Newsletter

INSTITUTE OF INDUSTRIAL RELATIONS UNIVERSITY OF CALIFORNIA, LOS ANGELES



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# COLLECTIVE BARGAINING IN THE PUBLIC SECTOR

The most significant development in labor-management relations over the past decade has been the growth of employee organizations and bargaining in the public sector. Today about one out of every six workers is employed by the government at one level or another and they increasingly demand the right to negotiate the terms and conditions of their employment. Since 1960, membership in unions and employee associations has more than doubled, nationwide, to reach almost five million. Thus, about one-third of the fourteen million public employees are now organized, whereas unionization in the private sector amounts to about one-fourth.

This development has led to a substantial increase in legislative action, policy decisions, ordinances and guidelines involving labor relations in government employment. Some thirty-six states have now adopted legislation covering one or several categories of public workers, as have a number of counties and cities. And the trend continues.

### Labor Relations in California Government One Step Closer to Reality?

Of California's 1.2 million nonfederal public employees, well over a half million belonged to unions or independent employee associations in 1974. They include state and local government workers as well as professional employees of the public schools and the systems of higher education. The editors of CPER (*California Public Employee Relations,* published by the Institute of Industrial Relations, University of California, Berkeley) estimate that over the six-year *period, 1968-1974, union membership rose* from 83,700 to 165,200, while membership in independent associations dropped from 499,600 to 478,100.

### The Legislative Framework

Most public employees in California are presently covered by one of the following three laws, none of which provides for the right to strike:

**State employees** — including those of the University of California and of the state colleges and universities — by the *George Brown Act (1961),* which recognizes the right of employees to organize and to be represented, but imposes no bargaining obligation on public employers.

**Local government employees** — by the *Meyers-Milias-Brown Act (1968),* which requires that public employers meet and confer in good faith with employee representatives to reach agreement on matters within the scope of negotiation: wages, hours, and other terms and conditions of employment.

**Teachers of public schools** and the community colleges — by the *Winton Act (1965),* which requires the meet and confer procedure, as discussed above.

However, there is dissatisfaction with the existing legislative framework on the part of both public management and labor. As a result, several comprehensive public employee labor relations proposals were under active consideration by the California State Legislature in 1974, the year which saw some 42 work stoppages among public employees, involving more than 4,100 workers; four of these were major strikes—by the Southern California Rapid Transit District, lasting 68 days; the A-C Transit, 61 days; San Francisco Unified School District, 20 days; and San Francisco City and County Employees, 9 days.

Assembly Bill 1243, introduced by (then) Speaker Robert Moretti, provided for a comprehensive collective bargaining system for all California public employees, including a limited right to strike. The extensive proposal was developed by the Assembly Advisory Council on Public Employee Relations, established in June, 1972, by the California Assembly. Chaired by Professor Benjamin Aaron, the Institute's Director, the Council reviewed the effectiveness of present statutes and policies dealing with public sector labor relations and prepared a thorough going report containing specific recommendations for a *Collective Bargaining Act for Public Employment.* The recommendations, submitted in March, 1973, define the nature and scope of the proposed law and provide for: establishment of a Public Employment Relations Board (PERB) to administer the law; the ascertainment of bargaining and representation rights; the determination of bargaining units; and the specific procedures for the resolution of impasses.

### A Major Breakthrough

This year—in which the nation observes the 40th anniversary of the National Labor Relations Act, a most significant landmark in the history of private sector collective bargaining—a major legislative breakthrough may occur in California public sector labor relations with the probable passage of the *1975 Collective Bargaining Act for Public Employment.* Culminating five months of intensive effort by the Joint Committee on Public Employer-Employee Relations, Senate Bill 275, the Dills-Berman measure, was introduced in the State Senate on January 23 by Senator Ralph C. Dills (D-Gardena) and Assemblyman Howard Berman (D-Sherman Oaks), the Committee's chairman and vice-chairman, respectively. The bill, the most comprehensive labor relations proposal to be considered for public employees in the nation, would create a uniform system of collective bargaining for *all* California public employees—city, county, special districts, schools, and state

employees including the University of California as well as the state university and college systems. It would repeal all existing state public sector labor-management relations laws including the *George Brown, Meyers-Milias-Brown,* and the *Winton Acts.* The law would be administered by a Public Employment Relations Board, whose members would be appointed by the governor and confirmed by the state senate. The PERB would be empowered to determine bargaining units, conduct representation elections, certify bargaining representatives, investigate and rule on unfair practice charges, and implement impasse resolution procedures. SB 275 would, for the first time, grant state and local government workers a limited right to strike under certain specified conditions.

