EMPLOYEE ORGANIZATION AND UNIONIZATION IN NEW YORK STATE

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•THOSE OF US who have been actively involved in the collective bargaining process in the New York State government tend to think that we are part of some "big new thing," mostly because that is the attitude commonly held regarding public employee labor relations. However, a closer look at recent history points up the fallacy of that thought.

HISTORICAL BACKGROUND

New York State Personnel Council

In 1945, Governor Thomas Dewey created the New York State Personnel Council, whose function was to meet with the personnel and fiscal officers of the various state departments to open channels of communication for explanation of state policies and procedures. As a vehicle to adjust differences of opinion on policies affecting employee welfare, its goals were to promote efficiency in the state departments and secure solutions to employee problems (1).

Condon-Wadlin Act, 1947

The first major labor relations statute exclusively for public employees in New York State took the form of an amendment to the Civil Service Law (the Condon-Wadlin Act) and was passed by the New York State legislature and signed by the governor in 1947. The act was a reaction to public employee strikes in Rochester (1946) and Buffalo (1947) involving municipal employees and teachers respectively. The transit workers in New York City nearly struck at about the same time, but the strike was averted at the eleventh hour. Each of these served as a catalyst in the creation of the Condon-Wadlin Act. The act forbade strikes by public employees, and violations resulted in automatic termination. If terminated, the employee could be reemployed but would have to serve a probationary period of 5 years and could not receive a pay increase for 3 years (2).

Executive Order, 1950

Following this, in 1950, Governor Dewey issued an executive order that established the Personnel Relations Board in the state civil service department. Its powers and duties were to administer a program for resolving employee complaints and problems relating to conditions of employment in the civil service and to promote cooperation between the state and its employees.

The Personnel Relations Board was headed by a full-time chairman appointed by the governor and had two other members selected by the chairman from a list of 24 people designated by the governor. The list was divided with half from the competitive class of the New York State civil service and the other half from the exempt class. Each panel member served for 2 months and was then replaced by another appointee.

The board established a grievance procedure under which employee complaints were directed first to the individual's immediate supervisor and then to the next higher authority. After exhausting the department's chain of command, employees could ask the Personnel Relations Board to review the complaint. The board would review the case and render an advisory recommendation to the head of the department.

The Personnel Relations Board was used sparingly and had very little impact on employee relations. As a result, there was an obvious need for a more viable means of treating employee-management problems in New York State.

Executive Order, 1955

In 1955, Governor Averill Harriman issued an executive order that provided for the settlement of differences through an orderly grievance procedure. Its basic principles were that employees had the right to join employee associations or labor organizations and to present grievances without reprisals or discrimination, that supervisors were to act promptly and fairly to resolve employee grievances, and that state agencies were to hold conferences with employee representatives regarding conditions of employment and improvements in the public service.

This order created the Grievance Board in the Department of Civil Service consisting of three members appointed by the president of the Civil Service Commission, including the chairman who was an employee of the commission. The other two positions were filled by members of the public. The responsibility of the Grievance Board was to create and maintain a program for resolving employee grievances that involved employment conditions in the state service.

The board established a procedure that allowed an employee to present his grievance to his immediate supervisor in the first instances. If the grievance was not resolved, the employee could request a review and determination from his department head. The final step allowed the employee to appeal the department head's decision to the Grievance Board. Following a hearing, the board could offer an advisory recommendation to the department head (3).

Joint Legislative Committee, 1962

None of these executive orders superseded the Condon-Wadlin Act, which continued in effect through the 1960s. But, as a result of a strike by 20,000 New York City school teachers, the New York State legislature took a long, hard look at the Condon-Wadlin Act in 1962. The act was criticized as being unduly rigid and severe in its penalties and almost impossible to enforce. In 1962, the staff of the Joint Legislative Committee on Industrial and Labor Relations proposed a bill to replace Condon-Wadlin with a labor relations system that included the following basic elements:

1. Public employees were to be given the right to "form, join, and assist any employee organization or to refrain from any such activity."
2. Public employees were to be given the opportunity to negotiate with their employers.
3. Those selected as representatives of employees were to be given the exclusive right "to negotiate agreements covering all employees in the unit and be responsible for representing the interests of all such employees without discrimination and without regard to employee organization membership."
4. Public employees would not be allowed to strike, and any violation would be considered as misconduct under the Civil Service Law. The attorney general would be empowered and required to seek injunctive relief against strikes or threatened strikes.

Condon-Wadlin Act Amendments, 1963

Rather than enacting this proposal into law, the New York State legislature in 1963 passed a 1-year amendment to the Condon-Wadlin Act that allowed striking employees to have their regular pay suspended for the period of the strike and lose 2 days' pay for each day they were on strike. The probationary period was reduced from 5 years to 1 year (4).

The ineffectiveness of the Condon-Wadlin Act was illustrated by a strike in 1964 involving the New York City Welfare Department, which lasted 28 days. It resulted in the suspension of 5,398 welfare workers. The Condon-Wadlin Act was viewed as "the most formidable obstacle in resolving the dispute." The mechanics of the act were ineffective in terminating the strike, and, in fact, the harsh provisions of the act, in

relation to striking employees, promoted union solidarity. In the end, special legislation exempted the striking employees from Condon-Wadlin restrictions and reinstated them to employment, and salary increases were incorporated into written agreements between the unions and the City of New York (2).

The following was said of the Condon-Wadlin Act: "The Law was impressive in its failure. This was equally true in its original 'harsh' and amended 'moderate' form: as a matter of fact, there was no perceptible difference. Generally, Condon-Wadlin was enforced in the more conservative upstate areas and consistently violated and evaded in New York City."

