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Collective bargaining in education: an historical perspective

by Thomas A. Eaves

Nearly 40 years ago, Congress and a number of states recognized collective bargaining as a procedure for the orderly determination of working conditions in private enterprise.

The federal policy established in 1935 by the Wagner Act might not have come to fruition had it not been for the Depression. However, 125 years of employees' use of economic power, such as work stoppages which halted industrial production, preceded the congressional approval of collective bargaining (5). Thus the Wagner Act did not evolve totally from the Depression, although the Depression provided perhaps a necessary thrust. When the Wagner Act was enacted, public employees had little interest in bargaining. They had job security, pensions and adequate compensation. The civil service system or the political process afforded public employees working conditions generally regarded as superior to those of employees in private industry.

Gradually after 1935, private employees forged ahead of public employees in compensation and benefits. By 1965, conditions had changed substantially. Government employees, like their counterparts in private enterprise, were being subjected to the same vicissitudes of employment insecurity, inflation, accident, illness and old age. Other factors influenced the pressure for public sector labor legislation and the demand for the privilege to bargain. Increased employment in state and local government caught the eye of union leaders as a source for union growth. Congruently, the human desire to have a voice in those activities which have substantial influence on one's life motivated public employees to organize.

The Federal Scene

At the federal level, the first right granted federal employees came with the Lloyd-LaFollette Act of 1912. This legislation reversed the President's "Gag Rule" of 1902 and thereby allowed employees to petition Congress individually or collectively, and specified that postal employees had the right to join organizations that did not authorize the use of strikes (10). Although it mentions only postal employees, it has been held to protect the rights of all federal employees. The major breakthrough in federal labor relations programs occurred, however, in 1962 with President Kennedy's Executive Order (EO) 10988 which authorized union representation for most federal employees. The order also provided for advisory arbitration of representation issues and permitted negotiations between governmental agencies and the organizations representing their employees. However, it did not provide the right to strike.

Dissatisfaction with the provisions and execution of EO 10988 increased as collective bargaining units and agreements spread among federal employees. Such dissatisfaction had grown because some measures had become outmoded and others had proved more restricting as employee organizations and employee-management relations developed. In September 1967, President Lyndon B. Johnson appointed a committee to review and study the operations of EO 10988. The report of the Wirtz Committee, as it was known, was never officially released by President Johnson due to changes in the committee membership. Nonetheless, Secretary Wirtz, in his final report as Labor Secretary, issued the unofficial text as agreed to by the committee majority (11).

On October 29, 1969, President Nixon issued EO 11491, thereby revoking EO 10988 as well as the Standards of Conduct for Employee Organizations and the Code of Fair Labor Practices. The new order incorporated most of the Wirtz recommendations and differed from EO 10988 primarily by further extending the procedures for impasse resolution and the provision for a greater degree of finality in employee relations in the Federal Government (10).

State and Local Action

Collective bargaining has existed in state and local governments for decades. The International Association of Fire-Fighters, for example, is one of the oldest unions operating in the public sector, while the American Federation of State, County and Municipal Employees, (the largest public sector union in America today) dates back to the 1930s in the state of Wisconsin (11). However, prior to 1962, no state had passed legislation permitting or requiring government agencies to bargain with employee organizations. During that period, judicial decisions and orders by state attorneys general typically opposed the concept of collective bargaining for public employees. Murphy has indicated that the three events generally cited as historic precedents for public employee unionism at the local level are:

1. The recognition of the city of Philadelphia in 1957 (the Clark-Dilworth Era) of AFSCME as the exclusive bargaining agent for all nonuniformed workers in the city, on the basis of proof of majority representation, and the subsequent negotiation of an agreement.
2. The issuance by Mayor Robert Wagner of New York City in March of 1958 of an executive order (often called New York City's "Little Wagner Act") declaring

it to be the policy of the city to promote the practice and procedures of collective bargaining for the city by the majority representatives of its employees.

3. The negotiation by AFSCME in July of 1956 of an agreement with the city of New Haven, Connecticut, which provided for third-party arbitration by an independent arbitrator selected through the American Arbitration Association.

When EO 10988 was issued in 1962, it had a profound impact on state and local government. Thereafter, in the middle 1960s several states began to enact laws that showed the distinctive influence of the federal model found in Kennedy's Order (10). The overwhelming majority of state statutes pertaining to public employee relations have been enacted since 1965, and each year brings additional states into the picture, either through amendments or the enactment of new laws.

