agreement. Like any tool, however, it has only a limited use. The limitation on its utility will be the confidence that the parties have in the interest arbitrators. Only you can increase that confidence by writing sound opinions which will convince the parties that it is safe to give up their sovereignty to you.

IV. A UNION VIEW

VIC GOTBAUM*

I am pleased to have this chance to discuss some of my thoughts on interest arbitration with you. My remarks will be confined to a consideration of collective bargaining and bargaining impasses arising in the public sector—for two reasons. The first is that my experience is in organizing and directing a public-sector labor union, District Council 37 in New York City. The second reason is that it is only in the public sector that labor and management are required by law to resolve their bargaining impasses by having a third party write the contract for them.

We all know that in the majority of those states that even allow public employees to organize, strikes by public employees are illegal. We know that the strike threat or the strike is the major weapon labor uses to achieve its ends. Certainly, if the right to strike is prohibited, a substitute for the strike is needed or unions will strike anyway because that is the major power they can show to have a chance that their demands will be taken seriously. We know that binding interest arbitration is the substitute for the strike that legislative bodies have mandated for the parties.

My basic position is that public-sector employees should not be treated any differently than private-sector employees. Public employees should have the right to strike. I think fear of the strike paralyzes us and prevents the development of mature collective bargaining relationships in the public sector. I do not think it is likely, however, that this line between the public and private sectors will be erased. So let's talk about interest arbitration, the substitute for the strike.

My focus will be on who uses interest arbitration, some of the problems I see with its use, and some comments on how its ef-

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fectiveness might be increased. For example, I headed a small AFSCME council in Illinois in the late 1950s and early 1960s. We were very vocal in our support of interest arbitration because of our weak bargaining position. Interest arbitration can be used as a critical tool by unions that are numerically small or centered in agencies which are thought to provide nonessential public services.

For public-sector unions that are in a stronger position, it is questionable whether interest arbitration is a fair substitute for the strike. When governments require interest arbitration in the public sector, we had better be concerned about the fairness of the procedures. What disturbs me is realizing, first of all, that most arbitrators come from a management background and are most sensitive to issues of management rights. Second, most arbitrators are also members of the public and have absorbed a notion that public employees should be prepared to sacrifice some of their goals for a general public good. Unfortunately, the public good is defined in public by representatives of the public employer. Lastly, I am concerned about the effect of interest arbitration on the collective bargaining process and have some suggestions for increasing the effectiveness of arbitrators who are selected to decide contract disputes.

My first concern is that most arbitrators come from a management background. This occurs because usually the elected political officials appoint the members of a state's labor relations board and those members come from a background of government service and have a management perspective on labor issues. Under most statutes, it is the state board that creates a panel of arbitrators, and it is the board that appoints the arbitrator when collective bargaining negotiations have reached an impasse. We must not forget that where management can dispense, they can also dispose.

In 1965, New York City social service workers would not have struck if city management had agreed to impartial binding arbitration. City management had proposed its own panel of arbitrators and insisted that any interest arbitrators be selected from that panel. The union wanted the American Arbitration Association to propose a neutral panel of arbitrators, but this proved unacceptable to management. The social service workers struck rather than accept the unacceptable.

I will mention that at present New York City is unique in that the Board of Collective Bargaining of the city's Office of Collec-

tive Bargaining is truly a tripartite structure. The Board has a total of seven members: two are management representatives, two are labor, and three are neutrals. The city unions and city management must agree on the appointment of each of the three neutrals. Before an arbitrator is selected to resolve a bargaining impasse, both parties must agree on the arbitrator to be appointed.

The degree of labor involvement that occurs under the New York City collective bargaining law is a major reason for the success of the Office of Collective Bargaining. There is no question but that this involvement enhances the credibility of the procedures and decisions of the Board. In light of the unusual involvement of labor, it is interesting that several times in the past ten years the city has exercised its option to veto the reappointment of a Board neutral. The municipal unions have never exercised their collective option to veto reappointment of a neutral. A tripartite structure such as this can balance the management bias inherent in most labor board structures.

Besides the management orientation of many arbitrators, arbitrators are members of the public and incorporate public prejudices in their approach to dispute settlement. One example of this is the increased application of the ability-to-pay standard by arbitrators in deciding most items. This has occurred as the operating expenses and debts of state and municipal governments have increased. There appears to be a public attitude that public employees should be grateful that they have jobs, and an assumption that public employees should subsidize governments' services by accepting lower wages and benefits than those that are available in the private sector.

