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COLLECTIVE BARGAINING IN THE PUBLIC SECTOR:

A COMPARATIVE STUDY OF
CANADA AND THE UNITED STATES

Submitted to the Department of Political
Science of the University of Windsor in
partial fulfillment of the requirements
for the degree of Master of Arts

by

Stephen Dean Adams

Faculty of Graduate Studies

1970

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ABSTRACT

The primary purpose of this thesis is to demonstrate that stability in the public sector of the economy in the sphere of personnel relations can only be achieved through a structured form of meaningful bilateral negotiations. This will be done by constructing a conceptual framework of the bargaining process, then applying this model to the situations that exist in the public sectors at the federal level in both the United States and Canada. This application will be done with the end in mind of showing that the degree of conformity is directly related to the degree of stability.

ACKNOWLEDGEMENTS

I would like to take this opportunity to express my gratitude to Professor Lloyd Brown-John whose early encouragements in the field of public administration provided the base of interest which was necessary for the completion of this thesis. My debt to Professor Brown-John does not stop here, however, but extends along each of the many steps that were involved in the researching and writing of this thesis. I am also sincerely grateful to Dr. R.H. Wagenberg and Dr. J.C. Strick for their suggestions and advice.

I would also like at this time to thank my uncle, Mr. John Adams for the financial assistance which enabled me to return to school after a three year absence. I am also indebted to the Gulf Oil Company for the research fellowship which they so kindly made available to me this year. Finally, there are two people left whose contribution to the completion of this thesis I could never stress enough. They are, my father, whose intellect I have always tried to duplicate and my wife, Vicki, whose patience and faith carried me over the difficult times.

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INTRODUCTION

One of the most pressing problems in today's society is the question of personnel relations in the public sector. The immediacy and the magnitude of the problem can be seen in the fact that in both Canada and the United States, the government is the largest and fastest growing employer in the economy, and, as such, the importance of the relationships that exist between it and its' employees' is easily discernible. Yet stability in this sector, which is so important to the welfare of the economy and to the safety of the people, has not been achieved; proof of this statement is conveyed to us almost daily through the various mass media. It has become almost impossible to read a newspaper or listen to a news commentary without encountering an article, or hearing a news release which deals with the unstable personnel relations which exist in the public sector.

Personnel relations in this sector are in a state of flux; an environment of uneasiness and restlessness has permeated every level of government employment as a result of the public employees' concern over salaries and working conditions. This restlessness has been accompanied by a corresponding uneasiness on the part of the populace, created by fears for public order and safety in the face of public strikes and work stoppages. Strikes, such as the one in New York City by 10,000 members of the Uniformed Sanitationmen's Association, which resulted in 10,000 tons of garbage accumulating every day; or the recent strike in Montreal (November, 1969) by the police force, which led to widespread rioting, only heighten these fears and give a new impetus to the attempts being made to try to stabilize relations in the public

sector. Stabilizing relations does not imply the total elimination of industrial unrest. It only means that personnel relations are put in a context which enables both sides, management and labour, to work with each other in a constructive fashion in the hope that they can resolve their differences before such drastic action as outlined above is necessary.

In the private sector of the economy, before the emergence of unions and collective bargaining, industrial relations were also very unstable. The employer had absolute power; he hired and fired at his own discretion and he arbitrarily dictated the working conditions to which his employees would be subjected. The workers had no guarantees and no security; as long as they could find employment and keep it, they were fairly secure, but if they were beaten out of their job by stronger and more able men, they would no longer be in a position that would enable them to provide for their families. Their dependence on the labour market for their livelihood and well being was heightened by the absence of organized relief institutions that were backed by the wealth and by the power of the state. Neither the government nor the business elite were concerned with the workmen's plight, and if the individual workers had not put away a portion of their wages to safeguard against unemployment, both they and their families would go hungry. The workers were also at a disadvantage because the American business elite always ensured that a suitable labour market was present by manipulating immigration, and when this was not possible, the black man.¹

1

For a discussion of the American negro and his role as a supply component on the labour market, see Eli Ginzberg and Alfred S. Eichner, The Troublesome Presence, New York: Mentor Book, 1964.

The labour force as a consequence of the competitive market could almost be considered to be in a Hobbesian state of nature. The lack of uniform labour practices and regulations meant that the men did not have any common bonds or central power structure to regulate their relationship with one another. The cut-throat activity that resulted from this situation, is a matter of history which can be seen very clearly in the United States in the 1930's, when the depression heightened the competition between the workers.²

That labour relations in the private sector are no longer unregulated and abusive is due primarily to the presence of unions and collective bargaining. Relations between the employer and the employee are no longer governed on a unilateral basis, but are rather the result of bilateral negotiations which take place between the two parties in a collective bargaining framework. The bargaining process, as it has developed in the private sector, has had a great deal of utility as it has helped to regulate and to stabilize the once unpredictable relationship which existed between labour and management. The concretion of the relationship between the two has been to the advantage of both as it has allowed each to plan their activities.

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The conditions that existed in the labour market prior to and during the depression, are brought out very dramatically in John Steinbeck's, The Grapes of Wrath, and in Upton Sinclair's, The Jungle. "can't tell ya about them little fella's layin' in the tent with their bellies puffed out an' jus' skin on their bones, an' shiverin' an' whinin' like pups, an' me runnin' aroun' tryin' to get work -- not for money, not for wages!" he shouted, "Jesus Christ, jus' for a cup o flour an' a spoon o lard. An' then the coroner come." John Steinbeck, The Grapes of Wrath, New York: Viking Press, 1939, p. 260. "That was the competitive wage system; The workers were dependent upon a job to exist from day to day, and so bid against each other, and no man could get more than the lowest man would consent to work for." Upton Sinclair, The Jungle, New York: The New American Library, Inc., 1905, p. 308.

without an excessive fear of labour disruptions during the duration of a contract. The utility of the bargaining process has been that it has substituted a predictable and stable element in the relationship between the employer and the employee, for a very tenuous one.

In the public sector of the economy, the relations between the employer and the employee, have not followed the same course as in the private sector. This is due primarily to the theory of sovereignty which views the state as an omnipotent or monistic entity. The theory advances the belief that the modern state "possesses, or should possess, a single source of authority that is theoretically comprehensive and unlimited in its exercise".³ The state is the ultimate power in the society and as such, its dictates cannot and must not be questioned; "it issues orders to all men and associations... it receives orders from none of them".⁴

Inherent in this concept of sovereignty is the theory of sovereign immunity, which implies that the sovereign power is not amenable to a suit by an individual without its consent. As Alexander Hamilton wrote,

The contracts between a nation and an individual, are only binding on the conscience of the sovereign and have no pretensions to be a comprehensive force. They confer no right of faction, independent of the sovereign will.⁵

³ Kung Chuan Hsiao, Political Pluralism, London: Kegan Paul, Trench, Trubner and Co. Ltd., 1927, p. 2.

⁴ Harold J. Laski, A Grammar of Politics, London: George Allen and Unwin Ltd., 1967, p. 44.

⁵ Alexander Hamilton, The Federalists, Modern Library edition, 1937, pp. 529-530.

The origin of this concept can be dated back to the time of absolute monarchy in England when the kings claimed to rule by divine right. The ruler was the nucleus of all legislative, executive, and judicial authority, and as he supposedly exercised these prerogatives with divine guidance, it was inconceivable that any citizen would initiate action against him. "The doctrine of sovereign immunity was a self-evident truth to anyone who subscribed to the maxim, the King can do no wrong."⁶ Blackstone expanded on this point when he wrote; "The King moreover, is not only incapable of doing wrong, but even of thinking wrong; in him is no folly or weakness."⁷

Since this theory suggests that whatever the government does is right, it follows that the state cannot be compelled by either an individual or by a group of citizens to act against its will which means, of course, that the activities associated with collective bargaining do not readily lend themselves to adaptation in the public sector. Bargaining activity, as will be seen in chapter I, leads to a collective agreement, and this places restrictions on both signatories; a collective agreement is in essence a contractual relationship between two parties,⁸ and this type of association is not possible as long as a Government refuses to deviate from the theoretical stance of sovereign immunity.

⁶ Wilson R. Hart, Collective Bargaining in the Federal Civil Service, New York: Harper and Brother, 1964, p. 41.

⁷ Quoted in ibid., p. 41.

⁸ See Chapter I, supra., p. 23 for clarification of this point.

By the 1960's in Canada and the United States, however, it had become apparent that if stability was going to be maintained in the public sector the governments of these respective countries were going to have to relinquish some of their sovereign prerogatives. This course of action was necessitated because of the pressures that were being exerted on them to abandon the unilateral and paternalistic mold which had hitherto characterized personnel relations. What was being demanded was the introduction of a new system of employer-employee relations based on the concept of bilateral negotiations.

In order to implement this demand, and as will be shown in chapter II implementation was essential in order to ensure stability, both governments turned to the collective bargaining structure as it had developed in the private sector to see if it could be adapted to their unique environments. The result was that in both Canada and the United States the government voluntarily agreed to limit its sovereignty in certain areas under normal conditions to allow a form of collective bargaining for its public employees. The new system of employer-employee relations substituted bilateral negotiations for the old base of unilateral decision making.

The primary aim of this thesis is to demonstrate that if labour-management relations in the public sector are going to be structured on a basis of bilateral negotiations it is imperative that these relationships be embodied in a collective bargaining framework. If they are not the system can only breed instability.

In order to pursue this goal it is necessary to first

analyze collective bargaining as it has evolved in the private sector in order to gain a comprehensive understanding of the process and the connotations that have come to be attached to this activity. This general discussion of collective bargaining will serve two purposes; first, it will provide a basis on which future discussions of the process can be structured by explaining the terms and processes which are involved in it, and second, the discussion of the basic mechanisms of collective bargaining will facilitate the development of a framework. Once a conceptual framework has been developed in chapter I, a discussion of the inevitability of bilateral negotiations in the Canadian public sector will be initiated in chapter II.⁹ Chapters III and IV will be devoted to the application of the bargaining framework developed in chapter I to the structured forms of bargaining as they exist in the American and Canadian public sectors. The conclusion will consolidate the observations and conclusions obtained in the two previous chapters into a general hypothesis which will substantiate my contention that the basic framework of collective bargaining must be duplicated in the public sector before stability can be achieved.

⁹ The Canadian experience rather than the American experience is used to demonstrate the need to implement bilateral negotiations because of the accessibility to documents and other relevant material on the former and the inaccessibility of such material for the latter. However, a brief discussion on the American situation will be included in the first part of chapter III.

CHAPTER I

Collective Bargaining in the Private Sector

The term 'collective bargaining' was coined by Sydney and Beatrice Webb in 1891.¹ At first, limited connotations were associated with the phrase, as the activities linked with it were confined almost exclusively to discussions concerning wage rates. However, the evolution of the bargaining process, which has taken place since that time, has 'broadened its' scope to such an extent that today its usage covers the entire spectrum of organized relationships which exist between the employer and the employee.² One legal definition of the term is:

The performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached, if requested by either party, but such an obligation does not compel either party to agree to a proposal or require the making of a concession.³

¹ Although the term, 'collective bargaining', was not instituted until 1891, many of the processes which are associated with the term, and which will be discussed in this chapter, originated prior to this date. For a discussion of collective bargaining activities prior to 1891, see Neil W. Chamberlain, Collective Bargaining, New York: McGraw-Hill Book Co. Ltd., 1951, pp. 1-46.

² For an excellent discussion on the expansion of the scope of collective agreements see, "Labour Legislation and Collective Bargaining in the America's", International Labour Review, vol. 84 (October, 1961), pp. 282-283.

³ Bevars D. Maby, Labour Relations and Collective Bargaining, New York: The Ronald Press Co., 1966, p. 179. For an alternative discussion of the modern usage of the term collective bargaining, see Harold W. Davey, Contemporary Collective Bargaining, Englewood Cliffs, N.J.: Prentice-Hall, 1951, pp. 6-7.

Collective bargaining, therefore, is a bilateral process, through which two participants negotiate the terms and conditions which will regulate their relationships with one another.⁴

These two participants are management on the one hand and, on the other, the union, or its bargaining agent.⁵ The former represents the stock-holders or owners of the company, and the latter represents the employees in the bargaining unit. These two parties, however, are not free to negotiate in an unrestricted or unrestrained fashion because they are both subject to internal and external pressures.

Internal pressures are applied against both the parties engaged in collective bargaining activity because both the unions and the companies are complex organizations that are characterized by specialization and differentiation of responsibilities, and this diffusion of authority makes internal conflict almost a certainty. An illustration of this diffusion can be seen in the fact that both management and the bargaining agent normally delegate their powers regarding negotiations,

⁴ For the purposes of this paper, I will follow Maby's and Davey's view of collective bargaining which was that the process covers the entire spectrum of organized relationships that exist between union and labour. It should be pointed out, however, that there is an opposing point of view which breaks this spectrum into two parts; contract administration and contract interpretation, with the term 'collective bargaining' being associated with only the former. See Neil W. Chamberlain, "Grievance Proceedings and Collective Bargaining", Richard A. Lester and Joseph Shister, (eds.), Insights Into Labour Issues, New York: Macmillan, 1948, p. 86.

⁵ A "bargaining agent is the certified representative of the bargaining unit" and "bargaining unit means a unit of employees appropriate for collective bargaining"; see the Labour Relations Act, R.S.O. (1960), c. 202, s. 5(1).

first to a negotiations committee, and ultimately to a chief negotiator.⁶ Therefore, when trying to discern what internal pressures are applied against the negotiating process, one has to look at the role of the chief negotiator and work back from there.

Most of the studies dealing with the dynamics of interactions between institutions, have been undertaken under the "simplifying assumption that chief negotiators act with a single purpose in mind; to carry out the wishes of the organization they represent".⁷ But this underlying assumption is not exactly correct, because organizations, although they are structured on a hierarchical basis, do not have a monolithic goal pattern. This is not to say that organizations do not have a well defined goal pattern which permeates the

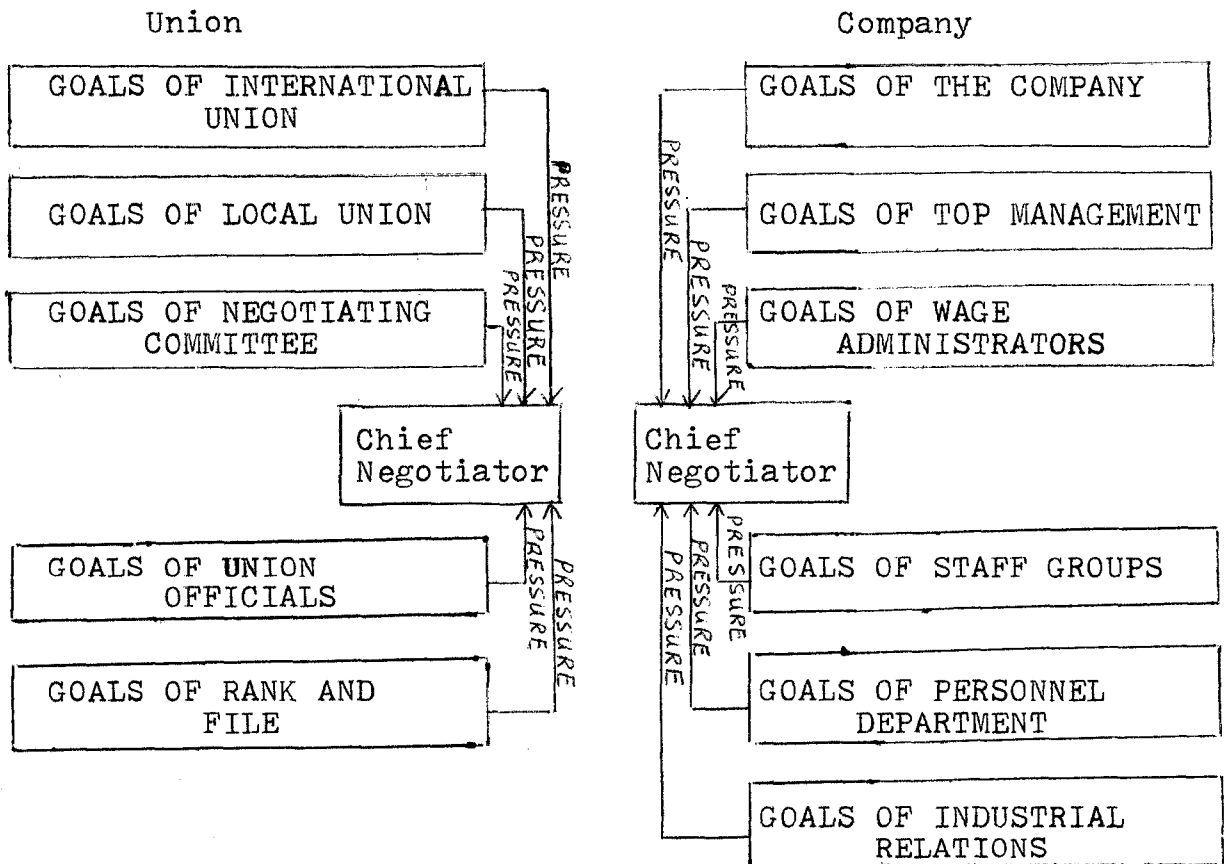
⁶ For a comprehensive discussion of bargaining agents and management and their devolution of power, see Edward E. Herman, "Determination of the Appropriate Bargaining Unit", Occasional Papers L2-26, Department of Labour, (November, 1966), pp. 2-6.

⁷ Robert B. McKersie, Charles R. Perry and Richard E. Walton, "Intra-organizational Bargaining in Labour Negotiations", Journal of Conflict Resolution, vol. 9 (December, 1965), p. 463. For an interesting discussion concerning whether these internal divisions and conflicts should be allowed to appear at the bargaining table, principle of dissent, or whether they should be suppressed, principle of unanimity, see William M. Evan and John A. MacDougall, "Interorganizational Conflict: A Labour-Management Bargaining Experiment", Journal of Conflict Resolution, vol. XI (December, 1967), pp. 398-413. See also Thomas Schellings, Strategy of Conflict, New York: Oxford Press, 1963, pp. 21-34, for a discussion of how the cohesive of demands effects the bargaining strategy.

structure from the top to the bottom, but rather that this pattern can only be the ultimate goal of the organization. The specialization and differentiation of responsibilities, within the structure itself, gives use to different intermediary goals through which their initiators hope to pursue and to achieve, the ultimate goals of the organization.

It is these sub-goals that exist within the organization, which apply pressure on the negotiating process. Pressure is applied because each specialized function in the organizational hierarchy wants to ensure that the negotiator follows a policy which is conducive to its own plans and desires. Figure one illustrates this point.⁸

Figure 1



⁸ This diagram is a modified version of one which appeared in McKersie, op.cit., p. 463.

