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The Public Service Staff Relations Board
La Commission des relations de travail dans la fonction publique

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Résumé de l'article

Depuis la fin des années trente, les commissions des relations de travail sont intégrées à la plupart des lois sur les relations du travail en Amérique du Nord. Au Canada, la Commission des relations de travail dans la fonction publique (CRTFP) est seule responsable de l'application de la Loi sur les relations de travail dans la fonction publique. Outre les membres de la Commission, présidée par l'un d'entre eux, la CRTFP compte un tribunal d'arbitrage, le bureau de l'arbitre en chef et le Bureau de recherches sur les traitements (BRT).

Tripartite, la Commission gère en grande partie le régime des relations de travail. Ses principales fonctions consistent à accréditer des associations d'employés à titre d'agents négociateurs pour divers groupes d'occupations ; dans le cas des unités de négociation où la méthode de règlement des différends par conciliation et grève a été choisie, désigner les employés dont l'exercice des fonctions est indispensable à la sûreté et à la sécurité du public et qui ne peuvent participer à une grève légale ; entendre les griefs des agents négociateurs et des employeurs ; mener des enquêtes sur de prétendues erreurs de loi ou de compétence ; décider de règlements sur un grand nombre de questions incluses dans le cadre de la convention collective ; et faire des déclarations de légalité des grèves. Donc, la principale fonction de la Commission est de superviser les activités du régime de négociation collective.

C'est au Président de la Commission qu'a été conféré le pouvoir d'appliquer les dispositions de la loi relatives au règlement des différends. Il a comme responsabilité de nommer des conciliateurs et des médiateurs quand les parties font appel à leurs services pour s'entendre sur une convention collective ; de les aider à conclure une convention collective ; de déterminer s'il y a lieu d'établir un bureau de conciliation pour régler des différends concernant la convention collective et les attributions de ce bureau de conciliation ; et de choisir les membres du tribunal d'arbitrage.

Le tribunal d'arbitrage est un moyen pour les fonctionnaires fédéraux de régler leurs différends avec leur employeur sans avoir recours à un arrêt de travail. Le rôle du tribunal se limite à prendre des décisions portant seulementsur les taux de traitement, la durée du travail, les droits à des congés, les normes de discipline et les conditions d'emploi qui se rattachent à ces questions et n'ont pas été réglés entre les parties. Les employés des unités de négociation ont la possibilité de recourir à un bureau de conciliation pour régler leurs différends sur la convention collective. Celui-ci si l'on a épuisé tous les recours, peut les autoriser à faire une grève légale. La*Loi sur les relations de travail dans la fonction publique* consacre ainsi deux méthodes de règlement des litiges concernant les conventions collectives.

Les employés ont le droit de déposer des griefs au sujet de leurs conditions d'emploi et de renvoyer ceux qui portent sur l'interprétation ou l'application d'une convention collective, ou d'une décision arbitrale, ou d'une mesure disciplinaire entraînant le congédiement, la suspension ou une peine pécuniaire, à un tiers d'arbitrage. Les agents négociateurs et l'employeur peuvent aussi référer leurs griefs qui pourraient ne pas être du même ordre que ceux d'un simple employé, à l'arbitre en chef. Toutes les décisions prises par les arbitres sont sans appel et exécutoires pour les deux parties.

Le Bureau de recherches sur les traitements obtient et fournit aux parties en négociation des renseignements sur les taux de traitement, les salaires des employés, les conditions d'emploi et les pratiques pertinentes qui ont cours tant à l'intérieur qu'à l'extérieur de la fonction publique. Les données du BRT sont les données de fait, impartiales et objectives. Le BRT ne participe pas à la négociation des conventions collectives, ni à la fixation des taux de traitement des fonctionnaires.

La Commission des relations de travail dans la fonction publique est un organisme neutre dont la compétence est très étendue à l'intérieur des limites du régime de négociation collective. Les divers bureaux de cet organisme neutre constituent une autorité administrative dont le cadre est particulier au domaine des relations de travail au niveau fédéral. La centralisation des pouvoirs dans le cadre d'un régime où le gouvernement est aussi l'« employeur », est nécessaire du fait que les organismes neutres existants au ministère du Travail, par exemple, ne pourraient plus être considérés comme tels lorsqu'il s'agit de régler des conflits. Quelle que soit la raison d'être de la centralisation, les dispositions amenant une décision par une troisième partie pour régler des griefs, le système de données du Bureau de recherches sur les traitements ou le caractère presque juridique du Tribunal d'arbitrage, tous ressortissant à une seule administration, est une caractéristique unique du régime de négociation collective de la fonction publique fédérale.

