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S.J. Frankel

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Article abstract

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The State as Employer and the Civil Service

S. J. Frankel

In this paper, the author deals with the civil service rather than the public service. The two terms are not mutually exclusive, nor is the difference between them always clear. But a distinction can and should be made from the standpoint of employer-employee relations.

The term *civil servants*, as I shall be using it, refers to those who work for (one might say « serve ») the Crown or Sovereign directly — that is, persons who are employed in government departments operating under direct ministerial control and whose salaries are paid out of consolidated revenue funds voted by the legislature. This distinguishes them from employees of public corporations who are *public* servants in the wider sense. Generally speaking, labour relations in public corporations tend to be similar to industrial relations in the private sector. Of course, the degree of similarity varies from jurisdiction to jurisdiction. For example, employees of the Canadian National Railways, a federal public corporation, have the right to strike, but employees of Hydro Québec do not have this right. In the present context, I might merely suggest that if I favour a system of staff relations for *civil servants* that approximates the private pattern my views must be seen to apply a fortiori to employees of public corporations.

Staff relations in the civil service must differ from those in private employment because of the unique legal character of the state-employer and the overriding importance of the state's functions. Yet to acknowledge the special status of the state is, by itself, not very enlightening. Efforts to deduce practical policies from abstract definitions are not usually very fruitful. It is best, I think, to resist the temptation to

FRANKEL, S.J., Ph. D., McGill University. Associate professor, Department of Economics and Political Science, McGill University.

use the idea of sovereignty to justify policies that might otherwise be open to question.

Civil servants in most constitutional states are to a greater or lesser degree organized in associations whose structure and aims resemble those of trade unions. But there are vast differences in the form and scope of their activities and in the nature of their formal relationships to the state-employer. This suggests that there are no simple principles for determining the limits of trade unionism in the civil service. The actual state of civil service staff relations in a particular jurisdiction is a function of political, regional, historical and institutional factors.

In developing my views on this topic I propose to touch on three general problem areas which raise the following questions.

1 — Do civil servants have a right to form associations with trade-union objectives? If they have this right, does the special nature of the state-employer impose any limitations on the scope and character of their organizations?

2 — Is it possible to have a process of direct negotiations on questions of salaries and other conditions of employment between a state-employer and a civil service association? Can the state be bound by the outcome of such negotiations? In other words, is collective bargaining possible when the state is one of the direct parties?

3 — If there is some form of direct negotiations, what happens if the parties cannot reach agreement? Is there any other recourse open to them?

Right to form associations

The first question is not a difficult one. The organization of civil servants for mutual assistance is a fact. It has been recognized in many official pronouncements and is generally justified as a fundamental civil right. There are civil service associations in every province as well as on the federal level. The question of their scope is more complicated. Take the issue of affiliation: should civil service associations be permitted to affiliate with the general labour movement? Most jurisdictions are silent on this point. There was a period in Britain between 1927 and 1946 when the civil service unions had to disassociate themselves from the Trades Union Congress, but this restriction no longer

holds. You will find that some provincial and federal staff groups in Canada have been affiliated, at one time or another, with the Canadian Labour Congress. The recent tendency, however, has been to withdraw from such affiliation. (Especially since the CLC has associated itself with the NDP.) Civil service associations seem to prefer affiliation with other similar staff groups, and the recent establishment of a Canadian Federation of Government Employees Organizations has met with considerable success.

The issue of « union » recognition is also relevant at this point. Because civil servants are normally excluded from the provisions of labour relations legislation there are no fixed standards or procedures for recognizing one particular group rather than another. On the federal level this factor has led to a multiplicity of organizations competing with each other for the same membership and expending a good deal of their energies on these fruitless rivalries. Indeed, the movement of the federal civil service towards a system of negotiation is being impeded by the inability of the staff associations to agree on a form of common representation. The problem has been less serious in the provinces where a single organization usually represents the organized staff. Some provinces have even given statutory recognition to their respective staff associations. It seems to me that where there is a desire to develop a good staff relationship some thought should be given to a policy of recognition.

