

CHAPTER VI

FEDERAL LABOR RELATIONS:  
PROBLEMS AND PROSPECTS

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As I was traveling to Los Angeles, I experienced a minor identity crisis. First, I am honored to be a member of this organization. Second, when I was invited to speak I was Assistant Secretary of Labor for Manpower. Third, I am now with the Office of Management and Budget in the Executive Office of the President.

It's not clear whether I'm appearing before you as an aging arbitrator, a tired bureaucrat, or a passé professor. All of those identifications give me a certain invulnerability, and I would only say that if I have anything clear or concise to say, it reflects my training as an arbitrator; if I obfuscate, it reflects the disabilities that have been put on me in the past two years.

I spent most of my time in government as Assistant Secretary of Labor for Manpower—with responsibility for the administration of various training programs. However, I decided that this was an inappropriate topic for my remarks today since arbitrators can't be classed as disadvantaged, and certainly not in these surroundings—which I would classify as Cecil B. DeMille's middle period.

Thus, I decided to fix upon my present responsibilities. In my present position I'm most concerned with the federal budget, which is presently being presented to the public and the Congress with much fanfare and hyperbole. I must confess that I had a shock when I came over to OMB. It is the only place in the world where, when you say ".1," you mean \$100 million. The standard unit of currency is a billion dollars. When we go into the Director's reviews, where decisions are made with re-

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spect to budget recommendations to the President, we have to transact business at a rate of \$20 million a minute or we fall behind.

Technically, I'm the "M" in OMB and am concerned with developing effective management in government. Part of my responsibility, within the broad category of management, is for federal labor relations, working in concert with the Civil Service Commission and other agencies that impact upon this area.

The specific institutional responsibility goes from the Office of Management and Budget to one of these arcane groups called Federal Labor Relations Council. The Federal Labor Relations Council is charged with the broad administration and supervision of Executive Order 11491, which establishes the framework for federal labor relations.

The Federal Labor Relations Council is comprised of the Secretary of Labor, the Chairman of the Civil Service Commission, and the Director of the Office of Management and Budget, who is George Shultz. I am Mr. Shultz's representative on the Council. It is instructive that the broad administration of the critical area of labor relations in the Federal Government is a responsibility imposed upon three men who are very busy and have a wide range of responsibility. It is important that labor relations policy in the Federal Government be determined by top-level officials, but this arrangement poses some difficulty in assuming that this area receives the continued attention that it warrants.

As my text, then, I would like to talk about the development of federal labor relations: where it came from, where it is now, and the problems it will have to deal with in the immediate future. The lessons here are important ones, both in their own right and for what they can contribute to the understanding of the broader phenomenon of collective bargaining outside the private sector.

The federal labor relations system impacts on three million workers. Those three million workers represent a microcosm of the work force, from blue-collar workers in the naval shipyards and on soil conservation projects to the host of white-collar employees all over the country.

The federal labor relations system is also an important part of what will be the most exciting development in the industrial relations area in the 1970s—the emergence of bona fide labor relations in the public sector. The most visible and dramatic developments in this area have come at the state and local levels, with the Federal Government lagging behind in terms of the application of what we would view as professional industrial relations concepts. However, future developments at the federal level will undoubtedly have a major impact on the overall development of public sector labor relations.

Finally, the federal labor relations system provides a new basis for testing the transferability of the wisdom and genius that has accumulated in the labor relations field in the private sector over the past 35 years. This is one of the persistent issues in public sector labor relations, as I am sure you are aware from your involvement in cases in the public sector. Just as persistent are the two schools of thought in this area: those who believe that the idiosyncrasies of the public sector overwhelm private sector precedents, and those who argue that NLRB decisions and private sector contract provisions can be adopted, *in corpus*, in the public sector including the federal sector.

In order to understand the development of federal labor relations, it is important to understand the federal personnel administration system. Collective bargaining—or what passes for collective bargaining—is superimposed on a well-developed, elaborate, and explicit system of personnel administration that is calculated to deal with the wide range of substantive and procedural matters that are of concern to any group of employees. There are several specific elements of this system which are of particular significance.