À l'origine, les bureaux de la Commission des relations de travail dans la fonction publique étaient indépendants et ne relevaient pas du gouvernement. L'organisme lui-même s'est également efforcé de maintenir sa neutralité pour garantir sa crédibilité. Par conséquent, l'aide donnée par les bureaux de la Commission des relations de travail dans la fonction publique, le tiers neutre du régime de négociation collective du secteur public fédéral, est nécessaire au bon fonctionnement du régime des relations de travail.

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The Public Service Staff Relations Board

A. G. Gillespie

This paper is primarily an attempt to describe the organization, functions, and influence of the neutral third-party agency in the Federal Public Service collective bargaining system.

Labour relations boards have been constituent elements of most North American labour statutes since the late 1930's. The federal *Public Service Staff Relations Act* (R.S.C. 1970 C. 72) is no exception, and the functioning of its labour board has had a considerable influence on the operation of the industrial relations system. In the Federal Public Sector, the Public Service Staff Relations Board (PSSRB) is vested with sole responsibility for administering the provisions of the *Public Service Staff Relations Act.* [1] Figure 1 describes the organizational framework, functional elements, and major area(s) of responsibility within the jurisdiction of the Public Service Staff Relations Board. The Public Service Staff Relations Board must be viewed as a many-faceted organization with each administrative element able to directly affect the industrial relations environment.

THE BOARD

The Board is tripartite in composition, consisting of a neutral Chairman and Vice-Chairman and equal number of representatives of the interests of the employer and the employees.

The various terms of office as stated in the Act are such that:

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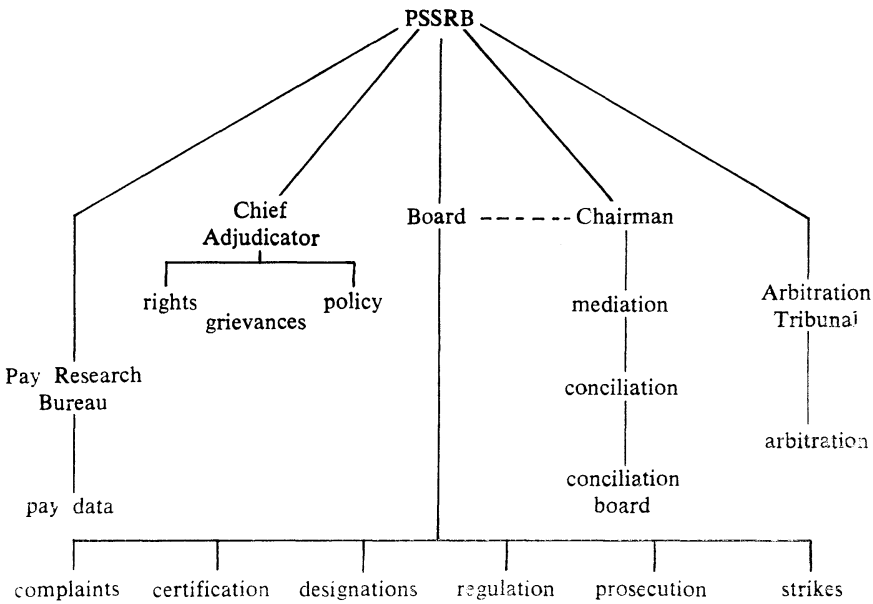
The opinions expressed are those of the author alone and not necessarily the opinions held by the Treasury Board Secretariat.

[1] Hereinafter, reference to the Public Service Staff Relations Board may be considered as the administrative entity. References to the « Board » may be considered as defining the tripartite labour relations committee.

FIGURE 1

Organization of the

Public Service Staff Relations Board



All members of the Board are appointed for a fixed term of years; the chairman and vice-chairman have been given what amounts to judicial tenure for a term of ten years, thus assuring their independence of government, i.e. management, influence. [2]

Sections 11 through 20 of the *Public Service Staff Relations Act*, [3] while setting out the aforementioned periods of appointment and equality of representation, also state that no person who holds office or employment under either the employer or an employee organization that is a bar-

[2] « Finality in Public Sector Bargaining — The Canadian Experience, » Address delivered by Jacob FINKELMAN, QC, Chairman, Public Service Staff Relations Board, Ottawa, Canada, to the International Conference on Trends in Industrial and Labour Relations, at Tel Aviv, Israel, January, 1972.

