An analysis of the impasse procedures of the professional negotiations act for teachers in Montana
by Leroy John Casagranda

A thesis submitted in partial fulfillment of the requirements for the degree of DOCTOR OF EDUCATION
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Abstract:
The problem of this study was to compare, contrast and describe the attitudes of 108 randomly-selected members of negotiations teams toward the Impasse Procedures of the Professional Negotiations Act for Teachers in Montana, Code 75-6123. The sample consisted of four randomly- selected negotiators from each of twenty-seven school districts in Montana. Two negotiators represented school boards and two negotiators represented teacher associations in fourteen Class 1 and thirteen Class 2 size school districts.

The data was collected by questionnaire. A Chi-Square Test of Independence was applied to each statement to test for significance at the .05 level.

The conclusions of the study were: (1) Negotiators representing school boards favor the impasse provisions of the Negotiations Act for Teachers, (2) Negotiators representing teacher associations disapprove of the Impasse Provisions of the Professional Negotiations Act for Teachers, (3) Teacher negotiators and school board negotiators agree impasse procedures should strengthen the collective bargaining process, (4) Teacher negotiators and school board negotiators disagree that impasse procedures for teachers in Montana strengthens the collective bargaining process, provide for an acceptable alternate to the use of economic force, allows for an equitable settlement for both parties locked in dispute and that teachers should have the legal right to strike, and (5) Teacher negotiators favor strikes or binding arbitration as a replacement for voluntary arbitration.

Recommendations of this study were: (1) A task force consisting of teachers, school board members and legislators study the feasibility and merits of (a) allowing teachers the legal right to strike under certain conditions, (b) binding arbitration, and (c) other alternatives to the present impasse procedures; (2) A study be conducted in the schools of Montana that have used the impasse procedures; (3) Negotiators representing both parties meet regularly to search for methods of improving the process of collective bargaining and provide a more equitable settlement for both parties locked in dispute.

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TABLE OF CONTENTS

Chapter Page

LIST OF TABLES

ABSTRACT

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CHAPTER I

INTRODUCTION

The image of the teacher in American Society is rapidly changing. Once viewed as docile, loyal, passive employees, many teachers in today's society are organized, trained, financed and in a fighting mood to win higher salaries, better working conditions and a strong say in policy making (Muir, 1969). Teachers are demanding meaningful participation in areas of decision making which have traditionally been presumed to be exclusively the rights of school administrators. They are attempting, as a group, to control their own work (Corwin, 1965).

Teachers are becoming a discipline problem. They are demanding the right to make decisions concerning their personal welfare, the educational program for students, and governance of their profession. They are no longer willing to remain silent or engage in collective begging. Teachers, in other words, are becoming professionals (Myer, 1973).

The seriousness of the militant attitudes of teachers is demonstrated by the increasing number of teacher strikes. During an eight year period (1962-1970), 209 teacher strikes occurred, as compared to 110 teacher strikes during the previous twenty-two year period (1940-1962) (Alexander, 1971). Of the 209 strikes, 131 occurred during the 1968-1969 school year. In the 1969-1970 school year, there were 181 strikes. The following school year, 1970-1971, saw a decline

in strikes to 130 (Myers, 1973).

Teachers are now insisting upon having written agreements that govern their working conditions. (Myer, 1973:94) wrote:

> The number of teacher agreements has increased from a total of 1531 in 1967 to 3045 in 1969. In the 1970-1971 school year, an estimated 3522 public school systems with an enrollment of 1000 or more were operating under a written negotiation agreement. This is a 130 percent increase over 1966-1967.

Williams (1970) identified six major factors as having a marked influence on the attitude of teachers. They are: (1) Civil Disobedience, (2) The American Labor Movement, (3) Dissatisfaction with Schools, (4) The Changing Character of the Teaching Profession, (5) Inadequate Teacher Compensation, and (6) Teachers Seeking to Become Professionals. (Myer, 1973) added four factors: (1) Larger and More Bureaucratic Educational Systems, (2) Social Demands Toward More Democratic Institutions, (3) The Struggle Between the American Federation of Teachers (AFT) and The National Education Association (NEA), and (4) A Need for Teachers to Counteract the Power of School Boards and Create a State of Countervailing Power. While all the factors listed have had some influence on the rise of teacher militancy, Myers (1970) and Goodwin (1969) believed the struggle between the AFT and the NEA, and the attempt to establish a condition of countervailing power had been the two most significant factors.

Galbraith (1952) believed countervailing power occurred when one section of the economy gained a disproportionate amount of control or power over a second section. As this disproportionate state continued

to grow, the suppressed segment develops various mechanisms to equalize the power.

In the judgment of many teachers, school boards have historically held a disproportionate amount of control or power. Myer (1973: 90) wrote: "The board could act unilaterally without consultation, always have the last word, lack good faith, ignore divergence between policy and practice, and retain a power relationship that is unilateral, paternalistic, and authoritarian."

Thompson (1969:276) expanded the point:

> School districts hold the power of monopoly. They have used that power to control wages, working conditions, and to prevent teachers from having a meaningful role in policy formulation. In other words, management has used the power of monopoly to prevent an equivalent power relationship and a mutual power accommodation.

Teachers' organizations have embraced the mechanism of collective bargaining as the means of neutralizing school board control and perhaps reverse the condition of disproportionate power. The Taft-Hartley Act (1947) provided the following definition of collective bargaining:

> The performance of the mutual obligation of the employer and the representatives of the employee to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of any agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached, if requested by either party, but such obligation does not compel either party to a proposal or require the making of a concession.

