

Collective Bargaining in the Public Sector : Prince Edward Island

La négociation collective dans le secteur public : l'Île du Prince-Édouard

G. K. Cowan

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Résumé de l'article

Les gens sont de plus en plus opposés aux grèves qui, dans le secteur public, semblent toucher davantage la population que les participants eux-mêmes. Ainsi, les comparaisons entre les taux de salaire qui sont payés dans les secteurs public et privé suscitent de plus en plus de critiques à mesure que les niveaux de traitement des employés du secteur public atteignent et dépassent ceux du secteur privé. L'un et l'autre doivent relever le défi en trouvant la solution opportune.

La faiblesse du régime de négociation collective dans le secteur public, qu'il s'agisse du gouvernement fédéral, des provinces ou des municipalités, réside dans l'impuissance à reconnaître que le secteur public diffère du secteur privé. Le Conseil économique du Canada a constaté que tant les négociateurs des organismes publics eux-mêmes que ceux de leurs employés sont soumis au même type de contraintes que celles que la concurrence des marchés fait peser sur les négociations collectives dans le secteur privé. Les gouvernements détiennent un pouvoir de taxer illimité et les syndicats des employés des services publics sont en mesure, du moins dans les secteurs-clés, de disloquer la vie économique, ce qui leur permet potentiellement d'obtenir de avantages inéquitables sur le secteur privé qui forme plus de quatre-vingts pour cent de la main-d'oeuvre et qui fournit la grande partie des impôts sur les revenus qui alimentent les bordereaux de paie de l'État.

La nouvelle réglementation du gouvernement de l'Île du Prince-Édouard en matière de négociations collectives pour ce qui concerne les enseignants et les fonctionnaires s'inspire de critères suggérés par le Conseil économique et qui existent depuis longtemps dans la fonction publique en Grande-Bretagne, en Nouvelle-Zélande ainsi que dans le Tennessee Valley Act, etc. Les négociateurs et les arbitres doivent établir les taux de salaire des employés du secteur public de façon à les ajuster aux taux qui sont payés par les « bons » employeurs du secteur privé. L'Île du Prince-Édouard définit le « bon employeur » en parlant « des employeurs qui paient les meilleurs salaires » dans l'île. Si l'on tient compte des taux de salaire payés par les autres gouvernements des Maritimes, on tiendra également compte des différences économiques entre les provinces, tel le revenu disponible, par exemple, ainsi que d'autres facteurs comme la nécessité d'avoir un personnel compétent.

De pareils critères modifient le concept de la force qui existe dans le secteur privé en limitant beaucoup les divergences possibles dans les négociations. Ainsi, la cueillette en commun et l'échange des données entre les parties devient chose possible. Le recours à ces critères rend plus praticable l'acceptation du mécanisme de l'arbitrage dans les différends, puisque l'arbitre est, lui aussi, obligé de s'en tenir à ces critères. La grève devient ainsi un moyen inopportun et inutile de résoudre les différends dans les services publics lorsqu'il existe de meilleures façons de les résoudre.

Le régime apparaîtra ainsi équitable tant aux employés des services publics qu'aux contribuables, ce qui est important pour les hommes politiques, car le gouvernement peut ainsi avoir sa part de travailleurs compétents et ceux-ci être en mesure de voir évoluer leurs traitements selon les changements qui se produisent dans le secteur privé.

Le régime de négociation du gouvernement fédéral a cessé de s'inspirer du type de négociation britannique en 1966 en optant pour le concept de la force et en négligeant de définir ce qu'il entendait par le « bon » employeur du secteur privé.

L'Île du Prince-Édouard a aussi copié le fort efficace système de consultation instituée en Grande-Bretagne en vue de résoudre les questions relatives aux conditions de travail par l'établissement de conseils consultatifs mixtes tant au niveau du gouvernement lui-même que des différents ministères.

Un régime d'arbitrage fondé sur des « comparaisons équitables » peut aussi s'appliquer dans les entreprises d'intérêt public, comme les chemins de fer, par exemple, et dans les municipalités ainsi que partout où les entreprises subviennent à leurs besoins à même les impôts des contribuables.

Collective Bargaining in the Public Sector: Prince Edward Island

G. K. Cowan

The author reports on Prince Edward Island's attempt to solve some of the key issues of public sector bargaining through its recent collective bargaining regulations for teachers and the public service.

