Article

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Relations industrielles / Industrial Relations, vol. 30, n° 1, 1975, p. 3-29.

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Manitoba

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In reference with the Manitoba Labour-Management Review Committee, the author deals with the problem of public employment labour relations and the use of the Review Committee as a device to explore a major public policy problem in industrial relations.

INTRODUCTION

During the past two years the Manitoba Labour-Management Review Committee has been engaged in an examination of labour relations in the public sector. In the Spring of 1974 this Committee held a two-day conference to review the contents of a draft report including proposals and recommendations. The draft report and its recommendations was later revised in the light of the discussion and debate which developed in the conference. The Committee endorsed the revision and submitted the amended document to the Minister of Labour for distribution to the members of the legislature. What happens with it now will be a matter for government decision and possible legislative action. The Committee has completed a phase of its work.

In this paper I propose to deal with two aspects of this experience ; a) the problem of public employment labour relations ; and, b) the use of the Review Committee as a device to explore a major public policy problem in industrial relations. As a preliminary step it will be necessary to present a brief sketch of the Review Committee, its genesis, structure, frame of reference, mode

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* This paper was presented to the June 1974 Annual Meeting of the Canadian Industrial Relations Research Institute.

of operation and some illustrations of the areas of review undertaken in the past. The 1973 Report of the Review Committee explains its origin and purpose as follows :

Origin and Background

« 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.

The 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 which were designed to examine the main aspects of industrial relations in Manitoba. Labour and management representatives attended these sessions, and a consensus developed that the establishment of a permanent Committee representing both parties would make a valuable contribution to labour-management relations. In the Speech from the Throne of February 1964 the government forecast action of this matter. Two months later the Committee was established and its existence was unanimously approved by a resolution of the Legislature.

Purpose

The Joint Committee was designed to fulfill a twofold purpose. It was charged with the specific responsibility of reviewing labour legislation as embodied in various Acts of the Manitoba Legislature. The second purpose was to untertake, at the Committee's own discretion, a far-reaching examination of common problems. There was no thought that these problems would necessarily be solved, but rather that a discussion of them would lead labour and management to a better understanding of each other's point of view. Ultimately such an undertaking might lead to an intangible but vitally important improvement in labour-management relations within the province. There is agreement that considerable progress has been made on both fronts.

The Committee consists of a Chairman and Vice-Chairman, and twelve nominees each from organized labour and representative employer and business organizations. It functions through a central sub-committee

and ad hoc working parties. It makes use of research results ; from time to time calls in outside expertise ; holds conferences on specific issues ; and attempts to reach consensus on various matters with the object of making recommendations to the Minister of Labour for conveyance to the legislature.

It is important to note the independence of the committee from any formal responsibility to the government of the day, as displayed by the fact that it determines the issues it shall examine, and controls its own agenda. Its sole formal responsibility is to make a report once a year for tabling in the legislature.

It would be misleading, however, to omit reference to the fact that there is a close liaison between the Committee and the Labour Department. A great deal of secretarial and research assistance is supplied by the permanent staff of the Department, and there has always been much informal communication, especially between the Chairman and Vice-Chairman of the Committee on the one hand and the Minister and Deputy Minister as well as senior officials of the Department on the other. It is a somewhat unusual situation of collaborative independence and interdependence which seems to work. In any case the Committee was established by a Conservative regime and has been continued by their New Democratic successors.

PUBLIC SECTOR INDUSTRIAL RELATIONS

In 1972 the Committee decided on its own volition to undertake an examination of public sector industrial relations in Manitoba. In its first discussions it became apparent that Hamlet was being played, not only without the Prince of Denmark, but practically in the absence of almost the whole Court. Indeed, the Committee possessed only two members — a union nominee from C.U.P.E. and a representative of the Amalgamated Transit Workers Union — who were associated with public sector industrial relations. It was decided to invite representation from the parties of interest in public employment industrial relations to join forces with the Committee members in their proposed examination of the problem.

A conference was organized to which were invited, in addition to the regular members of the Committee, representatives from the secretariat of the Cabinet, the Manitoba Government Employees' Association,

the main Crown agencies and the unions representing Crown agency employees, municipalities and their unions including fire fighters and policemen, school trustees and the Manitoba Teachers Society, and the Manitoba Hospital Association and their appropriate unions.

The conference acted as a catalyst and there was unanimous endorsation of the suggestion that the work continue. Bi-partite working parties were established covering respectively the areas of a) the civil service department, b) municipal employment including police and fire, c) hospitals, d) Crown agencies such as Manitoba Hydro and the Liquor Commission and e) public schools.

It might be useful to reflect for a moment on the procedure and its meaning for the development of industrial relations policy. The revision of labour relations policy is always a treacherous operation for any government. Since labour relations are power relations, and since in a society which attempts to construct its policies on certain well-known fundamental freedoms, logic supports the recognition of a positive role of legal confrontation which includes the strike and lockout as legitimate instruments, it follows that changes in public policy usually tend to shift power from one side to the other. Certification and the requirement to bargain in good faith undoubtedly transferred power from employers to unions, while the banning of strikes and lockouts during the life of an agreement tipped the balance in the other direction. In the private sector changes in public policy in labour relations is initiated by the government and enacted by the legislature. Policy changes will usually reflect the relative political power relations of organized labour and organized business.

Governments as the « neutral » actors in the private sector power conflict frequently resort to various forms of investigation of the problems in industrial relations as a preliminary to legislating. These include devices such as departmental studies, internal or mixed task forces, trial balloon white papers or proposed bills, external task forces, royal commissions, or a combination of these. Such activities may serve to enlighten the government of the day and the legislators, as well as the parties of interest, and consequently may indicate the appropriate direction of legal amendment.

