but at least we know in those countries that in an unorganized sector (and there are unorganized sectors in all of the countries that I am talking about), those employees will also have vacations. In the United States we really do very well with regard to fringe benefits where there are contracts, especially where unions are reasonably strong. But I dare say that there are plenty of people who work year in and year out without any vacation because they either are not organized or they are not in a position to bargain for a decent vacation period.

Another illustration of where the individual unorganized employee is at a disadvantage in the United States is with regard to dismissal notice. In the United States you can dismiss such an employee without any notice. Most employers who follow good personnel practices will try to give some notice. However, there is no requirement for this except where there are labor-management agreements which spell out a grievance procedure, and a discharge procedure, and a right to arbitration, and so forth. It seems to me that this is really a basic right that every individual ought to have, so that even if he is working in an unorganized plant, if he is no longer needed, or even if he is going to be discharged for cause, there ought to be some period of time during which he would receive notice, whether it be two weeks, or one week, or even a month. Generally, this is spelled out by law in most European countries. Let alone an opportunity to appeal a discharge through some kind of a procedure which would take the place of a grievance procedure with final and binding arbitration. I think this is what Ben meant when he was talking about the lack of protection for unorganized employees, and this is an area which we ought to explore. We take it for granted that where there are unions, they are going to negotiate rights and privileges for their members, tending to forget that there is a very large number of people who not only are not members of unions, but who do not work under union contracts even if they are members, and are not covered by any agreement.

As to Ted Kheel's paper, there is a matter that was not mentioned which is related to the subject of technological change and automation. Again it is a difference between American practice and West European practice. There is legislation in a number of European countries providing that before employers make collective dismissals for economic reasons--which means relatively large numbers of employees, in the range of 5 percent or more of the work force of a given employer--they must give notice to the employment service before they start laying off employees. This is especially true where the layoffs are due to technological change, and according to some of the people from Sweden particularly, this has worked out quite well. Most employers have not found that giving two months notice of their intention to make large scale layoffs creates any hardship for them.

I have found that employers in the United States generally feel that it would be almost impossible in certain lines of businesses to be able to tell even as little as a month in advance whether they will have to make a layoff of a substantial number of people because of technological change or for economic reasons. It may be interesting to discuss whether it would be feasible in the United States to have some kind of requirement that employers give a certain period of notice before making what I have referred to here as collective dismissals.

Finally, with regard to some of the things that Mr. Aaron mentioned on the public employee strikes question. There is of course an inconsistency, as he says, in asking on the one hand for more federal regulation, and on the other hand, asking for state experimentation. But I resolve it by saying that just as we have certain constitutional rights which are laid down by the U. S. Constitution which apply to everybody, there is still room for experimentation in other areas once you are within the overall constitutional guarantees. Similarly, I would say that the right of organization and the right to negotiation would be made a right that is guaranteed to all public employees. But then we would go further and recognize that there are different ways of dealing with some difficult problems, one of them being public employee

strikes, that nobody knows the answer, and that, therefore, this would be an appropriate area for state experimentation. They must still keep in mind, however, that they cannot experiment to the degree of denying the basic rights of organization and collective negotiations.

DR. ROBERTS: Would you care to distinguish between collective negotiations and collective bargaining? The courts seem to have some difficulty on this.

DR. STIEBER: I think it's an artificial distinction. Perhaps some of my colleagues will disagree on this, but as far as I can see, it is an artificial distinction which has been made between public employment negotiation and private employment bargaining. These distinctions are said to arise because there are problems, for example, as to who is the employer when you are dealing with an agency of a municipality which in itself does not have complete freedom to bargain because it must rely on somebody else for its budget--the board of estimate or city council? Also other problems exist, civil service regulations and so forth, that distinguish public employment from private employment. Consequently, some people have insisted that we should not use the term "collective bargaining" in talking about negotiations in the public sector because there are these differences, and they have, therefore, coined the phrase "collective negotiations" which would distinguish it from "collective bargaining." Perhaps there are more solid reasons for the use of the two terms, but I don't know them.

DR. ROBERTS: In this connection I would like to pose a question to Nate Feinsinger, because it involves Wisconsin and he is a great protector of the State of Wisconsin. At the meeting yesterday of State Labor Relations officials, two lawyers talked about the rights that should be available to public employees. They argued that they should have the same rights in collective bargaining as private employees do--the equal right to strike, and to inconvenience the public by withdrawing their services. One of the speakers said that the Wisconsin statute is a good one and requires collective bargaining. And then he said that the Wisconsin statute does not cover wages, hours, and working conditions. Could you explain this?

DR. FEINSINGER: No, I don't think so. In Wisconsin we have a single board known as the Wisconsin Public Relations Board. It mediates, it arbitrates, it decides unfair labor practice complaints. In my opinion, you cannot have mediation and arbitration vested in the same agency, because if the union knows that it has another step to go, it would turn down the best deal that it could get through mediation and go to arbitration. What the mediator got them while they are at that stage they have in their pockets, and they believe they can't get less when they go to arbitration. There is no other Board that I know that has more than a single function. In New York you have a mediation board, and also a State Labor Relations Board.

DR. STIEBER: In Michigan, the State Labor Mediation Board does have both the functions of mediation and fact-finding and unfair labor practices, and so forth. However, the statute with regard to public employment specifically states that these two functions should be handled by different departments or divisions of the State Mediation Board. The legislature neglected to give it enough money to actually provide for two separate divisions, so what actually happened is they have taken some of the employees who were formerly involved in processing representation elections and unfair labor practices and have assigned them to mediation functions. But there is this dual function within one board which has been criticized, and I would not be surprised if at some point the feeling became strong enough to result in putting them in separate agencies.

DR. FEINSINGER: Let me tell you a story related to this. Our Wisconsin

Supreme Court had said that policemen had no right to bargain; they had no right to strike; they had a right to fact-finding. In the fact-finding process, they had a right to appoint an outside organization, but they cannot join it as their bargaining representative. It seems to me this shows the height of ignorance and unreality itself. You can't join a union; you can't bargain, but you can have a union represent you in fact-finding! How do you account for that? A new judge, that's all.

DR. ROBERTS: I have a question from the floor. Does not the strong potential block voting power which rests in government workers' unions give them a dominant position in any negotiation with their employers, who are usually elected officials? Therefore, wouldn't giving them the ad led power--the strike--tip the scale too much in favor of the government workers?

DR. STIEBER: This might especially be true at the local level where you have a strong union city, and the elected officials may be in position where they are not free to act in the way that they would want to because they believe that these actions will have some impact in the ballot box perhaps in a very short period of time. Now this is just a fact of life. I don't see that you can stop union officials from trying to get their members and even non-members to vote a certain way. This is a right that all citizens and all organizations have. One might say these unions don t need the right to strike. They are so strong that perhaps through the legislative process and their power in the elections they can influence the economic benefits that they get. I think in a way this is true. There are some unions who weren't terribly happy about the changes which introduced collective bargaining into the public sector. For example, I suppose over the years the post office employees have influenced their own pay and benefits through lobbying activities and have done so very effectively. I don't know whether they are likely to do any better through collective bargaining. However, on the other hand, there are many cities in which unions are not all that powerful, and even in those cities where unions are important we all know that union leaders have not always or even frequently controlled the votes of their members when they go into a secret booth to vote. So that I think that the question of whether or not the unions are powerful enough actually to get what they want is debatable and will vary from one community to another. But apart from that, there are those organizations which do not have the power of numbers but are entitled to collective bargaining negotiation to influence the conditions of their employment. And these certainly must depend on some introduction of organization and collective bargaining in the public sector.

DR. FEINSINGER: We are in a transitional period. Here is the Chairman of the County Board of "X" town, who has been running the show; he has never had any discussion with a union, and suddenly he is told by the Legislature he has to bargain collectively. And he says, What's that? He says I don't have to bargain with anybody because I am the sovereign: the sovereign state, the sovereign city, the sovereign county. I cannot share my responsibility with a union. I think the unions will make a mistake if they insist on getting the whole cake right away. You've got to bide your time union, there is a new generation of county chairmen.

One of the newer devices to bridge the gap is known as advisory arbitration. This is a contradiction in terms. It is just like compulsory arbitration but with a different name. It is like saying the Iliad was not written by Homer but by another man with the same name.

DR. ROBERTS: In this connection, I asked the question before about this collective negotiation. The same thing applies to "advisory arbitration" and "mediation to finality." Is it because we're trying to run away from terms which have become objectionable and come up with something which would be acceptable to people as long as they don't recognize the objectionable thing?

DR. FEINSINGER: No, I think the argument against public bargaining is generally nothing better than the old shop-worn argument about the closed shop and the union shop and the agency shop. Those terms are devised for industrial negotiations, not for public negotiations. The "fair-share agreement," I think, is a term that I invented to distinguish the union security problem in public employment from the problem in private employment. It's as simple as that. Besides, it's got a better chance to pass in the Legislature.

DR. ROBERTS: Executive Order 10988 provides for "advisory arbitration." This is a contradiction in terms but perhaps it was the only way to get a form of arbitration into the Executive Order and make it acceptable to government agencies—even though it was not final and binding arbitration. The agencies said that they would not accept a decision by somebody who is not in authority; that the department head has to make the final decision. Although these terms may be classed as gimmicks for those of us who are accustomed to using simple, straight talk, yet, some feel that if you come up with something which gets you over the language obstacle and you can accept it, or get the legislature to pass it, or get the President to sign it, or get the Congress to go along, that it makes good sense. Maybe what we need is a new language in the public sector.

DR. STIEBER: Actually, Harry, the term advisory arbitration is different from final and binding arbitration, and the best evidence of that is that the unions in the Federal sector are not happy with advisory arbitration and they have cited illustrations where the advice of the arbitrator has not been taken. Therefore, one of the changes that they are asking for in Executive Order 10988 is to substitute final and binding arbitration for advisory arbitration so that here it is really not just a matter of semantics. It is actually a difference in the outcome and the way in which the arbitration award is treated.

DR. AARON: I think you missed a point on that, Jack. I think it is a euphemism, not for arbitration, but for fact-finding recommendations and the term advisory arbitration is designed to create the illusion that there is something final and binding when obviously there is not. So it is not a distinction between final and binding arbitration and something else. What it is is the old recommendation procedure clothed in language which was intended to give people the feeling that they were really going to get a final and binding decision. But obviously there was no way that the Executive Order could accomplish that, at that particular time.

DR. ROBERTS: How can you support that old canard that civil servants both state and federal are paid lower wage rates than employees in the private sector? Here in Hawaii private employers are continually losing employees to the federal and to the state agencies.

DR. STIEBER: I suppose I will have to say that this is my first visit to Hawaii, and I am not acquainted with the pay scales either of the private sector or the public sector. I would say that if private employers are losing employees to government organizations then this is evidence that perhaps their rates are not competitive. Generally speaking in most states and the federal government this is not the case. In the federal government, I think that certain employees may start at a higher level, but in terms of the progression that prevails, they do not as a rule pay more, and usually pay less than comparable workers receive in the private sector. I am sure that there are illustrations, not only here in Hawaii but also in some states, where the federal government, because of the importance of the installation and the necessity of attracting workers, especially in blue collar jobs, ordinance and naval installations and so on, where they have flexibility to a point where they are pricing labor away from the private employers. I am sure this is true on some instances.

DR. ROBERTS: I think perhaps you might add too that the shifts in employment

from private to public vary in different types of occupations–that you might get a loss in some and a gain in others. I think there are some factors other than wage rates, which determine whether the employee will move from the private to the public sector.

Here's a question which deals with police strikes. Do any of you want to comment on the experience of police strikes? Have they resulted in increased crime waves?

DR. STIEBER: The most interesting recent development that I know of in this area–it was not responsive to this question–but I think it does illustrate the attitude of unions toward strikes by policemen and perhaps firemen. The State, County, and Municipal Employees recently withdrew the charter that they had issued to a police local because the police local did call a strike that lasted something like two hours. And immediately after that happened, the President of the State, County, and Municipal Employees appointed a board to investigate, and apparently the board's finding was that in fact there had been an actual withholding of labor for a short period of time and since it is the policy of State, County, and Municipal Employees that they do not sanction strikes in these three areas, namely, police, firemen and prison, they withdrew their charter from that organization. But there really are very few illustrations of actual police strikes where we could get enough evidence to answer that question.

DR. ROBERTS: I'd like to note that in a recent visit I made to Canada, one of the things that interested me a great deal were the collective bargaining agreements between public employee organizations and government agencies. The agreements covering police and fire departments had specific provisions which required collective bargaining. If collective bargaining fails, a mediator is assigned by the National Agency or the regional agency. If mediation fails there is a proviso for a tripartite board to meet to make recommendations to the parties. The recommendations, however, were final and binding so that in effect you have compulsory arbitration for firemen and police. Other public employees in the country are free to take economic action, including the use of the strike.

There is a question as to how extensive public employee organizations are in Hawaii. I'd better get somebody from the audience active in the public employee area to answer that. Briefly on the state and local levels, we have four major organizations: the Hawaiian Government Employees' Association, the United Public Workers, the Hawaii Education Association, and the American Federation of Teachers, a total of almost 25,000. The largest of these is the Hawaiian Government Employees' Association. On the federal level I guess the major ones are primarily in the military installations–Pearl Harbor Naval Shipyard being the largest. They have a contract with the Hawaii Metal Trades Council. Any comment from the floor?

COMMENT: The shipyards are saying that approximately one-third of the employees belong to some employee organization. In this State there are some 6,000 federal employees who belong to one organization or another.

DR. ROBERTS: Here is a question addressed to Ben Aaron. Aside from your suggestions for overhauling of the federal labor laws, do you suggest any specific changes in the existing labor laws?

DR. AARON: Well, my particular suggestion for a death warrant is Railway Labor Act, which I think was a great piece of legislation when it was enacted and provided most valuable experience for us, but which I think now is obsolete, and I would strongly favor its repeal and the subsuming of those employees under the National Labor Relations Act with

appropriate modifications to deal with particular problems. So far as I know, I am alone in that recommendation and I don't expect it to come to pass. But I have spent a number of years of my life studying the Act and being tangled up in one way or another in its administration, and my conviction remains the same in that regard even though I don't have many supporters.