INTRODUCTION

Collective Bargaining in the public sector may be at an historic turning point. This paper accepts Dr. Fred Carrothers' contention¹ that public acceptance of collective bargaining for tax-supported employees and for institutions and utilities, where the burden of strike action is born more heavily the public than by the participants is waning. The problem is accentuated as public pay levels are now reaching, and occasionally surpassing, private levels set by the market place.

An attempt to solve some of the key issues has been made in Prince Edward Island's recent collective bargaining regulations for teachers and the public service. A special preparatory study by the Chairman of the P.E.I. Labour Relations Board² challenged the parties to action and raised important questions. Planners then drew heavily from Ottawa federal problems, some new American³ arbitration experiments, but

COWAN, G.K., Director of P.E.I. Institute of Industrial Relations and Advisor to the P.E.I. Government.

¹ (a) A. W. R. CARROTHERS, President, University of Calgary, « Industrial Relations in a New Environment », presented to Business Outlook Conference, The Conference Board, Ottawa, October 2, 1972.

(b) Editorial, « Slowly Towards Arbitration », *The Globe and Mail*, Toronto, October 30, 1973, B2.

² J. J. REVELL, University of Prince Edward Island, « Collective Bargaining in the Public Service of Prince Edward Island », December, 1971.

³ (a) Arvid ANDERSON, Chairman, Office of Collective Bargaining, New York City, « Impact of Bargaining in the Public Service », *Wisconsin Law Review*, December, 1973.

(b) Act. No. 312, Michigan Public Acts, 1969.

especially from the long experience of the British public service⁴, the Tennessee Valley Authority⁵, and more recently, New Zealand's experience⁶ in negotiating comparability with private sector rates.

Preliminary studies of the Federal scene showed, the importance of another historic turning point in 1967, when an Ottawa Parliament turned away from the essential elements of the British public service model which had been partially recommended in the 1965 *Heeney Report*,⁷ and which was being sought after through the 1950s by most federal employee organizations. Instead, the legislators adopted the *Public Service Staff Relations Act* which embodies the basic, adversary power-struggle concept of private sector collective bargaining on the apparent assumption that there are no major differences between the public and private areas.

Parliament's action, however, may have been less of a turning point than the power-struggle attitudes and administration policies followed by the Civil Service managers, as observed by the author, and in line with observations from the private sector⁸. Prior to actual bargaining, a sharp, 'divide the sides' policy was pursued with haste, arbitrarily splitting management up the middle to establish contending adversaries. Many longstanding, effective working relationships within departments began

4 (a) *Staff Relations in the Civil Service*, Her Majesty's Stationery Office, London, England, 1965.

(b) «The National Whitley Council — The First Fifty Years», Civil Service Department, London, England, March, 1969.

(c) J.D. THOMAS, *Fifty Years of Whitleyism in the Review*, Department of Inland Revenue, London, England, 1970.

(d) *Inland Revenue Departmental Council, Staff Side, Report for 1972*, Department of Inland Revenue, London, England, 1972.

(e) James L. STERN, «Bargaining and Arbitration in the British Civil Service». *Monthly Labour Review*, U.S. Department of Labour, August, 1973, pages 61-63.

5 (a) Louis J. VAN MOL, «The T.V.A. Experience», *Collective Bargaining in the Public Service, Theory and Practice*, Public Service Association, Chicago, 1967, pages 85-94.

(b) John E. MASSEY, «Labour-Management Co-Operation in T.V.A.», *Public Personnel Review*, July, 1965

6 *Salary and Wage Fixing Procedures in the New Zealand State Services — Reports of the Royal Commission of Inquiry*, Government Printer, Wellington, Zealand, August, 1968 and June, 1972.

7 *Preparatory Committee on Collective Bargaining*, Queen's printer, Ottawa, 1965. (The Heeney Report).

8 G. K. COWAN, P.E.I. Institute of Industrial Relations, *The Relevance of Communications and Behavioural Knowledge to Labour Management Relations — A New Route*, Task Force On Labour Relations, Devember, 1968, revised 1972.

deteriorating and reports currently received suggest that employee alienation is increasing.

In August, 1966, George Davidson, then Secretary to the Treasury, said openly that « up to that time » there had not been a « sharp cleavage » between « the interests of management » and the « interests of employees » but the line of demarcation would become increasingly sharp « as collective bargaining matures », which would be both « increasingly apparent » and « necessary ». « I am not for a moment suggesting that this is a bad thing, an unfortunate thing . . . » he added, indicating government policy.