The Manitoba Labour-Management Review Committee differs in one important respect from the other investigating devices in that it brings

together around a common table representatives of the parties of interest and operates on the principle of accommodation as far as it can. As in collective bargaining itself the members of the Committee are negotiating, although the Committee has only the power to recommend to the sovereign provincial legislature. That body decides what labour relations policy will be. And just as the Manitoba Government has recognized the independence of the Committee, it is clearly recognized also that no sovereignty transfer to the Committee has taken place. In my opinion this is a wise arrangement. To the extent that the Committee is able to reach a consensus, it presents the government with proposals that represent agreement between labour and management in Manitoba. While the government is under no formal obligation to legislate in accordance with the Committee's recommendations, it is certainly placed in a strong position in the legislature and with the public if it decides to do so. Incidentally, where the two sides of the Committee are not able to agree on policy changes, the government is in no way constrained and may, and indeed has, amended the Labour Relations Act without recommendation from the Committee.

The dual role of the Government as employer of those who work in public service and as the agency formulating public policy in labour relations complicates these relations in the public sector. It is, of course, an oversimplification to say that in this instance the employer as government is in a position to establish rules of the game that favour the employer against the employees and their unions. Yet American and Canadian experience suggests that this is to a considerable extent so. In both countries serious impediments to collective bargaining were characteristic until recently ; and indeed full collective bargaining rights on the scale found generally in the private sector is almost non-existent. Even in those jurisdictions where collective bargaining rights have been granted to public servants they are usually accompanied by a series of restrictions in one or more areas. Certain groups such as the R.C.M.P. in this country are denied the right of unionization. Others such as municipal policemen, firemen, school teachers in some jurisdictions, and so on, may be granted rights to unionize but are denied the right to strike. And in some cases there is no right to arbitration in lieu of the strike. There are frequently limits to the scope of bargaining ; restraints on freedom of association by statutory recognition of government employees unions, bargaining units determined by statute, and other limitations. In general also the management prerogative in public service employment has been protected to a remarkable degree by law.

This is not to suggest that such limitations are not necessary, but only that they exist and that they reflect the governmental authority of the state which happens also to be the employer, and which protects itself by reference to the sovereignty argument and by appeal to the public interest. The record reveals the apparent inconsistency of provincial governments which as early as 1944 imposed the private sector industrial relations model on municipalities but continued to deny it to their own employees.

Students of public employment industrial relations, as well as many of the participants on both the employer and employee sides have long recognized that employment, at least in many areas of the public service, differs in varying degrees from that in the private sector.

The Manitoba Committee recognized the following types of activity into which it considered all government functions involving employment can be classified :

(a) *government agencies engaged in production or provision of commodities or services for sale.* The Manitoba Telephone System, Hydro, the Liquor Board are illustrations. Most of these agencies are engaged in activities which at one time were wholly in the private sector. Generally speaking they are inclined to respond to financial or profit constraints in much the same way as do private corporations.

(b) *public services made available but not for sale for identifiable consumers.* Public education is perhaps the best example. While it operates with budget constraints, generally public education, unlike the commodities and services in the previous category, is not commercially motivated.

(c) *public service to provide facilities for general use but not for sale.* Streets, highways, street lighting snow removal are illustrations.

(d) *public service for the benefit of the whole population.* Police and fire protection, the courts, and control of pollution may be taken as examples.

(e) *public service concerned with research, information and general administration.*

What applies to type (b) is also true of the last three categories. They are concerned with budgets but they are not revenue producers. Thus the discipline of the market is absent.

Of all these types of public employment only the first functions like the private sector. Only it is confronted with the problem of operating with a profit. Labour relations will resemble those in the private sector and collective negotiations will tend to reflect market pressures. But with the rest of governement service decisions in the industrial relations area are political in the same sense that public budgets are political. This is a fundamental difference between the non-commercial areas of public employment and the private sector. And it casts doubt on the validity of the private sector model. But by similar reasoning it indicates that the private sector model may be valid for the commercially oriented sections of public employment.

MODELS OF PUBLIC EMPLOYMENT INDUSTRIAL RELATIONS SYSTEMS

Governments confronted with demands from their employees for the rights associated with collective bargaining have usually at first opposed such demands. The range of possible government positions may run from no concession at all to the granting of all collective bargaining rights, including the right to strike. The possible variations are limitless but the Manitoba Review Committee recognized the following types as probably encompassing most of the forms found in Canada and the United States.

No Right of Association

The terms and conditions of employment are determined by the government of the legislative body or both, sometimes aided by expertise supplied by a civil service commission. This form still persists in some jurisdictions in the United States. It is more or less extinct in Canada. It is probably unstable because of growing employee unrest.

Right of Association and Consultation

Public employees may establish associations which have the right to meet with the government as employer and present requests for improvement. There is no right to bargain. This form is unstable because a power instrument has been created but the right of employees to use this power is denied. It tends to move toward number three.

Right of Association and Negotiation

This goes one very important step beyond the right to petition. In this model actual negotiation takes place with the object of reaching an agreement. Failure to do so leaves the government as employer with the residual authority to determine the terms and conditions of work. For the employees this model has the advantage over petitioning in that it brings in the elements of bargaining and accommodation, and confronts the government with at least a minimal obligation to « justify » its position. The employees, denied the right to strike, will seek alternative methods of exerting pressure on the government in its capacity of employer. The process of collective negotiations tends to become politized and the unions or associations are tempted to resort to campaigns for support from legislators and the public. The justifying approach will florish. The model is unstable again because a permitted power instrument is denied the right to a work stoppage. To the extent that the power of the union is more apparent than real, the model will be relatively stable, but with a limited tolerance horizon. Since there is no provision for arbitration the government as employer still possesses the authority to settle the issues if an impasse is reached.

