PROFESSIONAL WORKERS AND COLLECTIVE BARGAINING

SELECTED PAPERS

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INSTITUTE OF INDUSTRIAL RELATIONS
UNIVERSITY OF CALIFORNIA
LOS ANGELES

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FOREWORD

In the United States in the decade of the 1960s, there was relatively little collective bargaining among professional workers. Of course, there were some notable exceptions such as groups of musicians, actors, and airline pilots. But professional workers by and large clearly were a minor presence at the bargaining table.

In the decade of the 1970s, by contrast, salaried professionals not only are expanding rapidly as a component of the American labor force, but they are also at the core of union growth and collective bargaining, especially in the public and nonprofit sectors of our economy.

These developments invite, and indeed urge, a deeper exploration of the many issues surrounding professional worker collective bargaining, some of which were highlighted at the Institute's conference on *PROFESSIONAL WORKERS AND COLLECTIVE BARGAINING*. The conference, held in November, 1974, was designed to bring together representatives from the various groups affected--professional worker unions and associations, administrators and employee representatives from the private and public sectors, members of the academic community--for a day of discussion and dialogue.

The conference was devoted specifically to explore the question of how professionals use collective bargaining to increase their participation in the decision-making process. The papers selected for inclusion in this volume, therefore, focus on that trend as more and more recognition is given to the participation of professional workers in collective bargaining. (As we go to press, California teachers and classified school employees are making use of their right to bargain collectively, a right they gained with the passage in 1975 of SB 160, the Rodda Act. The Act became fully effective on July 1, 1976.)

Professor Garbarino's paper, the first in this selection, sets the stage by reviewing the developments involving professionals in the 1960s, and by identifying the three types of structures within which significant bargaining by professionals was carried out--unions of professionals, professionals associations/unions, and employee associations/unions. For the 1970s he sees continued expansion of professional unionism, but at a different rate.

Professor Bairstow's discussion of professional worker bargaining in the Canadian Federal Service suggests to the American reader that there is a great potential for innovative problem solving. Her presentation of how Canadian professional workers have dealt with problems of definition of "scope of bargaining" and impasse resolution are of particular interest.

Our own paper is an attempt to understand the extent to which organized professionals use collective bargaining to increase their participation in decision-making. In distinguishing between Level I goals, short-term goals related to specific job and work rewards, and Level II goals, longer-term goals related to the distribution of decision making power, we quote some illustrative cases to explain how difficult it is for professional workers to move from Level I to Level II goals.

Harry Gluck's paper presents the union point of view in representing professional workers. He finds that the disparity between professional workers' demands and their final accommodation is a result of management's attitude at the bargaining table. He feels that so long as management upholds the sovereignty principle and refuses to acknowledge the mutuality of the parties' interests, there will be no meaningful collective bargaining for professional employees.

In addition to these four major presentations, a panel of experienced and well-known labor relations practitioners brought insight and perspective to the issues in question. Their comments are summarized below.

Charles Bakaly, Senior Partner in the firm of O'Melveny & Myers and Labor Relations Representative for the Los Angeles Unified School District, discussed the dilemma that he sees arising between competing professional and bargaining interests among teachers. He suggested that some of their objectives might best be accomplished by methods other than collective bargaining.

Louis Barnard, Director of Industrial Relations at Lockheed California Company, Burbank, commented on the difference in bargaining posture between professional engineering unions and blue-collar unions. He noted that the former generally adopt a role of cooperating with management, while the latter have traditionally displayed an adversary one. The challenge of the future, he said, is that both parties must become aware of these differences in their bargaining relationships.

Dennis Chamot, Assistant to the Executive Secretary, Council of AFL-CIO Unions for Professional Employees, Washington, D.C., noted that while the trend points toward increasing unionization, there still are some professional groups who resist organization and unionization. He discussed two such groups, doctors and engineers, in some detail.

Eugene Kidder, Assistant City Administrative Officer, Los Angeles, views the professional worker's problem in bargaining collectively from the other side of the table. The problem is one of choice, he noted; that is, the choice between affiliation with organized labor or maintenance of the professional worker's tradition of independence and judgment of his performance by peers.

Martin Morgenstern, who was appointed Director of Employee Relations by Governer Brown, reviewed professional worker bargaining in New York City. He distinguished between the professionals' demands to participate in decisions affecting working conditions and demands to participate in decisions affecting social policy. He feels that the former should be subject to negotiation even though there may be an impact on the service to the public as well as on the ultimate cost to the taxpayer. The latter kind of decisions, he noted, would certainly benefit from the professional workers' involvement, but such involvement would be only one of many inputs in the decision-making process.

Finally, Roger Kuhn, the Director of Leadership Development, United Teachers Los Angeles, presented a teacher union viewpoint. He stated that statutory limitations on scope of bargaining have served only to delay, but not eliminate, bargaining over professional concerns. He identified such concerns as selection of textbooks, class size, the number of classes for which a teacher must prepare course content, the right to practice his profession under reasonable standards of academic freedom, and other concerns which affect the quality of service teachers are able to give.

Mr. Kuhn's remarks, of course, predate the passage of the Rodda Act which has given teachers and educational personnel, as noted earlier, full collective bargaining rights. This volume on the scope of bargaining for professionals, therefore, is a timely contribution to the growing field of labor relations involving professionals.

March 1977 Mei Liang Bickner

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PROFESSIONALS AND COLLECTIVE BARGAINING IN THE UNITED STATES

THE DECADE OF THE 1960s

Joseph W. Garbarino*

The decade of the 1960s may turn out to have been the golden age of the professional worker in the United States. However that difficult term is defined, for most professionals that ten-year period saw a rapid growth in their numbers as well as in their income and status in the labor force. This would not be true of course, of all the individual occupations that might be considered as professional, but, in general, the buoyant economy of the 1960s produced gains for professionals that were large relative to the past and that may be difficult to reproduce in the future.

In one reaction to the potential deterioration of their relative economic position, therefore, professionals will continue to organize and bargain collectively in increasing numbers during the 1970s.

The upsurge in white-collar unionism that marked the 1960s included large numbers of professional employees. Although there are many reasons for their new interest in organizations, changing labor market conditions and, perhaps more important, changing structures of work, changing authority relationships and changing attitudes have all combined to produce a rapid growth in unions of professionals, when a broad definition of that elusive category is used.

End of an Era?

The most traditional of the professions, lawyers, doctors and dentists, easily maintained their usual position at the top of the earnings hierarchy. Under the pressures generated by the explosion in the school-and college-age population during the latter half of the 1950s and the 1960s and aided by the growth of teacher unionism, teachers at all levels improved their economic position substantially. Scientists and engineers benefitted from the boom in scientific and technological spending engendered by the space and missile

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*Professor of Business Administration and Director, Institute of Business and Economic Research. The paper was prepared with the assistance of Fred Naseef.

programs, from the growth of technologically based industries such as computers and atomic energy, as well as from the side effects of the increased emphasis on higher education. Finally, the growth of employment at all levels of government--in many ways the natural home of the modern professional--contributed to a sense of occupational euphoria that lasted until the end of the 1960s. Professional and technical workers combined have been growing as a percentage of the labor force for as long as we have records, but the 1970 Census reported an increase of about 4.25 million or 60 percent between 1960 and 1970 compared to increases of 47 and 38 percent for the 1950s and the 1940s, respectively. In 1970, professional and technical workers accounted for almost one in every seven members of the work force.1/

The most obvious indication that the golden age may be waning has appeared in education, where the combination of a rapidly rising supply of teachers and a drastic reduction in the rate of population growth has created an overall surplus condition that appears to present a long-run problem to that profession.

The situation with regard to scientists and engineers seems to be more ambiguous. These professional groups suffered from a slackening in demand as the space program wound down and have also been affected by cutbacks in defense spending on missiles and other technological defense products. Whether an expansion of demand in pollution and environmental areas as well as new technological developments related to energy production and distribution will offset the reductions is unclear at this time.

The status of the health professions is threatened by two different trends. In the case of doctors, what has been a perennial shortage shows signs of easing and there have been predictions that a surplus may appear in the relatively near future. More important are the potential changes in the structure of the system of providing medical care and of financing the costs that will accompany the move to some form of national health service. The continuing socialization of health services at a minimum will affect the financial arrangements under which the professionals work and may eventually affect the structures within which they work even more profoundly.

The legal profession is even more threatened by a flood of new practitioners than the medical and dental professions because the

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[1]The figure for 1970 was 13.8 percent compared with 11.8 in 1960 and 2.8 a century earlier, in 1870. Data are from the Bureau of the Census, 1970 Census of Population, Vol. I, Characteristics of the Population, Part I, U.S. Summary, Section 2, Washington, D.C. 1973.

enrollments in law schools are less constrained by the need to provide clinical and laboratory facilities. Although lawyers may be an example of Say's law in economics (that supply creates its own demand), there exists a real possibility that a surplus of lawyers could be created in a relatively short period of time.

These occupational groups have been the center of most of the current discussion of "professional" unionism in recent years, with most of the union activity occurring among the teachers (including college teachers) and the nurses. This raises the question of the definition of "professional" appropriate for a discussion of this sort.

The Problem of Definition

There are a large number of potential definitions of the professional available. Sociologists probably have the best claim to expertise in the area and their definitions tend to stress the intellectual requirements of the tasks involved, the autonomy of the professional in its performance, the responsibility to the client, and often the social purpose of the service provided. In a paper concerned with the professional and collective bargaining, it seems most appropriate to use the definition of "professional employee" provided by the *Labor Management Relations Act*.[2] Recent developments in questions of bargaining unit determinations involving groups such as college teachers suggest that this approach will produce a broadening of the concept of a "professional" well beyond that which the sociologists' definitions would include. (In addition to teachers of all types, a wide variety of administrative and support staff such as counselors and registrars have been included in units of professionals.)

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[2]The basic definition in the LMRA is: "The term 'professional employee' means (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 judgment 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 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,..." *Labor Management Relations Act*, Section 2 (12).

It would be very helpful if the Bureau of the Census or the Bureau of Labor Statistics would settle the definitional question for us, but they have carefully avoided the issue by the use of the category of "professional, technical and kindred workers." 3/

It appears that there is no readily available authoritative source currently willing to distinguish between "professionals" and technical and kindred workers over the whole range of occupations. In the course of rushing to fill the gap left by timidity of angels, we have made a rough estimate of the total number of professionals and their distribution by type from the 1970 Census data. The data are presented in Table 1. According to this estimate the combination of medical, legal, teaching and scientific and engineering professionals discussed above accounts for about 70 percent of all professionals. If our earlier interpretation of the current status of these four groups of professions is correct, then the conclusion that most professionals are likely to be faced with major changes in their working conditions in the future seems to be justified.

Professionals and Bargaining

There are three different structures within which significant bargaining by professionals is carried on: separate unions of professionals, and professional associations and employee associations that have been converted to union status.

Unions of Professionals

If the broad definition of professional occupations suggested by industrial relations practice is accepted, then unions of professionals such as those of actors, entertainers, musicians, and newspaper writers have been engaged in traditional collective bargaining for a long time, so long as to be largely ignored in the present flurry of discussion of professional unionism. These well-established unions often represent large numbers of employees; the Actors reported 67,000 and the Musicians a probably inflated 300,000 professional or technical members in 1971.4/

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[3]The second edition of the Bureau of Employment Security's publication, *The Dictionary of Occupational Titles, Volume II, Occupational Characteristics*, published in 1949, separated occupations into professional and technical. In the 3rd edition the D.O.T. retreated and no longer makes this distinction. The 1949 listing was used for guidance in this paper.

[4]Bureau of Labor Statistics, *Directory of National Unions and Association, 1971 Bulletin 1750, Appendix G.* Washington, D.C., 1972 cited hereafter as BLS Directory. The 1970 Census reported 95,000 "musicians and composers" in the experienced civilian labor force.

Table 1

ESTIMATED NUMBERS OF MAJOR CATEGORIES OF PROFESSIONS: 1970

	Total		% Employed by Government (1970)
	1960	1970	
Teachers (all levels)	1849	3228	74.7
Engineers and Natural Scientists	1003	1390	18.6
Health Professionals	963	1385	19.6
Accountants	471	704	18.2
Writers and Entertainers[1]	195	261	n.a.
Judges and Lawyers	212	259	17.7
Clergymen	196	228	1.2
Personnel and Labor Relations[2]	80	200	n.a.
Social Workers[3]	70	175	n.a.
Social Scientists	42	110	36.3
Librarians	72	100	72.0
Architects	30	54	11.4
Airline Pilots	28	50	3.0

Source: Adapted from Bureau of the Census, 1970 Census of Population, Vol 1, *op. cit.* Tables 221 and 225.