[3] *The Public Service Staff Relations Act* will hereinafter be referred to as « the Act » unless otherwise specified.

gaining agent, is eligible to hold a Board office. Also, salaries of Board members are fixed by the Governor General in Council. The aforementioned provisions of the Act have ensured that the Board is physically independent of Government with its two prominent members holding positions of neutrality.

The Board is vested with substantial authority in the operation of the industrial relations system. A cursory review of the legislation indicates that the Board is mentioned numerous times as the neutral third-party agency. However, the Board's major functions centre on the areas of certification, designations, complaints, questions of law, strike declarations, prosecution, and regulation.

The certification procedure is set out by the Act in sections 27 through 48.[4] Since the legislation did not provide for the according of rights to an employee organization through voluntary recognition, the Board was given extensive power in the area of certification. The Board is empowered to receive applications for certification from an employee organization or a council of employee organizations.[5] Upon receipt of an application, the Board, through an examination of the employees' duties and classification, is to determine whether the group of employees constitutes a bargaining unit appropriate for collective bargaining. The Board is then empowered to satisfy itself that a majority of the employees in the bargaining unit wish to be represented by the employee organization making application. This procedure is completed by the Board's certification of the employee organization as bargaining agent for employees in the bargaining unit, and the recording of the process for the resolution of disputes as specified by the bargaining agent. By the end of the 1968-69 fiscal year alone, the Board had received 131 applications for certification, of which 44 applications, covering 183,000 employees, were accepted and a bargaining agent certified.[6] The Board also has extensive authority

[4] Section 26 deals with the initial certification period, and the commencement of collective bargaining. All activities during this period were subject to the time frame set out in Schedule II of the Act. During this period, the Board was required to specify when application for certification was to be made, and was limited by s. 26(4) in its determination of bargaining units. This section no longer has application for current certification proceedings.

[5] The Public Service Alliance of Canada is one of fourteen employee organizations certified as bargaining agent for a bargaining unit for the purposes of collective bargaining.

[6] Public Service Staff Relations Board, *Second Annual Report: 1968-69*, Queen's Printer, Ottawa, 1969, p. 18.

in the area of revocation of certification. The procedures outlined in this area have been put into use on only one occasion since the inception of collective bargaining in 1967. In the fall of 1974, the Council of Postal Unions, which was the certified bargaining agent for the Letter Carriers Union of Canada and the Canadian Union of Postal Workers, requested that its certification be revoked. After several hearings the Board granted the request for the revocation of certification, and subsequently certified two separate bargaining units. Thus, through extensive authority over the certification procedure, the Board is able to regulate, to a certain degree, the attempts of employee associations in becoming certified bargaining agents.

The Board does not have extensive authority in the area of collective bargaining, except where the parties have reached an impasse in their negotiations. Prior to the establishment of a conciliation board, resulting from an impasse in negotiations, the Board, under section 79 of the Act, is required to determine those employees whose duties are necessary in the interest of the safety and security of the public (designated employees).[7] This determination will have a substantial effect on the ability of employees to carry out an effective strike as the designated employees are required, under section 101 of the Act, to remain on the job during any cessation of work. Accordingly, the Board functions as « the protector of the public interest » in situations where employees may eventually withdraw their services to substantiate demands made at the bargaining table.

The Board is also empowered to act in a regulatory capacity. Section 18 of the Act enables the Board to make regulations on a variety of matters within the scope of collective bargaining. This resulted in the Board publishing the *Public Service Staff Relations Board Rules and Regulations of Procedure,* which covers those matters delegated under section 18 of the Act. Under section 20, the Board hears complaints

[7] The procedure for designating employees under section 79 of the Act, requires the employer to furnish the bargaining agent and the Board with a list of employees considered by the employer to be designated employees, within twenty days after receipt of notice to bargain. If there is no objection filed by the bargaining agent the list becomes the statement of the employees who are agreed by the parties to be designated employees. Should an objection to the list be filed by the bargaining agent, the Board conducts a hearing and makes a final and binding determination as to the list of designated employees. In either case, the Board informs the employees of their designated status.

