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FOREWORD

This RECORD contains three papers that discuss employee organizations and unionization in highway departments and transportation agencies.

The paper by Gibbs and Pezzola describes the history of the development of the collective bargaining process in the New York State government, which dates back to 1945. The paper presents the development of state legislation regarding employee organizations and describes several employee strikes and the effect of the state employee organization on the Department of Transportation. The paper notes that unionization of supervisors and middle management personnel causes severe strain when, during labor controversies, they are expected to be loyal to both the union and management.

The paper by Roslak describes the emergence of public employee unionization and collective bargaining in Wisconsin and gives an overview of and experiences under Wisconsin's employment relations laws for public employees. In 1959 the Wisconsin state legislature enacted a law providing collective bargaining rights to all public service employees except those in state government. In 1966 the State Employment Labor Relations Act was passed. The author provides a summary of the act's significant features and the amendments passed in 1972.

The paper by Sauer describes the effect of nine public employee strikes in Contra Costa County, California, since 1964. The paper describes the issues that led to the strikes and the three main strikes that occurred in 1968, 1971, and 1972. The 1972 strike of clerical workers was a result of their need for identity, quest for dignity, and desire for better economic status. The paper concludes with results of the strike and recent state and local legislation.

EMPLOYEE ORGANIZATION AND UNIONIZATION IN NEW YORK STATE

Thomas A. Gibbs and Peter Pezzola, New York State Department of Transportation

•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.

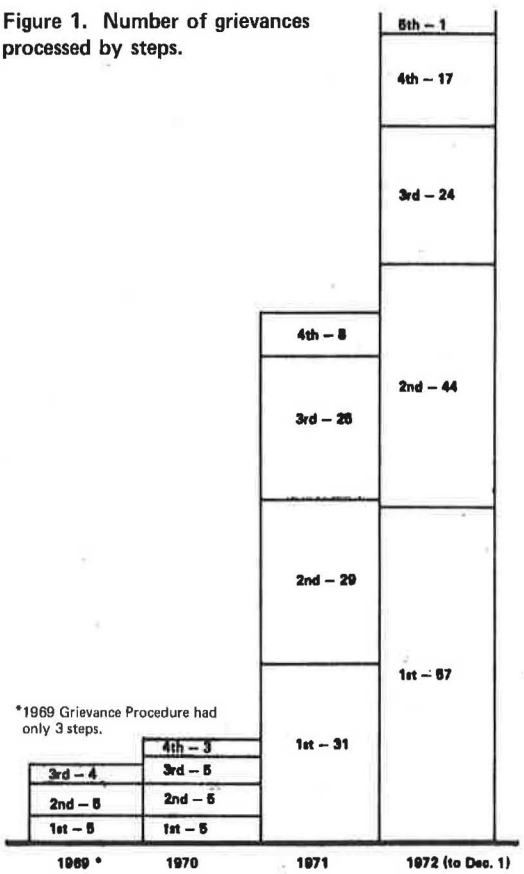
Unit	Occupational Groups Represented
Security services	Those involving protection of groups of persons, enforcement of laws, and security of correctional institutions
Administrative services	Those engaged in preparing and maintaining records, reports, and communications and technical positions that involve 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."

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PUBLIC SERVICE COLLECTIVE BARGAINING: A SOCIAL REFORM; A NEW WAY OF LIFE

John Roslak, Wisconsin Department of Transportation

EMERGENCE OF PUBLIC EMPLOYEE UNIONIZATION AND COLLECTIVE BARGAINING

One of the most intense social movements taking place in our nation today is the unbelievable growth of unionization and collective bargaining in public services. The movement really took root in the late 1950s and has in some manner affected all units of government. Being a strong social movement, public service collective bargaining will continue to spread throughout the country and into all segments of public service. To assume it will not directly affect you or your agency is wishful thinking. As public service administrators and managers, we must fully understand collective bargaining and get our organizations in order before the union agent knocks on our door if we expect to retain those prerogatives and rights needed to manage the programs and resources entrusted to us.

Public service administrators not knowledgeable in collective bargaining may recognize too late that the process of collective bargaining not properly understood or managed can result in a process where management bargains and the union collects, or, stated another way, in the process of give and take, management will give and the union will take.

Collective bargaining is an adverse process, essentially a conflict between management and union. Those who seek harmony within the process are doomed to disappointment because conflict is inevitable. Even in its adversity, the final objective must however be viewed as an opportunity for creativity, an opportunity to develop a new method of inquiry and process.

Many factors have contributed to what we can now see was the inevitable emergence of public employee unions and the militancy with which they pursued initial organizational efforts. Paramount among all of these factors is the general philosophy of "individual rights" and "people power" that has prevailed since the late 1950s. In this environment the public service employee became bold enough to organize, to question critically and militantly the sovereign rights of government over its employees, and to insist that collective bargaining as practiced in the private sector become a part of government employment.

Whether in the private sector or the public sector, the reasons employees join unions are similar. Unions help employees meet needs in economic, psychological, social, and political areas:

1. Economic—The prime motivator for public service unionization in its early stages was economic. Public service employees wanted increases in salary and fringe benefits. In some public agencies without an effective merit system, employees turned to the union for their economic security against layoff, suspension, or dismissal, exactly as in industry. Today, economic factors are not always so dominant as they were in the past. In contract negotiations a favorite tactic of a union is to lead management to believe the critical importance of a strictly economic demand in hopes of later "conceding" this demand for a "lesser" noneconomic demand that has far greater long-range ramifications, including eroding management's prerogatives to manage resources.

2. Psychological—All human beings want to be recognized; they want to feel important. Many jobs do not offer this type of satisfaction because of either the nature of the job or the management of the work unit. Unions afford personal recognition to

employees through committee work and through union leadership positions in a work unit or union local. They also afford an even more important function to all members in decision-making participation through union meetings. Unions have recognized the importance of the psychological factor, often to their own consternation. It is often the case that local demands and individual grievances with no substance or validity are adamantly pursued or defended by a union officer or official only for the purposes of maintaining unity. Management must recognize this "internal political" problem of the union and learn to "play the game without conceding any points."

3. Political—The union is a political organism that is involved in many reforms even outside of the realm of actual working conditions and conditions of employment. For its own personal gain it does get involved in the issues of the day such as the support of political candidates, employment and training of minorities and the disadvantaged, taxation and representation issues, public housing, mass transit, and the like. For many workers the union fulfills the need of an employee for political involvement. Civil service laws that traditionally have prohibited an employee from participating in political activity can be circumvented through a labor union.

4. Social—To many employees the union is a social club. Early unions were often called brotherhoods. The custom of calling fellow members "brother" or "sister" still prevails in many unions today. The gathering together of persons with common backgrounds is not an unusual phenomenon. Monthly and annual meetings and conferences, annual picnics and parties, and individual social ties among members of common background and economic status are all contributory to meeting the social needs of the union member.