Robert G. Howlett, chairman, Michigan Employment Relations Commission summarized the state and local involvement in collective bargaining:

Today, 38 states and the District of Columbia require public employers to engage in collective bargaining or to meet and confer with all or some employees. Thirteen states **authorize**, by statute, attorneys general opinion or court decision, collective bargaining for some or all public employees or grant to public employees the right to present proposals.

Collective bargaining between public employees and labor organizations exist in states where neither statute, court decision, nor attorneys' general opinion authorizes bargaining. The number of public sector union members in these states, as evidenced by the most recent Labor Department statistics, discloses that neither unions nor employees have waited for the passage of public sector bargaining laws to begin organizing and bargaining. (6:37)

Public School Bargaining

Prior to 1962, no board of education in the United States was required by law to negotiate with its teachers, and only a handful of boards of education had signed written collective bargaining agreements. Such limited activity by public education in collective bargaining has been partly explained by Parrott.

In 1917, the question whether public school teachers could be dismissed for membership in a labor union arose. The Chicago Board of Education adopted a resolution prohibiting membership by any of its teachers in the Chicago Federation of Teachers. Several teachers who violated this resolution lost their jobs and the Supreme Court of Illinois upheld the board's resolution. In the case of **People ex. rel. Fursman v. City of Chicago**, 116 N. E. 158, 1917, the court declared that union membership "is inimical to proper discipline, prejudicial to the efficiency of the teaching force, and detrimental to the welfare of the public school system." (13:35-36)

It was not until 1951 that the regulation against union membership by teachers was reversed. This occurred in **Norwalk Teacher's Association v. Board of Education**, 83A. 2d 484, 1951, where the dismissal of several Norwalk, Connecticut, school teachers (for striking) was upheld. However, the court ruled that, in the absence of enabling legislation, (1) public school teachers may organize; (2) a

school board is permitted, but is not legally obligated, to negotiate with a teacher's organization, (3) a school board may agree to arbitrate with teachers, but only on those issues that do not erode the board's legal prerogative to have the last word, (4) a school board may not agree to a closed shop; and (5) public school teachers may not strike to enforce their demands (12).

However, even the advent of the **Norwalk** case did not rapidly stimulate the bargaining movement in public education. For all practical purposes, 1960 marks the true beginning of the collective bargaining impetus in public education. According to Livingston:

While virtually no teachers were covered by collective bargaining agreements as of the 1961-62 school year, a survey by the National Educational Association (NEA) of selected school districts during the 1966-67 school year found 1,531 separate collective bargaining agreements covering 609,034 teachers. By the 1970-71 school year these figures had increased to 3,522 collective bargaining agreements covering 1,337,146 teachers. (18:63)

The American Federation of Teachers (AFT), the more militant of today's teacher labor organizations, was founded in 1916 as a craft union affiliated with the American Federation of Labor (AFL). Consequently, the AFT was organized along traditional trade union lines. From 1916 until 1960 the AFT was practically moribund. However, after the success of its New York City affiliate, the United Federation of Teachers, in obtaining collective bargaining rights in 1961, the AFT experienced significant growth in membership. As of September 1962, the AFT had 261,506 members. By May 31, 1973, AFT membership had increased to approximately 360,000, largely as a result of the merger between the NEA and AFT affiliates in New York State. In order to be a member of the merged state organization, New York State United Teachers, teachers were required to join both the NEA and the AFT (4).

Unlike the AFT, which has collective bargaining as an almost exclusive objective, the NEA is a multi-purpose organization which devotes itself to such matters as research, teaching methodology, standards for teacher education, academic freedom and tenure, and a wide range of political activities. In recent years, however, a steadily increasing percentage of the NEA's annual budget has been earmarked for the direct or indirect support of collective bargaining activities.

With local affiliates of both the AFT and NEA merging and as the two organizations have moved to more common grounds, discussions of organizational detente or amalgamation have increased. Since 1968 the AFT has publicly advocated a merger of the two national organizations and has urged the NEA to enter into talks looking to this end. After repeatedly rejecting the merger requests of the AFT, the NEA, in 1973, did authorize its president to enter into discussions regarding the merger of the two respective organizations. From the fall of 1973 until the end of February 1974, the two teacher organizations discussed the possibility of merger. However, the NEA terminated the talks on the grounds that the AFT was unwilling to agree to a merger on the terms called for by the NEA Representative Assembly of 1973.

