UNIT DETERMINATION
RECOGNITION AND REPRESENTATION ELECTIONS
IN PUBLIC AGENCIES

Proceedings of a Conference on Public Sector Labor Management Relations

September 23—24, 1971

Institute of Industrial Relations • University of California • Los Angeles

Price: $2.00

Los Angeles, March 1972

UNIT DETERMINATION, RECOGNITION AND REPRESENTATION

ELECTIONS IN PUBLIC AGENCIES

"I cannot tell you what a bargaining unit is, but a person who knows bargaining units will know one when he sees one."
Daniel P. Moynihan

The papers contained in the Proceedings were presented at a two-day conference on Unit Determination, Recognition and Representation Elections in Public Agencies, held on the UCLA campus, September 23-24, 1971. After the enactment of the Meyers-Milias-Brown Act in California, the basic law that regulates employee relations in local government, the concept of Unit Determination--methods of determining representation units, appropriate units, fragmentation and proliferation of units--emerged as a formidable problem both for public administrators and employee organizations. Likewise, Recognition Procedures, whether they involve informal or exclusive recognition or procedures based on majority representation, need to be evaluated in the light of current legislation. Finally, a fresh approach to Representation Elections and Certifications in the public sector should prove most valuable in view of their impact on the "meet and confer" process as well as employee rights.

This conference was a "first of its kind" effort on the West Coast, designed to gain insight into these crucial matters affecting public sector labor relations throughout the country. It was sponsored by the Institute of Industrial Relations Public Sector Management Programs as part of a newly created sequence of conferences and workshops that has been established primarily for public officials at all levels of government. Under the general guidance of Benjamin Aaron and Paul Prasow, director and associate director (Community Services) of the Institute, programs of this kind fill a special need on the part of managers and administrators of public agencies, elected officials, as well as employees and their organizations in the growing field of public sector labor-management relations.

March, 1972

Philip Tamoush
Coordinator
Public Sector Management Programs
Institute of Industrial Relations
University of California
Los Angeles

Published in 1972

Copies of this volume may be purchased
at $2.00 each from the Institute of
Industrial Relations, University of
California, Los Angeles, California 90024

CONTENTS

PRINCIPLES OF UNIT DETERMINATION
CONCEPT AND PROBLEMS

Paul Prasow

On behalf of the Institute of Industrial Relations at UCLA, I am very happy to welcome you. I hope you will find these two days most profitable in terms of the questions that arise on this important subject of unit determination and representation. The Institute considers itself a service agency. We want to service the training needs of the public sector, both labor and management. We welcome your suggestions, comments, and criticisms.

I have served as an arbitrator for the past 25 years. One case which I think illustrates this intriguing subject of unit determination involved the Pacific Air Force Command at Hickam Air Force Base in Honolulu. They were faced with a demand on the part of fire fighters to form a bargaining unit consisting only of civilian fire fighters at the Hickam Base; approximately 100 of about 2,000 civilian employees were fire fighters. The Air Force, the employer in this case, maintained on the basis of the federal Executive Order originally issued under President Kennedy that the bargaining unit should include all civilian personnel--the broadest possible bargaining unit on the base. The fire fighters, represented by the American Federation of Government Employees (AFGE), claimed that the appropriate unit should include only those engaged in fire fighting duties. This was the issue. The Air Force, however, took the position that the total civilian group was the appropriate unit since all employees were in the same government agency and carried out the mission of that agency.

The issue was: "What is an appropriate bargaining unit?" The Air Force stated that for all practical purposes the unit claimed by the AFCE coincided with the extent of its organization or membership. This, they claimed, was contrary to the Executive Order. In other words, the organized fire fighters were saying, "This is our membership; we want this unit and exclude all other employees."

I was appointed an advisory arbitrator to consider the matter and make recommendations to the Defense Department under the Executive Order. This was my first case involving a bargaining unit issue, and I had to clarify for myself the role of the arbitrator in deciding the question. After some research, I concluded that the fundamental issue was not what is <u>the</u> most appropriate unit, but rather what is <u>an</u> appropriate unit, of which there could be several.

This is a difficult concept to get clearly in mind. The arbitrator was not asked to determine whether fire fighters constituted the most appropriate unit, only whether the group is an appropriate unit within the meaning of the criteria contained in the Executive Order. The proposal of the Air Force that a broader unit may be more desirable or more appropriate did not alter the responsibility of the arbitrator to make a finding as to whether the unit proposed by AFGE was an appropriate one. As advisory arbitrator, I concluded, "It may well be that the Air Force's desire for a broad unit stems in part from a preference to deal with one broad employee representative unit rather than a multiplicity of units." However desirable this objective may be, it does not preclude the establishment of smaller units provided they meet certain criteria revolving about the phrase "community of interest of the employees." My final conclusion was:

> In the Arbitrator's opinion, once having proved the existence of a community of interest among firefighters, the AFGE is no longer open to the charge of seeking to establish a unit solely on the basis of the extent to which the employees in the proposed unit have organized. The primary test is the community of interst. If such a community of interest exists among a particular grouping of employees, it is not necessary to await the possible organization of a more inclusive unit, before the AFGE can avail itself of the Executive Order's provisions. There is no evidence the particular unit requested is based upon an arbitrary segment composed of employee members. The employee groups in this case is clearly a homogeneous, stable, complete unit with closely related jobs, similar skills, wages, hours and working conditions.

Let me turn a moment and comment on the experiences of Philadelphia and New York City conerning the unit issue. In Philadelphia, all city employees, with the exceptions of police, fire, teachers, and transit workers, were established in one bargaining unit, represented by the American Federation of State, County and Municipal Employees (AFSCME). This was a very broad unit of approximately 50,000 workers. In sharp contrast, New York City has approximately 900 bargaining certifications of employee organizations; hundreds of which are established on the basis of job title alone. These job classifications are grouped into about 200 different bargaining relationships with about 90 different employee associations representing these employees. It is little wonder that the Office of Collective Bargaining in New York City says the task of restructuring negotiation units will be a difficult and time-consuming one for many years.

In establishing collective bargaining relations in a city or county, there are excellent reasons for creating broad units. In this connection, I should like to refer to an article by Eli Rock, a Philadelphia arbitrator and consultant on public sector bargaining, published in the Michigan Law Review, March of 1969, one of the best articles written on unit determination. It is concerned with the problem of fragmentation of bargaining units in a city or county versus the establishment of broad all-inclusive bargaining units. There seems to be more justification for broad units in the public sector than in the private sector, primarily because of civil service rules and regulations normally promulgated to apply to large categories of employees, including almost all government workers. Not that civil service rules and regulations should be the sole criteron in establishing a bargaining unit, but I know that that has been used in the past and does have merit.

Broad uniformity is traditional in public sector employment. In private industry, however, a major factor that has made for narrow units has been the competitive nature of the industry. Management and employees faced with different market constraints must remain relatively free to consider their separate problems. In the public sector, however, with the treasury uniformly governing all financial aspects of the situation, the problem of competition between different groups in the industry is not a factor. Also, in both the private and the public sectors, employee election districts often have been influenced largely by strategic considerations of the employer and union. That is, unions and management have traditionally maneuvered for larger or smaller units primarily to improve their chances of success in the election. If management prefers a certain group to win the election, it may favor a unit size that would result in a successful election of that union or association. Thus, the size and composition of the unit may have an important bearing on who wins an election.

Returning to the example of the Air Force, let me summarize the position of the employer in that case. The Air Force claimed there was a broad community of interest among all civilian employees at the base. The employees were under the same jurisdiction, the same employer, and were all subject to the same regulations. They shared a common purpose. The question remains, however, whether the unit proposed is the appropriate one. The broad common-purpose criterion, although a factor to be considered, is not conclusive in deciding what is an appropriate unit. To illustrate: let us assume there are 1,000 employees in a government agency.

These employees are all subject to the same rules and regulations, but invariably there will be certain groups of employees within that agency who have special duties and conditions of work which fall under the community-of-interest principle. For example, there may be 20 maintenance electricians who repair and maintain electrical equipment. Their interests, problems, skills, training, supervision, etc., may be substantially different from all others in the agency; so you could correctly say they have a distinct community of interest and therefore could be a distinct bargaining unit apart from the other 980 employees. Thus, returning to the fire fighters' case, I said, "It is my belief that the community of interest among a group of employees must be defined in terms of distinctiveness of function, similarities of job skills, generally the same working conditions, mutual interests, problems and grievances which might arise. The community of interest of one small group may far outweight the broad common goals shared with all other employees in the agency. A clear and identifiable community of interest exists when a group of employees constitutes a functionally distinct and homogeneous unit, and where there is a clear similarity of skills, job duties, etc."

The unit issue has impact on three areas that are directly affected by the size and composition of the bargaining unit. The most important single criterion for establishing a bargaining unit is what I call the community of interest among employees. If that criterion is disregarded, the consequences can be unfortunate. An employee organization may succeed in changing for its own members certain conditions which also apply to a much broader grouping of employees. The end result may be an impossible patchwork of salary, wage, and fringe benefits, which generate serious conflicts over inequities and which impair the balance in employee relationships.

Personnel and administrative officials in public employment must cope with enormous pressures in order to maintain equitable relations among all groups of employees in the units for which they are responsible. A crazy quilt structure of different benefits also creates problems for individual employees who seek transfers from one job to another within the agency. The transfers could be hampered by a differential in wages, fringe benefits, seniority, pension plans, etc.

Unit determination can decisively affect the scope of the bargaining issues. If negotiations include wages, hours, and working conditions, a much broader unit is feasible than if bargaining is limited to working conditions peculiar to a craft or profession. In some states and in federal employment,

wages and hours are excluded from negotiations; bargaining is limited to certain terms and conditions of employment. Some unions consider the important issues to be wages and hours; others are concerned only over working conditions. Negotiations for employees within a given unit are unlikely to lead to satisfactory results if the key issues are excluded from bargaining. However, the very nature of the bargaining unit may force a change in the restrictive policies which excluded the issues and thus expand the scope of negotiations.

Unit determination has a considerable impact on the interested parties which consist of four groups: (1) employees, (2) the employee organization, (3) the public employer, and (4) the public. Employees prefer the unit which provides the maximum pressure to achieve their economic objectives. Where special skills are involved, they desire tight, compact, small units which preserve their bargaining power in terms of numbers and skill. Also, the smaller unit gives more weight to each vote.

Employee organizations are quite pragmatic in their approach to the unit question. Their first interest is in organization. They seek that unit which strengthens or ratifies the extent of employee organization. A major problem in unit determination arises when there are two or more rival organizations, each seeking recognition for some or all employees. The older and more established organization generally has more members and prefers a broader unit to offset the strength of the rival organization. The newer organization will insist on a narrow unit because its strength is concentrated in that area.

Rival employee organizations occasionally take opposing sides on two different unit questions. One will argue for a narrow unit in the first situation and a wide unit in the second. Exactly the opposite position is taken by the rival organization. There are internal, political, economic, and technological reasons for such apparent contradictions.

There are usually two types of employee organizations in the public sector: the independent association and the affiliated union. The former often prefers broad installation-wide groupings of employees, rather than the narrower units favored by unions whose limits are considered with the view to winning elections.

In state and local government, management's interest in unit formation is influenced by several factors. Public managers are subject to inevitable political pressures, from below as well as above. They must be sensitive and responsive to the views of higher officials, legislative or administrative, who have the ultimate decision-making power. Public managers

in state and local government are often reluctant to take a firm stand on the boundaries of the bargaining unit. They may have mixed feelings on whether to include or exclude such categories as supervisors or professional personnel.

Public executives are properly concerned with efficiency in operations, stability of the work force, and administrative convenience. Accordingly they may prefer the all-inclusive unit to avoid the rivalry resulting from fragmentation of employees into competing units. Public management may sometimes press for a wider unit in order to prevent a particular organization from winning an election. In other situations, a unit is sought which favors a more cooperative employee organization.

Public management has a major stake in unit determination because it can significantly affect administrative functioning. For example, the larger the number of units, generally the greater the tendency of organizations to multiply. Certain kinds of unit determinations may preclude equitable treatment for all employees. The formation of units can be reflected in the quality of work performed. Administrators and public officials are expected to insure that service is rendered promptly, efficiently, and economically.

We come now to "the public," the fourth and last, but not the least interested party in unit determination. It is just not possible to define this term precisely because the public is so diffuse, so heterogeneous and such a conglomerate assortment of individual and group interests.

We are never quite sure what the public interest really is. It is certainly not in the public interest for teachers to strike. Neither is it in the public interest for local officials to maintain an intransigent attitude in the face of reasonable teacher demands.

However, there are some aspects of the public interest which can be stated affirmatively: First, the public does not want any deterioration in the quality of the service rendered. There is an interest in maintaining harmonious relations in public employment. But the greatest concern is over the possibility of a disruption or stoppage of the service. The public has a right to expect uninterrupted service, but public employees also have the right to obtain effective representation. Both rights are legitimate. The difficulty arises when they conflict and are headed for a collision course. The solution to that thorny problem is outside the scope of this paper.

Some segments of the public fear that the development of employee organizations in government will weaken our institutions of representative government and undermine the long-established traditions of a civil service policy. The very terms "collective bargaining," "unions," "strike," as applied to public employment, are anathema to large sections of the public who conjure up visions of serious inconvenience, hazards to health and safety, disruption of vital services, mass picketing, violence, and disrespect for law and order. However, this does not imply any real objection to public employees participating peacefully in the determination of some conditions of their employment.

In conclusion, may I say that despite all the formulas, all the criteria, there are no ideal solutions or simple paths to resolving the complex issue of unit determination. There is usually a weighting of alternatives, an application of value judgment, a forging of decision within a framework of conflicting interests. Whatever standards are used should serve as guides and not become rigid, undeviating blueprints to be followed as though unit determination were an exact science. They should never supplant human relations and human judgment on a case-by-case basis.

MODELS IN UNIT DETERMINATION--PROBLEMS AND CONSIDERATIONS MAJOR DECISIONS OF THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Morris Slavney

In preparing my remarks with respect to the subject matter assigned to me, I have taken the opportunity to review the majority of various state statutes relating to public employee bargaining. There are somewhere in the neighborhood of twenty-five states which have some form of statute on the subject. My remarks would not be truly meaningful if I attempted to discuss all the statutes. I have selected to discuss those state statutes and unit determinations issued by the agencies administering them, which, in my opinion, provide examples of the type of statutes presently in effect and the units established thereunder. I have selected to discuss the Michigan, Pennsylvania, New York, Hawaii, and, of course, the Wisconsin statutes.

Michigan

The Michigan Public Employment Relations Act, which became effective July 23, 1965, in Section 423.312 provides as follows with respect to the appropriate bargaining unit:

> The Board shall decide in each case, in order to insure public employees the full benefit of their right to self-organization, to collective bargaining and otherwise to effectuate the policies of this act, the unit appropriate for the purposes of collective bargaining as provided in section 9e of Act No. 176 of the Public Acts of 1939: Provided, That in any fire department, or any department in whole or part engaged in, or having the responsibility of, fire fighting, no person subordinate to a fire commission, fire commissioner, safety director, or other similar administrative agency or administrator, shall be deemed to be a supervisor.

Section 93 of the Act No. 176 of the Public Acts of 1939, amended July, 1965, relating to collective bargaining in private employment, provides as follows:

> Sec. 93. [Determination of Bargaining Units.] The board, after consultation with the parties, shall determine such a bargaining unit as will best secure

> to the employees their right of collective bargaining. The unit shall be either the employees of 1 employer employed in 1 plant or business enterprise within this state, not holding executive or supervisory positions, or a craft unit, or a plant unit, or a subdivision of any of the foregoing units: Provided, however, That if the group of employees involved in the dispute has been recognized by the employer or identified by certification, contract or past practice as a unit for collective bargaining, the board may adopt such unit.

Robert G. Howlett, in the fall of 1966 at a conference held at Michigan State University, in reporting on the review of a year's experience in Michigan schools under the Public Employment Relations Act, stated as follows with respect to collective-bargaining unit problems: "There are approximately two thousand public employers in the State of Michigan, each of which has a minimum of two potential bargaining units," and further, "petitions for units in the City of Detroit, with twenty thousand employees subject to organization are among our most difficult cases. Thirteen labor organizations seek to represent employees in 28 units. Three petitions seek City-wide units...we have several professional employees petitions--probably more in seven months than the NLRB does in seven years--as engineers, cost accountants, surveyors, nurses, librarians, registered pharmacists and veterinarians have sought representation. We recently received our first petition from lawyers employed by a county. It is clear that the Public Employment Relations Act excludes executive and supervisors from bargaining units of rank and file employees. However, it is not clear that supervisors are excluded from coverage by the Statute. We have pending anumber of petitions by school principals who wish to be represented in separate units."

The Michigan Supreme Court, in the case involving the Private Sector Labor Relations Statute,1/ set forth the criteria for the establishment of bargaining units in the Michigan private sector, which policy applies to the public sector, to the effect that the appropriate unit should be the largest unit "which, in the circumstances of the particular case, is more compatible with the effectuation of the law, and to include in a single unit all common interests."

---

1. Hotel Olds, 333 Mich. 382.

In one of its earlier cases involving the City of Warren, a Teamsters Local attempted the severance of employees from a larger unit represented by AFSCME, seeking two units consisting of employees in the Department of Public Works and in the Forest Division. AFSCME and the City of Warren contended the only appropriate unit consisted of all the city employees excluding police, firemen, and supervisors. The Michigan Board dismissed the Teamsters petition and found the unit to consist of all the employees of the city, except the noted exclusions. The Michigan Board stated that there was an insufficient showing of a community of interest among the employees in the units desired so as to sever them from the existing overall unit. With respect to establishing a community of interest, the Michigan Board stated:

> Community of interest is determined by a number of factors and criteria, some of which are as follows: similarity of duties, skills and working conditions, job classifications, employee benefits, the amount of interchange or transfer of employees, the integration of the employer's physical operations, the centralization of administrative and managerial functions, the degree of central control of operations, including labor relations, promotional ladders used by employees, supervisory hierarchy, and common supervision.

The Michigan Board further stated that "similar community of interests of supervision is insufficient as to establish the appropriateness of the unit sought."

In November, 1966, in a case involving librarians in the City of Detroit, the Michigan Board established separate units of professional librarians and chief librarians. The Association of Professional Librarians sought a unit consisting of 300 professional librarians and would exclude only a handful of central administrators on the basis that the latter positions were the only supervisors of the librarians. AFSCME, the competing union, contended that the librarians in charge of branch libraries were supervisors and should be excluded from the unit. The Detroit Library Commission would have also excluded the second in command at each branch, as well as the head of each department at the main library and six coordinators as supervisors. The Michigan Board in establishing the separate units stated as follows:

> ...the chiefs of divisions and departments of the Commission are supervisors, since they responsibly direct the work of their subordinate librarians in a

> nonroutine manner, requiring the exercise of independent judgment. While personnel decision-making is retained to a remarkable degree in the hands of the Commission and the Director, it is clear from the Rules and Regulations of the Commission and from the testimony that each branch library or department chief is entrusted with the day to day responsibility for the conduct and performance of his staff. Particularly in the case of the twenty-eight branch libraries, scattered as they are throughout a major urban area, it is inconceivable that the central administrators to ever become well acquainted with, or view the working habits of, the large number of Librarians I, II, and III, it is obvious that the profiles [rating forms] prepared by the chiefs must be accorded great weight by the Commission in its evaluation of librarians for promotions and other changes.
>
> While the first assistants and assistant chiefs assume charge of their branches and departments in the absence of their chiefs, the record does not support a finding that they are supervisors. Each chief is present an ample number of hours each week to be able to personally reach all nonroutine decisions affecting librarians. Decisions required of the second in command pertain almost exclusively to the professional content of the job, not to the matters affecting wages, hours, or working conditions or other librarians. The single exception is the preparation of the weekly schedule of assignments. Even then, with an average of only three Librarians I and II to a branch or department, the rotating of assignments must be profoundly matter-of-fact, and hardly one of the serious indicia of supervisory status.

In a case involving the City of Detroit, a Teamsters local petitioned for an election among construction equipment and motor vehicle operators in sixteen city departments, including the Departments of Public Works, Health, State Railways, Water, Public Lighting, and Parks and Recreation. AFSCME proposed that the unit claimed by the Teamsters was inappropriate and that the separate departments should constitute separate units. The city appeared to be neutral since it stated its position as follows: "We favor the recognition of the largest possible unit, whether it be on a city-wide or department-wide basis, that will represent the greatest community interest and be in accordance with the provisions of the Act, and that proper consideration be given to the jurisdictional claims of recognized skills, trades, crafts, professional and technical

associations and recognized supervisory personnel." AFSCME's position was buttressed by the argument that the degree of control exercised by department heads and the lines of supervision within the department favor departmental units. The Michigan Board stated that "while supervision is a factor to be considered to determine the appropriateness of the unit, it is not the controlling factor...," and concluded that "the evidence establishes a greater community of interests between the classifications in the proposed unit on a city-wide basis than between the classifications in the proposed unit in the other proposed classifications of the Department of Public Works." A bargaining unit as proposed by the Teamsters would best secure to the employees their right of collective bargaining and would not have any detrimental effect on the City of Detroit. 2/ The classifications included in the unit consisted of "11 construction equipment operators general, construction equipment operators (grader), bulldozer operators, asphalt roller operators, senior contruction equipment operators, vehicle operators-semi-truck trailer, vehicle operators-street equipment, truck drivers, street sweeper operators, and vehicle operators-park equipment, employed by the City of Detroit, excluding, however, all supervisors, clerical employees, professional employees, and all other employees of the City of Detroit."

In a case involving a hospital in Flint, Michigan, the Michigan Board held that a separate bargaining unit for maintenance repairmen was inappropriate. Said positions at the time were included in an overall hospital unit. The rationale expressed by the Board included a statement that the petitioning organization failed to show a sufficient differentiation of a community of interest between the employes sought in its unit and the overall hospital bargaining unit, and further "that the community of interest in the smaller unit is insufficient to fragmentize an appropriate unit created by historical practice in over 20 years of bargaining in a hospital unit." 3/

The Michigan Board's determination of bargaining units in the Detroit school system might serve as a model for appropriate bargaining units among school-board employees. The Detroit school board employs some 18,000 employees. It has the following units consisting of (1) some 11,000 teachers and related professional positions, (2) approximately 2,000 blue-collar employees, (3) 1,200 school administrators and supervisors, (4) 20 separate craft classifications, with some 500 positions, (5) some 630 engineers and boiler operators, (6) 1,300 white-collar and clerical employees, (7) 15 accountants and related positions, (8) 35 radio TV engineers and related positions, (9) 25 machine-shop employees and related positions, and (10) 3 electrical agricultural engineers and draftsmen.

