Relations industrielles
Industrial Relations

Public Sector Dispute Resolution : An American Twist to a Canadian Approach
Les conflits d'intérêts dans le secteur public

Allen Ponak

Volume 31, numéro 4, 1976

URI : https://id.erudit.org/iderudit/028741ar
DOI : https://doi.org/10.7202/028741ar

Aller au sommaire du numéro

Éditeur(s)

Département des relations industrielles de l'Université Laval

ISSN

0034-379X (imprimé)
1703-8138 (numérique)

Découvrir la revue

Citer cet article

Ponak, A. (1976). Public Sector Dispute Resolution : An American Twist to a Canadian Approach. *Relations industrielles / Industrial Relations*, *31*(4), 537–552. https://doi.org/10.7202/028741ar

Résumé de l'article

Il existe bien des variantes en Amérique du Nord dans les mécanismes mis au point pour résoudre les différends du travail dans le secteur public. Dans une certaine mesure, ce phénomène traduit le débat ininterrompu qui se poursuit pour découvrir les meilleures méthodes pour résoudre les conflits d'intérêts entre les gouvernements et leurs employés.

Sur ce point, il vaut la peine d'étudier ce qui s'est fait récemment dans l'État du Wisconsin. Le Winsconsin fut le premier État à accorder à ses employés le droit de négociation collective en 1959.

En 1974, pour mettre un terme à la fréquence de plus en plus marquée des grèves dans le secteur public, une commission d'enquête tripartite a été formée pour étudier l'efficacité des mécanismes de règlement des différends. Ces mécanismes consistaient dans le recours à la fois à la médiation et aux enquêtes factuelles, alors que la grève était interdite par la loi.

Quatre auditions publiques eurent lieu auxquelles plus d'une centaine de représentants de syndicats et d'employeurs du secteur public furent entendus Les représentants des syndicats critiquèrent durement le système de médiation et les enquêtes factuelles qui n'étaient pas, selon eux, valables « pour assurer la solution finale des différends. » Au départ, ils demandèrent la légalisation du droit de grève. Toutefois, les employés du secteur public ne voulaient pas surtout le simple droit de faire la grève. Ils favorisaient plutôt un système qui permettrait unilatéralement aux syndicats de choisir, à un certain moment de l'impasse, entre l'arbitrage exécutoire ou le droit de grève.

Lorsque ce système fut inséré dans la Loi des relations de travail dans les services publics (Public Service Staff Relations Act), on s'y référa sous le nom de « projet canadien ».

De leur côté, les porte-parole des employeurs préconisaient le maintien du régime existant et se félicitaient de sa valeur. Ils s'opposaient avec vigueur à toute révision substantielle de la législation. Ils soutinrent que le mécanisme de médiation et d'enquête factuelle fonctionnait bien et que les contre-propositions, soit le droit de grève, le recours à l'arbitrage exécutoire en cas d'impasse et la liberté pour les employés de choisir entre les deux, étaient des solutions inacceptables. Fait à noter, un certain nombre d'employeurs déclarèrent que, si l'on était pour apporter des changements majeurs à la législation existante, ils préféraient purement et simplement la légalisation des grèves à un régime qui laissait la possibilité de choisir entre la grève et l'arbitrage exécutoire. Ils voyaient dans la grève « un moindre mal. »

Plaçant l'intérêt public à la base de ses préoccupations, la commission recommanda finalement un système qui laissait le choix entre l'arbitrage et la grève, mais y ajoutait une innovation importante. Arrivées au point où la situation deviendrait sans issue, chacune des parties au différend pourrait choisir entre l'arbitrage et une grève qui serait légale.

Si les deux parties choisissaient de ne pas soumettre le différend à l'arbitrage, il serait permis au syndicat de déclencher une grève légale. Si l'une ou l'autre des parties optait pour l'arbitrage, les deux devraient accepter de soumettre le différend à l'arbitrage. En ce dernier cas, le droit de grève des employés se trouverait suspendu. En d'autres termes, la recommandation de la commission d'enquête faisait de la décision sur la procédure à suivre une affaire bilatérale contrairement à la décision unilatérale du syndicat que l'on trouve dans la législation canadienne.

Elle recommandait aussi que, dans l'éventualité où les deux parties seraient en désaccord sur l'option à choisir, soit la grève, soit l'arbitrage, l'arbitrage exécutoire aurait préséance. De plus, on proposait que l'arbitrage portât sur les dernières offres finales.