I think there are a number of provisions in other laws that might very well be repealed. There are a lot of very foolish provisions in the Taft-Hartley Act relating to national emergency disputes, but they're minor except in the context of a thorough reform. I don't think it is worthwhile mounting a crusade to repeal the ridiculous vote on the employer's last offer, or the procedure for getting a report from an emergency board to a person who has already made up his mind what he wants to do, and which is told to get a report in in a certain time so the Attorney General can get an injunction, although the purpose of the report is to advise him as to whether or not there is a national emergency. That's all very ridiculous but it's not terribly harmful. But if we were going to revise our national emergency disputes procedures, then it seems to be quite clear we ought to get rid of those really quite undignified and ridiculous provisions.

To suggest other aspects of labor reform would require, I am afraid, much more technical discussion on the problems than would be appropriate here. I would mention that I think another very grave aspect of the whole Railway Labor Act situation, and one which isn't known so much, is the whole question of elections. I think their election procedure is vastly inferior to that of the National Labor Relations Board. For one thing it does not permit any choice on the ballot for a no union vote which I think is absolutely essential in any kind of democratic procedure, and I think the whole procedure before the National Railroad Adjustment Board is an outstanding scandal and I strongly favor the elimination of all that.

When we get into the more detailed aspects of the National Labor Relations Act, as we do particularly in boycotts and that sort of thing, I think we are just tearing the seam as well. I think we have too much legislation. That is my basic point, we could do with much less of such legislation.

DR. ROBERTS: Here is a question addressed to Nate Feinsinger. Are you saying in effect that compulsory arbitration in public employment is inevitable?

DR. FEINSINGER: No, on the contrary, I don't think compulsory arbitration is ever inevitable, but I would say in this respect I disagree with Michigan. There's always time for a State Legislature or Congress to adopt the compulsory arbitration system. Therefore, we can try voluntary arbitration.

DR. ROBERTS: Question to Dr. Stieber. In Hawaii we are concerned largely with relations between unions and the federal government, not the State. What has been the attitude of the armed services toward the federal directives on collective bargaining?

DR. STIEBER: I'm really not well enough informed on the Department of Defense and the various armed services and their experience under Executive Order 10988. However, I do read regularly a government employee labor relations letter put out by BNA, and my general impression is that the Navy Department particularly, which seems to be one having considerable organization of their employees, has generally lived reasonably well under the Order. I think that they have had some advisory arbitration. I think that they have accepted the procedure. I have the impression that there is not any strong difference in the acceptance by the armed services with respect to their civilian employees as compared with let us say some other agency. Of course, there are some agencies that are outstanding in the degree of

acceptance. The Labor Department, where one I think might reasonably expect that there would be a strong acceptance of the Executive Order, has gone further than most in the degree to which they have established relations and consultation and negotiations with their employees. The Interior Department has had relations for many years. The TVA, of course, long before Executive Order 10988 had contractual relations with their employees, and was the prime example of a government employer which was negotiating and in every way treating their employees more or less like private employers. I don't have any particular information with regard to any defense services having any significant difficulty under that Order.

Let me mention two other things. When Nate Feinsinger referred to his difference with the Michigan procedure with regard to compulsory arbitration, I know he's clear on it but I want to be sure the rest of you are. He was not referring to the current Michigan law which does not provide for compulsory arbitration for any disputes in public employment. He was referring to the report of a commission established by the Governor which was asked to examine the law and to make recommendations for its improvement, and it was this commission which, among other things, recommended that for a period of three years–every three years–there be some experimentation with compulsory arbitration only for police and fire fighters. They did not go beyond this. The legislature has not acted on any of those recommendations, and therefore, in Michigan our law is no different than it is in Wisconsin.

Just one last point. I don't know why, in trying to answer the question with regard to police, I did not draw on the illustration closest to home. Actually, we have perhaps the best illustration of a non-strike among the policemen in Detroit but one which had a very significant impact, only a month or two ago. The policemen are still very unhappy about a recommendation for their wage increase for next year. They have not called a strike. However, for a period of perhaps two weeks they were calling in sick in large numbers, so that on some days there were as many as 600 policemen reporting sick. It's just a problem of money with regard to the police. They tried to combat this one day by insisting that all policemen who had called in sick report in and have doctors examine them. Well, they were a little unlucky, because one of the men who reported in keeled over when he got there because he obviously was sick. In a police force of several thousand you always will have a percentage of people who are sick. This has not been resolved. It is a case in which a very substantial number of policemen have stopped short of a strike, but they have exercised other alternatives. Among the other things that they did on one or two days was to stop writing traffic tickets. This had quite an impact on the municipal budget. These and other things only illustrate that you don't need to have the right to strike to be able to exert power.

QUESTION: What are the basic differences between collective bargaining in the private sector and collective bargaining in the public sector?

DR. AARON: In the first place, when you're dealing in a private sector, within certain limits the union has the right to withhold its services, to go on strike. The employer has certain limited responses he can make to that–he can just try to wait out the union or he can try to operate during the strike and there are various federal and state agencies which would assist the parties to reach an agreement. The employer makes his own decision. He doesn't have to go somewhere else to decide what kind of an arrangement he can take in settlement of the strike.

If you're dealing with the federal or state government, in the first place you've got limitations on the right to strike, legal limitations at any rate. And secondly–and I think this goes to the heart of the problem of public bargaining–very frequently the agency with which the union and public employees have bargained doesn't have the final say. The union maybe asking for more money from the school board whose budget has already been determined,

and even if the board wanted to grant the union's demands it may find it impossible to do so. That's one of the reasons why in the Taylor Report in New York the commission recommended very strongly that bargaining precede the final determination of what monies would be available for the year, so that when the parties got to bargain the people representing the government would be able to go to their principals and say, "Look, we think this is a fair arrangement and you've got to provide the money." Limitations on bargaining of the government are very, very much more stringent, particularly when the federal agency budget has already been determined by Congress or will be determined by Congress. I don't know if that gets to the heart of the question.

DR. STIEBER: I think in this respect there is much more room and scope for negotiation at the local level than there is at the state or the federal level. For example, you cannot as a classified civil service employee bargain over wages, because wages for civil service employees are set by Congress. I have read some very learned articles which make a very good case for the view that really as long as you cannot negotiate over wages and salaries you really cannot call it collective bargaining.

This is exactly the situation in which I was involved in just before coming out here. I was appointed fact-finder in a school district where they happened to reach an impasse. I went and held a hearing and found that the basic issue was over the salary schedule. The school board had already gone to the voters and gotten authorization for two and a half million tax increase. The main beef of the teachers was that really they had no business asking for only two and one-half million, because the teachers had told the Board that they would need at least five million in order to give the teachers what they wanted. The superintendent of schools said the Board felt that based on the fact that this city had just voted an income tax and the State of Michigan was just about to vote an income tax, they felt that anything above two and one-half million would be voted down, and he cited some very apt illustrations about neighboring communities where they had gone in for a higher millage and had been voted down.

Here was a situation where the teachers were asking for a certain amount of money which the school board was in effect saying we don't say that you're not worth it and that you're not entitled to it, but the fact of the matter is that our budget for next year has been set, and there they were. Now, private situations like that would never occur, because there is nothing in the last analysis to prevent the employer, if he is faced with a situation where the union is demanding more, from making a decision. He might make a decision (1) to raise the price of his product, (2) to close down certain unprofitable operations, or (3) to take a strike or other possibilities. But this is only one illustration of the great difference between bargaining in the public and private sectors.

DR. ROBERTS: Was there a question back there, Art?

QUESTION: What would you do about a strike in a hospital?

DR. AARON: I think one of the big problems in hospital situations is that first of all you've faced with the undeniable fact that while they are beginning very slowly to catch up, most hospital employees all around the country are very, very badly underpaid and over worked, and their general working conditions are pretty bad. The reason I think in part is that in the typical private, non-profit hospital the Board of Trustees usually are wealthy people who are very concerned about providing hospital care and are very cost-conscious. They say we're giving all our time and energy without compensation and we think everybody ought to do the same, you know. They expect their employees to work and make their livelihood under clearly substandard conditions and when the employees want to bargain, they are told how can you do

anything to interfere with providing health services for sick people.

I think we have to bring hospital administrations into the 20th century in terms of their duty to provide for their employees as well as for their patients. The problem is sky rocketing hospital costs. We all know the kind of hospital care and medical care that we want. Everybody wants to go first-class, but none of us can afford it really, and everytime we get increases in benefits for patients or increases in pay and improved working conditions for people who work in the hospitals, we get increased costs to the patients, and we just have to reach some kind of an agreement in our society about how far we are going to go with providing good medical care. We certainly should not ask the hospital workers to subsidize the rest of us. For a long time we've been exploiting the nurses and the nurses finally just got sick of it. Now the nurses are about as militant a group of employees as you will find anywhere. And it's just a matter of time before all the other people who work in the hospitals are going to react the same way. We can't deal with that problem by telling them that they don't have the right to strike.

DR. FEINSINGER: Mr. Chairman, with your permission. I'd like to spend a minute or two to discuss the problem on a broader spectrum.

I started with the assumption that the world of force is gone and to determine disputes of any kind by means of military force, diplomatic, political, and even the judicial–that leaves the question as to how the disputes are to be decided other than by force. The newly emerging nations are saying to us, "Give us back our burdens, Mr. White Man; we will carry it ourselves."

Now mediation in a broader sense includes any kind of voluntary action. With that thought in mind we have established in the past three years at the University of Wisconsin Law School what we call a Center for Teaching and Research in Dispute Settlements with heavy emphasis obviously on civil rights disputes. But it's not limited to civil rights disputes. They cover the war area. They have labor-management disputes; I think some of you are born with just labor-management. I know I am. And the question is, how do you make the mediator? Does he have to be born this? Do you teach a man to become a mediator? That's one thing. The second thing is to take a successful mediator in the labor-management field. Like the rest of us who has made a name for himself, can he transfer those skills from the labor-management field to other fields such as civil rights disputes and international disputes? Then we have a whole host of other terms. Let me give you an example of what we're trying to do.

There is a law suit by the Frank Lloyd Wright Foundation against the City of Madison over a little item of $350,000. The case has gone up to the State Supreme Court, back down. They appointed an Arbitration Board. They have two members of the Senate office, one is their arbitrator, and the other is going to present the case. What a nuisance I admit. Same thing on the other side and with a great deal of difficulty getting a man who would be willing to serve in this group. First one they got died and I agreed to serve and, of course, we have a problem explaining to other people that this isn't a fatal assignment. They finally got him and by this time each side had spent $150,000 with fees of one kind or another and they haven't even got the show off the ground and on the road. What do you get off the ground?

At any rate, the Mayor asked me if I would mediate with a little more preparation than that. Well, the point of it is the city had offered to pay $25,000. But the real difference of opinion is $50,000 as the Foundation had offered to settle for $75,000, not $350,000.

I said, "This is very interesting. I am going to call the newspapers for a press conference. Since each of you has already spent $150,000, the real difference between you is only $50,000. That is not fair because we did intend to get the case all cleared up."

Later a friend of mine who is a very prominent lawyer in Los Angeles told me, "You better stay out of Los Angeles. Your name is mud with the lawyers," and I said, "What's the matter now?" "Oh," he said, "they heard about that settlement you forced on the Frank L. Wright Foundation and they don't like it."

If you use the word mediation to a civil rights man, he'll kill you, not literally. You won't like him because he says mediation means compromise. We are talking here of God-given and Constitutional protected rights and there is no room for compromise. I can understand that, but you see the assumption of mediation is always compromise is not a fair assumption. A lot of times one side or another is out on the limb. It doesn't have a case at all. It's very, very embarrassing to come along with somebody else and save face for him. And now in any case if anybody wants to know something about the mediation settlement, you write me at the Law School. It's just--life is a seamless web--you can't slice it into a labor-management dispute, civil rights dispute, international dispute. It's all one ball of wax. For purposes of this kind and for instruction, you have to divide the world up into slices, this whole industrial relations. I say you should consider labor-management relations as the total concept of the society in which we are living including this whole business of civil rights in the nation.

QUESTION: Is the traditional type of bargaining becoming obsolete? Is there a trend toward bargaining on the real issues from the beginning, instead of waiting for the end of negotiations?

DR. AARON: I think that this is one of the areas where it is very hard to generalize, because we don't have any uniform structure of bargaining throughout industry or in the public sector. There is certainly a marked trend away from so-called crisis bargaining in the sense that nothing can be done until just shortly before the agreement is due to expire. In some of the big industries informal bargaining goes on more or less continuously and parties are constantly working at it the year around. There is a good deal of informal exploration and by the time the parties meet for formal negotiations they pretty well have an idea of what has to be settled. But I think you have to allow for a certain amount of just formal ritual. People expect it. The membership of the union and the stockholders of the corporation would be, I think, a little disconcerted if the parties simply announced that they have reached an understanding.

And of course, as the bargaining continues on a more and more sophisticated level, the problems become much more difficult, so that there really is genuine disagreement. I was interested in a statement reported in the press about the use of computers in collective bargaining, indicating that some day the computer could take over a good part of the bargaining. The implication being that people are really just not sure about the facts, and that's what takes time and causes the trouble, and the computer could run through various proposals and come out with the facts and the parties would be bound by that.

Actually, I think more and more what the parties are arguing about is something far more fundamental; that is, the whole question of what proportionate share of the total income of the corporation should go in the way of profits to the enterprise, to greater benefits to the employees, lower prices to the consumer and so forth. And there is also in negotiations, like this year's auto negotiation, fundamental questions of what should be the nature of the employment relationship. Should all wage earners be switched to salaries for example? Now these are points that, even with careful background preparation, are going to require very hard bargaining and undoubtedly will have to go to some kind of a crisis point before a resolution can be reached.

Well, I think the millenium is far from here, but I do think that there is a great deal

of important ground work and careful preparation for bargaining that has never existed before in some of the major industries, but it will not in my judgment fully supplant the last mile or so of tough bargaining, the long hours, sometimes, of bargaining to mutual exhaustion and so forth.