---

2. MLMB Case R-65 J-171
3. MLMB Case R-67 G-229 10/68

In a decision issued in January 1968, 4/ the Michigan Board included college department chairmen and directors of the health and athletic departments in a unit with other teaching personnel on the basis that said department heads, although they interviewed and evaluated members of the departments as to their teaching ability, "the record did not indicate that their recommendations with respect to the hiring or termination of faculty members were accepted without further investigation or consideration by the Dean." The Michigan Board stated that it was "essential that in order to constitute a supervisor the recommendations by the individual occupying the situation must be effective", and that the mere existence of periodic or occasional evaluation was not in itself sufficient for a finding that the individuals involved were supervisors.

In a case involving a school district, 5/ the Michigan Board included substitute teachers in a bargaining unit of certified classroom teachers, librarians, and counsellors, although the substitute teachers were not fully certified, and at the same time did not permit the substitute teachers to vote in the election. The Michigan Board's rationale for including the substitute teachers was stated that to ex clude them "would permit the employer to jeopardize the professional faculty and favorable benefits of its regular fully certified teachers by unilaterally fixing the salaries and employment conditions of non-teachers."

The Michigan Board has ruled that supervisors in public employment have a right to organize, but those supervisors who are in a position to determine labor relations policy do not have a right to organize under state law. In accordance with that policy, in a case involving deputies, two elected officials who were appointed were not confidential employees and did not participate in the collective bargaining process, and since they were not policy-makers the deputies had a right to organize and were included in a unit consisting of all full-time and regular part-time employees employed in the courthouse. 6/

In a unique case determined in March of this year involving interns and residents employed at the University of Michigan Hospital, 7/ the Michigan Board, in a two-to-one decision, found that interns and residents performing their duties at the hospital were employees entitled to collective bargaining, contrary to the argument of the employer that they were essentially students and trainees.

---

4. Southwestern Michigan College: MLMB Case R-68 E-174
5. Reese Public School District: MLMB Case R-68 E-138
6. Gratiot County Board: MLMB Case R-68 L-384
7. MERC Case R-70 C-142

Pennsylvania

The Pennsylvania Public Employee Relations Act, which became effective July 23, 1970, technically identified as Act 195, Secs. 101-2301, contains the following provisions with regard to the establishment or appropriate bargaining units:

Section 604. The board shall determine the appropriateness of a unit which shall be the public employer unit or a subdivision thereof. In determining the appropriateness of the unit, the board shall:

(1) Take into consideration but shall not be limited to the following: (i) public employees must have an identifiable community of interest and (ii) the effects of over-fragmentation.

(2) Not decide that any unit is appropriate is such unit includes both professional and nonprofessional employees, unless a majority of such professional employees vote for inclusion in such unit.

(3) Not permit guards at prisons and mental hospitals, employees directly involved with and necessary to the functioning of the courts of this Commonwealth, or any individual employed as a guard to enforce against employees and other persons, rules to protect property of the employer or to protect the safety of persons on the employer's premises to be included in any unit with other public employees, each may form separate homogenous employee organizations with the proviso that organizations of the latter designated employee group may not be affiliated with any other organization representing or including as members, persons outside of the organization's classification.

(4) Take into consideration that when the Commonwealth is the employer, it will be bargaining on a Statewide basis unless issues involve working conditions peculiar to a given government employment locale. This section, however, shall not be deemed to prohibit multi-unit bargaining.

(5) Not permit employees at the first level of supervision to be included with any other units of public employees but shall permit them to form their own separate homogenous units. In determining supervisory status the board may take into consideration the text to which supervisory and nonsupervisory functions are performed.

In June of this year, the Pennsylvania Board issued a decision establishing four bargaining units among state employees. In establishing said units, it indicated that it considered "not only the letter and intent of the Act, but the standards applied to determine the appropriateness of the bargaining units of the private sector, the experience of other jurisdictions having public employee relations statutes, and the views of recognized experts in the field of labor relations. All of these latter factors form a large part of the climate in which the Act was written and must be interpreted and administered." It further went on to say that under the Pennsylvania Act it must consider the employee community of interest, the effects of overfragmentation, and the fact that the state was the employer involved and that as such will be bargaining on a state-wide basis except for local working conditions. The Pennsylvania statute provides that first-level supervisory personnel should not be included in a unit with any other public employees. The state of Pennsylvania as an employer is composed of twenty-nine departments, boards, and commissions, all under the direct control and jurisdiction of the governor, employing over 100,000 employees who are all under the jurisdiction of the Executive Board which acts for the governor. The four units established by the Pennsylvania Board consist of the following:

Unit No. 1, comprised of all non-supervisory employees in all departments, agencies or otherwise under the jurisdiction and control of the Governor in the major classifications petitioned for, as set forth in Exhibit A-1 attached to and made part of the Order and Notice of Election, excluding all employees in hospitals and correctional institutions as well as all supervisors, first-level supervisors and confidential employees;

Unit No. 2, comprised of all first-level supervisors in all departments, agencies and otherwise under the jurisdiction and control of the Governor in the major classifications petitioned for, as set forth in Exhibit A-2 attached to and made part of the Order and Notice of Election, excluding all employees in hospitals and correctional institutions as well as all supervisors, management and confidential employees;

Unit No. 3, comprised of all non-supervisory employees in all hospital and correctional institutions under the jurisdiction and control of the Governor in the major classifications petitioned for, as set forth in Exhibit A-3 attached to and made part of the Order and Notice of Election, excluding all supervisors, first-level supervisors and confidential employees;

> Unit No. 4, comprised of all first-level supervisors in all hospitals and correctional institutions under the supervision and control of the Governor in the major classifications petitioned for, as set forth in Exhibit A-4 attached to and made part of the Order and Notice of Election, excluding all supervisors, management and confidential employees. 8/

In July of this year, the Pennsylvania Board conducted an election in a unit involving employees of the Philadelphia Housing Authority. The unit was described as follows:

> ... a subdivision of the employer unit comprised of all office and clerical employees with the following classifications: account clerk, accounting clerk, area youth worker, auto equipment dispatcher, automobile drivers, cashiers I and II, clerks I, II, and III, dwelling inspectors, engineer aide II, engineering aide II, field inspector representative, housing and building inspector, housing and fire inspector I, key-punch operator II, public works inspector I, recreation aide, service representative, store clerk, switchboard operator, lab equipment operator II, and the following clerk-stenographers. . . (7) and excluding the following classifications: building inspectors, building maintenance engineers, building repairs and alterations estimators, clerical IV, construction project technicians, exterminators, insurance office, property control clerk, refrigeration mechanic, statistical control clerk, tenant service office, and the following clerk-stenographers and clerk-typists... (8) and further excluding all supervisory, first level supervisors, and confidential employees...

The Pennsylvania Act is one of the latest statutes which have been enacted and it will be interesting to note future decisions with regard to its unit determinations.

New York

The New York Public Employee Law presently in effect provides the following with respect to appropriate collective bargaining units:

---

8. In the matter of the employees of the Commonwealth of Pennsylvania PERA A-12-C 13-C.

> Sec. 207. Determination of representation status. --For purposes of resolving disputes concerning representation status, pursuant to section two hundred five or two hundred six of this article, the board or government, as the case may be, shall
>
> (1) define the appropriate employer-employee negotiating unit taking into account the following standards.
>
> (a) the definition of the unit shall correspond to community of interest among the employees to be included in the unit;
>
> (b) the officials of government at the level of the unit shall have the power to agree, or to make effective recommendations to other administrative authority or the legislative body with respect to, the terms and conditions of employment upon which the employees desire to negotiate; and
>
> (c) the unit shall be compatible with the joint responsibilities of the public employer and public employees to serve the public.

The most significant decision issued by the New York Board with respect to appropriate units involved the state of New York as the employer. The proceeding was initiated by petitions filed by various employee organizations, following the unilateral establishment by the state of three units of state employees, consisting of (1) professional employees of the State University of New York; (2) members of the state police; and (3) a general unit of all other state employees, most of whom were covered by civil service and at the same time the state recognized the Civil Service Employees Association as the representative of the employees in the general unit. The New York Board neither recognized the three units unilaterally established by the state as the mployer nor the recognition granted to the Association, and it proceeded to process the petitions filed with it, namely by

(1) AFSCME, which sought the following units:

1. ALL CORRECTION OFFICERS, correction youth camp officers and correction hospital officers in the Department of Correction, excluding all supervisors and all other persons.

This identical unit was claimed by another of the petitioners, Local 456 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Herein referred to as IBT).

2. All employees in the PSYCHIATRIC ATTENDANT SERIES, including psychiatric attendant, psychiatric senior attendant, psychiatric staff attendant, psychiatric supervising attendant, psychiatric head attendant, psychiatric chief supervising attendant and all (T.B.) titles in this series.

3. All non-supervisory employees in the REHABILITATION COUNSELLOR SERIES in the DEPARTMENT OF EDUCATION, including counsellors and senior counsellors. There were a few rehabilitation counsellors in the Departments of Social Services and Mental Hygiene and in the State University. Council 50 took no position on whether these rehabilitation counsellors should also be included in the proposed unit.

4. ALL CLERICAL EMPLOYEES of the DEPARTMENT OF LABOR, proper.

5. ALL PROFESSIONAL AND TECHNICAL EMPLOYEES of the DEPARTMENT OF LABOR, proper, excluding managerial and confidential employees, nurses, attorneys and safety inspectors.

6. ALL PROFESSIONAL and TECHNICAL EMPLOYEES of the DIVISION OF EMPLOYMENT, excluding managerial and confidential employees, nurses, and attorneys.

7. ALL CLERICAL EMPLOYEES of the DIVISION OF EMPLOYMENT.

8. All non-supervisory OFFICE and CLERICAL EMPLOYEES of the STATE INSURANCE FUND.

9. All non-supervisory PROFESSIONAL and TECHNICAL EMPLOYEES of the STATE INSURANCE FUND, excluding field service, confidential and managerial employees, nurses and attorneys.

10. All supervising PROFESSIONAL and TECHNICAL EMPLOYEES of the STATE INSURANCE FUND, excluding field service, confidential and managerial employees, nurses and attorneys.

11. All INVESTIGATORS of the WORKMENS' COMPENSATION BOARD, Grade 12 through Grade 20.

12. All HEARING OFFICERS of the WORKMENS' COMPENSATION BOARD, Grade 14, and all those CALENDAR CLERKS who were assigned to the Workmen's Compensation Board Referees' Bureau.

13. All ASSISTANT WORKMEN'S COMPENSATION EXAMINERS, Grade 8.

A Local of the Operating Engineers sought a unit consisting of "non-supervisory employees in the Power Plants and related Skilled Trade Shops."

An independent organization, the Safety Officers Benevolent Association, sought the following unit:

> All non-supervisory SAFETY OFFICERS, SOBA left to the discretion of the Board whether all non-supervisory safety officers should be included in a single unit or whether there should be separate units for these employees in the Department of Mental Hygiene, Department of Correction, and the State University, respectively. It took no position with respect to the inclusion or exclusion from the proposed unit or units of safety officers, if any, in the Department of Health.

A Building Service Employees local requested two units, one of lifeguards employed by the Long Island State Park Commission, and the other consisting of seasonal patrolmen in the employ of said Park Commission. Another local of the Building Service Employees Union desired a unit of inspectors in the Division of Industrial Safety Service of the Department of Labor.

The Machinists sought a unit of Long Island State Park Police, grade 14 and 16. An independent police organization, the Police Conference of New York, Inc., desired a unit consisting of Niagara State Park Police, excluding captain and lieutenants, and also a unit of all Capital Buildings Police. The Corrections Officers Association claimed a unit of all correction officers and their supervisors, excluding the deputy warden and correction deputy superintendent.

The Association of New York Civil Service Attorneys, Inc., sought the following unit:

> LAWYER holding COMPETITIVE CLASS POSITIONS IN THE ATTORNEY SERIES of titles for which permission to practice law in the State of New York is a mandatory requirement, and persons holding training-level positions whether or not admitted to practice law in New York State. It would exclude lawyers who hold competitive class positions as counsel to a department or agency.

The New York State Nurses claimed the following as an appropriate unit:

> ALL REGISTERED PROFESSIONAL NURSES and every person lawfully authorized by permit to practice as a registered professional nurse in nursing service or in nursing education. The proposed unit would include persons on the faculty of the State University, and therefore, not within the general unit designated by the employer.

The American Physical Therapy Association sought a unit of "all physical therapists." In all, eleven employee organizations sought 25 appropriate bargaining units. At first blush, it appears that they sought units based upon the extent of their organization. Involved were approximately 150,000 state employees in 3,700 job classifications in some 90 occupational groupings. After a number of hearings, and New York Board established the following six appropriate units:

1. Operational Services Unit
2. Inspection and Security Services Unit
3. Health Services and Support Unit
4. Administrative Services Unit
5. Professional, Scientific and Technical Services Unit
6. A unit of seasonal employees of the Long Island State Park Commission

In its decision the New York Board significantly stated:

> The enormity of this diversity of occupations and the great range in the qualifications requisite for employment in these occupations would preclude effective and meaningful representation in collective negotiations if all such employees were included in a single unit. The occupational differences found here give rise to different interests and concerns in terms and conditions of employment. This, in turn, would give rise to such conflicts of interest as to outweigh those factors indicating a community of interest.
>
> Thus, the implementation of the rights granted by the Act to all public employees mandates a finding that a single unit would be inappropriate.
>
> On the other hand, to grant the type of narrow occupational fragmentation requested by the petitioners would lead to unwarranted and unnecessary and adminis-

trative difficulties. Indeed, as the State contends, it might well lead to the disintegration of the State's current labor relations structure.

A basic question presented to the New York Board was whether, in a representation proceeding, the Board might devise a unit that it deemed to be most appropriate although such a unit was not sought by any of the parties. That issue brought the following response:

> We are convinced that this question must be answered in the affirmative. The statutory grant of authority to this board to resolve disputes concerning representation status mandates this Board to define appropriate units and does not restrict its power simply to the approval or disapproval of units sought by a party or parties to the proceeding. Even apart from such clear statutory intent, the logic of the situation compels the same conclusion. If the Board's power herin were so restricted, a representation dispute might be interminable in that it would continue until a party to the proceeding petitioned for a unit which the Board found to be appropriate in the light of statutory criteria. Such a restrictive interpretation of the Act would delay unduly participation by public employees in the determination of their terms and conditions of employment.
>
> We believe that the statutory criteria that 'the unit shall be compatible with the joint responsibilities of the public employer and public employees to serve the public' (Civil Service Law sec. 207 (c)), requires us to designate negotiating units which provide the employer with a comprehensive and coherent pattern for collective negotiations. Moreover, we believe that this statutory standard requires the designation of as small a number of units as possible consistent with the overriding requirement that the employees be permitted to form organizations of their own choosing to represent them in a meaningful and effective manner. It is our conviction that in designating a limited number of negotiating units, each consisting of families of occupations, is reasonably designed to achieve this goal.

For those who have a sincere interest in unit-determination issues, I recommend you contact the New York Board (PERB) and request copies of the various orders and decisions involved.

Hawaii

Hawaii has met the problems of unit head-on and the statute has established 13 possible units as follows:

> Appropriate bargaining units. (a) All employees throughout the State within any of the following categories shall constitute an appropriate bargaining unit:
>
> (1) Nonsupervisory employees in blue collar positions;
> (2) Supervisory employees in blue collar positions;
> (3) Nonsupervisory employees in white collar positions;
> (4) Supervisory employees in white collar positions;
> (5) Teachers and other personnel of the department of education under the same salary schedule;
> (6) Educational officers and other personnel of the department of education under the same salary schedule;
> (7) Faculty of the University of Hawaii and the community of college interest;
> (8) Personnel of the University of Hawaii and the community college system, other than faculty;
> (9) Registered professional nurses;
> (10) Nonprofessional hospital and institutional workers;
> (11) Fireman;
> (12) Policeman; and
> (13) Professional and scientific employees, other than registered professional nurses.

Because of the nature of work involved and the essentiality of certain occupations which require specialized training, units (9) through (13) are designated as optional appropriate bargaining units. Employees in any of these optional units may either vote for separate units or for inclusion in their respective units (1) through (4). If a majority of the employees in any optional unit desire to constitute a separate appropriate bargaining unit, supervisory employees may be included in the unit by mutual agreement among supervisory and nonsupervisory employees within the unit; if supervisory employees are excluded, the appropriate bargaining unit for such supervisory employees shall be (2) or (4), as the case may be.

Such a provision eases the task of the agency with respect to the determination of bargaining units. However, such mandatory units may very well deprive a substantial number of employees from exercising their rights to engage in concerted activity in collective bargaining, since it may very well be possible that no individual labor organization may be able to organize a majority of the employees in some of the statutory units, and thus, while a substantial number of employees in the particular unit would desire collective bargaining, they cannot exercise that right until the organization seeking the representative status has done a substantial bit of organizing. The units in Hawaii are, in fact, state-wide since there are no public employers in Hawaii except the state and the University and its community college system. In other words, the school teachers are employed by the state, the department of Public Works, as are the police and fire departments of the various communities in Hawaii, are employed by the state.

Wisconsin

Under the Wisconsin municipal employment law, our agency has no discretion to establish an appropriate collective bargaining unit. Units are established in accordance with the procedures set forth in the private-employment labor relations act, with some exceptions. Under the latter act, 9/ the appropriate bargaining unit is described as all employees of the employer except where employees engaged in a separate plant, division, department, or craft indicate a desire to establish themselves as a separate collective bargaining unit, the Commission must conduct a vote in the separate plant, division, department or craft among the employees involved, and if a majority of the eligible employees vote in favor of separation, they become a separate unit. Under the municipal bargaining law, the procedure is the same except for the fact that craft employees can only be in units of the same craft. The same principle applies to professional employees. The craft unions in Wisconsin indicated that they would not support the enactment of the municipal bargaining law unless they were guaranteed that craft employees would not be included in larger units of non-craft employees or along with other craft employees. It must be obvious to you that such statutory requirements with regard to the establishment of bargaining units have resulted in an overfragmentation of bargaining units in municipal employment in Wisconsin. For example, the city of Milwaukee has over twenty separate bargaining units. In the city of Appleton, somewhere in the neighborhood of 60,000 population, both AFSCME and Teamsters were engaged in organizational efforts among clerical employees in some six departments of the city hall. As a result of the statutory provision granting employees in each department an opportunity to establish separate units, the

---

9. Sec. 111.02(6)

city of Appleton wound up with six units of stenographers and clericals in six departments. The Teamsters represented three of the departmental units while AFSCME was certified as the representative in the remaining three departments. You can imagine the frustration of management in having to bargain with two unions, who are forever competing with each other, for the same classification of employees under the same civil service system.

We have found a separate department or division to exist where a group of employees is functioning distinct and separate from other employees and where such employees are neither craft nor professional. The Commission will permit said employees to determine for themselves as to whether they desire to establish a separate department. 10/ For example, the Commission has determined that all clerical employees employed in a county did not constitute a separate department or division since they had no common separate supervision. 11/ In the Fire Department of the city of Milwaukee, where a separate division had been established for certain water-front firefighter classifications, the Commission permitted said firefighters to determine for themselves whether they constituted a separate unit. 12/ The Commission found a county home and sanatorium to constitute a single division of a county, separate and apart from the County Hospital, for the reason that the operations of the home and sanatorium were sufficiently integrated and similar in nature so that the hospital was not included in said division by reason of its physical division, its separate supervision, and an absence of a substantial integration in the operation of the other two institutions. 13/ On the other hand, in a case involving another county, we found that the operation of a county hospital and a county infirmary were sufficiently integrated in a similar nature and employees in both the hospital and infirmary were found to have constituted a separate department. 14/ With respect to teaching personnel involving the Milwaukee Vocational and Adult School, we determined that vocational school teachers who teach more than one-half of a full teaching schedule constituted a division separate and apart from those teachers teaching less than one-half of a full teaching schedule since conditions of employment, wages, and benefits were different for both groups.

---

10. Dodge County Hospital (6067) 7/62

11. Waukesha County (8548) 5/68

12. City of Milwaukee (6476) 8/63

13. Eau Claire County (6183) 12/62

14. Monroe County (8166) 9/67

15/ With respect to substitute per diem teachers in the employ of the Milwaukee School Board, we found that those teachers constituted a division separate and apart from the regular teaching personnel since they had no tenure, they did not get the fringe benefits received by regular teachers, and they were paid at a per diem rate rather than on an annual basis. 16/

There are at least two bills presently pending in the Wisconsin legislature to amend our municipal employment law, and both labor and public-employment management have favored the elimination of the present procedure for the establishment of units and would favor granting discretion to our agency in the establishment of bargaining units. If we had such discretion, we would no doubt eliminate a majority of the fragmentation that now exists and would probably establish units on the basis of community of interest, such as white-collar, blue-collar employees, and the like.

The state employment labor relations statute grants our agency discretion similar to that granted to the National Labor Relations Board by the federal act with respect to unit establishment.

> (3) "Collective bargaining unit" means the unit determined to be appropriate by the board for the purposes of collective bargaining. Employees in a single craft or profession may constitute a separate and single collective bargaining unit. The board may, and in order to effectuate the policies of this subchapter, determine the appropriate bargaining unit and whether the employees engaged in a single or several departments, divisions, institutions, crafts, professions, or occupational groupings, constitute an appropriate collective bargaining unit. The board may make such a determination with or without providing the employees involved an opportunity to determine for themselves whether they desire to establish themselves as an appropriate collective bargaining unit.

However, there is a provision in the state employment act which has affected our so-called discretion:

111.91 SUBJECTS OF COLLECTIVE BARGAINING. (1) Matters subject to collective bargaining are the following conditions of employment for which the appointing officer has discretionary authority:

(a) Grievance procedures;

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

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

---

15. (6343) 6/63

16. Milwaukee Board of School Directors (8991) 2/69

(d) Scheduling of vacations and other time off;
(e) Use of sick leave;
(f) Application and interpretation of established work rules;
(g) Health and safety practices;
(h) Intradepartmental transfers; and
(i) Such other matters consistent with this section and and the statutes, rules and regulations of the state and its various agencies.

(2) Nothing herein shall require the employer to bargain in relation to statutory and rule provided prerogatives of promotion, layoff, position classification, compensation and fringe benefits, examinations, discipline, merit salary determination policy and other actions provided for by law and rules governing civil service.

