Private-Sector Model

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The 25-year lag between passage of the Wagner Act in 1935 and the first comprehensive public labor relations statute in Wisconsin provided ample time for widespread acceptance of the practice of collective bargaining. Transfer of many private-sector norms and practices to the public sector, therefore, should not surprise many observers. However, the appropriateness and extent of the transfer of collective bargaining to the public sector is still a matter of controversy, as the prohibition of collective bargaining by public employees in many states attests.

Concern about the appropriateness of collective bargaining for government is rooted in a belief that government is different from industry and therefore requires alternative approaches to labor relations. The objectives of this chapter are twofold: (1) to identify the scope and depth of the transfer of the private model of collective bargaining in the public sector; and (2) to isolate problems associated with the introduction of private-sector practices to government. The chapter begins with a review of relevant contextual differences between the public and private sectors. Problems associated with the transfer of the private model of collective bargaining to the public sector are likely to be rooted in differences in the context or functions of government organizations. The next section focuses on identifying the penetration of private-sector practices in the public sector. It compares broadly the policy, legal, and institutional foundations of collective bargaining in each sector. The final section considers some of the conflicts between private practices and governmental systems. It seeks to identify what changes must be made to accommodate the practice of collective bargaining in the public sector.

I. CONTEXTUAL DIFFERENCES

If the public and private sectors were fundamentally similar, the adoption of private-sector practices in the public sector would probably be a source of little controversy.
However, many scholars of public organizations (Allison, 1979; Rainey et al., 1976; Wamsley and Zald, 1973) contend that the economic and political contexts of business and government differ in important respects. Among the contrasts in the political contexts of business and government are the forms of ownership (corporate versus popular), public scrutiny, and susceptibility to political influence. Because of the political context of business, decisions by business officials tend to be salient only to their stockholders and frequently can be derived by use of formal optimization techniques. On the other hand, government decision makers must often be as concerned about the effectiveness of the decision-making process as the effectiveness of the decision itself. The economic contexts are equally dissimilar. Government organizations are often characterized as monopolistic providers of essential public goods, required to pursue goals that cannot be sought efficiently by the profit-oriented business sector.

The implications of these structural differences might be expected to reverberate through the collective bargaining process. The political context of government could affect how management defines and adheres to its bargaining goals. The nonmarket economic context reduces the available standards for judging the efficiency of bargaining settlements. David Stanley (1972: 19-20) reiterates some of these implications:

The private employer must stay in business and sell his goods and his services, in order to pay his employees. . . . Governments, on the other hand, have to stay in business, and their payrolls are met from taxes or fees imposed on the public. . . . In both public and private sectors, organized employees use power to affect the distribution of resources and the management of men and materials. In the private sector they do this primarily as employees. In the public sector they exert influence as employees, as pressure groups, and as voting citizens.

There is little disagreement that the differences summarized by Stanley raise questions about the transfer of collective bargaining to the public sector, or, at the very least, necessitate some adaptations of the private system. The adaptations evolving from the private system, and the conflicts that remain between the private model and public-sector values, can be ascertained by comparing the policies, laws, and institutional arrangements of the two sectors.

II. PUBLIC AND PRIVATE LABOR RELATIONS SYSTEMS: POLICY, LEGAL, AND INSTITUTIONAL FOUNDATIONS

In order to identify the impact of the private-sector model on public labor relations, it is necessary first to identify the shared or common practices in the public and private sectors (see, e.g., Chamberlain, 1972; Imundo, 1973). John Dunlop's (1958) model of an industrial relations system is a helpful device for facilitating comparisons because it defines key parameters of such systems. The industrial relations system concept is an analytic construct for identifying a particular subsystem of an industrial society. Central issues in such a subsystem are work force procurement, rule making governing the workplace, and compensation for labor services (Dunlop, 1958). Dunlop suggests that a labor relations system can be divided into four basic components—actors, rules, ideology,
and the environmental context. The environmental context component was discussed briefly in the preceding section. This section focuses on the other three components, which are the primary interest of this chapter. The following sections use a comparative methodology to identify the private-sector antecedents of public-sector practices.

A. Ideologies: Public Policy Objectives

Webster's *New Colloquial Dictionary* defines ideology as "the integrated assertions, theories, and aims that constitute a sociopolitical program." Based on the breadth of this or similar definitions, it is obvious that no ideology can be easily described or summarized. However, the policies and aims articulated in key federal and state statutes provide reasonably good proxies for more thorough statements of prevailing ideologies. For the private sector, the prevailing ideology is reflected in the declaration of policies at the beginning of the National Labor Relations Act (NLRA). Public-sector ideology is more diverse (possibly mirroring multiple ideologies), but can be identified from policy statements in the many laws governing public-sector bargaining, including the Civil Service Reform Act of 1978 (CSRA) and the statutes of the 50 states.

*Private-Sector Policy Objectives:* The policy objectives that guide labor relations in the private sector evolved gradually over a period of 25 years. In the National Labor Relations Act (U.S. Congress, 1935), Congress' first declaration of national policy in 1935 and commonly called the Wagner Act, collective bargaining was justified as a means of overcoming employer excesses:

... the denial by some employers of the right of employees to organize and the refusal by some employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or necessary effect of burdening or obstructing commerce.

Congress clearly intended to facilitate not just the organization of employees, but the practice of collective bargaining. With this legislative action, "industrial democracy" became more than a slogan, it became a meaningful form of social organization.