Ce mécanisme de solution des conflits est unique et il sera fort intéressant de voir comment les employeurs des services publics agiront lorsqu'ils auront à faire le choix entre l'arbitrage exécutoire ou une grève. Dans leurs témoignages, les employeurs du secteur public ont soutenu qu'ils préféreraient courir le risque de la grève plutôt que de se soumettre à une intervention exécutoire de l'extérieur. Le système qui a été proposé fournira maintes occasions de vérifier la véracité d'une pareille affirmation.

Public Sector Dispute Resolution.

An American Twist to a Canadian Approach.

Allen Ponak

The objective here is to report on the experiences of the Special Committee on Collective Bargaining Impasses in Public Employment and to emphasize how the various parties viewed the impasses procedures then in effect and what kinds of revisions they considered most desirable.

Substantial variation exists within North America with respect to procedures adopted to resolve collective bargaining impasses in the public sector. This reflects to a large extent the continuing debate among public employees, public managers, and policy makers over the best way to deal with interest disputes involving government employees. [1]

In this light, recent developments in the state of Wisconsin are worth exploring. Wisconsin was the first state to grant collective bargaining rights to its public employees, having done so in 1959. In 1974, in response to the increasing frequency of strikes in the public sector and one bitter work stoppage in particular, a tripartite committee of enquiry was appointed to investigate the efficacy of impasse resolution mechanisms then in effect. The « Special Committee on Collective Bargaining Impasses in Public Employment » * as it was called, was given ten months to report its findings and recommendations to the Wisconsin Legislature. [2] The Committee focused most of its attention

PONAK, A., Assistant Professor of Industrial Relations, Faculty of Commerce, The University of British Columbia, Vancouver, B. C.

[1] The parameters of this debate are synthesized in: James L. STERN et al., *Final Offer Arbitration* (Lexington, Mass.: D. C. Health and Company, 1975), p. 1. For a general overview, see: George T. SULZNER, « The Impact of Impasse Procedures in Public Sector Labor: An Overview, » *Journal of Collective Negotiations*, Vol. 4 (1), 1975, pp. 3-21.

[2] 1973 Assembly Joint Resolution 138 (Wisconsin State Legislature: Madison, Wisconsin).

* Paper presented to the Annual Meeting of the Canadian Industrial Relations Research Institute, Québec, P.Q., June 1976. The author likes to thank Chris FRASER and Stephen HILL for comments on an earlier draft, Howard SNYDER and Ian WILSON for their research assistance and the National Civil Service League (Washington, D.C.) which provided funds for portions of this research. Unless otherwise specified, it will be referred to simply as the Committee.

on Wisconsin's Municipal Employment Relations Act[3] which governed collective bargaining for municipal employees and public school teachers.[4] It was widely held that any revisions in this Act would later be applied to state employees as well.

The objective of this paper is to report on the experiences of the Committee and to emphasize how the various parties viewed the impasse procedures then in effect and what kinds of revisions they considered most desirable. Ample opportunity was provided to assess these perceptions during four public hearings at which more than one hundred representatives of unions and public employers testified. Of additional interest, especially to Canadians, was the attention given to the concept of a procedure that would permit the employee organization unilaterally to choose between binding arbitration and a strike in the event of an impasse. In recognition that this feature first was introduced under the Public Service Staff Relations Act,[5] it was referred to as the « Canadian Plan. » The Committee ultimately did recommend a dispute resolution mechanism which incorporated a choice procedure, but one that constituted a significant departure from the Canadian approach and contained some unique innovations.

Information on which this paper is based was obtained through personal interviews with Committee members and other informed parties in Wisconsin, attendance at Committee sessions and public hearings, and from various documents and transcripts generated by the Committee.

BACKGROUND

More than a decade after the enactment of public sector collective bargaining legislation, bargaining in Wisconsin at the municipal level and in education is very widespread. It is also a highly decentralized process, collective agreements almost invariably being negotiated locally. At the time of the Committee's establishment several different public sector bargaining statutes were in effect. The Municipal Employment Relations Act governed labour relations for municipal employees and teachers. State employees (or civil servants) were covered under

[3] Wisconsin Statute 111.70, as amended.

[4] Unlike the situation in Canada, municipal employees are covered by public sector labour legislation, rather than private sector codes.