After four years of operation under the state act, there has been no uniform policy adopted by the department heads. They continue to insist on operating their own individual kingdoms and to make their own individual decisions with respect to those matters on which they have the authority to bargain. As a result, our agency, in establishing bargaining units, in this regard is the fact that in a petition filed by the Wisconsin Nurses Association requesting a unit of all the nurses in state employment, employed in six state departments, we found it necessary to establish six separate bargaining units of nurses, although they were covered by the same salary schedules and the same civil service provisions on a uniform basis. There is one consolation, however, that the nurses are represented by one organization in all units, and there is nothing in the act which prevents multi-unit bargaining. The fragmentation of bargaining units becomes an aggravation when different labor organizations represent employees of similar classifications in separate units.

There are also presently pending in our legislature two bills which would substantially amend our State Employment Labor Relations Act, both providing that salaries and other monetary fringe benefits would be subject to collective bargaining. If the Act is amended to require the state to bargain on such matters, there is no doubt that the Commission will change its policies with regard to unit determinations in state employment, and it most certainly will abandon its present policy of not crossing department lines in establishing appropriate collective bargaining units.

Concluding Remarks

By now it is obvious to you that the various state statutes discussed, and those not discussed, approach issues with regard to the establishment of bargaining units in what I can only describe as a smorgasbord. The agencies administering said statutes can only order that which is "cooked up" by the legislative body in adopting the labor relations menu. The labor relations agency involved digests the facts, issues its decision, and hopes that those affected thereby have a "bon appetit." The professionals in administering public employee collective bargaining statutes are continually seeking legislation with respect to the establishment of units, which will protect the rights of the employees, the parties, and the public, and at the same time not jeopardize or interfere with the governmental function to such an extent that it will weaken its administrative and management responsibilities, and, of course, its program.

ARBITRATION OF UNIT DETERMINATION
A CASE STUDY

Morris L. Myers

Mr. Myers' comments were presented informally at the two-day conference on unit determination. Although he was unable to review and edit his material because of printing deadlines, it was decided to include his discussion in the Proceedings since it provides invaluable insights into the process of arbitration of representation unit determinations.

My comments concern the Sacramento County experience, which, I think, you might find helpful in two ways: first, in relation to the kind of ordinance that might be drafted on unit determinations; and second, in relation to my experience involving the actual ordinance that was passed there last year.

The Sacramento County Ordinance provided that if the county and the unions could not agree on appropriate bargaining units, the parties would submit to final and binding arbitration. Both county and labor organizations that were interested in representing certain groups of county employees met and agreed upon an arbitrator to decide all the unit determinations for the entire county. I was fortunate to be selected as the arbitrator.

Hearings began in February, 1971, and lasted 20 days. The unit determination hearings were held in early May. By June 1st, I was expected to make a decision. I had a very tight time schedule since there were post-hearing briefs as well as elections after the unit determinations, and collective bargaining agreements also were to be negotiated.

In any event, I am happy to say that presently all of the collective bargaining agreements have been signed. I think it demonstrates that all parties were anxious to do the job and do it the right way. Without the cooperation of all the parties involved, this undertaking could not have been accomplished in that short period of time. If any one large group had desired to obstruct or delay the hearings, they probably still would be going on. I do not envy the five members of the Los Angeles Employee Relations Board for what lies ahead for them.

In Sacramento County, approximately 6,000 employees were involved, whereas in the City of Los Angeles, there would be approximately 70,000 employees. I suspect, also, that the positions of certain parties would probably be much more polarized in Los Angeles County as they were in Sacramento County.

Certain problems arose with respect to the Sacramento County Ordinance, a discussion of which may be helpful to you. First of all, I decided to begin with the professional units, since, in my judgment, there were fewer issues involved. They could be dealt with relatively easier than other units. The only limitation with respect to unit determination under the Meyers-Milias-Brown Act is that professional employees shall not be denied the right to separate representation if they so desire. This was incorporated into the Sacramento County Ordinance. However, it was apparent at the outset that there were some professional groups who filed petitions as a defensive measure. For example, both the planners and the engineers had organized separage unions. This was primarily because one of two major competing groups in Sacramento, an organization called SOURCE which is a joint council comprised of the Sacramento County Employees Association, two locals of SEIU, and the operating engineers, had filed for a broad, non-supervisory unit, a "carpet to carpet" unit. SOURCE had included in those petitions classifications of professional employees, such as doctors, lawyers, accountants, planners, and engineers. As a defensive measure, these professional groups of employees had to establish their own labor organization in order to assert the right to be represented separately.

One benefit in having a single arbitrator rather than a board is that you can seal out these situations and deal with them rather expeditiously. You might say that you take yourself out of the aloof role of an arbitrator and place yourself somewhat in the role of a mediator or semi-mediator. I asked these employees if they really wanted to be separately represented and bargain collectively with the county. The answer was, no; they felt they had to do this in order to avoid a broader unit; they really did not desire a labor organization, they just wanted things to remain as they were. In this situation, I suggested to the county and SOURCE that these classes of employees be dropped from the petition as well as not considered in the answer. The planners and engineers were content to withdraw their petitions since they had no desire to join a labor organization. Thus, it saved a great deal of time.

However, you have to be sure of your ground. For example, the accountants said in earnest, "We have an association and we want to bargain." They had their own professional unit established.

As far as the professional units themselves were concerned, the ordinance was drawn in such a way that the arbitrator did not have the power or authority to determine who were professional employees. The county took the position that only it, unilaterally, could determine who were professional employees. Some of the professional organizations also took the view that the arbitrator could not make that determination, and the legislative history seemed to support this.

Under such circumstances, it is virtually impossible to make unit determinations if there is a dispute among the parties as to who are professional employees. For example, the Licensed Vocational Nurses League took the position that licensed vocational nurses, professional employees within the meaning of the act, were entitled to a separate bargaining unit. The county took the position that they were not professional employees. Well, how can the arbitrator make unit determinations if he cannot, at the outset, determine whether these licensed vocational nurses are, in fact, professionals? It was finally determined that they were not professional employees, but then I had to address myself to the subsidiary question whether licensed vocational nurses, even though non-professional, deserved separate representation.

The Sacramento County Ordinance contained the following statement as the basic criterion for what is considered an appropriate bargaining unit: "The unit shall include the broadest feasible group of employees who share a community of interest." I interpreted this statement to mean that if there was an appropriate bargaining unit, say, under Taft-Hartley--but it could also be part of a larger group of employees to constitute an appropriate bargaining unit--then this statement in the Ordinance precluded my finding the smaller group to be appropriate. Even more important was that it also precluded my finding that the smaller group had a right to a self-determination, or a Globe-type election. This was true with respect to the licensed vocational nurses. I am confident that under Taft-Hartley, the licensed vocational nurses would have been entitled to a Globe-type election, and I determined that these nurses were an appropriate bargaining unit. But, with this statement in the Ordinance, I was required to include the licensed vocational nurses in a larger, medical-department bargaining unit, which I did also find to be appropriate.

Also, under the Sacramento County Ordinance I was required to separate supervisory from non-supervisory units. If you read the decision, you will find I determined that a broad supervisory unit was appropriate. I did this primarily for two reasons: First, I believe that the element of efficient operations of county management, which is one of the criteria in the Ordinance, is of much more importance with respect to supervisory employees than non-supervisory employees. In other words, I consider supervisors, regardless of where they are supervisors, to be a part of management. They are closer to the power center, and I think that the skills of just being supervisor are very important and interrelated among departments. Therefore, I felt it was appropriate that there be a broad supervisory unit.

There was another unstated reason why I held one supervisory bargaining unit to be appropriate. It is my prediction, and I say this with some hesitation, that sooner or later the Meyers-Milias-Brown Act will exclude supervisors from the right of representation in public employment. I frankly think they should be excluded.

Another major problem in the Sacramento County Ordinance was that you could not split classes. For example, we were confronted with a situation regarding ward clerks in the Medical Center. They were classified as Class I and Class II clerks. Clerks of the same classification were working in the Probation Department and the Assessor's Office, but I could not split these ward clerks from the other clerks because of this prohibition in the Ordinance. It did not make any sense since there was a community of interest of ward clerks with the nurses' aides, the licensed vocational nurses, and, for that matter, the nurses in the patient care group. I think the moral is that if you ever have any influence in drafting legislation, it is not a good idea to prohibit the splitting of classes. Under the circumstances, the most I could do was to say where I thought these ward clerks really belonged. All of the parties in the hearing urged me to say this to put pressure on the Civil Service Commission to pull the ward clerks out and establish a separate class. I think the other moral--which is a long time coming but I think will come--is the abolishment of the Civil Service operation. Collective bargaining in the public sector cannot live comfortably on a long-term basis with a Civil Service Commission.

In closing, let me inform you of the units of employees that were established and the reasons for these determinations. I established a total of four non-supervisory units. Two consisted of a broad office, technical unit (white-collar) and a blue-collar unit. I did this because it follows what happened in the private sector. There has always been a demarcation between production and maintenance employees as well as between office and technical employees under Taft-Hartley, and I think it is a sensible one. I think that the interest of blue-collar employees are basically different from those of white-collar employees in terms of motivation, work environment, and so forth. However, sometimes it becomes difficult to determine who is a blue-collar or a white-collar employee. There were some touchy classes where I was not sure in which unit they were to be included. I did the best job I could. I think the important thing to the parties is to make it clear as to which specific classes are included in each unit. I set this forth explicitly so there would be no quarrelling as to where a particular class fell. I was urged by one of the parties to make my award in terms of generic groups without being specific as to classes. I felt that if I did this, I would be creating many problems and disputes regarding under which group any particular class would fall.

The third appropriate bargaining unit determined was a Medical Center unit. It was my belief that the work environment in the hospital is just too different from the work environment in any other county service, and I therefore felt that the Medical Center unit was appropriate.

The fourth unit was a Welfare Department unit. This was predicated largely on the bargaining history of the parties themselves. The county had dealt on an exclusive bargaining basis with three labor organizations. The first was the building trades for the craft group who had already agreed to that bargaining unit before I came in. The second was a stationary engineer group. The county, aside from these two groups, had dealt on an exclusive bargaining basis with one of the locals of SEIU for Welfare Department employees constituting the third group. Thus, there was substantial bargaining history. There had even been a strike of Welfare Department employees, and although I do not recommend it as a means of establishing bargaining history, it certainly is a dramatic way of doing so. Because of this bargaining history, I thought that a Welfare Department unit was appropriate.

The establishment of a Welfare Department unit also was very significant in terms of the election results. If I had not determined this unit, all of these welfare employees would have been included in a larger, Office-Technical unit.

Since all of the technical Welfare Department employees were members of SEIU, which is part of the general council called SOURCE, the larger technical unit almost certainly would have been won by SOURCE. As it turned out, there had to be a runoff election between SOURCE and AFSCME in the Office-Technical unit, which was won by AFSCME. It was then clear that the unit determination made in the Welfare Department was responsible for AFSCME becoming the bargining agent for the Office-Technical group.

This demonstrates another problem, namely, the value of having a neutral or group of neutrals make unit determinations instead of a county, city, or other governing entity. I am convinced that if the county had determined the Welfare Department unit was an appropriate one, it would have been accused by AFSCME of trying to confuse the election. I am confident this would not have been the case because the county group had really played it straight; they are very sophisticated in collective bargaining and are not anti-union. It was a delight to work with them because they did play it straight. However, if they had been put in the position of having to make the determinations, they would have been accused of hanky-panky--and in this life it is not how things are, but how they appear to be that is often important.

NOTE: The complete text of Mr. Myers' decisions involving representation unit determinations in Sacramento County appears in California Public Employee Relations, "A Special Report on Sacramento County." CPER Series No. 10, August 1971, pp. 8-14, published by the Institute of Industrial Relations, University of California, Berkeley.

THE NLRB AND BARGAINING UNIT DETERMINATIONS

Julius N. Draznin

Frequently, we enter directly into discussions of current problems without an adequate understanding of the past--of how we got to where we now find ourselves. In view of this, I am prefacing my remarks today with some historical facts regarding the development of bargaining and unit determinations.

Senator Robert F. Wagner noted, in remarks made in 1933 regarding the then recently formulated Section 7(a) of the National Industrial Recovery Act, that "the bill marks a far-reaching departure from the philosophy that the Government should remain a silent spectator, while the people of the United States, without plan and without organization, vainly attempt to achieve their social and economic ideals."

The purpose of the NLRA was to insert the government, its supervision and its advice, into the economic affairs of the nation, including, through Section 7(a), the outline of a system of checks and balances between industry and labor. Interestingly enough, the enactment of Section 7(a) was not only met with intense resistance by numerous employers, but also with tremendous multiplication of company unions as a barrier to the trade union movement.

Senator Wagner became convinced that the critical issue was the need to impose upon employers the duty to bargain with legitimate worker organizations. This congressional leader also determined that of equal importance to bargaining was the principle of majority rule for electing employee representatives. This principle was not new. It had been used by the War Labor Board in 1918. It had also been applied by the Railway Labor Board pursuant to the Transportation Act of 1920. Majority rule entails the concept of a unit of employees who will determine, by voting or signed cards, the representation agent.

In March of 1925, the man who was the chairman of the first National Labor Relations Board, Francis Biddle, told a Senate committee: "The major problem connected with the majority rule is not the rule itself, but its application. The important question is to what unit the majority rule applies." And this, of course, is still the question today.

The NLRB, with greater discretion than its predecessors had in determining bargaining units, immediately got itself entangled in the dispute between the AFL and the CIO, craft

versus industrial unions. While, on one hand, the Board had almost unanimous labor support, on the other, its decisions in the thirties drew very heated reactions and criticism from one side or the other on this question.

The NLRB issued its first famous line of decisions under the "Globe Doctrine," which held, in effect, that where the considerations over rival units were evenly balanced, i.e., between industrial and craft, the deciding factor should be the decision of the employees in the craft group.

There were other vexing problems the Board faced on unit matters. There was, for example, the question of single-plant versus multi-plant units. There was also the famous line of decisions that followed the American Can case in 1939, when a Board majority decided to limit the Globe Doctrine by permitting an election for a craft group that wanted to gain severance from an industrial unit that had an established bargaining history. Still another very important unit problem was whether or not supervisors should be included in the same unit as nonsupervisory employees.

Now, in the area of public service that we are all concerned with here today, we know full well that the unionization of private sector employees has sparked interest among public employees. Still, unions weren't new in the public sector, even years ago. Postal workers had labor unions representing them as was feasible--and so did ship-yard workers. And in many communities, teachers, firemen, and others had some union affiliations and had attempted representation. But this did not mean that there was acceptance of the right to bargain collectively.

President Franklin Roosevelt, in 1937, said in part: "All government employees should realize that the process of collective bargaining, as usually understood, cannot be transplanted into the public service. The very nature and purpose of government make it impossible for administrative officials to represent fully or to bind the employer in mutual discussions with government employee organizations.... Particularly, I want to emphasize my conviction that militant tactics have no place in the functions of any organization of government employees."

But, in fact, even before the President spoke, the great TVA development was underway, and an extensive labor relations program was developed which included the same elements as set forth in the NLRA. By 1940, the AFL Metal Trades Council had a contract with the TVA, and in 1942 there were contracts covering office and technical employees,

and engineers and chemists at the TVA. Later students of the great TVA story have hailed its record in personnel and labor relations as one of the most significant contributions to "the application of democracy to public administration."

The Taft-Hartley Act amended the NLRA in 1947. It virtually maintained all the basic elements of the Wagner Act, and a list of unfair labor practices by unions was added. Section 8(c) was added, expanding employer rights of free speech. Supervisors were removed from the protection of the law.

Majority rule for selecting union representatives is the method hammered out in this nation in our national labor law. Majority rule means exclusive representation rights. (Proportional representation was actually debated but it was rejected; minority unions were given no legal standing.) Majority rule also had an impact on the individual employee who was not a union member. For, while he could pursue his grievances himself, if the grievance is related to the union contract, the union has to be advised. Majority rule also meant establishing bargaining units. In addition to having a majority, the employees must be in a unit appropriate for collective bargaining. Now, that means a unit that is appropriate to ensure to employees in each case the fullest freedom in exercising the rights guaranteed by the National Labor Relations Act.

Problems in determining an appropriate unit are complex and voluminous. There are many different viewpoints to be considered. We can assume that a union seeking representation rights will petition only for a grouping of employees which it can successfully organize. The employer, on the other hand, will try to get a unit finding which he believes the union will find most difficult to organize. So, let us examine some of the principal areas of bargaining unit decisions and the bases used by the NLRB for these determinations.

With regard to professional employees, section 9(b)(1) of the NLRA prohibits the Board from deciding that a unit including both professional and non-professional employees is appropriate, unless a majority of the professional employees vote for inclusion in such a mixed unit. (Vickers, Inc., 124 NLRB 1051; Pay Less Drugs, 127 NLRB 160.)

The question of single-location units versus multi-locations as a single unit is much more complex. Very recently, the NLRB, in split decisions covering several cases, found that retail establishments, in one instance,

part of 22 locations in the New York-New Jersey area, did not lend themselves to a finding of a single-store bargaining unit, such as the Board's Regional Director had determined earlier. The Board majority particularly stressed the element of uniformity:

The 22 stores involved have identical designs, are in the business of serving the same food, and observe the same hours of doing business. While each location was separately incorporated, overall policy for all corporations is established at the headquarters of the corporate structure. The policies established are applied uniformily, and these policies include labor relations. All administration, payroll, and record-keeping are centralized at headquarters. All employees receive a uniform fringe benefit program. There are separate divisions, each with its own general manager and field supervisors; each restaurant in the division also has its own manager. Field supervisors visit each location daily. Hiring and discharges, wage increases, promotions and transfers must be approved by a field supervisors or the general manager. There is employee interchange between locations.

Finally, the majority of the Board stressed the standardization of the business and the centralized control of labor relations, and the fact that "any meaningful decision governing labor relations matters emanates from established corporate-wide police, so implemented by the general managers and field supervisors." (Twenty-First Century Restaurant, 192 NLRB 103.) This decision could well be a new landmark for unit findings that lie ahead involving retail chain operations.

Another multi-unit finding, of office workers in this instance, was found for similar reasons to be appropriately including several locations of a stock-brokerage firm, as against a single location. The case in point is Dean Witter & Company, Inc. (189 NLRB 119). It precedes by several months the earlier citation of the restaurant chain. Again, a functional integration between locations is substantial. Hiring and firing of some of the personnel is handled through a central office; common policies are exercised with respect to pay, hours of work, and fringe benefits. There is also a substantial interchange of personnel.

What are some of the other elements that one can look for that will possibly determine the size of the bargaining unit and its complexity?

A very recent case, involving the United States Steel Corporation (192 NLRB No. 12), contains some excellent guidelines for future use. Again, we find the language relating to employee sharing, to substantially the same working conditions,

the same employment benefits and fringe benefits. The functions of several departments of the company are found to be integrated operationally; there is interchange of personnel, routine contact, common supervision; all of which led the Board to say, "that any separate community of interest which the craft or maintenance employees might enjoy has been largely submerged into the broader community of interests which those employees share with other employees."

The very complex issue of craft unionism and industrial unionism has been a source of great criticism. Yet, as John Abodeely summarizes the situation in his recent monograph, entitled The N.L.R.B. and the Appropriate Bargaining Unit, "There is much to be said in behalf of the NLRB's craft unit determinations. Should the Board adopt a policy of freely granting separate representation to craft employees, it may well be sowing the seeds of labor relations instability."

I have covered only a very small segment of the subject of NLRB bargaining unit findings. There are many, many more areas of significance, but time will not permit me to dwell on this aspect further. I have already cited some of the principal ones in the decisions referred to above.

In the Post Office, over which the NLRB has now jurisdiction, the precedents established by the Board will be applied to cases arising in the Postal Service. Officers of the postal unions and some of the postmasters have already asked: where would the Board stand on unit questions that might arise?

The answer will lie, one, in the particular facts of the particular case; and, two, in how the NLRB applies its precedent-making cases to the facts of the particular case. To date, Post Office cases filed with the NLRB nationwide, in July, were about 14 C cases and 7 R cases. In August, the figures appear to be twice that number. What September's figures are still is not known.

What would happen, for example, if all the Post Office truck drivers who cover a certain area of the city taking mail from mail boxes were organized in a new labor entity; a petition is filed alleging an appropriate unit for such drivers in a given limited geographical area. The Board would have to get all the facts and determine the correct criteria, similar to those which I have described earlier, as to whether the unit requested is appropriate or, if not, what the appropriate unit is and why.

Because the Postal Service consists of many diverse operations at numerous and widespread locations, it conceivably could be the source for a great many difficult questions. So far, this has not been the case. As a matter of fact, while there are some election petitions for representation now pending at the NLRB that have come from the Postal Service, no decisions of unit findings have issued as yet from the Board.

Before going into the subject of election campaigning and the changes that have occured in this area, let me dwell for a moment on some recent arbitrations that involve issues of appropriate bargaining unit in cases arising in the public sector.

The American Arbitration Association has recently published a compilation, entitled Arbitration Cases in Public Employment. It contains a section relating to bargaining unit arbitrations that I find to be of some significance. Arbitrators are being called upon with greater frequency in public sector labor disputes to determine appropriate bargaining units. In almost each case written up in this excellent collection, the issue of unit in the public sector arose out of changes in employment, poorly defined procedures for determining the unit in the first place, or a very hard-nosed union and/or management attitude in resolving issues as to where a new employee or a new job or job classification belonged. In one case involving branch librarians, the arbitrator sounds very much as though he made a thorough reading of NLRB decisions before walking a tightrope toward his own conclusions and findings.

My point here is that unit problems can and do occur at many points in the course of the working relationship between management and labor; but a clearly defined bargaining unit or agreement at the outset of a bargaining relationship can pay huge dividends in reduced problems, costs, and plain headaches in the future.

Unfortunately, many arbitrators are not equipped to handle the special problems that arise in making bargaining unit determinations. The expertise and ability that are needed for unit findings, the vital importance of continuity in the decision-making, lead me to a personal recommendation, namely, that a panel of arbitrators be established in each area or community who have knowledge and expertise in unit findings; and from these panels the arbitrators should be chosen for unit-determination purposes. Actually, I should like to see three-man panels of arbitrators sitting on unit-determination cases. But, in the alternative, if a select panel of arbitrators were operating under this type of procedure, individual arbitrators chosen to hear such cases should be able to

develop the expertise and continuity of decision-making necessary in this area of collective bargaining.

Now I would like to spend the time remaining in covering the matter of employer and union conduct preceding an election for representation. The Board has the broad duty of providing procedures and safeguards for elections, and it has a wide discretion in determining when conduct does or does not jeopardize the untrammelled expression of employee freedom of choice. In a recent case in which the NLRB was reversed by the Tenth Circuit Court of Appeals (NLRB vs. Sanitary Laundry, Inc., J-6263, issued May 14, 1971, 172 NLRB No. 233), the court found that the Board erred in concluding that letters sent by the employer to the employees were coercive. There being several letters, the Board had found the letters to be coercive in their total effect, even though they were not considered separately, each one of and by itself.