Critical features of the proposed bill deal with (a) determination of bargaining units; (b) definition of supervisory personnel; (c) scope of bargaining; and (d) impasse resolution.

On *unit determination,* the bill sets forth specific criteria to be considered in deciding upon an appropriate unit. In summary, these include:

> (1) community of interest of employees, history of representation, commonality of employees, (2) effect of unit on authority to collectively bargain, (3) effect of unit on agency's ability to serve public, (4) number of employees, (5) impact on bargaining, and (6) allowance for skilled craft units.

The bill defines a *supervisor* as:

> ". . . any employee, regardless of job description, having substantial responsibility on behalf of management regularly to perform all or most of the following functions: employ, promote, transfer, suspend, discharge, or adjudicate grievances of other employees, if, in connection with the foregoing functions, the exercise of such responsibility is not of a merely routine nature, but requires the exercise of independent judgment."

The *scope of bargaining* in the bill is quite broad and includes ". . . wages, hours, and other terms and conditions of employment; provided, however, that nothing in this chapter shall preclude the parties from mutually agreeing to negotiate over any other matters."

On *resolving impasses,* the proposed legislation provides that "Public employees shall not have the right to strike and public employers not have the right to lock out" except after following an extensive set of impasse procedures which include "mediation, factfinding, and such other procedures as the parties agree to. Further, specific time limits are provided within which the impasse procedures may be utilized."

### The Impact of Title VII On the Collective Bargaining Process

One employment standard that applies equally to labor relations in the public and the private sector is *Title VII of the Civil Rights Act of 1964,* amended in 1972 by the Equal Employment Opportunity Act to cover public employment and to grant the Equal Employment Opportunity Commission the right to seek court action in behalf of affected workers—union members as well as the unorganized.

The open-ended ramifications and implications of Title VII are now receiving increased attention as a result of the sharp rise in unemployment to the highest level in the past 35 years. Heavy layoffs in major industries have focused attention once again on the traditional practice of "last hired, first fired." Minority and female employees, along with the Equal Employment Opportunity Commission, are challenging seniority systems which run counter to affirmative action plans, arguing that layoff of minority and female workers defeats the very purpose and objective of such plans, namely, erasing the effects of past discrimination in hiring.

There is a growing body of case law involving Title VII suits: for example, two circuit courts have recently sustained the seniority provisions of negotiated agreements, while another case is awaiting a decision by the Fifth Circuit, appealing a ruling by a lower court which, in effect, held that the plantwide seniority system in that particular layoff situation must give way because the layoff of black employees perpetuates the effects of past discrimination in hiring. If the Fifth Circuit holds differently than the two circuit court decisions which sustained the seniority provisions, it may well mean that the Supreme Court will rule on this controversial issue.

In January of this year, the Institute's Center for Labor Research and Education conducted a *Forum for Union Leadership* on some of the complex and varied problems as well as legal issues arising out of the clash of two protected rights—one created by Title VII, and the other by negotiated seniority provisions. Among the areas examined were Title VII provisions specifically affecting unions; overlapping jurisdictions and remedies under that legislation; Title VII in relation to contract provisions—grievance procedure, seniority, and affirmative action; the role of arbitrators in Title VII grievances; and a look at the labor market impact of Title VII. Geraldine Leshin, Coordinator of the Labor Center, conceived the idea and developed the framework for this successful conference. Upon invitation of Don Vial, Chairman of the Center for Labor Research and Education of the Institute of Industrial Relations on the Berkeley campus (and recently appointed Director of the State Department of Industrial Relations), Ms. Leshin and Jack Blackburn, Administrator of the UCLA Institute's Labor Center, will bring this program to Northern California for the benefit of union leaders in that area. It will be held on April 25, at the Hotel Claremont, Berkeley.