Right of Association and Negotiation and Arbitration

This model has the appearance of the previous one but has the very important addition of a right to arbitration of unresolved disputes. The fear of arbitration results may have the effect of encouraging negotiation and agreement. But it could have the opposite effect if one side believes it will get a better result by arbitration than by negotiation. The politization of the previous model is less likely to occur here because it is neither the government nor public opinion that is important, but rather the arbitrator. If impasse is reached negotiation with the object of accommodation is replaced by a debate over standards and a justifying approach. Each side will compete for the mind of the arbitrator since by definition he is all powerful. This system will be relatively stable as long as the union believes it can, either by negotiation or arbitration, achieve results acceptable to those it represents. If this proves impossible or very difficult there will be a tendency to engage in working to rule, booking off sick, mass resignations and even outright illegal strikes.

A modification of this model would give the government the authority to reject or modify the arbitration award. Probably such an authority

would be difficult to use because it would lead to charges of bad faith. It has the virtue of protecting the sovereignty of the government.

A still further modification might give the authority of rejecting or modifying an award to the legislature rather than the government. This procedure would hardly be necessary since the legislature always possesses such authority and power without special legislative provision.

Right of Association, Negotiation and the Strike

This is the standard private sector model. Its usefulness in the public sector depends upon the extent to which it is compatible with those features of public service employment which differ from the normal circumstances in the private sector. It is to be noted that ultimate authority as between the government as employer and the civil service unions is replaced by an accommodative process. However, if a distinction is made between the government and the legislature ultimate authority rests with the latter acting as a law-making body. This is the device which has been used in some jurisdictions from time to time. The Federal parliament as well as the legislature in Newfoundland, Quebec, and Ontario have all resorted to this ad hoc device of breaking public interest deadlocks.

The « strike-right » model is almost entirely absent from the United States but has been permitted in practically all Canadian municipalities as well as at least four provinces and the Federal jurisdiction.

It should be pointed out that in some of the strike-right jurisdictions the right of a public service union to strike is actually limited in one or more ways. There may be limits set on the scope of collective bargaining which reserve certain issues for employer (government) determination. This does not deprive the union of the right to strike, but it does limit the number of issues over which the work-stoppage is allowed. Indeed it removes certain matters from the negotiation area altogether. More directly limiting is the provision of « designated » jobs whose occupants are denied the right to strike even if the unit in which they are located has been called out on a legitimate stoppage. The purpose of this modification is to guarantee that certain functions considered essential shall be continued even while a work-stoppage is in progress.

These are the principal models we might expect to find in operation. They cover a spectrum running from a position in which the employees

have no collective rights to the other extreme where they have full rights of association, negotiation and the use of the work-stoppage weapon. Somewhere along that spectrum perhaps can be found the optimum system under present circumstances, although this should not be taken to mean that in Manitoba (or any other jurisdiction) there must be one system only to maximize benefits from the industrial relations systems. It may be safely taken as axiomatic that the most appropriate procedure for municipalities, will not be the best arrangement for the provincial civil service departments. What is appropriate for crown agencies may differ from what is best for education or hospitals, and so on. There is a considerable range of systems in operation in Canada ; and the variations reflect differing and even conflicting interpretations of the problems involved in public employment labour relations.

EXISTING POLICY IN PUBLIC SERVICE EMPLOYMENT RELATIONS IN MANITOBA

Legislative policy applicable to public sector industrial relations in Manitoba is of two basic types. One extends full bargaining rights on the private sector model to all public service employees except civil servants, firemen, and public school teachers. The second, applicable to these latter groups, provides for compulsory, binding arbitration as the ultimate means of dispute settlement. Prior to 1973 municipal and hospital workers were covered by legislation originally designed for the private sector. In a major revision of that year, policemen and employees of crown agencies such as Hydro, the Manitoba Telephone System, the Workman's Compensation Board, the Liquor Commission, and some other agencies had extended to them the same full bargaining rights as prevailed in the private sector and in the public employment agencies mentioned above. While all of these groups had been covered by the pre-1973 Labour Act, they were also subject to certain restraining and limiting provisions especially with regard to dispute settlement procedures. The 1973 amendment abolished these special dispute settlement procedures and extended to the groups concerned full collective bargaining rights including the unmodified right to strike.

It is important to note that the liberalization of the law by expanding the right to strike to groups to whom it had been formerly denied did not include the civil servants proper. But this was in response to the representatives of the Manitoba Government Employees Association who at that time preferred the right to arbitration to the right to strike.

There were other provisions in the amendments such as extension of bargaining rights to certain levels of management, provisions for negotiations over technological change during the life of an agreement, tighter unfair labour practice regulations, and so on. But these need not involve our attention in this paper. In general the changes indicated a policy shift in the direction of the goals of organized labour and in accordance with the ideological position of the recently elected New Democratic Party.

It should be noted that the 1973 amendments were initiated by the government independently of recommendations from the Manitoba Labour-Management Review Committee. It also should be noted that these amendments were not confined to the public sector, but involved changes in policy for both the private and public sectors. Meanwhile the Committee had entered on its own examination of the public sector alone.

OBSERVATION, CONCLUSION, AND RECOMMENDATION

The Committee and its associates from the public sector approached the problem more or less de novo. It accepted the basic agreement by all participants that they favoured collective bargaining as the principal instrument in resolving industrial relations problems in the public sector. It would be misleading, however, to suggest that the existing law as amended was ignored in the examination. It was carefully studied but was not considered to be a barrier to conclusions which would lead logically to policy recommendations at variance with existing policies. Indeed, there are some recommendations for important policy changes. These will be examined below. In the meantime it is important to emphasize the independent approach of the Committee.