First, the basic conditions of employment are essentially established by statute which reduces the opportunity to negotiate or to bargain over policy issues that would be the normal fare for collective bargaining. The statute goes back to 1884 and to the passage of the Pendleton Act which established the civil service system. It sets the basic rules of hiring, dismissal, promotion, and other rules governing the allocation of the labor force as codified over an 80-year period.

Second, basic levels of compensation have not been subject to

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managerial discretion or the exercise of economic sanctions by employee organizations. Rather, the wages of nearly two million classified employees in grades GS-1 through GS-18 who dominate federal employment have been set by Congress within a political framework, as opposed to the framework of an economic system subject to a continuous market test.

There is a Comparability Act, providing for wage surveys covering classified employees, which has been on the books since 1962. However, wage and salary increases over the past eight years have been a result of congressional action which has not been directly linked to principles of comparability. Congress does not always act in economic wisdom, and cannot reasonably be expected to, because it is not minimizing costs or maximizing profit. Congressmen must be concerned primarily with their relations with constituents and the probability of reelection. Thus, it is not surprising that over the past eight years the wage increases initiated by the Congress have exceeded the wage increases that would be justified by strict application of the comparability principle.

Third, elements of wage structure, as well as levels of compensation, are determined by statute and by Congress: in the first instance, by the Ramspeck Act of 1927, which sets up the various grades, and in the second instance, by various aspects of the wage board system which covers blue-collar employees. In this latter respect, the recent Wage Board bill which was vetoed by the President provides a classic example of legislative efforts to determine wage structure. Specifically, it represented an example of congressional action to define the number of steps in each grade of a job classification system.

Presently, all Wage Board employees—the blue-collar workers—have three in-grade steps with 4-percent differentials which are specified by law. The Wage Board bill would have added a fourth step. The cost of that little extra step would have been \$130 million, which is big money even if we do identify it as “.13.”

The extra step for blue-collar workers is, at best, difficult to justify in terms of established principles of job evaluation, independent of its cost. However, if you asked, “Why do you need the fourth step?” the unanimous reply was, “Because it’s

fair." It was "fairness" that ruled the day in Congress because standards of equity were more persuasive in the political process than arguments based on technical principles of wage and salary administration or standards of economic logic. This is perhaps a difficult reality to accept, but it is, in fact, a reality which anyone dealing with labor relations or personnel administration in the federal sector must accept.

Fourth, it is important to recognize the size and complexity of the federal personnel or labor relations system as a force and factor in its own right. There are three million employees in the system, and these employees are covered by seven different wage and personnel systems, all of which are linked by statute, regulation, or administrative practice. Overall, it is instructive to note that every time wages of federal employees are increased by 1 percent, the budget increases by \$365 million. Thus, the recent 6-percent comparability increase cost \$2,137,000,000.

It is possible to cope with and overcome the cultural shock of dealing with nine- and 10-digit numbers, but the magnitude of the issues involved, and the problems of applying them with some consistency across the board, continually pose a special technical requirement which is often difficult to meet. The structure of decision-making in the system tends to complicate this difficulty.

The departments generally can be viewed as line divisions, but in the area of personnel administration this is not the case. In fact, the departments have very little discretion. They deal with what you might call second-order administrative aspects: seeing that the rules are followed, but generally not being concerned with the development of the rules themselves or the character of the rules. Those are the preserve of a central agency of government—the Civil Service Commission.

Within the departments we generally find that personnel and industrial relations are left to the Assistant Secretary for Administration. The Assistant Secretary for Administration is the king of the hill, as far as the career civil service is concerned, but normally he is not on the main line of substantive developments and policy formulations in the department. It is a rare Cabinet member, as the operating head of his "division," who

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can find the time and the attention to give consideration to matters of industrial relations, personnel management in its own right.

Even the Secretary of Labor, who has a professional bias, or institutional bias, in this area, will find very little time and attention and capacity to deal with these in a constructive way between congressional committee hearings and making speeches to constituent groups and keeping Assistant Secretaries happy. If this is the case for the Secretary of Labor, who has a positive professional bias and who presides over one of the smallest departments, with only 10,400 employees, woe betide the poor Secretary of the Interior who has to worry about the Bureau of Indian Affairs and a host of other issues and who presides over 74,000 employees.

