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LABOR ECONOMICS AND LABOR RELATIONS

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COLLECTIVE BARGAINING IN THE PUBLIC SECTOR

Earlier chapters have dealt mainly with collective bargaining in private employment, where government is formally a neutral, laying down rules of conduct for unions and employers. We turn next to collective bargaining in the public sector, where government itself is the employer. Although the public work force is much smaller than that of the private sector, one of every six workers is employed by the government at either the local, state, or federal level. We saw in Chapter 14 that the public sector, which was almost entirely nonunion as recently as the 1950s, is now much more strongly unionized than the private sector. Over one-third of all union members are now employed by government. Unionization and collective bargaining in the public sector are important topics in their own right. In addition, by learning more about the public sector, we can develop a broader context for understanding industrial relations in the private sector.

The legal and economic environment of public bargaining differs substantially from that of private bargaining. The decision-making processes of a public employer differ from those of a corporation. The concept of "ability to pay" and the factors affecting ability to pay are different for a public employer. Government is bound legally to represent the interests of all citizens, and this may limit what it can concede to the groups of citizens who are public employees. Use of the strike weapon in public employment is usually considered inappropriate, though strikes do occur. But if the strike possibility is removed, there must be some other method for final determination of disputes in public employment.

In this chapter, we will consider five topics:

1. The differences between public- and private-sector employers
2. The growth of public-sector unions
3. Bargaining at the federal level
4. Bargaining at the state and local level
5. Methods for settling labor-management disputes
6. The effects of collective bargaining in the public sector

DIFFERENCES BETWEEN PUBLIC- AND PRIVATE-SECTOR EMPLOYERS

We have assumed that private-sector employers are profit maximizers. Such an employer sells goods and services, usually in competition with other firms, with the expectation that sales revenue will exceed costs, leaving a profit for the firm's owners.

In the public sector the employer faces quite different pressures. The government does not have to sell its output in a competitive market. Instead, it finances its activities through taxation, which is compulsory. While a firm can go out of business if it misjudges the demand for its product or if its costs become too great, government does not go out of business. Instead, if one set of elected officials are perceived as unsuccessful they will be voted out of office and replaced by another. Thus top government officials are subject to political constraints, in contrast to the market constraints facing executives in the private sector.

Public employers represent the sovereign power of the state, including military and police power. In the United States we have a long history of civilian control of such power, control exercised by elected government officials. Collective bargaining could reduce such civilian control by giving greater influence to police or military personnel, especially if the union includes high-ranking officers. In contrast to the private sector, unions in the public sector do include supervisory personnel. They do not include top officials, however.

From an economic perspective one of the important issues is the elasticity of demand for government services. To the extent that government has a monopoly over any service (e.g., police or fire protection) and the service is considered essential by many people, then the demand for this service will be inelastic. The inelastic product-demand, in turn, will lead to an inelastic labor demand, which increases the bargaining power of the union. Because of the inelastic labor demand the union can seek a high wage rate with little concern for the effect on employment. Equally important, the same factors leading to an inelastic labor demand also imply that a strike will be very costly for the citizenry. As a result of these considerations, legal prohibitions have often been established on the right of public employees to strike, especially for workers in essential areas like police and fire protection.

The elasticity of labor demand in the public sector may not be as great as it first appears, however. First, not all public services are essential. Even those that are, such as police protection, can be provided at different levels depending on cost. Moreover, private-sector alternatives can often be found, ranging from the hiring of

private guards to supplement the police to using Federal Express instead of the U.S. mail.[1] Empirical estimates indicate that the wage elasticity of labor demand is somewhat lower in the public than in the private sector but that the elasticity in the public sector is well above zero.[2]

In addition to the sovereignty and monopoly issues, public-sector employers differ from their private-sector counterparts in several other respects. First, because the public sector receives most of its revenue from taxation rather than from sales a strike does not deplete its treasury. In fact, a government will gain financially during a strike because its revenues remain relatively constant while its labor costs diminish.[3] So the pressure on a public-sector official to settle a strike comes primarily through the political process, as a result of services not provided to constituents rather than from financial costs, as in the private sector.

Much of the bargaining power of public-sector unions comes through the political process. In this process union members vote and lobby as well as bargain. Consequently, unions can penalize elected officials for adverse wage decisions. Although the general body of voters has an interest in holding down government costs and tax rates, this interest is more diffuse and therefore usually requires less attention from politicians.

The relative emphasis on lobbying versus bargaining will depend on which approach is perceived to be most effective. Lobbying can be used to shift the labor demand curve as well as to increase wage rates.[4] For example, teachers often bargain about class size as well as wage rates. Such issues can have an important effect on working conditions, job security, and the union's future size and political power. They also may be easier to "sell" politically because they emphasize the community interest in better services rather than just the worker interest in higher earnings.

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[1]In addition, there are other qualifications. First, public as well as private employers may respond to wage increases by substituting capital for labor or by subcontracting to the private sector. For an interesting study of how such responses have played a major role in sanitation, see David Lewin, "Public Employee Unionism in the 1980's: An Analysis of Transformation," in *Unions in Transition*, ed. Seymour Martin Lipset (San Francisco: ICS Press, 1986), pp. 241–64. Second, high wage rates normally will lead to high tax rates, which can cause citizens to move from one jurisdiction to another, thereby reducing the demand for labor in the high-wage jurisdiction. In addition to these long-run arguments, Freeman emphasizes that in the short run, the elasticity of labor demand may actually be higher in the public than in the private sector. In contrast to private employers, who can pay higher wages at the expense of reduced profits, state and local governments generally face a fixed budget constraint. If the government must pay a wage increase but is already spending all of its revenue and cannot borrow on its current account, then any wage increase must lead to an equal percentage decline in employment. See Richard Freeman, "Unionism Comes to the Public Sector."

[2]For example, see Ronald G. Ehrenberg, "The Demand for State and Local Government Employees," *American Economic Review* (June 1973), pp. 366–79; Orley Ashenfelter and Ehrenberg, "The Demand for Labor in the Public Sector," in *Labor in the Public and Nonprofit Sectors*, ed. Daniel Hamermesh (Princeton, N.J.: Princeton University Press, 1975), pp. 55–78, and Ashenfelter, "Demand and Supply Functions for State and Local Government Employment," in *Essays in Labor Market Analysis*, ed. Ashenfelter and Wallace Oates (New York, Halsted Press, 1979), pp. 1–16.

