

## Theoretical Problems of Public Interest Sector Industrial Relations

### La question théorique de l'intérêt public en matière de relations de travail

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#### Résumé de l'article

Le but de l'article précédent est la mise au point d'un modèle très simple de négociations collectives tel qu'on le retrouve dans un cas d'entreprise ordinaire. Par ce modèle, il est possible de faire ressortir le rôle de la conciliation, de la grève ou du lock out, de l'arbitrage obligatoire, de l'assurance-grève, des indemnités de grève et des espoirs des parties tels qu'ils influencent le processus et le dénouement de la négociation collective.

Ce modèle de négociation diffère de beaucoup d'autres en ce qu'il introduit les dimensions temps et coût en tant que facteurs importants qui amènent les parties à s'entendre ou non. Ce modèle reconnaît l'existence d'un éventail chevauchant de solutions possibles à l'intérieur desquels se dessine une solution finale réalisable et il énonce succinctement les limites du pouvoir de marchandage à l'intérieur de cet éventail. De même, il y est discuté du rôle d'une tierce partie eu égard à son influence sur le comportement des parties à la table des négociations et sur le risque et la durée d'un arrêt de travail.

La deuxième partie de l'article analyse dans quelle mesure ce modèle emprunté à l'entreprise privée peut s'appliquer aux différends dans le secteur d'intérêt public, c'est-à-dire dans les entreprises qui fournissent des services dans lesquels le public en général a un intérêt direct et immédiat au dénouement du différend, le secteur public étant ici défini en tant qu'intérêt public et non pas en tant que propriétaire de l'entreprise.

Le modèle de négociation de type industriel apparaît d'une certaine manière inapproprié au secteur d'intérêt public parce que les facteurs temps et coût qui poussent les deux parties à s'engager sur la voie des concessions dans l'entreprise privée sont faussés dans le secteur d'intérêt public. Les employeurs et les syndicats sont nécessairement obligés de considérer les conséquences politiques qui peuvent affecter leurs positions respectives et la perception qu'ils ont du pouvoir de négociation de l'autre partie.

Finalement, l'auteur traite de certaines suggestions qui pourraient s'appliquer à l'occasion de l'intervention d'un tiers dans les différends touchant le secteur d'intérêt public et il conclut son étude en soutenant que le succès de la négociation collective dans ce secteur repose sur la bonne foi des parties, le syndicat ne cherchant pas à utiliser la vulnérabilité politique de l'autorité publique pour obtenir des gains exagérés et la société d'État ne cherchant pas de son côté à se servir de son pouvoir législatif ou exécutif pour faire échouer la négociation collective.

# Theoretical Problems of Public Interest Sector Industrial Relations

**Paul Phillips**

*This paper develops a simple industry bargaining model with explicit consideration of the determinants of the bargaining range and the narrowing of that range over time as a function of perceived bargaining power and costs of settlement. The model is then applied to the public-interest sector under altered assumptions of costs of settlement and the introduction of political influences in the determination of bargaining paths. The impact of third party intervention is considered in both the industry and public-interest sector cases.*

The purpose of this paper is to develop a simple bargaining model as it might apply to the normal industry case. In the model it will be possible to amplify on the role of conciliation, the strike/lockout, compulsory arbitration, expectations, strike insurance, union strike benefits, and so on, as they influence the procedures and outcome of collective bargaining.

The second part of this paper will then attempt to see to what extent our 'industry' model fits the 'public-interest sector'. Let us first be clear as to what we mean by the public-interest sector. It is intended to include those industries which provide direct public services where the general public has an intimate and direct interest in the outcome of a dispute. This could include, for example, private transit companies or private utilities. It is largely coterminous with the public sector but with important exceptions. For example, the Manitoba government owns a cruise boat on Lake Winnipeg. While the crown corporation that runs it is within the public sector, it can not really be considered to be within the public-interest classification. On the other hand, Bell Telephone in Ontario, being privately owned, is not in the public

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sector but since it is an important utility it is considered to be in the public-interest sector (explicitly, since it is a regulated company). In other words, the public-interest sector is defined by being imbued with special public interest (the third party to any action), not by the nature of the ownership of the corporation, branch, service organization, etc.

Elaboration of a bargaining model for the private industry sector will suggest reasons why it may not fit the public sector, and in turn, this will suggest reasons for the breakdown of industrial relations in the latter sector. This may well lead to the consideration of possible alternative mechanisms for the settlement of industrial disputes in the public-interest sector.

#### THE SIMPLE BARGAINING MODEL

Most bargaining models are concerned with the relative power of the two bargaining units in the strike/lockout situation.<sup>1</sup> The relative degrees of power are influenced by the costs of a dispute which, in turn are a function of many other variables such as the cost to employers of a shutdown, the amount of inventories, contractual agreements, the possibilities of employing other workers, etc. Similarly, for workers, the costs are determined by the state of the labour market, workers' contractual commitments (mortgages, monthly payments, etc.), their mobility, their strike fund, and so on.<sup>2</sup> In almost every case, however, there is a range of settlement acceptability for both the employer and the union.

The determinants of employer and union minimums and maximums are generally simple. The employer minimum is most logically determined by the supply of labour. Should the employer offer a wage increase of less than some such minimum his workers would leave for

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<sup>1</sup> See J. T. MONTAGUE, *Labour Markets in Canada*, (Prentice Hall: Scarborough, 1970), pp. 213-228.

<sup>2</sup> Strictly speaking, one should not necessarily equate 'union' with 'workers' since the goals, costs of disputes and commitments, etc., may not coincide exactly. For example, the union has a vested interest in maximizing membership and, therefore, employment within its bargaining units; while the individual worker has an obvious interest in maximizing his wages. These two goals are very often in conflict. Ultimately, however, the union must rely either on the ratification by its members of a negotiated settlement or on the membership's support of a strike vote or actual strike and indeed the leadership must attempt to maintain the support of the individual members if it wishes to maintain its political position. Therefore, under normal circumstances the union position must approximate the position of the majority of the individual workers.

other employment, thus producing a labour shortage. This may be extremely important in the case of maintaining skilled workers in a period of a tight labour market. The employer maximum is determined by the economics of the market — the maximum the firm could pay while it was still profitable to continue producing.<sup>3</sup>

The union range is more difficult to specify. Both the desired level and the minimum acceptable level are influenced by the perceptions of the union bargaining position (for instance, the company's 'ability to pay') and comparisons with other industries, firms, and occupations, (the so called wage contour<sup>4</sup>). The upper and lower levels can also be influenced by internal union political situations. Nevertheless, we can say generally that the maximum demand represents a union preference for some wage-employment combination that is considered economically feasible. The minimum can probably be usefully thought of as the lowest wage agreement that the union will accept without striking, *although the union may very well strike as a bargaining tactic above this rate*. The overlapping range, therefore, is the bargaining range. The actual settlement value will then be determined by the relative bargaining powers of employer and union.