Treasury Board proceeded to hire considerable numbers of experienced industrial relations executives from the private sector, who, of course, accepted the full implications of a power-struggle system, as they had experienced it. Results were predictable. One example : during the early organizing stages, an employee representative requested from a department manager, with whom he had long held a working relationship, the names of department employees who were dues-paying members of his union. This would save the union considerable administrative expense in tracking down people who had moved about. The manager's willingness was nullified by a Treasury Board directive. It was the beginning of alienation in that Department.

The National Joint Council, a joint consultative body, was also downgraded in the beginning on the assumption that the bargaining table would replace consultation. On the other side, only a minority of employee leaders apparently sought a total private sector approach. Nor did all managers, even to this day, follow the 'split-the-sides' policy in practice.

It can be said, I believe, that today's growing militancy was not the general desire of overall public service membership (nor is it yet) if such had been measured, but the result of a small minority of « expert » opinion at the top.

P.E.I.'s situation of two years ago closely reflected Ottawa of the early and pre-1960's. Teachers', public servants' and nurses' associations each sought rights to negotiate wages and salaries. Each group asked for a system which would not use the strike weapon to resolve disputes, but would nevertheless *insure* fair and acceptable settlements. The government, while willing to enter the modern era of collective bargaining with its employees, sought answers to problems seen in other public sectors.

A special Cabinet Committee began meeting with all concerned to find answers to such questions as : Could government risk leaving public pay decisions to an arbitrator ? Would current good working relations and efficiency be impaired ? Was there an answer to Ottawa's quarrels over management exclusions, and the maintenance of full management control

over classifications and other items? And from a growing public concern, was there an alternative to the strike? The Committee's Chairman, issued a public paper entitled « Fair Comparison Arbitration — A Workable Solution to Public Service Strikes »⁹ on policy considerations.

Details for the Regulations governing bargaining were then worked out by Joint Committees from the concerned parties.

P. E. I. REGULATIONS FOR BARGAINING

By *voluntary* agreement of both parties the Regulations for negotiations require that either party, following a breakdown in negotiations and conciliation, shall submit unresolved differences to an independent arbitrator or board for a binding decision. The arbitrator, however, is required to make his decision on the basis of certain definite criteria. Here lies one basic difference between the P.E.I. and U.K. systems and that of Ottawa. A P.E.I. arbitrator must give « *priority* » to pay and other benefits currently available for comparable jobs among the *better paying employers* — with suitable size and modern employee relations — of the private sector on Prince Edward Island. (For rationale for tax-supporting area comparisons see Newfoundland Commission Report)¹⁰. Where no fair comparisons exist locally such as in a depressed area, the arbitrator looks to the other Maritime provinces, but must take into account the « *varying economic capabilities* » of the provinces including available Federal funds. In addition, where relevant, the arbitrator may also consider the usual requirements to obtain and retain competent public servants, to maintain appropriate internal pay relationships, etc.¹¹. These provisions were also designed for and did become the *guidelines for negotiations*.

These criteria provided the rationale which permitted government and the employee organizations to make sole use of an arbitrator for dispute settlement by trying to insure 'fair comparison' pay levels that could generally satisfy both employees and the public. They also altered the *nature* of negotiations since government's commitment through the regulations to pay up to the levels of the better private sector employers, coupled with an employee requirement to accept this limitation, removed the need for an ultimate power struggle and the lengthy bargaining dances

⁹ Hon. Bruce STEWART, Ministre of Labour, Prince Edward Island, « Fair Comparison Arbitration — A Workable Solution to Public Service Strikes », Conference of Canadian Premiers, Halifax, August, 1972.

¹⁰ *Report of the Royal Commission on Labour Legislation in Newfoundland and Labrador*, 1972, pages 498-9.

¹¹ « Section 26, The Civil Service Act of Prince Edward Island, Amendment to Regulations, 'Consultation and Negotiating procedures' », November 22, 1972.

which naturally follow unlimited ceilings for demands and floors for offers. The much narrowed bargaining range brings greater ease and speed of settlement. This is the lesson of the T.V.A., New Zealand and, especially, the British experience.

WHY CRITERIA ?

Why should such limitations be set for the public service ? First both management and employees of government exist for the purpose of providing a public service, and are not essentially in conflict as can be the case in the private sector where the management of a company is required to increase profit levels with which employees may be in conflict when seeking increased wages. The *Third Annual Review* of the Economic Council of Canada — 1966¹², establishes the need for setting a 'constraint' on public service incomes in order to match the 'constraints' which the *market system*, for the most part, sets upon negotiations in private sector companies. A dissatisfied company, losing money, can go out of business, but no the government, or a utility. Governments and huge public service unions also can exercise enormous monopoly powers by combining the ultimate power to tax with the disastrous effect of strikes in key sectors. Unions have as great a vested interest as government in finding solutions to 'unlimited' *public service* power struggles.

