

CHAPTER 3

STRUCTURAL CHANGE AND ITS EFFECTS  
ON ARBITRATION

I. STRUCTURAL AND CONTEXT CHANGES IN EDUCATION

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The only true general observation about industrial relations in education is that no general observation is true. The situation is much too varied. The following "map" indicates some of the variations.

<i>Level of Instruction</i>	<i>Percent of Teachers Under Union Contracts</i>	
	<i>Public</i>	<i>Private</i>
Primary and secondary	80	5
Tertiary		
Community and junior colleges	33	2
Four-year colleges and universities	18	1
Liberal arts colleges	5	0
Research universities	6	0

Thus collective bargaining is almost entirely concentrated in (1) public primary and secondary education, and (2) public community colleges.

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There is a geographic distribution of the incidence of coverage of teachers by union agreements in a relatively few states, including California, Florida, Illinois, Maryland, Massachusetts, Michigan, New Jersey, New York, Ohio, and Pennsylvania. About 80 percent of the teachers represented are in these 10 states. Similarly, in higher education 10 states account for 83 percent of representation, and two states, California and New York, account for one-half of all organized faculty members.<sup>1</sup>

The period of greatest growth in the unionization of teachers, 1968–1980, was characterized by rapid growth in teaching staffs, active unionization efforts across the nation, and selective state support of unionization of teachers. By 1994, 34 states and the District of Columbia had enacted authorizing legislation.<sup>2</sup>

In the 1960s and 1970s illegal strikes by teachers were common. A typical strike of that period would result in an increase in compensation, and the settlement would be accompanied by an amnesty clause prohibiting disciplinary action against teachers for violation of no-strike laws. Since the early 1980s, however, strike incidence in education has fallen dramatically, even in the 11 states that allow teachers a limited right to strike. Minnesota, for instance, gave teachers the right to strike in 1980, and, in the following year, there were 35 teacher strikes in the state. Since then, the incidence of teacher strikes has fallen sharply, with the number of strikes remaining in single digits.<sup>3</sup>

The first faculty unionization in tertiary education occurred in 1963 at the Milwaukee Technical Institute, a two-year institution, and in 1966 at the first four-year campus, the U.S. Merchant Marine Academy. Unionization of faculty began in earnest with the organization of the City University of New York in 1969. By the end of 1972 faculty at some 285 institutions, employing a total of 84,000 faculty members, were represented exclusively by unions. By the end of 1984, a total of 168,000 faculty members were organized at

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<sup>1</sup>The 10 states are, by ranking from highest to lowest percentage, California, New York, Pennsylvania, Connecticut, New Jersey, Michigan, Florida, Massachusetts, Washington, and Illinois. Annunziato, *Directory of Faculty Contracts and Bargaining Agents in Institutions of Higher Education* (National Center for the Study of Collective Bargaining in Higher Education and the Professions, Baruch College, City University of New York, 1994), ix.

<sup>2</sup>These states are Alabama, Alaska, Arizona, California, Connecticut, Delaware, Florida, Hawaii, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Vermont, Washington, and Wisconsin.

<sup>3</sup>Ley & Wines, *Teacher Bargaining in Minnesota: Retrospect on the 1980s and Prospect of Fewer Bargaining Units*, J. 22 *Collective Negotiations Pub. Sector*, 233 (1993).

547 institutions,<sup>4</sup> and in 1994 a total of 234,540 faculty members were organized at 1,057 institutions.<sup>5</sup> The largest employer in higher education and the largest faculty bargaining unit is the California State University (CSU) system. With 22 campuses enrolling over 300,000 students and over 20,000 faculty in a single bargaining unit, the CSU system has been represented by the California Faculty Association (CFA) since 1982. The faculty at the smaller nine-campus University of California system is not unionized, although there has been some faculty representation at the Santa Cruz campus.