and makes orders directing compliance if the employer or an employee organization has failed : to observe any prohibition stated in the Act ; to give effect to a provision of an arbitral award or adjudication decision ; or, to comply with a regulation respecting grievances. [8] Under section 23 of the Act, the Board is required to hear and to determine whether or not an Adjudicator or the Arbitration Tribunal has erred with respect to any question of law or jurisdiction in the making of the adjudication decision or arbitral award. With reference to the foregoing, the Board has heard 120 references under section 20, and 82 references under section 23 to March 15, 1975. The Board is also empowered under section 103, to make declarations on the lawfulness of strikes, and under section 106 must consent to the prosecution of any person for failing to observe any prohibition, or for the continuation of an illegal strike. The provisions provide the Board with two regulatory mechanisms whereby decisions of the various third-party services within its administrative jurisdiction may be re-examined.

The foregoing discussion indicates that the primary function of the Board is to regulate the operation of the collective bargaining mechanism. The Board, however, is not empowered to initiate actions at its own discretion, but must react solely on the request of either party to collective bargaining. This has enabled the collective bargaining system to function effectively while ensuring that the public interest will be protected.

CHAIRMAN OF THE PUBLIC SERVICE STAFF RELATIONS BOARD

The Chairman of the Public Service Staff Relations Board has the authority to administer the dispute settlement provisions of the legislation. In this regard, his responsibilities include : the appointment of conciliators and mediators ; the establishment of a conciliation board ; the selection of panel members for the Arbitration Tribunal ; and the referral of matters in dispute to the Arbitration Tribunal or conciliation board.

Conciliators may be appointed only by the Chairman upon written request by either party. [9] Although not specifically provided for in the legislation, a mediator may be appointed by the Chairman, however, he

[8] *Public Service Staff Relations Act* (R.S.C. 1970 c. 72), s. 20.

[9] *Public Service Staff Relations Act* (R.S.C. 1970 c. 72), s. 52.

has no authority to impose the services of a mediator on the parties. The role of federal public sector conciliators and mediators is primarily the same as in the private sector, that being, to confer with the parties and endeavour to assist them in reaching agreement. The only major difference between the two is that, in the federal employment sector, the method of appointment differs.

The conciliation board method of dispute resolution is found in sections 78 through 89 of the Act. [10] The Chairman has sole responsibility for determining whether or not the establishment of a conciliation board will assist the parties in reaching an agreement. The Chairman is also required to determine the conciliation board's terms of reference and to receive its recommendations if it has not been successful in assisting the parties to reach an agreement. Finally, the Chairman must notify the parties of the board's recommendations and publish the report if he deems it necessary.

The current Chairman is Jacob Finkleman, a well-respected and prominent member of the labour relations community. His positive disposition toward the use of neutral services and previous experience as Chairman of the Ontario Labour Relations Board has enabled him to react most assiduously to the needs of the parties in the dispute. Through constant contact with the bargaining agents and the employer in the crucial stages of negotiations, he has been able to smooth the way for necessary third-party assistance. Thus, the Chairman, as a pre-eminent member of the neutral agency, has endeavoured to provide the parties with assistance which will enable them to reach a collective agreement without resorting to a cessation of work.

ARBITRATION TRIBUNAL

The Public Service Arbitration Tribunal provides public employees with a method for resolving their dispute with their employer without

[10] The major innovation of the Act is the two-pronged method of dispute settlement which provides for the referral of the dispute to a conciliation board and possible strike or binding arbitration. The choice of dispute settlement route rests solely with the bargaining agent and must be specified prior to the serving of notice to bargain. The employer is not accorded any rights by the Act with respect to the choice of dispute settlement procedures, and is bound by the bargaining agent's choice.

resorting to a work stoppage. If employees in the bargaining unit have chosen this method of dispute settlement, sections 63 through 75 of the Act applies to them in a binding fashion.

The Arbitration Tribunal is a tripartite body composed of the chairman who is responsible for the administration of the system of arbitration, and two panels of members who represent the interests of the employer or employees respectively. Once the dispute is referred to arbitration, the Chairman of the Board selects a member from each panel and, along with the chairman of the Arbitration Tribunal, they constitute the Tribunal required by the Act to render a binding arbitral award on the matters in dispute which have been referred to them. However, if at any time prior to the rendering of the award, the parties reach agreement on the matters in dispute, the Arbitration Tribunal is not to render its award on any matter to which they have agreed upon. [11]

