tween the two issues at the close of the evidence any more than he can be made to elect between his pleadings at the outset;[185] he is entitled to have each issue submitted of which there is evidence in the record. If the trial does end with evidence which may prove both res ipsa and specific negligence, the instructions will be complex and difficult. Here again no reported case points to any clear plan; it is merely said that the instructions should encompass both issues. It may be proper to pattern submission of both res ipsa and specific negligence on the instructions regarding express and implied contracts. The jury is instructed on the express contract and told to find first as to its existence. If the express contract is proved, the existence of an implied contract need not be determined; otherwise they can proceed to so consider. Here, the first set of instructions can cover the evidence of specific negligence and the next set res ipsa. Interrogatories may be used to ascertain whether the verdict rests on one or both and will greatly simplify the post-trial motions and aid in their suitable disposition. However, such submission may well seem absurd to a jury of laymen. For example, a defendant who hits the plaintiff's standing vehicle from the rear in daylight may certainly be guilty either of speed, want of control, want of look-out or faulty equipment. If all of these are submitted and the jury fails to find that any exist, how can it justify a res ipsa verdict which, after all, must rest on these same acts?

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185 Schneider v. Swaney Motor Car Co., 257 Iowa 1177, 136 N.W.2d 338 (1965); Eaves v. City of Ottumwa, 240 Iowa 956, 38 N.W.2d 761 (1949); Schroeder v. Kindschuh, 229 Iowa 590, 294 N.W. 784 (1940); *accord*, John Rooff & Sons, Inc. v. Winterbottom, 249 Iowa 122, 86 N.W.2d 131 (1957).

COLLECTIVE BARGAINING IN THE PUBLIC SECTOR: A SURVEY OF MAJOR OPTIONS

Val L. Schoenthal†

The importance of collective bargaining in the public sector is attested by the recent decision of the Association of Labor Mediation Agencies and the National Association of State Labor Relations Agencies to devote the entire program of their latest joint convention to the burgeoning field of bargaining rights for public employees.[1] The opening presentation of the convention consisted of a survey of the most significant developments of the past year. Noting that most state legislatures met in regular sessions during 1967, the speaker reported that laws of major significance to labor-management relations in the public section were passed in seventeen states. In dramatizing the legislative variety, he chose to contrast "the comprehensive Taylor Act adopted by New York to the Iowa law which made it lawful for civil service employees, individually or collectively, to express 'honest' comments concerning wages or other conditions of employment."[2]

Although most Iowans are conditioned—if not resigned—to the predilection of "Eastern sophisticates," by slighting reference to "the little old lady from Dubuque" and other comments, to suggest a bucolic lagging by our fair state "behind the times," it must be conceded that in the area of bargaining rights for public employees the legislative response has, indeed, been minimal.

The purpose of this paper is not to offer a definitive treatment of any of the myriad, separately challenging aspects of this complex field, much less of its full scope.[3] Rather, it is to present a general survey of the developments and trends and, against this background, to raise for consideration some of the major options available for Iowa and the many similar "semi-industrial" states which have not yet been swept into the full turbulence of this explosive field. Among the principal options which will be examined are those apparent in the separate aspects of practical politics, techniques of legislative approach, scope of regulation, choices among administrative structure and alternative specific measures and methods for the selection of employee representatives and the resolution of disputes.

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1 Report on Joint Conference of Association of Labor Mediation Agencies and National Association of State Labor Relations Agencies, August 19 to August 24, 1968, 69 LAB. REL. REP. 13 (1968), 260 GOV'T EMPL. REL. REP. B-1 (BNA Sept. 2, 1968).

2 69 LAB. REL. REP. 13, 16 (1968).

3 For a survey of the professional literature relating to this field, *see* Appendix *infra*.

I. Background

Perhaps the most significant and dramatic factual consideration is that over the past two decades employment has grown faster in the public sector than in any other major segment. A few statistics will suffice to demonstrate this vital development. According to a recent Census Bureau report,[4] the total civilian public employment in the United States exceeded twelve million persons in October, 1967. Of these, just over three million are in federal service. Of even greater importance is the trend reflected by recent increases: of the 500,000 additions in the past year, 400,000 were in state and local governments, for which the totals have more than doubled since 1951.[5] From the foregoing statistics, it is readily apparent that public employees comprise a major segment of the total work force and will continue to increase at a faster and larger rate than any other sector.

Historically, organizing public employees has been widespread, particularly among professionals (especially teachers) and civil service employees. Until relatively recently however, affiliations have generally been with organizations and associations independent of the industrial union movement. With the recent rapid increases in the number of public employees, it is not surprising that they have received increasing attention from the traditional national and international unions. Among the most important are the American Federation of State, County and Municipal Employees (AFL), chartered in 1936, which has a current and rapidly expanding membership of over 400,000, and the American Federation of Teachers (AFL) which, with over 165,000 members, has emerged as the principal "union" competition to the older and much larger National Education Association.

Among public employees generally, membership in national and international unions has increased rapidly, rising to 1.7 million in 1966, almost double that of a decade earlier. Among state and local employees, membership has increased from about 175,000 in 1962 to 645,000. Added to the more than one million classroom teachers in the National Education Association

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[4] 256 Gov't Empl. Rel. Rep. D-3 (BNA Aug. 5, 1968).

[5] Ross, *Those Newly Militant Government Workers*, Fortune, Aug., 1968, at 104. The Monthly Lab. Rev., published by the U.S. Dep't of Labor Statistics, regularly features tables of "Current Labor Statistics." Vol. 91, No. 9, presents the following estimates (at 89):

Employees on Nonagricultural Payrolls, by Industry
[in thousands]

	June 1968	1966 Average
Government	12,273	10,871
Federal Government	2,815	2,564
State and local government	9,458	8,307
State government	2,423.4	2,161.9
State education	922.8	782.6
Other state government	1,500.6	1,379.3
Local government	7,034.7	6,145.0
Local education	3,950.2	3,419.1
Other local government	3,084.5	2,726.0

and the substantial membership in civil service organizations, the total number of organized public employees comprise an increasingly significant segment of the population and a potent force in the pluralistic structure of American society.