Before developing the argument further, we should consider the cases where the two ranges do not overlap. There are two such possible cases. It is obvious that if the union minimum exceeds the employer maximum no settlement is possible, at least without a strike or lockout — unless the union lowers its minimum, or the employer raises his maximum. or both. The threat of the strike/lockout or the strike/lockout itself plays the role of inducing the two parties to adjust their respective minimums and maximums. If neither adjusts, either the employer goes out of business or the union effectively goes out of business as a result of the employer hiring non-union labour or members of a competing union.

The case where the union maximum is less than the employer minimum may seem, at first glance, to be impossible, the union maximum being less than the minimum offered by the employer. Under special conditions such a situation can and has occurred resulting in wage drift — wages rising well above contracted rates. To give a

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<sup>3</sup> In conventional economic terms, this would coincide with the short run shut-down point.

<sup>4</sup> J. T. DUNLOP, «The Task of Contemporary Wage Theory», in *The Theory of Wage Determination*, ed. by J. T. Dunlop. (Macmillan, New York: 1966.) pp. 3-27.

concrete example, in Sweden the union policy of «solidarity» called for the narrowing of inter-skill and inter-industry differentials. This meant that the unions wanted lower contractual rate increases for the already better paid workers. The employers, on the other hand, were faced with a tight labour market for skilled workers and therefore wanted to bid up the rates. In fact, what tended to happen was that although the contractual rate was agreed to at the union preference level, the employers found it easy to evade the contract and pay more. Thus the wage levels 'drifted' up. For our purposes, however, this case is of little importance and will not be discussed.

The model as developed up to this point only determines the limits of bargaining. We have yet to discuss two other parameters, (a) the determinants of bargaining power and (b) the process of bargaining.

Let us first consider the determinants of bargaining power. As a general rule, an employer's bargaining power will depend on four factors:

1. the cost to the employer of a work stoppage;
2. the ability of the employer to incur this cost;
3. the ability of the employer to 'hurt' the union or its membership through incurring a work stoppage;
4. the employers determination not to concede to the union (often referred to as the employer's 'will to resist').

On the union side there is a parallel set of determinants:

1. the cost to the worker (and indirectly, the union) of a work stoppage;
2. the ability of the worker/union to incur this cost;
3. the ability of the union to 'hurt' the employer through pursuing a work stoppage;
4. the union's determination not to concede to the employer's demands (the union's 'will to resist').

The bargaining strategy of the two sides is greatly influenced by their respective *perceptions* of their relative bargaining powers. Thus, an employer with adequate reserves, a large inventory, facing a financially or organizationally weak union, and determined to give the union a lesson would tend to be intransigent. Similarly, a union of skilled workers in a period of relatively full employment, with a well-stocked strike fund, facing an oligopolistic employer which can pass

increased labour costs on, able to completely shut down the employer and organize secondary boycotts, and determined to brandish 'the strength of our right arm', will be equally intransigent. All bargaining strategy, on both sides, therefore, must be analysed in terms of the perceptions of each as to their own and the opposition's bargaining power. We say 'perceptions' because it is not necessarily true that the real bargaining power of the employer or union is the same as the two parties believe it to be. The outcome of any dispute, however, will normally reflect the real bargaining power of the two parties.

We can suggest that, assuming both parties are rational, they will each approach a negotiation from a cost-benefit point of view. Any possible solution will be approached by comparing the perceived cost of settling with the perceived costs of rejecting the settlement. This can be illustrated by a model (somewhat similar to the avoidance — avoidance model of C. Stevens<sup>5</sup>) illustrated in figure 1. The employer (or union) acceptance curve is in some ways comparable to a utility curve in consumer theory. The closer the settlement to the employer's most desired position (A) the greater will be his satisfaction. At A, the employer may be considered at his perfectly satisfied (or 100 percent satisfied) position. As the wage increase he is forced to accept rises, his satisfaction with the outcome diminishes to position (B) where he has zero satisfaction and therefore could not accept any settlement. The union acceptance curve, similarly, represents the degree of satisfaction within a range of wage increase settlements. In other words as potential settlements increase from C to D, the acceptability of such settlements to the union rises.

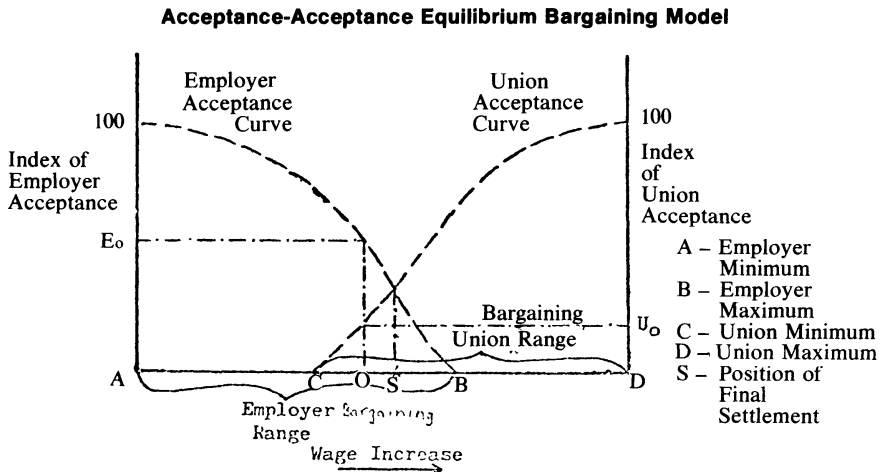
What mechanism, within the model, induces union and employer to settle at S? Let us assume that the latest company offer is at O. The union perceives that the acceptability of such an agreement to the employer is higher than it is to its membership. The will to resist is thereby strengthened. It is only where the union perceives that the employer is equally satisfied (or equally dissatisfied) with the result that it is willing to concede.