QUESTION: Was the joint resolution of Congress on the railway disputes mediation, fact-finding, or compulsory arbitration?

DR. AARON: What it is is an attempt to reach some settlement, but with the added sword of Damocles over the heads of the parties indicating that if they cannot reach an agreement then the recommendationsmade by the Commission or Board will become in effect a compulsory arbitration award. I'd like to say just one cool word about that. I was a member of the first compulsory arbitration board that was established in 1963 by Congress to settle the last railroad dispute with the operating brotherhoods. You recall that there were a number of issues that were referred for mediation, but two of them having to do with whether firemen should continue to be employed on diesel engines in freight service, and what should be the size of the train crew. Those two were to be settled by final and binding arbitration.

For some 20 years or more, I've been telling my students that compulsory arbitration is not a good means of settling labor disputes. But every once in a while I doubt the validity of that advice. Having served on this arbitration board I'm happy to report that I think I was telling them the truth all those 20 years. This board met pursuant to a statute that was a model of ambiguity, that had all kinds of restrictions built into it so that the public members, although there were three of them as opposed to two representing the union and two representing management, didn't really have the whip hand at all.

We spent nine weeks in hearings, hearing things that were totally irrelevant to the dispute, that merely rehashed what the parties had done in the preceding 18 months and with the Commission appointed by President Eisenhower, and then we had to make a decision. We were told that that decision would last for two years. Our decision was greeting with ill-concealed joy by the carriers, and with outrage by the brotherhoods who, however, had refused to give us any help in trying to get an equitable solution.

Then we sat back and watched what would happen. Well we knew, first of all, that the decision would be appealed to the courts, which it was. It went all the way up to the Supreme Court of the United States and it turned out that the law was constitutional, which was obvious, and that the decision met the terms of the statute, which I think was equally obvious, but they had just begun to fight. Under the Railway Labor Act any arbitration board can be reconvened at the request of either of the parties to interpret the award. So for the next two years, our arbitration board was reconvened sixteen times, each time for about three days at a time, always on weekends, in almost as many cities. We handed down over 300 separate interpretations of the award. And a great many of those in turn were taken to the courts. Many of the decisions critical to the whole operation of the award are still pending in the courts. At the end of the two years it was not certain as indeed isn't certain yet what the status of the award is.

In short we've settled nothing; absolutely nothing. But in the meantime some 18,000 firemen were put off the railroads. They got for the most part very substantial benefits but a great deal of human misery resulted, and Congress has been investigating it ever since. It's just a terrible way to handle anything, and it seems to me that if ever we needed proof that compulsory arbitration simply will not do what it is supposed to do, which is, to take something and settle it finally, this case is a perfect example of it. Now whether present law will do something better remains to be seen, but at least there the Board has the option of mediating, which

we didn't have, and trying to reach a settlement, and the parties have a little more leeway in which to operate. I hope very strongly and I hope Ted Kheel's absence today help them do some good in this dispute. Maybe they can work out a settlement which will prevent the necessity for compulsory arbitration, but if those compulsory arbitration men were back in the same old muddle we had before, I don't think we will solve any problems at all.

DR. ROBERTS: Well, the word this morning wasn't very good from Senator Morse in the Senate. The law itself provides for a 30-day mediation which ends on the 16th and then there's 30 days of fact-finding. But the series of criteria which they don't have for the third time which I think deal with the guidelines. If that doesn't work, then they make their recommendations and then they have 30 days in which to file and these will last for two years for the effectiveness from January 1, 1967 to 1969.

Our time limit is up and I want to see if any of the members have any comments before we close our discussion.

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ORGANIZATION AND COLLECTIVE BARGAINING IN THE PUBLIC SECTOR

by

Jack Stieber*

Each decade since the 1930s has had at least one major law dealing with labor relations: the Wagner Act of 1935, the Taft-Hartley Act of 1947, and the Landrum-Griffin Act of 1959. All have excluded government employers and employees from their purview. The 1960s, barely half over, have already earned the right to go down in labor relations history as the decade of the public employee. At the Federal, state and local levels of government, public employees are organizing, engaging in negotiations, and giving voice to grievances against their employers; in short, they are beginning to act like all other employees. Equally important, legislatures are passing laws according public employees most of the rights won by workers in private industry thirty years ago.

This paper discusses the growth of public employee organization and collective bargaining, analyses different approaches to some basic issues, and points up implications of this significant development for the future.

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Organization of Government Employees

Government is the largest and fastest-growing industry in the United States. In 1965 one out of every six nonagricultural wage and salary employees was on the public payroll which totaled 10 million, 3 million more than in 1955. By 1975 government employment is expected to increase to about 15 million and comprise one out of every five employees in the country.

Almost all of the increase in government employment since 1955 has occurred at the state and local level. At 2.4 million, Federal civilian employment in 1965 had risen by only 200,000, or 13 percent, over 1955; during the same period the nation's population increased by 17 percent and state and local government employees increased from 4.7 million to 7.7 million, about 65 percent. By 1975, the Bureau of Labor Statistics projects an increase in Federal civilian manpower requirements of less than 10 percent, while state and local government needs will rise by 60 percent, a far greater increase than anticipated for any other industry.[1] Population is expected to rise by about 16 percent during the next decade.

The major reason for this phenomenal growth in government employment is the increased demand for services that are supplied by government, the most important by far being education. One out of every two state and local employees is employed in education. Other government growth industries include the supplying of health and hospital services, highway construction and maintenance, natural resource conservation, national defense and related activities.

Given the tremendous growth in government employment, trade union membership among government employees might also be expected to have increased. This has indeed happened. The BLS reports that union member-

ship in government rose from 915,000 in 1956 to 1,453,000 in 1964, an increase of almost 60 percent.[2] More than 40 percent of the increase occurred between 1962 and 1964, and 70 percent after 1960. During the same eight-year period, 1956 - 1964, trade union membership in the private sector of the economy decreased by more than 700,000 or 4 percent.

As a result of these contrasting trends, government employees comprised 8.1 percent of total trade union membership in 1964 as compared with 5.1 percent in 1956. Furthermore, while the proportion of union members in the entire labor force declined from 25 percent to 22 percent and the ratio to nonagricultural workers dropped from 33 percent to 29 percent, the percentage among government employees rose from 12 percent in 1956 to 16 percent in 1964. This membership was rather unevenly distributed as between the Federal level and state and local governments. In 1964, 900,000 or 38 percent of all Federal employees belonged to unions, while only 550, 000 or 7.5 percent of all state and local government employees were union members.

The rise of public employee unions has been spectacular. In September 1965, the AFL-CIO reported that three of the fastest growing unions during the preceding decade were exclusively in the public employee field: the American Federation of State, County and Municipal Employees (AFSCME) which had 99,000 members in 1955 and 237,000 in 1965; the American Federation of Government Employees (AFGE) which increased its membership from 47,000 to 132,000; and the American Federation of Teachers which rose from 40,000 to 97,000 members.[3] In early 1966 the AFSCME claimed 288,000 members, the AFGE 180,000 members and the Teachers Union 115,000 members.[4]

Organization of government employees is not a recent development. Craftsmen in naval instellations have been organized since the early part

of the nineteenth century. Unions currently affiliated with the AFL-CIO Metal Trades Department have a long history of organization in Federal employment. The most important of these, the International Association of Machinists, established its District 44 in 1904 to work solely in Federal employment and in 1966 reported 44,000 public employee members.

The earliest union composed entirely of Federal postal employees, the National Association of Letter Carriers, was organized in the late 19th century and was one of the first affiliates of the AFL. Today more than a half million postal workers belong to some dozen unions, most of which have existed for many years, frequently in the face of pronounced hostility.

Unions have been far less active in the classified service, which makes up about half of all Federal employment and accounts for almost all Federal white-collar employees. Less than ten percent of these employees are union members. Most of them belong to the AFGE, chartered by the AFL in 1933 and affiliated with the AFL-CIO, and to a large number of independent unions. Thus the history of union organization in the Federal Government parallels that of private industry. The President's Task Force on Employee-Management Relations in the Federal Service noted that "the more similar a government activity is to that of a private activity in which workers are normally organized, the more often it will be found that the government workers are also organized and the relations with management officials approach the pattern of such relations in private industry."[5]

At the state and local level the oldest and strongest national union is the International Association of Fire Fighters affiliated with the AFL-CIO. This union, which had its origins in the local firemen's benefit societies

and social clubs of the late 1800s, claimed 115,000 members in 1964, 90 percent of all eligible employees. More recent arrivals on the scene are the State, County and Municipal Workers and the Teachers Union, mentioned earlier. Other national unions active at the local level include the Teamsters, Building Service Employees, Transport Workers and various building trades.

Important as the gains in union membership have been at all levels of public employment, the predominant form of organization among public employees is still the independent association. By far the largest and most important organization is the National Education Association with about one million national members and a total membership in excess of 1.5 million including state associations. Some 90 percent of the nation's teachers are estimated to be enrolled in the national organization or its state and local affiliates. In many states, associations of civil service employees represent the prevalent form of membership. In California, more than half of all state and local employees belong to some 260 independent associations. In New York, the Governor's Committee on Public Employee Relations reported that there were 650 association-type local employee organizations-- more than twice the number of union locals in the state. In Michigan, the Michigan State Employees Association claims 15,000 members and is the principal rival of the AFSCME in organizing state civil service employees. This picture is duplicated in many other states.

At the Federal level, Executive Order 10988 issued in January 1962 has resulted in a proliferation of organizations representing employees in various agencies. In addition to the 29 affiliates of the AFL-CIO Government Employees Council and IAM District 44 which left the Council in 1966, one finds such organizations as the following competing in representation

elections: the National Association of Government Employees (Independent), Organization of Professional Employees of the U. S. Department of Agriculture, Patent Office Society, National Association of Internal Revenue Employees, Federal Tobacco Inspectors Mutual Association, Air Traffic Controllers Association, Federal Plant Quarantine Inspectors Mutual Association, National Association of Federal Veterinarians, and many others.

The increased organization of Federal employees can be largely ascribed to E.O. 10988. But what accounts for the upsurge of organization at the state and local level?

To some extent unions and associations in the states and municipalities also benefited from E.O. 10988. President Kennedy's espousal of collective bargaining for Federal employees encouraged some states to follow suit and provided an impetus to employee organizations at the state and local level. Several states passed laws providing for recognition of and negotiations with employee organizations. A number of other jurisdictions provided for union recognition through resolutions, ordinances, civil service rules, charter amendments, executive orders, and departmental codes.

These official actions were important. But there were other factors. Labor unions devoted more energy and resources to the task of organizing government employees. They became more militant, they organized demonstrations, picketed, talked tough to public officials and on occasion called strikes to back up their demands, even though they knew such action was prohibited. A few dramatic breakthrough agreements, such as the 1961 contract covering 44,000 New York City teachers, helped union organization in other cities and states. Associations of teachers nurses, and civil

service employees reacted to the union challenge by acting more like unions themselves, while at the same time insisting on their basic professional orientation.

The U. S. Supreme Court's reapportionment decisions in 1962 and 1964 helped the tide along. Reconstituted legislatures, more representative of urban centers, were more friendly to labor and sympathetic to collective bargaining for public employees. Michigan provides a dramatic example of the effect of reapportionment. The first legislature in 20 years controlled by Democrats, drawn heavily from the populated urban areas of the state, passed the Public Employee Relations Act of 1965, amending the punitive Hutchison Act which had provided for automatic discharge of any government employee engaging in a strike but made no provision for recognition of public employee organizations and collective bargaining. The amended Act continued to prohibit strikes but also included provisions governing certification of employee representatives, unfair labor practices, mediation of disputes and fact-finding. In Delaware, a reapportioned legislature also passed a new labor relations law for public employees. Since the impact of reapportionment on state legislatures has only begun, we may find other states changing their laws on organization and bargaining for public employees as the composition of their membership changes.

The relatively unfavorable earnings and fringe benefits of government employees in many states as compared with private industry provide a fertile field for cultivation by unions. Tighter labor markets and rising prices have already boosted negotiated settlements in private industry, possibly widening the gap between employees in industry and government. In addition, personnel management in the public service has not kept pace with the

Professionalization and advances made in private industry since the 1930s, under the impetus of the Wagner and Taft-Hartley Acts and the pressures exerted by unions. These factors, taken together, have improved the environment for the growth of unions and other employee organizations in public employment.

Experience Under Executive Order 10988

As of June 1965 there were some 2,473,000 Federal government employees distributed as follows among three basic categories: 1,260,000 classified employees, 621,000 wage board employees and 592,000 postal employees.[6] Salaries of the classified and postal employees are established by Congressional action. Wage board employees consist largely of blue-collar workers whose wage scales are determined by periodic surveys of prevailing wage rates for similar occupations in the labor market area in which they are employed.

Several months after his inauguration President Kennedy kept his campaign pledge to promote collective bargaining in the Federal service. In June 1961 he appointed a Task Force, chaired by Secretary of Labor Goldberg and made up of high administration officials, to review and advise him on employee-management relations in the Federal Service. Prior to this time the only existing legislation governing relations between Federal employees and agencies was the Lloyd-LaFollette Act of 1912 which provided protection for the right of postal employees to join unions and petition Congress. It was, in effect, Congress's response to the "gag order" first imposed by President Theodore Roosevelt in 1902 and made more restrictive by President Taft in 1909. The order prohibited any Federal employee or official from responding to any request for information from

any committee or member of Congress "except through and as authorised by the head of his department."[7]

The Task Force report noted that although 33 percent of all Federal employees belonged to national employee organizations, membership varied greatly among agencies, from the Post Office in which 84 percent of employees belonged to unions to the Department of State where "a careful search uncovered a total of 11 members."[8] There existed within the Executive Branch no policy on employee-management relations. The result was wide variation among agencies in their dealings with employee organizations. Of 57 departments and agencies studied by the Task Force, 22 had no stated labor relations policies; 11 had the "barest minimum of policy" giving employees the right to join or not to join employee organizations; 21 engaged in discussion with employee organizations on limited local problems. Only the Tennessee Valley Authority and the Interior Department had extensive relations with unions and other employee organizations including mediation and arbitration, and written agreements on pay scales, classifications, hours of work, grievances and fringe benefits.