The emergence of organized labor as a major force in both the private and public sectors traces to the adoption of the original National Labor Relations Act (Wagner Act) in 1935.[6] Prior to that enactment, the craft and industrial unions had been struggling, with variable success, to penetrate the private sector. The Wagner Act granted to employees in the private sector "the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection."[7] In addition, the Act also provided for a National Labor Relations Board to administer and enforce the provisions of the new law, the policy of which was explicitly declared to be "encouraging the practice and procedure of collective bargaining and . . . protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection."[8]

While governmental employees were categorically excepted from coverage of the Wagner Act, and still are,[9] the impetus of the power and growth of industrial unionism in the private sector was transmitted with substantial force to the growing numbers of public employees. Indeed, while the growth of industrial unions has reached an apparent plateau and leveled off since the mid-1950's, the continued growth in total union membership since then has been almost entirely attributable to the influx of public employees.

In the meantime at the federal level, the rapidly increasing work force was given an enormous boost toward formal affiliation by the promulgation of the late President Kennedy's Executive Order entitled "Employee-Management Cooperation in the Federal Service."[10] Under this order, federal agencies were directed to recognize employee organizations and to accord "exclusive" representation to those representing a majority in the unit, with "informal" or "formal" recognition where less than a majority chose representation. Specified areas of negotiation were delineated, with specific exclusions for major areas, *including wages and fringe benefits* which are subject to congressional action.

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6 Act of July 5, 1935, ch. 372, 49 Stat. 449 (Subsequently amended and re-enacted as § II, ch. 7, of the Labor Management Relations Act, 1947 (Taft-Hartley Act), and last amended by the Labor Management Reporting and Disclosure Act of 1959 (Landrum-Griffin Act). The National Labor Relations Act in its present form now appears at 29 U.S.C. §§ 151-68 (1964))

7 *Id.* § 7 (now, as amended, 29 U.S.C. § 157 (1964)).

8 *Id.* § 1 (now, as amended, 29 U.S.C. § 151 (1964)).

9 National Labor Relations Act § 2(2), 29 U.S.C. § 152(2) (1964).

10 Exec. Order No. 10,988, 3 C.F.R. 521, 5 U.S.C. § 631 (1964). Full text also appears in CCH 1968 LAB. L. REP. ¶ 823, LAB. REL. REP. 4431 (L.R.X. 1968) and 5 U.S.C.A. § 7301 at 300 (1967).

The Labor Management Relations Act of 1947 (Taft-Hartley Act)[11] originally included a complete prohibition on strikes by federal employees, enforced by a stiff provision for automatic discharge and a three-year ban on reemployment of violators.[12] That provision was repealed in 1955 and supplanted by the present law which prohibits employment to anyone who participates in a strike, asserts the right to strike against the government or is, knowingly, a member of an organization of government employees that asserts that right.[13] Violation is declared a felony punishable by fine up to $1,000 or one year's imprisonment or both.[14] These restrictions and others in the aforementioned Executive Order have been roundly criticized by unions representing federal employees and are now under congressional review.

Another significant provision of the Taft-Hartley Act was its creation of the Federal Mediation and Conciliation Service as an independent agency designed to assist in the settlement of disputes between employers and unions in the private sector.[15] Pursuant to its mandate, the Service has recruited, trained and made available a substantial force of staff mediators who have developed and brought a considerable expertise to their assignments. In addition, the Service maintains a roster of professional arbitrators which is available on request.

To compliment these substantial developments in federal law and practice, many states—especially the larger, more industrialized ones—were encouraged to enact local legislation covering the relatively small portion of the private sector unregulated by the federal statute (especially, industries not within the extremely broad "affecting commerce" coverage test of the National Labor Relations Act (NLRA) or the narrower, self-imposed, dollar volume jurisdictional yardsticks established by the National Labor Relations Board). Although there is a considerable variety among the state laws, many have tended to pattern on the federal model and to be, more or less, "little N.L.R.A.'s."[16]

A substantial number of states have also enacted laws granting and regulating bargaining rights for some or all state and local public employees. These enactments vary from full rights of organization, recognition, bargaining and the settlement of disputes for all public employees to selective regulation of less than all phases for less than all public employees.[17]

Undoubtedly a landmark legislative development was the enactment in 1959 of the Wisconsin Municipal Employees Relations Act,[18] which granted

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11 29 U.S.C. § 141 (1964).
12 Act of June 23, 1947, ch. 120, § 305, 61 Stat. 160.
13 5 U.S.C.A. § 7311 (1967).
14 18 U.S.C.A. § 1918 (1967).
15 29 U.S.C. §§ 171-82 (1964).
16 State laws are compiled in CCH LAB. L. REP. (State Laws) and LAB. REL. REP. (S.L.L.).
17 Outlines of the types and coverages of state laws appear at CCH 1968 LAB. L. REP. ¶ 40,355 (State Laws) and LAB. REL. REP. 1:47 (S.L.L. 1968). *See also* 91 MONTHLY LAB. REV., June 1968 at 54-55.
18 Ch. 509 [1959] Wis. Acts.

municipal employees the right to organize and negotiate with their employers. The Wisconsin enactment was followed by federal, state and local commissions instructed to review developments in the law and practical experiences of state and local governments.[19]

At the federal level, the 1961 report of the President's Task Force on Employee-Management Relations in the Federal Service provided substantial impetus to a reconsideration of the "conventional wisdom," its premises and the practical consequences of its application. Similar studies by other committees and "task forces" developed further re-examinations of legal premises through the involvement and interaction of scholars and experts from the several quadrants of law, personnel administration, governmental service and politics. A further admixture and resulting cross-fertilization of fresh thought came from the participation of those whose practical experience and expertise had previously been primarily in the private sector.

From these reports there have come not only the immediate work products and recommendations but a substantial number of legislative enactments, some of which—like the new cybernetic marvels—are now into the second, third and fourth "generations." Whatever other reflections may be warranted, it has been clearly demonstrated that the inevitable consequences of statutory establishment of bargaining rights include, first, a strong and active utilization followed shortly by an invigorated press for further consideration and expansion. States which have enacted significant legislation are generally more populous and contain a high degree of both industralization and concentration in urban centers. Not surprisingly, these same states are, generally, the ones in which industrial necessities or the political "clout" of organized labor or both caused the earlier adoption of state labor relations acts covering the private sector.

Against this summary background, it is possible to consider the implications and choices being raised, with increasing insistence for Iowa and other similar states, over the questions of whether and, if so, how to deal with bargaining rights for public employees.

