Employee Management Relations In The Federal Service: An Introduction.

INFORMATION TO USERS

This material was produced from a microfilm copy of the original document. While the most advanced technological means to photograph and reproduce this document have been used, the quality is heavily dependent upon the quality of the original submitted.

The following explanation of techniques is provided to help you understand markings or patterns which may appear on this reproduction.

1. The sign or "target" for pages apparently lacking from the document photographed is "Missing Page(s)". If it was possible to obtain the missing page(s) or section, they are spliced into the film along with adjacent pages. This may have necessitated cutting thru an image and duplicating adjacent pages to insure you complete continuity.

2. When an image on the film is obliterated with a large round black mark, it is an indication that the photographer suspected that the copy may have moved during exposure and thus cause a blurred image. You will find a good image of the page in the adjacent frame.

3. When a map, drawing or chart, etc., was part of the material being photographed the photographer followed a definite method in "sectioning" the material. It is customary to begin photoing at the upper left hand corner of a large sheet and to continue photoing from left to right in equal sections with a small overlap. If necessary, sectioning is continued again — beginning below the first row and continuing on until complete.

4. The majority of users indicate that the textual content is of greatest value, however, a somewhat higher quality reproduction could be made from "photographs" if essential to the understanding of the dissertation. Silver prints of "photographs" may be ordered at additional charge by writing the Order Department, giving the catalog number, title, author and specific pages you wish reproduced.

5. PLEASE NOTE: Some pages may have indistinct print. Filmed as received.

University Microfilms International
300 North Zeeb Road
Ann Arbor, Michigan 48106 USA
St. John's Road, Tyler's Green
High Wycombe, Bucks, England HP10 8HR

EMPLOYEE MANAGEMENT RELATIONS IN THE FEDERAL SERVICE: AN INTRODUCTION

by

James J. Ravelle, Esquire

A Dissertation

Presented to the Graduate Committee
of Lehigh University
in Candidacy for the Degree of
Doctor of Arts

in

Government

Lehigh University
1978

Approved and recommended for acceptance as a dissertation in partial fulfillment of the requirements for the degree of Doctor of Arts.

June 23, 1978
(date)

Ronald R. Barry
Professor in Charge

Accepted June 23, 1978
(date)

Special committee directing the doctoral work of James J. Ravelle, Esquire

Ronald R. Barry
Chairman

Frank T Colosi

Howard R Whitcomb

L. Reed Tripp

TABLE OF CONTENTS

ABSTRACT

Employee-Management Relations
in the Federal Service:
An Introduction

James J. Ravelle, Esquire

The emergence of public employee unionism and collective bargaining has had a significant impact on concepts of public management. A great deal of literature exists to describe and analyze this phenomenon. The audience for much of this literature is personnel and labor relations specialists. Most public sector relations textbooks stress the state and local sector and neglect the federal service. The purpose of this study is to provide college students and interested readers in the areas of public management and labor relations with an understanding of the existing policies and issues in federal service labor relations.

To accomplish this goal, the author discusses the history and development of labor relations in the federal service from the advent of employee unionism to the present. A concise description of the role and function of the various federal agencies involved

in this process is provided. The federal approach toward unfair labor practices and representation procedures is reviewed. Dispute resolution of grievances and impasses in the federal government is also discussed. There are exceptions to the general policies which apply to labor relations in the federal service. The most notable of these, the U.S. Postal Service and the Tennessee Valley Authority, are discussed. Further, the relation of public employee unions to the federal government is reviewed.

The study concludes with an analysis of the civil service system and the concept of sovereignty vis-a-vis public employee bargaining. It is suggested that the present methods of dispute resolution in the federal government may be inefficient. Further, considering the nature of federal employment, serious thought must be given before the private labor relations practices of direct bargaining for wages and the right to strike are applied to the federal service.

INTRODUCTION

The purpose of this manuscript is to provide the reader with an introductory understanding of employee-management relations in the federal service. In the area of public sector labor relations the federal service is often neglected in the relevant literature and in classroom discussions. This is unfortunate since a very large number of organized public sector employees are in the federal service and the labor relations policies established for the federal government significantly influence government policies on the state and local level.

It would take a multi-volume work to discuss all of the major issues in federal labor relations. Few students or interested readers have the necessary time or fortitude to read multi-volume works. This manuscript is designed to acquaint the reader with the basic sub-areas of this topic and to highlight the major issues relevant to federal labor relations.

In reading this manuscript the reader is cautioned on the following items. First, the term "union" is broadly defined. Thus, a professional association which performs the function of bargaining rep-

resentative or aspires to perform this function is included in the category of a union. Second, the special labor relations features which apply to the Postal Service are discussed in Chapter 8. Throughout the remaining chapters in this manuscript the focus of our attention will be on nonpostal federal employees.

CHAPTER I

DEVELOPMENT OF LABOR-MANAGEMENT RELATIONS IN THE FEDERAL SECTOR

Approximately three million individuals, representing four percent of the non-agricultural work force, are employed by the United States Government.[1] If there is one aspect about the federal government that most political critics agree on it is that the size of the federal personnel force and the scope of federal governmental functions are massive. The United States government is the largest single employer in American society and it is unlikely that it will relinquish that distinction in the future. The government is engaged in conducting countless activities in order to serve the nation and service its own requirements. Consequently, the manpower and skills needed to perform these functions are numerous and varied. Occupational endeavors in the federal service parallel those found in the private sector. It is not unusual, therefore, to discover parallels in the demands of federal employees for coll-

---

[1] U.S. Department of Labor, Bureau of Labor Statistics, Handbook of Labor Statistics 1977, Bulletin 1966, (Washington, D.C.). Table 46, p. 96. In October, 1975, federal employment was reported to be 2,890,000.

ective interaction in order to affect the terms and conditions of their employment. In 1935 the United States committed itself as a government to the policy of encouraging the process of collective bargaining and labor organization in the private sector by passing the National Labor Relations Act. It took twenty-seven years for that same government to permit its own employees to legitimately exercise some of those same rights.

In this chapter we will briefly trace the manner in which federal labor-management relations developed. First, we will explore the labor relations environment as it applied to the federal government before Executive Order 10,988 was issued in 1962. Next, the characteristics of the era of Executive Order 10,988 will be highlighted. We will also outline the legal framework which is currently operable in federal labor relations as it is expressed in Executive Order 11,491 as amended by Executive Orders 11,616 and 11,838.

Labor Relations in the Federal Sector Before 1962

In its early history the federal government acted in a manner similar to that of private employers in regard to labor activity. Several parallels can be

drawn between the government and the private sector of this time. Skilled craftsmen employed by the federal government belonged to the same labor organizations as craft workers in non-federal employment. These workers bargained with federal employers on matters concerning wages and other terms of employment. Strikes among these organized craft workers did occur during this period.[2]

The rise of unionism and labor strife among non-craft workers brought about a reorientation of federal policy. Postal employees, more than any other group of federal workers, were responsible for the development of labor relations policies in the federal government. Postal workers were the first large group of federal employees to organize. Labor groups representing postal workers had affiliated with the Knights of Labor, the first significant national labor movement in America. In 1890, the National Association of Letter Carriers was founded. The NALC was the first national organization of postal workers. By the first decade of the 20th century postal labor organizations had begun to affiliate

---

[2]See Sterling D. Spero, Government as Employer (New York: Remsen Press, 1948).

with the American Federation of Labor. Other non-craft workers followed the example of the postal employees. In 1917 the AFL chartered the National Federation of Federal Employees. The NFFE withdrew from the AFL in 1931 after it was accused of endorsing industrial unionist methods by the craft affiliates of the AFL. The American Federation of Government Employees was chartered in 1932 by the AFL to compete with the NFFE. The Congress of Industrial Organizations also sought government workers through its affiliate, the United Public Workers of America.

The history of government resistance to federal unions can also be traced to the origins of the postal unions. From 1895 to 1909 a series of "gag rules" were issued to suppress attempts by representatives of postal workers and other federal employees to lobby in Congress for legislation enabling labor organizations to expand their rights in the public service. During the term of President Grover Cleveland, Postmaster Wilbur Wilson issued an order forbidding postal employees from visiting Washington D.C. if their purpose was to

petition Congress. Teddy Roosevelt, a leader in the civil service reform movement at the turn of the century, issued his famous "gag rule" in 1902. Roosevelt's executive order prohibited any employee or employee association in the executive branch of government from lobbying in Congress for wage increases or any other type of legislation except through department heads. In 1906 Roosevelt extended that rule to include independent government agencies. Roosevelt believed that union activities violated inherent executive authority and the neutrality of the Civil Service. The belief in unhampered executive action was further endorsed by Roosevelt's successor, William H. Taft. Taft issued an executive order which increased the potency of Roosevelt's gag rules. Executive Order 1142 prohibited federal employees from responding to Congressional inquiries except with the approval of department heads. In addition to the gag rules government administrators developed a system of anti-union tactics utilizing informers and employee discharges in order to quell labor activity in the federal government. Federal employees, especially the postal workers, reacted to the gag orders by employing militant union tactics

and stepped-up attempts to petition Congress.[3]

The lobbying efforts by the postal employees achieved some limited success. In 1912 Congress challenged the executive gag rules by passing anti-gag legislation known as the Lloyd-LaFollette Act of 1912. The Act gave federal employees the right to petition Congress in an individual or collective capacity. The Act also allowed federal employees the legitimate right to join labor organizations as long as these organizations did not advocate or use strikes as a labor tactic. The new law in its operation was only relatively successful since it lacked effective remedies for its enforcement. Federal managers continued to discharge employees active in the labor movement by using other grounds for discharge as excuses. Decades after Lloyd-LaFollette became law, anti-union activities persisted. Nor were unionists supported by the Courts. In Levine v. Farley, 107 F.2d 186 (1939), a federal court of appeals refused to review the decision of an administrator in regard to an employee discharge even though there was evidence that the discharge was based on the fact that the plaintiff

---

[3]See Sterling D. Spero, Government as Employer, (New York: Remsem Press, 1948).

was engaged in labor union activities.[4]

The advent of the Great Depression and the election of F.D.R. in 1932 marked a turning point in labor relations in the United States. The number of union members in the AFL and the CIO dramatically increased. The National Labor Relations Act gave government blessing to union activities in the private sector. F.D.R.'s New Deal programs brought about a significant rise in the size of federal employment. Correspondingly, federal workers organized and started to make more demands for collective bargaining rights. The federal government throughout this period was unresponsive to these proposals. President Roosevelt in a much-celebrated letter to NFFE leader, Luther Stewart, stated that he believed that there was a legitimate place for unionism in government. However, in the same letter Roosevelt went on to say that public sector collective bargaining "has its distinct and insurmountable limitations when applied to public personnel management."[5] The latter part of the letter was used by federal managers as a

---

[4]107 F.2d 186 (1939).

[5]Letter dated August 16, 1937 as cited in Murray B. Nesbitt, Labor Relations in the Federal Government Service (Washington BNA, 1976), pp. 10 to 11.

rationale to continue their unwillingness to support collective bargaining with employee representatives. This unwillingness on the part of federal officials became a passive one. The unions were, most often, simply ignored. Nor did Congress react in a manner favorable to public unionism. Congress had deliberately excluded public employees from the National Labor Relations Act and the War Labor Disputes Act of 1943. When Congress did focus its attention on public employees it was not in a manner in which unions desired it. The 1947 Taft-Hartley Act specifically forbade federal employees from engaging in strikes. By Congressional Act in 1955 employees who did engage in strikes were threatened with criminal penalties for committing felonies and all prospective federal employees were required to sign affidavitts assuring compliance with the law.[6]

By the late 1950s a change in federal labor relations policy became imminent. The rise of municipal unionism and collective bargaining among local governments illustrated that public employee bargaining could be achieved in a rational manner. In the federal

---

[6]See 5 USC §7311(3) and 5 USC §3333(a).

sector itself collective bargaining had persisted with positive results in the TVA, GPO and certain activities within the Department of Interior. These experiences indicated that federal collective bargaining was possible. Representative George Rhoads of Pennsylvania continually sponsored legislation from 1949 to 1961 which would allow federal employees to be represented by employee organizations in disputes with the federal government. These bills also attempted to put teeth in the Lloyd-LaFollete Act by penalizing federal managers who did not comply with the law.

As a junior senator from Massachusetts, John F. Kennedy was a strong supporter of Congressional efforts which attempted to provide federal employees with meaningful rights in regard to union activities. After he was elected President, Kennedy appointed a task force to review labor relations in the federal service and to make recommendations within five months on the subject. The task force recommended that the President issue policy guidelines which would recognize the legitimate role of employee organizations in regard to recognition, impasses and grievances.[7]

---

[7]Task Force Report, A Policy For Employee-Management Cooperation In the Federal Service, reported in Harold S. Roberts, Labor-Management Relations in the Public Service (Honolulu University of Hawaii Press, 1970). pp. 23 - 35.

Kennedy relied heavily on the report of the Task Force. On January 17, 1962 he issued Executive Order 10,988. Many unionists regard this executive order as a very important breakthrough in federal labor relations. Some commentators, however, have contended that Congressional recognition of union rights in federal employment was simply a matter of time and that federal employees may have been better off if they had waited for Congressional action.[8]

The Era of Executive Order 10,988

Executive Order 10,988 was characterized by several important features. Employees were given the right to join or refrain from joining a labor organization. Agencies were instructed to possess an "affirmative willingness" to enter into relations with bona fide employee organizations. Neutrality toward all unions also had to be maintained. Management personnel could not serve as managers or representatives of unions. Finally, recognized employee groups were permitted

---

[8]William R. Hart, "The U.S. Civil Service Learns to Live with Executive Order 10988: An Interim Appraisal," Industrial and Labor Relations Review, Vol. 17, January, 1964, p. 205.

to confer with agency officials on matters concerning personnel policies and practices and working conditions. Employee representatives were allowed to negotiate grievance procedures provided that these procedures conformed with the standards and regulations of the Civil Service Commission. Arbitration was allowed in grievance cases where labor and management could not reach a resolution of the issue between them. Arbitration was, however, only advisory.

Certain limitations were placed on employee-management agreements. Agency heads had to abide by the regulations and policies issued by the CSC and other federal agencies. Unions could, however, attempt to determine an interpretation of rules. Federal managers reserved certain prerogatives under the law in order to "fulfill the many requirements for efficient government."[9] These management rights included "the right to hire, promote, transfer, assign, and retain employees ... and to suspend, demote, discharge or take other disciplinary action against employees."[10] Federal managers were also provided with the power "to maintain the efficiency

---

[9]E.O. 10,988, Section 7(2).

[10]Ibid.

of the Government."[11] Furthermore, employee unions were prohibited from discriminating within its ranks, on a religious or racial basis. And unions which advocated or supported the right to strike were prohibited from invoking the protections of the executive order.

