterize the fact finding process. Both labor and management negotiators in the public sector may be less cooperative and compromising in bargaining prior to fact finding because they may feel that a more favorable outcome can be reached via the fact finder's report. This "narcotic effect" could be reduced by resorting to a variation on fact finding known as final offer fact finding.
In final offer fact finding, the fact finder is limited in his recommendations to deciding between the final offers of the parties to the dispute. This should keep the offers of both parties at more reasonable levels and induce both sides to engage in meaningful bargaining out of fear that the neutral will select the other party's final position as more reasonable. Another disadvantage is that fact finding may result in unrealistic recommendations. The criteria set down by legislation governing fact finding is often unclear and in violation of common sense. Finally, if public opinion has little or no effect on the parties to the dispute, there is no cost to the parties for outright rejection of the recommendations of the fact finder. If such is the case, fact finding is not a viable alternative to the strike as a mechanism prompting serious bargaining.

Mediation

Another method of dispute resolution is mediation. Mediation, like fact finding, involves a neutral third party, but there is where most similarities end. The job of the mediator is to help the parties to a dispute come to some voluntary compromise on the issue or issues at impasse. The mediator acts as an advisor in bargaining to both parties, and uses his own persuasive influence and other techniques available to him to bring the parties to an agreement. Mediation is also advisory in nature, and none of the recommendations or suggestions of the mediator are in any way binding. To mediate is to compromise, and it is the role of the mediator to bring about a settlement acceptable to both parties.
The primary advantage of mediation is that a neutral third party is present to hear both sides of the dispute and to keep the parties on topics at impasse rather than taking more extreme action. The mediator is an expert labor relations negotiator available to both parties for airing their demands or stance on an issue, and this can help keep the parties working towards a satisfactory compromise. The mediator can also act as an intermediary for clearing up misunderstanding of what the opposition really wants on an issue, and also act as a means for the parties to save face when conceding on an issue. The settlement process can be sped up in this manner.

The major shortcoming of mediation is that nothing about it is binding. If the parties are intent on sticking to their demands without concessions, there is really nothing the mediator can do to prevent it. Unless other costs will prevent disagreement between the parties, there is ultimately nothing to prevent disagreement from occurring. Costs must be present to make any dispute resolution process an effective one.

Arbitration

The dispute mechanism most often relied upon is that of binding interest arbitration. The arbitrator's function is to hear the facts of the dispute as it applies to both parties and, based upon the merits of the case, to render a final decision to settle the dispute that binds both parties. The main difference between arbitration and other forms of neutral third party dispute resolution is that the decision of the arbitrator is a legally binding one. If either party fails to comply
with the arbitration award, the other party may go to the courts for enforcement. There are several forms arbitration may take, but central to all forms is the binding nature of arbitration decisions.

**Final-Offer Arbitration**

One variant of binding arbitration is final-offer arbitration. In final offer arbitration, the arbitrator is limited in his decision to choosing one of the final offers by either the union or management. In some cases the arbitrator may be allowed to choose between the final offers on each bargaining topic, but sometimes he is limited to either the final offer package of management or of labor. The main advantage of this variant is that it gives the parties an incentive to be reasonable in their bargaining prior to arbitration. Simply put, each party knows that the likelihood that the arbitrator will select the other party's proposal increases as the unreasonableness of one's own position increases. Another advantage is that the position, whichever one is selected by the arbitrator, is one that will have been formulated by one of the parties and not by someone separate and perhaps less informed about the specifics of the bargaining relationship.

**Mediation-Arbitration**

Another variant of arbitration is mediation-arbitration -- med-arb. As the name suggests, this is a combination of mediation and arbitration. Under med-arb, the impasse resolution process begins as mediation, and if after a certain period of time no settlement is reached, the mediator becomes the arbitrator. This type of system increases the incentive to be reasonable in bargaining demands at all stages of negotiations because the mediator may become the arbitrator and will be aware of past negotiation strategies.
Advantages of Arbitration

Binding arbitration in general has several advantages associated with it. The main advantage is that it is binding in nature. Once a decision is reached by the arbitrator, a legal duty exists for the parties to the dispute to accept the decision. Since arbitration awards are legally enforceable, there are great incentives to avoid disagreement and noncompliance and thereby avoid any resulting costs. There is also an incentive among the parties to settle among themselves without arbitration because arbitration may generate an award less favorable than could otherwise be obtained.