Direct negotiations

The second problem area that I referred to brings us to the heart of the matter. The idea of collective bargaining between the state-employer and its employees raises questions that are much more complex than those of organization. Yet, I think that the difficulty is often exaggerated out of all proportion by a terminology that is really out of date. I have called this terminology « the semantics of sovereignty ». One still finds that when the issue of unionism in the civil service is broached official reaction tends to be rationalized in terms of the sovereign status of the state and, by inference, of those who must act in the name of the state.

I do not suggest that this argument is altogether lacking in validity. But its validity is neither simple nor absolute, except in a purely abstract

and legalistic sense. It may be that we need the conception of sovereignty to legitimize the coercive power of the state and also to derive some of the principles of political obligation from it. However, we must also recognize that the idea of a monolithic, all-powerful sovereign is a thing of the past. We live in the age of popular sovereignty. Although we may still speak, as a matter of form, of the Queen in Parliament as the Sovereign, our real concern is with the sovereign's will as it finds expression in laws and in acts of government. The formation of that will in a parliamentary democracy such as ours is the product of a complex and many-sided political process that involves individuals, groups and institutions — a process in which civil servants and their associations may have a legitimate part to play. Parliament as the repository of sovereignty is a continuing institution, but it should not be forgotten that the representatives in government and legislature who may give formal expression to the sovereign's will are transient and expendable men.

In the modern democratic state the will of the sovereign is the will of the people: but how does one get to know just what that will is? Obviously, when it comes to deciding particular issues in our complex and varied mass society there is no such thing as a homogeneous or even a majority will. Parliament as the representative institution approaches the principle of majority rule only at election time when its composition is determined. In devising concrete policies the majority in parliament does not act arbitrarily but responds to the mood and expectations of the « sovereign people » to the extent that it is sensitive enough to perceive them. We may concede that the idea of sovereignty is a useful legal fiction. It provides for an ultimate authority within the state that may be invoked under certain conditions. But the real stuff of politics is the interplay of individual and group interests, and these are based on fundamental power relationships that cannot be treated in purely legal terms. It is futile to try to resolve social and economic problems by means of an abstract logic flowing from a priori legal assumptions.

It may be technically correct to say that the sovereign can determine unilaterally the rights and privileges of civil servants. But, by the same token, it also holds true of the rights and privileges of private citizens, private corporations and other private associations. From a purely legalistic viewpoint, the sovereign may consider himself unsuable, or he may allow himself to be sued. He may permit himself to be bound by contracts with private firms, or he may decide to ignore the contract

and even confiscate the physical and financial resources of those firms. The sovereign may hold his civil servants in virtual bondage, recruit them by conscription and maintain them in monasteries; or, he may grant them the right of association, enter into negotiations with them, and even, if he wills it, accept as binding the award of an arbitration tribunal which may owe its existence to the sovereign's caprice. One can pursue the theoretical argument to its logical conclusion, but it becomes a reductio ad absurdum in relation to experience. The fact is that the concept of sovereignty can be defined so narrowly or so broadly that there is room for almost any kind of practical adjustment.

All this is by way of arguing that something like a system of collective bargaining between the state-employer and organizations of civil servants is possible. It may be that the term « collective bargaining » because it has a particular meaning in private labour relations is not the best one for civil service staff relations. If this is thought to be the case one can always find other words that will adequately describe the relationship that has been decided upon. The kind of staff relationship that is entered into, however, is not determined by legal technicalities, it depends on policy decisions that lie in the realm of politics. As an illustration of the range of possible relationships and also of my point about the flexibility of sovereignty in practice, consider the following. The Queen (as the formal symbol of sovereignty in the « old » Commonwealth) *bargains collectively,* in the fullest sense of the term, with her servants in the Province of Saskatchewan. She *negotiates* with her servants in Britain, Australia, New Zealand and, more recently, with her servants in the province of Ontario. She *consults* with her servants in Canada, and the provinces of New Brunswick, Nova Scotia, Manitoba, Alberta and British Columbia. And, the same Queen graciously receives representations and petitions from her servants in Newfoundland, Prince Edward Island and Quebec. Generally speaking, civil service associations in Canada favour a system of direct negotiations with their government employers on matters of pay and conditions of work. By direct negotiations they mean something less than « collective bargaining » in its usually-accepted meaning.