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19 Among the significant official studies are the U.S. President's Task Force on Employee-Management Relations, Nov. 30, 1961, and those for the states of Connecticut (1965), Minnesota (1965), New York (1966), Rhode Island (1966), Illinois (1967), Michigan (1967), Pennsylvania (1968), California (1968) and for the city of New York (1966). *See also* the reports of a three-member panel of labor experts to the Los Angeles County (Cal.) Board of Supervisors with proposals for a county ordinance under the California "local option" statute, summarized in 257 GOV'T EMPL. REL. REP. B-1 (BNA Aug. 12, 1968) and 261 GOV'T EMPL. REL. REP. B-1 (BNA Sept. 9, 1968).

Other organizations giving close attention to the field by seminars and publications include the principal unions and employee associations, governmental groups, such as the Nat'l League of Cities, the Int'l City Manager's Ass'n and the Indus. Rel. Research Ass'n.

The field is followed with close attention by organizations and publications whose basic focus is on personnel administration generally and by virtually all colleges and universities in one or more special sections in their departments of public affairs, law, business and personnel administration.

II. Options

While the full spread of possible options is as broad as the numerous and proliferating responses of the many states which have considered or enacted laws, only those most frequently considered will be discussed. In most instances, the aim is merely to identify the salient alternatives which experience elsewhere has provided and to do so without necessarily attempting to propose "the answer." In most cases the thoughtful reader will probably find himself pondering additional possibilities. If so, it would certainly not be purposeless, but perhaps a reminder is warranted that, sooner or later, choices will have to be made. Summarily, the principal choices are to do nothing or to take action. Assuming the possibility of action, the options which will be considered include methods of procedure, comprehensiveness of coverage, scope of regulation, choice of administrative machinery, settlement of disputes and whether to limit the right of public employees to strike.

A. *Inaction*

Among the possibilities for dealing with the area of collective bargaining for public employees (as many others in the affairs of men) is the simple expedient of doing nothing at all.

Certainly the lack of action thus far by the Iowa legislature cannot be attributed to unawareness of the problem nor to lack of opportunity for action. In recent sessions the General Assembly has been presented several different bills proposing not only regulations of labor relations in the private sector but both comprehensive proposals covering all public employees and selective measures limited to specific groups.[20] The legislature's inaction may be attributed to plain disinclination to act, unwillingness to proceed on very complex matters without further background and information, inability of a majority to reach consensus on which of the available alternatives to adopt or other reasons.

Concerning the first of these possibilities, disinclination to act, although much water had passed over dams elsewhere by 1967, there had not yet been any serious or dramatic contretemps in the state. The September, 1967, strike by sanitation and maintenance employees in Des Moines had not occurred; the public consideration by members of the Des Moines Education Association of possible resort to "economic action" in connection with their 1968-69 "package" had not occurred; physical plant workers at the University of Northern Iowa had not struck and had not, by picketing, shut down millions of dollars of pending constructions. The city of Ottumwa had not experienced a walkout by eighty of its employees over 1969 wages; a member of the State

[20] *See, e.g.*, S.F. 181, 62d Iowa G.A. (1967) ("An Act relating to the public employees of the State of Iowa."); *cf.* Iowa Code §§ 90.15-.27 (1966) (setting forth a detailed arbitration provision for disputes relating to firemen in certain cities).

University Law School faculty had not publicly challenged the outstanding and recent opinions of the Attorney General of Iowa declaring a lack of power on the part of public officials even to bargain with public employees.[21] Most importantly, an Iowa District Court judge had not cited Professor Dole's addresses and other recent authorities, in concluding that, indeed, the State Board of Regents "does have the power to bargain collectively regarding labor, hours and working conditions."[22]

Outside the state, the New York Transit Workers had not defied the city and courts of New York, and, perhaps foremost and most dramatic among numerous other developments, the sanitation workers of Memphis had not yet staged their successful confrontation of the city administration following the tragic assassination of Dr. Martin Luther King.

Despite these events and a full torrent of other "water over the dam," the next General Assembly may nonetheless refuse or defer action. If they do, it will leave pots near boiling stuck in the hands of some very nervous and uncertain officials and administrators. Although inaction would leave many uncertainties, they would not include the lack of the right of public employees to strike, which proposition would remain technically clear and unquestioned, if practically less than a fully adequate answer.[23] The most difficult times and decisions will be those of public officials on all levels who, if the *Regents* case is affirmed, will have to re-examine and resolve the exceedingly excruciating question as to whether they *want* to bargain.

Pending a legislative or conclusive judicial resolution of the power issue, those preferring not to bargain will find sufficient "cover" in the Attorney General opinions,[24] while those who wish to bargain will be able to do so without challenge of having acted palpably ultra vires. In either case, these decisions will be open to attack by those citing the contrary positions, and the only certainty will continue to be the uncertainty and discomfort of those who must choose.

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21 Addresses by Professor Richard F. Dole, Jr., at the First Governmental Employee-Management Institute, April 3, 1968, in 244 GOV'T EMPL. REL. REP. F-1 (BNA May 13, 1968), and at the Annual Meeting of the Iowa Municipal Attorneys' Ass'n, May 22, 1968. The focus of the first was on the power of school boards to bargain while the latter concerned municipalities and other bodies. The Attorneys General Opinions challenged are: 1938 OP. IOWA ATT'Y GEN. 718; 1946 OP. IOWA ATT'Y GEN. 162; 1960 OP. IOWA ATT'Y GEN. 168; 1962 OP. IOWA ATT'Y GEN. 407.

22 State Bd. of Regents v. Local 1258, UPW, No. 44,035 (Black Hawk County, Iowa, Oct. 7, 1968), *appeal docketed*, No. ——, Iowa Supreme Court, ——, 1968. Judge Van Meter's interlocutory order of June 12, 1968, is reported unofficially in 251 GOV'T EMPL. REL. REP. D-1 (BNA July 1, 1968); 68 LAB. REL. REP. § 2677 (L.R.R.M. 1968); 58 CCH LAB. CAS. ¶ 51,931 (1968). His final order of Oct. 7, 1968, is the subject of an extended comment in 267 GOV'T EMPL. REL. REP. B-1 (BNA Oct. 21, 1968). *Cf.* Independent School Dist. of Des Moines v. Teamsters Local 90, Equity No. 62511 (Polk County Iowa, May, 1964) (A declaratory action in which the court held that, although the school board could "discuss" wages, hours and any other matters with its employees or their union representatives, it could not enter into a collective bargaining contract with them.).

23 Authorities cited note 30 *infra*.

24 Note 21 *supra*.

B. *Action*

Assuming a legislative inclination not to leave the problem in the laps of the executive and judicial branches, the immediate practical question will be how best to proceed.

