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# The Open Bargaining Model: An Introduction to "Where Does the Public Fit into the Collective Bargaining Process?"

By HUGH D. JASCOURT\*

The very act of fitting collective bargaining into the public sector has caused a challenging of private sector labor relations precepts. Since the public has a more direct awareness of the results of collective bargaining by public institutions there have been waves of interest or concern, from time to time, with the issue of where the public fits into the traditional bilateral model of collective bargaining.

At this moment in time, the public is particularly sensitive to the outcomes of the negotiation process. Some of this is due to media attention to declining Scholastic Aptitude Test scores. More of it is due to just plain economics. Many schools and universities are plagued by fiscal crisis, which is characterized by inflation coupled with legislated limits on budgets. Negotiated agreements necessarily will impact on management's choices in budgetary allocations and, therefore, the nature of school services that will be provided, such as which subjects will be on the curriculum, classroom size, or whether certain athletic teams will no longer be fielded. Or the decisions may be translated into higher taxes. Often higher taxes are accompanied by slashing to services at the same time.

No matter how deftly accomplished these penny pinching measures have to displease someone. And those who are displeased start looking for someone to blame. Generally, collective bargaining is conducted behind closed doors. With the recoiling from the shocks of cover ups pertaining to Vietnam, Watergate, the Nixon tapes and now Abscam, Government does not exactly engender trust, especially when the deals which may be affecting their interests are secret. Consequently, it is not unusual for there to be a public perception that school board members or trustees have sold out the public interest to buy union support for coming elections or to pay them off for prior elections. Others believe that public rights have been given away by ineptness or to buy labor "peace." Others feel that the negotiators or managers do not share the same concern as the public.

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It is because of this growing public concern that we have accepted for publication Professor John Ralph Pisapia's unsolicited paper entitled "The Open Bargaining Model" which deals with a system to give the public a role to protect its interest. The publication of this article is in no way an endorsement of Professor Pisapia's assumptions that the public has been disenfranchised, that the public spotlight is a panacea or cure-all, or that the unions with whom schools or universities negotiate have taken (or are likely to take) advantage of their management counterparts at the bargaining table. Instead the publication of the article is a recognition of the need for discussion of this issue at a critical time. It reflects a hope that thought can be stimulated at a time when the institution of public sector bargaining can easily be modified if necessary. To assist in putting Professor Pisapia's thoughts in perspective we have prevailed upon two academicians-arbitrators, one on the East Coast and one on the West Coast, to critique the Open Bargaining Model. Although Professor Joseph Loewenberg and Philip Tamoush, (who had spent considerable time in assisting the advisory committee whose proposals, in large part, were adopted by the California legislature), admirably achieve my goals in providing a basis for you, the reader, to test the Open Bargaining Model, I would be derelict-after having posed the problem-if I did not offer some thoughts by which to also test Professor Pisapia's assumptions and thesis.

One way of viewing the situation is that those on school boards, whether elected or appointed, generally want to retain their office. Retention is likely to be affected by a public perception that they approved a negotiated agreement which caused some "bad" result. For a while unions may be used as the scapegoat, but sooner or later, as Professor Pisapia points out, the public contacts or pressures the school not the union. Thus, the critical component of any model is the means the school board uses to ascertain the impact of negotiations and to determine the public response to them before they are effectuated.

Using this as a framework, a number of questions need to be addressed, if not answered, in order to judge the Open Bargaining Model:

1. Before the advent of collective bargaining,
  - a. How was the "public interest" identified? (and how has this changed under collective bargaining? And how will it change under the model?)
  - b. Was the public input effective previously? (A current test is the ability of the public to affect those matters which management has refrained from negotiation upon in order to maintain its accountability to the public)
2. Why is not the election process a sufficient vehicle for the public to indicate its concerns? And even if it is, does the time lag require too high a price?
3. Who determines which public groups or spokespersons are representative, especially since most special interests are not even structured in a way to be truly representative?
4. Is the union a monolith at the ballot box?
5. Specifically, what will disclosure do? The assumption is that collective bargaining will be viewed with reason and will produce citizenwide responses based on reason. Can we reasonably expect that? If not what result is probable and does that alter the need for such types of disclosure?

6. As a counterquestion it should be asked whether, in contrast to the prenegotiation era, the parties, in an effort to arouse public support for their position, have made the public more aware of cost factors, impacts, and managerial techniques than they previously were—or even cared out about.
7. Does the public even care except in times of crisis?

The public gets involved when there is impasse or a strike. This is likely to affect the positions of the parties since it is public pressure not economic pressure that wins strikes. The other side of the coin is that the public may be aware of impacts only when the media reports them and such impacts are news only in a time of crisis. The basic question is that if the Open Model is valid, if the “public” fails to use it, is the obligation to the public really met?

8. If collective bargaining is also in the public interest (recognizing that teacher organizations are not newcomers on the scene, although they operated primarily as lobbyists), will public scrutiny techniques so modify the negotiations process that it will be ineffective and that the results of the scrutiny will not be obtained either? For example, the management side may not reveal its full hand to the union, but the public may recognize the cards not played and reveal them to the unions. A more likely example is that of the union attempting to justify its position by showing impact on the public and not on its membership with the consequence that the union negotiator will have a more difficult time to back down on class room size or to make compromises to meet cost factors and teaching goals of management.

In short, the basic question involves the ability of the public to meaningfully affect decisions that affect them while still giving the employees of public schools and universities true participation in establishing the terms of their employment and their working conditions. It isn't even an easy question to state. The answer is even more difficult to express. Hopefully, the following articles will make clearer the full ramifications of the questions and will make it more possible to arrive at an answer based on pragmatic reality.