Recognizing the role of unions in the welfare of employees in business and industry, federal and most state governments for over a quarter of a century have established the policy of encouraging and protecting the organization, growth, and development of unions and collective bargaining for employees in the private sector.

The Wagner Act, enacted in 1935, created labor relations as we know them today. The Wagner Act granted employees in the private sector the legal right to organize and bargain collectively with their employers. Ground rules for this new employer-employee relationship were established. Of utmost importance were the items that made up unfair labor practices. Actions that had been common practice by employers before passage of the Wagner Act were now unfair labor practices. Among these were the following:

1. Interfering with or coercing employees in their attempts to organize,
2. Discrimination against employees for their union activity, and
3. Refusal to bargain collectively with a union representing employees.

The Wagner Act excluded those employees working in establishments whose business did not involve the crossing of state lines or whose minimum annual trade across state lines was less than $50,000. Dissatisfaction, dissent, and collective action on the part of private industry employees excluded from the provisions of the Wagner Act were rewarded with tangible results in a number of states, among them Wisconsin. Through the passage of the state's "Little Wagner Act" in 1937, these employees were afforded practically identical benefits and protection that other employees were granted under the Wagner Act. Public service employees continued to be excluded from the rights to organize and to bargain collectively.

Throughout the years since enactment of the Wagner Act there have been numerous improvements in the labor laws of this country as they affect the private sector. Today the national labor policy for the private sector of our economy provides the following:

1. That employees have the protected right to form and join unions of their own choosing for the purpose of bargaining collectively with their employers over wages, hours, and conditions of employment and that employees have the right to refrain from any and all such activities;

2. That the majority representative chosen by the employees shall be recognized by the employer as the exclusive representative for the purpose of collective bargaining;

3. That managerial, supervisory, or confidential employees are excluded from bargaining units selected by the employees;
4. That employers and employees have the duty to bargain collectively in good faith and to enter into written agreements;
5. That employees have the right to avail themselves of a grievance procedure, including binding arbitration of grievances arising over the interpretation of the terms of the labor agreement;
6. That employers and employees may utilize mediation services to assist them in resolving labor disputes;
7. That state and federal administrative agencies will determine questions of representation and will enforce and protect the rights established by statute; and
8. That employees have the right to engage in concerted activities, including the right to strike in pursuance of their demands at the bargaining table.

Collective bargaining in the public sector was initially viewed as codetermination. Public service administrators and lawmakers felt that the collective bargaining process was inappropriate for government employer-employee relations. It was argued that units of government, being sovereign, could not delegate or share their sovereign power and that (a) the fixing of conditions of work in the public service is a legislative function that neither the executive nor the legislature may delegate to any outside groups, (b) the legislature or executive must be free to change the conditions of employment at any time and thus cannot set for a fixed period of time or bind a subsequent executive or legislature by its action, and (c) exclusive recognition under collective bargaining is at odds with the principle of equal treatment of all employees (1).

Under the guise of objectivity and equal rights, a number of states including Wisconsin did attempt to deal with the issue of collective bargaining for public service employees, but sovereignty and unilateral decision-making kept creeping into the picture. Legislatures required answers to the following time-delaying questions before they could give serious thought to collective bargaining rights in any form for public service employees:

1. What is the proper scope of bargaining in public employment; are there legal limitations on bargaining with respect to budgets or civil service matters?
2. What are the conflicts between civil service procedures for handling grievances or other conditions of employment and collective bargaining solutions for the terms and conditions of employment?
3. What is the effect of budget deadlines on collective bargaining in public employment?
4. Can a public employer enter into signed labor agreements with a labor organization?
5. Can a public employer enter into union security agreements?
6. What are the rights of minority employee organizations to make their views known to the public employer on contract terms or to represent employees in grievance matters?
7. For what period of time may a collective bargaining agreement be entered into in public employment, and may the terms of the agreement be made retroactive?
8. Should failure to bargain in good faith be made an unfair labor practice in public employment? If so, should it be enforceable against the public employer or the public employee organization?
9. May collective bargaining sessions be held in executive session? How is the public's right to know dealt with?
10. May final and binding arbitration be used to resolve grievances (2)?

While legislatures and the Congress debated these questions with no apparent urgency to find answers, the public employee became restless for collective bargaining rights. (Is it not surprising that some of these same questions are still being asked, are still being debated, and still remain unanswered while collective bargaining is today a fact?)

Public employees and even public interest groups started to question the rationale and logic of the statement by the U.S. Supreme Court that (a) public employees are so well taken care of by the government they serve that they need not band together to achieve better working conditions and (b) collective bargaining has not proved to be as necessary in public employment as it was in private industry.

Dissatisfied with this unilateral and unquestioned sovereignty, and the "second-class citizen" role that the public service employee claimed his employment put him into, he began to organize. In some instances the organization was in the guise of a social, technical, or professional association. In other cases it was in full view as a labor union with which to be reckoned.

As with so many social movements, radical and militant action was an integral part of the public employee's process to gain recognition. In direct defiance of state statutes and municipal ordinances public employees went on strike. This militant action, recognized as a social movement, was objectively evaluated by federal officials, state legislatures, city councils, county boards, and school boards. A society that was in the midst of and in accord with a number of social reforms provided a favorable environment; it accepted and supported the public employee's desire to bargain collectively with his employer. Even the American Bar Association's Committee on Labor Relations as early as 1955 had this to say:

> A Government which imposes upon other employers certain obligations in dealing with their employees may not in good faith refuse to deal with its own public servants on a reasonably similar basis, modified of course, to meet the exigencies of the public service.... While the duty of the legislative authority to fix salary and wages in the light of fiscal capacity of the government must not be impaired, no sound reason exists why such policies should not be the subject of reasonable negotiation with the duly constituted democratically chosen representatives of organized employees. Whether this is, or is not, called collective bargaining or collective negotiation or by any other name seems immaterial. The end result is what really matters.... Whether the terms of a collectively negotiated agreement shall, as is customary in private industry, be in the form of a written contract is really academic.... Government which denies to its employees the right to strike against people, no matter how just might be the grievances, owes to its public servants an obligation to provide working conditions and standards of management-employee relationships which would make unnecessary and unwarranted any need for such employees to resort to stoppage of public business. It is too idealistic to depend solely on a hoped for beneficent attitude of public administrators.

The first real inroad to collective bargaining for public service employees was won in 1958 by the employees of New York City, when the mayor of New York issued an executive order for city employees designed "to further and promote insofar as possible the practice and procedures of collective bargaining prevailing in private labor relations."

The order of the mayor was not a paternalistic action; it was issued after a period of chaos, conflict, and strife in the relations of the city and its employees. Public hearings following the period of conflict led to a report that recommended a uniform bilateral technique for actual participation by both sides in determining working conditions that would likely foster responsible and rational actions on both sides to the best interest of the efficient conduct of the city's business. Public service employees through militant action and in direct violation of law had won public support and obtained recognition as the first step in collective bargaining.