The Task Force report, submitted in November 1961, served as the basis for Executive Order 10988 which was signed by President Kennedy on January 17, 1962. The Order gave all Federal employees the right to join or not to join organizations of their own choosing, and granted exclusive recognition and the right to enter into agreement with an agency to any organization which represents a majority of the employees in an appropriate unit. In order to attain exclusive recognition, an organization must receive a majority of all votes cast in an election participated in by at least 60 percent of the employees eligible to vote and present

at the installation on election day. The latter requirement goes beyond the Taft-Hartley Act, which requires a simple majority of those voting.

A new feature was introduced by the provision of two lower levels of recognition: formal recognition for organizations with at least 10 percent of the employees in a unit where no other organization has been granted exclusive recognition; and informal recognition for any organization with less than 10 percent membership. Formal recognition carries with it the right to be consulted in the formulation and implementation of personnel policies and practices and on matters affecting working condition. Informal recognition gives an organization the right to be heard on matters of interest to its members.

The Order provided that a dispute over the scope of an appropriate unit be resolved by the Secretary of Labor, who could resort to advisory arbitration. As of April 1966, 43 advisory arbitration decisions had been rendered and all had been accepted by the agency and organization involved.[9]

A Code of Fair Labor Practices, promulgated by the President in May 1963, is roughly equivalent to the unfair labor practices contained in the Taft-Hartley Act, with two important additions: strikes and picketing are prohibited and employee organizations may not discriminate against any employee with regard to terms and conditions of membership because of race, colow, creed or national origin.

During its first four years of operation the program showed the following results:[10]

1. About one-third (835,000) of all civilian employees were represented in 800 exclusive bargaining units.

However, deducting postal employees, this figure decreases to 16 percent or 320,000 employees. For a more meaningful picture we must look at each of the three main types of employment: about 87 percent of all postal employees were in exclusive units and worked under collective bargaining agreements; one-third of all wage-board employees were in exclusive units but only about one-fourth (170,000 out of 621,000) worked under agreements; only 7 percent of all classified employees were in exclusive units and only 4 percent (52,000 out of 1,260,000) were covered by agreements.[10a] Of the three groups, only wage-board employees have shown a significant increase in exclusive unit coverage since 1963 -- from 16 percent to 33 percent of the total.

2. Nine out of ten employees in exclusive units worked in the Post Office Department.

3. AFL-CIO unions represented 87 percent of all employees in exclusive units and 80 percent of employees outside of the post office. Ninety percent of the employees in the AFL-CIO are represented by a postal union, the AFGE, or a Metal Trades Council. In units belonging to independent associations, 90 percent of the employees are represented by an independent postal union, the National Association of Internal Revenue Employees (NAIRE) or the National Association of Government Employees (NAGE).

4. More than half of the 429 agreements negotiated have been in the Defense Department and about 85 percent are with AFL-CIO unions. Outside of the Post Office and the Defense Departments, only a little more than one-half of the employees in exclusive units work under negotiated agreements, most of them with AFL-CIO unions.

5. In 1965, 262 additional exclusive units covering almost 118,000 employees were recognized, and 217 additional agreements covering 158,000 employees were negotiated.

Bargainable issues were severely circumscribed by Section 7 of Executive Order 10988 which enumerated "certain matters" reserved for management decision. These include the right to direct employees, to hire, promote, transfer; to assign employees and to suspend, demote, discharge or discipline employees; to relieve employees from duties because of lack of work or for other legitimate reasons; and to determine the methods, means and personnel by which operations are to be conducted. Section 6(b) of the Order further notes that the obligation to negotiate "shall not be construed to extend to such areas of discretion and policy as the mission of an agency, its budget, its organization and the assignment of its personnel, or the technology of performing its work." These restrictions are in addition to such important conditions of employment as salaries of classified employees, pensions, insurance and other fringe benefits, which are established by Congress.

The strong "management rights" clause which is included in every

agreement goes beyond what is usually found in agreements in private industry. The kind of subjects included in agreements negotiated between Federal agencies and employee organizations is illustrated by a 1964 BLS report which listed 44 types of provisions found in such contracts including: hours of work and overtime, holiday pay, rest periods, working and/or cleanup provisions, special clothing, work by supervisors, subcontracting, safety, leave ppolicies, jury duty, craft jurisdiction, wage surveys, promotions and demotions, reductions in force, job descriptions and ratings, apprenticeship and training, check-off of dues, mediation and advisory arbitration of grievances.[11]

Despite the acknowledged success of the Executive Order in promoting union membership and collective bargaining, employee organizations would like to see some changes made in the Order and more particularly in its administration by individual agencies. Their complaints focus on the following issues:[12]

1. Bilateral collective bargaining versus unilateral regulations: Except for the agency-wide agreements in the Post Office and the Railroad Retirement Board, all agreements are negotiated at the local level and must be approved by the agency head. But personnel managers at the agency level have been too restrictive in delegating authority to local managers to permit meaningful negotiations. Too often they issue rules and regulations on matters that should be subject to negotiation.

2. The grievance procedure: There are too many exclusions from the grievance procedure in most agreements, and agencies

have rarely been willing to agree to advisory arbitration in adverse action proceedings. These include position and classification cases, disciplinary cases, and disputes as to the interpretation and application of the agreement if not based on an individual grievance. There have been instances in which management has refused to comply with an advisory arbitration award. This has lead to demands that arbitration be made final and binding.

3. The scope of collective bargaining: Despite necessary limitations on matters subject to negotiations, there is far more room for bargaining than most agencies permit. Wage and salary determination is a good example. While Civil Service determines the content and coverage for grades, an agency can permit union participation in developing policies for determining grades and steps for its employees. But only a few agencies follow this practice. Furthermore, for wage board employees, and under the comparability principle of the Federal Salary Reform Act of 1962, there should be bilateral procedures for selecting comparable firms, key jobs and geographical areas to be surveyed for determining rates of pay.

4. Collective bargaining impasses: Only 10 percent of all agreements provide for outside mediation and 25 percent for fact-finding and referral to higher authority in the agency when an impasse occurs in collective bargaining. Without the strike weapon, these procedures take on added

importance to a union which is already bargaining from a very weak position.

5. Unfair practice charges: Hearing officers, selected from employees of the agency involved, merely rubberstamp the action of supervisors and management officials. A few agencies have offered to use outside arbitrators as hearing officers and the Labor Department has encouraged this practice. Some unions favor turning over administration of the Order to an impartial agency or board similar to the NLRB. Others would like to see the Department of Labor given more responsibility and the Civil Service Commission less in administering the Executive Order.

Agencies too have had complaints, particularly over the amount of time consumed in collective bargaining and handling of grievances. Their major problem however has involved the training of thousands of management officials to carry out their responsibilities under the order. Unions have also faced this problem with respect to training of representatives and stewards. Both have embarked on extensive training programs, making use of universities which have labor and management education programs.

Experience in the States[13]

Legislation governing organization and collective bargaining in public employment ranges from several states with comprehensive laws, to some with laws for particular groups of employees, such as police and firemen, transit workers and teachers. Most states, however, have no labor relations statues dealing specifically with public employees. There have also been

numerous court decisions and opinions by state attorneys general relating to labor-management relations in the public service.

Our definition of a "comprehensive" law is one which applies to a substantial proportion of all public employees and not only contains provisions regarding the right to organize and bargain collectively, but also establishes machinery for determining bargaining representatives, dealing with unfair labor practice charges where they are included in the law, and mediating disputes. The laws in at least six states -- Connecticut, Delaware, Massachusetts, Michigan, Minnesota and Wisconsin -- met these criteria as of June 1966, all but Wisconsin's having been passed or substantially revised within the last two years. Oregon's law gives all public employees the right to organize and bargain collectively, but only classified state employees have a procedure established by the Civil Service Commission for certification of representatives. In addition, California, Connecticut, Oregon, Rhode Island and Washington have separate statutes regulating teacher-school board relations which are administered by state education agencies.[14]

Even the comprehensive state laws do not apply to all public employees and employers: The Connecticut law covers only municipal employees but specifically excludes certified teachers who are dealt with in another law; Delaware includes state and county employees, but a municipality is covered only upon affirmative legislative action by its common council or other governing body and teachers are specifically excluded from coverage; the Massachusetts law does not apply to policemen; state civil service employees are excluded from coverage in Michigan by the 1963 Constitution; the Minnesota law does not apply to teachers; the Wisconsin statute does not apply to employees of the state government who are covered by a separate

law which becomes effective January 1, 1967.

The right of public employees to organize is recognized in almost all states. Ironically, right-to-work laws have been the vehicle for protecting this right in a few states. In Arkansas, a statute prohibiting police officers from belonging to a union was invalidated under the state's right-to-work law which gives employees the right to join or refuse to join unions; and, in Texas, the courts have overturned city ordinances banning union membership by public employees as violations of the right-to-work amendment to the state constitution. In North Carolina, public employees are prohibited from belonging to any labor organization which is affiliated with any national or international union.[15]

The right of employees and the duty of public employers to bargain collectively is less widely recognized. In addition to the states mentioned above, a number of others, including Alaska, California, Idaho, Louisiana, Maine, Maryland, New Hampshire, Oregon and Wyoming, have authorized collective bargaining for public employees generally or for specific groups such as transit workers or fire fighters. Some states, however, have expressly prohibited collective bargaining by public employees or declared any agreements reached to be unenforceable. Included in this group are: Alabama, Colorado, Indiana, Iowa, Kansas, Kentucky, North Carolina, Texas and Virginia. A few states, including New York, permit employees to organize and bargain collectively but do not impose a correlative duty upon employers to bargain.

On one issue, all states, the courts, and opinions of attorneys-general are in agreement: public employees are prohibited from stroking. It is interesting to note that five of the six states with comprehensive

laws, although expressly prohibiting strikes by public employees do not spell out penalties for striking employees. Only Minnesota specifies such penalties, including termination of employment, and if reappointed, employees may not be paid more than before the strike, must wait at least one year for any increase in compensation, serve a two-year probation period and lose tenure rights. These penalties are similar to those contained in the Conlin-Wadlin law of New York State and in other states which detail penalties for strikers.

Laws recognizing the right to organize and bargain collectively are of limited value unless machinery is set up to implement and administer them. The Michigan Act, which is fairly typical, gives the Labor Mediation Board authority to determine the unit appropriate for collective bargaining, and to hold elections and certify and decertify exclusive bargaining representatives. The Act lists "unlawful" employer practices which parallel the unfair labor practices in Section 8(a) of the National Labor Relations Act: interfering, restraining or coercing employees in the exercise of their rights; dominating or interfering with any labor organization; discriminating against employees in order to encourage or discourage membership in a labor organization; discriminating against employees for giving testimony or instituting proceedings under the Act; refusing to bargain collectively. The Michigan law differs from Laws in Wisconsin, Massachusetts and Connecticut in that it does not specify "unlawful" acts on the part of labor organizations. The Chairman of the Labor Mediation Board has stated that the legislature considered a listing of unfair practices for employees unnecessary on the theory that a public employer may discipline or discharge a striking public employee.[16]

The Michigan statute requires that the Board's mediation and labor relations functions be administered separately. The Board also has authority to conduct fact-finding when there is an impasse in collective bargaining. Either the employer or the employee representative may petition to have a Hearing Officer, usually a member of the Board's staff, assigned by the Board, who will hear testimony and submit his report and recommendations to the Board and the parties. The Board then reviews the entire record, including any comments from the parties, and issues its report which may "affirm, modify or reverse" the Hearing Officer's report. This final report is made public but is not binding on the parties. Other states with fact-finding procedures, including Connecticut, Massachusetts, Minnesota and Wisconsin, usually appoint outsiders rather than staff members and publish the fact-finders' report without modification. A few states permit the fact-finder(s) to try to mediate the dispute before issuing a report.

In Michigan and in most other states, arbitration is provided only upon request of the parties. A few states, however, provide for compulsory arbitration of disputes affecting specific groups of employees: Rhode Island for firemen and policemen; Wyoming for fire fighters; Nebraska for disputes involving "government service in a proprietary capacity or service of a public utility"; Maine requires all agreements involving fire fighters to contain a no-strike provision and an alternative method of settling disputes by arbitration.

Of the six states with comprehensive laws, only Delaware does not provide for fact-finding. Wisconsin has had the most experience with fact-finding in public employee disputes, although a number of other states

have utilized this procedure for emergency disputes in private industry. During the first four years of experience under Wisconsin's law, 108 petitions for fact-finding were filed. Fact-finders were appointed in 38 of these cases; 49 were resolved by mediation prior to appointment of a fact-finder; 10 were withdrawn or consolidated with other cases; and 11 cases were pending as of June 30, 1966.[17] Professor James Stern has analyzed the first three years of experience with fact-finding in Wisconsin and concluded that "the law has made a substantial contribution to the improvement of collective bargaining among public employees ..."[18] Over 70 percent of the fact-finding awards have served as the basis for settlement of disputes. Stern specifically noted that the Wisconsin Act has served to avoid the strife experienced in some other states in disputes involving teachers.

No discussion of state laws regulating labor relations in the public sector would be complete without reference to the 1966 experience in New York State which illustrates some of the political obstacles to legislating in this area.

New York City had the first thorough-going code of labor relations for municipal employees anywhere in the country.[19] The program grew out of an Executive Order of 1958, issued by Mayor Wagner, providing for exclusive recognition on the basis of majority rule, procedures for unit determination and certification, and machinery for resolving bargaining impasses. But at the state level there was no statute governing labor relations in public employment, except for the punitive and ineffective Conlin-Wadlin law. The New York City transit strike of January 1966 put added pressure behind efforts to replace this law with a more realistic

and comprehensive statute.

Governor Rockefeller appointed a Committee on Public Employee Relations consisting of five public members and chaired by Professor George Taylor "to make legislative proposals for protecting the public against the disruption of vital public services by illegal strokes, while at the same time protecting the rights of public employees."[20] In New York City, a tripartite panel, originally set up under Mayor Wagner to review the experience under the 1958 Order and to develop "improved collective bargaining procedures", was continued by Mayor Lindsay.[21] Both groups submitted their reports on March 31, 1966.