A definition that applies more directly to education is:

> A set of procedures to provide an orderly method for teachers' associations and school boards--through professional channels--to negotiate on matters of common concern, to reach mutually satisfactory agreement on these matters, and to establish educational channels for mediation and appeal in the event of impasse (NEA, 1965:15).

Nolte (1970:13-14) contended collective bargaining increases the power of teachers. He wrote:

> The difference between the traditional approach to school personnel administration and collective bargaining is marked. Using collective bargaining, the board is required to consult with employees, communication is two-way, impasse procedures are provided, good faith bargaining is mandated, and a constant dialogue requires the board to discuss divergencies between policy and practice, and the power relationship is bilateral, cooperative and democratic.

The two major teacher organizations, the AFT and the NEA, today adopt a similar posture regarding the issue of collective bargaining. However, this has not historically been the case. During the first forty years of co-existence, the NEA and the AFT had opposite philosophies and policies regarding the relationship between school boards and teachers. The writer believes it is essential to briefly trace AFT and NEA policies concerning collective bargaining to sharpen the focus on teacher militancy and collective bargaining as it presently exists.

The AFT was formed in 1919 and today has a membership of about 400,000 teachers. Since its conception, the AFT has been affiliated with the AFL-CIO labor movement. This affiliation with a parent organization who represents labor in the private sector has had a marked effect on policy regarding school board-teacher relationships. The AFT favors the same kind of relationship between teachers and their

boards of education as the relationship established between employer and employee in the private sector through the National Labor Relations Act of 1935. The AFT advocates the following positions: (1) exclusive recognition of a single bargaining agent, (2) negotiation units composed of non-supervisory educational personnel only, (3) no limit on the scope of negotiations, (4) written agreements between negotiating units and boards of education, (5) development of a code of unfair labor practices, (6) according teachers the right to strike, and (7) individual grievance procedures with outside arbitration as the final step (Cogen, 1965).

The AFT believes collective bargaining is the logical, practical and meaningful way to develop greater professionalism among teachers. Teachers must not only have the right and power to negotiate, but also a higher degree of involvement in matters of professional concern. Of the 5,845,215 teaching days of work stoppage between 1940 and 1971, teachers affiliated with the AFT accounted for 4,447,263 (Myers, 1970).

The NEA is by far the largest of the two major teacher organizations. It has 1,377,998 members, thirty-three departments, twenty-five commissions, seventeen headquarter divisions and a staff of 900 persons to carry out its policies (Nelson, 1974).

The NEA is not affiliated with any organization representing labor in the private sector. The NEA policy toward collective bargaining prior to 1962 was, "professional education associations should be accorded the right, through democratic channels, to participate in the

determination of policies of common concern including salary and other conditions for professional services." (Moskow, 1965). The absence of any reference to the words, "collective bargaining" was stressed and any agreement should preclude the use of unilateral force by the teachers' association or the school board.

The year 1962 was significant with regards to the changing of NEA philosophy and policy concerning collective bargaining by teachers. During the annual NEA convention in Denver in 1962, the United Federation of Teachers (AFT) in New York was finalizing a written agreement with the City of New York. The impetus for the agreement had been a five-day teachers' strike during the month of April. The culmination of this strike was the adoption of the first comprehensive collective bargaining agreement involving teachers.

Although there had been competition between the two organizations for a number of years, the 1962 strike by New York teachers accelerated the conflict. It also had a pronounced effect on NEA policy. The 1962 convention began to use the term, "professional negotiations", and adopted Resolution 19 entitled, "Professional Sanctions". The resolution stated:

> The National Education Association believes that, as a means of preventing unethical or arbitrary policies or practices that have a deleterious effect on the welfare of the schools, professional sanctions should be involked. These sanctions would provide for adequate disciplinary action by teachers (Moskow, 1965:325).

Since 1962, the NEA has continued to spell out terms for negotiations and use more stringent language to describe possible

action against school boards who refuse to negotiate. Local NEA units are urged to sign written agreements with school boards. Negotiations should include all items that are of a professional concern to the teachers' associations and the school boards. At the 1972 National Convention, a resolution to support strikes by local NEA units failed by a narrow margin. The policy statements of NEA, with regard to collective bargaining began to parallel the collective bargaining policies of the AFT.

Teachers in increasing numbers favor collective bargaining. An NEA report shows that 74.1 percent of NEA-affiliated teachers thought they should strike after all other means failed (NEA Research Division, 1971). Myer (1973) reported that 31 percent of the number of strikes, work stoppages, and interruptions of services during the period from 1940 to 1971 were by NEA-affiliated teachers.

Many authors feel the posture presently adopted by the AFT and the NEA regarding collective bargaining is needed if a condition of countervailing power between teacher associations and school boards is to exist. Goodwin (1969:280) wrote:

> Teachers needed a mechanism to put validity to their demands and thus to operationalize countervailing power. That mechanism was collective bargaining with its power tool, the strike. Teachers have long been a collectivity. They have had their professional associations and a union for many years. They had a power tool in the association, professional sanctions. But, collectivity was not really united around a cause and their power tool was ineffective. Under such conditions, they were no match for the power of the school management. Only when teachers, as militant collectivists, are willing to adopt the private sector union

> tactic of the strike to enforce its demands will they modify the monopolistic power of school boards. When this is done successfully, teachers will emerge with a state of countervailing power.

Although the AFT and the NEA have established a stance of teacher militancy and strong collective action by teachers, some authors question the merits of this approach to the teacher-school board relationship. Williams (1963:572) made the following observation:

> While it is not surprising that teachers have taken to this industrial relations approach to achieve what they consider their legitimate ends, it is surprising that both school management and teachers seem to have accepted the inevitability of the industrial relations answer to the teachers' search for power. There are characteristics about this approach that leads one to question its applicability to the achievement of teacher goals. An elaborate network of rules and regulations, grievance procedures, impasse systems and job descriptions are carefully defined and meticulously maintained. One cannot help but wonder if teachers are not ultimately substituting teacher-imposed rules and regulations for those formerly imposed by school management.