Executive Order, 1963

Governor Nelson Rockefeller issued his first executive order on the subject of labor relations for New York State employees on August 28, 1963. It established standards, principles, and procedures for handling grievances. This order created the three-man Grievance Appeals Board and provided for conferences between management and employees. The order instructed agency heads to delegate to supervisors the authority to take appropriate action promptly and fairly on the grievance of any subordinate employee. Agency heads were instructed to hold conferences with employee representatives on problems relating to conditions of employment and continued improvement of the public service and to develop a feeling of identification with the objectives of their agency. The preamble of the executive order presented the New York State's policy on employee relations. The preamble reads as follows (5):

> In order to establish a more harmonious and cooperative relationship between the State and its employees, it is hereby declared to be the policy of this Administration and the purpose of this Order to provide for the settlement of differences through an orderly grievance procedure. It is also the policy of this Administration to assure to State employees the right to full freedom of association, self-organization and designation of representatives of their own choosing for the purpose of adjustment of their grievances, free from interference, restraint, coercion, or reprisal. All the provisions of this Order shall be liberally construed for the accomplishment of this purpose.

The members of the Grievance Appeals Board established by this order were appointed by the president of the Civil Service Commission. The board had the power to hear grievance appeals from employees, to issue advisory recommendations, and to act as a clearinghouse for information related to the rights of the employees under the executive order.

Original Condon-Wadlin Act Restored, 1965

The temporary 1-year amendments to the Condon-Wadlin Act, which were passed in 1963 and again in 1964, expired, and the provisions of the original Condon-Wadlin Act of 1947 became effective again on July 1, 1965.

Governor's Study Committee, 1966

To effect a better solution of the issue, Governor Rockefeller established the Committee on Public Employee Relations in January 1966. The committee's mission was "to make legislative proposals for protecting the public against the disruption of vital public services by illegal strikes, while at the same time protecting the rights of public employees." The committee issued its report on March 31, 1966, outlining a legal framework for labor relations for public employees.

The committee concluded that the Condon-Wadlin Act was unsatisfactory and extremely negative and "that the protection of the public from strikes in the public service requires the designation of other ways and means for dealing with claims of public employees for equitable treatment."

The committee recommended replacement of the Condon-Wadlin Act with a law that would fulfill the following:

1. Grant organizational rights to public employees,
2. Grant power to governmental units in the state to negotiate and make contracts with public employees,
3. Establish a Public Employees Relations Board (PERB) to administer various aspects of the policies established, and
4. Prohibit public employee strikes and include appropriate sanctions against such strikes.

The committee noted areas of difficulty in the field of public employment. Among these were the following:

1. The increasing number of public employees,
2. Number and variety of governmental units,
3. Difficulty of negotiating unit determination,
4. The "political" nature of the government budgeting process and the lobbying of government employee organizations as contrasted with the "economic" nature of the collective bargaining process in the private sector (this dichotomy manifested itself in the various opinions among the public employee organizations regarding the transplantability of the latter on the former), and
5. The need for prohibiting strikes in the public sector, for establishing sanctions against strikes, and for providing effective dispute-resolving machinery in its place.

From this report emerged a law that addressed itself to the problems identified (4).

Taylor Law, 1967

The New York State Public Employee's Fair Employment Act of 1967 (Taylor Law) is, in many ways, a model public employees' labor relations statute. Its basic provisions include the following:

1. Public employees have the right to organize collectively for negotiating purposes;
2. Public employers are required to negotiate with elected representatives of employees; and
3. Strikes by public employees are prohibited.

The Taylor Law outlines some criteria for unit determination and guidelines for selection of the representative union. It provides for the designation of certain employees as management-confidential and prohibits them from membership in the same union as other employees of the same employer. It contains impasse resolution procedures and penalties to apply in the event of violation of the no-strike clause (6)[1].

Executive Order, 1970

On October 14, 1970, Governor Rockefeller signed an executive order that transferred the Grievance Appeals Board, established by the executive order of August 28, 1963, to the Office of Employee Relations in the Executive Department. The rationale behind this order was the felt need for procedures for the settlement of grievances of employees not covered by collective agreements and for the settlement of grievances outside the scope of the grievance procedure set forth in a collective agreement.

The three members of the Grievance Appeals Board are appointed by the Director of the Office of Employee Relations and serve at his pleasure.

Post-Taylor Law Developments

Since the enactment of the Taylor Law in 1967, a number of disputes have arisen in the implementation process, some of which resulted in changes in the law. One that evokes quite a bit of interest is the question of representation of state employees in the various negotiating units. The final designation of the units to which all New York State

[1]The original manuscript of this paper included an appendix available in Xerox form at the cost of reproduction and handling from the Highway Research Board. When ordering, refer to XS-41, Highway Research Record 424.

employees are assigned followed 2 years of litigation and culminated in a mail ballot representation election held during summer of 1969.

Negotiating Unit Determinations

The process began in November 1967, when the state determined that all state employees would be divided into three negotiating units. The state recognized the Civil Service Employees Association (CSEA) as the negotiating agent for the general unit that contained the vast majority of all state employees. (The other two units were the state university professional employees and the state police.) PERB was immediately petitioned by a number of employee organizations demanding that the state halt all negotiations until the question of which union would represent employees was resolved in a formal manner.