On the other hand, the court was critical of the Board in finding that the union conduct was not coercive, even though employees were threatened and told that those who voted against the union would lose their jobs.

The employer's letters had been arguing that unionism would inevitably result in strikes and economic depression. The court decision cites excerpts from the employer's letters, and then summarizes by stating: "Although the Board has a duty to assure fair elections, it must recognize a Congressional intent to encourage free debate on issues dividing labor and management. And cases involving free speech are to be considered against the background of a profound commitment to the principle that debate should be uninhibited, robust, and wide-open...."

The court goes on to say the employer did not violate these tenets, and he did not "set forth any reckless or actual untruth." The court's stress on the truth or untruth of an argument highlights what is now a vital factor in NLRB determinations, on whether or not pre-election campaigning does or does not exceed the bounds of legitimate conduct. In the instant case, the company, just by repetition, made its point; but its argument, though often repeated, was not untrue, to wit, the union's chief economic weapon is the strike. But, with all this campaigning, there can be no threats or promises. No reference can be made to decreasing benefits or to a refusal to bargain in good faith, should the union win.

The circumstances in which campaign remarks are made are also significant. In Great Lakes Chemical Corp. (174 NLRB No. 79), the plant manager made an inappropriate remark at a social gathering. The Board found that the circumstances, were, in

and of themselves, not conducive to accuracy and therefore constituted no basis upon which to construe the remarks made to be substantial and material misrepresentation.

In the realm of misrepresentation before an election, time is another critical element. If there is not ample opportunity for reply, a serious misrepresentation before an election may be sufficient to set it aside. (Compare General Electric Co., 162 NLRB 912, and Western Electric Co., 172 NLRB 59; also see Hollywood Ceramics Co., Inc., 140 NLRB 221 and Tram Company, 137 NLRB 1506).

While I have covered only a very small portion of pre-election campaign problems, I believe I have mentioned those that are receiving the greatest attention and use at this time. There is much that the private sector can contribute to the public sector; but bear in mind that in the latter there are complexities arising out of the many layers of local governmental units which have to deal with many labor unions that have no corollary in the private sector.

The political nature of the trade union as it affects local government and its employer representatives will further complicate your collective bargaining scene. Then there are the local communities competing with each other (or trying not to, as the case may be) on matters of wages, etc., always keeping in mind the nature of the tax base that provides the income with which to pay the final bill.

In the private sector, we have our problems; but we certainly have no monopoly on them. Where our expertise and experience can be helpful, please call on us. Thank you.

RECOMMENDED READING AND ADDITIONAL CASE CITATIONS

Abodeely, John. The NLRB and the Appropriate Bargaining Unit. University of Pennsylvania, Labor Relations and Public Policy Series, Report No. 3.

Bok, Derek, and Dunlop, John T. Labor and the American Community. Simon & Schuster, 1971.

Derber, Milton. The American Idea of Industrial Democracy. University of Illinois Press, 1971.

Stone, Morris, ed. Labor Grievances and Decisions. American Arbitration Association, 1970.

Tracy, Estelle R., ed. Arbitration Cases in Public Employment. American Arbitration Association, 1969.

"Employer Free Speech." In Northwestern University Law Review, 1968, vol. 63, no. 1, pp. 40-75.

"Policy Concerns in Public Employee Bargaining." In Labor Law Journal, August, 1971, pp. 484-498.

"Resolving of Unrest in the Public Sector." In Report of Spring 1969, Meeting, Industrial Relations Research Association, pp. 517-553.

"The Suppression of Employer Free Speech." In Villanova Law Review, 1970, vol. 15, no. 3, pp. 588-611.

Some Recent NLRB Unit Findings:

1. Levitz Furniture Co. of Santa Clara, Inc., 192 NLRB No. 13.
Truck drivers included in overall warehouse and store bargaining unit.

2. Marriott In-Flite Services, 192 NLRB No. 54.
Kitchen personnel in single-location unit not appropriate where several kitchens operate as functionally integrated and directed enterprises.

3. Safeway Stores, Inc., 174 NLRB No. 189.
Programmers included in a unit of office and technical employees where they are not required to have long training histories.

4. Westinghouse Electric Corporation, 163 NLRB 726.
Engineers found to be professional employees and not managerial, even though work performed requires great competence and use of independent judgment.

5. American District Telegraph Company, 160 NLRB 1130.
Determination of guards' bargaining units and criteria set forth by U.S. Court of Appeals, Third Circuit. Same Company, 205 F. 2d 86(C.A.3).

6. Hampton Roads Maritime Assn., 178 NLRB No. 44.
Determination as to confidential employees and their exclusion from the bargaining unit.

7. Ramar Dress Corp., 175 NLRB No. 52.
Managerial employees defined even where they are not strictly in supervision; excluded nonetheless.

8. Sheffield Corporation, 134 NLRB 1101.
Technical employees' criteria established for determination as to status and whether or not they should be in unit with nontechnical employees.

9. Mallinckrodt Chemical Works, 162 NLRB 387.
Employees performing skilled duties and constituting a potential craft unit may be separated from a larger already existing bargaining unit, under certain conditions. (Further affirmed in Safeway Stores, 178 NLRB No. 64.)

10. Mountain States Telephone & Telegraph Co., 126 NLRB 676.
A systemwide bargaining unit in a public utility, while ultimately the most desirable, is not always the only appropriate unit when administrative subdivisions and other lines of demarcation are taken into consideration.

SUPERVISORS AND MANAGERIAL EMPLOYEES IN PUBLIC SECTOR REPRESENTATION UNITS: RANDOM COMPARISONS WITH THE PRIVATE SECTOR

Reginald H. Alleyne, Jr.*

One of the many interesting aspects of decision-making in public sector labor relations disputes is to observe how labor and management use the National Labor Relations Act(NLRA). From its inception as the 1935 Wagner Act, the NLRA has expressly excluded federal, state, and local units of government from its coverage. Despite this explicit exclusion of public sector entities, both public employers and unions representing employees in public sector disputes frequently cite National Labor Relations Board and court decisions interpreting the National Labor Relations Board and court decisions interpreting the National Labor Relations Act. In these cases, I have found that two arguments may be used by management or by labor when confronted with the issue of National Labor Relations Act precedents and their possible application to analogous issues arising in the public sector. Argument number one is: The NLRA precedent is analogous and should therefore be followed in the public sector. Argument number two is: The NLRA precedent is analogous but decisions interpreting the NLRA are not binding upon public sector labor relations agencies.

I have witnessed the same party to a dispute before our Commission use argument number one on one occasion and argument number two on another occasion involving a different issue. This is fair advocacy, but in those instances I can never resist reminding a party that not very long ago we heard a different argument.

This raises questions concerning the propriety of using NLRA precedents in public sector labor relations disputes; when, and under what circumstances if at all, should they be used? Obviously, public sector agencies concerned with employee relations are not bound by the comparable decisional law in the private sector. Accordingly, it would be erroneous to conclude that all of those private sector decisions should be followed by a public sector agency. It would be equally erroneous, I think, to entirely ignore the decisions construing a statute which has existed for three and a half decades, and which now is the source of 37,212 cases flowing annually into NLRB offices around the country. Like so many issues in the law, the answer lies somewhere between two extremes.

---

* Acting Professor of Law
UCLA School of Law

Private sector decisions as precedents in public sector disputes is a fascinating issue, with jurisprudential overtones, but this is not the occasion for its full exploration. While that is true, I think the subject of representation units is one where some differences and some similarities which exist between public and private sector labor-management relations is sharply manifested. No doubt, you have already gathered this from listening to Mr. Draznin discuss some representation unit issues arising under the National Labor Relations Act. I should like to focus on another phase of the unit subject: the matter of some of the consequences flowing from a supervisory, managerial, or professional status. Here, some differences and similarities between the bargaining process in the public and private sectors are particularly conspicuous. If nothing more, by making comparisons we are aided in our understanding of the public sector aspects of the subject.

Supervisors

First, supervisors. As your outline notes, both the NLRA and the Los Angeles County Employee Relations Ordinance define a supervisor. If you examine the language in Section 3(r) of the Ordinance and compare it with Section 2(11) of the NLRA, you will quickly conclude that the Ordinance's definition of supervisor was lifted almost verbatim from the NLRA's definition of supervisor.

You may make this comparison by observing the similarities between the two definitions at page 16 of your Glossary of Selected Employee Relations Terms. The definition of supervisor there is from the NLRA; the definition of supervisory employee is from the Los Angeles County Employee Relations Ordinance. This tells or attempts to tell us who is and who is not a supervisor under those provisions. Section 2(3) of the National Labor Relations Act excludes supervisors from the Act's coverage. This is the Act's definition of employee. It provides, among other things, that the term "employee," "shall not include...any individual employed as a supervisor...."

The Private Sector Supervisor

At page 4 of your glossary you will find the full NLRA definition of employee. Note that the supervisory exemption appears in the same section of the Act which excludes domestic workers, agricultural workers, and other powerful and vested interests, from the definition of employee, and hence from the Act's coverage.

The supervisory exemption did not appear in the original Wagner Act, but was added by the Taft-Hartley amendments in 1947. Until that time, supervisors enjoyed the same kinds of protection now enjoyed by nonsupervisory employees under the NLRA. They were free to vote in representation elections, free to be part of bargaining units, and they could not be discharged or otherwise discriminated against because of their union activity.

This gives us some insights into the tensions which this issue evoked. The Wagner Act was, to say the least, not popular with employers. Once it passed, most employers probably felt that they would at least not have to contend with their supervisory personnel organizing, petitioning for NLRA elections, and demanding the right to bargain with the hand that fed them, that gave them supervisory authority, and which, as a result, conferred upon them the status of representatives of the employer class. These employer attitudes were converted to legal action in the 1946 Supreme Court case of Packard Company v. NLRB.

In that case, 1,100 foremen who supervised 32,000 rank-and-file employees at the Packard Motor Car Company sought to organize as a unit of the Foremen's Association of America, an unaffiliated organization which represented supervisory employees exclusively. The NLRB held that a unit of foremen was appropriate. The Foremen's Association subsequently won a representation election and asked the employer to bargain. When the company refused, the Association subsequently won a representation election and asked the employer to bargain. When the company refused, the Association filed a refusal to bargain charge against the employer. The Packard Company conceded that the foremen had a right to organize, but vigorously denied that the Act compelled them to recognize the union of foremen. The Packard Company's argument in support of that proposition was ingenious. They relied upon the Wagner Act's definition of employer--not the statutory definition of employee, but the statutory definition of employer. That definition, contained in Section 2(2) of the Act--which you will find at page 6 of Mr. Tamoush's outline--reads in part:

> The term 'employer' includes any person acting in the interest of an employer directly or indirectly....

The employer reasoned that this language lifted the foremen out of the employee class and into the employer class, inasmuch as foremen act "in the interest of /their/

employer...." The Supreme Court rejected this ingenious bit of semantics and held that all employees act in the employer's interest. Applying that finding to the employer's argument, it would have followed that all employees were employers and not employees--an absurd result. Finally, the Supreme Court relied quite simply on the absence of explicit language in the NLRA excluding supervisors from the Act's coverage. Said the Court:

> /T/here is nothing in the Act which indicates that Congress intended to deny its benefits to foremen as employees, if they choose to believe that their interests as employees would be better served by organization than by individual competition.

Thus, it was held that the Act did not exclude supervisors from its coverage.

Three Justices, Douglas, Burton, and Chief Justice Vinson, dissented. They felt that the Wagner Act necessarily excluded supervisors from coverage, notwithstanding the Act's silence on the matter. They reasoned that the majority holding would have to be applied to unions of company presidents and vice presidents. But the court majority, without elaborating, stated in response that there would be obvious and relevant differences between a unit of 1,100 foremen and a unit of corporate officers elected by the board of directors.

Now, so far as I know, corporate vice presidents and presidents rarely if ever seek the aid of the NLRB to achieve the goal of organizing for bargaining purposes. I suppose one reaches a point in the corporate hierarchy where the management function is so clearly identifiable as such that one is indeed describing the employer and not the employees. Those who work at that level in the private sector probably suffer no ambivalent feelings of "divided loyalty" between the workers and the employer. They are the employer, and no doubt think of themselves exclusively as such. If they organized to bargain with their "employer," they would find themselves bargaining with themselves.

This point might be kept in mind when, momentarily, my remarks are directed at the consequences of a managerial status in the public sector, particularly in Los Angeles County government. For now, what was the reaction to the Supreme Court's decision in the Packard Company case, holding that a unit of foremen was appropriate and that the employer was bound to recognize the union representing those

employees even though they were supervisors by today's statutory standard?

The Supreme Court was never given the opportunity to state how far up the corporate ladder one might move before becoming ineligible for the National Labor Relations Act's protective cloak of the right to organize and freedom from discrimination on account of the exercise of that right. In 1947, the year after the Packard Company case was decided, the Taft-Hartley Act amendments, among other things, explicitly removed supervisors from the National Labor Relations Act's coverage. Thus, in the private sector, where the NLRA is applicable, employers need not recognize a union of supervisory employees; employers may discharge with impunity supervisors who engage in union organizing activity. At the same time, though, Section 14(a) of the NLRA allows a supervisor to become or remain a member of a labor organization. But this appears to mean that passive, card-carrying union membership for supervisors is permissible. Anything beyond that in the way of organizing activity is unprotected activity for which the private sector supervisor may be discharged or otherwise disciplined. Further, in the private sector a unit of supervisors need not be recognized, and a unit of rank-and-file employees which included supervisors in most cases would be deemed inappropriate.

There are other interesting consequences flowing from a private sector supervisory status, but before discussing those I should like to take up the matter of the consequences of a supervisory status in the public sector. I hope to note those supervisory consequences which are peculiar to the public sector and then discuss those consequences which are common to both the private and public sectors.

The Public Sector Supervisor

Most public sector employee relations laws do not, as does the NLRA, exclude supervisors from coverage. I think our County Ordinance is probably typical. Its Section 3(f) definition of employee, unlike the NLRA's definition of employee, does not exclude supervisors. Indeed, it includes practically all County employees.

> "Employee" means any person employed by the County in a position in the classified Civil Service.

To find out who is in the County classified Civil Service, simply look at Article IX, Section 33 of the County Charter and see who is not in the classified Civil Service. Simply put, all County employees who are not in are out. Unclassified County employees are elected officials, like the Sheriff, District Attorney, and the Assessor, and one or two of their deputies or assistants. Also, under the Charter, members of commissions like our Employee Relations Commission and the Civil Service Commission are unclassified; school superintendents, principals and teachers are unclassified. All other County employees not so designated as classified are unclassified, notwithstanding their rank.

So, the definition of employee in the Ordinance is much broader than the comparable definition in the National Labor Relations Act. Supervisors in the County then--and I obviously do not mean the County Board of Supervisors--unlike those in the private sector, may not be discharged or otherwise disciplined because of their union activity, and the County, unlike a private sector employer, may become obligated, as it has in some instances, to recognize a unit composed of supervisory personnel. But in establishing employee representation units, Section 8(c) of the Ordinance admonishes that "supervisory employees shall not be included in a unit with...nonsupervisory emloyees unless [the] supervisory employees are in the same classification with nonsupervisory employees."

This section appears to permit mixed units of both supervisory and nonsupervisory personnel if the employee classifications are the same. In the County, we have not had much experience with attempts to establish units with both supervisory and nonsupervisory personnel of the same classification. In cases where representation of supervisors and nonsupervisors is sought, either the union has sought two units, one supervisory, the other nonsupervisory, or the Commission has determined, over the union's objection, that separate units were appropriate. I believe the County always takes the position that supervisors and nonsupervisors should not be in the same unit, even when the classifications are the same.

I can think of a number of policy reasons why it would not be desirable to have supervisors and nonsupervisors in the same unit. For example, in that instance, a grievance filed against a supervisor in the bargaining unit might present the union with an embarrassing situation. Perhaps, though, a union might reason that grievances against a supervisor member of the bargaining unit would be less likely to take place. This, on the other hand, is another reason why the County might properly resist the mixed unit.

Like so many contested labor relations issues, this one is not one-sided. There are some problems with the separate supervisory-nonsupervisory units. For example, some bargaining tensions arise in Los Angeles County's separate supervisory-nonsupervisory units because of the conflicting desires of some unions and the County on the question of tying together supervisory and nonsupervisory salaries. The unions sometimes want the salaries of the classifications in a nonsupervisory unit to stay within a certain number of salary schedules of the comparable salaries in the supervisory unit. I have found that the County generally does not want to be wedded to the formula proposed by the union, or, for that matter, to any such formula. This, of course, is legitimate bargaining on both sides--assuming good faith--and some form of compromise is usually worked out. At times, though, the compromise comes not without considerable anguish and delay, when, for example, neither the nonsupervisory group nor the supervisory group has reached an agreement; the nonsupervisory unit wants to see how the supervisory unit fares, and the supervisory unit is interested in the outcome of the nonsupervisory unit's bargaining. All well and good, unless, as is sometimes the case, one set of negotiations is on its way to protracted mediation and protracted fact-finding. In these instances, that problem is compounded and the pressures become most intense when the bargaining approaches and goes beyond the date beyond which negotiated salary agreements will not have an effective date beginning the first day of the fiscal year.

These are merely examples of problems involving supervisory personnel which are unique to public sector bargaining units. Obviously, in that category there are many others which the parties will have to contend with from time to time.

Apart from the question of whether supervisory and nonsupervisory personnel of the same classification should be placed in the same unit, a more serious question is whether, as a matter of legislative policy, supervisors in the public sector should be afforded any collective bargaining rights. Why, in this connection, should public sector practices differ so radically from private sector practices?

At one time in our labor-management relations history, organizational activity by supervisors was prevalent, particularly in the maritime industries. Both the decision of supervisors themselves to attempt organizational efforts and the general policy question of whether supervisors should be permitted to organize were influenced by a "loyalty" criterion.

Supervisors who felt that their primary allegiance was to management tended not to organize; those employers who felt that way--no doubt most--also felt that the law should not protect supervisors in their organizing efforts. We see similar tensions today in the area of white-collar worker organization.

Certainly, the foremen in the Packard Company case were examples of the other side of the coin. These men resolved their "divided loyalty" dilemma in favor of allegiance to their subordinate workers. And as we have already noted, Congress, by removing supervisors from the NLRA's coverage, finally decided the question in favor of the allegiance-to-management view.

In the public sector, it has been noted that a supervisor does not have the same kind of authority that a supervisor in the private sector possesses; that in the public sector the discharge and discipline functions are left untimately to decision-makers far removed from the worker's immediate supervision--a civil service commission, for example. Further, in the public sector, broad policy questions on matters like salaries are not decided by managers, but by law-making bodies clearly removed from management. It has apparently been concluded in most units of government passing legislation on the matter that these distinctive aspects of public sector employee relations warrant a treatment of supervisors and managers which differs drastically from private sector policies. Whether these distinctive features warrant a departure from the private sector policy of excluding supervisors from statutory protection and from bargaining units is problematical. The issue is best analyzed by examining, first, some supervisory-status consequences which are common to both the public and private sectors, and then the question of who is a supervisor.

At first blush, it might seem easy to conclude that there are no supervisory-status consequences which are common to both the public and private sector, inasmuch as supervisors are not covered by the NLRA and are covered by most comparable public sector legislation.

Common Public-Private Sector Consequences

Common consequences are few, and relate generally to a single general topic--the question of who is responsible for an unfair labor practice. An unfair labor practice under virtually all labor relations legislation may be committed only by an employer or by a union. In the case of alleged unfair labor practices by employers, an agent of the employer--

in short, a supervisor or other employer representative--must be shown to have committed the practice. In the overwhelming majority of cases, the issue does not arise. In some cases an employer may successfully defend on the ground that the person alleged to have committed the unfair practice was not a supervisor, but a rank-and-file employee whose acts could not be attributed to the employer. In these instances, the status of the alleged perpetrator becomes crucial.

These cases do not occur frequently because most unfair labor practice charges are based on the purported conduct of an individual who clearly qualifies as a supervisor or other representative of management. In the case of an alleged discharge because of union activity, for example, the discharge is itself tantamount to an admission that the person effectuating it was a supervisor, for the statutory definition of supervisor includes one who has the authority to discharge.

Consider, however, the unfair labor practice allegation of making coercive threats which interfere with legitimate union activity. Take, for example, the simple statement: "If you vote for the union you are going to be fired." The statement constitutes the clearest kind of violation of Section 8(a)(1) of the National Labor Relations Act or its counterpart, Section 12(a)(1) of the County Employee Relations Ordinance--if and only if--the statement is made by a supervisor or other person of comparable authority, or by one known to represent someone in authority. Such a statement by a rank-and-file employee would not constitute a violation of the NLRA or the County Employee Relations Ordinance, notwithstanding the vehemence, verve, and conviction with which it was made.

Having noted some consequences connected with a supervisory status or lack of a supervisory status, it should be clear that the question of who is a supervisor within the meaning of the NLRA or a comparable public sector law like our County Ordinance may be a vitally important question. We have already observed that in the public sector an employee's placement in a representation unit may depend upon his supervisory or nonsupervisory status; in the private sector, the resolution of the supervisory issue may also resolve the question of whether an employee is protected by the provisions of the NLRA; in both the private and public sectors, the resolution of the supervisory issue may also resolve the question of whether an unfair labor practice has been committed by an employer. It has also been noted

that the matter of who is a supervisor may bear on the policy question of whether supervisors should be covered or excluded from public sector labor relations law coverage. In this perspective, then, we might consider how, in a close case, one resolves the supervisory issue.

Who is a Supervisor

Once again I invite your attention to page 16 of Mr. Tamoush's excellent glossary. There, you will find the term supervisor defined, and recall once more that the only distinction between the NLRA definition and the County Employee Relations Ordinance is the use of the word "County" for the word "employer" in the NLRA. There are a few rules of thumb that I would like to leave with you on the subject of defining a supervisor under these statutory definitions.

Rule 1. If any of the criteria listed in the definition apply to the worker, the worker is a supervisor. This is the rule in the private sector, and a quick examination of the private sector labor digests would reveal a number of NLRB and court decisions so holding. If, for example, a worker did not have the authority to hire, transfer, suspend, or to exercise any of the powers enumerated in the definition--with the exception of the authority to discipline workers--that worker would be a supervisor. This means that a party seeking to prove a supervisory status, when that is a contested issue, must disprove every allegation that one of these criteria has been met. Let me give you an example from my own experience.

