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A Public Employee Representative Perspective

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INTRODUCTIONS

A STATE MANAGEMENT PERSPECTIVE

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Perhaps I should state my point of view at the outset so there can be no misunderstanding of where I stand on this important issue. I oppose the extension of compulsory collective bargaining to employees in the public service. I further oppose extending to employees in the public service the concomitant right to engage in concerted activity, that is, the right to strike. I advocate an enlightened and pragmatic approach to the vexing problems of employment in the public service, and I encourage all public administrators to shoulder fully their responsibilities as a part of government to engage in open and frank dialogue with their employees in an effort to identify and resolve their problems as they arise. Common sense, my understanding of the dynamics of the democratic process, and my own experience in government have all converged to reenforce for me the basic correctness of my point of view.

Collective bargaining was designed to meet the needs of labor and management in the private sector. In some portions of the private sector, it has worked reasonably well in meeting those needs; however, it is an inappropriate system to be applied to employment in the public sector. The National Labor Relations Act is a collective bargaining model resting on certain assumptions about the nature of the employment relationship in the private sector. The most important of these assumptions is that employment in the private sector is essentially adversarial. Collective bargaining was thus designed to right the balance between management and labor by capitalizing on the adversarial nature of their relationship. The unrestrained power of manage-

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ment was regulated, and labor, by means of regulations, was granted the power to raise itself to relative equality with management. Arms-length negotiation could then proceed and presumably eliminate the employment evils perceived to exist in the private sector. This law was passed in an atmosphere in the 1930's when labor unions were relatively weak and when, at least prior to the Great Depression, an imbalance of economic power rested in the hands of employers, some of whom were prone to abuse that power in the growing-pain years of the Industrial Revolution (a situation which is imminently more complex and intertwined with all kinds of crosscurrents of the era about which volumes have been and no doubt will be written). For our purposes it is sufficient to note that the apparent abuses of some employers provided a convenient vehicle for justifying far-reaching, even revolutionary, change in our whole socio-economic system insofar as the private sector was concerned. While the real effectiveness of collective bargaining in the private sector leaves many questions unanswered and debatable, collective bargaining does exist in many quarters and is an ongoing technique of labor relations. The fact that less than twenty-five percent of the employees in the private sector are covered by collective bargaining agreements forty-one years after the enactment of the National Labor Relations Act may raise some legitimate questions as to its viability. The fact that over seventy-five percent of the private work force has and is faring well without the benefit of collective bargaining, and through voluntary choice, surely indicates that even voluntary collective bargaining in the private sector is far from the sole or even the most desirable system for dealing with the problems and issues arising out of the employment relationship. Compulsory unionism or compulsory collective bargaining should have no place in our society. Collective bargaining as a concept should have no place in the public sector.

To the extent that collective bargaining has succeeded in the private sector, it has done so for the following reasons. In a competitive free market economy, some goods and services are not essential, and the consumer, when deprived of these goods and services, quickly realizes that he does not need them and learns to get by without them. Those goods and services that are essential usually have numerous sources of supply; when deprived, either temporarily or permanently, of a particular source of goods and services, the consumer can turn to an alternative source of supply. Business decisions are economic decisions, and manage-

ment has the authority to bind the enterprise in the course of collective bargaining; for better or for worse, the concessions made by management in collective bargaining affect the economic health of the business. The effectiveness of management is measured by its ability to maintain the economic health of the enterprise; thus the manager knows that his survival depends on the business decisions he makes. Organized labor, when acting responsibly, will exact as much from management as management is willing to concede, but will not act to the detriment of the enterprise. Labor shares the interest of management in the economic health of the enterprise; accordingly, labor should be concerned with the stresses which influence the long-range economic health of the business.

To the extent that collective bargaining has failed in the private sector, it has done so because one or more of these elements have been distorted or ignored, or because a foreign element has been injected into the business context. For example, governmental subsidy of strikers, through food stamp programs, welfare payments, and unemployment pay during labor disputes, clearly disrupts any semblance of balance at the bargaining table. But the failures of collective bargaining in the private sector are normally limited to certain enterprises or industries, and although the failures may be disastrous to those industries, they ordinarily do not have a severe impact on the economy. There are some striking exceptions to this proposition where labor disputes of serious national impact are involved. Congress recognized the crippling effect a strike could have upon the nation and enacted the Taft-Hartley amendments to the labor act to provide the President with power to seek temporary injunctions against strikes which create national emergencies.