The Arbitration Tribunal is limited to specific matters on which it may render an arbitral award. The notice of request for arbitration must contain the terms and conditions of employment to which the parties request arbitration, as well as any matters already agreed upon in the course of bargaining and incorporated in a partial collective agreement. Futhermore, the award may deal only,

> ... with rates of pay, hours of work, leave entitlements, standards of discipline and conditions of employment related thereto. [12]

The Tribunal is prohibited from making an award in despect of,

> ... standards, procedures or processes governing the appointment, appraisal, promotion, demotion, transfer, lay-off or release of employees, or with any term or condition of employment of employees that was not a subject of negotiation between the parties during the period before arbitration was requested in respect thereof. [13]

The foregoing terms of reference are also augmented by another section of the Act which sets out the guidelines to be considered by the Arbitration Tribunal in rendering an award. Section 68 of the Act states that,

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[11] *Ibid.*, s. 60-64.
[12] *Ibid.*, s. 70(1).
[13] *Ibid.*, s. 70(3).

> In the conduct of proceedings before it and in rendering an arbitral award in respect of a matter in dispute the Arbitration Tribunal shall consider
>
> (a) the needs of the Public Service for qualified employees;
>
> (b) the conditions of employment in similar occupations outside the Public Service, including such geographic, industrial or other variations as the Arbitration Tribunal may consider relevant;
>
> (c) the need to establish terms and conditions of employment that are fair and reasonable in relation to the qualifications required, the work performed, the responsibility assumed and the nature of the services rendered; and
>
> (d) any other factor that to it appears to be relevant to the matter in dispute. [14]

The foregoing provisions may seem to place a considerable degree of restraint on the activities of the Arbitration Tribunal. [15] However, considering that, when the Act was first implemented, the arbitral function was carried out in a complete vacuum, the necessity for detailed direction in the area of pay determination and working conditions becomes readily apparent.

The Arbitration Tribunal must be considered as an essential element of the collective bargaining mechanism. First, it provides employees with a method of settling their dispute without recourse to a work stoppage; and second, it provides employees in bargaining units, whose economic power at the bargaining table is weak due to functions which lack public prominence, with a fairer method for determining pay and employment conditions, since, without the Tribunal, the employer would almost be able to unilaterally determine wages and fringe benefits. Thus, the Arbitration Tribunal provides another constructive agency for assisting the parties in the resolution of their collective bargaining disputes.

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[14] *Ibid.*, s. 68.

[15] The limitations imposed on the subject matter of an arbitral award are more restrictive than the limitations imposed on the subject matter of a collective agreement. Section 56(2) of the Act prohibits a collective agreement from providing for the alteration or elimination if any or establishment term or condition of employment which would require or have the effect of requiring the enactment or amendment of a legislation by Parliament. Accordingly, the scope of matters which may be the subject of negotiations is more extensive than the scope of matters which may be covered by an arbitral award.

CHIEF ADJUDICATOR

The right to present grievances and the right to refer such grievances to adjudication are prescribed by sections 90 through 99 of the Act. Under the scheme provided, section 90 enables an employee who considers himself to be aggrieved, as a result of any matter affecting his terms and conditions of employment, to present a grievance through all levels of the departmental grievance procedure, except where other administrative procedures for redress are provided in, or under another Act of Parliament. This right had led public servants to grieve against their employment conditions on approximately 28,000 occasions since the provisions of the Act were implemented in 1967. However, under such a formalied grievance procedure, it is to be expected that a large number of real or fancied grievance are likely to arise.

Not all grievances may be referred by employees to adjudication under section 91 of the Act. Only those grievances which involve either the interpretation or application of a collective agreement or arbitral award, or disciplinary action resulting in discharge, suspension or financial penalty are adjudicable. The former references must also have thy approval of the employee's bargaining agent, however, this is not necessary for disciplinary references. Public servants have, from 1967 to March 15, 1975, referred over 1,888 grievances to adjudication. The marked reduction between the number of grievances and the number of references to adjudication is indicative of a system which is efficiently conducted by employers and bargaining agents, thus, leaving only the most difficult or doubtful cases for binding third-party determination.

The Chief Adjudicator is responsible for the administration of the adjudication mechanism. On receipt of a reference to adjudication, the Chief Adjudicator is responsible for selecting the adjudicator to hear the case. The adjudicator then hears arguments presented by representatives of the grievor and the employer, and the decision rendered is final and binding on both parties. In practice, although all adjudicators are on equal footing, the decisions rendered by the Chief Adjudicator have, over the last few years, tended to be the most precedent-setting, in terms of the jurisprudence surrounding adjudication decisions. [16]

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[16] Arjun P. AGGARWAL, « Adjudication of Grievances in Public Service of Canada, » *Relations Industrielles*, vol. 28, nº 3, July, 1973, pp. 530-539.

