tripartite panel chaired by Alex Elson was asked to consider whether an election should be held among county public-aid employees to select an exclusive bargaining representative. Despite the fact that the Illinois Legislature, by granting bargaining rights to two specific groups of government employees, had inferentially denied it to others, and despite the legal opinion of the State's Attorney of Cook County that the County Board could not enter a bargaining arrangement, the fact-finding board recommended that it should. After serious and lengthy consideration, the Elson board recommended that a bargaining unit be determined by agreement of the parties or, failing agreement, by arbitration; that an election be held; and that a union obtaining a majority be recognized as the exclusive bargaining representative.

I cite this case not because I am shocked by it; on the contrary, I fully agree. The real point is that this board was appointed because of the demonstrated willingness of the employees involved to go on strike to obtain recognition rights. If state, local, and other units of government do not provide public employees with viable procedures whereby they can make known their complaints and desires—whereby they can participate in the formulation and administration of personnel policies—their failure to do so can only lead to recurrent strife in the public sector. If governments do not provide representation procedures for their employees, then I conclude that neutrals can and very probably will take whatever opportunities are offered to do it for them.

II. ROLE OF THE NEUTRAL IN GRIEVANCE ARBITRATION IN PUBLIC EMPLOYMENT

ELI ROCK*

A. Introduction

At the 1958 meeting of the Academy, Charles Killingsworth, in his paper on "Grievance Adjudication in Public Employment," referred to the paucity of established collective bargaining rela-

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tionships in government and to legal obstacles as factors minimizing grievance arbitration in that field. He concluded that,

> Even if the opposition of courts and legal officers could be overcome . . . , it seems unlikely that conventional arbitration would be widely adopted in the absence of other basic changes in the structure of industrial relations in government.[9]

My own discussion of his paper in the 1958 meeting contained this brave projection:

> Obviously, real arbitration is not in the cards on any extensive scale for the immediate future.[10]

Despite the seemingly forthright thrust of both statements, I believe that a careful analysis of the phraseology will reveal that both Professor Killingsworth and I, in the profession's finest tradition, covered ourselves for what has in fact now occurred.

This is not a paper dealing with the enormous overall changes that have taken place in collective bargaining in this field since 1958. None will contest, however, that the "basic changes in the structure of industrial relations in government" are now here, and, predictably, the story regarding grievance arbitration in this field has also been fundamentally altered.

There are still highly significant differences, both quantitative and qualitative, in grievance arbitration in public employment in comparison with grievance arbitration in private industry. My paper will first attempt to present, in some detail, factual information and analysis regarding the current state of the arbitration art at the several levels of government. Thereafter, I will suggest some broader evaluations and projections within the limits which the present stage of history permits.

On the initial factual aspect and analysis, I shall divide my presentation between the experience at the federal level of government on the one hand, and state and local government on the other. Within each of these two groupings there will be further breakdowns in terms of enabling procedures or laws, the nature

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9 "Grievance Adjudication in Public Employment," *The Arbitrator and the Parties*, Proceedings of the Eleventh Annual Meeting National Academy of Arbitrators, (Washington: BNA Incorporated, 1958), p. 158.
10 *Ibid*, p. 166.

of some of the agreed-upon arbitration clauses, and the numbers and nature of some of the arbitration decisions issued thus far.

B. Federal Government

If one were asked to designate the three most significant individual developments that have led to the great rise and growth of collective bargaining in the public-employee field in the last 10 years, it would be difficult to omit any of the following: the issuance on January 17, 1962, of President Kennedy's Executive Order No. 10988,[11] the rapid enactment since the early '60's of state statutes governing public-employee labor relations,[12] and the American Federation of Teachers' bargaining-unit victory in the election in the New York City Board of Education in late 1961.[13]

Executive Orders 10988 and 10987

Executive Order 10988, which authorizes collective bargaining at the federal level and provides rules and machinery, has been regarded as a magna carta by the federal-employee unions. They have prospered under it, although they are now, predictably, showing signs of restiveness, related in part to certain basic limitations of the order itself.[14] The order was issued on January 17, 1962, following lengthy hearings and a report by a cabinet-level task force chaired by then Secretary of Labor Arthur J. Goldberg.[15] Section 8 (b) of the order authorizes the inclusion of grievance arbitration clauses in collective bargaining agreements negotiated under the order, provided, among other things, that "Such arbitration (1) shall be advisory in nature with any decisions or recommendations subject to the approval of the agency head . . ." [16]

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[11] *Federal Register*, Vol. 27, 1962, p. 551.
[12] Address by Arvid Anderson, Commissioner, Wisconsin Employment Relations Board, Annual Conference, Public Personnel Association, Toronto, Canada, August 22, 1966.
[13] Myron Lieberman, Michael H. Moskow, *Collective Negotiations for Teachers* (Chicago: Rand McNally, 1966), p. 35.
[14] Wilson R. Hart, "The Impasse in Labor Relations in the Federal Service," *Industrial and Labor Relations Review*, Vol. 19, No. 2 (January 1966).
[15] Report of the President's Task Force on Employee-Management Relations in the Federal Service, *A Policy for Employee-Management Cooperation in the Federal Service* (Washington, G.P.O., November 30, 1961).
[16] *Op. cit.*

The anomaly called "advisory arbitration" is not a new idea; Charles Killingsworth had urged its greater use in his 1958 paper.[17] One could dwell at length on why the phrase "grievance fact-finding with recommendations" was *not* used, but it may at least be hazarded that the word "arbitration" reflected the strong union strivings to borrow, wherever possible, the established concepts and practices of the private-industry sector, and that the word "advisory" reflected the exactly opposite aspirations of public-sector management. In any event, advisory arbitration is now an established fact in an estimated 75 percent of the 600 collective bargaining agreements covering over 800,000 employees negotiated by federal unions under E.O. 10988. (No reference is here made to the separate 12,000-14,000 local post office agreements.) Earlier agreements under E.O. 10988 had markedly fewer advisory arbitration clauses than those more recently negotiated. Those currently being negotiated or renewed are seldom without such a clause.[18]

Notwithstanding the Executive Order's exclusion from the collective bargaining area of what might normally be regarded as the bread-and-butter issues elsewhere, the area of permissible subject matter includes many of the "working conditions" that give rise to arbitration issues in the private sector. There are, however, a number of unique aspects of the arbitration procedure at the federal level, in addition to the advisory nature of the process, which require discussion.