Is there another alternative available to public educators other than the adoption of the labor-related conflict model of collective bargaining? Walton and McKersie (1965) described two collective bargaining models: (1) a distributive or allocation of scarce resources approach based on the conflict model used in the private sector and (2) the integrative on cooperative problem-solving approach based upon the concept of "meet" and "confer".

The differences between the two approaches are dramatic. The essential ingredients of the distributive model are: (1) a relatively

fixed value is attached to the total outcome for both parties, (2) each party is oriented to maximizing his share of the total outcome which the eventual settlement appropriates to it, and (3) the possibility exists that parties can both comport themselves so that both parties will lose; e.g. a strike of such expense that neither party can recover from the losses (Walton and McKersie, 1965).

The integrative or "meet" and "confer" bargaining model is based on a problem-solving premise. Direct conflict is avoided because there is a possibility of increasing the shares of both parties; the total payoff possible is a variable rather than a fixed sum. Each party is primarily interested in finding new alternatives which will increase the total sum available, not with increasing its own share. The motivation for agreement is school improvement, problems replace demands and counterproposals, joint problem-solving and decision making represents the group behavior. The dialogue is questioning, brainstorming, interpretation, and is built upon agreement. Impasse is rare and both sides gain as a result (Walton and McKersie, 1965).

Wynn (1970) recommended the integrative bargaining model as the most appropriate for educators. He refers to the integrative bargaining process as collective gaining, contrasting it to collective bargaining in the following ways: (1) in collective bargaining (cb), the motivation for both sides is reprisal for the other side; in collective gaining (cg), the motivation is school improvement; (2) in collective bargaining, timing is appropriate and both sides are disposed

to procrastinate until the eve of contract expiration, the opening of school or a strike deadline; in collective gaining discussion takes place throughout the year wherever problems are recognized; (3) in collective bargaining, quarrels develop over what is negotiable; in collective gaining, joint attack on any important school problem is welcome; (4) in collective bargaining, the session is closed to outsiders, discussion is secret and progress is not reported to the public until the entire package can be wrapped up and negotiations photographed shaking hands; the sessions are open to the public in collective gaining; (5) during collective bargaining, demeanor is likely to be vituperative and superintendents are warned not to get caught in the middle less they get clobbered; in collective gaining, each side deliberately obscures its resistance point even though demands are obviously inflated; (6) the dialogue in collective bargaining is argumentative and exhorative and disagreements are belaboured; the collective gainers' model provides a format for the dialogue to be questioning and interpretative; (7) caucuses are frequent in collective bargaining, strategies cannot be revealed to the other side, and the mood is often hostile. In collective gaining, the mood is friendly and empathetic, and (8) impasses are frequent in collective bargaining and in collective bargaining they are rare (Wynn, 1970).

During the latter part of the decade of the 1950's and early part of the decade of the 1960's, state legislators began to seek a legislated process that would bring teacher organizations and school

board members together to collectively solve their differences and advance the common goals. In 1961 the State of Wisconsin had the only collective bargaining law for teachers. Since 1961 twenty-nine additional states, including Montana, have enacted legislation giving teachers the right to bargain collectively.

Collective bargaining laws for public school teachers provide machinery for both models as described by Walton and McKersie; namely, the distributive or conflict model as prescribed for private business and industry and the integrative model based upon "meet" and "confer". The items that are negotiable using the distributive model are clearly spelled out, as well as the items that are to be discussed using the integrative or "meet" and "confer" model.

A major difference in the majority of laws allowing collective bargaining for public school teachers and collective bargaining as practiced in the private sector is the illegality of public school teachers to strike. With the exception of Pennsylvania and Hawaii, teachers are prohibited from legally striking. The right to strike when impasse has been reached has been replaced by mediation, fact-finding, voluntary arbitration and binding arbitration. In Pennsylvania and Hawaii, teachers have the right to strike after mediation, fact-finding and voluntary arbitration have failed to produce settlement.

Legislators in Montana passed a Professional Negotiations Act for Teachers in 1971. The language and provisions of the Act are

included in Codes 75-6115 through 75-6128 of School Laws, State of Montana. The law defines the procedure for initiating collective bargaining, items that are negotiable and those that are of a "meet" and "confer" nature, and clearly spells out the procedure for resolving impasse.

The impasse procedures provide for a panel of three persons to engage in fact-finding, partial mediation, and recommending a solution for termination of the impasse. Impasse is defined as, "the point in the collective bargaining process when the employee and the employer cannot reach proper agreement upon any proper issue or issues presented." (School Laws, State of Montana, 1971). Specifically, the impasse resolution of the Professional Negotiations Act for Teachers in Montana, Code 75-6123, states:

> If, after fifty (50) days following the commencement of negotiation between an employer, and a negotiating agent designated by the employer, and teachers, or a representative of teachers, an agreement cannot be reached upon any proper issue or issues presented, either party may notify the other in writing that it desires to present the issue or issues to a panel of three (3) persons, resident of the state in which the employer is located, one (1) to be selected by the employer, one (1) to be selected by the representative of teachers, and the third to be selected by the first two (2) named, who shall act as chairman of the panel. Each party shall select its panel member within ten (10) days after such notification. If the members selected by the parties are unable to agree upon the third member within ten (10) days from the date of their selection, the senior district judge of the county in which the employer is located shall submit the names of five (5) persons to the parties at impasse and each party shall in the presence of such senior district judge alternately strike one (1) name until only one (1) shall remain. The teachers or representative of teachers shall strike the first name. The