[5] Canadian federal legislation enacted in 1967 that governs labour relations in the federal civil service.

provisions of the State Employment Relations Act.[6] Police and firefighters had their own separate provisions.[7]

Interest dispute resolution machinery under the Municipal Employment Relations Act consisted of a combination of mediation and fact finding procedures. Strikes statutorily were prohibited. As an initial step the Wisconsin Employment Relations Commission (WERC),[8] on its own or at the request of one or both of the parties involved, was authorized to provide mediation to assist the parties in reaching a voluntary settlement. If mediation proved unsuccessful, either or both of the parties could petition the WERC to begin fact finding procedures. A neutral party was appointed in most cases to serve as factfinder, although either party had the right to request a three-member tripartite panel. The factfinder (or panel) then conducted hearings to determine the facts of the dispute and the positions of the parties. Upon completion of the hearings, the factfinder reported, in writing, the facts of the impasse and his recommendations for settlement to both parties and to the WERC. At any time prior to the issuance of the report, the factfinder could endeavour to resolve the dispute by mediation.

Once the factfinder's report was released, each party was required to inform the other side and the Commission, within thirty days, whether it accepted or rejected, in whole or in part, the recommendations for settlement. In order for the report to become binding, it was necessary that both sides accepted the recommendations. The rejection of the recommendations by either side exhausted the statutory impasse resolution procedures under the Act, in effect leaving the dispute unresolved. Negotiations might or might not then be resumed, and since it was illegal for the employees to strike, the old collective agreement, even if it had expired, remained in effect.

State employees in Wisconsin fell under impasse resolution machinery essentially identical to those covering municipal employees and teachers. Police and firefighter interest disputes ultimately were resolved by binding arbitration, usually of the final offer selection variety. (At no time was it contemplated that the Committee's recommendations would be applied to police or firefighters.)

---

[6] Wisconsin Statutes 111.80 and 111.97.

[7] Wisconsin Statute 111.77.

[8] The Wisconsin Employment Relations Commission is the agency responsible for administering Wisconsin labour statutes.

The experience in Wisconsin with these statutes with respect to their abilities to resolve impasses without stoppages is presented in Table 1.

These data show that public school teachers and municipal employees, both covered by the Municipal Employment Relations Act, have been most prone to strike. Table 1 also reveals the increasing incidence of strikes since 1969.

In addition, as the number of strikes have increased, the utilization of fact finding has decreased. In a study that examined the developments in education, it was found that teachers had lost faith in fact finding and had become prone to forego it in favour of direct action.[9]

TABLE 1

Public Employee Strikes in Wisconsin per Year (1962 to 1974)

Year	Public School Teachers	Law Enforcement	Firefighters	Other Municipal	State Employees	TOTAL
1962	0	0	0	1	0	1
1963	0	0	0	1	0	1
1964	0	0	0	2	0	2
1965	0	0	0	2	0	2
1966	0	0	0	3	0	3
1967	1	0	0	2	0	3
1968	0	0	1	6	0	7
1969	3	0	1	6	3	13
1970	2	0	2	4	0	8
1971	7	1	0	6	0	14
1972	9	0	0	3	0	12
1973	19	0	1	8	0	28
1974 (Jan.-June)	3	0	0	8	0	11
TOTALS	44	1	5	52	3	105

SOURCE: Compiled by the Wisconsin Legislative Council from the records of the Wisconsin Employment Relations Commission.

[9] Lucian B. GATEWOOD, « Factfinding in Teacher Disputes: The Wisconsin Experience, » *Monthly Labor Review*, Vol. 97, No. 10, October 1974, pp. 47-51.

As is often the case, however, it was neither the increasing incidence of strikes, per se, nor the perceived ineffectiveness of fact finding by unions that occasioned the Committee's appointment. Rather it was the impact of an unusually bitter teacher's dispute in 1974, in the small Wisconsin community of Hortonville, which focused an almost unprecedented amount of attention on Wisconsin public sector labour relations, that was most responsible.

The dispute originated when teachers in Hortonville and the Hortonville School Board were unable to reach agreement on a new contract after a long period of negotiations. The major issue was wages. Attempts to bring the parties together through mediation proved fruitless. A fact finder was appointed and handed down recommendations for settlement. The Board accepted his recommendations, but the teachers rejected them.