The Governor's Committee make the following major recommendations:

1. The Conlin-Wadlin Law should be repealed and replaced by a statute which would grant public employees the right to organization and representation; empower the State, local governments and other political subdivisions to recognize, negotiate with, and enter into written agreements with employee organization; and create a Public Employment Relations Board (PERB) to assist in resolving disputes with respect to the representative status of employee organizations in State departments and in local governments.

2. To resolve disputes which reach an impasse in the course of collective negotiations, all written agreements should include procedures, developed by the parties, to invoke in the event of such an impasse in advance of budget submission. Should the impasse persist, the PERB is empowered to mediate the dispute, and if no settlement is reached, to appoint a fact-finding board of public members with power to make public recommendations.

If the fact-finders' recommendations are rejected by either party, the appropriate State or local legislative body should hold a "form of 'show cause hearing'" at which the parties would review their positions prior to final legislative action.

3. Strikes or threats of strikes by public employees should be subject to court injunction. Any organization violating the injunction could be fined in an amount left to the discretion of the court. Individual employees participating in strikes would be subject to reprimand, fine, demotion, suspension, or dismissal, depending on the extent of their misconduct.

The report of the tripartite New York City panel was directed at the specific problems of the largest and most complex city in the nation, in which unions had achieved a much higher degree of economic and political power than elsewhere in the state and where public officials had had considerable experience in collective bargaining. This report was not proposed as an alternative to the report of the Governor's Committee. Nevertheless, coming at the same time as the State report and diverging from that report's recommendations in some important respects, it was inevitable that the differences between the two would be highlighted and become important in the political maneuvering in the State legislature.

The New York City report was in the form of a memorandum signed by the Deputy Mayor and Corporation Counsel for the City and by nine leaders of employee organizations, and endorsed by the four public members. It provided:

1. A declaration of policy that the City will engage in collective bargaining and enter into written agreements with employee organizations holding certification to represent employees in designated

bargaining units.

2. A detailed exposition of the subjects coming within the scope of collective bargaining and those excluded, a management rights clause, and procedures to be followed in negotiations and implementation of agreements under various circumstances.

3. Establishment of an Office of Collective Bargaining (OCB) to be administered by a tripartite board, including a full-time impartial Chairman. The OCB was empowered to make certain that each party complies with its obligations; to oversee adherence to collective bargaining procedures; to administer procedures for resolving deadlocks; to determine bargaining units, and certify and decertify bargaining agents; and to recommend changes and improvements.

4. The Chairman of the OCB was given authority to appoint mediators and, if authorized by a majority of the Board, a disputes panel with power to mediate, hold hearings, subpoena witnesses and records, and formulate recommendations to be released to the parties and the public.

5. Unilateral changes by the City in wages, hours, or working conditions, and strikes, slowdowns, work stoppages or mass absenteeism by employees, were prohibited during negotiations and for 30 days after a Disputes Panel filed its report.

6. All agreements would contain no-strike clauses for the term of the contract and provisions for grievance procedures terminating with final and binding arbitration, to the extent permitted by law.

The four public members of the panel, in a statement accompanying the memorandum, said: "Our professional judgment and national experience, generally, with fact-finding procedures convince us that these agreed-upon procedures will result in the peaceful settlement of disputes and make strikes unnecessary." But, they added, "strikes continue to be barred by existing state laws. We are aware that changes in these laws are under consideration. The problem of strikes of public employees is a matter for legislative policy. We have sought by agreement to develop procedures designed to make strikes unnecessary and have left to other forums the problem of dealing with other contingencies." Subsequently, the public members indicated that they were evenly divided on the question of prohibiting strikes in public employment.[21]

The major differences between the recommendations of the Governor's and the Mayor's Committees were: the use of an appointed all-public board as opposed to the tripartite Office of Collective Bargaining to administer the collective bargaining procedures; the final resort in the State report, to the legislature or other appropriate governmental body if either party rejects a fact-finding report; and the prohibition of strikes and prescription of penalties on unions and employee violators in the State report. The inability of the Republican-controlled Senate and the Democratic-controlled Assembly to agree on the handling of strikes led to the failure of any law to be enacted in the 1966 session of the Legislature. New York City is expected to put the tripartite panel's recommendations into effect by Executive Order or by a local ordinance. This action had not yet been taken as of the end of July 1966.

Comparison of Public and Private Employment

The foregoing analysis of state legislation in the public employment field indicates that the developing trend follows existing laws governing labor-management relations in private industry, except for the prohibition of strikes and the provision of alternative settlement procedures. Most unions favor this approach because they see little difference between employment in the private and public sectors. They focus upon the individual employee, his economic needs, his job and his fundamental rights as a citizen in a democratic society. Since public employees do not differ from those in private industry in terms of their economic requirements and desire to have a voice in determining their conditions of employment; since almost every job in public employment has its counterpart in private industry; and since management behaves the same was vis-a vis employees, union leaders see no reason why we should have different laws, procedures and institutions governing labor-management relations in the public and private sectors of the economy. They sum it up by calling for "first class citizenship" for public employees. The more militant unions, such as the State, County and Municipal Employees and the Teachers assert the right to strike and not infrequently practice it.

Some students of industrial relations have questioned the desirability of transferring, with little or no modification, the legal framework, concepts and institutions which have become well established in private industry to the public sector.[22] They prefer an approach which would take account of the important differences between public and private employment, both with regard to the unique characteristics of the state as employer and the indigenous development of organizations representing public employees.

The proponents of this view believe that public employees are entitled to the same basic rights as private industry employees: the right to organize, to be represented by organizations of their choice, and to engage in collective bargaining (or collective negotiations as some prefer to call it) with agreements reduced to writing. But, they point out, there are certain constraints operating in the public sector which make the complete transfer of private industry laws, practices and institutions either illegal, inappropriate or undesirable in the public sector. Among these they include the following:

1. Many of the terms and conditions of employment are mandated by legislative bodies or prescribed by civil service regulations. This acts as an important limitation on the scope of negotiations.

2. There is diffusion of decision-making authority to a much greater extent than in private industry. Private employer representatives have broad discretion to negotiate and commit the organization on almost all matters. The negotiators and top management constitute a closely knit "team." This is not true in the public sector. An agency head may have authority to negotiate on some issues but not on others which are state- or city-wide. Even the chief executive does not have the final say on the distribution of funds and can only submit recommendations to the legislative body, which has responsibility for the overall budget and levying of taxes to balance income and expenditures. And if the negotiated items include matters mandated by state law or civil service

provisions, there is still an additional layer of decision-makers to go through. This has important implications for determining the appropriate unit and the appropriate scope of negotiations within a given unit of government.

3. The legal framework, procedures and institutions in private industry were developed as a response to certain characteristics, economic and social factors and historical events. To mention only a few: the strong antagonism and use of force by a large segment of private industry to prevent employees from organizing; the helplessness of the individual employee in the face of market forces and the complete and unilateral authority of the employer to hire and fire, set wages, hours and other conditions of employment; the existence of a labor movement dominated by one federation (except for the period 1935-1955) with a strong tradition of exclusive jurisdiction.

To the extent that these factors exist in the public sector and some of them are present though not to the same degree as was true in private industry before the Wagner act - transference of private industry laws and procedures may be appropriate. But we should be wary of transplating the complete system of private industrial relations into the unnatural and unreceptive environment of public employer-employee relations.

4. Cognizance must be taken of the two types of employee organizations existing in the public sector: the "association-type" and "union-type" of organizations. The former includes

not only professional associations of teachers and school administrators, nurses and other employees, but also such unions as the fire fighters and the postal employees. Associations tend to prefer broader groupings of employees rather than the narrower bargaining units favored by unions, whose limits have been set with a view to winning elections. They normally include supervisors, while unions are limited to employees below the supervisory level. The association-type organizations have been less interested (at least until recently) in formal recognition, exclusive representation and written agreements than have unions, and have rejected the strike in favor of political pressure and lobbying for favorable laws and local ordinances.

It is too early to say which of these types is the "wave of the future" in the public sector. It is more likely that they will continue to co-exist and compete with one another. Indeed, one cannot rule out the possibility of merger, amalgamation or some form of loose affiliation among the two types of organization in some fields. But the issue should not be foreclosed by legislation or adoption of arrangements which pre-ordain the outcome by favoring one or the other type of organization. A period of competition and experimentation might have salutary results if carried on within certain ground rules, and if not permitted to hold back legislation and the development of constructive employer-employee relations in public employment.

5. Finally, the strike is unlawful in public employment and should be excluded from any system of industrial relations in the public service. (This will be discussed in the next section)

In addition to these constraints, there are doubts whether certain long-standing arrangements in private industry are suitable for dealing with the wide range of complex problems and issues facing employers and unions today. For example, Professor John Dunlop questions whether the concept of exclusive representation is as well suited to dealing with pensions and health and welfare benefits, which might better be negotiated on an industry basis, as it is for handling grievances and work rules which are best determined at the plant or enterprise level. Perhaps it would be better to have different units to deal with different issues. This is only one of a number of practices in private industry which might be re-examined. It happens to have particular relevance for public employment because of the many levels of decision-making found in government. Those engaged in labor relations in government have found that the "appropriate unit" problem is one of the most difficult to resolve.

The argument between the approaches outlined above has two facets. On the one hand, there is the question whether the differences between private and public employment are so great as to warrant significant modifications in the laws, procedures and institutions which have become engrained in American labor-management relations over the past thirty years. This question lends itself to research, discussion and negotiation, as well as to experimentation at the state and local level. Another question is the extent to which practices which have worked imperfectly

in the private sector can be improved upon in public employment, and whether such improvements might serve as the basis for changes in the industrial relations system in private industry.

The idea that the states should serve as laboratories for social experimentation is one of the alleged advantages of the federal system of government. In the labor-management relations field the process has been the other way around, with the states patterning their laws on the Federal government. This has been true even in public employment where Executive Order 10988 helped to stimulate action at the state level. We doubt that Congress will follow the lead of the states in labor legislation. But this should not deter the states from rejecting those practices which have been found wanting in our Federal law and fashioning improvements to meet the peculiar problems of public employer-employee relations at the state and local level.

The Strike Issue

In private industry the strike is the ultimate weapon of employees in collective bargaining. In some cases - disputes affecting the national health and safety under the Taft-Hartley Act and those subject to the Railway Labor Act - strikes may be delayed for several months. But eventually, the union is free to use economic power, subject only to action by Congress.

Not so in the public sector. The strike is prohibited by Federal law, by a number of state statutes and court decisions. Presidents, Governors, Mayors and public officials -- liberal and conservative alike -- have generally supported the view that strikes by government employees cannot be tolerated. Calvin Coolidge, Governor of Massachusetts during

the Boston police strike of 1919, said, "there is no right to strike against the public safety by anybody, anywhere, at any time." Franklin D. Roosevelt, while recognizing the right of government employees to organize, wrote, in a letter to the President of the National Federation of Federal Employees in 1937, ". . . A strike of public employees manifests nothing less than an attempt . . . to prevent or obstruct the operations of government until their demands are satisfied. Such actions looking toward the paralysis of government by those who have sworn to support it is (sic) unthinkable and intolerable."[23] Similar statements have been made by other public officials.

But, strikes of government employees have occurred. David Ziskind decumented such strikes in his book One Thousand Strikes of Government Employees published in 1940. BLS statistics indicate that there were at least 883 strikes of public employees during the period 1942-1965.[24] Strikes in government occurred most frequently during the period 1942-1953. There followed a relatively quiescent period until 1964 when there were 41 public employee strikes followed by 42 in 1965 and at least 30 during the first six months of 1966.[25] However, even the increased strike activity of the last few years among public employees does not exceed that of the post-World War II and Korean War years. Strikes in government have been concentrated at the local level, occurring only occasionally at the state level, and very rarely in the Federal government. These stoppages are typically of short duration, rarely lasting more than a few days. However, the average duration of public employee strikes increased in 1965 and, so far in 1966, there have been several fairly long strikes.

There has been a long-term decline in the use of the strike in the

United States and in other industrialized countries.[26] In recent years, unions in the United States have found the strike increasingly costly and decreasingly effective as a method of resolving disputes. In public employment, on the other hand, unions and even associations, which in principle reject the strike weapon, have found that it often brings quick and rewarding results. Furthermore, they have learned that the risks are not great, despite the severe penalties which may be legally imposed on strikers. This, coupled with the belief that some public employers are unwilling to engage in genuine collective bargaining except under the threat or actuality of a strike, and the absence of alternative methods of resolving disputes, has undoubtedly contributed to the growing incidence of government strikes in recent years and will continue to do so as long as the situation remains unchanged.

Too often the strike in public employment has been treated as an unmitigated evil to be exorcised rather than the symptom of a malady which needs treatment. At the other extreme, some unions have utilized the strike as if it were the first rather than the last resort in collective bargaining. Mediation and fact-finding are being used increasingly in public employment and the record based on limited experience is promising. But there still remains the thorny question of what to do when these procedures have been exhausted and the impasse has not been resolved. Should the strike be permitted? And if not, why not?

The "sovereignty doctrine" which holds that a strike of public employees, whatever their occupation or the nature of their activity, is an attack upon the state and a challenge to government authority will no longer suffice. Secretary of Labor Wirtz put it succinctly when he said: "This doctrine is wrong in theory; what's more, it won't work."[27]

He was referring to the broad use of the sovereignty doctrine to deny rights of collective bargaining to government employees. But, the New York Governor's Committee also rejected the "rights of sovereignty" as a justification for barring strikes of public employees, stating that "this is scarcely an apt term to apply to a system of representative democratic government . . . which is responsive to the electorate."[28] Other countries, including Canada which is presently (July 1966) considering a bill giving Federal civil servants the right to strike, apparently do not regard strikes by government employees as a threat to the sovereignty of the state.[29]

Few would dispute, and the courts have upheld, the right of governments to prohibit strikes of public employees. Presumably a legislative body can also permit strikes, either for all public employees or for certain groups of employees. The question is whether a blanket prohibition on public employee strikes is necessary, wise or desirable in the context of present day industrial relations.