In 1980 the U.S. Supreme Court dealt a death blow to the organization of faculty at private colleges and universities when it issued its decision that the Yeshiva University's faculty members were "managers" under the terms of the National Labor Relations Act.<sup>6</sup> As a result, private-sector faculty remain unprotected under the law for purposes of union organization and collective bargaining. The spread of unionization was slowed as fewer public employee bargaining laws applicable to higher education were enacted, and this was compounded by the general perception by faculty that unionization is more appropriate for community college and four-year institutions of lesser rank and prestige.<sup>7</sup> The 125 or so "research universities" typically have not been unionized because faculties at those schools have greater autonomy and control over personnel practices at the academic senate and departmental levels. Research universities constitute about 3 percent of the institutions and cover 20 percent of faculty and students in higher education.

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<sup>4</sup>Garbarino, *Faculty Collective Bargaining: A Status Report*, in *Unions in Transition: Entering the Second Century*, ed. Lipset (Institute for Contemporary Studies 1986), 266, 268.

<sup>5</sup>Annunziato, *supra* note 1, at 117.

<sup>6</sup>*NLRB v. Yeshiva Univ.*, 444 U.S. 672, 103 LRRM 2526 (1980).

<sup>7</sup>Nonfaculty organization in higher education has proceeded at a relatively healthy pace. Notable successes at prestigious private universities were the National Labor Relations Board election victories at Yale in 1984 by the Hotel Employees and Restaurant Employees, at Columbia in 1985 by the United Automobile Workers, and at Harvard in 1988 by the American Federation of State, County and Municipal Employees (AFSCME). Large units organized at public universities included the California State University system in 1982 by the Service Employees International Union, University of Iowa in 1984 by AFSCME, and several Ohio campuses by the Communications Workers of America. Nonfaculty unionization typically encompasses six types of bargaining units: clerical, professional, technical, health care, blue collar, and police. By far, the dominant group is clerical workers. Altogether, about 250,000 nonfaculty workers are represented. See Douglas, *Directory of Non-Faculty Bargaining Agents in Institutions of Higher Education* (National Center for the Study of Collective Bargaining in Higher Education and the Professions, Baruch College, City University of New York, 1991), x.

The major unions in primary and secondary education are the National Education Association (NEA) and American Federation of Teachers (AFT). The NEA is the largest labor organization in the nation with a total membership of about 2.2 million. Nearly all of the 1,935,642 NEA members in the K-12 category are teachers, with only about 20,000 educational support members.<sup>8</sup> At one time the NEA included a far larger proportion of educational administrators. Today, however, there are relatively few administrators in the organization because nearly all of the state education negotiation laws do not permit inclusion of supervisors in the bargaining unit. An exception is Maryland, which includes school principals in bargaining units. The AFT in 1995 had 708,373 out of its total of approximately 800,000 members working in education.<sup>9</sup> The AFT is one of the Big Ten in the AFL-CIO. Union members in teaching (3 million) constitute about 17.5 percent of all union members in the United States. (Possibly one-fifth of all union members are within educational institutions, if nonteaching staff are included.)

Organization of professors in tertiary education is dominated by three unions, the AFT (37 percent), NEA (32 percent), and American Association of University Professors (AAUP) (23 percent).<sup>10</sup> It is not uncommon for a pair of these groups to represent a given faculty, with AAUP as the typical partner.<sup>11</sup> The CFA, for example, is an amalgam of the NEA, AAUP, and California State Employees Association, and the Pennsylvania State College system is represented by AFT and AAUP.

Unionization has occurred in part as a response to the “new managerialism” that arose to coordinate policy and utilize resources efficiently, which challenged faculty domination and led professors to seek stronger, more direct representation of their occupational interests.<sup>12</sup>

Graduate students are the one group of teachers subject to significant union activity within research universities. These organizations include teaching assistants, research assistants,

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<sup>8</sup>Data as of July 31, 1994, provided to the authors by John E. Dunlop of the National Education Association.