> person so remaining shall be the third panel member. Negotiation shall thereupon continue before the panel. The panel may take oral testimony under oath and shall consider all documents and arguments presented to it. If an agreement has not been reached by the parties within twenty (20) days after presentation before the panel has commenced, the panel shall make findings of fact and recommendations concerning both parties within five (5) days after such twenty (20) day period. Within five (5) days following mailing of such findings and recommendations, the parties must notify the county superintendent of schools and each other whether or not they accept the findings and recommendations of the panel, and unless both parties do so accept, the panel shall publicize its findings of fact and recommendations in such manner as it deems advisable. Not less than five (5) days nor more than ten (10) days after such publication of findings of fact and recommendations of the panel, the parties shall again notify the county superintendent of schools and each other whether or not they accept the recommendations of the panel. The parties may further negotiate and settle the issues at any time before or after the recommendations of the panel. Each party shall pay the expenses of its selected member of the panel and both parties shall share equally the expenses of the third member of the third member of the panel and the publication costs. (School Laws, State of Montana, 1972).

STATEMENT OF THE PROBLEM

The problem of this study was to determine the effectiveness of the impasse procedures of the Professional Negotiations Act for Teachers in Montana, Code 75-6123. The attitudes of 108 randomly-selected members of negotiation teams toward the impasse procedures were compared, described and contrasted, Specific aspects of the problem investigated were: (1) Are the impasse procedures acceptable to both parties, (2) Do the impasse procedures encourage collective bargaining, (3) Do the impasse procedures provide for an equitable settlement for both parties locked in the dispute, and (4) Are other impasse procedures more acceptable than the procedures used in Montana.

NEED FOR THE STUDY

On January 17, 1962, President John F. Kennedy issued Executive Order 10988 giving recognition that employees of the Federal Government had the right to join and form unions and bargain collectively. Saying that, "participation of employees in the formulation and implementation of personnel policies affecting them contributes to the effective conduct of public business," President Kennedy's Executive Order represented one of the first official policies on union management relations for civil servants (Schneider, 1969:98). Basically, the order granted:

> (1) The right to organize and present views collectively to executive officials, Congress, or other appropriate authority, (2) The right of an employee organization to informal, formal, or exclusive recognition, (3) The right of formally and exclusively recognized organizations to be consulted and to raise for joint discussion matters of concern to their members, and (4) The right to exclusive representatives to negotiate written agreements applying to all employees within a unit. (Schneider, 1969:99).

Executive Order 10988 provided the same impetus for collective bargaining in the public sector as the Wagner Act provided for the private sector. States began to provide legislation giving public employees the right to organize, elect a bargaining unit and bargain collectively.

Strikes by public employees are uniformly considered to be illegal. In some states such as Rhode Island, Washington, and Delaware, strikes are declared illegal. In several other states including Wisconsin and Kansas, strikes are deemed to be unfair labor practices (Shaw, 1972). Hawaii and Pennsylvania are the only states

that provide for strikes by defined categories of public employees and only under certain conditions.

The strike tool used in private business and industry to settle deadlocks on impasses that occur during negotiations has been replaced in the public sector by fact-finding, mediation, voluntary arbitration and binding arbitration. Wing (1971) conducted a survey of teacher-school board collective negotiations in 26 states including Alaska, California, Connecticut, Delaware, Florida, Hawaii, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Pennsylvania, Nebraska, Nevada, New Jersey, New Hampshire, New York, North Dakota, Oregon, Rhode Island, South Dakota, Texas, Vermont, Washington and Wisconsin. Questionnaires were sent to (1) Chief school officers, (2) Executive secretaries of the state NEA affiliates, (3) Presidents of state NEA affiliates, (4) Executive secretaries of AFT units, (5) Presidents of AFT units, and (6) Executive secretaries of School Board Association (SBA) and chairmen of the State House Educational Committees. One of the questions concerned itself with the method used in these states to settle impasse disputes. He found four states used binding arbitration, two states used limited right to strike, fourteen states used mediation, and two states had no provision and six states used a combination of all methods. The law in the State of Montana provides for fact-finding and non-binding arbitration.

Wing (1971) also asked the question, "What is the most crucial

area of teacher-school board negotiations?" Eleven of the twenty-six states sampled, on 42.3 percent, felt the impasse provision of the legislation to be the most crucial area of the state laws providing for collective bargaining for teachers.

Montana passed a Professional Negotiations Law for Teachers in 1971. Since 1971, the following school districts have used the impasse procedures of the law: Helena, Great Falls, Shelby, Browning, Independent School in Yellowstone County, Centerville, Sims, Poplar, Charlow, Anaconda, Billings, Valier, Polson, Gardiner, Missoula Elementary, Fort Benton and Pioneer Progressive. (Nelson, 1974).

How acceptable have the impasse procedures been to the parties locked in dispute? Nelson (1974) suggested the pattern seems to indicate that teachers accept the impasse panels' findings and the school boards, in a great number of cases, rejected the findings. Of the seven impasses declared during the 1973-1974 school year, the recommendations of the arbitration panel were rejected on four occasions by school boards and accepted on all occasions by teachers. (Nelson, 1974).

Mr. James McGarvey, President of the Montana Federation of Teachers (MFT) has referred to Montana's Professional Negotiations Act for Teachers as a "meet" and "confer" act. The MFT also believes the law favors school boards because it does not legally allow Montana teachers the use of economic force; namely, the strike, to settle impasse disputes.