One of these is the problem of dual, overlapping procedures for the processing of employee complaints—a problem that, although not normally as complicated, also exists at the state and local level. Briefly, under the federal arrangements, a unit may have an "agency" grievance procedure, which might have preceded E.O. 10988, or it may have a "negotiated" grievance procedure with an exclusive bargaining agent designated under E.O. 10988. Under Section 8 (a) of the order, the preexisting rights contained under the agency procedures are preserved, so that both procedures may be available even after a negotiated procedure has been established.

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[17] *Op. cit.*, pp. 161, 162.

[18] Louis Wallerstein, Chief, Division of Federal Employee-Management Relations, U. S. Department of Labor; conversation with writer, 2/23/67.

For the ordinary "grievances," as distinguished from "adverse actions" that will be described below, the employee has his choice of channels and is bound by his election. Only the negotiated procedure can offer advisory arbitration in the final step. But even if the employee chooses the negotiated channel, the bargaining agent alone, in evident recognition of its obligation to share the costs of the arbitration with management, can decide whether a case will actually be carried to arbitration or dropped at the level prior to arbitration. The latter level may be lower than the final level under the agency procedure.[19]

Complaints involving "adverse actions," which are called "appeals" but not "grievances," are handled still differently.[20] By definition, the term "adverse action" applies to discharges, suspensions of more than 30 days, furlough without pay, and demotions not limited to those instituted for disciplinary purposes. For cases of this type, processing within the internal agency or negotiated machinery of the agency is still available, although by different rules pursuant to the separate Executive Order 10987, also issued January 17, 1962.[21] One of those differences involves the preservation of the basic right of ultimate appeal to the Civil Service Commission from the agency's determination, although in certain instances even this right may be waived by the employee. The use of advisory arbitration under E.O. 10987 may also, under some circumstances, be agreed upon between the agency and the bargaining agent for the final stage of adverse-action cases within the agency and prior to appeal to the Commission; however, to date, only two departments, Labor and Post Office, have entered into agreements to that effect.[22]

In addition to its use for both grievances and adverse actions, the technique of using outside advisory arbitrators is also available, but thus far seldom has been used, for the handling of "unfair labor practice" cases,[23] which, in the federal service, are matters involving claimed violations of the Code of Fair Practices

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19 United States Civil Service Commission, *Federal Personnel Manual*, Chap. 771, Employee Grievances and Administrative Appeals, Subchap. 1. Section 1-7,g.
20 *Ibid*, Subchap. 2.
21 *Federal Register*, Vol. 27, 1962.
22 Wallerstein, conversation with writer, 1/10/67.
23 *Ibid*.

issued under E.O. 10988.[24] The "Fair Practices" listed in the code can be compared to the unfair labor practices by both management and labor as set forth in the Labor Management Relations Act.

One other unique aspect of the federal procedure which deserves pointing up at this stage is that the advisory arbitrator in "grievance" cases is empowered under E.O. 10988 to interpret and apply not only the terms of the collective bargaining agreement but also "agency policy." It has sometimes been said that in the public service, at all levels, the terms and conditions of the collective bargaining agreement represent only the tip of the iceberg insofar as the employee is concerned. Below the water is a vast array of regulations, rules, and practices which long antedate the recent era of collective bargaining. Delegating to an arbitrator the authority in the Federal Government to interpret and apply such agency rules or, collectively speaking, policies, may involve no unique problems as yet, particularly since his decision is only advisory and may be rejected. Moreover, the agency is presumably free to change its policy if it dislikes the interpretation received. Nevertheless, the difference, by contrast with the role of the private-industry arbitrator, is a major one, reflective perhaps of the narrow scope of permissible *contract* subject matter at the federal level. It is an aspect in the Federal Government which will bear interested observation as this whole field develops over the coming years. Another aspect that will merit interest is the situation in which the agency regulation may be in conflict with a provision of the contract, an issue which has thus far arisen in only a minority of the cases.[25]

Turning briefly from the basic program to some of the details as represented by contracts thus far negotiated under E.O. 10988, the appointing agency normally designated for the arbitrator-selection process is not surprisingly the Federal Mediation and Conciliation Service, although a few agreements designate the American Arbi-

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[24] *Standards of Conduct for Employee Organization and Code of Fair Labor Practices,* issued by President John F. Kennedy, May 21, 1963.

[25] See, for example, advisory arbitration decision of David H. Stowe involving Charleston Naval Shipyard and Charleston Metal Trades Council; BNA, *Government Employee Relations Report,* No. 84, April 19, 1965; see also, in same connection, advisory arbitration decision of Herbert Schmertz involving Norfolk Naval Supply Center and Lodge 97, IAM, where the decision was rejected by the Base Commander, *ibid,* No. 116, November 29, 1965.

tration Association or use other variants.[26] A study of some sample contracts about 18 months ago as reported in *Government Employee Relations Report* (one more sign of the times is the separate reporting service in this field that The Bureau of National Affairs, Inc., inaugurated a number of years back) reveals few innovative characteristics insofar as the detailed aspects of the arbitration procedure are concerned.[27] For some reason, however, the parties to one agreement found it necessary to say,

> [The arbitrator] is to make his own awards and to write his own opinions. . . . He may not delegate this duty to others in whole or in part. . . .[28]

Insofar as the more important question of jurisdiction of the arbitrator is concerned, further examination of a number of contracts reveals a rather general pattern regarding the exclusion of these particular items from arbitration: letters of caution, incentive awards, clearance for sensitive duties, reductions in force, performance ratings, discrimination charges falling under Executive Order 11246 which deals with race and sex discrimination, nonselection for promotion when the grievant alleges that he is better qualified than the person selected, and, very importantly, job rating, position classification, and wage determinations.[29]

Should arbitrators be called upon in future Navy Department cases to determine whether a particular issue in fact constitutes a grievance, they may find challenge in giving meaning to the following surprisingly polite and unmilitary definition of a grievance which appears over and over again in the contracts of that particular department:

> An employee's expressed feeling of dissatisfaction with respect to his working conditions and relationships which are outside his control and which personally affect him adversely.[30]

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[26] *Ibid,* "Contract-Analysis: Grievances and Advisory Arbitration," No. 92, June 14, 1965, p. X-10. See also U. S. Bureau of Labor Statistics, *Collective Bargaining Agreements in the Public Service, Late Summer 1964* (Washington: G.P.O., 1964), Bulletin No. 1451, p. 62.
[27] *Ibid,* p. X-1 to p. X-12.
[28] *Ibid,* p. X-11.
[29] See, for example, these sample contracts, *ibid*: Bureau of Engraving and IBEW, No. 172, December 26, 1966; National Aviation Facilities Experimental Center and Lodge 707, IAM, No. 147, July 4, 1966; Rock Island Arsenal and Local 1200, Firemen and Oilers, No. 127, February 14, 1966; Wright Patterson Air Force Base and Lodge 2065, IAM, No. 113, November 8, 1965.
[30] See, for example, contract between Philadelphia Naval Shipyard and Metal Trades Council, *ibid,* No. 90, May 31, 1965.