[3]Revenues will decline somewhat to the extent that a strike by public-sector employees leads to less economic activity, and some taxes, such as those on income and sales, depend on the state of the economy.

[4]See Freeman, "Unionism Comes to the Public Sector," p. 52.

At the start we indicated that private-sector firms attempt to make a profit and usually are assumed to be profit maximizers. Although not a profit maximizer, the public-sector employer is likely to be a cost minimizer. At least for elected officials the political pressure to provide good service at low cost to increase the chance of reelection is likely to be as great as the economic pressure on the private-sector manager to provide a good product at low cost in order to stay in business and reap financial rewards. Of course, lower-level employees may be more accountable to top officials in the private than in the public sectors, thus enabling private-sector executives to be more effective in their attempt to minimize costs. Nevertheless, the most *important* distinction between public- and private-sector employers is not the distinction between profit and nonprofit orientation but *rather* the greater emphasis on product markets in the private sector and on taxation and the political process in the public sector.

THE GROWTH OF PUBLIC-SECTOR UNIONS

As shown in Table 19-1, between 1950 and 1980 employment grew at a considerably faster rate in the public than in the private sector.[5] Since 1980 employment has barely grown at any level of government and declined relative to private-sector employment. The absence of any appreciable increase in government employment in the 1980s reflects both an increased opposition to higher taxes and a decline in the number of school-age children and thus in the demand for school teachers. Government employment remains at a fairly high level, however. As pointed out earlier, one of every six nonagricultural employees works in the public sector.

In the public sector union membership has increased even faster than employment. In 1950 less than 5 percent of union members in the United States worked in the public sector. By 1988, 38 percent of all union members were public employees. The increased importance of public employment accounts for some of the increase. Most, however, comes from changes in the percent unionized within the public and private sectors. From 1953 to 1988 union membership increased from 11.6 to 36.7 percent among public employees, while the percent unionized among employees in the private sector declined from 35.7 to 12.9 percent.[6]

As we see in Table 19-2, in 1953, 22 percent of federal workers were union members. Postal workers accounted for over 70 percent of union members among federal employees and over half of all members in the public sector. Outside the postal service unionization among federal workers was only 9 percent. Among state and local employees it was only 5 percent.

In the 1960s unionization among public-sector workers grew dramatically.

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[5]Employment in state and local government increased sharply, from 9.1 percent of total employment in 1950 to 19.8 percent in 1980. In constrast, federal employment decreased slightly as a percentage of total employment, from 4.3 percent in 1950 to 3.2 percent in 1980.

[6]In addition, the number of workers covered by a collective bargaining agreement is greater than the number of union members, especially in the public sector. In 1988, 43.6 percent of all public employees were union members, while the corresponding figure for the private sector was only 14.2 percent.

TABLE 19-1 Public-Sector Employment

	PERCENTAGE OF TOTAL NONAGRICULTURAL EMPLOYMENT		
Year	All Govt.	Fed.	State & Local
1950	13.3	4.3	9.1
1960	15.4	4.2	11.2
1970	17.7	3.9	13.9
1980	18.0	3.2	14.8
1989	16.3	2.8	13.6

Source: Economic Report of the President.

TABLE 19-2 Unionization among Public Employees

	PERCENT UNIONIZED		
Year	All Govt.	Federal	State & Local
1953	11.6	22.2	4.8
1960	10.8	23.8	5.0
1970	32.0	37.6	30.1
1976	40.2	41.5	39.9
1983	34.1	37.1	32.7
1989	36.7		

Source: Prior to 1989 the data are from Leo Troy and Neil Sheflin, *Union Sourcebook* (West Orange, N.J.: Industrial Relations Data and Information Services, 1985). For 1989 the data are from *Employment and Earnings*, January 1990.

In 1962 President Kennedy issued executive order 10988, which granted federal employees the right to join a union, although it forbade strikes. During the 1960s many states passed legislation making it much easier for state and local employees to join unions. Prior to this period it was more difficult for unions to develop in the public than in the private sector because the provisions of the National Labor Relations Act did not apply to government workers. In the sixties most public-sector employees gained protections similar to those in the private sector. For example, in the federal government and most states agencies were set up to supervise elections to see if workers wished to be represented by a union. If they did vote for the union, then the employer was required to bargain with the union, although strikes were seldom allowed.

During the 1960s union membership grew dramatically among employees of state and local government, especially teachers. In 1960 most teachers were represented by the National Education Association (NEA), which at that time was involved primarily in lobbying and other professional activities unrelated to collective bargaining. In the early sixties the NEA shifted its emphasis to collective bargaining and took on most of the characteristics of a union, although it has never joined the AFL-CIO. Its membership grew to over one million teachers, many of

whom were covered by collective agreements. In addition to the NEA, the American Federation of Teachers (AFT), an AFL-CIO union, grew from about 50,000 to almost 200,000 members. Thus while fewer than 100,000 teachers were considered union members in 1960, by 1970 the number had grown to about 1.3 million. Other occupations with strong union representation included police, firefighters, and nurses. Outside of teaching the most important union at the state and local level is the American Federation of State, County, and Municipal Employees (AFCSME), a union that includes workers in a wide variety of occupations.

The 1960s was a period of considerable growth in unionization at the federal level as well. While the two postal unions, the American Postal Workers Union (APWU) and the National Association of Letter Carriers (NALC) continued to expand, the fastest growing union of federal employees was the American Federa-

TABLE 19-3 Public-Sector Union Membership, 1983

Teachers	
Education Association; National (Ind.)	1,444,000
Teachers; American Federation of (AFL-CIO)	457,000
University Professors; American Association of (Ind.)	58,000
State and Local Government	
State, County & Municipal Employees; American Federation of (AFL-CIO)	955,000
Service Employees' International Union (AFL-CIO) (1985)	560,000
Governmental Employees; Assembly of (Ind.)	340,000
Fire Fighters; International Association of (AFL-CIO)	157,000
Police; Fraternal Order of (Ind.)	150,000
Teamsters, Chauffeurs, Warehousemen & Helpers of America; International Brotherhood of (Ind.) (1985)	150,000
Laborers' International Union of North America (AFL-CIO) (1985)	85,000
Communications Workers of America (AFL-CIO) (1987)	85,000
Nurses' Association; American (Ind.) (1987)	25,000
Automobile, Aerospace & Agricultural Implement Workers of America; International Union, United (AFL-CIO) (1987)	25,000
Postal Service	
Postal Workers Union; American (AFL-CIO)	226,000
Letter Carriers; National Association of (AFL-CIO)	203,000
Letter Carriers' Association; National Rural (Ind.)	40,000
Post Office Mail Handlers (Laborers' International Union of North America, AFL-CIO)	40,000
Federal Government	
Government Employees; American Federation of (AFL-CIO)	218,000
Treasury Employees Union; National (Ind.)	47,000
Federal Employees; National Federation of (Ind.)	34,000
Metal Trades Council (AFL-CIO) (1985)	24,000
Government Employees; National Association of (Service Employees' International Union, AFL-CIO) (1985)	23,000
Machinists & Aerospace Workers; International Association of (AFL-CIO) (1985)	12,000