[1]Includes Actors, Editors and Reporters, Musicians and Composers.

[2]Census reports 99.2 and 294 thousand persons. Arbitrarily reduced to eliminate estimate of nonprofessionals.

[3]Census reports 95 and 220 thousand persons. Arbitrarily reduced to eliminate estimate of nonprofessionals.

The American Federation of Teachers is, of course, the professional union that has attracted the most attention over the past decade and a half. The AFT scored its big breakthrough in the New York City schools at the beginning of the 1960s. Along with the American Federation of State, County and Municipal Employees' union, the AFT has been the fastest growing union since that time, and its organizing and bargaining successes have converted both the National Education Association and the American Association of University Professors to forthright union programs. With more than 400,000 members in 1974, the AFT has not only been attracting new members but it has displayed an aggressive and effective approach to mergers with other groups.

As the prototype union of teaching professionals, the AFT would argue that it has always been concerned with professional issues of practitioner qualifications and educational policy, as well as with more conventional trade union goals. Compared with its professional association counterparts, it has pursued these professional objectives in a context of increasingly conventional trade union methods. The rhetoric of professionalism has been linked to the tactics of unionism.

Since separate unions of professionals have been bargaining for extended periods, the question arises as to whether they have behaved differently from other unions. At first glance one is tempted to argue that the unions of actors and entertainers, musicians, journalists, airline pilots, and teachers have all stuck fairly close to traditional union issues such as pay, job security, and working conditions. There have been indications, however, that professional issues such as the qualification of employees and the type and the organization of the delivery of services provided have been increasing in importance.

The entertainers, musicians and journalists, all depart from traditional union insistence on a standard rate of pay in some part of their jurisdictions permitting especially qualified persons to negotiate individual contracts with their employers. Some of the symphony orchestra musicians have bargained for systems of peer evaluation for selection and promotion and have introduced the tenure concept explicitly into their contracts.

Probably the ideal model of professional working conditions to which the unions aspire is that of the major universities where the faculty enjoy an unusual combination of independence in determining job content, scheduling of work and regular sabbatical leaves along with the security of tenure, regular salaries and retirement plans. As of 1974, about 330 institutions of higher education including about 86,000 faculty and professional staff were represented by unions. Following the lead of these unions, other groups find

claims of professional autonomy a convenient philosophical basis for employees desiring more "meaningful work," "self-fulfillment," and greater control over their working environment.

Even within the narrow definitions of "professional" some stirrings of union activity have occurred. In several cities unions of interns and residents have been formed and have negotiated agreements on pay and working conditions with administrators.

A local union of doctors affiliated with the Service Employees International Union was formed in Las Vegas in early 1972. An independent union of physician practitioners was established with headquarters in San Francisco in April 1972 under the name of the Union of American Physicians with a reported membership of several hundred. Efforts to set up an umbrella national organization of the scattered doctors' organizations have begun.

The occupational group in which the most important new unions of professionals have appeared has been the engineers, and to a much lesser extent, the scientists. The engineers launched a wave of organization in the early 1950s that produced an umbrella organization, the Engineers and Scientists of America, whose affiliated unions had 25,000 members in 1957. Other engineering unions claimed about 20,000 members while 10,000 engineers were reported to be enrolled in general unions affiliated with the AFL-CIO.5/

By the first years of the 1960s, several major engineering unions had lost bargaining rights (Strauss lists Western Electric, Sperry, and Westinghouse as major losses) and the Engineering Society of America disintegrated. Little attention was paid to engineering unions in the 1960s, but the movement seems to have held its own over the decade. The National Society of Professional Engineers conducts a periodic survey of engineering unions and its 1972 edition reported that about 56,000 employees were represented by engineering unions.6/ An earlier survey had reported that in 1959 a somewhat larger number of unions represented about 60,000 employees. (Not all of these represented employees were union members nor were they all professionals.)

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[5]George Strauss, "Professional or Employee Oriented: Dilemma for Engineering Unions," *Industrial and Labor Relations Review*, July 1964.

[6]National Society of Professional Engineers, *Tabulations of Unions Represent Engineers and Technical Employees*, eleventh edition, February 1972, Washington, D.C.

A large number of unions that are predominantly made up of other types of workers report substantial numbers of professional and technical workers in their organizations. Examples are the International Union of Electrical Workers (15,000) and the United Steelworkers (62,230). [7] Because there is no way of calculating the proportion that would be classed as professional under the Taft-Hartley definition, no attempt to estimate the numbers of professionals in these unions has been made.

Professional Association/Unions

The most interesting development in the past decade of professional organization has been the transformation of a number of prominent examples are the American Nurses Association (180,000 members), the National Education Association (1.2 million) and, more recently, the American Association of University Professors (75,000). The Nurses Association began its transformation shortly after World War II with the formulation of their Economic Security Program. Some urban branches of the National Education Association (NEA) also began to function more like unions at about the same time and by the mid-1960s the conversion of the NEA to bargaining was well under way, largely as a result of competitive pressures from the American Federation of Teachers (AFL-CIO). The AAUP began functioning as a bargaining agent for college faculty at the end of the 1960s. Local branches of all three associations now not only engage in bargaining, but all have conducted strikes; two faculty strikes in four-year colleges have been conducted by the AAUP and one by the AFT. The use of the membership figures for the nurses and the teachers' associations as if they were all the equivalent of union members in traditional unions is somewhat misleading since all three organizations continue to function as professional associations, and undoubtedly substantial proportions of their membership do not favor union-style collective bargaining nor do they regard themselves as "union members."

The experience of these associations to date suggests that their union activities will come to dominate their role as professional associations. This need not mean that they will abandon a concern with issues traditionally considered professional matters, but it does mean that the techniques used to influence the resolution of these issues will be bargaining and direct action rather than the more genteel methods associated with professionalism.

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[7] BLS Directory, Appendix G.

Whether other major professional associations will also take on a trade union coloration is an intriguing question. The professional association in its pure form is designed to deal with occupation-wide issues by using techniques of occupational control that were developed largely for use by self-employed professionals. Control over the supply of professional labor by controlling the educational process and the accreditation mechanism, control over the conditions of practice by the use of codes of ethics and the prohibition of corporate practice, and control over the right to provide the services that make up the content of the profession by legal regulation are well suited to medicine and the law as traditionally practiced. As professionals proliferate, however, more of them are finding themselves working as employees. The traditional techniques of professionalism are not really effective when employed against an employer in a bureaucratic, hierarchial organization. The apparatus of unionism seems to be a more promising method of influencing conditions under which services are provided. These include formal negotiation by expert representatives, detailed, written, legally enforceable agreements, third party adjudication of grievances, and the strike or other forms of job action. All of these processes are designed to deal directly with on-the-job relationships between employer and employee. When these tactics are added to the repertoire of a professional association, the organization comes to look more and more like a union and less and less like an association.

Will pure associations like the American Medical Association and the American Bar Association go through metamorphoses similar to those of the Nurses Association and the AAUP? There are two reasons to think that a movement in that direction might ultimately occur:

1. A large and growing proportion of doctors and lawyers are working as salaried employees rather than practicing as independent practitioners. According to the 1970 Census almost half of all doctors are working as salaried physicians, up from one-third in 1960. The proportions of lawyers and judges working as employees were very similar to that of the physicians in each of the Census years. [8] As their numbers increase and as they further diversify the roles they play in society, some segments of each profession seem likely to find themselves in a situation in which representation by a bargaining agent will seem useful.

2. Even without a shift to employee status, the free professions have increasingly found themselves negotiating about the economic conditions under which they practice. For the medical profession this has involved negotiation with "third party" groups such as insurance

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[8] The actual figures for physicians were 46 percent in 1970 and 33 percent in 1960. For "lawyers and judges" the figures were 46 percent in 1970 and 36 percent in 1960. Census, op. cit. Table 225.

companies, prepaid insurance plans, state and federal health agencies, and union welfare administrators. Dentists are increasingly included in prepaid dental plans and face the same problems.

The oft-cited goal of improving the delivery system of health services may well require changes in the conditions of practice for the health professions that would stimulate union organization. In other countries, such as Sweden and Britain, professional representation in the union mode is well established. In the United States, new forms of organization of health services such as Health Maintenance Organizations and Professional Services Review Organizations are likely to change the working conditions of health professionals.

Legal services have not been the object of the same amount of social concern, but this situation is changing and some of the same elements are appearing. Bar associations are facing the question of "closed panels" of lawyers sponsored by insurance and consumer groups--an early stage of the development of organized "third party" intervention into some of the conditions of practice.

It is possible that some of the academic professional associations (e.g., the American Political Science Association) might take on collective bargaining functions, but there has been little evidence of this to date. Some of the engineering associations such as the Association of Civil Engineers have shown more interest in this range of activity, but no substantial change in their roles seems in prospect.

For the immediate future, no obvious candidate for further conversions from professional association to union seems to be identifiable.

Employee Association/Unions

Employee associations are organizations of employees of political jurisdictions that in the past have been concerned mainly with lobbying activities as well as with providing a range of fringe benefit programs for their membership. As collective bargaining laws extending bargaining rights to public employees have been enacted in many states, these associations have tended to become candidates for status as formal bargaining agents. As in the case of professional associations, to some extent this has been in response to competition from existing unions. Twenty-one state employee associations were identified as engaging in some degree of collective bargaining by the compilers of the BLS Directory. These organizations accounted for about 650,000 members in total, and it is estimated that they include perhaps as many as 90 - 100,000 professional members. Most of these professionals are probably members of large heterogeneous bargaining units, such as the New York State Civil Service Employee Association which holds bargaining rights for most of New York civil servants.

There is no exact equivalent of the all-inclusive state and municipal associations in the federal government, but there are similar employee associations with more limited jurisdictions and both affiliated and independent unions have been active for many years. With the introduction of a version of collective bargaining into the federal service beginning with the promulgation of Executive Order 10988 during the Kennedy administration, bargaining has spread throughout the federal establishment, although the scope of bargaining is still limited.

The expansion of public employee bargaining rights to additional states is continuing, and there is an excellent chance that a federal collective bargaining law covering all public employees will be enacted in a few years, or possibly that the National Labor Relations Act will be extended to cover public employees. It appears that employee associations will continue to be converted to de facto unions and that in the process substantial numbers of professionals will be organized. Some of these, for example, the lawyers and accountants in the Internal Revenue Service and the staff of the NLRB, are already organized into professional units, and more will follow.

The View Ahead

The review of the relationship between professionals and unions presented in the preceding sections suggests how tentative any quantitative statements of the prevalence of professional unionism must be. Nevertheless, the temptation to estimate the level of professional unionism overall is irresistible. For what it is worth, my best guess as to the number of professionals who are members of unions or of associations engaged in bargaining is about two million. Probably almost two-thirds of this number are teachers, leaving about 700,000 for all other professions combined. If the broad definition of "professional" used in compiling Table 1 is accepted, this would suggest that between 20 and 25 percent of all professionals are members of a union or of a quasi-union professional or employee association. More than 40 percent of all teachers appear to be union members while only one in ten of all the other professionals are organized.[9]

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[9]The overall estimate of two million professionals organized is based on the 2,600,000 figure provided in the 1971 BLS Directory (p. 78) as the number of "professional or technical" workers who are members of unions or associations. The "professions" listed in Table 1 account for about 70 percent of the total of all professional, technical and kindred workers listed in the 1970 Census. Because the approximately 1,300,000 professional members of the NEA and the AFT account for so large a proportion of all members, I chose two million as my estimate of the number of professionals in the total of 2.6 million professional and technical workers combined.

The analysis to date suggests that professional unionism will continue to expand, but that the rate of expansion of the 1960s is not likely to be repeated. This pace resulted from the development of teacher unionism largely through the conversion of the NEA from a professional association to a trade union. No other mass of professionals of comparable size is available for such a large-scale conversion in the near future.

Nevertheless, the recruitment of professionals to some form of collective bargaining will continue at a substantial rate. This is guaranteed by the continued expansion of public employee unionism which will either absorb the professional workers in government in existing unions or force them to organize separately in self-defense.

Earlier I made the statement that public employment is the natural home of the professional in the broad definition used in this paper. Table 1 illustrates the basis for this claim.

As the table illustrates, about 40 percent of all professionals listed were employed by some level of government. Because of changes in classification, it is difficult to be precise, but I estimate that this proportion has risen from about 36 percent in 1950. Interestingly enough, the overall increase in the proportion of professional employment accounted for by government is not the result of increases in the proportions of teachers, as might be assumed, but largely by increases in the proportions of scientists, medical professionals, accountants, lawyers, and librarians among the professionals.