GENERAL QUESTIONS TO BE ANSWERED

This study described, compared and contrasted the attitudes of randomly-selected negotiators representing school boards of teacher associations concerning the following questions:

1. Is professional negotiations between teachers' associations and school boards in Montana a process of "meet" and "confer"?

2. Is professional negotiations between teachers' associations and school boards a process that is essentially an adversary relationship?

3. Do the Impasse Procedures of the Professional Negotiations Act for Teachers in Montana favor school boards over teacher associations or teacher associations over school boards?

4. Is the impasse procedure of Montana law for negotiations by teachers an effective tool in keeping negotiations at the bargaining table?

5. Should the impasse procedure include a provision making the recommendations of an arbitration panel binding on both parties?

6. Does the Impasse Procedure of the Professional Negotiations Act for Teachers in Montana allow for an equitable settlement for both parties locked in the dispute?

7. Should teachers have the legal right to strike?

8. Is the Impasse Procedure Section of the Professional Negotiations Act for Teachers in Montana the weakest section of the law?

GENERAL PROCEDURES

The investigator used a random sample of 108 persons representing negotiation teams in fourteen Class 1 and thirteen Class 2 school districts in Montana. Of the 108 randomly-selected members, fifty-four

represented school boards and fifty-four represented teacher associations or teacher unions. The sample members represented the following Class 1 school districts: Butte, Billings, Great Falls, Missoula Elementary, Missoula High School, Helena, Kalispell, Bozeman, Havre, Libby, Livingston, Wolf Point and Columbia Falls. Class 2 size districts included Three Forks, Lewistown, Polson, Roundup, Twin Bridges, Fairfield, Sunburst, Shelby, Laurel, Cut Bank, Hardin, Deer Lodge and Conrad.

A questionnaire consisting of twenty-five items was sent to sample members during the week of February 11-15, 1974. A second questionnaire was mailed to the non-respondents the third week of March. Of the 108 questionnaires mailed, eighty were returned, or 74 percent. Forty-one of the fifty-four questionnaires, or 76 per cent, were returned by negotiators representing teacher organizations. Thirty-nine of fifty-four questionnaires, or 72 percent, were returned by negotiators representing school boards. A copy of the questionnaire can be found in Appendix A, page 110.

LIMITATIONS AND DELIMITATIONS

The study had two limitations. They were: (1) the limited time the Professional Negotiations Law for Teachers was in effect in Montana, (2) the limited number of cases of teacher organization-school board conflicts that have gone to impasse, and (3) the review of literature was limited to the libraries at Montana State University and the University of Montana.

DEFINITIONS OF TERMS

Terms defined include:

Collective Bargaining. A process of compromise and concession-making on matters over which there is conflict and common concern between the employer and the employee (the terms, "Collective Bargaining and Professional Negotiations" are used interchangeably).

"Meet" and "Confer". A process involving employer and employee in a discussion of issues of concern to both parties.

Impasse. The point in the collective bargaining process when the employee (teachers' association of teachers' Union) and the employer (school board) cannot reach agreement upon any proper issue on issues presented.

Class 1 School District. A student population of 6500 or more.

Class 2 School District. A population of between 1000 and 6500.

SUMMARY

Historically, school boards have dictated the direction of public education and in many instances the personal and professional fate of teachers. Teachers' requests were often treated lightly by administrators and school board members. When this occurred, they had little recourse but to accept their fate, although they may not have liked it.

The teacher in today's educational society is making a serious attempt to equalize and perhaps reverse this circumstance of countervailing power which has historically favored school boards. The

vehicle they have chosen is the tool of collective bargaining. They are demanding to bargain on educational issues that concern them personally and professionally.

The American Federation of Teachers and the National Education Association have adopted a similar posture toward collective bargaining. They have patterned their negotiating behavior after the distributive model used by labor in the private sector of the economy. Teacher-school board relationships during negotiations are advisary in nature and based upon a power relationship. While the AFT has always followed the patterns of the labor-affiliated parent body, the AFL-CIO, it has only been during the past decade that the NEA has moved toward this position.

The major difference between collective bargaining in the private sector and collective bargaining in the public sector is the illegality of the use of the strike in the public sector. While this illegality does not always deter the use of economic force to settle disputes, it necessitates the inclusion of provisions in the laws of the states to systemmatically and peacefully settle deadlocks that occur between negotiating parties. These provisions generally include fact-finding, mediation, voluntary arbitration and binding arbitration or a combination thereof.

Only the State of Wisconsin had legal provisions for collective bargaining prior to 1962. In 1962, President John F. Kennedy issued

Executive Order 10988 giving public employees the right to bargain collectively with their employers. Since 1961 an additional twenty-nine states, including Montana, have enacted legislation enabling teachers to bargain collectively with school boards. Teachers are prohibited from legally striking in all except Hawaii and Pennsylvania.

The majority of state laws also prescribe the items that are negotiable using the distributive model and those that are strictly "meet" and "confer" items. Montana law clearly describes what items are negotiable and what items are "meet" and "confer".

Montana law declares that strikes by public employees are illegal. The procedure for resolving impasse during negotiation is described in Code 75-6123 of the School Laws for the State of Montana. The law provides for fact-finding procedures, partial mediation and recommendation for unlocking the disputes which are non-binding on both parties locked in the dispute.

Since the enactment of the Professional Negotiations Act for Teachers in Montana, a total of eighteen school districts have used the impasse procedure of the law. While a clear trend is not evident, it appears that teachers accept the finding of arbitrations more often than school boards.

The purpose of this study was to compare, contrast and describe the attitudes of 108 randomly-selected members of negotiations teams toward the impasse procedures of the Professional Negotiations Act for

Teachers in Montana. This was done by mailing a twenty-five item questionnaire to the sample members representing fourteen Class 1 and thirteen Class 2 school districts in Montana.