Source: James L. Stern, "Unionism in the Public Sector," in *Public-Sector Bargaining*, 2d ed., Benjamin Aaron et al. (Washington, D.C.: Bureau of National Affairs, 1988), p. 54. Stern, in turn, has derived these figures primarily from Leo Troy and Neil Sheflin, *U.S. Union Sourcebook: Membership, Finances, Structure, Directory* (West Orange, N.J.: Industrial Relations Data and Information Services, 1985).

tion of Government Employees (AFGE). Like AFSCME, the AFGE represents many different occupations, but the AFGE has been less powerful than AFSCME, at least partly because of greater legal restrictions on unions of federal employees.

Unionization among public-sector employees continued to grow during the early seventies. Especially at the state and local level unions took advantage of new legislation, a favorable political climate, and expanding employment to gain new members and in most cases to win significant gains for their members. In the late seventies and early eighties, however, a reaction against both government in general and public-sector unions in particular set in. The result was fewer gains at the bargaining table and a leveling off of membership, as shown in Table 19–2.

The main unions involved in the public sector are listed in Table 19-3.

BARGAINING AT THE FEDERAL LEVEL

Federal authorities long took a negative if not hostile view of employee organization, in part because civil service protection was considered sufficient for government workers. Federal employees, along with state and local employees, were excluded from the coverage of the Wagner Act, while the Taft-Hartley amendments of 1947 specifically outlawed strikes by federal employees: "Any individual employed by the United States or any such agency who strikes shall immediately be discharged from his employment, and shall forfeit his civil service status, if any, and shall not be eligible for reemployment for three years."

The first positive statement of policy came in two executive orders issued by President Kennedy in 1962. The orders guarantee the right of federal employees to join unions, although this right is defined to exclude the right to strike.

Until 1978 labor-management relations in the federal government remained under the jurisdiction of an increasing number of executive orders and was not regulated by any legislation. The Civil Service Commission (CSC) played a large role in administering the executive orders, an arrangement opposed by the federal-employee unions, who saw the CSC as a representative of management.

The Civil Service Reform Act (CSRA) of 1978 provided legislative codification of many provisions of the executive orders and established a new body, the Federal Labor Relations Authority (FLRA), to administer the legislation.[7] Like the previous executive orders, the CSRA sanctions collective bargaining but outlaws all strikes. It covers most federal employees but excludes those involved directly in national security and those who have participated in illegal strikes. In addition, postal workers are covered not by the CSRA but by the National Labor Relations Act (NLRA), which covers workers in the private sector. Like other federal employees, however, postal workers are not allowed to strike.

As with the NLRB in the private sector, one important duty of the FLRA is

[7]The three members of the FLRA are appointed by the President for staggered five-year terms, in an effort to keep the FLRA independent rather than serving, or being perceived as serving, as an arm of management.

to determine the appropriate unit for secret ballot elections to determine which union, if any, will represent the workers. If one union receives a majority vote, then it is certified as the exclusive representative of all the workers in the unit and negotiates with the employer on their behalf.

The number of issues to be resolved through collective bargaining is much smaller in the federal government than in the private sector. Specifically, no bargaining is permitted that would modify any federal legislation. Because an agency's mission, budget, and number of employees is determined through legislation, these issues are out of bounds for collective bargaining. In addition, merit procedures have been established by legislation for hiring, transferring, and promoting workers.[8] Although bargaining is prohibited on many topics, it is required on some, especially on procedures for resolving employee grievances. Other topics where bargaining is permitted but not mandatory include the rules, regulations, and technology used by the agency to achieve its mission.

In the private sector a primary issue in collective bargaining is wage rates. In the federal government, however, pay scales are not set through collective bargaining, although unions do play some role. Since 1962 the basic principle underlying wage determination is for the federal government to try to pay the same wage as a "comparable" worker would receive in the private sector. Of course, it is not easy to determine when two workers or two jobs are really comparable. For example, even if the tasks are comparable, one job may involve more responsibility, poorer working conditions, or a greater risk of layoff. In addition, comparable dollar wage rates are set with little attention paid to whether there is comparability in nonwage benefits such as pensions and health insurance. In general, most studies have found that federal employees, especially women, appear to be more highly paid than comparable workers in the private sector.[9] These results are consistent with lower quit rates in the public sector and also with reports of long queues for many public-sector jobs.[10]

To determine how wage rates for white-collar federal employees should be changed each year, the process begins with a national survey of salaries, conducted by the Bureau of Labor Statistics. After receiving these data and the recommendations of top union officials, some of the President's top officials make recommendations. So does a panel of experts from the private sector. On the basis of these recommendations, the President makes his decision, which can be reversed only by a special act of Congress. A similar approach applies for blue-collar employees, except that local rather than national wage data are the standard of comparison.

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[8]This merit system has been reinforced by the CSRA, which established not only the FLRA but also another independent agency, the Merit System Protection Board (MSPB), to safeguard the merit system.

[9]See Sharon P. Smith, *Equal Pay in the Public Sector: Fact or Fantasy?* (Princeton, N.J.: Industrial Relations Section, Princeton University, 1977); Sharon P. Smith, "Are State and Local Government Workers Overpaid?" in *The Economics of Municipal Labor Markets*, ed. Werner Hirsch and Anthony Rufulo (Los Angeles: UCLA Press, 1983); and Steven F. Venti, "Wages in the Federal and Private Sectors," in *Public Sector Compensation*, ed. David Wise (Chicago: University of Chicago Press, 1987).