Not only does government employ about 40 percent of all professionals by our definition, but in 1970 about 25 percent of all government employees were professionals. Once again this figure has been rising at least since 1950.

In short, although professional unionism will probably grow more slowly in the 1970s, almost 25 percent of all professionals are already union members. The rising tide of public employee unionism combined with the growth of government employment and control will produce a steady rise in the number of professionals who are members of organizations engaged in collective bargaining.

PROFESSIONAL WORKERS AND COLLECTIVE BARGAINING IN CANADA

REFLECTIONS OF THE LAST TEN YEARS

Frances Bairstow*

The story of professional unionism in Canada--outside of the teaching and nursing groups--of necessity means the story of professional employees in the public service, both federal and provincial. Many enterprises which employed professionals, such as hospitals and universities, and may have been considered "private" in the past no longer qualify under that heading. We now have over 1000 public general hospitals in Canada.

It is also worth noting at the outset that public service professionals do not suffer from the same hangups of identity possessed by self-employed professionals or private industry in the engineering, research, and related fields. They know and accept the fact that they are "employees." They, therefore, forego concerns with status and prestige since it is nearly impossible to earn individual recognition as an outstanding research scientist in a government which employs over 2000 of them. The turn to professional unions--sorry, "associations"--reflects this hardheaded pragmatism, helped by establishment of public policy in Canada in 1967 upon the passage of the Public Service Staff Relations Act (PSSRA).

The legislation applies to all portions of the Public Service of Canada. Members of the armed forces and the Royal Canadian Mounted Police are excluded. Nearly 300,000 employees--over 90 percent of the work force--of the Government of Canada are covered by the legislation, with the Treasury Board designated as employer. There are eight other "separate employers" identified in the Act. They are: Atomic Energy Control Board, Centennial Commission, Defence Research Board, Economic Council of Canada, Fisheries Research Board, National Film Board, National Research Council, and Northern Canada Power Commission.

*Director Industrial Relations Centre, McGill University

The employees to whom the legislation applies are located in some 80 departments and agencies, with large concentrations in all provinces and major metropolitan centres in Canada. Smaller groups are to be found in most cities and towns across the country. Significant numbers are located in the far north and at other isolated posts within Canada. Others serve Canada at various posts and missions throughout the world. Their duties embrace a broad occupational spectrum--from relatively unskilled manual duties to those of highly skilled professional and technical nature--from laborers to research scientists.

The legislation has application to the large body of professional employees within the Public Service. They are employees within the meaning of the Act and are eligible for inclusion in bargaining units. The coverage of employees in the classical professions, such as law, medicine, dentistry, and engineering, represents a departure from the usual pattern followed in all but a very few labor relations statutes in Canada and in the United States.

Approximately 5 percent of federal public servants are excluded from the collective bargaining provisions of the Act by reason of their managerial or confidential rank.

The legislative scheme that was adopted incorporated the two basic principles that you are all familiar with through the operations of your own Wagner and Taft-Hartley Acts, namely, the freedom of association and provisions to insure bargaining in good faith. The Public Service Staff Relations Board is vested with the authority to inquire into complaints and to issue compliance orders.

Scope of Bargaining

Although there is no restriction on the matters that may be discussed at the bargaining table, there are some limitations on the matters that can be embodied in a collective agreement or in an arbitral award. Rates of pay, hours of work, leave entitlement, standards of discipline, and other terms and conditions of employment directly related are expressly made bargainable. One significant issue that is not bargainable is the merit principle of appointment, transfer, and promotion; these matters remain to be dealt with by the Public Service Commission under the terms of the Public Service Employment Act.

However, there is something new on the horizon which represents a significant departure from appointments strictly by merit. That is the new Data Stream system, first introduced in the Foreign Service, which provides that qualities and qualifications of various employees be fed into a central computer. When a position becomes vacant, all those with appropriate qualifications will have their cards emerge and choices can be made from the ones considered to be the best. It should come as no surprise that professional employees are raising vigorous objections to this system.

The Public Service Staff Relations Act also contains what we call in private industry a "management prerogative" clause. It reads: "Nothing in this Act shall be construed to affect the right or authority of the employer to determine the organization of the Public Service and to assign duties to and classify positions therein". As you might expect, some employee organizations and particularly the professional groups have been highly critical of the legislation on the ground that the area of bargaining has been unduly circumscribed.

The most unique and publicly discussed feature of the Canadian legislation is the arrangement for the resolving of impasses in bargaining. It has come as somewhat of a shock to many Americans (in fact, the head of the Civil Service Commission told me flatly, he would never permit such a law to be passed in the United States). There are those (including the late President Franklin D. Roosevelt) who have asserted dogmatically that "militant tactics have no place in the functions of any organization of Government employees," or, to put it more bluntly, that no public employee should have the right to strike. Many who share this view even assert that the public employer cannot delegate to any third party, in fact an arbitrator, the power to render a decision binding upon the public employer on a matter that touches its sovereign right to govern, which includes, in their opinion, the determination of the conditions under which its employees shall work. It is my personal view that there can be no realistic collective bargaining where management unilaterally makes the final decision.

On resolution of interest disputes the Act provides **two** alternatives: (1) the referral of the dispute to arbitration on conclusion of negotiations, or (2) the referral of the dispute to a conciliation board. If the latter alternative does not result in an agreement, the employees in the bargaining unit are entitled to engage in a lawful strike at the appropriate time. *The choice of alternatives rests with the bargaining agent and the bargaining agent alone.* It applies with respect to a particular bargaining

unit and is binding for the set of negotiations immediately following the specification of the choice; the choice must be made before notice to bargain is given.

The PSSR Act is coming before the Parliament for changes and adaptations which have been necessitated because of knowledge and experience gained from seven years of operation. It is important to note that the dispute resolution procedure described above will remain substantially unchanged. Other revisions proposed by the Chairman of the Public Service Staff Relations Board will be referred to shortly.

This retention of the present provision is in no small part due to the record of success. In the first six years of the Act's operation, 62 percent of all of the 300 agreements signed have been negotiated between the parties themselves without resort to third party intervention and another 20 percent have been signed by agreement with the help of a mediator or conciliator. About 13 percent followed arbitral awards and 5 percent conciliation board reports. The last 5 percent include five cases in which there was resort to strike action. These cases did not include professionals.

Out of 81 bargaining units that have been certified, about 25 have now opted for the conciliation board method of dispute settlement. Of particular interest is that the professional groups which have selected the strike route are: the Translation group, Education group, the Chemists, the Veterinarians, the Nurses, and, of all people, the Research Scientists. (If I can interject a personal note, as a professional with some background in Economics, I tremble in anticipation of the day when economists opt for strike and learn to their dismay that the body politic is totally unaware of their absence from duty. Should the Foreign Service go that route I dread the surfeit of cartoons of striped pants diplomats picketing Parliament Hill, since Canadian newspapers had a field day when the diplomats first formed their union in 1967.)

I am emphasizing here the federal public service of Canada because it is essential to view the professional worker against the backdrop of this particular legal and social environment. In plain words, in Canada, this is where the action is.

I want to get beyond the recital of statistics and convey something of the special nature of professional collective bargaining. A cursory perusal of the professional agreements won't tell you very much.

They read very much like union contracts in private industry. They cover such standard subjects as wage rates and fringe benefits; hours and overtime; shift arrangements; transfer, promotion, discipline and discharge; and procedures for processing grievances. But here and there one is starting to notice innovations.

Item:

Research Scientists' Agreement

Article 12 - Professional Papers

12.01 The Employer agrees that original articles and technical papers prepared by an employee, within the scope of his employment, will be retained on appropriate departmental files for the normal life of such files; the Employer will not unreasonably withhold permission for the publication of such articles and technical papers in professional media and, at the Employer's discretion, recognition of authorship will be given where practicable in departmental publications.

Article 26 - Career Development

26.01 Education Leave

(a) An employee may be granted education leave without pay for varying periods up to one (1) year, which can be renewed by mutual agreement, to attend a recognized institution for additional or special studies in some field of education in which special preparation is needed to enable him to fill his present role more adequately, or to undertake studies in some field in order to provide a service which the Employer requires or is planning to provide.

(b) An Employee on Education Leave under this clause shall receive allowances in lieu of salary equivalent to not less than 50% of his basic salary provided that where the employee receives a grant, bursary or scholarship, the education leave allowance may be reduced. In such cases the amount of the reduction shall not exceed the amount of the grant, bursary or scholarship.

26.02 Attendance at Conferences

(a) In order that each employee shall have the opportunity for an exchange of knowledge and experience with his professional colleagues, the employee shall have the right to apply to attend a reasonable number of conferences or conventions related to his field of specialization. The Employer may grant leave with pay and reasonable expenses, including registration fees, to attend such gatherings, subject to budgetary and operational constraints as determined by the Employer.

26.03 Professional Development

(a) The parties to this Agreement share a desire to improve professional standards by giving employees the opportunity on occasion

(i) to participate in seminars, workshops, short courses or similar out-service programs to keep up to date with knowledge and skills in their respective fields, or

(ii) to conduct research or to perform work related to their normal research programs in institutions or locations other than those of the Employer

Item - Administrative and Foreign Service Category

Article 28 - Publications

The employer agrees to continue the present practice of ensuring that employees have ready access to all publications considered necessary to their work by the Employer.

Item - Historical Research and Scientific & Professional Category

Article 33 - Authorship

33.01 When an Employee acts as a sole or joint author or editor of a historical publication, his authorship or editorship shall normally be shown on the title page of such publication.

33.02 Where the Employer wishes to make changes in material submitted for publication with which the author does not agree, the author may request that he not be credited publicly.

Other contractual clauses on joint consultation, registration fee payments to professional societies, etc., could be cited, but the small sample given here indicates the direction in which professional negotiations appear to be headed. The point which deserves emphasis is not that professionals are getting professional development leave, a type of sabbatical leave provision, since many received these benefits in the past even before unionism. It is the recognition in a contractual obligation that it is the right of the professional to receive them which is significant. This means effectively that if he doesn't get what he thinks he is entitled to, he can grieve on the issue.

In addition to more access to training programs and sabbatical leaves, demands which exercise members of the foreign service, efforts are being stepped up to secure cash payments for unused accumulated sick leave. The drive for this compensation has received impetus because of the failure of salaries and regular increases to keep up with inflation.

Professional union leaders have expressed disappointment to me that their members have not been as interested in pursuing more idealistic goals such as improving the quality of services provided to the public. But they blame that on the overriding immediate concern with money due to the recent and rapid inflationary increases. The priorities have been rearranged for the foreseeable future and woe to the leader who ignores this especially one who has members at the lower end of the salary spectrum. Professionals are putting in demands of 20 percent increases per year and are expecting to get 15 percent. Foreign service officers are insisting that at least 6 percent of this be in the form of performance pay. About 75 percent of them achieved this last year. My mind boggles at the problems of determining performance pay in a bargaining unit of 1000 members, scattered around the world, with a salary range of $12,000 to $33,000.

With the decline in real income, unifying issues to professionals include flexible hours, compressed workweeks, overtime pay (first achieved by the economists, excuse me), pay for "extra professional services" and that hottest of all issues to professionals, performance or merit pay. Blood can be drawn on this one. Although my choice of words may appear to you as being somewhat dramatic, I am speaking as a sometime mediator of professionals.

There is a special flavor to professional bargaining. Consider, if you will, the subject of professionals in management positions or managerial exclusions, a matter causing much pain and anguish these days. If Mr. Finkelman's (the Chairman of the Public Service Staff Relations Board) recommendations on changes in legislation are enacted into law, the result will be to exclude from collective bargaining, "a person who...regularly participates to a significant degree in the formulation and determination of government policies and programs." This is a major departure from the present legislation which reads "who has executive [italics mine] duties and responsibilities in relation to the development and administration of government programs."

Anyone who has been through the rigours of faculty consensual government in the universities will recognize the extra hazards, the semantic antics which are inherent in professional bargaining ambiguity and confusion abound. I need only remind you that Alice-in-Wonderland was written by an academic.

When you have two professionals, you will have two opinions plus caveats, plus disclaimers, plus disassociation that the employer is not responsible for the statements which are about to be made, plus advice that all the facts aren't in, and concluding comments to the effect that further research is needed, combined with a plea for more adequate funding.