Internal influences, however, extend beyond the pressures which are applied by the organization and its component parts; they are also present within the minds of the negotiating team. The men involved in the negotiating process cannot divorce their own values, beliefs, perceptions and images from their work, and as a consequence, the verstehen influence becomes an important variable in the process. The verstehen influence is an important variable because it suggests that an actor sees behavior solely on the basis of his understanding of his own motivations. Therefore, concept formation and planned strategy cannot be construed on neutral grounds but must be the result of each individual's perception of himself and his drives. Consequently, each actor in the negotiating team can be seen to have a personal influence on the outcome of the negotiations.⁹ Weber, however, would not have accepted this last statement; he would have argued that if the organization was structured in a legal-rational fashion¹⁰ all outputs of the organization, including any collective agreement, would be fairly value free due to the filtering process that is inherent in all such structures. But, I would suggest one can question the applicability of Weber's argument in this case;

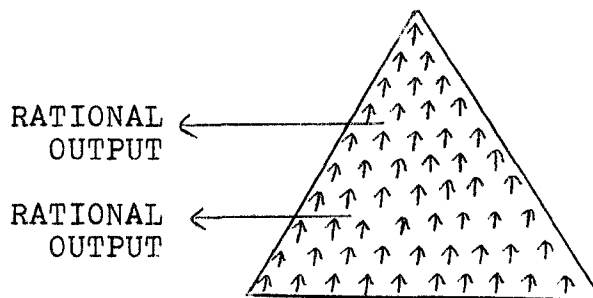
⁹ For a discussion of the Weberian concept of the verstehen operation, see: Arthur L. Kalleberg, "Concept Formation in Normative and Empirical Studies", American Political Science Review, vol. 63, 1969, pp. 26-39.

¹⁰ Weber claimed that advanced bureaucracies stand in a specific sense under the principle of sine ira ac studio. This means that bureaucracies are dehumanized; they eliminate from official business love, hatred and all purely personal, irrational and emotional elements. See Max Weber, Essays in Sociology, edited by H. Gerth and C. Wright Mills, New York: Oxford University Press, 1958, pp. 215-216.

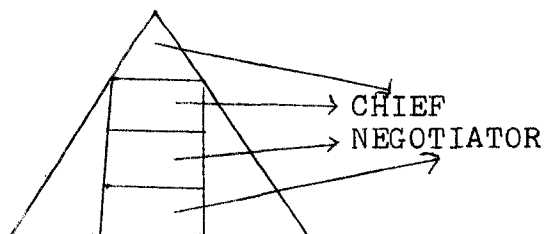
the negotiating team and the chief negotiator, although they are responsive to influences from their respective organizations, are not part of a structural hierarchy when they are involved in negotiations.

Figure (2) illustrates, that in the collective bargaining process, the filtering process does not function properly because all pressures are not filtered through the organization. Some of the pressure is exerted, as illustrated, directly on the negotiator. Therefore, the bargaining process is not strictly a rational one. This leaves the negotiator with a greater flexibility in determining outputs than in any other process in the organization and this means, of course, that he is more vulnerable to his own verstehen prejudices.

Figure 2



Normally in a legal-rational structure, the verstehen processes are filtered out as the policies move up the hierarchy. Even if the policy is emitted from the organization at a level lower than the apex, the policy has had some filtering, and is still considered to be rational.



For the negotiating process, however, the structure can be considered to be departmentalized with each department exerting influence directly on the negotiator, without the benefit of any prior filtering process.

Besides the major sources of internal pressure which have been discussed above, there are also a number of external forces which apply pressure on both the negotiating process and on the two organizations involved; these are labour laws, the mutual need for co-operation, public opinion, the relative public interest and the threat of industrial warfare. These influences are extremely important, as they help to mould the images and attitudes of the two sides, and both must incorporate them into their valuations and judgements.

The requirements of law are an important influence that must be taken into account by both sides because they define the parameters within which management and union operate. For example, in 1944 Canada introduced the Wartime Relations Regulations in Dominion Order In Council P.C. 1003;¹¹ these regulations were patterned after the United States' Wagner Act of 1935.¹² They legislated that a corporation not only had to recognize a union that had obtained certification from the National Labour Relations Board, but also stipulated that it must meet, and negotiate, in good faith with the designated agent. Labour laws, besides this one basic example, also affect the company's and the union's manoeuvrability by defining minimum wage levels and the maximum number of hours that an employee can be required to work under. Labour legislation also dictates

¹¹ For a discussion of these regulations and the Industrial Relations and Disputes Investigation Act (IRDI) of 1948, which replaced them, see Herman, op.cit., pp. 21-27.

¹² For a discussion of the National Labour Relations (Wagner) Act of 1935, see Neil W. Chamberlain, Collective Bargaining, op.cit., pp. 300-301.

the conditions under which the union may be certified, the size of the bargaining unit and the type of unit that is to be recognized.¹³ The above examples are only a few illustrations of the host of statutes¹⁴ that affect both union and management, but they sufficiently demonstrate the point that both union and management have to be consciously aware of the limitations this external pressure places on their activities.

The second external influence that exerts pressure on each of the organizations and, therefore, has to be taken into account, is the need for mutual co-operation on the part of both management and labour. There exists between these two parties a genuine interdependence. Both realize that they are dependent on the ongoing enterprise, and consequently are limited in the commitments¹⁵ they make by the requirement that the enterprise must be kept going.¹⁶ The company realizes that it requires employees to carry out the various functions that are essential to its production, and the employees recognize

¹³ These legislative acts all come under the jurisdiction of respective Federal and Provincial Labour Relations Boards.

¹⁴ For a detailed discussion of Labour Laws and their effect on the bargaining process, see Charles Lipton, The Trade Union Movement of Canada, 1827 - 1959, Montreal: Canadian Social Publications Ltd., 1966. Also H.D. Woods and L. Ostry, Labour Policy and Labour Economics in Canada, Toronto: MacMillan, 1964, pp. 3-159.

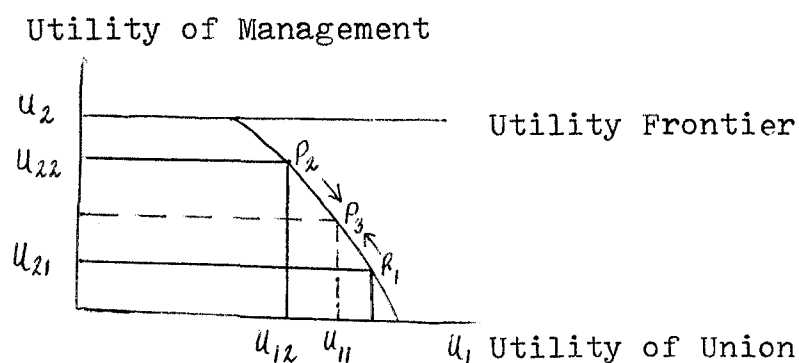
¹⁵ "Commitments" is used here to denote a bargaining stance that is non-negotiable. See Schelling op.cit., pp. 24-28.

¹⁶ Survival in this context refers to the economic definition which stipulated that a satisfactory profit must be made to induce the entrepreneur to continue the operation.

their need for employment. Therefore, since both sides realize their need for one another, a mutual ground for co-operation evolves, and as a result introduces a cautionary element into the stance of both sides.¹⁷

This concept of co-operation as a restraining device that ensures the continuance of the operation, which is taken to be relative to the optimum position of both the employer and the employee, was brought out by Zeuthen when he constructed his utility frontier;¹⁸ see figure (3).

Figure 3



The points P_1 - P_2 represent the offers of the union and the management respectively. These points show the differing degrees of utility that will be achieved by each side. Settlement can only come about when $U_{22}=U_{21}$ * $U_{11}=U_{12}$ which is shown by P_3 .

¹⁷ For a discussion of the cautionary element in bargaining necessitated by the survival instinct see Schelling, op.cit., pp. 21-22.

¹⁸ For a complete discussion of Zeuthen's utility frontier and general theory of bargaining, see Robert L. Bishop, "A Zeuthen-Hicks Theory of Bargaining", Econometrica, vol. 32 (July, 1964), pp. 410-417. Also see Edward Saragdar, "Zeuthen's Theory of Bargaining", Econometrica, vol. 33 (October, 1965), pp. 802-813.

He suggested that the bargaining undertaken by both sides, take place upon the utility frontier, and that eventual settlement results from the bargainers conducting their activities in a rational fashion. By rational, Zeuthen means that each part considers holding out for a more favourable settlement than the one offered to him, only when he feels that such an action will yield a positive expected gain. A positive gain, he argues, cannot be obtained by either side if an irreconcilable conflict arises; therefore, both sides, when they pursue net gains, will be sure to stay on the utility frontier which represents all solutions that are both possible and practical.¹⁹

The third external influence that plays an active role in determining the direction and limitations of demands on the part of both management and labour, is public opinion. The pressure exerted by this force is very potent, and as a consequence, must be weighed very carefully by both sides. A miscalculation by either could alienate public opinion, which would create a very precarious foundation for either of

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The co-operative element as a restraining force is played down by Vernon H. Jensen, "The Process of Collective Bargaining and the Question of it's Obsolescence", Industrial and Labour Relations Review, vol. 16 (July, 1963), pp. 546-556. He suggests that collective bargaining is not a process of reasoning, nor is it primarily a process of economic analysis; he claims that it is a relationship which is based on the sole criteria of power. The settlement which is finally agreed upon is not the culmination of rational arguments based on market conditions and prevailing economic tendencies, but is rather the result of a primitive power struggle when each side attempts to extract as much from its opponents as its relative strength permits.

their respective positions. Reasons for the potency of this force are: first, it has a real and definite effect on the morale of both the management and the union; and second, it may provoke legislative action aimed at settling the dispute to the detriment of one of the parties involved.

Public opinion's effect on the morale of both participants is an important variable on the outcome of any dispute; for example, if the public is favourable to the position of the union, its membership is reinforced by the knowledge that it is not standing alone against management. The financial hardships that are imposed upon the employees due to the dispute, are alleviated somewhat by the moral support that comes from the community. The bargaining unit's position is also enhanced by their knowledge that management, in the face of adverse public opinion, is probably going to be compelled to retract from its position; if the company does not do so, it is running the risk of being blamed for prolonging the strike, which may very well alienate the public from its products in the long run.²⁰ If, conversely, public opinion is favourable to the position of the company, the above effects are reversed. The union feels not only isolated from the company, but also from the entire community and the psychological impact on its membership may weaken their position

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The argument can be made that the alienation of the public to a company is also detrimental to the position of union membership in the long run, as it may cut down on employment levels. However, for the purposes of this paper, we will assume that the company's growth rate, rather than its present capacity, is placed in jeopardy.

considerably. The company, when it has public opinion on its side, will be reluctant to give in to the union's demands because it will feel that it is operating from a position of strength.

Public opinion, beside giving moral support to participants, may also result in governmental intervention or legislative action aimed at terminating the dispute, and when the government intervenes in a conflict it cannot do so in a completely neutral fashion. Thus public opinion can force the government to take action, and when it does, it usually will be sympathetic to the side public opinion is favouring. For example, in 1945 the public was outraged at reports that the U.A.W. had withdrawn all their maintenance men from the Ford power house in Windsor; an act that not only completely crippled the Ford operation, but actually endangered the property. The public outcry initiated by this behavior, forced Ontario's Premier Drew to act; he requested immediate assistance from Prime Minister Mackenzie King, who responded by authorizing the dispatch of Royal Canadian Mounted Police reinforcements to Windsor, and by mobilizing tanks and troops in Camp Borden.²¹

Public opinion is therefore an important variable which sets the limits in which the participants involved in the bargaining process are free to act. If they overstep these limits they arouse public hostility, and as a consequence, a great deal of pressure can be levied against them which cannot help but hurt their stance. The importance of public

²¹ For a complete discussion of the Ford strike, see Saragdar, op.cit., pp. 48-50.

opinion can be seen in the fact that during a strike, or just prior to it, both sides attempt to win public support or at least try to ensure that it is not hostile to them.

The fourth external influence that has an effect on both management and labour is the related concept of the public good.²² Modern society is not a laissez-faire one where each component is free to pursue its own ends oblivious to the needs of the others. Today all gains in society must be relative; that is, every organization must ensure that its programmes are in concert with the aims of the entire society. If they are not, the society will not tolerate them and will force changes through legal means. Therefore, each participant in the bargaining process must ensure that its position falls within the range of public tolerance which is defined by the general aims of the society; if they do not, they face almost certain interference on the part of the government. Examples of this type of interference can be seen in many Latin American countries where foreign owned companies are forced to alter their relationship with their domestic employees if they wish to continue operating.

The fifth external influence that has an effect on both management and labour is the threat of industrial warfare. This activity includes an entire spectrum of alternatives ranging from a shutting down of the plant by the company, to

²² For a discussion on this external influence, see Arnold R. Weber, Collective Bargaining: Problems and Perspectives, New York: The Free Press of Glencoe Inc., 1961, pp. xxviii to xxxii.

a strike by the workers. The threat of any such action is a very significant influence, because this type of activity has serious implications for both the company and the workers.

When a serious dispute breaks out between a company and a union, both sides have a number of alternative courses of action they can threaten to pursue. The company in the case of hostilities can use the suicidal technique of going out of business;²³ or it can attempt to weaken the union by either forcing a strike when environmental conditions are unfavourable, or they can jam the grievance procedure to undermine the Union's effectiveness and "use their superior financial resources to carry numerous grievances to arbitration, to pauperize a union's treasury".²⁴ Another tactic open to the company is the formation of employer leagues with other industries such as the Canadian Manufacturers Association. Collectively the members of the C.M.A. constitute a very formidable body, and as such, are in an excellent position to wage a propanganda war against unionism; this has the effect of further weakening the union's treasury because the unions have to retaliate. Management organizations also take an active role lobbying in both Ottawa and the provincial capital for anti-labour legislation.²⁵

²³ The threat of this technique was used in Windsor in the Spring of 1969 when the Plasticast Corporation, a division of Noranda Mines threatened to close down their plant. The warning was credible to the union and helped to bring about a settlement.

²⁴ Mabry, op.cit., p. 375.

²⁵ For a discussion on the organization and some of the activities of the Canadian Manufacturers Association, see Francois Lemieux, "Lobbying Plus the C.M.A.", Politics Canada, Paul Fox (ed.), Toronto: McGraw-Hill Co., 1966.

Another weapon at the disposal of management, is its legal ability to utilize strike breakers.

The unions, on the other hand, also have a number of weapons at their disposal. In a labour dispute the strategy of each party is to bring as much pressure on the opponent as possible in order to force him to concede the issue or issues at hand, and the union accomplishes this objective primarily by utilizing its most potent weapon, the strike.

The strike has been the traditional means used to resolve serious conflicts in the private sector if negotiations failed to produce a peaceful settlement. In most cases, striking employees leave the plant, one or more pickets are posted, the situation is publicized and the plant does not operate, as all services are withheld.²⁶

The workers by "voluntarily withholding their labour, deprive an employer of an essential resource",²⁷ which is required for the operation of the firm. This weapon can even become more powerful if the unions are able to extend their influence to other workers servicing the company, as this type of activity can deprive the employer of other essential resources or separate him from his markets. But unions can only utilize the strike legally at a specific stage in the negotiations process, usually after conciliation, and as a result have to rely upon other weapons at the other stages.

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J.H. Foeger, "The Partial Strike: A Solution in Public Employment", Public Personnel Review, vol. 30 (April, 1969), p. 85.

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Mabry, op.cit., p. 377.

It may encourage its workers to resort to slowdowns, sabotage, or absenteeism, all of which wreak havoc with a company's production schedule, and which can result in severe financial loss to the manufacturer.

Also, unions, like management, utilize lobbying and propaganda techniques in a continuous attempt to ensure suitable government policies and a favourable public image, as both of these factors are necessary prerequisites to the creation of a suitable labour environment.

The above discussions have illustrated the point that labour laws, the mutual need for co-operation, public opinion, the relative public interest, and the threat of industrial warfare are all potent external influences that effect the bargaining process; neither side can afford to ignore any of them when formulating their bargaining strategy. Each party must ensure that during the give and take process of negotiating they keep in touch with the internal goals of the organization while remaining at the same time in concert with the external forces being applied against them. If they do not, the negotiations, which may be looked upon as a conversion process leading to the collective agreement, will probably be to their detriment.

The negotiations that take place between management and labour are, "akin to the creation of a constitution";²⁸ the collective agreement that comes out of the conversion

²⁸ John T. Dunlop and James J. Healy, Collective Bargaining: Principles and Cases, Howewood, Illinois: Richard D. Irwin, Inc., 1953, p. 86.

process, like a constitution of a state, tries to reflect past experiences while at the same time attempting to embody provisions aimed at covering all possible eventualities. The collective agreement's adaptative task is made somewhat easier, however, in that it comes up for renewal after a specific length of time, which usually is between one and three years.

Therefore, since no two unions or companies have had an identical past or expect to experience exactly the same future, no two labour agreements can be exactly alike. However, the categories into which the terms of all labour agreements can be classified are fairly uniform. These classifications are: the coverage and applicability of the agreement, wages and wage supplement programmes, working time, seniority and job rights, and operating rules and industrial jurisprudence.²⁹

The first section of the collective agreement is usually concerned with the coverage and the applicability of the agreement. It contains a number of clauses which provide

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An alternative classification of the collective agreement was set forth by Professor H.D. Woods in his essay "Some Problems Related to Collective Bargaining in the Public Service", Collective Bargaining in the Public Service, Fredericton, N.B.: Canadian Labour Federation, (May 5, 1960). In this article he claimed that the agreement could be broken down into three parts; first clauses which deal with the relationship between the two parties which include (a) the union recognition clause, and (b) the management's rights clause; second, the substantive clauses which contain employment standards; and third, the procedural clauses which establish the steps to be taken to ensure that the rights shall be protected and obligations observed. This classification scheme is set out in greater detail in H.D. Woods and Sylvia Ostry, Labour Policy and Labour Economics in Canada, Toronto: MacMillan of Canada, 1962, pp. 12-15.

the foundation for the rest of the agreement: for example, the clauses usually state the purpose of the agreement; identify the parties bound by the agreement; outline the rights and responsibilities of each, and define the duration for which the agreement is valid.³⁰

A second segment of the contract deals with wages and wage supplement plans as a single category; for together, they constitute labour costs to the employer.³¹ As a result, this section is one of the most complex of any appearing in the agreement, as it not only has to establish a classification, but also has to deal with such wage supplements as holiday and vacation pay, pension plans, separation payments, insurance policies, hospitalization or disability benefits, and supplementary employment benefits. It is usual to also include in this section, a number of clauses which deal with the rights of laid-off and retired employees in so far as the above benefits are concerned. The clauses stipulate the procedures to be followed in determining their eligibility for the benefit programmes. This section also defines the financial contributions for the various programmes that are to be made by both

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An example of a collective agreement which conforms roughly to this classification scheme, is given in Chamberlain, Collective Bargaining, op.cit., Appendix B., pp. 499-525. The agreement reproduced in these pages is the one which was signed by General Motors and the United Auto Workers on May 29, 1950.