## INSTITUTE CONFERENCE HONORING COLLECTIVE BARGAINING

The Institute is planning a special conference on April 25, *honoring collective bargaining.* Jointly sponsored by a number of prominent community organizations, the Conference is designed to acknowledge the contribution collective bargaining has made in the United States to improved working conditions and to industrial peace. Among the speakers are leading representatives from management, labor, and the public who will share their views on this vital institution: Arvid Anderson, Chairman, Office of Collective Bargaining, New York City; Thomas Donahue, Assistant to President George Meany, AFL-CIO; Edmund J. Flynn, President, Pacific Maritime Association; and Professor of Law, Benjamin Aaron, Director of the Institute. (For details, see announcement of Institute Programs in this Newsletter.)

# MANAGEMENT PROGRAMS

The Institute has kept pace with legislative developments. Soon after passage of the Meyers-Milias-Brown Act in 1969 (which extended the "meet and confer in good faith" procedure to employees of counties, municipalities, and special districts), the Institute substantially expanded its training programs in the public sector. With the aid of a grant from the U.S. Civil Service Commission under the Intergovernmental Personnel Act of 1970, a total of thirty-three public management training programs were conducted from 1972 to 1974.

In 1974, a second IPA grant was received to support the planning of six advanced programs for public managers. Two of these, Legal Procedures for Labor Relations Practitioners (nonlawyers), and Presenting Arbitration Cases, will be conducted next month (see Announcements of Institute programs, insert page).

Of particular interest to public managers are the Institute's "closed" programs which deal with specific problems for single government agencies or groups of agencies. In addition to California, public agencies in Hawaii and Nevada have availed themselves of these training opportunities. An annual "Practical Labor Relations Institute" was developed for the County Supervisors' Association of California; the third of these was held recently in Santa Cruz.

In anticipation of enactment of a comprehensive public employee collective bargaining law, the Institute's Intergovernmental Management Programs section is devoting special attention to two areas: the development of new programs dealing with upcoming relevant topics, and the development of public sector labor relations courses that can be administered by other institutions.

All management training programs for both the public and private sectors come under the general direction of Philip Tamoush, Administrator of Management Programs. Mr. Tamoush is ably assisted by Gene Bell, Coordinator of Intergovernmental Management Programs, and Angus MacLeod, Coordinator of Management Programs.

# INSTITUTE STAFF CHANGES

Two senior members of the Institute staff have recently announced their resignations, effective 30 June 1975. Benjamin Aaron, Director and Professor of Law, and Irving Bernstein, Associate Director for Research and Professor of Political Science, will relinquish their administrative posts on that date, but will continue their long relationship with the Institute as Research Associates. The two men will have held their respective positions for fifteen years. If a new Director has not been appointed by 30 June, Aaron will continue to serve until his successor has been designated.

In announcing to the Institute staff his decision to resign the directorship, Aaron said in part:

"My decision reflects neither dissatisfaction nor weariness, but simply the conviction that the Institute would benefit from new leadership. During the fifteen years I have served as Director, the Institute's prestige and influence have grown appreciably, not only in the Southern California community, but throughout the state and nation, and abroad. All of us, together with our former associates, have contributed to that growth, and we can and should take pride in that accomplishment. Nevertheless, I think the Institute has the potential for even greater achievement; and in my judgment it will have a better chance to realize that potential with new leadership."

A Search Committee will soon be appointed to recommend a new Director to the Chancellor of UCLA. As is customary, the Committee will make a broad canvass of likely candidates and recommend the person best qualified in its judgment to carry out the duties of the position. The post of Associate Director for Research will remain open for the immediate future.

# THE INSTITUTE OF INDUSTRIAL RELATIONS ASSOCIATION

### Monthly Dinner Meetings

Members and friends of the Institute of Industrial Relations Association enjoyed excellent presentations by guest speakers at their monthly dinner meetings in February and March of this year.

At the February meeting, **Barry F. Evans,** Senior Partner with the law firm of Evans, Dalbey & Cumming, and **Barry Satzman,** Partner in the law firm of Geffner & Satzman, discussed recent legislative changes in the Workers' Compensation statutes. They explained the meaning of the increases in temporary disability compensation as well as in death benefits, and the amendment to Labor Code Section 139.5 pertaining to rehabilitation which provides that the "employer and/or insurance company" are responsible for the total cost of such rehabilitation. Mr. Evans and Mr. Satzman agreed that the estimated cost involved in the application of this new provision is seriously underestimated. In addition to the cost factor, the amendment is not specific as to when the new provision will become effective and whether it will be retroactive. Mr. Evans noted that the cost of the new law would lead to a takeover of the program by the federal government, but Mr. Satzman felt that the state legislature could intervene in cases of abuse by changing the provision. Both attorneys agreed that there would be future changes in the methods of medical treatment under the amendment, allowing an injured worker free choice of doctors. They also believe that ultimately the responsibility to establish a rehabilitation plan that would lead to gainful employment rests with the employer or the insurance carrier.