In 1962 Federal Executive Order 10988 gave federal employees limited bargaining rights. In 1959, the Wisconsin legislature passed its first law for collective bargaining in the public sector. In 1965 Michigan and Connecticut enacted collective bargaining laws for public service employees. These laws all provided public employees the right to organize for their mutual aid and protection, to participate in various ways through representatives of their own choosing in formulating terms and conditions of their employment, and to present grievances and have these grievances resolved fairly. Each of these laws also provided for a labor relations or mediation and arbitration board to ensure that the basic rights established through laws were enforced.

The past decade is a history of almost unbelievable growth in the area of collective bargaining in all units of government.

A review of public service collective bargaining laws that have now been passed and of the contracts that have been written under these laws raises several questions:

1. Were legislatures reacting under the pressure of the times, too generous in the number and scope of collective bargaining rights given to public employees? Did they include in statutes items that unions in the private sector had gained through "hard-nosed" bargaining over a number of years at the expense of concessions on their part?
2. When passing public service collective bargaining laws, were too many of the questions that legislators initially felt had to be answered left unanswered? Does this now result in laws that are subject to varying interpretation, that are difficult to administer, and that have led to undue labor-management conflict at the bargaining table?
3. Will public service administrators and supervisors learn soon enough that continuing paternalism will be exploited by the union at the expense of management's right to manage?

Collective bargaining in the public sector is a "new way of life." The employee has chosen a representative to bargain for his well-being. Through his union representative the employee will demand. His initial demands may be totally unacceptable and may often border on ridiculousness. If the collective bargaining process is to be a positive and creative one, management must in the process take as well as give.

OVERVIEW OF AND EXPERIENCES UNDER WISCONSIN'S EMPLOYMENT RELATIONS LAW FOR PUBLIC EMPLOYEES

Wisconsin has long been a forerunner in the enactment of labor legislation. The first workmen's compensation statute in the nation was passed into law by the Wisconsin State Legislature in 1911. In 1932, Wisconsin enacted the nation's first unemployment compensation statute. In 1937, along with several other states, Wisconsin enacted a "Little Wagner Act" to provide collective bargaining rights to those private sector employees excluded from collective bargaining rights under the federal Wagner Act. In 1939, Wisconsin enacted the Employment Peace Act, the first legislation in the nation that made labor-management relations for private sector employees a two-way street. It established unfair labor practices by labor. Prior to this time only management could be charged with an unfair labor practice; labor had been immune to such a charge. The basic provisions of the Taft-Hartley Act are virtually line for line from the Wisconsin Employment Peace Act.

In 1932, the parent American Federation of State, County, and Municipal Employees (AFSCME) had its birth in Wisconsin. A small group of Wisconsin state employees, including the director of the State Bureau of Personnel, the head of the state's civil service agency, formed the Wisconsin State Employee's Association (WSEA) and received an AFL charter. Through this association's leadership AFSCME, in December 1935, became a formal nation-wide organization. It is interesting to note that the birth of AFSCME occurred in the same period that the federal government's Wagner Act was passed. Public service employees were organizing, recognizing full well that their organizations had no legal recognition.

Since its inception in 1932 the WSEA has continued to grow. It became Council 24 of AFSCME. Locals were organized throughout the state. A full-time professional staff of labor relations experts was hired and based in Madison.

For years WSEA operated effectively as a quasi-union. It enjoyed no legal status for collective bargaining. However, in some departments and institutions it did in fact get involved in bargaining. A number of public service administrators were voluntarily meeting with WSEA representatives and discussing work schedules, health and safety, working conditions, and the like. Many of these administrators were not aware that they were not obligated to discuss any matters with the WSEA. Other administrators were unwilling to cope with the conflict that inevitably arose if they refused to meet with the representatives. The WSEA was also active as a lobbying group in the legislative chambers. It gained the respect of many legislators and was successful in

obtaining economic gains for state employees. Before the State Personnel Board the WSEA voice was heard in matters of job classification and the assignment of job classifications to salary ranges. To member employees it provided legal counsel and representation before the State Personnel Board and the courts in discharge, suspension, classification reduction, or other personnel action cases where it felt an employee had been treated unjustly. For an association that had no statutory rights as a union, WSEA was enjoying more than a limited degree of success through informal bargaining and substantial success through lobbying.

In many county units of government public employees represented by councils of AFSCME fared even better. Many county boards gave these councils voluntary recognition as unions and many of the rights afforded to a union. They accepted the union's demands, bargained on the demands, and entered into contractual agreement with the union. The Wisconsin Employment Peace Act was the probable reason behind this voluntary recognition of unions. County board members were elected officials who in many cases ran businesses covered by the Employment Peace Act. They had experience in dealing with unions and were comfortable with the collective bargaining process. With no legal restrictions against voluntarily recognizing unions, voluntary recognition was given. The majority of these voluntarily recognized unions were in county highway departments and in county homes and hospitals.

In 1959, the Wisconsin state legislature, by statute, provided collective bargaining rights to all public service employees except those in the state government. Amendments in 1962 and 1971 made the act more meaningful to both labor and the units of government covered. The Wisconsin Employment Relations Commission (WERC) was given the responsibility and authority to administer the act. WERC was, and still is, responsible for the following:

1. Determining questions of representation,
2. Making bargaining unit determinations,
3. Enforcing the prohibited practices section of the law,
4. Certifying unions after successful representation elections,
5. Making its mediation services available to municipal employers and labor organizations, and
6. Conducting fact finding in the event that the parties are deadlocked in negotiations or in the event that either party fails or refuses to meet and negotiate in good faith at reasonable times in a bona fide effort to arrive at a settlement.

The act provided that an agreement reached in negotiations with a certified union must be reduced to writing in the form of an ordinance, resolution, or agreement. Strikes are specifically prohibited.

Since 1959, about 60 strikes have occurred in the public sector. This points out a known fact that a no-strike statutory restriction or a no-strike contractual clause will not prevent strikes from occurring. The fact that there have been only 60 strikes indicates that public sector collective bargaining is working. The number of strikes is even less significant considering that almost every county, city, town, and village government bargains with a number of unions.

To date the greatest percentage of strikes has been among school teacher groups. The lack of knowledge on the principles of collective bargaining and the lack of expertise at the bargaining table by both teachers and school boards have been the major contributory factors to these strikes. It has been a tendency for both boards and teachers to "personalize" the conflict. Collective bargaining became a dispute between the bargainers rather than a dispute over the issues. Both parties are now recognizing their shortcomings. The Wisconsin Education Association has established a full-time professional employment relations service for local teacher organizations. School boards are increasing their use of professional consultants to assist them in collective bargaining.