As noted above, most of the states with substantial legislation have acted only after careful consideration and evaluation of study committee reports. When such committees have been utilized, the first decision has been whether to comprise them entirely of legislators or to involve others. In the latter case, the question is whether to resort to a group made up of nonpartisan experts, to partisan (labor-management) elements or to proceed on a tripartite basis including representatives from all three sectors, with or without legislative participants. No such interim study committee having been commissioned by the last Iowa General Assembly or the executive branch, it would appear virtually impossible for the upcoming legislature to obtain one as the basis for its action during the next session. The remaining alternatives would be either to defer action pending completion of a report or to proceed without one on the basis of the considerable data and varying recommendations set forth in studies completed elsewhere.[25]

Should the General Assembly decide it is not expedient or feasible to await a formal study and report, it will have an immediate basic choice between attempting comprehensive, definitive action or, at least, intermediately constraining itself to a minimal clarification of its will as to whether—and, if so, which—agencies should have the power to bargain collectively.

1. *Coverage*

a. *Levels of Government.* Should a single law cover all public employees, state, county and municipal, or should coverage be limited to one or more of these levels? Although the practice elsewhere has frequently been otherwise, especially among the earlier enactments which may have proceeded less extensively from lack of experience or available administrative staff and machinery, the more recent predilection seems to be in favor of a single comprehensive law.[26]

b. *Occupation Groups.* Irrespective of the "horizontal" levels of coverage, another basic question is that of the groups to be covered at any partic-

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[25] Some of the various alternatives employed so far are surveyed and discussed in several helpful reports. *See, e.g.*, [1967] EXECUTIVE COMM. OF THE NAT'L GOVERNORS' COMM'N., REPORT OF THE TASK FORCE ON STATE AND LOCAL GOV'T LABOR REL. [hereinafter cited as TASK FORCE REPORT]. Derber, *Labor-Management Policy for Public Employees in Illinois: The Experience of the Governor's Commission*, 1966-1967, 21 IND. & LAB. REL. REV. 541 (1968), is an intriguing *post mortem* on one such report and recommended bill which was rejected. The author of the Article, also the vice chairman and director of the project, reviews the establishment and proceedings of the commission and gives a "blow by blow" account of its legislative demise with some penetrating observations as to the cause. *See also* Goldberg, *Labor Management Relations Laws in Public Service*, 91 MONTHLY LAB. REV., June, 1968 at 48 (recent enactments reviewed).

[26] *See, e.g.*, TASK FORCE REPORT at 9.

ular level. A "vertical" division by types of employees has been enacted in many states and is often favored by representatives of groups such as teachers, firemen, policemen and others, who may believe that such separation is preferable for reasons of practicality and efficacy of administration, including better understanding and clearer insight into their special problems or the practical probability of achieving enactment or both.

c. *Types of Employees.* Within particular groups, a further differentiation is often common among particular types. For example, provision is frequently made for the entire exclusion from participation of professionals or lower level supervisory personnel or, alternatively, to allow their participation only in separate groups or in other groups if separately approved by members of either the principal unit and the subgroup or both.

d. *Size of Community or Group.* Other possible divisions of coverage are by the size of the communities regulated, for instance, cities over some minimum population, or by the size of the groups concerned, such as governmental units or departments employing some minimum number.

e. *Local Option.* A major possibility with substantial practical and political appeal would be providing more or less extensively for a form of regulation but leaving the choices as to its adoption or specific implementation or both to local governing bodies or their citizens. In its simplest form, such an enactment might be a bare statement of the right of bodies so wishing to recognize and bargain with their employees.

f. *Other Considerations.* While such of these foregoing alternatives as fall short of a single comprehensive law covering all public employees would clearly not fulfill the optimum criteria of most groups and commentators who have studied the question, it must be recognized as a plain political reality that less than total coverage may well be all that can attract sufficient support for enactment.

Another apparent reality materially affecting the question of coverage is the possibility of differing attitudes among the primary organizations representing public employers or within their memberships. For example, if not inevitable, it would not be unlikely if the school boards of both small and large communities would be generally opposed to any legislation affecting teachers, while municipal employers tend to divide essentially by size, the large cities favoring legislation and the small ones opposed. This could well happen in light of the tendency for closer affiliation between organizations representing municipal employees with traditional union groups and the greater power and political effectiveness of "organized labor" in the larger cities as contrasted to the lesser cooperation between the education "associations" and the traditional labor movement. In addition, the tendency of school boards in the large cities to resist bargaining is often shared by members of city councils in smaller cities where there is less (or no) organized labor. There is more conceptual and philosophical resistance to bargaining in the smaller communities, and not infrequently, a frank disinclination exists,

on the part of those apt to occupy their governmental positions, to have a local working model established even if it were to be limited to public employees.

Should this or some similar division of attitudes emerge, it would militate strongly toward a rejection of any bill or, at least, to a bill with coverage limited to those groups and places for whom the apparent advantages outweigh the apparent disadvantages. As an example, the "price" for rural and smaller city support of a bill to enable the large cities to achieve a more stable framework for dealing with their municipal employees might well be large city cooperation in limiting the coverage of such a bill to them only or, at least, providing "protection" to smaller communities by a veto through local option. In any event, for any bill to be enacted, it will have to "pass muster" before majorities in both houses and, thus, will have to satisfy the qualms and reservations of representatives of rural and smaller cities whose problems in hiring and dealing with public employees are quite different from those of the large cities.

2. *Scope of Regulation*

The three principal areas on which questions concerning the rights of public employees arise are those of representation, unfair practices and disputes. As to each, the questions are whether a particular state wishes to undertake any regulation and, if so, in what detail.

a. *Representation.* Under the federal system, the treatment of representation questions has been extensively developed. Given a representation question, the law establishes some basic rules and broadly empowers the National Labor Relations Board to provide those additionally necessary for determining who shall represent whom, under what conditions and for how long.[27]

From the long and substantial federal experience there has evolved, by a sometimes tortuous and tempestuous process, an identification of the main subsidiary issues and a highly systemized method for handling them. For the state, the basic question is whether and to what extent to resolve and codify these matters, many of which have been delegated under the federal pattern to the National Labor Relations Board for regulation. It is sufficient here only to identify the more salient of these matters.

i. Exclusive or Proportional Representation. Under the NLRA, the collective bargaining representative designed by a *majority* of employees in an appropriate unit becomes the *exclusive* representative for all employees in the unit. Attendant protections are provided to maintain its status free from attack, subversion or circumvention by minority representatives or the employer. The stabilizing effect and other practical advantages of this approach in clearly fixing rights, responsibilities and in maximizing orderly relations

[27] National Labor Relations Act § 9, 29 U.S.C. § 159 (1964).

are apparent. On the other hand, the achievement of those advantages is at the cost of obvious limitations on individual and minority rights.

