

Relations industrielles Industrial Relations



Public Sector Bargaining From Retrenchment to Consolidation

La négociation dans le secteur public : du repli à la consolidation

Negociación en el sector público : de la racionalización a la consolidación

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Volume 59, numéro 2, printemps 2004

URI : <https://id.erudit.org/iderudit/009542ar>

DOI : <https://doi.org/10.7202/009542ar>

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Éditeur(s)

Département des relations industrielles de l'Université Laval

ISSN

0034-379X (imprimé)

1703-8138 (numérique)

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Citer cet article

Rose, J. B. (2004). Public Sector Bargaining: From Retrenchment to Consolidation. *Relations industrielles / Industrial Relations*, 59(2), 271–294. <https://doi.org/10.7202/009542ar>

Résumé de l'article

Il existe un consensus général à l'effet que la négociation collective dans le secteur public a évolué en passant par trois étapes : une première reflète les années d'expansion (du milieu des années 1960 à 1982) au cours de laquelle une loi permettant la syndicalisation dans ce secteur a été adoptée et la négociation a connu un essor. C'est une période qui fut marquée par une syndicalisation rapide du secteur, des augmentations salariales alors que les salariés essayaient de rejoindre ceux du privé, et passablement de grèves. La deuxième étape (1982–1990) a été qualifiée « d'années de contrainte ». Au cours de cette période, on a adopté une loi freinant les hausses salariales dans le but de combattre l'inflation et de réagir à ce qu'on considérait comme un excès de négociation pendant la décennie précédente, notamment les ententes élevées sur les salaires et l'activité de grève. La troisième période qualifiée d'« années de repli » (les années 1990) a émergé dans le sillage d'une récession sévère et de déficits budgétaires en escalade. Les gouvernements ont eu recours de façon croissante aux lois restreignant les droits relatifs à la négociation collective et favorisant une réduction de la taille de l'État.

Cet essai propose une quatrième étape qui en serait une de « consolidation » et qui aurait débuté en 1998. Le passage du repli à la consolidation a été caractérisé par un essor économique, par le retour à la stabilité budgétaire chez les gouvernements supérieurs, par le retrait des contraintes salariales et par l'augmentation modérée de l'emploi dans le secteur public et des dépenses des gouvernements. Ces changements ont entraîné le développement d'attentes divergentes. Pour les syndicats du secteur public, se présentait alors une occasion d'accroître leurs effectifs et de chercher à rejoindre le secteur privé au plan des salaires. Les gouvernements, d'un autre côté, s'étaient engagés à surveiller de près la fiscalité et à consolider les gains qu'ils avaient réalisés au cours de la période de repli. Ils étaient décidés à gérer soigneusement les dépenses publiques et à résister aux demandes de rattrapage salarial.

Les faits à l'appui de l'étape de consolidation permettent de penser que la négociation dans le secteur public reflète de façon croissante un glissement du pouvoir relatif de négociation à l'avantage du gouvernement et des employeurs du secteur public. Avec l'amélioration des conditions de l'économie, les syndicats ont connu des gains au plan de la densité syndicale et des effectifs, bien que ces gains demeurent tout à fait modestes. Aux tables de négociation, les syndicats, en dépit de l'intensification de l'activité de grève, n'ont pas réalisé un rattrapage salarial appréciable. Cela s'explique de deux façons. En premier lieu, cette situation tranche nettement avec le modèle historique où les syndicats du secteur public négociaient des salaires de rattrapage après avoir accusé un retard sur le secteur privé. En deuxième lieu, les années 1990 représentent la période la plus longue (dix années consécutives) au cours de laquelle les ententes dans le secteur public ont accusé un retard sur le secteur privé. L'inaptitude à obtenir un rattrapage salarial concret reflète les efforts concertés et jusque là fructueux des employeurs du secteur public de consolider les gains réalisés au cours des années de repli.

Quelle importance doit-on accorder à ces résultats ? D'abord, ils démontrent chez ces employeurs une volonté de s'engager dans des négociations ardues pour préserver une stabilité au plan fiscal. Quoique le recours à la législation ait diminué quelque peu, il reste néanmoins une volonté de l'utiliser de façon à restreindre les droits de négociation et de contrôler les résultats de la négociation. Ceci se répercute dans le recours continu à des mesures visant à centraliser les structures de négociation, à restreindre les limites du négociable et à imposer des limites aux droits de grève et d'arbitrage des différends. Un enseignement qu'on a retenu de ces années de repli est à l'effet que le coût politique de la législation demeure négligeable. En deuxième lieu, la sous-traitance, la privatisation et la menace d'agir en ce sens demeurent des options efficaces et viables qui continuent à accroître l'inquiétude au sujet de la sécurité d'emploi chez les salariés du secteur public. En troisième lieu, les années de repli ont affaibli les syndicats du secteur public. Plusieurs syndicats ont souffert de la perte de membres et leur capacité à faire des grèves fructueuses a été limitée par la volonté des employeurs à envisager les arrêts de travail, par la possibilité d'une loi de retour au travail et par l'indifférence de la population. Considérés dans leur ensemble, ces conséquences laissent croire que les gouvernements ne sont pas préparés à restaurer un système de négociation collective véritable et les syndicats ne sont pas dans une position pour les forcer à agir ainsi. En présence d'une possibilité de croissance économique ininterrompue et de l'engagement des gouvernements supérieurs à l'endroit des restrictions budgétaires, il apparaît que l'étape de consolidation va demeurer le point d'ancrage des relations du travail dans le secteur public pour les années à venir.

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Public Sector Bargaining

From Retrenchment to Consolidation

JOSEPH B. ROSE

There is general agreement that public sector bargaining has evolved through three stages: the expansionary years (mid-1960s to 1982), the restraint years (1982-1990) and the retrenchment years (1990s). This paper argues that public sector collective bargaining entered a new stage of development around 1998. The post-retrenchment period or what is referred to as the consolidation stage was marked by economic expansion, the restoration of fiscal stability among the senior levels of government and increases in public employment. Under these conditions, governments and public sector employers sought to consolidate the gains they achieved during the retrenchment years through legislation and hard bargaining. Public sector unions attempted to improve their position by increasing membership and negotiating catch-up wage settlements. Based on a review of selected collective bargaining indicators, employers appear to have consolidated their gains from the retrenchment years.