Compulsory arbitration

The third problem area referred to earlier flows from the second and is based on the assumption that some form of bilateral negotiations is already established. What happens if the government and the staff

organizations are unable to reach agreement? Is there some way of breaking the deadlock? In private labour relations employee groups may resort to strike action if the machinery of negotiation and conciliation has failed to produce an acceptable compromise. Or, the parties to the dispute may agree to submit their differences to an arbitration board for a binding decision. The problem is more complex in the case of civil servants.

To begin with, the logic of sovereignty is somehow more relevant on this level than on the level of negotiation. One can imagine the sovereign consenting to negotiation. But the notion of a strike, which is a form of force, against the sovereign not only seems intolerable but, indeed, seems impossible by definition. In the second place, an interruption in government services brought about by a strike would immediately raise the question of the public interest in the most direct way. The strike problem, however, despite its sinister implications does not figure prominently in civil service staff relations. The staff groups, in general, do not look to the strike as either a necessary or a desirable instrument of policy. Most of them are willing to accept a system of compulsory arbitration as a substitute for the strike.

It is worth noting, in passing, that in spite of legal prohibitions and threats of disciplinary action, strikes have occurred in the civil services of most countries. They have usually been limited in scope and duration, but this is beside the point. An exhaustive study of strikes in the American public services suggests that regardless of official and legal restrictions public servants will strike when they perceive their situation to be intolerable and see no other avenue of effective action. [1] A French writer once made the apt observation that « A strike is not a matter of right, but a brutal and spontaneous fact precipitated by events. » I make this point merely to suggest that one cannot afford to be insensitive to the expectations of civil servants that they should have a right to participate in determining their conditions of employment. My studies indicate that these expectations rise to the extent that civil services are recruited and administered on the basis of merit rather than patronage.

It is easy enough to quarrel with the principle of compulsory arbitration on the basis of legalism. After all, how can the sovereign allow

(1) DAVID ZISKIND, *One Thousand Strikes of Government Employees* (New York, 1940).

himself to be bound by the award of a tribunal that owes its existence to his will? How can the legislature abdicate its responsibility to determine and authorize all expenditures? The argument is really quite inconsequential. Do we say that sovereignty has broken down when the Crown accept a petition of right and allows itself to be sued? Was the passing of the Crown Liabilities Act by the federal Parliament an abdication of its power of the purse? The legal obstacles to the submission of the sovereign to the awards of an arbitration tribunal are, in practice, not insurmountable. This is clearly demonstrated in the experience of Great Britain where an agreed system of compulsory arbitration on questions of civil service pay and conditions of work has been in operation since 1925. It requires only a bit of ingenuity — the insertion of a qualifying clause here and there — to provide for the reality of arbitration while preserving the fiction of sovereignty. The rest is a matter of good faith. Thus, the formal document that announced the Civil Service Arbitration Agreement in Britain pledged that « Subject to the overriding authority of Parliament the Government will give effect to the awards of the Court. » The British government has made it clear that while the qualification is necessary to preserve the constitutional supremacy of Parliament, the government itself would not take any initiative to have an award that has been made rejected by Parliament. In the 38 years that the Agreement has been in force more than 600 cases have gone to arbitration, and in not a single case has Parliament refused to honour an award.

In arguing the case for some form of compulsory arbitration in civil service staff relations I do not overlook its difficulties and shortcomings. Arbitration awards are not good substitutes for agreements that can be reached by negotiation. Indeed, the availability of arbitration often tends to inhibit and frustrate such negotiations. The experience of municipal and school corporations in Quebec is a case in point. But what is the alternative? The real issue in civil service staff relations is not to find a substitute for negotiation, but to find a substitute for the strike. In a society that accepts the full implications of trade unionism, no large body of employees will submit indefinitely to a position that it considers to be inferior simply because its employer happens to be the state. In a sphere of public activity where the strike would be regarded as disproportionately disruptive, if not intolerable, arbitration seems to offer a fair and reasonable alternative. Once the principle is conceded, the problem of making arbitration work becomes mainly a technical one.

Practical considerations

Let me turn now from these abstract polemics to a number of practical considerations. These might help us see the scope and limits of employer-employee relations in the civil service in sharper focus. If the principle of negotiation and arbitration is conceded, a number of fundamental questions suggest themselves immediately. What are the negotiations to be about? Are there any standards to which they can be referred? Who is to represent the government in negotiations? How can arbitration be made most effective?