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See M.W. Neder, "The Theory of Union Wage Policy", in Labour and Trade Unionism, New York: John Wiley and Sons, 1960, pp. 3-27.

the company and the employees; sets forth the means of administering the programmes; outlines the benefits to be provided by these activities, and specifies the appeal procedure which will be provided to handle any disputes and grievances.

The third section dealing with the working time of the employees is also a very intricate part of the collective agreement.³² It is closely aligned to the second section as it specifies the amount of time that an employee will have to work before he qualifies for the specified wage rates and wage supplements. But this section is far more inclusive than this statement would suggest, as the clauses in this segment usually govern the days that will be worked, the number of hours per day, which hours of the day the employees will be required to work, which may also include shift rotation, the amount of time that can be devoted to set-up, washup and housekeeping, and the number of breaks or reliefs that the employee can take. As a result, working time constitutes an important ingredient of the agreement for both the employer and the employee. The former is concerned with the regulations controlling the hours of work, because various time studies have demonstrated that the number of hours worked, directly influence the unit labour cost. But, besides allowing the company to ensure that its marginal cost of labour always remains properly proportionate to the unit cost, the stipulations regarding hours of work

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For a thorough discussion of this section of the collective agreement, see Maurice S. Trotta, Collective Bargaining, New York: Simons-Boardsman, 1961, pp. 251-256.

also allow it to run the plant in an efficient manner, as it is able to draw up its production plans months in advance. The latter is interested in the hours of work that are going to be expected of him, because it is only through a detailed knowledge of both his obligations and rights concerning his working time, that an employee can plan his leisure time.

A fourth section of the collective agreement usually deals with seniority and job rights. "In a society ruled by law rather than men, arbitrary and capricious actions by those in authority that influence the lives of others, are restricted by rules and regulations".³³ Collective agreements attempt to extend this rule of law to the industrial sphere. Of fundamental importance to every worker, are questions pertaining to job rights, promotion, transfer, demotion, lay-off and recall, shift selection and job assignments. If peace and goodwill are to prevail in the industry, it is important that some arrangements be made that are considered to be fair and just in order that the job rights can be determined and job opportunities can be allocated in an agreeable fashion. The basic solution that has been accepted in most industries is the one based on the seniority principle.³⁴

Seniority systems, however, are very complex and fall into many conflicting categories; the two main ones are most

³³ Mabry, op.cit., p. 337.

³⁴ For an interesting and concise discussion on seniority, see James J. Healy, Creative Collective Bargaining, Englewood Cliffs, New Jersey: Prentice-Hall Inc., 1965, pp. 33-34. In his discussion of seniority, the author mentions a new term, 'juniority', which is gaining popularity in plants with substantial supplementary unemployment benefits.

commonly referred to as straight seniority and qualified seniority. "Straight seniority signifies that length of service is a prime requisite for any preferences, while qualified seniority implies that an employee must have specific qualifications, such as experience and specialized skills to receive a preference."³⁵ These definitions, however, give rise to a number of questions such as: To whom does seniority apply? How is seniority computed? How may it be lost?

Each industry has its own conditions that determine the answers to these questions. It usually takes a number of years of trial and error before a definition can be formulated that is adequate to meet both the operating needs of the company and the workers' concept of justice. However, there are a number of general principles that can be mentioned and examined.

Seniority is usually only granted to full-time employees after they have finished a probationary period, and is dated either from the day of employment, or the day probation is terminated. It may be based on the length of service in the company, within a department, within a particular plant, or on the job, depending on the stipulations in the collective agreement. Each individual contract will also specify how seniority may be lost, but a number of common reasons are: discharge for cause, voluntary quitting, failure to return within a stipulated period during lay-off, and absence from work for a given period of time without notice.

³⁵ Trotta, op.cit., p. 356.

Seniority is one of the most useful concepts in labour relations, as it is used not only to determine a wide variety of job rights, but also to determine employment rights during lay-off, which include the priority list for recalling workers, the establishing of transfer rights, and the opportunities for 'bumping'³⁶ other employees with less seniority. Therefore, in view of the above discussion, seniority clauses can be seen to constitute a very important part of the collective agreement.

A fifth section of the collective agreement is usually concerned with operating rules and industrial jurisprudence. This segment of the agreement outlines the basic rules that govern the conduct of a plant and set forth the punishment that can be expected in case of an infraction of these rules. Also included in this section are clauses pertaining to the necessity for, and the mutual advantage of, maintaining safe and healthy working conditions.

Negotiations of contracts in this area rarely raise serious or basic problems. The disputes arising out of this section usually occur after the contract has been signed in respect to methods and intent of the parties. Settlement of these disagreements is usually obtained through participation of both sides in the grievance procedure. In most cases, if an agreement cannot be concluded, the matter must be referred

³⁶ Bumping refers to the procedure which allows one employee, if he is qualified, to request and to obtain the job of another employee who has less seniority.

to an impartial arbitrator.

The contractual grievance procedure is the usual way of settling differences arising out of a collective agreement...In broad outline, grievance procedures have been largely standardized...though in detail, considerable variation still exists. The provisions which set out the various procedural stages are usually very detailed. Normally they provide for a succession of steps through which complaints may be processed from lower to higher echelons in the management and union hierarchy. In the case of grievances that cannot be resolved at any one of the steps by the parties themselves, reference to an arbitration jointly chosen by the parties, is usually provided for, as the last step.³⁷

The arbitrator does not have any authority to alter the agreement; he simply interprets it and both sides must abide by his decision.

The collective agreement is not a contract in the strict sense, but in specific **situations** it can legally bind the parties to follow a prescribed course of behavior in their relationships with one another.³⁸ As a result, the negotiations leading up to

³⁷ _____, "Labour Legislation and Collective Bargaining in the America's," International Labour Review, vol. 84 (October, 1961), p. 285.

³⁸ In Canada, the legal status of the collective agreement was recognized in the 1944 Wartime Labour Relations, P.C. 1003, and this principle has been extended in both federal and provincial statutes since that time. Canada is unique in the fact that during the lifetime of a collective agreement, disputes over its application must be settled by arbitration with the strike and lockout explicitly banned; this compulsory arbitration based on the content of the collective agreement, implies that the agreement is a legal contract. The Ontario Labour Relations Act, R.S.O. 1960, C. 10 Section 37, reads: "A collective agreement is...binding upon the employer and upon the trade union that is a party to the agreement...and upon the employees in the bargaining unit defined in the agreement. For a thorough discussion on this point see C.H. Curtis, The Enforcement of the Collective Bargaining Agreement, Kingston, Ontario: Industrial Relations Centre, Queen's University, 1967, pp. 1-3. For an argument against this type of compulsory settlement, see Stanley A. Little, "Union or Association Objectives: A Labour Viewpoint", Collective Bargaining in the Public Service: Theory and Practice, Kenneth O. Warner (ed.), Chicago, Illinois: Public Personnel Association, 1967, p. 55.

the collective agreement are often drawn out, and tend to become quite tedious, as both sides are careful to ensure that they receive their basic requests while not becoming a partner to any disadvantageous provisions that would bind them for the length of the contract. A great deal of attention is given to the language in which the terms are phrased, and usually the document is constructed or reviewed by a team of attorneys before it is signed. It is not surprising therefore, that the negotiations often break down. When this occurs, one, or all, of three techniques can be employed to bring about a meeting of minds of the participants in the labour dispute; these are mediation, conciliation and arbitration.

Mediation occurs when a neutral party is appointed³⁹ to act as a go between. When negotiations break down and the two parties refuse to meet at the negotiating table, a neutral mediator can play a very important role. His most important function and his first concern, is to discover some common area in which the combatants may resume negotiations. To this end, the mediator often arranges to meet privately with each party to determine the true bargaining position of each, which for strategic reasons, they would not want to reveal fully to the other side. These private meetings usually show him how far the two sides really are from settlement, and from this understanding, he is able to map out his future strategy. This

³⁹ Mediators are usually appointed by a neutral government body. In the United States, they are usually made by the Federal Mediation and Conciliation Service, and in Canada, by the Department of Labour, at either the Federal or provincial level depending on the nature of the industry.

plan of action may involve suggesting proposals for settlement, but usually not with the expectation that the parties will adopt the recommendations, but in the hope that the proposals will suggest a new line of approach which will stimulate the resumption of bargaining.

Conciliation takes place when the two antagonists meet with each other in the presence of a conciliation board⁴⁰ in an attempt to reach an agreement. Conciliation does not imply compulsion; the disputants are not required by law to consent to the proposals of a conciliation board; they are merely required to wait before they take any remedial action against the lack of agreement "until an attempt has been made to effect an agreement with the assistance of a conciliation officer and conciliation board, and fourteen days has elapsed after the conciliation board reported to the Minister of Labour".⁴¹ In theory the process of conciliation simply encourages the management and the bargaining agent to use reason instead of force. "Men of good will can reach an agreement, particularly when the commonwealth is endangered; given the place and opportunity, they will employ intelligence rather than belligerence."⁴²

⁴⁰ The Conciliation Board is usually appointed by the appropriate Labour Relations Board, and it usually consists of three members, one nominated by labour, one by management, and the third a neutral nominee, usually the chairman, appointed either by the other two nominees, or by the Minister of Labour.

⁴¹ Woods and Ostry, op.cit., p. 80.

⁴² Trotta, op.cit., p. 89.

Compulsory arbitration, unlike conciliation, implies compulsion. The two sides are bound by the decision of a neutral arbitrator. However, this practice is not sanctioned in law in the private sector, nor has it obtained much popularity in collective agreements. Collective bargaining is basically a two-party relationship and therefore, it is only logical that the final decision will result from direct discussion between these two sides.⁴³

This concludes the discussion of collective bargaining as it exists in the private sector. What needs to be done now

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In holding the view that compulsory arbitration is not a suitable means to settle disputes, I am accepting labour's claims that the strike is a basic right of all employees and an essential component of the bargaining process. However, an eloquent argument for compulsory arbitration is set out by Professor O.W. Phelps, "Compulsory Arbitration: Some Perspectives", Industrial and Labour Relations Review, vol. 18 (October, 1964), p. 81 and I feel that his remarks on this topic are worth reproducing.

Over the years, the case against compulsory arbitration of labour disputes has been argued with such skill and conviction that the brief for the defense seems to have been lost. Quite apart from the merits, this is a curious development in a community where the compulsory arbitration of other types of dispute is considered an ornament of a free society. If a neighbour commits a trespass, or a business associate fails to honour his contract, he is hauled before a magistrate and the matter compulsorily arbitrated rather than settled by force of arms. Even in the difficult and delicate area of domestic relations, questions of child custody and separate maintenance may be brought to compulsory arbitration at the option of an aggrieved party. Our whole system of jurisprudence relies on the idea that anyone with a grievance is able to compel an antagonist to meet him peaceably at a public hearing where, after argument, a binding third-party settlement is handed down. No one apologizes for this; more often than not, the courts are referred to as protectors of our liberties, defenders of freedom. The unanimity with which it has been held that labour disputes must be exempted from this process is remarkable in itself.

is to extract from this complex process its basic framework in order that it can be applied to the American and the Canadian public sector. The application of the basic framework of collective bargaining to the structured forms of bargaining that exist in these public sectors will be done with a view to verifying the thesis that the duplication of this framework is essential for stability. (11 (12

Collective bargaining is a two-party relationship; the two sides, one representing management and the other labour, meet and discuss in a meaningful fashion all the important matters affecting the relationship that exists between them. In the case of an impasse between the two, either during the negotiations of a contract or arising from its interruption or application there exists a structured method through which a resolution can be reached. The end result of the process is a written agreement which is designed to govern the conduct of both management and labour over a given period of time. (13 (14 (15

The above is the basic framework of collective bargaining; it is simple but it embodies all the important aspects of the process. Consequently it becomes a useful tool which can be used to analyze the Canadian and American experiences with collective bargaining in the public sector.

However, before initiating a discussion on this point it is necessary to first demonstrate that some type of bilateral negotiations are necessary in the conduct of personnel relations in the public sector before a claim can be made that implementation of the bargaining framework is the most conducive to

stability. To demonstrate the necessity of bilateral negotiations no reliance will be made on philosophical arguments, rather it will be demonstrated by the Canadian historical example that the introduction of this type of relationship was the result of an evolutionary process.

CHAPTER II

The Trend Towards Bilateral Negotiations in Canada

In February 1967 legislation was passed which set up a framework of collective bargaining in the federal public service.¹ This chapter will attempt to assess in an historical context the influences and the pressures which ultimately resulted in this policy decision.

In Canada, Federal public servants have always enjoyed the rights to both organize staff associations, and then to make collective representation to the government.² These rights have rarely been challenged by the executive, and when they have been questioned, the queries have been interpreted not as attacks on staff organizations as such, but rather to any extension of their power. An example of this type of attack can be seen in a statement by Sir George E. Foster when he was acting Prime Minister in 1920. His remarks made in the wake of the 1919 Winnipeg Strike were concerned with the right of employee organizations. He stated that, although the right to organize was already recognized as applying to industrial workers, "the principle could not be applied to Government employees, who were

¹ Legislation on the subject of Collective Bargaining in the public sector consisted of three Acts, "The Public Service Staff Relations Act", An Act Respecting Employee Relations in the Public Service of Canada, S.C. (1967) c. 72; "The Public Service Employment Act", An Act Respecting Employment in the Public Service of Canada, S.C., (1967), c. 71; and An Act to Amend the Financial Administration Act, S.C., (1967), c. 74.

² Kenneth O. Warner and Mary L. Hennessey, Public Management at the Bargaining Table, Chicago: Public Personnel Association, 1967, p. 36.

obviously in a different category".³ However, when one takes into account the fact that as early as the late nineteenth century, the federal employees' associations had begun some sporadic organizational activity, and that by the time of Foster's speech in 1920, a number of them were already firmly established,⁴ his denial of the right of public servants to organize, had little relevance. That is unless his words are interpreted to take in the broader scope of trade union activities, which include collective bargaining and strike action.

The right to group together can be considered, therefore, an inherent right of our public services. But organization by itself is of no real importance if the representatives of the group are denied a responsive ear to which they can voice their needs and desires. The lack of such responsiveness on the part of the government to the requests of the association, plagued the public service for most of this century, as the

³ _____, "Notes on Current Matters of Industrial Interest", The Labour Gazette, vol. 20 (April, 1920), p. 372.

⁴ The Federal Civil Servants Association that date their origin prior to 1920 are: The Railway Mail Clerks Association in 1889; the Federated Association of Letter Carriers in 1891; the Civil Service Association of Ottawa in 1907; the Association of Canadian Postal Workers in 1911; and the Dominion Mail Clerks Association in 1917. For a discussion of these early organizations, see Robert A. Vaison, "Collective Bargaining in the Federal Public Service: The Achievement of a Milestone in Personnel Relations", C.P.A., vol. XII, (Spring, 1969), pp. 108-112. For a discussion of the environment from which these organizations evolved, see R.M. Dawson, The Civil Service of Canada, London: Humphrey Milford, 1929.

development of regularized relations, even on a basis of limited reciprocity, were slow in maturing. For example, after the formation of the two postal organizations in the 1890's, a letter was sent to the Postmaster-General requesting a meeting at which they could discuss improvements in their pay and working conditions. But even though the postal workers had not received a pay increase in 32 years, and thus had good reason to request such a meeting "the Postmaster-General replied that he had no intention of wasting his time meeting with dissident groups of employees".⁵

The public servant has always enjoyed the right to petition the Crown, but the Sovereign authority for a long time did not consider it necessary, or even proper, to consult with its servants on matters affecting their conditions for employment. Representatives of the various staff organizations were invited periodically to submit briefs before the various committees which were established to study the public service, but they were not permitted to participate in the deliberations or to be a party to its reports and recommendations.⁶ The Government felt that since it alone was responsible to parliament for all governmental activity this precluded the type of employer-employee relationship which was beginning to evolve in the sphere of private labour relations.⁷

⁵ J.F. Maguire, The Public Service Alliance, Approach to Collective Bargaining, October 1967, an unpublished research paper prepared by the Public Service Alliance of Canada.

⁶ Saul J. Frankel, Staff Relations in the Civil Service, Montreal: McGill University Press, 1962, p. 51.

⁷ For a discussion of the development of employer-employee relations in the private sector, see Woods, op.cit., pp. 39-86.

This attitude on the part of the Government led to the Prime Minister and his Cabinet becoming the centre of activity as far as the public service associations were concerned. As a consequence, the Executive became the goal on which the organizations set their sights when they attempted to initiate discussions that would lead to favourable changes in employer-employee relations. In reviewing the association's briefs, the Government usually followed one of three procedures: (i) they would give an immediate reply (ii) they would inform the organization that its proposals were under consideration, or, (iii) they would request that they submit a more detailed brief to the Civil Service Commission or the Treasury Board. Nevertheless, whatever the procedure, the final decision was not the product of direct and detailed consultations, but was rather the unilateral decision of the Government.

The associations were aware of their lack of power and authority, but prior to the Second World War, they were not in a position to question their inferior status. Before the Civil Service Act of 1918,⁸ the Public Service had relied to a large extent on the patronage system to staff the Government departments. As this system does not imply tenure during good behaviour, it would have been extremely foolish on the part of the public servants to rebel against the men who had appointed them to their positions.⁹ An example of how precarious employment actually was at this time can be seen in the fact that

⁸ S.C., 1918, c. 12.

⁹ See Dawson, op.cit., p. 27.

"in the three years following the defeat of the Laurier Government in 1911, some 11,000 civil servants resigned or were removed from office."¹⁰ However, with the 1918 Civil Service Act, the entire public service, with limited exceptions,¹¹ was placed under the supervision of the Civil Service Commission. This enhanced the stability of employment, but before this system was fully able to adjust to the new conditions, the country was plunged into a depression. Another reason for the acquiescent attitude of the association in the 1920's was the violent reaction on the part of the populace to the Winnipeg Strike of 1919 and all the Communist connotations that were associated with labour organizations.¹²

¹⁰ R. MacGregor Dawson, The Government of Canada, Toronto: University of Toronto Press, 1964, p. 273.

¹¹ The Civil Service Act extended to all government employees except those associated with government railways or working on government ships. However, the Act did stipulate that the Civil Service Commission with the permission of the Governor in Council could dispense with the normal procedures associated with the merit when it saw fit to do so. See Statutes of Canada, 1918.

¹² The intensity of the hostility towards labour organizations that was prevalent among the populace in the 1920's can be gauged by the newspaper editorials of the day. For example, on June 30, 1919, an editorial in the Globe and Mail said "We at least, have no Czar or Kaiser to threaten us with Siberia or subdue us with the sword, but who knows what we would have under the regime of a rampant and bolshevised Labour party? ... The pick is no more the sceptre of divine right than the sword."; and on May 13, 1921, headlines on the front page of the Globe read "Unionism faces serious Strike Danger in Strike Order", and this was followed with a sub-headline which read "Communist Agitators all Under Surveillance." The red scare and the effect it had on the public's attitude towards labour, was also brought out in the Annual Report of the Department of Labour in 1921, "large numbers look upon the general labour movement as an overt act of the tendency such as has been witnessed in Russia." See Sessional Paper no. 37, 1921, p. 10.