The Economic Council suggested that an appropriate 'constraint' for public service pay should be the *current* income levels of the « *good employer* » in the private sector for comparable work. (The Ottawa Act omits the word « good »).

In addition, more than 80% of the Canadian work force is in the private sector indicating that the economy's, true 'ability to pay', which must be a fundamental consideration of collective bargaining, is established by the millions of daily market place decisions of the private sector, irrespective of government's overall economic role. It means, for example, that if a secretary in the public sector is paid significantly *more* than secretaries among the better paying employers of the private sector, those private secretaries will be taxed *extra* (regardless of how slight) in order to pay the public secretary extra money for doing the same work.

THE STRIKE ISSUE

Following the British pattern again, P.E.I.'s regulations make no mention of strikes, neither laid down procedures nor penalties. This silence is designed to throw full weight upon negotiations and arbitration

¹² *Third Annual Review*, Economic Council of Canada, 1966, pages 181-2.

routes. It recognizes, however, that there could be aggravating circumstances which could cause a walkout. This would be dealt with by the government as an ad hoc issue, ascertaining the nature of the problem in order to effect a solution. It also implies that the 'fair comparison' and consultation procedures will be effective in resolving almost all interest disputes, as has been the British experience. Recent public service walkouts in the UK Civil service have been 'protests' to keep the system intact.

This paper contends that strikes in the public service are an 'uneven' and 'unnecessary' method of solving general economic disputes, *providing that adequate alternatives are available*. A strike can only be used by those public employees where it can cause sufficient disruption to bring pressure for settlement. Other public servants must use arbitration or settle on government terms. And if pressures from a strike increase substantially, such as in the recent railway strike or last year's Quebec public employee strikes, governments must respond by legislating employees back to work under some form of compulsory arbitration settlement. In our present public climate a public service strike in a key sector cannot continue to an ultimate economic end, which either closes down a business or forces one side or the other to bleed enough to settle. Alternatives are needed.

PRIESTLEY REPORT

The British 'Priestley' Royal Commission report of 1956¹³ defines the public and private pay relationship with special clarity. When a public employee earns what he could earn working for a « good employer » outside the service, this will *appear fair* to both the tax payer and the employee. Priestley's emphasis that incomes must *appear* as well as *be* fair is critical. Through 'fair comparability' pay, political leaders also can claim, properly, that the work of government is of equal importance to the work of the « good » (usually large) employer in the private sector, and that government must therefore obtain their fair share of *good* employees on the market. But to pay significantly more achieve an unequal share.

THE EFFECT OF COMPARABILITY ON BARGAINING

'Fair Comparability' calls for the *establishment* of the *real* pay levels for comparable jobs among the 'good' or 'better-paying' private employers. Priestley, therefore, recommended that employee organizations should be given a joint role in developing negotiating data. Ottawa's Pay Research Bureau grew, partly from this suggestion. But today it more closely re-

¹³ *Royal Commission on the Civil Service, 1953-5, (The Priestley Commission), Civil Service Department, London, England.*

sembles the U.K. *prior* to their acceptance in 1956 of the 'good' employer definition, when British public service negotiators increasingly found themselves at the negotiating table with separate sets of facts independently developed and far apart. One used the lower private pay levels, and the other the highest. A threatened breakdown of the system led to the Priestley Commission.

In the present U.K. system, a separate pay research unit, whose members are chosen after joint consultation, are *directed* by a « Steering Committee » of both parties to study a certain set of industries which has been *agreed upon* as most closely representative of the Priestley definition for « good employers », ie. of suitable size with modern management methods and having consultation or negotiations with employee organizations, a steady business pattern, etc.

In one case examined, U.K. Pay Research was asked by the Steering Committee to pick ten out of some twenty-seven industries recommended for study. After study, Pay Research provides each side with exact pay and benefit figures for the classifications studied among the ten industries. Each side then makes out an *average* dollar (or pound) cost, and they meet to compare. When comparisons are exact, this becomes the settlement. Where they differ, a search is made for the point of difference, possibly a variant view of the value of an insurance plan, for example, and this is negotiated.

