Relations industrielles
Industrial Relations

Public Sector Collective Bargaining

Jacob Finkelman

Volume 41, Number 4, 1986

URI: https://id.erudit.org/iderudit/050254ar
DOI: https://doi.org/10.7202/050254ar

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Publisher(s)

Département des relations industrielles de l'Université Laval

ISSN

0034-379X (print)
1703-8138 (digital)

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Cite this article

Finkelman, J. (1986). Public Sector Collective Bargaining. *Relations industrielles / Industrial Relations*, *41*(4), 691–703. https://doi.org/10.7202/050254ar

Article abstract

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I must warn that I am not a social scientist nor an economist. I am a lawyer who, for many years, was an administrator of legislation enacted by the powers that be. I admit that I have acted as a consultant to government, expressing my views based on the problems that I encountered in the administration of the legislation entrusted to me. I am not competent or objective enough to tell you how successful the legislation or my administration thereof has been.

My involvement with the public service collective bargaining legislation came about in a rather odd way, as have a number of other incidents in my professional life. The secretary of the Heeney Committee, the Preparatory Committee on Collective Bargaining in the Public Service, that was established in 1963, was a former graduate student of mine at the University of Toronto. He suggested that I be invited to serve in that capacity. The Ontario government felt it would be advisable for me to accept the invitation because it might provide the Ontario government with some insight into the problems that had to be met if Ontario decided to introduce legislation of a similar character. I served as consultant to the Committee intermittently for about two years. When the legislation was introduced in the House of Com-

* FINKELMAN, Jacob, o.c., Q.C., Former Chairman of Ontario Labour Relations Board (1944-1947; 1953-1967), and of Public Service Staff Relations Board (1967-1976).

** Woods Conference Series address presented during the Canadian Industrial Relations Association meeting in Winnipeg, Manitoba, 1986.

mons, I was invited to accept the chairmanship of the Public Service Staff Relations Board which was entrusted with the administration of the new legislation, the Public Service Staff Relations Act. I hesitated, at first, but finally accepted the invitation (incidentally with the blessings of the Hon. Mr. John Robarts, the Premier of the Province) at the urging of my wife, who convinced me that, since I had been involved in the early days of collective bargaining legislation, it would be interesting for me at my then age, I was 60, to try something new. I should tell you that, in my opinion, public service collective bargaining differs markedly from collective bargaining in the private sector. Several years before I went to Ottawa, the Hon. Leslie Frost, then premier of Ontario, asked me what I thought about bringing the Ontario civil service under the Ontario Labour Relations Act. My response was that, if he did so, he could find another chairman for the Ontario Labour Relations Board. I recall I said to him: «The animal with which we are dealing is a zebra in both cases, but its stripes run vertically in the private sector and horizontally in the public sector». My early experience in Ottawa, after assuming office, proved to me that I was right in my assessment of the situation. The attitudes and approaches of both the government and its representatives and those of the employee organizations in the public service were quite different in some significant respects from those of employers and trade unions in the private sector. I was fortunate in having as my vice-chairman in Ottawa Mr. George Gauthier, who had been in the public service for 25 years and was well acquainted with the foibles of the parties. He saved me from many missteps that would have reflected badly on the administration of the legislation.

The general notion that public sector collective bargaining legislation had its origin in the 1960's is wrong. A number of Crown Corporations were under the general labour relations legislation as early as 1944. (Local governments in 1943 with special provisions.) Saskatchewan made its general labour relations legislation applicable to the central administration of that province in 1945. However, whatever bargaining there was there was affected by economic conditions in the province at that time and for some years thereafter. Some employees in the public sector in some jurisdictions — e.g. policeman and firefighters, were brought under collective bargaining legislation in the 40's. Acknowledgment in other jurisdictions that public employees in the central administration government departments and the like were entitled to bargain collectively was much slower. In practice or by legislation, some jurisdictions established consultation processes with representatives of employee organizations, in some cases with third-party determination of certain limited issues. However, in 1951, the Prime Minister of Canada, the Hon. Louis St. Laurent, declared in the House of Commons that there could be no collective bargaining in the generally ac-