During the early 1930's, Bennett attempted to solve the country's economic ills through the pursuance of a policy that depended on cutting government expenditures to balance the budget. This, naturally, had a detrimental effect on the public servants, as both their number and their salaries were reduced.¹³ The Government employees realized that this period of economic restraint was not compatible with a vociferous movement on their part which demanded a greater voice in determining their working conditions and, as a result, they tended to be passive during this period. This dormant attitude was augmented by the fact that people tend to be more co-operative during good times, and the public servants, even with their reduction in pay were, in relation to the majority of the society, fairly well off.¹⁴ The outbreak of the Second World War, however, terminated both the period of economic restraint and the passiveness of the public servants.

¹³ In January 1929, there were 42,038 employees in the Federal Service, and they earned a total of \$5,428,058 in that month, which was an average of \$129.00 per month for each employee. By 1934, the total number of employees had fallen to 41,346 and they earned a total of \$4,698,536 in the month of January, and this was only an average of \$113.00 per month. These figures were obtained from the Canada Year Book 1934-35, p. 499.

¹⁴ In the manufacturing sector of the economy in 1929, a total of \$812,049,842 was paid to 694,434 employees; this was an average of approximately \$99.00 per month for each employee. In 1935 the total number of employees was only 583,874 and they earned a total of \$590,326,904 which was an average of \$84.00 per month. In the civil service, the depression resulted in a reduction of the total number of employees of between one and two percent; in the manufacturing sector, the decrease was between 16 and 17 percent. The loss in pay in the private sector for the employees who were fortunate enough to hold onto their jobs, was about 15 percent. The figures for the above calculations were obtained from the Canada Year Book 1934-35 and 1945.

In 1916 the British Government had appointed a committee under the chairmanship of J.H. Whitley to inquire into the relationship which existed between employers and employees in the private sector and to make recommendations that would improve and stabilize the conditions in that sector. This move was necessitated because industrial unrest was so prevalent. For example, during the war years of 1915 and 1916, more than four and one half million working days were lost as a result of strikes.¹⁵ The committee made its first report in 1917 and recommended that joint councils be established which would negotiate the differences which existed between the two sides. The report was not meant to include the civil service, but soon after its publication, the President of the Civil Service Clerical Alliance began to expound the benefits such a system would have in the public sphere of employment, and in 1919 Whitley councils were set up in the public sector on the national level as well as on the departmental level. The objectives of these councils were:

To secure the greatest measure of co-operation between the State in its capacity as employer, and the general body of civil servants in matters affecting the Civil Service, with a view to increase efficiency in the public service combined with the well being of those employed; to provide machinery for dealing with grievances, and generally to bring together the experiences and different points of view of representatives of the administrative, clerical and manipulative

¹⁵ See Sir William Armstrong, "Whitleyism in the Civil Service", Whitley Bulletin, vol. XLIX (September/October, 1969), p. 136.

Civil Service.¹⁶

The councils, which were made up of an equal number of representatives from the government and the employees, were to meet regularly to discuss a wide range of issues which concerned the civil service. These included problems concerning conditions of employment such as hours of work, leave, and allowances. The councils were primarily advisory bodies and their recommendations were not considered to be binding, although quite often their proposals did become operative. In order to be in the position to enable it to submit a recommendation to the government, the council had to first reach an agreement among its own members; this consensus was not achieved by a majority vote of the entire council, but rather through an agreement on the issues by its two component parts, the representatives of the employer and of the employees. If an agreement could not be reached, the issue remained unresolved and the Government had to look to alternative methods to solve the problem.¹⁷

The Canadian public servants in the 1920's looked to the British example with envious eyes, and to a degree pressure

¹⁶ Richard Hayward, Whitley Councils in the United Kingdom Civil Service, published by Civil Service National Whitley Council, Staff Side.

¹⁷ For a more comprehensive study of the Whitley Councils see L.D. White, Whitley Councils in the British Civil Service, Chicago: University of Chicago Press, 1933. For a discussion of the Councils and their effectiveness, see Leo D. Gagan, "Recent Transformation in Civil Service Whitleyism", Public Personnel Review, vol. 12, (January, 1951), pp. 25-30, and Sir William Armstrong, "Whitleyism in the Civil Service", Whitley Bulletin, vol. XLIX (November, 1969), pp. 151-155.

was put on the government to initiate a similar programme in Canada.¹⁸ In 1926 Mackenzie King utilized this fervour on the part of the government employees to gain support in the election of that year, when he went on record publicly advocating the establishment of joint-councils:

I think that in the relations of the Civil Service and the Government, a Council on which there would be representatives of the Civil Service to speak directly to members of the Government, or to take up with the heads of departments, matters of interest to all government departments, would be of the utmost service to all concerned.¹⁹

After the election, however, King seemed to lose some of his fervour concerning national councils and nothing was done until 1928 when J.S. Woodsworth introduced a bill in the House of Commons which would have authorized the creation of both a National Council and Departmental councils. When the bill came up for second reading on February 10, 1928, King referred the bill to the Committee on Industrial and International Relations.²⁰ The House Committee recommended that the Government should establish a committee to draw up a constitution for a National Civil Service Council. The Government followed

¹⁸ On April 21, 1922 the Hon. James Murdock, the Minister of Labour, admitted to a question by J.S. Woodsworth, that "representations had been made to the government for the introduction of Whitley Councils". See House of Commons Debates, 1922, p. 1061.

¹⁹ Quoted in Taylor Cole, The Canadian Bureaucracy, Durham, N.C.: Duke University Press, 1949, p. 124.

²⁰ See House of Commons Debates, 1928, p. 362.

this recommendation, and in May of 1930 Order in Council number 970 established a committee to draft a constitution for such a council.

But an election preceded the first meeting of this committee; Mackenzie King was defeated by Bennett, and although the new Prime Minister did not repeal the Order in Council, he allowed it to remain inactive. King's return to office in 1935 did not enhance the situation, as the Order continued to remain far down the list of priorities; but with the advent of the war and the resulting proliferation of public servants the issue could no longer be ignored.²¹

On February 24, 1944, the Minister of Finance, Hon. J.L. Ilesley, announced in the House of Commons that the Treasury Board had decided to establish an "employer-employee council in the public service in Canada modelled after the pattern which had evolved in the United Kingdom through the application of so-called Whitley Councils, to the British Public Service".²² The final constitution of this council was embodied in a Treasury Board Minute in March 1945. It provided for a total of eighteen members, eight representing the official side, and ten representing the staff side; it also allowed for recommendations to be made to the Treasury Board, the Civil Service Commission, or the Governor in Council. However, Finance Minister Ilesley was emphatic when he stated that "the Council will of course have no executive powers which would impair the responsibility

²¹ In March of 1935, there were 40,792 people employed in the Federal Service; by March 1944, this figure had mushroomed to 112,658. Canada Year Book, 1945.

²² House of Commons Debates, 1944, p. 778.

of the Cabinet, or Treasury Board or Civil Service Commission, or possibly infringe upon the authority of Parliament".²³ But even this pronouncement could not dampen the spirits of the public servants, who for the first time had a forum in which they could "discuss and consider jointly with officials representing the Government as employer, a wide range of questions affecting their conditions of work".²⁴

The concept of joint councils was expanded in 1948 with the creation of departmental councils, and it appeared that there would finally be responsible negotiations, between employer and employee at all levels in the Federal Administration. But the employees' high hopes in these joint Councils soon dwindled. This came about due to a number of factors: the Government appeared to put little weight on the activities of these organizations; the constant bickering between the various Staff Associations weakened the employees' position; and, the central question concerning salaries and wages could not be discussed by the Council.²⁵ As a result, the latter part of the 1940's and early 1950's witnessed an increasing amount of dialogue on the part of the public servants and their Associations

²³ Cole, op.cit., p. 126.

²⁴ Heeney Report, Personnel Administration in the Public Service, Queen's Printer, 1 Reprint 1960, Appendix "B" Joint Consultation Between Government and Employees Pay and Conditions of Work.

²⁵ For a discussion of these points, See Cole op.cit., p. 128.

concerning the feasibility of collective bargaining.²⁶

However, in the late 1940's and early 1950's, the prevailing opinion in Canada, although under an increasing amount of pressure, was still that there was no bargaining with the Crown; this was not only the official point of view, but to a large degree also that of the employers. One reason for this lacklustre approach towards collective bargaining was that the labour movement was still involved primarily with industry "and it took some time before the labour leaders realized that the growing tertiary, or service sector, would be an interesting clientele".²⁷ As a result, the Staff Associations, operating in a void of pressure from outside labour forces, were neither competent nor strong enough by themselves to undertake such a movement. Another important factor was that at this time, unions were primarily associated with blue-collar workers, and the white-collar attitudes of the public servants tended to regard any associations on their part with unionism, or any of the connotations attached to it, as degrading to their station. The last major cause of the hesitancy of the public servants towards demanding the extension of bargaining activity to their sector, can be attributed to the

²⁶ On November 26, 1953, Mr. Claude Ellis brought up in the House of Commons the question of the extension of bargaining rights to civil servants: "I think the time has come in this country when we should recognize that there is a better method of carrying on employer-employee relations. We have got beyond the concept of master and servant ...". See the House of Commons Debates 1953, p. 377. The unrest in the Civil Service was also brought out in an article by O. Glenn Stahl, "The Horizon of Personnel Administration". Public Personnel Review, vol. 13, (July, 1952), p. 106.

²⁷ Bolduc, op.cit., p. 13.

fact that the government employees at this time had grown up and had been educated during the depression and the Second World War and, as a consequence, they knew what hard times meant and they did not want another conflict, this time with their employers. But as the fifties drew to a close "many forces that were latent, or that had worked in isolated fashion, gained impetus",²⁸ and a concentrated effort aimed at the attainment of collective bargaining was launched.

By the late 1950's, discontent was growing at an unprecedented rate in the public service.²⁹

"The demand (for change) had developed slowly during the postwar period. When the Industrial Relations and Disputes Investigation Act was passed in 1948 there was no apparent desire on the part of the Public Service employer organizations to have their relationship with the Government regulated by the legislation. Within a few years it was being argued by some associations that the Public Service should be brought within the ambit of that Act and by these that a system of collective bargaining and arbitration designed

²⁸ Ibid., p. 13.

²⁹ The unrest in the public sector in this period can be measured by a number of factors: by the merger of the Amalgamated and the Civil Service Association of Ottawa in 1958; by the appointment of a Pay Research Bureau in 1957; by the appointment of a Committee to study the public service; by the numerous announcements in the House of Commons; by the opposition, advocating the extension of collective bargaining to the public sector. An example of this last point can be seen in a speech by Mr. Bodani in the House of Commons on May 14, 1959: "I suggest the Minister of Labour should recommend to his cabinet colleagues that the time has come to place all workers of the civil service below the executive rank, on the same footing as workers who are employed in industry, and that they be given the same bargaining rights as any other group", see House of Commons Debates, 1959, p. 3668.

specifically for the Public Service would be preferable."³⁰

The introduction of the National Joint Councils had placated the public service temporarily, and the formation of the Pay Research Bureau in 1957³¹ which was instituted in an effort to affect one of the major shortcomings of the Councils, also had a tempering effect, but the problems which existed in the Civil Service went far deeper than either of these two bodies could hope to reach.

For approximately forty years government employees had been forced to live with the then present Civil Service Act, despite the fact that during this period Canada had experienced momentous changes which had a great effect on the National Public Service.

Population had more than doubled. The immense expansion of commerce and industry throughout the nation had been accompanied by significant developments in labour-management relations... During this period, too, Canadians had evolved their own concepts of the responsibility of the state for the welfare of its citizens.³²

But these extensive changes had little effect on the public service; the public servants continued to work under the weak and vague provisions outlined by the 1918 Civil Service Act even though it was "legally deficient in making provisions for

³⁰ Report of the Preparatory Committee on Collective Bargaining in the Public Service, July 1965, p. 16.

³¹ See ibid., p. 17 for a limited discussion on this bureau.

³² The Civil Service Commission's Report "Personnel Administration in the Public Service", quoted in Canadian Public Administration, edited by Hodgetts and Corbett, Toronto: Macmillan Company, 1960, p. 268.

many of the so-called fringe benefits provided by good employers today".³³ The Government, realizing this unrest, instructed the Civil Service Commission to "review the Civil Service Act and regulations and examine the role of the Commission in the machinery of government".³⁴

The Heeney Commission³⁵ conducted a detailed study and, as result of its investigation, made a number of recommendations. There have been a number of statements made concerning these proposals, but none as appropriate as one by J.C. Best.³⁶

Unlike good wine, the document known as Personnel Administration in the Public Service, has not improved with age. When first introduced early in 1959 the Report was acclaimed by the newspapers and others as being the forerunner of a new Bill of Rights for Civil Servants, and the gateway to the best of all possible worlds. Today, some fourteen months later, there are many of us who look at the report with considerable misgivings.³⁷

Appendix "B" of the Heeney Commission has been the target of most of the criticism levelled at it. This section

³³ Harold Bowen, "The Heeney Report", Collective Bargaining in the Public Service, Fredericton, N.B.: Canadian Labour Congress, 1960, p. 1.

³⁴ The Civil Service Commission Report, Hodgetts and Corbett: op.cit., p. 264.

³⁵ The correct name for the Heeney Report is the Report of the Civil Service Commission of Canada on Personnel Administration in the Public Service. Queen's Printer, Ottawa, 1958, (reprinted 1960).

³⁶ Mr. Best was, at that time, President of the Civil Service Association of Canada.

³⁷ J.C. Best, "The Heeney Report", Collective Bargaining in the Public Service, Fredericton, N.B.: Canadian Labour Congress, 1960, p. 1.

recommended that on matters other than salaries and wages, the National Joint Council should be the forum for discussion and the body that should forward all recommendations directly to the government. As far as wages and salaries were concerned, the Report recommended that machinery be set up for joint consultation between the "representatives of the government on the one hand and the representatives of the organized staff associations on the other"³⁸ in order that they "could discuss in systematic fashion, questions of salary and wages in government employment".³⁹ These meetings, the report suggested, would be chaired by an officer of the Civil Service Commission, and after frank discussions between the two sides, the Civil Service Commission would make its recommendations to the Government, and forward a copy of its proposals to the Staff Associations.⁴⁰

This section attracted the bulk of the criticism due to the fact that it did not deal with the problems concerning salaries and wages in a realistic fashion.

"The type of collective consultation which the three commissioners recommended, was one in which the Civil Service Commission would sit at the end of a table in a somewhat detached capacity, the representatives of the civil service organizations and associations would sit on one side, and representatives of the Treasury Board would sit on the other, and there would be discussions."⁴¹

³⁸ Heeney Report, Appendix "B", op.cit., paragraph 7.

³⁹ Ibid., paragraph 7.

⁴⁰ Ibid., paragraphs 8, 9, 10.

⁴¹ Hon. Donald M. Fleming, House of Commons Debates, 1960-61, p. 2879.

The inadequacies of this proposal were brought out clearly by a Member of Parliament when he stated:

I have not been impressed with the provisions of Appendix B of the Heeney Report. It is naive in its assumptions and to my understanding, it completely ignores the legitimate aspirations of the employee. It has all the weaknesses of a unilateral compromise in that it fails completely to appreciate the need for participation in employment matters that now exists. It is too much concerned with maintaining outmoded traditional concepts that are useless in 1960.⁴²

The inadequacy of the recommendations set forth were apparent even before the report was published. In May 1958, the Pay Research Bureau submitted a brief to the Treasury Board; this report was followed by joint consultations between the three main Staff Associations and members of the Treasury Board and senior Government officials. These consultations were chaired by a Civil Service Commissioner. Each party involved was given an opportunity to state its case and, in addition, time was allowed for informal arguments by individuals. These meetings were followed by the Civil Service Commission presenting to the Government, its recommendations for a salary revision to be effective October 1, 1958. The above procedure was identical with the one outlined in the Heeney Report except for the fact that the Staff Associations were not supplied with a copy of the commissioner's recommendations. The result of these responsible discussions was that the government not only turned down the recommendations, but even refused to make them public. Civil Servants across the country were shocked by

⁴² Quoted in Best, op.cit., p. 2.

this treatment, and demands were made to the Central offices of the Staff Associations, demanding some type of action. The Staff Associations petitioned the Minister of Labour and "expressed themselves quite forcibly on the subject and indicated that this kind of system did not meet with their views".⁴³ The organizations also responded to this pressure from their membership by organizing public discussions in the principle cities across the country, in an attempt to educate the public on the seriousness of the situation.⁴⁴ They also initiated a Joint Action Committee in 1959. The aim of this body was to co-ordinate activity among the various staff associations in order that they could have a united front.⁴⁵

The Government reacted to this growing discontent by introducing a bill in 1960 which would have revised the Civil Service Act. However, at the request of several groups who wanted more time to study it, the Government withdrew the motion.⁴⁶ In 1961 it re-introduced it. The Bill C-71 was

⁴³ House of Commons Debates, op.cit.

⁴⁴ Bolduc, op.cit., p. 14.

⁴⁵ Report of the Preparatory Committee on Collective Bargaining op.cit., p. 16.

⁴⁶ Mr. Caron, a Liberal Member of Parliament, was instrumental in obtaining the delay in the legislation. The government was attempting to push a Civil Service Act through in the latter part of the session and Mr. Caron attacked this move in the House of Commons. "He, (Minister of Finance will not even allow civil servants and civil service organizations enough time to give it (Civil Service Act) adequate consideration, or give them an opportunity to appear before the committee and make recommendation." House of Commons Debates, June 20, 1960, p. 5132.

to become the Civil Service Act of 1961. The bill was referred to the House of Commons Special Committee on the Civil Service Act and the employee organizations were invited to present briefs. "Most of them wanted direct negotiations with the Government. Eschewing the strike, they were in favour of settling disputes by arbitration."⁴⁷ However, the briefs by these organizations were not well presented and often conflicted with each other. These slipshod presentations demonstrated to the House Committee the fact "that the staff associations had not really thought through the implications of full-blown collective bargaining and it was not what most of them wanted".⁴⁸ As a result, the Government was able to take a firm position and the new Civil Service Act received Royal Assent with provisions for consultations only, with the Staff Organizations.

These provisions, however, proved only to be a stop-gap measure, as the Staff Associations soon discovered that their right to consult with the Civil Service Commission and with senior personnel designated by the Minister of Finance, was not very practical, because although they could consult all they wanted to, it was the Government, in the final analysis, which made the decisions. As a result, the Staff Associations once again began to press for collective bargaining. In 1963, for example, they formulated the Staff Side Council for Collective

⁴⁷ Robert Armstrong, "Some Aspects of Policy Determination in the Development of the Collective Bargaining Legislation in the Public Service of Canada", Canadian Public Administration, vol. XI (Winter, 1968), pp. 485-493.