In fact, the only place where you will find that the divisional managers are really concerned with personnel or labor relations is in the Department of Defense. The Defense Department has had to give institutional energy and commitment to personnel and labor relations primarily because it has such a sizable blue-collar work force and because there has been strong spillover from private sector labor relations due to the activity of private sector unions, most notably the metal trades unions, in the blue-collar work force.

The basic responsibility for personnel administration and labor relations lies with the Civil Service Commission. The Commission's role is an interesting one because it has two somewhat inconsistent operational imperatives—bipartisanship and impartiality. The bipartisan imperative of the Commission is built into its structure. There are three commissioners and only two can be of one political party. At the same time, the Chairman of the Civil Service Commission is appointed by the President. He's an instrument of the President. He's there to serve the President and to be responsive to the President's and the Administration's desire and policy directives, but the nature of his job also requires him to be impartial.

Overall, the federal personnel system may be characterized as unstable and structurally amorphous. Most of the major decision-making in primary substantive areas is done by Congress. As a result, there is an element of indifference, if you will, asso-

ciated with efforts to implement industrial relations in the department. The Civil Service Commission really assumes the lead, struggling to be bipartisan and impartial while also being responsive to the President and the needs of the executive branch, that is, management.

Against this background the unions historically played a rather interesting, if not peculiar, role. They were never visible and until recently had little direct impact. In fact, few of them functioned like unions; most were primarily lobbying organizations. The reason they were lobbying organizations is clear. The primary power is held by Congress, and one does not negotiate with Congress in the classical way; one lobbies for its attention and favor. Indeed, the unions, as lobbyists, generally have been extremely effective because they know how the game should be played.

Under this system, the unions reacted to their environment rather than actively shaping it. Over the past 10 years, however, we have seen something of a revolution in union behavior and tactics. That revolution has brought the first steps toward power to the shop stewards, not to the people—albeit in an ungainly and unpredictable way.

Clearly, the first step was taken in the early years of the Kennedy Administration, with the promulgation by the President of Executive Order 10988. Notice—this was an executive order, which is an instrument of art in government. It does not involve Congress, but is an expression of the President's power as Chief Executive or top manager, if you will, of the federal establishment. Thus, Executive Order 10988 was much like Section 7A in the NIRA of 1934.

Executive Order 10988 provided for collective bargaining; it provided for recognition of unions. In effect, it provided for the protected right to organize. However, its primary significance was not that it engendered a system of collective bargaining, because that system of collective bargaining still isn't in place in government, but that it removed the legal impediments that had limited such activities in the past. Specifically, it broke the nexus with the sovereignty issue, and with the notion that somehow unions didn't belong in government service.

Although that executive order was a very courageous and in-

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novative act on the part of President Kennedy, it did have major deficiencies which reflected a persistent ambivalence. Clearly, one of the deficiencies was that the executive order never really made up its mind on the concept of exclusivity as one of the keystone concepts in the development of the American system of industrial relations, as contrasted to systems that have developed elsewhere.

As most of you know, the order provided for three levels of representation: exclusive, formal, and informal. In part, this was an effort to accommodate the unions, which dealt less by collective bargaining than by what might be called institutional dealing—the capacity to make extra-legal or informal arrangements with government officials in key administration positions. In this respect, it is interesting to note that the reaction of government unions to the concept of exclusivity in the new executive order has not been one of unanimous enthusiasm. For some unions, exclusivity means that they cannot make the best of two worlds, but they must choose formal collective bargaining while being denied the advantages of informal dealing.

A second deficiency in Executive Order 10988 was the fact that primary responsibility for the enforcement of the executive order was lodged with the agencies, the departments, and the Civil Service Commission. Thus, if there was an allegation that the executive order was violated, it was the department, in the first instance, that judged itself. Now it is true that all public officials are wise, compassionate, and aloof from their own concerns, but it is also true that they do make mistakes because of their particular interests and angle of vision.

Third, the executive order permitted only a narrow scope of collective bargaining. This had an impairing effect on the development of normal collective bargaining. Wages were still enacted by Congress; most of the other elements that are meat for collective bargaining were covered by the Civil Service Commission. The order ruled out negotiating over the mission of the agency; all that was left were a few interstices in this wall of exclusion.