cepted sense in the public service since, as he said, «the funds from which the salaries are paid in the public service have to be voted by parliament and parliament alone can discharge that responsibility». In 1964, Premier Lesage of Québec stated categorically that «The Queen does not negotiate with her subjects». However, as Victor Hugo once said: «Greater than the tread of mighty armies is an idea whose time has come». In 1965, Québec took the lead over other provinces, except as I mentioned earlier, Saskatchewan, and granted bargaining rights to its civil servants. The federal Parliament followed suit in 1967 as have all the other jurisdictions in Canada since then. Today, practically all government institutions are covered by collective bargaining legislation. In fact, institutions of government that were not so covered are gradually being brought under a collective bargaining regime. An illustration of this trend is the Parliamentary Employees and Staff Relations Act which was introduced in Parliament last year, but is still pending, which would extend collective bargaining rights to the Staff of the House of Commons, the Senate and the Library of Parliament, all of whom were excluded from the coverage of the Public Service Staff Relations Act in 1967. No doubt the government's hand was forced by the decision of the Canada Labour Relations Board that these employees were subject to the Canada Labour code and would therefore have the right to strike. The decision of the Canada Labour Relations Board has recently been upset by the Federal Court of Appeal, but the union has indicated that it would appeal to the Supreme Court of Canada and a final decision on the issue is not likely to be forthcoming for some time. Whatever the results of the appeal may be, the government is proceeding with the Bill it had introduced last year. I believe we may take it that the employees concerned will eventually be assured of the right to bargain collectively. Again, it is not beyond the realm of possibility that, in view of recent events, the Royal Canadian Mounted Police, also excluded from the Public Service Staff Relations Act, may in the not too distant future, be given some measure of collective bargaining rights.

Another illustration of the trend is the recent occurrence in Ontario where psychiatrists employed in government hospitals threatened to strike. Professionals are excluded from the coverage of the Ontario Crown Employees Collective Bargaining Act. They are not excluded in some other jurisdictions. As part of the settlement understanding reached between the government and the psychiatrists, the Ontario government undertook to look at arbitration to settle disputes for such employees. It is not inconceivable that there may be interesting developments in this area in Ontario. In some countries in Europe, the members of the armed forces have limited collective bargaining rights in times of peace. It is scarcely likely that Canada would emulate these countries in the foreseeable future.

There are pronounced differences between the legislation applicable to the private sector and that applicable to the public sector, even in Saskatchewan, as we shall see. There are differences in the definition of the type of person that is excluded from the legislation, the treatment of professionals where they are subject to the legislation, the manner in which bargaining rights are acquired, the determination of what constitutes an appropriate bargaining unit, the scope of bargaining and the process for resolution of bargaining impasses. Time constraints make it impossible for me to deal with each of these differences. You may refer to the study that Professor Shirley Goldenberg prepared on the experience in the federal area and probably next year you will be able to refer to our forthcoming study of the provincial and territorial jurisdiction. However, several of the differences call for some attention at this session.

Several of the provincial enactments accord bargaining rights by statute to a particular organization that has had a prior bargaining relationship of some sort with the employer. In others, e.g. Ontario, recognition of this type is accorded on an interim basis, again because of a preexisting relationship. The federal legislation and that of several other jurisdictions require certification of a bargaining agent as a means of acquiring bargaining rights.

It is the common pattern in many jurisdictions for the public service collective bargaining enactment to set out specifically the bargaining units into which the employees in the central administration are to be divided, either as a permanent feature of the legislation or again as an interim measure, to avoid the delays in bringing the bargaining process into play if the determination of bargaining units were left to be dealt by the agency charged with the administration of the legislation. Where this is the case, the number of units is very small and the bulk of the employees in the central administration, the government departments, are usually assigned to one unit. The federal and New Brunswick statutes depart from this pattern and set out guidelines that are to be observed by the Board in determining what are appropriate units and in the result a large number of units have been so determined.

