

## Article

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"Public Sector Bargaining : A Review of A Report or A Tale of Two Persons"

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Notons que le tome II contient les annexes au rapport lui-même. D'abord une étude du professeur Woods analyse les caractéristiques des relations de travail dans la construction, en particulier en ce qui a trait aux structures de négociation et aux conflits qui en résultent. Le rapport reproduit ensuite les mémoires soumis à la Commission et les pièces ou exhibits déposés lors des audiences.

## Public Sector Bargaining

### A Review of a Report or A Tale of Two Persons

Public sector bargaining is front and center on the labour relations stage. Action in the private sector drama continues in the wings but in the 1970's the public sector occupies the spot light and commands the attention of the Canadian audience. Unions that were non-existent or relatively unknown ten years ago are now among the largest in the country. Employees who have never previously hit the bricks, and some who have traditionally been opposed to unionism, now find themselves using militant threats and strike tactics.

The Public Service Alliance of Canada, representing mostly non-professional employees in the Federal public service, did not exist ten years ago. It is now the third largest union in Canada. During the same period the Canadian Union of Public Employees more than doubled its membership and seems likely to become the largest union in the country. Nurses (at least in New Brunswick) have been blowing out the Florence Nightingale lamp. Early in 1975, in an attempt to renegotiate wage scales in an unexpired collective agreement, they submitted resignations in large numbers and voted to defy a Supreme Court injunction to return to the hospitals. Strikes by school teachers are no longer a rare or strange event; and professors at several universities have been seeking certifications and bargaining relationships with their governing boards. Letter carriers and postal clerks, meat inspectors and grain inspectors, air traffic controllers and airport firemen — how often did they occupy the attention of headline hunters ten years ago? Only an exceptionally obtuse observer could fail to see that this extension of bargaining has been the most significant development in Canadian labour relations since the rapid growth of industrial unions some thirty years earlier.

Not surprisingly there has been a parallel growth in published writings about public sector bargaining in Canada. In 1965 they scarcely existed. Beyond the study by S. Frankel and C. Pratt on *Municipal Labour*

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*Relations in Canada* (1954), and one by S. Frankel on *Staff Relations in the Civil Service : The Canadian Experience* (1962), and two or three journal articles, there was nothing to be found. The Province of Quebec moved to public service bargaining in 1964-65, two years later the Public Service Staff Relations Act introduced bargaining for Federal employees, followed the next year by similar legislation in New Brunswick. Within a short time these developments (and moves in the same general direction in the other provinces) became the subject of seminars and conferences, articles in *The Labour Gazette*, *The Monthly Labour Review*, this journal and others. There is now available a substantial body of writing on the topic.

It is not the intention of this paper to review and assess this accumulated writing. Much of it is purely descriptive, and as such it is useful but unexciting information. Much of it is a combination of description, some analysis, speculative opinion and inevitable repetition. This is unavoidable until such time as scholars provide detailed studies of the results of these new bargaining developments. In the words of a famous mixed metaphor « it is virgin territory pregnant with possibilities » for research.

In the meantime two reports that appeared last year deserve more than passing notice. At the request of the Government, Jacob Finkleman (chairman of the Public Service Staff Relations Board) reviewed the experience of the Federal act and presented his findings and recommended changes. *Employer - Employee Relations in the Public Service of Canada* (Proposals for Legislative Change, Part 1) is the most valuable publication available to anyone who seeks a detailed knowledge of the complexities, short-comings and strength of the legislation governing the bargaining relationship at the Federal level, as viewed by the man charged with the primary responsibility for its administration. Its coverage is comprehensive ; its presentation, clear and forceful ; its argument, persuasive ; and its conclusions command respect. (Who now needs the suppressed Bryden report ?) At its annual meetings last year CIRRI held a symposium on the Finkleman Report and one may assume that its existence is well known <sup>1</sup>.

Probably less well known was the appearance of another report a few months later. Its appearance could be appropriately labelled « a tale of two persons. » The purpose of this paper is to bring attention to this report and even more so to bring attention to the cooperative relationship of these two persons. The report has the lengthy and somewhat misleading title : *Report of the Manitoba Labour Management Review Committee on Public Sector Employee-Employer Relations in Manitoba* (July, 1974). The two persons are H. D. Woods and N. D. Cochrane.

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<sup>1</sup> The papers presented at CIRRI have been published in *Relations industrielles/Industrial Relations*, Québec, vol. 29, no 4, Dtcember 1974, pp. 749-846. See also : H.D. WOODS, *Labour Relations in the Public Service*, in this issue.