The 1990s was a time of profound change in public sector labour relations. Referred to as the “retrenchment years,” it was a period marked by restructuring and downsizing in response to government fiscal difficulties. This paper argues that as the economy became stronger and budget deficits subsided, public sector collective bargaining entered a new stage of development known as the “consolidation” stage.

The paper is divided into four parts. The first section traces the evolution of public sector bargaining in Canada over the past forty years. It begins by describing the emergence and development of public sector collective bargaining in the 1960s. At that time, the Canadian model was considered permissive, especially in regard to the right to strike. However, a

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more restrictive approach began to emerge in the 1980s and continued in the 1990s. As was the case in other advanced industrial countries, the public sector in Canada experienced significant retrenchment and restructuring during the 1990s (Beaumont 1996). The second section explores the emergence of a new stage of public sector bargaining around 1998, i.e., a shift from the retrenchment stage to the consolidation stage. This change was brought about by economic expansion and the improved fiscal position of senior levels of government. Next, the paper considers the impact of improvements in the climate for bargaining on selected collective bargaining indicators during the consolidation stage. These include union growth, bargaining structure, the bargaining process and bargaining outcomes. In the final section, the implications of the findings are discussed.

THE EVOLUTION OF PUBLIC SECTOR BARGAINING: AN OVERVIEW

Most observers submit that public sector bargaining has gone through three stages of development (Ponak and Thompson 2001). The first stage reflects the “expansionary” years (mid-1960s to 1982). During this period, there was a transformation in public sector labour relations. The period was marked by the adoption of enabling legislation. Initially, this led to the spread of collective bargaining among federal and provincial government workers and subsequently to employees in the broader public sector, e.g., education and health care. There was a rapid expansion of public sector union membership in response to new collective bargaining laws. Union growth was sustained by the expansion of public employment and union security arrangements. The early stage of public sector bargaining was accompanied by high wage settlements, as public employees attempted to “catch-up” with the private sector, and relatively high strike activity.

From the outset, the scope of bargaining has been narrower in the public sector than in the private sector. Various federal and provincial statutes restricted bargaining over the organization of the public service (e.g., classifications and criteria for promotions, transfers and layoffs) and issues such as pensions. That said, there were no significant restrictions imposed on public sector bargaining during the expansionary years. The federal government introduced wage and price controls (the Anti-Inflation Program) in an attempt to stem high rates of inflation in the mid-1970s. The Anti-Inflation Program constrained collective bargaining for a three-year period and established annual wage guidelines (albeit flexible ones). By virtue of most provinces “opting into” the federal program, it covered both the private and public sectors. The controls program restrained wages in two ways: (1) wage settlements that exceeded the guidelines were rolled

back and (2) the guidelines lowered expectations and contributed to lower wage settlements than would have been predicted in the absence of controls (Reid 1982).

As discussed below, this program differed from the restraint measures adopted in the 1980s and 1990s in that it was a broad initiative aimed at controlling both prices and wages. Although wages constitute one of the most important issues in bargaining, this was a relatively benign intrusion into collective bargaining in so far as it was limited to constraining negotiated compensation gains for a fixed period of time. Further, while it provided for a review of negotiated wage settlements, it did not suspend collective bargaining (i.e., restrict the right to strike or automatically extend the life of collective agreements). As well, collective agreements reached prior to the commencement of the controls program were not rolled back.

The second stage of public sector bargaining was known as the “restraint” years (1982-1990). The federal government paved the way by adopting the *Public Sector Compensation Restraint Act* (known as the “6 and 5” Program). This initiative, which was followed in varying degrees by most of the provinces, specifically targeted the public sector. Like the Anti-Inflation Program, the “6 and 5” Program was adopted at a time of annual double-digit increases in inflation and wage rates. Accordingly, governments argued it was essential to introduce wage controls once again. The federal government believed that imposing restraints on public sector pay increases would set the tone for restraining private sector wage bargaining. At the federal level, the government imposed a wage ceiling of 6 percent on settlements for fiscal year 1982–83 and 5 percent for the following year. (In actual point of fact, settlements of 6 and 5 percent became the norm.) While the legislation was described as a compensation restraint measure, it went much further than that. It unilaterally extended collective agreements for a period of two years, thereby suspending collective bargaining. Specifically, it (1) eliminated the right to strike and access to interest arbitration under the federal government’s choice-of-procedures model, (2) precluded negotiations over all issues, including non-compensation issues and (3) rolled back negotiated wage settlements exceeding the 6 and 5 percent maxima. Whereas the rationale for the “6 and 5” Program and similar provincial programs was to restrain public sector compensation, the impact on collective bargaining was far more pervasive than the Anti-Inflation Program (Swimmer 1984).

The “6 and 5” approach was broadly accepted among the provinces. However, some jurisdictions were less intrusive (in New Brunswick there was a voluntary wage freeze in exchange for no layoffs), others were more intrusive. For example, Quebec passed legislation rolling back wages by “an average of 18.8 per cent for all employees” for the first three months of

1983 (lower-paid employees received smaller rollbacks) (Hébert 1984: 267). Subsequent legislation allowed the government to use decrees to extend collective agreements for three years and unilaterally establish terms and conditions of employment (Hébert 1984). In British Columbia, twenty-six laws were passed covering compensation restraints, other industrial relations matters and social welfare. This represented a major departure from the national pattern of imposing public sector wage restraints. Of particular note was the *Public Sector Restraint Act*, which granted employers the right to terminate employees without regard to job security. Following protests and negotiations between Operation Solidarity and the government, an agreement was reached granting exemptions from the restrictions on bargaining rights (Thompson 1986; Panitch and Swartz 1988).

The adoption of public sector wage restraint measures was justified both in terms of the need to thwart inflation and to gain a measure of stability in the wake of a major recession. Wage restraints can also be seen as a backlash against what were characterized as the “excesses” of bargaining over the preceding decade, namely high wage settlements and strike activity. They were also viewed as a forerunner of more permanent and restrictive changes to public sector bargaining (Swimmer 1984). During the remainder of the 1980s, wage settlements were moderate, even after wage restraints were removed, and strike activity declined. There was also a slowdown in the rate of growth of public employment and public sector union membership expansion slowed as well.

