CHAPTER 7

INTEREST ARBITRATION AND ABILITY TO PAY

I. U.S. PUBLIC SECTOR EXPERIENCE

EDWARD B. KRINSKY*

This paper is an attempt to address the question of how public sector interest arbitrators in the United States handle the issue of ability to pay. It has a narrow focus and does not address the question of what arbitrators should do about ability to pay, but what they actually do. This paper draws upon prior published analyses, opinion statements of correspondents, a review of arbitration decisions, and personal and shared experiences of colleagues.[1] Questions about what interest arbitrators do or should do about ability to pay are not new to Academy programs. I refer you to papers by Academy members Fallon, Berkowitz, Block, and Anderson in past proceedings of annual meetings.[2] The subject has not been addressed at these meetings since 1982.

Great caution must be used in making generalizations about what interest arbitrators do because of the many statutes, procedures, and criteria under which they operate.[3] Many public

---

*Member, National Academy of Arbitrators, Madison, Wisconsin.

[1]In preparing this paper, I wrote to the heads of a dozen public sector labor relations agencies in December 1987, asking them how arbitrators in their states handle the ability to pay issue. I received responses from three, indicating that the subject had not been studied. It is a subject area ripe for exploration by professors and students with time and access to research money.

[2]Fallon, *Interest Arbitration: Can the Public Sector Afford It? Developing Limitations on the Process, An Arbitrator's Viewpoint,* and Anderson, *Outer Limits of Interest Arbitration: The U.S. Experience,* in Arbitration Issues for the 1980s, Proceedings of the 34th Annual Meeting, National Academy of Arbitrators, eds. James L. Stern and Barbara D. Dennis (Washington: BNA Books, 1982); Berkowitz, *Arbitration of Public Sector Interest Disputes: Economics, Politics and Equity,* in Arbitration—1976, Proceedings of the 29th Annual Meeting, National Academy of Arbitrators, eds. Barbara D. Dennis and Gerald G. Somers (Washington: BNA Books, 1976); Anderson, *The Use of Fact Finding in Dispute Settlement,* in Arbitration and Social Change, Proceedings of the 22nd Annual Meeting, National Academy of Arbitrators, ed. Gerald G. Somers (Washington: BNA Books, 1970); Block, *Criteria in Public Sector Interest Disputes,* in Arbitration and the Public Interest, Proceedings of the 24th Annual Meeting, National Academy of Arbitrators, ed. Gerald G. Somers (Washington: BNA Books, 1971).

[3]Citations of state arbitration statutes, descriptions of the arbitration procedures, and the employee groups covered by them can be found in Anderson, *Interest Arbitration in the Public Sector: Standards and Procedures,* in Labor and Employment Arbitration in the United States, ed. Tim Bornstein (New York: Matthew Bender, 1988).

sector arbitration statutes contain criteria that arbitrators must follow in making their awards. "Ability to pay" or related phraseology usually appears on the list of criteria. Sometimes it is subsumed under a criterion such as "interests and welfare of the public." However it is phrased, arbitrators must pay attention to the matter of ability to pay.

How much attention do they pay to it? The answer is probably "as little as they have to." I say that flippantly because it is a fair generalization that arbitrators do not enjoy becoming mired in questions of government finance. They pay a great deal of attention to ability to pay when they arbitrate in an environment such as New York City's fiscal crisis with restrictive fiscal control legislation, but that is not the typical environment. As with other issues, arbitrators are not apt to delve into the issue of ability to pay unless it is squarely put before them by the parties in a manner which cannot be ignored or passed over.

The issue of ability to pay is raised by disputants in very few cases.[4] It is not raised more frequently because public employers have come to recognize the difficulty of persuading arbitrators that they cannot pay more than they are offering.[5] Paying more may require a reordering of budget priorities, new taxation, borrowing, reductions in force, or curtailment of services; but it can usually be done. Whether it should be done, or whether it is

---

[4]In his study of interest arbitration cases in the 1970s, Joseph Crowley found that ability to pay was discussed in the following percentages of decisions: Iowa—50; Michigan—20; Minnesota—59.5; New York State—58.4; and Wisconsin—11.3. The percentages would be smaller if they reflected only the decisions in which the arbitrator dealt with the ability to pay issue in depth. Crowley, Ability to Pay as an Issue in Public Sector Interest Arbitration (Public Employment Relations Serv., 1981).