Obviously, many of my observations are based on personal experience and interviews. This type of investigation does not readily lend itself to quantifying. It could be dignified as impressionistic. Since measuring the quality of work is a subjective matter, I can only report to you that some managers in the public service tend to be scornful of economists who demand treatment and recognition as professionals and at the same time negotiate for overtime clauses which in the opinion of these same managers have had deleterious effects on work assignments.

On the positive side, managers are pleased with the results of joint consultative efforts. They note a better attitude of trust and understanding. There are positive signs of openness. It is my view that it is traceable to the likelihood of the professionals' realization that soon they will be occupying these managerial positions, so it would be unreal to adopt "hate the boss" attitudes and engage in easily remembered slanging matches.

It has been observed by many specialists that professionals suffer from a kind of schizophrenia. They haven't found themselves yet in collective bargaining. They want kudos and perquisites which come with professional status and achievement, and they are learning that some of them are incompatible with collective bargaining which tends to seek common denominators and penalizes the maverick or unusually qualified.

The Professional Institute of the Public Service of Canada is the parent group or federation which has taken unto itself the responsibility of over-all representation of most of the professionals in the public service. A few groups have remained outside of PIPS, notably PAFSO or the Professional Association of Foreign Service Officers.

PIPS was founded in 1920. It functioned essentially as a traditional professional association. Interest in collective bargaining was expressed, but it never really caught on with the 3000 members until 1967 with the passage of the PSSRA. It would probably be more accurate to describe what happened to PIPS as being "thrust into collective bargaining kicking and protesting."

With major responsibilities in collective bargaining for over 17,000 individuals, research activities were established, regional offices opened and grievance officers hired. The impact of newly unionized young and militant employees was nearly traumatic and PIPS has not yet found its proper leadership stance. At various times it has been led by "management-minded" individuals, by those with an almost evangelical mission and now can be characterized as a kind of collective leadership. (For details, see the McGill study of "The Professional Employee in the Public Service of Canada," March, 1973.)

A great amount of energy was dissipated almost from the beginning in arguing with the employer over managerial and confidential exclusions. The employer was continually being accused of bad faith since it was alleged that by classifying employees as "managers," he was getting them cheaper; they were out of the purview of collective bargaining demands and had no voice in the determination of their salaries or fringe benefits.

Members accused the Institute leadership of selling out their interests by engaging in confidential and secret discussions with management under the aegis of the National Joint Council referred to derisively by some public employees as a kind of "old boy" net. Individual occupational groups such as economists or nurses have threatened withdrawing from the Institute and taking their per capitas with them.

A large pool of potentially organizable professionals, about 11,000, remain unorganized in crown corporations. Some of them are waiting for PIPS to clarify its role; some groups are seeking certification but the labor relations boards have not rushed. I have noted a certain reluctance among certifying groups to deal with professionals as members of organized groups since the legislative guidelines are somewhat unclear until the Act is revised.

Professionals are flexing their muscles to a larger extent. One might conclude that the scientists, veterinarians and education groups feel that opting for the strike route vests them with a kind of machismo or virility. So far, the professionals have only threatened. Would the vets who are small in number and large in clout have the chuzpah to stop the nation's meat supply from leaving the packing houses? Without their stamp of approval, no meat can be released from the abattoirs.

I am convinced that professional union members will find their destiny in less drastic and more constructive approaches. Both the managers and professionals are uncomfortable with the traditional hostile stances commonly associated with union-management relationships. Discussions are going on right now between professional groups and the Treasury Board which may result in a new type of collective agreement, one specifically designed for professionals. Such discussions incorporate a high degree of consultation and mutual trust, since the results would have to be sold to an individualistic membership. If successful, this innovative type of agreement might represent a breakthrough in collective bargaining.

In conclusion, I have interpreted the assignment given to me by the organizers of this conference as answering the question - "Can a motivated, dedicated, individualistic professional find true happiness as a union member--sorry, member of an association?"

My unscholarly answer to this question is, "Yes" if the organization the professional joins can act like a union and look like an association. Our modern teachers, scientists, and economists want their organizations to have the clout associated with the Truck Drivers unions, but without having to sacrifice dignity or status. They prefer arbitration to strike tactics when negotiations fail. And if, heaven forbid, they have to engage in a work stoppage, they describe their actions as "study sessions," "withdrawal from services," or "information meetings."

In Canada, there is a remarkable laboratory operating, namely, the workings of the public Service Staff Relations Act. There the professional employee is having his cake and eating it, too.

SCOPE OF BARGAINING AND PARTICIPATION IN DECISION MAKING BY PROFESSIONALS

Archie Kleingartner*

And

Mei Liang Bickner **

Introduction

In 1974, the Institute of Industrial Relations at UCLA was awarded a grant by the U.S. Department of Labor to conduct a study of "Problems in the Scope of Bargaining for Professional Employees in the Public Sector."[1] This presentation draws from the research conducted in connection with this project. There will thus be greater emphasis on professional worker bargaining in the public sector, but we must also bear in mind that these professionals have been less reluctant to enter into bargaining relationships than have professionals employed in the private sector. Moreover, some professional groups in the public sector--for example, teachers--have no direct counterpart in the private sector. But even where such counterparts exist--for example, engineers--professionals employed in government have shown greater interest in collective bargaining.

The thrust of this analysis is the prospect of making a contribution to our understanding of the interplay of various elements in collective bargaining relationships as they relate to scope of bargaining and to participation in decision making among organized professionals.

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[1] Among the questions being considered in this study are:

a. How have legislation and other expressions of public policy at all levels of government defined the appropriate subject matter for collective negotiations? What standards are being used and how much consistency is there between different governmental jurisdictions and public agencies in this regard?

b. How does the subject matter of negotiation change as the bargaining relationship matures and evolves? What impact do these changes have on existing civil service systems and other established policies and rules? And how has bargaining altered, if at all, the locus of decision making in public agencies?

The study will also provide data on how public employee relations boards, administrative agencies, the courts, and third party neutrals have resolved disputes over scope of bargaining involving professionals.

Framework For Analysis

An Interdisciplinary Approach

To the scholarly researcher, part of the challenge of studying collective bargaining among professionals is that it requires the bridging of at least two academic disciplines--sociology and industrial relations--and two traditionally rather separate fields of inquiry--professional behavior and unionism including collective bargaining.

It is sociologists, primarily, who study the professions and the nature of the professionalism. There exists in that discipline a substantial body of knowledge about what constitutes professionalism, the goals that professionals seek to achieve in their jobs and careers, the distinction between the fictions and the realities of professionalism, and so forth. Collective bargaining and trade unionism have been the focus of interest of industrial relations specialists.

Students of professional behavior, however, along with those concerned with topics such as the quality of working life and participation by workers in management decision making, have not given much attention to the character and implications of the trend toward collective bargaining. Conversely, the industrial relations experts have not bothered to consider the unique aspects of professional worker bargaining or its potentially catalytic impact on the future of collective bargaining generally.

The topic of this paper, "Scope of Bargaining and Participation in Decision Making by Professionals," presupposes the existence of an ongoing collective bargaining relationship. The phrase, "scope of bargaining," has meaning only within the framework of a formally established collective bargaining relationship.

The central proposition that we are exploring, one which bridges the two academic traditions discussed above, is the extent to which organized professionals use collective bargaining to increase participation in decision making, broadly defined. The broad definition tends to encompass such notions as the extent to which collegial rather than bureaucratic relations exist between professional employees and their administrative superiors; the extent to which professional employees have the freedom to make judgments about how and when they do their work; the role of employees in evaluating the quality of the completed work as well as the performance of individual practitioners; the extent to which they have a role in establishing the basic mission of the organization that employs them, and so forth. To a large degree, these areas of participation define what we might refer to as "professional status" in the employment relationship.

The scope of bargaining can be very broad, covering many different topics, or it can be very narrow. Most legislation which provides for collective bargaining also deals to some degree with the issues of mandatory, permissible, and prohibited subjects for bargaining.

Generally speaking, when people talk about problems in scope of bargaining they have one of two things in mind. First, they may be referring to how mandatory, permissible, or prohibited subjects of bargaining should be defined in legislation or, indeed, whether they should be defined at all. Second, and perhaps more commonly, they are referring to the efforts of unions or associations to expand the range of permissible and mandatory subjects in specific bargaining relationships.[2]

Traditional Attitudes Toward Professionals

In an historical sense, a common approach of the professional associations and societies among the salaried professions (e.g., teachers, nurses, social workers, and engineers) was to look to the self-employed professions, most notably law and medicine, in their search for income, autonomy, freedom and power--in short, the professional status of doctors and lawyers.

The common practice of the employers of professionals, on the other hand, has been to convince their professional staff that, in effect, they already had full professional status, that indeed, in a fundamental way they were part of management. These employers emphasized that there is an essential harmony of interest between the employer and the professional staff. They would criticize a professional's concern with financial rewards and job security, pointing out that the essence of professionalism is to provide service.

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[2] It will be helpful to make explicit the distinction between "breadth" and "depth" of participation in decision making--breadth meaning the number and variety of items covered in a contract and depth being defined as the degree of penetration in a given area. There is an important difference between a contract provision which states that a teachers' union and the school superintendent will consult over appointment of school principals, and a provision to the effect that these appointments shall be made by mutual agreement of the parties. Bargaining by professionals in most relationships is still at the stage where conflict over scope is concentrated on breadth, that is, should something be included in the contract at all. We suspect that as time goes on, the most difficult problems will arise over "depth" of penetration on matters included in the contract initially as statements of principle or intent.

The images of the "angel in white" and the "dedicated teacher" illustrate this version of the service ideal. Furthermore, such employers did not admit that problems arising in relations with their professional staff could not be solved through improved communication, consultation, and education. Thus, employers tended to equate professionalism with loyalty to management. An interest in unionism, for example, was automatically viewed as an expression of disloyalty and, by extension, as unprofessional conduct.

The trade unions in dealing with professionals within their jurisdiction have had--and to a considerable extent still have--the problem of deciding what message they wish to communicate. They have tended to vacillate between convincing professionals to be less status conscious and recognize that they are workers who need unions to help them get decent wages and improved working conditions; or they tried to out-professionalize the professional association,[3] this latter approach rarely being successful.

The stereotypes roughly sketched here have characterized the behavior of professional associations, unions, and employers of professionals until the mid-1960s. In our judgment, the certification of the United Federation of Teachers in New York in 1961 and its subsequent activities, more than any other single event in professional worker labor relations, served as the catalyst which broadened the interest of professional workers in collective bargaining. There were, of course, many other contributing factors, most notably the expansion of public sector bargaining legislation.

Now, about a decade later, there is a good deal of professional worker collective bargaining. But in arriving at this point, unions, professional associations, and employers of professionals have undergone many changes in attitude, structure, and conduct. We can anticipate a continuation of this trend.

There is no reason to suppose that because professionals have joined unions, their aspiration to achieve broad participation in management decision making are reduced. On the contrary, it may be argued that they finally have a mechanism that holds real promise of bringing such participation about. Yet, efforts by professionals to expand participation in decision making often conflicts with the prevailing interpretation of the appropriate subject matter for

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[3]It is also worth noting that historically, an important reason for the trade unions' interest in professional workers was that if they could be successfully organized, then unionism might become attractive to the more numerous and generally unorganized clerical and sales workers.

bargaining, as defined in legislation as well as in negotiated management rights provisions. Most employers would prefer to limit bargaining with professionals to strictly economic and job matters.

Professional workers are no less interested than nonprofessional workers in obtaining an appropriate salary, good fringe benefits, adequate job security, and equitable practices relative to such matters as layoff. The ability to secure these "bread and butter" items at an adequate level is a function of bargaining power, unity of purpose, and negotiating skills--whether the union represents professionals or nonprofessional workers. And increasingly, unions representing professionals are willing to use all available economic and political strength to achieve these objectives. This, too, represents a dramatic departure from objectives pursued historically by professional organizations.

Disputes over scope of bargaining affecting manual workers now arise infrequently in both the private and the public sector. Generally speaking, public sector management has been willing to negotiate over the same matters as management in the private sector unless specifically prevented from doing so. Problems remain, of course, in such areas as the extent to which civil service regulations preempt bargaining on issues that otherwise would fit easily into the definition of wages, hours, and working conditions.

The fact that disputes over scope in recent years have been most pronounced among professionals, and in the public sector, may not indicate so much a difference between bargaining practices in the two sectors as it reflects a difference in goals and objectives between professionals and nonprofessionals. If there were more bargaining by professionals in the private sector and if the organizations that do bargain now were stronger, we might also find more controversy over scope of bargaining in that sector than exists at the present time.