Acting on this petition, PERB on November 30, 1967, ordered the state not to negotiate with CSEA on an exclusive basis and to be neutral in its treatment of all employee organizations that had filed appropriate petitions claiming representation rights. The PERB action was based on the premise that recognition of CSEA, if allowed to progress through the state of negotiations to the achievement of a written agreement, would add so much prestige to CSEA that the rights of competing organizations would be prejudiced. It further ruled that, although the Taylor Law stipulates that public employers will recognize employee organizations, if such recognition is challenged by one or more employee organizations, further negotiations with the employee organization so recognized may frustrate the law.

This PERB action was challenged by CSEA, which appealed to the New York State Supreme Court. The court upheld PERB's ruling stating that, if PERB were to assist in resolving disputes between public employees and public employers, it must be allowed to make such pronouncements as will, in its judgment, promote harmonious and cooperative relationships. It also must have the authority to review the acts of a public employer. It noted that the legislature had conferred broad powers on PERB, and PERB could interpret that it was intended for these powers to be exercised. Although CSEA argued that the PERB order would cause delay and destroy meaningful negotiations, the court ruled that, in this regard, it would not substitute its independent judgment for that of the administrative body. Therefore, it found that PERB did not act illegally and that its order should be carried out (7).

CSEA appealed the case further to the Appellate Division, which, on February 12, 1968, overruled the supreme court decision. The Appellate Division found that the order of PERB was unnecessarily issued in that there was no threat of unlawful action or of great and irreparable damage, nor was there any indication that exclusivity was intended or threatened (7).

PERB in turn appealed this decision to the Court of Appeals, which, on March 7, 1968, in a 5 to 2 decision, upheld the Appellate Division decision stating that PERB did not have the power to make a provisional order directing a public employer to stop negotiating exclusively with a recognized employee organization pending PERB's disposition of representation disputes. In making this decision, the Court of Appeals recognized the significant difference between the state labor law and the Taylor Law concerning the presence (at that time) in one and the absence in the other of provisions relating to unfair labor practices and cease and desist orders. This departure from the private labor relations statute is explained by the nature of government operations in New York State (or any state for that matter). Such operations are regulated by annual budgets with specific deadlines and appropriations adopted by the legislature. In fact, the negotiating executives do not have the ultimate power to bind the appropriate legislative bodies although they may enter into written agreements with recognized or certified organizations. Hence, PERB did not have the power to issue the order halting negotiations. The dissenting arguments were based primarily on the fact that these negotiations would serve as a precedent for future negotiations and that agents involved in these negotiations would have an overwhelming advantage over other unions that might subsequently be recognized. On the strength of this action, the state resumed negotiations with CSEA and developed a general package for fiscal year 1968-1969. This package was implemented for all state employees in April 1968 (7).

In late 1968, when the state again began exclusive negotiations with CSEA for the forthcoming fiscal year, Council 50, a local council of the American Federation of State, County and Municipal Employees (AFSCME), an AFL-CIO affiliate, demanded that the negotiations be terminated pending the outcome of the representation status dispute. PERB, by action on November 27, 1968, established five negotiating units for state employees and directed the state to halt exclusive negotiations with CSEA pending a representation election. CSEA appealed both the desist order and the unit determination to the state supreme court (7).

The state supreme court, on December 13, 1968, ruled that the determination by PERB of the five negotiating units was not a final determination and, therefore, not subject to judicial review. It held that a review of representation decisions should be permitted only upon certification of an employee organization. To permit court intervention in the procedure for resolving representation disputes would interfere with the rights granted to employees to be represented by employee organizations. They also stated that, in this case, PERB had the right to halt exclusive negotiations between the state and CSEA (7).

Once again, CSEA appealed to the Appellate Division, which, in a decision dated February 5, 1969, ruled that PERB's action rejecting the negotiating unit designated by the state negotiating committee and PERB's subsequent designation of five negotiating units was final and thus reviewable. The Appellate Division in overturning the supreme court action ruled that certification of an employee organization is not a prerequisite to judicial review of the determination establishing separate negotiating units and that PERB does not have the authority or power to issue an order restraining negotiations between an employer and an employee organization pending the determination of a representation dispute. Thus the precedent set in the March 7, 1968, ruling was upheld (7).

The state, in the meantime, had begun negotiations with both CSEA and Council 50 on wages, health insurance, and retirement. On May 16, 1969, the court of appeals affirmed the decision that PERB's unit determination was final and thus subject to review by the courts (7). The unit determinations were then approved by the Appellate Division on June 4, 1969, and by the court of appeals on July 1, 1969.

As determined by PERB, the negotiating units were (and still are) as given in Table 1. The state police are contained in separate negotiating units (troopers and officers) as is the professional staff of the state university.

Representation Elections

An election was held during summer of 1969 with the result that CSEA won the right to represent employees in the administrative services unit (ASU), operational services unit (OSU), institutional services unit (ISU), and professional, scientific, and technical services unit (PS&T), whereas Council 82, another AFSCME local council that assumed many of Council 50's earlier personnel, was declared the representative of the security services unit (SSU).

Strike, 1968

Throughout this period of growth and negotiating, there were several substantial confrontations between the state and unions representing state employees.

In November 1968, four state mental hospitals were struck by Council 50 over union recognition, representation, and the definition of negotiating units. Council 50, upset with the state's recognition of the CSEA as the statewide negotiating union, struck for about 9 days at selected locations to cause the state to cease negotiations with CSEA, to obtain a decision on the vital issue of negotiating units that was pending before PERB, and to have immediate elections for employees to choose their negotiating representatives. The majority of the strikers were nonprofessional employees in service-related jobs. The strikes affected 13,000 patients in four hospitals. Absenteeism varied in the four areas and decreased daily as the strike continued.