After more than 5 years of experience under the municipal collective bargaining statutes, unions representing state employees increased their efforts to attain legislation to cover state employees. In the forefront of this effort was WSEA, Council 24,

AFSCME. In the closing days of its 1966 spring session the legislature enacted the State Employment Labor Relations Act (SELRA). The act became effective on January 1, 1967. A summary of the significant features of the act follows:

111.80 *Policy*—statement recognizing need and desirability of collective bargaining in state government which operates within the existing framework of laws, rules, and policies governing state employment and the public safety and interest.

Provides for establishment of Division of Employment Relations in Bureau of Personnel along with appointing authority to represent the state in bargaining with employee organizations for purposes of maintaining equitable and consistent statewide employment relations policies and practices.

111.81 *Definitions*—includes provision of greater latitude than currently exists in municipal law 111.70 for Wisconsin Employment Relations Board to determine appropriate bargaining units based on needs and circumstances of public employment.

Includes definition of strike and provides for employer's right to impose discipline, suspension without pay, or discharge on participants; plus the right to seek court action against the employees and/or labor organization involved.

Defines "state employee" excepting supervisors, management personnel and confidential employees as well as all employees of the Wisconsin Employment Relations Board.

Defines term "supervisor."

Defines term "professional employee."

111.82 *Rights of State Employees*—provides for right of employees to join or not join labor organizations and to bargain collectively.

111.83 *Representatives and Elections*—provides machinery and procedures for determining representation of state employees.

111.84 *Prohibited Practices*—enumerates same for both employer and employee. Provides for phasing out of supervisors as active members or officers of employee organizations over period of 4 years.

Makes it a prohibited practice for state employer to refuse to bargain or violate terms of written agreement.

Provides for "dues check off."

Prohibits strikes, slowdowns, or other work stoppages.

111.85 *Prevention of Prohibited Practices*—provides machinery for referral of complaints to Wisconsin Employment Relations Board.

111.86 *Arbitration*—establishes use of this technique to settle a dispute on mutual consent of both parties.

111.87 *Mediation*—allows Wisconsin Employment Relations Board to appoint a mediator in disputes at the request of one of the parties.

111.88 *Fact Finding*—establishes use of fact finding in cases where Wisconsin Employment Relations Board determines there is a deadlock between labor organization and the appointing authority and the division of employment relations.

Requires fact finder to include considerations of public personnel and merit system concepts and principles in his findings and recommendations.

111.89 *Agreements*—provides for written agreements between the parties for up to 3 years' duration. Requires approval of all agreements by division of employment relations.

111.90 *Management Rights*—identifies and enumerates prerogatives of state employer including:

(a) Carry out the statutory mandate and goals assigned to the agency utilizing personnel, methods, and means in the most appropriate and efficient manner possible.

(b) Manage the employees of the agency; to hire, promote, transfer, assign, or retain employees in positions within the agency and in that regard to establish reasonable work rules.

(c) Suspend, demote, discharge, or take other appropriate disciplinary action against the employee for just cause, or to lay off employees in the event of lack of work or funds or under conditions where continuation of such work would be inefficient and nonproductive.

111.91 *Subjects of Collective Bargaining*—lists those conditions of employment subject to collective bargaining including:

(a) Grievance procedures;

(b) Application of seniority rights as affecting the matters contained herein;

(c) Work schedules relating to assigned hours and days of the week and shift assignments;

(d) Scheduling of vacations and other time off;

(e) Use of sick leave;

(f) Application and interpretation of established work rules;

(g) Health and safety practices;

(h) Intradepartmental transfers;

(i) And such other matters consistent with this section and the statutes, rules, and regulations of the state and its various agencies.

111.92 *Board Rules and Regulations*—gives Wisconsin Employment Relations Board authority to implement their role in state-level bargaining.

111.93 *Advisory Committee*—allows Wisconsin Employment Relations Board to enlarge its advisory committee to include state officers and state employee representatives.

Though wages and fringe benefits have not been bargainable under the provision of SELRA, as stated above, unions representing state employees did make their demands in these areas known in the legislative chambers. Strikes were threatened if economic demands were not met. The lobbying of these unions influenced the legislature, which finally granted salary increases and fringe benefits to state employees.

The obvious dissatisfaction of state employee unions with a collective bargaining law that did not allow for the negotiation of wages and fringe benefits resulted in pressure on the legislature by the WSEA and other union groups for a revision in SELRA. Management also was somewhat dissatisfied with the law and supported efforts for revision. The management rights clause (section 111.90) was thought to be quite precise, but the enumerated subjects of bargaining (section 111.91) modified this clause. The unions were in essence bargaining on two fronts, formally with departments and informally with the legislature, to the unions' advantage. The limited scope of formal bargaining subjects led to "concessions" at the bargaining table that restricted management's necessary flexibility to manage.

On April 29, 1972, upon the recommendation of the Governor's Advisory Committee on State Employment Relations, the legislature enacted a revision to SELRA. The revision expanded the subjects of bargaining to include wages and fringe benefits. It also changed bargaining units from units within individual departments to statutory statewide units that cross department lines. The bargaining units established are as follows:

1. Clerical and related,
2. Blue collar and nonbuilding trades,
3. Building trades-crafts,
4. Security and public safety,
5. Technical,
6. Professional-fiscal and staff services,
7. Professional-research, statistics, and analysis,
8. Professional-legal,
9. Professional-patient treatment,
10. Professional-patient care,
11. Professional-social services,
12. Professional-education,
13. Professional-engineering, and
14. Professional-science.

The act also provides for establishment of two statewide bargaining units of supervisory personnel: one unit of professional supervisory employees and one unit of nonprofessional supervisory employees. A labor organization seeking to represent supervisory employees may not be affiliated with any labor organization representing nonsupervisory employees. Bargaining for supervisory employees is limited to wages and fringe benefits and excludes all other conditions of employment.

There is recognition that additional or modified statewide units may be appropriate in the future. WERC is given authority to establish additional units after July 1, 1974. The declared legislative intent is, however, to avoid fragmentation whenever possible.

To gain recognition as the bargaining representative for employees assigned to one of the statutory bargaining units, a labor organization must petition WERC for certification. WERC then conducts a hearing to resolve any issues relating to assignment of individual classifications to particular statutory units. WERC also resolves any issues relating to supervisory and confidential exclusions. It then conducts a statewide election for all employees assigned to the unit to determine whether the employees want a union to represent them and what union they want to represent them. A union gaining a majority vote of the bargaining unit employees who cast a ballot will then be certified to represent all employees of the bargaining unit.