Disadvantages of Arbitration

There is some concern among the parties to a dispute that decisions that intimately affect their livelihood will be made by a stranger that knows very little about the intricacies of the bargaining relationship. This particularly true for public sector managers who fear that the arbitrator will make decisions that border on policy making. Another problem which may exist when arbitration is used is that there may be disincentives to bargain. In cases where one of the parties feels that a more favorable outcome can be obtained through arbitration, that party will have little incentive to bargain. When this is a factor of negotiations, there is little hope that an agreement or compromise can be reached. Final offer arbitration, however, minimizes this problem. Refusing to bargain or taking unreasonable positions simply increases the likelihood that the arbitrator will select the opponents proposal.
Mixed Impasse Resolution Techniques

The final category of dispute resolution techniques consists of various combinations and hybrids of the impasse procedures discussed above. One such method, and a very effective one at that, is the Mutual Anxiety System as it exists in California. The Mutual Anxiety System is a defined series of steps to be taken in case of an impasse or dispute. The system was designed specifically for public sector agencies and organizations to bring about good-faith bargaining while at the same time protecting the public from unnecessary work stoppage. The first step of the system is mediation in hopes that a compromise may be arrived at. If indeed an agreement is reached, the impasse is over, but if no settlement comes from mediation then fact finding with recommendations is the next step. Following the report of the fact finder, the parties to the dispute are required to meet and negotiate for a set period of time. After this time period has expired, the parties must submit the fact finder's report to their respective constituencies for a vote. Either side has the option of accepting or rejecting the suggestions of the fact finder. If either side rejects the report one of two things will happen. Either the parties will continue negotiations or they will engage in a strike/lockout. Any party opting for the latter option must notify the other and the public five days in advance of the action. Once a strike or lockout has been initiated, any consumer or taxpayer may seek judicial relief of the work stoppage. The court is then faced with two questions. First, does the work stoppage impose a threat to the public health and safety? If it does not, the stoppage continues.
If a threat does exist, the next question is whether or not there are alternative safeguards against this threat other than injoining the work stoppage. If the court finds that there is a threat to which no alternative safeguards are available, then the court will issue an injunction ending the work stoppage. Also, the report of the fact finder will be converted to a binding arbitration award by the court. In short, either the parties settle for themselves or it is likely that someone else will settle the matter for them. Avoidance of a highly unfavorable decision provides a great incentive for coming to some sort of agreement.

**Conclusion and Comments**

Collective bargaining is the central issue of public sector labor relations and it will continue to be so in the future. While the right to strike and other topics will continue to generate controversy and discussion, it is the joint determination of working conditions that is really at issue. The future of collective bargaining is going to be dependent on the development of a more mature bargaining relationship. This has been the case in the private sector and it applies equally to the public sector. This development is, in turn, dependent upon other factors.

First, there needs to be better definition and understanding of the bargaining process on both sides. Labor and management in the public sector are ultimately after the same goals - providing a quality service. For the public sector employer this means recognizing that the employee in the public sector has the right to have some say in the conditions of his employment. For the public sector employee this means recognizing
the managerial rights of the public employer and the rights of the public, as well as the recognition that the strike is not always the best means for achieving the goals of labor. A changing attitude is necessary for both sides if public sector labor relations is to develop as it should.

The other consideration for the development of labor relations in this sector is the political environment. Politics has in the past, and will continue to have in the future, major influence on public employment. It may well be that public opinion will be that which resolves future deadlocks in the bargaining process. If such actions as the Reagan administration's dealings with striking air traffic controllers continues to take place, it will be because public opinion stands behind such actions. Continuance of such a policy towards public union members could mean a weakening of the status of unions in the public sector.

As the bargaining relationship in the public sector develops so will those aspects associated with the public sector. Changing attitudes should result in alternative forms of impasse resolution techniques being utilized, and the changing political environment will affect the overall standing of public sector unions. In any case, the future of public sector labor relations should be characterized by changes, both by public sector managers and public sector employees.
ENDNOTES


4. Ibid., p.211.


8. Ibid.

9. Ibid.


16. Ibid.

17. Ibid., pp 10-12.

19. Ibid., pp55-56.

20. Ibid., p.56.

21. Ibid., pp56-57.

22. Ibid., p.57.

23. Ibid.

24. Ibid., pp58-60.

25. Ibid., pp60-62.

26. Ibid.


28. Ibid., p.104.

29. Ibid., p.104.

30. Ibid., p.105.


32. Ibid., pp13-14.

33. Globe Cotton Mills v. NLRB, 103 F. 2d. 91, 94(5th Cir. 1939).

34. Missouri Revised Statutes, 105.520,2, Public Employee Bargaining, (CCH) 12, 508.


36. Ibid., pp151-152.

37. Ibid., pp 153-154.


40. Ibid.

41. Ibid.

42. Ibid., Chapter 1.

43. Ibid.


45. Ibid., p.45.

46. Ibid., p.46.

47. Ibid., pp 51-52.
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