Initially, the state's attorney general obtained an injunction prohibiting the strike at any state mental institution. Four days after the first strike, a three-man mediation panel was created by PERB to help end the strikes. The mediation attempt did not re-

solve the strike, but it did help the quick settlement of the strike when the negotiating decision was reached. On November 27, 1968, PERB reached its final decision on negotiating units and ordered that negotiations then in progress between the state and CSEA be halted. When these negotiations with CSEA halted, the strike ended, and, later in spring of 1969, the state resumed negotiations with both Council 50 and CSEA. This was a unique situation because, in fact, neither union had been elected as representative of employees at this point.

Under the provisions of the Civil Service Law, in effect at that time, about 2,000 employees were ultimately found guilty of absenting themselves without official permission and participating in a strike in violation of the no-strike provisions of the Civil Service Law. They were penalized with penalties, dependent on their degree of involvement in the strike, that included reprimands and dismissal. This strike did not have an impact in the New York State Department of Transportation.

Threatened Strike, 1971

In spring of 1971, CSEA threatened a statewide strike, commencing on June 16, if 8,250 laid-off state employees were not rehired. Although the layoffs were precipitated by budget cuts in state government, CSEA felt that the layoffs violated its agreement with the state. The strike was averted after 3 days of marathon negotiations between the state and CSEA. As a result of these negotiations, the state agreed that there would be no further immediate layoffs of permanent employees and that those permanent employees who had been fired would receive prompt consideration in rehiring in matching or similar jobs.

Due to a previously imposed vacancy control program, DOT was faced with no layoff at that time; not only was there no adverse labor relations activity in the department, but also some department chapters worked against the strike decision by CSEA.

Strike, 1972

In March 1972, CSEA voted to strike on April 1, 1972, if its contract demands were not met by the state. CSEA was demanding, among other things, a 15 percent wage increase and substantial improvements in the pension plan. CSEA also maintained that, without a contract, its members' health insurance program, vacation, sick leave, and other fringe benefits might be taken away. Following 3 months of negotiations, on the day preceding the April 1 deadline, CSEA called off negotiations and a statewide strike began at 12:00 midnight, April 1, 1972. The strike involved about 7,500 employees and lasted over Easter weekend. CSEA and the state reached accord on Sunday, April 2. In walking out, CSEA violated the Taylor Law and a last-minute court injunction. The walkout occurred after CSEA had spurned the state's original offer of a deferred 4 percent wage increase. In another marathon negotiating session, CSEA and the state agreed to a 5.5 percent increase, payment of 1.5 percent of which was deferred for 1 year, thus ending the strike. The strike lasted slightly more than 36 hours, and disruption to public facilities operated by the state was not excessive. Its main area of impact was in the mental hygiene institutions.

The effect on the Department of Transportation was minimal and involved only 15 employees serving as watchmen or members of a traffic signal repair crew. This was undoubtedly so because of the season of the year, early spring (winter maintenance was over and summer programs had not yet begun), and the fact that the strike occurred on a weekend.

In late 1972, the union was fined $30,000 for contempt of court for violating its no-strike injunction, and seven officials of the union were fined $250 each. Charges are also pending against CSEA that, if sustained, could result in the loss of some dues deduction authorizations by CSEA and against individual employees that, if sustained, could result in loss of 2 days' pay for each day on strike and loss of tenure for 1 year. Individual strikers are also subject to disciplinary charges for misconduct, if appropriate.

CURRENT SITUATION

DOT Organization

Despite the fact that the state DOT has avoided involvement in statewide issues, a few serious incidents have arisen that were uniquely its problem. A brief review of the organization of the department would be helpful at this point.

DOT, an organization of almost 16,000 positions, has a substantial number of employees in every county of New York State. The number at any single work site varies from one to almost 2,200. Their duties vary from clerical to engineering to maintenance, and they are mixed at most locations.

Classified positions in the state DOT are designated to negotiating units approximately as follows:

Unit	Number
ASU	3,412
OSU	8,082
ISU	1
PS&T	3,993
Management-confidential employees	192
Total	15,680

Classified positions in the DOT are physically located as given in Table 2. Table 2 also gives the number of positions allocated to each location. The department has organized its manpower responsibilities under the supervision of the Assistant Commissioner for Manpower and Employee Relations.

DOT Incidents

On December 24, 1970, DOT employees responsible for snow and ice removal were reassigned to shifts covering 24 hours a day, 7 days a week, in order to reduce overtime, in conformance with an administration austerity directive to all state agencies. DOT's response to mandated austerity measures met with immediate resistance from CSEA. CSEA felt that the night work created safety hazards, and the loss of overtime imposed a harsh financial burden on highway maintenance employees. The department admitted the financial portion of the charge, but its position regarding safety was that only the maintenance work that could be performed would be performed during night shifts, ensuring that workmen and the traveling public would be adequately protected.

In January 1971, 350 DOT employees from Long Island threatened to strike if the shift and overtime policy were not removed. During this crisis, CSEA met on a regular basis with the governor's Office of Employee Relations (OER) in an effort to reach an agreement. On January 25, 1971, CSEA and the governor's office reached an agreement to restore the shift arrangements that were in effect prior to December 24, 1970. This agreement was made possible through the administration's agreement to restore the funds necessary to pay overtime for night work. DOT retained the right to schedule the work force when work is to be done on a regular time basis and indicated that it would evaluate the effectiveness of the three shift-7 day a week operation and consider it for implementation in the future.