[10]James E. Long, "Are Government Workers Overpaid? Alternative Evidence," *Journal of Human Resources* (Winter 1982), pp. 123–31.)

As this process suggests, the primary influence of federal-employee unions is through the political process, not collective bargaining. Unions do play an important role in processing grievances. But because they are not allowed to strike and cannot bargain over many important issues, including wage rates, they are more like lobbying organizations than like unions in the private sector. The main exception is the postal unions, which although they cannot strike, do bargain with the postal service about a wide range of issues, including wage rates.

BARGAINING AT THE STATE AND LOCAL LEVEL

At the state and local level collective bargaining is more important than at the federal level. Yet state and local collective bargaining is difficult to summarize because it is governed by different legislation in each state and because some groups, especially police and firefighters, are often treated differently from other public employees.

Background

Governmental units had systems for managing employee relations long before the appearance of unionism. These older managerial structures have posed serious problems for the development of collective bargaining. We shall comment particularly on practices in local government, where some of the most complex problems arise.

In a private corporation lines of authority are usually clear. The union knows with whom it must bargain; and it knows also that the management bargainer can make good on any commitments he or she makes. Neither of these factors is necessarily clear in bargaining with local government units.

Cities differ, to begin with, in their basic organization. Some have strong-mayor systems, others weak-mayor systems, others a city-manager system. Under any of these systems, the all-important authority over budgets is usually divided between the executive and legislative branches. The mayor or city manager may recommend a budget, but the city council can usually modify or veto it. Who has the dominant influence varies from city to city. The fiscal authority of local officials may be restricted by legislation. Sometimes tax increases beyond a certain size must be approved by the state legislature or submitted to popular referendum. Frequently, important fringe benefits such as pensions, vacation, and sick-leave arrangements are regulated either by state law or by the city charter. Local ability to pay is influenced also by availability of state and federal grants.

This situation presents the union with both difficulties and tactical opportunities. It is often unclear whether the bargainer for the city can actually commit the city to a proposed increase, which implies a corresponding budget appropriation. The bargainer may try to hide behind his limited authority or to pass the buck to other levels of government. Thus one finds the mayor of New York saying to a

union group, "I'd be glad to give you the money if the governor would first give it to me" (these two politicians often being rivals). In other cases the bargainer is incapable of making a binding commitment because someone else will have to ratify the budget.

But the division of fiscal authority can also be turned to union advantage. If the city manager or a representative is proving a tough bargainer, the union can sometimes go around the manager to friends on the city council who will ratify a larger settlement. Collective bargaining is thus intertwined with personal and party rivalries in city politics.

A different kind of problem arises from the fragmentation of government units. One often finds semiautonomous agencies with independent authority over wages and benefits. These agencies may have their own taxing power or may be supported by state and federal grants. They are often under no compulsion to coordinate their wage struggles with other city departments or to follow directives of the mayor and council. Los Angeles, for example, has six independent salary-setting authorities, and the mayor and council set salaries for less than 60 percent of city employees. An example from Michigan is the Wayne County Road Commission, which operates in virtual independence of the Wayne County Board of Supervisors. Only about 2 percent of its budget comes from the county, the remainder from state grants and other outside sources. It has complete authority over this budget, including authority to enter into contracts with employees.

Another important governmental body is the civil service commission. Such commissions play a major role in the personnel policies of most states and many large cities. Created as a reaction against the earlier *spoils system*, it attempts to substitute merit for political patronage in public employment. Normally it has authority to establish basic job classifications and descriptions; to compile lists of applicants for entry jobs, and to select from these lists through competitive examination or some other objective basis; to lay down rules for training, retention, and promotion of employees in each classification, making further use of competitive examination as required; and to hear employee appeals from supervisors' decisions. Occasionally, the commission's jurisdiction extends to salary administration and recommendation of salary increases; but more usually its authority is limited to nonsalary matters. The existence and strength of civil service commissions create additional confusion over who can bargain for the public and on what issues.

As we saw in the case of the federal government, unions regard the civil service commission as an arm of the employer rather than as a neutral agency. Commission administration of personnel matters in accordance with its own judgment of merit runs counter to two union principles outlined in earlier chapters: (1) the principle that procedures for recruitment, promotion, layoff, or discharge of employees must be bargained out with the union and administered jointly through the grievance procedure rather than determined and administered unilaterally by the employer; and (2) the principle that seniority should be given dominant weight in personnel decisions. Promotions and demotions based on merit only, with merit decided by the employer, are not acceptable.

Recognition and Bargaining Units

Until the 1960s there was little legislation concerning unionization of state and local employees. State legislatures, particularly in the more agricultural states, were usually critical or hostile to the idea; and some states prohibited unionization of policemen, firemen, or even public employees in general. But usually the decision of whether to bargain was left up to city, county, or state officials. Unions had to make their way by politics and persuasion. Just as in the private sector, this led to numerous strikes over the basic issue of union recognition.

This situation has changed greatly in the past three decades, partly because of changes in the composition of many state legislatures, which now provide less representation to agricultural areas, and partly because of changes in public attitudes, which became more favorable to public-sector unions in the 1960s. Now most states have comprehensive labor-relations statutes covering state and local municipal employees.

A comprehensive statute usually contains an explicit declaration of the right of public employees to organize, to be represented by associations of their own choice, and to negotiate with their employers. Administration is usually in the hands of a public employee relations board, or some equivalent title. This board has the general powers and follows the general procedures of the National Labor Relations Board in defining bargaining units, conducting elections, certifying bargaining representatives, and enforcing the right to bargain. In the larger states the volume of election activity is high; and as a result of the new procedures, recognition strikes have almost disappeared in these states.

Employer Organization for Bargaining

There is often a question of specifying who the employer is for purposes of bargaining. The fragmentation of local-government decision making has frequently led to a corresponding fragmentation of bargaining units, with a union such as AFSCME bargaining separately with many governmental units. Fragmentation also exists because many public-sector unions, including those representing police, firefighters, and teachers, are craft unions, each wanting to bargain separately with the city.

Negotiations between many different unions and many different governmental agencies have considerably complicated collective bargaining at the state and local levels, creating several problems. The bargaining consumes the time of city officials in multiple negotiations. It tends to produce a crazy-quilt pattern of wages and benefits, differing among units and subject to no central oversight or rationale. Multi-union bargaining can pose barriers to ready transfer of city employees among departments using the same kinds of skill. It leads to whipsawing in the bargaining process, as one union wins superior terms on a particular front, and other unions then press for similar treatment. There have been several responses to these problems.