Most supporters of the view that public employee strikes should continue to be prohibited do so on one or both of the following grounds: the essentiality of many government services to the health, safety and welfare of the community and the belief that the strike is an economic weapon which is inappropriate in public employment.

The "essential services" argument is indisputable with respect to policemen, firemen and prison guards. Although isolated strikes among such employees have occurred, few would defend them and the organizations with which they are affiliated do not assert the right to strike. But one quickly runs into differences of opinion in trying to decide what

other services are "essential" to a community.

School teachers? Professor Myron Lieberman points out that "schools are closed for summer, Christmas, Easter and Thanksgiving vacations, for football games, basketball tournaments, harvesting, teachers' conventions, inclement weather, presidential visits, and for a host of other reasons without anyone getting excited over the harm done to the children."[30] Why not for strikes to protest teacher grievances or to achieve legitimate demands in collective bargaining? But how many parents would agree with Mr. Lieberman?

Transit employees? Few people would question Norman Thomas's dedication to the cause of the working man. But after the New York transit strike of January 1966 Mr. Thomas said: " . . . there are services whose continuous operation is so important to society that strikes should not be thinkable. . . . Transit in a city like New York should be so recognized." But would the transit workers agree?[31]

Similar differences of opinion would be found to exist with regard to garbage collection, water works, public utilities, hospitals and other government services. This led the New York Governor's Committee to conclude that "a differentiation between essential and non-essential governmental services would be a subject of such intense and never-ending controversy as to be administratively impossible."[32]

Perhaps the Committee was right. Still, one of the most frequent and effective arguments against a blanket prohibition on public employee strikes is that people doing the same work in private industry are free to strike. Besides, there are innumerable government services which can by no stretch of the imagination be considered so essential that they cannot be interrupted even for short periods: state-owned liquor stores, city botanical gardens, recreation centers, government cafeterias, automobile

license bureaus; the list is almost endless. The best way to put this argument to rest would be for a few states to prohibit strikes in certain specified "essential" services but not in others. Given the increasing trend towad state regulation of public employer-employee relations, we may yet have an opportunity to see how such a law would work. Of course, public employees engaged in non-essential services also have less bargaining and political power than those in essential pursuits. Given a choice between being treated like private employees in all respects, including the right to strike, and being barred from striking but with access to mediation and fact-finding procedures, most of them would probably prefer the latter alternative.

The second, and in our view the more fundamental, argument against lifting the prohibition on the strike in public employment holds that the work stoppage does not serve the same purpose in public employment that it does in private industry. It is argued that in private industry employers have countervailing rights to the strike: they may lock out their employees, try to break the strike by operating with other employees, suspend operations for months without regard to the effect on those not directly involved in the dispute; they may even choose to go out of business entirely. The threat or actual use of these economic weapons is supposed to perform a useful function by exerting reciprocal pressures upon the parties to modify their positions to the extent necessary to bring about an agreement. Throughout the dispute both parties are subject to market pressures where the consumer's power of choice is exercised (except for certain monopoly industries e.g. telephones). Jobs can and have been lost and markets seriously depleted by long strikes or settlements leading to non-competitive price increases.[33]

These considerations are not normally present in government. The countervailing right of the lockout or the possibility of going out of business do not exist. Extended suspension of operations depriving the community of needed or even desired non-essential services is not politically feasible, even when possible from an economic viewpoint. While a government can try to break a strike and may even call upon the National Guard or the Army to perform essential services during an emergency, this is hardly a permanent solution; nor does it lend itself, even on a temporary basis, to such government services as education and hospital care. Besides, such action would be political suicide in most cities.

The economic and market pressures which operate in private industry do not usually exist in the public sector. Competitors will not teach a community's children or provide checks and case work services to welfare clients; consumers will not find ready substitutes or learn to do without garbage collection or health services; too high a settlement will not price most government services out of the market, though it may affect the number of passengers on public transport in some cities.

This does not mean that there are no constraints upon the public official when he engages in negotiations with a union; nor even that he is not as influenced as his private counterpart by the cost of settlement. The difference is that the threat is political rather than economic: the public official may not be concerned over market competition and substitute products; instead, he worries over "continuance in office, political survival and future political aspirations."[34]

In this context some groups stand to gain much more than others by resorting to the strike weapon. A recent instructive example is the New York City transit strike and the resulting settlement and exemption from

prosecution under state law for transit employees, as compared with the experience of the welfare department employees in the same city. The basic question is whether the strike, which in the United States has been viewed primarily as an economic weapon, is equally appropriate when used as a political weapon.

Finally, there is a feeling on the part of some students in the industrial relations field that the strike should not be sanctioned in public employment at a time when its use is being questioned in private industry. Public opinion has become less tolerant of work stoppages, and demands for Presidential and Congressional action to force settlements of strikes which significantly affect the economy or result in great inconvenience to large numbers of people are heard with increasing frequency. The public is particularly intolerant of strikes which deprive them of government services. To sanction the strike in public employment at this time, these people argue, would take attention away from the constructive alternatives of mediation and fact-finding and focus it on the strategy and techniques of conducting or countering work stoppages.

One of the most persuasive arguments in support of permitting the strike in government is that it is the only way to get some public officials to take collective bargaining seriously. Union representatives cite case after case in which a government employer contended he could not bargain over certain issues but changed his attitude quickly when a strike was threatened or actually started. Then, insurmountable obstacles to negotiation seemed to fade away and an agreement was reached in short order. There is no question but that some public officials have used the strike prohibition to evade their responsibility to negotiate in good faith,

even in states with laws providing for collective bargaining in government employment. Union representatives have also sometimes resorted to a strike vote, strike threat, or actual stoppage before exhausting the grievance procedure or making use of mediation. Both sides are often inexperienced in collective bargaining and ignorant of the law or the most elementary knowledge of industrial relations.

Management and labor must take their responsibilities more seriously if collective bargaining in the public sector is to make progress. Government and universities too have a responsibility to make collective bargaining work. They can make an important contribution by helping the parties improve their knowledge and skill in the industrial relations field. An example is provided by the Michigan Board of Education which contracted with the School of Labor and Industrial Relations of Michigan State University to conduct courses, workshops, institutes and conferences for teachers and other school employees, school administrators and school board members. In the long run, the answer lies in building effective organizations for collective bargaining in government and unions, developing expertise, improving the amount and quality of data and information for use in negotiations, and in broadening the areas of communications. This has happened in private industry during the last 30 years. It will have to happen in the public sector before there can be real collective bargaining.

A Look to the Future

During the next decade we can look for the extension of legislation governing public employer-employee relations to more states. While existing laws will serve to show the way, there should be more variation

then is found in state laws applicable to the private sector because of the absence of a definitive Federal statute similar to the National Labor-Management Relations Act. History will probably repeat itself in the lag of the Southern states, both with regard to legislation and the ability of unions to organize public employees. In August 1965, the AFSCME reported only 6 signed agreements in the South out of a total of 302.[35] However, the existence of professional associations with substantial membership in Southern states may speed up the development of employer-employee relations in certain areas of public employment. An extensive survey of school districts by the University of Chicago found that the National Education Association had local affiliates in close to 90 percent of the districts in Southern states, and that 121, or 13 percent, were carrying on negotiations with school superintendents or boards.[36]

Employee organizations can be expected to press for agreements which will more closely resemble those found in private industry. Among their objectives will be: broadening the scope of negotiable issues, union security in the form of the union shop, and final and binding arbitration of grievances.

As employee organizations become stronger they will become less willing to accept unilateral determination of matters which presently are considered sovereign prerogatives of the state. They will whittle away at these in much the same way as unions in private industry have narrowed the range of management prerogatives. A particularly sensitive issue is the virtual exclusion of employee organizations from having any say in wage determination for classified civil service employees in the Federal Government and in the states. In 1966, Federal employee wage and salary adjustments were held within the administration's 3.2 percent guidepost.

President Johnson, in signing the Federal Salary and Fringe Benefits Act, urged labor and management to follow the example set "in our own house."[37]

In hearings on the bill, some Congressmen reminded the administration that it had "perfect control" over wages of Federal employees but not over the rest of the economy. Senator Hartke of Indiana chided the administration for violating the comparability principle established in the 1962 Federal Salary Act, providing that salaries of Federal employees were to be related to pay for the same levels of work in private industry. He charged that because of the guidepost limitation "all bargaining power and rights to negotiation have already been taken away. Now it becomes an intriguing question as to just how long these various union and Government representatives will submit to this kind of treatment."[38] Union representatives testified against the bill but were unsuccessful in getting the administration of Congress to raise the ante.

It is reasonable to assume that legislatures and government officials probably have adhered more closely to the guideposts than have private employers whose wage rates are set in collective bargaining. If the labor market remains relatively tight and inflationary pressures continue to mount, public employee organizations may be expected to press more vigorously for inclusion of pay scales as a negotiable item.

Union security in the form of the union shop is generally held to be inconflict with the civil service concept and contrary to the principle of equality of opportunity for appointment and promotion in government service. However, it has been argued, that "if collective bargaining through an exclusive representative is recognized as advancing the public interest . . . then reasonable practices that will promote a fruitful and responsible bargaining relationship should also be acceptable."[39]

In actual practice there are many union shop provisions and lesser forms of union security in agreements involving governmental units, In 1965, the AFSCME reported that it had at least 51 union shop agreements, and an additional 56 with a modified union shop or maintenance of membership.[40] Other unions have also negotiated union shop provisions. The checkoff of union dues is much more common in both the Federal service and at the state and local level. Union shop provisions and lesser forms of union security, including the agency shop, will probably become more widespread. However, they will face a major obstacle in areas where there is strong competition between unions and employee associations.

The sovereignty doctrine holds that Government must possess the right of final determination in all relations with its employees. Final and binding arbitration would appear to be ruled out by this principle. There is a long line of court decisions holding that general arbitration clauses in public employment represent an unlawful delegation of authority. However, in 1951 the Connecticut Supreme Court ruled that "arbitration may be a permissible method as to specific, arbitrable disputes."[41]

Despite the questionable legal status of general arbitration in the public service, the AFSCME has reported at least 133 agreements negotiated in 23 states providing for final and binding arbitration.[42] In 1966, the New York City Mayor's tripartite panel recommended final and binding arbitration of grievances "to the extent permitted by law,"

It would appear that the sovereignty doctrine is far from impregnable in the area of grievance arbitration. Unions at the Federal level want to replace advisory arbitration with final and binding decisions which would not be subject to veto by the agency involved. Some public officials may actually welcome the use of neutrals to free them from the touchy job of deciding disputes between lower level supervisors and employees. We expect that in time the same pragmatic approach which resulted in grievance

arbitration becoming widespread in private industry (95 percent of all agreements) will spread to public employment.

Arbitration to resolve impasses over terms of new agreements is another matter. In addition to the sovereignty obstacle, arbitration of contract terms is neither accepted in private industry nor does it have the support of unions and employers generally. Supporters of compulsory arbitration, whether in public or private employment, have yet to devise a system which will not at the same time lead to a breakdown of collective bargaining.

Conclusion

The advent of employee organizations and collective bargaining to the public sector is the most significant development in the industrial relations field of the last 30 years. In addition to the more obvious implications for employees, public officials and the art of government, it may have important effects on the labor movement and on labor-management relations in the private sector.

Trade union membership in the United States has not been keeping pace with the growth in the labor force. This has been due largely to the relative decline in employment in industries where unions have been strongest, and the failure of trade unions to appeal to the growing technical and white collar segment of the labor force. Equally important, is the tendency of young people to view the labor movement as just another pressure group out for itself, like big business, the farm lobby and other self-serving organizations.

The opening up of public employment to trade unions may change all this. As the fastest growing industry, government could provide a source of enough new recruits to reverse the decline in trade union membership.

Government employees who join unions could change the image of the labor movement to make it more acceptable to white collar employees and technicians in private industry. Finally, if the teachers of the United States join unions in large numbers, youngsters may reevaluate the role of labor in society.

If public employees show a preference for association-type organizations rather than unions, the effects may be different but nonetheless significant. Employee associations have already taken on some of the characteristics of unions; the reverse has also been true as unions try to compete for the allegiance of professional employees. This drawing together of the two types will continue. In time, some unions and associations may merge or agree not to raid one another; some associations may even affiliate with the AFL-CIO. In any event, whether employees are represented by unions or associations, the total strength of organized employees will be louder and more influential in the labor markets as well as in the legislatures of the country. The effect on students will still be great, whether their teachers are members of unions or associations which act a lot like unions.

In the collective bargaining arena, we are witnessing something that students of labor-management relations have for a long time held (and many continue to hold) could not exist, namely "no-strike bargaining." If the recent trend in state legislation continues, mediation, fact-finding and other methods of settling disputes will be used more extensively than ever before. To the extent that these approaches are successful, they may have some application to disputes in private industry. If they fail, it will provide additional ammunition to those who contend that collective bargaining without the right to strike is meaningless. Whatever the result, the experience should be instructive.

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41. Shenton, D. G., "Compulsory Arbitration in the Public Service," Labor Law Journal, March 1966, p. 141.

42. Education and Research Guide, op. cit.

Jackson work copy

Introduced: 3/20/70
Referred: Judiciary, Labor and Management and Finance

IN THE HOUSE

BY THE JUDICIARY COMMITTEE
BY REQUEST

HOUSE BILL NO. 796

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to a public employment labor relations Act."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 23.40 is amended by adding new sections to read:

ARTICLE 2. PUBLIC EMPLOYMENT LABOR RELATIONS ACT.

Sec. 23.40.070. DECLARATION OF POLICY. The public policy of the state regarding labor relations and collective bargaining in public employment is as follows:

(1) There are three major interests involved, namely: that of the public, the public employee and the public employer. These interests are to a considerable extent interrelated and therefore, it is the policy of this state to protect and promote each of these interests with due regard to the situation and to the rights of the others.