In February 1971, some highway maintenance employees in the Buffalo area threatened to strike over the disciplinary suspension of an employee. The employee had refused to perform a winter maintenance assignment not so much as a complaint against the assignment as just another complaint against shift work for snow and ice control. He was suspended from work following intensive discussions with CSEA, and the suspension was reviewed in the grievance procedure. The grievance decision, which upheld the supervisor's action and ensuing suspension of the employee, was accepted by CSEA, and a local strike was averted.

Another incident occurred later that year in the same area and involved a maintenance employee who refused to follow his supervisor's order to clean the underside of

a bridge because it was an unsafe situation. The employee refused even after his supervisor agreed to do whatever the employee felt to be necessary to ensure safety. As a result of this refusal, the employee was suspended. A second employee became involved in this incident in his role as president of the local CSEA chapter. This individual was already being disciplined as a result of his misuse of working hours (absenting himself from the job improperly to perform union-related duties) over a period of time. Both incidents merged, in time, to pose a tense labor relations situation.

After a thorough investigation, disciplinary charges were preferred against the union president for his acts of misconduct, and his leave credits were charged for those periods of unauthorized absences. CSEA filed an unfair labor practice charge against DOT claiming harassment of this representative. After further investigation and negotiations between both parties, it was decided to review the entire relationship between this employee representative and his supervisor in an attempt to improve communications and understanding between the parties. Coupled with this agreement was the withdrawal of the charges against the employees and the unfair labor practices charge against the department.

Statewide Negotiations

Following the 1969 representation elections, the state negotiated a 2-year agreement (April 1, 1970, to March 31, 1972) with CSEA for its four units and with Council 82 for its unit.

Pursuant to the provisions of the Taylor Law, which allow for periodic challenges of an incumbent union, in fall of 1971, CSEA challenged Council 82 in the SSU, and an election was held to determine who would be the representative union in that unit. (No union challenged CSEA in the other four units.) An election was held in the security services unit, and Council 82 was once again victorious by a narrow margin.

Following this and into early 1972, the state negotiated new agreements with CSEA for its units and with Council 82 for its unit. These negotiations resulted in a 1-year agreement in the units represented by CSEA, and a 2-year agreement (with a reopener for wages, retirement, health insurance, and dues deductions) in the unit represented by Council 82. This term of agreement is one of the first major differences between the agreements negotiated thus far for New York State employees.

In fall of 1972, the Service Employees International Union (another AFL-CIO affiliate) challenged CSEA as the negotiating representative in ISU (43,000 employees) and PS&T (35,000 employees). CSEA won each of the representation elections handily, by a 2 to 1 margin in PS&T and by a 3 to 1 margin in ISU. (Surprisingly, only about half of the eligible voters voted in the elections.) Council 82 was not subject to challenge inasmuch as theirs is a 2-year agreement and PERB rules regarding challenges permit such challenge only as the term of agreement draws to an end.

Thus, at the present time, the Civil Service Employees Association is the representative union in ASU, ISU, OSU, and PS&T, whereas Council 82 represents the employees of SSU.

CSEA, an association that has been in existence in New York State since the early 1900s, is an independent union that represents about 200,000 public employees in New York State (of whom about 120,000 are state employees). In DOT, about 84 percent of the employees are members of CSEA. Council 82, a recently organized local unit of AFSCME, represents approximately 7,000 employees in SSU, mainly peace enforcement personnel.

In the agreements negotiated to date, the salary, health insurance, and retirement plans have been kept completely uniform, and, although there are certain differences in the overtime and attendance rules, they are generally similar between units. This consistency, which is almost imperative for ease of administration, is likely to diminish in the future as different negotiations progress and especially if negotiations are conducted with different unions.

At the present time, statewide negotiations are conducted between the central OER, which reports directly to the governor, and CSEA or Council 82, as appropriate. In CSEA negotiations, the major economic items (salary, health insurance, and retire-

ment) and the common procedural items (discipline and grievances) are negotiated in coalition negotiations between a central state team and a central CSEA team. Work rules unique to the four units are negotiated between unit teams. The state's side of each of these four unit teams is chaired by an OER staff representative and filled out by representatives of the major agencies involved. DOT management has been represented on PS&T and OSU teams. CSEA's unit teams are composed of state employees of the various agencies with a CSEA collective bargaining specialist assigned to each. DOT employees have represented the union as members of CSEA's ASU, OSU, and PS&T teams.

OER labors diligently to retain some degree of uniformity between the agreements and has been fairly successful to date. However, the future of such an arrangement is gloomy. It seems that ultimate uniformity will be practically impossible to retain due to differing interests of the employees in each unit and of the psychological need of each unit negotiating team to contribute its unique section to the statewide agreement.

Although Council 82 negotiations, which have been conducted concomittantly with CSEA negotiations, have not been conducted in the same room as the CSEA negotiations, OER has kept the negotiations in close coordination. Thus far the concept of multiunion bargaining has not been used, but it is a possibility for future use.

Practically all of the important employee relations issues are subject to negotiation in New York State (i. e., salary plan, health insurance, attendance rules, overtime rules, and grievance procedures). But, thus far, the state has not negotiated the classification of titles or the salary allocation of positions, although pressures have been brought (with some degree of success) during negotiations to guarantee support of future reclassifications, reallocations or both. Similarly, retirement plans are not being negotiated at present due to a legislative study of public employee retirement plans. However, that will undoubtedly change in the near future.

These negotiations are extremely time-consuming and call for practically the full time and attention of many state employees including at least two DOT staff men and about six employees serving as union negotiators. This time away from the job for union activities presents an ever-increasing operating problem that we hope to reduce in forthcoming negotiations. (Copies of our current agreements are available by writing the Office of Manpower and Employee Relations, N. Y. S. Department of Transportation, Building 5, State Campus, Albany, New York 12226.)