Among the states (and political subdivisions where the choice has been delegated) a few have opted for proportional or "members only" representation by competitive groups, but most have chosen to adopt the NLRA's pattern of exclusive representation, this latter method being the overwhelming preference of most commentators.[28]

ii. Method of Determination. Whether exclusive, "members only," or proportional representation is decided upon, there remain practical questions as to when and how such claims may be raised and resolved. Under the federal procedure, they may be determined either by an election or "by other means," including proof of designation obtained directly from employees. Undoubtedly because of the raging controversy concerning the reliability of many of the "other means," most state and local provisions have preferred the finality and objectivity of the secret ballot.

iii. Unit Determination. An obvious basic question is that of the appropriate unit for bargaining. Under the federal practice, complex but relatively settled criteria have been developed, with the central objective being to determine the largest group with a substantial homogeneity of interests in wages, hours, supervision and other conditions of employment. Among political entities, there is an infinite variety of possibilities, each one of which will tend to favor or disfavor established organizations whose majority status will vary depending on the scope and extent of the unit selected. The legislative choice is whether to regulate the standards closely or to delegate that power.

iv. Eligibility. Many choices arise as to the inclusion or exclusion of individuals, for instance, supervisors, professionals, technicians, confidential and security personnel. As with the question regarding coverage, the primary choice is whether to resolve these questions by statute or to delegate them to the administrators. In any case, careful definitions are obviously important and the possibility—and common practice—is not to resolve the matter by simple exclusion or inclusion, but to make special provisions, such as providing for inclusion subject to veto by members of the category in question or the balance of the unit, or both.

v. Election Rules. Under the federal practice there are detailed rules and regulations, many of which have emerged only as "case law," concerning the "do's and don't's" of permissible campaign tactics by employees, competing organizations, employers and others (local news media, etc.). Whether and, if so, to what extent these matters should be regulated are basic and important questions.

vi. Certification and Decertification. It is important to determine not only who has been elected but also whether, how often, when and under what conditions the victor may be challenged or displaced.

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28 TASK FORCE REPORT at 20.

b. *Unfair Practices.* If the rights of employees to form, join and bargain collectively are to have meaning, it is essential that such rights be protected against destruction or dilution by interference, restraint, coercion, discrimination or other repressive means. Moreover, if the right to bargain is to have content, it requires the definition and regulation of correlative duties on "both sides of the table."

Under the federal practice, these rights are protected by the NLRA. The National Labor Relations Board investigates "unfair labor practice charges" and "prosecutes" complaints. Cases are heard by independent trial examiners and decided by the Board, with appeal and review to the Courts of Appeal and, finally, the United States Supreme Court.

How much of this regulation is necessary or desirable to a state or local system and, if so, how it should be administered is of fundamental importance.

c. *Dispute Resolution.* If the process of bargaining is established, there will be two quite separate occasions for disputes requiring methods and machinery for resolution: new agreements and grievances. The most dramatic opportunity for disagreement between a designated bargaining representative and the employer is, of course, the question of the scope and terms of the collective bargaining agreement and its subsequent modifications and "renegotiations."

After agreement between the parties, questions will inevitably arise as to the correct meaning and administration of its terms. These "grievances" may be individual in character (for example, whether the grievant was unjustly discharged, disciplined, passed over for promotion or refused overtime) or they may affect some or all of the entire unit (for instance, whether the employer was justified in rearranging shift schedules or promulgating work rules).

Under the federal practice, the handling of disputes is entirely separated from the representation and unfair practice areas administered by the National Labor Relations Board. Under the aegis of the Federal Mediation and Conciliation Service, the machinery and procedures have several major aspects: First, except for national emergencies and other very limited instances, utilization of the government's services by the parties is voluntary. While having available facilities and personnel for mediation, conciliation and arbitration and charged with seeking the resolution of disputes, the FMCS cannot effectively impose or require the use of its services.

Second, the *mediation-conciliation* function, performed by FMCS personnel, does not encompass a final decision process. The mediators are available to assist the disputants in resolving their differences but seldom prescribe even recommended solutions and never issue "decisions."

Finally, the *arbitral* function, while typically—though not necessarily—restricted to grievance cases and culminating in a "final and binding" decision, is not performed by government personnel. Instead, it is performed by

independent, private, professional arbiters, the sole function of FMCS being to maintain a roster of such persons and to assist in getting them and the parties together.

Unlike the representation and unfair practice matters handled by the National Labor Relations Board, the functions of the FMCS are not mandatory. They are, in fact, alternatively available and commonly furnished by private organizations. For example, the American Arbitration Association, a private, nonprofit organization, has facilities and rosters not unlike those of FMCS and can and does make mediators or arbitrators available when asked by disputants.

Thus, the question for each state is basically whether and to what extent it shall undertake to regulate the primary areas of representation, unfair practices and dispute resolution.

3. *Administration*

If regulation is undertaken, a major question is whether to provide administrative machinery and, if so, in which areas, how much and in what form. The alternatives which have been demonstrated across the land include the full gamut of nonaction, simply permissive statutes without any machinery, more or less detailed statutes still without machinery (leaving implementation to local option or the courts and such private means as the parties may choose to use), fully developed counterparts of the extensive federal arrangement and even more extensive regulation (as by mandating the use of governmental agencies for mediation, "final and binding" arbitration or both).

Concerning this choice, it is worth recognizing that although well established and highly developed, there is nothing pre-ordained or "sacred" about the federal model. For example, private agencies are quite capable of administering representation elections and have considerable experience in doing so. Furthermore, unfair practices are essentially comparable to the traditional areas of tort and criminal law, with no fundamental or mechanical reasons why they could not be "prosecuted" by either the aggrieved litigant (as are torts) or local law enforcement personnel (as are many quite complex statutes) with the role of decision making being discharged by the courts. Grievance disputes are essentially issues of contract interpretation which both the courts and private arbitration agencies could resolve. Private agencies can and do furnish assistance for "interest" (new contract) disputes.