Let us turn now to the decisions that have been issued under the agreements negotiated since E.O. 10988 was issued. There were, as of January 1967, 20 actual advisory arbitration decisions —most of which were written by members of the Academy. Of these, 17 decisions were accepted and followed and three were rejected, all by the agency.[31] Each of the three decisions rejected involved promotions; the agency's complaint in each instance was that the arbitrator had violated existing agency regulations on the subject. In each instance also, the department had delegated the right to accept or to reject the arbitrator's decision to the agency official who had made the original, final decision!

In the remaining 17 cases that were accepted by both sides, the issues involved such matters as overtime assignments, discipline of 30 days or less, premium pay for difficult work conditions, abuse of sick leave, and job classification assignments. Interestingly, an examination of the first 14 decisions published, which includes two of those rejected, reveals a count of exactly seven decisions in favor of the agency and seven in favor of the union.[32]

A few brief additional observations should be made regarding the federal experience in the light of the foregoing comments before state and local developments are discussed. It would be difficult to disagree with the judgment of Louis Wallerstein, Chief of the Division of Federal Employe-Management Relations, Department of Labor, who has incidentally offered valuable guidance for this particular section of my paper, that the field of grievance arbitration at the federal level can be regarded only as being in its infancy. Both quantitatively and qualitatively, in my view, significant developments are predictable in the near as well as the distant future. The need on both sides not only to obtain an answer in arbitration for the irreconcilable, but to delegate to a third party the blame at times for reconciling the reconcilable, will probably be as prevalent among the personalities in the federal service as in private industry.

Obviously, there will be reexamination, change, and growth in the advisory arbitration process as the experience develops. A few

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[31] Wallerstein conversation, 1/10/67.

[32] The published advisory arbitration decisions under E.O. 10988 which were examined for purposes of the present paper were those found in BNA's *Government Employee Relations Report* for the period up to or about February 1, 1966.

areas of potential change should be mentioned. It would appear reasonably clear that the exclusion of the mutually chosen third party from so vital an area as discipline, which has accounted for the single largest grouping of arbitration cases in the private sector, will soon be up for further examination; and it seems possible that other departments will, if nothing else, at least be following the Labor and Post Office example of using the outside third person *within* the department's internal machinery. Similarly, there is obvious weakness and predictable change in the present custom, in some instances, of requiring the advisory arbitrator to submit his recommendations to the agency official from whose decision the appeal to arbitration was taken. Major problems, of course, await the future in connection with the arbitrator's jurisdiction and the scope of bargainable subject matter, which in turn affects the subject matter appealable to arbitration. The duality matter and the extremely complex nature of the present appeals procedure are still other aspects that invite reexamination.

C. State and Local Government

Public-employee bargaining at the state and local levels of government, it may be stated at the outset (and judicial notice of the newspapers is sufficient to document the statement), is currently "where the action is"—both in terms of intensity and quantity of collective bargaining problems as well as numbers of employees presently and potentially affected. At the same time, because of its scattered and exceedingly diverse character, this area lends itself to less satisfactory analysis, in terms of grievance arbitration as well as other aspects, than is possible in the federal sector.

Basic Enabling Procedures

Let us examine first the state and local basic enabling procedures and laws as they affect grievance arbitration. The obvious fact at the outset is that grievance arbitration, as a subject matter, cannot be divorced from the larger subject manner of collective bargaining; the problems and trends in the latter must inevitably affect the problems and trends in the former, and this truism has probably never been more applicable than in the public-employee sector at the state and local levels.

Until recently, there was no definitive legislation on the subject. Although a great many units of local and state government practiced, nevertheless, some form of collective bargaining (in some instances rather advanced forms), this was normally done under minimum legislative or regulatory authorizations that did little more than permit "collective bargaining," or that sometimes merely permitted union membership; in many instances where even these types of authorization were lacking, collective bargaining nevertheless occurred.[33]

State Laws and the Sovereignty Problem

A major change of the '60's, as I have indicated earlier, was the spate of definitive, or semi-definitive, state laws legalizing, as it were, public-employee collective bargaining within the states. The approximately 10 states[34] with such laws are still a relatively small minority. Some major industrial states, such as New York, Pennsylvania, Ohio, Illinois, and New Jersey, do not have such legislation, whereas other states, such as Wisconsin, Michigan, and Massachusetts, do.[35] The effect of these laws, however, has been felt beyond the particular state borders. Obviously, other major and basic factors have also contributed to the recent great growth in membership and bargaining within the states. My present purpose, however, is only to call attention to the growth which has in fact occurred and not to analyze fully why it has occurred.

Special reference should be made to the phenomenon of professional unionism, and particularly teacher unionism, at the state and local level. Of the eight million public employees in state and local government, a third or more are in education.[36] The figure is large and growing and is particularly important because of the remarkably rapid advance of collective bargaining, or pro-

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[33] The City of Philadelphia offers an outstanding example. The details of its experience with collective bargaining in the absence of definitive legislation are described by Foster B. Roser, Personnel Director of the City of Philadelphia, in "Collective Bargaining in Philadelphia," *Management Relations with Organized Public Employees*, Kenneth O. Warner, Editor (Chicago, Ill.: Public Personnel Association, 1963), pp. 103-115. See also Jean McKelvey, "The Role of State Agencies in Public Employee Labor Relations," *Industrial and Labor Relations Review*, Vol. 20, No. 2 (January 1967), p. 183.

[34] Anderson, *op. cit.*

[35] *Ibid.* See also, for a further discussion of some of the state statutes, Jean McKelvey, *op. cit.*, pp. 183-189.

[36] *Ibid*, p. 183.

fessional negotiations as it is often called, which has taken place in this area.[37]

An especially important development, mentioned earlier, was the overnight change in New York City, where the United Federation of Teachers, AFL-CIO, went from a membership of several thousand with no bargaining rights to recognition as the exclusive bargaining agent for over 50,000 teaching employees. Only passing mention can be made of the impact of this development upon the rapid, nationwide growth in the American Federation of Teachers, and of the dramatic effect of this development as well as others upon the considerably larger National Education Association, which in prior years had been only a professional association in no way interested in either collective bargaining or—largely synonymous, some say—professional negotiations.