In a study for the Wisconsin Legislature in 1985, respondents said that ability to pay was either stipulated by the parties or was not in dispute in more than 30% of the cases. In most of the remaining cases ability to pay, if raised, was not raised seriously. An earlier study for the Wisconsin legislature in 1980 concluded from questionnaire responses that criteria other than comparability and cost of living "are rarely cited by the parties and little reliance has been placed on them by the arbitrators." My observation is that in Wisconsin's depressed rural farm economy, it has become commonplace in arbitration for employers to argue that additional increases are not in the public interest, although it is unusual for employers to argue seriously that there is no ability to pay more. *See Analysis of Employer and Employee Experience Under Wisconsin's Mediation-Arbitration Law* (Wisconsin Legislative Council Staff, 1985), and Bellman and Krinsky, *The Effect of the Senate Bill 15 Amendments to the Municipal Employment Relations Act,* A Study by the Wisconsin Center for Public Policy (Wisconsin Legislative Council, 1980).

[5]A recent study by Peter Feuille demonstrates that ability to pay is the deciding factor in a small percentage of cases. The study involved 302 police cases between 1975 and 1983. In 154 instances in which wages were at issue, the study identified what the arbitrator viewed as the "most important criterion." Ability to pay was the most important criterion in only 13 of those cases. In nonwage matters, the most important criterion was identified in 165 instances. Ability to pay was the most important criterion in only 25 of those cases. Feuille et al., *The Decisions of Interest Arbitrators,* 43 Arb. J. 1, 33-34 (1988). In the wage cases the study noted that "a slight majority of the ability-to-pay references favored employers."

politically wise for the employer to offer more, is another matter. What is usually involved is a political-economic decision, not inability to pay more.

Employers can make their political and economic arguments under other statutory criteria and not be subject to quite as stringent an analysis of their finances as that raised by the ability to pay argument. Many statutes have an "interest and welfare of the public" criterion or something similar. Resort to that criterion allows an employer to argue that even if the ability to pay exists, the union's demand is contrary to the public interest in economically difficult times. Many arbitration decisions have modified or rejected requests by unions based on the arbitrators' views of the public interest.

Arbitrators examine the evidence before them in the light of the statutory criteria. Typically, the criteria are not weighted in the statute. The arbitrator must apply each criterion, weigh each in balance, and decide whether and to what extent each party's position should be supported. The economic climate in which the dispute occurs is weighed accordingly. It is apt to weigh more heavily if the economy is very bad, particularly if the economy of the governmental unit involved in the arbitration is markedly worse than those of the comparable jurisdictions.[6]

This paper is not about cases in which the employer simply asserts that what it has offered is fair in light of all of the criteria and that it is not in the public interest to require it to pay more. The focus is on cases in which the employer claims that it cannot pay any more. What does that assertion mean? In the extreme case it means that the employer has reached the limits of its taxing authority, or that it is bound by fiscal control legislation and is precluded from additional spending or borrowing. In the more typical case the assertion means that the employer cannot pay more without additional borrowing, taxing, or altering of budget priorities in ways deemed undesirable, and perhaps resulting in curtailment of services and in layoffs.[7]

---

[6]Joseph Crowley concludes: "Ability to pay has not been regarded in the positive sense; rather it has been considered primarily as a negative factor." He explains that ability to pay is not cited by arbitrators as a rationale for ordering payment of higher wages. Rather, not having ability to pay is cited by arbitrators as a negative factor and as rationale for not ordering payment of increases above the employer's offer. *See* Crowley, *supra* note 4, at 54.

[7]Howard Foster suggests that inability to pay in the public sector means: "the public employer cannot pay the increase demanded without reducing its services to a level that is in some sense inadequate or irresponsible or without raising taxes to levels that are by some standard excessive (or conceivably unattainable or illegal). In other words, the relevant claim is essentially that the union's demands entail costs that the community

Arbitrators generally do not consider the ability to pay issue unless it is raised seriously. If a simple assertion is made about ability to pay and is not supported by detailed evidence, the arbitrator is not likely to consider the argument further except perhaps to mention it in the award so that a reviewing court or agency knows what was done with the issue and how it was presented and argued. Employers who seriously argue the issue of ability to pay realize the importance of documentation. Arbitrators are less likely than before to encounter ability to pay arguments "restricted to newspaper articles, irate statements of taxpayers and other emotional approaches. . . ."[8] In the discussion that follows it is assumed that the issue of ability to pay has been raised seriously and is supported with documentation.[9]

For purposes of discussion, assume three situations. In the first case the data for other than ability to pay issues are heavily in the employer's favor. In the second case the data for other than ability to pay issues are a toss-up or slightly favor one party's position. In the third case the data for other than ability to pay issues are heavily in the union's favor.