One of the most curious features of Executive Order 10,988 was the levels of recognition it granted to employee groups. Three types of recognition were allowed. Informal recognition allowed a labor group to present employee views on matters of concern. Management in turn, however, was only required to give such attention to these views as could "reasonably and conveniently be given."[12] Formal recognition of a union occurred when the employee organization had a stable membership of 10% or more of the employees of a unit. At the national level an organization was granted formal recognition when in the judgement of the agency it had a sufficient number of members or locals to warrant recognizing it. Where formal recognition existed, management had an affirmative duty to consult with the employee organization on matters of interest to its

---

[11] E.O. 10,988, Section 7(2).

[12] Ibid., Section 4(b).

members. Exclusive recognition, clearly the most desirable form from a union's standpoint, was granted to unions selected by a majority of employees in the unit. Organizations with exclusive recognition were permitted to represent all employees in a unit on matters concerning personnel policies and practices and working conditions, and to execute written contracts which embodied agreements made between unions and federal management on behalf of their members.

During the era of Executive Order 10,988 the Department of Labor was vested with the authority to assist agencies in making unit determinations and developing arbitration procedures. The Labor Department along with the CSC also prepared a Code of Fair Labor Practices and Standards of Conduct for unions. The CSC was also instrumental in providing information and developing labor relations training programs for federal managers.

From the time of its inception Executive Order 10,988 was the target of critical scrutiny. As time and the operation of the order continued, more alleged deficiencies were perceived. Unions desired legislative supervision of labor relations in the federal sector. The executive branch had managed labor relations since

1962 and policy-making power had been vested in executive officials. The original rationalization for creating, three distinct forms of recognition was based on the need for a transitional period of time for federal labor-management relations. By 1967 many were arguing that the transition had been made. The resolution of disputes under Executive Order 10,988 was subject to management approval. Unions, lacking the right to strike, felt unduly constrained and prejudiced in seeking an impartial resolution of labor issues. Unions also accused agencies of being partial in making unit determinations. Labor officials were especially dissatisfied with the influence and role of higher level agency heads who exercised vetos on agreements reached in negotiations at lower levels.

As a response to these criticisms, President Johnson appointed a special panel to review the executive order. The panel consisted of the Secretary of Labor, the Secretary of Defense, the Postmaster General, the Director of the Budget, the Chairman of the Civil Service Commission and a Special Assistant to the President. This group in turn created an advisory panel of neutral specialists familiar with public sector labor relations. The panel held hearings and took

testimony from various groups interested in the problems of federal labor relations. The review group issued a list of ninteen recommendations. The significance of these recommendations became apparent after the election of Richard Nixon as President in 1968. After he came to office Nixon appointed a cabinet-level group to study reform measures in federal labor relations. The Nixon group paid particular attention to the recommendations of the Johnson Review Panel. Consequently, on October 29, 1969, Nixon issued Executive Order 11,491. Many of the provisions incorporated in the new executive order were influenced by the recommendations of the Johnson Review Panel.

Executive Order 11,491 and Beyond

Executive Order 11,491 revoked the previous orders, the Code of Fair Labor Practices and Standards of Conduct for employee organizations promulgated by the CSC and the Department of Labor. The new executive order was issued in order to standardize federal labor relations practices and terms with those found in the private sector, to correct the alleged deficiencies and uncertainties attached to the previous executive order and to stabilize and reinforce the developing

institution of federal labor-management relations. Many of the features of Executive Order 10,988 were retained. The executive branch of government continued to maintain its policy-making and administrative power over federal labor relations. The essential provisions concerning mandatory management rights and the prohibition against the right to strike were also continued.

On the other hand certain features of the new order represented a significant departure from the past order. The administration of federal labor relations by government organizations was altered. A Federal Labor Relations Council was set up to act as the central agency in the supervision and implementation of the order. Many functions formerly executed by the CSC were transferred to the Council. The Assistant Secretary of Labor for Labor-Management Relations was vested with new and extensive responsibilities in the review of federal labor relations. These duties related to unit determination, supervision of representative elections, eligibility of labor organizations, enforcement of the standards of conduct for labor organizations and unfair labor practices. A Federal Service Impasse Panel within the Federal Labor Relations Council was created and given duties to resolve impasses in the federal

service with the assistance of the Federal Mediation and Conciliation Service. Under the new executive orders the criteria for unit determination was expanded. In addition to ensuring "a clear and identifiable community of interests among the employees concerned" the structure of the units must also "promote effective dealings and efficiency of agency operations."[13] Further, guards are excluded from joining units with other employees and supervisors are excluded from negotiating units. The new order changed the old recognition process by eliminating the forms of formal and informal recognition. In the place of formal recognition, national consultation rights were established for employee groups not exclusively recognized. Exclusive recognition has continued. Additional restraints were placed on labor unions regarding their financial activities and unfair labor practices. The scope of permissible negotiations was expanded to specifically encompass negotiations regarding labor displacement due to technological changes, grievance procedures and grievance arbitration. Further, an appeals procedure to resolve questions of negotiability was established

---

[13] E.O. 11,491, Section 10(b).

in order to determine if negotiations challenged or violated an applicable law, regulation or executive order.

Executive Order 11,491 was subsequently amended by two significant executive orders. Executive Order 11,616 was issued by Richard Nixon in 1971. This order amended Executive Order 11,491 in several ways. Under Executive Order 11,616 grievances and appeal procedures were altered in order to clear up confusions and conflict between CSC procedures and collective negotiations provisions regarding grievances. The Director of the OMB was fixed as a third member of the FLRC. Unfair Labor Practices were placed under the executive authority of the Assistant Secretary of Labor for Labor-Management Relations. The Assistant Secretary was also empowered to develop a body of precedent interpreting the Code of Fair Labor Practices. Under the executive order union officials were given greater latitude in using official time for negotiations-related activities. There was a final elimination of all formal and informal recognition procedures. Further, exclusive recognition did not preclude an agency from consulting with a social or religious group on matters which concerned their members. Under Executive Order 11,616 agency

costs for processing allotments of union dues became a bargainable issue.

President Ford on February 6, 1975, further amended Executive Order 11,491 by issuing Executive Order 11,838. Several items at issue were addressed. Parties were less constrained by administrative rules and regulations in collective negotiations since "a compelling need" was necessary in order to sustain the application of an administrative regulation to a collective negotiations issue. Greater freedom was allowed in the area of grievances and arbitration. Negotiated grievance and arbitration procedures were only subject to the mandatory exclusion of pre-existing administrative channels. The authority of the Assistant Secretary of Labor for Labor-Management Relations was expanded in the area of Unfair Labor Practice Cases. Further, the structure of negotiations units was modified. Guards no longer had to be excluded from units encompassing other federal employees.

CHAPTER II

A REVIEW OF THE GOVERNMENT AGENCIES RESPONSIBLE FOR THE ADMINISTRATION OF FEDERAL SECTOR LABOR RELATIONS

While reference will be made throughout this thesis to the various agencies involved in the administration of labor relations in the federal government, it is helpful to discuss the role and function of those public bodies in a systematic manner. These agencies include the United States Department of Labor, the United States Civil Service Commission (CSC), the Federal Labor Relations Council (FLRC) and the Federal Service Impasse Panel (FSIP). In addition the Federal Mediation and Conciliation Service (FMCS) has taken on an increasingly important role in this process.

United States Department of Labor

The Labor Department provides important services to the public administration of labor relations. The Secretary of Labor is one of three members of the FLRC. The Assistant Secretary of Labor for Labor-Management Relations performs several important functions. The Assistant Secretary is the chief administrator of the Labor-Management Service Administration, an office

within the Department of Labor. In addition he or she has important duties under the executive orders. The Assistant Secretary, following FLRC regulations, determines if an employee group is eligible for national consultation rights. He or she also decides appropriate bargaining units for exclusive recognition, supervises representative elections and decides issues relating to Unfair Labor Practice cases. Further, it is the duty of the Assistant Secretary to determine if a grievance is subject to arbitration or a negotiated grievance procedure when parties to an agreement cannot decide for themselves.[1]

The Assistant Secretary is empowered to deal with violations of the Standards of Conduct of Labor Organizations. Under these regulations employee groups must file annual financial reports with the Assistant Secretary for public disclosure. The Assistant Secretary also supervises labor organization compliance with the Standards of Conduct as they pertain to internal union election procedures, administration of trusteeships and other rights of union members.[2]

---

[1] E.O. 11,491, Section 6.

[2] Ibid., Section 18.

Along with the Civil Service Commission, the Labor-Management Services Administration of the Labor Department provides technical assistance to the parties to collective bargaining through the collection and dissemination of information.

United States Civil Service Commission (CSC)

Historically, the CSC has been the federal agency most affected by issues in employee-management relations. The CSC, while not possessing the degree of theoretical importance it had under Executive Order 10,988, remains an instrumental agency in the administration of labor relations. Under the new executive orders the FLRC has assumed many functions which were formally executed by the Civil Service Commission. However, it is important to note that the Chairman of the CSC sits as a permanent member of the FLRC. The CSC is charged with providing administrative support and services to the FLRC and it is the CSC, not the FLRC which publishes the Federal Personnel Manual. This publication contains important information relevant to the governance of federal labor relations.

The CSC has several specific responsibilities under the executive orders. The CSC supervises and

regulates the allotment of employee dues to labor organizations.[3] The Commission is also vested with the authority to hear appeals from administrative decisions which are adverse to employees.[4] Through its Office of Labor-Management Relations (OLMR) and cooperation with the Office of Management and Budget (OMB), the CSC maintains programs which provide policy guidance to federal agencies which are relevant to labor relations problems. The OLMR also reviews existing labor relations programs and can make appropriate recommendations to the FLRC. The OLMR provides a constant flow of technical assistance as well as training materials to federal managers engaged in labor relations. The OLMR has a well-deserved reputation for effectiveness in providing information.

The primary role of the CSC in its training activities is to advise federal managers and increase their sophistication in labor relations matters. The Commission is, not surprisingly, subject to constant criticism from union representatives who maintain the position that the Commission's role in labor relations

---

[3] E.O. 11,491, Section 6.

[4] See E.O. 11,787.

precludes administrative impartiality on the part of the CSC. This problem has been recognized by the Commission.

Federal Labor Relations Council and Federal Service Impasse Panel

In many ways the most important agency involved in Labor-Management Relations in the United States Government is the Federal Labor Relations Council. The Council consists of the Chairman of the CSC, the Secretary of Labor and the Director of the Office of Management and Budget as permanent members and other members of the executive branch as designated by the President. Briefly, the FLRC has a general power to administer and interpret Executive Order 11,491 and its amendments, issue regulations pursuant to it and decide the major policy issues confronting federal labor relations. The Council has specific appellate review power over decisions from the Assistant Secretary for Labor-Management Relations, appeals of negotiability issues and exceptions to arbitration awards.[5]

In regard to the Council's policy-making power,

---

[5]E.O. 11,491, Section 4.

the FLRC allows federal agencies and unions to possess a great amount of leeway in the development of labor-management relationships. The FLRC has not fully utilized its authority under the law. The Council obviously supports the proposition that the parties which are direct participants to the collective bargaining process are in a better position to resolve the differences between them.

The purpose behind the broad grant of policy-making authority seems to be to provide the FLRC with the necessary power to expeditiously deal with problems common to all participants in the labor relations process. The Council is, therefore, able to avoid the vague and deliberate policy-making process created by case-by case adjudication.

As to its power of appellate review, the Council does not act as a tribunal for the relitigation of disputes nor will the Council hold de novo proceedings. Appellate review is further restricted by the Council's rules that grounds for appeal be supported by presented facts. Mere assertion of grounds is not sufficient.[6]

The Federal Service Impasse Panel is an agency

---

[6] 5 USC §2411.14 (1977).

within the FLRC. It consists of a chairman and at least two other members all of whom are selected by the President. The primary task of the FSIP is to resolve negotiation impasses after mediation attempts by the Federal Mediation and Conciliation Service fail. The FSIP becomes involved in the process of impasse resolution only after it receives a request for its services by one of the parties to the impasse, by the FMCS or on the initiative of its own Executive Secretary. The FSIP can suggest procedures (including the reinvolvement of the FMCS) for settlement of the dispute. The Panel can attempt to resolve the dispute by utilizing its fact-finding procedures. If fact-finding fails the FSIP may assume the role of an arbitration panel and issue a binding decision. All arbitration and fact-finding procedures concerning a negotiations impasse must be supervised and approved by the FSIP. It is important to note that the FSIP has been able to resolve the overwhelming number of its cases by the use of fact-finding rather than arbitration.[7]

---

[7]See, generally, Federal Service Impasse Panel, Report of the Federal Service Impasse Panel, 1970 to 1973, (Washington, D.C.) and E.O. 11,491, Section 5.

The Federal Mediation and Conciliation Service

The FMCS has been obligated by Executive Order to provide assistance and services to federal agencies and labor organizations who are parties to real or potential impasses. The FMCS determines in what manner it will serve the parties. The Service seeks settlement of disputes through voluntary compliance with its recommendations. Since 1973 the policy of the FMCS has been toward an activist position in settling disputes within the federal sector. This activism has not always characterized the FMCS. When the role of the FMCS was initially formalized by Executive Order 11,491, the attitude of the Service was one of restrained assistance. In other words, the FMCS would provide services to the federal sector only if its services to the private sector would not be adversely affected.[8]

Today the FMCS provides several services to the federal sector. Each year the FMCS is called upon to monitor and mediate hundreds of disputes involving collective negotiations. The FMCS also provides preventive mediation through technical assistance to

---

[8]See Jerome H. Ross "Federal Mediation in the Public Sector," Monthly Labor Review, Vol. 99, No. 2 (1976) pp. 41 to 45.

agencies and unions. During the term of a collective bargaining agreement, mediators from the Service will often act as consultants to the applicable parties in order to improve the understanding of the parties concerning the agreement. As mentioned above, the role of the FMCS is integrated with that of the FSIP. Even after a case is referred to the FSIP for settlement, it is not unusual for the FSIP to employ the services of the FMCS.