The initial belief that employers were primarily at fault for industrial strife was supplanted by the Labor Management Relations Act of 1947 (Taft-Hartley Act) (U.S. Congress, 1947), which amended the NLRA. This act reflected both a more sophisticated understanding of the causes of industrial strife and a more pluralistic view of the world. Whereas the opening passages of the 1935 version of the NLRA attributed industrial strife to employer unwillingness to accept the principles of collective bargaining, the 1947 amendments recognized that labor and management were responsible for destructive conflict. Taft-Hartley was also more explicit about the legitimate interests of third parties outside organized labor and management—for example, individuals and the general public. These points are illustrated by the policy statement preceding the act:

It is the purpose and policy of this Act, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers... to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of the individual em-
ployees in their relations with labor organizations ... and to protect the rights of the public in connection with labor disputes affecting commerce.

The most recent major elaboration of private-sector ideology is embodied in the Labor Management Reporting and Disclosure Act of 1959, commonly termed the Landrum-Griffin Act (U.S. Congress, 1959). Previous national labor legislation was directed almost exclusively at developing the interorganizational (Kochan, 1975; Levine et al., 1977; Perry and Levine, 1976) foundations for collective bargaining. Landrum-Griffin, on the other hand, focused on intraorganizational principles important to the legitimacy of the collective bargaining process. Congressional hearings in 1958 (U.S. Congress, 1960) had uncovered significant abuses of member rights by labor unions. Among these abuses were the collusion of union officers with employers and illegal solicitations of funds from union members. The act created a "bill of rights" for members of labor organizations, providing safeguards against improper union disciplinary action and guarantying equal rights to participate in union affairs, and established financial reporting requirements for union and corporate officers and labor relations consultants.

The preceding discussion has offered some perspective on the ideology of private-sector collective bargaining. Private-sector ideology might be summarized by five basic tenets:

1. Collective bargaining is a process designed to enhance commerce through the reduction of labor-management strife.
2. Employees have the right of freedom of choice regarding whether to join, or refrain from joining, a labor organization.
3. The bargaining power of labor and management should be balanced equally.
4. The public's interests are relevant to the collective bargaining process, but they should override the interests of the parties only in rare instances.
5. Unions are democratic organizations, and therefore their leaders are accountable ultimately to the membership.

Public-Sector Policy Objectives: As indicated earlier, the ideology surrounding collective bargaining in the public sector is less consistent or patterned than that of the private sector. This no doubt reflects the less advanced evolution of collective bargaining in government, but it also represents the constitutional bifurcation of federal and state government and some divergence in the operative ideologies of the two sectors. Neil Chamberlain (1972), in an earlier comparison of the collective bargaining models in the two sectors, arrived at a similar conclusion: "Even if some jurisdictions have moved to codify practice, as in New York City, we can hardly say that governmental units in the United States, as a class, operate on industrial relations principles that are relatively uniform and understood. Instead, we have a wilderness of chiefly casual or undirected growth."

Does the range of current policies in state and local governments offer any clues about principles that will predominate in the future? Quite possibly not, but some potential contrasts with the five private-sector tenets presented earlier are apparent. A mixture of statutes and case law indicate that "equality of bargaining power" is not a predominant feature of beliefs attendant to collective bargaining in state and local governments. In some states, such as Texas (Morris, 1977), legislation outlaws recognition of employee
representatives, collective bargaining, and strikes for state and local employees. The Texas statute indicates that the principle of sovereignty, that is, “that government employees have only the rights that the government permits them” (Stanley, 1972: 17), remains a legitimate guiding principle for labor relations, despite its often-reported demise.

Another contrast between public and private ideology involves the grounds for justifying collective bargaining. Disruption of commerce because of labor-management strife offered a strong rationale for introducing formal collective bargaining to industry. However, at no point has the level of public-sector strikes necessitated resorting to collective bargaining in order to facilitate the flow of goods and services to the public (see, e.g., Perry, 1976). In fact, collective bargaining is more often considered the culprit than the solution for disruptions in government services (see, among others, Liston, 1971; Shartey, 1970; Wellington and Winter, 1971). Furthermore, the popularity and acceptance of management-administered wage setting in government (Lewin, 1974) diffuses another possible source of employee and public demand for collective bargaining. The absence of a rationale for public-sector bargaining grounded in so general a notion as “enhancing commerce” has lengthened the search for a universally acceptable raison d’être.

The policy objectives guiding federal relations might provide further insights about public-sector ideology, especially because the Civil Service Reform Act of 1978 (U.S. Congress, 1978) is of such recent origin. The brief statement of findings and purpose in the labor-management relations section of the act, Title VII, presents a mixed message about the efficacy of collective bargaining. On one hand, Congress finds that “labor organizations and collective bargaining in the civil service are in the public interest.” A later paragraph in Subchapter I, however, qualifies this declaration:

It is the purpose of this chapter to prescribe certain rights and obligations of the employees of the Federal government and to establish procedures which are designed to meet the special requirements and needs of the Government. The provisions of this chapter should be interpreted in a manner consistent with the requirement of an effective and efficient Government.