1. A shift of authority for labor relations toward the executive branch, as against the legislature and the civil service commission. This is a move that has clear practical advantages. The executive branch normally prepares and recommends the budget. When it also does the bargaining, any agreements involving money can be coordinated with the timing and content of the budget. Moreover, it is mainly the executive officials who will have to live with the agreement and participate in its administration. They are in the best position to anticipate administrative problems and inefficiencies that may be created by union requests on hours of work, shift arrangements, staffing requirements, transfers of personnel, and other restrictions on managerial authority. City councilors are often part time, usually nonexpert in labor matters, and unavoidably political in outlook, none of which makes them good bargaining representatives.
2. Increased centralization of authority within the executive branch. This is needed to coordinate city policy across the board and reduce whipsawing. It also permits hiring of expert personnel to carry on the bargaining.
3. Transfer of bargaining authority from existing staff officers, such as the budget director or personnel director, to full-time labor relations specialists. The first reaction has often been to assign bargaining responsibility to an existing staff member; but this creates difficulties. Apart from the fact that these officials usually lack expertise in labor relations, the bargaining function involves them in a conflict of roles. The budget director may want to reach agreement with the union; but her main function is to hold down costs to the city. A personnel director, on the other hand, may be willing to make outsize wage concessions if the union will go easy on interfering with personnel management. Increasingly, therefore, the bargaining function is located directly under the mayor or city manager. In smaller communities, the city manager may do the negotiating. In larger cities, there is usually a labor relations office with specialized, full-time personnel.

THE CONTENT OF COLLECTIVE AGREEMENTS

State laws have placed on public employers a duty to meet with unions and negotiate in good faith on "terms and conditions of employment." But what does this mean? In the private sector determination of what are mandatory subjects for bargaining has been left to the NLRB and the courts; and the scope of bargaining has been extended quite far. Any management decision that materially affects job content, job security, or working conditions is likely to become a subject for bargaining.

The situation in public employment is different. The logical problem is to reconcile the sovereign authority of government to make decisions in the interest of all the citizens with the bilateral authority inherent in collective bargaining. This leads to a variety of restrictions on what the public employer may and may not concede: provisions of state constitutions limiting delegation of authority by public officials; municipal ordinances relating to work schedules, pension systems, and other matters; preexisting civil service systems and personnel management rules; restrictions written into the text of state labor relations laws; court decisions interpreting these laws and defining the scope of bargaining.

Discussion of the present rules of the game is more difficult than in the case of the private sector. State laws and practices vary from quite permissive to quite restrictive. Moreover, practices are evolving quite rapidly in this new and experi-

mental area. Space constraints force us to give only a broad-brush picture of where matters now stand.

1. What Is Bargainable? This issue arises most frequently with respect to quasi-professional groups such as teachers, policemen, nurses, social workers. How far can teachers' unions bargain over issues of educational policy? Is class size a legitimate bargaining issue? What about provisions for student discipline? What about curriculum content and assignment of teachers to athletic and other nonclassroom programs?

These subjects affect teachers' "terms and conditions of employment." But they also affect educational standards, administrative efficiency, pupils' welfare, and parents' concerns and interests. The question is whether collective bargaining on such matters provides adequate protection for third parties who have a legitimate interest in the outcome as well as for taxpayers who must pay for program costs.

Similar problems arise with respect to other professional groups. Can a union of social workers bargain over standards and procedures in a city's welfare system? Can a police union bargain for a clause prohibiting establishment of a civilian police review board? This is an issue with strong social and political overtones.

There have been efforts to resolve these issues through appropriate language in state labor relations laws; but the language and the underlying policy vary from state to state. Thus a Maine statute requires local school boards to "confer and negotiate in good faith with respect to wages, hours, working conditions and contract grievance arbitration . . . (and to) meet and consult but not negotiate with respect to educational policies." A Nevada statute defines class size, student discipline, staffing levels, and workloads as management rights. Some other state statutes take the opposite course of enumerating "terms and conditions of employment" in detail; whatever is left out is reserved to management. It has also become increasingly common to write a management rights clause into public employee contracts, confirming the employer's authority to determine agency policy, direct employees, determine the methods and personnel by which operations shall be conducted, and maintain the efficiency of government operations.

But, again, someone—usually the state labor relations board, and ultimately the courts—has to say just what the language means. The courts have tended to develop a "balancing" doctrine, to ask which set of interests predominates. For example, how important is an issue to teachers' well-being relative to its effect on the operation of the school system? There seems also to be a tendency toward gradual expansion of the scope of bargaining under continuing union pressure. Statute language has become less restrictive and has been interpreted in a less restrictive way.

2. Wages and Benefits. As we have seen, unions of federal employees have the peculiarity that they cannot bargain over salary schedules, pension rights, or other money matters, which are determined uniformly for the federal service.

Proposals for change are usually made by the President, and the necessary funds must be appropriated by Congress. On this front, then, union pressure must be exerted through political channels.

At the state and local level, on the other hand, wages and fringe benefits are usually freely negotiable. This involves much jockeying for position among employee groups and between them and the city government. If one union wins a favorable settlement, others will immediately demand the same terms. The city government will often try to delay a settlement with any one group until it can deal with all as a package. In the background, too, is the constraint that increases in wages and fringe costs must be found somewhere in the city or state budget. The people negotiating on the employer side may not have the power to deliver until the state legislature or city council has appropriated the necessary funds.

A government negotiator may even say, "We can't bargain with you at all until we know how much money is available." This position, however, has typically been rejected by state labor relations boards and by the courts. A possible shortage of funds can be used to justify hard bargaining—there is no restriction here; but a shortage cannot be used to justify refusal to bargain.

Pensions are usually included among the bargainable fringe issues; but some commentators have questioned whether they should be. There has been a tendency to write into contracts very generous pension terms—for example, terms that allow firefighters and police officers to retire on full pension after twenty or twenty-five years of service. These provisions build up large money costs for the future. Moreover, some governments, instead of "funding" these obligations—that is, building up a pension fund out of current revenue—have simply pushed them off to be met out of future revenues.