Departmental Negotiations

A clause in the current statewide agreements with CSEA mandates that state agencies conduct "local negotiations" during the term of the agreement. These local negotiations were intended to provide a review forum for issues that had not been previously negotiated and were within the sole authority of the individual departments. Although the original intent of local negotiations was to bring agencies and union representatives together at the local level to resolve issues, the negotiating atmosphere of confrontation, adversary relationships, "eyeball-to-eyeball" bargaining, "marathon sessions," and "hammering out agreements" soon prevailed, and any possibility of a constructive approach disappeared. As a matter of fact, it is unlikely that such an atmosphere ever existed because the unions' desires, as evidenced by their demands in local negotiations, were essentially nongrantable by agencies; they were mainly central staff or chief executive responsibilities. In other words, the unions began to use local negotiations as a "second bite at the apple," and, when the agencies properly resisted, much frustration and some animosity developed. In addition, the credibility level of the agencies was reduced when the union successfully appealed some of the items to OER, which has more authority in certain areas. This created the impression that the agencies were not to be bothered with in-labor relations matters. Local negotiations developed into an obstacle to a positive relationship rather than a route over which this relationship could be enhanced.

DOT has long supported a much better approach to improving local communications between labor and management through the concept of regular meetings between the parties to discuss current issues. (As a point of interest, the agreement between the

state and Council 82 does not include a local negotiations clause but rather a labor-management meetings clause.)

In local negotiations in DOT, it was agreed to continue the concept of periodically scheduled meetings between a team of 14 DOT employees and a CSEA staff man representing the union and a team that represents management to discuss not only departmental issues of current interest but also statewide issues with a DOT impact. These meetings have reviewed issues such as the statewide and departmental fiscal situation, use of vehicles, work schedules, and personnel reassignments.

If the department is required to take certain action because of a statewide central staff decision, its impact is discussed. If the department is taking action based on its own decision, the reasons and method of implementation are discussed. If the matter is purely a local issue, the policy philosophy is discussed and the immediate issue is referred to the local level for further discussion.

The concept of these department-wide labor-management meetings has been extended statewide in DOT by the department's agreement to participate in local labor-management meetings in the main office and in each of the 10 regional offices. (With 14,000 employees statewide, each of these units contains between 1,000 and 2,000 employees and as such constitutes a substantial work unit in and of itself.) These local labor-management meetings periodically discuss statewide issues that affect the regions and local problems resolvable at that level.

We find these labor-management meetings extremely beneficial in developing and maintaining lines of communication between the management of the department at various levels and the leadership of the union. We feel that, if the leaders of the union are advised of impending changes and the reasons therefor prior to implementation, they are better able to answer the questions of their membership and thus more likely to keep certain situations under control rather than adding fuel to the fire. (Copies of the department procedure on labor-management meetings are available on request.)

In accordance with the same philosophy of union involvement, the department has developed a policy position whereby any item to be issued as part of the Manual of Administrative Procedures (the document stating department policy and outlining procedural steps to carry out that policy) with a broad employee relations impact is forwarded to the department CSEA representative and to the CSEA staff representative for comment prior to issuance. This philosophy not only results in occasional modifications in procedures that might prove unworkable in the field but also tends to involve the union in the process and makes the ultimate procedure more palatable. This is not negotiation of policy but discussion of policy and implementing procedures to ensure workability and understanding. Clarifying modifications are made only where there will be no destruction of original intent.

Professional Organizations

Whereas the state and the department observe this collective negotiating relationship with CSEA, the department has been able (and hopes to continue) to maintain a "professional organization" relationship with certain organizations of DOT employees. These associations are valuable in keeping lines of communications open between management and employees.

Because it would be a violation of the "exclusive negotiations" clause of the state's contract with CSEA to discuss terms and conditions of employment with such professional organizations, to be certain of no alleged violation, the department requires any organization other than CSEA to obtain CSEA's approval prior to meeting with the department.

The New York State Association of Transportation Engineers, a professional organization of about 2,000 DOT engineers, with its major goals in the area of education and career development, has been meeting with the department at least annually for several years to propose educational programs to assist employees in performing present and future department duties. The department participates actively in the annual convention of this group, sending panelists and speakers on transportation activities and philosophies.

The Association of New York State Highway Employees, an organization of about 500 DOT highway maintenance employees, is concerned with working conditions among maintenance employees. It meets annually, and its local chapters meet periodically to discuss not only working conditions but also matters of general interest to the group. The department is represented at its annual convention through the presence of certain top staff officials as dinner speakers. A recently formed organization, the New York State Association of Right-of-Way Agents, is a professional organization of about 300 DOT employees involved in real estate activities for the department. This group has to date provided mainly minor technical education for its membership.

Grievance Procedure

Another avenue of communications between management and its employees is through the formalized grievance procedure. Our procedure, which has three steps in the department (immediate supervisor, regional director, assistant commissioner), also has two steps beyond the department (OER and, for contract interpretations, final binding arbitration).

We find an ever-increasing use of the grievance procedure in recent years, but thus far the volume is no more than healthy. The grievances reviewed have provided another opportunity for management to review its lower level operations and to ascertain that "things are in proper order" (or how things can be brought to order). Subject matters considered in the grievance procedure are as follows:

Area	1971	1972
Safety	1	8
Overtime	2	5
Accrual charges	7	7
Out-of-title work	9	9
Employment practices	12	28
Total	31	57

Figure 1 shows the level of activity over the past few years. There is an inclination on the part of the union lately not only to increase the number of grievances initiated (e.g., 5 in 1969 versus 57 thus far in 1972) but also to carry more of them to higher levels of the grievance procedure. This indicates a basic strategy: "Keep escalating the issue to a higher level until you get what you want." However, some grievances were solved (or at least the decision was accepted) at lower levels. In 1972, for instance, 13 grievances were settled at the first stage, 20 at the second stage, seven at the third stage, and 16 at the fourth stage. One has been appealed to arbitration.