Finally, Executive Order 10988 made no provision for the constructive development of impasse resolution techniques. The order did not address itself to this problem because it was



gratuitous in the structure of that executive order. It did not provide for the shift in power and discretion that was necessary to make true bargaining work. And the notion of an impasse, as we understand it, was alien to the concept of discussions or negotiation that was engendered by the order.

Toward the end of the last Administration, the executive order was subjected to reevaluation and reanalysis. In the early part of this Administration, in 1969, an amended executive order was issued—11491. The major chore then became to forget 10988 and remember 11491 as the appropriate executive order.

The new order provides for exclusive recognition and for the phasing out of the other vestigial forms of recognition which are really inconsistent with bona fide collective bargaining. This step may be noncontroversial to those schooled in the private sector, but it has proven to be a painful step to take in the federal sector. The loss of formal recognition based on 10-percent membership excludes large numbers of organizations from dues check-off privileges. The outgrowth of this has been a clamor for dues check-off independent of representative status.

Executive Order 11491 also provided for an impartial mechanism for administration of that order. The old executive order was administered primarily by the Civil Service Commission and the agency heads. The new executive order is administered, in the first instance, by the Assistant Secretary of Labor for Labor-Management Affairs. He makes unit determinations and initial hearings on unfair labor practices. Much of what the NLRB does with respect to Taft-Hartley, the Assistant Secretary of Labor does with respect to this executive order.

This is an important step. The Assistant Secretary of Labor is still a management official who is put in the position of acting as an impartial party in cases involving other management officials and presidential appointees. By conventional private sector standards, one is still left with a feeling of unease. The administration of the order has been taken out of the hands of all Cabinet officers and placed in the hands of a single official in a department which has a professional bias in favor of good industrial relations, but that official is a manager himself.

A parallel change was made in the structure of the central administrative authority under the order with the establishment

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of the Federal Labor Relations Council. In effect, the creation of the Council modified the authority of the Civil Service Commission in the interest of managerial balance by substituting a troika—the Director of OMB, the Secretary of Labor, and the Chairman of the Civil Service Commission—for the Civil Service Commission as the final authority.

Walter Reuther used to talk about what he called the clean-shirt theory of government. While you are recovering from the shock of a Republican Administration official's quoting Walter Reuther, I'll present his theory: People reflect particular interests, but when they come down to Washington to serve on a board, they put on a clean shirt and suddenly become disinterested public servants. This analogy highlights the problem rather than indicating the solution.

The experience in this regard has not been as bad as a priori projection would imply. As a matter of fact, it has been good. But let me say as one of the delegated trinity, "it ain't easy." One always has to self-consciously address oneself to the questions: How am I to behave? And, what should my role be in this situation?

The third major change in Executive Order 11491 involves explicit attention to the problem of impasse resolution. The order did not change the status of strikes, but it did create a Federal Impasse Panel and injects the FMCS into impasses. Overall, it provides a range of impasse resolution methods which encompasses the arsenal of techniques which have been used so widely in the public sector.

The order, however, did very little about the problem of the narrow scope of collective bargaining. The scope of collective bargaining is now as constrained as it was under the previous executive order.

Coincidental with the movement from one executive order to another were other developments which also conditioned the character of evolution of this federal labor relations system.

One was the postal strike that took place in March of last year—clearly a watershed in the history of federal labor relations. It was a traumatic event; it was the Homestead strike and the Boston police strike and the sitdown strikes of the thirties all

rolled into one. When those postmen went out in New York and Boston and parts of Chicago, what was a matter of labor relations—accumulated grievances, wage structure, and wage compression—became politics, and big politics at the highest level.

For the first time we had a massive withdrawal of the supply of labor—an exercise of a traditional sanction by government employees. It was interesting to see the wrench this action caused all the way down the line on the part of the old-line union leadership, who are deeply committed to the notion that a strike is not an acceptable weapon in collective bargaining. In a sense, although H491 was controversial, it now seemed to be almost *de minimis* in view of the magnitude of the problems which were emerging in the federal sector.