British Columbia has established by statute three bargaining units, one for nurses, one for professionals and one for the remainder of the public servants. Nevertheless, in recognition of the diversity of interests among the various groups in these units, the British Columbia legislation provides that there are to be two collective agreements to apply to each unit: (a) a master agreement including terms and conditions of employment common to all employees in the unit or to two or more occupational groups therein, and (b) a subsidiary agreement for each occupational group applying only to the

employees in the group. Specific occupational groups are determined by negotiation between the parties. Although no other enactment contains a similar provision, a number of jurisdictions have developed a process of bargaining not unlike that in British Columbia.

In the federal area, where there are a great many bargaining units, the need to establish some sort of uniformity in working conditions that apply to employees in a number of units who work side by side and to reduce the time and energy expended in the continuous bargaining process that has gone on for about two decades, has led the two largest employee organizations in the public service, the Public Service Alliance and the Professional Institute to agree with the employer last year to engage in a form of coalition bargaining for some issues. The experiment is in its early stages and it is difficult to know how successful it will be.

One of the most highly controversial aspects of public service collective bargaining legislation is that of scope of bargaining, i.e., the matters about which the parties may bargain and which they may be included in a collective agreement. The public service collective bargaining enactments of *all* jurisdictions in Canada impose some limitations on the matters that are subject to bargaining and this is the case even in Saskatchewan where classification is not bargainable. The rationale for this approach is a government's perceived need to preserve the sovereignty of the legislature, to protect «the turf» of another agency such as a civil/public service commission, the need to maintain uniformity of some conditions of employment over a wide spectrum of the public service such as in respect of superannuation and to guard against the intrusion by an employee organization into areas that a particular government regards as its management prerogatives. The exclusions from the scope of bargaining differ from jurisdiction to jurisdiction and what may be excluded in one jurisdiction may expressly be made bargainable in another jurisdiction. For example, classification is not bargainable in Saskatchewan but is bargainable in Ontario. Lay-off is excluded under the federal legislation, a bone of contention in the recent negotiations between the government and the Public Service Alliance, but is expressly declared to be bargainable in Ontario. In my report to Parliament in 1974, I recommended certain changes in the provisions of the Public Service Staff Relations Act covering the scope of bargaining but no action on those recommendations has been taken as yet.

While I do not intend to delve further into the provisions of the various enactments relating to the scope of bargaining, I do want to bring to your attention an interesting provision in the Newfoundland legislation which declares that:

> Where an employer is unable to implement the provisions of a collective agreement or *judgment* by reason of being prohibited by law from doing, the employer shall use its best endeavours to introduce or cause to be introduced and supported as a Government measure, legislation designed to implement and give effect to such provisions.

You will note that this provision applies not only to an agreement entered into voluntarily, albeit sometimes under pressure, by the employer, but also to an award by an arbitrator in an interest dispute arbitration. As far as I can ascertain, there has been no resort to this provision as yet. Our research has disclosed that, on occasion, clauses are included in a collective agreement in other jurisdictions that go beyond the limits on the scope of bargaining that are set by the applicable legislation. I ask the question, what occurs if subsequently someone files a grievance alleging that there has been a failure by the employer to observe such a clause? Can an adjudicator in his ruling on the grievance abide by the agreement oris be bound by the statute to dismiss the grievance? Perhaps some of you have had occasion to deal with such a situation and I would like to hear from you.

While I am on the subject of scope, a few words about anti-inflation and wage stabilization legislation that was enacted both federally and in other jurisdictions. Such enactments were first introduced in 1975 and new legislation of this type was enacted in 1982. The effect of such enactments, in general terms, was to put a cap on the extent to which the parties could negotiate the compensation component in a collective agreement or which could be awarded in arbitration. Needless to say, such legislation had a pronounced impact on bargaining in the public services throughout the country.