For the NLRB, I once tried a case against a newspaper accused of discharging a worker because of his union activity. In these cases the usual defense is that the employee was not discharged because of his union activity but for some other justifiable reason. This case was unusual. The employer admitted that the discharge was indeed because of union activity, but justified the discharge on the ground that the worker was a supervisor. Recall that in the private sector a supervisor may be fired for engaging in union activity. In this case the employer maintained that the discharged worker met all of the supervisory criteria contained in the statutory definition--not merely some or one, but all of them. They put on a day's worth of evidence in an attempt to show that this fellow discharged employees, hired, promoted, transferred and disciplined employees, laid them off, directed them, adjusted grievances--everything. That being the case, I had to spend a full day putting on evidence tending to show that this charging party

had no authority to discharge, hire, promote, transfer, discipline, lay off, direct or adjust grievances. The NLRB eventually found that this worker was a working foreman but not a supervisor within the meaning of the Act, that his discharge was therefore illegal, and that he was entitled to a few thousand dollars in back pay.

To be sure, our conference today concerns representative units, and not unfair labor practice issues. And ostensibly, I have strayed from the topic which Mr. Tamoush has assigned. Actually, I have not. The criteria for determining whether an individual is a supervisor or a nonsupervisor are the same in unfair labor practice cases and unit issues arising in representation cases. If you are confronted with a representation issue involving a subsidiary supervisory issue, and you are consulting NLRA precedents, do not fail to search the literature concerning unfair labor practices. The precedents from unfair practice charges may, in this limited instance, be used in representation cases. So much for rule 1; namely, that proof of any one of the supervisory criteria in the statutory definition is sufficient to prove a supervisory status.

Rule 2 is this: A supervisor's status is not determined by labels but by functions. In short, it makes little or no difference what the worker is called. A supervisor by any other name is a supervisor. It is what the worker does and not how the worker is described which counts. By this I mean that the naked label "supervisor" will not alone make a supervisor out of one who is in fact a leadman or working foreman. Job descriptions might be of some assistance in resolving the issue, but those are of limited assistance. And in the case of a conflict between the job description and credible testimony showing the worker's duties, the testimony would prevail.

Rule 3 is this: The enumerated criteria in the statutory definition must be read closely in conjunction with the statutory requirement that the purported supervisor's authority not be merely routine or of a clerical nature; it must require the use of independent judgment. For example, it is doubtful that an individual who lays off other employees on a seniority basis alone, and pursuant to the terms of a collective bargaining agreement, uses independent judgment in a non-routine, non-clerical manner. Those duties would be ministerial and would not require the exercise of discretion, or, to use the statutory language, "independent judgment." Thus, in the absence of other indicia of a supervisory status, this worker would very likely not be regarded as a supervisor.

Now, to move away from supervisors, let us look at another group of employees who are the subject of exclusion issues when representation units are discussed. These are professional employees, management employees and confidential employees. In the latter case, professional employees, we shall see that their treatment, for representation unit pruposes, is the same in the NLRA and most comparable public sector laws, including the Los Angeles County Employee Relations Ordinance. First, management employees.

This presents no problem at all in the private sector. Usually, if an employee is high enough on the eschelon ladder to warrant an executive title, that employee clearly acts for the employer and is easily regarded by every employer as such. Executives usually act for the employer at high policy levels, a level so high that a question of their bargaining with the employer simply does not arise. I suppose this is why the National Labor Relations Act does not even purport to deal with the situation and does not explicitly mention managerial employees, as does most public sector legislation.

Certainly, the definition of supervisor does not cover all management personnel. It is quite possible to be a management employee without qualifying as a supervisor under the statutory definition. An example would be that of a special assistant who supervised no one but reported directly to a line manager. Conversely, it seems clear that a supervisor of custodians who had the power to hire and fire, for example, would be a supervisor within the meaning of the statutory definition but would not be a manager.

In the public sector, management employees are usually defined as they are in the Los Angeles County Employee Relations Ordinance. Section 8C of that Ordinance keeps professional and management employees out of units with nonprofessional employees, unless those management or professional employees vote to be included in the representation unit. These two classes differ from the supervisory class in that there is no language in the Ordinance dealing with the exception relating to employees of the same classification.

Without going into detail about what constitutes a professional employee in the public sector, I would commend to you the language defining professionals in the National Labor Relations Act and suggest that you investigate precedents of the NLRB and the courts, even if you do not wish to follow them. Again, like the supervisor analogy, the statutory definition of "professional employee" in

the public sector is often lifted verbatim from the National Labor Relations Act.

I would caution those in the public sector to be careful not to run into a situation that the Board ran into involving professional employees, where contrary to the language in the statute the Board attempted to include professional employees in a unit with nonprofessionals. Those professionals who objected to going into that unit promptly went to the federal district court and got an injunction against the Board enjoining it from holding an election. This was unusual in that representation questions are normally within the exclusive province of the NLRB. The court found that the case was such a clear violation of the plain language in the National Labor Relations Act that an injunction was warranted.

I would conclude by saying I think it would be a mistake to simply ignore the long experience of the private sector on representation as well as on other labor-management matters. While public sector jurisdictions are not bound by private sector precedents, they may or may not be persuasive.

UNIT CRITERIA IN LOCAL GOVERNMENT--LEGAL DECISIONS CURRENT STATE OF THE ART

B. V. H. Schneider

Under the Meyers-Milias-Brown Act we now have had two and a half years' experimentation with recognition and unit determination, with a wide variety of results. I will concentrate on two questions this morning: (1) what the various jurisdictions have been doing over the last two and a half years about recognition; and (2) what problems have arisen.

I'm going to start out in a general academic way by reviewing the requirements embodied in the rule-making section of the act, that is, section 3507. I will then summarize the kinds of procedures which have been adopted by the counties and larger cities, emphasizing what their ordinances and resolutions say they can do. Finally, I will describe some of the court cases concerning the recognition problem.

The Meyers-Milias-Brown (MMB) amendments made some significant changes in the old George Brown Act. For example, section 3505 now states that the employer must meet and confer in good faith with representatives of recognized employee organizations and that the parties have the mutual obligation to endeavor to reach agreement on matters within the scope of representation. Other new rights were made explicit when the amendments were passed and were also granted just to recognized organizations. This word "recognized" was new, and it immediately raised such questions as "Who does the employer recognize? Does he have to recognize anybody? If he wants to, how does he go about it?"

This is where section 3507 comes in. The amendments included no standards or procedures for granting recognition. But section 3507 states that rules and regulations regarding recognition may be adopted by a public agency. The section reads as follows: "A public agency may adopt reasonable rules and regulations after consultation in good faith with representatives of an employee organization or organizations for the administration of employer-employee relations under this chapter...." Such rules and regulations "may include provision for... (c) recognition of employee organizations...."

The generally accepted interpretation of this wording was, and still is for the most part, that (1) an employee organization has to be formally recognized before an employer

need deal with it in good faith and endeavor to reach an agreement, (2) the employer may or may not adopt rules to recognize organizations for these new rights as he sees fit, and (3) if he does choose to adopt rules, he must consult in good faith with the employee organizations first, and the rules must be reasonable.

Discussion in late 1968, after the bill was signed in August, focused on three aspects of the implementation problem: (1) What does consult in good faith on the rules involve? (2) Is implementation of the amendments really permissive, as the words "may adopt" suggest? (3) What are "reasonable" rules? For example, must the agency recognize all of its employee organizations? May it set up a differential system giving formal recognition to some organizations and residual meet-and-consult rights to others? If you want a differential recognition system, do you have to have a unit determination system to start with? Is it "reasonable" to determine recognition by membership card count, or is an election preferable?

In practice, the first didn't turn out to be much of a problem. Most jurisdictions which chose to implement did meet and consult with their employee organizations before adopting rules. Some of them did this at great length and negotiated agreements on rules.

However, the questions of whether the amendments are permissive and how you define reasonable rules were not so easy. They have, to some extent, been answered by actual experience over the last two and a half years in the jurisdictions and by court cases.

I would like to discuss the actions of the public agencies first. In issue number 8 of CPER we published a study which, in part, analyzed the kinds of recognition procedures contained in implementing ordinances and resolutions of the 58 counties and the 36 cities of California which have a population of over 75,000. The study is complete up to January 1, 1971. For purposes of this analysis today I have included Los Angeles City, although its ordinance was not passed until January 29. There are a couple of other subsequent implementations that are not included. We found that of the 58 counties and 36 cities, 37 counties and 18 cities have implemented something. Eight counties and one city apparently allow formal recognition for all so-called "qualified" employee organizations. Twenty-two counties and 18 cities make provision for a majority representative system; they do not necessarily have a unit determination system. Of these, 15 counties and 16 cities have made provision for unit determination prior to recognition. In the latter group, who determines the units?

In the counties there is no majority view on this. The most common method is that the board of supervisors makes the decision. The data show that in eight counties, units are decided by the board of supervisors, in two they are determined by the personnel director, and in two cases third-party determination is required (those being Los Angeles and San Diego). In eight cases some form of third-party participation is possible under certain circumstances. For example, if there is a hearing before the board of supervisors and there is a good deal of dispute, the board of supervisors may if they wish call in a mediator, a form of third-party participation. Concerning the 16 cities, in six cases the municipal employer relations officer makes the decision, in three cases the city manager, in two cases the city council, and in five cases some form of third-party participation is possible of the type that I mentioned. In three cases third-party participation is required. You can see that there is a grand array.

Once units have been determined, how is recognition determined? In the 15 counties with unit determination procedures all allow elections under certain circumstances. For example, in the case of a challenging organization most of these counties allow for elections. However, in 4 of the 15 counties, elections are mandatory, regardless of whether or not there are challenges. In the 16 cities with unit determination procedures again all allow for elections under certain circumstances. In 5 cities elections are mandatory.

Thus, most jurisdictions with recognition procedures of some kind--37 counties and 18 cities--allow for majority representation as opposed to general representation. Again, of those with procedures of some kind, about 40 percent of the counties and most of the cities have unit determination procedures. Bear in mind, however, that we are not talking about all cities in California, but the small group of large cities which do have some kind of procedures. Where unit determination exists, elections are the common method of determining representation rights where there are competing organizations. Thus, we can conclude that, so far as formal policies go, the implementation of the MMB is not particularly widespread after two and a half years.

In my opinion the court cases don't tell us much about the reasonableness of rules concerning recognition and the permissive nature of section 3507. I found five cases. All are superior court actions and therefore are not binding on other jurisdictions. None were brought on the issue of the right to consult in good faith before rules are adopted, and none were concerned with any aspect of unit determination procedures. Instead, they focus on the permissive nature of section 3507 and what "reasonable" means.

The earliest case was the Los Angeles County Association vs. the County of Los Angeles (939 557 LA).The association in late 1968 challenged the legality of the Los Angeles ordinance, passed in October 1968, on the grounds that (1) the MMB Act preempts the field of employer-employee relations and (2) that the purpose of the act is to provide a uniform basis for recognizing the right of employees to join and be represented by employee organizations and to strengthen existing systems and procedures. The association claimed that the L.A. county system of unit determination and majority representation contravenes state law because it does not strengthen existing systems but substitutes collective bargaining procedures found in private employment. However, the superior court held that the ordinance does not conflict with the MMB or any other law. In effect--MMB does not preempt the field and public agencies can do as they please. This case was appealed, but a hearing was denied.

The next case was the L.A. Fire and Police Protective League vs. the City of L.A. (955 544 LA). The league in 1969 sought an order compelling the city to meet and confer with it on 11 items. The city had previously, under its rules of 1966, granted informal recognition to all employee organizations. The superior court held that the city would only owe the duty to meet and confer if it "formally acknowledged", i.e., recognized, the league. In effect, the MMB is permissive. It cannot be interpreted as preempting the field. The city may withhold recognition at its pleasure (in the absence of rules).

These two cases were important at the time and relieved some doubts about whether the MMB Act was permissive. Some of this doubt had been created by an opinion of the legislative counsel that was issued just prior to the signing of the bill in August 1968. It received extensive circulation at the time. In discussing the fact that rules under section 3507 might provide for recognition of employee organizations, it stated: "While the authority granted to public agencies...to adopt such rules and regulations is phrased in the permissive form, we do not think that it would be construed to permit a public agency to refuse to enact reasonable rules and regulations with respect to these matters. Ordinarily 'may' is permissive, but if the provision or context requires it, that meaning is not required."

In 1970 there was a new development. The legislature amended section 3507, by adding at the end, the following sentence: "No public agency shall unreasonably withhold recognition of employee organizations." On first reading

there seemed to be some conflict. Rules were supposed to be reasonable, which implied that recognition couldn't unreasonably be withheld anyway. Before the amendment was passed, a consultant's analysis to the assembly committee on public employment stated, "There is some controversy concerning a public agency's discretionary use of its power to adopt rules and regulations for the recognition of employee organizations as a self-serving means of recognizing only those employee organizations acceptable to the agency. It goes on-if an organization meets the act's definition of "employee organization", A.B. 498 would afford some protection from unreasonable act of nonrecognition. "Unreasonable would appear to be a standard that is measured on a case by case basis in the light of applicable circumstances."

A few weeks later the consultant to the senate industrial relations committee stated: "The apparent practical effect of the bill would be to force a public agency to adopt rules and regulations to verify than an organization does in fact represent employees of the public agency. In any event, recognition of an employee organization could not be unreasonably withheld by a public agency."

What happened in the courts subsequent to the amendment? In Anaheim a dispute arose over the representation of some permanent employees working at the Anaheim Stadium and Convention Center. The city does not have a policy implementing the MMB Act. Thirty permanent employees had been represented since 1966 by an SEIU local union together with 600 part-time employees. In September, 1970, the Anaheim Municipal Employees Association was recognized for its members in the city as a whole. The association subsequently wished to represent its 16 stadium members, all of whom were full-time employees. The city refused, in view of its traditional relationship with the union and the predomonance of union membership in the stadium group. The city had not only been dealing with SEIU since 1966, but had been signing agreements and was up for its third round. The independent association sought to enjoin the city from recognizing the union in the absence of an employees relations policy, charging that such an action was in violation of MMB Section 3502 which protects the right to join and participate in an employee organization for the purpose of representation. The superior court held that the MMB Act does not require rules to be adopted and such ad hoc recognition is permissible. So much for the legislative counsel's views on adoption of rules.

Two cases were subsequently brought specifically on the amendment. The first was the Operating Engineers vs. the County of Madera (16501 Madera). The operating engineers sought a writ to invalidate the county's employee relations ordinance on the basis of the section 3507 amendment. Their reason was that the ordinance states that the

board of supervisors will recognize any employee organization that is composed of at least 51 percent of authorized classified positions. Other employee organizations may represent their members to the extent of section 3502 which is the generalized right to join, participate and be represented. A writ of mandate was issued by the judge ordering the county (1) to cease to enforce ordinance 332, (2) to refrain from granting exclusive recognition to any employee organization based on any unreasonable numerical or percentage requirements, and (3) to refrain from requiring a representation of 51 percent of authorized classified positions. The court noted the requirements of sections 3502 and 3503 and stated that such a large percentage acts as a deterrent to employee organizations. He also cited section 3507 and declared that the ordinance is not reasonable and is invalid on its face. The case is interesting in that it resulted in the first invalidation of an ordinance. However, in addition to Madera County, there are nine other counties and one city with a 51 percent membership requirement for recognition and another county with a 40 percent requirement (which may or may not fall under the same category).

The next and last case is the International Brotherhood of Electrical Workers Local 1245 vs. the Fresno Irrigation District (145 472 Fresno). The district recognizes an independent association with which it has dealt for about six years. It implemented new rules under the MMB Act in 1969 in which it continued to recognize the independent association. The IBEW then came in, organized, and claimed that it represented a substantial number of maintenance employees and requested formal recognition. It requested the court to order an election to determine which organization was favored by a majority, or to permit the state conciliation service to examine authorization cards. This is permitted under the employee relations rules of the district, but it is permissive. In other words, the district may ask the state conciliation service to come in and check cards if it wishes to. So the question presented was: Has the district "unreasonably" withheld recognition contrary to section 3507? The court concluded that the district had not, that the MMB "has left it to the reasonable discretion of the public agency to decide" whether to recognize an employee organization. "The vesting of such reasonable discretion in the public agency gives the agency the right to decide whether it will recognize more than one employee organization, or will restrict its recognition to one organization." To require recognition of IBEW as a second organization will mean dual employee representation with resultant conflict each year when it came to negotiating. To force the district to recognize IBEW as an exclusive bargaining representative would be unlawful infringement on the discretion vested in the agency by the MMB Act and would forfeit the right of

employees who are members of the association and who wish the association to represent them. Secondly, on the subject of an election, the judge commented that to order an election or card verification would be to interfere with the discretion vested in the agency by the act. Section 3507 permits an agency to make its own rules for recognizing employee organizations. District procedures reserve to the agency the right to verify employee preferences, but do not impose a duty to hold an election or a card count.

As you can see, some fascinating issues are dealt with in these cases, but it's not clear that we have advanced on what we know or speculated two and a half years ago. We have found that the MMB amendments are apparently permissive. We don't have a clear definition of "reasonable", and the legality of the two-level recognition system is still unclear. In Madera County the judge emphasized the importance of sections 3502 and 3503-the right-to-representation sections- thereby implying acceptance of the concept of multi-organization representation. In Fresno County a judge decided in effect that the employer is free to exercise what he termed "reasonable discretion" to decide what a reasonable recognition system is. In this case a majority recognition system was accepted. Both the Madera County and Fresno Irrigation District cases have been appealed, although neither has been accepted yet. A court of appeal decision in either case would undoubtedly have to consider the legality of majority versus multi-organization recognition system. Whether such a decision would be good or bad at this stage is arguable.

Concerning the reasonable rules issue, the very few cases that we have had may indicate that most rules are accepted as reasonable. Perhaps the answer lies in section 3507's words, "after consultation in good faith." Mutual agreements tend to be accepted by the participants as reasonable. On the other hand, times change, new organizations appear and recruit, employees change their minds about how they want to be represented. We are experiencing this now in California. The question then arises-will the old mutually acceptable rules meet tests of reasonableness when the power shifts in the favor of a new employee organization. In my view, they probably will if they were designed with primary attention to a viable long-run employee relations structure. They probably won't if they were the result of simply responding to the organizational patterns and pressures of the moment.

This is not to say that I think rules should be reasonable from the employee organization point of view so that you won't get sued and perhaps lose. But the rules should be reasonable in some general sense for both sides. Because if they are not rational and equitable in terms of the overall objectives of the MMB Act, then the public manager is the one who is eventually likely to have a real mess on his hands.

UNIT CRITERIA IN COUNTY GOVERNMENT
A SURVEY OF CURRENT PRACTICES

Harold Rosen

An introductory comment I have is that we are getting bad advice from some legal counsel around the state, most of whom are still caught up in the old sovereignty concept. This includes county counsels and some hired attorneys who are brought in as experts in the field and who are telling cities and counties what they need not do. Unfortunately, very few of the counselors have actually been involved with the legislature in this area.

Jim Williams, from the County Supervisors Association of California, and I have been attending a number of legislative committee meetings this last year. I am sure he will agree with me that there is a tremendous amount of movement, a great upsurge of interest in this area. Nevertheless, the legislature is being convinced everything that is going on in cities and counties is all bad. It is very difficult sometimes to point out shining examples of success when there are three times that many failures. The survey data that I will give you later may not properly be interpreted as examples of failures, but they could be interpreted as inactivity which, to the legislature, is the same thing.

I would like to discuss a number of areas concerning the Meyers-Milias-Brown Act (MMB) that may help us understand why there has been this kind of inactivity. First of all, the term "representation unit" does not appear in the MMB Act. This was done deliberately. When MMB was being discussed, the term had appeared but was taken out primarily because there was disagreement between affiliated unions and independent associations on what would happen if we had bargaining units. In other words, the question as to who would win or lose depended on how strong an individual union happened to be at that time. If the union was thoroughly entrenched, then it was thought that the history of representation would give it an advantage on whether there would be a unit favoring it. Also, certain local agencies contended this adversely affected collective bargaining and didn't want the term "unit" included; they wanted to be left free to develop their own procedures.

There does exist a provision for rules concerning recognition. Frankly, I do not see how there can be such rules without a unit. This is possible only if one organization is preferred to any other, and thus the others are frozen out since there is no mention at all in the rules as to how a new organization can come in and petition for something smaller than the whole agency. Some cities and counties have done this.

MMB has two provisions which imply that we are talking about units, but it is not made explicit. One of these is the right of professionals to represent themselves or to be represented by their own professional association. This provision was included when one county decided not to let the nurses represent themselves; it wanted nurses to be represented by the County Employees Association. The nurses objected and took their case to the legislature. The result was a written definition of who is a professional, which included nurses. The second provision concerns law enforcement. Law enforcement agencies have the right to require that their employees be represented by an organization representing only law enforcement. To some extent, this is not a real issue because it is occuring anyway in most agencies; traditionally, there has been some kind of law enforcement organization.

There are two bills in the legislature now which, I think, are of some interest. One is the Hayes Bill 2456 on management. It takes the National Labor Relations Act's definition of supervision, except that it strikes out the section that says "has the authority to effectively recommend...". I'm not sure why, except that some unions might have thought it would have given the county the right to restrict representation rights of first-line supervisors. However, I still do not think it changes anything. In its present version, I think the bill will be passed. There seems to be little opposition to it and it represents a change in attitude by the independent associations, which for years took the position that without management and supervisory personnel the association is dead. Gradually the independents are beginning to realize that for their own survival they will have to be more employee-oriented, rather than speaking for management. (NOTE: the bill was finally killed through opposition of some employee associations who obviously had not heard this speech.)

The other measure currently in the legislature is the LaCoste Bill. (This bill did pass.) In effect, it provides that at the request of any of the parties, any dispute over unit representation will be submitted to the state conciliation service for a final and binding decision. To me, there are a couple of things wrong with this. As originally drafted, the bill provided that any of the parties can request a final and binding decision. To me, this means anyone who has only a passing interest can be considered a party and can go to the state conciliation service for a final and binding decision. Also, the bill disregards the fact that many of the local agencies have their own dispute resolution procedures. In addition, the state conciliation service functions to provide mediation services--not those normally associated with arbitration. As it turned out, the bill was rewritten. It now sets forth that at the request of either of the parties, in the absence of local procedures for dispute resolution, a dispute over unit representation can be submitted to the state conciliation service for mediation rather than a final and binding decision.

It is interesting to note that this is the first time the term representation unit will appear in the MMB Act. This may now cause a flurry of interest in some of the areas where it has been disregarded, on the premise that since the law didn't say anything about it then nothing had to be done.