The third and most profound stage of public sector bargaining, the “retrenchment” years, commenced in the 1990s. In the wake of a severe recession and escalating budget deficits, government policies increasingly relied on market forces (Ponak and Thompson 2001). These policies can be distinguished in several ways from the wage restraint measures of the 1980s. First, they were not introduced in response to rampant inflation. Rather, governments were concerned with controlling expenditures, reducing budget deficits and addressing public debt. Second, the various measures adopted were not limited to compensation restraints. Given the determination to reduce costs, the issues were far broader. They included downsizing, restructuring and redefining the role of government and the delivery of public services (Warrian 1996). Whereas most of the changes that were made in the 1990s involved unilateral legislative action, in almost all instances, legal infringements were once again largely confined to compensation issues. Nevertheless, where compensation restraints were adopted, they were often more onerous. They included wage freezes, wage rollbacks, the extension of collective agreements and unpaid leaves of absence. As a result, negotiated wage rates were altered, take home pay was reduced and/or the opportunity to negotiate wage improvements was precluded.

Clearly, unilateral legislative action became the method of choice by governments for regulating public sector collective bargaining. A comprehensive analysis of government restraint and restructuring at the federal and provincial government levels found that 11 of the 15 governments in power in the 1990s relied on legislative action exclusively or in conjunction with adversarial bargaining to achieve their objectives (Swimmer 2001). The legislative approach was preferred over adversarial bargaining and labour-management cooperation because it offered the prospect of fast and reliable results. A prime example of this was the Social Contract experience in Ontario. After failing to achieve a consensus with public sector partners on an agreement to provide job security in exchange for expenditure reductions, the government adopted a coercive strategy and passed the *Social Contract Act* (Hebdon and Warrian 1999). Moreover, the legislative approach was supported by the business community and financial markets, and was sellable to the general public. Legislative measures included restrictions on the right to strike, wage restraints (freezes, rollbacks or limited increases), the extension of collective agreements, unpaid leaves of absence, and suspending access to interest arbitration (federal sector) or altering arbitral criteria and the process for appointing arbitrators (Rose 2000).

There were also several high-profile laws which limited or foreclosed bargaining over matters related to job security. Such measures were directed at strong job security agreements reached through bargaining or consultation. Mounting deficits prompted governments to adopt legal measures to weaken job security arrangements that were seen as barriers to achieving significant job cuts. For example, the successor rights provisions for Crown employees in Ontario were removed in 1995 to facilitate the government's plans to privatize Crown agencies and government services (Rose 2001). Additionally, the government successfully employed a hard bargaining strategy (and took a five-week strike) to eliminate the guaranteed job offer provision that had been negotiated in the early 1990s (*Lancaster's Collective Agreement Reporter* 1996).

Another example involved the Workforce Adjustment Directive Agreement (WFAD) in the federal public service (Swimmer and Bach 2001). The WFAD, which was developed in the National Joint Council (NJC) and evolved over three, three-year plans (1985–1994), provided a guaranteed reasonable job offer to permanent employees declared surplus. After concluding that the WFAD was incompatible with its need to downsize, the federal government decided not to renew the reasonable job offer. Instead, it instituted changes to the WFAD after announcing plans to cut 45,000 public service jobs in 1995. Although the initial intent was to temporarily suspend the WFAD, it was permanently modified in several ways, including: (1) legislation suspending the WFAD for three years for

departments most affected by downsizing in exchange for new buyout packages (1995); (2) under the threat of legislation, a reasonable job offer was modified to include transferring public servants to the private sector at 85 percent of their wage rates (1996); and (3) further changes to the reasonable job offer resulted from legislation (1996), discussions within the NJC (1998) and, in the case of the Public Service Alliance of Canada, at the bargaining table (1998) (Swimmer and Bach 2001).

A less direct, but nonetheless significant attempt to undermine job security involved Ontario teachers in 1997. In this case, the provincial government deemed that workload and class size would become statutory terms of employment upon the expiry of the teachers' collective agreements. Although the government stated its rationale was to have teachers spend more time in the classroom instructing students, it later conceded the purpose was to reduce teaching positions and expenditures (Rose 2001).

In addition to these legal restrictions, governments increasingly sought to control bargaining outcomes by imposing restrictions on interest arbitration. In 1996, the federal government modified the "choice-of-procedures" model by suspending access to interest arbitration for three years (Swimmer and Bach 2001). In Ontario, several controversial laws altered traditional arbitral criteria and the process for appointing arbitrators. This led to a legal challenge to the appointment of retired judges to chair arbitration boards. In 2003, the Supreme Court of Canada held that the appointment of retired judges as interest arbitrators was patently unreasonable, noting that arbitrators were to be selected from candidates who were qualified in terms of their impartiality, expertise and general acceptability in the labour relations community (*C.U.P.E. v. Ontario (Minister of Labour)*, 2003 SCC 29, File No. 28396).

The impact of the retrenchment years was profound. Reductions in government spending contributed to the curtailment of public services and to a decline in public employment (Peters 1999). As a result, there was little opportunity for union growth and some unions suffered membership losses. In addition, the downward trend in wage settlements and strike activity, which began in the 1980s, continued into the 1990s. Finally, in contrast to the temporary wage restraint measures introduced in the 1980s, legal restrictions on public sector bargaining were broader and, in many cases, represented permanent changes.

FROM RETRENCHMENT TO CONSOLIDATION

The fiscal problems experienced by governments and the restructuring and restraint measures adopted to alleviate these problems have been well

documented. Less attention has been focused on collective bargaining in the period after budgetary crises subsided. As economic conditions improved in the latter half of the 1990s and as budget deficits were replaced by balanced budgets and, in some cases, budget surpluses, public sector bargaining arguably entered a fourth stage of development. The transition from the retrenchment stage to the consolidation stage began around 1998.

The Nature of the Consolidation Stage

The consolidation stage reflects a period of sustained economic growth, budget stability and continued fiscal vigilance, and efforts by governments and public sector employers to consolidate the gains achieved in the retrenchment years. As in the retrenchment years, government remains the dominant influence in labour relations. As a result, the consolidation stage has been characterized by the continued use of hard bargaining and reliance on legislation to restrict collective bargaining rights, preserve gains from the retrenchment years, and, in a few instances, secure additional gains. Governments and public sector employers maintained an interest in new public management practices and in making the public sector more efficient. Accordingly, downsizing, privatization and contracting out remained viable strategies. However, given economic expansion and the easing of budgetary pressures, there was less urgency to adopt such strategies than had been the case during the retrenchment years.