In May of 1974 the Committee and its public sector associates met in a final two-day session at which a draft final report and a series of proposed recommendations were considered. This report and the recommendations were based on the earlier conference and working-party meetings as well as the independent research undertaken on behalf of the Committee.

Approximately forty persons attended the conference. This was the penultimate step before presenting a report to the Minister. The final step was approval of the report by the formally appointed members of the Committee itself.

All participants favoured the retention of collective bargaining as the principal instrument for the resolution of conflict in public employee-employer relations. This does not mean that there was agreement as to the appropriate structure of collective bargaining or with regard to the best devices for the resolution of impasses. Nor was there consensus on the most promising ways of guaranteeing industrial peace and protecting the public interest. It does mean, however, that the general Canadian approach which has made collective bargaining in the public services practically universal is fully endorsed by the participants in this Manitoba review. *Indeed we can safely recommend on the basis of consensus among these participants, at least in this one instance, that public policy should continue for the foreseeable future to support collective bargaining in all areas of public service employment.* An equally important finding which emerged from the Committee's review was *the strength of interest the parties demonstrated in identifying and discussing ways in which they might improve their relationships for their mutual benefit and the public interest.*

These two outcomes of the Committee's discussions are the twin bases of the most important aspect of the report, that is the great emphasis the recommendations place on the parties themselves taking the initiative and responsibility for designing their own procedures of collective bargaining, including ways of protecting the public, rather than have such procedures imposed by law. It is true that failing agreement by the parties to negotiate these procedures there might be a third-party resolution. But, unlike much legislation enacted in the past in Canada, the distinctive feature of these proposals is that they do not take the initiative and responsibility away from the parties.

The Administrative Instrument

Three models of a labour board for the public service were considered :

a) the present board which operates under the Labour Relations Act for the private sector, the municipalities and some state agencies ;

b) a separate public service board unrelated to the existing board — the Federal and New Brunswick model ;

c) a public sector panel of the present board with a chairman and vice-chairman who would be common with the regular board. The other members of the panel would not sit on the regular board.

The committee chose the third alternative as providing a degree of independence, making it possible to have members chosen to function in the public sector alone, and yet providing a link with the regular board through the common chairman and vice-chairman.

Associated with this recommendation was the preference for a common Labour Relations Act but with a special section covering the needs and circumstances of public sector labour relations. In this regard, there was no strong sentiment in favour of bringing municipal labour relations under the proposed new public sector clauses. It will be noted that the conference rejected the separate system and separate legislation theory of the Federal and New Brunswick jurisdictions.

A proposal inspired by the Federal Task Force report that the notion of representatives be discontinued in favour of public members only in the selection of panel members was not received with enthusiasm by anyone and was consequently dropped.

The Bargaining Unit Problem

At the present time there are certain bargaining unit problems. These arise with regard to both the civil service departments and in the teaching profession at least. With regard to the former, labour relations respecting the civil servants are governed by both the Civil Service Act and the Labour Relations Act. The Civil Service Act establishes membership in the Manitoba Government Employee Association as a right of anyone employed in the civil service. It also provides that there shall be one global unit for the service and one recognized agent, the M.G.E.A., so long as it has the majority support of the employees. There is provision for recognition of an alternative bargaining agent if the M.G.E.A. should lose its majority status ; but the Act empowers the Minister rather than the Labour Relations Board to make the change.

It would appear that this monolithic position of the M.G.E.A. is practically unassailable as the law now stands. Nevertheless, the conference agreed to three important recommendations for change. One would bring the civil servants and their associations under the jurisdiction of the proposed Public Sector Panel of the Board ; a second would open the way to fragmentation, by application to the panel, of the existing global unit, and a third would make it possible for other associations or

unions to challenge the M.G.E.A.'s sole bargaining rights. In other words, the Civil Service Act provisions regarding the unit and representation would be replaced by the normal certification and bargaining rights provisions of the Labour Relations Act, with the proposed panel being the administrative instrument.

Public school teachers are not included in those covered by the Labour Relations Act. Consequently their employment relations privileges and constraints flow from the Public Schools Act alone. Teachers have the right to join and participate in the Manitoba Teachers Society. There is established a Collective Agreements Board which is authorized to deal with applications for certification including the determination of units and the majority issue as well. There is provision for the certification of M.T.S. locals which means decentralized bargaining.

The firemen in the province are in a somewhat similar position to that of the civil servants in that their employment relations are covered by two acts. But in their case they are the Labour Relations Act and the Fire Departments Arbitration Act. However, unlike the civil servants, the normal bargaining unit and certification provision of the Labour Relations Act apply. The provisions of the Arbitration Act will be considered under impasse resolutions.

There was much debate on the current circumstances in industrial relations in the school system. The Trustees Association has requested the Government to introduce regional bargaining units to replace the local units. The Manitoba Teachers Society vigorously opposes this suggestion. The trustees are seeking to reduce negotiation costs and to establish employer solidarity on a regional basis. The M.T.S. favours the local unit to provide direct negotiation with their employers, to combat regionalism, and to forestall any movement toward a province-wide unit.

The firemen took no formal stand in the meetings on any of the major issues but they requested a consultation meeting with the chairman and his assistants to explore the issues before committing themselves. Such a meeting did take place without further representations from the firemen to the Committee.

On the question of representation and bargaining units the committee recommended as follows :

Establishment of Bargaining Units

(a) *The law should permit the establishment of bargaining units based on the principle of community of interest among employees and administrative logic.* This would open the door to the establishment of several bargaining units within the provincial civil service where now there is one. So far as other employee groups are concerned the laws already permit what this recommendation proposes.