It is only necessary to observe that collective bargaining, or professional negotiations, is growing by leaps and bounds in the teaching profession as it is in virtually all other segments of public employment at the state but particularly at the local level. In a recent report prepared for *Government Employee Relations Report,* to cite an example, Robert Howlett indicates that in one year after the enactment of Michigan's new law, the number of signed public-employee contracts rose from 35 to many hundreds.[38]

Nevertheless, although membership and signed contracts now abound, the battles, even where recognition has taken place, are far from over. Plainly, there are numerous differences in government that make *automatic* transplanting of private-industry practices extremely difficult. The problems of adaptation are manifold, and many years will be required before satisfactory adjustments are evolved. A major obstacle in the past has been the concept of sovereignty, which, briefly described, holds that government may

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[37] Lieberman and Moskow, *op. cit.,* pp. 21-62.

[38] *Op. cit.,* No. 164, October 31, 1966. Although Mr. Howlett cites a figure of 1,000 signed contracts one year after the new law, he has indicated that the latter would include situations in which preexisting informal and unsigned "memoranda of understanding" or unilaterally issued "statements" had been converted to mutually executed, formal "contracts" under the new law. At the same time, Mr. Howlett confirms that a sizable proportion of the 1,000 figure would represent situations in which initial agreements, of any type, were first entered into after the new law. (Conversation with writer, 3/1/67)

not delegate its discretionary authority regarding its personnel, and that recognition and bargaining with unions constitute such an illegal delegation. The concept in many or most places, particularly where state collective bargaining laws have been passed but in other places as well, no longer poses a serious obstacle to basic recognition and bargaining. However, it continues in practice, in some instances as a result of restrictions contained in a state law like the recent Wisconsin one for state government employees, to engender major difficulties regarding scope and nature of bargaining subject matter.[39] As we have seen, this problem also assumes major proportions at the federal level.

The sovereignty problem has also had its impact upon grievance arbitration at the state and local levels. Because of it, advisory arbitration rather than binding arbitration is often found. However, unlike the federal experience, in the majority of situations in which grievance arbitration is agreed upon, there is a pattern of binding arbitration. In large part this seems clearly attributable to the state laws that have legalized bargaining itself, particularly in that minority of states in which the legislation specifically authorizes binding grievance arbitration.[40] In large part also, however, and this is evidenced where agreements of this type are made in states lacking definitive legislation, the growth of such provisions must be traced to the growing basic acceptance of collective bargaining *per se,* and with it many of the characteristics, such as arbitration, that mark collective bargaining in private industry.

Nevertheless, this is a new development, and it may well be that some court battles over the legality of such clauses in the public service will develop in the future. Arvid Anderson has called my attention, for example, to a very recent lower court decision in Wisconsin that ruled a binding grievance arbitration clause to be unenforceable. The decision was, however, narrowly

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[39] *West's Wisconsin Statutes Annotated,* Title XIII, Chap. III, Subchap. IV, Sec. 111.80. (1966). Whereas the earlier 1961 Wisconsin Act, applicable to local government employees, includes the usual matters of wages, hours, and working conditions, the new legislation for state employees defines scope of bargaining in a restricted fashion comparable to that existing for federal employees under E.O. 10988, with such basic matters as wages, promotions, pensions, and other fringe benefits not listed among the included items.

[40] For example, the 1965 Massachusetts Act, *Annotated Laws of Massachusetts,* Chap. 149, Sec. 178G; and the 1966 Rhode Island Act, *Rhode Island General Laws,* Title 28, Chap. 9.3. See also the 1966 Wisconsin Act for state employees, *ibid.*

based on a reading of legislative intent under the state act without reference to more basic issues. In any event, this decision is now pending on appeal.[41] There are other court decisions concerning the legality of arbitration, but space and time rule out any detailed analysis here of this particular question.

It is clear that grievance arbitration at the state and local level not only is growing but will continue to grow rapidly. This judgment is confirmed by Professor Michael Moskow, one of several very competent scholars specializing currently in the field of teacher unionism. It is also confirmed by several of the employee organizations operating in the public and teacher field.

In a very recent and shortly-to-be-published study by the American Federation of Teachers, 13 of 39 AFT contracts examined were found to contain binding arbitration clauses; two of the 13 were in the large centers of New York and Philadelphia.[42] The AFT now also represents the teachers in Detroit and Chicago—in total, all four of the largest *urban* school districts in the country thus far unionized—but I have no information at present regarding the status of negotiations or the union's efforts on the subject of arbitration in the latter two cities. Similarly, the evidence available to me does not indicate whether the AFT will agree or has agreed to advisory arbitration.

The American Federation of State, County and Municipal Employees, one of the few international unions operating exclusively at the level of state and local government, is currently investigating the number of grievance arbitration clauses in contracts negotiated by its locals. Preliminary results indicate that 175 of 500 agreements examined contain grievance arbitration clauses, some of which are binding and some advisory, but without a breakdown between the two; the information furnished me also is that the trend is upward.[43]

The National Education Association, whose representation

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41 *Local 1226, Rhinelander City Employees, AFSCME* and *Frances Bischoff* v. *City of Rhinelander,* Circuit Court, Oneida County, State of Wisconsin, June 10, 1966.
42 Information to be contained in the March 1967 issue of the *American Teacher,* monthly publication of the American Federation of Teachers (Chicago, Illinois).
43 Elwood Taub, Director, Department of Education and Research, American Federation of State, County and Municipal Employees, letter to the writer, February 14, 1967.

nationally includes a great many of the smaller school districts as well as a substantial number of the larger ones, reports that in September 1966, of 374 school districts studied with 12,000 or more pupil population, only 5 percent had binding or advisory grievance arbitration clauses. A current study indicates that in the last six months more than 200 binding grievance arbitration clauses have been agreed upon in school districts of various sizes in the states of Michigan, Massachusetts, and Rhode Island alone. In addition, about 100 advisory grievance arbitration clauses have been agreed upon in various states during the same period.[44]

Arbitration Arrangements

Let us now examine some of the individual arbitration arrangements. The New York City Board of Education has had binding arbitration of certain types of grievances since its first contract in July 1962. After using *ad hoc* arbitrators for the first several years, the parties agreed in their current 1965-1967 agreement to use a panel of three arbitrators chosen through the American Arbitration Association.[45] On the basis of a scattered sampling of the field generally, the pattern, except for a few examples like the New York City Board and also the New York City Department of Welfare, appears clearly to be *ad hoc,* with the predominating appointing agencies, where they are used, being the AAA and the state mediation or labor relations agencies where they exist and are authorized to perform this function.