Indeed, significant staff reductions, commonplace in the early to mid-1990s, have been replaced by government strategies to limit compensation increases in order to maintain balanced budgets. The economic rationale for doing so has been matched by a political one, notably a political shift to the right. During the retrenchment years, the favoured approach to reducing deficits was to cut spending rather than increase taxes. Having achieved impressive fiscal improvements in a relatively short period of time, there was little likelihood that senior governments would reverse course and lapse into old spending habits. Indeed, as the economy improved, reductions in personal income taxes became increasingly popular.

There have been some instances of union bashing during the consolidation period. The attack on teacher bargaining in Ontario (Rose 2002) and health care collective agreements in British Columbia (discussed below) are prime examples. However, the overall tenor of government strategy in this period is not so much anti-union, but one of containing sources of union power. This is most evident in regard to structure (maintaining consolidated bargaining structures), process (regulating the right to strike and the arbitration process), and outcomes (restricting bargaining subjects and wage settlements).

The hard line maintained in the wake of the retrenchment years reflects several considerations. First, to maintain fiscal stability and flexibility, senior governments chose to recast the bargaining model. They wanted to remove what they regarded as bargaining excesses and exert greater control over the entire system. Second, in doing so, they rejected a return to normalization similar to that experienced in the latter part of the restraint years. Whereas wage restraint in the early to mid-1980s was temporary, senior governments were looking for more enduring results. From their perspective, reforming collective bargaining was essential to fiscal stability. Hence, many of the changes made to collective bargaining during the retrenchment years have been maintained. Third, the political cost of interfering in collective bargaining is quite modest. As well, cash-strapped public employers frequently adopted hard bargaining out of necessity and public sector unions, weakened by the retrenchment years, were unable to alter the fiscal imperative of senior governments.

Economic and Employment Changes

The economic climate began to improve after 1996. Between 1997 and 2000, increases in real GDP ranged from 4.1 to 5.4 percent annually. For the first time in over two decades, total government revenues in Canada exceeded total government expenditures in 1997 (*Canadian Economic Observer* Various years). By 1998, most senior levels of government had erased their budget deficits; in the remainder, deficits were declining (Swimmer 2001). Accordingly, the budget deficit crises experienced by most senior governments had been eliminated or had subsided by this time. The improved fiscal situation not only reflected significant increases in revenues, but also government efforts to control spending. Although government expenditures as a percentage of GDP declined from 45.6 percent in 1998 to 39.3 percent in 2002 (*Canadian Economic Observer* Various years), demands on high-priority issues, such as health care and education, led to increases in spending per capita (in constant 1997 dollars). This reversed five consecutive years of spending cuts. By 2002, spending per capita inched ahead of the previous 1992 peak (Little 2003a).

After years of stagnation and decline, public employment rebounded in the consolidation stage. Between 1994 and 1998, public employment as a percentage of the total economy fell from 25.1 percent to 22.8 percent (see Table 1). The rate of public employment growth in this period was virtually non-existent, rising by 0.1 percent annually. This pattern was in sharp contrast to the 7 percent annual increases in public employment between 1946 and 1975 and the 1 percent increase per year in the late 1980s and early 1990s. The decline in public employment reflected cutbacks in

public services, privatization and contracting out (Ponak and Thompson 2001). In parts of the public sector, e.g., education and the provincial and federal governments, employment declined on an annual basis. The steepest declines occurred in the higher levels of government. For example, Peters (1999) found that between 1991 and 1997 provincial civil service employment declined by 41,600 or 15 percent and the federal civil service declined 44,100 or 14 percent.

TABLE 1
Public Employment (1994, 1998 and 2002)

<i>Component</i>	<i>1994 (000)</i>	<i>1998 (000)</i>	<i>Annual % change 1994–98</i>	<i>2002 (000)</i>	<i>Annual % change 1998–02</i>
Education	772.9	753.7	–0.6	769.5	0.5
Health and welfare	1,150.3	1,221.1	1.5	1,323.1	2.1
Local gov't.	216.3	255.6	4.6	237.0	–1.8
Provincial gov't.	242.6	210.8	–3.8	216.8	0.7
Federal gov't.	275.8	225.5	–4.6	253.2	3.1
Total public sector	2 657.9	2 666.7	0.1	2 799.6	1.2
Total economy	10,600.4	11,706.0	2.6	13,164.2	3.1
Public sector as % of total economy	25.1%	22.8%		21.3%	

Source: Ponak and Thompson (2001), Table 14.1 and Statistics Canada, *Employment Earnings and Hours*, Catalogue No. 72–002. All figures are for July in the reporting year.

Table 1 also reveals that since 1998, public sector employment as a proportion of the total economy continued to fall, reaching 21.3 percent in 2002. However, public employment grew between 1998 and 2002, albeit not as rapidly as overall employment. Total public employment increased by 5.0 percent or just over 1.2 percent annually. The largest gains were in the federal government (3.1 percent) and in health and welfare (2.1 percent). Conversely, employment in local government declined (–1.8 percent).

By 1998, the economic and fiscal climate had improved to the point that public sector bargaining was emerging from the retrenchment stage. Most legislated wage restraint programs had ended or were about to end, thereby clearing the way for the normalization of collective bargaining. This shift produced divergent expectations. For public sector unions, economic growth would contribute to increases in public employment and improve the prospects for membership growth. As well, it would lead to demands for

catch-up wage settlements and an increased willingness to engage in strike activity in support of those demands. For their part, governments would be fiscally prudent. In conjunction with broader public sector employers, they would be expected to carefully monitor spending and resist demands for catch-up wage settlements. Given past reliance on and success with legislated wage restraints, governments would not shy away from unilateral legal action to preserve what they regarded as fiscally responsible bargaining outcomes.

THE CONSOLIDATION STAGE

The emergence of the consolidation stage is reflected in a review of selected collective bargaining indicators. The indicators include union growth, bargaining structure, the bargaining process and bargaining outcomes. The analysis has two objectives. First, where data are available, an examination is made of general trends and changes in collective bargaining between 1980 and 2002. A second and more specific objective is to establish the transition in public sector bargaining from the retrenchment to the consolidation stage.