This particular passage of the CSRA is noteworthy in three respects. First, it recognizes explicitly the “special requirements and needs” of government, reinforcing an earlier point that the emerging public-sector model is diverging from the private model. Second, it refers to employee rights and obligations, two concepts seldom mentioned together in discussions of the private ideology. Finally, the act places a specific concern of the public—effective and efficient government—on a par with another public interest—to protect “the right of employees to organize, bargain collectively, and participate through labor organizations. . . .”

In summary, the current directions of federal, state, and local policies appear to be headed toward the development of a uniquely public-sector ideology. Although identifying the tenets of such an ideology is a considerably more speculative venture than for the private sector, five tenets are implied by the preceding discussion:

1. Collective bargaining is a legitimate means for reduction of labor-management strife in the private sector, and therefore should be a right in public employment.
2. Employees have the right of freedom of choice regarding whether to join, or refrain from joining, a labor organization.
3. The bargaining power of labor should be commensurate with its representation task, but this does not require parity with management.

4. Under prescribed circumstances or conditions the public interest must prevail.

5. Unions are democratic organizations, and therefore their leaders are accountable ultimately to the membership.

Summary: The ideologies of public- and private-sector bargaining, as revealed by the policy declarations in major statutes, share important features. The preceding review of private- and public-sector ideologies indicates that beliefs about an individual's right to join a labor organization, to refrain from joining, and to hold leaders accountable are essentially similar in two sectors. These commonalities would appear to be a product of the strength of democratic and egalitarian norms within American society as a whole (Lipset, 1963), as much as they are a function of the transfer of the private model to the public sector.

Subtle differences in the ideologies are also apparent. Public-sector collective bargaining, unlike its private-sector analog, has no highly persuasive instrumental justification (e.g., "the facilitation of commerce"), and therefore must rely primarily on normative arguments to achieve adoption (Dotson, 1956). Unequal distribution of bargaining power, quite possibly as a result of the sovereignty and illegal delegation doctrines, appears to buttress developing public-sector practices. Finally, public-sector ideology considers the "public interest" a legitimate criterion for designing the process and evaluating the results of collective bargaining.

B. Rules: Prevailing Legal Frameworks

Dunlop (1958: 13) suggests that the rules of an industrial relations system consist of "procedures for establishing rules, the substantive rules, and the procedures for deciding their application to particular situations." Although Dunlop used the concept of rules in a broader sense, government regulations and legal requirements are central to his concept. Laws and procedures are the first step in articulating more abstract belief systems, and in structuring particular relationships so that the more specific rules governing workers and managers can be developed. This section compares the legal environments of private- and public-sector bargaining regarding five issues: right to bargain, scope of bargaining, impasse resolution, union security, and bargaining rights of supervisors.

Right to Bargain: In the private sector, the parameters of the requirement "to bargain collectively" are well known. The employer and employee representative have a mutual obligation to confer in good faith, but neither party is compelled to agree to a proposal. The private-sector system also assures the "territoriality" of the employee representative, by giving it the exclusive right to represent employees within its defined jurisdiction.

The federal government and the states that provide some right to bargain have generally adopted the exclusive recognition principle. Alternative forms of recognition, such as proportional representation, were used initially in some jurisdictions, but they often brought chaos and bitter interorganizational conflict. Most jurisdictions have therefore turned to exclusive recognition to secure more stable labor-management relations. As Schneider (1979: 198) observed: "Once written agreements were seen as a desirable, if
not inevitable, consequence of formalized relationships, exclusive representation became a logical prerequisite to orderly procedure."

The complementary principles of a mutual obligation to bargain and the freedom to agree or refuse to concede, however, have not followed inevitably from more formalized relationships. Both the extent of the employer's obligation to bargain and the local employer's ability to impose unilaterally a settlement vary substantially among states (for overviews of some of these variations, see Jones, 1975; Kochan, 1973; Levine et al., 1977; Schneider, 1979). The right of an employee representative to bargain can vary from minimal informal rights in jurisdictions where no laws control labor relations to a full-fledged mutual obligation in situations governed by NLRA-type statutes. For example, California municipalities are required to "meet and confer" with employee representatives. In some jurisdictions, this statutory language is interpreted to mean merely communicating with employee representatives; it does not require that labor and management achieve consensus before an employee relations ordinance can be approved by the local legislative body. On the other hand, states such as New York, Wisconsin, and Pennsylvania have adopted statutes granting rights to bargain essentially similar to those of employees in the private sector.

Scope of Bargaining: The scope-of-bargaining concept involves the definition of the range of issues that are, or should be, legitimate areas for negotiation between labor and management representatives (Gerhart, 1969). Scope of bargaining concerns a simple question: What issues are bargainable? The guiding legal statement for what is bargainable in the private sector is well known—"wages, hours, and other terms and conditions of employment." Over four decades of case law in the private sector have created a voluminous definition of specific, bargainable items. Items within the scope of bargaining are categorized as mandatory, permissive, or prohibited subjects for bargaining. Mandatory subjects are those over which the employer is obligated to bargain. An employer may, but is not required, to bargain over permissive subjects. Prohibited subjects are those that the parties are forbidden to discuss, because entering into an agreement on the subject would violate a law (e.g., the closed shop).

A great deal more chaos surrounds the scope of bargaining in the public sector. In states with NLRA-type statutes, such as Michigan, New Jersey, New York, Pennsylvania, and Wisconsin, the categories of bargainable subjects have developed in accordance with the threefold distinction in the private sector (Gershenfeld et al., 1977). Many years of decisions may remain, however, before the contents of these categories reflect coherent and stable patterns.