On March 12, **Walter Slater,** S.F. Regional Coordinator for Employee Benefits Security, Labor-Management Services Administration, U.S. Department of Labor, discussed various aspects of the Employee Retirement Income Security Act of 1974—the Pension Reform Act. The new law, jointly administered by the Internal Revenue Service and the Department of Labor, is an attempt at overall pension reform long considered overdue (28 million workers, or almost half of the private nonfarm labor force were covered by private pension plans in 1973). The method of administration has raised some complex problems, namely, how should such joint administration be divided between the Labor and the Treasury Departments; and, within the Congress, how should overseeing the Act be shared between the Labor Committees and the tax-writing Committees?

Mr. Slater predicted that administration of the law will be hotly contested and debated. Current criticism expressing different points of view are that: (1) the Act fails to correct basic deficiencies in private pension plans, and, (2) its goals are too broad and resulting regulations would stifle private pension planning. Nevertheless, advantages from the standpoint of the individual worker constitute some of its most significant features: i.e., the vesting standard, the continuation of vesting benefits even if the plan should fold, regulations governing integrity in financial management, and the individual's right to bring court action in certain cases.

The April 9 dinner meeting features four women who are well-known to the labor movement in Southern California, and who bring a special commitment and personal interest to their topic, *Women at Work.*

**Elinor Glen,** General Manager of the Service Employees International Union, Local 434, and West Coast Vice President of the Coalition of Labor Union Women, will moderate a panel discussion of specific and critical problems of women workers (who now represent 43 percent of the work force), with particular emphasis on the impact of layoffs and unemployment. The panelists are:

**Mei Bickner,** Associate Professor of Industrial Relations, California State University, Fullerton, and Research Associate at the Institute;

**Ruth Miller,** National Representative, Amalgamated Clothing Workers, AFL-CIO, and Chairperson of Women in the Work Force of the County Federation of Labor; and

**Virginia Mulrooney,** Associate Professor of History, Los Angeles Valley College, and Executive Secretary Local 1521, College Guild, American Federation of Teachers.

Their presentations should lead to stimulating discussion and exchange of ideas during the question and answer period.

**A Message from Julius Draznin**

It is this "give and take" between speakers and participants at the monthly dinner meetings that **Julius Draznin,** the immediate past president of the Association, found most rewarding. He considers the opportunity of having worked with distinguished representatives of labor, management, and community organizations a real challenge in developing worthwhile programs and in helping to shape the organization of the Association. When he served as president from 1972 to 1974, Mr. Draznin sought to build the membership of the Association and to broaden the scope of topics for the monthly dinner meetings. One of the Association's most important goals in his view is to create a climate in which members and guests join freely in discussion and in question and answer periods—an atmosphere in which discussion is open and direct, where challenges are offered and met, ideas are exchanged, and friends are made. He is convinced that in this manner, the Association can make a significant contribution to the industrial relations community in Southern California. Mr. Draznin is the Assistant Regional Director, National Labor Relations Board, Region No. 31, Los Angeles; a member of the American Arbitration Association; and serves as instructor for Institute programs as well as for UCLA Extension.

## CERTIFICATE PROGRAMS

On March 12, fourteen graduates of the Industrial Relations Certificate Program were honored at the dinner meeting of the Institute of Industrial Relations Association and were awarded certificates:

Carolyn Lee Alexander
Robert Gary Attridge
Norma A. Conrad
Jo F. Crenshaw
Lois Felder
Edward Leroy Fogderud
Lawrence J. Kriwanek
Jerry L. Murase
Rose-Mary Porter
Marlene Mary Teeple
Donald Nolan Tripeny
Else Ward
Wallace James Weissman
Curtis R. Wooley

At the April 9 dinner meeting, seven graduates will be awarded Certificates in Public Sector Labor-Management Relations:

John M. Caraway
R. Douglas Collins
Don Donnelly
Wayne R. Hartigan
Steven A. Larson
Lawrence P. Stern
Gary A. Stout

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