Union Growth

As noted above, public sector union growth was most pronounced in the 1960s and 1970s. In the period 1969–1973 alone, it was estimated that public sector membership doubled from 430,000 to 883,000 members. By the late 1970s, growth rates had subsided. Nevertheless, gains in public sector union membership exceeded increases in total Canadian union membership during the restraint years. Between 1981 and 1992, there was an estimated 47 percent increase in public sector union membership (Rose 1995). During the retrenchment years, union membership reflected the trend in public employment. Figures compiled by Ponak and Thompson (2001) reveal that, with the exception of the Canadian Union of Public Employees and firefighters' unions, membership stagnation and erosion occurred for Canada's public sector unions between 1994 and 1998 (Table 2, Panel A).

Although complete data are not available for all union groups in the consolidation period, Table 2 tracks public sector membership and union density between 1998 and 2002. Consistent with increases in public employment, the consolidation stage witnessed gains in union membership and density (Table 2, Panel B). Between 1998 and 2002, public sector membership increased by 240,000 members or 13 percent. The average annual rate of union growth (3.25 percent) was nearly three times greater than annual growth in public employment. In contrast to the decline in private sector union

density, public sector union density increased from 71.7 to 72.5 percent (after initially declining between 1998 and 2000). Gains in membership and density are found in all components of the public sector. The largest membership gains were achieved in health care and social services and public administration recorded the largest increase in density. Canada's three largest public sector unions achieved broadly similar gains in membership in this period (Table 2, Panel A). However, membership in the Public Service Alliance of Canada, which represents federal government workers, was considerably lower in 2002 (150,000 members) than at its peak in 1993 (171,000 members). Overall, these figures demonstrate there were modest gains in public sector union membership and density in the consolidation stage.

TABLE 2
Public Sector Union Membership and Density

Panel A: Membership in Public Sector Unions (1994, 1998 and 2002)

<i>Unions</i>	<i>1994</i>	<i>1998</i>	<i>2002</i>	<i>Percentage change</i>	
				<i>1994–1998</i>	<i>1998–2002</i>
CUPE	409.8	489.3	521.6	+ 19.4%	+ 6.6%
NUPGE	307.6	309.0	325.0	+ 0.5%	+ 5.2%
PSAC	167.8	142.3	150.0	– 15.2%	+ 5.5%
Teachers' unions	404.6	404.6	n.a.	0.0%	n.a.
Nurses' unions	166.5	166.2	n.a.	– 0.2%	n.a.
Police unions	43.5	42.2	n.a.	– 0.3%	n.a.
Firefighters' unions	27.2	30.8	n.a.	+ 13.2%	n.a.

Panel B: Membership (Density) by Sector (1998 and 2002)

<i>Sector</i>	<i>1998</i>	<i>2002</i>	<i>Percentage change</i>
			<i>1998–2002</i>
Education	635.3 (68.9%)	656.0 (70.2%)	+ 3.3% (+ 1.3%)
Health care and social assistance	654.7 (53.4%)	749.6 (54.2%)	+ 14.6% (+ 0.8%)
Public administration	507.0 (64.1%)	523.1 (67.5%)	+ 3.2% (+ 3.4%)
Public sector	1,851.4 (71.7%)	2,091.6 (72.5%)	+ 13.0% (+ 0.8%)
Overall economy	3,565.2 (30.7%)	3,891.7 (30.3%)	+ 9.2% (– 0.4%)

Sources: Ponak and Thompson (2001), Table 14.3; Workplace Information Directorate (2002); Akyeampong (1999, 2001).

Bargaining Structure

Unfortunately, comprehensive data on bargaining structures are not available. Nevertheless, bargaining structures have been shifting in opposite directions in the private and public sectors. Whereas globalization and competitiveness have been associated with decentralization and disruptions to pattern bargaining in the private sector (Chaykowski 2001; Katz 1993), there has been a centralization of bargaining structures in the public sector. Although bargaining structures at the senior levels of government have remained relatively stable, restructuring and rationalization led to the amalgamation of municipalities, school boards and health care institutions during the retrenchment years. These changes reflected efforts to reduce budget expenditures by consolidating bargaining units and streamlining collective bargaining. In British Columbia, centralized bargaining outside the public service (which was already centralized) has been encouraged and the Public Sector Employers' Council was created "to co-ordinate bargaining for most components of the public sector in the province, establishing an explicit role for the provincial government in collective bargaining, compensation, and human resources management for the first time" (Thompson 2001: 168).

Although some evidence exists of further centralization in the public sector during the consolidation stage, it is uncertain whether there will be substantial change in this area. In 2000, Quebec became the latest province to pass legislation to amalgamate municipalities. As well, Alberta amended its *Labour Relations Code* in 2003 to further streamline bargaining in the health care sector. This reduces the number of collective agreements in the sector from 400 to 36 (www.gov.ab.ca). At the same time, some governments have chosen not to consolidate bargaining structures. This is because the centralization of bargaining involves a tradeoff between greater budgetary control and increased political accountability. A case in point is Ontario, where despite centralizing funding and amalgamating some school boards, the government has been reluctant to adopt province-wide bargaining for teachers. Its reluctance undoubtedly reflects an unwillingness to assume the political risks this would bring, including the likelihood of another major confrontation with teacher unions (Rose 2002).

Wage Settlements

Over the past twenty years, there has been a downward trend in negotiated wage settlements covering bargaining units with 500 or more employees (Table 3). In the 1980s, public sector wage settlements exceeded those in the private sector. Using a wage index (1979 = 100), the public sector wage index was marginally higher in 1990 (194.6 versus 193.4 for the private sector). The reverse was generally the case after 1990. Using a

wage index (1990 = 100), the private sector wage index in 2002 was 129.7 compared to 122.2 for the public sector. For the entire 1980–2002 period, the private sector wage index exceeded the public sector index (250.7 and 237.8, respectively). As well, wage settlements in the public sector lagged increases in the Consumer Price Index.