The actual position of these acceptance curves will depend on the cost-benefit calculus of agreeing or disagreeing to any particular settlement. (Note that we are only considering wage demands whereas the issues involved in any dispute will normally involve a list of other issues. Alternatively, we might suggest that it is possible to convert all

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<sup>5</sup> C. STEVENS, *Strategy and Collective Bargaining Negotiations*. (McGraw-Hill: New York, 1963).

FIGURE 1



demands into 'real wage' values and talk about the total value of the package and the total cost of the package. This may be quite realistic in the context of normal bargaining where «package» settlements are the rule<sup>6</sup> while begging the question of those thorny issues which are impossible to convert into value terms, such as the extent of management rights.) As we have stressed, the degree to which either party accepts a settlement figure, (that is the actual position and shape of the acceptance curves) will be determined by the perceived bargaining power of the parties to the dispute.

The above formulation of bargaining theory, stressing perceptions of bargaining power implies a somewhat static, mechanistic approach and some sort of equilibrium solution which, if we could only develop methods of finding it, would solve all industrial conflict. As anybody who has been involved knows, however, nothing could be farther from the truth. The essence of bargaining strategy and the rationale for the provision of 3rd party (government) intervention is changing the perceptions as the bargaining process takes place such that acceptance by both parties will take place before a work stoppage or, failing that, as soon as possible after a stoppage begins. In other words, what is

<sup>6</sup> «The outcome of collective bargaining negotiation is by agreement. Characteristically, such agreement must be upon all the items comprising the agenda ... The items comprising a package are to a considerable extent commensurable in terms of cost, and, to a considerable extent, it is the total cost of the package that matters. In consequence, agreement on all the items is what matters.» *Ibid.*, p. 44.

important is the changing willingness to concede to an offer/demand under pressure from a strike/lockout or the threat of a work stoppage.

Let us first discuss the typical bargaining strategies in the industrial sector. Under contemporary economic conditions, (rising wages), the union initiates bargaining, usually at some specified time before the existing contract expires. The initial demand the union makes is almost invariably higher than the union might reasonably expect to settle for. In answer the employer makes an offer, normally the minimum it could expect to offer and still retain its labour force, and below that which it expects it will finally settle for.<sup>7</sup> These two initial positions need not be exactly the same as the union's 'maximum' demand or the employer's 'minimum' offer as defined in figure 1, but for our purposes we can take these two positions as the relevant starting points.

From these initial points, both parties make concessions, limited of course by the market and power influences enumerated above. The reason concessions are made is because of the wish to avoid the cost of a work stoppage. If this threat is not sufficient to bring about a settlement then the strike/lockout will take place and the two parties will be forced to bear the costs. Because of these additional costs, and the package nature of bargaining both parties may initially revert to earlier, less conciliatory, positions, temporarily until the economic pressures force compromises. Although the existence of any real «hardening» or desire to punish the opposition by reverting to earlier demands is perhaps unlikely, the nature of package bargaining tends to give the same effect. For instance, the union's initial demand may have included 2 extra statutory holidays plus a ten percent wage increase. It might have agreed in subsequent bargaining to one extra day providing a satisfactory wage increase was negotiated. Failure to achieve the latter, thus precipitating a strike, means that the concession on holidays is automatically rescinded. Almost inevitably, however, the concession will be restored in subsequent negotiations. While it is natural that both parties will attempt to devise means to limit the costs of a stoppage, to the extent that they can, they are likely to prolong the dispute and, indeed, to increase the incidence of work stoppage in the first place. Strike/lockouts, of course, could be almost completely eliminated or at

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<sup>7</sup> There is one major exception to this pattern, often referred to as «Boulwarism», which means the employer's initial offer is deemed (by itself) «reasonable» and indeed is its final offer. It is questionable under such a system, whether the term «bargaining» is therefore, appropriate. STEVENS refers to the high initial demand and low initial offer as the «Large initial bargaining demand rule». *Ibid.*, pp. 32-34.



least greatly reduced in duration merely by weakening one party so that it has no power to resist. Indeed, Adam Smith was cognizant of this when he wrote<sup>8</sup> in 1776 his famous *Inquiry into the Nature and Causes of the Wealth of Nations*.

The central feature of Canadian labour legislation in the 20th Century has been the devising of mechanisms by which two goals could be reached: (a) limiting the occurrence and duration of work stoppages (compulsory third party intervention); and (b) increasing the bargaining power of employee organizations to bring more equity to the respective bargaining powers (compulsory recognition, the checkoff, etc.)

It should immediately be recognized that these goals conflict. We might also note that the emphasis in this tradeoff has shifted from the first of these goals (work stoppage avoidance) in the early years of this century to the second, equalizing bargaining power or the equity question, most noticeably with and since the passage of P.C. 1003 in 1944. Since the 1960's the major extension of collective bargaining to the public sector is a reflection of this trend.

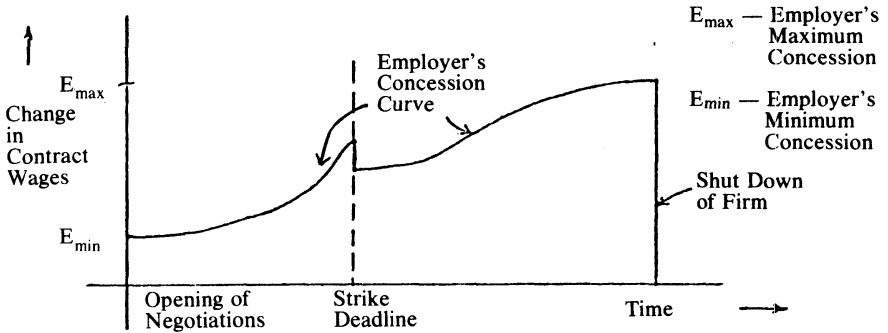
Within this framework we would like to formalize our bargaining model. This can be shown for the employer in figure 2 and for the union in figure 3. Let it be made clear that the actual position and slope of each 'concession curve' will vary with each individual case but the pattern is likely to remain similar. The concession curve indicates the settlements acceptable to the union (employer) at different times in the bargaining period.