Chapter 2 will review the evolvement of collective bargaining and impasse procedures in the private and public sector with an emphasis on public education.

CHAPTER 2

REVIEW OF RELATED LITERATURE

Introduction

The past two decades have seen a shift in the American Labor Force from largely blue collar workers to predominately white collar workers. White collar employees outnumbered blue collar employees in the non-agricultural labor force in the late 1950's, the first time this has occurred in our nation's history (Woodworth and Peterson, 1969). Also, approximately one out of every six non-agricultural employee was on the public payroll and the number of state and local government employees increased 65 percent between 1955 and 1965. Of this amount, approximately one-half of the employees worked in the field of education.

Membership in traditionally blue collar trade unions was decreasing and membership in white collar unions was increasing. Woodworth and Peterson (1969:4) reported, "Bureau of Labor Statistics figures show that union membership decreased from a high of 34.7 percent of non-agricultural workers in 1954 to 28.0 percent in 1966." Foegen (1967:93) wrote:

> As of 1966, over 1.5 million of 10 million government employees at all levels belong to public employee unions. Six of these unions have over 100,000 members. And, the area of greatest union growth and unrest today is among public employees.

Public employees became increasingly interested in collective bargaining. (Kossolow, 1969:22) emphasized the point: "Many

associations or employees in public service which formerly limited themselves to fraternal and professional questions are taking greater interest in the new bargaining activities. Prominent among these is the National Education Association."

The first part of this chapter entitled, "Collective Bargaining in the Private Sector", will review the evolvement of collective bargaining and impasse procedures in the private sector. The remainder of the chapter entitled, "Collective Bargaining in the Public Sector", will review the evolvement of collective bargaining and impasse procedures in the public sector with the major emphasis on public education.

COLLECTIVE BARGAINING IN THE PRIVATE SECTOR

The cornerstone of federal policy in the field of labor relations law is the National Labor Relations Act of 1935, often referred to as the Wagner Act. Prior to 1935, little federal recognition had been given to union legitimacy and the legality of collective bargaining. Public policy favored management. At the peak of the depression, however, the pendulum began to swing toward a policy of union encouragement. The Wagner Act period from 1935-1947 was clearly one of governmental encouragement of collective bargaining.

Labor hailed the Wagner Act as its greatest gain. Davey (1972: 56) wrote:

> The Wagner Act of 1935 was clearly the high point of unblushing encouragement of unionism and collective bargaining. It also marked the beginning of the regulation phase. Five

> employer practices were prohibited as unfair. Once the constitutionality of the Act was upheld in the Supreme Court's Landmark Decision in April, 1937, the National Labor Relations Board (NLRB) was able to move effectively to implement the national labor policy of encouraging the practice and procedure of collective bargaining.
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> It is difficult to exaggerate the importance of the Wagner Act and the Board as instrumentalities for facilitating the rapid growth of unionism. Union industries would not have been possible without the psychological climate and the legal support that the Wagner Act and the NLRB supplied.

The NLRB was established to enforce the legislation. Shils and Whittier (1968:128) believe the functions of the NLRB is:

> To ascertain and declare who in any particular plant are bonafide representatives entitled to speak for employees in collective bargaining and to hear and pass on complaints against employers for denying or abridging employees' rights to organize, for refusing to bargain collectively, for discharging employees, for union activity, or for engaging in other unfair labor practices.

Shils and Whittier (1967:127) further report:

> In three decisions in 1937, the Supreme Court of the United States confirmed the constitutionality of the new labor law. With the National Labor Relations Act reviewed affirmatively, it was clear that Congress had the right to require collective bargaining as an exercise of its commerce power. Employers had no alternative but to comply with the statute's provisions. In these crucial decisions, the Court took a long step forward, not only in modernizing its interpretation of the commerce power, but in enabling the national government to deal with the realities of American business in twentieth century.

Union membership grew remarkably during the Wagner Act era. Between 1935 and 1945, union membership grew from 3,728,000 to 14,796,000 (Davey, 1972). During the years of World War II (WW II), both employers and unions were operating under the constraints of a no-strike, no-lockout pledge. While joint concern for the war effort

created a peaceful atmosphere on the surface, tensions were building beneath the surface. The post-war period would be the format for a new era in employer-union relationships.

As World War II drew to a close, a consensus of professional opinion urged a prompt return to "free" collective bargaining. Long restrained by wartime regulations, some unions were anxious to capitalize on their increased economic power. At the same time, there were some employers who looked upon a return to private bargaining as an opportunity to crush the unions with which they had been obliged to deal (Davey, 1972).

During the post-war years, the strike emerged as labor's most effective tool in resolving disputes during collective bargaining. Foegen (1967:91) wrote:

> Unions are convinced that the strike is the worker's only effective weapon of protest. Conferring with an employer, begging, or even threatening him is ineffective, they feel! He must be approached, not through his ear, but through his pocketbook. Strikes are intended to do just that.

This basic belief by unions and the antagonism toward unions by some employers made 1946 the most serious strike year in our history. Approximately 1.43 percent of the total man hours worked in 1946 were lost due to strikes (Davey, 1972). The most serious dispute was a 113-day strike by the United Auto Workers in 1945-1946 against General Motors.

The positive side of the post-war era cannot be overlooked or underemphasized. The values of free collective bargaining came to be

appreciated by employers and labor leaders alike. Collective bargaining required the establishment of a satisfactory, enduring relationship with the other party. This could only be done by attempting to understand one another's point of view and developing constructive private arrangements. Collective bargaining had arrived as a viable, positive process for settling disputes and improving the conditions of both management and labor.