The Office of Arbitration Services within the FMCS also works with federal agencies in setting up permanent regional panels of arbitrators and expedited arbitration procedures. The FMCS, pursuant to a collective bargaining agreement, may also be utilized to mediate grievances between agency and employee organization prior to arbitration.[9]

Conclusion

Two obvious criticisms have been lodged against the present system of government administration. First, the functional differences among the official

---

[9]See, generally, Federal Mediation and Conciliation Service, 29th Annual Report, 1976, (Washington, D.C.), pp. 17 to 25.

organizations involved in the administrative process has created a perceived need for a central authority, with both general and exclusive control over the administration of federal labor relations. The second criticism is based on the fact that the primary agencies presently engaged in the labor relations process have a definite management orientation. Administrative impartiality is, therefore, difficult to achieve. The role of the OMB has become especially bothersome to public employee organizations. The Director of the OMB sits on the FLRC. Executive Order 11,616 allows the OMB to review labor relations policies in the federal sector in cooperation with the CSC. The primary role of the OMB is that of management specialists who advise the President and make recommendations on ways in which labor may be utilized in a less costly and more efficient manner. Unions do not view the role of the OMB in labor relations to be consistent with that of an impartial referee in the arena of labor-management conflict.

Several ideas have been proposed to correct the alleged deficiencies mentioned above. Congress with encouragement of the various employee unions has considered legislative proposals which would create a

Federal Labor Relations Authority. This body would have centralized functions which parallel that of the NLRB in the private sector. Its members would be selected in ways which would minimize management influence.[10] The possibility of utilizing NLRB jurisdiction, as with the postal service, has also been discussed. However, because of the recognizably unique character of public service employment this view has not enjoyed widespread union or management support.

---

[10] A suggestion of this nature has been proposed in section 7123 of H.R. Bill 4800.

CHAPTER III

EXCLUSIVE RECOGNITION AND UNIT DETERMINATION

Exclusive Recognition vs. National Consultation Rights

Under the present system of labor relations in the federal sector, a union may be recognized by management in two distinct ways. An employee union can be afforded national consultation rights or exclusive recognition. The differences between these two forms of recognition are significant. In order to be granted national consultation rights, an employee organization must be the exclusive representative of either 10% or more, or 5,000 or more, employees of an agency or a government organization within an agency which has functions which are national in scope. Once a union is vested with national consultation rights, it must be notified by the appropriate agency of personnel policy changes which will affect its members. The employee representative is allowed to respond to these policy changes in writing or it may (upon request) consult, party-to-party, with the agency on these

matters.[1] Management must consider union input. However, an employee group with consultation rights does not possess powers tantamount to collective negotiations rights.

Exclusive recognition is granted to a labor union which has majority support of an appropriate unit of federal employees. Exclusively recognized unions have a much stronger position vis-a-vis an agency than do unions with national consultation rights. Union representatives with exclusive recognition may enter into collective negotiations with federal employers in order to develop an agreement between them in respect to conditions of employment. Unlike a union with national consultation rights, the exclusively recognized union represents all employees in a unit. The conditions of union membership, dues payment or union support are irrelevant. In addition to collective negotiations rights, exclusively recognized unions may also represent employees on discussions concerning personnel practices and in matters relevant to negotiated grievance and impasse resolution procedures.[2]

---

[1]See E.O. 11,491 Sec. 9 and 5 CFR §2412.1 to §2413.2, (1977).

[2]E.O. 11,491, Sec. 10.

Figures from a 1973 statistical survey completed by the Bureau of Labor Statistics give some insight on the nature of union recognition in the development of federal labor-management relations. In the period of 1963 to 1973 the total number of federal workers in exclusive recognition units increased from 180,000 to 1,086,361 employees. The number of wage system employees (employees in trades or labor and paid on a prevailing rate basis) in exclusive units increased from 226,150 or 40% of their number in 1966 to 404,955 or 84% in 1973. Since 1970, however, the total percentage of wage system employees in exclusive units has remained relatively constant. The total number of wage system workers in exclusive units has actually declined from a high of 437,586 in 1971 to 404,955 in 1973. General Schedule employees have realized larger gains. In 1966 only 179,243 or 59% of the federal employees in the General Schedule (GS) system were members of exclusively recognized units. This figure increased to a high of 681,406 or 47% of the GS employees by 1973.[3] These figures illustrate several points.

---

[3]U.S. Civil Service Commission, Office of Labor-Management Relations, Union Recognition in the Federal Government, November 1973 (Washington, D.C.) pp. 18-33.

Initially, there has been a greater tendency on the part of blue-collar employees to organize. Further, organization is more extensive among blue-collar federal employees than it is among white-collar employees. On the other hand, the percentage growth of GS employees has been greater in recent years. By 1970 the total number of GS employees in exclusive units exceeded that of wage system employees. The following table makes it clear that overall organization of federal employees in exclusive units is levelling off.

Table 3A[4]

Year	% Employees in Exclusive Units	No. of Employees in Exclusive Units	% Gain of Employees in Exclusive Units
1964	12%	230,543	28%
1965	16%	319,724	39%
1966	21%	434,890	36%
1967	29%	629,915	45%
1968	40%	797,511	27%
1969	42%	842,823	6%
1970	48%	916,381	9%
1971	53%	1,038,288	13%
1972	55%	1,082,587	4%
1973	56%	1,086,361	*

The above table seems to reveal that a saturation point

[4]U.S. Civil Service Commission, Office of Labor-Management Relations, Union Recognition in the Federal Government, November 1973 (Washington, D.C.) pp. 18-33.

is being reached in the organization of federal employees.

The number of federal employees operating pursuant to a negotiated agreement has significantly and consistently increased.

Table 3B[5]

Year	No. of Employees Covered by Agreement	% of Employees Covered by Agreement
1964	110,573	6%
1965	241,850	12%
1966	291,532	14%
1967	423,052	20%
1968	556,962	28%
1969	559,415	28%
1970	601,505	31%
1971	707,067	36%
1972	753,247	39%
1973	837,410	43%

The above table is illustrative of the developing acceptance on the part of federal managers and federal employee units to enter into agreements.

Agency figures reveal that the Department of the Army, Department of the Navy and Department of the Air Force within the Department of Defense (DOD) have the largest number of employees in exclusive recognition

[5]U.S. Civil Service Commission, Office of Labor-Management Relations, Union Recognition in the Federal Government, November 1973 (Washington, D.C.) pp. 18-33.

units. In terms of numbers only the Veterans Administration comes close to these agencies.

Table 3C[6]

Agency	Total Number of Employees in Units	% of Employees in Exclusive Units
Army	185,129	58%
Navy	179,515	60%
Air Force	179,468	76%
Veterans Admin.	126,455	64%
Others	415,731	48%

Table C illustrates the preponderance of exclusive recognition in defense-related employment as compared to other federal agencies. Part of the reason for the extensive organization in these four agencies can be attributed to the large number of blue-collar or wage-system employees in these agencies.

Table 3D[7]

	Wage System Employees	GS Employees
4 Defense Related Agencies	320,972	349,658
Other Agencies	83,983	331,748

[6]U.S. Civil Service Commission, Office of Labor-Management Relations, Union Recognition in the Federal Government, November 1973 (Washington, D.C.) pp. 18-33.

[7]Ibid.

Wage-system employees have a significantly higher level of organization than do GS employees. Historically, the defense-related agencies have employed a large number of blue-collar, skilled workers in civilian employment.

Correspondingly, the number of employees working under a negotiated agreement follows the pattern illustrated by Table 3C. Table 3E illustrates this point.

Table 3E[9]

Agency	Number of Employees Under Agreement	% of Employees Under Agreement
Army	142,712	44%
Navy	133,815	45%
Air Force	120,626	51%
V.A.	113,843	58%
Other	326,414	38%
TOTAL	837,410	43%

Among professional employees the Treasury Department leads other agencies in the number of professional employees in exclusive units. The Treasury in 1973 had 24,432 professional employees in exclusive units as compared to 62,246 in all other federal agencies.[9]

[8]U.S. Civil Service Commission, Office of Labor-Management Relations, Union Recognition in the Federal Government, November 1973 (Washington, D.C.) pp.20,21 .

[9]Ibid, pp. 18-33.

This fact is probably attributable to the large number of professionals employed by the Treasury Department.

As of November, 1973, national consultation arrangements existed between eleven different unions and thirty-four different agencies. The unions most involved in consultation were the American Federation of Government Employees (consultation with thirty agencies), the National Federation of Federal Employees (consultation with eleven agencies) and the National Association of Government Employees (consultation with seven agencies). The major federal participants to this process were the DOD agencies, the V.A., the Treasury Department and the National Guard Bureau. The DOD through its agencies participated in eighteen separate consultation relationships with six different unions. The Treasury Department was involved in five consultation relationships with three unions. The V.A. and the National Guard Bureau were obligated to consult with four unions, respectively.[10]

---

[10]U.S. Civil Service Commission, Office of Labor-Management Relations, Union Recognition in the Federal Government, November 1973, (Washington, D.C.) pp. 18-33.

Appropriate Bargaining Units

A bargaining unit in the federal sector is established in a manner consistent with the regulations of the Assistant Secretary of Labor for Labor-Management Relations. A union seeking exclusive recognition must file a petition for a representation election. This petition must demonstrate that at least 30% of the employees in the proposed unit have an interest in establishing a unit and that the union considers the unit to be an appropriate one. This petition must be posted for employee scrutiny and if another union wishes to contest the petitioning union's right to exclusive recognition, the intervening union must demonstrate a 10% showing of interest. Management must then receive the petition and decide to accept or reject the union's concept of an appropriate unit. The union may revise its unit proposal in order to reach an accord with management. If management explicitly rejects the petition on the grounds that the unit is not appropriate, the union may file an objection with the Assistant Secretary. Ultimate authority to make unit determination rests with the Assistant Secretary.[11]

Certain types of employees may not be included

---

[11] 29 CFR §202.1, §202.2, (1977).

in a bargaining unit. Under the Executive Orders supervisors and management officials may not be included in a bargaining unit. Supervisors may, if they wish, form their own units. Professional employees cannot be put in the same bargaining units as non-professionals unless the professionals vote to include themselves in a unit with non-professionals. Federal employees involved in personnel and labor relations work (other than those in a clerical capacity) and employees who administer the executive orders and federal law appropriate to federal labor relations are also prohibited from affiliating with other employees in a bargaining unit. Finally, confidential employees who have access to information regarding management activities and positions as they apply to labor relations may not be represented by an exclusive representative in conjunction with other employees.[12]

In determining the appropriateness of a unit, three factors are considered. First, there must be a clear and identifiable community of interests among the employees in the unit. In other words employees in the unit must have certain interests in common. Work

---

[12] E.O. 11,491, Sec. 10.

skills, training and education, geographic location, supervision, transferability among employees, common methods of pay, common benefits and promotion opportunities are examples of considerations in determining a community of interests. Second, the unit must promote effective dealings between management and the union. Third, the unit should promote the efficiency of agency operations.[13]

The Assistant Secretary and the FLRC have expanded on the application of these standards. It is clear from the council's decisions that in making unit determination, the Assistant Secretary must affirmatively determine that the unit satisfies each of the three criteria under 10(b).[14] Further, the council has held that "the Assistant Secretary must not only affirmatively determine that a unit will ensure a clear and identifiable community of interests among the employees concerned and will promote effective dealings and efficiency of agency operations, but must give equal weight to each of the three criteria

---

[13] E.O. 11,491, Sec. 10.

[14] Department of Transportation, Federal Aviation Administration, Southwest Region, Tulsa Airway Facilities Sector, FLRC No. 74A-28 (May 9, 1975), 3 FLRC 235.

before the particular unit can be found to be appropriate."[15] Equal weight, therefore, must be accorded these standards.

After the appropriate unit issues are settled a representation election is held. Elections are by secret ballot under the supervision of the Assistant Secretary. Employees must choose between one or two or more different unions and a "no union" choice. In order for a union to be chosen as an exclusive representative, it must receive a majority of the votes cast rather than a majority of eligible voters. If the union attempts to achieve exclusive recognition and fails, no new representation election can be held for twelve months. Where unions oppose one another for the right to represent the unit, no representation challenge to an elected union can occur for twelve months after certification of the recognized union.[16] Decertification of an exclusive representative can occur after the expiration of an election bar or certification bar. In a situation where a negotiated agreement exists

---

[15] Department of Transportation, Federal Aviation Administration, Southwest Region, Tulsa Airway Facilities Sector, FLRC No. 74A-28 (May 9, 1975), 3 FLRC 235, at 238.

[16] 29 CFR §202.20 (1977).

between the exclusive representative and management, a contract bar to decertification attempts exist. An agreement can bar a decertification attempt for up to three years. Decertification attempts may be made by an employee or group of employees upon a thirty percent show of interest or by management with a good-faith doubt that the exclusive representative no longer represents a majority of employees in the unit.[17]

A petition to consolidate existing bargaining units may be submitted unilaterally by labor unions or bilaterally by both unions and management to the appropriate area director representing the Assistant Secretary. If the Assistant Secretary determines the consolidation to be inappropriate, the petition is dismissed and the present structure of representation continues. If, however, the Assistant Secretary decides (a) that consolidation is appropriate, (b) management and the union(s) agree on the consolidation without an election, (c) there is no petition from 30% of the employees showing an interest for an election and (d) the proposed consolidation does not include mixing professionals and non-professionals, the new

---

[17] 29 CFR §202.20 (1977).

consolidation unit is certified. If management and labor cannot agree to forego an election or if a group of employees demands an election, a consolidation election is held in which a majority of votes must be cast for consolidation in order for a new unit to be established. If professionals and non-professionals are involved, a professional self-determination election is required. If a majority of the professional employees vote against inclusion into the certified unit, a separate professional unit must be established and certified.[18]

Significance of an Exclusive Unit

Exclusively recognized unions have the general right to negotiate agreements on behalf of unit employees and to represent the interests of unit employees. Further, agencies are required under Section 10(e) of Executive Order 11,491 to give exclusively recognized unions "an opportunity to be represented at formal discussions between management and employees . . concerning grievances, personnel policies and practices, or other matters affecting general working conditions

---

[18] 29 CFR §202.20 (1977).

of employees in the unit." The right to representation under this section is a union right and may be only exercised in a manner determined by an appropriate union. An agency is required to provide the union with a reasonable opportunity to be present. However, the right to be present must be balanced against reasonable management requirements to conduct meetings as scheduled and with minimal interference with operational efficiency. Failure to inform the union of a formal discussion may result in an unfair labor practice.

Several decisions on the administrative level have been made concerning the question of what is a formal discussion requiring the opportunity for union presence. According to the most significant cases on this point, formal discussions occur when the content of the employee-management meetings concerns subject matter appropriate to section 10(e) and the meeting has a potentially significant effect upon an exclusive unit. Among situations held to be formal discussions are those which include any discussion of an existing grievance,[19] meetings between an employee and supervisor

---

[19] Department of Defense, National Guard Bureau, Texas Air National Guard, FLRC No. 74A-11 (June 18, 1974), 2 FLRC 130.

concerning new methods of performance evaluation,[20] discussions with employees concerning sick leave where a formal record was kept, several management representatives were present and the parties dealt with personnel practices which had an effect on the unit as a whole.[21] Further, the mere designation of a meeting as being informal by an agency is not controlling.[22]

By contrast the Assistant Secretary and the FLRC have determined in many instances that discussions were not formal. According to one observer, "Typical meetings that would not seem to invoke the effect of Section 10(e) include investigations, performance evaluation discussions, counselling sessions, factfinding meetings, and meetings involving matters of personal concern to an employee and work assignments and instructions."[23] In a case where the CSC was conducting

---

[20] Federal Aviation Administration, National Aviation Facilities, Experimental Center, Atlantic City, New Jersey, A/SLMR No. 438 (1974).