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<sup>8</sup> «What are the common wages of labour, depends everywhere upon the contract usually made between those two parties, whose interests are by no means the same. The workmen desire to get as much, the masters to give as little as possible. The former are disposed to combine in order to raise, the latter in order to lower the wages of labour. It is not, however, difficult to foresee which of the two parties must, upon all ordinary occasions, have the advantage in the dispute, and force the other into a compliance with their terms. The masters, being fewer in number, can combine much more easily; and the law, besides, authorises, or at least does not prohibit their combinations, while it prohibits those of the workmen ... In all such disputes the masters can hold out much longer. A landlord, a farmer, a master manufacturer, or merchant, though they did not employ a single workman, could generally live a year or two upon the stocks which they have already acquired. Many workmen could not subsist a week, few could subsist a month, and scarce any a year without employment. In the longrun the workman may be as necessary to his master as his master is to him, but the necessity is not so immediate.» Adam SMITH, *The Wealth of Nations*, (Irwin: Homewood, Illinois, 1963), Vol. I, pp. 53-54.)

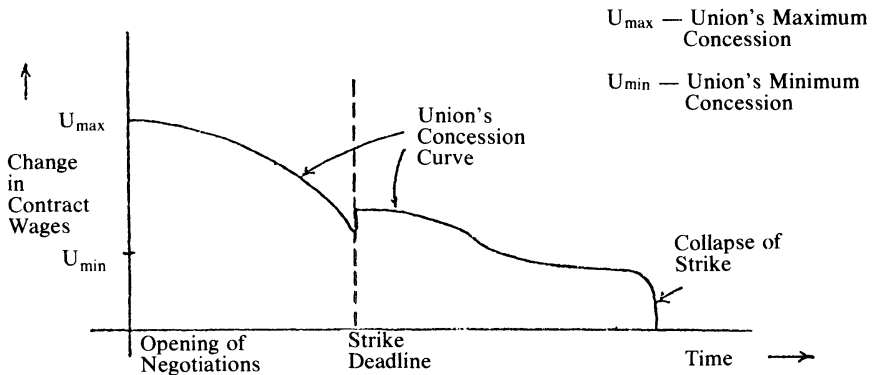
**FIGURE 2**

**Diagrammatic Representation of Employer's Willingness to Concede Wage Increases as a Function of Time**



**FIGURE 3**

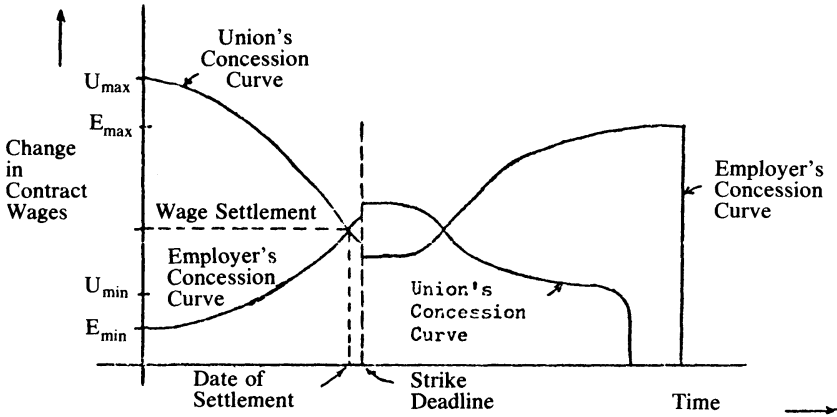
**Diagrammatic Representation of Union's Willingness to Concede to Employer's Wage Offer as a Function of Time**



For most contracts, agreement will be reached before a strike/lockout takes place. This can be shown as in figure 4.

FIGURE 4

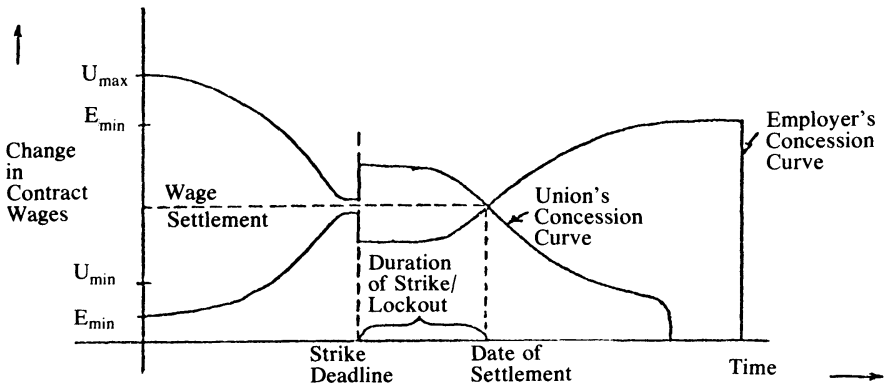
**Diagrammatic Representation of Bargaining Agreement Before Strike Deadline**



In other cases, agreement may not be until the added cost of an actual shut-down enters into the union-employer cost benefit calculus. This is illustrated in figure 5.

FIGURE 5

**Diagrammatic Representation of Bargaining Agreement After Strike Deadline**



Other examples, where no solution is achievable can be illustrated but are of little importance to us here.

This particular model is useful, quite apart from its explanatory use, in analyzing the policies relating to third-party intervention. Consider the effects of conciliation, mediation or the appointment of an enquiry commission, either before or after a strike/lockout. In terms of our model, the purpose of this type of intervention is to change the perceptions of the respective sides as to the concession paths of their opponents and to moderate the concession paths so that a settlement is possible. By acting as a good faith intermediary, threatening a contrary report, cajoling, exchanging information, or suggesting a settlement that conceivably would result from a strike but without resort to a strike, third party intervention is aimed at bringing the parties together sooner. Two possibilities exist, where through intermediation<sup>9</sup> the concession curves are altered to prevent a strike/lockout, and second where intermediation reduces the duration of the dispute. The first case lowers the union concession curve and/or raises the employer concession curve such that they intersect prior to the strike deadline. The second case modifies the concession curves in the same manner after the strike deadline, producing an earlier settlement.