In other states and the federal government, legislators have attempted to restrict the scope of bargaining to achieve a balance between employee rights and various interests of the public. These restrictions on scope include subjects such as pay (for federal employees), textbooks and educational policy (teachers), pensions (most employee groups), union shops (most employee groups), and merit principles (most employee groups). A variety of rationales exist for these types of restrictions on the scope of bargaining (Jones, 1975). First, restrictions are often looked upon as a way of assuring retention of specific prerogatives by management and the public. If certain subjects are excluded from bargaining, then a means is available for controlling encroachment by employee organizations into issues properly within the public domain. Second, restrictions on the scope of
bargaining may be used to distinguish between those decisions that may be made through bargaining and those that reside with civil service commissions. Thus, limitations on the scope of bargaining may be designed to assist in perpetuating the authority of civil service systems (Stanley, 1970). Third, restrictions on bargaining scope may coincide with the need to distinguish among the functions of different governmental jurisdictions. For example, some states regulate local employee pensions, and therefore prohibit this subject from being considered in local bargaining.

Impasse Resolution: There is no single area of rules for the labor relations systems of the public and private sectors where the contrasts are better delineated than with respect to impasse resolution. The right to strike is recognized as a sine qua non for the success of the normal bilateral bargaining process in the private sector (Cox, 1958; Konvitz, 1948). It is viewed as the strongest incentive to encourage the parties to reach an optimal agreement.

For many years, the strike has been viewed with disfavor in the public sector (Wellington and Winter, 1971; Ziskind, 1940), equal to its acceptance in the private sector. Kochan (1979) and Schneider (1979) indicate that this pattern is changing. At least eight states now provide some statutory right to strike (Schneider, 1979). The legalization of employee strikes in these states has been a result of both a belief in the integral importance of the right to strike in the bargaining process and the failure of strike prohibitions (Kochan, 1979). Several studies have revealed the ineffectiveness of such prohibitions (Burton and Krider, 1975; Perry, 1977; Perry and Berkes, 1977). Nonetheless, the legalization of strikes in some states has been contingent upon substantial legal safeguards. Among these safeguards is a determination that the public welfare would not be jeopardized by a strike. Schneider (1979: 203) describes generally the mechanisms incorporated to protect the public's interests:

In no case is the right to strike unfettered. In all cases, a threat to the public health, safety, and/or welfare triggers a "no-strike" mechanism. In all cases, certain pre-strike impasse procedures must be complied with. Some of these involve the passage of considerable time. Others involve other kinds of devices to bring public pressure into the picture and to force harder bargaining.

It is interesting to note that these types of constraints are imposed in the private sector in cases of national emergency strikes, that is, strikes that "imperil the national health and safety," and they have been invoked by the President on only 30 occasions since 1947.

Not all governmental jurisdictions have opted simply either to continue the traditional public-sector policy—prohibiting strikes—or adopt the traditional private-sector policy—permitting strikes. Many jurisdictions have developed rather elaborate impasse producers to serve as alternatives to strikes. These alternatives generally take one of three forms: mediation, fact finding, or arbitration. Although each of these procedures is available in the private sector, they are employed relatively more frequently in the public sector.

Union Security: The ability of unions to require membership or a "fee for service" has always been a goal important to unions. A union's statutory mandate to represent all
employees encourages "free riders" (Olson, 1965), that is, employees who benefit from union representation but who are not dues-paying members of the union. The NLRA permits the negotiation (unless prohibited by state "right-to-work" laws) of union security arrangements, which require compulsory membership or service fees, thereby providing unions a tool for coping with the free-rider phenomenon.

Until recently, constitutional issues and merit system principles inhibited most governments from legalizing all but voluntary dues checkoff (Schneider, 1979), but the eradication of some of these obstacles has opened the way for government to move toward private practices. In the 1977 case of Abood et al. v. Detroit Board of Education, the U.S. Supreme Court upheld the constitutionality of a Michigan statute that permitted the negotiation of an agency shop. This decision has led to the most substantive objections to union security arrangements modeled after the private sector. It seems unlikely, however, that legislators will rush to pass laws permitting the negotiation of agency or union shops because of the ideologies that currently prevail with regard to the appropriate distribution of power between labor and public management.

Bargaining Rights of Supervisors: Another legal area where public statutes diverge from the NLRA involves the eligibility of supervisors for membership in bargaining units. Private practice is quite clear. Any employee exercising authority "to hire,. . . lay off, . . . promote . . . or discipline other employees" is a "supervisor" and therefore excluded from rights granted "employees" in the NLRA.

In the public sector, the treatment of supervisory bargaining rights has followed four different paths (Hayford, 1975; Hayford and Sincicropi, 1976):

1. Exclusion—All Supervisors: No supervisors are granted any bargaining rights protection.
2. Exclusion—Bona Fide Supervisors: Only employees fitting an NLRA-type definition of supervisor are excluded from bargaining.
3. Full Bargaining Rights—Autonomous Units: Supervisors have bargaining rights, but are organized into autonomous bargaining units.
4. Meet and Confer—Autonomous Units: Supervisors in autonomous units may consult with their employer, but the employer has no obligation to bargain.