In the first case, where the other factors heavily support the employer's case, the arbitrator is not likely to spend a great deal of time discussing the issue of ability to pay. There is no need to do so. The arbitrator is apt to state that even if the union could demonstrate that the employer had the ability to pay what was requested, the dispute would still be resolved in favor of the employer based on the other factors.

In the second case, where the factors other than ability to pay do not clearly support either party, the arbitrator may not have to spend much effort dealing with the question of the employer's ability to pay because the ability to pay argument occurs in a context of general economic difficulty for that governmental jurisdiction or geographic area. The arbitrator considers the

---

cannot reasonably be asked to bear or tradeoffs that the citizenry cannot reasonably be asked to make." Foster, *"Ability to Pay" in Public Sector Fact Finding and Arbitration,* 35 Lab. L.J. 125 (1984).

[8]Mulcahy, *Ability to Pay in Public Employment,* 31 Arb. J. 2 (1976).

[9]The author concurs with the following statement by Academy President Arvid Anderson concerning the type of documentation which should be provided to arbitrators if ability to pay is to be considered seriously: "ability to pay . . . can only be fairly and intelligently considered when the panel is presented with fully documented references to such subjects as real estate and sales tax collections, constitutional debt limitations, the possibility of deficits, per capita income of citizens, economic trends in the particular locality, and recent settlements with other bargaining units by this governmental entity and other employers." Anderson et al., *Impasse Resolution in Public Sector Collective Bargaining—An Examination of Compulsory Interest Arbitration in New York,* 51 St. John's L. Rev. 465 (1977).

financial data (such as tax rates, state shared revenues, per capita income, unemployment rates, local plant closings and layoffs, and, in my part of the country, the value of farm land and commodity prices) and makes a judgment about the strength or weakness of the local economy. If it is indeed fragile and the governmental unit offers a fair increase, the decision may favor the employer because the arbitrator views the employer's offer as more in the public interest than the union's, whether or not the employer has the ability to pay more. This is not to suggest that employers typically win cases where the economy is bad. The union may prevail if it can show that the governmental unit is no worse off economically than comparable units of government paying higher wages and benefits. Arbitrators who place great weight on wage and benefit comparability are apt to be receptive to arguments about comparability of the employer's financial efforts.

If the arbitrator is leaning towards the union's position based on the other than ability to pay criteria, the opinion is likely to analyze more thoroughly the employer's arguments about ability to pay. The arbitrator will not want to issue an award in the union's favor which may be subject to criticism that there was little or no consideration given by the arbitrator to the employer's ability to pay arguments.

This brings us to the third situation where factors other than ability to pay weigh heavily in favor of the union's position. The employer may acknowledge that but for the financial condition of the employer, the union's requests are fair and reasonable.

What does the arbitrator do with the employer's ability to pay arguments and how is the outcome affected? There are two basic approaches that arbitrators take. The first is what I call the "hands off" approach. These arbitrators do not consider it their responsibility to look behind the budget document and do not view it as their role to make awards which may result in higher taxes, borrowing, reordering of priorities, curtailment of services, or some combination of these things. They say, in effect, if there is not sufficient unallocated money in the budget, such as contingency funds or position vacancies, there is no ability to pay. They believe that "a third party should not be able to single-handedly alter the fiscal priorities of a political subdivision."[10]

---

[10]The quoted language is from an article written by employer representatives critical of the role of third parties in arbitration. Larner et al., *Interest Arbitration: A New Terminal*

The second approach is the one most arbitrators follow. They do not stop their analyses after determining that there are no obvious available funds in the budget to finance higher wages and benefits. They realize that such a position puts the employer completely in control of the outcome of the dispute, since the employer adopts the budget, makes the political-economic decisions concerning the size of the budget, and establishes priorities.[11] "Hands-on" arbitrators understand that since interest arbitration is a creature of the state legislature, a political decision at the state level requires arbitrators to weigh various matters, including ability to pay, and to judge the relative fairness and reasonableness of the parties' positions. From that perspective these arbitrators make critical judgments about all the evidence. There is no reason to be more or less analytical about evidence on ability to pay than evidence on other statutory criteria, or to be more or less accepting of one side's position on that issue. Arbitrators personally may be philosophically opposed to wielding power having direct or indirect effects on budgets, taxes, and borrowing, but that philosophical decision has been made for the arbitrator by the state legislature which created the statute.[12]