<sup>9</sup>Data provided to the authors by Tish Olshefski of the American Federation of Teachers.

<sup>10</sup>Data from the National Center for the Study of Collective Bargaining in Higher Education and the Professions, Baruch College, City University of New York.

<sup>11</sup>The AAUP tends to be overshadowed by the AFT and NEA, and membership in the AAUP has dropped from 52,000 in 1983 to 43,000 in 1995.

<sup>12</sup>Garbarino, *Faculty Bargaining: Change and Conflict* (McGraw-Hill 1975), 49.

readers, and tutors, with organizational composition and bargaining unit structure varying slightly among campuses. Graduate students have gained formal recognition at the University of California (Berkeley), University of Florida, University of Massachusetts (Amherst and Lowell), University of Michigan, Rutgers University, State University of New York, University of Oregon, and University of Wisconsin (Madison and Milwaukee).<sup>13</sup>

In addition to the formally recognized organizations, several other graduate student groups have a voice in the determination of employment conditions. Most of these groups are at large public universities in states such as California, Connecticut, Illinois, Indiana, Iowa, Kansas, and Minnesota. Also, organizations of graduate students are found at some prominent private universities, including Cornell, Notre Dame, Syracuse, and Yale. The history of these groups indicates that they are associated with such diverse international unions as the United Automobile Workers, AFT, NEA, AAUP, Communications Workers of America, and Service Employees International Union. Although membership seldom exceeds 50 percent of the representation unit, the organizations are often militant, and graduate students intent on gaining formal recognition have mounted several strikes.<sup>14</sup>

As shown in Table 1, public school employment of teachers and other staff grew from 1964 to 1993 at a much faster rate than student enrollment, causing a decrease in the student-to-teacher ratio from 25.1 to 17.3, and a decrease in the student-to-employee ratio from 13.3 to 6.4. The fall in the student-to-teacher and student-to-employee ratios indicates that class sizes are smaller and there are more educational support personnel available to assist students. The addition of staff per student has also raised costs of education significantly. Yet, with declining Scholastic Aptitude Test scores and other indicators of lower student achievement, it cannot be said that the public primary and secondary school systems are getting net yields from such expenditures. This had led to emphasis on ways to increase student achievement outcomes.

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<sup>13</sup>Lanzerth, Hayes & Curtiss, eds., *Directory of Graduate Student Employee Bargaining and Organizations* (National Center for the Study of Collective Bargaining in High Education and the Professions, Baruch College, City University of New York, 1991).

<sup>14</sup>For an account of recent strike threats by graduate students, see *Wall St. J.*, Mar. 14, 1995, at A1.

**Table 1.** Student-to-Employee and Student-to-Teacher Ratios, 1964–1993

<i>Year</i>	<i>Student-to-Employee Ratio<sup>1</sup></i>	<i>Student-to-Teacher Ratio</i>
1964	13.3	25.1
1965	12.6	24.7
1966	11.9	24.1
1967	11.6	23.7
1968	11.5	23.2
1969	11.2	22.6
1970	10.8	22.3
1971	10.5	22.3
1972	9.9	21.7
1973	9.4	21.3
1974	9.0	20.8
1975	8.8	20.4
1976	8.7	20.2
1977	8.3	19.7
1978	8.1	19.3
1979	7.7	19.1
1980	7.5	18.7
1981	7.3	18.8
1982	7.3	18.5
1983	7.3	18.4
1984	7.1	18.1
1985	6.9	17.9
1986	6.8	17.7
1987	6.7	17.6
1988	6.6	17.3
1989	6.5	17.2
1990	6.4	17.2
1991	6.5 <sup>2</sup>	17.3 <sup>2</sup>
1992	6.5 <sup>2</sup>	17.4 <sup>2</sup>
1993	6.4 <sup>3</sup>	17.3 <sup>3</sup>

<sup>1</sup>Based on data from the National Center for Education Statistics.

<sup>2</sup>Preliminary.

<sup>3</sup>Estimated.

