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May 2000, 60 pp., ISBN 0-662-64979-6.

*Second Report: Working Together in the Public
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The appointment, in October 1999, of a nine member Advisory Committee on Labour Management Relations in the Federal Public Service, with John Fryer as Chairman, reflected the concern of the Government of Canada over its strained relationship with the unions that represent its employees.

While the system is considered to have generally worked well, in the first few rounds of bargaining after the enactment of the Public Service Staff Relations Act (PSSRA), the relationship between the parties began to deteriorate in the mid-1970s with the introduction of the first in a series of legislated wage restraint programs. The relationship deteriorated further in the following decades, with legislated interventions in the

bargaining process almost becoming the norm.

In the first of its two reports, the Fryer Committee describes a labour relations climate of low morale and mistrust, exacerbated by years of suspended bargaining, salary and arbitration freezes and back-to-work legislation. The Report notes also that increased work loads resulting from 'downsizing,' and a perception by many public servants of blocked career development are creating a problem of retention of younger employees in an already ageing work force, while the recruitment of additional 'knowledge workers'—professional, scientific and administrative—to meet the evolving requirements of government service can only be successful, in

the face of competition from the private sector, if the Public Service can be seen as a better place to work.

While recognizing the need for some differences in the statutory provisions for collective bargaining when a government is the employer, the Committee is highly critical of the PSSRA which, it points out, is far more restrictive than collective bargaining legislation in the private sector and more restrictive even than the legislation in most public sector regimes.

Certification procedures, bargaining unit exclusions, scope of bargaining and arbitration, redress mechanisms, the designation procedure and mechanisms for the resolution of bargaining impasses are among the major problem areas identified in the first Report and on which the Committee recommended fundamental legislative/institutional changes in the second. These issues represent problems of long standing. Most have been identified in earlier studies. What distinguishes the Fryer Committee's Report from other studies is the innovative recommendations it makes to deal with these problems and the new philosophy of labour relations in the Public Service that its recommendations represent.

The title of the second report, *Working Together in the Public Interest*, reflects a fundamental shift in emphasis from the adversarial approach in the labour management relationship to date to an emphasis on joint problem-solving. While the Report supports the right of public service employees to unionize and bargain collectively, with the corollary right to strike, the new legislative framework it proposes makes express provision for consultation and co-development, at all levels of the labour management relationship, not as a minor adjunct to collective bargaining, but as a major component of that relationship.

The Committee recommends transferring the general administration of the PSSRA to the Canada Industrial

Relations Board (CIRB). It would give that Board jurisdiction currently exercised by the Public Service Staff Relations Board (PSSRB) over certification, bargaining unit exclusions, unfair labour practices and the designation of services to be maintained during a legal strike, the provisions now in the PSSRA regarding these matters to be amended to mirror those in the Canada Labour Code. This would transfer to the jurisdiction of the CIRB matters that are not significantly different in the Federal Public Service than in the entities governed by the Canada Labour Code.

The Committee found that scope of bargaining, mechanisms for redress of employee grievances and for the resolution of bargaining impasses are sufficiently unique to the Federal Public Service to require special treatment, under separate legislation. These matters form the subject of its most innovative recommendations.

The discussion on scope of bargaining opens with the following sentence: "We believe that virtually all matters that arise in the workplace are properly the subject for joint discussion between the unions and the employer." However, the Committee does not suggest that all matters are appropriate for collective bargaining. Some, in its view, are more appropriately dealt with through consultation or co-development. For this, it envisages a significantly expanded role for the National Joint Council (NJC) and recommends specifically that staffing, classification and the Pension Plan be made subject to co-development through the NJC.

Recognizing that the implementation of a staffing plan, co-developed at the NJC, may require further discussion at the departmental/workplace level, also that other issues may be dealt with more appropriately at these levels, the Committee recommends that the PSSRA be amended further to provide for consultation and co-development of policies at

the service-wide, departmental and workplace levels, the details to be worked out by the parties.

Similarly with agreements reached through collective bargaining, it recommends that the PSSRA be amended to provide for voluntary adoption of two-tier bargaining to allow for flexibility at the departmental/workplace level in the implementation of centrally negotiated agreements.

The Committee expressed serious concern over the lack of effective, accessible and credible mechanisms for redress of employee grievances and complaints. With adjudication by the PSSRB confined to grievances arising out of the interpretation of a collective agreement or suspension or discharge for disciplinary reasons, other complaints, even by bargaining unit members, come within the purview of the Public Service Commission and a confusing array of other agencies. The Committee found that lack of confidence in the appeals procedure, particularly for staffing and classification complaints, was the principal source of frustration with current redress mechanisms.

The Report recommends that the present array of appeals procedures be replaced with a single redress mechanism. This would be effected by reconstituting the PSSRB as a tripartite board under a new name, the Public Service Rights Redress Board (PSRRB), with authority up to and including adjudication over all complaints arising in the employment relationship, whether by bargaining unit or other employees, that could not be resolved at the departmental level.

With regard to the question of interest disputes, the Committee set as its goal the development of a strategy to reduce disruption to the public as much as possible while preserving the fundamental right of unions to strike and respecting the government's ability to

ultimately impose its will through legislation. It recommends the creation of a new tripartite entity, the Public Interest Dispute Resolution Commission (PIDRC), as the mechanism through which to achieve this purpose.

The PIDRC would have access to a wide range of dispute resolution techniques—fact-finding; referral back to the negotiating table; mediation; issuance of a preliminary report commenting on the reasonableness of the parties' positions; issuance of a report outlining the terms of a settlement that could be adopted by or imposed on the parties—and full discretion in the use of these techniques. The Committee hopes that the element of surprise inherent in the procedure, with a potential for embarrassment to one or other of the parties, will be an incentive to them to work out their differences together and “serve to reduce the incidence of public service strikes as well as the problem of intervention by the government.”

The Committee maintains that the above and other recommendations, all of which require amendment to the PSSRA, must be accompanied by profound changes in attitudes and behaviour for the system to be sustainable into the twenty-first century. This would require, among other things, an increase in positive interaction between managers and unions at the departmental and workplace levels and an end to the separation that presently exists between human resource and industrial relations functions. The recommendation for consultation and co-development at these levels as well as for two-tier bargaining would, if implemented, encourage such interaction. Other recommendations include, but are not limited to, joint union-management educational programs in labour relations and conflict resolution and the development of systems of measurement and accountability. While some questions have been raised about the lack of detail in the Report on how to implement these recommendations, the Committee

is convinced that this is best left to the parties to work out themselves.

Only time will tell whether the participative mechanisms envisioned by John Fryer and his colleagues will materialize as they hope, also whether they would be compatible with various new forms of public service management being suggested in some quarters—much more managerial discretion, management by objective, mixed public-private or autonomous service agencies, for example. There has been some devolution, in the relatively recent past, of services from the federal public service to other levels of government and to the private sector as well as changes in the nature of some of the services the federal government continues to provide. The first Report notes, in this regard, that “the government already has begun to redefine its role.”

While it is impossible to predict the changes the future may hold for the management and delivery of public services, there can be no doubt of the present need to improve the strained relationships that prompted the federal government to appoint the Fryer Committee. A practical first step would be to implement the thoughtful, innovative and in the opinion of this reviewer, long overdue statutory amendments recommended by the Committee. Although not a panacea in and of themselves, these amendments, taken together, would provide a legislative framework considerably more conducive to harmonious labour management relations than the one it would replace.

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