(2) Orderly and constructive employment relations for public employees and the efficient administration of government in the state serve to promote these interests. They are largely dependent upon the maintenance of fair, friendly and mutually satisfactory employee-management relations in public employment, and the availability of suitable machinery for fair and peaceful adjustment of whatever controversies may arise. It is recognized that whatever may be the rights of disputants with respect to each other in a controversy regarding public employment relations, neither party has the right to engage in acts or practices which jeopardize the public safety and interest and interfere with the effective conduct of public business.

Put in hands of an independent agency? No

(3) Where permitted by secs. 70 - 280 of this chapter, negotiations of terms and conditions of public employment should result from voluntary agreement between the public employer and its agents, as an employer, and its employees. For that purpose a public employee has the right, if he desires, to associate with others in organizing and in bargaining collectively through representation of his own choosing, without intimidation or coercion from any source.

(4) It is the policy of this state, in order to preserve and promote the interests of the public, the public employee and the public employer, to encourage the practices and procedure of collective bargaining in public employment subject to the public employee and related laws, regulations and policies governing public employment, by establishing standards of fair conduct in public employment relations.

Sec. 23.40.080. RIGHTS OF PUBLIC EMPLOYEES. Public employees shall have, and be protected in the exercise of, the right of self-organization and the right to form, join or assist any labor or employee organization, to bargain collectively through representatives of their own choosing, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection.

Sec. 23.40.090. COLLECTIVE BARGAINING UNIT. (a) The department may determine, in order to insure a clear and identifiable community of interest among employees affected, an appropriate bargaining unit and whether the employees employed in a single or several departments, divisions, institutions, crafts, professions, or occupational groupings, constitute an appropriate collective bargaining unit. No collective bargaining unit may include both professional and nonprofessional employees unless a majority of the professional employees and a majority of the nonprofessional employees vote for inclusion in the unit. No unit may include employees whose positions are in one of the classes in sec. 260 of this chapter with employees

whose positions are in another one of the classes under the same section. The department may determine a collective bargaining unit with or without providing the employees involved an opportunity to determine for themselves whether they desire to establish themselves as an appropriate collective bargaining unit.

(b) When the department permits employees to determine for themselves whether they will constitute a separate bargaining unit, the determination shall be by secret ballot, and the department shall provide, by regulation, for voting procedure to be employed in making the determination.

(c) In determining, modifying or combining collective bargaining units, the department shall consider the duties, skills and working conditions of the public employees, the history of collective bargaining by the public employees and their bargaining representatives, the extent of organization among the employees, and the desire of the public employees.

Sec. 23.40.100. REPRESENTATIVES AND ELECTIONS. (a) Representatives chosen for the purposes of collective bargaining by a majority of the public employees voting in a collective bargaining unit shall be the exclusive representative of all the employees in the unit for the purposes of collective bargaining. An individual employee, or a minority group of employees in a collective bargaining unit, may present grievances to the public employer in person, or through representatives of their own choosing, and the public employer shall confer with the employee regarding the grievances, provided that the majority representative has been afforded the opportunity to be present in the conference and that any adjustment resulting from the conference is not inconsistent with the conditions of employment established by the majority representative and the public employer.

(b) When a question arises concerning the representation of public employees in a collective bargaining unit, the department shall determine the representative of the unit by taking a secret ballot of the employees and certifying in writing the results of the election to the interested parties and to the public employer. There shall be included on a ballot for the election of representatives the names of all persons, having an interest in representing public employees, submitted by a public employee or group of public employees participating in the election, except that the department may exclude from the ballot one who, at the time of the election, stands deprived of his rights under secs. 70 - 280 of this chapter by reason of a prior adjudication of his having engaged in a prohibited practice. The ballot shall be prepared to permit a vote against representation by anyone named on the ballot. The department's certification of the results of an election shall be conclusive.

(c) When an election has been conducted under (b) of this section, in which the name of more than one proposed representative appears on the ballot and results in no conclusion, the department may if requested by any party to the proceeding within 30 days from the date of the certification of the results of the election, conduct a runoff election. In the runoff election, the department may drop from the ballot the name of the representative that received the least number of votes at the original election, or the department shall drop from the ballot the privilege of voting against any representative when the least number of votes cast at the first election was against representation by any named representative.

(d) Questions concerning the determination of collective bargaining units or representation of public employees may be raised by petition of any public employee or the public employer, or the

require 30%?

see p 3 of HB368

representative of either of them. When it appears by the petition that an emergency exists requiring prompt action, the department shall act on the petition immediately and hold the election requested within a time that will meet the requirements of the emergency presented. The fact that one election has been held within the preceding year may not prevent the holding of another election among the same group of public employees, if it appears to the department that sufficient reason exists.

Sec. 23.40.110. PROHIBITED PRACTICES. (a) It is a prohibited practice for a public employer individually or in concert with others to:

(1) interfere with, restrain or coerce public employees in the exercise of their rights guaranteed in sec. 80 of this chapter,

(2) initiate, create, dominate or interfere with the formation or administration of a labor or employee organization or contribute financial support to it, but the public employer is not prohibited from reimbursing public employees at their prevailing wage rate for the time spent conferring with its officers or agents; it is not a prohibited practice for an officer or supervisor of the public employer to remain or become a member of the same labor or employee organization of which its employees are members, when they perform the same work or are engaged in the same profession; however, a supervisor may not participate as an active member or officer of the organization,

(3) encourage or discourage membership in a labor or employee organization, employee agency, committee, association or representation plan by discrimination in regard to hiring, tenure or other terms or conditions of employment;

(4) refuse to bargain collectively on those matters provided for in sec. 250 of this chapter with the representative of a majority of its employees in an appropriate collective bargaining unit;

however, when the public employer files with the ~~board~~ department a petition requesting a determination as to majority representation, it may not be considered to have refused to bargain until an election has been held and the result has been certified to it by the department. A refusal to bargain shall include, but not be limited to, the refusal to execute a collective bargaining agreement previously agreed upon;

(5) violate the provisions of a written agreement concerning terms and conditions of employment affecting public employees, including an agreement to arbitrate, or to accept the terms of an arbitration award, when previously the parties agreed to accept an arbitration award as final and binding upon them;

(6) deduct labor or employee organization dues or assessments from a public employee's earnings, unless the public employer has been presented with an individual order for the deduction, signed by the public employee, and terminable at the end of any year of its life by the public employee giving at least 30 days' written notice of the termination to the public employer and to the representative organization.

(b) It is an unfair labor practice for a public employee individually or in concert with others to:

(1) coerce or intimidate a public employee in the exercise of his legal rights, including those guaranteed in sec. 80 of this chapter;

(2) coerce, intimidate or induce an officer or agent of the public employer to interfere with any of its employees in the exercise of their legal rights, including those guaranteed in sec. 80 of this chapter, or to engage in a practice with regard to its employees which would be a prohibited practice if undertaken by him on his own initiative;

(3) refuse to bargain collectively on those matters provided for in sec. 250 of this chapter with the authorized officer or agent of

the public employer, provided it is the recognized or certified exclusive collective bargaining representative of employees in an appropriate collective bargaining unit; a refusal to bargain includes, but is not limited to, the refusal to execute a collective bargaining agreement previously agreed upon;

(4) violate the provisions of a written agreement concerning terms and conditions of employment affecting public employees, including an agreement to arbitrate or to accept the terms of an arbitration award, where previously the parties agreed to accept an arbitration award as final and binding upon them;

(5) coerce or intimidate a supervisory employee, officer or agent of the public employer, working at the same trade or profession as its employees, to induce him to become a member of or act in concert with the labor organization of which they are members.

OK amend.

(c) It is a prohibited practice for a labor or employee organization or any other person to do or cause to be done in the interest of public employers or public employees, or in connection with a controversy over employment relations, any act prohibited by (a) and (b) of this section.

Sec. 23.40.120. INVESTIGATION AND CONCILIATION OF COMPLAINTS. If a verified written complaint is filed by or for a person claiming to be aggrieved by a prohibited practice, or a written accusation that a person subject to secs. 70 - 280 of this chapter has engaged in a prohibited practice is filed with the department, the department shall investigate the complaint or accusation. If it determines after the preliminary investigation that probable cause exists in support of the complaint or accusation, it shall try to eliminate the prohibited practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during this endeavor may be used as evidence in a subsequent proceeding.

Sec. 23.40.130. ~~FORM AND SERVICE OF~~ COMPLAINT AND ACCUSATION. If the department fails to eliminate the prohibited practice by conciliation and to obtain voluntary compliance with secs. 70 - 280 of this chapter, or if, before it attempts conciliation, it considers that the circumstances warrant, it shall serve a copy of the complaint or accusation upon the respondent. The form of the complaint or accusation and the subsequent procedures shall be conducted in accordance with the Administrative Procedure Act (AS 44.62), ~~and the department shall have the powers granted therein.~~

Sec. 23.40.140. ORDERS AND DECISIONS. If the department finds that a person named in the written complaint or accusation has engaged in a prohibited practice, the department shall issue and serve on the person an order or decision requiring him to cease and desist from the prohibited practice and to take affirmative action which will carry out the policies of secs. 70 - 280 of this chapter. If the department finds that no person named in the complaint or accusation has engaged or is engaging in a prohibited practice, the department shall state its findings of fact and issue an order dismissing the complaint or accusation.

Sec. 23.40.150. ENFORCEMENT BY INJUNCTION. The department may apply to the superior court of the judicial district ~~or division~~ in which the prohibited practice occurred for an order enjoining the prohibited acts specified in the order or decision of the department. Upon a showing by the department that the person has engaged or is about to engage in the practices, an injunction, restraining order, or other order which may be appropriate shall be granted by the court without bond.

Sec. 23.40.160. POWER TO INVESTIGATE AND COMPEL TESTIMONY. (a) For the purpose of the investigations, proceedings, or hearings which

the department considers necessary for the enforcement of secs. 70 - 280 of this chapter, the department may issue subpoenas requiring the attendance and testimony of witnesses and the production of relevant evidence.

(b) The department may administer oaths, examine witnesses, and receive evidence.

(c) The attendance of witnesses and the production of evidence may be required from any place in the state at any designated place of hearing.

(d) If a person refuses to obey a subpoena issued under secs. 70 - 280 of this chapter, any superior court for the district in which the contumacious person resides or is found may, upon application by the department, issue an order requiring him to comply with the subpoena.

Sec. 23.40.170. REGULATIONS. The department may ~~from time to time~~ issue, amend, or ~~rescind~~ regulations under the Administrative Procedure Act (AS 44.62) to carry out the provisions of secs. 70 - 280 of this chapter.

Sec. 23.40.180. PENALTY FOR VIOLATION OF ORDER OR DECISION. A person who violates a provision of an order or decision of the department is guilty of a misdemeanor and is punishable by a fine of not more than $500.

Sec. 23.40.190. PENALTY FOR OBSTRUCTING ENFORCEMENT. A person who forcibly obstructs, intimidates or interferes with an authorized representative of the department while the representative performs duties under secs. 70 - 280 of this chapter or because the representative performs those duties, is punishable by a fine of not more than $500, or by imprisonment for not more than one year, or by both.

Sec. 23.40.200. ARBITRATION. (a) Parties to a labor dispute

arising from the interpretation or application of a collective bargaining agreement affecting terms and conditions of public employment may agree in writing to have the department name arbitrators in all or any part of the dispute. The department shall appoint as arbitrators only competent, impartial and disinterested persons. Proceedings in arbitration shall be conducted in accordance with the Uniform Arbitration Act (AS 09.43.010 - 09.43.180) where applicable.

(b) The parties to a collective bargaining agreement may provide in the agreement a contract for arbitration to be conducted solely according to the Uniform Arbitration Act (09.43.010 - 09.43.180) if the Act is incorporated into the agreement or contract by reference.

Sec. 23.40.210. MEDIATION. The department may appoint a competent, impartial, disinterested person to act as mediator in any labor dispute either on its own initiative or on the request of one of the parties to the dispute; or the parties may select a mediator by agreement or mutual consent. It is the function of the mediator to bring the parties together voluntarily under such favorable auspices as will tend to effectuate settlement of the dispute, but neither the mediator nor the board have any power of compulsion in mediation proceedings.

Sec. 23.40.220. FACT FINDING. (a) If, after a reasonable period of negotiation over the terms of a collective bargaining agreement, a deadlock exists between a public employer and a labor or employee organization, either party or the parties jointly may request the department in writing to initate fact finding in order to make recommendations to resolve the existing deadlock.

(b) Upon receipt of a request to initiate fact finding, the department shall make an investigation, either informally or by a formal hearing, to determine whether the parties are, after a reasonable period of negotiations, deadlocked with respect to a dispute.

After its investigation the department shall certify the results of the investigation. If the certification requires that fact finding be initiated, the department shall appoint from a list established by the department a qualified disinterested person or three-member panel, when jointly requested by the parties, to function as a fact finder.

(c) The fact finder shall establish times and place of hearings and shall conduct the hearings under rules established by the department. Upon request, the department shall issue subpoenas for hearings conducted by the fact finder. The fact finder may administer oaths. Upon completion of the hearing, the fact finder shall make written findings of fact and recommendations for solution of the dispute and submit them to the parties and to the department. In making its findings and recommendations, the fact finder shall take into consideration among other pertinent factors the logical and traditional concept of public personnel and merit system administration concepts and principles vital to the public interest in efficient and economical governmental administration. Cost of fact finding proceedings shall be divded equally between the parties.

(d) Nothing in this section may be construed as prohibiting a fact finder from mediating the dispute, in which he is involved, at any time prior to the issuance of his recommendations.

(e) Within 30 days of the receipt of the fact finder's recommendations or within a time period agreed upon by the parties, both parties shall advise each other, in writing, as to their acceptance or rejection, in whole or in part, of the fact finder's recommendations and, at the same time, send a copy of the notification to the department. Failure to comply with the requirements of this section by the employer or employee representative is a violation of sec. 110(a)(4) and (b)(3) of this chapter.

Sec. 23.40.230. AGREEMENTS. Upon the completion of negotiations between a labor or employee organization representing a majority of employees in a collective bargaining unit and a public employer, if a settlement is reached, the employer shall reduce it to writing in the form of an agreement. The agreement may include a term for which it will remain in effect, not to exceed three years. Either party to the agreement has a right of action to enforce the agreement by petition to the department.