Approaches 3 and 4 are unique to the public sector. They have been viable policy options in the public sector because of the relative absence of vertical status differentials within the operating components of government organizations. Supervisors are often supervisors in title only, and identify more strongly with rank-and-file employees than with top management. Zagoria (1972: 165) illustrates the severity of the problem:

As a result of managerial negligence, many supervisors feel a stronger kinship with their employees than with top management. As governmental units grow in size, many a municipal supervisor has yet to meet his mayor, or many a state employee his governor, or many a federal worker his cabinet member.

Add to this negligence and alienation the fact that political executives and civil servants are frequently on opposite sides of an issue and it is not surprising that the right of supervisors to bargain is handled radically different in the public sector.
These variances of policy toward government supervisors from private-sector policy create the potential for unique situations in bargaining. Management must mobilize bargaining coalitions without any assurances about the allegiance of supervisory employees. In fact, supervisors may be openly hostile to top management if they equate the success of other bargaining units with their own. In the event of a work stoppage by nonsupervisory employees, management may also have difficulty continuing services using supervisory employees, who identify with the strikers rather than their supervisors. The control problems associated with supervisory bargaining are most evident during interest disputes, but they may also be expected to spill over into contract administration and grievance handling.

Summary: Collective bargaining is now widespread in government, but it has not been adopted universally. Where the overarching rule structure governing private-sector labor relations has been incorporated in the public sector, it has usually been qualified substantially to fit the requirements of the public sector. The legal differences are in tune with, and probably a product of, the ideological differences discussed earlier. The rights to bargain and to strike, the scope of bargaining, and union security are frequently constrained to assure that the power of public employee representatives does not exceed that required by their legitimate interests. In some legal areas, such as impasse resolution, policy makers have usually rejected the private model’s approach—strikes—sometimes for novel third-party mechanisms.

III. INSTITUTIONAL STRUCTURES: THE ACTORS AND THEIR CHARACTERISTICS

The regular participants and roles in any social system can be considered a part of its institutional structure. In his description of an industrial relations system, Dunlop (1958: 7) identified three essential sets of actors:

(1) a hierarchy of managers and their representatives in supervision, (2) a hierarchy of workers (nonmanagerial) and any spokesmen, and (3) specialized governmental agencies (and specialized private agencies created by the first two actors) concerned with workers, enterprises, and their relationships.

In the private sector, the composition of each of these groups, in both individual enterprises and the society as a whole, is at least vaguely familiar to most Americans. The representatives of workers, particularly national organizations such as the AFL-CIO, United Auto Workers, and International Brotherhood of Teamsters, are highly visible to the public. Specialized government agencies, such as the National Labor Relations Borad, play a prominent rule-making and adjudicatory role in the private sector.

At the foundation of private-sector industrial relations systems is the assumption that interactions are typically bilateral; that is, management and labor hierarchies are engaged in transactions involving issues of conflict and mutual benefit. Specialized government and private organizations are conceived as intervening usually in instances of
extreme conflict, and then according to rules either established or accepted by the parties. Thus, the roles of the actors are well defined and role conflict is minimal.

The institutional structure of public-sector labor relations systems differs in several important respects. First, the sets of actors in the public sector often exceed the three common to the private sector. Among the additional actors in the public sector who are often more than merely observers are legislative bodies, taxpayers, specialized interest groups, and the press (Juris and Feuille, 1973; Kochan, 1974; Levine et al., 1977; McLennan and Moskow, 1972; Perry and Angle, 1980; Perry and Levine, 1976; Schick and Couturier, 1977). "Community multilateralism" (Juris and Feuille, 1973), the entry of external interest groups into the bargaining process, has made bilateral interaction difficult, jeopardized the legitimacy of some specialized government and private actors, and has, in some jurisdictions, led to formal recognition (via sunshine laws, citizen participation, and similar provisions) of this unique aspect of the public labor relations system.

A second point of divergence between the public and private institutional structures is the greater role conflict within the government management hierarchy (Derber, 1979; Juris and Feuille, 1973; Kochan, 1974). This tendency of non-labor relations government officials to become involved in collective bargaining has been termed "government multilateral bargaining" by Juris and Feuille (1973), to distinguish it from community multilateral bargaining. Non-labor relations government officials often enter bargaining to lobby for the settlement of their choice. They might intervene directly with the legislature or indirectly through the media, on behalf of employees under their jurisdiction.

Community and government multilateral bargaining are manifestations of a more general phenomenon, conflict expansion, a process inherent in agenda building and disposition in the public sector (Cobb and Elder, 1972; Lipsky, 1968; McCombs and Shaw, 1972; and Wildavsky, 1962). Conflict expansion is intended by the actors initiating such expansion to alter bargaining outcomes (Levine et al., 1977). The collective bargaining agenda, that is, the sum of issues brought by the parties to negotiations, represents a set of concrete, specific items scheduled for active and serious consideration by a given institutional decision-making body. This institutional agenda sometimes conflicts with the broader and more abstract systematic agenda, which is a "general set of political controversies that will be viewed at any point in time as falling within the range of legitimate concerns meriting the attention of the policy" (Cobb and Elder, 1972: 14). Various actors involved in the process may attempt to manipulate public opinion about items on the bargaining agenda by associating them, either positively or negatively, with items on the systematic agenda. They hope by this means to control the magnitude or composition of the bargaining settlement.