⁴⁸ Ibid., p. 487.

Bargaining in the Public Service. The breaking point in their fight came just prior to the 1963 election when C.A. Edwards, the President of the Civil Service Federation of Canada, took the initiative and wrote the leaders of Canada's national political parties asking them to clarify the official position of their respective parties "on the question of the principle of negotiation and arbitration for the civil service and the specific proposals of the Civil Service Federation for a negotiation procedure in the civil service".⁴⁹ The responses of the parties were generally favourable towards the introduction of some type of bargaining.⁵⁰

With the Liberal victory in 1963, Mr. Pearson acted swiftly to honour the cause he had committed his party to, prior to the election. He established a preparatory committee on collective bargaining in August 1963, with Arnold Heeney as Chairman. The task of this committee was to "make preparations for the introduction into the Public Service of an appropriate form of collective bargaining and arbitration, and to examine the need for reforms in the system of classification and pay applying to civil servants and prevailing rate employees".⁵¹

⁴⁹ Ibid., p. 488.

⁵⁰ This outright request to the leaders of the political parties for their position on collective bargaining put them in an awkward situation because they could not afford to alienate over 140,000 voters during an election campaign. As a result, their responses were favourable towards the concept of collective bargaining.

⁵¹ Preparatory Committee, op.cit., p. 1.

The preparatory committee consulted with the various staff associations and also a number of trade unions before it made its report in July, 1965. In this report it proposed a structural method of collective bargaining in the Federal Service similar to that existing in private industry. As in the private sector, it suggested that bargaining should be a two party process; the Treasury Board, it proposed, should be considered the employer in all negotiations to facilitate the process, while the bargaining agents on the other hand, would represent bargaining units established in relation to classes or groups of employees to whom a pay plan applied; sixty-six such bargaining units were recommended.⁵² The committee also proposed binding arbitration on the employers, but reserved to the government the right to reject an award when the national interest was at stake. The Preparatory Committee, however, did not specifically condemn strike action and a group of militant postal workers took advantage of this and went on a strike, July 18, 1965, shortly after the report was issued to back up their demands to the Government.

The Government reacted to this by requesting that all interested parties submit briefs to them concerning the proposals of the Preparatory Committee. This resulted in approximately 75 amendments to the proposed legislation suggested by the Preparatory Committee. The two most important changes brought about by this review of the Preparatory Committee recommendations were the means to review conflict resolution and the power of reservation which the Committee had given to the Government.

⁵² See Appendix A for a discussion of the reclassification system.

These changes which were instituted at this time, especially the clause to allow strike action, can be seen as important policy decisions which were made at the discretion of the executive branch of Government.

The final draft of the bill introduced into Parliament was tailored to meet the aim of the legislation as defined by the Government, which was "to preserve the capacity of the public service to function efficiently in serving the people of Canada".⁵³

Various pressures, including the environment as prescribed by established norms and economic conditions, the needs and aspirations of the public servants and their organizations, public opinion, the activities of the opposition parties and interested groups, and the goals of government, as pointed out in the above discussion, all played a vital role in setting the stage for the legislation. By 1966 the time was ripe for government action. The result was legislation which culminated the trends which had been present in the society since the turn of the century. The course of action the government could pursue was clearly defined. It could have possibly introduced piecemeal legislation to placate the public servants but it would only have been a temporary measure. The various pressures in society demanded the introduction of meaningful bilateral negotiations and the policy alternatives of the executive by 1966 were extremely limited. The time was ripe; it had be ripened by the historical process outlined above, and the government merely consummated this trend.

⁵³ Lester Pearson, Debates, August 1963, p. 4244.

Chapter III

Collective Bargaining in the American Public Sector

From the discussion in the previous chapter it appears as though the road to bilateral negotiations was an evolutionary one in the field of labour-management relations in the public sector. In Canada, employee organizations have been actively engaged in eroding the once powerful position of the sovereign power since before the turn of the century. Today this erosion has reached the extent that the Canadian Government, like most other modern governments, has agreed to limit its sovereignty by engaging in some type of collective bargaining activity. This move towards bilateral negotiations, however, was not only precipitated through the pressures exerted by the employee organizations but also through a realization on the part of management that stability could be better achieved by introducing into the staff relations area a structured form of negotiations. It realized that negotiations would allow for the utilization of the knowledge and the genius of the employees while at the same time providing an open line of communications that would allow management to stay abreast of discontent and alienation in order that it could formulate appropriate policies before a disruption occurred.

Negotiations, therefore, have a very important role in staff relations in the public sector. But what line should these negotiations follow and within what boundaries should they be conducted? It is my hypothesis, as pointed

out in the introduction, that in order to have negotiations that do in fact help to create stability it is necessary to embody the basic framework of collective bargaining into the public sector context. This is not to say that there has to be a wholesale transplant of the practices and processes discussed in chapter II; only that the basic interactions of the process must be reproduced if the beneficial aspects of the system are to be transferred to the public sector. Stability can only be achieved in the public sector through a well structured process of bilateral negotiations, and since this process was developed in the private sector within a collective bargaining framework, with a large measure of success, it stands to reason that the basic framework of collective bargaining should be put to work in the public sector. Once this model of bargaining is transplanted it will develop and foster its own outgrowths and trappings which will be compatible to the public environment.

In order to show the validity of this thesis, I will discuss the American and Canadian experiences with bilateral negotiations in the public sector at the federal level. My discussion of the experiences of these two countries in this field will show that the successes and failures of these experiments are directly related to the degree that they have embodied or failed to embody the basic framework of collective bargaining.

But before I apply the outline developed in chapter I to the American situation it would be useful to first give a brief history of staff relations in the American civil

service to bolster the claim made in chapter II that the introduction of collective bargaining was an evolutionary process.

In August, 1912, the Lloyd-La Follette Act was passed and it established the right of persons employed in the civil service of the United States, "either individually or collectively, to petition Congress or any member thereof, or to furnish information to either House of Congress or to any committee or member thereof".¹ This act was relatively progressive for its day as it provided for both the right of the federal employee to be heard by his employer and his right to join employee organizations. It did not, however, grant the employee organizations any rights of their own which were distinct from those of individual employees; consequently, the ability of these organizations to represent their members did not rest on any rights granted to them by a legislative body but rather on the degree of sufferance they received from the various departments.

Meaningful negotiations² were therefore impossible in this type of environment. As argued above it is imperative that negotiations take place in a bilateral setting, and as long as the government did not recognize

¹ Lloyd-La Follette Act, 37 Stat. 555, quoted in Hart, op.cit., p. 33.

² Meaningful negotiations is a technical term which implies that negotiations cover all the important aspects of employer-employee relations. A discussion of the scope of the relationships which are incorporated in the meaning of this term is given in chapter I, pp. 24-29.

the employee organizations as instruments of negotiation, regularized patterns of staff relations based on criteria other than paternalism and unilateralism were not possible. The employees in the federal civil service realized this, and as a consequence sought enactment of legislation that would amend the Lloyd-La Follette Act "in order to provide more effective statutory recognition of organizations of federal employees".³ For example, during the period between 1949 and 1961 approximately eighty bills were introduced in Congress on the subject of union recognition.⁴ Although a number of these bills were favourably reported by the House and Senate committees they were never brought to a vote in either House of Congress.

The inability of the supporters of these bills to bring them to a vote was due primarily to a number of preconceived notions held in the Congress and in the nation at large. These widespread misconceptions of government employment were that (1) public employees were so well taken care of by the governmental parent they served that they did not need to band together to achieve better working conditions; (2) collective bargaining was not shown to be as necessary in public employment as it was in

³ W.B. Vosloo, Collective Bargaining in the United States Federal Civil Service, Cornell University, Ph.D. 1965, University Microfilms Inc., p. 80.

⁴ The two chief exponents in Congress of this drive for union recognition were Representative George M. Rhodes of Pennsylvania (D) and Senator Olin D. Johnston of South Carolina (D).

private industrial life because the public environment was sheltered, to a large degree, from the market influences that played havoc on employment conditions and standards in the private sector;⁵ (3) the state was considered to be a sovereign power, a sort of transcendental unique force that would be threatened by any comparison with private institutions especially private employment and its practices.⁶

However, these notions of government employment were extremely unrealistic as they ignored the fact that since the war the government had been faced with an ever increasing demand load from the civil service. But the increase in the number of demands was not the only new post-war characteristic of the civil service; the methods by which the employees sought to achieve their ends, including greater militancy and persistency, was also new.⁷ The government, in order to combat these new demands and techniques, went on the defensive. Instead of trying to introduce new programmes and techniques that would dispel the old notions of government employment and which would establish a new

5 For a discussion of market influences and the public sector see Gordon T. Nesvig, "The New Dimension of the Strike Question", Public Administration Review, vol. 28 (April, 1968), pp. 130-131.

6 For a discussion of why public employees were excluded from participation in labour policies that had evolved in private industry see Ida Klaus, "Past, Present and Some Prognostications", Personnel Report, #662, Public Personnel Association, editor, Keith Ocheltree, p. 1.

7 For a discussion of the dissatisfaction and restlessness in the post-war period in the public sector see Rollin B. Posey, "The New Militancy of Public Employees", Public Administration Review, vol. 28 (April, 1968), pp. 111-117.

framework that would utilize the militancy and enthusiasm of the civil servants by bringing them within the system, the government chose to safeguard its traditional approach. Rather than change their methods of dealing with management-labour problems the government decided to institutionalize legal restrictions aimed at curbing the activities of the employee organizations.

The federal government bolstered the Lloyd-La Follette Act's implicit clauses banning strike action by civil servants with specific clauses in the Taft-Hartley Act of 1947. The government then found it necessary to bolster this reinforced stance in 1955 by making it a felony for federal employees to strike.⁸ But it soon became apparent that the government could not solve the problem of uneasy personnel relations in the public sector by legalistic means which were not embodied in a bargaining framework.⁹ With this realization the government was stimulated to seek out better ways to achieve the necessary stability in this sector. The avenue the executive branch of government chose to pursue towards this end was the one stressing joint determination of employer-employee relationships through the process of negotiations and collective bargaining.

8 For a discussion of Public Law 330 see Warner, Hennessey, op. cit., p. 76.

9 During the Eisenhower administration the cabinet was split on the desirability of revising the government's labour-management policy in the public sector to embody a bilateral approach. But by 1958 the future course of action had settled itself because by then it was apparent that some type of bilateral approach was necessary if stability was going to be maintained. This can be seen in the fact that the official opposition to employee organizations which had characterized the administrations of both Truman and Eisenhower was forced to undergo radical review in 1958. The outcome of this review can be seen in Rocco Siciliano's memorandum which is discussed below.

In 1958, the first major sign of the coming realignment in labour-management relations was seen when Rocco Siciliano, the Special Assistant to President Eisenhower for Personnel Management, sent a letter to all departments and agency heads advising each of them to "evaluate the personnel management activities of his own agency with respect to employee-management relations, including relations with employee organizations."¹⁰

But by 1960 advisory statements such as the one above were not sufficient; the matter of staff relations could no longer be put off by placating the staff associations with executive policies that attempted to reform conditions within the present framework. What was needed by 1960, if widespread labour discontent and instability were to be averted, was a whole new framework of labour-management relations that recognized the utility of the bargaining process. It is likely that if the Democratic leadership which came to the White House in 1961 had continued the policy of official opposition towards the representatives of the federal employees chaos would have more than likely resulted in the public sector. But President Kennedy did not follow the traditional role of opposing the establishment of a new and more realistic set of ground rules regulating employer-employee relations. He acknowledged both the problem that existed in this area and the urgency

¹⁰ Quoted in Vosloo, op. cit., p. 99.

of it by appointing a task force in 1961 which was to report back to the executive no later than November 30 of that year. The task force was appointed to investigate the question of "how to improve practices which will assure the rights and obligations of employees, employee organizations and the Executive Branch in pursuing the objective of effective labour-management co-operation in the public service."¹¹ But even before the task force reported, President Kennedy in a letter to all departments gave advance notice of the changes that were to come.

The right of all employees of the Federal government to join and participate in the activities of employee organizations and to seek to improve working conditions and the resolution of grievances should be recognized by management officials at all levels in all departments and agencies.

The participation of Federal employees in the formulation and implementation of employee policies and procedures affecting them contributes to the effective conduct of public business.

I believe this participation should include consultations by responsible officials with representation of employees and Federal employee organizations.¹²

Finally, on January 17, 1962 President Kennedy issued Executive Order 10988 which formalized, for the first time, a structured form of collective bargaining in the American public sector. The following discussion of Executive Order

11 White House Memorandum from President to Heads of Departments and Agencies, Subject: Employee-Management Relations in the Federal Service, June 22, 1961, quoted in ibid., p. 108.

12 Quoted in M. B. Nesbitt, The Civil Service Merit System and Collective Bargaining, New York University, Ph.D. 1962, University Microfilms Inc., p. 125.

10988 will, as pointed out earlier, centre around its adaptability to the basic framework of collective bargaining which was developed in chapter I.

Executive Order 10988 granted federal employees the right to form, join and assist any employee organization, and conversely it also granted them the right to refrain from participating in these organizations in any fashion whatsoever.¹³ The order then allowed for recognition of these employee organizations on one of three levels: exclusive recognition, formal recognition, or informal recognition. Exclusive recognition is to be given to an employee organization that satisfies three basic criteria; one, it has a stable membership of at least 10 per cent in an appropriate unit;¹⁴ two, it has been designated or

13 The right to join and/or to assist an employee organization is subject to the scrutiny of management, who can claim that the official duties of an employee constitutes a conflict of interest with membership in either an employee organization or its management, and as a result can bar his membership. There is no appeal for the employee who is so designated except to the official who made the original decision. See Executive Order 10988, Section (6).

14 The question of what constitutes an appropriate bargaining unit is left to the discretion of each department and agency. The employee organization may ask the Secretary of Labour to investigate their claims for recognition as a bargaining unit but his role as an arbitrator is only an advisory one to the department or agency. This is in contrast to the private sector where the appropriateness of a bargaining unit is determined by an independent board, usually the State Labour Relations Board. These independent boards play an important role in the bargaining process as they ensure an existence for each part that is independent of the other. When one side is dependent on the other for its formal existence, as is the case in the American public sector, it cannot help but weaken the collective bargaining framework.

selected by a majority of the employees of the unit as their representative;¹⁵ and three, it has submitted to the agency or department in which it is located a roster of its officers and representatives, a copy of its constitution and by-laws and a statement of its objectives.¹⁶ Once given exclusive recognition by the agency or department the employee organization is entitled for a period of at least twelve months to act for and negotiate agreements covering all the employees in the unit.

Formal recognition is granted to organizations that satisfy all the criteria required for exclusive recognition except the one requiring a majority of supporters within the bargaining unit. Informal recognition is given to any employee organization which does not qualify for exclusive or formal recognition because of its size or the status of other organized groups in the unit.

What this tripartite method of recognition means is that unless exclusive recognition is granted to an employee organization within a bargaining unit there cannot be any bilateral

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A majority of members means at least 50 per cent of the votes cast are in favour of exclusive recognition with a minimum of 60 per cent of the members within the bargaining unit voting. This is in contrast to the private sector where only a majority of those voting is required.

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This information is required because the order stipulates that organizations that (1) recognize the right to strike, (2) advocate the overthrow of the government, or (3) discriminate with regards to the terms or condition of membership because of race, colour, creed or national origin, are not to be recognized. Also the "Standards of Conduct for Employee Organizations and Code of Fair Labor Practices", which was a Presidential Memorandum supplementing the Executive Order, "requires employee organizations to maintain standards of conduct that ensure democratic procedures and practices and requires them to exclude Communists, other totalitarians and corrupt persons". Warner, Hennessey, op.cit., p. 73.

negotiations that affect the entire unit. In other words, negotiations between management and labour will have to be conducted on several different planes with no overall policy being evolved that will cover all the employees. But not only is there no written agreement covering all the employees, there is no written agreement covering any of the employees in the unit because since no one organization represents all the employees, management is not required to negotiate a written agreement. Management is required by law only to consult with formal organizations and to hear briefs from them, but nothing concrete as far as binding agreements can come out of these negotiations. Informal organizations, on the other hand, do not even enjoy free access to management for consultation but can only put forth their views "to the extent (that is) consistent with the efficient and orderly conduct of public business".¹⁷

It would seem then that the bilateral negotiations which are a prerequisite for a meaningful bargaining framework are only possible when an employee organizations is granted exclusive recognition. But even this is not exactly true because when an employee organization is granted exclusive recognition, bargaining on a strict bilateral basis can still not take place. The Executive Order requires that all negotiated agreements must be approved by the head of the department or agency in which the bargaining unit is located or by an official designated by him.¹⁸

¹⁷ Executive Order 10988, Section 4 (6).

¹⁸ Executive Order 10988, Section 7.

Management negotiators cannot make final and binding agreements at the bargaining table; they must refer all decisions up to top management. In the private sector the role of the negotiator is distinct from the organizational hierarchy of his firm or department, and this allows him to engage in responsible and relevant negotiations because his statements have a fair amount of credibility and meaning. In the American public sector this is not the case; the result of the role of the negotiator not being distinct from the organizational hierarchy of the departments is that his role as a responsible unit in the bargaining process is negated. The referral of decisions places a great deal of stress on the concepts of bilateral and of efficacious negotiations both of which play a vital role in the bargaining framework developed in chapter I. This has proven to be a major shortcoming in the American situation, as the unions have been complaining that "agency heads are second guessing local officials and are over-restrictive in delegating sufficient authority to the local levels to permit meaningful negotiations."¹⁹

The discussion of recognition and the role of management showed that in the area of bilateral negotiations the Executive Order failed to duplicate the basic mechanisms of the bargaining framework. The second place that the proposals of Executive Order 10988 run into conflict with the basic framework of collective bargaining is in the area of pertinent negotiations.

19 Arvid Anderson, "The U. S. Experience in Collective Bargaining in Public Employment", editor Warner, op. cit., p. 27.

Meaningful negotiations basically implies two things; first, that negotiations take place on all the major areas that affect the relationship between management and labour, and second, that the negotiations on these topics are conducted in a responsible fashion.

As shown above²⁰ negotiations in the private sector extend to all the important matters affecting the relationship between labour and management. These included wages and wage supplement programmes, working time, seniority and job rights, and operating rules and industrial jurisprudence.²¹ In the public sector in the United States at the federal level the breadth of negotiable items is not nearly as broad as in the private sector. The scope of the negotiations depends to a large degree on the form of union recognition that is afforded to the employee organization, but since the breadth of negotiable items broadens from a narrow base at the informal level to an all-inclusive one at the exclusive level the discussion can be concentrated on this latter tier.

Exclusive recognition means that one employee organization serves as the spokesman to management for all employees included in the unit; consequently, management must negotiate and reach an agreement only with it. But the areas which this exclusive organization can negotiate on are fairly limited. The Executive Order states explicitly that negotiable matters shall not extend "to such areas of discretion and policy as the mission of an agency, its budget, its organization and the

²⁰ Chapter 1, pp. 24-29.