Sec. 23.40.240. MANAGEMENT RIGHTS. (a) Nothing in secs. 70 - 280 of this chapter shall interfere with the right of the public employer, in accordance with applicable law and regulations to

(1) carry out the statutory mandate and goals assigned to the department or agency utilizing personnel, methods and means in the most appropriate and efficient manner possible;

(2) manage the employees of the department or agency; to hire, promote, transfer, assign or retain employees in positions within the department or agency and in that regard to establish reasonable work rules,

(3) suspend, demote, discharge or take other appropriate disciplinary action against an employee for cause, or to lay off employees in the event of lack of work or funds or under conditions where continuation of work would be inefficient and nonproductive.

Sec. 23.40.250. SUBJECTS OF COLLECTIVE BARGAINING. (a) Matters subject to collective bargaining are the following conditions of employment:

(1) grievance procedures;

(2) application of seniority rights as affecting the matters contained herein,

(3) work schedules relating to assigned hours and days of

does not include wages

the week and shift assignments;

(4) scheduling of vacations and other time off;

(5) use of sick leave;

(6) application and interpretation of established work rules,

(7) health and safety practices;

(8) intradepartmental transfers; and

(9) other matters consistent with this section and the statutes, rules and regulations of the public employer.

(b) Nothing in this section shall require the employer to bargain in regard to ~~statutory and regulation provided~~ prerogatives of promotion, layoff, position classification, compensation and fringe benefits, examinations, discipline, merit salary determination policy and other actions provided for by law, and regulations ~~governing civil service~~.

Sec. 23.40.260. STRIKES. (a) For purposes of this section, public employees are employed to perform services in one of the three following classes:

(1) those services which may not be given up for even the shortest period of time;

(2) those services which may be interrupted for a limited period but not for an indefinite period of time; and

(3) those services in which work stoppages may be sustained for extended periods without serious effects on the public.

(b) Class (1) includes police and fire protection employees and jail, prison and other correctional institution employees. Strikes by employees in this class are prohibited. Upon a showing by a public employer of the department that employees in this class are engaging or about to engage in a strike, an injunction, restraining order, or other order which may be appropriate shall be granted by the superior court

of the judicial district ~~or division~~ in which the strike is occurring or is about to occur. If an impasse or deadlock is reached in collective bargaining between the public employer and employees in this class, and mediation and fact-finding have been utilized without resolving the deadlock, the parties shall submit to arbitration to be carried out under the provisions of the Uniform Arbitration Act (09.43.010 - 09.43.-180).

(c) Class (2) includes hospital, public utility, sanitation and public school and other educational institution employees. Employees in this class may engage in a strike, subject to the voting requirement of (d) of this section, for a limited time. The limit is determined by the interests of the health, safety or welfare of the public. The public employer or the department may apply to the superior court of the judicial district ~~or division~~ in which the strike is occurring for an order enjoining the strike. A strike may not be enjoined unless it can be shown that it has begun to threaten the health, safety or welfare of the public. A court, in deciding whether or not to enjoin the strike, shall consider the total equities in the particular case. Total equities includes not only the impact of a strike on the public but also the extent to which employee organizations and public employers have met their statutory obligations.

(d) Class (3) includes all other public employees who are not included in classes (1) or (2). Employees in this class may engage in a strike if a majority of the employees in a collective bargaining unit vote by secret ballot to do so.

Sec. 23.40.270. DEFINITIONS. In secs. 70 - 280 of this chapter, unless the context otherwise requires,

(1) "collective bargaining" means the negotiating by the public employer, by its officers and agents, and a majority of its

employees, by their representatives in an appropriate collective bargaining unit, concerning terms and conditions of employment of all employees in the unit in a mutual effort to reach an agreement with reference to the subject under negotiation;

(2) "department" means the Department of Labor;

(3) "election" means a proceeding conducted by the department in which the employees in a collective bargaining unit cast a secret ballot for collective bargaining representatives, or for any other purpose specified in secs. 70 - 280 of this chapter;

(4) "professional employee" means

(A) an employee engaged in work:

(i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work;

(ii) involving the consistent exercise of discretion and judgment in its performance,

(iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time,

(iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical processes; or

(B) an employee who:

(i) has completed the courses of specialized intellectual instruction and study described in (4)(A)(iv) of this

section; and

(ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in (4)(A) of this section;

(5) "public employee" means an employee of a public employer, except a person elected by popular vote, appointed to office by the governor; or a member of a board or commission, or a person who is employed by the public employer for less than 20 hours a week;

(6) "public employer" means:

(A) the State of Alaska;

(B) an organized borough,

(C) a city of any class, whether home rule or otherwise;

(7) "supervisor" means any individual having authority, in the interest of the public employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or to adjust their grievances, or effectively to recommend such action, if in connection with the exercise of the foregoing the exercise of the authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Sec. 23.40.280. SHORT TITLE. Secs. 70 - 280 of this chapter may be cited as the Public Employment Labor Relations Act.

* Sec. 2. AS 23.40.010 is repealed.

* Sec. 3. AS 23.40.040 is repealed.

Original sponsor: Judiciary Committee by request

Offered: 4/23/70
Referred: Labor and Management, Judiciary and Finance

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 796

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to a Public Employment Labor Relations Act."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 23.40 is amended by adding new sections to read:

ARTICLE 2. PUBLIC EMPLOYMENT LABOR RELATIONS ACT.

Sec. 23.40.070. DECLARATION OF POLICY. The public policy of the state regarding labor relations and collective bargaining in public employment is as follows:

(1) There are three major interests involved: that of the public, the public employee and the public employer. These interests are to a considerable extent interrelated, and therefore it is the policy of this state to protect and promote each of these interests with due regard to the situation and to the rights of the others.

(2) Orderly and constructive employment relations for public employees and the efficient administration of government in the state serve to promote these interests. They are largely dependent upon the maintenance of fair, friendly and mutually satisfactory employee-management relations in public employment, and the availability of suitable machinery for fair and peaceful adjustment of whatever controversies may arise. It is recognized that whatever may be the rights of disputants with respect to each other in a controversy regarding public employment relations, neither party has the right to engage in acts or practices which jeopardize the public safety and interest and interfere with the effective conduct of public business.

A M E N D M E N T

Offered in the HOUSE By The Judiciary Committee

To: CS(L & M) HOUSE BILL NO. 796

_____ SENATE BILL NO. ____

AMENDMENT: Page 3 Lines 6-10

Delete all material and insert in its place: "(b) When the department determines an appropriate bargaining unit, the determination is subject to approval by secret ballot of the employees concerned, and the department shall provide, by regulation, for voting procedure to be employed."

Page 15 Lines - Between 24 & 25

Insert: "(8) 'statute' and 'statutory' include local government charters and ordinances."

Page 15 Line 28

Add: "*Sec. 3. Nothing in this Act affects collective bargaining agreements in effect on the effective date of this Act."

ALASKA has enjoyed relative peace in the labor relations of the public sector, however there is a general feeling that this will not last for the following reasons:

1. The STATE and local Governments have, in most cases, responded to the need for capital improvements with such a high percentage of the tax dollar that the wage and working conditions of the public employee has suffered and have not kept pace with the private sector.

2. The public employee, in an effort to better his wages and working conditions, has made demands to be recognized as a unit for collective bargaining. Because the Alaska law is permissive regarding collective bargaining for public employees, the demands has been rejected in many areas. Such refusal leaves the employee group no alternative but to take strike action to attain their goals as they are denied the give and take of collective bargaining.

H.B. 796 is a well thought out, progressive piece of legislation in that it provides the working man his right to organize and bargain with his employer, yet at the same time protects the public safety and interest.

STATE OF ALASKA

KEITH H. MILLER, GOVERNOR

DEPARTMENT OF LABOR

OFFICE OF THE COMMISSIONER

BOX 1149 — JUNEAU 99801

April 8, 1970

The Honorable Tom Fink
House of Representatives
Alaska State Legislature
State Capitol
Juneau

Dear Tom:

I apologize for the delay in replying to your request to submit my comments on HB 796. My opinion on this bill is as follows:

On April 1, 1970, I testified before the House Judiciary Committee regarding the above bill. I stated that the bill was technically excellent, but that I did have some recommendations for improvement.

The committee clarified for me the terminology in line 9, page 4, of the bill. I had misread that section and thought that violation of one of the unfair labor practices, as included in this bill, precluded an individual from voting in an election. The committee pointed out to me that it merely precluded the placing of the name of an individual on the ballot.

Although this was the committee's opinion, it is not compatible with page 6 of the bill, (6) (b) which states that it is unfair labor practice for a public employee, individually or in concert to engage in unfair labor practices. The terminology does not include labor organizations. Thus, page 4 only precludes an individual from having his name placed on a ballot, but an individual is not a labor organization.

Next I discussed the language on page 4 and on page 5; lines 27 through 30, and 1 through 7 respectively. I stated that a time lag should be imposed between elections. I based this on my experience with the National Labor Relations Board, where there is a time lag of one year between elections. This election

bar precludes too frequent elections which, of course, are costly and time-consuming. The committee discussed a shorter time period and I agreed that a one-year bar is an arbitrary selection. I further stated that a sufficient showing of interest must be present before petitions should be entertained for a election. The NLRB uses a criteria of 30 percent of the employees in the alleged unit as a sufficient basis for the holding of elections.

If there is no criteria for showing of interest before an election is held, one employee in a unit could petition for such an election. Again, the procedure is costly and time-consuming.

I stated a personal opinion on page 5, lines 17 through 22, that I did not believe an officer or supervisor of a public employee should be permitted to remain a member of a labor organization, even though they are precluded from participating as an active member. I based my opinion on the concept that there is countervailing interest between management and labor organizations on occasion, and that this could result in a conflict of interest. Since that time it has been pointed out to me that such a bar may be appropriate in certain types of units, but in construction-oriented units rank and file members become supervisors. To preclude them from membership would also preclude them from union benefits, such as Health & Welfare or pension rights. I have no strong feelings on this particular issue and believe that preclusion from membership of supervisors could result in serious damage to the individual.

On page six, (6) (b), I thought that a labor organization should be included as one which may commit an unfair labor practice. Under the existing wording of that section, only a public employee, individually or in concert with others, may commit an unfair labor practice. A labor organization is not a public employee, but its agents may commit unfair labor practices under this act. Under the existing language, there would be no sanction.

On page eight, section 23.40.140, entitled "Orders and Decisions", there is provided an administrative procedure whereby unfair labor practice can be determined by the Department of Labor. I discussed, in general, the remedies available, such as reinstatement of, and back-pay for, discharged employees, etc. This subject is probably adequately covered in AS 23.40.150

which provides for enforcement by injunction of the Department's orders. As long as an order is reasonable and is supported by evidence, the Department can apply to the Superior Court for enforcement of said order.

I further discussed page 12, section 23.40.250, entitled "Subjects of Collective Bargaining". I pointed out that the "Subjects of Collective Bargaining" does not include wages which, I think, is a deficiency in the law.

In earlier testimony, Dwayne Carlson, lobbyist for AFL-CIO stated that he thought compulsory arbitration should be provided for Class II employees, as set forth on page 14 (c). He stated that after an injunction is obtained, the matter should be solved by compulsory arbitration. I spoke generally that I did not believe that compulsory arbitration is a good approach to labor relations. I believe that the parties have to hammer at their own agreement, and that through compulsory arbitration there is a tendency for both parties to take extreme positions and hope that the arbitrator will split the difference. I said the alternative to this was not particularly satisfactory either and that I would recommend a continuous bargaining process. In short, if an injunction is granted, it would not be retained indefinitely. The union would be allowed to strike again, and the pressure on the employer would continue. There is no truly adequate solution to this problem.

I told the committee that I had just reviewed a committee report by the Advisory Commission on Inter-government Relations, covering labor management policies for state and local government. This commission includes private citizens, members of the United States Senate, members of the U.S. House of Representatives, officers of the executive branch of the federal government, governors, mayors, members of state legislative bodies, and elected county officials. The commission had come up with some 16 recommendations, most of which were included in this piece of legislation. The commission did state that it was opposed to the striking of public employees. The commission recommended mediation and fact-finding as alternatives to the strike, and although it mentioned compulsory arbitration, it did not positively suggest this as a solution.

I went on to tell the committee that I believe there is no truly complete solution in the public sector, and that there is no magic formula that can be applied. I pointed out that although no state permits strikes by public employees, some 250 work stoppages occurred in 1968. I stated that it is the legislature's responsibility to consider all aspects of this legislation, and that one of the aspects of the legislation is timing. I stated that I did not believe that the legislature could legislate

April 8, 1970

The Honorable Tom Fink

maturity on the public employer or on the public employee group. The main problem in the public employee sector is that in the private sector there has been 35 years, or more, of collective bargaining experience, but that this is absent in the public sector. I stated that I thought that both parties had to gain a great deal of maturity and that legislation such as HB 796, may bring that maturity about.

After I concluded my testimony, Mr. Lewis Dischner, lobbyist for the Teamster's Union, stated that he disagreed with 90 percent of what I had said, and that he was in favor of the bill where I was opposed to it. He went on to say that he did not favor a "little" labor relations act, and the rest of his testimony was somewhat incomprehensible to me. After Mr. Dischner concluded his testimony, I made some additional comments.

One of my comments was that the committee should consider administration of this act by an independent agency, rather than by the executive branch of the government. I stated that since the Department of Labor is an executive agency, conflicts could result. I further pointed out that the Department of Labor could be organized and would determine the appropriate units as well as determine unfair labor practices, if any. This, to me, would not be very desirable.

I further stated that I disagree with Mr. Dischner in that HB 796 is based on the Labor Management Relations Act. I further stated that the most satisfactory thing about the National Labor Relations Board is its election procedures. I stated that these procedures are excellent and that they do afford employees the opportunity to express their free will as to selection or non-selection of their bargaining representatives.

Other people testifying at the committee hearing were Ferrell Campbell of the Operating Engineers Union, and Tom Brown, a lobbyist representing himself.

If you have any questions on the above, don't hesitate to give me a call.

Sincerely,

Bill

WILLIAM K. JERMAIN
Deputy Commissioner

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