With no further provision for intervention under the law, matters remained stalemated until the teachers began an illegal strike. The School Board subsequently fired the teachers on breach of contract grounds, successfully recruited new teachers, and reopened the schools. A week later police arrested more than fifty picketers who were protesting the entrance and exit of substitute teachers in front of the local high school. The arrests, and some of the violent incidents that accompanied the arrests, received wide exposure. [10]

The decision to form the Committee was taken in the aftermath of Hortonville. The Legislature directed that a Committee be appointed to examine the whole matter of public sector impasse resolution in the state and to recommend changes in the legislation directly involved, namely, the Municipal Employment Relations Act.

A nineteen-member committee was appointed in May 1974. It was composed of eleven public members and eight members of the Wisconsin Legislature. Of the public members, three represented organized labour, five individuals represented public management, and three individuals were from academia and were not explicitly associated with either side. The chairman of the Committee was Arlen Christenson, Professor of Law at the University of Wisconsin.

[10] This synopsis of events during the Hortonville dispute was prepared on the basis of newspaper accounts, an interview with the factfinder involved, and an unpublished report prepared by Mr. Howard SNYDER, formerly of the Milwaukee Teachers Education Association.

PUBLIC SECTOR DISPUTE RESOLUTION — PERCEPTIONS OF EMPLOYERS, EMPLOYEES, AND NEUTRALS

At its first meeting, the Committee voted unanimously to conduct several public hearings to ascertain the views of public employee groups, public employer groups, and other interested parties. Three public hearings subsequently were held prior to the commencement of any formal deliberations by the Committee. Notices announcing the hearings asked that two questions be addressed:

1. What, if any, specific problems have been encountered in the present impasse resolution procedures contained in Wisconsin's Employment Relations Act?
2. What, if any, changes in the law would facilitate the peaceful settlement of collective bargaining impasses in public employment?[11]

Approximately ninety percent of the oral and written testimony at the hearings was submitted by individuals associated with public employers or public employees, with the majority of these coming from persons in the education field.[12]

Perceptions of Public Employers

Public employers with few exceptions favoured retention of the existing impasse procedures. It was argued both that the mediation and fact finding procedures worked well and that alternatives to it -- namely, granting public employees a right to strike, invoking binding arbitration in the event of an impasse, or permitting the employee group to choose between the two — were unacceptable. In defending their arguments, public employers frequently cited their concern for the « public interest. »

Legalization of strikes generally was attacked on three grounds: 1) it would greatly increase the power of unions; 2) it would lead to an unacceptable increase in public employee work stoppages; and 3) it would foster political strikes. Harsher penalties for illegal strikes and stricter enforcement of the strike ban were advocated.

Opposition to compulsory arbitration was equally widespread and even more vigorous. Compulsory arbitration, the employers contended,

[11] Wisconsin Legislative Council, *Notice of Public Hearing* (Special Committee on Collective Bargaining Impasses on Public Employment).

[12] These figures were compiled from transcripts of the public hearings.

would undermine the process of collective bargaining and, more significantly, would remove decision making authority from the persons (i.e. public management) in whom the taxpayers has vested authority. The employee relations director of a Wisconsin community summarized this sentiment when he stated:

> Compulsory arbitration would result in the total loss of the public's right through its elected representatives to determine the level of expenditures and proportion of its budget to be devoted to particular services within the community. [13]

Public employers expressed even greater opposition to the choice of procedures approach. In addition to embracing, de facto, the two dispute resolution mechanisms they explicitly opposed, the choice of procedures alternative was depicted as a method that would ensure that power in negotiations would be weighted heavily in favour of the unions. The following testimony from a municipal labour relations director (who then went on to state a preference for the legalization of strikes) is indicative:

> We are opposed to the strike-arbitration option. The vestiture of an exclusive option with the union to determine whether it will strike or utilize compulsory, final and binding arbitration in the event of a dispute does not «promote peaceful resolution of differences, nor reflect a balance of equity and fairness between the parties, nor does it promote continuity of essential services.» The effect of such an option arms the union with the ability to disrupt governmental services where their situation assessment indicates a strike would be successful and the ability to eliminate the influence of local elected officials by compelling arbitration when they determine a strike might not succeed. Under such circumstances the municipality would be at the distinct disadvantage of reacting to the decisions of the union. [14]

One other facet of the testimony by public employers is worth noting. A number of employers declared that if any major changes were made in the existing statute, they preferred legalizing strikes over either binding arbitration or the choice of procedures approach. They saw the former as being «the lesser of evils.»

Perceptions of Public Employees

The position taken by public employees was very different from that enunciated by public employers. Public employees were almost unanimous in their contention that the Municipal Employment Relations

---

[13] Testimony at first public hearing, July 25, 1974, held in Milwaukee, p. 53.