Although the differences are probably more subtle and less fundamental than those between the management hierarchies, the nature of the hierarchy of workers in the public sector also diverges from that of the private sector. However, the attitudes of the workers do not appear to be the reason for this divergence (Smith and Hopkins, 1979). Rather, the employee organizations themselves and the environments in which they operate are more probably the roots of differences in the hierarchy or workers.

The nature of public employee organizations reflects, in part, the ideological and legal differences across state and government levels (Horton et al., 1976). Although
public employee organizations carry out the collective bargaining function, they normally have a complex goal set and engage in an array of other functions and activities. The absence of union security arrangements, the prohibition of strikes, constraints from civil service regulations, interorganizational rivalry, and, in some instances, nonexclusive or proportional representation has encouraged public employees to seek political influence and to develop special incentives for the attraction and retention of members, as a supplement to the limited power these organizations derive from collective bargaining (Cook, 1966). The adaptations by public employee organizations to the constraints above have also helped to produce more decentralized decision-making structures (Stern, 1979) and a broader range of organizational forms than the industrial and craft unions typical in the private sector. Stieber (1973: 1) summarizes the major differences:

The pattern of organization among public employees in the United States is more complex than the single form of organization that is characteristic of the private sector. Public employees belong to unions and associations, which differ from each other organizationally and structurally, as well as in their purposes and policies.

In many cases, the different purposes and policies that Stieber notes are longstanding and reflect the institutional environment. Many public employee organizations, such as the National Federation of Federal Employees (NFFE), are strong supporters of civil service principles. In fact, the “personnel movement” (Waldo, 1948) of the early twentieth century nurtured many public employee organizations. Lewis Meriam (1938: 281), an early advocate of both merit systems and unions, articulated the view that undergirds the goal structure of organizations like the NFFE:

Many Americans regard the extension of the merit system, the preservation of its integrity, and the perfection of its techniques as an outstanding need of our democracy. Persons with such views generally recognize that unionism and affiliation both tend to further these objectives.

A final noteworthy difference between the institutional structures of the two sectors is that the powers and the role of specialized government agencies are less developed in public labor relations. Many states do not provide for an administrative agency to oversee public labor relations. Other states designate local governments, often one of the parties to labor conflict, as the administrative unit. In the federal government, legislation recently created an independent Federal Labor Relations Authority (FLRA), but its performance during its very brief life span has disappointed many observers (Badhwar, 1980). The future development of specialized government agencies will depend a great deal on further statutory formalization of public-sector bargaining.

In summary, although Dunlop (1958) deduced, primarily from the experience of the private sector, that all industrial relations systems have three sets of actors, his ideal-typical model is strained considerably when applied to the public-sector situation. The lack of correspondence between Dunlop’s tripartite model and the quadripartite structure in the public sector reflects differences in institutional contexts rather than a rejection or modification of private practices. Role conflicts among actors, external intervention, and a less developed set of specialized agencies characterize the institutional structure, which deviates significantly from the private model.
IV. MAJOR CONFLICTS BETWEEN THE SYSTEMS

The preceding discussion has provided some perspective on the present status of the incorporation of collective bargaining in the public sector, including the reasons behind similarities and differences between the established private model and the emerging public-sector model. Does the current situation reveal any significant problems that might exist as the merger of collective bargaining into government continues? In defining problems associated with the adoption of private collective bargaining practices by government organizations, it will be useful to identify some standards against which current practice can be judged (Perry and Hunt, 1978; Schick and Couturier, 1977). Two very general (though by no means exhaustive) criteria may define some minimum standards of acceptable performance. These criteria might be looked upon as defining significant discrepancies in the "fit" between collective bargaining, as it is practiced in the private sector, and the institutions and norms of government, on which it is being overlayed.

The first standard is that the collective bargaining subsystem produce generally acceptable behavioral outcomes, that is, that it resolve tensions between the public's interests and employee interests that often generate destructive behaviors (strikes, sabotage, etc.). In a nutshell, does the collective bargaining framework achieve the objectives set out for it while simultaneously minimizing objectionable side effects?

The second standard focuses on the fit between the collective bargaining subsystem and the governmental systems in which it is embedded. Kaufman (1956, 1969) notes that the design of our governmental machinery has shifted historically in accordance with changes in emphasis on three values: representativeness, politically neutral competence, and executive leadership. Kaufman argues that this continual process of value resurgence, although inherently unstable, is fruitful because it permits the accommodation of the many interests within our society. This accommodation assures the legitimacy of our governmental systems. The collective bargaining subsystem is linked to this broader governmental system by virtue of the constraints and opportunities it places on the resurgence of values and, thereby, the continuing accommodations among various interests in our society. Has the adoption of collective bargaining altered the balance among the three central values underlying governmental design? Have conflicts arisen between the collective bargaining practices that have been transferred from the private sector and critical government machinery?