[21] U.S. Army Headquarters, U.S. Army Training Center, Infantry, Fort Jackson Laundry Facility, Fort Jackson, South Carolina, A/SLMR No. 242 (1973).

[22] FAA, Atlantic City, supra, note 20.

[23] Robert Sebris, Jr., "Formal or Informal: What are the Union's Rights?" Public Personnel Management, Vol. 6 (1977) p. 158.

a management evaluation of an IRS facility, the Assistant Secretary held that union representation was not required since the CSC was not functioning as agency managers.[24] In a case where agency-level representatives were conducting meetings with activity-level employees in order to solicit opinions on matters concerning EEO programs, the FLRC held that the agency was not required to permit exclusive union representatives to be present since the meetings were merely "a mechanism whereby agency headquarters-level management sought to evaluate the effectiveness of an agencywide program which existed totally apart from the collective bargaining relationship at the level of the exclusive recognition."[25] It is possible to conclude that the subject matter of the meeting must be related to the collective bargaining process (as it pertains to the conditions of Section 10(e)) in order to apply the formal discussion requirements of Section 10(e). It is

---

[24]U.S. Civil Service Commission, Washington, D.C., A/SLMR No. 641 (1976).

[25]National Aeronautic and Space Administration, Washington, D.C. and Lyndon B. Johnson Space Center, Houston, Texas. FLRC No. 74A-95 (September 26, 1975), 3 FLRC at 621.

important to note, however, that an exclusive representative and agency may by contract determine for themselves what is an informal versus formal discussion, provided that a union waiver of rights under Section 10(e) be clear, unmistakable and intentional.

CHAPTER IV

COLLECTIVE BARGAINING AND WAGE DETERMINATION

Scope and Conduct of Negotiations

Under the present labor relations system exclusive representatives are allowed to negotiate with federal agencies in order to reach an agreement on personnel policies, practices and matters affecting working conditions.[1] The executive orders do not affect or permit the negotiation of items determined by Congress. Many essential issues are within the exclusive jurisdiction of Congress. Legislation is necessary in order to establish pay scales, hours of work, fringe benefits, vacations and sick leave. The executive orders also exclude from the bargaining process those items which have been determined by the CSC under its legal authority and direction. Further, Executive Order 11,491 prohibits federal agencies from bargaining away its right "(1) to direct employees of the agency; (2) to hire, promote, transfer, assign and retain employees in positions within the agency, and to suspend,

---

[1]E.O. 11,491, Sec. 11(a).

demote, discharge, or take other disciplinary action against employees; (3) to relieve employees from duties because of lack of work or for other legitimate reasons; (4) to maintain the efficiency of the Government operation entrusted to them; (5) to determine the methods, means, and personnel by which such operations are to be conducted; and (6) to take whatever actions may be necessary to carry out the mission of the agency in situations of emergency."[2]

In its discretion federal agencies may negotiate on matters concerning "the mission of the agency; its budget, its organization; the number of employees; and the numbers, types and grades of positions or employees assigned to an organizational unit, work project or tour of duty; the technology of performing its work; or its internal security practices."[3] Further agreements dealing with employment dislocation due to work force realignments or technological changes may be negotiated.

Agency policies and regulations may prevent negotiations on certain issues if "a compelling need exists" to invoke those regulations. The "compelling

---

[2]E.O. 11,491, Sec. 12(b).

[3]E.O. 11,491, Sec. 11(b).

need" requirement of section 11(a) has been the subject of substantial controversy. The requirement of compelling need was the result of recommendations by the FLRC. Prior to the issuance of Executive Order 11,838 internal agency procedures often acted as a bar to contract negotiations since any higher agency regulation pre-empted negotiated procedures. As a result of this procedure union representatives charged with some justification that collective negotiations were being unduly restricted by superfluous agency regulations. The FLRC in its recommendations of 1975 to the President suggested that in order for an agency regulation to bar negotiations a "compelling need" for that regulation should exist. The recommendation specified that the FLRC should interpret this standard and resolve disputes concerning it. The Council further suggested that, "Section 11(a) should ... provide that ... only those (regulations) issued at the agency headquarters level or at the level of a primary national subdivision may bar negotiations."[4]

---

[4]United States Federal Labor Relations Council, Labor-Management Relations in the Federal Service, Executive Order 11,491, As Amended, Reports and Recommendations (Washington, D.C.) 1975, p. 37.

These recommendations were implemented by Executive Order 11,838. In a situation where a union and management disagree on whether compelling need exists to bar negotiations, the issue is first filed as an exception with the agency. If the agency disallows the exception the union may appeal to the FLRC. This appeal must be filed by the National Union President or his designee, or by the president (or his designee) of a labor organization not affiliated with a national union. It is the Council's responsibility to decide whether or not a compelling need exists to bar collective negotiations.[5]

The tactics used in the federal collective bargaining process share similarities with the private sector. Bargaining skills and sophistication are important. During the initial period of Executive Order 10,988 many commentators accepted the view that union representatives with private sector experience were at an advantage to inexperienced federal managers. Both the Department of Labor and the CSC have instituted training programs to develop the abilities of federal

---

[5]See E.O. 11,491, Sec. 11(a) and 5 CFR §2413.1, §2413.2 (1977).

managers in the negotiation process. While these agencies provide training and other support, each agency is responsible for developing its own negotiations policy. Depending on the agency, different agency levels - local, regional and/or national - may be involved in contract negotiations. A definitive agreement cannot be established until the National Office of an agency reviews and approves the results of the negotiations. The National Office of an agency may also send a delegate to the negotiations to sit on the management bargaining committee. A regional officer of an agency may also be involved in the negotiations process. For the most part the initial reluctance of federal managers to bargain willingly and in good faith has been overcome by the threat of executive mandate and the gradual acceptance of collective bargaining as a part of the personnel and labor relations process.

Bilateralism is implied in the concept of collective bargaining. In its early stages many critics of federal collective bargaining alleged that it was a unilateral process since the issues of wages and hours of work etc. were not negotiable. It was also believed that management's legal power in the collective bargaining process overwhelmed that of an employee organization.

In recent times, however, many observers have discerned a trend toward bilateralism.[6] Unions have especially supported this trend. The "compelling need" requirement is in part a response to union input. The CSC in 1973 reviewed the Federal Personnel Manual and reinterpreted many FPM provisions so that collective bargaining could exist in a more hospitable environment. Agencies have assumed much more discretion on bargaining issues. Many issues presumed to be non-negotiable became negotiable. Consequently, the number of negotiable issues has substantially expanded. Moreover, union input on wage determination has become increasingly significant. Bilateralism has expanded to labor-management relations policy as a whole, not only collective bargaining.

By contrast union representatives have been less impressed by the belief that there is a bilateral trend. According to Stephen A. Koczak of the AFGE, bilateralism, and therefore, genuine collective bargaining does not exist in the federal service. Koczak stresses the pay comparability issue in drawing this conclusion. Koczak believes that in order for true collective bargaining

---

[6]See Phillip L. Martin, "Bilateralism: The New Trend in Federal Labor-Management Relations" Labor Law Journal, Vol. 5, March 1974, pp. 155-160.

to exist "at least two criteria should apply. First, the system should collect together the representatives of all the interested parties, labor and management; and second, it should provide a means to collect together all the important issues for review ... Bilateralism as practiced in the federal service does not do this ... Today, federal employees must continue to seek the attainment of their proper goals before Congress and in the courts rather than in genuine discussions with management."[7] It is likely that union criticisms of federal policies will persist and union supporters will continue to doubt the validity of bilateralism until such time as federal employees are allowed to bargain directly for wages and hours, and are allowed to strike.

Collective Bargaining Agreements in the Federal Service

In 1973 the BLS published a comprehensive study of federal collective bargaining agreements. This study updated a 1964 study by the BLS. Out of a total

---

[7]Stephen A. Koczak, "Collective Bargaining and Comparability in the Federal Sector," Proceedings of the Twenty-Eight Annual Winter Meeting of the Industrial Relations Research Association, 1976, p. 198.

1,643 collective bargaining agreements reported by the CSC, the BLS surveyed 671 of these contracts. These 671 agreements covered three-quarters of all federal employees working pursuant to a collective bargaining agreement. The BLS sample, therefore, covered the great majority of federal employees operating under a collective negotiated contract. Twenty-six federal agencies executed agreements with their employees. These agencies were represented in the sample. Four agencies, the Departments of the Army, Navy, Air Force and the Veterans Administration accounted for seven tenths of all sample agreements and four fifths of the employees covered in the study.[8] These disproportionate figures accurately reflect the importance of these agencies in the federal collective bargaining process.

AFL-CIO unions dominate the labor organization side of the collective bargaining process. Of the 671 sampled agreements AFL-CIO affiliates negotiated 474 of these contracts. AFL-CIO contracts applied to 429,759 out of the 532,745 federal employees covered by the survey. One AFL-CIO union, the American

---

[8]U.S. Department of Labor, Bureau of Labor Statistics, Collective Bargaining Agreements in the Federal Service, Late 1971, Bulletin 1789 (Washington, D.C.) 1973, p. 1.

Federation of Government Employees (AFGE), negotiated 343 sampled contracts covering 334,226 employees. Among the independent unions, the National Federation of Federal Employees (NFFE) and the National Association of Government Employees (NAGE) made the most significant contribution to the number of collective bargaining agreements.[9]

Collective bargaining agreements in the federal sector share many similarities. Most contracts in the federal service begin with a preamble stating the purpose of the agreement. The preamble is characterized in an overwhelming number of agreements by the following characteristics: (1) language subordinating the contract to the executive orders, the Federal Personnel Manual and agency regulations; (2) reference to the items subject to bargaining by the parties; (3) a management rights provision; (4) language calling for the reopening of contract provisions upon the mutual consent of the parties; (5) a statement subjecting the contract to review by a higher agency level and

---

[9]U.S. Department of Labor, Bureau of Labor Statistics, Collective Bargaining Agreements in the Federal Service, Late 1971, Bulletin 1789 (Washington, D.C.) 1973, p. 1.

employee membership; (6) the rights of the employees to organize and express themselves and (7) language stating that copies of the contract will be distributed to each employee.

Anti-discrimination provisions are common in federal agreements. These provisions occurred in 472 out of the 671 agreements surveyed by the BLS. In 128 of these contracts equal employment opportunity joint committees of employees and employers were created.

Provisions relating to hours of work and overtime are rare in the federal service since CSC or agency regulations determine policy on these subjects. Agreements pertaining to wage board[10] employees did, on occasion, contain these provisions. There has also been a growing acceptance in wage board agreements to provide for rest periods, cleanup time and clothing and tool allowances.

Most federal agreements also contain provisions related to health and safety. Among wage board agreements a substantial number of these agreements call for the creation of continuation of a Joint Safety Committee. Wage board employees are the most affected by and concerned with unsafe conditions. However, a majority of all federal agreements contain language

---

[10]For an explanation of the Wage Board System, see supra p. 66.

to the effect that employees will not be subjected to hazardous conditions.

A substantial number of federal agreements make reference to leave policies. 494 of the 671 sampled agreements dealt with vacation scheduling matters and 434 contracts contained sick leave provisions. A growing number of federal agreements contained provisions relevant to leave for civil responsibilities. Nearly one-third of the sampled contracts had provisions relating to the issues of leave time for voting, jury duty and charity drives.

A substantial number of federal agreements deal with personnel practices. It is important to note that the subject matter of these negotiated issues is often already covered by CSC and agency regulations. Provisions relevant to promotion procedures are common. Demotion procedures, by contrast, were rare in the sampled contracts. A majority of contracts contained provisions which specified the union's role in reduction-in-force problems. A union's role in this regard is somewhat diminished since primary responsibility for this question rests with the federal agency.

While they exist in only a minority of agreements, provisions pertaining to disciplinary action have become

more frequent. Approximately 25% of all agreements required either union notification of the adverse action against an employee or the use of a negotiated grievance procedure to deal with the disciplinary issue.

Contract provisions directed at occupational training and development have gained increasing signifcance and now exist in a majority of agreements. Training provisions are particularly prevalent in wage board agreements.

Federal employees are not permitted to bargain for wages. The process of wage determination in the federal sector will be discussed later in this chapter. In agreements covering wage board employees, provisions relevant to the wage survey process are not uncommon. Contract provisions related to wages are virtually nonexistent in agreements that apply to Classification Act (GS) employees.

The vast majority of federal agreements contain provisions pertaining to the activities of employee unions. These provisions cover a wide range of issues. Examples of union-activity issues covered by agreement include the following: (1) union notice relating to meetings, elections, social affairs, etc.; (2) the conduct of union affairs during work hours, (3) the

activities of shop stewards and employee representatives; (4) rights of union officials to visit the work-place; and (5) leaves of absence for union business. Further, a majority of contracts provide for a dues checkoff procedure. Negotiations for checkoff procedures are made pursuant to Section 21(a) of Executive Order 11,491 and any written understanding between union and agency must be made subject to CSC regulations. Mechanisms for union-agency cooperation are often aided by Joint Cooperation Committees. Provisions for the maintenance of these committees exist in about half of all federal agreements.

Impasses are, of course, subject to the jurisdiction of the FMCS and the FSIP for resolution. However, parties to a collective bargaining agreement may establish methods of resolving impasses short of invoking the mandated procedure. Close to 50% of the sampled agreements contain some type of negotiated impasse procedure. These procedures vary considerably.

An overwhelming number of agreements contain provisions pertaining to grievance procedures. The negotiation of a grievance procedure is one of the most important issues in the collective bargaining process. Approximately two-thirds of all sampled agreements

provided for grievance arbitration. In a slight majority of these cases, advisory arbitration was preferred over binding arbitration.[11]

Wage Determination

One of the most obvious limitations on the process of collective bargaining in the federal sector involves the issue of wage determination. With few exceptions[12] wages in the federal sector are not determined in the collective bargaining process as they are in the private sector. Two major systems are used by the government to pay its employees. The "Prevailing Rate" or Coordinated Federal Wage System (CFWS) is applied to the compensation of blue-collar employees. The General Schedule (GS) system is the second major way in wnich federal employees are paid. The GS system is primarily applicable to white-collar and clerical employees.[13]

---

[11]U.S. Department of Labor, Bureau of Labor Statistics, Collective Bargaining Agreements in the Federal Service, Late 1971, Bulletin 1789 (Washington, D.C.) 1973, p. 10-87.

