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Since the past is the prologue for the future, it is appropriate to briefly assess the last decade before making predictions about the next. In retrospect, the decade of the 1970's can be divided into two distinct parts. During the first half of the decade an unusually large amount of legislation was enacted, accompanied by tremendous organizing activity. From 1970 through 1975, 16 states enacted legislation extending for the first time collective bargaining rights to certificated and/or non-certificated personnel.[1] Moreover, in 1970 the NLRB reversed long-standing precedent and asserted jurisdiction over private colleges and universities.[2] As a result of these two developments, there were wide ranging efforts to organize educational personnel, many of which were successful. This is reflected in the fact that unions such as the American Federation of Teachers experienced rather sizable growth between 1970 and 1975.

The legislative and organizational thrusts of the first half of the 1970's stand in marked contrast to the second half of the 1970's. Since 1975, only two states—California and Tennessee—enacted legislation granting certificated and/or non-certificated personnel bargaining rights. Moreover, while efforts to organize educational personnel continued, the rapid pace of organization experienced during the first half of the decade slackened considerably.

There was also a very noticeable change in educational negotiations

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[1] Alaska (teachers, 1973; other school employees, 1972), Florida (1974), Hawaii (1970), Idaho (teachers, 1971), Indiana (teachers, 1971), Iowa (1974), Kansas (teachers, 1970); other school employees, 1971), Maine (university employees, 1975), Massachusetts (1973), Minnesota (1971), Montana (1973), New Hampshire (1975), Oklahoma (teachers, 1971), Pennsylvania (1970), Vermont (non-certificated employees, 1973), Washington (community college academic personnel, 1971); classified higher education personnel, 1971; certificated personnel, 1975). If just the date is in parenthesis it means that the state law covers all school employees, usually as part of one comprehensive statute.

[2] Cornell University, 184 NLRB 329 (1970).

between the first and last half of the 1970's. During the first half of the decade, unions and associations representing educational employees frequently made significant gains on both economic and non-economic issues. During the last half of the decade, the financial exigency confronted by many public and private sector educational institutions resulted in both fewer dollars for salaries and fewer jobs, regardless of whether the employees in question were organized. As a result, during the last half of the 1970's there was as much, if not more, emphasis in negotiations on job security as on salaries and benefits. Reductions in force which were practically unheard of prior to 1975, became standard operating procedure for many schools and universities. The resulting hard times also stiffened the back of management negotiators. Thus, during the last half of the 1970's management negotiators not only increasingly resisted union initiatives for more benefits and job security, but also boldly took the initiative to negotiate back managerial prerogatives that had been agreed to in prior negotiations.

During the first part of the 1980's, and perhaps beyond, I see a continuation of the trends established during the last half of the 1970's. Let me elaborate in three specific areas: legislation, organizing, and negotiations.

Legislation

During the 1980's I doubt that many additional states will enact legislation which for the first time extends collective bargaining rights to educational personnel. The most likely prospects are in three states outside the South that do not presently have legislation: Illinois, Missouri, and Ohio. The primary legislative focus at the state and local level during the 1980's will be on, as it was during the last half of the 1970's, modifications or revisions to *existing* legislation rather than the exactment of new statutes.

During the first part of the 1970's considerable attention was given to the possible enactment of federal collective bargaining legislation that would apply at the state and local level.[3] The prospect for the enactment of such legislation was dealt a severe blow by the Supreme Court's 1976 decision in *National League of Cities v. Usery*.[4] Although the Court's decision was limited to holding that Congress did not have the authority under the Commerce Clause to extend the

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[3] *See generally,* FEDERAL LEGISLATION FOR PUBLIC SECTOR COLLECTIVE BARGAINING (T. Colosi & S. Rynecki, eds. 1975).

[4] 426 U.S. 833 (1976).

Fair Labor Standards Act to state and local government employees employed in integral governmental functions, it was rather uniformly interpreted to mean that the enactment of federal collective bargaining legislation would likewise be unconstitutional. With Ronald Reagan in the White House and a considerably more conservative Congress, the chances for the enactment of federal legislation—even assuming the constitutional obstacles could be overcome[5]—are virtually non-existent. It certainly will not happen in the first half of the 1980's and I doubt very much that the prospects will be much better during the second half of the decade.

Organizing

While the unions and associations that seek to represent educational personnel will continue their efforts to organize the unorganized, the halcyon days of the late 1960's and early 1970's will not be repeated. In many jurisdictions the saturation point has been reached, *i.e.*, a substantial majority of the educational employees eligible for organization have already been organized. While the percentage of organized faculty at private colleges and universities is considerably lower than among public colleges and universities, the relatively easy organizing targets have been, for the most part, picked off. The remaining private colleges and universities will be considerably harder to organize, especially in light of the Supreme Court's *Yeshiva* decision.[6] The extent and rate of organization will also be affected by decertification efforts. While decertification efforts among educational personnel have been relatively few and far between to date, there could well be an upswing in decertification efforts, perhaps paralleling what is now happening in the private sector of the economy, especially if employees perceive—rightly or wrongly—that they are not gaining as a result of collective bargaining.