Professional Goals in Bargaining

Unions of professional workers tend to bring within the scope of joint decision making matters of the utmost importance to the functioning of the organization. Arvid Anderson, in a much quoted statement, has offered the opinion that what these organizations are trying to do is to use collective bargaining to bring about fundamental social change.[4] This viewpoint probably goes too far if it is interpreted to mean that professional unions seek to effect basic social change as a deliberate political and economic strategy. Yet it may be correct in terms of the net long-run effect of the bargaining objectives being pursued by a number of the more powerful and sophisticated professional worker unions.

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[4] Anderson, Arvid, "Public Employees and Collective Bargaining: Comparative State and Local Experience." In Proceedings, New York University Twenty-First Annual Conference on Labor, 1968. New York: Matthew Bender, 1969.

In an earlier study, we suggested a division of the objectives of professional worker unions in collective bargaining into Level I and Level II goals.[5] Level I goals were defined as those relating to fairly specific job and work rewards. Salary increases, medical insurance, and related "bread and butter" items illustrate these goals. Level II goals were defined as participation in decision making on such matters as the mission of the agency, the allocation of resources, and long-term career development; in short, questions relating to the distribution of power and authority. We suggested that even for professionals, Level II goals rarely become concrete objectives in bargaining until Level I goals have been adequately met. Level I goals typically have an immediate cost impact on the employer. Level II goals may or may not have such an impact. It is mainly because of their effect on the distribution of authority and power within the work organization that Level II goals are more likely to be challenged by management as inappropriate subjects for negotiation. But reaching these goals is generally what professionals have in mind when they talk about participation in management and the achievement of professional status.

In our current research, we are trying to identify those issues that arise in professional worker bargaining in the Level II area which have been challenged by management as being appropriate subjects for the bargaining table. Examples of disputed issues include the establishment of joint committees to consider policy questions, paid educational leave, the appointment and evaluation of supervisors by staff professionals, the elimination of rules determining when professionals perform their work, peer review of professional worker performance, expenditure of agency funds, and so forth.

Some issues are more or less specific to individual professions. For example, among teachers questions such as selection of teaching material, class size and teacher-student ratio are frequently challenged by management at the bargaining table as being outside the scope of bargaining. Among nurses, determination of the number of duty stations and establishment of the number of nurses on a shift have been troublesome. Caseload questions continue to come up among social workers, and relief from performing routine clerical duties aggravate relations between librarians and library management.

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[5] Kleingartner, Archie, "Collective Bargaining Between Salaried Professionals and Public Sector Management," Public Administration Review, March/April 1973, pp. 165-172.

Problems In Scope Of Bargaining: Some Illustrative Cases

The framework as outlined suggests that an important goal of professionals is to increase participation in management decision making through expanding the scope of bargaining. However, advancing from bargaining over Level I goals to Level II goals which expand the scope of bargaining, and where the final result does mean increased participation in management decision making is--in the real world--a very slow and difficult process.

The preference of professional employees is only one of many elements that go into determining what the parties bargain about and how extensive the involvement of professionals will be in the decision making process. The legislative framework within which the bargaining takes place, the decisions of employee relations boards and of the courts, the relative bargaining power of the employer and of professional worker organization, the composition and size of the bargaining unit, the maturity of the relationship as well as numerous other factors can and do influence bargaining outcomes.

In this section we analyze certain aspects of four different bargaining relationships involving professional employees in the public sector. We will attempt to convey some of the complexity of our bargaining institutions as they affect scope of bargaining and participation in decision making.

Teacher Bargaining in Los Angeles

Collective Bargaining for teachers in California is presently governed by the Rodda Act (S.B. 160) of 1975 which provides for collective bargaining for teachers and other employees of the school districts. However, at the time of the case we offer here teachers were covered by the Winton Act of 1965, as amended in 1969.[6] Under the provisions of the Act, Boards of Education are required to "meet and confer" with the Certificated Employee Councils. Membership on the Council is proportional to the membership of the various teacher organizations.

The Los Angeles City School District is the second largest in the nation. Prior to the formation of the United Teachers of Los Angeles (UTLA), a number of rival teacher organizations were affiliated both with the California Teachers Association (NEA) and the California Federation of Teachers (AFT). In a series of complicated mergers, UTLA was formed by merging the NEA affiliated Associated Classroom Teachers of Los Angeles (ACTLA) and the AFT affiliated Los Angeles Teachers Union (LATU) in February, 1970.

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[6] Cal. Educ. Code, Sections 13080-13090.

Soon after the merger was accomplished, UTLA called a strike which lasted four and a half weeks and involved approximately 14,000 teachers. The settlement of the strike resulted in an agreement which, in addition to including such traditional items as salary increases and a grievance procedure with binding arbitration, showed surprising breadth as well as depth of participation by teachers in the decision making process.7/

Among other things, the agreement called for the establishment of joint committees to review hiring policies, the school calendar, the definition of a school day, preparation time, and the selection of teachers to receive nonteaching assignments. Joint Committees also were established to study and review existing Board policies with the objectives of releasing teachers from nonprofessional duties.

With regard to the Joint Committee on hiring policies, Article X, Section 2 (a) of the agreement reads in part:

> The parties shall establish a Joint Committee to review applicable factors, desirable standards, and methods for the recruitment of qualified persons to fill teacher vacancies, and to establish preferences.

In addition, the agreement provided that certain decisions will be made jointly by the Local School Administrator and the Faculty Representative. Among these were the approval of local curriculum and textbook selection, assignment of teachers to extracurricular activities, and the assignment of teachers aides.

In addition, Article XIII, Section 3 stated:

> The District shall reduce the current class sizes in the fourth to the twelfth grades and shall continue to work for the objective of reducing class sizes to the minimum amounts necessary for effective teaching. Effective as of the 1970-71 school year, the District shall reduce the classes in the fourth through twelfth grades by three (3) pupils per class , or by the number necessary to insure that the maximum amount of pupils in any class shall not exceed thirty-two (32) pupils.

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[7] Agreement between the Los Angeles Unified School District and the Negotiating Council of the Los Angeles Unified School District, May 20, 1970. As we shall note below, this Agreement was never executed.

The agreement, in Article IX, also attempted to insure the professional autonomy of the teacher in the classroom.

> Teacher shall have the right to teach their classes, discuss controversial subjects, and make professional decisions, including the grading of students without interference. . . .

This agreement between UTLA and the Los Angeles City School Board went beyond the traditional issues of wages, hours, and working conditions. The results of the negotiations were viewed as an important victory for the newly formed union.

It was a short-lived victory. Suits were filed by private citizens and teacher groups against both the Board of Education and the union on the grounds that existing law prohibited the Board from sharing its decision making authority. In pretrial proceedings, the court enjoined the parties from executing the agreement.[8] Faced with the restraints under the court's injunction, the Board adopted the provisions of the agreement as a Board rule.[9] Another suit was filed against the Board to prevent the implementation of the Board rule.[10] Again, the court enjoined the Board from adopting and implementing the Agreement. The court concluded that the Board was without express statutory authority, or necessary implied authority, to enter into a binding bilateral agreement.

From our standpoint it is most interesting that in ruling on the adoption of the Board Rule, Judge Stratton cited as examples of violations of the Education Code those articles and sections of the negotiated agreement that provide for teacher participation in decision making through Joint Committees. The UTLA case illustrates that although a strong professional employee organization can achieve substantial breadth and depth of participation in decision making in the absence of favorable legislation, the courts can nullify these gains even though they were agreed to by both parties. The Stratton decision has had far-reaching impact on the definition of negotiable issues for teachers under the Winton Act in the state of California.

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[8] Grasko, et al., v. Los Angeles City Board of Education et al., and United Teachers of Los Angeles, etc., et al. Miles, et al., v. United Teachers-Los Angeles, etc., et al. 31 Cal. App. 3d 290 (1973).

[9] The Board Rule (No. 3700) was substantially the same as the negotiated instrument. However, as a Board Rule it took the form of a unilateral statement of policy.

[10] Citizens Legal Defense Alliances Inc., vs. L.A. City Board of Education et al. No. 977964.

The Seattle School District and the Seattle Alliance of Educators

In 1965, the state of Washington adopted a statute on Professional Negotiations for Certificated Personnel and School Districts.[11] The Act contains a broad scope-of-bargaining clause. Section 28A 72.030 provides that representatives of an employee organization

> "...shall have the rights, after using established administrative channels to meet, confer and negotiate with the board of directors of the school district or a committee thereof to communicate the considered professional judgment of the certificated staff prior to the final adoption by the board of proposed school policies relating to, but not limited to, curriculum textbook selection, in-service training, student teaching programs, personnel, hiring and assignment practices, leaves of absences, salaries and salary schedules and non-instructional duties." (Emphasis added)[12]

The Act was apparently intended by the state legislature as a collective bargaining statute, even though its wording imposed "meet-and-confer" obligations only. The Seattle School Board of Education decided to treat the Act as a collective bargaining statute.[13]

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[11] The Professional Negotiations Act of 1965 Chapter 28A.72 of the Revised Code of Washington.

[12] The courts have ruled that: Chapter 28.72 RCW is not an improper delegation of the legislative power in violation of this amendment notwithstanding the absence of standards and the specific discretion given to the districts to make rules for its implementation. American Federation of Teachers. Yakima Local 1485 vs. Yakima School District No. 7 (1968) 74 WD2d 871, 447 P2d 593.

[13] Interview with Mr. Billy Fogg, Assistant Superintendent, Seattle Public Schools, October 24, 1974.

The Washington State Supreme Court recently reaffirmed that the Act mandated "meet-and-confer" obligations only. Barnes vs. Spokane Education Association. 83 Wn 2d 366 (1974).

The latest contract between the Seattle School District and the Seattle Alliance of Educators provides for extensive participation by teachers in the decision making process of the district.[14] Some examples are the following:

1. On input to the curriculum

   "The professional staff shall be deemed competent and responsible to assist in designing the curriculum, in conformity with the laws of Washington and the rules and regulations of the State Board of Education."

2. On teaching assignments

   "A teacher will be assigned to combination and split grades only after consultation with the teacher concerning the necessity of the assignment."

3. On class size

   The contract mentions specific upper limit of class size. The District will:

   a. "Maintain an average District ratio of students to full-time equivalent teachers at no more than 30:1, exclusive of Special Education."

   b. "Initiate steps to limit regular academic class size to thirty-two (32) students for grades 7-12."

   c. "Initiate steps to limit regular academic class size for grades 3-6 to twenty-eight (28) and for grades K-2 to twenty-five (25)."

By almost any standard the Seattle contract represents broad participation by teachers in these areas of decision making. As such, it provides at least a partial test of the proposition that absent inhibiting factors, professional workers will seek participation in areas of traditional managerial responsibility through the bargaining process.

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[14] Collective Bargaining Agreements 1973 through 1976 between the Seattle School District No. 1 and Seattle Alliance of Education, October, 1973.

The dynamic elements in the Washington situation include a management that was willing to bargain collectively even though the statute required only a meet-and-confer relationship, and an employee organization that had a well-developed set of goals and a strategy for achieving them. The parties have been bargaining since 1965. The latest contract reflects the sophistication and mutual tolerance that comes from experience in working jointly on common problems.

Eligibility Workers and the County of Los Angeles

Public policy can limit the scope of bargaining and, therefore, the extent to which professional workers participate in the decision making process; it can also expand the scope. Bargaining between eligibility workers and the County of Los Angeles provides an example of the latter.

In 1968 the Los Angeles County Board of Supervisors adopted an employee relations ordinance.[15] The pertinent provisions of the ordinance for purposes of this discussion are those dealing with management rights and scope of bargaining.

The management rights provision sets forth:

> "It is the exclusive right of the County to determine the mission of each of its constituent departments, boards, 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 of 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."

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[15] Employee Relations Ordinance of The County of Los Angeles; Ordinance No. 9646, adopted by the Board of Supervisors on September 3, 1968.

The scope of consultation and negotiation clause provides in part:

> "(b) The scope of negotiation between management representatives and the representatives of certified employee organizations includes wages, hours, and other terms and conditions of employment within the employee representation unit.
>
> "(d) Management representatives and representatives of certified employee organizations may, by mutual agreement, negotiate on matters of employment concerning which negotiation is neither required nor prohibited by this Ordinance."

In 1970 The Los Angeles County Employees Association Local 660 and the Service Employees International Union, Local 535, the jointly certified bargaining representative for eligibility workers employed by the County, filed charges with the Los Angeles County Employee Relations Commission (ERCOM) against the County, alleging that the County had consistently refused to bargain over the question of workload for eligibility workers. The unions charged that the refusal to negotiate constituted an unfair employee relations practice on the part of the County as defined in the Ordinance. The County admitted that if refused to negotiate with the union on the size of the caseloads carried by eligibility workers. The County based its refusal to negotiate chiefly on the grounds that workload is not a mandatory subject of bargaining. At the same time, the County indicated that it would consult with the unions prior to implementing changes in caseload assignment.