I come now to discuss a topic that has become highly controversial — the process for the resolution of bargaining impasses. Compulsory arbitration has been mandated for years in some jurisdictions, but not in all, for policemen, fire-fighters and hospital employees. Under the public service collective bargaining legislation of the last two decades, compulsory final and binding arbitration is the sole dispute resolution process in Alberta, Manitoba, Ontario, Nova Scotia, Prince Edward Island and the Northwest Territories, which do not accord the right to strike to public employees covered by such legislation. Under the federal legislation and in that of New Brunswick and the Yukon, a bargaining impasse may be referred either to arbitration or to a conciliation board; in the latter event, the employees have the right ultimately to go on strike. The choice of dispute resolution process in the federal area and in the Yukon rests entirely with the bargaining agent; in New Brunswick, arbitration is available only on consent of both parties and has rarely been resorted to. In Newfoundland, as we shall

see, a bargaining agent has a choice of arbitration if a majority of the employees in a bargaining unit have been designated as essential, a topic to which I will return later.

Although, for some years after the legislation was introduced, arbitration was the preferred process for many of the bargaining units in the federal area, most of their bargaining agents have now specified the other option. One of the reasons for the switch has been that the scope of matters that are subject to arbitration under the federal legislation is more limited than the scope of matters that may be dealt with by the parties if they reach agreement either through their own efforts or with the assistance of a board of conciliation. Employee organizations fear that the employer subject to arbitration will resist proposals that are not ultimately arbitrable, in the expectation that such proposals will be rejected in any event by the arbitration tribunal. Our research discloses that, at least in the federal area such fears are exaggerated. We have found that agreements reached where the arbitration process has been specified, at the stage before the dispute has been or may be referred to arbitration, contain quite a few provisions that could only be included therein by agreement of the parties and could not have been dealt with in arbitration. In my report that I mentioned earlier, I recommended that, while some limitations on the scope of arbitration ought to be retained, nevertheless the scope of arbitrable matters needs to be broadened. It has also been claimed by employee organizations that, whatever the situation may be with regard to other aspects of terms and conditions of employment, wage awards under arbitration are lower than those that may be achieved though resort to the other process. There is a considerable difference of opinion among those who have looked at the matter as to whether this claim is supported by the evidence. The different views have been discussed at some length in the study by Professor Goldenberg and myself that I mentioned earlier. However, I would quote to you the views expressed by Professor Bryan Downie in a discussion paper he prepared for the Economic Council of Canada in 1979. He said that it is «...impossible for a variety of reasons to disentangle in a definite way the independent effect of arbitration from other wage determinants. On some occasions an arbitration award may set the pattern for ensuing awards and negotiated settlements. But, at other times, a negotiated settlement may set the pattern, and arbitration awards become parasitic with respect to it... Without intimate knowledge of negotiations and the timing of settlements, it is impossible to identify the pace-setting settlements and other important relationships.»

I suggest, with all due deference, that academics who study this question bear in mind the concluding words of Professor Downie's statement that I have just quoted.

Where arbitration is available only on consent of both parties, employers have shown a marked reluctance to agree to arbitration. The reason for this is to be found in the view expressed by the Honourable Louis St. Laurent which I quoted earlier and will now repeat. «The funds from which the salaries are paid in the public service have to be paid by parliament and parliament alone can discharge that responsibility.» I doubt whether there is convincing evidence to show that generally arbitral awards on wages are significantly out of line with those in settlements reached in bargaining between the parties. It must be borne in mind that the enactments that provide for arbitration usually contain guidelines, such as comparability with the private sector, that arbitrators are directed to observe. I cannot bring myself to believe that experienced arbitrators ignore these guidelines. In this connection I would add that in the federal area for some years in the early history of the legislation, the employer's presentation to the Arbitration Tribunal left a good deal to be discussed. Don't blame the arbitrator for the faults of the employer or, for that matter of the bargaining agent. During the period when wage restraint legislation was in effect, some arbitrators rendered awards on wages which, although they fell within the guidelines set by the collective bargaining legislation, nevertheless exceeded the limits fixed by the wage restraint legislation. Their justification was that the determination of what wage increases were permitted by the restraint legislation was something that had to be determined by the agency administering such legislation and not by arbitrators who were operating under the collective bargaining legislation.