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[5] *See* Shaller, "*The Constitutionality of a Federal Collective Bargaining Statute for State and Local Employees*," 29 LAB. L.J. 594 (1978); Chanin, "*Can a Federal Collective Bargaining Statute for Public Employees Meet the Requirements of* National League of Cities v. Usery?: *A Union Perspective*," 6 J.L. & EDUC. 493 (1977); Weil & Manas, "*Can a Federal Collective Bargaining Statute for Public Employees Meet the Requirements of* National League of Cities v. Usery?: *A Management Perspective*," 6 J.L. & EDUC. 515 (1977).

[6] Yeshiva University v. Yeshiva University Faculty Association, 444 U.S. 672 (1980). In *Yeshiva* the Supreme Court held that university faculty members who participated in the formulation and carrying out of university policy were excluded from the category of employees entitled to the benefits of collective bargaining under the National Labor Relations Act.

The ability of teacher organizations to organize parochial school teachers was significantly restricted by the Supreme Court's decision in NLRB v. Catholic Bishop of Chicago, 99 S. Ct. 1313 (1979), in which the Court held that the NLRB did not have the authority to exercise jurisdiction over lay faculty employed by church-operated schools.

Negotiations

For at least the first part of the 1980's negotiations for educational personnel will continue to be plagued by a lack of adequate financial resources and declining job opportunities. These two circumstances, especially in the present context of double digit inflation, will continue to make negotiations difficult. Whether this will lead to increased confrontation or increased cooperation remains to be seen. Hanging in balance may be the future of public education in this country, at least as we know it today.

Several years ago during the midst of the New York City fiscal crisis, Albert Shanker, the President of the AFT, suggested that when the ship was sinking it was not the time to insist on normal adversarial collective bargaining. In many respects, the same general observation could be made today with respect to educational negotiations in many states and communities. The acrimony and name-calling that accompanies far too many teacher negotiations is not only shortshighted but contrary to the best interests of both parties. There is much truth in the following observation by Albert Shanker:

> In the conflict between teachers, administrators and school boards, each side believes it can gain strength by weakening the other side. So we say terrible things about each other. And we have all been remarkably successful in convincing the public how horrible we all are and that the schools are not a good investment. . . .[7]

The 1980's will be critical in determining whether we learn to subordinate and downplay the adversarial aspects of collective bargaining and accentuate cooperation where it is clearly in the interests of both parties to do so.

The stakes are high. If continued confrontation rather than cooperation marks educational negotiations during the 1980's, the following are some of the likely results:

—Further loss of public confidence in public education.
—Reduced support for adequate funding.
—Further acceleration of the trend towards private schools.
—Passage of legislation granting tuition tax credit for privately operated schools and colleges.

It should not be overlooked that there is a degree of innerplay among the foregoing. For example, there is undoubtedly a correlation between a lower public confidence in schools and a higher enrollment in private or parochial schools. Moreover, with a higher enrollment in

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[7] *The School Administrator*, May 1975, at p. 1.

non-public schools, the greater the pressure for tuition tax credit and/or other forms of financial aid and assistance for private schools. The latter could lead, in turn, to reduced levels of funding for public education. While cooperation rather than confrontation would not, by itself, reverse the trend, it would go a long way in that direction.[8]

With collective bargaining being as prevalent as it is in public education today, the question might well be whether public education can survive collective bargaining. As a supporter of collective bargaining where a majority of the non-supervisory employees in an appropriate unit desire to engage in the process, I sincerely hope that the parties will be able to accommodate each other's interests and, in turn, gain the necessary public support that they both need to survive and prosper.

Other Thoughts Concerning the 1980's

During the 1980's there are a number of other areas that should be watched, including political action by teacher unions and associations, organization of supervisory and administrative personnel, and the development of impasse procedures.

Politics

The recent emergence of teacher unions and associations, and especially the National Education Association, in partisan politics promises to continue unabated in the 1980's. Whereas the NEA once shunned partisan politics, today it is highly involved. At the democratic national convention in 1980, the NEA had 302 delegates and 162 alternatives, an overwhelming number of whom supported President Carter.[9] These delegates, as the *Wall Street Journal* observed, were "the largest and most tightly controlled block of interest-group convention votes. . . ."[10]

Whether the highly partisan role played by both the NEA and the AFT augers well for education in the 1980's remains to be seen. As in physics, for each action there tends to be an opposite reaction. It should hardly come as any surprise, then, that the heightened political activity by the NEA and AFT has given stimulus to the organiza-

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[8] There are, to be sure, other factors unrelated to collective bargaining which have led to reduced support for public education. Among these would be mandatory school busing to achieve pupil integration.

[9] Merry, "Teacher Group's Clout on Carter's Behalf Is New Brand of Special-Interest Politics," *Wall St. J.*, August 13, 1980.