The ERCOM, after extensive proceedings, ruled that caseloads are a subjects of mandatory negotiations under the Ordinance, and that the County's failure to negotiate constituted an unfair labor practice.16/

The ERCOM seemed to hold to the concept of a balancing of interests as between the desires of the union and of management in determining whether a specific issue should be viewed as a non-negotiable management right or as being more to the terms and conditions of employment and, therefore, negotiable under the Ordinance. However, in its decision the Board also seemed to say that if it could be shown that a matter in dispute is related directly to the terms and conditions of employment, it should be found negotiable irrespective of how closely it also is related to established management rights.

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[16] In the matter of Joint Council of Los Angeles County Employees Association and Service Employees International Union, Local 535 and Los Angeles County Department of Public Social Services and Department of Personnel UFC553 June 25, 1971.

The Commission further pointed out that negotiating over workload is not to be equated with negotiating over "routine job directions or detailed decisions relating to the manner in which work is to be performed,"[17] the latter being items over which, in ERCOM's view, the employer has no duty to negotiate. One might ask, if workload is definitely an employment condition and therefore a mandatory subject for negotiation, on what basis is it determined that the details implementing a workload provision should be excluded from bilateral determination?

The decision of ERCOM was appealed by the County. The court of appeal, in a decision which the California Supreme Court refused to review, sustained the decision of ERCOM.[18]

Bargaining Under the Hawaii Public Employee Relations Act

In discussing the teacher and social worker situations described above, we focused on fairly specific elements that affect the scope of bargaining and opportunity for participation in decision making. Bargaining experience in Hawaii will be used to illustrate how a combination of factors, rather than a single overriding factor, can affect the patterns of negotiations.

In 1970, Hawaii passed Act 171 which provided a framework for public employees to bargain collectively; the Act became effective on July 1, 1970.[19] In that state all the important issues of public employee collective bargaining are contained in a single act and all state and local government employees are covered by the statute.

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[17] Ibid., p. 13.

[18] County of Los Angeles, Los Angeles County Department of Public Social Services, et al., v. Los Angeles County Employees Association, SEIU Local 660, et al. 33 Cal. App. 3d 1 (1973).

[19] Hawaii Revised Statutes, Chapter 89.

In Section 1 the Act states the following about the preferred approach to decision making in the public sector:

> The legislature finds that joint decision making is the modern way of administering government. Where public employees have been granted the right to share in the decision making process affecting wages and working conditions, they have become more responsive and better able to exchange ideas and information on operations their administrators. Accordingly, government is made more effective. The legislature further finds that the enactment of positive legislation establishing guidelines for public employment relations is the best way to harness and direct the energies of public employees eager to have a voice in determining their conditions of work, to provide a rational method for dealing with disputes and work stoppages, and to maintain a favorable political and social environment.

Act 171 avoids many of the conflicts which arise in other jurisdictions over the establishment of appropriate bargaining units; it did so by providing for thirteen--and only thirteen--units. The large majority of all professionals are in four of these units, as noted below:[20]

Unit	No. of Employees in Unit (1974)	Exclusive Representative
(5) Teachers and other personnel of the Dept. of Education under the same salary schedule	9,001	Hawaii State Teachers Association (HEA-NEA)
(7) Faculty of the University of Hawaii and the community college system	2,457	Hawaii Federation of College Teachers, Local 2003, American Federation of Teachers[21]
(9) Registered professional nurses	571	Hawaii Nurses Assn., Inc., ANA
(13) Professional and scientific employees, other than professional registered nurses	3,058	Hawaii Government Employees Assn., Local 52, HGEA/AFSCME

[20] Data for Figure 1 obtained from the 1973-74 Annual Report to the Honorable John A. Burns, Governor of the State of Hawaii, presented by the Hawaii Public Employee Relations Board, dated July 1, 1974.

As to scope of bargaining, Section 89-3 of the Act provides for bargaining on questions of "wages, hours, and other terms and conditions of employment." The Hawaii Act, like many other public sector statutes in other states that were recently examined, includes language limiting the scope of negotiations.[22] Section 89-9(d) excludes from the scope of bargaining such subjects as

> . . .classification and reclassification, retirement benefits and the salary ranges and the number of incremental and longevity steps now provided by law, provided that the amount of wages to be paid in each range and step and the length of service necessary for the incremental and longevity steps shall be negotiable.

In addition, the employer and the union shall not agree to anything that would interfere with the right of the employer to

> (1) direct employees; (2) determine qualifications, standards of work, the nature and contents of examinations, hire, promote, transfer, assign, and retain employees in positions and suspend, demote, discharge or take other disciplinary measures for proper cause; (3) relieve an employee from duties because of lack of work or other legitimate reasons; (4) maintain efficiency of government operations; (5) determine methods, means, and personnel by which the employer's operations are to be conducted; and take such actions as may be necessary to carry out the missions of the employer in cases of emergency.

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[20](continued) The other units provided in Act 171, with the number of members in the unit indicated in the parenthesis are: Unit 1 "Non-supervisory employees in blue-collar positions (6,673)"; Unit 2 "Supervisory employees in blue-collar positions (743)"; Unit 3 "Non-supervisory employees in white-collar positions (6,791)"; Unit 4 "Supervisory employees in white-collar positions (351)"; Unit 6 "Educational Officers and other personnel of the Dept. of Education under the same salary schedule (574)"; Unit 8 "Personnel of the University of Hawaii and the community college system, other than faculty (784)"; Unit 10 "Non-professional hospital and institutional workers (1,370)"; Unit 11 "Firemen (1,149)"; Unit 12 "Policemen (1,771)". It might be noted that some professionals are included in Unit 4, 6, and 8 in addition to those units indicated in Figure 1.

[21](Document 1974 decertification of AFT)

[22]Seidman, Joel. The Hawaii Law on Collective Bargaining in Public Employment. Honolulu, Industrial Relations Center, College of Business Administration, University of Hawaii, 1973, p. 24.

Although not aimed exclusively at professional employees, Section 89-9(c) may be of special interest to them where it provides for joint consultation in

> . . .all matters affecting employee relations, including those that are, or may be, the subject of a regulation promulgated by the employer or any personnel director, are subject to consultation with the exclusive representatives of the employees concerned. The employer shall make every reasonable effort to consult with the exclusive representatives prior to effecting changes in any major policy affecting employee relations.

Whether the provisions in the Hawaii Act for joint consultation will establish a mechanism to expand genuine participation in those subject areas now excluded from formal bargaining remains to be seen. However, some insight into this and related questions can be obtained from examination of actual experience with bargaining, as described below. Of course, we need to keep in mind that professional bargaining in Hawaii is still quite new and any conclusions we draw must be viewed as extremely tentative.

Bargaining by Nurses: The Hawaii Nurses Association (HNA) was certified as the bargaining agent for nurses in February 1972. The first contract was signed in December 1972, and has an expiration date of June 30, 1975.

The language of the contract does not suggest that the HNA had applied pressure to expand bargaining into areas likely to be viewed by management as an encroachment on its traditional prerogatives. The contract contains a rather detailed provision covering rights to sabbatical leave, although this does not strike us as being particularly generous. Another provision establishes a program for educational and professional improvement, obligating the employer to meet and confer with the HNA on the development of education programs; for the most part, it leaves decisions relating to the implementation of the program to the employer. In this and several other areas, such as reorganization and reduction in staff, the contract places the burden on the employer to consult with the HNA prior to implementing changes.

The first round of negotiations between the HNA and the state may be characterized as having been basically an exercise in learning how to operate in a bargaining situation. The outcome of the negotiations consisted to a considerable extent of placing formally in the contract personnel rules and policies that were in effect before the bargaining.

In terms of potential participation in decision making, perhaps the most interesting feature of the negotiations was a letter of understanding relating to the establishment of Professional Performance Committees.[23] These Committees, covering different organization units, have the responsibility to discuss and make recommendations to the Director of Nursing or the Nursing Administrator on matters related to patient care and professional nursing practice. The recommendations of the Committee are specifically excluded from review through the established grievance procedure. The HNA considers the professional performance committee concept as having excellent potential for expanding the role of staff nurses in areas of vital professional interest. A problem so far for the HNA has been the reluctance of nurses to utilize the professional performance committee mechanism.

It will be some time before the HNA is in a position to establish, through the bargaining process, employee and professional rights about which the employer feels uncomfortable or threatened. At the present time, the HNA has neither the bargaining power nor internal cohesion involving its own goals to expand participation into policy matters much beyond consultation and the making of recommendations.

Bargaining by Professional and Scientific Workers: The Hawaii Government Employees Association (HGEA) is certified as bargaining agent for professional and scientific workers. The first round of negotiations began in February 1973. The first contract was signed in March 1973. The unit includes approximately 2,400 employees in various professional occupations.

Initial negotiations did not lead to open disagreement over negotiability, mainly, it would appear, because of a "gentlemen's" agreement to conclude the first round with minimum challenge to the language of Act 171.[24] The HGEA takes the position that while Act 171 is basically a good piece of legislation, it is too restrictive in its definition of scope of bargaining. It is possible that as time goes on, the HGEA will apply pressure to expand bargaining into more controversial areas. The contract did not break new ground or establish innovative concepts. This contract , as do all the other

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[23] If recommendations on patient care and professional nursing practice cannot be settled by the Committee, the issues are resolved by the department head, whose decision is final. Upon request, the reasons for the department head's decision must be submitted in writing to the Committee.

[24] Based on interviews with officials of the Hawaii Government Employees Association and the Hawaii Public Employee Relations Board.

contracts negotiated under Act 171 (the teacher contract being the single exception), contains a management rights clause. Article 8 of the contract covering professional and scientific workers provides:

> The employer reserves and retains, solely and exclusively, all management rights, powers, and authority, including the right of management to manage, control, and direct its work forces and operations except those as may be modified under this agreement.

In negotiations, the parties tended to give contractual sanction to the policies and rules previously established unilaterally by the employer. There seems to have been little tendency to move the relationship into new areas of joint decision making.

Bargaining by Elementary and Secondary School Teachers: The most significant questions concerning scope of bargaining in Hawaii have been raised in negotiations between the Hawaii State Teachers Association (HSTA) covering the 9,000 teachers in Unit 9 and the Hawaii Board of Education (BOE).

The HSTA is the only union which has engaged in a strike since the passage of Act 171, and is the only one which has challenged in an important way the definition of negotiability under Act 171. For these reasons teacher bargaining is of particular interest in this analysis.

The HSTA was certified as the exclusive bargaining representative for elementary and secondary teachers in May 1971.[25] After protracted and difficult negotiations during which an impasse was declared and a strike had been authorized, agreement was reached on February 17, 1972. It seems evident that the pressure on the parties to reach agreement to avoid a strike led to a number of provisions in the contract where there was no genuine meeting of the minds.

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[25]The certification election was a contested affair between the HSTA (HEA-NEA) and the Hawaii Federation of Teachers, Local 1127, AFT, AFL-CIO. The HSTA won certification rights in a very close election. Subsequent to certification the HFT petitioned the HPERB for a decertification election. The HSTA views the HFT as a continuing threat. The lingering bitterness and competition between the two organizations has had a substantial impact on the positions taken by the HSTA in negotiations and other dealings with the Hawaii Board of Education.

Prior to signing of the first agreement, the Board of Education (BOE) had petitioned the HPERB for a ruling that any proposal putting a limit on class size would be in violation of the management rights clause of Act 171 as well as of the state constitution. HPERB disposed of the matter by dismissing the case without prejudice on motion of the Board of Education. The parties signed their first agreement on the basis that a number of disputed items would be submitted to final and binding arbitration. Through arbitration it was determined that teachers would not be required to teach more than 180 consecutive minutes without a break or lunch or recess; limitations were placed on the number of academic levels or academic subjects that a teacher could be required to teach; a union policy committee would be established with which the principal is required to discuss such topics as student rules, activity policies, extracurricular policies, intra-school communications, and other matters. A structure was also established to provide a joint basis for discussion of problems concerning the instructional program for the children of Hawaii.[26]

The parties were able to agree through negotiations that teachers have the right to recommend candidates for the position of chairman of the department, and that the employer, if requested, must explain in writing why none of the proposed candidates was selected. Arbitration was relied on to establish the specific job responsibilities of the department and of grade-level chairmen. Arbitration was also used to establish the work year for teachers.