[14] Testimony at third public hearing, September 30, 1974, in Madison, p. 27.

Act's impasse procedures did not work well and ought to be substantially revised.

The paramount objection expressed by employees toward the existing procedure was that it lacked a mechanism that could provide for «ultimate definitive resolution of disputes.» It was argued again and again that the absence of a legal right to strike or of binding arbitration left many impasses unresolved after all procedures under the law had been exhausted. The president of a local teacher association stated:

> If mediation fails, the only other alternative under the law is fact finding. What can a factfinder do?... in the end all a factfinder can do is suggest a settlement. The results of the fact finding are not binding on either party. We have gone through fact finding three times in the last six years. In all cases the board refused to accept the factfinder's report in its entirety. If mediation and fact finding do not succeed, and in our case they have not, what is left? There are no other alternatives within the law.[15]

The existing procedures were further criticized on the grounds that the lack of finality placed no pressure on employers to bargain in good faith and enabled them to drag out negotiations to the detriment of employees.

In view of these complaints, changes in the law were strongly and universally advocated. As a start, a right to strike was demanded. Collective bargaining did not function properly in the absence of the strike sanction, it was argued, because there was no incentive for the employers to make concessions. On philosophical grounds, it was argued that the denial of the right to strike had no place in a free society.

However, employees did not, in the main, desire a simple right to strike. Rather they favoured a procedure that would enable the employee organization unilaterally to choose, at the point of impasse, between binding arbitration or a strike. Public employees maintained that this type of procedure, rather than the simple right to strike, would be most likely to equalize bargaining power between themselves and public management throughout the state. Smaller rural units who lacked the muscle to strike, it was suggested, would be able to opt for arbitration, while larger urban units could select the strike route. In this way, the argument ran, collective bargaining could take place meaningfully.

---

[15] Testimony at first public hearing, July 25, 1974, in Milwaukee, p. 45.

Perceptions of Individual Committee Members

The opinions of the individual Committee members reflected the tripartite nature of the Committee. The partisan appointees echoed the views expressed by their respective factions at the public hearings. Union representatives on the Committee were critical of the existing procedures and advocated major revisions. The employer representatives, for their part, reiterated their basic satisfaction with the current statute and advised against tampering with its dispute settlement provisions.

The attitudes of the non-partisan[16] Committee members are more revealing and, as well, more important since it was they who held the balance of power on the Committee.

Contrary to union claims, it was generally agreed that the law worked reasonably well and that most disputes were settled with few difficulties. More significantly, however, the belief also was expressed that the employer was the more powerful party under the legislation, a serious problem when an employer chose not to bargain in good faith. One non-partisan observed that « under the law, the employer does not really have to bargain in good faith, since there is nothing to compel him to do so. » Elaborating on this theme, another non-partisan member of the Committee stated « that under the existing procedures, collective bargaining is pretty much what the employers want to give employees. »[17]

In light of this sentiment, it is not surprising that nine of the eleven non-partisans voted in favour of a motion supporting substantial change in the impasse resolution mechanism then in effect.[18] But specific suggestions for revision varied among this group and the final Committee recommendations, as is discussed below, reflected considerable compromise.

---

[16] « Non-partisan » is used only to distinguish the group of Committee members representing neither labour nor management. The term is not intended to reflect any value judgments on the part of the author.

[17] This quotation and the one directly preceding it in the text were noted during interviews held with individual members of the Committee.

[18] At the December 18, 1974 session of the Committee, it was moved that a vote be taken on the issue of whether Committee members wanted any change in the existing statute. A « yes » vote indicated the position that the existing collective bargaining law required substantial change. A « no » vote indicated that no change was required. (From minutes of December 18, 1974 meeting of the Committee.)

Summary

The most striking observation that can be made about the opinions expressed by public employers, on one hand, and public employees, on the other, concerns the great disagreement between them. Union representatives were highly critical of the existing dispute resolution machinery and advocated its replacement by a procedure (the «Canadian Plan») completely disagreeable to public employers. The employer spokespersons, conversely, overwhelmingly endorsed the soundness of existing procedures and argued vigorously against any substantive revisions. The magnitude of these differences is detailed in Table 2.

It was the non-partisan members of the Committee, therefore, who ultimately were required to set the parameters of the eventual recommendations to the Legislature. While agreeing with employers that the existing statute was adequate in most instances, they also accepted the union argument that the impasse procedures were balanced in the favour of employers. The non-partisan Committee members thus sought alternatives that would redress this balance somewhat.