Other expenditure programs that impose large obligations for the future, such as bond issues to finance buildings, roads, sewers, and other public improvements, frequently require taxpayers' approval by referendum vote. It has been suggested that pension costs and the financing arrangements to cover them should be subject to a similar referendum.

3. Job Tenure, Promotion, Demotion. The main problems here arise from preexisting civil service systems at the state and federal levels. The heart of these systems is the merit basis of recruitment, testing, and selection for employment. The merit plan was intended to promote both equity and government efficiency by barring the employment of presumably less qualified people on political grounds. But in the absence of collective bargaining, civil service functions tended to expand into an elaborate body of rules concerning promotion, demotion, discharge, and appeals from employer personnel actions—in short, all the aspects of job rights and job tenure that in the private sector are usually regulated by the union contract. Unions of public employees, however, feel entitled to bargain and to represent their members on these issues as on others. So which should prevail—the old civil service system or the new collective bargaining procedure? The answer to this question varies from state to state. In many cases there is no state legislation, so the answer must be fought out issue by issue and city by city.

Looking to the future, it seems unlikely that public employee unions can be kept completely out of the job-tenure area, an area so central to union activities in the private sector. On the other hand, civil service commissions are not likely to disappear. The most common outcome may be that civil service will be cut back to its central function of advertising jobs, administering tests, compiling eligibility lists, and ensuring initial appointments on a merit basis. But establishing rules about what happens after that and policing allegedly unfair personnel actions by government agencies may become increasingly a collective bargaining function.

4. Grievance Procedures and Grievance Arbitration. Union contracts at the state and local level typically have grievance procedures capped by binding arbitration. Most state statutes permit this system and even encourage it. But the question of whether an issue is arbitrable, as well as the terms of the arbitration award, is subject to court review. In the private sector, as we saw in the last chapter, the courts have been very supportive of arbitration. They limit themselves to determining whether the party seeking arbitration is making a claim that on its face is governed by the contract and do not go into the merits of the dispute. Arbitration may not be denied unless it can be said with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the disputed issue. Arbitration gets the benefit of the doubt. Further, so long as the arbitrator's award can be characterized as drawing its essence from the agreement, the award is final and not subject to judicial review.

In public-sector disputes the courts have been more restrictive, both as to what issues are arbitrable and as to accepting the terms of an arbitrator's award. In a number of cases, the courts have set aside arbitration awards or refused to enforce them on the grounds that some law or public policy precludes the public agency from "bargaining away" or "delegating" its authority or discretion with respect to the issue in dispute. Such cases arise frequently in education, where it has been held, for example, that a school board cannot delegate to the arbitrator authority to make decisions involving tenure. Some courts have also intruded rather deeply into the merits in ruling particular disputes to be nonarbitrable, even to the extent of reversing the presumption of arbitrability that prevails in the private sector. One court held that unless the agreement is specific, direct, and unequivocal about which issues are arbitrable, arbitration may be denied.

The courts have also set aside arbitration awards on occasion, particularly where there was a relevant statute. They have been less tolerant than in the private sector of awards, where past practice is relied on to establish obligations not written into the agreement. Even when there is express contract language, they have shown a greater propensity than in the private sector to overturn an arbitrator's interpretation of this language.

The differences from private-sector practice described above cannot be summarized in any simple way. But it is clear that the scope of collective bargaining is more restricted than in the private sector. For this reason the power of public-sector unions may be less than it appears to be.

The most striking difference from the private sector, of course, is the usual

prohibition of strike activity and the special procedures from breaking an impasse in contract disputes. This matter is complicated and important enough to deserve a separate heading.

PROCEDURES FOR SETTLEMENT OF CONTRACT DISPUTES

A strike by public employees is usually illegal and in any event is regarded as undesirable. But this presents a problem: if contract bargaining reaches an impasse, how can the impasse be broken if the strike option is removed? Most of the state labor relations laws set up procedures for dispute settlement, often several procedures that can be used in successive stages.

*1. **Mediation.*** This is normally the first step. A government mediator enters the scene and tries to guide the parties toward a settlement but without any coercive power. A certain percentage of disputes, though not a majority, are settled at this stage. The technique of mediation and the factors determining its success or failure are much the same as in the private sector. Success depends partly on the experience and skill of the mediator but also on the objective situation. The chances of success are greatest when there is considerable overlap in the positions of the parties or when the main problem is a breakdown of communications rather than substantive differences. The chances are improved also if there is strong outside pressure to settle, as there often is in public-sector disputes.

*2. **Fact-finding.*** A fact-finder is a neutral outsider, like a mediator. But the fact-finder has a broader role. He or she is expected to evaluate the positions of the parties, including the validity of any factual assertions underlying these positions, and then to make public recommendations for a settlement. While undertaking this role, usually the fact-finder will also engage in informal mediation, so a settlement may be reached before the fact-finder issues any formal report. Even if the dispute is not settled, the fact-finding report can help clarify the issues, influence public opinion, and may serve as the basis for a judgment by an arbitrator.

The defect of fact-finding is that it does not ensure a final settlement. Neither party is obliged to accept the recommendations. In order to force a settlement without the economic pressures of a strike sometimes arbitration is necessary.

*3. **Arbitration.*** Many states now provide for compulsory arbitration as the final stage in dispute settlement, and there is a trend toward greater use of this technique. The statutes vary considerably in detail. They may apply only to essential services, such as police and fire fighters, or to all public employees.

Arbitration involves formal hearings before either a single arbitrator or a tripartite panel of labor, management, and public representatives. In the latter case, in addition to the formal procedures, there is often continued informal bargaining within the panel and between the panel and the parties; and sometimes a

settlement can be reached without issuing a formal award. Most commonly, however, an award is issued, which is binding on the parties.

Arbitration has also been criticized as involving an unacceptable delegation of public authority to an outsider not responsible to elected officials. Thus far most state supreme courts have upheld compulsory arbitration statutes, while some have declared them unconstitutional. In addition, courts have sometimes set aside an arbitration award on the grounds that it conflicted with laws or ordinances governing tenure rights, retirement age, or other matters.

Compulsory arbitration is a formidable procedure, since it takes final settlement of a dispute out of the hands of the parties. A common criticism is that it tends to have a "chilling effect" on collective bargaining—the parties will be unwilling to make concessions in the early stages of negotiation because of fear that this will prejudice them if and when the dispute goes to arbitration. They will remain dug in to fixed positions, and little real bargaining will occur. For example, an arbitrator may split the difference between the positions of the two parties, to avoid offending either and thus to increase the chances of being invited back by the parties to arbitrate future disputes. But if union and management both expect a dispute to go to arbitration and expect the arbitrator to split the difference, then each side will have an incentive to take an extreme position. As a result, little real bargaining will occur.