[12]The Postal Service is the most notable exception to this rule. See Chapter 8, supra.

[13]The General Schedule approach emanates from the "Classification Act" 5 USC §5101 et. seq.

The CFWS was established during Presiaent Johnson's administration in 1968. The CFWS was created to replace the previous confusing and inequitable methods of payment for blue-collar workers. The purpose of the Wage System is to provide equal rates of pay for the same occupation within different agencies in the same geographical area. Both skilled and unskilled workers are included under the Wage System. The Wage System process creates job-grading standards and common wage schedules for all covered employees in a wage area except those to whom special status is allowed.

While the President of the United States is given general responsibility for the Wage System, it is the Chairman of the CSC with the help of an advisory committee, the National Wage Policy Committee (NWPC), which sets basic policy guidelines for the CFWS. The NWPC consists of five representatives from federal management, four representatives appointed by the President of the AFL-CIO, one representative from an independent union and a chairman appointed by the CSC chairman. The NWPC makes recommendations to the CSC chairman and also reviews policies promulgated by the CSC.

Briefly, the CFWS operates as follows. A lead

agency, generally the federal agency with the largest number of employees, in a geographic area is chosen by the CSC to conduct and analyze a wage survey. A local wage survey committee consisting of members from both labor and management collect and review data which relates to the establishment of a wage scale in a specific area. A wage survey is also conducted by the Bureau of Labor Statistics (BLS) which attempts to determine the prevailing wages paid in private industry for workers in similar occupations in the wage area. The results of this survey are submitted to the local wage survey committee which in turn submits its total findings to the lead agency. The lead agency is responsible for an acceptable wage schedule for specific occupations. The recommended schedule is reported to the other federal agencies in the area. These agencies are obliged to follow it.[14]

Under the CFWS labor organizations have a significant impact on wage determinations for blue-collar employees. Whether this system is equivalent to the union effect on wages through a collective bargaining

---

[14]See William J. Lange "The Federal Wage Board System of the United States Government," Public Personnel Review: Vol. 32, October 1971, pp. 238-245.

process is difficult to determine. Unlike collective bargaining in the private sector, ultimate authority to set wage schedules for blue-collar employees does rest with federal management.

The system of employee compensation for white-collar federal workers is determined by the Federal Pay Comparability Act of 1970.[15] Union consultation under this act is not as intense or significant as union participation under the CFWS. The basic policy behind the act is to provide federal employees with pay comparable to that found in the private sector for similar work. The process for accomplishing this task is as follows. The President designates an agent and directs that agent to submit an annual report that compares rates of pay in the federal sector with that found in the private sector.[16] This comparison is based on BLS surveys. Under Section 201 of Executive Order 11,721, the Director of the OMB and the Chairman of the CSC have been named as agents for this purpose. The agent, based on this information, also makes

---

[15] 5 USC §5301 et. seq.

[16] 5 USC §5305(a)(1).

recommendations for pay adjustments.[17] The Advisory Committee on Federal Pay (ACFP) also has a role in this process. The ACFP is an independent committee consisting of three members from without the federal government. They are appointed by the President upon the recommendation of the Director of the FMCS and others. Members serve for six years. The ACFP reviews the report of the agent and consults with other groups, including unions, on the subject. Findings and recommendations of the ACFP are also considered and the President may adjust the pay system along the lines suggested by the ACFP or the agent. All applicable suggested pay adjustments and reports are submitted to Congress.[18]

The President's agent is also required to set up a Federal Employees Pay Council (FEPC). This Council consists of five members, all of whom come from labor organizations representing federal employees. No labor organization, including the AFL-CIO, is allowed more than three members on the Council. The President's agent is compelled under the Act to consult and actively elicit the opinion of the FEPC on wage policy

---

[17] 5 USC §5305(a)(1).

[18] 5 USC §5306.

issues. The Council can express their opinion on the coverage of the appropriate BLS survey, the process of comparing private and federal pay rates. The agent must thoroughly consider these views and include the council's recommendations in its report to the President.[19] If adverse economic conditions or a national emergency warrant it, the President may decide to disregard the agent's pay adjustment suggestion. He may formulate an alternative plan to Congress involving pay adjustments dissimilar to that of the regular comparability adjustment. This alternative plan becomes effective unless either house of Congress disapproves of it during the first thirty days of continuous session of Congress.[20]

Through the FEPC a certain degree of union input is achieved in the wage determination process. It is clear, however, that the primary task of wage rate structuring is accomplished by Congress with the substantial initiative and dependence on the President and other officers within the Executive Branch of government. The union role is, at best, one of secondary importance.

---

[19] 5 USC §5305(a)(1).

[20] 5 USC §5305(b)(1).

For white-collar employees, wage determination in the federal service probably does not approach the effectiveness (from a union-input perspective) of private sector collective bargaining mechanisms.

CHAPTER V

UNFAIR LABOR PRACTICES

Much of the labor relations activity which takes place in the federal service concerns unfair labor practices. Federal service procedures differ from those found in the private sector. For these reasons we will separately consider the area of unfair labor practices. The vast majority of unfair labor practice charges are filed against federal management. Generally, it can be said that an unfair labor practice charge is a weapon in a union's arsenal. Employees in an individual capacity may also file these charges against an agency. Management does, on its part, have the potential to utilize this procedure.

Management's Violations

Management commits an unfair labor practice charge when it interferes with, restrains or coerces a federal employee in regard to the worker's right to "form, join, and assist a labor organization or refrain from any such activity."[1] Section 19(a)(1) of the

---

[1]E.O. 11,491, Sec. 1(a).

Executive Order can be violated by management in two ways. First, federal managers can independently and specifically violate an employee's right. The scope of this protection is very broad and numerous situations have arisen which have been determined to be independent violations of this section. Second, derivative violations of employee rights can occur when any part of section 19(a) is violated. For example, if management fails to consult, confer or negotiate with a union, a violation of 19(a)(6), the agency in question would also have derivatively violated section 19(a)(1). This determination is based upon the belief that by not allowing an exclusive representative the chance to collectively bargain with a federal employer, the agency is ultimately interfering with the employees' right to form, join and assist a union.[2]

It is a violation of section 19(a)(2) for management to "encourage or discourage membership in a labor organization by discrimination in regard to hiring, tenure, promotion, or other conditions of employment." Certain activities will trigger an unfair

---

[2]United States Air Force, Kingly Field, Klamath Falls, A/SLMR No. 443, FLRC No. 74A-82 (February, 1975) 3 FLRC 154.

practice charge pursuant to this section. These activities include the failure to promote an employee, a suspension, a termination and disciplinary actions designed to intimidate employees. Charges under this section, while given high priority by the federal labor relations authorities, are rare since the activities associated with a violation of this section are generally subject to an adverse equal employment opportunity complaint process. Where violations of this section do occur, the prohibition is broadly interpreted. Proof of actual discouragement of union membership is not required. Any action which tends to discourage union membership is sufficient. Management must, therefore, be careful not to give the impression of anti-union bias in regard to these matters.

Section 19(a)(3) prohibits an agency from sponsoring, controlling or assisting a union. This section does permit the agency to dispense customary services and facilities provided that the agency is impartial in the dispensation of these services. It would be an unfair practice for an agency to display favoritism for one union over another. Further, an agency may not attempt to encourage its employees to accept a certain union. This section prohibits federal

managers or supervisors from participating in the management of a union since these federal employees are considered part of federal management and an inherent conflict of interest would arise. An exception to this rule occurs when a unit is exclusively composed of managers and supervisors.[3] Actions of managers who become involved in union affairs is imputed to an agency and the agency can be held to have violated this section. This section would also prevent management from executing a new agreement with an incumbent organization when the representational status of that union is being challenged.[4] In regard to the provision for services and facilities, an agency generally may not allow a rival union to use agency premises for organizational purposes when an existing incumbent organization already exists.[5]

To protect the rights of employees to utilize unfair labor practice mechanisms, management is prohibited from disciplining an employee based on the

---

[3]E.O. 11,491, Sec. 24.

[4]See Naval Air Rework Facility, Jacksonville, A/SLMR No. 155.

[5]V.A. Data Processing Center, A/SLMR No. 523.

fact that the employee has filed a complaint or testified against an agency in an unfair labor practice case. While this section, 19(a)(4), has seldom been invoked, it is clear that if management does discipline an employee who has filed a complaint or has testified the basis for such action must be anti-union sentiment.

An unfair practice may also occur if an agency refuses "to accord appropriate recognition to a labor organization qualified for such recognition."[6] Violations of this section are infrequent and often arise in cases where an agency has become the successor-in-interest to an employee unit. In the natural confusion which follows the transfer of functions from one agency to another, management may be uncertain as to how to proceed in its dealings with a particular union with which it did not have a pre-existing relationship.

The most frequently charged unfair labor practice is the allegation that management has refused "to consult, confer, or negotiate with a labor organization."[7]

---

[6] E.O. 11,491, Sec. 19(a)(5).

[7] Ibid., Sec. 19(a)(6).

This charge can only occur in a situation where the charging party is the exclusive representative of a unit. Under the executive orders it is the obligation of management to bargain with an exclusive representative. There are several common types of activities which will violate section 19(a)(6). Management commits an unfair labor practice when it improperly prevents a union from representing its members at formal discussions of a grievance. Where an agency refuses to negotiate on the basis that (1) the union is not the exclusive representative of the employees, (2) the agency is not obliged to bargain on a certain issue or (3) the matter is not appropriate for negotiations, an unfair labor practice may result if the agency errs in its judgement. An agency can also violate this section if it acts or fails to act in a certain way. An example of this would be found in a situation where management refuses to make a counter-offer during negotiations with a union. Unilateral action on the part of management contrary to a provision of a collective bargaining agreement or a unilateral refusal to process a grievance would also result in an unfair labor practice. The refusal of an agency to execute an agreement with a union upon the union's request where such agreement

has already been reached would result in a violation of this section.[9] Through the use of unfair labor practice charges, Section 19(a) injects a degree of bilateralism into the federal labor relations process.

Unfair Labor Practices and Unions

Pursuant to Section 19(a) of Executive Order 11,491 as amended, employee organizations are prohibited from engaging in certain acts. A union may not "interfere with, restrain, or coerce an employee in the exercise of his rights." This section protects the right of federal employees to refrain from joining a union. The AFGE was found to have violated this provision when it expelled a federal worker from membership despite the fact that the employee had submitted his resignation prior to the AFGE action.[10] It is also an unfair labor practice on the union's part to induce management to coerce an employee in the

---

[9] DSA, DPBO, Aberdeen A/SLMR No. 360, FLRC No. 74A-22 (December 9, 1975), 3 FLRC 787.

[10] See American Federation of Government Employees A/SLMR No. 275.

exercise of his rights.[11] Further, a union may not use coercive tools or fines in order to impede one of its members in the performance of his duties.[12]

It is also an unfair labor practice for a union to "call or engage in a strike, work stoppage, or slowdown; picket an agency in a labor-management dispute; or condone any such activity by failing to take affirmative action to prevent or stop it."[13] While penalties for picketing have not been harsh, the response of the federal authorities to unions involved in strike-related incidents has, by contrast, been severe. The Professional Air Traffic Controllers Organization (PATCO) was found to have violated this section by condoning a strike by a group of air traffic controllers. At the time PATCO was in the process of seeking exclusive representation rights on behalf of these federal employees. Because of its involvement, PATCO was prevented from utilizing and going forth with representation procedures under the Executive Order until such time as the ASLMR was convinced that PATCO was doing

---

[11] E.O. 11,491 Sec. 19(b)(2).

[12] Ibid., Sec. 19(b)(3).

[13] Ibid., Sec. 19(b)(4).

its best to prevent the unfair labor practice.[14]

As with management, a union may not "refuse to consult, confer, or negotiate with an agency ... without committing an unfair labor practice.[15] Further, pursuant to 19(c) of the Executive Order a union, which is exclusively recognized, is prevented from denying membership to an employee in a unit unless that employee fails to meet reasonable occupational standards for union membership or if the employee refuses to pay his initial union fees or dues. Even if a union believes that a prospective member is undesirable, it cannot deny him or her union membership if the applicant is qualified. This rule does not, however, prohibit a union from expelling one of its members after they join the union so long as the terminating action is done in accordance with the union's constitution and by-laws.

---

[14]See Professional Air Traffic Controllers Organization (PATCO), A/SLMR Nos. 10 and 51.

[15]E.O. 11,491, Sec. 19(a)(6).

Procedures For Filing An Unfair Labor Practice

The procedure for filing an unfair labor practice charge has been well-developed in the federal sector. If an employee, union or management decides to file an unfair practice charge it must do so within six months of the alleged offense. The charge is filed directly with the offending party. After the charge is filed an investigation of the incident takes place. Since most complaints are directed against management, it is the primary duty of the agency in such cases to conduct the investigation. The parties must attempt to resolve the issue by informal negotiations. If the party issuing the charge receives a written formal decision by the respondent to the charges and agrees to abide by it, the issue is resolved. If the party disagrees, it must file a charge with the Labor Management Services Administration (LMSA) within sixty days of receiving this written notice, or within nine months after the alleged unfair practice, whichever is sooner. If the party does not receive written notice, he may file a charge with the LMSA but must wait thirty days after the filing of the initial charge. It is the duty of the Area Director of the LMSA to dismiss or continue with the complaint. Through the intervention of the

Area Director, it is possible that the issue will be settled by the parties. Such settlement must be in writing. A charging party may also withdraw the issue. If the Area Director decides to dismiss the complaint, the charging party has ten days to challenge the dismissal. If the case is continued, an investigation is conducted by the LMSA. A report of the investigation is given to an Administrative Law Judge and it can be submitted into evidence by one of the parties to the issue. Based on the evidence accumulated during the hearing, the Administrative Law Judge issues a recommendatory decision and order. It is the responsibility of the ASLMR to make a definitive decision on the case. The ASLMR may dismiss the case or issue a remedial order. The ASLMR may affirm the ALJ's decision in full or part, or he may overrule it.[16] In cases which have significant policy implications, the ASLMR can refer the case to the FLRC. If the ASLMR makes a negotiability determination in connection with an unfair labor practice complaint, the parties have an automatic right to appeal the case to the FLRC. In all other cases the FLRC will hear unfair practice appeals only

---

[16]See 29 CFR §203.1 et. seq. (1977).

when significant policy issues are present or when the decision of the ASLMR appears to be arbitrary or capricious.[17]

A common defense raised by federal managers in response to unfair labor practice charges has been the invocation of the provisions of section 19(d) of Executive Order 11,491. That provision provides: "Issues which can properly be raised under an appeals procedure may not be raised under this section. Issues which can be raised under a grievance procedure may, in the discretion of the aggrieved party, be raised under that procedure or the complaint procedure ... but not under both procedures." Section 19(d) sets up a defense to an unfair labor practice charge. If an unfair practice is alleged, the respondent can specifically assert that the issue can be dealt with under an established appeals procedure. If such a challenge was upheld, the charge would be dismissed. Not all statutory appeals procedures can pre-empt an unfair practice charge. The issue must be one which can be properly disposed of by the use of the appeals procedure.