Arbitration decisions occasionally mention these philosophical problems. The arbitrator expresses discomfort about making these decisions, but goes on to make whatever substitution for the employer's judgment is called for by the circumstances. The arbitrator must act cautiously and prudently, but unless the arbitrator is willing to make these judgments, there is no point to

---

Impasse Resolution Procedure for Illinois Public Sector Employees, 60 Chi.[-]Kent L. Rev. 860 (1984). If the "hands off" arbitrator is persuaded that there is money in the budget and awards accordingly, the employer may choose to use its budget in a manner not anticipated by the arbitrator and may decide to lay off workers, curtail services, borrow, or increase taxes. In fact, it may serve the employer's political purposes to take these adverse measures and blame the arbitrator or the arbitration process for it. The employer may not have a negative view of the consequences since this provides an opportunity to accomplish cost saving and efficiency otherwise not possible politically without the arbitration. Even the "hands off" arbitrator contributes to altering the fiscal priorities of the employer.

[11]In his analysis of interest arbitration criteria 15 years ago, Howard Block cited a City of Detroit arbitration case: "What would be the point of an arbitration, the panel asks in effect, if its function were simply to rubber-stamp the City's position that it had no money for salary increases? What employer could resist a claim of inability to pay if such claim would become, as a matter of course, the basis of a binding arbitration award that would relieve it of the grinding pressures of arduous negotiations?" Block, *supra* note 2, at 1710.

[12]Howard Foster suggests that these legislative decisions may have been unintentional: "I also suspect that the vast majority of legislators who have voted for . . . arbitration procedures has no intention whatever of permitting outsiders to make such judgments about the provision of public services . . . but . . . they have effectively thrust that very responsibility on the outsider." Foster, *supra* note 7, at 124.

the arbitration; it becomes merely a rubber stamp for the employer's position. However, the evidence may support the employer's position after the arbitrator has looked beyond the budget.

My review of decisions suggests that most arbitrators faced with ability to pay arguments are "hands-on" arbitrators who look critically at the financial data presented to them and raise questions about available funds, alternative priorities, and alternative means of funding additional wage and benefit requests. There is considerable variation in the degree to which arbitrators delve into these matters. The most comprehensive analysis of how arbitrators deal with ability to pay questions in multiple jurisdictions is a study published in 1981 by Professor Joseph Crowley.[13] He studied experience up to 1979 in Iowa, Minnesota, Wisconsin, Michigan, New York City, and New York State and reached the following conclusion:[14]

> Although the various statutes set forth many criteria, the most significant criteria . . . appear to be (1) wage comparisons; (2) cost of living; and (3) ability to pay. The cases reviewed indicate that where either of the first two factors are compelling, the arbitrator will generally not be dissuaded by claims of financial inability and will suggest other alternatives such as reallocation of priorities or reductions in force to fund the increase. Conversely, where the first two factors are not compelling, the arbitrator is usually more receptive to demonstrated financial inability.

Crowley's conclusions give the answer to what arbitrators do in the third situation posed earlier. Where factors other than ability to pay clearly favor the union, the arbitrator "will generally not be dissuaded by claims of inability to pay." I do not disagree with that generalization, but there are occasions in which arbitrators make ability to pay the determining factor even under those circumstances. Arbitrators are likely to give detailed reasons for their treatment of ability to pay arguments in such cases.

When serious economic arguments are made concerning ability to pay, arbitrators take their responsibilities seriously in evaluating the evidence, especially if the outcome hinges on the disposition of that issue. Monroe Berkowitz, speaking to the Academy in 1976, urged that changes were needed in the way

---

[13]Crowley, *supra* note 4.
[14]*Id.* at 55.

arbitrators considered ability to pay arguments. He cited the need for:[15]

> [A] willingness to listen and to evaluate testimony relating to the financial condition of the employer. Such testimony is relevant not only to applying the ability to pay criterion but also to assessing the impact of the settlement on the welfare of the public. . . . The wage decisions do affect the allocation of resources, and we will be living under conditions where limits on resources will be apparent. If decisions about curtailment of services or the relative value of one function over another cannot be made, at least the problems can be exposed to public scrutiny and discussion.