TABLE 3
Major Wage Settlements and Changes in the CPI

Year	Average annual increase in employees' base wage rates			Annual change in CPI
	Public sector	Private sector	Total	
1980	10.9%	11.7%	11.1%	10.2%
1981	13.1%	12.6%	13.0%	12.4%
1982	10.4%	9.5%	10.2%	10.8%
1983	4.6%	5.5%	4.8%	5.9%
1984	3.9%	3.2%	3.6%	4.3%
1985	3.8%	3.3%	3.7%	4.0%
1986	3.6%	3.0%	3.4%	4.2%
1987	4.1%	3.8%	4.0%	4.3%
1988	4.0%	5.0%	4.4%	4.0%
1989	5.2%	5.2%	5.2%	5.0%
1990	5.6%	5.7%	5.6%	4.8%
1991	3.4%	4.4%	3.6%	5.6%
1992	2.0%	2.6%	2.1%	1.5%
1993	0.6%	0.8%	0.6%	1.9%
1994	0.0%	1.2%	0.3%	0.2%
1995	0.6%	1.4%	0.9%	2.2%
1996	0.5%	1.7%	0.9%	1.6%
1997	1.1%	1.8%	1.5%	1.6%
1998	1.6%	1.8%	1.7%	1.0%
1999	1.9%	2.7%	2.2%	1.7%
2000	2.5%	2.3%	2.5%	2.7%
2001	3.2%	3.0%	3.1%	2.6%
2002	2.9%	2.6%	2.8%	2.2%
Wage indices				
1980–90 (1979 = 100)	194.6	193.4	194.3	196.1
1991–02 (1990 = 100)	122.2	129.7	124.5	127.7
1980–02 (1979 = 100)	237.8	250.7	241.9	250.4
1990–97 (1989 = 100)	108.5	114.7	110.3	115.5
1998–02 (1997 = 100)	112.7	113.0	112.9	110.6

Source: Akyeampong (2001) and Workplace Information Directorate (2003).

These figures indicate that stringent government wage restraint measures had a substantial impact on wage outcomes. During the 1990s the relative position of public sector employees worsened in two important ways. First, average annual wage settlements in the public sector lagged the private sector for ten consecutive years (1990 to 1999). The longest previous stretch in which public sector settlements lagged the private sector was six years (1969–1974) (Maslove and Swimmer 1980). Second, real wages in the public sector suffered a greater decline in the 1990s than in the preceding decade. As well, the inflation rate exceeded public sector settlements for five consecutive years (1993–1997).

The wage data in Table 3 also suggest that public sector unions have had difficulty achieving wage catch-up during the consolidation period. As economic conditions improved and budget deficits were erased in the late 1990s, public sector settlements improved. Specifically, average annual public sector settlements exceeded inflation beginning in 1998 (except for 2000) and were higher than private sector settlements in 2000–2002. That said, there has not been appreciable wage catch-up with the private sector.

The historical relationship between wage settlements in the public and private sectors has been described by Gunderson (1995: 119).

Public sector settlements tend to be volatile, with unusually high settlements often occurring in certain years. These tend to be temporary, however, often reflecting a ‘catch-up’ to earlier private sector settlements, and they tend to dissipate over time.

For example, after lagging private sector settlements for six consecutive years (1969–1974), public sector wages outpaced the private sector in 1975 such that catch-up was achieved (Maslove and Swimmer 1980). Similarly, significant wage catch-up was achieved in public sector settlements in the early to mid-1980s (Gunderson 1995). The experience of the 1990s deviates from the historical pattern. Considering the decade-long lag in public sector settlements, catch-up has been extremely modest. Even after taking into account that public sector union bargaining priorities may have shifted toward job security issues, these results suggest that relative bargaining power has shifted in favour of governments and broader public sector employers. To date, they have been able to resist demands for catch-up and achieve moderate wage settlements in the consolidation period.

The difficulty in achieving wage catch-up in the consolidation stage is amply illustrated by the situation in Alberta in the wake of oil royalty windfalls and soaring private sector wages. The emergence of budget surpluses produced cautious and targeted government spending rather than an unrestricted flow back to the budgets of public employers. Although the province’s budget surpluses fuelled wage expectations, public employers

lacked the resources to acquiesce to union demands. Unions discovered that they had to bargain hard to simply restore wage cuts rather than make significant new gains (Ponak, Reshef and Taras 2003: 295).

Hard bargaining prevailed, and unions were preoccupied with restoration of wages rather than putting themselves in a position to use economic buoyancy to launch aggressive wage initiatives. Unions learned that once concessions were given, they were not easily recovered regardless of economic prosperity.

Hence, wage catch-up has proven difficult, even under very favourable economic conditions.

Strike Activity

Consistent with the wage settlement trend, there has been a significant decline in strike activity since 1980. As shown in Table 4, the average annual number of strikes and person-days lost in the 1990s was approximately half the levels recorded in the 1980s. Although strike activity declined in both the private and the public sectors, the decline was greater in the private sector. As a result, the public sector's share of total strike activity increased (Ponak and Thompson 2001).

During the 1990s, public sector restructuring and downsizing, which was accompanied by wage restraint laws, had a pronounced effect on strike activity. This occurred in various ways, including the removal of the right to strike, passage of back-to-work legislation, limiting the opportunity to strike by extending the term of collective agreements and reducing the utility or feasibility of strike action in the face of imposed restrictions on compensation increases. The strike pattern was altered when governments resisted demands for wage catch-up in the consolidation period. Strike activity in the public sector increased in absolute and relative terms. This is illustrated when strike activity is divided into the retrenchment years (1990-97) and the consolidation years (1998-2002). There was a substantial rise in the average annual number of strikes (32 percent) and person-days lost (16 percent) in the consolidation period. As well, the public sector share of total strike activity increased between 1998 and 2002. Public sector strikes rose from 20.4 to 28.7 percent of all strikes, and person-days lost rose from 32.8 to 43.2 percent of all person-days lost.

It is noteworthy that the rise in public sector strike activity during the consolidation stage occurred against a backdrop of continuing legal restrictions on the right to strike. Back-to-work laws were adopted to deal with a broad cross-section of public sector disputes, including teachers and other school board employees (Ontario, B.C. and Alberta), nurses and other health care employees (Newfoundland, Nova Scotia, Quebec, Saskatchewan, Alberta and B.C.), utilities (Sask Power), and municipal

TABLE 4
Public Sector Work Stoppages (1980-2002)