The foregoing grievances are, what are generally considered in the private sector as, « rights » disputes. Another category of grievances found under section 98 of the Act may be referred to as « policy » grievances, and involve matters which may not be the subject of an individual employee grievance. This scheme allows either the employer or the bargaining agent, when seeking to enforce an obligation that is alleged to have arisen out of a collective agreement or arbitral award, to refer the dispute to the Chief Adjudicator for hearing and decision. As of March 15, 1975, 65 such grievances had been referred to the Chief Adjudicator for determination.

The federal public sector's approach to the resolution of the grievances of its employees is a unique contribution to the field of enlightened labour relations legislation. The statute has precisely enumerated the rights of both employees and bargaining agents. The basic grievance procedure was made available to all public servants in all federal departments and agencies. Finally, the legislation provided for a scheme of independent grievance adjudication which is uniform throughout the entire public service.

PAY RESEARCH BUREAU

The Pay Research Bureau, since March, 1967, has operated within the administrative jurisdiction of the Chairman of the Public Service Staff Relations Board. Although not specifically mentioned as being under the jurisdiction of the Board, the Board has provided for the Bureau's operation in its budgetary estimates, and the Chairman has conferred terms of reference on the Bureau which define its role and responsibilities.

The primary function of the Pay Research Bureau is,

> ... to obtain information on rates of pay, employee earnings, conditions of employment and related practices prevailing both inside and outside the Public Service to meet the needs of the parties to bargaining, or in the case of occupational groups where no bargaining agent is certified, as may be requested by the employer. [17]

[17] Felix QUINET, *Collective Bargaining in the Canadian Context*, CCH Canadian Ltd., Don Mills, 1972, p. 16.

The data compiled is made available by the Bureau to both the employer and certified bargaining agents.

The Bureau, in its role as a neutral agency, must be objective in its operation, and it has been able to maintain this stance for a number of reasons. The Bureau provides, as outlined by its terms of reference, information which is factual, impartial, and objective. The Bureau does not participate in either the negotiation of collective agreements or the setting of rates of pay for public employees. Finally, being under the administrative jurisdiction of the Board has enabled it to maintain its impartiality and to conduct its operations in an atmosphere of independence.

The Bureau also attempts to remain responsive to the needs of both the employer and bargaining agent in collective bargaining. Through the Advisory Committee on Pay Research, which is comprised of representatives of the Treasury Board, separate employers, and all certified bargaining agents, the Bureau consults and receives advice « in determining programs, in setting priorities and in deciding on the information to be sought. » [18]

The *Public Service Staff Relations Act* does not require the parties to collective bargaining to utilize the Pay Research Bureau data in the making of demands, arguments, or in the process of negotiation. However, both the employer and bargaining agents make extensive use of Pay Research Bureau Data in their regotiations. The use of unbiased data has enabled the parties to begin bargaining from a common base and, in cases where third-party intervention was necessary, may have led to a speedier resolution of the dispute. Thus,

> The creation of a single independent organization providing impartial information to both parties at the bargaining table is unusual and perhaps unique in North American industrial relations. [19]

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[18] Public Service Staff Relations Board, *Fourth Annual Report: 1970-71*, Queen's Printer, Ottawa, 1971, p. 96.

[19] T.J. WILKINS, « The Pay Research Bureau, » *Civil Service Review*, Vol. XL, No. 3, September, 1967, p. 8.

CONCLUSION

The foregoing discussion suggests that the neutral agency, known as the Public Service Staff Relations Board, has an extensive jurisdiction within the confines of the collective bargainings system. [20] The agencies of this organization are available to provide assistance to the parties in all matters except for the direct bilateral (at the table) negotiation of collective agreements. This type of neutral third-party assistance is essential to the operation of the federal industrial relations system as the public interest is protected without a substantial deterioration in the free collective bargaining mechanism.