*Source:* Morisi, *Employment in the Public Schools: The Student-to-Employee Ratio*, 117 Monthly Lab. Rev. No. 7 (1994), at 43.

### Some Observations

Collective bargaining in public primary and secondary education and in community colleges is of a peculiar sort. It is not basically between employees (unions) and "owners" (boards of education and trustees) but rather between employees *plus* "owners" versus public financial authorities over appropriations and associated rule making. Employees and "owners," while united in seeking larger appropriations, may, however, split over the desired rules. This results in a comparatively heavy emphasis within collective bargaining to determine the rules. But even this bargaining is often political and calls for political organization, lobbying, and influencing the public. Further, political action often affects selection of the "owners."

Along with political bargaining externally comes a comparatively heavy emphasis internally on dispute resolution efforts, including conciliation, mediation, and use of ombudsmen. Elected officials are often reluctant to relinquish their authority to final and binding arbitration, particularly in interest disputes. An example of dispute resolution in the political context is in operation under the Connecticut law. Passed in 1979 as a result of a bitter teachers' strike in Bridgeport, the law mandates last-best offer, issue-by-issue arbitration after mandatory mediation has failed to resolve an impasse.

Arbitration of negotiation impasses in Connecticut has worked well in that there have been no work stoppages in the 15 years of the law's operation.<sup>15</sup> There is a high incidence of arbitrated settlements, however, which calls into question the effectiveness of the negotiation process in settling disputes.<sup>16</sup> There has also been heated debate over the years as to the impact of the Connecticut law, raising issues that have come up in other states with interest arbitration for teachers and other public employees. One such issue is whether arbitration violates the home rule provision of the state constitution by delegating authority to persons other than public officials. Although this issue has not been fully resolved by

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<sup>15</sup>Williamson, *Impasse Procedures for Public Educators in Connecticut*, in Proceedings of the 1994 Spring Meeting, Industrial Relations Research Association, ed. Voos, *reprinted in* 45 Lab. L.J. 481 (1994).

<sup>16</sup>Compare, for instance, the far lower incidence of arbitration awards in Pennsylvania. See Loewenberg, *Bargaining Intensity and Interest Arbitration*, in Proceedings of the 44th Annual Meeting, Industrial Relations Research Association, ed. Burton (IRRA 1992), 388.

the Connecticut courts, similar challenges in other states have sometimes been sustained. Another concern is that arbitrators do not give sufficient consideration to a school district's ability to pay. This prompted a change in the law to provide that the district's fiscal condition be taken into account by arbitrators, a criterion frequently included in interest arbitration legislation elsewhere. The Connecticut law has the highly unusual provision that local legislative bodies may reject arbitration awards if there are insufficient funds to implement the awards. Rejection of awards is uncommon but constitutes a predictably controversial feature of the law.

Another aspect of arbitration in education generally is for grievances, which causes a far greater volume of cases than does interest arbitration. Total cases arbitrated through the American Arbitration Association in recent years indicate that the division between cases arising in private industry and public employment is virtually equal, but that four of 10 cases in the public sector involve teachers.<sup>17</sup>

Besides review by a formal grievance procedure including arbitration, other possibilities exist for the settlement of education employment complaints. One is for fellow faculty members to review claims and make recommendations for resolution to administrators. Another possibility is the ombudsman, a teacher or other employee appointed to represent a grievant in working out a mutually satisfactory outcome.<sup>18</sup> The obvious problem with these methods is that they do not provide for a final impartial decision, and may not be perceived as fair.

Much of higher education is organized on a guildlike basis. The guild has substantial control over admissions to the profession, over advancement, over employment security, over working rules. The guild entrusts itself with student judicial problems. There is much guildlike decision making. While there was formerly little conflict within the guild about the objectives of higher education, bifurcation into "politically correct" and traditionalist groups now threatens the unstated compact between universities and middle class supporters.