(b) Although the legislation should encourage the parties to re-structure bargaining units themselves, where they disagree *the power to determine the appropriateness and composition of such units and the question of employee support should be vested in either a new Public Service Labour Relations Board, or a Public Service Panel of the existing Manitoba Labour Board, or the present Board itself.*

On balance the committee favours the second of these alternatives — a panel of the existing Board with a common chairman for both panel and Board but with separate members for the panel, nominated by the parties.

(c) *The principle of freedom of association and of choice of unions justifies the right of replacement of one bargaining agent by another, in whole or in part.* This well-established principle, long applicable to employees in the private sector and to many in the public sector as well, the Committee believes should apply throughout the public sector.

(d) With respect to *geographic or province-wide bargaining* the report proposes that *the parties themselves attempt to work out mutually acceptable arrangements* and, where they cannot agree, *consideration should be given to legislation making it possible for eihter a council of unions or a council of employers to apply to the Board panel for a redefinition of geographic scope of bargaining units.* In reaching its decision the *panel should apply the recognized principles of community of interest and administrative logic and the balance of advantage or convenience of these competing principles.* In any case, the Committee believes it would be wrong to interfere by legislation with the position of one side or the other with respect to the determination of geographic scope of units.

The Scope of Bargaining

In the private sector in Canada there is no legislative restriction on the range of items subject to collective bargaining. The whole management personnel administrative area is within the scope of bargaining. In the public sector this is frequently not so. It is usually a goal of public administrators to maintain consistency of rules and standards across the whole service so that persons performing the same class of work will, as nearly as possible be subject to the same terms and conditions of employment. Where, as is presently the case in Manitoba, the civil service is recognized as a single bargaining unit and the M.G.E.A. is the sole bargaining agent, the maintaining of consistency is relatively easy, although there are problems. But if separate units should emerge (and the proposals regarding appropriate units would make this possible) unrestricted bargaining could lead to a crasy-quilt pattern of results.

Some governments in Canada have met this problem by statutory exclusions from the scope of bargaining of certain matters where it is believed uniformity is too important to allow it to be disrupted by bargaining through independent units. Thus the federal law excludes from bargaining the application of the merit principle in appointments, transfer, promotion, lay-off or release of employees ; pension plans, and death benefits are also excluded. New Brunswick excludes employee classification and items that would require legislative changes in order to be adopted. In British Columbia school teachers appear to be authorized to bargain for salaries and bonuses only. In Manitoba, although nothing is stated in the legislation restricting the scope of bargaining, in practice such matters as pensions and group insurance are excluded.

The conference called by the joint committee debated the issue of scope at great length, and most of those present appeared prepared to accept a compromise proposal which would include such items as classification, pensions, and groups insurance in the scope of bargaining ; would provide for two-tier negotiations on such items where public policy favoured uniformity across several bargaining units ; and on these issues would leave the ultimate determination with the Government, subject to legislative endorsation, in case of impasse.

Scope of Bargaining

In principle, the Committee believed that pensions, group insurance and employee classifications should be negotiable as are pay and other

fringe benefits and that where these matters affect only one bargaining unit, they should be fully negotiable.

Where two or more separate units are affected by the same plans, however, making strikes over these issues unworkable, the Committee proposes a « two-tier » bargaining system as follows. *Negotiations on such issues as pensions, insurance and employee classifications should be conducted independently of regular bargaining by a council of unions and employers. Where impasses occur either party would have the right to have the matter in dispute referred to on impartial technical referee, whose authority should be limited to making public recommendations, unless the two sides by agreement give him some other mandate.* If the use of the referee fails to bring agreement *determination would rest with the employer side.* Though this leaves the final say with the employer side the Committee thinks the proposed procedure should ensure full consideration of the points of view of both sides. It is also suggested that the parties might find it useful *to involve technical experts from the outset.*

This proposal would mean that pensions, for example, could be maintained on a uniform formula across the whole civil service as well as some Crown agencies, but that a council of unions with bargaining rights in their specific spheres would have these rights collectively in the second tier areas. In return for this right to negotiate which they now do not seem to possess as a practical matter, they would give up any claim to the right to strike on these restricted issues, with the legislature being the final arbiter.

It was also agreed that a similar arrangement was workable in the municipal area where in fact multi-bargaining units and several unions do exist at present.

The report notes that a special case is presented by the interest of the teaching profession in negotiating matters such as pupil-teacher ratios, class size and even educational programming itself. It believes the teacher claim for an influence in these issues to be valid but questions the use of collective bargaining as the means of exerting influence. *It suggests that the solution lies in the recognition by both central bureaucracy and local trustee groups that, next to the students, teachers are the most important people in education and that mechanisms such as continuing and ad hoc committees involving the teachers are essential.* Otherwise,

teacher concern with educational planning and execution may become enmeshed in collective bargaining in which teachers are engaged in protecting themselves as employees.

Bargaining and Budgets

It had been anticipated that there would be sharp controversy over the timing and results of bargaining on the one hand and budget-making on the other. Yet it did not materialize, the parties of interest displaying a remarkable pragmatic calm. The following statement by the conference was endorsed.

> Budget decisions are made in a political context. Collective negotiations cannot be insulated from this fact. Moreover, the timing may influence the results. If it is established by law that bargaining results must conform to predetermined budget provisions, bargaining will be circumscribed by legislative action taken without the benefit of the results of bargaining. On the other hand, if bargaining is concluded before budgets are determined, the pressure on the legislators to budget sufficiently to meet the commitment of public funds made in bargaining will be strong. On balance it would seem wise to avoid any statutory linking of bargaining and budget-making. This is a political burden which should be determined in the political arena. The way should be left open for collective bargaining to influence the legislature. At times this may lead to embarassment of government negotiators or of governments. Nevertheless, this is probably less damaging than the frustrations of fixed limitations on negotiations, which have been determined by legislative action. Procedures should be maintained which make possible a reasonable accommodation of the legitimate aspiration of public servants and the political responsibilities of governments and legislators. A predetermined statutory relationship between budgets and collective bargaining should be avoided.