New York City must always come to the fore when the public-employee field is being discussed, and, in addition to the Board of Education experience, a more detailed reference must be made to the existing arrangement in the New York City Department of Welfare. Although it is a unique one at this particular time, the arrangement may represent a straw in the wind, reflective of the particular and difficult problems in this field, and of the need for imaginative improvisation that may be required for the

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[44] "The Growth and Implications of Grievance Arbitration," Donald L. Conrad, National Education Association, to be published in the March 15, 1967, issue of *Educators Negotiating Service* (Educational Service Bureau, Inc., Washington, D.C.).

[45] The members of the panel at the present time are Abram H. Stockman, James C. Hill, and the writer.

grievance-resolution problem as well as for other aspects of public-employee labor relations.[46]

According to Arthur Stark, who occupies the neutral spot in the Welfare Department setup, two separate lines of arbitration currently exist between the Social Service Employees' Union and the Department.[47] Under one arrangement, he is chairman of a labor-management committee that is authorized to consider any issue at all, not merely the subject matter of the contract. The procedure is an informal one, and every effort is made, with his help, to work out a mutually satisfactory solution within the committee. If the latter fails, he may then, on the basis of his information and knowledge acquired during the informal committee discussions, issue an advisory decision to the Commissioner of Welfare.

The second arrangement is a more formal one, with the proceeding and Mr. Stark's role more akin to that of conventional arbitration. In this situation he is limited to issues arising under the contract; but his decision, which is again an advisory one, is submitted to the Mayor.

New York City is also currently considering, for the bulk of City employees outside the Board of Education, a tripartitely-arrived-at comprehensive set of rules and procedures for collective bargaining, under which is included a provision for grievance arbitrators to be appointed by what will be known as the Office of Collective Bargaining.[48]

Insofar as the jurisdiction of the arbitrator at the local level is concerned, the problem, as indicated earlier, is greatly complicated by and dependent upon the more basic controversy over permis-

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[46] The field of public employee labor relations, after having been long neglected by researchers and scholars, is now happily receiving major attention. Recent issues of such publications as Cornell's *Industrial and Labor Relations Review* clearly indicate the reversed trend. In addition, there has been a marked upsurge in the publication of books, the appearance of reporting services, and the preparation of graduate studies in this field. The American Arbitration Association's Labor Management Institute, which was established to address various specialized labor relations problems, is currently devoting major attention to this subject-matter, as are a number of other private organizations. There could be little question, however, that much remains to be done.

[47] Conversations with the writer, 11/20/66 and 3/1/67.

[48] See *Report of the Tri-Partite Panel on Collective Bargaining Procedures in Public Employment,* submitted to Mayor John V. Lindsay, March 31, 1966, prepared under the sponsorship of the Labor Management Institute of the American Arbitration Association.

sible scope of bargaining subject matter in the public service. A clear trend in many of the agreements checked indicates an effort to exclude from the arbitrator's jurisdiction matters which involve policy or discretion or subject matter of existing laws, rules, or regulations. An interesting hybrid tendency, present also in the New York City Board of Education agreement, is illustrated by the clause recently agreed upon between the Philadelphia Board of Education and the AFT, providing as follows:

> . . . the Board or the Federation may submit the matter to arbitration if the grievance, complaint or problem involves the compliance with, or application or interpretation of this Agreement, provided that a grievance concerning any Board action, not inconsistent with any provision of this Agreement, taken under any term of this Agreement requiring or providing for the exercise of the Board's discretion or policy-making powers, may be decided by the arbitrator only if it is based on a complaint that such action was applied in a manner inconsistent with the general practice under such action followed throughout the school system in similar circumstances.[49]

On the other hand, some agreements are at the opposite extreme, encompassing all controversies both within and without the agreement.[50]

It is possible, or at least one may conjecture, that with the passage of time and experience the latter type will tend to be narrowed and the former type will tend to be broadened. Although an insufficient sampling is available to permit safe generalizations, and there are exceptions even within the limited sampling, there are not surprisingly some indications that the lines are more tightly drawn where binding arbitration is agreed upon, and less tightly drawn, as in the federal service, where advisory arbitration is used. The earlier reference to the tip-of-the-iceberg aspect regarding extracontractual regulations and practices at the federal level also affects the problem at the local and state level.

It is not uncommon to exclude from the arbitrator's jurisdiction such fundamental matters as job classification, promotion, and discipline; this is related to pre-existing and continued jurisdiction of local civil service commissions over such issues. The matter

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[49] Article IX, Section 2, Step 3, contract dated September 1, 1966.

[50] See, for example, contract dated March 1, 1966, between the State Tax Department of Delaware and Local 1385, AFSCME, BNA, *Government Employee Relations Report,* No. 132, March 21, 1966.

of dual procedures, discussed at greater length in connection with the federal level, can also be a basic element in the pattern at the state and local level, although it may here represent a somewhat simpler duality between negotiated procedures on the one hand and civil service or similar state-enacted appeals systems on the other hand. At least at this stage of the evidence available to me, the further complicating factor of pre-existing internal agency grievance procedures, which I have referred to in connection with the federal experience, would not appear to present the same problem at the local level.

The 1966 agreement between the City of Milwaukee and the State, County and Municipal Employees may not be typical, but I believe it offers a valuable sense of flavor regarding the problem of arbitral jurisdiction and illustrates the type of atmosphere which arbitrators working in this field may meet.[51] This particular contract has *two* sections on arbitration—one entitled "Final and Binding" and the other entitled "advisory." Together the two sections encompass over five closely typed pages.

The binding arbitration section commences with a statement that it may "only" be used for issues involving interpretation of the agreement, and then quickly states, "except, however, that the following subjects shall not be . . . subject to either advisory or binding arbitration . . ." Listed thereafter are six items of exclusion which for the most part refer very generally to matters covered by existing law, or to responsibilities conferred upon the City or its officials by existing law, including all legal principles spelled out by the Wisconsin Supreme Court regarding the City's responsibilities but excluding, interestingly, any "dicta" in decisions of that court. There follows an extremely detailed description of the procedures to be followed in this kind of arbitration, including careful requirement for the spelling out of the issue and limitation thereto.