NEGOTIATION STANDARDS

The central issue in all employer-employee relations — and the civil service is no exception — is pay. There are many other things that could be the subject of negotiation, such as pension plans, promotional policy and special allowances, but these are secondary. Whether or not they should come within the scope of negotiation is not my present concern. If there is an agreement to negotiate about pay it should not be difficult to agree on either including or excluding other matters. The more important question is: are there any factors or criteria that can provide a rational basis for determining the pay of civil servants? How can we know if civil servants are being fairly treated?

The civil service occupies a peculiar, non-economic position in the community. Civil servants do not face their government-employer in the framework of a competitive market where salary ranges are circumscribed by supply and demand and by calculations of profit and loss. In theory, the limit on salaries of civil servants is a function of the capacity of a government to tax. In practice, however, we know that a government must seek to reconcile the salary expectations of civil servants with the imperatives of financial responsibility and political accountability — not to speak of sheer political expediency. Clearly, what is needed is some standard for evaluating civil service pay, a standard that could be regarded as fair and reasonable by civil servant and taxpayer alike.

You will find that where an attempt has been made to define such a standard two propositions are most frequently advanced. The first is that salaries should be sufficient to attract to, and retain in, the civil service persons who possess the necessary qualifications. The second is

that salaries for each class of work should be in line with those paid for comparable work, by good private employers. The two principles are sometimes referred to as *recruitment-retention* and *fair comparison* and at first sight they appear to be dependent one on the other. One could argue that if salary rates are fair, qualified people will be attracted to and retained in the civil service and vice versa. But it does not necessarily follow that because able people are in fact retained in their civil service posts their rates of pay can be assumed to be fair in comparison with outside rates. One need only look at the salaries of our senior civil servants to concede this point.

This is not the time to deal more fully with the question of pay principles. There is an excellent discussion of this problem in the report of a British Royal Commission on the Civil Service which was published in 1955. (Priestly Report — It should be required reading for those concerned with personnel policy in the civil service). I merely wish to state my agreement with its strongly-argued conclusion that there should be only one principle of civil service pay — the principle of *fair comparison.* Negotiations are usually more productive when the parties agree on some point of reference. In the absence of the normal economic forces that operate in private labour relations, a clear policy which accepts the principle that the remuneration of civil servants should be in line with what is paid employees in private industry doing similar work would, I believe, provide a good basis for rational negotiation.

The British have gone a step further than merely enumerating this principle. The Royal Commission that had recommended the single principle of fair comparison also argued the need for setting up fact-finding machinery that would be trusted by both sides. It reasoned with a good deal of force that the process of negotiation between the government and the staff associations would be made more rational and easier if both sides could have access to data that had been collected and organized by an expert statistical agency. The Civil Service Pay Research Unit was established in 1956 for this purpose. It operates under the joint direction of the government and staff sides and produces regular report on comparable rates of pay and working conditions. The British are under no illusion, however, that good statistics can, or should, be a substitute for negotiation. They merely see pay research as a means of introducing relatively objective criteria into the bargaining process and thereby facilitating it. The federal government in Canada has established a similar Bureau of Pay Research which is doing excel-

lent work as a fact gathering agency. But in contrast to the British approach we do not yet, on the federal level, recognize the principle of direct negotiations, so that the interpretation of pay research data and their translation into salary scales remains, in effect, the unilateral decision of the government. Nevertheless, when a system of direct negotiation does come, as I think it must, the work of the Pay Research Bureau will take on new and added importance. It should be noted, in passing, that pay research has also done much to rationalize the work of the Civil Service Arbitraiton Tribunal in Britain, and it would undoubtedly be a valuable auxiliary to a system of arbitration in Canada.