Third Party Intervention

There was a general consensus in the conference in favour of retaining the conciliation officer stage, but in the context of the present Labour Relations Act which divorces conciliation from the date of acquisition of the right to strike. Conciliation boards were unpopular although the delegates were not opposed to the right of the parties jointly to request a conciliation board. Some sentiment was expressed particularly by union representative in favour of vesting the appointment of conciliation officers with the propose Public Sector Panel of the Board. In this way the conflict of interest which would be suspected in appointments

by the Minister of Labour would be avoided. On the whole, however, the conference was prepared to accept conciliators appointed by the Minister provided the conciliator did not engage in public reporting or recommendations. It was suggested that if the parties should jointly request a conciliation board and were unable to agree on a chairman the Chairman of the Public Sector Panel shoud undertake the responsibility of appointments.

The Commission of enquiry should be retained in the hands of the Minister in the public interest. It was recognized that such an appointment goes beyond the simple interest in dispute resolution and is in fact a political act.

The Conference gave some attention to the appropriate approach of third parties and endorsed the following :

« 1. The conciliation officer's role should be toward bringing the parties to agreement. He should make no public recommendations. His mandate should continue until either he is withdrawn from the case or there is a settlement. Once assigned to a dispute he should be empowered to call any meetings of the parties he deems necessary and they should be obliged to cooperate with him.

2. The conciliation board (should one be granted on the request of both parties) should take its direction from the parties. They might jointly ask it to :

a) merely mediate without formal recommendation ; or

b) attempt mediation but on a failure to achieve a settlement make non-binding recommendations ; or

c) avoid mediation and go directly to factfinding without recommendations ; or

d) engage in factfinding and non-binding recommendations ; or

e) act as an arbitration board voluntarily accepted by the parties. »

Reasoning behind this unusual recommendation is that since it proposes that conciliation boards should be appointed only when both parties are agreeable, they should also jointly determine its terms of reference and its method of operation. In other words the parties would control the instrument rather than that they should be bound or limited by statutory requirements.

Data Available to the Negotiating Parties

The conference recognized the probability of greater reliance, in public sector bargaining and settlements, on objective criteria and community standards than on simple acceptability as in the private sector, where bargaining power normally will be expected to play a major role. Under the circumstances availability of accurate information becomes crucial in public sector bargaining. The Committee recommended that the existing work of the Department of Labour in data collection be expanded perhaps along the lines of the Pay Research Bureau of the federal system, to assist the negotiators or any intervenors who might become involved.

The Strike Issue and the Resolution of Impasse

Before dealing with the strike isssue in the public sector it is necessary to outline the legal provisions for dispute resolution provided for the private sector in the revised Labour Relations Act.

The first point to emphasize is that the right to strike does not hinge on any particular stage of conciliation. In the case of a newly certified union the right to strike accrues to the union 90 days after the date of certification. In the case of bargaining for the renewal or amendment of an agreement the strike right is acquired by the union on the termination date of the expiring agreement. This arrangement was introduced into the law in order to eliminate the unfavourable effects on collective bargaining of the former suspension of the work stoppage right associated with compulsory conciliation stages. As a means of further encouraging bargaining the amended law permits a party to give notice to bargain 90 days prior to expiration rather than the former 60 days.

The Minister, under these constraints, may assign a conciliation officer in the usual way, and he may also appoint a conciliation board, although this device has a matter of policy practically disappeared from Manitoba. Carried over from the previous law also is the provision by which the two parties may jointly request the Minister to appoint a mediator of their own choosing. The Minister has no option but to meet the joint request ; and the mediator replaces the conciliation officer. This provision was formerly practically enver used, but recently it was successfully applied in at least one public employment case and interest in it may be rising.

A new provision in Section 112(1) provides that the Minister, where he deems it expedient, may have enquiries carried out regarding industrial matters, and may *do such things as seem calculated to maintain or secure industrial peace and to promote conditions favourable to the settlement of disputes.* This imprecise language has not yet been tested in practice, let alone in the courts. At first blush it would appear to grant very extensive powers to the Minister.

Another unusual clause in Section 70 of the Act endorses the principle of voluntary arbitration by providing that the parties may include in their agreement an arbitration clause to resolve any negotiation impasse the next time around when they are re-negotiating an agreement. However, either party may refuse to have such a clause carried forward to the new agreement, and this decision, in spite of the arbitration agreement, is not arbitrable.

These provisions outlined above apply in the private sector. They also apply without qualification to hospital workers, municipal employees (except firemen) policemen and employees of a number of crown agencies. In contrast to many jurisdiction in Canada there are no special legislative provisions for these various classes of public service employees.

There are three important exceptions to the general coverage of public sector employees by the Labour Relations Act of Manitoba. 1) As indicated earlier some years ago the M.G.E.A. requested that their negotiations with the Provincial Government be subject to compulsory arbitration. The Civil Service Act was so amended. 2) With regard to firemen, the Fire Departments Arbitration Act of 1954 established compulsory arbitration and a prohibition of the strike. 3) The Public Schools Act similarly denies to teachers the right to strike, and impasse compulsory arbitration is the conventional three-man board, where requested by either party. Let us return to the proposals of the Review Committee.

The Manitoba record of successful resolution of negotiation disputes in the public sector has been remarkably good, and in recent years there has only been one strike, legal or otherwise. It might therefore be argued, on the principle of leaving well enough alone, that there should be no constructive purpose in considering whether or not there should be policy and therefore legislative changes. But the Committee decided otherwise on the basis of the experience in other jurisdictions and on knowledge of considerable stress in at least some areas of the public sector in the province.