Article 6 of the contract, which relates to teaching conditions and hours, was bitterly disputed during negotiations and became the subject of extensive proceedings before HPERB and the courts after the contract went into effect. The Article provided for the establishment of a joint class-size committee to investigate and make recommendations involving complaints over class size. It also covered such matters as the development of lesson plans, parking (providing that teachers shall be given priority over students); campus leave (providing that teachers can leave campus during the duty-free lunch period); evaluation of students (providing that a teacher's evaluation of a student shall not be changed, but also recognizing the right of administrators to make separate evaluations of students); nonprofessional duties (providing that such functions as lunch duty and custodial duties shall be eliminated from the teachers' job responsibilities).

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[26] Hawaii State Department of Education and Hawaii State Teachers Association. Arbitrators: Paul Tinning, Charles Bocken, Ted Tsukiyma, Tamatsu Tanaka. Decided on Aug. 15, Aug. 31, Sept. 1 and Sept. 22, 1972.

Section 2 of Article 6 of the contract provides in part: ". . .beginning with the 1972-73 school year, the employer agrees to reduce the average class size ratio by approximately one student." In May 1972, the HSTA requested the HPERB to find the BOE guilty, among other things, of failing to implement Section 2 of Article 6. In the proceedings before the HPERB, the BOE argued that there could be no breach of the Article in question since the provision in the contract, which the union accused the employer of not implementing properly, was itself outside the scope of negotiations. Consequently its inclusion in the contract violated Act 171. After lengthy hearings and resolution of various procedural disputes, the HPERB ruled that the provision in the contract calling for reduction of the statewide average class size ratio was negotiable.[27] The decision of the HPERB was carried to the court of the First Circuit in Civil Actions 38036 and 38087 by both parties. The court disagreed with the decision of the HPERB and affirmed the BOE on the question of negotiability. The court also ruled that the employer was not estopped from challenging the legality of the contract into which it had entered.[28]

Under a reopener provision (Article 23) the HSTA placed on the table for negotiations, which commenced in September 1972, the issues of preparation periods and work load levels. The BOE took the position that work load levels were nonmandatory subjects for bargaining under Act 171 and the state constitution, and that preparation periods were similarly non-negotiable except in certain limited respects. In this case HPERB ruled that the proposal for the scheduling of preparation periods during the students' instructional day was outside of mandatory bargaining. The rationale of the HPERB for its decision is less than clear. At one point (in its decision) the Board stated:

> While we held that Section 89-9(d) should not be narrowly construed so as to negate the purposes of bargaining, we concomitantly express the view that set action should not be too liberally construed so as to divest the employer of its managerial rights and prevent it from fulfilling its duty to determine policy for the effective operation of the public school system.[29]

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[27] In the Matter of Hawaii State Teachers Association and Department of Education. Case No. CE-05-4, Decision No. 22 (October 24, 1972).

[28] Hawaii State Teachers Association v. the Hawaii Public Employment Relations Board and the Board of Education. Civil No. 38630.

[29] In the Matter of Petition for Declaratory Ruling by the Department of Education. Case No. DR-05-5, Decision No. 26 (January 12, 1973), p. 14.

In the same decision, but dealing with the work load issue, the Board seems to base its opinion entirely on the subjective grounds of the probate impact of a work load provision on the policy-making responsibility of the Board of Education. For example:

> Therefore, it is our opinion that the specific proposal on work load which is here at issue, while admittedly concerned with the condition of employment because it may affect the amount of work expected of a teacher, nevertheless, in far greater measure, interferes with the BOE's responsibility to establish policy for the operation of the school system, which cannot be relinquished if the BOE is to fulfill its mission of providing a sound educational system and remaining responsive to the needs of the students while striving to maintain efficient operations. Hence, the BOE and the HSTA may not agree to the subject work load proposal because such agreement would interfere substantially with the BOE's right to determine the methods, means, and personnel by which it conducts its operations and would interfere with its responsibility to the public to maintain efficient operations.30/

The HSTA has appealed the HPERB's decision in this case to the circuit court. As of this writing, it is not clear when, if ever, a decision will be rendered on the HSTA complaint.

Summary And Comclusions

Research on collective bargaining by professionals requires an interdisciplinary perspective. Account must be taken of the characteristics of professional workers which tend to set them apart from most categories of organized workers, and of how these characteristics mesh with established as well as emerging legislative frameworks and bargaining practices.

We suggested that salaried professionals are interested in broad participation in decision-making within the organization. Where professionals are unionized they attempt to accomplish this through collective bargaining, although collective bargaining need not be the only approach. While legislatively mandated restrictions on the scope of bargaining may frustrate professional aspirations, such restrictions alone do not deter professionals from attempting to participate in decision-making in the nonbargainable areas. Obviously, the extent of such participation will be influenced by many of the same elements that have had an impact on the bargaining relationships of nonprofessional workers.

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[30] Ibid., p. 16-17.

Among these elements are: militancy, sophistication and ideological predisposition of the employee organization; legislation, court decisions and rulings of administrative agencies; the resistance power of the employers; the size and composition of the bargaining unit; the quality of the day-to-day relationship between the employee organization and the employer; and, finally, in the public sector, civil service systems and other established standards.

The case studies we discussed demonstrate some of the ways in which the realities of collective bargaining impinge on the efforts of professionals to secure participation in decision making through the bargaining mechanism. There are important lessons to be learned from each of these cases.

The Los Angeles Teachers' case suggests that a vague statute such as the Winton Act, under which school boards are not obligated to reach a written agreement, can be used by an aggressive union to obtain major concessions through economic action. It also illustrates the ability of public agencies - in this case, as expressed through courts decisions - to countermand agreements reached by the parties directly involved. The fact that the Winton Act fails to spell out the bargaining obligations of the parties enabled the courts to invalidate the agreement. The lesson of this case is that the outcome of negotiations was unsatisfactory to all parties concerned, and especially so to the teachers and their union.

The Seattle Teachers' case shows maturity and mutual respect on the part of both parties in their approach to collective bargaining. The provisions of the Professional Negotiations Act within which the parties operate could have led to prolonged legal battles over the obligations and rights of each party. This did not occur. The school board appears to have made a conscious effort to build its relationship with the Washington Education Association on a foundation of problem-solving rather than on legal entitlement.

The Social Workers' situation in Los Angeles stands in sharp contrast to that of the Los Angeles Teachers. In this situation, we can observe how administrative and court rulings can expand the scope of bargaining despite determined employer resistance. The scope of bargaining and, thus, the degree of potential participation in decision making often depend on the determination of the union involved to bring matters within the bargaining process.

Expense and acrimony often accompany the resolution of disputes over negotiability. Each time a disputed issue arises, the boundaries of negotiability are being tested. And each time a decision is rendered that a disputed matter is negotiable, the next round of negotiations will build on what has already been decided. Through this accretion process, there may occur a steady expansion in the issues subject to the bargaining process. A decision rendering a

matter not negotiable, while being a setback for the union, can also have the effect of prompting the union to press hard in areas that are bargainable to obtain concessions in the restricted areas.

Often a combination of factors rather than a single overriding issue shapes actual scope of bargaining and union effectiveness. The evidence from the Hawaii experience provides an illustration; in the case of nurses and professionals other than teachers, weak bargaining organization and ambivalence about goals and interests as well as a general lack of bargaining experience helped to prevent any serious disputes from arising over scope during the first round of negotiations. Interviews with union officials also suggest strongly that we might expect such confrontations to occur in the future. The kind of disputes that developed between the teachers and the Board of Education have surfaced in numerous other situations. The Board of Education, determined to retain unilateral decision making over all matters except economic issues narrowly defined, forced the union to turn to the Public Employee Relations Board and to the courts.

The cases we have described indicate that unionized professionals may encounter many obstacles in their attempts to expand bargaining beyond matters relating strictly to wages, hours, and working conditions. One important reason for this, as a perceptive practitioner has noted, is that the "sovereignty doctrine," although little talked about as such, is far from dead at the bargaining table.[31] Yet, employer resistance at the table, legislative limitations, and adverse administrative rulings do not seem--over the long run--to be effective devices to keep matters out of the bargaining process. In many respects, the value of joint decision making will depend on the success of making it contingent upon shared responsibilities. If management and professional organizations can develop means to link the benefits of joint decision making with the burdens of implementation, then potentially irresponsible behavior on the part of either side may be avoided.

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[31] Gluck, Harry, "Professional Workers, Managers and Collective Bargaining: Whose Moustache is Bigger?" Paper presented at a conference on Professional Workers and Collective Bargaining sponsored by the UCLA Institute of Industrial Relations, October 23, 1974. 15 pp.

PROFESSIONAL WORKERS, MANAGERS AND COLLECTIVE BARGAINING: WHOSE MOUSTACHE IS BIGGER?

Harry Gluck*

These are the personal observations of an advocate practitioner and as such reflect a local experience. While dismay that the lessons of decades of private sector experience are ignored and a wry amusement with our propensity for being sucked into the vortex of repeating history is evident, there is confidence in the ultimate liberation of common sense and good faith.

A great deal has been written and said about the uniqueness of professional employees' collective bargaining. Seminars proliferate at which such terms as "patient-load," "class size," "curriculum content," "program evaluation," and "participation in the decision-making process" are surgically excised, cultured and analyzed to be finally catalogued in "Everyman's Anatomy of Public Employee Labor Relations."

Yet, away from the laboratory, we read of teachers and nurses, psychologists and engineers striking for higher wages. Recently, a group of county-employed doctors joined, albeit temporarily, a coalition of unions threatening a walkout over a cost of living increase, and certain public health physicians had one foot out the door because of an overtime pay dispute. It is doubtful that either issue can be found in the esoteric literature.

Meanwhile, back in the real world, classrooms continue to overflow, workloads remain over yardstick, programs sag further under the weight of their years, and rank-and-file suggestions are still overlooked when decisions are made.

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Are we the victims of our own need to find something different to write and talk about? Are professional employees "putting us on?" I submit neither is the case. The disparity between initial proposal and final settlement is simply the consequence of latter-day sovereignty presiding at the bargaining table.

Sovereignty, of course, is a fiction, as was the notion of "divine right" from which it springs. That doesn't make it any the less real. We are familiar with legal fictions--nontruths--invented to establish a desired end, or to prevent the end of a desired establishment. Corporations are deemed to be "persons" so that they may enjoy due process protection of their property, a consummation devoutly to be wished in a free enterprise society, but hardly contemplated by the authors of the Fourteenth Amendment to our Constitution.

In the public sector today, sovereignty is an untruth revived, refurbished and trotted out by managers who are only marginally accountable for their actions, to establish and defend their "right" to demand without challenge and to silence - even punish - those who nevertheless dare to ask: "But are you sure this is right?"

Sovereignty differs from paternalism, a term frequently applied quite mistakenly to the prevailing management attitude toward collective bargaining and which refers to the condescending granting of privileges. Soverignty deals with "rights" and holds itself above those it doesn't outrightly deny. Thus, though legislatures, here and there, have established the public worker's right to collective bargaining, managers continue to operate on the premise that they alone know what's best--and the best subordinates are those who are seen but not heard. Ironically, nowhere is this attitude more in evidence than at the bargaining table itself, and toward no group of employees more than toward professionals.

One might expect otherwise. No segment of the work force is characterized by higher educational achievement or greater intellectual capacity. By definition, professionals consistently exercise judgment and discretion.[1] Particularly articulate, they bring to their duties an array of special skills that add to their ability to tackle problems in a mature and highly effective manner. By all measure, professional subordinates should be quite useful allies to an alert management.

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[1] LMRA, as amended, Section 2 (12); Los Angeles County Employee Relations Ordinance No. 9646, Section 3 (q).

Unfortunately, managers ascend to roles created in other times, when life was not so complex and when all that had to be done was pave the road, collect the taxes and the garbage and provide the party faithful with reasonably gainful employment. Such simple requirements were best fulfilled under the firm but benevolent supervision of a bureaucratic royalty, whose dominion was one-hundred-or-so square feet of glass-enclosed cubicle and whose power was divine as long as the right political side continued to enjoy November's bounty.

In such a benign setting, it was only natural that managers would come to believe in the fundamental "reality" of their own superiority. And underlings generally knew and kept their place. Furthermore, they were tolerated only when they did.

But the "Civil Service" is no longer a summer place in which to paddle about in a 9 to 5 serenity. Government and government workers are under heavy fire. Anti-welfarism, in its blind, self-centered rage, confuses the public servant with the public charge. Watergate, inflation, and a sea of other troubles are blamed on government in general and on government workers in specific.