The diversified offices of this neutral agency constitute an administrative jurisdiction, the scope of which is unique to the federal industrial relations environment. In part, this centralization of authority is made necessary by a system where the Government is also the « employer », and as such, existing neutral agencies such as those within the Department

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[20] On April 18, 1973, Mr. Finkelman was requested by the Honourable A.J. MacEachen, then President of the Privy Council, to examine the Public Service Staff Relations Act and to make recommendations with respect to its amendment having regard to the experience gained since the Act came into force. In March, 1974, the first of the volumes on *Employer-Employee Relations in the Public Service of Canada* (Finkelman Report) were tabled in the House of Commons. The Report was sent for study to a joint Committee of the Senate and of the House of Commons in December, 1974. During the Committee's deliberations Mr. Finkelman submitted another volume of supplementary recommendations and observations. The Finkelman Report is an overall examination of the *Public Service Staff Relations Act* and its administration and makes recommendations as to how the Act should be amended and revised in order to meet adequately the needs of the employer and the employees in the Public Service and the employee organizations that represent them, and to serve the interest of the public. Of special interest to this paper are the recommendations which provide for an expansion of the scope of an Arbitral Award to include « compensation, including standards and rates of pay, and procedures relating to the administration thereof » (*Finkelman Report*, Volume I, p. 164) ; the reorganization of the Board which would make it a full-time public member board and vest with it the presently divided functions of the Arbitration Tribunal and Grievance Adjudicators ; and, an expansion of the powers and jurisdiction of the board to enable the board to examine and enquire into all types of complaints, and to summon witnesses and compel the production of documents. It must be noted that Finkelman Report recommendations are only proposals for legislative change, and the joint Committee may, in its report to Parliament, make substantial alterations. The revised legislation is expected to become law in early 1976.

of Labour no longer could be considered as neutral for the purposes of dispute resolution. Whatever the rationale for centralization, the provision for third-party adjudication of grievances, the Pay Research Bureau data system or the quasijudicial operation of the Arbitration Tribunal, all functioning within a single administration is a feature that is unique to the collective bargaining system in the Federal Public Service.

In recent years, the image of the Public Service Staff Relations Board has become somewhat tarnished. Time delays, often of more than one-half year in length, especially in the rendering of arbitral awards and adjudication decisions, give rise to the question of whether or not true labour relations justice is being served. The tenure of office of Board members, so important for the preservation of independence, and providing an opportunity to become familiar with the particular bargaining system, has resulted in a normativeness which has permeated decisions and reduced the confidence of the employer or the bargaining agent in relation to neutral third-party assistance. These neutrals have, on occasion, been required to render decisions on items which should have been determined solely by the parties at the negotiating table, such as zone rates of pay, which require expert knowledge and time to understand. Often, waiting for decisions to be rendered by the neutral agency, especially arbitral awards, has resulted in stalling at the table, by other groups in the particular Occupational Category, in anticipation of a favourable pattern-setting award. The blame for this somewhat tarnished image may be placed at the collective feet of the employer, the bargaining agents, and the Public Service Staff Relations Board, as each element of the system fully understands the rationale causing the time delays.

The balance sheet would not be complete without reference to the major advantages of this neutral agency. The centralization of all neutral functions within one administrative jurisdiction enables the Public Service Staff Relations Board to react quickly and positively to the needs of the parties, should they request third-party assistance. In a barganing environment which is as political as it is industrial, the offices of this neutral agency provide either or both of the disputants with « face-saving » mechanism which enables them to abdicate their responsibility for the settlement of an unresolvable dispute. Thus, the primary concern of the neutral agency in the federal public system is the prevention of industrial relations holocausts in a system where it is essential that the public interest be properly protected.

The offices of the Public Service Staff Relations Board were originally legislated as independent of Government influence. The agency itself has also endeavoured to maintain a neutrality of character so necessary to the maintenance of its credibility. Accordingly, the assistance provided by the offices of the Public Service Staff Relations Board, the neutral third-party in the federal public sector's collective bargaining system are essential to the viable operation of the industrial relations system.

La Commission des relations de travail dans la fonction publique

Depuis la fin des années trente, les commissions des relations de travail sont intégrées à la plupart des lois sur les relations du travail en Amérique du Nord. Au Canada, la Commission des relations de travail dans la fonction publique (CRTFP) est seule responsable de l'application de la Loi sur les relations de travail dans la fonction publique. Outre les membres de la Commission, présidée par l'un d'entre eux, la CRTFP compte un tribunal d'arbitrage, le bureau de l'arbitre en chef et le Bureau de recherches sur les traitements (BRT).