A reading of arbitration awards leads me to believe that today arbitrators, presented with substantial and well supported economic documentation about the public employer's financial condition, listen to it, consider it, and weigh it in their decision making. An arbitrator cannot responsibly ignore the subject matter because it is difficult or unpleasant, and most public sector interest arbitrators realize that.[16] In assessing the employer's ability to pay, arbitrators do not confine their analyses to budget documents. They consider other data: How do tax rates compare with the taxing efforts of comparable communities? What increases have occurred in the tax rate this year and in previous years in this and comparable communities? Is there a statutory limitation on the amount of tax increase that can be levied? An arbitrator is more likely to order the employer to pay more in wages and benefits even when there are no funds available in the current budget, if the employer has not made sufficient taxing efforts as measured against comparable communities. Comparability is one of the major criteria relied upon by arbitrators and bargainers in setting wage increases, and comparability of tax effort is important to the arbitrator in attempting to determine ability to pay.

The arbitrator may credit the employer for its efforts or for the environment in which decisions have been made. The arbitrator may view as significant referenda where the public has rejected authorization of additional taxes and defeated borrowing proposals, or recall elections centered around financial

---

[15]Berkowitz, *supra* note 2, at 172.

[16]One continues to hear of criticism of arbitrators, usually by employers, for not giving adequate weight to the employer's ability to pay. Much of this criticism results from a lack of shared definition by employers, unions, and arbitrators about what is meant by ability to pay.

issues. The arbitrator may take note of the extent to which the employer has borrowed in the past. How does this effort compare with what has been done elsewhere? Has the employer reached the limits of its authority to borrow?

Some arbitrators consider the employer's track record in estimating revenues and expenditures. They may be persuaded by evidence showing a consistent pattern by the employer of substantial underestimation of revenues or overestimation of anticipated expenditures. A management representative wrote, "There is, in some [school] districts, unfortunately, some truth to the claim that management trots out a 'tired record' of insufficient funds which has been repeatedly proven false after the budget year is completed."[17] The arbitrator faces the dilemma of not knowing whether this year's projections by management are any better than those in the past.

Whether or not arbitrators state it clearly in their awards, they realize that awards costing the employer more than what has been budgeted require the employer to reorder budget priorities to stay within the budget. This requires reduction of expenditures in other areas and perhaps curtailments in service and personnel. If the employer chooses to maintain its budget, this necessitates borrowing and perhaps subsequent tax increases. Joseph Crowley notes that arbitrators who knowingly impose greater financial burdens on the employer "may indicate that the funding will require the employer to borrow or to increase taxes even though he does not so direct such action, but will at least deal with and discuss the options available to the employer in the funding of the award."[18] Crowley cites instances in which arbitrators questioned budget priorities and ruled in favor of the union. One arbitrator noted that the school district was willing to spend money to subsidize a hockey arena, but not to give wage increases to teachers. Another observed that money would be available for salaries if the school board would spread the costs of paving a parking lot over several years instead of paying for it all at once as budgeted.[19]

There are many cases where arbitrators question employer priorities that place the burden of the employer's austerity measures disproportionately on the employees rather than on the

---

[17]Hall, *"Ability to Pay" Under Factfinding: A Management Comment*, 63 CPER 3 (1984).
[18]Crowley, *supra* note 4, at 53.
[19]*Id.* at 15, 7.

taxpayers. After reviewing budgetary and other financial documents, some arbitrators conclude that the employer has acted wisely and does not have the ability to pay, and that spending priorities should not be changed.

As mentioned earlier, ability to pay may become the predominant criterion where there is a known, well documented, or widely recognized fiscal emergency. In an article in the Albany Law Review, Michael Fox detailed the changing nature of interest arbitration awards in New York City as its fiscal crisis worsened. He examined 151 awards between 1969 and 1979, tracing "the process by which the City's neutral arbitrators under the pressure of the fiscal crisis abandoned the equity-oriented criterion of comparability in favor of the fiscally conservative, employer-oriented criterion of the City's ability to pay."[20] As the crisis deepened, "impasse panels were attempting to reach a compromise between the compensation which would ordinarily be awarded to municipal employees under the comparability standard and the compensation amenable to the fiscal needs of the City in terms of its ability to pay. . . ." Fox goes on to say that arbitrators discarded the comparability factor altogether after the establishment in 1975 of the New York City Fiscal Control Board and the New York City Financial Emergency Act. Two arbitrations thereafter which awarded more than the established pattern were modified by the Board of Collective Bargaining.[21]

Arbitrators are reluctant to rely upon ability to pay arguments except in well documented cases where employers demonstrate adverse financial positions and show that they have done everything in their power to overcome it, both absolutely and in relation to what comparable public employers have done. As I observed almost 20 years ago, employers will not prevail with ability to pay arguments unless they can show that "the raising of additional revenues involves greater difficulties than merely making an unpleasant political decision."[22]

Another aspect of the ability to pay issue that arbitrators confront has not been mentioned to this point. Arguments are made to arbitrators that in deciding ability to pay questions, they

---

[20]Fox, *Criteria for Public Sector Interest Arbitration in New York City: The Triumph of Ability to Pay and the End of Interest Arbitration*, 46 Alb. L. Rev. 97 (1981).