Finally, we can use our model to illustrate the effect of compulsory arbitration. Two possible cases exist. The first, and simplest, is where compulsory arbitration is imposed without prior warning, after a work stoppage is underway. This is a somewhat unusual type of case and is likely to be effective only very occasionally. Oft repeated use will result in the parties assuming that compulsory arbitration will be imposed and hence adjust their bargaining strategies appropriately. The difference in strategies can be illustrated by figure 6. In the first case (illustrated by the solid lines U' and E') bargaining is not affected, up until the arbitration board is appointed. At that point, positions are frozen until the issues are compulsorily adjudicated. Such a model only prevails if neither side has any premonition of the imposition of arbitration.

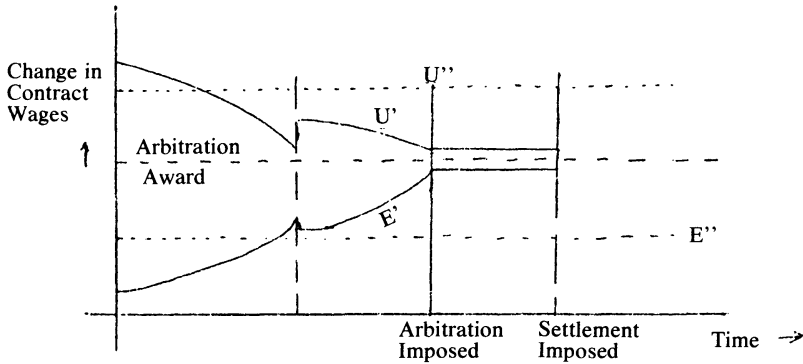
The more usual case exists where arbitration may be provided by law or by previous agreement. Under such circumstances, the prediction of behaviour becomes more hazardous. Nevertheless, we may suggest a typical response. Knowing that arbitration will be imposed, neither party may be willing to modify its demands, believing that, to do so, would negatively affect its position before the arbitrator(s). Both parties may, of course, modify their initial demands hop-

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<sup>9</sup> The term «intermediation» as used in this paper means any form of third-party intervention short of arbitration.

FIGURE 6

**Diagrammatic Representation of Compulsory Arbitration  
After Strike Deadline and Without the Right of Strike  
or Walkout**



ing to make their cause seem more reasonable but arbitration is likely to inhibit any compromise before compulsory settlement machinery is imposed (coinciding with the strike deadline in the normal case), on the not unreasonable grounds that arbiters tend to 'split the difference'. Thus, our model will look like the dotted lines  $U''$  and  $E''$  in figure 6.

There is, of course, no reason why the imposed settlement need bear any resemblance to what would have been determined by the free use of market and power forces. The more that the imposed settlement varies from what one or other of the parties *believes* would have been the result under free collective bargaining, the greater the threat to industrial relations for the duration of the agreement. This will tend to be true whether or not the arbitration award approximates what would have been the settlement or not. It is what is believed that determines attitudes.

Up to this point we have been outlining a bargaining model based on the *non*-public interest sector, or as we have termed it, the industrial sector model. We must now attempt to apply this to the public-interest sector to identify if, and in what ways, this model may apply to this sector.

#### BARGAINING IN THE PUBLIC-INTEREST SECTOR

We have talked so far as if the public-interest sector is monolithic — that is, one with universal characteristics. As we perceive it,

however, there are several fairly distinct categories. It may be useful at this point to identify three such groupings.

A. «Emergency» Classification

- fire and police
- hospital employees

B. Utility Classification

- hydro, telephone, and gas workers and similar type utilities<sup>10</sup>
- municipal employees in water works, garbage collection
- public transportation employees

C. «Non-emergency» Public Employee Classification

- Civil servants and municipal employees not already specified
- teachers (school, university, community colleges)
- other crown corporations' and agencies' employees

It is useful to specify these classifications, because the political and economic environment is sufficiently different in terms of our model specified above. Let us deal with these in turn.

The emergency classification is quite distinct in a market sense from the pressures implicit in the industrial model. On the side of the employer there is no 'economic' upper limit (excepting the ultimate ability to tax); there is no market test of ability to pay, no marketed product and no 'competition' within the market. The determination of the employer's concession curve, therefore, tends to be determined primarily by political forces. On the union side the market may be more comparable to the industry sector, although a comparison of wages and working conditions in many occupations is difficult since the private sector often has no comparable occupation group. What is, of course, obvious is that the ultimate pressure on both sides is the threat of irreparable loss to third parties (the public) due to a work stoppage. This is the ultimate deterrent to both employer and union. It is not, however, obvious upon which side this threat has the most immediacy.

If we were to speculate on the shape of the concession curves, we would suggest that the threat of irreparable loss would place extreme pressures on both parties to compromise without a strike/lockout and,

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<sup>10</sup> Automobile insurance, when it is provided by a public monopoly (such as Autopac in Manitoba) or by a consortium of private companies bargaining as a single unit would constitute a «utilities» case. Similarly, we might include liquor board employees in the province.

indeed, this seems to have been the case where compulsory arbitration has not been resorted to.<sup>11</sup> It is in the very small number of cases where pressures of one or both sides prevent a settlement that the issue arises. It is expected that the enormous real or potential loss to the public, and the consequent 'backlash' of public opinion would induce a rapid settlement. This, however, is where the unequal recourse to political tools causes difficulty for it is quite likely (and probably usual) for the government to then change the rules of the game and resort to legislative imposition of compulsory arbitration. What will happen in subsequent negotiations, then, becomes impossible to predict.

The utility classification, of the three groups in the public-interest sector, is the most comparable with our industry model. However, there are distinct and important differences. The employers tend to be regulated monopolies (which influences their ability to pay although not as determined by the market) and which are usually involved in essential services which have a similar, if not quite as immediate, potential for third party loss as does the emergency classification. In other words, they represent marketable commodities or services, albeit of an essential type, of monopolies that are able, within limits, to determine the market price. (In technical terms, this means that the demand schedules are highly inelastic, almost perfectly inelastic within the relevant range.) The upper limit for the employer, therefore, again within reasonable limits, tends to be very flexible. On the union side, comparability with other industries may be more realistic than in any of the other public-interest sector cases, but again, the main inducement to settle on both sides of a dispute is the political pressure from the public which directly or indirectly bears the cost and disutility of the interruption of services that results from a strike/lockout.

