

LABOR NEGOTIATIONS and TEACHER CONTRACT BARGAINING: PARALLELS AND PROBLEMS

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Private sector experience in negotiations is complex enough to give support for nearly anything a public school bargainer on either side of the table may wish to consider. The only necessity is to study the private sector with an open mind.

ONE CAN develop an almost never-ending list of parallels between collective bargaining in the private sector of the economy and activity by teacher organizations.

Reasons for Organizing

Private sector employees organized for a variety of reasons including a desire for job security, improved wages and working conditions, and the need for a united work force in dealing with larger and more impersonal employers. Public employees have organized around similar issues. The need for industrial democracy and effective po-

litical representation¹ has been present in both private sector bargaining and public school negotiations.

Impact of Legislation

Another parallel can be drawn from the impact of legislation. Large numbers of private sector employees were not organized until various pieces of federal legislation made organizing and bargaining possible (Norris-LaGuardia Act, Wagner Act). Prior to the passage of enabling legislation by various states beginning in the middle 1960's most public school teachers did not work under collective bargaining contracts. School employees who were able to obtain a

¹ Henry H. Wellington and Ralph K. Winter, Jr. "The Limits of Collective Bargaining in Public Employment." *Yale Law Journal* 78: 115; June 1969.

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collective bargaining contract prior to the passage of enabling legislation were almost always urban-area teachers or highly skilled maintenance and stationary engineers.

Three Phase Continuum

Collective bargaining in the private sector can be marked by three stages: (a) an organizational phase, (b) a contract formulation phase, and (c) a contract administration phase.² Elements of each phase can be identified in any given bargaining relationship.

Organizing Phase

The organizing phase is concerned with recognition issues. Defining an appropriate unit of employees, establishing an organization as a bona fide labor organization as contrasted with a company union, conducting authorization and card verification or

secret ballot elections, and the initial problems of what is or should be negotiable are characteristic of the organizational phase of bargaining. The continued presence of a rival employee organization, a jurisdictional dispute between two unions, a membership raid, or a decertification drive can prolong the organizational phase or reintroduce this phase into a bargaining relationship that has progressed further along the continuum.

Contract Formulation Phase

The contract formulation stage is marked by union and management efforts to learn how to negotiate. The scope of bargaining and union security are key issues. Specific problems involving the role, power, and duties of an arbitrator under a given grievance machinery; the scope of bargaining, sub-contracting clauses, the role of seniority in lay-offs, recall, and promotion; hiring and promotion policies with regard to women and minority employees are examples of the issues which usually surface but need not be definitively settled during this period.

² James J. Healy, editor. *Creative Collective Bargaining*. Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1965. p. 36.

Contract Administration Phase

Contract administration is the third phase in the collective bargaining maturation process. It is generally characterized by relatively long term contracts, the effective use of the grievance machinery, and the continuous use of the consultation process. Bargaining is not easier during this phase but the parties are experienced and know the limitation of collective bargaining.

The public school bargaining relationship can be plotted on such a continuum.

Much has been written about how different public sector bargaining is from private sector bargaining.³ I leave it to others to detail this since I am convinced that most of these differences are either a matter of degree or an actual, measurable difference but one which does not basically affect the bargaining process. There is, however, at least one difference which can have a dramatic effect. Militant unions will by-pass management to visit directly with legislators and elected officials who control budgets and legislation.⁴ Opportunities for these political end-runs are usually not present in private sector bargaining situations.

Similarities Between Sectors

In the broad areas of unfair labor practices, contract administration, and bargaining scope, private sector experience usually sets precedent. Many experienced education bargainers would no doubt agree that public sector bargaining has developed and will continue to develop along the same lines as bargaining in private industry.⁵

³ Arvid Anderson. "The U.S. Experience in Collective Bargaining in Public Employment." In: Kenneth O. Warner, editor. *Collective Bargaining in the Public Service: Theory & Practice*. Chicago: Public Personnel Association, 1967. p. 22.

Alice H. Cook. *Public Employee Bargaining in New York City*. Reprint 290. Ithaca: New York State School of Industrial and Labor Relations, Cornell University, p. 267. (Two of hundreds of citations possible.)

⁴ Anderson, *op. cit.*, p. 38.

⁵ Eric J. Schmertz. "Grievance Arbitration in the Public Sector." *Proceedings of the NYU 23rd Annual Conference on Labor*. New York: New York University, 1971. p. 388.

Pattern bargaining, where certain settlements become key bargains widely emulated though rarely exceeded, exists in public school bargaining.⁶ The continuous nature of the bargaining process with the signing of a contract as the beginning rather than the end of the relationship is now understood, albeit begrudgingly, by many school bargainers.⁷ Educators have discovered that effective contract administration can be a positive influence on the parties at the bargaining table.⁸

What Is Next?

Efforts are already underway to bring regional bargaining (coordinated, coalition, multi-employer, etc.) into K-12 districts. Statewide bargaining with a master agreement with or without supplemental local agreements has been predicted for New York State public school teachers in the near future. These suggestions are influenced by private sector experience with similar structures.

Let me close with a reminder about the private sector: "There is no THE private sector model. Collective bargaining in the private sector has always been characterized by diversity."⁹ The private sector experience is complex enough to provide support for nearly anything a public school bargainer on either side of the table may wish to consider. To profit from this experience one must merely study the private sector with an open mind. □

⁶ John E. Drotning and David B. Lipsky. *The Outcome of Impasse Procedures in New York Schools Under the Taylor Law*. Reprint 309. Ithaca: New York State School of Industrial and Labor Relations, Cornell University. p. 94.

⁷ Matthew A. Kelly. *Techniques for Minimizing Crises*. Reprint 23. Amherst: University of Massachusetts. p. 99.

⁸ C. L. McLeod. "Interpreting and Implementing the Collective Agreement." In: Kenneth O. Warner, editor. *Collective Bargaining in the Public Service: Theory & Practice*. Chicago: Public Personnel Association, 1967. p. 98.

⁹ William Weinberg. "Structural Realities of Collective Bargaining in Public Education." *The Journal of the College and University Personnel Association* 25 (2): 4-5; April 1974.

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