²¹ Supra,

assignment of its personnel, or the technology of performing its work".²² This means that the employee organizations are not permitted "to negotiate on wages, retirement, insurance, annual and sick leave, and holidays because these decisions are made by Congress".²³ The employees, then, have no say on the matters which are considered to be the core of vital ones in the private sector; they are restricted to negotiation on secondary matters such as grievances, personnel policy and practices, and matters affecting working conditions such as overtime distribution, car allowance, call in and wash-up time, apprentice shop councils and the like.²⁴

But not only are the employee organizations required to bargain in a limited field of activity, they are also forced to operate under the further restriction that

...in the administration of all matters covered by the agreement officials and employees are governed by the provisions of any existing or future laws and regulations, including policies set forth in the Federal Personnel Manual and agency regulations which may be applicable, and the agreement shall at all times be applied subject to such laws, regulations and policies.²⁵

In transplanting the framework of collective bargaining from the private sector to the public sector the area of negotiable items underwent a severe transformation, as it was both narrowed and put on a very unsteady foundation. The

²² Executive Order 10988, Section 6 (6).

²³ Warner, Hennessey, op.cit., p. 80.

²⁴ Ibid., p. 80.

²⁵ Executive Order 10988, Section 7 (1).

result is a great deal of discontent, as the employee organizations feel that in order to have responsible negotiations, and hence a stable relationship, the scope of negotiable items must be expanded.

The second meaning implicit in the phrase meaningful negotiations is that negotiations are conducted in a responsible fashion. Similar to the private sector attempts to safeguard the responsibility criteria of negotiations are made through legislative means. In the private sector standards of negotiations are safeguarded through various legislative acts; these include the Wagner Act of 1935, the Taft-Hartley Act of 1947, and the Landrum-Griffin Act of 1959. If one of the two parties engaged in the bargaining process breaks one of the regulations embodied in one of these acts the other has recourse to the courts. In the public sector an attempt was made in 1963 to inculcate a similar framework of responsibility with the passage of the Standards of Conduct for Employee Organizations and, Code of Fair Labour Practices in the Federal Service, by executive order. The Standards are designed to impose upon union and management in the federal sphere the same responsibilities required of similar structures in the private sector. Labour is required to work within a given framework which includes the maintenance of democratic procedures and practices, the exclusion from union office of communists or corrupt persons, the prohibition of conflict of interest on the part of union officials, and the maintenance of fiscal integrity. Management on the other

hand is prohibited from interfering with employee rights under the Order, including the encouragement or discouragement of union membership by discrimination; the provision of assistance to union; the discrimination against employees for having filed a grievance; refusal to grant to the employee organizations the recognition which they qualify for; and refusal to negotiate, consult or bargain with a union as required by Executive Order 10988.

On paper it appears as if the legislative guidelines which safeguard responsible negotiations in the private sector have been transplanted to the public sector. But this is not really the case. In the public sector there is no effective means the employee organizations can use to force an agency or department to comply to these standards.

An employee organization which feels an agency has violated the Code of Fair Labour Practices may file a charge against the agency. The agency does not have to conduct a hearing on the charge unless it finds there is a "substantial basis for complaint". If the agency decides to hold a hearing, it must name an impartial hearing officer, who may be one of the agency's own employees. Management acts as defendant, judge and jury all at the same time.

If management is found to have violated the Code, Section 34 of the Code directs the agency to immediately take necessary action in accordance with the decision to remedy the violation. If the agency refuses to take corrective action, the Code allows no recourse for the employee organization.²⁶

²⁶ Warner, Hennessey, op.cit., p. 83.

On the other hand if the employee organization violates the Code, management can suspend or revoke the recognition of the organization.²⁷

This is not an equitable arrangement, nor is it one which is conducive to responsible negotiations. Therefore, the introduction of a collective bargaining framework into the American public sector can be seen to be lacking another basic mechanism which is essential to its operation.

The third major area where the model of collective bargaining is thwarted in the American public sector is in the area of conciliating differences between management and labour. In the private sector impasses between the two are solved through a variety of means which may include mediation, conciliation, arbitration, industrial welfare, or any combination of these. In the American public sector however, there are no procedural rules or processes such as these to resolve impasses in bargaining.²⁸ If there is an issue that cannot be agreed upon by management and labour then there is no agreement. Management in the bargaining process has the final say; if it approves the agreement it is signed, if it does not then it has to go back to bargaining until an agreement is submitted which is conducive to the wishes of management.

²⁷ For a thorough discussion of the Code see Vosloo, op. cit., pp. 149-152.

²⁸ Although there is no structured method to solve impasses in the public sector generally, a number of departments and agencies have voluntarily agreed to submit to a process of mediation. Anderson claims that approximately 10 per cent of the current collective agreements in the federal service provide for mediation. Anderson, op.cit., p. 27. However, it must be remembered that management still has the final say as it can disregard any previous commitment made if it is in conflict with its 'mission'.

No agreements are valid unless approved by top management and they are to be made with the understanding that in emergency situations a government activity must be free to take whatever actions are necessary to carry out its mission, regardless of prior commitments. To the same effect, all arbitration decisions are advisory. There is no provision for the arbitration of negotiation impasses.²⁹

The prerogative of not signing an agreement is not unique to the public sector; in the private sector an agreement does not become enforceable until both the representatives of management and the bargaining unit have signed it. But if management refuses to sign the agreement in the private sector the union has recourse to a number of weapons which can be used to apply pressure and make it either too costly for management not to sign, or necessary through a process of binding arbitration. In the public sector in the United States at the federal level no such pressure can be exerted on management, and as a consequence it is not under any real pressure to make concessions.

The fourth place where the application of the framework of collective bargaining to the public sector breaks down is in the area of contract adjudication. In the private sector a fairly standardized grievance procedure has evolved which allows for binding arbitration by an impartial arbitrator on all questions that arise through the interpretation or application of the collective agreement.³⁰ The

29 Vosloo, op. cit., p. 132.

30 Supra, pp. ①

Executive Order attempted to borrow this procedure from the private sector, but like much of the transplanting of the basic framework of collective bargaining it was a twisted and an abortive attempt. Like most of the other clauses in the order the proposal dealing with the grievance procedure is weighted too much on the management side. The procedure, similar to the private sector, provides for an arbitration of differences than extend from the interpretation or application of agreements, but it then states that "such arbitration shall be advisory in nature with any decision or recommendation subject to the approval of the agency head."³¹

The objective of Executive Order 10988 was stability in the public sector; the means it provided in order that this could be achieved was the introduction of collective bargaining into the public sector. But in introducing collective bargaining to this sector the Order did not take into account the basic framework of this process as it had developed in the private sector. The Executive Branch of government attempted to adapt this framework to meet their own special needs; in doing so they only adopted a partial framework of bargaining and then attempted to mix this with the old method of public employee relations which was based on paternalism and unilateral decision-making. The end result was that it failed to achieve its objectives.

³¹ Executive Order 10988, Section 8 (6).

The failure of Executive Order 10988 becomes very evident when one reads the profusion of current literature which is emanating from this sector.³² The current dissatisfaction and unrest can also be seen in the activities of the huge postal Unions. Both the Postal Clerks' Union and Letter Carriers' Union recently (1969) dropped the no strike clause from their constitution in direct violation of the Executive Order and are presently on a collision course with the administration.

Therefore, collective bargaining as it was introduced into the American public sector appears to have been a failure; but before any arguments are put forth as to why it was a failure and what can be done to make the process a more viable one, I will review the Canadian experiences in this field.

32. Articles which bring out the point that the present structure of collective bargaining in the American public service is inadequate include: Marvin J. Levine, "Dealing with Inadequacies in Collective Bargaining in the Federal Government", Public Personnel Review, vol. 30 (July, 1969), pp. 164-168. "New Directions in Bargaining", American Federationist, vol. 70, pp. 18-21. J. H. Foegen, "The Partial Strike: A Solution in Public Employment", Public Personnel Review, vol. 30 (April, 1969), pp. 83-87. Robert E. Catlin, "Should Public Employees Have the Right to Strike", Public Personnel Review, vol. 29 (January, 1968), pp. 2-6. Posey, op. cit., pp. 111-117.

Chapter IV

Collective Bargaining in the Canadian Public Sector

The application of the framework of collective bargaining to the structured form of bargaining that exists in the American public sector showed that the two did not correspond. It was apparent throughout chapter III that the executive in the United States was not really intent on replacing the old method of unilateral decision making for one based on relevant bilateral negotiations. The concept of sovereign supremacy is apparent throughout the new approach; the government did not relinquish any of its ultimate authority. The result, as was seen, was an abortive type of collective bargaining which merely attempted to placate the public servants. The model of collective bargaining was not adhered to; consequently the Executive Order did not, and could not, fulfil its primary aim, which was to generate a more stable civil service.

Canadian legislation in this area also had the ultimate aim of establishing stability in the public sector.¹ The means it chose to pursue this end was also a form of collective bargaining. This chapter will concern itself with a comparison of the structured form of collective bargaining which was introduced into the Canadian

1 The objective of the government in introducing this legislation was "to preserve the capacity of the public service to function effectively in serving the people of Canada". Lester Pearson, Debates, April 25, 1966, p. 4244.

public sector with the outline developed in chapter I. This will be done in order to see if there is a relationship between the degree of conformity and the degree of stability.

The Canadian legislation on the subject of staff relations in the public sector,² unlike the American, attempted to embody into its framework of collective bargaining the principle of bilateral negotiations. Bill C-182 which became An Act to Amend the Financial Administration Act was designed primarily for this purpose. This act provided for the expansion of the functions of Treasury Board which enabled it to assume the role of employer in negotiations with representatives of the employees. This was achieved by revising sections 5 and 7 of the Financial Administration Act.

The revision of Section 5 allowed Treasury Board to assume the responsibilities associated with personnel management in the public service. Section 7 provided for a number of new functions to be placed under the jurisdiction of Treasury Board which would enhance its role as director of personnel management. These functions included the responsibility for the determination of manpower requirements, for establishing guidelines for training and

2 Canadian legislation on the subject of Collective Bargaining in the public sector consisted of three Acts, "The Public Service Staff Relations Act", An Act Representing Employee Relations in the Public Service of Canada, S.C., (1967), c. 72; "The Public Service Employment Act", An Act Respecting Employment in the Public Service of Canada, S.C., (1967), c. 71; and An Act to Amend the Financial Administration Act, S.C., (1967), c. 74.

development of personnel, for the classification system, for the disciplinary standards, for work standards, for pay rates, and for hours of work. It was necessary to consolidate these functions under one central agency because collective bargaining is basically a two-party relationship. Consequently, it was considered imperative to have authority and responsibility in all essential matters invested in one agency in order that it could negotiate with the employee organizations in a responsible fashion.

The concentration of responsibility in the Treasury Board, in my assessment, has worked out very well. It has assumed much the same role as the negotiating team for management has in the private sector. The acceptance and effectiveness of this "steely eyed team of negotiators"³ can be seen in a statement by J. F. Maguire, the Research Director of the Public Service Alliance of Canada:

The road travelled so far under collective bargaining has not been an easy one. Bargaining with the Treasury Board has nearly always been hard. At times, it has been a lengthy, stubborn process. This has been particularly true in areas where the Treasury Board has been reluctant to yield, through the collective bargaining process, rights which management has traditionally in the past kept as its own, i.e. the right to make the final decision with respect to implementing and changing conditions of employment.⁴

3 Clive Baxter, "No Holds are Barred in this Diplomacy", The Financial Post, December 27, 1969, p. 3.

4 J. F. Maguire, Development and Experience of Collective Bargaining to Date, an unpublished paper delivered to the Technical Inspection Group, May, 1969, p. 8.

By placing authority for management decisions in the hands of Treasury Board the Canadian Government was recognizing the need for bilateral negotiations. But as was brought out in the example of the United States it is essential that the employee organizations have an independent existence before it can be said that a significant two party relationship exists. The Canadian legislation attempted to ensure this condition by establishing an independent board, the Public Service Staff Relations Board (P.S.S.R.B.). This board was set up, along the lines of the Labour Relations Boards that exist in the private sector, to administer the Public Service Staff Relations Act (P.S.S.R.A.).

The P.S.S.R.B. is an independent board which is composed of a Chairman, a Vice-Chairman and not less than four, nor more than eight other members appointed in equal numbers to represent the employer and the employees respectively.⁵ The Chairman and the Vice Chairman are appointed by the Governor in Council and they hold office during good behaviour for a period not exceeding ten years. Each of the other members of the Board are also appointed by the Governor in Council and they are appointed for terms of up

5 The Board as it is presently constituted consists of a Chairman, a Vice Chairman, and eight other members; four representing the employer and four representing the employees. It also has a full time secretariat to carry out the administrative work.

to seven years. The responsibilities of this Board include determining the appropriateness of a bargaining unit⁶, certifying bargaining units, and investigating complaints made by either the employer or the representative of the employees regarding any activities on the part of the other that are contrary to any of the provisions set forth in the Act. The Board also has the authority to order redress in so far as its investigation demonstrated that such action is warranted.

When the P.S.S.R.B. receives an application from an employee organization requesting certification as a bargaining agent, it must determine three things; first, whether the bargaining agent represents a properly defined bargaining unit; second, whether the majority of the employees in the unit want the employee organization to represent them as their bargaining agent;⁷ and third, whether the employee organization is competent to organize and conduct meaningful negotiations. The Board may challenge an employee organization on any of the above factors

6 In determining the appropriateness of a unit the Board considers "the duties and classification of the employees in the proposed bargaining unit in relation to any other plan of classification as it may apply to the employees in the proposed bargaining unit". Also the Board ensures that the proposed bargaining unit includes only employees of one occupational category, (see appendix A), since workers of more than one category are not allowed to be grouped into the same unit. See the Public Service Staff Relations Act, Section 32.

7 A majority of employees, unlike the American case, means a plurality of those voting.

by investigating the appropriateness of the bargaining unit, by ordering a representative vote to ensure that the majority of the employees do, in fact, want the employee organization to represent them, or by examining evidence, records and other documents respecting the organization's constitution, election practices, and character of its officials to ensure their competence.

Unlike the American situation in collective bargaining, the Canadian employee organizations can be seen to have an existence that is independent of the whims of management. This autonomy enhances the two party relationship which is so essential to the bargaining process. Thus collective bargaining as it is structured in the Canadian public service duplicates to a large degree the bilateral relationship that exists in the private sector. The one significant difference is the requirement that the employee organization be considered competent to carry out the processes involved in collective bargaining before it is granted recognition. However, this requirement, which has never been invoked, does not directly affect the basic framework of bargaining and as such can be considered as an outgrowth of it which is peculiar to the public environment.⁸

The next important part of the model of collective bargaining is the concept of meaningful negotiations. It was pointed out in chapter III that there are two important

⁸ This requirement can be seen to have some justification in the public sector because of its political nature. The government is ultimately responsible for all policies and as such needs to ensure that it is dealing with a responsible party.

aspects to this concept. First, the ability of each side to bargain in a responsible and a binding fashion, and second, the scope of negotiations. The first aspect has already been dealt with earlier in this chapter.⁹ It was pointed out that Treasury Board has assumed the role of management negotiator which means that it can make binding decisions. Also, as it was pointed out earlier, the P.S.S.R.B. can investigate a complaint by either side that bargaining is not being conducted in accordance with the procedures outlined in the Public Service Staff Relations Act. The, in light of its investigation, it can order a party that is not bargaining faithfully to correct its ways. If the party refuses to do so, the Board can lay a report before Parliament.¹⁰

The second important aspect of meaningful negotiations, the scope of bargaining, is the first place that the structured form of collective bargaining in Canada does not correspond directly with the framework developed in chapter I. This is because there are three important areas that remain outside the bargaining process. The first area is defined in the Public Service Employment Act; the second in section 7 of the P.S.S.R.A.; and the third in section 56 of the same act.

The Public Service Employment Act removed all those matters from the bargaining process "which are clearly related to the preservation of the merit system",¹¹ and

9 supra, pp. 0

10 See the Public Service Staff Relations Act, section 21.

11 Warner, Hennessey, op. cit., p. 336.

vested them in the Public Service Commission. These included initial appointments, promotions, transfers, demotions, lay-offs, and the determination of the qualifications which are required for employment and advancement.

It was felt that in order to maintain the merit system, a system which has been accepted in modern western societies as the most desirable type on which to structure a bureaucracy, it would be necessary to have an impartial commission continue to regulate employment standards. However, the Government realized that it would not be feasible to have the Commission setting up employment standards in an arbitrary fashion when the rest of the activities concerning staff relations were governed by a bargaining process. Consequently some provision had to be made to allow for consultations between the Public Service Commission and the representatives of both the employer and the employee. This was done by incorporating in the Act a clause which stated that

The Commission shall from time to time consult with representatives of any employee organization certified as a bargaining agent under the Public Service Staff Relations Act or with any employer as defined in that Act, with respect to the selection standards that may be prescribed under subsection (1) or the principles governing the appraisal, promotion, demotion, transfer, lay-off or release of employees, at the request of such representatives or of the employer or where in the opinion of the Commission such consultation is necessary or desirable.¹²

12 Public Service Employment Act, Part II, section 12 (3).

However consultation is not the same as negotiation; consultation only implies dialogue; it does not necessarily mean that an agreement will be reached.

Section 7 of the Public Service Staff Relations Act defines the second area of employer-employee relations that is outside the bargaining process. It establishes the managerial rights of the employer and states that "nothing in this Act shall be construed to effect the right or authority of the employer, to determine the organization of the Public Service and to assign duties and to classify positions therein".¹³ This establishes very clearly

that the areas of job organization, technological change, assignment of work and classification of positions, is a right of the employer and, if the employer desires, is not bargainable. The experience with bargaining so far confirms that the employer is definitely not prepared to negotiate any of these matters.¹⁴

Section 56 of the Act outlines a further limitation on the scope of collective bargaining in the public sector.

No collective agreement shall provide, directly or indirectly, for the alteration or elimination of any existing term or condition of employment or the establishment of any term or condition of employment, the alteration or elimination of which or the establishment of which, as the case may be, would require or have the effect of requiring the enactment or amendment of any legislation by Parliament except for the purposes of appropriating money required for its implementation.¹⁵

13 Public Service Staff Relations Act, section (7).

14 Robert Giroux, Notes for Talk to the Ottawa-Hull Area Council Seminar, October 30, 1969, an unpublished paper.

15 Public Service Staff Relations Act, section 56.

This in effect means that the Government is hanging onto the concept of sovereignty. In one area, the monetary realm, it agreed to limit its sovereignty; in all other areas it maintains the final say by forcing bargaining to operate within the context of existing legislation. This is not to say that there is not a great deal of flexibility involved in negotiations in the public sector; it is only an assertion of the fact that negotiations are required to operate within a broad parameters, and if one of the parties wants to go beyond these boundaries they cannot do so through the bargaining process but must concentrate on initiating legislative changes.