Arbitrators generally do work from specific statutory criteria and are required to explain the basis for their awards. A government's ability to pay is just one of several statutory criteria enacted in the New York State Taylor Law. The NYC collective bargaining law lists the interest and welfare of the public as one standard, and the Office of Collective Bargaining has considered the city's ability to pay as one element in that standard. In 1975, however, in the Financial Emergency Act, the New York State legislature established the Financial Emergency Control Board, delegating to that board the authority to limit wage increases. On review of impasse panel awards, the Board of Collective Bargaining of the OCB revised downward the terms of the few awards which provided for greater increases than those permit-

ted by the FECB. In 1978, the state legislature engraved what the Board of Collective Bargaining had already effectively done, namely, made New York City's ability to pay for contract terms the primary consideration for any arbitrator chosen to hear a contract dispute that had reached impasse.

Of course the fiscal crisis has imposed a terrible responsibility on us. Unions have had to undergo a crash course to learn about fiscal matters. In negotiations we absolutely must know the budget and know the source and number of tax dollars. Since 1975 New York City unions have become more accurate predictors on budget items than the city's own analysts.

If the employer's representation as to its ability to pay is the primary consideration, I don't need to tell you that this is inherently unfair to public employees who are thus expected to subsidize public services. In fact, in our negotiations last fall on the Coalition Economic Agreement, the city showed itself only too eager to stop negotiating and to put the proposed contract terms before an impasse panel, especially since a few months earlier an OCB impasse panel had awarded New York City transit workers 6 percent in wage increases for each year of a three-year contract. Instead, negotiations continued and we settled for a two-year contract with an 8 percent increase the first year, after a two-month lag, and a 7 percent increase in the second year.

It is probably unrealistic to think that interest arbitrators should ignore that implicit, if not explicit, mandate to write awards that are for the public good. As I have noted, the public good is increasingly being defined as the good that comes from spending less money. If the budget projections by government officials are considered sacrosanct, where does that leave the public employee? I think all public employees ask is that their wages and benefits compare to the wages and benefits available in the private sector. The standard arbitrators should use in determining an economic package for public employees is the standard of comparability because that is the only fair standard.

Now let us look at collective bargaining as a process—one that occurs over time like any process. Al Shanker and I are praised for being good negotiators. I'm not sure that we are such great negotiators, but we have bargained many contracts over a long period of time. Our determination to bargain contracts and the actual bargaining of contracts have caused the development of

a certain maturity in our collective bargaining relationships. It is only by going through the whole tedious process again and again that working relationships develop. Management in the public sector has a problem in that usually a high turnover of management representatives occurs. There is minimal continuity from one contract to the next, so that management representatives get less practice in negotiating. Thus, often we have a public-sector management that does not know how to bargain or is unwilling to do so.

I think the effectiveness of interest arbitration in the public sector could be increased in several ways. One problem I have noticed is that at times interest arbitrators move in too quickly to resolve a dispute. Arbitrators are basically peace-loving people. They don't want rancor or animosity to develop, or if they notice it beginning to develop, they are too quick to cut it. I'm not sure that animosity is a negative thing. Animosity allows you to define the positions very clearly. Sometimes it is not possible to compromise and patch, or it should not be made easy for the parties to do that because something more fundamental needs to happen in their bargaining relationship. One suggestion I have is that arbitrators not be so quick to bring the parties together in a false peace.

Another way to increase the effectiveness of interest arbitration, I suggest, is for interest arbitrators to get to know the parties. You should make it a point to know the leadership of both parties, to know our problems, and to know our constituencies. An interest arbitrator should do whatever he or she can to learn what the real problems are that face us.

If an interest arbitrator is going to serve the parties effectively, he or she has to know the economic and political problems that confront each set of parties. The economic and political problems that District Council 37 must struggle with are different from the problems of the police, firefighters, or the unions that serve still other constituencies. The internal union concerns and dynamics vary dramatically from union to union.

I think that the approach of any interest arbitrator is fundamentally different from the approach of the grievance arbitrator. The interest arbitrator can do the job satisfactorily only if he or she has the continuing insight gained over time, and through personal relationships to the parties, into the kinds of real problems that confront those parties in their bargaining relationship. This is why I say, "Come and take me out to lunch, take the man-

agement representatives out to lunch, and do whatever else you can to know what problems we have."

Of course I would rather negotiate a contract than have a third party decide what terms we have to live with for however many years. I will tell you, however, that if interest arbitration is the only way a dispute can be resolved, I trust the arbitrator who knows the ins and outs of the economic and political realities that District Council 37 and the city face every day of the week. I trust the arbitrator who knows the history of our collective bargaining with the city and is sensitive to the problems we will face tomorrow as well as to the problems we face today.

Interest arbitration is firmly lodged in the public sector as a substitute for the strike. We are all concerned that its performance be as stellar as possible.