WHAT NOW?

Current New York State Labor Relations Problems

Our existing management-confidential group, which is only about 5 percent of the work force, must be expanded to provide a management-confidential group of sufficient size to operate free of union pressures. When middle management personnel are members of the union, this does not cause serious problems in the everyday routine, but, when times of stress occur (grievance hearings, disciplinary actions, negotiations, or strikes), the loyalties of the union member-manager are severely strained. This strain occasionally causes management to be hampered in making job assignments and even to question the quality of supervision provided. Once this larger management-confidential group is defined, the state must devise a method to deal with this group so that it does not become dependent on the activities of the union for improvements in its terms and conditions of employment. Certain management personnel in New York State have proposed that a "meet and discuss" relationship be developed between the state and a representative group of management-confidential personnel.

A corollary problem has been the fact that many lower ranked supervisors and middle managers are in the same negotiating unit, represented by the same union, and are members of the same union as the employees they supervise. This overlapping has also

Table 1. Negotiating units established by PERB.

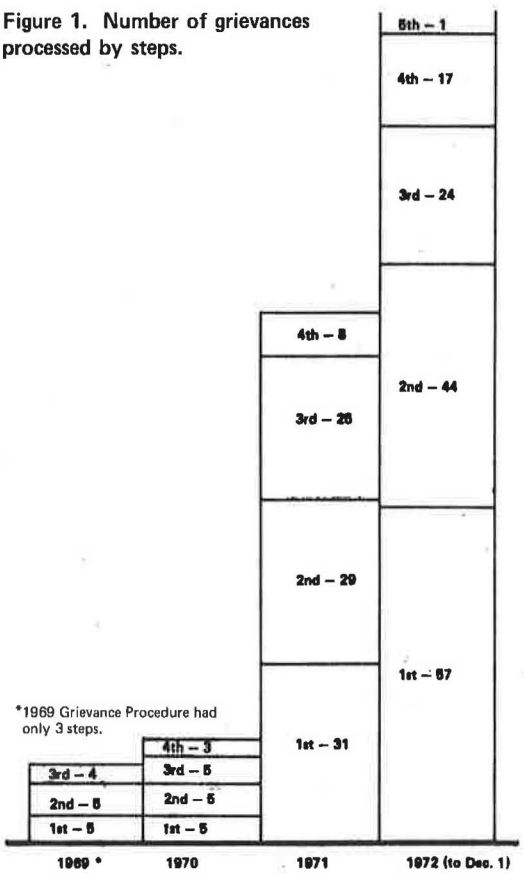
Unit	Occupational Groups Represented
Security services	Those involving protection of groups of persons, enforcement of laws, and security of correctional institutions
Administrative services	Those engaged in preparing and maintaining records, reports, and communications and technical positions that involve only partial mastery of the technique or work under close supervision
Occupational services	Those engaged in the performance of a craft or of unskilled work in fabrication, maintenance, and repair activities and in the operation of machines, equipment, and vehicles
Institutional services	Those participating in programs designed to aid in the care and rehabilitation of the physically or mentally ill
Professional, scientific, and technical services	Those engaged in the application of a comprehensive body of knowledge acquired through college graduation and those supervisors whose obligations give rise to such a conflict of interest as to preclude their inclusion in the same unit with rank-and-file employees

Table 2. Locations of and positions at New York State DOT offices.

Location	No. of Locations	Approximate Average No. of Positions at Location	Negotiating Unit
Main office	1	2,160	All (mainly ASU, PS&T)
Regional offices	10	380	All (mainly ASU, PS&T)
Maintenance residencies	60[a]	100	All mainly OSU)
Various subresidencies and maintenance locations	300[b]	4	OSU
Canal section headquarters	10	30	All (mainly OSU)
Canal locks	60	4	OSU
Canal floating units	40	7	OSU
Equipment management shops	10	50	All (mainly OSU)
Construction site supervision	200[b]	6	PS&T and ASU

[a]Generally one per county outside New York City. [b]Approximation.

Figure 1. Number of grievances processed by steps.



*1969 Grievance Procedure had only 3 steps.

caused a strain of loyalties and even some questionable activities by supervisors at certain times. The law should be amended to prevent supervisors from being in the same negotiating unit and union with the employees they supervise.

The unionization of engineers has not been a serious problem per se. When discussing terms and conditions of employment, engineers act like, and apparently expect to be treated like, employees of the department rather than as independent professionals. Our system (and society) has probably made them this way, but, regardless of the reason, the result is that unionization of engineers has not produced an insurmountable problem.

The question of strikes by public employees has been debated for decades in this nation and will be for some time in the future. However, the trend is changing slightly at this time. A few states (Hawaii, Pennsylvania, and Alaska) have already granted public employees a limited right to strike, and I believe that more will follow. It may be a matter of only a few years before we see a situation where the duties and responsibilities of a position and not for whom the employee performs those duties will determine whether the employee can strike. Compare, if you will, the attendant at the state social services institution with an employee of a privately owned rest home, a bus driver for a privately owned company with a bus driver for a public agency, a fuel truck driver in New York City in the winter with a receptionist in the state transportation department, a milk truck driver with a batch plant inspector. The inconsistencies are obvious. I feel that some day we will see federal legislation limiting certain employees' right to strike, but it should not be (and will not be) determined by the name of the employer.