The subjects of bargaining under the revised SELRA include:

1. Wages—A separate salary schedule for all classifications assigned to the particular bargaining unit is initially established from the present state civil service classification and compensation plan. General overall increases to established salary schedules will be bargainable. Individual increases for particular classes within a salary schedule are not bargainable. Additionally, the salary adjustments for temporary assignment of duties in a higher or lower classification are bargainable.
2. Fringe benefits—All recognized fringe benefits are bargainable including vacation, sick leave, retirement benefits, health insurance, holidays, and bonuses. The coverage, scope, and content of health insurance and retirement are not bargainable until July 1, 1974. Unions are permitted to bargain immediately on employer contributions for insurance premiums.
3. Conditions of employment—The law enumerates management rights and prohibited subjects of bargaining. With these exceptions all conditions of employment are proper subjects of bargaining. This would include such things as work schedules, work rules, lunch and rest periods, safety rules, subcontracting, changing of established past practices, travel expense procedures, and overtime distribution and payment.

Under the new act the state is prohibited from bargaining on the following:

1. The mission and goals of state agencies as set forth in the statutes;
2. Policies, practices and procedures of the civil service system relating to (a) original appointments and promotions specifically including recruitment, examinations, certification, appointments, and policies with respect to probationary periods and (b) the job evaluation system specifically including position classification, position qualification standards, establishment and abolition of classifications, assignment and reassignment of classifications to salary ranges, and allocation and reallocation of positions to classifications and the determination of an incumbent's status resulting from position reallocations; and
3. Amendments to this subchapter.

The act also provides that the following are management rights under statute and as such not required subjects of bargaining. The employer may (a) carry out the statutory mandate and goals assigned to the agency, utilizing personnel, methods, and means in the most appropriate and efficient manner possible; (b) manage the employees of the agency, hire, promote, transfer, assign or retain employees in positions within the agency, and in that regard establish reasonable work rules; and (c) suspend, demote, discharge, or take other appropriate disciplinary action against the employee for just cause or lay off employees in the event of lack of work or funds or under conditions where continuation of such work would be inefficient and nonproductive.

Bargaining under the provisions of the state's new collective bargaining law is the responsibility of the State Department of Administration, Division of Employment Relations. Operating departments through membership in an employment relations council, through participation in committees, and in direct consultation with the State Division of Employment Relations are involved in all of the prebargaining determinations and strategies.

The management bargaining team for each unit is expected to include five members: one member from each of the two departments with majority representation in the unit and three members from the state's Division of Employment Relations. The management bargaining team for each unit will include at least one labor relations lawyer.

Any agreement reached in bargaining will need legislative approval. A Joint Committee on Employment Relations composed of eight members of the legislature has been established to provide liaison between the legislature and management bargaining team during negotiation. It is intended that this committee represent the views of the legislature in caucuses during the negotiations process. The committee is composed of the following members of the legislature:

1. Senate, co-chairman, Joint Committee on Finance,
2. Assembly, co-chairman, Joint Committee on Finance,
3. Assembly majority leader,
4. Assembly minority leader,
5. Senate majority leader,
6. Senate minority leader,
7. Speaker of the assembly, and
8. President pro-tempore of the senate.

Three statewide bargaining units have to date been certified by the WERC under the revised SELRA. The units certified are technical, security and public safety, and blue collar and nonbuilding trades. Negotiations with these three units began in November 1972. The Wisconsin Department of Transportation, having majority membership in both the technical and the security and public safety units, is represented on both of these bargaining teams. Because the Wisconsin State Employees Union has been certified as the representative of all three of these units, it was agreed to bargain as many basic contract provisions as possible for all three units by one master team before negotiating in the unit teams those items peculiar to that unit. The Department of Transportation is represented on the master bargaining team.

Though the Department of Transportation has not yet had any experience with a contract under the new Wisconsin State Employment Labor Relations Act, we did have extensive experience under the old act, which excluded wages and fringe benefits as subjects of bargaining.

The Wisconsin Department of Transportation negotiated two contracts with its employees under the provisions of the previous SELRA, which will remain in effect until July 1, 1973. One agreement was with the State Highway Engineers Association; the other was with the Wisconsin State Employees Union, Council 24, AFSCME, AFL-CIO. All employees in the Department of Transportation with the exception of management personnel, supervisors, confidential employees, and limited-term employees are included in one of the two bargaining units. Relations with both unions have been amiable. From the approximately 3,400 employees under contract, about 10 grievances per month are being filed. Four grievances are currently in the arbitration process. We have had no strike threats to the department either during or after negotiations. Our most pressing problem is one of getting our supervisors and managers to recognize that they are management and that continuing paternalism erodes or sets the stage for erosion of management's rights at the bargaining table.

The Public Personnel Association has published a book, Questions and Answers on Public Employee Negotiations, that every public service administrator will find invaluable in preparing for collective bargaining. The following four points brought out in this book should be remembered:

1. Never attack the security of the union. Once it gains recognition, it must remain in business in order to serve its members. Any effort to weaken the union as an organization will almost certainly fail. Written agreements, recognition clauses, and dues deduction are basic to the health of the union. Members will rally around the union in case they are attacked.

2. Never hesitate to disagree with the union position on any issue. Recognition means negotiation not capitulation. Management can still manage under a proper union agreement, unless it voluntarily gives up its rights. Only the process of management is different. We recognize that negotiations may lead to a compromise that would not have been necessary under a unilateral system. But as long as no principle is compromised, the result is not necessarily bad. In fact, it might even be an improvement; management is not necessarily right all the time.

3. In establishing a relationship with a new union, management must be prepared for the change. This means setting forth clear policies and, then, educating all echelons of supervision in these policies and how to carry them out.

4. Organizing of a union does not necessarily represent a failure on the part of management in supervising its work force. There are unions in the most liberal and enlightened of organizations, both public and private.

Collective bargaining is not a process to be handled by amateurs. It is an art gained through long experience with labor boards and commissions and conferences and meetings with policy-makers in determining counterproposals and strategy, long hours of tough bargaining, and extensive handling of grievances and arbitration cases. If you do not have an employment relations specialist on, or available to, your staff, I would suggest you get one before the union knocks on your door.

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THREE STRIKES—A NEW BALL GAME IN CONTRA COSTA COUNTY, CALIFORNIA

Victor W. Sauer, Public Works Director

•THERE HAVE BEEN nine public employee strikes in Contra Costa County, California, since June 1964. Three were against the county government, one involved a school district, and the other five concerned cities. Although I am not an expert, I would venture the opinion that nine strikes in less than a decade is a strong indication that public employees in the county are seriously concerned with collective action, in either traditional unions or nonaffiliated associations, and that major changes in public employee-management relations are resulting. Whatever the outcome is, and I do not think the transition will be easy, we have a whole new ball game.

Why did these strikes occur in our county? I think one word, recognition, with its various connotations and denotations, covers most issues leading to public employee strikes. Some management personnel may feel that unions want primarily more power, particularly in areas historically conceded to management, i. e., directing of work, scheduling, determining workloads, assigning of work, and the like. I believe Contra Costa County employees desire recognition first, with whatever attendant power that accompanies recognition, rather than power for its own sake[1].