THE RECOMMENDATIONS

In the search for an alternative that could accommodate the diverse concerns of a majority of the Committee members, a wide variety of ideas were explored. In addition to the suggestions enunciated at the public hearings, the Committee reviewed impasse procedures utilized in various states, municipalities, and in Canada. Little progress was made, however, until the Committee considered ten impasse resolution «procedural models,» prepared by the Committee's staff attorney, which incorporated a broad spectrum of dispute resolution techniques.[19] Not patterned explicitly after any particular statute, the models were «intended solely to place a number of concepts and ideas before the Committee within several overall procedural frameworks which, in turn, could be further refined into viable statutory language. Many of the provisions in all of the models... could be 'mixed and matched' with other provisions from different models to create a potentially workable statutory impasse resolution procedure.»[20]

[19] Working paper prepared by Committee Staff Attorney, December 12, 1974.

[20] Quoted from explanatory comments that accompanied working paper on collective bargaining impasse resolution models. These comments were prepared by the Committee's Staff Attorney.

TABLE 2

Summary of Public Employer and Public Employee Testimony on Preferred Impasse Resolution Procedure

Preferred Impasse Procedure	*Employers (%)*	*Employees (%)*
Right to Strike	7%	21%
Compulsory Arbitration	2	8
Choice of Procedures [a]	0	71
Mediation and Fact Finding (No right to strike/no compulsory arbitration)	91	0

Percentages listed in this table are based on the testimony of 68 public employers and 24 public employee groups (or their respective representatives).

[a] Choice of procedures is intended to connote an impasse resolution procedure under which the union unilaterally could choose between binding arbitration or a legal strike.

SOURCE: This table is based on an analysis of transcripts of testimony at the first three public hearings conducted by the Wisconsin Special Committee on Collective Bargaining Impasses in Public Employment.

The « mixing and matching, » in fact, is precisely what took place. With the procedural models serving as the point of departure for discussion, three draft proposals were formulated. Two of the three proposals, however, represented minority viewpoints and never were considered seriously.[21] The third alternative, on the other hand, reflected the main currents of thought of the non-partisan members of the Committee and ultimately was adopted as the Committee's recommendation.

The proposal introduced a modified choice of procedures approach in which either final offer binding arbitration or a strike would constitute the terminal method of dispute resolution. At the point at which a final impasse was declared (by the WERC), each side in the dispute would have an opportunity to choose between arbitration or a legal strike. If *both parties* chose not to submit the dispute to arbitration, the employee organization would be permitted to legally strike. If *either one of the parties* in the dispute opted for arbitration, both sides would be required to submit to the arbitration. Under the latter circumstances, the employees right to strike would be suspended. In other words, the right

[21] The two proposals were referred to as WLCS: 76/5 and WLCS: 91/2. The former called for non-binding intervention in the event of an impasse and was in many ways similar to the existing statute. The latter proposal was a binding arbitration bill.

of public employees to strike formally was recognized, but its exercise was permitted only under specially prescribed conditions, the key contingency being that both sides explicitly declined to make use of binding arbitration. The proposal also included provisions for mediation and non-binding fact finding at earlier stages of negotiations. [22]

Before the proposal was adopted, a fourth public hearing was held to solicit reactions to it. As in the first three hearings, public employers and public employees differed greatly in their assessments of the issues.

Public employers completely opposed the proposal, reaffirming again their antipathy to binding arbitration and legalized strikes. Predicting the worst, they foresaw widespread reliance on both arbitration and strikes if the proposal was enacted. Further, they argued that in view of the oft stated repugnance of public employers toward binding third party solutions, it was inevitable that the unions, in practice, would be the side that exercised the choice of invoking arbitration or opting for the strike route. They thus saw the union side as the prime beneficiary of the choice of procedures feature of the proposal. [23]

Public employees were far less critical of the proposal even though they saw it as unnecessarily curtailing their right to strike. They did not seem to feel, as did public management, that the union invariably would control whether binding arbitration or the strike route was invoked. The most positive aspect of the bill, from the public employees' perspective, was its specification of a clearcut terminal point in the bargaining process and its recognition, however limited, of the right of government employees in Wisconsin to engage in strikes. Overall, the general sentiment among union representatives was that the proposal did not go far enough, but that it was a step in the right direction and certainly was preferable to the procedures it was designed to replace. They predicted that because the proposal injected the concept of finality into bargaining, it would reduce, rather than increase, the total number of interest impasses. [24]

At the final Committee session, the proposal was passed as outlined. Voting for the bill were the three labour representatives, the three Committee members from academia, and five members of the Legislature. Voting against adoption of the proposal were the five employer

---

[22] Draft proposal WLCS: 90/3.