As the NEA has become more militant in its approach to teacher bargaining, the gap in philosophy and action between the AFT and NEA has narrowed to the point where one cannot determine which organization represents

the faculty of a particular school or school system (9). Currently, both are ardent supporters of the strike as a basic right of their respective clientele and both have strong lobbying efforts for a national public employee labor law. Helen Wise, 1973 president of the NEA, stated this support aptly with:

The real reason for the resistance to collective bargaining is obvious. Collective bargaining means bilateral decision-making in respect to many matters traditionally within the unilateral control of the school board, and history teaches us that authority is seldom relinquished without a struggle. (3:21)

Post-Secondary Education: Focus on Two-Year Institutions

The 1960s was the era of explosive growth for collective bargaining in the elementary and secondary schools. The decade of the 1970s seems destined to be recorded as the era when collective bargaining arrived as the primary vehicle for faculty entrance into the governance of post-secondary institutions. Evidence today clearly substantiates such a claim. In comparing statistics of surveys taken 1969, 1973, and 1975, one may determine the following:

1. In the 1969 Carnegie Survey of Higher Education 47 percent of the respondents supported the strike as "legitimate action." In the 1975 survey reported by Ladd and Lipset (9), 66 percent of the faculty respondents supported the strike as a legitimate action in lieu of impasse in negotiations.
2. In April 1973, as reported by Tice (14), 228 public institutions or campuses were represented by 194 faculty bargaining units. Two hundred and one (201) of these institutions were public two-year institutions or campuses having 142 bargaining units. Semas (14) reported 394 campuses or institutions with bargaining units in public post-secondary education; 266 of these being two-year campuses or institutions.
3. In the Carnegie Survey of 1969, 67 percent of two-year faculty respondents and 60 percent of all post-secondary faculty respondents supported the statement, "I disagree that collective bargaining has no place on campus."
By 1975 these percentages had increased to 76 percent for two-year faculty and 69 percent for all faculty (8).

These data indicate the rapid growth of faculty collective bargaining in higher education and, further, clearly indicate that the focal point is the two-year post-secondary institutions and campuses.

The first recorded community college (or community college system) to affiliate with a labor organization and gain bargaining status was the City Colleges of Chicago which became officially recognized in October 1966. Three months later Macomb County Community College (Michigan) was officially recognized to have bargaining rights. In the years that have followed, community colleges across the nation have led post-secondary education to the bargaining table. This "march to unionism" was correctly predicted as early as 1967 by the American Association for Higher Education (17:23): "... studies indicate that the greatest discontent and most visible tendencies toward unionization are found at the junior college level..."

Conclusion

Today, union organizations find faculty even more receptive to collective bargaining. Inflation, which has impinged upon faculty salaries, and the rising level of unemployment throughout the nation create anxieties that further faculty cutbacks will be forthcoming. The movement toward centralization and more state control creates impersonality in the operation of institutions and places faculty participation in decision-making farther from faculty influence.

Even where local autonomy exists, hierarchical governance structures persist and faculty "power" remains negligible, particularly in policy matters concerning compensation, personnel issues and job security (1). Faculty discontent has been compounded by the increasing practice of stretching instructional wage budgets by hiring increasing numbers of younger, inexperienced instructors at close to subsistence-level salaries and employing more instructors than may be allotted according to size of student populations at particular institutions. One might extrapolate, given the similarities of the mid-1970s (in regard to economic conditions and unemployment) with the mid-1930s, that public sector bargaining has the impetus to move Congress to a national public sector labor law as supported by the NEA, AFT, AFSCME and other public employee unions.

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Community colleges should lead way?

Of the two levels of public higher education—community college and university—the community college system should perhaps be the leader in examining the climate of its member institutions with regard to collective bargaining. Such leadership by the community college system is most appropriate at this time due to the national trend of public two-year educational institutions' involvement in collective bargaining. Blumer¹ indicates that community colleges comprise 70 percent of the institutions in higher education which are unionized. Such membership can be aligned directly with the prevailing attitudes of community college faculty toward collective bargaining. Kennelly and Peterson² indicate that community college faculties view collective bargaining more positively than do other faculty in higher education. To them, collective bargaining promotes desirable administrative-faculty relationships, is not associated with militance or discontent, and does not imply adversity.

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