Because I am Public Works Director of the county, I will confine my comments to the history and activities of employee organizations in the county and to the three strikes that took place in 1968, 1971, and 1972.

Contra Costa County, one of the nine San Francisco Bay area counties, has a population of 587,000. The county's good transportation system plus a mild climate and adequate work force early attracted industry. The continuous expansion of industry promoted growth and increasing complexity in the county government.

Contra Costa is a strongly unionized county inasmuch as industry has been and continues to be involved with unions. This has naturally created an affinity among county employees with unionism. Union leaders for many years have enjoyed an amiable relationship with the Board of Supervisors, the governing body of the county. The Board of Supervisors has appointed union leaders to planning commissions, civil service commissions, and also important committees over the years. Union leaders also have developed, over the years, strong ties with county employees because of union espousal and support of employee benefits. Several county employees have themselves become leaders in unions.

Two employee organizations existed in the 1930s; one was the Roads and Bridges, an official organization, and the other was a loosely knit group, not formally organized, and called the "court house gang" with employees from the district attorney's, auditor's, clerk's, and assessor's offices. Both organizations, particularly the former, had political punch, and both actively campaigned for their friends in office.

The Contra Costa County Employees Association, formed in 1941, was the first organization to represent county employees generally. The association's 31 years have not been drab. It brought a retirement system and the present Civil Service System to the county. It was enlarged, and then its name was shortened; it became affiliated with an international union, dropped its affiliation, went to court with the international union

[1] The original manuscript of this paper included several in-depth appendixes that are available in Xerox form at cost of reproduction and handling from the Highway Research Board. When ordering, refer to XS-42, Highway Research Record 424.

(and won), and had wide fluctuations in membership. It is currently designated as the Contra Costa County Employees Association, Public Employees Union Local 1. (See Appendix.)

ISSUES THAT SET THE STAGE FOR THREE COUNTY STRIKES

Contra Costa County's three strikes involved issues that had been brewing for many years. Other issues are of more recent vintage. I believe that, whatever the responsibility (highways, roads, public buildings, airports, sewage treatment, or other activities), the following issues pretty much exist throughout the public works field. These issues came from management and employees and union leadership whose views are fully developed in the Appendix. Some of the issues follow:

1. Union demands for a stronger role in the salary determination process, for good faith negotiation rather than mere presentation of testimony;
2. Employee expectations built up by union activity for salary treatment and fringe benefits more favorable than those acceptable to management;
3. Management's refusal to meet and confer in good faith and to grant employees an equal seat at the bargaining table;
4. Management's attempts to divide and conquer;
5. Management's refusal to negotiate at all in certain areas such as in the work program, assigning work, ordering overtime, classifying jobs, and promoting, transferring, laying off, discharging, and disciplining employees;
6. Management's failure to recognize workers as human beings instead of numbered pieces of equipment;
7. Management's salary discrimination against female workers; and
8. Lack of responsiveness of civil service to employees.

I firmly believe that those in the highway field would find most, if not all, of these issues in any strike that might concern their organization. There could undoubtedly be many more issues with which to contend.

THE STRIKES

1968—The First County Strike

This strike was largely over frustration of the then Contra Costa County Employees Association, Local 1675, American Federation of State, County and Municipal Employees (AFSCME) International Union, which felt unable to bargain effectively with management and the Board of Supervisors. Another factor leading to the strike vote was a split that had developed between a joint action committee, composed of two AFL-CIO unions, Local 1675 and Local 302, Service Employees International Union (SEIU), representing county employees. There were also rumors that management favored one union over the other. I quote from a paper on the subject prepared by C. A. Hammond, Assistant to the County Administrator (see Appendix):

> This split appears to have resulted from rivalry between the two unions concerning tactics and organizational and representational efforts. Each union held meetings thereafter, and, in due course, Local 1675 obtained a strike vote from its membership. The membership of Local 302 voted not to strike but voted to observe the picket line in case a strike was called, a position also taken by the membership of Social Workers Union, Local 535.

Table 1 gives data that illustrate the magnitude of the strike, which lasted 10 days (2 weekend days). The main employee groups out were Locals 1675, 302, and 535.

The clerks, unorganized in 1968, largely ignored the picket lines. The hospital director drove supply trucks through the picket lines and was accused by some of trying to run over the pickets. The then leader of Local 302, a supervising nurse, ignored the picket lines, as did most registered nurses. During strike negotiations, 15 issues were laid on the bargaining table. Only two were concerned with money. Some 700 workers did receive a 2½ percent increase in salary. The other 13 issues involved recognition of one sort or another.

Sometime after the strike in 1968, Local 1675 was accused of raiding Local 302 in violation of AFL-CIO rules. Generally, the international unions settle raiding questions by negotiations, but such was not the case here. The AFSCME president refused to back Local 1675, which was ordered to "return" 400 allegedly raided employees. Local 1675 refused to do so and disaffiliated from the international union and eventually went to court against AFSCME and won the legal right to disaffiliate. Local 302 is now defunct.

1971—The Second County Strike

For years, about 20 building maintenance craftsmen had enjoyed a salary that was 90 percent of the private industry construction rate of the crafts. In 1970 after the maintenance craftsmen had their salaries adjusted to maintain the 90 percent relationship, the Board of Supervisors abolished this parity arrangement. In 1971 the building maintenance craftsmen received a minimal raise, which did not reach the 90 percent level. They struck. This strike was ended after a few days when the board passed a resolution ensuring that in the future the craftsmen would receive an overall benefit given to other county employees. The picket lines of the craftsmen were limited and generally were crossed by members of other employee organizations. The Building Trades Council had not requested strike sanctions of other employee organizations.

1972—The Third County Strike

First, I would like to quote the statements of W. R. Higham, Public Defender, a department head, and former president of the Contra Costa County Employees Association, Local 1675:

> I think that we can start by saying that in the summer of 1972 some 1,500 Contra Costa County employees struck, and that they stayed out much longer than we thought they would, and that they acted in a fashion which we would not have predicted. It was quite clear that many or most of them sacrificed money knowingly and intentionally to make some kind of a point or points. My theory has been that far more than money was involved in the whole thing.
>
> One problem area which I think has been partially identified as a result of the strike is what appears to be a fairly strong desire on the part of this middle-class work force to have more input into and control over the apparatus of bureaucracy which surrounds their jobs. Being the spiritual descendents of de Toqueville's early agrarian Americans, they want the power to solve their own problems and frustrations and are somewhat less interested in having management solve these things for them purely as a matter of "noblesse oblige." This has been identified by some as the unions wanting to take over County government as though the instincts of the employees are somehow anarchistic rather than being the product of a 200-year American tradition.