Functionally, then, the question is not one of necessity and certainly not of constitutional requirement. It is, rather, a pragmatic matter of deciding whether and to what extent the expertise of established administrators is worth its substantial cost.[29]

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29 An interesting example of a local system which left the choice of scope and implementation to each public body is the original California enactment for public employees. CAL. GOV'T CODE §§ 3500-09 (West 1961). It has recently been modified to increase the specifications of required duties but is still essentially optional in form. Ch. 1277 [1968] Cal. Act. approved August 13, 1968. *See* LAB. REL. REP. 14:219 (S.L.L. 1968); CCH 1968 LAB. L. REP. ¶ 47,150 (State Laws); 263 GOV'T EMP. REL. REP. G-1 (BNA Aug. 21, 1968).

4. *Strike Restraints*

Irrespective of the legislative decisions regarding coverage, scope of regulation and administration, there remains for resolution a fundamental question which is certainly the most visible and controversial of all: whether public employees shall have all or any of the rights accorded to employees in the private sector to resort to strikes as a means of protest or for exerting pressure in the resolution of disputes.

Before considering the alternatives, it is purposeful to consider briefly the common law and its enforceability.

a. *Without statute.* In the absence of statute, the case law, attorneys-general opinions and commentaries are in virtually universal consensus that there is no right to strike.[30] Nor will such rights be inferred from general provisions such as anti-injunction statutes or exceptions for labor disputes in state anti-trust laws.[31] As a consequence, the inducement of strikes or participation in them is not only misconduct, punishable by discipline up to and including the discharge of offending employees, but is also unlawful and subject to restraint by the courts against employees and their representatives.

b. *Enforcement.* The most frequent concerns as to the judicial restraint of strikes are whether restraint may constitutionally require involuntary servitude, whether restraint may conflict with the traditional reluctance of courts of equity to require the performance of personal services and how restraint can practicably be enforced.

The answer to the first two inquiries lies in an apparent conundrum, which on thoughtful consideration, makes sense: *that the court is not ordering the employees to return to work but only to stop striking.* To appreciate the logic of this rationalization it is purposeful to bear in mind the function and definition of a strike including what it is and what it is not: A "strike is ordinarily thought of as the physical act of employees leaving their work benches or office desks and departing from their place of employment, but not including in such departure a severance of the employer-employee relationship."[32]

Thus, a court in enjoining a strike does not, in fact, confront any employee with the sole alternative to punishment of returning to work. His third alternative is to quit. He is free, if he chooses, to sever completely the employment relationship, including any and all of its perquisites and emoluments such as accumulated seniority. He may not, at the same time, refuse to work and lay claim to the work he refuses to do while asserting a right to return to it on his terms.[33] Although probably implicit in a negative order to

[30] Probably the leading and most frequently cited case is Norwalk Teachers' Ass'n v. Board of Education, 138 Conn. 269, 83 A.2d 482 (1951). *See* Annot., 31 A.L.R.2d 1142 (1953); note 20 *supra* (for a recent case citing these authorities and the virtually unbroken line of subsequent cases).

[31] *Id.*

[32] M. Forkosch, Labor Law § 248 at 425 (2d ed. 1965).

[33] For a recent application and explication of this reasoning, *see* Pinellas County Classroom Teachers Ass'n v. Board of Pub. Instruction, 214 So. 2d 34 (Fla. 1968).

cease and desist from striking, courts frequently make this point explicit by appending to such orders and, perhaps necessarily, to the more rare mandatory order, a statement such as: Nothing in this order shall be construed as affecting the right of any employee of said department to abandon or quit his employment.

As for the third question (concerning judicial enforceability of injunctions against strikes) the answer is as simple and fundamental as the ultimate strength and force underlying the judicial arm of government and hence, in fact, the government itself. Beginning with the injunction, the means of enforcement, through both civil and criminal contempt procedures, escalates just as slowly or quickly and just as gently or harshly as the court chooses to apply it. From the mildest contempt citation providing for automatic purging upon compliance with the injunction, to the heaviest fines imposed on organizations and individuals or the most prolonged imprisonment of the latter, the court's "arsenal" is quite sufficient to enable it to do whatever is required to have and maintain respect for its lawful orders.

Of course no judicial order is self-executing and any is dependent upon its being enforced, if necessary, by the executive branch. If and to the extent this can and will be done there is order; when and if it cannot or will not be done, there is anarchy. In addition, of course, to judicial relief, the executive branch has and can resort, if necessary, to the ascending expedients of calling on other governmental employees from its own or higher levels to carry out or perform work abandoned by strikers. Fellow employees at the municipal level who might choose to refuse would be joining the strike unless they also chose to quit, but their ultimate replacements would, if necessary, be state and federal troops who cannot quit and whose refusal would constitute mutiny or —if sufficiently concerted—revolution.

In any case, however personally hesitant or reluctant a particular judge might be to issue and then enforce a lawful order that public (and, for that matter, private) employees cease and desist from an unlawful strike, the clear fact is that the power is there so long as the government he represents—up to and including its national level—is viable. It's as simple as that!

c. *Options.* As in the other areas of choice, the available options are virtually unlimited and many have been demonstrated by enactments of the states which have chosen to confront the issue.[34]

i. Nonaction. Because of the unlawfulness of strikes by public employees in the absence of statute, the decision by a state to enact no statute is really the equivalent of a positive prohibition.

ii. Express Prohibition. Many states, like the federal government, have enacted express prohibitions against strikes by their employees. These are sometimes accompanied by specific provisions as to penalties and who shall be the enforcer. If specific penalties are provided, they may be directed against

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[34] *Cf.* TASK FORCE REPORT at 22, 36, 89 & 100; Goldberg, *Labor Management Relations Law in Public Service*, 91 MONTHLY LAB. REV., June, 1968.

the employees or their representatives, or both, whether such representatives be individuals or organizations. Among the penalties which may be imposed on employees are discipline (ranging from suspension to discharge) and forfeiture of entitlement to participate in any increases for some proscribed period. Against representatives, statutory penalties have included cancellation or suspension of recognition for bargaining purposes or of other privileges; for instance, "check off" of dues by the employer, the imposition of fines against the organization and its agents and jailing the latter.

Because of the difficulty in prescribing a penalty which will fit all kinds and degrees of violations and the negative possibility of an automatic penalty exacerbating the situation, experience has suggested and many commentators recommend that none of the penalties be required. Instead, it is suggested that a broad "arsenal" of penalties be provided or, preferably, that none at all be stated, thus leaving the choice to the executive branch and the traditionally broad contempt powers of the courts.