The category that includes the non-emergency, non-utility workers is the most difficult to deal with. In general, with the exception of crown corporations in commercial industries, they are employed by a public authority out of tax monies. Therefore, the employer (the government) has no 'break even' or 'shut down' point in any economic sense. The upper limit is purely political (except in the sense of an ultimate limit of taxation). There is no market test for the services provided. There are no competitive employers; indeed, there is unlikely to be any comparable private sector employer.

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<sup>11</sup> Note, for instance, the long standing prohibition in the fire-fighters union constitution against striking by member locals.

Since the function of the strike/lockout is to put economic pressure on the employer and the union to settle, our model tends to break down because in many cases, a work stoppage, in the short run, saves the employer (the government) money. Indeed, the economic loss may never be noticeable or measurable for any individual or group. The only immediate and apparent cost that may arise, therefore, is a political one. The costs, if they do appear at all, tend to be at the expense of the general public and widely diffused. The costs may be obvious (as in the case of teachers, although this might be more perceived than actual except in the case of working parents who rely on the school system as a day care agency) or they may be hidden. How many people would experience a recognizable loss or even mild inconvenience if the employees of the provincial ombudsman's office or the city planning office were absent for a month or two? In fact, the absence of these types of employees might even redound to the advantage of the government concerned since expenditures would fall without a corresponding decline in revenues, thus permitting a reduction in required taxation.

At the same time, a dispute with the union in this category might give the governing agency the opportunity of implementing a macro-economic policy. For instance, should the government wish to implement a restrictive wage policy, it might attempt to do so by restricting the public employees to some preconceived upper limit regardless of the consequences of a strike/lockout. Using the public employee serves two goals for the government, restricting the economic cost of a settlement and demonstrating a government policy. The union, however, does not have comparable options. The cost to the workers does not vary significantly from that in the private sector.

In summary then, the employer costs which induce the employer to settle in our model, vary in the public-interest sector from extreme third party loss and consequent political pressure in the case of emergency category stoppages (and, to a lesser extent possibly, utility stoppages) to minimal, non-visible and possibly even negative economic costs, at least in the short run for the non-emergency category.<sup>12</sup> The basic characteristic, however, of all these categories is that there is limited direct economic pressure on the employer to settle but rather, there is political pressure from the public which bears the cost in one form or another.

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<sup>12</sup> Not all public employee groups have no direct effect on government revenues. Consider employees selling, and enforcing, fishing licences as an example.



As a broad, possibly sweeping, generalization, we suggest that the economic pressures of the industrial sector are replaced by political pressures in the public-interest sector. This presents severe strains on the bargaining relationship. Consider the case where a government has issued a budget authorizing a certain level of taxes and expenditures, or an even more direct case where the budget contains wage-price guidelines. A union demand for wage increases in excess of the expenditure limits or of the guidelines is often seen, then, as a direct challenge to the political authority of the government, (or the so-called sovereignty argument). This then tends to lead to the interpretation of the dispute, at least by the government concerned, as being between 'democratic government' and 'government by the unions'. Indeed, if the bargaining group is large, the union's demands may actually threaten the government's economic or fiscal policy.<sup>13</sup>

We might also point out another significant difference between public-interest sector disputes and those in the industrial sector. If the government intervenes as a third party in an industrial dispute, it can do so on the grounds of the damage to third parties and yet still maintain some degree of credibility since it is not party to the dispute. However, if the government were to intervene in a dispute to which it was an interested party, it lacks credibility to suggest that it is doing so as a disinterested body.

By way of general summary, then, we must conclude that the prime determination of the employer's concession curve is political. Yet the very rejection by the union of that concession curve (which is the same as non-acceptance at each and every point) appears to many to constitute a rejection of elected authority. We might postulate the following situation (see figure 7) where the dispute may be significantly drawn out by the unwillingness of the government to compromise on its fiscal or wage policy. Alternatively, we may suggest the case of an emergency industry (say a police force) where the costs of a strike are exceptionally high (both in real terms to the general public and in political terms to the government) which might be illustrated as in figure 8.

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<sup>13</sup> Certainly, the demands of the united front of Quebec unions were interpreted by the Quebec government as a direct threat to its economic solvency. Another example is the recent British Coalminer's strike which the British Government interpreted as a challenge to its anti-inflation program. It is significant that the subsequent general election that was precipitated by the impasse was fought by the governing party on the issue (or slogan) of «who governs Britain» implying a conflict between the miners' collective bargaining demands and the elected government's legislative powers.

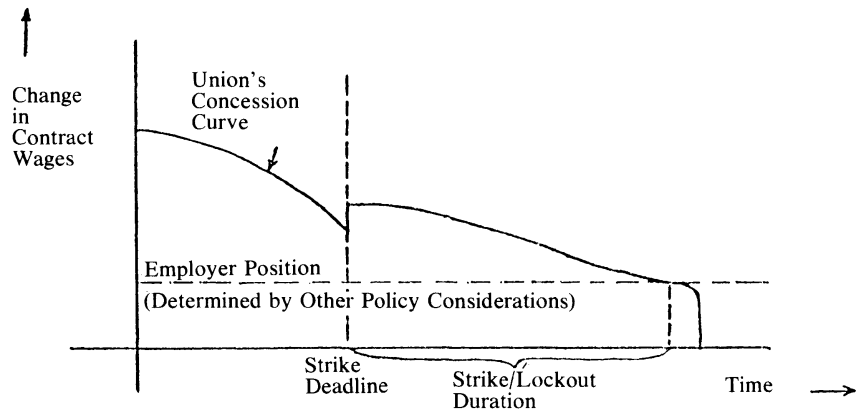
In either of these cases, the government body may not be willing either to accept the duration of the dispute (figure 7) or the cost of the settlement (figure 8) and will thus use its legislative power to intervene by way of compulsory arbitration or some such limitation on the right to strike. This then reduces the model to the one pictured previously (figure 6) and is subject to the same limitations. Indeed the limitations may even be more serious because, in the industry sector there is much greater likelihood that an arbitrator will have some comparable occupation, industry or employer by which to judge the 'equitable' wage level or working condition.<sup>14</sup>