<i>Year</i>	<i>Number of stoppages</i>	<i>% of total</i>	<i>Person days lost ('000)</i>	<i>% of total</i>
1980	244	23.7	3193	35.0
1981	271	25.6	2210	25.0
1982	121	17.8	895	15.7
1983	95	14.7	2129	47.9
1984	108	15.1	572	14.7
1980-84 (mean)	168	20.4	1800	28.1
1985	158	19.1	628	20.1
1986	128	17.1	796	11.1
1987	105	15.7	885	23.2
1988	76	13.9	2167	44.2
1989	139	22.2	1658	44.8
1985-89 (mean)	121	17.7	1267	27.0
1990	119	20.6	786	15.5
1991	115	24.8	1429	56.7
1992	80	19.8	496	23.5
1993	85	22.3	355	23.4
1994	55	14.7	414	25.8
1990-94 (mean)	91	20.7	696	27.2
1995	55	16.8	183	11.6
1996	76	23.0	1389	41.6
1997	56	20.1	1948	54.6
1998	119	31.5	642	26.0
1999	135	32.7	1038	42.4
1995-99 (mean)	88	25.5	1040	38.8
2000	100	26.5	586	35.5
2001	114	29.9	1164	52.8
2002	61	20.8	1667	54.9
2000-02 (mean)	92	26.1	1139	49.5
1990-97 (mean)	80	20.4	875	32.8
1998-02 (mean)	106	28.7	1019	43.2

Source: Calculations based on Peirce (2003) for 1980-2000 and special tabulation provided by the Workplace Information Directorate for 2001-2002.

and urban transit workers (Toronto and Greater Vancouver). As well, teachers (British Columbia) and ambulance services (Ontario and the City of Winnipeg) were designated essential services, thereby restricting their right to participate in work stoppages. There has also been legislation aimed at controlling work-to-rule tactics by Ontario teachers (i.e., withdrawing extracurricular activities) and limiting their bargaining leverage (Human Resources Development Canada Various Years).

Other Legislation Restricting Collective Bargaining Rights

In addition to regulating conflict, the consolidation stage produced other restrictions on collective bargaining rights. For example, the range of bargaining subjects was narrowed in Nova Scotia and British Columbia. In the latter case, teachers no longer have the right to negotiate provisions that would restrict school boards from determining class size and composition, and staffing levels. In Ontario, all teacher agreements entered into after July 1, 2001 must specify a common expiry date of August 31, 2004. The institution of interest arbitration was also altered. In 1999, the federal government extended the suspension of interest arbitration as a dispute resolution process in the federal public service for an additional two years. In addition, several recent laws in Ontario established constrained arbitration procedures and permitted the appointment of arbitrators even if they lacked previous arbitration experience and were not recognized as mutually acceptable within the labour relations community.

The landscape changed dramatically in 2002 when British Columbia introduced Bill 29, the *Health and Social Services Delivery Improvement Act*. This law enhanced the ability of health care employers to reorganize service delivery and contract out non-clinical services. It became the first major piece of legislation to void collective agreement provisions during their term. Specifically, in an effort to lower costs and increase flexibility, the law voided collectively bargained provisions dealing with contracting out and bumping rights. The legislation has been characterized as arguably “the most severe government intrusion into collective agreements in Canadian history” (Thompson and Bemmels 2003: 108). It went well beyond any of the legislated wage restraint measures and limitations on job security introduced during the retrenchment years. A challenge to the legislation under the Canadian Charter of Rights and Freedoms has been mounted.

Bill 29 not only appears out of character with the general legislative pattern in the consolidation stage, but would have also seemed extreme during the retrenchment years. To a large extent, the situation in British Columbia is anomalous. It did not experience a fiscal crisis during the

retrenchment years (Thompson 2001). Throughout most of the 1990s, the province's economy and the government's fiscal position were stronger than its provincial counterparts (Swimmer 2001). When most senior governments were downsizing, provincial civil service employment in British Columbia expanded. Between 1992 and 2001, the number of provincial employees rose by 10 percent. When the budget crunch came in 2002, the Campbell government virtually eliminated that gain in one swoop (Little 2003b). For fiscal year 2002–03, the province had a \$4-billion deficit, the largest in Canada (Little 2003c).

DISCUSSION AND CONCLUSIONS

This paper suggests that around 1998, public sector bargaining moved from the retrenchment stage to the consolidation stage. This transition was brought about by changes in the economic and political environment. Specifically, a period of sustained economic growth emerged, budget crises subsided and most wage restraint laws had lapsed or were due to expire. As a result, governments had greater spending leeway and public employment increased, albeit moderately.

Emerging from the retrenchment years, there was a sense that “normalcy” would return to collective bargaining. There were, nevertheless, divergent expectations about the process. Governments, conscious of the pain and suffering attendant to deficits and debt, were determined to control spending by consolidating the gains they had achieved in the retrenchment years. To that end, they engaged in hard bargaining, took strikes and relied on legislative action. The direction of legislation shifted somewhat, away from explicit wage restraints toward other measures to control bargaining outcomes, including restrictions on the right to strike, interest arbitration and the scope of bargaining subjects. Unions, on the other hand, expected the improved economic climate and increases in public employment to foster increases in membership and the opportunity for wage catch-up.

Evidence from the consolidation stage suggests that public sector bargaining increasingly reflects a shift in relative bargaining power in favour of government and public sector employers. Under improving economic conditions, unions achieved gains in membership and density, but these gains were quite modest. On the collective bargaining front, unions have not achieved appreciable wage settlements despite increases in strike activity. This is significant for two reasons. First, it contrasts with the historical pattern in which public sector unions negotiated catch-up wages after falling behind the private sector. Second, the 1990s represented the longest period in which public sector settlements lagged behind the private sector. The

failure to achieve tangible wage catch-up reflects the concerted and so far successful efforts of public sector employers to consolidate the gains they made during the retrenchment years.

What do these results signify? First, they demonstrate the resolve of public sector employers to engage in hard bargaining to preserve their fiscal stability. Although resort to legislation has abated somewhat, there nevertheless remains a willingness to use it to restrict bargaining rights and control bargaining outcomes. A lesson learned from the retrenchment years is that the political cost of legislation is negligible. Second, contracting out and privatization or the threat to pursue such strategies remain potent and viable options that continue to raise job security concerns among public sector employees. Third, the retrenchment years weakened public sector unions. Many unions suffered membership losses and their ability to sustain successful work stoppages was limited by the willingness of some employers to take strikes, the prospect of back-to-work legislation and public indifference.

Taken together, these forces suggest governments are not prepared to restore a genuine collective bargaining system and unions are not in a position to compel them to do so. By the same token, a return to the retrenchment stage seems unlikely. Arguably governments and public employers have restructured and downsized as far as they possibly can or wish to. The recent rise in public employment suggests there may be limits to retrenchment (Swimmer 2001: 33).