Where the public service legislation permits employees in a particular bargaining unit to engage in a strike once they have complied with any preconditions provided for under an enactment, the law nevertheless in most jurisdictions forbids certain employees in such a unit to go on strike even though their fellow employees in the same unit may lawfully do so. Those so prohibited are referred to in the federal legislation as «designated» employees and I will use the term in my discussion of other jurisdictions as well. Under the federal Act, the «designated» employees are those «whose duties consist in whole or part of duties the performance of which at any particular time or after any specified period of time is or will be necessary in the interest of the safety or security of the public». The essential duties under a similar provision in the New Brunswick legislation and that of Newfoundland includes the health of the public. In British Columbia, under the Essential Services Disputes Act, the duties that call for designation are those «necessary or essential to prevent immediate and serious damage to life, health or safety, or an immediate and substantial threat to the economy and welfare of the Province and its citizens». The process for determining which employees perform essential services envisages consultation between

the parties in the first place and, if they fail to agree, the responsibility for making the determination falls to the board, after entertaining the representations of the parties.

In the early days of the federal legislation, the number of employees that the *employer* proposed shall be designated was rather small. However, there was a change in the employer's attitude in 1980 in respect to the air traffic controllers unit — the number proposed rose from several hundreds to several thousands. The matter ultimately went to the Supreme Court of Canada which upheld the position of the employer. The Treasury Board has since then increased substantially the number of employees it has proposed for designation in many units. The result of the Supreme Court decision is that we have a whole new ball game in respect of designations not only in the federal area but in other jurisdictions as well. I should point out that, when the Public Service Staff Relations Act was being considered by a Special Committee of Parliament in 1966, the then Secretary of the Treasury Board, Dr. George Davidson, stated that what the government intended in the designation provision was far more limited than that which flows from the Supreme court decision. Obviously, the provision now contained in the Act does not reflect the intentions of the authors of the legislation. (I must tell you that I had no hand in drafting this provision.)

The effect of the Supreme Court decision is that the capability of an employee organization to mount an effective strike has been severely diminished. The Public Service Alliance has sought to deal with this situation by timing the bargaining process in most of the units for which it is the bargaining agent so that its entitlement to call a strike in all these units will mature at the same time. Thus, it believes that, although many employees will be designated in these units, a broad-based strike of non-designated employees will bring enough pressure on the employer to make concessions it would not otherwise make.

A few words about the situation in Newfoundland. In that province, if a majority of the employees are deemed to be essential, every employee in the unit is to be deemed essential, whereupon the applicable dispute resolution process is binding arbitration. At first glance, this approach appears to be pretty fair. However, the Newfoundland government has designated, in all but one instance, less than a majority of the employees in a unit and this has proved frustrating for the bargaining agent. This is the case in the current dispute.

In Saskatchewan, where the strike is the ultimate weapon and the parties do not agree jointly to refer a dispute to the Labour Relations Board, by the Labour-Management Disputes (Temporary Provisions) Act of 1981, the

Lieutenant-Governor in council may in effect forbid or halt a strike, a «work stoppage», during a provincial election, if the dispute creates a situation of pressing public importance or endangers or may endanger the health or safety of any person in the province. Presumably, once the election is over, the Legislature could be recalled to deal with the situation.

Questions concerning the validity of legislation curbing strikes have been raised in a number of cases that have reached the courts in the last few years in which the issue before the courts was whether a particular enactment that limited the right of employees to engage in a strike infringed on the Charter of Rights and Freedoms embodied in the Constitution Act of 1982. As you know, the Charter guarantees to everyone the freedom of association subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society. In 1983, the Divisional Court of Ontario, in the *Bradford Manor Case,* held that, if the right to strike is removed, the freedom of association, as one judge put it, «is more than merely infringed, it is emasculated». The decision of the Divisional Court was appealed to the Ontario Court of Appeal which disposed of the issues in the case on other grounds and concluded its decision with the comment that «In the circumstances, it would be inappropriate for us to express any opinion on the Charter issues considered in the court below». Courts in other jurisdictions in Canada have reached conclusions that are the reverse of those expressed by the judges in the Divisional Court of Ontario. This has been the case in decisions of the Trial Division of the Federal Court, the Federal Court of Appeal, the British Columbia Court of Appeal, the Alberta Court of Appeal, and the Supreme Court of Newfoundland. They have all held that the guarantee of freedom of association in the Charter does not extend to the right to strike. A contrary conclusion was reached by the Saskatchewan Court of Appeal and, when the province in January 1986, enacted back-to-work legislation to terminate a rotating strike by public employees, it invoked the «exception» provision of Article 33(1) of the Canadian Charter of Rights and Freedoms, which permits a legislature to exclude explicitly an act from the Charter.