#### CONCLUSION

There is nothing in this formulation of bargaining theory that suggests any simple answers to the questions raised by public-interest sector bargaining. In fact, the purpose of the model is primarily to systematize our conception of the bargaining process and make clear the role of the strike/lockout in this process; and secondly, to indicate

FIGURE 7

**Diagrammatic Representation of Bargaining Course  
Constrained by Government Policy Determined Maximum**



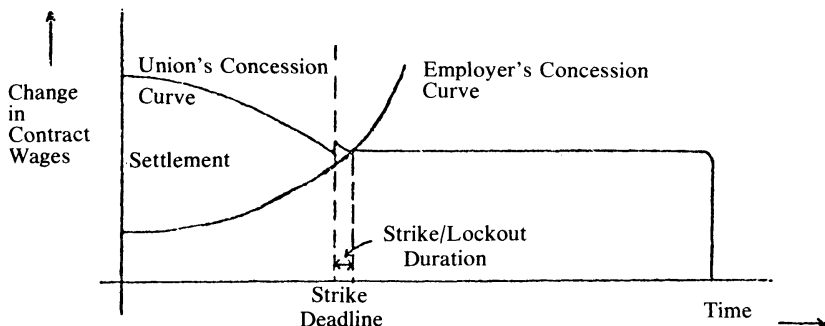
<sup>14</sup> The model, of course, does not indicate all of the problems implicit in compulsory arbitration such as the inherent tendency to limit the scope of arbitrable issues, lack of flexibility, unwillingness of one or both parties to police an imposed agreement, or the special problem in the public-interest sector of placing the government's fiscal/economic policy in the hands of an independent person or board without setting limits which destroy the independence of the arbitrator.

the major differences between industry bargaining and public-interest sector bargaining. This is not to say that the concession curves of all industries or firms in the private sector will approximate the same paths any more than we have suggested that they are the same in the public-interest sector. Indeed, the most perceptible difference is that the pressures to compromise in the public interest sector reflect to a greater extent political costs than in the industry sector where economic pressures are paramount. We may also conclude that even this difference is only one of degree since any dispute in a major industry brings political pressures to bear because of the injury to third parties,<sup>15</sup> and that in many public interest disputes, economic pressures may be paramount to the public authority.<sup>16</sup> However, it is intended that this model may provide a useful framework within which to consider the problems and alternatives in public interest sector contract determination.

What are some of the alternatives in public interest disputes? Inevitably the question reverts to the more fundamental one, what are the alternatives to the strike? Almost immediately, compulsory arbitration is suggested. But as experience and our model indicate, compulsory arbitration is beset with problems. It must be emphasized that the role of the strike/lockout in collective bargaining is to create a costly alternative to *both* parties to not arriving at a negotiated set-

FIGURE 8

#### Diagrammatic Representation of Bargaining Course in Emergency Industry



<sup>15</sup> Consider, for example, the strike/lockout of elevator constructors in 1973 and the resulting pressure upon governments to enforce settlement because of the costs incurred by building owners, apartment dwellers and office workers, etc.

<sup>16</sup> Consider the case where billing clerks and meter readers of a utility strike, thus cutting of the flow of income to a utility company; or where bus drivers strike cutting off transit income.

tlement. There can be little doubt that mandatory arbitration does not, in most cases, impose such costs and, in fact, may provide a cheap «out» for one or both parties, particularly since governments have shown a *penchant* for directly or indirectly, intervening in, or circumventing arbitration where it fears the results will be costly to them.

Various alternatives have been suggested. These may be classified as (a) modified strike rights (the partial and statutory strike), (b) modified compulsory arbitration (final offer selection arbitration) and (c) the «arsenal of weapons». The first alternative involves some limitation on the strike/lockout weapon so that costs accrue to both parties directly involved but the effect upon the general public is made bearable. Rotating strikes fit into this category as does the federal provision for the designation of essential personnel who may not strike. In some areas this may be a feasible alternative providing that the partial strike effectively costs the public authority, in which case it approximates the standard industry model. It is, however, difficult to think of many cases where the situation might apply.<sup>17</sup>

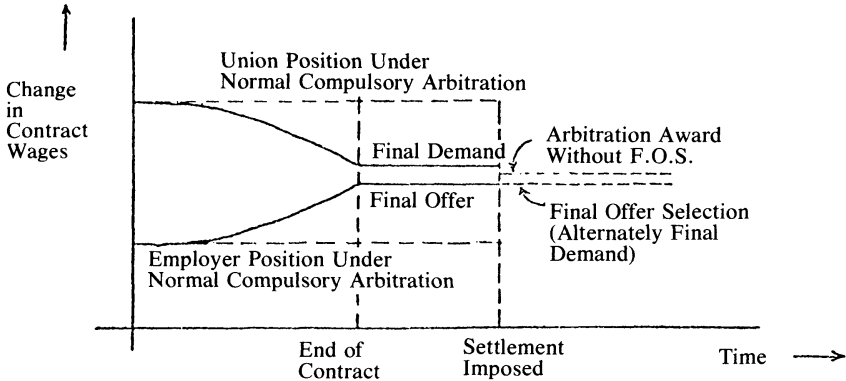
Modified compulsory arbitration is virtually restricted to the one case of «final offer selection». In such a case the arbiter is restricted to choosing between the final demand of the union and the final offer of the employer, whichever he thinks is the more reasonable. In terms of our model, the basic argument is that the «all or nothing» nature of the decision will induce both to bargain seriously because the uncertainty and possible consequences of the final outcome, should either side not compromise, is so great as to preclude the rigid behaviour suggested above. In other words, the strategy of refusing to compromise in the expectation that the arbiter will «split the difference» is no longer possible. «Either-or» arbitration, as it might be characterized, has its definite attractions in encouraging negotiation. This is illustrated in figure 9. However, all of the other arguments against compulsory arbitration are undiminished. In fact, the charge of partisanship on the part of the arbiter is almost inevitable. Also, one might be skeptical as to whether a government would accept the procedure on a continuing basis should the arbiter accept in whole or in part the union's last demand. As an *ad hoc* arrangement in certain circumstances, it might be a successful procedure; as a continuing system, it is unlikely to be a permanent solution.