Technically, we do not have collective bargaining in this state, although many people use the term. However, if one were to consult an expert, he would suggest four areas that are needed in order to have collective bargaining: (1) a contractual relationship; (2) a statement of unfair labor practices; (3) an agency to enforce those practices; and (4) exclusive recognition. We do not have exclusive recognition but majority representation. Also, we do not have a state agency to enforce the law, but I predict that we will have one within two years. I'm in favor of such an agency in view of the presently inconsistent court decisions. The only place that a union or employee organization now can turn to is the court. There are two types of judges the employee organization can expect to meet: one who knows only NLRB precedent and interprets everything that is now in the state law into those contexts, resulting in some bad decisions; and the other type who doesn't recognize the right of the employee at all to be represented. The latter type is still attuned to the old days when everyone was one happy family.

We compiled a survey of 33 major California counties, including all those that have 1000 or more employees. However, we excluded Los Angeles County since many people contend its experience is significantly different from any other. I think this follows from the feeling that what is good for a big county is not necessarily good for a smaller one. Thus, of the 33 counties considered, 19 reported no units. These counties ranged in size from Siskiyou, which has 407 employees, to San Francisco, which has 22,000 employees. San Francisco County has been trying unsuccessfully for almost two and a half years to establish an ordinance. They have a somewhat peculiar situation in that most unions and associations did not want an ordinance. They were happy with their power base as it was and didn't want to engage in a formal structure that might possibly lead to loss of contact with the source of power in the city. This is a personal observation.

Four of the 33 counties reported an omnibus unit, that is, one unit covering the whole county. However, in at least 2 of these, I suspect what they meant is that they do not have a unit as such but just grant some form of recognition to the employee organization that happens to represent all the county employees; thus, they describe it as a unit. Of the remaining

responses, 1 county has established three units. However, in that county one employee organization represents the supervisory and general units while the third unit, the management group, is unrepresented. Another county reports two units, a general unit and a law enforcement unit. In this case, two separate organizations represent the units. Finally, 8 counties reported what they referred to as multi-unit structures, in which the number of units varied from ten to twenty-two. The number of employees in these counties ranged from 1,250 to 7,600.

Overall, many counties having more than 1,250 employees (medium-size counties) reported no units. We tried to identify the reason for this, but were unable to do so since there seems to be little relationship between the size of an agency and the number of units recognized by the agency. In fact, it seemed to us to be either a lack of desire on the part of the county to embark on a unit determination program or a lack of competing organizations. In the latter case, there is no pressure from the employees to define where their area of representation lies. Thus, if there is one employee organization and the county is comfortable with it, then probably very little is done. However, in my opinion, this is not a very optimistic expectation.

If the survey indicated "no unit" to be the most common response, the more complex units that were reported revealed little pattern in actual unit determination. I think this is fairly significant, and it may get to the question of whether we are going to have a state agency. We expected from the survey to find some thread of reason as to how the units were set up in multi-unit operations, but we found absolutely none. The early unit determination procedures that were established shortly after MMB went into effect consisted largely of codification of what had already existed. This was the case in Marin, Ventura, and Santa Clara counties. In other words, where employee organizations already existed that were fairly active and well defined, unit determination and representation turned out to be simply a matter of codifying what was there and defining legally the parameters to be used as a matter of practice. The only modifications that took place were petitions or claims to professional or supervisory status which called for creation of a new unit. The law now provides for professional employees to represent themselves through their own professional association. Thus, new professional units are springing up all over the place. Originally, Marin County had 5 units and Ventura County had 2. There has been subsequent proliferation so that Marin County now has 11 units and Ventura County, 12. In Santa Clara County, we originally started out with 14 units and have since expanded to 17 (with six more petitions pending.) The whole idea of self-determination has an enormous appeal, and many groups of employees desiring to represent themselves have been successful.

The new multi-unit groups which were created in 1970 and 1971 reflect the pressure that also affects the older units. This is where smaller interest groups within a large unit find that their interests are being subordinated to the common well-being. For example, we had an employee association that represented all employees. And sitting across the table with them, the employee association itself had to serve as a sort of leavening process; it could not persist in favor of one occupation and disregarding another without internal conflict. When this occurs, the smaller interest groups will demand their own representation. This is what is happening to the older, more established bargaining relationships. The newer ordinances and units that are being proposed show us more proliferation and fragmentation than we have seen in the old type.

The method employed in the determination of the units has varied. First of all, the mere establishment of a unit on request by an association does not imply that the same association will represent that unit. Normally, there still has to be a recognition election, in which case anything can happen. There does not seem to be any consistency, either in the way unit disputes are resolved or in the practice of unit assignment. When I refer to unit assignment, I am talking of a situation where a given classification is put in a unit structure.

In my opinion, the board of supervisors should not be considered as the board of appeals on unit determination. I say that from a selfish point of view, representing management; I don't want the board of supervisors to think they are the ones that should defend the management position on the unit request. As you are aware, I get very little support for this position throughout the state. City councils and boards of supervisors still want to remain neutral.

Getting back to unit assignment, the eligibility worker is a good example. An eligibility worker determines financial eligibility for welfare aid. In the past, this was done by the professional social worker, but the state now provides that this subprofessional work can be done by a person without a college degree. Thus, this part of the job has been separated from social workers and has led to the creation of the new classification of eligibility worker. The question then is, what is the community of interest? Is an eligibility worker more like a social worker and should he therefore be in the same bargaining unit, represented by the same association as the social worker, or should the classification be placed with other clerical and technical employees? This has become a very hot issue because the Social Workers Union has found that their membership has been decreased by the increasing number of new eligibility workers. Since there

was a need for more eligibility workers, social workers thought of themselves as eventually being wiped out.

There are several ways in which this situation was handled in terms of determining the bargaining unit. In Santa Clara County eligibility workers were put into the general all-county unit, after a hearing before a third-party board. In Marin County they were included in a general unit. Ventura County included them in a social service unit for social workers. Alameda County put them into a separate unit, and in Sacramento, Contra Costa, San Mateo, and San Diego counties they were included with the social workers. Thus, there was a variety of practices.

Another example is the case of deputy sheriffs and related safety classes (criminologists, investigators, probation officers, correctional officers, coroners, matrons, bailiffs, etc.) They are all allied within the law enforcement group, both by organization and by flow of work. By and large, deputy sheriffs have in the past constituted a separate unit. However, many of the counties have now put them in with all of the county's related departmental classes that are uniformed, whether or not they are safety members. Some counties have set up special units for law enforcement only and restricted them to deputy sheriffs and the matrons. But this varies throughout the counties.

The nurses' situation is also interesting. It was traditionally assumed that the California Nurses Association (CNA) would automatically represent the nurses. The odd part is that even where units have been set up consisting only of nurses, the California Nurses Association did not win the election. I think this is because of the inability of CNA to put money into the field, but they will probably become more active in the future.

With respect to the way MMB is presently being implemented in California, in my opinion, it is to management's advantage to have procedures either in hand or on the books for unit determination. Many people tell me, once you establish a unit determination procedure this is an inviation for unions to come in. I don't think past experience has shown this. I think it is the union entering in the absence of unit determination which leads to chaos; the union will immediately scramble around to determine what is to its best interest. When that happens, management has little time because the pressure is already on.

Also, I think some of the procedures for unit determination covered only the initial determination and little attention was given to modification of established unit; very few of the resolutions or ordinances reflect this concern. If some attention were paid to these questions, future problems would be solved ahead of time.

Another question involves the clarity of the definition of a unit. An example of this is a case in Anaheim. There was a conflict between the employees association and SEIU concerning whether 17 people working in the stadium were in the scope of representation of the association. The clarity of definition of a unit is extremely important. My suggestion is that such definition should be in terms of specific class titles. There is no clearer way of doing it.

I would like to close with a few more personal biases. First, I suggest not to try establishing units to favor an organization. This happens, but I don't think it works. For example, we had only one strike vote in our county this year which came from an independent association. The whole concept of an independent association has been that it is somehow more favorable to management and less militant. I think those days are behind us. Second, I think there are many things that can be done even though the law does not provide for them, such as what to do with supervisory classes. One alternative would be to exclude them from units by consent. Finally, I do not believe in management having the right either to initiate units or to reach the decision on units. I think the initiation has to come from the employees, and the decision, if there is an impasse, has to be made by a party not involved in the dispute. This is important. If management utilizes sovereign right to make all decisions and forces employees into units which they did not want in the first place, management may find itself in situations that it cannot live with. The next two or three years will determine how successful negotiations will be with an organization, and to this end we ought to try and start with a minimum of friction and ill-will toward that organization.

UNIT DETERMINATION--THE FEDERAL SECTOR SIGNIFICANT DECISIONS

Tom Stover

I would like to discuss the federal situation concerning unit determination. The federal experience is somewhat unique as compared with state and local government in that the federal government is much larger and has unique powers such as the power to tax, etc., which may not always be analogous to other situations. However, I think a discussion of the federal experience will give you another perspective of labor relations which might be useful.

Federal labor relations, for all practical purposes, began in 1962 when President Kennedy signed Executive Order 10988. When the Order was issued, President Kennedy declared that the participation of employees in the formulation and implementation of personnel policies affecting them contributes to the effective conduct of public business. Under the Executive Order there were three types of recognition: informal, formal, and exclusive. Informal recognition gave unions the right to be heard on matters which affected employees. Formal recognition required that management consult with the union on certain matters affecting employees. Finally, exclusive recognition gave the union the right to negotiate collective bargaining agreements. Responsibility for administering federal labor relations was vested in the individual agencies. Over the years several problems developed with the Executive Order. This, coupled with the fact that employees became increasingly militant, provided pressure for a new and expanded federal labor relations procedure.

A study committee was set up which reviewed the situation and recommended that a new executive order be issued. This recommendation resulted in the promulgation of Executive Order 11491. One major difference between the two orders is that the new order provided for the granting of exclusive recognition only. And that only after a secret ballot election. In other words, informal and formal recognition were phased out over a period of time. Under the new executive order there have been some formal recognitions granted. However, as of July 1, 1971 no more formal recognitions were made.

Executive Order 11491 is administered by the Federal Labor Relations Council. The Council administers and interprets the Order, the Council decides major policy questions and makes reports and recommendations to the President. It is

composed of cabinet level officers: the Chairman of Civil Service Commission, Secretary of Labor, and Director of the Office of Management and Budget. Even though seldom present, they are the official members; generally they have substitutes sitting in for them. The Order also established the Federal Service Impasses Panel, which has the authority to break negotiation deadlocks. Finally, the Order gave to the Assistant Secretary of Labor for Labor Management Relations the authority to determine appropriate units, supervise representational elections, and decide cases alleging unfair labor practices and violations of standards of conduct. Standards of conduct basically relate to the internal democracy of labor organizations. In effect, the Order extends the Labor Management Reporting and Disclosure Act of 1959(Landrum-Griffin) to unions in the public sector. The Federal Labor Relations Council's first review of the operation of the Order began in October of 1970 and was completed in the summer of 1971. During the hearings on the operation of the Order, more than 65 persons gave oral testimony before the Council, including several members of Congress, presidents of labor organizations, and key government people. An opportunity was provided for every interested person to submit written evidence or argument to the Council for its consideration. I think it is interesting to note that while almost all major provisions of the Order came under attack from one group or another, nothing relating to the unit determination procedures of the Order was attacked. There were no suggestions for improvements or changes in the way bargaining units were determined. The only thing in this area that was complained of was the delay in getting decisions out after hearings. This, of course, involved more the mechanics than the philosophy of the Order.

After taking note of all suggestions received, the Federal Labor Relations Council proposed that the President make certain changes in the Order. These have now been made and will become effective in late November. The changes are not extremely significant. In effect, they allow for some collective bargaining on "company time"; broaden the area of negotiability; and dilute to some extent, the authority of the Civil Service Commission. The latter change points up the continuing erosion of the authority of the Civil Service Commission over time. Also, there will be some change in the section relating to unfair labor practices. At this time, it is not known what will evolve from this change. However, it appears that the Assistant Secretary will have increased authority to evaluate and judicate unfair labor practices under the amended procedure.

Currently an extended discussion is taking place over whether federal labor relations should be regulated by executive order or by legislation. Labor organizations generally feel there ought to be legislation and I think eventually

there will be. However, the beauty of an executive order is that it can be changed easily relative to legislation. Thus, a few years of experience under executive orders might lead to better legislation, when and if it comes.

One important discovery we have made in administering the Order is that there is much to be learned from the experiences of the private sector. For example, in the new Order we decided to call unions "labor organizations" rather than by the more vapid term "employee organizations" mandated under Executive Order 10988. We also adopted a simplified definition of the term labor organization patterned upon the one contained in the National Labor Relations Act. However, this small step toward the adoption of private sector terms for public sector labor relations has scarcely slowed the predilection of public managers to develop their own lexicon. I have attended meetings where learned men talked, interminably it seemed, on the differences between "collective negotiations" and "collective bargaining." The late Professor Eric Polisar of Cornell appropriately labeled such attempted distinctions "semantic slush."

Another feature embodied in Executive Order 11491 was that the term supervisor was for the first time expressly defined and also for the first time expressly considered to be part of management. Recognition no longer is to be granted for mixed units of supervisory and nonsupervisory personnel. Further, supervisors are barred from participating in the representation of labor organizations which represent other employees. There are some minor exceptions to this rule. However, they are inconsequential.

Executive Order 10988 provided that an appropriate unit could be determined on an installation, craft, functional, or other basis, which would insure a community of interest. The new Order kept the community of interest criterion but added two others: (1) that an appropriate unit should also be one that "promotes effective dealings"; and (2) that it should promote "efficiency of agency operations." These phrases are pregnant with potential problems and have caused us much consternation.

Under the former executive order, the Assistant Secretary of Labor assisted agencies and unions by providing third-party determinations on unit disputes by means of advisory arbitration. The individual agencies did not have to accept the recommendations of the arbitrators. This procedure worked reasonably well, but I think it had obvious limitations. The study committee took note of the lack of third-party resolution of disputes as well as

the fact that an inordinate amount of arbitration concerning unit disputes was occurring. The committee decided that in the area of unit determination it would be best to have one central party make all decisions and determinations. Accordingly, such a procedure was incorporated into the new order. The importance of unit determination in any new labor relations scheme is pointed up by the fact that after almost two years under the new Order, more than 90 of the first 100 decisions of the Assistant Secretary have been concerned with unit determination problems.

Probably the first significant unit determination decision made by the Assistant Secretary was in his sixth decision, which involved a case that arose at the Alameda Naval Air Station here in California. In that case, the Secretary borrowed a technique from the private sector by ordering a Globe-type election to let plumbers at the Air Station decide whether or not they wished to be represented by the United Association of Plumbers, an exclusive craft unit, or be part of the larger overall unit of wage board people who were petitioned for by the International Association of Machinists. Wage board people in government are blue-collar type workers. Thus, the Globe doctrine concept was a direct application of a private sector concept and has been used extensively in other cases. It is a good procedure and there is no reason why we should not follow it in federal labor relations.

Another landmark decision--again involving the Navy--concerned wage board workers of the Naval Construction Battalion Center in Davisville, Rhode Island. This case, the Assistant Secretary's decision number 8, set up what is called "the Davisville Doctrine." In this case, the Assistant Secretary dismissed a petition filed by the American Federation of Government Employees for an election to split about 400 wage board people from the existing activity-wide unit of 750 which was represented by the National Association of Government Employees. By dismissing the petition, the Assistant Secretary advised unions that when the evidence showed an established, effective and fair collective bargaining relationship already in existence which covered an appropriate unit, he would not permit severance from that unit except for unusual circumstances. Again, this decision rang bells in the minds of many practitioners from the private sector since this situation was extremely analogous to that followed in private sector labor relations.

In his 9th decision, which involved the Pennsylvania Army National Guard Civilian Technicians, the Secretary chose

a state-wide unit of civilian technicians that had been petitioned for by one labor organization over a unit sought by another labor organization which involved only one armory. Thus far, the Assistant Secretary has consistently held in favor of larger and more encompassing bargaining units. This is contrary to the experience under Executive Order 10988. Under that order, although agencies generally wanted larger units, arbitrators found more often in favor of unions who wanted the smaller units. Thus, there has been a direct reversal of federal unit determination policies as far as magnitude is concerned.

In this 18th decision, which was concerned with workers at the Boston Naval Shipyard, the Secretary invoked what has come to be called the Davisville Rule, mentioned earlier. A new unit cannot be carved out of an already established unit unless there are compelling reasons to do so. This case is significant only in that it illustrates the application of precedent in federal labor relations to a subsequent case. By having central administration, such as is provided by the Assistant Secretary, the parties have a pretty good idea of which direction their case will go. Thus, I think it helps both agencies and unions to determine which way they want to approach a problem.

Another decision worthy of note also involves military personnel. It is an innovative case of great significance in the federal sector and serves to point up some of the differences between private and public labor relations. This case involved the unit of Navy Exchange workers in Mayport, Florida. In this decision, which was his 24th, the Assistant Secretary included in the unit for bargaining off-duty military personnel who worked alongside civilian personnel at the nonappropriated fund activity. Examples of nonappropriated fund activities are PX's case exchanges, commissaries, etc. This decision, which came to be known as the Mayport Doctrine, states that whether an employee shares a community of interest with his fellow employees so as to be included in the unit with them depends on his <u>immediate status while in the employment relationship</u> and not upon whatever ultimate control may be excercised by other factors (such as the military) over the employee at other times. Here, the fact that these employees were also soldiers or sailors was not controlling. As long as they were in that base exchange and were doing the same things at the same pay scale with the same working conditions as the civilian people, they would be treated as full-fledged employees and be put into the bargaining unit. To do otherwise might have pretty much stopped the organization of base exchanges because the military could have staffed exchanges with predominately military types to circumvent organization.

In his 25th decision, which also involved a unit of nonappropriated fund employees at the Army and Air Force Exchange Service, White Sands Missile Range, New Mexico, the Assistant Secretary declared that he would not be bound by an agreement of the parties on composition of the bargaining unit. This was significant. Although all parties agreed to exclude off-duty military personnel from the bargaining unit, the Assistant Secretary refused to allow such agreement. He said that he would determine the appropriateness of bargaining units and decided that the off-duty military personnel should be put into the unit regardless of what the parties agreed to.

Another decision which parallels private sector practice involved a unit of guards at the Philadelphia Mint. The Assistant Secretary ordered the creation of a separate unit of guards to be carved out of an activity-wide unit which had been represented since 1964 by another union. The guards were to be represented by an organization which admitted only guards to membership. And this is consistent with Section 10(c) of the Executive Order which bars unions that admit to membership employees other than guards from representing a unit of guards. This provision did not exist under the old executive order.

In decision number 27 the Assistant Secretary, despite opposition from two unions and the agency, ruled that temporary workers should be included in whatever unit was found appropriate. In this case, he found that temporary workers were that in name only. They did share a community of interest with their "permanent" colleagues. Their working conditions were substantially the same. They also had a reasonable expectation of working for at least one year. Therefore, he found them to have a sufficient community of interest with other employees to be included with them in the bargaining unit. Here again is an illustration where the Assistant Secretary will go beyond the agreement of the parties and the classification of employees and investigate the duties of the personnel involved and perhaps include them in the bargaining unit, even against the wishes of the parties.

In summary, I think it is safe to say that in the federal service unit determinations are best made by a central authority. In addition, although slavish adherence to private sector precedent is not called for or even desired, the wealth of experience in the private sector should certainly not be ignored. However, private sector experiences should be used eclecticly as circumstances and conditions warrant such use. In addition, our

experience has demonstrated that we must go beyond the agreement of the parties involved to insure a degree of continuity and uniformity in unit determination. As shown by the decision last discussed, even the job classification terminology used by the parties must be investigated to insure, for example, that temporary employees in one situation are excluded or included in the bargaining unit on the same basis as they would be in another situation.