The unique characteristics of the services offered by the public sector are analogous to those situations in the private sector in which collective bargaining is known to fail. For example, most goods and particularly services supplied by government are essential; however, government has a monopoly in most of these goods and services, and there are no alternative sources of supply. Therefore, the public employer and the public employees supplying these goods and services need have little fear their enterprise will fail regardless of how badly they may distort the nature of the employment relationship through irresponsible collective bargaining in the political context of the public sector. The same is true even with respect to goods and services having alternative

sources of supply, such as schools and hospitals; the elimination of the public source effectively eliminates all sources of supply for large segments of the population. In other words, the human motivations and market stresses which tend to keep collective bargaining within bounds in the private sector are extremely weak in the public sector, if not absent altogether. Consequently, one obviously cannot predict that collective bargaining will operate in the same way or enjoy the same measure of success in the public sector as it has in the private sector. Realistically, one can usually predict the opposite result, as evidenced by the plight of New York City.

Beyond the practical considerations, however, there are theoretical considerations, emergent from the very foundations of our constitutional form of representative government, which when properly weighted, must preclude a collective bargaining solution to employment problems in the public sector. Government is the sovereign power of the people exercised through their elected representatives. Thus the people are, in a very real sense, their own employer. There is no two-way adversarial relationship in the public sector such as that which exists in the private sector. What one does encounter in the public sector, however, is a host of special interest groups, most of them legitimate and most with worthy causes, all competing for their share of the public's limited resources. To the extent that public employees perceive their employment relationship as adversarial, such a perception is not uncommon among members of a special interest group whose demands are at odds with other special interest groups. The core of the matter is that the decisions that determine the allocation or application of public resources are necessarily made by duly elected public officials free of the coercion and duress inherent in private sector type collective bargaining.

Although the sovereign power of the people is exercised through their elected representatives, the sovereignty itself continues to repose in the people. Consequently, elected representatives cannot delegate any portion of that sovereignty or the exercise of it to any third party over whom neither the people nor their elected representatives can exercise effective control. To extend exclusive recognition to organizations claiming to represent public employees and to obligate the public employer to engage in collective bargaining with such organizations would diminish or destroy the sovereign power of the people. Large, militant groups of organized public employees have the potential of asserting

themselves as a fourth force in government beyond the check or even the reach of the executive, legislative, and judicial branches—a fourth force in government, which derives its authority, not from a proper delegation of the sovereign power of the people, but from the expropriation of that sovereign power—a fourth force in government with a stranglehold of economic power through the withholding of essential services which would enable it to impose its will forcefully upon the society regardless of merit and regardless of the desires or interests of the electorate.

This is particularly true when collective bargaining is accompanied by the right to strike, and collective bargaining cannot function without the strike weapon. The strike is a necessary concomitant of compulsory collective bargaining. It is the ultimate, the effective weapon; it gives organized labor the leverage to exact concessions to its demands. The fundamental objection to granting public employees any right to strike is based again on the fundamental concept of our American form of government. To permit strikes against the government is to abdicate the elective process of representative government. The basic fact of government is that it is responsible to the people and responsible through the ballot box. We elect representatives at all levels of government who are charged with the responsibility of carrying on the functions which are proper for government to discharge. To this end they are responsible for the allocation of tax resources. To permit these decisions to be coerced or even seriously influenced through the threat of, or the existence of, a strike is to usurp the role of the elected representatives of the people. The notion that this result can be avoided by granting collective bargaining rights which substitute compulsory binding arbitration for the strike is naive indeed. Most union officials recognize this. Binding arbitration, itself a delegation of the exercise of sovereign power beyond the control of the elected representative, is a successful substitute for the strike only as long as the militant public employee union or the affected workers are satisfied with the results. To reject arbitration and, instead, to extend to public employees the so-called right-to-strike is to place in their hands the very instrument of expropriation.

In the basic scheme of representative government, the responsibility rests with the elected officials who make their decisions in a political rather than an economic setting. To preserve sovereign power in the people, government, unlike a private enterprise, is composed of diverse centers of power. The executive

branch of government cannot bind the legislative branch to appropriate the funds necessary to meet the obligations of a collective bargaining agreement. The decisions made by government, unlike those decisions made in private enterprise, are essentially political rather than economic. Organized public employees exercising bargaining rights, augmented by strike activity whether lawful or not, are thus engaged in influencing or forcing political decisions as a special interest group. But among the competing groups in the public sector, there is only one with the opportunity to seek its particular objectives by withholding its service from the public—the public employees. With the power collective bargaining gives them, they are able to coerce political decisions suitable to them at the expense of others dependent upon government and its resources and at the expense of the taxpayer who is expected to pay for the consequences of such decisions.

Those who advocate collective bargaining in the public sector do not attempt to resolve the political complexities of imposing such a scheme on our system of representative government. They simply avoid the problem by saying that the sentiments just expressed are symptomatic of an outmoded view of government that no longer comports with reality. They say, in effect, that government today is a pervasive and self-sustaining institution, which does not answer in any real sense to anyone. While that may seem to be in reality what government has become, the argument does not meet the basic objections raised. The fact that the fundamental principles of representative government have already been compromised to some extent does not justify compromising them further. If government does not answer to the people, then the solution is to make it more accountable; the solution is not to abandon to a greater degree the requirement that it be accountable. Many of those who advocate compulsory collective bargaining in the public sector are willing to compromise further the fundamental principles on which our government rests; they are willing to abandon altogether the requirement that government be accountable to the people. They believe so devoutly in the benefits of collective bargaining that they are determined to have it, whatever the cost, and the cost is high, unacceptably high as a matter of principle.