In any case, a frequent recommendation is that the duty and power of enforcement be placed in another office, for example the legal department, rather than left in the hands of the officer dealing directly with the employees and that enforcement action, wherever assigned, be mandatory rather than discretionary to avoid responsibility for difficult choices and to minimize the likelihood and concerns for subsequent recrimination or retribution against the person designated.

iii. Selective Prohibition. Although the controversy about the right to strike in the public sector waxes hot and heavy, virtually none of its advocates would extend it to all public employees in all cases. With very few exceptions, there is general agreement with Calvin Coolidge's oft-quoted statement (on the occasion of the Boston police strike): "There is no right to strike against the public safety by anybody anywhere at any time."

The point of sharpest collision in fundamental philosophies occurs when the employees and circumstances are narrowed to those not affecting safety. Such proposals (and several enactments) restrict the right to "nonessential" employees, services or circumstances.[35] With considerable logical force the proponents note that many "public services" today are of a nongovernmental or proprietary nature. Indeed, an increasing number are indiscriminately performed publicly or privately, depending only on the happenstance of local choice, with the range extending from garbage collection through public transportation to water and power utilities. Why, they ask, should public employees engaged in these industries be subject to restraint or total prohibition of the right to strike when their counterparts in the next city (or

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[35] *See, e.g.*, § 32 [1967] Vt. Acts 198; *cf.* the "limited" right to strike recommended by the Pennsylvania Governor's Commission, 1251 GOV'T EMPL. REL. REP. E-1 (BNA July 1, 1968) (rejected by Gov. Shafer, 267 GOV'T EMPL. REL. REP. E-10 (BNA Oct. 21, 1968)). *See also* 258 GOV'T EMPL. REL. REP. A-12 (BNA August 19, 1968) for a brief review of experience under the Canadian Public Service Staff Relations Act of 1967, including a 23-day walkout which shut down the Dominion's mail service in 1968.

even in the same city in similar jobs) are not? And how, they ask in attempted *reductio ad absurdum*, is the public safety even remotely affected by the presence or absence of the gardener in the city park?

One answer, at a perhaps superficial level, is the difficulty of establishing a practical distinction between "essential" and "nonessential." In some instances the differentiation as to a particular job or department is close, shifting and, at the least, difficult. In others, the answer would have to "depend." For examples, garbage collection or snow removal, for which some delay is merely an inconvenience, would obviously become major dangers if long disrupted. The rebuttal to this contention is that the problem is merely one of finding facts and drawing lines, neither of which is new to any of the branches of government and the requirement of which is a small price to pay for extending industrial democracy to its furthest feasible limits. In surrebuttal, the points are made that when the issue is public safety there is no time for careful and extended inquiry about "fine lines" and, candidly, in any case, "we" just don't want to have any of "our" public services disrupted or to have to argue about it!

Another objection is that while the original dispute might involve only nonessential personnel, it could readily "escalate" into a more serious matter if and when the gardeners should extend their picketing to the city hall or the fire station. The proponent's response to this is a reference to the type of differentiation which is possible and has been demonstrated under the NLRA in which certain forms of activity are allowed only unless and until they have specified undesirable consequences.[36] Further, they note that the precise question would not be the legality of the gardeners' picketing but, rather, of the right and entitlement of the employees who might choose to honor their picket line to do so. (Once more met by questions as to the safety, practicality and, frankly, the desirability of repeatedly having to "get into all of that.")

Irrespective of these questions, however, the issue would seem to many (including this author) to involve and be finally resolved by several more fundamental considerations, involving basic differences between public and private employment. These include, first, the total difference in economic context: In the private sector, a dispute over "more or less" can best be left to an economic "showdown" between the parties, with the ultimate result depending on which side can "take it" the longest. Any resulting public inconvenience is regarded as an endurable and preferable alternative to governmental intervention (except in the very rare instances of true national emergency, for which special treatment has been prescribed). By contrast, in the public sector the "battle" is not really between "the company" and the union; with the public as neutrals, but between the public, itself, as represented by its chosen officials, and the public's own employees. Conversely,

[36] National Labor Relations Act §§ 8(b)(4), 8(b)(7)(c), 29 U.S.C. §§ 158(b)(4), 158(b)(7)(c) (1964).

the public employees' dispute is not only with their employer but with their government and—as in any confrontation between citizens and government—the ultimate answer must be political.

Second, it may be noted that the governmental employer cannot resort to the private employer's countermeasure of "locking out" to win a dispute, at least without putting itself out of the business it has been given a statutory mandate to operate. However, fundamentally, it seems irrefutable that while "the business of business" is essentially a matter of economics, the business of government is political. Thus, to contemplate the resolution of any dispute with government by means which will disrupt it, is to come to a logically and politically indefensible contradiction in basic concepts and practicality.

If this analysis or any of the others which have led the vast majority of states by action or nonaction to prohibit completely strikes by public employees be valid,[37] the continuing consequence is simply that persons choosing to make their livelihood from such employment will have to recognize and accept as one of its conditions that they cannot (and will not have to) resolve their disputes by striking.

d. *Alternatives to Strikes.* If, as has been the decision of the overwhelming majority of states, the public employee is to be denied the right to strike as a means of protest or resolving disputes, it seems inescapable as a matter of humanism and democratic polity that there is due to him every possible exploration for fair and feasible alternatives. These would seem to include, minimally, assurance of the rights to be heard and to have his contentions fairly and fully considered. Furthermore, such rights should be available to him individually or, if he chooses, through his designated representatives. To be meaningful the latter means and must encompass the correlative rights of being able to form, join and participate in organizations of his choice. Such organizations should have rights and means to represent him effectively, including the rights to be heard on his behalf and to have a fair resolution of such differences as may arise.

If and to the extent there are legal barriers against (or even serious doubts about) bargaining collectively in the public sector (as asserted in the current opinions of the Attorney General),[38] they should surely be removed and that right clearly established.

The point of most substantial and substantive disagreement is the question whether impasses arising from the bargaining relationship should be resolved by "final and binding" arbitration or whether the award should be advisory only, with the prerogative and responsibility for final decision retained by the public employer. For purposes of analysis it is at least help-

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[37] *See*, especially, Taylor, *Public Employment: Strike or Procedures?*, 20 IND. & LAB. REL. REV. 617 (1968), reprinted as a separate section of the TASK FORCE REPORT at 36.