It would seem highly unlikely that all the terms of the above exclusions will be literally applied, but the approach is nevertheless indicative of some of the basic problems in this field. The advisory arbitration section of this same contract appears to be

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[51] Contract dated January 1, 1966, Part III, Sections II and III.

limited to disciplinary matters normally appealable to the civil service commission, with the decision of the arbitrator being submitted to the commission itself for acceptance or rejection, and with the right of the commission to reopen the case for further hearings if it wishes.

Arbitration Decisions

There have been a substantial number of arbitration cases at the state and local level, but there is no information as to the exact number. Many of these decisions have involved Academy members. A brief discussion of these decisions follows.

Insofar as New York City is concerned, there have been approximately 40 decisions at the Board of Education in approximately four years; there is an indication of an increased tempo over the last year or so. Clearly, the Board and the Welfare Department must be regarded as the two public agencies in this country with by far the greatest experience in grievance arbitration up to the present time. Arthur Stark has issued 30 decisions in his New York City Welfare Department arrangement, including a recent one involving summer hours which applied to many other departments besides Welfare.[52] The Wisconsin Employment Relations Board has processed five grievance arbitration cases for that state, and a number have also been processed through other state labor agencies.[53] It can be safely stated that there have been many more cases than these, of some of which, going back years before the more recent developments in this field, I am personally aware. But if the reporting of information of this type is inadequate for the private sector, it is clearly much more so for the public sector at the local level, with some of the unions and employee organizations in this field having no information at all regarding numbers of decisions issued. Statistically, as is true of many other matters in the public sector, conclusions must await extensive further research. I will, however, be making some additional comments

[52] Stark, *op. cit.* the 30 decisions were issued over a period of approximately 18 months; 22 decisions were issued to the Mayor, with all but one adopted. Of the remaining eight issued to the Commissioner of Welfare, all were adopted with the exception of some minor portions in individual instances.

[53] Anderson, *op. cit.*, p. 11, regarding the Wisconsin experience. Copies of a number of decisions issued in states such as Connecticut have been furnished to the writer directly by individual arbitrators.

regarding the quantitative aspect in the closing portion of this paper.

Insofar as the subject matter of decisions thus far issued is concerned, a number of the cases examined at the local level, as at the federal level, reveal no basic distinguishing characteristics from those found in private industry. To reverse the comparison, however, there is also, at both federal and local levels, an *absence* of many of the types of issues found in the private sector, as for example discipline and job classification matters already discussed along with such issues as incentive problems. On the other hand, the limited sampling at the local level reveals a not-surprising high incidence of basic arbitrability issues, reflecting some of the factors discussed earlier, and also, for probably related reasons, some frequency of issues over the arbitrability of group and/or union grievances as distinguished from individual grievances.

Mere subject matter of cases does not, however, tell the whole story. I will refer to only two actual decisions, not necessarily typical ones, but basically reflective, in my opinion, of the separate flavor which will be present in a great many though by no means all of the cases in this field. One is a recent decision by Clyde Summers. A Town Manager in Connecticut negotiated a new contract with his firefighters, with an effective date of July 1, 1966.[54] The Town Council, which was required to pass enabling legislation to implement certain provisions of the contract, postponed action on the matter until the end of July. On the advice of the Corporation Counsel that the enabling legislation could not be made retroactive, the Town Council approved the proposed contract but made it effective August 1. The union and the Town Manager signed the contract with an effective date "no later" than August 1, but submitted to the arbitrator the question of whether the effective date should in fact be the agreed-upon July 1 date.

The arbitrator, who is on the faculty of the Yale Law School, reviewed the law upon which the Corporation Counsel had based his opinion and found that the Corporation Counsel was wrong. Arbitrator Summers ruled on this aspect as follows:

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[54] International Association of Firefighters, Local 1241 and Town of West Hartford, Connecticut (undated).

> The conclusion must be that Article XI, Section 2 of the Connecticut Constitution was no bar to the making of the collective agreement between the Town and the Union retroactive to July 1, 1966. The opinion of the Corporation Counsel that the Contract could not be made retroactive was not well-founded and that opinion misinformed the Town Council as to its legal powers.

This did not, however, dispose of the issue. It was still not possible to effectuate the contract without the necessary enabling act of the Council, and the Council had made its action effective as of August 1. Referring again to the "mistaken" legal advice given the Town Council by its Corporation Counsel, Professor Summers held that he personally had no authority under his submission to correct this mistake, although the Town Council still could do so. He also found that the conditional approval by the Council was contrary to its authority under the detailed sequence and responsibilities for collective bargaining spelled out for local executive and legislative branches under the Connecticut Municipal Employee Relations Act. Nevertheless, under all the circumstances, he found ultimately that the only course open to him was to approve the August 1 effective date.

This general type of problem, involving the question of the arbitrator's role in relation to that of government officials or bodies and the effect on the latter of the collective bargaining process, will not, I feel, be an uncommon one.[55]

The second case is one decided recently by Peter Seitz involving the City of New York and its police and firemen's organizations.[56] Mr. Seitz, along with Saul Wallen, Father Philip A. Carey, Vern Countryman, and earlier Sylvester Garrett, had served on the tripartite committee that had worked out the previously mentioned, agreed-upon basic collective bargaining program for city

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[55] Robert Howlett, in a decision dated February 12, 1967, involving the Warren (Michigan) Consolidated Schools and the Warren Education Association, has pointed up another potentially unique, and no doubt controversial possible aspect of the arbitration process in this field. Where the issue was whether the agreement between the parties had in fact required that a past services credit clause should give higher benefits to newly hired teachers than to incumbent teachers with comparable experience, Mr. Howlett interpreted the agreement language as meaning the latter; but he nevertheless decided the grievance in favor of the association, holding the agreement clause to be a nullity as contravening the equal protection provisions of both the federal and state constitutions. Application of the latter approach appears to have been based on the public nature of the parties.

[56] BNA, *Government Employee Relations Report*, No. 165, November 7, 1966.

employees, which is still awaiting legislative enactment.[57] Although the decision of Mr. Seitz may not be narrowly defined as a grievance arbitration case, it is sufficiently related to some of the underlying aspects of the present paper to warrant its mention here.