---

[17]See 5 CFR §2411.1 et. seq. (1977).

Since the issuance of Executive Order 11,616 a complaining party has had the option of choosing between an unfair labor practice or negotiated grievance procedure. Whatever process it chooses, the aggrieved party is bound by that decision and may not pursue an alternative remedy.[18]

---

[18] E.O. 11,491, Sec. 19(d).

CHAPTER VI

GRIEVANCES

The Grievance Conflict

Grievances in the federal service are subject to two distinct methods of dispute resolution. An employee grievance can be processed through a statutory appeal procedure or it might be channeled through a negotiated grievance procedure. Despite pronouncements by federal authorities to the contrary and attempts to improve the system, there is a real conflict between these two procedures. The current system in the federal system is subject to much criticism from impartial observers as well as union representatives.

A statutory appeal procedure is one established by law, executive order or by the regulations of government authorities outside a particular agency. Depending on the procedure, legal responsibilities and issues to be covered by the procedure vary. The most significant statutory procedure in the federal service is the Civil Service Commission's Adverse Action Appeal Procedure. The present adverse action procedure was established by the issuance of Executive Order

11,787 in 1974.[1] This procedure encompasses issues dealing with removals, suspensions for more than thirty days, reductions in work or pay and furloughs without pay. Employees who face disciplinary actions against them must be given thirty days written notice stating why such disciplinary action is being considered. The employee has a right to file an answer to the charge. A higher agency official reviews the allegation and if he affirms the validity of the charge, the employee has the right to appeal the case to the Federal Employee Appeals Authority (FEAA). The FEAA is an independent organization within the Civil Service Commission (CSC). The Director of the FEAA is directly responsible to the Commissioner of the CSC. If requested, a FEAA hearing officer will conduct an informal hearing on the issue. A decision will be issued by the FEAA based upon a record of the case. Both the employee and the agency have the right to appeal the FEAA decision to the Appeals Review Board (ARB). ARB will reopen the case if one of the following conditions are met: (1) new evidence of a material nature becomes available subsequent to the FEAA determination; (2) the FEAA decision was

---

[1]This Executive Order revoked Executive Order 10,987.

based upon an erroneous application of the law or established policy; or (3) important and novel policy questions arise. If the ARB decision is unsatisfactory to an employee, he or she may appeal the case to a United States District Court or the United States Court of Claims.[2]

Grievances subject to a negotiated procedure can be limited to differences over the interpretation, application or enforcement of a collective bargaining agreement, or could be expanded to include any employee complaint over working conditions involving laws, administrative rules and regulations or agency work practices. Agreements may also be drawn in such a way as to include existing laws and regulations as part of the contract.[3] If negotiated grievances are too broadly defined they can come into conflict with statutory appeals procedures.

For a number of years the federal authorities

---

[2]See, generally, U.S. Civil Service Commission, Federal Employee Appeals Authority Appeals Procedure, Personnel Methods Series Number 16, January, 1977 (Washington, D.C.).

[3]See Felix A. Nigro and Lloyd G. Nigro, The New Public Personnel Administration (Itasca, Illinois: F.E. Peacock Publishers, 1976) p. 258.

responsible for labor relations have attempted to minimize the confusion and resolve the grievance conflict. In the recommendations which led to the issuance of Executive Order 11,616 the FLRC took note that the "roots of the persistent dissatisfaction with grievance and arbitration procedures in the Federal program appears to be the confusing intermixture of individual employee rights established by law and regulation with the collective rights of employees established by negotiated agreements. This intermixture has resulted in overlap and duplication of rights and remedies."[4] Much of the impetus for the issuance of Executive Orders 11,616 and 11,838 came from the FLRC's desire to improve the grievance situation.

The amended executive orders provide for several applicable standards to grievances. All negotiated agreements are required to contain a grievance procedure. While this procedure is the exclusive procedure available to a grievant, negotiated procedures may not cover issues which are already covered by a statutory appeals

---

[4]United States Federal Labor Relations Council, Labor-Management Relations in the Federal Service (Washington, D.C.) 1975, p. 56.

procedure.[5] As mentioned above, the problem of distinguishing between the proper application of a statutory appeals procedure as opposed to a negotiated grievance procedure is a difficult one. A partial resolution of this problem is provided in Section 13(a) of the amended Executive Order. In cases where the parties to a grievance cannot agree on what procedure to follow, the matter can be referred to the Assistant Secretary for Labor-Management Relations (ASLMR) for resolution. The ASLMR is also empowered to decide whether or not an issue is subject to a negotiated grievance procedure or arbitration when this matter is disputed.[6] While this system seems simple, confusions and criticisms remain.

Notwithstanding the attempts to improve the existing system, the statutory appeals procedure remains controversial. In addition to the adverse actions appeals procedure, it is important to note that there are about twenty distinct existing statutory appeals procedures. The subject matter covered in these procedures often overlaps. Union spokesmen have

---

[5] E.O. 11,491, Sec. 13(a).

[6] Ibid., Sec. 6(a) and 13(d).

maintained the position that

> the present multiplicity and hodgepodge of statutory appeals procedures is imcomprehensible to the average federal employee and, in fact, to almost anyone who tries to make any sense out of them. Each system has grown up almost independently of the others and is not subject to coordination. In addition to the statutory appeals system, federal employees also have to deal with the intricacies of agency and negotiated grievance procedures when pursuing job-related complaints ... It is difficult to believe how the present mess benefits anyone other than the Civil Service Commission bureaucracy that administers the statutory appeals system. [7]

Specific criticisms have been lodged against the Adverse Action Appeals Procedure. These criticisms

> include the lack of published concurring or dissenting opinions by Appeals Review Board panel members; the lack of authority by the Federal Employee Appeals Authority and the ARB to substitute a less severe penalty in adverse action cases; the failure to retain employees, particularly employees stationed overseas, in a duty pending conduct of the hearing and receipt of the decision of the FEAA appeals officer; the practice of the FEAA and the ARB in obtaining 'advisory' opinions from other Commission offices that are usually dispositive of the case, and finally the failure of the Commission regulations to specify that the agency has the burden of proof in adverse action cases ... [8]

---

[7]Edward H. Passman, "Federal Employees' Statutory Appeals Procedure-Status Quo or Change?" Journal of Collective Negotiations, Vol. 5(4), 1976, p. 298.

[8]Ibid.

The fact that an adverse action appeal does not temporarily suspend an agency's action in a discharge case causes particular concern for critics of the system. Under the present system it takes an average of 129 days to settle an adverse action appeal.[9] Richard A. Merrill has suggested that the appeal process should take place before an employee is discharged. The effect of this suggestion would be, according to Merrill, twofold. First, the appeals process would be expedited. Second, an employee could remain financially solvent throughout the process. Merrill also believes that the ARB should have the power to affirm, reverse or modify an agency's decision.[10]

Critics of the present system prefer the negotiated grievance and arbitration process. Arbitration is flexible. The arbitrator often considers all forms of evidence including an inspection of a work site. The process of arbitration also has a reputation of fairness and impartiality. Solutions to the present

---

[9]Edward H. Passman, "Federal Employees' Statutory Appeals Procedures - Status Quo or Change?" Journal of Collective Negotiations, Vol. 5(4), 1976, p. 298.

[10]See R.A. Merrill, "Procedure for Adverse Actions Against Federal Employees," 59 Virginia Law Review 196, 1973.

system have been suggested. Most proposals would eliminate the statutory appeals procedure in its entirety for organized employees. The negotiated process would become the exclusive method for resolving all employee grievances. Exceptions to arbitration decisions could be made to a central labor relations authority such as the FLRC. Further judicial review of a FLRC decision could be provided.[11]

Negotiated Grievance Procedures

In an adverse action appeal an employee may choose whomever he or she wishes to represent him. Employee representatives could include a union member, an attorney, a co-worker or anyone alse who is willing to perform this function so long as no conflict of interest arises. The union's role and responsibilities in a negotiated grievance procedure case is much more important. Unions are primarily responsible for the establishment of a negotiated procedure through collective bargaining. It follows that the union interest in

---

[11]An example of this type of proposal is found in §7123 of proposed H.R. Bill 4800.

the processing of a grievance through the negotiated procedure is often vital. This is especially true with grievances involving contract interpretation. In the federal service, unions may represent unit employees who are not members of a union. However, a federal employee may choose not to be represented by a union in a grievance adjustment. In cases where the employee chooses not to be represented by the union, a union representative still has the right to be present at the grievance adjustment.[12] Further, arbitration may only be invoked by representatives of the union or management.[13]

In the vast majority of situations an employee will rely on union representation. The union steward is most often the union representative with this responsibility. The steward will perform the function of advocate for the employee and will also seek remedies which are advantageous to the employee. The use of official time for this purpose is often specified in the collective bargaining agreement. The amount of official time the steward spends on grievance processing

---

[12]E.O. 11,491, Sec. 13(a).

[13]Ibid., Sec. 13(b).

is often a controversial matter.[14]

The steps in grievance procedure will vary according to the particular agreement studied. A review of contract provisions will reveal similarities in negotiated procedures. Steps in a grievance procedure are usually kept to a minimum. Specific deadlines for each step are enumerated. A typical grievance procedure will involve a three-step process. At the first step, an informal discussion occurs with the grievant's immediate supervisor. If the supervisor and the employee cannot resolve the matter, the employee may proceed to step two. At this stage, a grievance form may be filed by the employee or his representative with an agency official. Discussions take place between the official and the employee and the union representative. The official may also make an additional investigation of the problem. Based upon the record, the official will issue a written decision. If the decision is unsatisfactory to the employee, the parties

---

[14]Disputes over the use of official time often occur during collective negotiations resulting in impasses. See Chapter 7, supra. Grievances over official time for grievances are also common.

proceed to a third step. A written request appealing the official's decision is sent to a higher agency official. The higher official will review the record and acquire additional evidence. The higher official will issue a written decision with specified reasons to substantiate that decision. Most negotiated agreements provide for grievance arbitration if the matter is still unsettled after the grievance procedures are exhausted.

Grievance Arbitration

Under Executive Order 10,988 a negotiated agreement could not specify binding arbitration in its contents. Advisory arbitration was permitted. Advisory arbitration awards were subject to the approval of an agency head. The agency head had the power to accept, reject or modify an arbitration award. The use of binding arbitration was brought about by the issuance of Executive Order 11,491. Binding grievance arbitration has become extremely popular in federal agreements. As of December, 1976, approximately 90% of all federal agreements provide for grievance arbitration. Binding arbitration is provided in eighty-nine percent of

these contracts.[15]

Grievance arbitration in the federal service is similar to that of the private sector. Union representatives request arbitration much more often than does management. An arbitration may be conducted by a single arbitrator or by a tripartite panel of arbitrators. In most situations a tripartite arbitration panel is composed of one neutral arbitrator along with one representative each from the union and management. It is the function of an arbitrator or arbitration panel to hold a hearing on the grievance or grievances and issue a decision resolving the dispute.

The selection of a neutral arbitrator is an important consideration. The parties to a collective bargaining agreement may specify a permanent arbitrator in the contract. The more common approach involves the selection of an ad hoc arbitrator to deal with grievances on a case-by-case basis. The parties to a grievance may request a list of arbitrators from the FMCS or the American Arbitration Association (AAA),

---

[15]Statistics reported by the U.S. CSC's Labor Agreement Information Retrieval System (LAIRS) in Henry B. Frazier, "Labor Arbitration in the Federal Service," 45 George Washington Law Review at FN 30, p. 171, 1977.

a private organization. Based upon the list provided, the parties must choose an arbitrator agreeable to both sides. The costs of arbitration are generally split evenly between the two parties to the grievance.

A negotiated agreement usually enumerates the scope of the arbitrator's authority along with proper issues for arbitration. The neutral arbitrator's role at an arbitration is in some ways similar to that of a trial judge. The arbitrator receives evidence into the record and monitors (and, hopefully, expedites) the conduct of the hearing. The arbitrator has a duty to be impartial and fair in this regard. For their part the parties have a duty not to attempt to exert undue influence on the arbitrator.

It is not uncommon for the parties to reach an agreement on the grievance during the course of the arbitration. While a final decision is still in the hands of the arbitrator, it is usually prudent for the arbitrator to accept it into the award. In the case of tripartite panels, executive sessions involving discussions between the neutral arbitrator and the partisan panel members often result in a negotiated award. In other cases the arbitrator must make an independent decision. Most awards are written. In issuing an award in a

federal service dispute the arbitrator must be aware of past practices, arbitration precedents and legal constraints. Unlike a trial judge the arbitrator need not find for one party or another. The arbitrator has great flexibility in decision-making and in the formulation of an award.[16]

Exceptions to arbitration awards may be filed with the Federal Labor Relations Council (FLRC). In order to maintain the effectiveness of the arbitration process, the Council does not encourage appeals. To sustain an exception to an award "grounds similar to those applied by courts in private sector labor-management relations" must be present.[17] One or more grounds for review must be included in the appeal petition. The petition must also be supported by sufficient facts and circumstances. If the petition is accepted by the FLRC, the case will be reviewed on its merits. A FLRC decision will follow. The Council has the authority to sustain, set aside, modify or remand the

---

[16]For a more detailed view of this process see Arnold Zack, Understanding Grievance Arbitration in the Public Sector, a report prepared for the Labor Management Services Administration, U.S. Department of Labor (Washington, 1974).

[17]See 5 CFR §2411.32, §2411.37 (1977).

award.

Grounds for the review of an arbitration award exist in situations where the award violates applicable federal laws, administrative regulations or executive orders. Federal law is extremely complex and lengthy. An arbitrator in a federal service grievance must be cognizant of the law when making a determination. Grounds for review also exist in cases where similar arbitration awards in the private sector resulted in a successful court challenge. Current examples of these grounds can be found in the following situations: (1) where an arbitrator exceeds his authority, (2) where the award does not draw its essence from the collective bargaining agreement, (3) where the award is incomplete, ambiguous, or contradictory, making implementation of the award impossible, (4) where the award is based on a nonfact, (5) where the arbitrator was biased, and (6) where the arbitrator refused to hear pertinent and material evidence.[18]

---

[18] A detailed study of how these concepts have been interpreted by the FLRC is provided in Henry B. Frazier, "Labor Arbitration in the Federal Service," 45 George Washington Law Review 712, 1977.