[38] Note 21 *supra*.

ful—and perhaps necessary—to reconsider separately the two main instances for arbitral resolution.

i. Interest Arbitration. When the issue is the new or modified basic agreement, its determination will directly and almost inevitably affect costs. In this instance, there is a substantial question as to the constitutionality of any delegation by the duly constituted authorities of their assigned legislative functions, including those of approving expenditures and raising the necessary revenues. There will certainly be significant statutory restrictions, such as limits on taxes, expenditures and debt. Even more important, however, is the fact of political realism which underlies the constitutional limitations; namely, the vital desideratum that decisions as to how much shall be spent for what be made by those elected by and hence politically responsible to the citizens whose tax funds they are charged with administering. Granting the fullest and most objective expertise to any arbitrator, the facts remain that he is neither chosen by nor accountable to "the people."

Accordingly it would seem that, technical legal restrictions aside, it would be neither wise nor consonant with a primary attribute of representative government to delegate the power of final decision as to matters affecting basic fiscal policy to anyone outside of the legislative body. As President Truman said of his executive responsibility: "The buck stops here." If a pun may be forgiven, for those in whom the legislative function is reposed, not only "the buck" must stop, but also the right and responsibility to decide when, where and how many of them will be spent!

Some legislatures have felt constrained to prescribe conclusive "interest" arbitration in exchange for the denial of the right to strike. It is submitted that they are wrong because the practicalities militating against strikes by public employees in no way warrant, much less require, either delegation or abdication of the legislative responsibility for fiscal policy.

Acknowledging that a constitutional delegation may be effected if sufficient standards are established, the fact remains that the question involved is essentially and ultimately political. Put most bluntly, the will of the electorate at any given time concerning the expenditure of its funds may be neither fair nor objective. Ascertainment of that will and the decision whether to reflect it should, under representative government, be the responsibility of the elected official, not the scholar. Obviously, in practice this does not free elected officials to take arbitrary action. It remains for the legislators to appraise the soundness of the arbitrator's findings and recommendations, to determine whether or to what extent they comport with the general will and to take final action. If and to the extent an award is well founded and persuasively stated, it will be most difficult for the legislators to reject or depart from it, at least without providing reasons on which they are willing to stand at the court of last resort for political matters: the next election.

ii. Grievances. By contrast, the typical arbitration of questions as to the interpretation or administration of an agreement or enactment con-

cerning public employment requires only determinations of fact, intent or meaning. Such findings are essentially judicial in character but do not offend against the separation of powers since they remain subject to review for arbitrariness or caprice.

Practically, the reference of such "hot potatoes" to a neutral expert for resolution may be as attractive to the executive as it is pragmatically sound. While it must be acknowledged that some such decisions could have a substantial fiscal and, hence, political effect—especially when the issue relates to determination of legislative intent—it would seem a sufficient answer that in such instances the legislators have had their opportunity to state their position and that the question presented is merely interpretative. If no basis for interpretation is apparent, the proper action for the arbitrator would be to refuse to decide and to turn it back to the parties for resolution by bargaining. Of course, even in grievance cases the arbitrator would be constrained by any existent statutory or constitutional limitations.

III. Conclusion

Both the processes and institutions for collective bargaining by public employees have come a long way in development and public acceptance. Their evolution and growth have been at once the result and cause, through interaction, of concurrent developments in the private sector.

From the opportunity for experimentation under our federal system there have emerged numerous studies and widely divergent choices among the innumerable alternatives available as to basic and subsidiary options for dealing with the rights of public employees. From these, those states which, like Iowa, have not moved past nonaction, have a ready and replete source of example to aid and guide them in deciding whether and, if so, when and what to do.

APPENDIX

The professional literature relating to the field of collective bargaining for public employees is literally overwhelming. The enormous amount that has been written is being supplemented almost daily at an ever-increasing rate which reflects its characteristics of complexity, relative recency and frequent controversiality. Perhaps the most compendious effort at cataloging is that of the Committee on University Industrial Relations Librarians. Other useful services include the *Index to Legal Periodicals, Business Periodicals Index* and the *Bulletin of the Public Affairs Information Service*. The principal labor relations services report current articles, and bibliographies are appended to most of the governmental study-reports, articles and treatises. The *Monthly Labor Review*, published by the United States Department of Labor, Bureau of Labor Statistics, includes useful reports on significant events,

developments and current literature. *Industrial and Labor Relations Review,* published by the New York State School of Industrial and Labor Relations, Cornell University, Ithaca, New York, lists and reviews current publications and carries valuable reports of significant research projects in progress.

Other sources include reports of the Committee on Law of Government Labor Relations, the Labor Relations Law Section of the American Bar Association and publications of the American Management Association. Probably the most intensive coverages are those of the Public Personnel Association, 1313 East 60th Street, Chicago, Illinois 60637, and the *Government Employees Relations Report,* published by the Bureau of National Affairs.

The *Labor Law Journal,* published monthly by Commerce Clearing House, maintains a good coverage of the field, and *The Arbitration Journal,* published quarterly by the American Arbitration Association, carries an exhaustive listing of current "Readings in Arbitration."

Some recommended "points of departure" for those first entering the field would include the *Report of the Task Force on State and Local Government Labor Relations of the 1967 Executive Committee of the National Governors' Conference* (also published by the Public Personnel Association), Report No. 153,1960 of the National Institute of Municipal Law Officers, 839 17th Street N.W., Washington, D.C. 20006 (transcript of NIMLO labor relations seminar, April 7-9, 1968) and *The Emerging Law of Labor Relations* by Kurt L. Hanslowe *(Industrial and Labor Relations Review,* paperback No. 4, New York State School of Industrial and Labor Relations, Cornell University, Ithaca, New York). Again, the most complete coverage of current developments discovered by this author is the *Government Employees Relation Report,* published by the Bureau of National Affairs.

Compilations of statutes and periodic reports of cases appear in the "state laws," "current decisions" and "arbitration awards" sections of the leading labor law reporters: *Labor Relations Report,* Bureau of National Affairs and *Labor Law Reporter,* Commerce Clearing House.

The preparations, scope and preliminary reports eminating from Governor Rockefeller's (N.Y.) recent Conference on Public Employee Relations, October 14-16, 1968, indicate that the full report of its proceedings, when available, will supplant the *Report of the Task Force on State and Local Government Relations* as the pre-eminent single source of reference for this field. Volume 267, at AA-1, of the *Government Employees Relations Report,* published by BNA, October 21, 1968, and subsequent editions present papers by virtually all of the foremost scholars. Among the most interesting are the confrontations between the exponents of the "no-strike" and "limited right to strike" positions of Dr. George W. Taylor and Theodore W. Kheel (at G-1 and H-1, respectively).