While the use of the collective bargaining process gained increasing support, the use of strikes as a viable means for dispute settlement was questioned. Public pressure to do something about the man hours lost due to strikes each year became overwhelming. The Wagner Act of 1935 was criticized for being pro-labor. By 1946, respect for the Wagner Act had so diminished in the public mind that a Republican Congress believed that it had a popular mandate to amend it. There was also a belief rampant in the nation that the arrogance of several outstanding leaders of labor had to be attended to and that the Wagner Act, which appeared to be partial to labor, should be ammended to provide greater neutrality in the administration of industrial unrest (Shils and Whittier, 1968:129).

The Congress chose to revise National Labor Policy in 1947. In doing so, they overlooked the positive aspects of 1946 and looked only at the man hours lost due to strikes. The resultant legislation was the Taft-Hartley Act. The Taft-Hartley law was, "an act to amend the

Wagner Act and for other purposes." (Davey, 1972:60). The law was roughly five times as long as the 1935 statute and contained many new provisions and concepts.

The Taft-Hartley Act retained approximately fifty percent of the provisions of the Wagner Act and added other conditions that balanced the union-employer relationship. Some of the more significant provisions are: (1) Taft-Hartley imposes severe restrictions on the means that unions can use to induce workers to join, (2) unions are prohibited from coercing an employer in the selection of his representatives for purposes of collective bargaining on the adjustments of grievances, (3) the Act prohibits unions from pressuring an employer to discriminate against one of his employees and thus commit an unfair practice himself, and (4) just as employers are prohibited from refusing to bargain in good faith with a labor organization lawfully entitled to exclusive representation under the Act, unions are prohibited from refusing to bargain collectively in good faith with employers (Davey, 1972:71).

The Taft-Hartley Act does not prohibit the right to strike; however, several specific types of strikes are outlawed. They include: (1) any strike by federal government employees, (2) any strike to achieve an objective that is unlawful under the Act, (3) any strike to forcecan employer to violate the Act, (4) any general or sympathetic strike, and (5) any jurisdictional strike. (Davey, 1972:77).

It is agreed by both labor and management that the duration and number of work stoppages has been encouragingly low since 1946. However, Davey (1972:78-79) wrote:

> The complex of statutory and practical limitations on economic force and the decline in its use should not obscure the continuing validity of the proposition that the right of employees to strike and the right of employers to lock out employees or to "take" a strike are essential elements of free collective bargaining as we have always understood it in the United States. The knowledge that economic force may and can be used as a last resort is a powerful factor in keeping the parties at the negotiation table.
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> Under contemporary conditions of economic interdependence, the strike is rarely used. It has become literally a last resort device where negotiations, mediation and other efforts to reach a peaceful solution have failed. The meaningfulness of bargaining, however, is still directly related to preserving the right to use economic force. If this most powerful of incentives to reach agreement should be eliminated by law, collective bargaining would cease to be either free or productive.

Many union officials will admit privately that strikes are undesirable; however, they feel that they are a lesser evil than eliminating unions entirely (Foegen, 1967). In a typical reiteration of this view, AFL-CIO President George Meany stated in his 1966 Labor Day message, "It is the right to strike that gives clear meaning to collective bargaining." (Labor, 1966:3).

The strike is also seen as a price that must be paid for something more broad than union survival. Congressman Michael Feighan said that the strike is a "small price to pay for the liberty and freedom of American democracy. Every American would lose a part of his birthright if the right to strike was curbed every time a union exercised it effectively." (Labor, 1966:4).

The main function of a strike is to invoke the process of concession and compromise on the negotiating parties. Stevens (1966:40) described the functions of the strike:

> Generally, the strike is a technique by means of which each party may impose a cost of disagreement on the other. The central role usually assigned to the strike in analysis of collective bargaining is predicated upon the notion that a technique for imposing a cost of disagreement is necessary to invoke the process of concession and compromise which are an essential part of normal collective bargaining negotiations.

Stevens (1972:40) further noted the importance of the strike weapon upon the collective bargaining process. He wrote:

> Thus, the strike provides a kind of benchmark which may be helpful in arriving at a particular solution in negotiations. If parties do strike, the outcome of the strike negotiations will be the solution, and in some instances, this may be the only way in which a solution is available.

In the private sector of our economy, the strike is an important and viable tool for unlocking labor disputes and protecting and encouraging the collective bargaining process (Davey, 1972). The next section of this chapter will review collective bargaining and dispute settlement, and the alternatives available to public employees for dispute settlement.

COLLECTIVE BARGAINING IN THE PUBLIC SECTOR

On January 17, 1962, President John F. Kennedy issued Executive Order 10988 giving recognition that employees of the Federal Government had the right to join and form unions and bargain collectively. President Kennedy's Executive Order represents the first official

policy on union-management relations for civil servants. Basically, the order grants: (1) the right to organize and present views collectively to executive officials, Congress, or other appropriate authority, (2) the right of an employee organization to informal, formal, or exclusive recognition, (3) the right of formally and exclusively recognized organizations to be consulted and to raise for joint discussion matters of concern to their members, and (4) the right to exclusive representatives to negotiate written agreements applying to all employees within a unit (Schneider, 1969:99).

Executive Order 10988 provided the same impetus for collective bargaining in the public sector as the Wagner Act of three decades before had provided for the private sector. Secretary of Labor Willard Wirtz (1964:57) described the order as, "leading the way to constructive bargaining, or, perhaps even better, creative bargaining." Chairman John W. Macy, Jr., who had served as Secretary of Labor Arthur Goldberg's deputy on the Task Force which drafted the order, applauded the order. Macy (1962:2) wrote:

> This program is the biggest step forward in fifty years. It is a demonstration that we have not lost our capacity to achieve timely and fundamental reform. This is the end of the line for 'papa knows best' attitudes in any level of management.