Briefly, the issue was whether manning questions, such as the number of policemen in a patrol car or the number of firemen on a fire wagon, were bargainable issues under the tripartite agreement which the parties had agreed to follow in their particular current negotiations. Under the tripartite agreement, the scope of collective bargaining had been defined to include "working conditions" but was made specifically subject to a comprehensive management rights clause that included such items as the right to "determine the content of job classifications" and other items, which left a substantial question in Mr. Seitz's particular case. In addition, moreover, the management rights clause was immediately followed by a further paragraph which must be regarded as at least the equal of some of the most dangerous of language shoals that members of the arbitration profession have encountered in private industry. Specifically, and referring to the above-mentioned management rights exclusions, the paragraph in question reads as follows:

> The City's decisions on these matters are *not* within the scope of collective bargaining, but notwithstanding the above, questions concerning *the practical impact* that decisions on the above matters have on employees, such as questions of work load or manning, are within the scope of collective bargaining. (Emphasis supplied)

Mr. Seitz proceeded manfully, but not without difficulty, to interpret the various clauses involved and to arrive at a result which appears to be basically sound, considering the circumstances and the nature of the language.

It should also be pointed out, however, that Mr. Seitz was afforded an opportunity which few arbitrators have had. Despite going out of his way at several points in the opinion to place responsibility on the parties for the particular language, the fact of the matter is that the language was worked out under the sponsorship and through the mediating efforts of a tripartite panel

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[57] *Op. cit.*

on which Mr. Seitz himself had served. Notwithstanding his repeated, plaintive disclaimers, there is a gnawing impression that the lady protested too much. The conclusion which emerges is that Mr. Seitz was granted the truly unique, though clearly not welcome, opportunity to interpret basic contract language which he himself had had a hand in writing! Obviously, labor and management negotiators in the audience can be excused if they relish the situation; and some might even interject unkindly that to few arbitrators has there been afforded such an opportunity to furnish work for future arbitrators.

Now, Mr. Seitz is not an arbitrator who minces words or pulls his punches in his opinions. Nevertheless, considering the circumstances, it may not be surprising to find the following engagingly mild and forgiving, almost tender passage in this particular opinion. Referring to the indecipherable language that I have quoted, the arbitrator states:

> Third, the problem of construction here is to reconcile and to bring into concord a) the relatively clear, plain and well-drafted language in which the City's prerogatives are reserved from the area of bargaining; and b) the *uncertain,* and *possibly,* ambiguous language, which excepted certain matters from the City's prerogatives . . . (Emphasis supplied)

The case and the opinion are cited here only as one more example of the uniquely different and difficult types of problems that may confront arbitrators in the field of public-employee labor relations at the local level.

D. Conclusion

We turn now, after this lengthy description and analysis of some of the experience and developments at the federal, state, and local levels of government, to some closing evaluations and projections.

First, on the quantitative aspect, it is clearly too early, and the information is too inadequate, to permit any accurate conclusions regarding the extent to which grievance arbitration, binding or advisory, will come to represent the same basic part of the industrial relations behavior pattern in the public sector that it has come to occupy in private industry. On one side, the relatively

narrow scope of bargaining in many instances and the frequent exclusion from bargaining of such basic issues as discipline and job classification problems, plus the continued effort to limit arbitrability rather narrowly in the arbitration clauses themselves, suggest that wider unionization of public employees may not automatically carry with it proportionately widespread resort to grievance arbitration. Against this consideration is that, notwithstanding the limitation of subject matter, the contracts in public service, as have their counterparts in private industry, show signs of growing fatter with age. Moreover, some of the public contracts, particularly in the professional field, appear to be opening new areas of bargaining subject matter that have been unknown in the private field. There are also a few clear signs that earlier contractual restrictions on arbitrability are being broadened somewhat, although it is to be anticipated that some of the initially broader clauses may, in time and with some experience, move in the opposite direction.

Still another factor that must be weighed is the uncertain extent to which public employees, as a group, will make use of their grievance procedures. There is evidence that the grievance caseload is surprisingly small in some instances.[58] Whether this is due to the newness of the experience (small use of at least written grievances has also characterized some of the older relationships), or to the limited nature of the contract subject matter, or to some unique differences on this score arising from the separate nature of public employment, or because the high number of professional unionists may view grievances differently, it is too early to judge.[59]

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[58] Conrad, *op. cit.*

[59] The writer's own past experience with the City of Philadelphia's bargaining picture indicated a marked paucity of grievances processed beyond the departmental level. While most of the departments were unusually successful in resolving grievances at their own level, the evidence indicated some variation, between departments, in the number of grievances or complaints initially filed. The overall impression was one of relatively few grievances, but the validity of conclusions in this area must be qualified by the clear preference of the union representatives to use informal rather than written complaints. An additional aspect is that many of the complaints involved "working condition" subject-matter covered in Civil Service Commission regulations, which were often taken up by the union directly, and verbally, with the City's Personnel Director. Similar experiences have been reported to the writer, over the years, by representatives of other cities. Nevertheless, all of these experiences or impressions precede the current onset of basically more sophisticated collective bargaining in the public field, and judgment must, therefore, be weighed accordingly.

It may be safely predicted, I believe, that the private-industry experience of the increasing use of arbitration over the years will be duplicated in the public service. Whether the sharp and dramatic recent rise in collective bargaining in the public service will be accompanied by a sustained sharp rise of the grievance arbitration curve in the early stages remains to be seen.

Recognizing that the rapid increase in the number of contract clauses providing for arbitration does not automatically presage use of those clauses, it should also be pointed out that in the private-industry sector, where grievances were once a major source of work stoppages, interruption for this reason has now virtually disappeared with the widespread acceptance of grievance arbitration.[60] With the current preoccupation over the issue of strikes by public employees on contract matters, and with the difficulties of finding a substitute for such strikes, it is not unreasonable to expect that for the relatively easier area of *grievance* resolution, where an established peaceful method is already at hand and where the legal and institutional obstacles to transference are clearly not as great, the trend toward increased acceptance and usage of grievance arbitration will continue.

Any other conclusion would, in my opinion, be unrealistic, considering the dramatic growth in collective bargaining as such, the basic pattern of seeking to adapt public-employee bargaining to the private-industry framework wherever possible, and the other factors which I have mentioned. The only question at this stage appears to be the *rate* of growth; the evidence currently available is obviously too limited to permit an accurate projection on this score.

On the qualitative side, a host of actual and possible questions suggest themselves. On one major aspect, the returns are already in. The basic and bitter battle over the sovereignty issue, which so long barred the way to acceptance of unionism in the public service, has by no means been terminated with the now-widespread pattern of recognition and written agreements. At least at this stage, it has been transferred, with basically similar concerns on both sides, to the issue of scope of bargaining; and even where

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[60] Address by Dr. George W. Taylor, Industrial Relations Research Association, Philadelphia Chapter, March 8, 1966.

some controverted subjects are accepted as falling within the scope of bargaining, the battle then often moves to the arena of the arbitrator and *his* scope of authority under the contract arbitration clause.