[21]*Id.*

[22]Krinsky, *An Analysis of Fact Finding as a Procedure for the Settlement of Labor Disputes Involving Public Employees* (unpublished doctoral dissertation, Univ. of Wisconsin, 1969), 165.

should consider the consequences of the award on subsequent settlements by the employer with other groups of employees. This is an issue that will not affect ability to pay if the bargaining unit in the dispute is the only one that has not settled, unless the settled units have obtained some type of "me too" agreements obligating the employer to pay them anything additional granted to other bargaining units. Suppose, however, that other units have not settled and the arbitrator believes that the employer has the ability to pay this unit, but not the others which normally follow the pattern of settlement obtained by this unit. Crowley concludes in his study that arbitrators ought to consider the effects on other bargains in making judgments about ability to pay, although he notes that "arbitrators have evinced a lack of unanimity on this question."[23]

My reading of Crowley's study and many arbitration awards suggests that arbitrators faced with this question do consider the effects of their awards on other bargains unless they are precluded from doing so. The problem is frequently compounded for both arbitrators and parties where more than one bargaining unit goes to arbitration in a particular year and there is more than one arbitrator. There have been instances in which arbitrators have differed with regard to their assessments of the employer's ability to pay and have awarded accordingly.

I have a few additional thoughts about the ability to pay issue. There is a need for systematic and comprehensive analysis of what arbitrators do with ability to pay arguments. Without such analysis one should hesitate before citing particular cases as typical. In the ability to pay area there is a more local focus required for determining what arbitrators do than in the treatment of other statutory criteria, such as wage comparisons and cost-of-living increases. Generalizations about ability to pay may be difficult to make across state lines because of variation from state to state in such matters as tax and borrowing limits, state-local shared revenue formulas, and limits on local government or school district autonomy. Two similar units of government in two different states may have markedly different abilities to pay depending on the restrictions under which they are required to operate.

It would be of interest to know in what manner the decisions of arbitrators have differed in recent periods of relative eco-

---

[23]Crowley, *supra* note 4, at 50.

nomic hardship at the state and local levels in contrast to more prosperous periods.[24] Disputants now have a difficult time anticipating under what circumstances arbitrators are likely to give substantial weight to ability to pay arguments, and what data are likely to persuade the arbitrator. Arbitrators could probably benefit from such knowledge since they may not know how their analyses and decisions in the ability to pay area compare with those of other arbitrators.

As economic pressures on state and local governments become more acute, there may be pressures put on legislators to change interest arbitration statutes and to circumscribe the role of arbitrators by more clearly defining the statutory criteria and attaching specific weights to those criteria which arbitrators must follow in their decision making. Whether or not such changes are made, arbitrators will be called upon more and more to make difficult judgments about the financial condition of local government units. Whether or not this results in more frequent findings of inability to pay than occur today, arbitrators will be asked to evaluate whether the public's interests are served by ordering higher wages and benefits sought by public employee unions under increasingly adverse financial conditions faced by local government. Arbitrators will have to make decisions about the appropriate balance between fairness to public employees versus fairness to the public at large. As long as interest arbitration systems substitute for allowing public employees to strike, arbitrators will make value judgments about society's spending and taxation levels and priorities. Whether this is what they should be called upon to do is a philosophical question for others to answer.

II. CANADIAN EXPERIENCE: A UNION VIEWPOINT

FELICITY D. BRIGGS*

This paper is presented by a trade unionist who has been involved in collective bargaining by way of interest arbitration

---

[24]Richard Lester states that in the period 1981–1983, "in some states there were complaints that, in making awards, insufficient weight was given to the criteria of ability to pay and the interests and welfare of the public. . . ." These were years of relative economic hardship for local government. The complaints cited were from New Jersey and Wisconsin. *See* Lester, *Lessons From Experience With Interest Arbitration in Nine Jurisdictions*, 41 Arb. J. 2, 33 (1986). *See also* Lester's complete study, *Labor Arbitration in State and Local Government* (Princeton: Princeton Univ. Indus. Rel. Sec., 1984).

*Manager, Arbitration Services, Ontario Nurses' Association, Toronto, Ontario, Canada.