Public employees as a group may be divided into four broad categories. First, there are those people who are employed directly by the state or any of its political subdivisions. The second group would

be composed of those people who are employed by a legally-created semi-autonomous agency of the state. Examples of such agencies would be the state universities, school boards and transit authorities. The third group would include those employees affected by the public interest in an industry which is primarily local in nature. The fourth group would be privately-owned utilities such as gas, electricity, telephone and transit (Belasco, 1965).

Executive Order 10988 denies government employees the right to use the strike as a tool when bargaining. There are several reasons for this denial.

The first involves the doctrine that the people are sovereign; that a strike against the government is in actuality a strike against the entire nation. Another reason for the government's immunity from strikes is the vital nature of the government services. The oft-cited example of this is policemen and firemen. It is pointed out that the public could never be expected to forego these services in the event of a strike; thus, the answer is to outlaw the strike. This reasoning has simply been extended to include all government personnel. (Shenton, 1966:138).

States began to enact laws allowing public employees to bargain collectively. Prior to President Kennedy's Executive Order, Wisconsin was the only state to have enacted comprehensive legislation allowing public employees to bargain collectively. By 1973, a total of twenty-nine states had enacted separate legislation allowing the teachers the

right to bargain collectively with school boards. Ten states have enacted statutes covering firemen and policemen (Shaw, 1972). A typical provision found in most state statutes reads as follows:

> It shall be lawful for public employees to organize together or to form, join or assist in labor organizations, to engage in lawful concerted activities for the purpose of collective negotiations or bargaining or other mutual aid and protection, or to negotiate or bargain collectively with their public employees through representatives of their own choosing. (Shaw, 1972:28).

The School Laws of Montana, Code 75-6118 state:

> It shall be lawful for teachers to organize, form, join or assist in employee organizations or to engage in lawful activities for the purpose of collective bargaining, or to bargain collectively through representatives of their own free choice. Teachers shall also have the right to refrain from any or all such activity, but shall be bound by a professional negotiations agreement involving the appropriate unit of which they are a member. It shall be the duty of an employer to meet and confer on any proposal advanced by a representative of teachers, or by a teacher or group of teachers if no representatives of teachers has been selected, if such proposal does not endeavor to amend the terms of a professional negotiations agreement then in effect, and nothing in this act shall be construed to diminish such duty. However, a representative of teachers selected as provided by this act shall be the exclusive representative of all the teachers in the appropriate unit to meet, confer or negotiate upon all matters permitted in Section 75-6119 and such teachers shall not negotiate individually.

The majority of state acts expressly prohibit strikes by public employees in general, and teachers in particular. The states of Rhode Island, Washington and Delaware prohibit strikes by teachers. In several other states including Wisconsin, Kansas and Montana, strikes are deemed to be unfair labor practices (Shaw, 1972). Hawaii,

Pennsylvania and Vermont are the only states that provide for strikes by defined categories of public employees and only under certain conditions.

The School Laws of Montana (1971:150), Code 75-6120, entitled, "Unfair Practices", Item 2c, reads: "Teacher or teacher organizations, their agents or representatives, are prohibited from the following unlawful acts:

> Instituting, maintaining or participating in a strike or boycott against any employer, or picketing any school or school facility to further or to induce a strike or boycott because of any controversy, engaging in, or inducing or encouraging any individual to engage in a strike of refusal to handle goods or perform services or threatening, coercing or restraining any individual where the object thereof is to force or require any employer to discontinue doing business with such individual, or to force or require an employer to recognize a teacher representative not selected as provided in Section 75-6121." Code 75-6127, "Penalty for Violation", states: "Any teacher who violates the provisions of Section 75-6120(2) (c) shall forfeit his salary for every day that he is in violation." (School Laws of Montana, 1971:154).

Although Executive Order 10988 set the stage for collective bargaining in the public sector and was highly praised by officials of government and labor alike, it was a mere two years later when many people began to level criticism of the order. Civil Service Commission Chairman John W. Macy, Jr., expressed his feeling in a less enthusiastic view. He said, "The task of setting up new relationships between Federal managers and employee organizations has not been easy. There have been difficulties and some complaints." (Hart, 1966:176).

Management's disenchantment has been mild compared with that of leaders of government employees. Although union complaints take many forms, they tended to boil down to a single word, impasse. Hart (1966:176) wrote:

> Because all federal employees' unions had reserved the right to strike against the government, management representatives at the bargaining table are subject to no compulsion to make concessions or compromise leaders to meaningful agreements, comparable to the threat of a crippling strike, which hangs over the heads of their counterparts in industry in comparable circumstances.

By eliminating the public employee right to exert economic force on the employer, have we reduced the collective bargaining process to one of "meet" and "confer"? Zach (1972:105) expressed the following point of view:

> The absence of the right to strike in the great majority of jurisdictions has permitted the employer to bargain with the assurance that if his offer is not acceptable, the employees are legally prohibited from asserting the same economic pressure as might their private sector counterparts.

It became apparent that if the strike could not be used to settle impasse, other procedures had to be developed. Addressing an AFL-CIO National Convention, President George Meany charged that, "Certain departments of the government do not agree wholeheartedly with the President's intent in promulgating an order to give federal employees' representation rights." (Hart, 1966:176). The convention responded by passing a resolution calling for a revision of Executive Order 10988, "to authorize binding arbitration to resolve negotiation impasses." (Hart, 1966:176).