The deviation from the basic framework of bargaining in the area of the scope of the bargaining process, is not, however, as serious as in the American situation. The employee organizations in Canada are able to negotiate rates of pay, hours of work, leave entitlement, standards of discipline, and general conditions of employment. These are the important areas as far as the employees are concerned and consequently the amount of instability generated by the limitations on negotiations which were discussed above is not great. However, the areas that are presently outside the scope of collective bargaining have not been accepted as final by the employee organizations. They are constantly trying to get management to voluntarily give up the prerogatives outlined in section 7 at the bargaining table and are directing their efforts towards the legislative process to get section 56 modified.

The next important area of the outline of collective bargaining that has to be applied to the Canadian situation is the structured framework in which impasses between management and labour are resolved. The Americans did not transplant this aspect of the model into their public sector, and its absence has contributed to the generation of an unstable environment due to the preponderance of power that has been left in the hands of management. The Canadian Government did not want the same situation to exist in their public sector and consequently leaned towards the example established in the private sector.

In the Canadian public sector there are two methods of dispute settlement incorporated in the structure of collective bargaining, and before an employee organization is allowed to bargain collectively it must specify which one it prefers.

Two dispute settlement options are provided in the bill...one providing for a procedure requiring a reference to a conciliation board and permitting strike action, except in the case of employees whose services are considered essential to the safety or security of the public.¹⁶

¹⁶ Excerpt from Current Report on Legislation Affecting Labour, Number 3, June 27, 1966. Prepared by Legislation Branch, Department of Labour, Ottawa, Canada. The employer under the Public Service Staff Relations Act has the right to designate employees in any Occupational Group whom it feels should be prohibited from striking due to their importance to the safety and the security of the State. This is a unilateral decision on the part of the employer. However, on the request of the bargaining agent, the employer must furnish the P.S.S.R.B. with a list of those employees or classes of employees which it considers to be essential. If the bargaining agent disagrees with the list, it can appeal to the P.S.S.R.B. which has the power to make the ultimate decision in the matter. As of January, 1968, only 86 out of 30,000 employees who had opted for conciliation had been designated. See Jacob Finkleman, "The Public Service Staff Relations Act", Public Personnel Review: Public Service Alliance of Canada, vol. 41, (December, 1968), p. 30.

If the bargaining unit decides to submit to arbitration it loses its recourse to the strike.¹⁷ It must be content to request the services of the Public Service Arbitration Tribunal to arbitrate disputes arising out of the negotiation process. This Tribunal consists of a chairman appointed by the Governor in Council on the recommendation of the P.S.S.R.B., and

two panels of other members, one panel to consist of at least three persons appointed by the Board as being representative of the interests of the employer and the other to consist of at least three persons appointed by the Board as being representative of the interests of employees.¹⁸

Awards by the Arbitration Tribunal are binding on both the Government and the employees in the bargaining unit concerned.¹⁹ The scope of the Tribunal in making its awards is only as broad as the subject matter of negotiable items; the Arbitration Tribunal cannot make awards on questions that are "not a subject of negotiation between the parties during the period before arbitration was requested".²⁰ This means that the award cannot contain provisions requiring legislative implementation "nor can it deal with the standards, procedures or processes governing the appointment, appraisal, promotion, demotion, transfer, lay-off or

¹⁷ The method of settlement, however, can be changed prior to another round of bargaining.

¹⁸ Public Service Staff Relations Act, section 60.

¹⁹ Lester Pearson, then the Prime Minister of Canada, stressed the binding nature of arbitration on both parties when he introduced Bill C-170: "Arbitration will be equally binding on the employer, the government, and the employee, the public servant." Debates, April 25, 1966, p. 4246.

²⁰ Ibid., section 70 (3).

release of employees".²¹

If the bargaining unit does not choose to use the binding arbitration approach to resolve their differences they have to opt for the conciliation and strike approach. This approach is very similar to the one which is present in the private sector. A strike in the public sector is only legal seven days after the receipt, by the chairman of the P.S.S.R.B., of a conciliation report, or after he has notified the parties that he is not going to appoint a conciliation board.

In the private sector all industries retain the right to strike if their negotiations with management fail; strike action is the ultimate weapon and is guarded jealously. The approach in the Canadian public sector differs from this, as was shown above, but this does not mean that the Canadian approach contradicts the basic framework of collective bargaining. The framework simply indicates that a structured form of conflict resolution must exist which is capable of solving impasses between management and labour. It has already been said that a structure exists in which conflicts can be resolved; what needs to be done to verify conformity with the basic framework is to demonstrate that the structure is capable of fulfilling its task.

In Canada, as of December 1969, there were 104 bargaining units comprising 183,500 employees. Thus far in the first round of negotiations over half of the bargaining units have already signed their first agreement and their signed contracts cover over 80 per cent of the eligible

²¹ Ibid., section 70 (3).

public servants.²² This is quite an accomplishment when it is taken into account that there are "first agreements and the bargaining process usually takes much longer than with renewed agreements, where the number of issues that are raised at the bargaining table is much smaller."²³ The number of contracts signed in the last two and a half years (1967-69), under the added burden of being first agreements, demonstrates that the structured method of conflict resolution is capable of performing the task it was created to do.²⁴

Thus far it has been shown that except in the area of the scope of bargaining, the Canadian structure of collective bargaining has conformed with the model developed in chapter I. This conformity also extends to that area of the framework which suggested that a written agreement which is designed to regulate the activities of both parties over a given period of time must be the outcome of negotiations.

22 As of December 1969, there were approximately 185,000 employees who could conceivably be included in a collective agreement. Out of this number approximately 136,000 employees represented by the Public Service Alliance of Canada (P.S.A.C.) were covered by contracts and about another 25,000 employees, represented by the Council of Postal Workers and other small unions were also covered. These figures were arrived at from data given by Jacob Finkleman, "Public Service Staff Relations Board", Argus Journal, vol. 4 (December, 1969), p. 3. and "Where We Stand on Certification", Argus Journal, vol. 4 (November, 1969).

23 Finkleman, Argus Journal, op. cit., p. 3.

24 It can be argued that the first round of bargaining was the honeymoon period of public service staff relations which would mean that the process could become bogged down in subsequent rounds. I would suggest, however, that such is not the case as the precedent has been established for conflict resolution. The validity of either hypothesis, however, can only be ascertained by further developments.

Management and labour in the Canadian public sector conform to this requirement as they are bound by the terms of collective agreement which they have negotiated. If they are unable to reach an agreement and the matter has to be referred to binding arbitration, then both sides are bound by the arbitral award.²⁵

The last important segment of the basic framework of collective bargaining that remains to be applied to the Canadian situation is the one which is concerned with the resolution of conflicts that arise out of the interpretation and application of the collective agreement. As was seen in chapter III the American Government established a structure to perform this function. This structure was not, however, a viable one because it favoured one of the parties. The other party, as a result, gradually lost confidence in the structure. To get away from this type of situation the Canadian Government decided to adopt with minor modifications the structure which had evolved in the private sector to perform this function.

The function of contract interpretation, therefore, is performed in the Canadian structure by the grievance procedure. Grievances concerning the application and interpretation of the contract have to go through three primary

25 The collective agreement or arbitral award must be honoured by both parties. This is modified, however, in one instance; the collective agreement is subject to the appropriations by or under the authority of Parliament of any monies that may be required by the employer. See P.S.S.R.A., section 56 (1).

stages. These stages exist within the organizational hierarchy of management and labour. If a settlement cannot be reached at these levels then the matter leaves the organizational hierarchy and goes to binding arbitration by a neutral third party. Arbitration is performed by an adjudicator whose function it is to interpret the collective agreement or arbitral award.²⁶ His decision is final and binding on both parties.

Where a decision on any grievance referred to adjudication requires any action by or on the part of the employer, the employer shall take such action.

Where a decision on any grievance requires any action by or on the part of an employee or bargaining agent or both of them, the employee or bargaining agent or both, as the case may be, shall take action..²⁷

The discussion of collective bargaining in the Canadian public service at the federal level has demonstrated that, except for the area of negotiable items, it has incorporated the basic outline of collective bargaining. This should mean, if the hypothesis concerning the relationship between stability and the degree of implementation of the model is correct, that there should be a fair degree of stability in the Canadian public sector.

26 Adjudicators are appointed by the Governor in Council, on the recommendation of the P.S.S.R.B.

27 P.S.S.R.A., section 96 (4) (5).

The degree of stability that exists in the Canadian public sector can best be seen by looking at the degree of friction that exists between the employee organizations and Treasury Board. The easiest way to measure this is to look at the number of times that these two parties have been unable to resolve their own differences in contract negotiations. The bargaining process has only broken down three times. The strike has been used once and binding arbitration twice.²⁸ This is an extremely good record when one considers that over 60 contracts have been negotiated, by December, 1969.

The framework of collective bargaining has only been operable for two and a half years and as such it is hard to predict whether the stability that has been generated thus far will continue. The employee organizations are confident, however, that if the collective bargaining process remains as it is, it will become an even more viable instrument of stability in the future.

It is obvious, however, that given time to learn to adjust to and live with this new system of employer-employee relations, collective bargaining will provide a benefit to us all in the years ahead.²⁹

28 The strike has been used by the Council of Postal Workers and binding arbitration by the Communications and Education Groups.

29 Maguire, "Development and Experience of Collective Bargaining to Date", op.cit., p. 10.

The danger of instability arising in the future does not lie in the structure of collective bargaining, but rather in the failure on the part of the government to continue to recognize that its responsibilities as an employer are separate from its role as government.³⁰ This, of course, would mean an abnegation of the basic framework of bargaining, as the two party relationship would be placed in jeopardy.

30 This warning was given by Claude Edwards, the president of the P.S.A.C. in an editorial in the Argus Journal, vol. 4 (December, 1969), p. 2.

CONCLUSION

The discussion of the Canadian and American legislation on collective bargaining in the public sector in regards to their adaptability to the framework of collective bargaining demonstrated that the former represented the model fairly closely while the latter had very little resemblance to it at all. My hypothesis, at the beginning of this paper, was that stability could only be achieved in the public sector through a well structured process of bilateral negotiations modelled after the framework of collective bargaining as it has developed in the private sector. This hypothesis I feel was borne out; Canadian legislation conformed to the model of collective bargaining and the conformity has resulted, in my opinion, in a fair amount of stability. American legislation, on the other hand, did not provide for a structured form of collective bargaining which incorporated the basic variables embodied in a meaningful bargaining framework and this shortcoming has enhanced the instability in this sector. The present (March, 1970) unrest in the American public sector generated by the postal strike reflects the widespread feelings of insecurity and instability which are present.

Of course many examples can be given that appear, on the surface to contradict my hypothesis, or a profusion of arguments can be put forward demonstrating that separate methods must be employed in the separate sectors to deal with staff relations due to the distinct character of each. However, I do not feel that these examples or arguments will stand up in the long run.

For the examples that are given to contradict my hypothesis I would argue that in these cases the evolutionary stage of development of the public service has not yet reached the stage where a structured form of bargaining would be beneficial to both parties. For the arguments stating that the private and the public sectors are different and, therefore, must be dealt with differently, I would counter with examples from the private sector showing that collective bargaining has been effectively used in industries and services which closely represent if not actually perform the same functions as those that exist in the public sector. Further, I would suggest that in a society based on specialization and differentiation all industries and services ultimately work towards the benefit of the populace and thus must be considered to be public in nature. Thus a differentiation of labour practices based on whether an industry or service is public or not has no relevance.

Stability and conformity to the model of collective bargaining are intricately woven. When any civil service has matured to the extent that it is ready and able to accept the responsibility of participating in decisions concerning their pay and working conditions, they must be given this responsibility. If they are not, instability and agitation will result. This is what has happened in the American civil service, and the prospects for a stable public environment in that country are only as bright as the chances of the introduction of meaningful bilateral negotiations. Threats, force, bribery or persuasion are not suitable alternatives to an active role in activities which are considered essential to ones being.

APPENDIX A

The terms of reference for the Preparatory Committee on Collective Bargaining included the task of developing an orderly system of classification that would be conducive to the introduction of collective bargaining into the public service. A new classification was necessitated due to the fact that the system that existed prior to 1967 was much too cumbersome and awkward to be effective in any type of collective bargaining situation. The system that was in effect prior to the Public Service Staff Relations Act of 1967 contained a total of 700 classes which were subdivided into 1700 grades and then divided still further into 138,000 classified positions.

In order to pursue its task of updating the classification system, the Preparatory Committee had the Civil Service Commission create the Bureau of Classification Revision in 1964. This Bureau was responsible to the Civil Service Commission until 1967 when the authority for reclassification was transferred to the Treasury Board, rather than the Civil Service Commission.

The Bureau was subdivided right from the beginning into three main branches to facilitate its task; they were the Planning Branch, the Operations Branch, and the Structures and Standards Branch.¹ The Planning Branch was responsible for the general planning of approaches to classification for

¹ The information on reclassification was obtained primarily from a speech given by J.F. Maguire, Research Director of the Public Service Alliance of Canada to a Technical Inspection Group in May 1969, and from an unpublished paper prepared by R. Giroux, Assistant Research Director of the Civil Service Federation of Canada in 1966.

each occupational Category before any work was done in writing the standards. It was also responsible for determining the allocation of classes to categories and occupational groups, and for making recommendations as to the appropriate system of classification that should be used to revise the classes.²

The Operations Branch of the Bureau of Classification Revision was responsible for gathering information on jobs in order to facilitate the classification process; they performed this function through position questionnaires that concentrated on a content analysis of jobs that existed in the Public Service. These questionnaires were designed to probe into the duties, the responsibilities, the qualification requirements, and other pertinent data associated with the various positions in order to facilitate the task of the Structures and Standards Branch's task which was to develop classification standards. The Operations Branch was also responsible for training and developing classification officers in order that competent men would be available to interpret and to apply the classification standards at the departmental level. The Structure and Standards Branch, besides developing classification standards, was also responsible for formulating pay plans for each occupational group, and for converting positions

2

The method that was finally adopted was one based on a point rating system. This system was explained very adequately by J.F. Maguire and his explanation is reproduced in Appendix B.

from the old classification system to the new.³

The result of this monumental but necessary undertaking by the Bureau of Classification Revision, was an entirely new system of classification that adopted an occupational approach. The Public Service was divided into six occupational categories, each of which contained a number of occupational groups. These six categories along with their job description, minimum qualifications, and occupational groups, are listed below.

CATEGORIES AND GROUPS

EXECUTIVE CATEGORY

Description: This category is composed of positions in which senior responsibilities for government functions are assigned, and positions in which there is a requirement for exceptionally high standards of performance in the development and execution of policy or in administrative improvement and innovation.

Minimum Qualifications:

Demonstrated and outstanding executive abilities.

Occupational Groups:

Senior Executive Group
General Executive Group

SCIENTIFIC AND PROFESSIONAL CATEGORY

Description: This category is composed of groups of a scientific or professional character in which there is a requirement for a highly developed or specialized body of knowledge normally acquired through university education or through the completion of extensive post-secondary school training.

3

Two basic problems were encountered in this transformation; one was when reclassification resulted in the same job taking on a higher pay scale, and the second was when the same job was devaluated to a lower pay scale. In the first case, an employee that was affected by an upward evaluation would be "green-circled"; this means that his pay would be elevated to a corresponding pay rate within the higher category; in the latter case, the employee would be "red-circled", which means that his pay would be frozen until the salary maximum of his new classification surpassed his current maximum.

Minimum Qualifications:

University graduation, or membership in a recognized professional association.

Occupational Groups:

Actuarial Science
Agriculture
Architecture
Archival and Library Sciences
Auditing
Biology and Bacteriology
Chemistry and Physics
Commerce
Dentistry
Economics and Statistics
Education
Engineering
Foreign Service
Forestry
Geology
Home Economics
Law
Medicine
Meteorology
Nursing
Occupational and Physical Therapy
Pharmacy
Psychology and Social Work
Scientific Regulation
Scientific Research
Translation
Veterinary Science

ADMINISTRATIVE AND FOREIGN SERVICE CATEGORY

Description: This category is composed of groups engaged in the conduct, administration and direction of government programmes, including internal management and service programmes, in which there is a significant requirement for analytical ability, judgement, human relations and organizational skills and supervisory ability or potential.

Minimum Qualifications:

Either university graduation or demonstrated capacity for administrative work and knowledge equivalent to that normally attained through completion of secondary school education.

Occupational Groups:

Administrative Services
Administrative Training
Computer Systems Administration
Financial Administration
Information Services
Organization and Methods
Personnel Administration
Programme Administration
Purchasing and Supply
Welfare Programmes

TECHNICAL CATEGORY

Description: This category is composed of groups in which specialized techniques requiring highly developed skills are performed; it excludes those groups for which university graduation or equivalent qualifications are normally required.

Minimum Qualifications:

Completion of four years of secondary school.

Occupational Groups

Aircraft Pilots
Drafting and Design
Electronics
General Technical
Photography
Primary Products Inspection
Radio Operation
Scientific and Laboratory Technician
Ships' Pilots
Ships' Officers
Technical Inspection
Air Traffic Controller

ADMINISTRATIVE SUPPORT CATEGORY

Description: This category is composed of groups in which the preparation, transcribing, transferring, systematizing and maintenance of records, reports and communication is performed either by manual or machine process. It includes positions in which there is a responsibility for supervision and for the direct application of rules and regulations.

Minimum Qualifications:

Completion of two years of secondary school.

Occupational Groups:

Communications
Data Processing
Clerical and Regulatory
Office Equipment Operation
Secretarial, Stenographic, Typing
Telephone Operation

OPERATIONAL CATEGORY

Description: This category is composed of groups in which manual and related work of an unskilled, semi-skilled or skilled nature is performed and supervised.

Occupational Groups:

Correctional Group
Firefighters
General Labour and Trades
General Services
Heating, Power, and Stationary Plant
Hospital Services
Lightkeepers
Postal Operations
Printing Trades
Revenue Postal Operations
Ships Repair
Ships' Crews

APPENDIX B

STEPS TO BE TAKEN IN PREPARING THE POINT RATING PLAN

First Step

Determining the Types of Jobs to Evaluate

This involves deciding on whether the point rating plan will cover factory jobs only or both factory and office jobs, or office jobs only. Plans which are designed for jobs of a relatively narrow type such as factory or Operational, Clerical, or Supervisory, will result in a more accurate classification of the jobs. Plans that cover a wide range of jobs will tend to include a large number of factors and will not be as adequate as plans which cover a small range of jobs. It is conceivable that a point rating plan which covers both office and factory type jobs will include factors which are not important for office jobs, i.e. Working Conditions and Physical Demands, and will include factors which are not important for factory type jobs, e.g. Contacts Factor.

Second Step

Collection of Job Information

This step involves the job analysis. The job analysis schedule or questionnaires must gather all the necessary information on the factors to be rated.