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<sup>17</sup>From data provided in *Study Time*, a quarterly publication for members of the American Arbitration Association, 1990-94.

<sup>18</sup>See Briggs & Gundry, *The Human Dimension of Grievance Peer Review*, 23 J. Collective Negotiations Pub. Sector, 97 (1994).



### Some Structural Changes

Rising public complaint over the quality of the U.S. educational systems, especially compared with that of other nations, led to a recent study by the Commission on the Skills of the American Workforce, co-chaired by former Labor Secretary Ray Marshall. The report compares the strategies and skill requirements of companies in seven countries—the United States, Japan, Singapore, Germany, Sweden, Denmark, and Ireland—and finds that the greatest differences between the United States and other countries were in overall economic and human resource development policies and structures. For example:

1. The other countries insist that virtually all of their secondary school students reach a high educational standard. The United States does not.
2. The other countries provide “professional” education to non-college-bound students to prepare them for their trades and to ease their school-to-work transition. The United States does not.<sup>19</sup>

The message of the commission is that if the United States is to adjust to a high-performance economy, higher educational standards and more and better vocational training are required.

Yet resources to support the needed educational programs have become more scarce with low levels of productivity increase over the past quarter century, with rising competition for these resources from other sectors of the welfare state, and particularly from increasing need for internal security for citizens. This, in turn, intensifies conflicts within the educational system.

One of these conflicts is the “merit” versus “seniority” controversy over teacher compensation, promotion, and retention. Since the early 1980s teachers’ compensation has increasingly been based on the concept of merit pay, which rewards instructors for superior performance. Determination of merit pay is usually based on classroom observation by educational administrators and occasionally from student achievement results. Teachers typically move through a progression of steps within a pay grade. Eligibility for placement on a career ladder is based on the teachers’ educational accomplishments and seniority, but merit is often an important

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<sup>19</sup>Marshall, *Organizations and Learning Systems for a High-Wage Economy*, in *Labor Economics and Industrial Relations: Markets and Institutions*, ed. Kerr and Staudohar (Harvard Univ. Press 1994), 627–29.

criterion for advancement. Dale Ballou and Michael Podgursky estimate that 12.4 percent of full-time teachers are covered by a merit pay plan and another 2.5 percent receive merit pay for individual performance.<sup>20</sup>

Research assessments of whether teachers support or oppose merit pay yield mixed results, although many individual teachers, especially those in private schools, view merit pay favorably. Teachers' unions, on the other hand, usually oppose merit pay systems and have occasionally filed lawsuits to prevent or stop their implementation. The most commonly cited reason for teacher opposition is that evaluations are unfair. Also of concern is that competition to earn merit pay will impair the cooperation necessary for effective school operation; the formality and publicity found in merit pay plans may alienate teachers. In private primary and secondary schools and in higher education, where salary schedules are typically less rigid, administrators can reward faculty less obtrusively for superior performance, and may even avoid the controversial "merit pay" terminology altogether.

Another relatively new form of merit pay that is gaining acceptance is the linking of the salary of school superintendents to one or more achievement indicators. Superintendents increasingly are signing contracts to provide a bonus or percentage increase in their pay based on factors such as raising student test scores, raising attendance rates, and reducing the number of suspensions.<sup>21</sup> A problem with this kind of pay-for-performance is that the goals may be in major part based on factors over which school administrators have little or no control, like poverty, funding, gangs, violence, and relative improvement (or decline) in other school districts.

There is a rising conflict over the application of "affirmative action." This conflict is intensified by a growing backlash against preference for underrepresented groups versus a rising proportion of students from underrepresented groups. In some states there is a related conflict over opportunities for immigrants.

To members of the Academy, who have devoted their lives to the resolution of employment issues, affirmative action is a familiar topic. You know the evolution of this concept since 1965 and 1967 when President Johnson signed Executive Orders 11246 and 11375, establishing affirmative action for racial minorities and women. At

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<sup>20</sup>Ballou & Podgursky, *Teacher Attitudes Toward Merit Pay: Examining Conventional Wisdom*, 47 *Indus. & Lab. Rel. Rev.* 54 (1993).