The foregoing comparisons point toward problems of adjustment during the process of adapting collective bargaining in the public sector. Some of these problems involve specific behavioral outcomes associated with collective bargaining. Others encompass more basic conflicts between collective bargaining and two of the three values discussed above. Although these problems arise from a clash of both competing values and methods across the sectors, the causes of these conflicts cannot be attributed easily either to the traditional labor relations system or to our governmental system. The comparisons in the earlier sections illustrate that supervisory and management bargaining in government, for example, do not emanate from private-sector practice, but rather from public-sector traditions regarding the status of supervisors. This section highlights some of the conflicts that remain to be resolved.
A. Continuity of Services

Concern about strikes by legislators, public officials, and citizens long constrained the full-fledged facilitation of collective bargaining in the public sector. The fact that strikes occurred even in the absence of collective bargaining, however, and that collective bargaining might help to reduce the incidence of labor conflict, contributed eventually to the adoption of collective bargaining in many jurisdictions. Nevertheless, the adoption of collective bargaining seldom altered the goal of public policy makers: to minimize the frequency and duration of strikes and to assure the continuation of essential services. In the private sector, these goals still permit a substantial level of strike activity. In the public sector, these goals translate into a more rigid operational standard: "The public will tolerate only few public employee strikes, and seldom strikes in essential services."

Judged by this behavioral standard, public employee strikes probably exceed acceptable limits. This particular difficulty in adapting private-sector collective bargaining in the public sector is not likely to lead to a widespread and unfettered grant of the right to strike to public employee organizations. An absolute prohibition of strikes may be a more palatable solution, as demonstrated by current statutes, but it may not offer the only or best means for assuring the continuation of services. However, despite the assertions of many unionists and industrial relations specialists that meaningful negotiations occur only when the strike weapon is available, collective bargaining without the right to strike will continue to be a viable model for many public jurisdictions.

This type of compromise between private practices and public-sector needs is not the only means for assuring the continuation of services. Creation of dispute resolution procedures, which provide an alternative to strikes, is another means of modifying private practices to accommodate a public-sector requirement. In recent years, the proliferation of third-party procedures, such as final-offer arbitration (Fenflle and Long, 1974) and mediation-arbitration (Kagel, 1973), reflect the popularity and utility of the government's obligation to provide services. However, the search for effective dispute resolution methods for the public sector is likely to go on for many years (Feinle, 1979; Horton, 1975).

B. Supervisory Status

One of the more tractable conflicts between private and public-sector practices involves the eligibility of supervisors for membership in bargaining units. In this case, any compromise between the two models intended to improve behavioral outcomes will probably lead the public sector to converge with practices in the private sector. As pointed out earlier, the current public-sector practice of granting supervisors full bargaining rights produces internal management conflicts and substantial union leverage. These side effects of the general movement toward public-sector bargaining will be dissipated increasingly by singling out supervisors for special treatment. This special treatment will involve one of two approaches identified earlier: (1) excluding bona fide supervisors from bargaining; (2) permitting consultation only, rather than full-fledged bargaining, between public employees and representatives of supervisors. The latter approach, unlike the former, differentiates the public-sector solution to the supervisory status issue from that of the private sector. It is also consistent with the traditional lack of vertical differentiation within government organizations and the equal availability of the mechanisms for due
process to all employees. Therefore, it is probable that supervisors will retain consultation rights in the future, an approach to supervisory bargaining rights unique to the public sector.

For either of these solutions to work, greater attention must be paid to the designation of "bona fide" supervisors. The acceptance and workability of any bargaining rights policy separating supervisors from rank-and-file employees turns on whether the distinction between the two groups of employees is based on real, rather than imagined, status differentials. A recent study of supervisor attitudes by Davis and West (1979: 505) concurs with this view:

In short, our findings lead us to support the adoption of a flexible policy toward supervisory participation in union activities. State legislators would be well advised to direct greater attention to the statutory definition of "supervisor," distinguishing as clearly as possible between supervisory personnel with management responsibilities and those with little actual authority.

C. Conflicts with Representativeness

The private model of collective bargaining impinges on traditional pluralistic decision-making processes in government and may need to be modified to assure the representativeness of government. Collective bargaining is a system of governance not unlike American government—each is designed to redress grievances through a representative mechanism (Davey, 1972). Recent years have brought considerable change in the methods of representations in our governmental system. Unorthodox methods of representation, such as ombudsmen, have become commonplace. These representation methods are predicated on a growing disenchantment and alienation from major societal institutions, particularly government (Ladd, 1978). Kaufman (1968: 4) observes:

America is not wanting in arrangements for representation... Why, then, is there dissatisfaction with these arrangements? Fundamentally, because substantial (though minority) segments of the population apparently believe the political, economic, and social systems have not delivered to them—fair— even minimally fair—shares of the system's benefits and rewards... It appears to them that only the powerful get attention, and that the already powerful are helped by the system to deny influence to all who now lack it. Thus, the system itself, and not just evil men who abuse it, is discredited.

Collective bargaining has given one minority group—public employees—a fuller sense of participation in decisions that affect them. At the same time, however, it has exacerbated the problem of institutional legitimacy, because collective bargaining often creates the impression that public employee groups receive disproportionate attention. Methods must be created to ensure, both in fact and in appearance, that the interests of public employees are served equitably vis-a-vis the general public.

Like prohibitions on the right to strike in the public sector, achieving equity among interests probably will require a fundamental change in the private-sector model of collective bargaining. It does not appear likely that statutory restrictions on the scope of bargaining and formal statements designating the rights of management will suffice to establish equity for all parties, given the tendency of labor and management to deviate from
such constraints in practice. The most likely change will be the development of multilateral, rather than simply bilateral, bargaining and contract administration processes. Such processes would serve not only to resolve a significant conflict of values, but formalized multilateral procedures would be consistent with the informal behavior that now characterizes public-sector labor relations. Among the likely means for providing greater public access and input are sunshine laws, open meeting provisions, public referenda, and judicial review. Schneider (1979) reports that sunshine laws have already been adopted in four states—California, Florida, Minnesota, and Wisconsin. The design and forum for public access will probably have to be tailored toward particular substantive decisions. For example, the review of grievance arbitration decisions might be better left to the judiciary than to the public. On the other hand, settlements of interest disputes might appropriately be submitted to public referenda if they exceed specified bounds.