Notwithstanding the glowing theories and optimistic prophecies of those who have advocated it, collective bargaining for public employees has not worked in those public areas which have tried it. Recent studies have shown that, in states having compre-

hensive bargaining laws including the right to strike, public employee unions have not used the strike responsibly as the advocates of such legislation had fondly hoped they would. In states having comprehensive collective bargaining laws that establish dispute-resolution machinery other than the strike, strikes have not decreased but have actually increased, in most instances drastically and almost immediately. In none of these states has collective bargaining brought about the kind of labor peace it was intended to produce. In fact, labor unrest has increased sharply and grown more virulent, and the efficiency and quality of government services have declined.

Not only is collective bargaining inappropriate for the public sector and a failure in those states which have tried it, it is also an unnecessary and excessive way of dealing with employment problems in the public sector. Public employees are clearly not exploited, weak, and subjugated as some of their counterparts in the private sector were perceived to be in the early days of this century. Because their employers are subject to constitutional restraints on governmental action, and because of the very nature of government, public employees enjoy a privileged status and are better protected in most respects than employees in the private sector. Public employees have the first amendment right to free association and can belong to a labor union or any other lawful organization they choose; employees in the private sector have only a statutory right to belong to a labor organization. Because their employers may not act arbitrarily or capriciously, public employees can be disciplined and discharged only for cause. Moreover, when disciplined or discharged, public employees are entitled to legal and constitutional due process, that is, notice of the charges against them and an opportunity to be heard. Employees in the private sector are not entitled to due process from their employers, and the National Labor Relations Act protects them only from discrimination because they exercise the rights guaranteed them by the Act. Collective bargaining can thus contribute nothing toward the protection of the rights of individual public employees.

Because public employment is less susceptible to fluctuations in the economy than is private industry, public employment offers greater job security than employment in the private sector. Government agencies, once established, rarely go out of business. Moreover, until recently, layoffs in the public sector were extremely rare. Many of the recent public employee layoffs, how-

ever, were necessary to meet the wage and benefit demands of the public employee unions. Even so, the percentage of public employees laid off was still dramatically smaller than the percentage of public employees laid off in the private sector, almost to the point of being negligible. Also, recent studies explode the old myth that employees in the public service forego the wages and benefits they could earn in the private sector in exchange for the job security of public employment. Public employees in most communities throughout the country now earn wages and benefits equal to, and in a significant number of cases greater than, their counterparts in the private sector. These are little known facts, but they are true.

What has been said here should in no way be interpreted to suggest that public employees are or should be second class citizens. Quite the contrary is true in every respect. Every employee should be entitled to work under decent conditions and for an employer who has an enlightened understanding of contemporary employment practices. Public employers should, therefore, develop and implement reasonable work rules and personnel procedures to guide those who make such employment decisions as hiring, promotion, and merit increases. Many potential problems can be prevented by implementing personnel procedures carefully designed to protect the legitimate interests of employees. Public employees should also provide training for supervisors; a properly trained supervisor with clear authority and support from his superiors can serve as the catalyst for sound employee relations; a properly trained supervisor is less likely to generate controversy or to aggravate existing problems. When individual or group problems arise, the employees involved should have access to an effective grievance procedure, but the final authority must remain in those elected by the people.

Most employees who are attracted to collective bargaining are led to believe that they are powerless or exploited because they have no effective voice in shaping the terms and conditions of their employment. This should not be the case in public employment. The voices of public employees and others truly interested in their welfare should be heard. Their thinking, their problems, and their recommendations should, and indeed must, be considered. This can be accomplished and is accomplished in many ways. For example, it can be provided by the meet and confer model. The meet and confer model takes into account the nature of public employment as well as the existing rights of

public employees. It provides a method for effective two-way communications between the public employer and all interested groups, yet it imposes no more regulation than is necessary to make it work. It maintains the proper and necessary perspectives in public employee labor relationships.

We have had too much confrontation in the public sector in recent years. We have been governed long enough by the kind of mentality that merely reacts to crises as they arise. We do not need to foment more turmoil by imposing ill-advised, ill-considered, and ill-fitting regulatory schemes such as collective bargaining on employment in the public sector. What we want and need in the public sector is a careful, realistic, and reasonable appraisal of the needs that exist and the approaches and solutions that are appropriate to meet those needs. We must continue to develop and maintain a system of labor relations in the public sector which takes into account the interests of all concerned, protects the interests of all concerned, and, within the established governmental system, giving due consideration to the legitimate needs of the employees, delivers the essential services to the public for which government exists.