In the face of this onslaught of criticism and condemnation, today's manager is nevertheless expected to run the best--and possibly the biggest--school, hospital, or library; keep the department out of the newspapers and grand jury hearing room; satisfy an insatiable public appetite for more and more service; train and maintain an ever larger and sophisticated work force--all while keeping the budget in line with the taxpayers' willingness to pay.

As though this were not trouble enough, at this very beleaguered moment a new battlefront is opened: subordinates are being armed with the right to negotiate about what has always been management's province to do with as it saw fit. Managers suddenly are playing on the defensive team where so much can go wrong and so little credit is given for things that go right, where stardom is denied, rewards are comparatively meager, and every point scored by the other side is seen as a stepping stone to premature retirement.

Under such pressures, anxious and fearful managers, identified as they are with waste and deterioration of service, feel a desperate need to tighten their grip on the reins. If they are going to be held responsible they must have the control to avoid disaster.

If they are to be blamed, it must not be for another's decisions. Beyond all, if they must silently suffer the slings and arrows of outraged citizens, self-righteous editorial writers and harried legislators, they'll be damned if they'll turn the other cheek to their subordinates!

Two top management officials[2] recently cautioned their employers against "...substantial shift of control away from the Board of Supervisors and its appointed managers and a significant drift from a Civil Service personnel system to a new restricted merit system supplemented by a greatly broadened collective bargaining system." And, "once binding arbitration [of disciplinary grievances] is established, it is inevitable that it will spread to other areas currently the exclusive purview of your Board, i.e., salary determination, working conditions, workload, manning and staffing."[3] (Emphasis mine.)

There is no demonstrable evidence that the Board of Supervisors felt any threat to its legislative power. What leaps from the pages of this parade of horribles is the authors' own concern that previously unchallenged authority is being eroded. previously unquestioned wisdom is being disputed and the divine right to ignore protest is being legislatively curtailed.

Historically, the central reality of government employee relations has been the absolute acceptance of authoritarian dogma--no matter how dated, unexamined or inaccurate. But today's reality, fashioned out of a new rank-and-file expertise coupled with

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[2]Arthur G. Will, CAO, and Gordon T. Nesvig, Director of Personnel, County of Los Angeles, in a letter to the Board of Supervisors, July 25, 1974, opposing certain recommendations of the County Efficiency and Economy Committee covering collective bargaining and civil service. Mr. Will has since resigned his position with the County.

[3]It is interesting how the authors use the word "exclusive" with reference to matters which are expressly considered negotiable by the State law and the County Ordinance or which have been declared negotiable by the Supreme Court of California (caseloads). While the County might respond that the Board maintains the exclusive right to approve or disapprove negotiated provisions dealing with such matters, the fact is that exclusivity does imply the power to make unilateral decisions.

contemporary cyncism, particularly among professional employees, is a firm determination to correct old wrongs, re-examine old values and re-order priorities. Acts of blind faith, like dress codes and nursery room maxims on table manners, are "out."

But if collective bargaining is the newest game in town, it is one in which managers are unwilling players. Where the rules are imperfect or merely cosmetic (as under the Winton and the Meyers-Milias-Brown Acts) managers are quick to pick up the ball and go home when things don't go quite their way. They have not yet learned that the danger is not in the sounding of new voices, but in their own blind refusal to utilize the vast problem-solving resource that is collective bargaining's real potential.

Nor is this the end of the matter. The concept that subordinates can contribute something more than a mere day's work for a day's pay is a threatening one to many managers, as though their own jobs thereby become redundant. If threat generates fear, then fear generates rejection and even reprisal. At the least, managers become even more "conservatized" withdrawing behind Maginot lines thrown up against change. Communications are cut as though "out of sight, out of mind" really works, and the whole thing will disappear.

"Dissident employees" are identified, labeled and often shipped off to some covenient departmental ghetto. These kinds of people aren't wanted in management's neighborhood. Less militant, but disturbingly innovative workers are re-educated. The fresh creative breezes they feel are simply drafts from a broken window, the bird sounds they hear but the computers' whine. Life in the District, my child, is not pastoral. It is real, it is earnest--and inevitably it is dull.

In the jargon of collective bargaining these are acts of bad faith and arrogant assertion of management prerogative. As Berne might put it, certainly more stylishly, Adult Transactions (good faith negotiations) are avoided. Instead the managers invite the employees to play the Sovereignty Game: "You Think You Have Me, But Have I A Surprise For You!" The basis of this game is the childhood taunt: "My father can whip your father." (Or "My father's moustache is bigger than your father's moustache.") This is patently a defensive game since the player thus concedes that HE is incapable of doing the whipping himself.

Depending on the proposals submitted by the employees, management counters with one or more of an almost limitless collection of play variations. Some examples recorded in recent public employee negotiations:

> Player A requests the establishment of some new job classifications. The proposal is based on evidence that many employees are regularly performing additional duties considerably more demanding than those in the official job description. However, no additional compensation has been provided. Player B (manager) responds: (a) it is an unlawful gift of public funds to pay more than the legislated rate; (b) creation of new job classifications is a subject exempted from negotiations. ("Civil Service is next to Godliness.")
>
> After the allotted time has expired and the bargaining game is still scoreless, Player A urges that the key issues go to a neutral for resolution. Player B rushes from the field shouting that the legislative power is reserved to the elected officials. ("Ex-Lax is an Unlawful Delegation of Binding Arbitration.")
>
> Player A, confronted by the "What do we do now dilemma," decides to leave the stadium. Player B seizes the mike and reminds the crowd to drive safely and remember the three-day rule ("One Strike and You're Out.")
>
> Player A succeeds in getting three proposals accepted at the table, including one of high-point value. The following day, the League Commissioner voids the results. ("We'll Only Talk to a Council, and Nothing in Writing Please!")

By far, the most common variation, "Bargaining is Bull-ware" requires that all proposals be rejected out of hand without explanation. If Player A is especially tenacious and is backed by strong reserves, Player B will eventually offer a wage increase of 3.9%. If Player A accepts, Player B is automatically declared winner and champion.

An odd feature of this game is the method of scoring. Employees place different values on their various proposals. Some, in fact, are worth nothing at all, serving simply as strategic ploys (give-aways, tradeoffs, etc.). Managers, however, treat all proposals as of equal importance (danger) and consider the loss of any point as equivalent to checkmating the king.

When played out to the last move, the game often ends on a series of extreme or harsh retaliatory moves. Player A may withhold his services demanding an enormous ransom for their return. Player B may fire or suspend some of the opposing players. He will certainly enjoin and may even seek to jail the opponent ("My Contempt Proceeding Can Whip Your Strike.")

In the final analysis, the status quo which precipitated the game-playing is preserved. Problems remain unresolved. Constructive action is precluded. Both sides continue to act out their working days in mounting anger and frustration. Strangely enough, the employees continue to believe that they enjoy the right to bargain collectively and the managers find uneasy comfort in the preservation of the integrity of their fictional sovereignty.

A Case History

Consider this caucus discussion during this year's meet and confer sessions in the King Henry VIII County School District.

Administrator	What do we do about this demand for smaller classes?
Deputy Administrator	These teachers should be working instead of stirring up all this trouble. They have no sense of duty.
Labor Relations Expert	Just tell them that class size is a School Board prerogative.
Administrator	But they say class size affects their ability to provide quality instruction. Does that make it a "working condition?"
Labor Relations Expert	(To himself: Listen to that. He must have taken one of those university seminars.) You mean a "term and condition of employment." No, it's simply a matter of who has the right to determine the agency's mission.

Deputy Administrator — Leave it to them and taxes will double. Truth is they're just lazy. It's not like when we broke in.

Administrator — But they say our mission is to educate the kids. They don't want to change that. They just want to do it better.

Labor Relations Expert — (To self: Whose side is this guy on anyway?) But it's our job -- I mean, it's your job to decide the means and the personnel necessary to accomplish our -- your mission. Give up your prerogatives now and they will wonder why they need administrators at all.

Administrator — They should never have started this meet and confer nonsense. Who is the boss these days anyway?

Deputy Administrator — It was that democrat legislature. The same one that passed the new welfare act.

Administrator — What happens if they hang tough?

Labor Relations Expert — Remind them that under Article VII, Section 14, Subdivision (B) (2) of the Code we can demand a unanimous vote of all the organizations representing.....

Administrator — Wait! I won't remember all that. Let me write it down.

Labor Relations Expert — Never mind. Tell them anything you please. You can always get the Board to turn the agreement down later. It's only tentative at this stage and without anything in writing, which we are not allowed to do, who's to say what was agreed to.

Deputy Administrator — Lord, I will be glad when I can retire.

Administrator	Yes -- there's just no fun in working any more.

The following morning 68 percent of the School District's certificated employees stayed away from class. By 2:30 that afternoon the District Board had authorized an expenditure of $35,000 for legal services, a temporary restraining order had been obtained and had been served on the president of the Teachers Association and 172 John Does. The local newspaper published an article proving that two New York trained members of the Organization for Labor Democracy had instigated the strike and the Los Angeles trained Taxpayers Protective Society filed a civil suit against the union seeking $100,000 in actual and $16,000,000 in punitive damages. Anger hung like smog over the entire community, though many children seemed to enjoy the unexpected extension of their summer vacation. Two weeks later, the teachers settled for 4-1/4 percent and returned to work. In November the Union exhausted its treasury seeking to defeat two incumbent Board members bidding for re-election. They were successful in one instance.[4]

As long as managers--and their experts--find it impossible to believe that anything good can come out of the heads of their subordinates, public sector collective bargaining will be ever thus.

Every time a manager violates a subordinate's dignity by calling him "boy" at the bargaining table, he creates an adversary who will then only negotiate on his own special terms, seeking satisfaction of personal concerns. Secondary issues dominate negotiations because the options have been cut to deal with the major and principal problems common to both parties.

This, indeed, is the irony and the real tragedy of sovereignty negotiations. Employees, turned back from constructive, problem-solving dialogue, are forced to seek redress in political action and a cut-and-dried demand for more money, the only issue management concedes to be a permissible negotiable subject.

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[4]See the Los Angeles Times article, "The Public's Servants...How Big? And How Powerful?", September 10, 1974 and its editorial, "Public Payrolls: Beyond Control?" September 10, 1974. Both deal with the "dangers" of union power in public employee collective bargaining and political activity.

In conclusion, the removal of tension between employees and their employers cannot be achieved by sovereign decree on the one hand or the political guillotine on the other. Neither course of action speaks to the basic purpose of collective bargaining, the resolution of that host of problems which every worksite is doomed to experience from time to time simply because work is an activity devised, managed and performed by human beings. This is the first fact that must be understood and accepted. There is nothing divine or ordained about the manner in which the mission is executed.

There must be an open and unashamed acknowledgement of the mutuality of interest that exists between the parties and transcends all other concerns, particularly those of a personal nature. Problems that must be faced and solved are the property neither of management nor of subordinate. They belong to the "System" in which both have a great and equal stake. It is the mistaken notion that "equal" is synonymous with "same" and the irrational insistence on unilateral decision-making (or the suicidal impulse to deny the existence of problems altogether because subordinates brought them to light) which creates the separate anxieties that may properly be labeled "personnel problems."

Managers must fight off the hostility that surges when comfortable old ways of doing things are challenged. They must defeat the fear that invades when such old ways prove to be founded on sand. Change is not death. Decay is.

Barricades against communications with subordinates must be razed. Dialogue cannot be reserved for the three-month period ending with salary-setting. It is and it must be a continuous year-round process, even as problems observe no seasons.

But dialogue itself is not enough. A new vocabulary is needed. Words like "mine," "prerogative," and "irreconcilable differences" must be replaced by terms synonymous with mutuality and expectation.

There must be agreement on what to talk about. Every issue and every response raised must be reviewed in a cold and critical light, but with warm eyes. The spurious and the trite can be swept off the table, but the real must be tackled with an enthusiastic anticipation that mutual progress is about to take place. Answers to problems, whether offered as proposals or counter-proposals, should be evaluated as to their effectiveness and their achievability. Realism must be the theme. If the parties stop manipulating each other and get to

know and understand each other instead, then by such mutual giving (compromise) real problems can be settled by real solutions.

I submit that managers must make the first move. It should not be difficult if they are willing to recognize that they are not the victims of their subordinates' malice, but of their own misplaced fears and a haughtiness whose basis is lost in history. The air at the top of the classified service is the same polluted mess breathed by the rank and file. Together they will choke on it or together they will clean it up. Sovereignty or sanity -- the choice is management's.