The United Clerical Employees (cUe) have been organized for about 3 years. I have particularly noticed the enthusiasm as well as the hard work of the women in this organization. The militant tempo on the part of the clerical employees had been building over the years and can be expressed in the following terms:

1. Need for identity,
2. Quest for dignity, and
3. Desire for better economic status.

The president of the clerical union, Barbara Horne, in her paper, stated that during 3 weeks of negotiations with central management the union had declared its intent to strike unless their conditions were met. Management may or may not have underestimated the determination of cUe, but it would not or could not meet cUe's demands. (See Appendix for comments of Ms. Horne.)

The prestrike activity climaxed at a June 26, 1972, evening meeting of the Board of Supervisors, at which time salary and fringe benefits were to be acted on. The board room was packed with county employees; clerical workers were the majority in atten-

dance. The negotiations had been concluded, and there was no discussion of the employees' wage and fringe benefit package. The clerks' demands were not met. A mass meeting of the group followed immediately. The next morning at 12:01 a.m. the clerks were officially on strike.

There were some interesting aspects of this strike. The morning of the strike a majority of Local 535 honored the picket lines. This was in the face of a previously signed Memorandum of Understanding between Local 535 and the county. Associated County Employees, largely composed of engineering and technical personnel of the Public Works and Flood Control Departments, practically ignored the strike. Some individuals in sympathy with the clerks, whether members of associations or unions, honored the picket lines. Many more, chiefly county personnel, donated to the clerical workers' strike fund.

Two days after the clerks struck, Contra Costa County Employees Association, Local 1, voted 3 to 1 to support the clerks and strike. The following morning their membership reinforced the picket lines. Local 1 had not signed a Memorandum of Understanding and was at odds with the county, particularly in connection with an exculsive management prerogative clause in the County Employer-Employee Relations Ordinance. This clause decides questions affecting issues such as the scheduling of work, ordering of overtime, and classification and promotion procedures. (For an overview of the 1972 strike see Appendix.)

The Firefighters Union, Local 1230, International Association of Firefighters, AFL-CIO, and the Deputy Sheriffs Association sympathized with the clerks' strike by having their members on picket lines during off-duty hours. The Firefighters Union contributed over $10,000 to the strike fund by assessment, as well as by donation from their reserves. The Deputy Sheriffs Association as well contributed over $2,000 to the strike fund from its treasury. A substantial amount of money was tendered to the strike fund by many individuals and other California employee associations. The mammoth Los Angeles County Employees Association, Local 660, SEIU, some 400 miles away, is one example.

The strike lasted 26 days, including weekends. The Back-to-Work Agreement included economic gains in the range of 2½ percent and improved the grievance procedure. Local 1 was particularly pleased with the process in this latter area. Table 2 gives the daily impact of the strike on various county departments.

As a parenthetical point, it should be stressed here that the desire of public employees to have more input into management areas exists nationally as well as locally. The September 7, 1972, edition of the Wall Street Journal had a provocative article, "Who's in Charge? Public Employee Unions Press for Policy Role; States and Cities Balk." Some points raised in the article were whether teachers should set policies for schools, whether social workers should set welfare standards, and whether policemen should have a voice in determining the size of the police force. "Unions, particularly those of professionals, are attempting to broaden the scope of negotiations to include policy questions that used to be the exclusive province of public officials." Each side makes potent arguments, and the issue will remain one of the most vexing in public employment bargaining, collective or otherwise.

The October 10, 1972, issue of the San Francisco Chronicle carried an article on the unionizing of doctors of medicine. A spokesman for the doctors insisted that they did not want any more money but that the medical unions want collective bargaining with health plans, insurance programs, and other nonmonetary items affecting the role of doctors. An SEIU local of physicians and surgeons has been formed in Nevada.

Operation of Public Works Department During Strike—Paper work was reduced to a minimum because of the shortage of secretaries and other clerical employees in the association. Road maintenance operations were totally shut down. (County road contracts were also shut down, but this was due to a teamsters' strike not related to the strike of county employees.) Building maintenance was at minimum operation. Any malfunctioning of air conditioning units was corrected by supervisors as best they could. Elevators in all but two county buildings were purposely shut down. Department heads, for the most part, carried on their telephone chores and wrote letters in longhand. Our

department did not bring in workers to assist during this period. It was a policy of the Board of Supervisors, and one to which I heartily subscribe, not to break the strike but to end the strike as soon as possible. A new union, growing out of the seeds of bitterness over strike breaking, particularly if nationally affiliated, might be much stronger than its predecessor.

Results of Third Strike—More space will be given to the third strike because it came as somewhat of a surprise to many, involved more individuals, and lasted longer than anticipated. Some of the results of the settlement of the third strike follow:

1. Economic improvement for certain classes;
2. Improved grievance procedure that includes binding and final arbitration;
3. Language of back-to-work agreement to be tested in the courts as a result of certain disciplinary action against a few striking employees;
4. Maintenance of exclusive management rights and directive clauses of the County Employer-Employee Relations Ordinance (this item will be a continuing problem); and
5. Strengthening of unity among several county associations and unions and formalization of this unity in the creation of a coordinating council that must be involved in major organizational moves, including strikes.

Also, the Civil Service Department, and particularly the director, has been placed in an acutely awkward position with the discontent of the employees focusing on him. This criticism may be unwarranted but is caused by the fact that the Civil Service Department should be a service department for other departments and employees rather than be cast in the role of an adversary.

BATTLESCARS

During the strike there were tires slashed, cars scratched, and a certain amount of jostling. The laundry building at the county hospital was burned. My observation, however, was that the vast majority of employees on strike behaved rationally. There was a certain amount of awkwardness in some work areas in the county when striking employees returned to work. This disappeared within a few days, and the county, with an occasional exception, was back to normal operations.

HOT STOVE SESSIONS

The Meyers-Milias-Brown Act

The Meyers-Milias-Brown Act of the California State Legislature became effective January 1, 1969. This act sets some guidelines for local government employer-employee relations (except for State of California and school district employees). Employees have the right to form, join, and participate in employee organizations. Management must recognize employee organizations. Management and county organizations are required to meet and confer in good faith. Like the Golden Rule, it is easier to state than to adhere to. I quote from the comments of William A. O'Malley, District Attorney:

> The Meyers-Milias-Brown Act states that management must meet and confer in good faith with employee groups. To many of the employee groups this meant negotiations and that they would have some say in setting salaries and working conditions. To management, this language meant meet and confer and not negotiate as we commonly use that term. Unfortunately, since there was a difference of understanding over the words "meet and confer," the employee groups left the sessions with a great sense of frustration and anger.

Contra Costa County Employer-Employee Relations Ordinance

After prolonged discussion between management and employee organizations, the Contra Costa County Employer-Employee Relations Ordinance was hammered out and became effective in February 1971. The employee organizations were dissatisfied, but it was a start. The purpose of the ordinance was to supplement and implement the Meyers-Milias-Brown Act. The adoption of such an ordinance is optional with local

Table 1. Results of 1968 strike.