Federal Legislation

A subject of major concern to all states is the impact that federal legislation has had or will have on our labor relations functions in the future. Some laws already exist and have a limited effect, others have been proposed but not passed, and amendments to existing bills are in various stages of the legislative process. Many of these bills and amendments are basically pro-labor, and, if a situation were to exist where the Congress and White House were so inclined, they could become law with surprisingly little difficulty.

The Fair Labor Standards Act, which currently applies to private sector employees and to hospitals run by a state or a political subdivision, mandates certain rules regarding pay and working conditions.

The Occupational Safety and Health Act mandates that states enact industrial safety laws in the private sector comparable to very stringent federal standards, and it could possibly expand this coverage into the public sector through the enactment of work plans comparable to the private sector law. At the present time, it is not crystal clear whether public employees are directly affected by the Occupational Safety and Health Act. In any event, its regulations are bound to have substantial effect in the public sector.

The Equal Employment Opportunity Act, which prohibits discrimination in employment based on race, color, religious creed, national origin, or sex, now covers employers with 15 or more employees, unions with 15 or more members, state and local governments, governmental agencies, and political subdivisions.

Several bills were considered at the 1972 session of Congress that basically sought to impose federal standards on all state and local government labor relations. Hearings were conducted last spring before the House special subcommittee on labor where Secretary of Labor Hodgson, the National League of Cities, and others opposed its enactment. It was suggested by various persons at the hearing that the best role for the federal government would be to provide information and technical assistance to states and localities through the U. S. Civil Service Commission. However, the message of all this activity is that change is coming whether the states like it or not.

If it is a state's policy not to have a formalized collective bargaining relationship with its employees (bringing with it all its aspects of adversary relationships, confrontations, and disputes), it may be that the federal government will mandate that one

be created. If a state had previously developed collective bargaining legislation, it might have to adjust to conform to legislation passed in Washington.

Many of what are clearly matters for negotiations between the states and the unions representing their employees are being mandated by federal statute and are being removed from the negotiating process. This gives the union a set of accomplished victories (through no fault of its own) and allows it to move into other areas and make even greater inroads in the negotiating process.

Other Reports

The question is being studied not only by our legislators but also by groups such as the President's Advisory Commission on Inter-Governmental Relations, the 20th Century Fund, the Public Employee Relations Center of Harbridge House, and the American Assembly of Columbia University. Groups such as these have summarized that collective bargaining is here to stay for public employees and are divided only on the details and the critical question of right to strike.

The Future

The interest level of unions in public employees is going to escalate substantially in the future. The public employee is the last major group of employees still not unionized and is about the only group of our business society whose numbers are increasing.

If state government employees are unionized, raids by other unions can be expected; if they are not unionized, inevitably there will be an organizer. If local government employees are not unionized they will soon be, whether they need or want to be. In other words, the marketplace is the public service, and the union will be there to supply the demand.

What does all this say about our future relationship? I am afraid that I have to say it looks gloomy. The adversary relationship between agency and employee will naturally increase. (Even if the agency could develop a satisfactory relationship, the union must work to heighten the crisis atmosphere; it is in this atmosphere that the union thrives, as a matter of fact exists.) The gap between agency and employee will broaden. The number of work stoppages is probably going to escalate as union representation of public employees broadens. In summary, I would like to look for the beginning of the era of labor-peace often mentioned when labor legislation is passed, but I see rather a continuation of the conditions of the past few years and, if anything, possibly a worsening of the situation.

The 40th American Assembly (8) mentioned earlier said: "The history of labor-management relations in the private sector in America is loaded with pain and controversy as the price of progress and the recognition of union rights. Public unions and collective bargaining are here to stay. The price of progress need not be so dear in the public sector if all concerned recognize and respond to the urgent need for new attitudes, new legislation and new ways of working creatively together."

REFERENCES

1. Hubbard, A. S., Jr. Evolution of New York State's Employee Relations Program. Public Personnel Review, July 1951, p. 1.
2. Polisar, E. Strikes and Solutions. Public Employee Relations Library, No. 7, 1970, p. 9.
3. Executive Order on Employee Relations by Averill Harriman, Governor of New York State, Aug. 5, 1955.
4. Hanslowe, K. L. The Emerging Law of Labor Relations in Public Employment. Cayuga Press, Ithaca, N.Y., 1967, p. 78.
5. Clearing the Air, How Grievances of New York State Employees Are Resolved. New York State Department of Civil Service, 1963, p. 5.
6. A Guide to the Taylor Law. New York State PERB, 1969, p. 11.
7. Official Decisions, Opinions, and Related Matters, New York State PERB, Vols. 1 and 2, 1968-1969.

8. Weitzman, M., and Corrigan, W. The New York Mental Hygiene Strike. Public Employee Relations Library, No. 20, 1966.
9. Labor Relations Newsletter. Office of Manpower and Employee Relations, New York State DOT, May 1972.
10. Labor-Management Policies for State and Local Government. Advisory Commission on Intergovernmental Relations, Washington, D. C., Sept. 1969.
11. Pickets at City Hall. Recommendations of the 20th Century Fund report and Task Force on Labor Disputes in Public Employment, 20th Century Fund, 1970.
12. The Crisis in Public Employee Relations in the Decade of the Seventies. Proc. of seminar conducted by Public Employee Relations Center, Harbridge House, Inc., Feb. 25-27, 1970.
13. Collective Bargaining in American Government. Report of 40th American Assembly, Columbia Univ., Oct. 28-31, 1971.