A separate paper would be required to detail various problems and difficulties found, but the parties are *committed* to the system as the most workable they have seen. Some 500,000 British Public Servants are covered.

Ottawa's power struggle system leads to a key variant in Pay Research Bureau work. The Bureau's Advisory Committee is 'only' advisory, without a steering control as in Britain. The Bureau assumes that 'intelligent' men be able to settle through negotiations, and thus data is developed to cover a much wider range of pay rates than would be required by a clear definition of a « good » employer.

At present the system has led to each party picking figures from the Bureau (or not using any) which entirely support their own demand or offer. Result — increasingly both sides are looking upon *data* as a waste of time. Bargaining tends to become a power struggle or a waiting game.

Ottawa's P.R.B. data does, have greater value when arbitration is required. Here again, since no clear definition of a « good » employer is made the arbitrator has a wide range of selection. The current strike of public service nurses against an arbitrator's decision may be one result.

P.E.I. regulations require the parties to meet six months in advance of contract endings and either develop jointly or agree upon the data

required, meeting again two months later to share data and come to agreement on as many classifications as possible through consultation, before entering formal negotiations. On the first round of P.E.I. negotiations, negotiators set up a joint committee of two from each side to collect data, once the implications of the Regulations were made clear.

As soon as data was available, the committee recommended to the negotiators those figures which they had agreed (or disagreed) represented the *most exact comparability figures* available in accordance with the criteria. In most cases of nearly 500 classifications handled these figures were accepted by the negotiators. Areas of doubt, or judgment differences brought on negotiations few were difficult but since the boundaries had been narrowed, settlements proved to be within range. Where data was not available, jobs were interpolated between jobs with suitable data.

Special problem of gathering data and insuring accurate job comparisons, however, plague all of the systems. There is also an assumption that governments should treat private and public sectors alike on inflationary and other general questions.

The author's recent three-week study in London of the British system showed its reliance not only on fair comparability criteria and acceptable arbitration, but on a highly effective communications and consultation process known as the Whitley Councils.

Formal negotiations are confined primarily to financial items. Virtually all other working condition problems or new policies go into a thorough consultation procedure leading to joint agreement or to a 'willingness' to experiment, before action is taken, by-passing the 'management rights' 'hassle' by voluntary action. Both parties agree that time lost in consultation is more than made up for in employee acceptance and goodwill. Difficult and complex matters are also more readily resolved in this manner, than in the pressure cooker of negotiations.

Prince Edward Island Regulations establish both Provincial and Departmental Joint Councils for similar purposes.

ARBITRATION INFREQUENT

In his recent study of the British Public Service System, Stern (4 [e]) notes, « The infrequency with which the parties have turned to arbitration in recent years to resolve their wage disputes contradicts the idea, widely held in the United States, (and Canada, ed.) that its availability upon the request of either party will have a 'narcotic effect' that is, it will lead the bargainers to rely more and more heavily upon arbitration instead of solving them directly by negotiations ».

It is the judgement of this paper that the clarification of criteria is a major factor in making the above possible. It is especially interesting

that in the early 1960's both major federal public service associations combined, without success, to try and persuade the Federal Government to appoint a commission to study appropriate criteria to describe the 'good employer' of the private sector for comparisons in negotiations.

P.E.I. has adopted the U.K. approach on management exclusions. All levels of management pay may be negotiated on a fair comparability basis, excepting those groups directly involved in negotiations for the government and the Deputy Ministers. Negotiating over his pay within an Association has not proved a deterrent to a manager assuming his managerial responsibilities while participating in negotiations over his classifications, either in the U.K., or in Ottawa's Professional Institute. It also fits well with modern behavioral approaches to managing⁸.

CONCLUSION

So far, the P.E.I. system has worked through three sets of negotiations. Plans are being made to communicate a better understanding of the system and its values to managers and employees, and a joint review of the process will consider possible adjustments.

An extension of fair comparability might also be considered in the public utility and transport areas. During the 1950's, railway disputes were settled almost entirely on the basis of comparable pay with the 'hard goods' industries. Why not again? Vancouver teacher and school board also settle each year on a basis of changing rates in other B.C. sectors. In Ontario two commissions are studying the problem of finding an appropriate basis for comparing incomes between the private sector and two key public service units.

Events in Ottawa, and other provinces, have not gone beyond the possibility of changing the system, if a fair and workable alternative is communicated *effectively* with employees. Otherwise, events may force direct legislative actions.

La négociation collective dans le secteur public : l'île du Prince-Édouard

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