These issues may not be so serious where the arbitration is advisory, but at the local level, at least, that type of arrangement may already be relegated to the minority category. There is also evidence that even where the arbitrability of certain types of problems is accepted, the sovereignty issue may also be raised over the question of the arbitrator's authority to direct a remedy.

Dr. George Taylor has pointed out to me that the earlier stages of private-industry grievance arbitration in this country were marked by many heated controversies that were not dissimilar to some of those now arising in the public field—as, for example, the battles over the authority of supervisors and the retained-management-rights question. But he has also recognized current differences and he has pointed out, too, that many years were required for the solution of some of these early problems in the private sector.

Numerous other qualitative aspects of the problem range from matters like the impact of the political environment on a grievance in local government, to such matters as the publication of awards and confidentiality of the arbitrator's relationship with the parties and whether matters like these require a different approach because the parties in public service bargaining are public, to such questions as the basic method or style of arbitration in this field and whether that should be different. It is at least possible that questions like enforceability and procedural due process, which have been thoroughly analyzed in the private sector, may now have to be analyzed all over again in the separate framework of the public sector. The relative newness to collective bargaining and arbitration by most of the parties in this field may create, when the different characteristics of the field itself are also considered, a rather unfamiliar framework for many arbitrators. There is the danger that the procedures followed in hearings may be unrealistically oversimplified or, because of the nature of some of the problems, that they may become too formal, too slow, or too technical, thus defeating the goal of relatively expeditious resolutions.

Jean McKelvey, in an excellent recent article, has pointed to the controversy that is now taking place on the question of whether the state agencies and personnel assigned to administering some of the new state acts and programs in the public-employee labor relations field should reflect the experience and background of the private-industry sector, or whether, as urged by some who regard the public sector as different, they should not.[61] The same type of controversy may in time also arise in connection with the choice of grievance arbitrators for at least some parts of the public-employee sector, although to date most of the arbitrators used in this field have apparently been men with a private-industry background. Apart from the latter possible controversy as such, it may become necessary that arbitrators develop a particular expertise in this field, as so many already have done for a number of areas within the private-industry arbitration field. I might point out in passing, however, that while some of us have drifted in and out of this whole field of public-employee labor relations, the number of Arvid Andersons who have lived with the problem on a continuing and sustained basis can be counted on one finger.

The parties in the public field will often, on such questions as the basic sovereignty issue, be much better informed than the arbitrator because they have discussed the issue at some length. It it easy to say that the arbitrator should therefore limit himself in the usual fashion to interpreting the language they have written, but it must be recognized that because of the inherent difficulty of the problem the language may often be less than clear or sufficient. Where the latter *is* the case, and in connection with other areas too, the unique difficulty of the problems may perhaps call for further arrangements of the Welfare Department type in New York, in which the private-industry experiences of the arbitrator are joined with the public-service experiences of the parties in an informal program of mutual reasoning and assistance designed to adapt workable solutions for this field. In effect, private mediation, possibly in some new forms, may become a process peculiarly fitted to the needs here.

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[61] Jean McKelvey, "The Role of State Agencies in Public Employee Labor Relations," *Industrial and Labor Relations Review*, Vol. 20, No. 2 (January 1967), pp. 194-197.

Lawyers and staff men with experience in the private-industry sector may conceivably also be required to lend assistance in the mutual adjustment process, and some of them have already become involved in that function. Some of the difficulties which have hitherto developed, I feel, were unnecessary, stemming from the use of non-labor-relations experts, although, as I have indicated, simple transference of that expertise alone may not be enough.

A whole host of members of this Academy already have been or are currently involved in the process of attempting to hammer out solutions to the troublesome basic issues in this field, or in serving under some of the impasse procedures. The experience of grievance arbitration, which may offer a window for viewing the practical aspects of some of the problems with which they are faced, may enhance their usefulness for these more basic tasks.

Ultimately, in my judgment, the arbitrator in this field will, with the help of the parties, evolve his particular role and function in a rather gradual fashion as the field itself changes and evolves. It is clearly too early to define accurately the precise outlines of that ultimate role. He may often find himself facing this question in the basic task of determining the style, nature, and content that should go into a particular decision. Some of those who have had experience in this fascinating new field will agree with me, I believe, that some of the cases thus far presented have involved extremely difficult and painful, as well as highly unique, problems.

The arbitrator's approach could, on the one hand, conceivably reflect the view that private-industry decision-writing today suffers from a hardening of the arbitral arteries and that what is required in this field is the more forthright and free style of decision-making that marked the earlier era of private-industry arbitration where the arbitrator perceived and sought to meet a need for basic guidance on the part of the parties themselves. Another school will, however, be influenced by another view—justified perhaps by the use I have made of the Seitz decision earlier, and perhaps also to be demonstrated in the future by my own much too free indulgence in broad comments and projections in this particular paper. That view might be reflected in a recent quote by James MacGregor Burns from *Cardinal Richelieu*:

> Give me six lines written by the most honest man, I will find something there to hang him.

On this aspect too, I can only say once again that it is too early to know.

III. THE RESOLUTION OF IMPASSES

GEORGE H. HILDEBRAND*

Introduction

The treatment of impasses over new contracts in the public sector is still far from a settled issue. For one reason, the whole area lies on the frontier of collective bargaining; in many jurisdictions there is a legislative void as well as a lack of experience. For another, the approach one decides to take will be determined largely by the philosophical view one adopts toward labor relations in the public service. In consequence, some preliminary reconnaissance of this still largely uncharted territory seems in order.

As to prevailing philosophies, if one is a devoted advocate of the civil service principle, he will probably want to reject the possibility of collective bargaining, even though a measure of reconciliation is in fact possible. The situation is akin to that of a specialist in job evaluation who is asked by his management to assist in negotiating a system of wage differentials. Further, if one is deeply committed to a strict technical view of the sovereignty of the legislature, again he will probably rule out any place for independent unionism. In this instance, the position is similar to that of a company counsel urging an absolutist version of the doctrine of management rights.

On the other hand, if one sees some value to collective bargaining in the public sphere, as I suppose most of us here do, the ruling questions will take a different form. Probably the foremost one to emerge is whether the public sector is essentially a case *sui generis,* that is, whether it differs enough in substance from its private

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