LOS ANGELES COUNTY

EMPLOYEE REPRESENTATION UNITS

Unit No.	Unit	Departments	Number of Classes	Number of Employees	Description	Certified Employee Organization
101	Superior Court Clerks	County Clerk	2	200	Non-supervisory	AFSCME
111	Clerks & Office Employees	Various	110	16,000	Clerks, Typists, Stenographers & other non-supervisory Office Clerical Employees	LACEA
112	Supervisory Clerks & Office Employees	Various	100	1,400	(See Unit No. 111)	LACEA
121	Administrative & Technical Staff Personnel	Various	70	1,200	Administrative Assistants E.D.P. Analysts Deputy Purchasing Agents Insp., Weights & Measures Human Relations Consultants etc.	LACEA
122	Supervisory Administrative & Technical Staff Personnel	Various	50	260	(See Unit No. 121)	LACEA
131	Appraisers	Assessor	5	480	Non-supervisory	CAPE
132	Supervisory Appraisers	Assessor	2	190	(See Unit No. 131)	CAPE
201	Building Custodians	Building Services Hospitals Probation	10	2,400	Custodians Elevator Operators Housekeepers	LACEA/SEIU

Unit No.	Unit	Departments	Number of Classes	Number of Employees	Description	Certified Employee Organization
211	Institutional Support Employees	Hospitals Health Probation Sheriff Fire Medical Examiner	50	2,300	Food Service Workers Cooks Laundry Workers Seamstresses Laboratory Attendants Pharmacy Helpers etc.	SEIU
221	Paramedical Technical Employees	Hospitals Health Probation Sheriff Medical Examiner	40	4,600	Attendants Laboratory Assistants Vocational Nurses Ambulance Drivers Medical Technicians X-Ray Technicians etc.	SEIU
301	Pharmacists	Hospitals Probation Sheriff	1	80	Non-supervisory	SEIU
311	Registered Nurses	Hospitals Health Probation Sheriff Mental Health	10	2,000	Non-supervisory Hospital, Jail & Public Health Nurses	CNA
312	Supervisory Registered Nurses	Hospitals Health Probation Sheriff	20	900	(See Unit No. 311)	CNA
321	Dentists	Hospitals Health Public Soc. Services	7	70	Dentists Dental Hygienists	Dental Association

Unit No.	Unit	Departments	Number of Classes	Number of Employees	Description	Certified Employee Organization
331	Sanitarians & Health Investigative Employees	Health Urban Affairs	10	400	Sanitarians Public Health Investigators Industrial Hygienists	Health Joint Council
332	Supervisory Paramedical & Health Investigative Employees	(See Units 221 & 331)	30	140	(See Units 221 & 331)	LACEA/SEIU/Health Joint Council
341	Professional Paramedical-Health Employees	Hospitals Health Probation Medical Examiner Mental Health Sheriff	50	1,000	Dietitians Physical Therapists Psychologists Clinical Lab. Techs. Health Educators etc.	LACEA/Lab. Tech. Association
342	Supervisory Professional Paramedical-Health Employees	(See Unit No. 341)	30	100	(See Unit No. 341)	LACEA
401	Plant Operating Engineers	Mechanical Hospitals Flood	10	210	Stationary Engineers Sewage Plant Operators Dam Operators	Operating Engineers Union
411	Building Trades & Skilled Craftsmen	Various	80	1,400	Carpenters Plumbers Electricians etc.	Building Trades Council
421	Automotive & Equipment Maintenancemen	Mechanical Road Flood Hospitals Parks & Recreation	20	450	Power Equipment Repairmen Equip. Maintenancemen Garage Attendants etc.	AFSCME

Unit No.	Unit	Departments	Number of Classes	Number of Employees	Description	Certified Employee Organization
431	Artisan & Blue Collar Employees	Various	80	3,000	All non-supervisory Blue-Collar Employees except Employees in Units 401, 411, and 421	LACEA
432	Supervisory Artisan & Blue-Collar Employees	Various	180	780	All supervisory Blue-Collar Employees	LACEA
501	Professional Engineers	Co. Engineer Road Flood	20	650	Engineers Architects Geologists Chemists	CAPE
502	Supervisory Professional Engineers	Co. Engineer Road Flood	40	680	(See Unit No. 501)	CAPE
511	Engineering Technicians	Co. Engineer Road Flood Air Pollution Reg. Planning Real Estate	60	1,400	Construction Inspectors Title Examiners Engineer Aids Planners Air Pollution Engineers Property Agents	CAPE
512	Supervisory Engineering Technicians	(See Unit No. 511)	80	470	(See Unit No.511)	CAPE
601	Fire Fighters	Fire	4	1,400	Firemen Fire Dispatcher Helicopter Pilot	Fire Fighters Union

Unit No.	Unit	Departments	Number of Classes	Number of Employees	Description	Certified Employee Organization
602	Supervisory Fire Fighters	Fire	3	470	(See Unit No. 601)	Fire Fighters Union
611	Peace Officers	Sheriff District Attorney	10	3,700	Deputy Sheriffs D.A. Investigators	Peace Officers Association
612	Supervising Peace Officers	Sheriff District Attorney	6	1,000	Sergeants Lieutenants	Peace Officers Association
613	Public Defender Investigators	Public Defender	3	40	Non-supervisory	LACEA
621	Corrections Officers	Sheriff	1	310	Non-supervisory	LACEA
631	Guards	Various	3	340	Non-supervisory	LACEA/SEIU
701	Deputy Probation Officers	Probation	10	2,200	Deputy Probation Officers Group Supervisors Nurse-Counselors Transportation Deputies	AFSCME
702	Supervisory Deputy Probation Officers	Probation Community Services Senior Citizens	6	300	(See Unit No. 701)	LACEA/Supervising D.P.O. Assoc.
711	Social Workers	Public Social Services Adoptions Probation Health Mental Health	15	3,000	Social Workers Homemakers Community Workers New Careers Classes	SEIU 535

Unit No.	Unit	Departments	Number of Classes	Number of Employees	Description	Certified Employee Organization
721	Psychiatric Social Workers	Mental Health Hospitals	4	150	Psychiatric Soc. Wkrs. Mental Health Coordinator	Psychiatric Social Wkr. Assoc.
722	Medical Social Workers	Hospitals Health Public Social Services	6	440	Medical Soc. Wkrs. Medical Case Wkrs. Medical Social Work Consultants	LACEA/SEIU
723	Child Welfare Workers	Adoptions Public Social Services	2	310	Child Welfare Workers	SEIU 535
724	Supervisory Professional Social Workers	(See Units 721, 722, 723)	10	220	(See Units 721, 722, 723)	Supervising Prof. Soc. Wkrs.Assoc.
731	Social Services Investigators	Public Social Services	10	3,400	Eligibility Workers Welfare Investigators Property Services Advisors	LACEA/SEIU
741	Supervisory Social Services Employees	Public Social Services Health Hospitals Adoptions Mental Health	10	1,200	(See Units 711 & 731)	LACEA/SEIU
801	Attorneys	District Attorney Public Defender	10	750	Deputy District Attorneys Deputy Public Defenders	LACEA
811	Librarians	Library	10	360	Librarians Library Assistants	LACEA
821	Agricultural Inspectors	Agricultural Commissioner	3	50	Non-supervisory	AFSCME

Unit No.	Unit	Departments	Number of Classes	Number of Employees	Description	Certified Employee Organization
831	Cultural, Scientific & Educational Employees	Art Museum Museum Arboretum Fire Art Institute	40	210	Curators Biologists Foresters Art Instructors Etc.	LACEA

LOS ANGELES COUNTY IN RETROSPECT

John James

I would like to review briefly some of the principles of unit determination and criteria which, I think, are particularly important from management's viewpoint. Then I hope to draw upon our experience in Los Angeles County, with the idea of making it meaningful to you and your local situation.

We have been subject to the provisions of the Meyers-Milias-Brown Act (MMB) for about three years. During that period, in California, we have witnessed what I believe are some fairly common mistakes, certainly in the area of unit determination. The first mistake is that some public agencies have done very little concerning unit determination. Another mistake is that some agencies have followed the practice of formally recognizing, as the state law authorizes, any kind of unit that the employee organization requests. The third mistake occurs when management of the agency makes unilateral decisions concerning unit determinations. I think these kinds of decisions will haunt us in future legislation. It behooves all of us to do the very best job possible to establish units not only from our standpoint, but also from the standpoint of the employee organization and the employees themselves. These decisions will certainly have a significant impact on management's ability to develop effective employee relations in the long run.

Employee organizations generally will follow a number of different criteria in making their decisions. Probably one of the more common ones is that they will utilize the degree of organization of the employees in an effort to capture the largest possible membership or that membership which they hope they can hold for a long period of time, disregarding what effect this might have on the agency itself. A second criterion that an employee organization will generally follow will be to develop units leading to a strong position in bargaining. A third criterion is an attempt to develop units which will effectively block out efforts by competing employee organizations to organize the employees in the agency. I think these are the principal motivations of employee organizations in the area of unit determination.

Conversely, the employees tend generally to seek smaller units than does the employee organization. They want an opportunity for personal involvement and personal identification. They would like to have very small units where each could have a role to play. This is a problem that is faced by employee organizations as well as management.

Management generally seeks the smallest number of relatively large units which at the same time will allow the employees to have reasonable freedom in exercising their rights or organize and be represented. The pressure exerted by employee organizations which generally seek a larger number of units than management desires should be countered by management's pressure when these requests are unreasonable or would result in an excessive number of units. However, management should not carry this principle to the extreme. For example, unless an agency-wide unit is desired by the employee organization and the employees, it is a mistake for management to refuse to consider reasonable requests for additional units. It would cause serious problems in the long run. Also, I feel very strongly that we shouldn't break job classes up into more than one unit. The principal reason for this is that management will be forced into a position of bargaining two different rates of pay for the same job class.

In our ordinance, as in the state law, we recognize that management and confidential employees should be treated differently. We further recognize that professional employees should have the right to be represented in a distinct unit, separate from nonprofessional employees if they so elect. We feel very strongly that supervisors should be in a separate unit from nonsupervisory employees. This was one of the principal aims of county management during the development of our ordinance. State law gave supervisors an equal right with nonsupervisory employees to be organized into representation units. If it weren't for this, we undoubtedly would have tried to seek an ordinance that would have permitted us either to deny the right of full representation to supervisory employees and treat them as part of management or at least provide that supervisory employees could not be represented by the same organization that represented their subordinates. It is most important that management be consistent in all of its decisions in unit determination. Any exception would allow the precedent to be set for future situations, a precedent which would be very difficult to argue against.

I would like to cover the criteria adopted in our ordinance concerning unit determination, which were developed by the consulting committee appointed by the Board of Supervisors, chaired by Benjamin Aaron. There are six criteria: (1) insurance to the employees of the fullest freedom in exercising their rights; (2) the community of interest among the employees; (3) a history of representation in public employment; (4) the effect the unit would have on the efficient operation of the public service and sound employee relations; (5) the authority of management officials at the level of the unit to enter into agreements or make effective

recommendations; and (6) the effect on the existing classification structure of dividing a single job class into two or more units. In our county experience, after the determination of 47 units, there is not one case in which our commission established a unit which split a class into two or more units. The final decision, regardless of who makes it, must consider the interest of all three groups: management, employee organizations, and employees. Long-range results must be considered for successful unit determination. If a unilateral decision is reached with no consideration of its effect on improved employee relations, oftentimes this decision will return to haunt management.

In Los Angeles County we have what we believe is a truly independent commission. This is the Employee Relations Commission with whom the final decisions rest. Also, I feel there is a real need for a similar state agency, an agency that is knowledgeable in the field of public employee relations. Even though there is a multitude of similarities between the situations in the private and public sectors, there are many real differences which must be recognized.

In October, 1968, when our Ordinance was adopted, there were 68,000 public employees in Los Angeles County. There were twenty-seven separate and distinct employee organizations, of which eleven, at that time, were affiliated with the AFL-CIO. Of our 68,000 employees, 54,000 were members of these organizations, membership ranging from a small organization of about 20 to the large Los Angeles County Employees Association of over 30,000 members. We had more than 50 different departments and over 2,000 different classes. Given this kind of setting, it would have been completely unrealistic for management to conclude that, since we had excellent relations with the Los Angeles County Employees Association (which we really didn't have at the time), we should adopt a law authorizing management to determine units and proceed to set up one big, county-wide unit because it would be easier to negotiate one agreement only. Instead, in the early drafts of the ordinance, which we prepared, before the Meyers-Milias-Brown Act was introduced in Sacramento, we proposed that final authority for unit determination be vested with a neutral commission. We were the moving party in seeking the establishment of representation units and formal recognition of majority representatives.

There was a reason why we initially proceeded in this manner. In 1966, we had experienced a strike of our social workers. One of the main contributing causes of that strike was the fact that we didn't know who represented the social workers; there were three competing organizations

claiming to represent them. Previous meeting and conferring history showed that for the past ten years social workers had been represented by the Los Angeles County Employees Association. However, a new organization, which was a very small unit in SEIU (Service Employees International Union) at that time, was able to call a strike that resulted in 50 percent of our social workers walking out for about three weeks. It was this situation that made us realize the importance of determining which organization the employees wished to be represented by.

Then, in 1968, the ordinance was adopted and established the Employee Relations Commission as final authority. The commission proceeded to develop rules for unit determination which were adopted in January, 1969. Basically, in the unit determination the petitioner is the union, not county management. Any petition by an organization requires a 30 percent show of interest, and any intervening petition requires at least 10 percent in the formal hearing. The final decision is made by the commission, and the rules provide a detailed procedure as to how a certified representative is to be selected.

County management insisted upon a secret ballot election in each and every case. I recommend this very highly. It is one of the few opportunities for the employee to really get involved in the whole process; it gives employees an opportunity to be heard as well as informed. Another reason to be considered is the lack of reliability of the petition itself. Often employees are pressured into signing a petition or authorization card. This type of documentation is doubtful as proof of the real wishes of the employees.

Concerning our election procedure, we required a majority vote of the employees in the unit. We wanted a certified representative, but we also wanted to be reasonably sure that any successful employee organization could expect to have the continued support of a majority of the employees so that management could establish a long working relationship with the organization. This has caused few problems in Los Angeles County. Out of 50 elections, we have only had 3 that have failed to result in a certified representative. One case involved deputy sheriffs: In the first election, only 57 percent of the total membership voted and it was thrown out by the commission. There were two organizations on the ballot, the Professional Peace Officers Association and LACEA. It seemed clear that there wasn't much interest on the part of the employees. However, after a second election was unsuccessful, finally in a third election 50.4 percent of the membership voted in favor of the Professional Peace Officers Association. Also, of the 50 elections, less than half were contested.

The commission established the first unit on March 20, 1969. An election was held within the following month, and on April 30, 1969, the first unit of superior court clerks was certified. This procedure continued at an accelerated pace, a pace which was difficult to maintain. This is a problem that must be considered. Sufficient time must be available to negotiate an agreement after a representative is certified. The significance of the budget and salary calendar must be recognized by employee organizations and a neutral commission as well as management.

Generally, we were happy with the job done by our commission. With respect to a series of decisions defining supervisory employees, we felt many organizations petitioned for units that included what we considered to be both supervisors and nonsupervisors. The commission determined that in those cases where an employee had the responsibility to evaluate subordinates' performances, even though not responsible for hiring and firing, that employee is a supervisor. The commission made a series of decisions denying requests for units that included what we claimed were supervisory employees. This resulted in many modifications to petitions that were filed by employee organizations.

Another important decision made by the commission affected the broad group of social workers and welfare employees. In this case, six employee organizations were involved, including SEIU, AFSCME, and LACEA, as well as county management. No two parties agreed on any issue. At that time, LACEA had strength among clerical employees and eligibility workers, and SEIU's strength was with social workers and child welfare workers. We felt that it was appropriate to have the non-college graduate social workers in one unit, the eligibility workers in another unit, the professional M.S.W. social workers in a third, and a supervisory unit. After many weeks of delays and hearings, the organizations finally got together on units that substantially agreed with the county's original position, with the exception of three professional social worker units instead of one. There are three different organizations representing professional social workers: one, the psychiatric social workers; one, the medical social workers; and a third, the child welfare workers. In effect, we ended up with six units when we were seeking four.

In summary, we have had a total of 115 petitions filed, 47 units have been determined, an organization has won an election in each one of these, thus resulting in 47 certified representatives although only 15 different employee organizations are involved. For example, the Los Angeles County Employees Association has 12 units, but it is also in joint councils with SEIU and with other organizations, totalling 8 other units. Thus, they are involved in a total of 20 units. There are 5 SEIU units, 2 units that were won by professional peace officers, 2 by firefighters,

4 by AFSCME, 2 by the California Nurses Association, and 6 by an organization of professional employees. In addition, there are 6 other organizations, each of which won an election. Also, I might indicate that there are 4 units in which there are fewer than 100 employees in our agency; however, each of these is a professional unit. Sixteen units have over 1,000 employees, one of these having over 16,000 employees. Of the 47 units, 18 are professional, and 5 of these are supervisory units; among our 29 non-professional units, nine are supervisory units.

We have had 50 elections, 47 of which have been successful and resulted in certification of representation. We have had 20 contested elections. In 18 of our elections, over 75 percent of the employees voted. In 24 elections, between 60 and 75 percent of the people voted. In those elections where fewer than 60 percent of the people voted, 7 were not contested. Based upon our experiences, employees are interested in their right to vote and it really doesn't make that much difference whether an election is contested or not.

I would like to reiterate that I do think unit determination is a very important facet from management's standpoint. It is not the kind of thing that should be left entirely up to the union and employees themselves. However, it is usually to management's advantage to have a relatively small number of units, but perhaps more important than a workable number of units is the test of reasonableness. One of the best ways to obtain this is to have an opportunity for third-party resolution of potential disputes. Because of this, there appears to be a need for a state agency, an agency which would be staffed with persons who are knowledgeable and understanding, as well as experienced, in the field of public sector employment. We have many significant differences when compared to the private sector, such as an elected "board of directors", tax rate limitations, and the budget and salary calendars.

APPENDIX

UNIT DETERMINATION, RECOGNITION AND REPRESENTATION ELECTIONS

Conference Reference Materials

Bers, Melvin K. The Status of Managerial, Supervisory, and Confidential Employees in Government Employment Relations. New York State Public Employment Relations Board, June 1970.

Prasow, Paul. Unit Determination in Public Employment--Concept and Problems. Reprint No. 198, Institute of Industrial Relations, University of California Los Angeles, 1969.

Rehmus, Charles M. Arbitration of Representation and Bargaining Unit Questions in Public Employment Disputes. Reprint No. 45, Institute of Labor and Industrial Relations, Wayne State University, 1967.

Schneider, B.V.H. "Unit Determination: Experiments in California Local Government." In California Public Employee Relations (CPER) Series No. 3, Institute of Industrial Relations, University of California Berkeley, November 1969 (pp. 1-28).

"A Special Report on Sacramento County." In California Public Employee Relations (CPER) Series No. 10, Institute of Industrial Relations, University of California Berkeley, August 1971 (pp. 8-15).

American Arbitration Association--various pamphlets describing the functions and services of the AAA in public sector labor relations. See especially pamphlets on representation elections.

INSTITUTE OF INDUSTRIAL RELATIONS
UNIVERSITY OF CALIFORNIA, LOS ANGELES
PUBLIC SECTOR MANAGEMENT PROGRAMS

GLOSSARY OF SELECTED EMPLOYEE RELATIONS TERMS

REFERENCES: Some of the definitions provided herein are taken directly from significant employee relations documents. Where this is the case, a notation in parenthesis has been included at the end of the definition. These references include:

EO - Executive Order 11491 -- Labor Management Relations in the Federal Service - Signed on October 29, 1969.

LACI - the Los Angeles City Employee Relations Ordinance (#141,527, approved 1/29/71, effective 2/2/71) adding Chapter 8, Division 4 to the Los Angeles Administrative Code.

LACO - the Los Angeles County Employee Relations Ordinance (#9646; adopted 9/3/68; effective 10/4/68) and other published documents of the County.

LMRA - the Labor-Management Relations Act, 1947 (Taft-Hartley Act) as amended by Public Law 86-257, 1959 (Landrum-Griffin Act).

M-M-B - the Meyers-Milias-Brown Act -- California Government Code -- Sections 3500-3511 -- as amended in the 1968 and 1970 legislative sessions.

PO - the Postal Reorganization Act, Public Law 91-375 (signed on August 12, 1970).

AFL-CIO	Name of the federation created by merger in 1955 of the American Federation of Labor and the Congress of Industrial Organizations.
AFSCME	American Federation of State, County and Municipal Employees (AFL-CIO).
Administrative Code	Los Angeles County Ordinance No. 4099 (LACO).
Agency	An executive department, a government corporation and an independent establishment as defined in section 104 of title 5, United States Code, except the General Accounting Office (EO).
Agency management	The agency head and all management officials, supervisors, and other representatives of management having authority to act for the agency on any matters relating to the implementation of the agency labor-management relations program established under Executive Order 11491 (EO).
Agency shop	A union security arrangement to eliminate "free riders" without requiring all employees in a bargaining unit to become members of the union as a condition of employment. Employees in the unit must either join the union or pay a service charge (usually equivalent to union dues) to the collective bargaining agent. Modified agency shop -- A variant (rare) devised to meet objections of employees on a public (or private) payroll to being forced to pay fees to a union. Rather than a service fee to the bargaining agent the employee pays the sum to a designated charitable organization. See 'free riders.'
Arbitration	Method of resolving a dispute under which the parties to a controversy must accept the award of a third party.
Arbitration, advisory	An attempt in the public sector to employ the arbitration process to resolve disputes while still recognizing the sovereignty of the government. The arbitrator's award need not be accepted as where the employer decides the award is contrary to overriding public interest.
Arbitration, compulsory	Third party dispute settlement required by law or government regulation.
Arbitration, voluntary	Third party settlement where labor and management jointly request that an issue be submitted to arbitration. This may be done on an ad hoc basis or may be pursuant to a collective bargaining agreement making arbitration the terminal point of the negotiated grievance procedure.
Assistant Secretary	The Assistant Secretary of Labor-Management Relations (EO).
Association	An independent organization of employees generally not under the direct jurisdiction of the AFL-CIO. Major examples include the California State Employees Association and the National Education Association.
Authorization card	Statement signed by employee designating a union as authorized to act as his agent in collective bargaining. An employee's signature on an authorization card does not necessarily mean that he is a member of or has applied for membership in the union.

BCTC	Building and Construction Trades Council (AFL-CIO).
Bargaining unit	Shortened form of "unit appropriate for collective bargaining". An appropriate unit includes all employees sharing a community of interest which can be served through collective bargaining.
Board	The Employee Relations Board established in chapter 8 of division 4 of the Los Angeles Administrative Code (LACI).
CALPEF	California Public Employees Federation (Independent). Formerly known as CLOCEA
CNA	California Nurses Association (Independent).
COPE	Council of Political Education (AFL-CIO).
CPAAC	County Personnel Administrators Association of California.
CSAC	County Supervisors Association of California.
Captive audience	Employees required to attend a meeting at which the employer makes a speech, usually shortly before a representation election. The National Labor Relations Board requires an employer to give the union an opportunity to answer such a speech if the employer has prohibited solicitation on company property during non-working hours.
Card-check	Comparison of union authorization cards signed by employees against employers payroll to determine extent of union support by employees.
Certification	Official designation of a labor organization entitled to bargain as exclusive representative of employees in an appropriate bargaining unit.
Certified employee organization	Means an employee organization, or its duly authorized representative, that has been certified by the Employee Relations Commission as representing the majority of the employees in an appropriate employee representation unit (LACO).
Challenged ballot	A vote questioned by one of the parties to a representation election. Common practice is to resolve the challenges and open and count the challenged ballots only if the number of challenged ballots is sufficient to affect the outcome of the election.
Check-off	Arrangement whereby an employer deducts from the pay of union members in a bargaining unit membership dues and assessments and turns these monies over to the union. In some jurisdictions the public employee union is required to pay a fee for this service.
Collective bargaining	To bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession (LMRA).

Collective bargaining negotiations	Generic term for process of negotiating terms and conditions of employment to be incorporated in written contract. See "meet and confer" negotiations.
Commission	The Los Angeles County Employee Relations Commission established pursuant to section 7 of the Los Angeles County Employee Relations Ordinance (LACO).
Conciliation	Efforts by a neutral party directed to the accomodation of opposing viewpoints in a labor dispute in order to bring about a voluntary settlement. In current usage the terms conciliation and mediation are used interchangeably, although technically a "conciliator" plays a less active role than a "mediator" plays in a labor dispute. See "mediation".
Confidential employee	One whose responsibilities or knowledge in connection with the labor-management issues involved in collective bargaining, grievance handling, or the content of union-management discussions would make his membership in the union incompatible with his official duties. Such individuals usually are staff employees reporting to and accountable to those in management responsible for the conduct of union-management discussions, especially those relating to wages, hours and/or working conditions of union-represented employees. An employee who is privy to decisions of County management affecting employee relations (LACO). An employee who is privy to information leading to decisions of City management affecting employee relations (LACI).
Consult (or "confer")	Means to communicate verbally or in writing for the purpose of presenting and obtaining views or advising of intended actions (LACO).
Consult or consultation	To communicate orally or in writing for the purpose of presenting or obtaining views or advising of intended actions (LACI).
Contract-bar rules	Policies followed in determining when an existing agreement between an employer and a union will bar a representation election sought by a union attempting to unseat an incumbent employee representative.
Council	The Federal Labor Relations Council established by Executive Order 11491 (EO).
County	The County of Los Angeles, a body corporate and politic and political subdivision of the State of California, and where appropriate herein, "County" refers to the Board of Supervisors, the governing body of said County, or any duly authorized management representative as herein defined (LACO).
Craft union	Bargaining unit limited to workers engaged in a particular craft or skill; e.g., molders, carpenters.