<sup>21</sup>Lubman, *Schools Tie Salaries to Pupil Performance*, *Wall St. J.*, Mar. 10, 1995, at B1.

the time, the goal was to remedy past discrimination and to give more opportunities to protected groups for employment and college admission. The sentiments were noble and the cause was just. With accompanying antidiscrimination laws, such as the Equal Pay Act of 1963 and the Civil Rights Act of 1964, the United States more than any other country provides equal educational and labor market opportunities regardless of personal characteristics.

Because affirmative action favors underrepresented groups, it has prompted discontent and a challenge from unprotected groups, particularly white males. In one of the landmark cases, a white male, Alan Bakke, sought admission to medical school and successfully challenged the quota system at the University of California, Davis, under Title VI of the Civil Rights Act. Although the use of numerical quotas or set-asides was struck down, the U.S. Supreme Court ruled that race could be used as a factor in admissions as long as it was not the only criterion.<sup>22</sup>

Since the *Bakke* case in 1978 and the *Weber*<sup>23</sup> Title VII decision by the U.S. Supreme Court the following year, much has changed. Women and minorities now constitute a far greater proportion of the labor force and higher education system. In most major urban areas a white majority population has ceased to exist, and women now constitute a majority of college students. According to a recent nationwide poll, whereas in 1991 Americans favored affirmative action by 57 percent to 33 percent, by 1995 only 46 percent favored affirmative action.<sup>24</sup> The poll also indicated that respondents oppose most specific affirmative action programs, excepting those for women. For instance, minority firm preference programs are opposed by 59 percent to 44 percent.<sup>25</sup> Many women and minorities are against affirmative action, feeling that their legitimate accomplishments are tainted by the notion that they received preference.

The Republican majority in Congress has renewed the assault on affirmative action. Opponents contend that the present system is problematic, unfair, and untenable. In 1995 Senate majority leader Robert Dole released a 32-page list, compiled by the Congressional Research Service, of federal programs designed to achieve affirmative action goals. One of the items on the list reserves 25 percent of the excess of certain educational appropriations for allocation "among eligible institutions at which at least 60 percent

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<sup>22</sup> *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 17 FEP Cases 1000 (1978).

<sup>23</sup> *Steelworkers v. Weber*, 443 U.S. 193, 20 FEP Cases 1 (1979).

<sup>24</sup> Wall St. J., Mar. 19, 1995, at A1.

<sup>25</sup> *Id.*

of the students are African Americans, Hispanic Americans, Native Americans, Asian Americans, Native Hawaiians, or Pacific Islanders, or any combination thereof."<sup>26</sup> Opponents cite two main arguments: first, it is unjust to show favoritism based on personal characteristics, just as it is unjust to discriminate against a person on such bases; and second, that a society cannot afford not to hire and promote the most qualified people. Opponents are also skeptical about replacement of race and sex preference with "economic disadvantage" because the well-off are already penalized through progressive taxation and inheritance taxes, which benefit society as a whole, and the same infringements on justice and invitation to mediocrity would apply.

In California, two recent developments highlight discontent over affirmative action. One such development is passage by state voters in 1994 of Proposition 187, which denies social services, including education, to illegal aliens. This outcome has been challenged in the courts and could be invalidated as unconstitutional. Meanwhile, it has not yet been put into effect. The other development is the California Civil Rights Initiative, another proposition that will be placed before voters when it receives the 600,000 signatures required to qualify for the November 1996 ballot. The proposition would ban state affirmative action programs by amending the state constitution. The key section states: "Neither the state of California nor any of its political subdivisions or agents shall use race, sex, color, ethnicity or national origin as a criterion for either discriminating against or granting preferential treatment to any individual or group in the operation of the state's system of public employment, public education or public contracting."<sup>27</sup> Polls of voters indicate that the electorate will pass the measure by a wide margin.