Third Step

Selection of Factors

There are many factors which can be selected for point rating jobs. These factors vary whether the jobs to be point

rated will be factory type or clerical type. Given a certain type of jobs, certain rules should be followed in selecting the factors to be rated:

- (a) The factors chosen must be ratable; that is significant differences in degrees of each factor can be defined and distinguished in the jobs. For example, a factor such as supervision should vary from the supervision of no workers to responsibility for the supervision of all the employees in the work group. If, for example, supervision is not a characteristic of the jobs under study, then supervision should not be chosen as a factor.
- (b) The factors chosen must be important, that is, they must cover the major characteristics which are common to all jobs. In other words, the factors chosen must be present in all jobs and be useful in differentiating between jobs. The most important factors are education, experience, complexity, supervision, contacts, errors, working conditions, etc.
- (c) The factors must not overlap in meaning. Each factor should be a measure of one and only one aspect of the job. For example, the factor of

"accuracy" is almost the same as "effect of errors". If the definitions show that they overlap in meaning, then they will receive a double weight.

- (d) The Factors should meet both employer and worker standards. The practicability of a point rating plan is based on the acceptance of its value by both management and workers. The same principle should hold in the selection of job factors.

It should be remembered that the factors chosen do not describe all aspects of the jobs under study. It would be impossible to achieve such an objective. The factors chosen deal with those characteristics which are useful in differentiating between jobs or determining their relative values. In the Clerical and Regulatory Group, the Bureau of Classification Revision has chosen 5 main factors which they felt were common to all jobs and would bring in differences between jobs. These factors are, Knowledge (made up of experience and education) Complexity, Consequence of Error, Responsibility for Contacts, and Supervision.

Fourth Step

Definition of Factors

The meaning of the factors selected must be clear to those who use them. The definition of the factor usually attempts to limit us to outlining the exact meaning of the factor. We have stated before that each factor selected should represent one aspect of the total job value, and they should not overlap. In order to measure job values accurately, the raters must have an understanding of each factor, so that they will all measure one and the same aspect of the total job value. For example, the definition of the Knowledge Factor in the Clerical and Regulatory Group Point Rating Plan is as follows: "This factor is used to measure the amount of experience and education required to perform the duties of the position effectively". The definition does not, however, stop there. Experience and Education are also defined as follows: "Experience refers to the minimum level of academic, technical or equivalent formal training required to provide the basis for the development of the skill and knowledge needed in the position."

Fifth Step

Defining Degrees for Each Factor

The point rating plan involves evaluating the job on each of the selected factors. This is done by using a series of degrees within each factor, each degree having a different point value. For example, the Experience Factor is sometimes

composed of the following degrees:

1. Up to 1 month
2. Over 1 month
3. Over 3 months to 1 year
4. Over 1 year up to 3 years
5. Over 3 years

The factors selected are usually divided into degrees before the relative point values of the factors are determined. This is because the importance of each factor is somewhat easier to determine if the degrees have been established than with just the factor definition alone. The following rules are designed to aid in defining degrees for each factor in a rating scale:

- (a) The number of degrees selected should be no more than are needed to differentiate adequately and fairly between all the jobs being rated.
- (b) Degrees should be selected so that jobs fall at each level. It is unwise to have a degree at such a low level or such a high level that no job can be placed into it.
- (c) Each degree should be clearly defined in terms which the worker can understand.
- (d) Ambiguous terms should be avoided so that any misinterpretation will be eliminated.

- (e) Degrees should be written in objective terms. For example, the sentence "...must lift a heavy load" is subjective, whereas "...must lift 75 lbs." is objective.

- (f) Examples should be used as much as possible. This is one of the reasons why bench-mark job descriptions were provided as part of the standards prepared by the Bureau of Classification Revision. These bench-marks are helpful in that they exemplify the degrees of each factor and form points of reference for the rater to check his rating on a particular factor with a similar rating on the same factor for the bench-mark job.

Sixth Step

Determining the Relative Values of Job Factors

The job factors should not all have the same weight or be considered equally important in measuring the value of a job. If, for example, the total possible number of points for a job is to be 1,000, the distribution of these points to each factor will depend on the relative importance of the factors in measuring the value of the job. In judging the relative value of each factor, it must be kept in mind that their relative values are to be judged as they contribute to the difficulty and worth of all jobs. The relative value of

each factor is usually determined by a panel of job evaluation experts who are knowledgeable in the jobs being point rated and know the importance of each factor. The Bureau of Classification Revision, in the Clerical and Regulatory Group, has assigned the following point values to each factor on the basis of its importance:

Knowledge	Max. 350 points
Complexity	Max. 300 points
Consequence of Errors	Max. 100 points
Responsibility for Contacts	Max. 100 points
Supervision	Max. 150 points

The total number of points a job can obtain is, thus, 1,000.

Seventh Step

Assigning Point Values to Factor Degrees

Once the relative value of each job factor has been obtained, the next step is to assign points to the degrees in each factor. These point values can be assigned by an arithmetic progression, or a geometric progression. The arithmetic progression involves keeping the difference between each degree the same, e.g. 0, 15, 30, 45, etc. The geometric progression is based on the premise that each degree increases a given percentage above the preceding one, e.g. 5, 10, 20, 40, 80, where each degree is double that of the preceding one. The Bureau of Classification Revision, in the point rating plan

for the Clerical and Regulatory Group, has used the following method of assigning point values to degrees: the point values increase arithmetically as the degree of each factor increase. The minimum point value for supervision is one-tenth of the maximum point value.

BIBLIOGRAPHY

- Chamberlain, Neil W. Collective Bargaining. New York: McGraw Hill Book Co. Ltd., 1951.
- Cole, Taylor. The Canadian Bureaucracy. Durham, N.C.: Duke University Press, 1949.
- Curtis, C.H. The Enforcement of the Collective Bargaining Agreement. Kingston: Industrial Relations Centre, Queen's University, 1967.
- Davey, Harold W. Contemporary Collective Bargaining. Englewood Cliffs, N.J.: Prentice-Hall, 1951.
- Dawson, R. MacGregor. The Civil Service of Canada. London: Humphrey Milford, 1929.
- Dawson, R. MacGregor. The Government of Canada. Toronto: University of Toronto Press, 1964.
- Dunlop, John T. and Chamberlain, Neil W. Frontiers of Collective Bargaining. New York: Harper and Row, 1967.
- Dunlop, John T. and Healy, James J. Collective Bargaining Principles and Cases, Howewood, Illinois: Richard D. Irwin Inc., 1953.
- Fox, Paul. (ed.). Politics Canada. Toronto: McGraw-Hill Co., 1966.
- Frankel, Saul J. Staff Relations in the Civil Service. Montreal: McGill University Press, 1962.
- Galenson, Walter and Lipset, Seymour Martin (eds.). Labour and Trade Unionism. London: John Wiley & Sons, Inc., 1960.
- Gerth, H. and Mills, C. Wright (ed.). Essays in Sociology. New York: Oxford University Press, 1958.
- Ginzberg, Eli and Eichner, Alfred S. The Troublesome Presence. New York: Mentor Book, 1964.
- Godine, Morton R. The Labour Problem in the Public Service. Cambridge: Harvard University Press, 1951.
- Golding, M.P. (ed.). The Nature of Law. New York: Random House, 1966.
- Hamilton, Alexander. The Federalists. Modern Library Edition, 1937, pp. 529-530.

- Hart, Wilson R. Collective Bargaining in the Federal Civil Service. New York: Harper and Brothers, 1964.
- Hayward, Richard. Whitley Councils in the United Kingdom Civil Service. published by Civil Service National Whitley Council, Staff Side.
- Healy, J. Creative Collective Bargaining. Englewood Cliffs: Prentice-Hall Inc., 1965.
- Hodgetts, J.E. and Corbett, D.C. Canadian Public Administration. Toronto: Macmillan, 1960.
- Hsiao, Kung Chuan. Political Pluralism. London: Kegan Paul, Trench, Trubner and Co. Ltd., 1927.
- Laski, Harold J. A Grammar of Politics. London: George Allen and Unwin Ltd., 1967.
- Lester, Richard A. and Shister, Joseph (ed.). Insights Into Labour Issues. New York: Macmillan, 1948.
- Lipton, Charles. The Trade Union Movement of Canada, 1827-1959. Montreal: Canadian Social Publications Limited, 1966.
- Mabry, Bevars D. Labour Relations and Collective Bargaining. New York: The Ronald Press Co., 1966.
- Nesbitt, M.B. The Civil Service Merit System and Collective Bargaining. New York University, Ph.D. 1962, University Microfilms Inc.
- Ocheltree, Keith (ed.). Government Labour Relations in Transition. (Personnel Report No. 662). Ottawa: Public Personnel Association, 1967.
- Schellings, Thomas. Strategy of Conflict. New York: Oxford Press, 1963.
- Sinclair, Upton. The Jungle. New York: The New American Library Inc., 1905.
- Steinbeck, John. The Grapes of Wrath. New York: Viking Press, 1939.
- Trotta, Maurice S. Collective Bargaining. New York: Simmons-Boardsman Publishing Corporation, 1961.
- Vosloo, W.B. Collective Bargaining in the United States Federal Public Service. Cornell University, Ph.D. 1965, University Microfilms Inc.

- Ward, Paul W. Sovereignty. London: George Routledge and Sons Ltd., 1928.
- Warner, Kenneth O. (ed.). Collective Bargaining in the Public Service: Theory and Practice. Chicago, Illinois: Public Personnel Association, 1967.
- Warner, Kenneth O. and Hennessey, Mary L. Public Management at the Bargaining Table. Chicago, Illinois: Public Personnel Association, 1967.
- Weber, Arnold R. Collective Bargaining Problems and Perspectives. New York: The Free Press of Glencoe Ltd., 1961.
- White, L.D. Whitley Councils in the British Civil Service. Chicago, Illinois: University of Chicago Press, 1933.
- Woods, H.D. and Ostry, L. Labour Policy and Labour Economics in Canada. Toronto: Macmillan, 1964.
- Armstrong, Robert. "Some Aspects of Policy Determination in the Development of the Collective Bargaining Legislation in the Public Service of Canada", Canadian Public Administration. vol. XI (Winter, 1968), pp. 485-493.
- Armstrong, Sir William. "Whitleyism in the Civil Service", Whitley Bulletin. vol. XLIX (November, 1969), pp. 151-155.
- Armstrong, Sir William. "Whitleyism in the Civil Service", Whitley Bulletin. vol. XLIX (September/October, 1969), pp. 136-139.
- Baxter, Clive. "No Holds are Barred in this Diplomacy", The Financial Post. December 27, 1969, p. 3.
- Best, J.C. "The Heeney Report", Collective Bargaining in the Public Service. Fredericton, N.B.: Canadian Labour Congress, 1960.
- Bishop, Robert L. "A Zeuthen-Hicks Theory of Bargaining", Econometrica. vol. 32 (July, 1964), pp. 410-417.
- Bolduc, Roch. "The Framework for Collective Bargaining in the Public Service: The Canadian Experience", Collective Bargaining in the Public Service: Theory and Practice. edited by Kenneth O. Warner, Chicago, Illinois: Public Personnel Association, 1967.

- Bowen, Harold. "The Heeney Report", Collective Bargaining in the Public Service. Fredericton, N.B.: Canadian Labour Congress, 1960.
- Carson, J.J. "The Changing Scope of the Public Servant", Canadian Public Administration. vol. XI (Winter, 1968), pp. 405-413.
- Catlin, Robert E. "Should Public Employees Have the Right to Strike", Public Personnel Review. vol. 29 (January, 1968), pp. 2-6.
- Cunningham, W.R. "Collective Bargaining in the Public Service", Labour Gazette. vol. 67 (1967), p. 626.
- Evan, William M. and MacDougall, John A. "Interorganizational Conflict: A Labour-Management Bargaining Experiment", Journal of Conflict Resolution. vol. 11 (December, 1967), pp. 398-413.
- Finkleman, Jacob. "The Public Service Staff Relations Act", Public Personnel Review: Public Service Alliance of Canada. vol. 41 (December, 1968), p. 30.
- Finkleman, Jacob. "Public Service Staff Relations Board", Argus Journal. vol. 4 (December, 1969), p. 3.
- Foegen, J.H. "The Partial Strike: A Solution in Public Employment", Public Personnel Review. vol. 30 (April, 1969), pp. 83-87.
- Friedrich, Carl J. "Public Policy and the Nature of Administrative Responsibility", Bureaucratic Power in National Politics. ed. Rourke, Boston: Little Brown and Co., 1965.
- Gagan, Leo D. "Recent Transformation in Civil Service Whitleyism", Public Personnel Review. vol. 12 (January, 1951), pp. 25-30.
- Heeney, A.D.P. "The Environment of Public Personnel Administration", Public Personnel Review. vol. 28 (July, 1967), pp. 210-215.
- Hodgetts, J.E. and Corbett, D.C. (eds.). "Personnel Administration in the Public Service", Canadian Public Administration. Toronto: Macmillan Company, 1960.
- Jensen, Vernon H. "The Process of Collective Bargaining and the Question of it's Obsolescence", Industrial and Labour Relations Review. vol. 16 (July, 1963), pp. 546-556.

- Kalleberg, Arthur L. "Concept Formation in Normative and Empirical Studies", American Political Science Review. vol. 63 1969, pp. 26-39.
- Klaus, Ida. "Past, Present and Some Prognostications", Personnel Report. no. 662, Public Personnel Association, pp. 1-4.
- Levine, Marvin J. "Dealing With Inadequacies in Collective Bargaining in the Federal Government", Public Personnel Review. vol. 30 (July, 1969), pp. 164-168.
- McKersie, Robert B., Perry, Charles R. and Walton, Richard E. "Intra-organizational Bargaining in Labour Negotiations", Journal of Conflict Resolution. vol. 9 (December, 1965), pp.
- Neder, M.W. "The Theory of Union Wage Policy", Labour and Trade Unionism, New York: John Wiley and Sons, 1960, pp. 3-27.
- Nesvig, Gordon T. "The New Dimension of the Strike Question", Public Administration Review. vol. 28 (April, 1968), pp. 130-131.
- Newland, Chester A. "Collective Bargaining Concepts: Applications In Governments", Public Administration Review. vol. 28 (March & April, 1968), pp. 117-126.
- Nigro, Felix A. "The Implications of Collective Bargaining for Public Administration", Public Administration Review. vol. 28 (March & April, 1968), pp. 111-117.
- Phelps, O.W. "Compulsory Arbitration: Some Perspectives", Industrial and Labour Relations Review. vol. 18 (October, 1964), pp.
- Posey, Rollin B. "The New Militancy of Public Employees", Public Administration Review. vol. 28 (April, 1968), pp. 111-117.
- Roach, Ed. D. and Dunn, J.D. "The Collective Bargaining Unit in the Federal Service", Public Personnel Review. vol. 28 (January, 1967), pp. 19-25.
- Saragdar, Edward. "Zeuthen's Theory of Bargaining", Econometrica. vol. 33 (October, 1965), pp. 802-813.
- Scarrow, H. "Employer-Employee Relationships in the Civil Services of the Canadian Provinces", Public Administration Review. vol. 35 (1957), p. 65.

- Stahl, Glenn O. "The Horizon of Personnel Administration", Public Personnel Review. vol. 13 (July, 1952), pp. 104-109.
- Thompson, Arthur A. "Employee Participation in Decision-Making: The T.V.A. Experience", Public Personnel Review. vol. 28 (April, 1967), pp. 82-88.
- Varcoe, F.P. "Legal and Constitutional Aspects of Collective Bargaining in the Public Service", Collective Bargaining in the Public Service. Fredericton, N.B.: Canadian Labour Federation, (May 5, 1960).
- Vaison, Robert A. "Collective Bargaining in the Federal Public Service: The Achievement of a Milestone in Personnel Relations", C.P.A. vol. XII (Spring, 1969), pp. 108-112.
- Woods, H.D. "Some Problems Related to Collective Bargaining in the Public Service", Collective Bargaining in the Public Service. Fredericton, N.E.: Canadian Labour Congress, 1960.
- _____. "Labour Legislation and Collective Bargaining in the America's", International Labour Review. vol. 84 (October, 1961), pp. 278-291.
- _____. "New Directions in Bargaining", American Federationist. vol. 70, pp. 18-21.
- _____. "Notes on Current Matters of Industrial Interest", The Labour Gazette. vol. 20 (April, 1920).
- _____. "Where We Stand on Certification", Argus Journal. vol. 4 (November, 1969).

Government Statutes

- An Act Respecting the Civil Service, S.C. (1918), c. 12.
- An Act Respecting Employee Relations in the Public Service of Canada, S.C. (1967), c. 72.
- An Act Respecting Employment in the Public Service of Canada, S.C. (1967), c. 71.
- An Act to Amend the Financial Administration Act, S.C. (1967), c. 74.
- Revised Statutes of Ontario, Labour Relations Act, (1960).

Canadian Government Documents

Annual Report of the Department of Labour, Sessional Paper, # 37, 1921.

Canada; Senate - House of Commons; Special Joint Committee of the Senate and the House of Commons on Employer-Employee Relations in the Public Service of Canada: The Minutes and Proceedings.

Canada Year Book, from 1925.

Heeney Report, Personnel Administration in the Public Service, Appendix "B" Joint Consultation Between Government and Employees Pay and Conditions of Work.

Herman, Edward E. "Determination of the Appropriate Bargaining Unit", Occasional Papers L2-26, Department of Labour, (November, 1966).

House of Commons Debates, from 1917.

Report of the Preparatory Committee on Collective Bargaining in the Public Service, Ottawa: Queen's Printer, 1965.

Press Sources

Financial Post

Globe and Mail

Toronto Daily Star

Windsor Star

Other

Giroux, R. Classification Revision and How it Affects You, Civil Service Federation of Canada, September, 1966.

Giroux, R. Notes for Talk to the Ottawa-Hull Area Council Seminar, Public Service Alliance of Canada, October, 1969.

Giroux, R. Talk Given to the Panel on "Job Evaluation and the Union", May 27, 1969.

Maguire, J.F. Development and Experience of Collective Bargaining to Date: A Talk to the Technical Inspection Group, Public Service Alliance of Canada, May, 1969.

Maguire, J.F. The Collective Agreement in the Federal Public Service, Public Service Alliance of Canada, November, 1968.

Maguire, J.F. The Public Service Alliance Approach to Collective Bargaining, Public Service Alliance of Canada, October, 1967.

VITA AUCTORIS

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Stephen Dean Adams, son of Thomas Adams and the late Jean Kathleen Adams (nee Grant); born June 12, 1945, Windsor, Ontario. Sisters: Barbara and Susan. Married: December 4, 1965 to Vicki Lynn Conn. Daughter Shelley Dawn Adams was born on January 17, 1970.

Education:

Elementary education at Prince of Wales and Glenwood, Windsor, Ontario.
Secondary education at Kennedy Collegiate and Vincent Massey Collegiate, Windsor, Ontario.
University education at the University of Windsor. Bachelor of Arts, 1969.
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Work Experience:

Bank of Montreal, one and a half years.
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