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<sup>17</sup> One suggestion might be the post office where the union agrees to handle all non-stamped mail. Presumably, the government would refuse to pay the postal employees resulting in economic loss to both sides. It is doubtful if the public would object, although this might lessen the government's desire to settle.

FIGURE 9

## Diagrammatic Representation of Final Offer Selection Arbitration Compared with Normal Compulsory Arbitration



The idea of an «arsenal of weapons», while not new, has received recent reconsideration in Canada in relation to the public sector.<sup>18</sup> Under such a proposal, the industrial relations authority would have at its discretion a number of remedies in the case of impasse in a dispute in a sensitive area. Among the arsenal might be included fact-finding boards, industrial enquiry commissions, special mediators, trustee operation of the industry and union, voluntary arbitration and even compulsory arbitration. The operative principle is that neither party should know what form of intervention will take place and cannot, thereby, adapt to any particular form of intervention. In theory, the uncertainty of procedure and outcome should induce both sides to bargain more seriously rather than risk the caprice of the intervenor. In terms of the model, the effect should be to induce the parties to modify their respective concession curves prior to impasse or, should an impasse occur, to seriously reconsider their positions in the hopes of avoiding potential unfavourable results from the unknown intervention as discussed above. The success of the use of the arsenal depends upon the fear or the parties due to the uncertainty. For this reason, there appears more likelihood of success in municipal disputes where the government body concerned is not the sovereign authority in labour relations than at the provincial or federal level where one of the interested parties has an executive involvement.

<sup>18</sup> See for instance, John CRISPO, «*Collective Bargaining in the Public Service*», paper given to the 24th Annual Conference of the Institute of Public Administration of Canada, Fredericton, Sept. 7, 1972.

Up to this point, in both the industry and public-interest sector models, we have concerned ourselves only with settlement procedures which are provided (or imposed) by legislation or by *ad hoc* intervention on the part of government or its agencies. One question that arises is, are the models affected if the parties voluntarily accept a settlement procedure which differs from, but does not conflict with, the normal procedure. Such arrangements could include anything from voluntary binding arbitration to forms of contractual «strike/lockout» such as an agreement to pay wages and company profits into a charitable fund without a work shutdown from the strike deadline until a new agreement is reached.

It should be noted that these voluntary procedures do not differ in principle from the more normal ones in our standard models. Voluntary binding arbitration is merely a substitution of self-imposed for government-imposed compulsion. In the case of contractual strikes, the costs to the two sides are voluntarily accepted but without any interruption in service or production, thereby eliminating third party injury.

While not different in principle, however, voluntary procedures may be very different in practice, first because the voluntary procedures may be tailored to the specific nature or problems of a particular group or industry, and second, because the existence of voluntary agreements of this type almost invariably attest to a willingness by the two parties to work together and prevent work stoppages, a willingness that augurs well for subsequent contract negotiations. In terms of our models, the effect would probably be to narrow more quickly the gap between union and employer which in itself would tend to produce quicker settlements and fewer work stoppages. In theoretical terms, the effect of voluntary arrangements would be to alter the perceptions that the two parties have of one another thereby shifting the concession curves closer together. Therefore, in terms of our diagrammatic models, the curves may be shifted, but the patterns of behaviour as indicated by the courses of the concession curves should not otherwise be affected.

What is clear is that the success of collective bargaining in the public-interest sector is dependent on the good faith of both sides — that the union will not use the political vulnerability of the governmental authority to extract exorbitant terms, and conversely, that the public agency will not use its legislative and executive powers to subvert or influence legitimate collective bargaining. Since good faith can not be legislated, the problem remains.

## **La question théorique de l'intérêt public en matière de relations de travail**

Le but de l'article précédent est la mise au point d'un modèle très simple de négociations collectives tel qu'on le retrouve dans un cas d'entreprise ordinaire. Par ce modèle, il est possible de faire ressortir le rôle de la conciliation, de la grève ou du lock out, de l'arbitrage obligatoire, de l'assurance-grève, des indemnités de grève et des espoirs des parties tels qu'ils influencent le processus et le dénouement de la négociation collective.

Ce modèle de négociation diffère de beaucoup d'autres en ce qu'il introduit les dimensions temps et coût en tant que facteurs importants qui amènent les parties à s'entendre ou non. Ce modèle reconnaît l'existence d'un éventail chevauchant de solutions possibles à l'intérieur desquels se dessine une solution finale réalisable et il énonce succinctement les limites du pouvoir de marchandage à l'intérieur de cet éventail. De même, il y est discuté du rôle d'une tierce partie eu égard à son influence sur le comportement des parties à la table des négociations et sur le risque et la durée d'un arrêt de travail.

La deuxième partie de l'article analyse dans quelle mesure ce modèle emprunté à l'entreprise privée peut s'appliquer aux différends dans le secteur d'intérêt public, c'est-à-dire dans les entreprises qui fournissent des services dans lesquels le public en général a un intérêt direct et immédiat au dénouement du différend, le secteur public étant ici défini en tant qu'intérêt public et non pas en tant que propriétaire de l'entreprise.

Le modèle de négociation de type industriel apparaît d'une certaine manière inapproprié au secteur d'intérêt public parce que les facteurs temps et coût qui poussent les deux parties à s'engager sur la voie des concessions dans l'entreprise privée sont faussés dans le secteur d'intérêt public. Les employeurs et les syndicats sont nécessairement obligés de considérer les conséquences politiques qui peuvent affecter leurs positions respectives et la perception qu'ils ont du pouvoir de négociation de l'autre partie.

Finalement, l'auteur traite de certaines suggestions qui pourraient s'appliquer à l'occasion de l'intervention d'un tiers dans les différends touchant le secteur d'intérêt public et il conclut son étude en soutenant que le succès de la négociation collective dans ce secteur repose sur la bonne foi des parties, le syndicat ne cherchant pas à utiliser la vulnérabilité politique de l'autorité publique pour obtenir des gains exagérés et la société d'État ne cherchant pas de son côté à se servir de son pouvoir législatif ou exécutif pour faire échouer la négociation collective.