Tripartite, la Commission gère en grande partie le régime des relations de travail. Ses principales fonctions consistent à accréditer des associations d'employés à titre d'agents négociateurs pour divers groupes d'occupations ; dans le cas des unités de négociation où la méthode de règlement des différends par conciliation et grève a été choisie, désigner les employés dont l'exercice des fonctions est indispensable à la sûreté et à la sécurité du public et qui ne peuvent participer à une grève légale ; entendre les griefs des agents négociateurs et des employeurs ; mener des enquêtes sur de prétendues erreurs de loi ou de compétence ; décider de règlements sur un grand nombre de questions incluses dans le cadre de la convention collective ; et faire des déclarations de légalité des grèves. Donc, la principale fonction de la Commission est de superviser les activités du régime de négociation collective.

C'est au Président de la Commission qu'a été conféré le pouvoir d'appliquer les dispositions de la loi relatives au règlement des différends. Il a comme responsabilité de nommer des conciliateurs et des médiateurs quand les parties font appel à leurs services pour s'entendre sur une convention collective ; de les aider à conclure une convention collective ; de déterminer s'il y a lieu d'établir un bureau de conciliation pour régler des différends concernant la convention collective et les attributions de ce bureau de conciliation ; et de choisir les membres du tribunal d'arbitrage.

Le tribunal d'arbitrage est un moyen pour les fonctionnaires fédéraux de régler leurs différends avec leur employeur sans avoir recours à un arrêt de travail. Le rôle du tribunal se limite à prendre des décisions portant seulement

sur les taux de traitement, la durée du travail, les droits à des congés, les normes de discipline et les conditions d'emploi qui se rattachent à ces questions et n'ont pas été réglés entre les parties. Les employés des unités de négociation ont la possibilité de recourir à un bureau de conciliation pour régler leurs différends sur la convention collective. Celui-ci si l'on a épuisé tous les recours, peut les autoriser à faire une grève légale. La *Loi sur les relations de travail dans la fonction publique* consacre ainsi deux méthodes de règlement des litiges concernant les conventions collectives.

Les employés ont le droit de déposer des griefs au sujet de leurs conditions d'emploi et de renvoyer ceux qui portent sur l'interprétation ou l'application d'une convention collective, ou d'une décision arbitrale, ou d'une mesure disciplinaire entraînant le congédiement, la suspension ou une peine pécuniaire, à un tiers d'arbitrage. Les agents négociateurs et l'employeur peuvent aussi référer leurs griefs qui pourraient ne pas être du même ordre que ceux d'un simple employé, à l'arbitre en chef. Toutes les décisions prises par les arbitres sont sans appel et exécutoires pour les deux parties.

Le Bureau de recherches sur les traitements obtient et fournit aux parties en négociation des renseignements sur les taux de traitement, les salaires des employés, les conditions d'emploi et les pratiques pertinentes qui ont cours tant à l'intérieur qu'à l'extérieur de la fonction publique. Les données du BRT sont les données de fait, impartiales et objectives. Le BRT ne participe pas à la négociation des conventions collectives, ni à la fixation des taux de traitement des fonctionnaires.

La Commission des relations de travail dans la fonction publique est un organisme neutre dont la compétence est très étendue à l'intérieur des limites du régime de négociation collective. Les divers bureaux de cet organisme neutre constituent une autorité administrative dont le cadre est particulier au domaine des relations de travail au niveau fédéral. La centralisation des pouvoirs dans le cadre d'un régime où le gouvernement est aussi l'« employeur », est nécessaire du fait que les organismes neutres existants au ministère du Travail, par exemple, ne pourraient plus être considérés comme tels lorsqu'il s'agit de régler des conflits. Quelle que soit la raison d'être de la centralisation, les dispositions amenant une décision par une troisième partie pour régler des griefs, le système de données du Bureau de recherches sur les traitements ou le caractère presque juridique du Tribunal d'arbitrage, tous ressortissant à une seule administration, est une caractéristique unique du régime de négociation collective de la fonction publique fédérale.

À l'origine, les bureaux de la Commission des relations de travail dans la fonction publique étaient indépendants et ne relevaient pas du gouvernement. L'organisme lui-même s'est également efforcé de maintenir sa neutralité pour garantir sa crédibilité. Par conséquent, l'aide donnée par les bureaux de la Commission des relations de travail dans la fonction publique, le tiers neutre du régime de négociation collective du secteur public fédéral, est nécessaire au bon fonctionnement du régime des relations de travail.