Department	No. of Employees	Strikers	
		Number[a]	Percent
Agriculture	771	31	44
Auditor	127	11	9
Building Inspection	38	14	37
Building Maintenance	146	67	45
Health	190	53	28
Hospital	568	195	34
Library	169	71	42
Probation	289	81	28
Public Works[b]	293	108	37
Social Service	724	167	23
Total	3,501	789[c]	

[a]Only those offices with more than 10 employees out on strike listed.
[b]Road Maintenance shut down; office staff all present.
[c]Peak.

Table 2. Man-days lost due to 1972 strike.

Department	6/27	6/28	6/29	6/30	7/3	7/5	7/6	7/7	7/10	7/11	7/12	7/13	7/14	7/17	7/18	7/19	7/20	7/21	Total
Agriculture	29	26	24	31	31	31	37	36	37	35	35	32	38	37	38	38	35	38	608
Agriculture Ext.	2	2	2	2	2	2	1	1	1	1	1	1	1	1	1	1	0	0	21
Assessor	33	30	30	27	28	28	28	27	27	27	27	27	27	28	29	31	31	31	516
Auditor	16	48	48	48	46	51	52	52	52	52	52	52	52	52	50	50	50	41	864
Building Inspection	2	2	2	4	3	3	3	3	4	4	4	4	4	4	4	4	4	4	62
Civil Service	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	18
Clerk	5	5	4	4	5	4	4	4	4	4	4	4	4	4	4	4	4	4	75
County Counsel	5	6	5	5	5	5	5	5	6	6	6	6	6	6	6	6	6	6	101
District Attorney	15	19	16	16	17	16	16	16	15	15	15	15	15	15	15	15	15	15	281
Health	49	63	63	85	86	84	84	82	83	84	86	87	88	91	91	91	89	89	1,475
Library	7	20	20	28	37	34	35	23	24	25	26	30	21	32	31	31	24	18	466
Medical Services		50	88	160	193	245	225	197	194	200	195	199	196	189	198	204	202	187	3,122
OEO	2	2	2	2	2	1	1	2	2	2	2	2	2	1	1	1	1	1	29
Planning	4	7	6	6	5	5	5	5	6	5	5	5	5	5	5	5	5	5	94
Probation	42	62	62	79	79	75	78	78	79	79	79	78	84	90	80	79	77	57	1,337
Public Defender	10	10	9	10	9	9	9	9	9	9	9	9	9	8	8	7	7	7	157
Public Works	18	41	130	156	162	166	167	166	165	168	168	169	170	166	165	165	166	166	2,654
Sheriff	11	11	11	12	12	12	13	13	12	12	12	12	11	10	10	10	10	10	204
Social Service	550	690	641	651	691	674	668	667	665	658	662	663	655	673	672	676	663	663	11,876
Tax Collector	12	12	11	12	15	15	15	15	14	14	14	14	14	14	14	14	14	14	247
Consolidated Fire	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	90
Flood Control	0	0	0	3	3	3	3	4	4	4	4	4	4	3	3	3	3	3	51
Total	818	1,112	1,180	1,347	1,437	1,469	1,455	1,411	1,409	1,410	1,412	1,418	1,412	1,435	1,431	1,441	1,412	1,339	24,348

Table 3. Unit positions and majority representatives.

Unit	Majority Representative	Positions	
		Authorized	Filled
Agriculture and Animal Control	Local 1	55	53
Attendant-LVN-Aide	Local 1	295	269
Craft Maintenance	Contra Costa Building and Construction Trades Council	22	20
Deputy Sheriff	Deputy Sheriffs' Association	257	248
Engineering	Associated County Employees	145	122
Fire Suppression and Prevention	Local 1230		
Fiscal Services	Local 1	73	68
General Clerical Services	United Clerical Employees	1,105	1,042
General Services and Maintenance	Local 1	557	524
Health Services	Local 1	175	164
Investigative	Local 1	16	16
Legal and Court Clerk	Local 1	18	18
Library	Local 1	119	117
Probation	Local 1	234	211
Registered Nurse	California Nurses Association	106	101
Social Services	Local 535	832	707
Total		4,009	3,680

jurisdictions. The exclusive management-prerogative clause mentioned earlier was and continues to be a strong point of contention.

DIFFERENT ROLES OF DEPARTMENT HEADS

Before procedures were set up under the Meyers-Milias-Brown Act and the county employer-employee ordinance, salary negotiations were a different matter. A department head would discuss the salaries of the employees in classifications not general in the county with civil service staff and make a presentation to the civil service commission. In case of conflict, department heads could appeal directly to the Board of Supervisors, and such appeals have occurred from time to time with a fair amount of success. However, salaries for county-wide classifications, primarily the clerical classes, were set without input requested of department heads. Now, employee salaries for those in units represented by associations or unions are set at meet-and-confer-in-good-faith conferences between organizations and central management (central management consists of the office of the county administrator and the personnel director). This situation places the personnel director in an adversary relationship with employees. Because the Civil Service System was the child of county employees and they expect it to be sympathetic to them, this adversary relationship magnifies difficulties between employees and the Civil Service Department. (See Appendix for comments by William A. O'Malley, District Attorney.)

CHANGING INTERESTS OF EMPLOYEE ORGANIZATIONS

Some professional members of Associated County Employees are strongly considering voting out of this organization and joining the Western Council of Engineers, an independent union. This situation is partly based on the desire of professionals to be represented by professionals. Supervisors and middle management employees are in the process of forming another unit under the employer-employee relations ordinance. I may end up being the only management employee in my office!

Table 3 gives the status of employee organizations in the county as of September 1972. This table will continue to grow as time goes on.

SPECULATIONS

1. The third strike was settled July 21, 1972. The Board of Supervisors adopted the county budget August 28, 1972, with a 37 cent reduction in the county property tax rate. County organizations not satisfied this year may well try to use the cut as a lever for greater benefits at the next bargaining table.
2. County organizations will continue to push hard for more say in management prerogatives.
3. County organizations will continue to demand more recognition.

A FINAL THOUGHT ON THE NEW BALL GAME

Public employee strikes represent the failure of social mechanisms designed to reduce or minimize conflicts among groups with competing goals. State or local legislation or both have not solved issues that lead to strikes.

Two international unions, AFSCME and SEIU, are supporting the creation of a federal agency to develop and enforce regulations for state and local collective bargaining. Senate Bill 1440 of the 1972 California State Legislature called for the creation of such a state agency. SB 1440, however, failed to pass. Similar legislation no doubt will be introduced in 1973. Proponents for this type of legislation feel that more peace will come about in public employment inasmuch as such an enforcing agency is set apart from the local influence. More objectivity in disputes will be gained and the way paved for more stable employer-employee relationships. Time only will tell what the answer is. I hope that there is an answer to the new ball game in Contra Costa County.

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