OPEN FORUM:
Views From the Practitioners

Editor’s note: The object of this section is to create a “forum” wherein practitioners — management, labor, neutrals, lawyers, elected officials — have an opportunity to share their opinions. All appropriate contributions will be printed and must be limited to not more than 1,000 words. CPER does not solicit contrasting points of view or otherwise attempt to present a balanced discussion of the points raised, but any comments and criticisms submitted will be printed in subsequent issues. CPER does not assume responsibility for the content or accuracy of letters, which are printed in the order in which they are received.

Reducing Strikes In Transit Districts

From James Perry, Assistant Professor, Graduate School of Administration, University of California, Irvine, and Carder Hunt, Management Intern, City of Phoenix, Arizona:

Although strikes in California transit districts have been the exception rather than the rule, they have been lengthy and frequently bitter. Since 1970 major strikes have occurred in the Bay Area Rapid Transit District, the Golden Gate Bridge Highway and Transportation District, the Sacramento Regional Transit District, and the Southern California Rapid Transit District.

The consequences of strikes in public transit are both immediate and pervasive. Among the immediate consequences, for example, one might include commuter inconvenience and decreased mobility for the transit dependent. There are also a number of highly significant, but less visible, consequences. Historical trends demonstrate that transit patrons will use alternative means of transportation during a strike and will return either slowly or not at all to transit services after a strike. Perhaps more importantly, since most (if not all) transit districts receive a substantial flow of government operating subsidies, they are placed in an advantageous financial position during a strike because they will continue to receive public financial support whether or not services are actually provided.

A number of options might be considered by state policy makers for reducing the frequency and length of strikes in California transit districts. Among these options might be the prohibition of strikes and imposition of penalties on the union or its members. Penalties might be imposed on the union for “breaking the law” and might include fines against the union, loss of job security for striking workers, jail sentences for strike leaders, etc. This alternative may intuitively be considered the policy option most likely to minimize strikes, but recent research findings indicate the inadequacy of such prohibitions. Furthermore, extensive union penalties have proven to be virtually unenforceable in practice. This alternative places little or no pressure on management to continue bilateral negotiations compared to the weight of legal sanctions available to punish the union for illegal strike behavior. In fact, because it withdraws the right to strike currently held by employees in some districts, it might violate Section 13(c) of the Urban Mass Transportation Act of 1966 which, as a condition for federal aid, protects the bargaining rights of employees.

One of the most commonly proposed alternatives to the strike is compulsory binding arbitration. However, arbitration is often perceived as unfair by citizens and their representatives. Arbitration settlements may also result in awards markedly different from those achieved in bilateral negotiations. Similarly, the prospect of arbitration may change negotiating strategies, thereby severely hampering the prospects for serious bilateral negotiations and long-run improvement of labor-management relations.

The preceding policy options have serious weaknesses which decrease their attractiveness as general solutions to the strike problem. A third policy option, which might prove to be a viable alternative,
is grounded on several premises and includes several elements, as outlined:

1. The ability of workers to strike is an essential prerequisite for successful bilateral negotiations. The possibility of a strike provides a stimulus to both union and management to reach agreement at the bargaining table.

2. Bilateral negotiations may in many cases be aided by either mediation and/or factfinding. State policy should provide for these services if requested by either of the parties.

3. Management must recognize its responsibility to provide services during a strike. Thus, state policy should require the continuation of specified essential services. We suggest that, in the event of an impasse, state policy empower the factfinder to approve a binding contingency plan for the continuation of, at least, essential services. The contingency plan should include provisions for existing transit district management and administrative personnel to provide services during a strike.

4. Public policy will be able to encourage bilateral negotiations only if it insures that a strike benefits neither labor nor management. It should be recognized that while the worker forgoes his daily wage during a strike (reimbursed only by union strike funds), transit management may find itself faced with the intriguing possibility of making money during a strike. Operating subsidies are usually committed in anticipation of full service operations, and the amount of public subsidy provided to cover operating deficits represents a potential surplus for transit management over the length of a strike. This surplus may be a source of management reluctance either to engage in sincere bilateral negotiations or to settle once a strike has begun. Therefore, we propose that state policy anticipate and eliminate this source of possible reluctance by assessing transit districts that portion of total operating subsidies which are not required to “maintain the organization” (fixed costs) or to deliver those transit services which may be defined as essential.

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**NATIONAL SCENE**

**New York Approves Agency Shop**

A compulsory agency shop requirement for state and higher education employees has been passed by the New York state legislature. The same bill, which amended the Taylor Act effective September 2, makes the agency shop a mandatory subject of bargaining at all other levels of government. The provisions apply to employees in units with exclusive representatives.

New York is the fifth state to adopt a law which requires an organizational security arrangement (agency shop or service fee), rather than requiring or permitting negotiation of one. Others are Connecticut (state), Hawaii (all), Minnesota (all), Rhode Island (state). Three states allow such a union security arrangement to be implemented by a majority to two-thirds vote of employees in a unit: Massachusetts (all), Washington (higher education), Wisconsin (state, municipal).

The new New York law includes a “fair share” feature which provides that the agency shop feature “shall only be applicable in the case of an employee organization which has established and maintained a procedure providing for the refund to any employee demanding the return any part of an agency shop fee deduction which represents the employee’s prorata share of expenditures by the organization in aid of activities or causes only incidentally related to terms and conditions of employment.”

In the event of a violation of New York’s anti-strike law, the PERB is authorized to order the forfeiture of agency shop rights.

The agency shop amendment will expire on October 1, 1979, and any agreements reached pursuant to the law will become null and void at that time unless the provision is renewed by the legislature.