[23] Testimony from fourth public hearing, February 17, 1975, in Madison.

[24] *Ibid.*

representatives and three members of the Legislature. Underlining the sentiment of those (including himself) who had voted for the proposal, the Committee chairman stated that it was as ideal a recommendation as possible given the social and political context within which it would operate.[25]

CONCLUDING OBSERVATIONS

The recently concluded proceedings in Wisconsin have implications in several areas. Looking first at the attitudes expressed by the two major protaganists, it is clear that after more than a decade of collective bargaining, fundamental differences exist between the public employers of Wisconsin and the state's public employees. This may be partly explainable by the lingering bitterness of the Hortonville dispute, but evidence of deeper mistrust emerged. In particular, the extent to which the public employers really had accepted the process of collective bargaining can be questioned. Throughout the testimony, and in interviews, the concept of sovereignty repeatedly was raised in one form or another. Strikes, binding arbitration, or any process for that matter that might force public management to make unwanted concessions were depicted as illegitimately removing authority from the persons in whom it had been properly invested.

How indicative are these findings of attitudes held elsewhere? Conventional wisdom holds that with the passage of time the parties to a collective bargaining relationship undergo a maturing process that reduces the level of conflict between them. Hope is held that as unions and management in the public sector gain experience with collective bargaining, the degree of unrest that has characterized the formative years will decline. But for Wisconsin, at least, the findings in this study would seem to belie the underlying assumption of this proposition. It is relevant to ask if public managers in other jurisdictions also perceive unions as sources of illegitimate usurpation of decision making authority. Where unions sense that this is the case, how do they respond? What impact might attitudes of this nature be exercising on the incidence of work stoppages? Do certain methods of dispute resolution exacerbate underlying tensions, and conversely, do certain impasse procedures reduce them? Given the paucity of empirical data addressed to answering these questions, this would appear to be a useful and fruitful area for research.

[25] These comments were made during an interview held with the Committee chairman.

Perceptions held toward the «Canadian approach» also merit some exploration. It is obvious that only selected aspects of the choice of procedures method have been exported. The Canadian plan accurately was perceived as one that permits the union to choose between arbitration or the right to strike in the event of an impasse. But nuances of the Public Service Staff Relations Act such as designating essential employees and stipulating that the employee organization must choose its procedure prior to the start of negotiations seem to have been deemphasized. Both public employees and public employers appeared to take for granted the fact that the selection of procedures would occur at the point of impasse rather than prior to negotiations. This constitutes an alteration of significant proportions and it is little wonder that under these circumstances the choice of procedures approach was viewed by all concerned as favouring the union side. In this regard, it is interesting to note that the question of when to specify the impasse procedure was an issue both when the P.S.S.R.A. first was being considered[26] and more recently in Jacob Finkleman's report on proposals for legislative changes in that Act.[27] Canadian union representatives, like Wisconsin unionists, advocated that the choice of dispute resolution mechanisms be made at the point of impasse.

Finally, future developments in Wisconsin under the proposed statute deserve scrutiny. The recommendations make the decision over impasse procedures a bilateral one — as opposed to a unilateral one by the union as in Canada — and ensure that in the event the two parties disagree over whether the strike option or arbitration option should be invoked, *binding arbitration would take precedence.* Choices over the procedures would be made at the point of impasse and arbitration would be of the final offer selection variety. This dispute resolution mechanism is unique and it will be especially interesting to see how public employers respond when they have an opportunity to choose between binding arbitration or a strike. In their testimony, public employers indicated that they would rather take a strike than submit to outside binding intervention. The proposed procedure will provide many opportunities to test the validity of this assertion.

---

[26] *Proceedings of the Special Joint Committee of the Senate and the House of Commons on Employer-Employee Relations in the Public Service of Canada* (Ottawa: The Queen's Printer, June 28, 1966 — February 3, 1967).

[27] J. FINKLEMAN, *Employer-Employee Relations in the Public Service of Canada, Proposals for Legislative Change,* Part I (Ottawa: Information Canada, 1974); esp. pp. 125-126.