Day	A calendar day (LACI)
Determining body or official	The body or official who has final authority to make a decision on matters under discussion within the scope of representation (LACI).
ERA	Employee Relations Administrator. Employee of the County of Los Angeles Department of Personnel who acts as principal negotiator for various representation units and, in addition, is assigned a variety of County departments as liaison between Department of Personnel and the department (LACO).
ERCOM	County of Los Angeles Employee Relations Commission (LACO).
ERO	Los Angeles County Ordinance #9646. See also "Ordinance" (LACO).
Employee	The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act, as amended from time to time, or by any other person who is not an employer as herein defined (LMRA). An employee of an agency and an employee of a non-appropriated fund instrumentality of the United States but does not include, for the purpose of formal or exclusive recognition or national consultation rights, a supervisor, except as provided in section 24 of Executive Order 11491 (EO). Any person employed by the County in a position in the classified civil service (LACO).
Employee organization	Any organization which includes employees of a public agency and which has as one of its primary purposes representing such employees in their relations with that relations with that public agency (MMB). Any lawful organization which includes employees of the County and which has as one of its primary purposes representing such employees in their employment relations with the county; provided, however, that said organization has no restriction based on race, color, creed, sex or national origin (LACO).

Employee, regular	An employee who is appointed to a full-time or part-time permanent position (LACI).
Employee relations	The relationship between the County and its employees and their employee organizations, or when used in a general sense, the relationship between management and employees or employee organizations (LACO). The relationship between the City and its employees and their organizations, or when used in a general sense, the relationship between management and employees or employee organizations (LACI).
Employee representation unit	A unit established pursuant to section 8 of the Los Angeles County Employee Relations Ordinance (LACO). A group of employees constituting an appropriate unit as provided in the Los Angeles City Employer-Employee Relations Ordinance (LACI).
Employee rights	Each employee of the Postal Service shall have the right, freely and without fear of penalty or reprisal, to form, join, and assist a labor organization or to refrain from any such activity, and each employee shall be protected in the exercise of this right (PO). Nothing in the agreement shall require an employee to become or to remain a member of a labor organization, or to pay money to the organization except pursuant to a voluntary, written authorization by a member for the payment of dues through payroll deductions (EO). Except as otherwise provided by the Legislature, public employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. Public employees also shall have the right to refuse to join or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the public agency (MMB). Employees of the County shall have the right to form, join and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employee relations. Employees of the County also shall have the right to refuse to join or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the County. No employee shall be interfered with, intimidated, restrained, coerced or discriminated against because of his exercise of these rights (LACO). Employees of the City shall have the right to form, join, and participate in the activities of employee organizations of their own choosing pursuant to the provisions of this chapter

Employee rights (cont'd)	for the purpose of representation on matters of employee relations other than those excluded herein. City employees also shall have the right to refuse to join or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the City. No employee shall be interfered with, intimidated, restrained, coerced or discriminated against because of his exercise of these rights (LACI).
Employer	The term "employer" includes any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof, or any corporation or association operating a hospital, if no part of the net earnings inures to the benefit of any private shareholder or individual, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization (LMRA).
Exclusive recognition	When a labor organization has been accorded exclusive recognition, it is the exclusive representative of employees in the unit and is entitled to act for and to negotiate agreements covering all employees in the unit. It is responsible for representing the interests of all employees in the unit without discrimination and without regard to labor organization membership. The labor organization shall be given the opportunity to be represented at formal discussions between management and employees or employee representatives concerning grievances, personnel policies and practices, or other matters affecting general working conditions of employees in the unit. An agency shall accord exclusive recognition to a labor organization when the organization has been selected, in a secret ballot election, by a majority of the employees in an appropriate unit as their representative (EO).
Fact-finding	Process whereby the positions of labor and management in a particular dispute are reviewed by an impartial third party or panel in order to focus attention on the major issues and to resolve differences as to facts. The fact-finder or fact-finding panel merely may report a determination of the facts on the theory that the facts are so clear that the parties will perceive a solution of their differences. More frequently, the findings of facts is coupled with recommendation for settlement. Where a recommendation is made, particularly if it is made public, it exerts pressure on the parties to accept the recommendation.

Fact-finding (cont'd)	Identification of the major issues in a particular dispute, review of the positions of the parties, resolution of factual differences by one or more impartial fact-finders and, the making of recommendations for settlement when directed by the Commission (LACO). Identification of the major issues in a particular dispute; reviewing the positions of the parties; and the investigation and reporting of the facts by one or more impartial fact-finders; and, when directed by the Employee Relations Board the making of recommendations for settlement (LACI).
Free riders	A derogatory term applied by unions to non-members within a recognized bargaining unit; the implication is that they obtain without personal cost the benefits of representation supported by dues paying union members.
Globe doctrine	National Labor Relations Board policy that allows employee's choice to govern its designation of the bargaining unit where more than one form of unit is appropriate.
Grievance	Any dispute concerning the interpretation or application of the County Employee Relations Ordinance, or of a written agreement between the County and a certified employee organization, or of rules and regulations governing personnel practices or working conditions. A dispute over the terms of an initial or renewed collective agreement does not constitute a grievance (see section 11(a) - County ERO - see also further definitions in specific memoranda of understanding) (LACO). Any dispute concerning the interpretation or application of a written memorandum of understanding or of departmental rules and regulations governing personnel practices or working conditions. An impasse in meeting and conferring upon the terms of a proposed memorandum of understanding is not a grievance (LACI).
Guard	An employee assigned to enforce against employees and other persons rules to protect agency property or the safety of persons on agency premises, or to maintain law and order in areas or facilities under government control (EO).
IBEW	International Brotherhood of Electrical Workers (AFL-CIO).
Impasse	A deadlock in negotiations between a certified employee organization and the County over any matters required to be negotiated, or over the scope of the subject matter of negotiations (LACO). A deadlock, after a reasonable period of time, in the meet and confer process between the City's management representatives of recognized employee organizations on matters concerning which they are required to meet and confer in good faith or over the scope of matter upon which they are required to meet and confer (LACI).

Industrial union	A union admitting to membership all persons in a "plant" or industry, unskilled, semi-skilled, regardless of work performed. Industrial unions sometimes are referred to as vertical unions.
Internal disputes plan	AFL-CIO's in-family procedure for resolving disputes between and among affiliated unions. Plan, set forth in Article XX (formerly XXI) of federation's constitution provides for submission of disputes to impartial umpires with right of appeal to AFL-CIO executive council. Its purpose is to protect established relationships not paper jurisdiction--of affiliates.
International union	The self-identification used by most unions in the United States which have affiliated locals in other countries, usually Canada.
Joint Council	A council of employee organizations certified by the County of Los Angeles Employee Relations Commission as the majority representative in an employee representation unit (LACO). Two or more qualified employee organizations which have joined together for the purpose of seeking certification as a recognized employee organization for an employee representation unit (LACI).
Jurisdiction, union	Authority claimed by union in constitution to be sole representative of workers engaged in a specific type or class of work.
Labor organization	Any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work (LMRA). A lawful organization of any kind in which employees participate and which exists for the purpose, in whole or in part, of dealing with agencies concerning grievances, personnel policies and practices, or other matters affecting the working conditions of their employees; but does not include an organization which (1) consists of management officials or supervisors, except as provided in section 24 of Executive Order 11491; (2) asserts the right to strike against the Government of the United States or any agency thereof, or to assist or participate in such a strike, or imposes a duty or obligation to conduct, assist or participate in such a strike; (3) advocates the overthrow of the constitutional form of government in the United States; or (4) discriminates with regard to the terms or conditions of membership because of race, color, creed, sex, age, or national origin (EO).
League	May refer to either the "League of California Cities" or the "National League of Cities".
Local	Group of organized workers in a specific geographic area which holds a charter from a national or international union.

Lodge	Term used in some labor organizations as the equivalent of local. See "local".
M-M-B	Meyers-Milias-Brown Act -- the basic State legislations dealing with employee-employer relationships in public service in California (other than schools employees) (See Secs. 3500-3511 of the California Government Code.)
MOU	Memorandum (or Memoranda) of Understanding--written document incorporating agreement(s) reached as a result of negotiations.
Maintenance of Membership	A form of union security whereby employees who are union members on a specified date and those who elect to become union members after that date are required to remain members in good standing as a condition of employment during the term of the union's contract.
Management employee	Any employee having significant responsibilities for formulating and administering County policies and programs, and includes the Chief Administrative Officer, department heads, and any other employees who are so designated by the director of personnel based upon the recommendation of the department head or department heads concerned. For the purpose of the Ordinance such persons shall not exceed 2% of the total number of full-time employees of the County (LACO). An employee having significant responsibilities for formulating and administering City policies and programs, including but not limited to general managers of departments, heads of offices and bureaus, and all persons in management classes subject to a one year probationary period pursuant to section 5.26 of the Los Angeles City Civil Service Commission Rules. An employee appointed to a position in a management class subject to a one-year probationary period prior to the time that a one year probationary period was required for such class is a management employee (LACI).
Management representative	A department head as defined in Section 22.5 of Ordinance No.4099, the Administrative Code of the County of Los Angeles. Includes the Chief Administrative Officer and the Director of Personnel, or any duly authorized representative of such department head or officer (LACO). A person designated by a determining body or official, to carry out the responsibilities specified for a management representative under this chapter (LACI).
Management rights	The Postal Service shall have the right (1) to direct officers and employees of the Postal Service in the performance of official duties; (2) to hire, promote, transfer, assign, and retain officers and employees in positions within the Postal Service, and to suspend, demote, discharge, or take other disciplinary action against such officers and employees; (3) to relieve officers and employees from duties because of lack of work or for other legitimate reasons; (4) to maintain the efficiency of

Management rights (cont'd) the operations entrusted to it; (5) to determine the methods, means, and personnel by which such operations are to be conducted; (6) to prescribe a uniform dress to be worn by letter carriers and other designated employees; and (7) to take whatever actions may be necessary to carry out its mission in emergency situations (PO).

Management officials of the agency retain the right, in accordance with applicable laws and regulations (1) to direct employees of the agency; (2) to hire, promote, transfer, assign, and retain employees in positions within the agency, and to suspend, demote, discharge, or take other disciplinary action against employees; (3) to relieve employees from duties because of lack of work or for other legitimate reasons; (4) to maintain the efficiency of the Government operations entrusted to them; (5) to determine the methods, means, and personnel by which such operations are to be conducted, and (6) to take whatever actions may be necessary to carry out the mission of the agency in situations of emergency (EO).

The scope of representation shall not include consideration of the merits, necessity or organization of any service or activity provided by law or executive order (MMB).

It is the exclusive right of the County to determine the mission of each of its constituent departments, board, and commissions, set standards of services to be offered to the public, and exercise control and discretion over its organization and operations. It is also the exclusive right of the County to direct its employees, take disciplinary action for proper cause, relieve its employees from duty because of lack of work or for other legitimate reasons, and determine the methods, means and personnel by which the County's operations are to be conducted; provided, however, that the exercise of such rights does not preclude employees or their representatives from conferring or raising grievances about the practical consequences that decisions on these matters may have on wages, hours, and other terms and conditions of employment (LACO).

Responsibility for management of the city and direction of its work force is vested in City officials and department heads whose powers and duties are specified by law. In order to fulfill this responsibility it is the exclusive right of City management to determine the mission of its constituent departments, offices and boards, set standards of services to be offered to the public and exercise control and discretion over the City's organization and operations. It is also the exclusive right of City management to take disciplinary action for proper cause, relieve City employees from duty because

Management rights (cont'd) of lack of work or other legitimate reasons and determine the methods, means and personnel by which the City's operations are to be conducted and to take all necessary actions to maintain uninterrupted service to the community and carry out its mission in emergencies; provided, however, that the exercise of these rights does not preclude employees or their representatives from consulting or raising grievances about the practical consequences that decisions on these matters may have on wages, hours, and other terms and conditions of employment (LACI).

Massillon Doctrine — Policy governing application of AFL-CIO internal disputes plan to unions in the public sector where exclusive recognition is not available. The protection afforded an "established bargaining relationship" by Article XX of the AFL-CIO constitution is extended by Massillon to "Whatever bargaining relationship a given union has been successful in establishing with the employing governmental agency" when exclusive representation of the bargaining unit is not permitted. So called because policy was enunciated in a dispute between the Laborers International Union and the American Federation of State, County and Municipal employees at Massillon State Hospital in Ohio.

Mediation — Proposal, or offer of "good offices" to parties to a dispute as an equal friend of each. While the terms "conciliation" and "mediation" are used interchangeably, a distinction between the two may be drawn from the nature of the activity of the person who is serving as intermediary. The conciliator's role is to bring the parties together and to allow (or belabor) them to work out their differences; the mediator may take a more active part in the negotiations by suggesting possible areas of compromise and proposing settlement terms. As a practical matter the roles of the intermediaries often shift between conciliation and mediation depending upon the situation and the parties in dispute.

Effort by an impartial third party to assist in reconciling a dispute regarding wages, hours and other terms and conditions of employment between representatives of the public agency and the recognized employee organizations through interpretation, suggestion and advise (MMB).

The effort of an impartial third person, or persons, functioning as intermediaries, to assist the parties in reaching a voluntary resolution to an impasse (LACO).

Efforts by an impartial third party or parties to assist as intermediaries through interpretation, suggestion and advice, in reconciling disputes regarding wages, hours and other terms and conditions of employment between the City's management representatives and representatives of the recognized employee organization (LACI).

Meet and confer negotiations	Term for process of negotiating terms and conditions of employment intended to emphasize the differences between public and private employment conditions. Negotiations under "meet and confer" laws usually imply discussions leading to unilateral adoption of policy by legislative body rather than written contract and take place with multiple employee representatives rather than an exclusive bargaining agent.
Meet and confer in good faith	The mutual obligation personally to meet and confer in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation (MMB). (or "meet and confer") The mutual obligation of the City's management representatives and representatives of recognized employee organizations personally to meet and confer within a reasonable period of time in order to exchange freely information, opinions and proposals, and to endeavor to reach agreement on matters within the scope of representation (LACI).
Memorandum of Understanding	A written memorandum, jointly prepared by the parties incorporating matters on which agreement is reached through meeting and conferring between the City's management representatives and representatives of a recognized employee organization. The memorandum shall be presented to the appropriate determining body or official of the City for determination and implementation (LACI).
NACO	National Association of Counties.
NLRB	The National Labor Relations Board as described in Labor-Management Relations Act.
National consultation rights	A form of recognition possible in the federal government under section 9 (a) of Executive Order 11491. National consultation rights permit a union that represents "a substantial number" of employees to consult, but not negotiate, with agency headquarters. Not permitted where another union holds national exclusive recognition.
Negotiation	Performance by duly authorized management representatives and duly authorized representatives of a certified employee organization of their mutual obligation to meet at reasonable times and to confer in good faith with respect to wages, hours, and other terms and conditions of employment, and includes the mutual obligation to execute a written document incorporating any agreement reached. This obligation does not compel either party to agree to a proposal or to make a concession. Agreements concerning any matters within the exclusive jurisdiction of the Board of Supervisors or concerning any matters not otherwise delegated by the Board shall become

Negotiation (cont'd)	binding when executed by the Board of Supervisors and affected certified employee organizations. Agreements concerning matters within the exclusive jurisdiction of management representatives, or otherwise delegated to them by the Board, shall become binding when executed by said affected management representatives and affected certified employee organizations (LACO).
Ordinance	The Employee Relations Ordinance of the County of Los Angeles (LACO).
PEPAL	Public Employees Political Action League (Independent).
Panel	The Federal Service Impasses Panel established by Executive Order 11491 (EO).
Payroll deduction	Arrangement under which a public agency deducts from salary of employees sums of money for various purposes including Association and Union dues (see sections 115 Off., California Government Code).
Professional	Means (1) a classification of employees engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work; (ii) involving the consistent exercise of discretion and judgement in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical processes; or (2) a classification of employees who (i) have completed the courses of specialized intellectual instruction and study in clause (iv) of item (1) of this paragraph, and (ii) are performing related work under the supervision of a professional employee as defined in item (1) of this paragraph (LACO).
Professional employee	One whose work is predominantly intellectual and varied in character, requires exercise of discretion and judgement and knowledge of an advanced mature customarily acquired at an institution of higher learning, and is of such a character that the output or result accomplished cannot be standardized in relationship to a given period of time. It is recognized generally that professionals are entitled to separate bargaining units unless they elect to be represented.

Professional employee (cont'd)	(a)Any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgement in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized instruction and study in an institution of higher learning or a hospital as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or (b) any employee who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph (a), and (ii) is performing related work under the supervision of professional person to qualify himself to become a professional employee as defined in paragraph (a) (LMRA). An employee engaged in work requiring specialized knowledge and skills attained through completion of a recognized course of instruction. Including, but not limited to, attorneys, physicians, registered nurses, engineers, architects, teachers and various types of physical, chemical and biological scientists (LACI).
Professional negotiation	Term used originally by National Education Association to describe alternative to collective bargaining, and to prevent split in profession's ranks between teachers and school administrators. The distinction between "professional negotiations" and "collective bargaining" has faded over the years.
Professional sanctions	Technique developed by National Education Association as alternative to strikes. Sanctions may include any one or combination of the following: Public declaration of unsatisfactory working conditions; recommendation that members of the profession refuse to accept employment in the area; censure, suspension, or expulsion of members who take jobs in the area; campaign to mobilize public opinion and political action to bring about change.
Public agency	Except as otherwise provided means the State of California, every governmental subdivision, every district, every public and quasi-public corporation, every public agency and public service corporation and every town, city, county, city and county and municipal corporation, whether incorporated or not and whether chartered or not. "Public agency" does not mean a school district or a county board of education or a county superintendent of schools or a personnel commission in a school district having merit system (MMB).

Public employee	Any person employed by any public agency including employees of the fire departments and fire services of the State, counties, cities and counties, districts and other political subdivisions of the state, excepting those persons elected by popular vote or appointed to office by the Governor of this State (MMB).
Qualified employee organization	An organization which includes employees of the City, which has as one of its primary purposes representing such employees in their relations with the City and which has complied with the conditions specified in section 4.820 of the Los Angeles City Administrative Code (LACI).
Recognition	Formal acknowledgment by an employer that a particular organization has the right to represent employees. Exclusive recognition, where permitted, is accorded an organization supported by a majority of employees in an appropriate bargaining unit and carries with it the sole right to represent all unit employees, members and non-members, in dealings with management.
Recognized employee organization	An employee organization which has been formally acknowledged by the public agency as an employee organization that represents employees of the public agency (MMB). A qualified employee organization or joint council of qualified organizations which has been certified by the Board as the majority representative of employees in an appropriate employee representation unit in accordance with the provisions of section 4.822 of the Los Angeles City Administrative Code (LACI).
Registered employee organization	An employee organization, association or union, or council of employee organizations that has fulfilled the registration requirements specified in Rule 692--County of Los Angeles Personnel Manual (LACO).
Registered employee representatives	Means those authorized representatives of registered employee organizations whose names are on file with the Director of Personnel in compliance with the registration procedures set forth in Rule 692 of the County of Los Angeles Personnel Manual (LACO).
Run-off election	Second election conducted when the first fails to show a majority for any choice presented. Generally, the least popular option in the first election is eliminated in the run-off.
SEIU	Service Employees International Union (AFL-CIO).
Salary Ordinance	Los Angeles County Ordinance No. 6222 (LACO).
Showing of interest	Support that union must demonstrate, usually by signed authorization cards, by employees in proposed bargaining unit before an election will be held. Most common requirement is showing of interest among 30% of unit employees.

Sixty percent rule	Guidelines issued by the United States Civil Service Commission in 1962 which said that a representation election conducted under Executive Order 10988 should not be considered a valid expression of the wishes of the employees unless at least 60% of those eligible to cast ballots. Percentage could be lowered slightly in rare cases. Rule was abolished by section 10 (a) of Executive Order 11491, which says that a union will be certified as the exclusive representative if chosen by a majority of the employees voting.
Strike	Any strike or other concerted stoppage of work by employees (including a stoppage by reason of the expiration of a collective-bargaining agreement) and any concerted slow-down or other concerted interruption of operations by employees (LMRA).
Superseniority	Seniority granted by contract to certain classes of employees in excess of that which length of service would justify. It most frequently is used to protect union stewards and other officers from transfer or layoff to insure that a union representative is available on the job.
Supervisor	Any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay-off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority, is not of a merely routine or clerical nature, but requires the use of independent judgment (LMRA).
Supervisory employee	Means any employee, having authority to exercise independent judgment in the interest of the County to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or having the responsibility to direct them, or to adjust their grievances, or effectively to recommend such action if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment (LACO).
Taylor Law	Popular name of New York State's public employee bargaining statute, which was enacted in 1967 following the report of a commission appointed by Governor Nelson Rockefeller and headed by Professor George W. Taylor of the University of Pennsylvania's Wharton School of Finance and Commerce.
Unfair employee relations practices	Practices forbidden by section 12 of the County Employee Relations Ordinance (LACO). Practices forbidden by section 4.860 of the Los Angeles City Administration Code (LACI).

Unfair labor practices	Practices forbidden by sections 8 (a) and (b) of the LMRA. Practices forbidden by section 19 of the Executive Order (EO).
Union	An organization of employees generally, but not always, under the jurisdiction of the AFL-CIO. Major exceptions include the Teamsters Union and the United Auto Workers of America.
Union shop	A form of union security which permits the employer to hire anyone, union or non-union, but requires the new employee to join the union within a specified time and remain a member in good standing. Modified union shop--a variant which excuses some employees--for example those hired before the union shop agreement was made or those who object on religious grounds--from the union membership requirement.
Unit	Shortened form of "unit appropriate for collective bargaining". An appropriate unit includes all employees sharing a community of interests which can be served through collective bargaining.
Vertical union	A union admitting to membership all persons in a "plant" or industry, unskilled, semi-skilled, and skilled, regardless of work performed. Industrial unions sometimes are referred to as vertical unions.
Winton Act	Basic state legislation dealing with employee-employer relationships among public school employers and employees of school districts in California (see sections 13080-13088 of the California Education Code).
Work jurisdiction	Claim by union that its members have the sole right to perform certain work.