GOVERNMENT REPRESENTATION

We now turn to the question of representation. If the state-employer agrees to negotiate with unions of civil servants, who should act as the bargaining agent for the state in such negotiations? You will find two main approaches to this problem. In some jurisdictions it is the Civil Service Commission that is charged with this responsibility; in others it is one of the government departments under direct ministerial control that fills this role. Thus in Saskatchewan, New Zealand and Australia the chairman of the Civil Service Commission (or Public Service Commission) handles the detailed negotiations on behalf of the government. His function in this respect is essentially technical for he cannot, of course, commit the government to expenditures without its agreement in advance. He must therefore be in continuous communication with a responsible minister while the negotiations are going on. The reason why civil service commissioners are sometimes given this role is that Commissions, though designed originally to set up and maintain a merit system in recruitment and promotion, are sometimes required to look after other details of personnel administration including the making of salary recommendations. In these instances, when negotiations are introduced, the job of negotiator falls quite naturally on the shoulders of the chairman of the civil service commission. From a purely theoretical viewpoint, however, I find it difficult to reconcile the necessarily partisan role of the commissioner-as-negotiator with his duties as administrator of an impartial merit system. These functions are clearly separated in Britain where the Commission is concerned only with the merit system and where the Treasury (a government department) has sole responsibility for all the details of personnel management — organization, establishments, efficiency and pay. Thus, when it comes to negotiations it is the Chancellor of the Exchequer through one of his

expert subordinates who represents the government side. This second approach, it seems to me, is the more logical one, and is to be preferred whenever practicable. It places direct responsibility for negotiations where it belongs — on a minister of the Crown rather than on an official, the Chairman of the C.S. Commission, whose main responsibility should be of an impartial and quasi-judicial nature.

As to the form of an agreement reached by negotiation and the means of its implementation, you will find that experience varies over a wide range. In Saskatchewan the government actually signs a collective agreement with the staff association and considers itself bound by it. The formal instructions are then issued by Treasury Board. In Britain, on the other hand, agreement is recorded in an exchange of correspondence and implementation follows immediately by precise orders that are issued in the form of Treasury Circulars. The form is really unimportant. The key to a good negotiating relationship is the confidence of the parties that agreements once reached will be implemented without delay.

SOME ASPECTS OF ARBITRATION

I turn now to some of the practical aspects of arbitration which I will only touch briefly. First let me emphasize that what I have in mind is compulsory arbitration. Because strike action is ruled out in civil service staff relations there should be some way of resolving a deadlock in negotiations is a manner that is seen to be fair by all interested parties. The British Arbitration Agreement of 1925 which provides a useful model, clearly states that when negotiations fail recourse to arbitration is open to *either* side. The award of the Arbitration Tribunal has no formal legal force, but the undertaking of both sides to be bound by the award means that it will be implemented by formal instruments if necessary. The sovereign's prerogatives are protected by the reservation that actions on rulings by the Tribunal would be « subject to the overriding authority of Parliament. »

The scope of arbitration should, on the whole, coincide with that of negotiation. Pay, special allowances, overtime rates, weekly hours of work, holidays — the « bread and butter » issues — are most likely to cause difficulty. After arbitration has been in operation for some time the parties might wish to broaden its scope by including some of

the « fringe benefits ». One can foresee an occasional dispute over whether or not a particular claim comes within the scope of arbitration. It might be a good idea to allow such disputes over the admissibility of claims to be decided by an administrative ruling of the arbitration board.

I have been referring to an arbitration tribunal or board as a more or less permanent agency. It seems to me that a system of compulsory arbitration calls for such an institution rather than the ad hoc boards that are set up to deal with intermittent cases of voluntary arbitration in private industrial relations. What is needed is a building up of experience, technical competence and precedents which would be respected by the parties and trusted by the public. I believe that one of the conditions for such a development would be to have a chairman appointed for a fixed term and a small permanent secretariat to assist him.

In the actual arbitration hearings, I envisage a three-men tribunal following the usual tri-partite pattern of boards in private industrial relations. But instead of each side designating its nominee for a particular case as it arises, I would prefer to see each side nominate a panel of five or six members who would be available to serve on the tribunal as necessary. The composition of the tribunal for a particular case should be left to the chairman. That is, he should choose one member from each panel to serve with him. This has a number of advantages. It would cut down delays in constituting boards. The chairman would be able to draw on the special qualifications and experience of particular panelists in relation to the issues in dispute, and so on. The two sides should, of course, be able to renew the membership of their respective panels at set intervals. I believe that if the tribunal cannot reach a unanimous award the issue should be decided by the chairman alone. This point deserves some elaboration.