The issue will undoubtedly reach the Supreme Court of Canada fairly soon at which time legislators will finally learn how far, if at all, they can enact legislation which limits the right of employees to engage in a strike.

It may be of interest to note that, in the United States, in *United Federation of Postal Clerks v. Blount,* in 1971, the Supreme Court of the United States affirmed a decision of the District Court of Columbia, which held that the right to strike of federal employees in the United States is not a fundamental right guaranteed by the First Amendment right of association to the constitution of that country.

You heard about the obligations Canada may have under certain conventions of the International Labour Organization endorsing freedom of association and protecting the right to strike and the criticism by the Governing Body of certain legislation of Alberta, Ontario, Newfoundland and British Columbia. I do not propose to pursue the subject except to point out that, apart from the decision of the Divisional Court in the *Bradford Manor Case,* the view generally adopted by the other courts in Canada that I referred to earlier has been that Canada's obligations under the ILO conventions do not bar the imposition of limitations on the right to strike by public employees.

In conclusion, now that I am no longer constrained by responsibilities of public office, I wish to make a statement of my personal views regarding the right of public employees to go on strike that will probably arise violent opposition in several quarters. I firmly believe that public servants should not have the right to strike. I believe we must take account of the balance of interests between those of the parties and those of the public that result from a withdrawal of services for any length of time. In the private sector, some members of the public may suffer considerable inconvenience; a strike of public employees affects immediately not only the parties directly involved but also the members of the public generally. It may affect their health, safety, and welfare to a highly significant degree. Indeed, in some instances, the employer may benefit financially from a strike by public employees. By reason of the court's decision in the *Air Traffic Controllers Case,* the right to strike by federal public servants has been significantly circumscribed. An effective strike in that area would call for action such as that planned by the Public Service Alliance, which would be so widespread as to have a major impact on the provision of government services to the public. If such a strike causes a major disruption in the delivery of services to the public, I suspect that back-to-work legislation would soon be enacted. As I indicated earlier, the Air Traffic Control decision limits severely the capacity of employee organizations in other jurisdictions to conduct an effective strike.

If public employees are to be denied the right to strike, they should have the right to bargain collectively on a broad range of issues involved in their terms and conditions of employment and to resort to final and binding arbitration as the process for resolving bargaining impasses. The arbitration provisions of the applicable legislation should be administered by a tribunal that is not only neutral and independent, but one that is clearly seen in the eyes of the employees to be such. I am not in favour of *ad hoc* arbitration tribunals. I believe there should be a high degree of permanence of tenure for such a tribunal so that there is some assurance the awards across the service of a jurisdiction will maintain a large measure of consistency in the

terms and conditions that are established for various groups of employees. I do not share the fears of employers in some jurisdictions, for the reasons I indicated earlier, that arbitral awards will get out of hand.

I believe that the parties and the tribunal which is charged with the responsibility of marking an award should have the support of a neutral, independent pay research agency which should provide the parties and the tribunal in timely fashion with current information as to wage rates and other working conditions in both the private and public sectors. I do not agree with the suggestion of the Neilsen Task Force that perhaps, ultimately, the Pay Research Bureau might be integrated into Labour Canada. The Minister of Labour, under whose direction such an agency would then function, is a part of management in the public service. No matter how objective the reports of the Bureau of Labour Information in Labour Canada might be, they are very likely to be viewed by employee organizations in the federal and provincial public services as revealing an employer influence and therefore lacking the necessary objectivity. The credibility of the agency would be undermined and that would have an undesirable impact on the arbitration process.