One final note on the current status of the bill. As this paper is being completed, the Committee's recommendations are awaiting the opening of the forthcoming Legislative session. It is difficult to predict at this stage when the proposal will be enacted.

La solution des conflits dans le secteur public: Le tour de main américain et la méthode canadienne

Il existe bien des variantes en Amérique du Nord dans les mécanismes mis au point pour résoudre les différends du travail dans le secteur public. Dans une certaine mesure, ce phénomène traduit le débat ininterrompu qui se poursuit pour découvrir les meilleures méthodes pour résoudre les conflits d'intérêts entre les gouvernements et leurs employés.

Sur ce point, il vaut la peine d'étudier ce qui s'est fait récemment dans l'État du Wisconsin. Le Winsconsin fut le premier État à accorder à ses employés le droit de négociation collective en 1959.

En 1974, pour mettre un terme à la fréquence de plus en plus marquée des grèves dans le secteur public, une commission d'enquête tripartite a été formée pour étudier l'efficacité des mécanismes de règlement des différends. Ces mécanismes consistaient dans le recours à la fois à la médiation et aux enquêtes factuelles, alors que la grève était interdite par la loi.

Quatre auditions publiques eurent lieu auxquelles plus d'une centaine de représentants de syndicats et d'employeurs du secteur public furent entendus. Les représentants des syndicats critiquèrent durement le système de médiation et les enquêtes factuelles qui n'étaient pas, selon eux, valables «pour assurer la solution finale des différends.» Au départ, ils demandèrent la légalisation du droit de grève. Toutefois, les employés du secteur public ne voulaient pas surtout le simple droit de faire la grève. Ils favorisaient plutôt un système qui permettrait unilatéralement aux syndicats de choisir, à un certain moment de l'impasse, entre l'arbitrage exécutoire ou le droit de grève.

Lorsque ce système fut inséré dans la Loi des relations de travail dans les services publics (Public Service Staff Relations Act), on s'y réfèra sous le nom de «projet canadien».

De leur côté, les porte-parole des employeurs préconisaient le maintien du régime existant et se félicitaient de sa valeur. Ils s'opposaient avec vigueur à toute révision substantielle de la législation. Ils soutinrent que le mécanisme de médiation et d'enquête factuelle fonctionnait bien et que les contre-propositions, soit le droit de grève, le recours à l'arbitrage exécutoire en cas d'impasse et la liberté pour les employés de choisir entre les deux, étaient des solutions inacceptables. Fait à noter, un certain nombre d'employeurs déclarèrent que, si l'on était pour apporter des changements majeurs à la législation existante, ils préféraient purement et simplement la légalisation des grèves à un régime qui laissait la possibilité de choisir entre la grève et l'arbitrage exécutoire. Ils voyaient dans la grève «un moindre mal.»

Plaçant l'intérêt public à la base de ses préoccupations, la commission recommanda finalement un système qui laissait le choix entre l'arbitrage et la grève, mais y ajoutait une innovation importante. Arrivées au point où la situation deviendrait sans issue, chacune des parties au différend pourrait choisir entre l'arbitrage et une grève qui serait légale.

Si les deux parties choisissaient de ne pas soumettre le différend à l'arbitrage, il serait permis au syndicat de déclencher une grève légale. Si l'une ou l'autre des parties optait pour l'arbitrage, les deux devraient accepter de soumettre le différend à l'arbitrage. En ce dernier cas, le droit de grève des employés se trouverait suspendu. En d'autres termes, la recommandation de la commission d'enquête faisait de la décision sur la procédure à suivre une affaire bilatérale contrairement à la décision unilatérale du syndicat que l'on trouve dans la législation canadienne.

Elle recommandait aussi que, dans l'éventualité où les deux parties seraient en désaccord sur l'option à choisir, soit la grève, soit l'arbitrage, l'arbitrage exécutoire aurait préséance. De plus, on proposait que l'arbitrage portât sur les dernières offres finales.

Ce mécanisme de solution des conflits est unique et il sera fort intéressant de voir comment les employeurs des services publics agiront lorsqu'ils auront à faire le choix entre l'arbitrage exécutoire ou une grève. Dans leurs témoignages, les employeurs du secteur public ont soutenu qu'ils préfèreraient courir le risque de la grève plutôt que de se soumettre à une intervention exécutoire de l'extérieur. Le système qui a été proposé fournira maintes occasions de vérifier la véracité d'une pareille affirmation.