We know that conciliation boards in private industrial relations tend to split along ex parte lines. This is quite natural because the nominees of the parties tend to see themselves as representing the interests of their constituents. They are therefore reluctant to take a public position opposed to those interests, especially since the awards of conciliation boards are not binding, and usually serve as a basis for further bargaining. When it comes to binding arbitration, however, and particularly in the civil service different factors are at work. A binding award certainly carries more authority when it bears the signatures of

all tribunal members. Indeed, if split decisions were to become the usual result of arbitration proceedings the whole process would soon be called into question. However, if majority and minority awards are ruled out, and the only alternative to a unanimous award is an umpire's award by the chairman alone, there is pressure on all members of a tribunal to reach agreement. My evidence for this judgment comes from British experience. Out of more than 600 cases over a period of 35 years only 25 were determined by an umpire's award; the others were apparently « unanimous ». [2]

Let me return for a moment to the question of the constitutional status of arbitration and the enforceability of awards when the state is one of the parties. It seems to me that any agreement on a scheme of arbitration in the civil service would have to acknowledge the prerogatives of sovereignty. These might include the ability of the state to refuse to go to arbitration in a particular case on the grounds that it would or could be incompatible with some other major policy. The staff associations need not fear, however, that an open admission of the government's power to refuse arbitration would encourage excessive use of this power. In the first place, the whole process of staff relations, including arbitration, must be predicated on the good faith of the parties. If either side is going to seek advantage for itself by capitalizing on every technicality, relations between them would deteriorate very rapidly. In the second place, if there were no explicit provision for the exercise of the government's ultimate responsibility for general policy, the government would inevitably find other ways of exercising it. In any case it should be possible to have safeguards which would make it difficult for the government to be arbitrary and indiscriminate in the use of the sovereign's power to refuse arbitration. For example, it could be laid down that any refusal by the government to go to arbitration should be covered by a special order-in-council giving reasons for the refusal. Such an order would be tabled in the legislature and could become a subject of general debate.

Conclusion

Before concluding, I would like to deal briefly with the idea of the public interest. Like sovereignty it is a notion that is often used to justify special procedures and limitations in the staff relations of public ser-

(2) See my article « Arbitration in the British Civil Service, » *Public Administration* (Britain), Autumn 1960 (Vol. XXXVIII).

vants. In this province it is particularly relevant in the case of the public corporation. Yet, upon analysis, it would seem that the concept of the public interest is completely lacking in precision. The interest of a highly diversified public such as we have in our modern societies cannot, in fact, be defined objectively. For the public interest is not a generalized abstraction but an aggregate of individual and group interests. It is constantly changing in structure and intensity in response to changing issues. It may be sensed intuitively but it can never be known with certainty. It is more apparent in times of crisis than in times of stability. The public interest in reality includes the interests of many publics, and democratic policies must seek to reconcile them in all their diversity.

The idea of the public interest is just as vague when applied to the field of employer-employee relations. It is easy enough to distinguish between extreme cases. A labour dispute in a public transportation system impinges on the public interest much more than a strike in a toy factory. There would be little disagreement with the proposition that the process of labour relations in the former should be subject to greater restraint than that in the latter. But what kind of restraint is an open question, for the public interest that is affected is not at all clear cut. For example, a worker who commutes by train to his place of work is seriously inconvenienced by a railway strike; but as a trade unionist he may be prepared to pay the price of inconvenience for the sake of maintaining the strike as a necessary instrument in labour relations. The operator of a fleet of trucks, on the other hand, may be pleased with the extra business that a railway strike brings him; but as an employer he may welcome legal action that is a curtailment of the bargaining power of unions. In any given case there must be hundreds of such conflicting interests, and their relative importance must always be changing as a function of time. Thus a railway strike that lasts for ten days generates a different configuration of the public interest than one which is settled after two days.

I do not wish to belabour this point. I merely want to establish the position that the public interest at any given time must be looked for in the real activities and interests of people. It cannot be inferred in the abstract from the juridical status of a particular employer. To be sure, it may be argued that the mere fact that a public corporation is performing a certain service is in itself evidence of a considerable public interest. This may be granted as a probability, but it does not conflict

with the assertion that the public interest must exist or be anticipated before there is a formal response to it. Applying this argument to the problem of labour relations in the public corporation I would say that as a general rule they should conform to the pattern in the private sector unless, or until, special and realistic considerations of the public interest dictate otherwise.