Although arbitrators do have some incentive to split the difference, it is not clear that they normally act in this fashion. A plausible alternative hypothesis is for the arbitrator to make his or her decision not on the basis of the position of the parties but rather by taking account of the external environment facing the negotiators, especially the wage increases received recently by other comparable workers. If this hypothesis is correct, then union and management have an incentive to reach an agreement by themselves rather than to let the case go to arbitration. This incentive will exist as long as both parties are risk averse and there is uncertainty about the arbitrator's decision.[11] Thus the threat of having to go to arbitration can serve the same function as the strike does in the private sector, since both represent costs the parties would like to avoid but can incur if the other side is being too intransigent in its bargaining demands.

Because of the danger that compulsory arbitration will have a chilling effect, some states have adopted a different approach, called *final-offer arbitration.* Here the arbitrator is limited to choosing either the union's or the employer's final offer, sometimes termed *the last best offer.* It is argued that this tack will make the parties more willing to make concessions, in the hope of making a proposal that will strike the arbitrator as more reasonable than the opponent's proposal. Also, the parties have an incentive to settle rather than risk the chance that the arbitrator will pick the other side's final offer. In some cases the arbitrator must pick the union or management proposal as a package. In other cases he may select the best offer on each individual issue. The New Jersey statute covering police officers and fire-

[11]See Henry S. Farber and Harry C. Katz, "Interest Arbitration, Outcomes, and the Incentive to Bargain," *Industrial and Labor Relations Review* (October 1979), pp. 55–63.

fighters allows the parties to choose from a menu of alternatives, including final offer by package, final offer by issue, final offer on some issues and conventional arbitration on others, or conventional arbitration on all issues.

Detailed studies of final-offer arbitration have been made in New Jersey and in Iowa.[12] Unions are winning about two-thirds of the awards in New Jersey, while the reverse is true in Iowa. In neither state is there any evidence of bias on the part of the arbitrator. Instead, the average union offer is more conservative in New Jersey, and the average employer offer is more conservative in Iowa.

There have been a number of other studies of compulsory arbitration and its consequences. Compulsory arbitration does appear to reduce strikes, although it falls short of preventing them. It is not clear whether compulsory arbitration has any significant chilling effect on collective bargaining. Negotiations are somewhat less likely to go to arbitration, however, when the type of arbitration available is final offer rather than conventional.[13]

4. The Strike. In the public sector the strike has traditionally been viewed as unlawful. But there has been considerable debate among experts over whether that should be so. There are several shades of opinion. Some believe that the possibility of a strike serves the same functions in public as in private employment and that there should be no legal distinction between them. Others would draw a distinction between essential services, such as police and fire protection, and nonessential services and would make unlawful only strikes in the former category. A third group holds that strikes of public employees should be unlawful under all circumstances.

As to the actual situation, we note first that strikes at the federal level are clearly illegal and are in fact very rare. There was a major postal strike in 1970, when postal workers were still direct federal employees, which was settled only after troops were brought in to sort the mail. The present agreement between the postal unions and the U.S. Postal Service provides for arbitration as the final step in contract disputes.

A dramatic 1981 strike involved the Professional Air Traffic Controllers Organization (PATCO). In 1981 contract negotiations PATCO obtained what might be considered a good government offer. The administration agreed to recommend outsize increases in wages and other benefits to Congress. But the union leadership apparently preferred a strike, counting on support from the other airline unions and on congressional intervention to end the strike. So the executive board of PATCO rejected the proposed contract, and the membership voted it down by a large majority. The rejection proved to be a miscalculation. The administration moved vigorously to maintain service by transferring military air-traffic controllers and

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[12]See Orley Ashenfelter and David Bloom, "Models of Arbitrator Behavior: Theory and Evidence," *American Economic Review* (March 1984), pp. 111–24; and Ashenfelter, "Evidence on U.S. Experiences with Dispute Resolution Systems," in *Organized Labor at the Crossroads*, ed. Wei-Chiao Huang (Kalamazoo, Mich.: W. E. Upjohn Institute for Employment Research, 1989).

[13]See Freeman, "Unionism," and Craig A. Olson, "Dispute Resolution in the Public Sector," in *Public-Sector Bargaining*, ed. Benjamin Aaron et al.

recruiting new civilian controllers. It discharged all striking controllers and ruled them ineligible for other federal employment, a policy that has been substantially enforced. And it moved to decertify PATCO as bargaining agent under the Federal Labor Relations Act, which was done. The strike received little support from other unions and failed to cripple air transport as had been expected. PATCO went into bankruptcy and eventually dissolved.[14]

In state and local government, however, strikes are common, although data are not available after 1979. In a typical year in the late 1970s there were about five hundred work stoppages, involving over 200,000 workers. Strikes are most frequent by teachers' unions, in part because time lost because of a strike is often made up later in the school year, thus reducing the cost of a strike to both the teachers and the community. For other public employees, such as police and firefighters, where strikes would be much more costly, strikes are forbidden by legislation, and compulsory arbitration is often required if the parties cannot reach an agreement themselves.

Strikes in the public sector are usually shorter than in the private sector. This suggests that a public-employee strike arouses the citizens and generates political pressure for a prompt settlement. Also, some states provide quite severe penalties for strikes by public employees. Imposition of these penalties or fear that they may be imposed gives the union an incentive to settle quickly.

The existence of penalties does not mean that they are always imposed. Whether to involve legal sanctions is a difficult decision, in which a mayor's calculations about political survival may weigh more heavily than the strict letter of the law. Recent studies have found that the combination of antistrike legislation with legislation encouraging compulsory arbitration does reduce strikes but that outlawing strikes without establishing compulsory arbitration has little effect.[15]

THE IMPACT OF PUBLIC-SECTOR BARGAINING

In Chapters 22 and 23, we consider the economic effects of public-sector unions and how these effects compare with the effects of unions in the private sector. In this chapter we consider the political effects of public-sector unions, a more elusive but equally important topic.