[10] *Id.*

tion of opposing interest groups, including groups supporting measures similar to Proposition 13. My concern is that the increasingly partisan political role played by the NEA and the AFT may not redound to the interest of education generally.

Organization of Administrators

During the past decade a number of principals and other school administrators have sought and, in some instances, gained collective bargaining rights. In Minneapolis and Philadelphia, to cite but two examples, principals are represented by the Teamsters Union. In many instances principals and other school administrators have turned to collective bargaining in self-defense because some school boards have had a tendency to economize at the expense of those who are not covered by the collective bargaining process. As a result, the AFL in 1976 issued a charter to the American Federation of School Administrators and Supervisors.[11] Efforts to organize principals and school administrators will continue in the 1980's and such efforts will in many instances be successful *unless school boards recognize their importance and compensate them accordingly.*

Impasse Procedures

During the last half of the 1970's the debate over impasse procedures frequently was limited to considering either compulsory arbitration or the right to strike. As paradoxical as it may seem, a case can be made that there is a mini-trend towards both alternatives. Thus, whereas no state had extended the legal right to strike to any category of public employees prior to 1970, there are now eight states that grant some or all categories of public employees (typically, including educational personnel) the right to strike in certain circumstances.[12] At the same time there are 20 states—five times the number prior to 1970—that have enacted statutes providing for compulsory arbitration of unresolved collective bargaining disputes for some or all categories of public employees.[13] Although there are

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[11] 666 GERR B-1 (July 19, 1976).

[12] Alaska, Hawaii, Minnesota, Montana, Oregon, Pennsylvania, Vermont, and Wisconsin. All of these states except Montana enacted legislation which specifically grants some categories of public employees the right to strike. The right of public employees in Montana to strike was established by court decision. State of Montana v. Public Employees Craft Council of Montana, 529 P.2d 785, 88 LRRM 2012 (Mont. S. Ct. 1974).

[13] Alaska, Connecticut, Delaware, Hawaii, Iowa, Maine, Massachusetts, Minnesota, Montana, Nebraska, Nevada, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Washington, Wisconsin and Wyoming. Only Nebraska, Pennsylvania, Rhode Island and Wyoming had en-

many alternatives other than compulsory arbitration or the strike as the terminal step of an impasse procedure, the debate in the 1980's will probably focus on these two alternatives.

In terms of these two alternatives, some interesting things are happening. The various teacher groups which adamantly and uniformly opposed compulsory arbitration in favor of gaining the right to strike, are having second thoughts. While their official public position would still seem to favor obtaining the legal right to strike, their actions belie this official position. The NEA affiliates in Wisconsin and Michigan, for example, have lobbied in recent years for compulsory arbitration. Moreover, in the litigation over the constitutionality of compulsory arbitration statutes in Connecticut and Minnesota the NEA affiliates in these two states argued in support of the compulsory arbitration statutes.[14] I suspect that during the 1980's we will see more lobbying efforts by unions and associations representing educational personnel in support of compulsory arbitration. At the same time, many public employers, including many school boards and school management organizations, have dropped their once adamant opposition to the extension of the right to strike, at least in those circumstances where the only other alternative being seriously considered is compulsory arbitration.

While I may be wrong, I believe the tide is beginning to run against compulsory arbitration. In the last two years, voters in four large cities—Cincinnati, Denver, Phoenix, and San Diego—voted against compulsory arbitration. And just this past November voters in Massachusetts adopted the so-called "Prop 2-½" which included among its provisions, repeal of the Massachusetts compulsory arbitration law for police and fire fighters.[15] It would appear that the public is beginning to recognize that compulsory arbitration involves decisions being made by unelected third parties who have no political accountability to the public at large, decisions which frequently translate into tax increases. If my forecast is accurate, it will mean that more states during the 1980's will grant public employees, or least nonessential public employees, the right to strike rather than legislate compulsory arbitration.

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acted compulsory interest arbitration statutes prior to 1970.

[14] Town of Berlin v. Santaguida, 1979-80 PBC ¶ 36,998 (Conn. 1980); City of Richfield v. IAFF Local 1215, 276 N.W.2d 42, 1979-80 PBC ¶ 36,501 (Minn. 1979).

[15] 889 GERR 13 (Nov. 24, 1980).

Summary

The first part of the 1980's, probably through 1984-85, will probably see a continuation of trends that began during the last half of the 1970's: less legislation, a slackened pace of organization, and increasingly difficult negotiations. It will also see continued partisan political involvement by both the NEA and AFT, stepped up efforts to organize building principals and other school administrators, and further debate on whether compulsory arbitration or the strike should be the last step in the impasse procedure. The overriding issue, however, may turn out to be whether the parties can successfully accommodate collective bargaining to the economic realities of the 1980's and, in turn, regain the public's confidence in their ability to deliver quality educational services in an efficient and productive manner. The resolution of this issue in the 1980's may well make all the other issues pale in terms of their significance.