L'ÉTAT EMPLOYEUR ET LA FONCTION PUBLIQUE

L'exposé qui suit ne concerne que les employés civils et non les employés publics.

Les relations de travail pour les employés civils doivent différer de celles des employés du secteur privé, en raison du caractère légal unique de l'Etat-employeur et de l'importance primordiale des fonctions de l'Etat. Il est préférable, selon moi, d'ignorer l'idée de la souveraineté de l'Etat pour justifier des politiques concrètes, afin de discuter de celles-ci sur d'autres plans.

Association Syndicale

Il n'existe pas de principes simples qui délimitent la syndicalisation dans le service civil. Toutefois les employés civils possèdent certainement le droit de former des syndicats. La question de l'affiliation est plus compliquée. Les associations d'employés civils semblent préférer s'affilier avec d'autres groupes de fonctionnaires. De plus, il me semble que là où il existe un désir de bonnes relations de travail, on devrait songer à une politique de reconnaissance syndicale.

Négociation collective directe

L'idée de la négociation collective se situe au coeur même du sujet. Le concept de la souveraineté de l'Etat cause ici une difficulté mais la souveraineté du parlement démocratique résulte d'un processus politique complexe et diffus qui implique individus, groupes et institutions; les employés civils et leurs associations ont un rôle légitime à jouer dans ce processus. Un système quelconque de négociation collective est possible entre l'Etat-employeur et les organisations d'employés civils. De nombreux exemples viennent appuyer cette opinion.

Arbitrage obligatoire

En acceptant cette dernière possibilité, qu'arrivera-t-il si le gouvernement et les organisations de fonctionnaires ne peuvent arriver à une entente? Les employés civils, au lieu de vouloir recourir à la grève, semblent plutôt accepter un système d'arbitrage obligatoire. Notons toutefois que la grève a lieu dans le service civil. La soumission du Souverain à un tribunal d'arbitrage ne présente pas d'obstacles légaux insurmontables. Sans négliger

les difficultés d'un tel système, celui-ci peut fonctionner à condition qu'on y mette un peu d'ingénuité.

Considérations Pratiques

- Sujets de négociations -

Le sujet central des négociations est le salaire. D'autres tels que plans de pension, politique de promotion, etc., revêtent une importance secondaire.

Normes de négociations

La première norme: les salaires doivent être suffisants pour attirer et retenir dans le service civil des personnes possédant les qualifications nécessaires.

La deuxième: les salaires des employés civils doivent se comparer à ceux des employés du secteur privé. Personnellement, je suis d'avis que seule la dernière devrait exister. De là, l'importance des statistiques valables sur le sujet.

Représentants du Gouvernement

La fonction de représenter le gouvernement appartient parfois à la Commission du Service civil, à ce moment-là, sa fonction est essentiellement technique. Il nous semble plus logique que cette responsabilité revienne à un ministre de la Couronne. En Angleterre, ce sont des subordonnés du Chancelier de l'Echiquier qui représentent le gouvernement dans les négociations collectives.

Efficacité de l'Arbitrage

Ce qui assume de bonnes relations dans les négociations, c'est la confiance des parties concernées que les ententes une fois conclues seront mises en application sans délai.

Quelques aspects de l'arbitrage

Il s'agit d'abord de l'arbitrage obligatoire. Je crois en plus que ce système commande un tribunal d'arbitrage permanent, une institution comme telle. Ce tribunal pourrait être composé de trois membres. De plus, les sentences d'un tel tribunal devraient être exécutoires (unanimes plutôt que non-unanimes).

Selon moi, un système d'arbitrage obligatoire devrait reconnaître les prérogatives de la souveraineté et ainsi l'Etat pourrait refuser d'aller à l'arbitrage sur certains points.

Conclusion

Avant de conclure, je veux parler brièvement du concept de l'intérêt public. D'abord, à l'analyse ce concept manque de précision. Je veux principalement insister sur le fait que l'intérêt public doit être circonscrit d'après les activités réelles et les intérêts des citoyens.