In cases where an arbitration award needs clarification and interpretation, the FLRC has directed the parties to seek clarification from the arbitrator.[19] The FLRC will not relitigate a case nor will they submit a case for relitigation to the arbitrator. The parties on their own initiative may take such action. The FLRC will not enforce awards. In cases where an agency refuses to comply with an award the FLRC has held that such a refusal was an unfair labor practice in violation of Section 19(a)(1) of Executive Order 11,491.[20] Therefore, it is the function of the Assistant Secretary for Labor-Management Relations (ASLMR) to deal with these complaints and enforce arbitration awards.

---

[19]See American Federation of Government Employees Local 2532, Rep. No. 70, FLRC No. 73A-4 (May 21, 1975).

[20]See Department of the Army, Aberdeen Proving Ground, Rep. No. 67, FLRC No. 74A-46 (March 20, 1975).

CHAPTER VII

IMPASSE RESOLUTION AND THE RIGHT TO STRIKE

Impasses in the Federal Service

The goal of collective negotiations is to establish an agreement between labor and management. All too frequently an accord cannot be readily reached between the parties to negotiations. Bargaining impasses present a very serious problem to the continuation of harmonious labor relations. This problem equally applies to the public and private sectors. There are, however, important qualitative differences between the private and public sector in regard to the nature of an impasse. In the private sector the parties are generally faced with the unpleasant prospect of suffering through a strike or lockout if the impasse is not resolved. In the federal service the right to strike does not exist. Consequently, the subject of impasses and impasse resolution deserves special attention in the formulation of a labor relations policy.

It cannot be denied that a substantial number of impasses occur in the federal sector. It is the responsibility of the Federal Mediation and Conciliation

Service (FMCS) to monitor and/or mediate the hundreds of impasses which annually arise out of collective negotiations between agencies and representatives of nonpostal federal employees. The following table illustrates the number of cases in which the FMCS was aware of, or involved in, a bargaining impasse. The table also reveals the number of cases which were serious enough to warrant a joint conference meeting between the parties to negotiations and representatives of the FMCS.

Table 7A[1]

	No. of cases in which the FMCS monitored or mediated contract negotiations	No. of cases requiring joint conference meetings with mediators at the bargaining table
FY 1974	507	140
FY 1975	479	173
FY 1976	592	240

The type of issues leading to an impasse varied.

[1]This table is based upon information provided by the Federal Mediation and Conciliation Service, 27th Annual Report, 1974, 28th Annual Report, 1975, 29th Annual Report, 1976. (Washington, D.C.).

Figures for 1975 and 1976 illustrate that the three most frequently disputed issues involved disagreements over provisions for working conditions, management rights and provisions relating to grievance procedures and arbitration.

Table 7B[2]
(Figures for FY 1975 & 1976)

Issues	Frequency of issues in cases requiring joint conference meetings
Wages	18
Union Security	38
Seniority	37
Grievance Procedures & Arbitration	100
Guarantees	33
Vacations, holidays	23
Hours, overtime	48
Pensions-Insurance	5
Management Rights	83
Duration of Contract	68
Job classification	38
Working Conditions	96
Noncontract grievance	7
Other	53

Reference by executive order to bargaining impasse procedures now exists. Executive Order 10,988 did not possess any express procedures for the resolution of impasses other than a prohibition against arbitration. Sections 16 and 17 of Executive Order 11,491 address

[2]Federal Mediation and Conciliation Service, 29th Annual Report, 1976 (Washington, D.C.), 1976, p. 20.

this problem. The FMCS is required to furnish services to both agencies and unions in the resolution of impasses.[3] As mentioned previously, the Federal Service Impasse Panel (FSIP) was created to deal with serious impasses which cannot be resolved by FMCS intervention. The FSIP has a large number of tools at its disposal to resolve impasses. These tools include the use of further mediation, factfinding and arbitration.

Impasse Procedures in Negotiated Agreements

Prior to the issuance of Executive Order 11,491 and the establishment of the FSIP, much attention was focused on negotiated impasse resolution procedures and the variations found therein. The use of mediation, factfinding and other procedures was encouraged by the Civil Service Commission.[4] Certain federal agencies, such as the Department of Interior, had an established and successful experience with impasse procedures (including the use of arbitration). Other agencies, particularly those associated with the Department of

---

[3]See Chapter 2, infra, for a more detailed view of the role of the FMCS in federal labor relations.

[4]U.S. Civil Service Commission, Federal Personnel Manual System, FPM Letter 711-3, February 7, 1966.

Defense, rarely relied on impasse resolution procedures involving third parties. During the years of Kennedy's employee-management relations program, factfinding procedures were more frequently utilized than mediation. In addition to mediation and factfinding, referrals of impasses to a high agency authority were not uncommon. The official chosen to make a final decision on an impasse varied depending on the particular agreement.

The frequency of impasse resolution procedures remained relatively constant during the era of the Kennedy order. In 1970 the Bureau of Labor Statistics (BLS) conducted a survey based upon agreements. 27.3% of the sampled agreements of 1967 contained provisions for factfinding as compared to 25.0% in 1964. Mediation was found in 11.1% of the sampled contracts in 1967 as compared to 11.5% in 1964. 321 of the 684 sampled agreements contained provisions for the resolution of impasses. Referral of impasses to a higher authority was provided in 201 of the sampled contracts.[5] Today, provisions relating to impasse resolution are

---

[5]U.S. Department of Labor, Bureau of Labor Statistics, Negotiation Impasses, Grievances, and Arbitration in Federal Agreements, BLS Bulletin No. 1661, p. 7.

seldom comprehensive. Since the issuance of Executive Order 11,491 and the involvement of the FMCS and FSIP most federal contracts simply provide that if mediation by the FMCS or some third party fails, then either party has the right to request the intervention of the FSIP.

The FSIP and Impasse Resolution

It is the stated policy of the FSIP to promote the settlement efforts of the parties to an impasse rather than to simply issue a decision to resolve the impasse. The FSIP will not, therefore, deal with an alleged impasse until that impasse reaches "that point at which the parties are unable to reach full agreement, notwithstanding their having made earnest efforts to reach agreement by direct negotiations and by the use of mediation or other voluntary arrangements for settlement."[6] The FSIP has adhered to the view that third-party intervention in the federal collective bargaining process should be minimized. When the FSIP does involve itself in an impasse situation, "it

---

[6]Federal Service Impasse Panel, Report of the Federal Service Impasse Panel., 1970 to 1973 (Washington, D.C.), 1974, p. 1.

expects that its postfactfinding recommendations will be voluntarily accepted by the parties in toto, or at least, used as a basis for further negotiations and settlement. Indeed, the parties are encouraged to reach a direct settlement regardless of the stage at which the case may be."[7]

In order to invoke the jurisdiction of the FSIP, certain procedures must be followed. Either party to an impasse, the FMCS or the Executive Secretary of the Panel may file a request for a hearing before the Panel. An investigation of the problem is made by staff personnel of the FSIP with the assistance of the FMCS. The Panel will flatly refuse cases involving representational disputes or unfair labor practices. In those cases accepted by the FSIP the Panel has the following options: (1) it may require the parties to return to bargaining, (2) it may require the parties to submit to mediation, (3) it may direct the parties to use other established impasse procedures or, (4) it may appoint a factfinder to conduct a factfinding

---

[7]Federal Service Impasse Panel, Report of the Federal Service Impasse Panel., 1970 to 1973 (Washington, D.C.), 1974, p. 1.

hearing.[8]

The factfinder to an impasse is generally a FSIP staff associate. On rare occasions a member of the Panel will fulfill the role of factfinder. Based upon the factfinding hearing, a report without recommendations is filed with the Panel. The report and record of the case is reviewed by the FSIP and the Panel may issue recommendations in order to resolve the dispute. Should these recommendations be ignored, the Panel will take alternative action to resolve the impasse. As mentioned above, the Panel has wide discretion on the selection of an alternative impasse resolution method.

In a negotiability issue situation the case may be handled by a higher agency determination or FLRC decision subject to the requirements of section 11(c) of the Executive Order. The FSIP may also refer the issue directly to the FLRC. In cases where the FLRC determines that the issue is negotiable, the Panel may remand the issue to the parties for negotiation or consider the issue on its merits.

As with unfair labor practice charges, an impasse

---

[8]See 5 CFR §2470.1 to §2471.16 (1977).

resolution request to the FSIP is primarily the tool of a labor organization. Of the 96 requests received by the FSIP during the period of July 1970 to December, 1973, 91 were filed by unions.[9] Out of this total, 86 cases were closed during the time period. Only 19 of these cases required a factfinding hearing. 17 of the 19 factfinding hearings resulted in a report and recommendation issued by the FSIP. In 15 of these 17 situations the parties accepted the recommendation in toto. In the two cases where this did not occur, the FSIP recommendations were used as a basis for a settlement. 67 of the 86 closed cases were resolved prior to a factfinding hearing.[10] Most of these cases were either withdrawn from FSIP jurisdiction or were not withdrawn but settled by the parties prior to factfinding. It is interesting to note that during this time period not one case was submitted by the Panel to either third-party factfinding with recommendations or binding interest arbitration. While these procedures were not utilized, the incidence of factfinding without

---

[9]Federal Service Impasse Panel, Report of the Federal Service Impasse Panel, 1970 to 1973 (Washington, D.C.) 1974, p. 6.

[10]Ibid.

recommendations substantially increased. The number of situations directed to factfinding rose from 19% in 1970 to 48% of the total number of impasse resolution requests in 1973.[11] A trend toward the further use of factfinding does exist.

The type of issues brought before the FSIP varied. According to the Panel, the most prevalent issues brought before it involved "official time for negotiations, advisory versus binding arbitration as the terminal step of the negotiated grievance procedure, union representation concerning promotions and awards, and scheduling of work."[12] Certain similarities are obviously shared with those impasse issues brought to the attention of the FMCS.

The Right to Strike

Federal employees are prohibited from engaging in strikes or any other form of work-stoppage. This no-strike policy is the result of Congressional action and it applies to all federal employees. Federal

---

[11]Federal Service Impasse Panel, Report of the Federal Service Impasse Panel, 1970 to 1973 (Washington, D.C.) 1974, p. 6.

[12]Ibid.

employment is denied to anyone who asserts the right to strike or participates in a strike against the United States.[13] An employee has sixty days from the time he accepts employment with the federal government to execute an affidavitt stating that he or she will not violate the no-strike law.[14] In addition to a discharge, violation of these laws results in the commission of a felony with penalties up to a year and a day in prison and/or a fine of $1,000.00.[15] These statutes have been successfully upheld. In United Federation of Postal Clerks v. Blount, 325 F.Supp. 879 (D.D.C., 1971), a three-judge federal court held that public employees do not, in the absence of statute, possess the right to strike. The Court further held that it was not irrational and arbitrary for the U.S. government to prohibit strikes or to condition employment on a promise not to strike.[16]

---

[13] 5 USC §7311(3)

[14] 5 USC §3333(a)

[15] 18 USC §1918

[16] The UFPC v. Blount decision stands in contrast to NALC v. Blount, 305 F.Supp. 546 (D.D.C., 1969) on this point.

The Court decided that these laws were not in violation of either first amendment protections or fifth amendment due process considerations.[17] The UFPC v. Blount decision was affirmed on appeal by the U.S. Supreme Court.[18]

In addition to prohibitory legislation, Executive Order 11,491 provides that no union can be afforded the rights and protections of the order if that organization assists or participates in a strike against the federal government or requires its members to support strikes against the government.[19] It is also an unfair labor practice for a union to conduct a strike or work stoppage or to condone or fail to affirmatively attempt to stop or prevent one.[20]

Work stoppages and strike-related activities have occurred in the federal service. At least eight known

---

[17] In this context, fifth amendment due process considerations encompass the concept of equal protection of the laws.

[18] 404 U.S. 802 (1971).

[19] E.O. 11,491, Sec. 2(e) (3).

[20] Ibid., Sec. 14(b)(4); a discussion of this section is provided in Chapter 5, infra.

work-stoppages were recorded in the 1960s.[21] In each of these cases the employees involved were either dismissed or threatened with dismissal. As mentioned above, the right to exclusive representation, checkoff privileges and other executive order protections are likely to be revoked when a union supports or engages in a strike. This type of action was taken by the Department of Commerce against a local of the National Association of Government Employees (NAGE) when members of that union picketed a weather bureau station in New York City during off-duty hours. Exclusive representation rights were also revoked by the Federal Aviation Administration (FAA) when the Professional Air Traffic Controllers' Organization (PATCO) allegedly condoned and supported a "sick-out" by controllers in 1969.[22]

Work-stoppages in the federal service must be considered in light of the situation in the public sector as a whole. Hundreds of strikes involving hundreds of thousands of public employees occur each

---

[21]U.S. Civil Service Commission, Office of Labor-Management Relations, Strikes, Picketing and Associated Incidents Under Executive Order 10,988, 1962-1968, (Washington, D.C.), 1968, pp. 3-4.

[22]Further discussion of the PATCO incident is provided in Chapter 3, infra.

year. A substantial number of these strikes are of dubious legality. By contrast, strikes by federal employees are rare and, for the most part, undamaging to the public or any government operation. A notable exception to this rule may have been the 1970 postal workers' strike.[23]

In addition to a long-standing tradition against federal employee strikes and prohibitory law, nearly all employee unions have adopted a no-strike pledge in their constitutions. While these provisions are still common, a movement began in the late 1960s to eliminate these policies. In 1968 the NAGE and two large postal unions removed the no-strike provisions from their constitutions. Today, many union leaders have openly supported movements to grant employees the right to strike through Congressional action.

Arguments exist for and against the right to strike. Proponents of the right to strike contend that employees who perform similar functions in the public sector should have the same rights as those employees in the private sector. The ability of employees to collec-

---

[23]Further discussion of the Postal Employees strike of 1970 is provided in Chapter 8, supra.

tively withhold their labor has long been regarded as the only way to balance the preponderant power of management. Public employees contend that preponderant management power prevails in the public sector as well as the private. The possibility of a strike generates earnest collective negotiations among the participants to the collective bargaining process. Strikes also allow public employees the opportunity to achieve public recognition of their grievances. Government mismanagement, the argument goes, is brought to the attention of the public in this manner. Proponents of the right to strike also stress that as American citizens employees should be allowed the fundamental rights to refuse work, to collectively assemble and to express themselves.

Several arguments exist against the right to strike. These arguments rest on the propositions that the nature of public employment differs from that of private employment and that government as an employer can be distinguished from a private employer. Several arguments follow from these premises.