The second major development involved a major piece of legislation, the Pay Comparability Act, which passed in the last days of the last session. It was an Administration bill which provided for a shift of authority away from the Congress to the President in the setting of wages for classified employees. Now the President receives the comparability survey and, if he accepts comparability, it goes into effect automatically. If he chooses to recommend that the pay increase be either more or less than comparability indicates, he must submit his decision to Congress where it requires a so-called reorganization-plan-type approval. That is, it becomes effective within 60 days unless Congress votes it down. In a way, this is a bureaucratic subtlety, but the shift of power is critical. For the first time since this republic has been hiring and paying people, the President now has a considerable element of discretion in determining what the rate of increase in compensation should be.

Overall, what do we have? Where are we?

At this point in time we are in the early stages of the development of a framework for collective bargaining which involves a shift in decision-making power away from the traditional sources of decision-making power in this area—from the Congress in the compensation area and from the Civil Service Commission in the administration of labor relations. We are witnessing weakening of the established institutions and the development of a framework of new institutions, but those new institutions have not developed at this point.

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I would like to end, as is the wont of every government official, with a list of problems and prospects in this area that have to be addressed in some conscious way as we go forward.

First, we have to consciously try to depoliticize the process of collective bargaining in labor relations in the federal sector. The burden here, particularly, seems lodged with the unions. Many of the unions, as I have indicated, grew up when unions were really mutual aid societies for the purchase of legal representation before the Congress. Now they are in a situation where they have to bargain collectively, but at the same time they all want that second bite through the Congress. This dual approach is clearly inconsistent with meaningful collective bargaining, but it is difficult to eliminate because it is responsive to both the needs of unions and the understandable desire of Congress to maintain control over those elements of industrial relations which are important in terms of economics and politics.

The head of the new postal corporation tried to deal with this problem in a forthright way by saying that union officers should not be able to consult with congressmen on matters associated with collective bargaining. This immediately became "a gag rule." There was an invocation of the LaFollette-Jones Act of 1911, which was passed after President Theodore Roosevelt tried to do the same thing, and Mr. Blount prudently indicated that the order had been misunderstood and withdrew it.

The second point involves the viability of existing administrative arrangements. After one year of operation under Executive Order 11491, we conducted a review in which unions and management indicated what they thought was wrong with us and wrong with the executive order. We will shortly be recommending amendments to the order based on that review. The reaction to these recommendations will be an important short-run factor in the stability of the existing structure in any event. The structural deficiencies or problems associated with the existing administrative arrangement, as contrasted with a public board or an independent agency, will have to be self-consciously addressed as we proceed.

Third, we have to give attention to the question of the structure of collective bargaining and the scope of collective bargaining. For example, there's still great pressure on the notion of

exclusivity. One of the requests of the unions during the review was to postpone the phasing out of formal consultation. The whole set of issues associated with craft and industrial unions still has to be addressed. Indeed, people have to learn to think in those terms. I must say in this regard that the greatest need for upgrading lies with management, because management is not accustomed to thinking of these things and doesn't realize that the character of the bargaining unit, in fact, will set the whole structure of power through the federal establishment into the next 20 years.

The scope-of-bargaining issue centers on wages. Here the experience at the state and local levels is helpful. Initially, wages were not bargainable; now they are the subject of negotiations. It is difficult to maintain collective bargaining where the main element of tradeoff, the principal element that affects the welfare of the employees and members that the union represents, is excluded.

It may be fateful that the movement of authority concerning wages from the Congress to the President as the Chief Executive is taking place at the same time that collective bargaining is coming into play. That shift of authority may provide the basis for collective bargaining to affect the President's discretion in terms of what he recommends to Congress, or it may stand on its own, separated from the process of collective bargaining. The system provides for union representation on the Comparability Council, which makes recommendations to the President's agents—the OMB and the Civil Service Commission—concerning wage increases. I am not sure that the unions are aware, yet, of the possibility of using this structure for collective bargaining.

Last, parties on both sides have to cultivate an understanding of, and a respect for, the integrity of collective bargaining. This means they should not go to the Congress to attempt to remedy every grievance; they should not politicize all bargaining issues. Instead, they should accept the bargaining process as the primary channel through which the problems of employee-employer relations are worked out. At this point that is the missing ingredient. One way or another, through some amalgam of procedures, experience, and drawing on the wisdom of the private sector, this is a job which will have to be done.

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