The general question of the right to strike was explored and, with a few important exceptions, there was support for the idea that the right should be extended as widely as posisble. Among those three groups now denied access to the strike there was evidence of considerable ambivalence. The position of the firemen remains obscure. The teachers have a problem of a division within their ranks, partly because of the traditional reluctance of professionals regarding withdrawal of services, partly because of the attitude of certain religious groups among their membership, and partly because of their calculated appraisal of bargaining power vis a vis arbitration. As noted earlier, until recently the M.G.E.A. representing the civil servants of the province have supported their right to arbitration rather than the strike. Undoubtedly the global bargaining unit, and recognition of their limited power in bargaining are influences supporting this policy. Yet dissatisfaction with a recent arbitration award has apparently shifted some members in the direction of the right to strike so that a small majority now seeks an amendment in the law to grant the M.G.E.A. the right to strike.

The conference moved in the direction of establishing a general right to strike but with retaining the privilege of the right to arbitration as well, and with built-in protections for the public in certain situations. The strike was recognized as one means of resolving negotiation impasses.

It was proposed that the right to strike should be extended to all public service employees independently of the right to arbitration. It was recognized that the present unlimited right in the private sector and in certain public sector areas can be maintained and could probably be extended into areas where the right is denied and arbitration is imposed. It was also recognized that some limitation might become necessary to protect the public in certain cases. Efforts of the Committee and in the Conference to define emergency and vital public interest failed as it has always failed. Certain options were considered.

One proposal would introduce the practice of designating non-strikable jobs broadly to cover the whole spectrum of public service employment under the jurisdiction of the proposed Public Sector Panel. However a change from the federal arrangement of designation would make this an issue to be *negotiated* between the employer and the union, with the Panel having the final say in case of deadlock in the negotiations. It was felt by some that there would be a better chance of agreement this way than if the employer submitted a proposed list to the Panel subject to challenge by the union.

There was support for the view that a designation device on a bargaining basis could be applied so as to eliminate the need for legislative prohibition of the strike in any area. It is true that in security operations a high percentage of designation might be necessary, yet it would leave open the possibility of legal strikes, even if in some cases they might be token. This was considered to be better than a statutory prohibition.

The Committee also proposed that the parties negotiate the level and location of picketing, subject again to decision by the Board panel in lieu of agreement.

Consistent with the proposal to designate certain jobs which must be manned even during a strike, the Committee believed that the employer should refrain from carrying on the functions of those employees who are legitimately witholding their labour in a work-stoppage.

With regard to the breaking of impasses, there was some criticism of the federal provision which grants to the union the power to impose arbitration on the employer. Some felt that the New Brunswick system, without the conciliation board requirement, had more to justify it than the federal scheme. To begin with it makes arbitration a choice of both parties, secondly it brings the time of decision up to the time of impasse, thirdly it keeps open three possibilities, largely in the hands of the members of the unit ; the parties may reach agreement, they may agree to arbitrate, the unit may authorize strike action.

The main proposal of the Committee with respect to the problem of resolving impasses was that *either side have the right to impose final offer arbitration*, a system of arbitration in which the arbitrator must choose between the two packages of proposals, one submitted by the employer and one by the bargaining agent.

The Committee explained that this proposal has several advantages. It would probably overcome the problem of one side refusing to bargain seriously with the other because it would be under pressure to avoid the imposition of arbitration in which the other side's proposals might very well be selected. There would also be an inducement to the parties to negotiate a settlement themselves right up to the point of decision of the arbitrator because, once knowing the « final offer » the other side has submitted to the arbitrator, they might see something in their own proposals they would wish to revise in light of what the other side is pro-

posing and in fear that it might appeal to the arbitrator. The very nature of the « final offer » arbitration system would also tend to prevent its use and to induce parties to bargain to settlements themselves.

The proposal is in keeping with the whole emphasis in the report that bargaining by the parties is vastly preferable to legislative interference and imposed settlements.

Additional Recommendations

The Committee emphasized that there is need for the parties in collective bargaining to assume greater responsibility for the evolution of procedures designed to make collective bargaining work effectively and to the public advantage. This means 1) *communication between the parties should be maintained at a high level;* 2) *the parties should assume initiative within, but independently of legislative requirements;* 3) *experimentation;* 4) *the parties should maintain a continuing program of self-education either on a partisan basis, but preferably jointly, to keep abreast of experiments and thinking in public employment industrial relations elsewhere.*

The preference of certain groups of employees for arbitration should be respected but by procedural agreement between the parties rather than by law.

The Committee recommended a program for the development of arbitrators, possibly including the establishment of a panel of arbitrators who would be available to the parties who choose arbitration as a method of settlement or may have it imposed by law.

Finally, the Committee recommended that *consideration be given to establishing an on-going committee on public sector industrial relations similar to the Manitoba Labour-Management Review Committee itself.* The idea was strongly recommended by some of the parties of interest that it would provide an on-going vehicle for joint communication. Since the publication of the Report the Minister of Labour has invited the Committee to submit to the Government proposals for the composition and procedures of a public sector joint committee. This is now (December 1974) being done.

CONCLUSION

While agreement on many of these issues and others not reported was not reached, there was a substantial consensus on certain broad principles. There was a strong belief that the issue of the right to strike is not very important, but that making collective bargaining work is. There was a general belief that public policy should be framed in such a form as to put pressure on the parties to assume the responsibility for protecting the public. It should also remove barriers to inventive innovation in procedures for the resolution of problems. Hence the emphasis of negotiating such things as the designated list and the form of picketing. Hence also the proposal for a Public Sector Joint Committee.