Given the downsizing across senior governments, many civil service employees are faced with higher workloads and will have to work harder and/or smarter to do their jobs effectively. Now that deficits have been tamed, government leaders must think of their employees as a source of value to be increased, rather than a cost to be reduced, if they are truly committed to improving service to the public (another pillar of 'new public management').

The same considerations apply to other parts of the public sector.

There are several reasons for believing the consolidation stage is sustainable. For one thing, the economy continues to perform reasonably well. Although several recent developments (a struggling U.S. economy, a stronger Canadian dollar, SARS and mad-cow disease) may signal harder times, their principal effect will be a downward revision in forecasts for economic growth. In addition to its impressive economic performance in recent years, Canada has sustained a record of budget surpluses. As described in a recent *Globe and Mail* editorial: "Canada's international calling card is its economic performance in recent years—among the world's leading countries in growth, the sole G7 country to record continuing budget surpluses." (*Globe and Mail* editorial 2003: A16). A retreat from fiscal

vigilance by senior governments does not appear imminent. There is broad agreement about this among most political leaders and political parties.

That said, the arrival of and the sustainability of the consolidation stage confirms collective bargaining will be more restricted than it was in either the expansionary or the restraint years. The broadening of bargaining structures, the narrowing of the scope of bargaining subjects, the proclivity to restrict strikes and attacks on interest arbitration represent significant changes to collective bargaining. Constrained collective bargaining will likely remain a fixture of the public sector labour relations for years to come.

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RÉSUMÉ

La négociation dans le secteur public : du repli à la consolidation

Il existe un consensus général à l'effet que la négociation collective dans le secteur public a évolué en passant par trois étapes : une première reflète les années d'expansion (du milieu des années 1960 à 1982) au cours de laquelle une loi permettant la syndicalisation dans ce secteur a été adoptée et la négociation a connu un essor. C'est une période qui fut marquée par une syndicalisation rapide du secteur, des augmentations salariales alors que les salariés essayaient de rejoindre ceux du privé, et passablement de grèves. La deuxième étape (1982–1990) a été qualifiée « d'années de

contrainte ». Au cours de cette période, on a adopté une loi freinant les hausses salariales dans le but de combattre l'inflation et de réagir à ce qu'on considérait comme un excès de négociation pendant la décennie précédente, notamment les ententes élevées sur les salaires et l'activité de grève. La troisième période qualifiée d'« années de repli » (les années 1990) a émergé dans le sillage d'une récession sévère et de déficits budgétaires en escalade. Les gouvernements ont eu recours de façon croissante aux lois restreignant les droits relatifs à la négociation collective et favorisant une réduction de la taille de l'État.

Cet essai propose une quatrième étape qui en serait une de « consolidation » et qui aurait débuté en 1998. Le passage du repli à la consolidation a été caractérisé par un essor économique, par le retour à la stabilité budgétaire chez les gouvernements supérieurs, par le retrait des contraintes salariales et par l'augmentation modérée de l'emploi dans le secteur public et des dépenses des gouvernements. Ces changements ont entraîné le développement d'attentes divergentes. Pour les syndicats du secteur public, se présentait alors une occasion d'accroître leurs effectifs et de chercher à rejoindre le secteur privé au plan des salaires. Les gouvernements, d'un autre côté, s'étaient engagés à surveiller de près la fiscalité et à consolider les gains qu'ils avaient réalisés au cours de la période de repli. Ils étaient décidés à gérer soigneusement les dépenses publiques et à résister aux demandes de rattrapage salarial.

Les faits à l'appui de l'étape de consolidation permettent de penser que la négociation dans le secteur public reflète de façon croissante un glissement du pouvoir relatif de négociation à l'avantage du gouvernement et des employeurs du secteur public. Avec l'amélioration des conditions de l'économie, les syndicats ont connu des gains au plan de la densité syndicale et des effectifs, bien que ces gains demeurent tout à fait modestes. Aux tables de négociation, les syndicats, en dépit de l'intensification de l'activité de grève, n'ont pas réalisé un rattrapage salarial appréciable. Cela s'explique de deux façons. En premier lieu, cette situation tranche nettement avec le modèle historique où les syndicats du secteur public négociaient des salaires de rattrapage après avoir accusé un retard sur le secteur privé. En deuxième lieu, les années 1990 représentent la période la plus longue (dix années consécutives) au cours de laquelle les ententes dans le secteur public ont accusé un retard sur le secteur privé. L'inaptitude à obtenir un rattrapage salarial concret reflète les efforts concertés et jusque là fructueux des employeurs du secteur public de consolider les gains réalisés au cours des années de repli.

Quelle importance doit-on accorder à ces résultats ? D'abord, ils démontrent chez ces employeurs une volonté de s'engager dans des négociations ardues pour préserver une stabilité au plan fiscal. Quoique le recours

à la législation ait diminué quelque peu, il reste néanmoins une volonté de l'utiliser de façon à restreindre les droits de négociation et de contrôler les résultats de la négociation. Ceci se répercute dans le recours continu à des mesures visant à centraliser les structures de négociation, à restreindre les limites du négociable et à imposer des limites aux droits de grève et d'arbitrage des différends. Un enseignement qu'on a retenu de ces années de repli est à l'effet que le coût politique de la législation demeure négligeable. En deuxième lieu, la sous-traitance, la privatisation et la menace d'agir en ce sens demeurent des options efficaces et viables qui continuent à accroître l'inquiétude au sujet de la sécurité d'emploi chez les salariés du secteur public. En troisième lieu, les années de repli ont affaibli les syndicats du secteur public. Plusieurs syndicats ont souffert de la perte de membres et leur capacité à faire des grèves fructueuses a été limitée par la volonté des employeurs à envisager les arrêts de travail, par la possibilité d'une loi de retour au travail et par l'indifférence de la population. Considérés dans leur ensemble, ces conséquences laissent croire que les gouvernements ne sont pas préparés à restaurer un système de négociation collective véritable et les syndicats ne sont pas dans une position pour les forcer à agir ainsi. En présence d'une possibilité de croissance économique ininterrompue et de l'engagement des gouvernements supérieurs à l'endroit des restrictions budgétaires, il apparaît que l'étape de consolidation va demeurer le point d'ancrage des relations du travail dans le secteur public pour les années à venir.