These two men, close friends, came from relatively obscure New Brunswick communities. Both of them are nearing an age that society traditionally regards as suitable for rest, repose and reflection. Each has pursued a career in which he has maintained a primary interest in labour relations and government policy. Together they have formed an effective team whose influence deserves explicit recognition. The appearance of the Manitoba Report provides a convenient time and excuse to do so.

Some twenty years ago Bus Woods was making his well-known criticisms of the compulsory two-stage conciliation procedure. Doug Cochrane had served for over ten years as Deputy-Minister of Labour in New Brunswick. It was no accident that New Brunswick was the first province to change its dispute settlement policy in the direction of eliminating the automatic access to a conciliation board. It was the result of the influence of one man on thought and the quietly effective influence of the other on government policy.

Bus Woods is so well-known that it is superfluous to recount his deeds in detail. A teacher and dean at McGill, scholarly author, conciliator, investigator, organizer, editor, speaker, Chairman of the Task Force – the list is lengthy.

Doug Cochrane is less well known, in part because of his adherence to the principle that a civil servant should remain anonymous. His responsibility, as he views it, is to develop and administer policies and programmes in the public interest, with his Minister (regardless of political party) as the appropriate recipient of the credit. People in Fredericton commonly remarked that Doug Cochrane was the best deputy-minister in the provincial administration. Early in the sixties New Brunswick lost its best deputy when he accepted a similar appointment in Manitoba. Bus Woods soon found himself flying frequently to Winnipeg. The increased mileage was not going to break up this close working team. In a short time Manitoba began receiving its benefits.

In the passive voice of a government publication<sup>2</sup>, which describes things happening without any person doing anything, one reads :

The Manitoba Labour-Management Review Committee was established in the Spring of 1964 to undertake a continuing and comprehensive review of labour legislation and labour-management relations in the province.

This Joint Committee, with equal representation from labour and management, came into being as the culmination of a process which began in 1963. Several joint labour-management seminars were held over a 12-month period. . . .

Nonsense. Joint labour-management seminars and Review Committees are not just held or established. They come into existence because some one has some ideas, discusses them, proposes action, persuades

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<sup>2</sup> « Background Information on the Manitoba Labour-Management Review Committee ». Department of Labour, Manitoba. (mimeo, no date)

others of its value, obtains the necessary cooperation and finance, organizes the details, and brings something new into existence. It is a creative act of men. And the men in Manitoba were the team of Cochrane and Woods.

Should anyone doubt it note that Bus Woods has been Chairman of the Labour-Management Review Committee since its inception, and that Manitoba shortly followed New Brunswick's lead in de-emphasizing the use of conciliation boards.

Following about two years of discussions, interviews, and studies the joint Review Committee presented its report on *Public Sector Employee-Employer Relations in Manitoba*. A committee can determine or influence the content of its report, but no committee ever writes one. In the Foreword, Bus Woods gives credit for its completion to everyone from the typists to the Minister but respects his team-mates wish to remain anonymous. It is time to blow Doug Cochrane's cover. The *Report* makes no reference to him. The *Annual Reports* of the Manitoba Department of Labour do not carry his name. But behind this self-imposed screen he has been persuading, encouraging and, in general, making possible the effective contribution of others.

The *Report* is a good one with a relevance, despite its title, beyond Manitoba. Five of the nine chapters deal with such matters as : comparison of the private and public sectors ; collective bargaining and changing attitudes ; the strike issue ; models of public employment systems of industrial relations ; public policies elsewhere in Canada. In the three appendices Paul Phillips (research director for the study) explores some theoretical problems through « a simple bargaining model ; » summarizes the results of a questionnaire survey of practice in seven public interest sectors in the ten provinces ; and presents some observations based on statistical data about public interest disputes in Canada. In total this means that 65% of the *Report* is not confined to the situation in Manitoba. And the Manitoba experience itself is of wider interest as one part of the diverse Canadian developments. When one adds to this that the reader is getting the benefits of the reasoned judgements of Woods and his Manitoba associates the conclusion follows that the *Report* is of value to anyone interested in public sector bargaining in Canada.