D. Conflicts with Executive Leadership

In the private sector, bilateral decisions attendant to collective bargaining have, until recently, been virtually unchallengeable. The existence of well-developed public policy, contract law, and various judicial precedents regarding arbitral review (Grodin, 1979) guarantee a high degree of insularity of the decisions and activities of the parties from the vagaries of the wider environment. Seldom is the collective bargaining process an instrument of, or subject to, changing public policies.

Conflicts between bilateralism and overarching public policies are often resolved in a contrary manner in government—in favor of the broader policy objective. Federal employees have been more prone than other government employees to find their rights traded for the greater public good. However, the present fiscal crisis and tax revolt have led even local union leaders to lament that collective bargaining has become “collective begging.” An extreme example of the impact of the urban fiscal crisis on collective bargaining is provided by New York City. Substantial limitations have been imposed on the negotiation of wages and benefits, and public hostility toward employee unions has grown considerably. Arvid Anderson (1976: 512), chairman of the New York City Office of Collective Bargaining, assessed the impact on the status of collective bargaining:

Clearly the fiscal crisis in New York has chilled the public’s attitude there and in other large cities toward public employee unions and collective bargaining, and it has prompted a reexamination of the collective bargaining process as opposed to the traditional political role of the legislature and executive in determining conditions of employment for public employees.

Another illustration of where collective bargaining rests in the public sector’s hierarchy of priorities occurred during California’s recovery from Proposition 13. California Senate Bill 154 allocated $4.2 billion of surplus state funds to cushion losses of local property taxes. A provision of the bill limited eligibility to local governments whose salary increases did not exceed those for state employees. Because state employees received no increase, this provision of the bill effectively froze local salaries. However, a freeze on local salaries contradicted clauses of multiyear bargaining agreements. The California Supreme Court subsequently ruled the wage-restriction provision of the bailout bill
unconstitutional. However, this episode in California, and similar events in New York City and elsewhere, illustrate an important fact about the public sector—policies facilitating collective bargaining reflect a contingent, and not an absolute, commitment to joint decision making.

Because the stakes in the private sector involve essentially private goods, a clear demarcation of collective bargaining from the political system is consistent with our free enterprise system. Because government typically trades in public goods, concessions have been made, and will probably continue to be made, to the multiplicity of interests affected by bargaining decisions. However, even in crisis situations where some “greater good” might be served by suspension of collective bargaining, limitations on the legally conferred bargaining rights of public employees and their representative should not be arbitrary or ad hoc. Distinctions will need to be drawn between legitimate and illegitimate intrusions on the prerogatives of collective bargaining, not so much to avoid catastrophe as to clarify the rules of the game in the public sector.

VI. CONCLUSION

This chapter has examined private- and public-sector models of collective bargaining in order to ascertain points of intersection and divergence. It presented an overview of the public policy, legal, and institutional foundations of bargaining in each sector as a means for identifying private-sector antecedents of public-sector bargaining. Two general concepts, that is, the acceptability of behavioral outcomes and compatibility with basic values of governmental design, were used as evaluative criteria for judging which areas of collective bargaining present special problems that will need to be modified in the future. Significant problems must still be resolved with regard to continuity of services, the bargaining rights of supervisors, representativeness, and executive leadership.

Although the evidence portending a radical break is not overwhelming, there are indications that the public sector is beginning slowly to evaluate and redesign constructively the model of collective bargaining that has been transferred from the private sector. Sunshine laws and novel dispute-resolution methods (Bernstein, 1971) are signs of the constructive modifications that are occurring. It will be necessary in the future to experiment with forms of employee-employer relations that are responsive to employee needs as well as to the requirements of complex governmental systems. Not only must the citizenry be assured of some access and representation, but any negative consequences of collective bargaining should be minimized for those least able to voice their concerns about the process. We must also find better solutions to the conflicts between executive leadership and collective bargaining. The pursuit of productivity and efficiency is only one facet of executive leadership. Executive leadership also involves instilling in management a sense of responsibility for the interests of employees as well as the interests of political officials and clientele groups.
NOTES

1. Because the term "industrial" is usually associated with the private sector, the more general terms "labor relations system" or "collective bargaining" will be used wherever appropriate to refer to the overall system of activities.

2. A recent Supreme Court decision quashed an AFSCME-led drive for a national public-sector labor law. In National League of Cities v. Usery (96 S.Ct. 2465, 426 U.S. 833, June 24, 1976), the Court struck down as unconstitutional the extension of the Fair Labor Standards Act to state and local governments. The Court ruled the statute unconstitutional because it abridged state government's right to control intrastate commerce.

3. See, e.g., the evaluation of New York's elaborate system of strike alternatives by Kochan et al. (1979).

4. 97 S.Ct. 1782, 431 U.S. 209, 95 LRRM 2411.

5. The last several years have witnessed some erosion of this invulnerability. For an assessment of one area where another public policy has encroached on the prerogatives of the collective bargaining process, see Smith (1975).

REFERENCES