The differences between private and public sector bargaining are mainly political rather than economic. Employees do not become different by working in the public sector. The work they do is not distinctively different. The difference lies in the employer. In the case of a private company we do not look into the decision-making process that leads it to take certain positions at the bargaining table. But the decision-making process in government is the central stuff of politics. Government units operate under statutory and constitutional restrictions. Decisions must be

[14]For a more detailed account, see Herbert R. Northrup, "The Rise and Demise of PATCO," *Industrial and Labor Relations Review* (January 1984), pp. 167–84.

[15]Freeman, "Unionism," and Olson, "Dispute Resolution."

reached in an orderly way, within fiscal and other limits imposed by legislatures responsible to the public. These restrictions often conflict with the demands advanced by public-employee unions at the bargaining table. In the event of such a conflict, the central question is not how to make collective bargaining work but how to make government work.

Union demands pose a typical conflict of interest among different groups of citizens. This dilemma is clearest in the case of wage and fringe demands, though it exists also with respect to work rules, workloads, staffing requirements, and other things that affect costs and services. Employee compensation typically forms 65 to 70 percent of the city budget. Wage increases usually must lead to some combination of tax increases and reduction of public services, both imposing burdens on the public.

Group pressures exist, of course, even in the absence of collective bargaining. Teachers, police, firefighters, and other employee groups had organizations and engaged in lobbying and election activities long before collective bargaining became general. On the other side are organizations representing those with an interest in controlling government costs and improving public services: taxpayers' leagues, parents' organizations, chambers of commerce. Taxpayers are more numerous than government employees; but the employees have a more concentrated interest in their terms of employment and may exert stronger pressure per person than their opponents do. So it is not easy to judge where the balance of power usually lies.

The next question is, Does the development of unionism and collective bargaining change the balance of power in the employees' favor? Clyde Summers argues that it does, for several reasons. First, the principle of exclusive representation gives public employees a unified and authoritative voice. Second, it gives them special access to the political process. They are no longer limited to speeches and petitions but can argue with government administrators across the bargaining table. Third, because bargaining normally occurs before the budget is adopted, public employees may obtain priority consideration of their interests. Fourth, because bargaining goes on behind closed doors, public officials are confronted by the union's arguments without direct exposure to the counterarguments of other groups. Fifth, the union has resources that can be used politically to defeat officials who resist union demands and to elect others who will be more pliable.[16] As a leading New York labor leader, Victor Gotbaum, once remarked, "We have the ability . . . to elect our own boss."[17]

The mayor and other public officials, who are expected to mediate among conflicting interests in an even-handed way, may not be up to the job. Summers notes the prevalence of "hand-wringing politicians," who claim that they are unable

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[16]Clyde Summers, "Public Sector Bargaining: Problems of Governmental Decision Making," *University of Cincinnati Law Review* (1976); key portions of this article are reprinted in Getman, *Labor Relations: Law, Practice and Policy* (Mineola, N.Y.: Foundation Press, 1978), pp. 442–52.

[17]Reported in an article on the unusually strong position of municipal-employee unions in New York City: "A Reporter at Large: More for Less," *New Yorker* (August 1, 1977).

to resist union pressure; and also of "buck-passing politicians," who buy off the union by passing the cost on to future budgets and future taxes. The prime example is increased pension rights not funded out of the current budget, so that taxpayers do not realize the size of the eventual bill.

In the late seventies and eighties a counterreaction to public-sector unions developed as voter-taxpayers became increasingly concerned with the high cost of government. This concern led to effective pressure to cut taxes and thus, at least at the state and local level, also to reduce government expenditures. Since there was less money to spend, earnings of government employees could no longer increase rapidly, despite the influence of unions. So the effect of unions on the political process may well be smaller than its proponents initially hoped or than its opponents feared. As we shall see in Chapter 20, it seems clear that unions have not had dramatic effects on wage rates in the public sector.

SUMMARY

1. Public-sector employers are not profit maximizers but are concerned instead with political objectives. Because the public sector receives most of its revenue from taxation, a strike reduces its monetary costs without diminishing its revenue. Thus the pressures for public-sector officials to settle a strike are political rather than economic.

2. The elasticity of demand for union labor typically is lower in the public than the private sector, so public-sector unions need not be quite so concerned with the employment effects of higher wage rates.

3. By 1988, 38 percent of all union members were public employees. Unionization increased dramatically in the public sector in the 1960s and 1970s and was relatively constant in the 1980s, in contrast to the sharp decline of unions in the private sector.

4. Public-sector unions are strongest at the state and local level, especially among teachers, police, firefighters, and nurses. At the federal level the postal unions are the most influential.

5. Unions of federal employees have no right to strike. Their main influence is as lobbyists in the political arena, although they also play a role processing grievances.

6. Collective bargaining is much more important at the state and local level, where the right to strike sometimes exists and where compulsory arbitration is often available when strikes are prohibited. Bargaining takes place over many issues, including wage rates, job security, and promotion policies. Especially in the case of teachers, bargaining also occurs over issues of public policy, such as class size and curriculum, that affect working conditions.

7. Unions achieved considerable power at the state and local level during the late 1960s and early 1970s. Since then a counterreaction has developed, however, as voter-taxpayers have become increasingly concerned with the high cost of government, including expenditures for public employees.

KEY CONCEPTS

FACT-FINDING
ARBITRATION, CONVENTIONAL
ARBITRATION, FINAL OFFER
CIVIL SERVICE COMMISSION
PUBLIC SECTOR

REVIEW QUESTIONS

1. Does your state have a statute governing collective bargaining by state and municipal employees? If so, what are its main provisions?
2. If your college is in or near a city, what unions of public employees exist in the city? With whom in the city government does each union bargain? Appraise the effectiveness of present bargaining arrangements.
3. Is it desirable and feasible to draw a line between bargainable and nonbargainable subjects? If you favor such a distinction, how would you constuct it?
4. What are the main points of conflict between public-employee bargaining and civil service commission procedures? How might this conflict be resolved? (Again, look into what has happened in your own city.)
5. What are the advantages and disadvantages of compulsory arbitration of public-employee disputes? Why shouldn't all unsettled disputes go directly to arbitration, with no prior steps?
6. What should be the legal status of strikes in public employment? Is a policy of banning strikes actually enforceable?
7. Do you think that public-employee collective bargaining, accompanied by strikes or strike threats, unduly distorts the political process in the direction of employee interests? If so, can you suggest any practical correctives?

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