In its many consultations with the participants in public sector bargaining the Committee found two things : a strong consensus in favour of continuing a bargaining relationship ; and a demonstrated interest in seeking ways to improve it. These findings are reflected in a feature of the *Report's* recommendations : the emphasis they place on the parties to take the initiative and responsibility for designing their own procedures rather than have the law impose them. Some illustrations of this feature follow. The « initiative for carving out separate units from the global one now recognized should rest with the parties of interest » (p. 131) ; « we believe the question of geographic scope is one which should be examined . . . by the parties themselves to see if they can work out a mutually ac-

ceptable approach » (p. 135) ; « the procedural mandate [of a conciliation board] should be in the hands of the parties and should be included in an agreement to submit the dispute to a board » (p. 147) ; the matter of designating employees who are prohibited from striking is « an issue to be negotiated . . . before bargaining for a collective agreement » (p. 150) ; on the problem of picketing « the best compromise would be to require the parties to negotiate the level and location. » (p. 150)

Of course there must be some administrative authority to give final decisions on many such questions if the parties disagree. The *Report* recommends the creation of a Public Service Panel within the existing Manitoba Labour Board, having a common chairman and deputy chairman. This is a logical arrangement if, as the Committee envisaged, special sections of the present Labour Relations Act (rather than a separate act) would govern the public sector bargaining.

Some recommendations approach or cross the boundary of bravery. When pensions, group insurance, and employee classifications affect only one bargaining unit « *these items should be fully negotiable.* » (p. 138 original italics) If affecting more than one unit they still should be bargainable but not strikable. Not surprisingly, the recommendations would strengthen the powers of conciliation officers, and avoid conciliation boards unless jointly requested. More surprising is the apparent willingness to permit strikes at the expiration of an agreement, avoiding any statutory prohibition during the conciliation procedure. (The *Report* is not entirely clear on this matter.)

Bravest of all is the recommendation that « *if an impasse is reached either side could have the right to impose final offer arbitration.* » (p. 156, original italics) This proposal has a logical attractiveness because of the pressures to bargain that it should generate, and « bargaining by the parties is vastly preferable to legislative interference and imposed settlements. » (p. 158) The argument in favour of final offer selection seems equivalent to the farmer's argument for keeping a gun in the chicken coop. The neighbors are honest, and the gun keeps them honest. This recommendation is the most controversial one in the *Report* and it is not entirely consistent with the general emphasis placed on having the parties design their own procedures. That emphasis would logically lead to the recommendation found in the Finkleman Report (Part 1, p. 171) « that the legislation should permit the parties by mutual consent . . . to resort to final offer selection in whatever form they deem best suited to their needs in any particular case. »

There are many matters on which the *Report* is silent. Some of the omissions are probably deliberate, such as the absence of recommendations for penalties for those who may engage in illegal work stoppages. One wonders what should be done if designated employees join in a strike, or if unions or groups of their members strike illegally? Likewise there is no recommendation on the possible use by the employer of lockouts. Should the employer have, or be deprived of, this tactic? The Finkle-

man *Report* (Part 1, p. 154) suggests that it could be a useful weapon to minimize the impact of strike action that does not involve a complete cessation of work, such as a rotating strike. One wonders if the past relatively peaceful labour relations in the Province's public sector justify the optimistic bias that these omissions give to the Manitoba Review Committee's report.

Some of the omissions are probably by over-sight. The Report displays an awareness of the need for an administrative authority independent of the government employer but pays little attention to the range of activities that logically should belong to that authority. Who selects, appoints and pays for the arbiter in the procedure for final offer selection? The Chairman of the Public Service Panel should select the chairman of a conciliation board for a dispute in the civil service (p. 145), but should he not also appoint the conciliation officers or mediators for such disputes? Is not the provision of statistical data, acceptable to the parties, another activity for the independent authority? The point is not that there has been any lack of understanding of these matters but that there is no emphasis on the numerous and often onerous responsibilities of the independent authority.

One omission is difficult to understand. Collective bargaining involves not only the negotiation of collective agreements but also their day-to-day administration. Not even in Manitoba are labour relations so serene that disputes do not arise during the term of an agreement. There is no discussion or recommendation for Manitoba on the system for final decisions in such disputes. Presumably there is another function here for the Public Service Panel in administering an adjudication or arbitration system.

Finally there are a number of omissions because the Committee was more interested in the principles and the general structure of the bargaining relationship than in its myriad of messy details. One can find how many and how messy these details can be by reading the Finkleman *Report*. (e.g. Employees excluded from a bargaining unit should be « identified » not « designated » to avoid confusion with the designated employees prohibited from striking.)

The *Report's* final recommendation is for the establishment of an on-going Committee on public sector industrial relations. If this is done, and if such a committee does its work as well as the present Labour-Management Review Committee has done, some time in the future the new committee will provide a Finkleman-like review of the Manitoba experience. For the present the Manitoba *Report* is a valuable addition to the available publications on public sector bargaining. The team of Cochrane and Woods has scored again.