Finally, a few comments about another recommendation of the Neilsen Task Force. The Task Force examined the Public Service Staff Relations Act and came to the conclusion that the government consider maintaining the present legislative framework and structures for reasons with which I entirely agree. However, the Task Force went on to recommend that a study be conducted that might in effect lead to the merger of the Public Service Staff Relations Board and the Canada Labour Relations Board. I can tell you that a similar thought was in the minds of some members of the Woods Commission in 1968. When the matter came to my attention, I indicated that I would oppose any recommendation that the Commission might make along these lines. I want to go on record here and now that, while I am not opposed to any study such as is suggested by the Neilsen Task Force, if the study recommends merger of the two boards, I will register my objection thereto in no uncertain terms. Time constraints do not permit me to spell out my reasons for so doing except to point out in all modesty that my position is based on my experience in administering legislation both in the public and the private sectors and to assure you that my position does not reflect a desire to protect my former turf. I am aware that in a number of jurisdictions, both the legislation for the private and the public sectors are administered by the same agency. I express no opinion about the situation in those jurisdictions because I do not know enough about the conditions in these jurisdictions to express an informed opinion.

La négociation collective dans le secteur public au Canada

L'article signale d'abord que l'attitude des gouvernements et de leurs représentants, de même que celle des associations d'employés dans les services publics, diffère sensiblement du comportement des employeurs et des syndicats dans le secteur privé, tout en indiquant au passage que l'opinion selon laquelle la négociation collective ne remonte qu'à la décennie 1960 est fausse. Dès 1944, nombre de sociétés d'État étaient déjà assujetties à la législation du travail et, dès 1945, la Saskatchewan accorda le droit de négocier à ses fonctionnaires suivie par le Québec en 1965 et le gouvernement fédéral en 1967. Ce régime s'est ensuite étendu à l'ensemble des provinces.

L'auteur note ensuite les divergences considérables entre la législation s'appliquant au secteur public et ce qui existe dans le secteur privé, différences dans les exclusions prévues aux lois, dans le traitement des groupes professionnels, dans la détermination des unités de négociation, dans le champ des questions négociables et, notamment dans le processus de règlement des impasses ou des conflits. Après avoir noté que les modalités varient considérablement d'une province à l'autre, alors qu'on retrouve, dans certains cas, le recours à l'arbitrage obligatoire, le libre choix entre l'arbitrage et le droit de grève, l'auteur, qui a une longue expérience des négociations dans les services publics, responsabilités dont il est présentement libéré, expose ses vues personnelles sur ce sujet très controversé en soutenant que les fonctionnaires ne devraient pas avoir le droit de grève, qu'il faut tenir compte de la vacance des intérêts entre les parties et le public, surtout en considérant que le retrait des services est susceptible de se prolonger. En effet, dans le secteur privé, un certain nombre de personnes peuvent subir des inconvénients graves du fait de la grève. Tandis qu'une grève des employés des services publics touche immédiatement, non seulement les parties elles-mêmes, mais les citoyens dans leur ensemble. Elle peut avoir un effet nocif sur leur santé, leur sécurité et leur bien-être. En fait, dans quelques cas, l'employeur peut même bénéficier financièrement d'une grève des fonctionnaires.

Si les fonctionnaires n'ont pas le droit de grève, ils doivent avoir le droit de négocier collectivement sur l'ensemble des sujets se rapportant à leurs conditions de travail et de recourir à un arbitrage final et obligatoire comme processus normal de solution des impasses. Les dispositions de la législation applicables à l'arbitrage devraient être confiées à un tribunal qui est non seulement neutre et indépendant mais que les employés tiennent pour tel. Il ne devrait pas s'agir de tribunaux *ad hoc*, mais d'un Tribunal doté d'un haut degré de permanence, de façon que ses décisions puissent être très consistantes en regard des conditions qui seraient fixées pour les divers groupes d'employés. Les parties et le Tribunal qui a la responsabilité de décider devraient pouvoir s'appuyer sur une agence neutre et indépendante qui fournirait à la fois aux parties et au tribunal l'information disponible sur les taux de salaire et les autres conditions de travail tant dans les secteurs public que privé.