What the Government and legislature of Manitoba will do with the recommendations is a matter for the future. In the meantime, this unusual experience of joint study and recommendation by the parties of interest, who are by the nature of their relationship in continuous conflict, has been fruitful in a number of ways. It has been educative to all participants. It has deepened knowledge of the problems and increased understanding of the nature of public sector employment. It has advanced for consideration by the Government, the legislature and the public a set of proposals for public policy and administration based on certain principles which emerged during the exercise itself. It appears to have opened the door to a continuing instrument, the proposed Public Sector Joint Committee, which should guarantee that the initiative undertaken by the existing joint committee will be followed up with vigor.

Les relations de travail dans la fonction publique au Manitoba

En 1964, le gouvernement du Manitoba institua un comité de révision des relations de travail formé de douze représentants nommés par la Fédération du travail du Manitoba et de douze représentants désignés par le monde des affaires et les principales associations d'employeurs de la province. Ce comité comptait aussi parmi ses membres un président et un vice-président qui étaient au service des écoles de science sociale de deux universités. Deux fonctionnaires du Ministère du travail avaient la responsabilité du service des recherches et du secrétariat, mais ils ne faisaient pas partie du comité.

Le comité avait un double objectif : réviser la législation du travail et s'entendre sur des recommandations qui devaient ensuite être soumises au ministre du travail et, par son entremise, au gouvernement et à l'Assemblée législative ; entre-

prendre, de sa propre initiative, des études suivies et approfondies des problèmes courants. Au cours de ses dix années d'existence, le comité a formulé un nombre considérable de recommandations dont plusieurs furent introduites dans les lois avec ou sans modifications.

Le présent article traite d'un ambitieux programme d'études sur les relations du travail dans le secteur public entrepris en 1972 et qui résulta dans la présentation d'un rapport fort élaboré au gouvernement à la fin de l'été de 1974. Deux aspects de ce rapport sont fort intéressants pour les étudiants et les spécialistes en relations du travail : la question des relations du travail dans le secteur public sans doute, mais peut-être encore davantage la méthode d'étude et de révision utilisée en introduisant dans les relations du travail au Manitoba un instrument de travail original qui allait s'avérer un adjuvant pour l'administration publique.

Le comité de vingt-quatre membres avait été institué à une époque où l'actualité politique s'intéressait surtout aux problèmes du secteur privé. Il n'y avait donc pas à s'étonner si tous ses membres du côté des employeurs appartenaient à l'industrie privée et si les représentants de l'élément travail venaient presque tous de syndicats engagés dans les négociations dans le secteur privé. Aussi pour se pencher sur les questions propres au secteur public, le comité invita les employeurs et les syndicats de ce secteur à se joindre au comité à titre de spécialistes. Presque tous répondirent à l'appel avec enthousiasme de sorte que ce sous-comité réunissait un groupe de cinquante à soixante personnes représentant tant les employeurs que les salariés, qui venaient des municipalités, des commissions scolaires, des services de policiers et de pompiers, des services de santé, des agences de l'État et de la fonction publique proprement dite.

Le comité ainsi élargi recourut à tout un ensemble de méthodes de travail : conférences plénières, ateliers de travail, contrats de recherche indépendants, études et factums du secrétariat, etc. On étudia d'une façon approfondie les relations du travail dans le secteur public. Les textes juridiques et les services mis en place dans les provinces canadiennes et ailleurs furent mis à la disposition de tous les membres du groupe. On fit circuler parmi eux toute une série de pièces statistiques. Enfin, on leur distribua un avant-projet du rapport qui fut discuté dans une dernière réunion plénière.

Récrit et approuvé par le comité original, le projet fut transmis au ministre du travail qui en saisit l'Assemblée législative.

En ce qui a trait à la substance même du rapport, quelques points sont particulièrement intéressants. Tous les participants étaient favorables à la négociation collective comme instrument principal de règlement des conflits d'intérêts dans les services publics. Il n'y eut aucune pression pour interdire l'exercice du droit de grève dans aucun des champs d'activité. On admit qu'il fallait tenir compte de l'intérêt public et des différends susceptibles de créer une situation d'urgence. Dans l'ensemble, on inclinait vers la reconnaissance du principe de l'établissement de fonctions essentielles analogues à ce qui est prévu dans la Loi sur les relations

de travail dans la fonction publique fédérale. Cependant, on était fortement d'accord pour affirmer que l'établissement des fonctions essentielles était une matière de négociation qui, en cas de désaccord, serait tranchée par une section des services publics de la Commission des relations de travail dont on recommandait la formation.

Un second trait caractéristique du rapport, c'est l'accent que les parties ont mis sur leur volonté d'assumer leurs responsabilités plutôt que de s'en remettre au gouvernement ou à ses agences. Aussi, s'intéressait-on moins à la grève en soi qu'à la négociation collective et à la découverte de mécanismes sous leur contrôle qui les aideraient à atteindre des compromis tout en assurant au maximum la protection de l'intérêt public.

Quelques exemples permettent d'apprécier la saveur du rapport. Une recommandation précise fort importante demande au gouvernement d'établir un comité conjoint permanent pour le secteur public. Le ministre du travail fut d'accord et demanda au comité d'en déterminer les fonctions. Cet organisme convoqua une nouvelle conférence des personnes qui avaient participé aux discussions qui avaient abouti au rapport qui recommanda que le comité de révision paritaire original soit restructuré de façon à former un comité constitué de deux sections : l'une regroupant des représentants du domaine privé et l'autre ceux des services publics.

L'issue de tout ce travail dépend des mesures que le gouvernement voudra adopter pour encadrer les relations du travail dans les services publics.