A few other structural changes are noted briefly. One is that there is a rising conflict over the administrators/teachers ratio. Advocates of change argue for more teachers and fewer administrators. A shift is occurring in that direction, although many administrators have been adept at protecting their interests. Another is a rising conflict within the guilds of higher education over the rules governing "outside" work and over the enforcement of these rules. The guild itself is of no single mind about such rules and their enforcement.

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<sup>26</sup> *Affirmative Action in Action*, Wall St. J., Feb. 27, 1995, at A14.

<sup>27</sup> *Recalling Basics of Affirmative Action*, San Francisco Examiner, Mar. 12, 1995, at A12.

Political bargaining is intensifying with increasing public and interest group pressure on state legislatures and school boards to find solutions to problems. More parents have become disenchanted with public education and are sending their children to private schools or providing formal education in the home. Generally, there is more empowerment of teachers and less for school boards. At the same time, however, many school boards are coming under control from the political right, especially as enhanced efforts are being undertaken by fundamentalist religious groups to affect the selection of board members and trustees.

There is an increased series of battles over other aspects of "empowerment," on issues like centralization or decentralization of decision making; the roles of financing authorities, institutional boards, and parent associations; and the collective and individual roles of teachers. The courts, in particular, are becoming more important in determining the outcomes of struggles for empowerment. Teachers, administrators, unions, and other "inside-the-system" groups are trying to preserve the status quo. But external forces of change are gaining momentum. There appears to be a renewal of 1960s-style confrontation bargaining, except that now the political right is on the ascendancy.

### **Some Future Developments**

Looming on the horizon are some other forces that are likely to change the education system. One is the first major technological change in over 500 years that will reshape the work force as a result of the need for acquiring new and emerging educational and skill levels. We will be increasingly reminded that throughout history the principal source of improvement in productivity is the development of human capital through education.

In addition, demographic trends reflect that the number of young people knocking on the door of the higher education system is rising dramatically. By 1997 Tidal Wave II will begin, with the appearance of the grandchildren of the Second World War GIs. Tidal Wave II will be about the same absolute size as the first tidal wave of students during the 1960s, although it will be somewhat smaller in percentage terms and spread out over the next 15 years.

These structural changes will create an unprecedented challenge to higher education to produce the improved knowledge required to compete in the national and global economies. Intensified conflicts between educational institutions and society at

large will accompany these structural changes. This situation, in turn, translates into increased attention to methods of conflict resolution.

## II. STRUCTURAL CHANGES IN PUBLIC UTILITIES: IMPACT ON LABOR-MANAGEMENT RELATIONS

DONALD VIAL\*

### Introduction

The impact on labor relations, collective bargaining, and dispute settlement of structural changes currently taking place in public utilities is a grim reminder of how important product and service markets are in shaping our labor and industrial relations institutions.

We have long considered our utilities a part of the nation's infrastructure that builds community and provides the underpinning for a robust, market-driven economy. Being largely investor-owned (with some notable exceptions), we have regulated them as vertically integrated natural monopolies, primarily on a cost-of-service basis both at the federal and state levels of government. But all of this has been changing at a pace that is shaking up the utility industry and traumatizing unions that have developed their collective bargaining relationships under an umbrella of regulation.

It may be an understatement to say that, as a nation, we are rapidly losing confidence in regulators. Equally important, government itself, as a primary vehicle for building community, has become suspect. We are turning instead to the institution we seem to have the most confidence in—the marketplace—an environment for enterprise less constrained by command and control regulation.

This is to point out the obvious. In the restructuring of our utilities, as in other parts of the economy, we have been experiencing a "sea change" in ideology that looks not to government or regulations, but to the marketplace and a competitive environment that drives investments in infrastructure for the delivery of what we have known as public utility services, be they in transportation, energy services, or telecommunications. My focus today will

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