A philosophical argument exists against public employee strikes. The government exercises sovereign authority. Employee work-stoppages represent a direct

challenge to public authority. Public employees have power far in excess of most of their private counterparts. Through work-stoppages public employees, especially those in the essential services, have the ability to determine public policy in derogation to established democratic channels.

An economic argument also exists against public employee strikes. In the private sector, assuming a competitive marketplace, product markets act as an ultimate constraint on wage increases which exceed increased labor productivity. Unrealistic wage increases could place the existence of the firm, and consequently the jobs of the employees, in jeopardy. The same type of constraints do not exist in the federal government. Government services seldom exist in a competitive environment. With few exceptions, the federal government is the exclusive supplier of these services. The government relies upon revenue generated by taxes to produce these services. Generally, the taxpayers and the public as a whole are the users of government services. It has been long recognized that economic activities which exist in a monopolistic setting must be tightly controlled in order to prevent economic inequity and inefficiency. Based upon this

reasoning, the right to strike in the federal service should be restricted.

Not only are the alternatives to federal services nonexistent, many of the services produced by the federal government are essential to the well-being of society. While many question the efficiency of government operation, few doubt the essential nature of these operations. The crippling of certain federal services such as the delivery of the mails, provisions for the national defense, regulation of currency and banking, etc. would have deleterious effects for the nation as a whole.

Many proponents of the right to strike have recognized these objections and have modified their ideas. Some observers, such as Theodore Kheel, have supported the right to strike in situations where the public health and safety are not endangered.[24] Employee groups would be divided into essential and nonessential categories. Essential employees would be denied the right to strike. Nonessential employees would be allowed to strike. Procedures could also be devised

---

[24]See Theodore W. Kheel, "How to Prevent Strikes by Public Employees," Proceedings of the 21st Annual Conference of Labor, (New York), 1969.

to enjoin strikes by nonessential employees when such strikes endanger the public health and safety. Presumably, it would be the role of the courts to determine when this standard was appropriate. It is difficult to determine how wide or narrow this standard will be interpreted in relation to federal employees.

The Interest Arbitration Alternative

When considering strikes, alternatives to strikes, other than outright prohibitory law, should be considered. Compulsory interest arbitration has gained in popularity as an acceptable alternative to strikes in the public sector. Compulsory arbitration is not, however, without its critics. Many believe that the availability of compulsory arbitration impedes good faith bargaining. This belief is continually echoed in the federal service. Moreover, arbitration in a compulsory setting is often viewed as an excessive and unjustified delegation of power to a private party. Arbitration awards determining terms and conditions of employment will affect taxpayers, public employees and public managers. Yet, the arbitrator does not represent the public.

Interest arbitration need not be compulsory.

Arbitration can be advisory to the parties and still be relatively effective. Interest arbitration may also have the effect of being binding on the parties but recommendatory in nature in cases where legislative adoption of the arbitrator's determination is necessary.[25]

The use of interest arbitration in the federal service could be useful. Third-party impasse resolution would assure some degree of neutrality and would also afford a channel of expression for federal employees other than the strike. Arbitration need not destroy earnest and good faith negotiations. Certain state jurisdictions have utilized the techniques of final-offer arbitration in order to put pressure on the parties to reach an agreement.[26]

While the arguments for limited strikes and interest arbitration have their merits, it is unlikely that these ideas will be implemented in the federal service in the immediate future. Political opinion

---

[25]An example of interest arbitration which is recommendatory to legislative bodies is found in Pennsylvania's Public Employee Relations Act, Act 195, 43 P.S. §1101.80.5.

[26]An excellent discussion of the use of Final-Offer arbitration in the Public Sector is provided in James L. Stern et al, Final-Offer Arbitration, (Lexington, Mass.), 1975.

seems to stand decidedly against the right to strike for federal employees. There is a long-standing tradition in the federal service against strikes and the use of interest arbitration. Established traditions in the federal service do not easily expire.

CHAPTER VIII

LABOR RELATIONS IN THE POSTAL SERVICE AND THE TENNESSEE VALLEY AUTHORITY

The requirements of Executive Order 11,491 and other appropriate federal law do not apply to all federal agencies. Several federal agencies possess unique labor relations policies. The two most prominent examples of unique arrangements exist in the Postal Service and the Tennessee Valley Authority.

Labor Relations in the Tennessee Valley Authority

The TVA has a labor relations policy and history which are unique to the federal government. The TVA is organized and operated in a manner similar to that of a private sector business corporation. It is, in all other respects, a federal agency.

The TVA was established by Congressional legislation in 1933. The purpose of the authority was and is to provide electricity, flood control and soil conversation services to the Tennessee Valley region. It was also created in response to the Great Depression in order to provide employment and further economic development to the region. As was was common with

federal legislation of this kind, employee wages were legislatively restricted from being below the prevailing wages for similar employment in the region. The Act also removed the TVA from personnel and other regulations of the United States Civil Service Commission. Because of this unique background, the TVA has argued in the past that it was not required to abide by the policies and practices of Executive Order 10,988 and Executive Order 11,491. This point has been disputed. The issue was put to rest in 1976 when President Ford at the TVA's request issued Executive Order 11,901. This order effectively removed the TVA from the overall federal labor relations program.

The TVA maintained a labor relations environment which was hospitable to union organization early in the Authority's history. In 1935 the Employee Relationship Policy (ERP) was issued by the TVA. THE ERP gave all employees the right to organize and bargain collectively. Among the many features of the ERP, employees were allowed to provide input on the issue of wage determination. Through the ERP, the TVA became one of the first federal agencies to recognize and accept labor relations practices applicable to the TVA

today.[1]

Craft unionism was present in the TVA at its inception. In 1937, 14 AFL craft-affiliates joined together to form the Tennessee Valley Trades Labor Council (TVTLC). In part this consolidation was a response to the position of TVA management which supported centralized union authority for bargaining purposes. The TVTLC was soon recognized by the TVA as the spokesman and bargaining representative for organized blue-collar workers. In 1940 the first agreement was executed between the TVA and the TVTLC.

Today, sixteen craft unions belong to the TVTLC. Compared to other federal service agreements, the basic TVA-TVTLC agreement is very comprehensive. Provisions applicable to wage determination allow substantial union input through a Joint Committee on Wage Data. This committee submits a report to the TVA Board of Directors concerning recommended wage adjustments. If a disagreement occurs between the Committee and the Board, the dispute may be submitted to the Secretary of Labor for resolution. Agreements with the TVTLC have

---

[1]Tennessee Valley Authority, Employee Relationship Policy, August 28, 1935.

also been characterized by the use of binding grievance arbitration long before binding arbitration became common in federal agreements.

White-collar employees were also organized by unions. By 1943 the vast majority of non-managerial salaried employees were organized by seven labor unions. As with the trade unions, the TVA management urged the formation of a central bargaining authority to represent these employees. The seven unions, consisting of AFL and non-AFL affiliates, joined together to form the Salary Policy Employee Panel (SPEP). In 1950 an agreement between the SPEP and the TVA was executed. As with the TVTLC contract, the SPEP had substantial input on the issue of wage determination. Further, recent contracts between the parties have contributed to the establishment of a detailed classification structure. Contract provisions in both the SPEP and the TVTLC agreements include an extensive procedure to further employee-management cooperation on personnel

---

[2]Over 90% of the eligible salaried employees are now members of unions belonging to the Salary Policy Employee Panel (SPEP). See Michael Brookshire, "Bargaining Structures in the TVA," Journal of Collective Negotiations, Vol. 5(3), 1976, p. 266.

issues. Central and local cooperation committees have been established to discuss TVA personnel policies and transmit this information to TVA employees.[3]

When considering the labor relations experience of the TVA, several special features emerge. The TVA has resisted union demands for a union shop. However, union membership is encouraged by the Authority. All TVA contracts contain a statement of merit policy. The merit concept is technically applied in personnel considerations. However, an employee's membership and participation in a union is considered when decisions are made in regard to promotions.

Impasse resolution procedures in the TVA are well-developed. In cases where impasses develop, a mediator is selected from a panel of five individuals to help resolve the impasse. If mediation fails, the parties may resort to the use of voluntary interest arbitration.[4] An arbitration panel consisting of one

---

[3]For a discussion of the Bargaining practices of the TVTLC and SPEP see Louis J. Van Mol, "The TVA Experience," in Collective Bargaining in the Public Service: Theory and Practice (Chicago: Public Personnel Association, 1967), p. 89.

[4]The TVA may refuse, if it wishes, to submit an impasse to arbitration. Thus, the argument that the use of interest arbitration is an unlawful delegation of agency authority is avoided.

representative from each of the parties and an arbitrator selected by the neutral mediator is called upon.

Federal sector bargaining has been burdened by the problem of over-proliferation of bargaining units. A single federal agency must often negotiate separate agreements with many different unions. Recent attempts have been made to encourage the consolidation of units in the federal sector.[5] The TVA, by contrast, is characterized by a high degree of centralization in its bargaining procedure. In 1974 the TVA negotiated only three agreements covering 20,000 employees. In addition to separate contracts with the TVTLC and the SPEP, the TVA also reached a separate accord with construction employees and operating and maintenance employees.

Many advantages accrue to a highly centralized bargaining structure. Centralized bargaining seems to have fostered efficiency in the contract negotiations process. It is easier and less costly to negotiate three contracts than three hundred contracts. Contract administration has also been less expensive

---

[5]Executive Order 11,838 was, in part, a response to this issue.

in the TVA. Supervisors have fewer contracts and contract procedures with which to be familiar. Labor strife in the TVA has been virtually non-existent in its forty-five year history. Many critics have contended that this peaceful labor environment was bought at the cost of excessive wage increases. This view is refuted by Michael Brookshire. Brookshire's study indicates that for the period of 1960 to 1973 the average annual wage increase for blue-collar TVA workers was 5.58% as compared to 6.05% for building and trades workers in the United States on the whole. These figures indicate that blue-collar workers have been paid less, not more, than private sector workers. Average increases for salaried employees in the TVA was 5.40% as compared to 5.03% nationally. This figure is not disproportionately high.[6]

The goal of an effective labor relations policy should be to maintain labor peace without excessively inflating public sector costs. As to labor peace, a 1967 study was conducted to determine employee attitudes about the labor environment at the TVA by Arthur Thompson and Isaac Weinstock. 66% of the surveyed

---

[6]Michael Brookshire, op. cit., p. 267.

employees accepted the view that union membership improved employee-management relations. Only 6% of the respondents believed that the TVA would be a better place to work without unions.[7] The Thompson-Weinstock survey seems to support the position that a high degree of employee satisfaction has been achieved in regard to unionism and labor policy at the TVA. In many respects the TVA model of labor relations has been the most successful one in the federal service.

Labor Relations in the United States Postal Service

The development of labor relations in the postal service has a unique relationship to federal labor relations as a whole. Postal employees were among the first federal employees to organize. Postal unions have been instrumental in the labor relations advances made in the federal government. Postal unions were primarily responsible for the passage of the Lloyd-LaFollette Act of 1912. Historically, postal unions have continually lobbied the U.S. Congress to enact new reforms in regard to the rights of federal employee

---

[7]Arthur Thompson and Irwin Weinstock, "White Collar Employees and the Unions at TVA," Personnel Journal, Vol. 46, No. 1, January 1967, pp. 14-21.

unions. Postal employee unions were especially active in Congressional lobbying efforts to develop a comprehensive labor relations policy for federal employees.

The labor relations Task Force of President Kennedy was created, in part, as a response to potential Congressional legislation on this subject. The postal unions were, therefore, an important force behind the issuance of Executive Order 10,988. The postal labor relations experience under Executive Order 10,988 was not very satisfactory. One problem with postal labor relations emanates from the size and complexity of postal unions. During the era of the Kennedy order, seven national exclusive unions and four national formally recognized unions existed to face the Post Office Department. In addition to this large group, 32,442 exclusive and formally recognized units existed on the local level.[8] Thousands of sypplemental agreements existed on the local level to augment the national agreements made between the Post Office

---

[8]U.S. Civil Service Commission, Office of Labor-Management Relations, Union Recognition in the Federal Government - Statistical Report and Listings by Agency, November 1969, Washington, June 17, 1970, p. 234.

Department and the national unions. Unlike the TVA the Post Office has never acquired a reputation for efficiency in contract negotiations and administration.

Further, labor relations in the Post Office Department were often disharmonious. Postal management never strongly supported labor relations and collective bargaining efforts in its department. Postal officials viewed the postal unions as being prone toward radicalism and unreasonable in their demands. The postal unions on their part have accused the Postal Department of being dictatorial in their relations with postal employees. In 1968 the Kappel Commission conducted a study of the Post Office Department. In its study the Commission found that "Labor and management have seriously questioned the good faith of the other ... It is understandable that differences are bound to exist between the management and employees of any organization, particularly one as large as the Post Office Department. However, the frequency and intensity of the complaints presented to this Commission indicate a serious gulf between the parties."[9] The Kappel

---

[9]Report of the U.S. President's Commission on Postal Organization, Towards Postal Excellence, Washington, 1968, pp. 119-120.

Commission in its recommendations suggested that the Postal Department be reorganized along the basis of a business corporation. The Commission urged that the new government owned corporation be self-supporting.

While reorganization had long been studied, labor strife in the Postal Department was primarily responsible for eventual reorganization. Labor strife in the Postal Department had been building up for some time. Bargaining difficulties and local expressions of discontent began to appear in 1968. In 1970 a national postal strike broke out.

The reasons for the postal strike were clear-cut. In 1969 the postal workers were granted a 4.1% wage increase. This increase was far below the expectations of the postal employees. Further, the union-supported postal reorganization bill was replaced in the House of Representatives by an administration-supported bill. In response to this event, a strike vote was called by leaders of the New York letter carriers. The vote passed on March 18, 1970. Postal employees throughout the New York metropolitan area supported the work-stoppage. Other postal unions, nationwide, joined the strike. Soon, over 200,000 postal employees were on strike. The strike began to recede when the Secretary

of Labor, George Schultz, started negotiations with representatives from the seven exclusively recognized unions. The back-to-work movement was not immediately prevalent in the New York area. Units of the United States Army, Air Force and Army Reserve were called out to help deliver the mail. Within two days, the New York postal workers were back on the job. A memorandum of agreement was executed between the administration and the postal unions. This agreement formed the basis for the Postal Reorganization Act of 1970.

The Postal Reorganization Act significantly altered the structure of the postal organization. The new organization was similar to a business corporation. A basic purpose behind these structural changes was to remove politics from the postal organization. In the former Post Office Department, the Postmaster General was a member of the President's Cabinet. Under the new law, the Postmaster General is not directly responsible to the President, Congress or any executive office. The Postal Service is an independent government operation directed by an eleven member Board of Directors. Nine members of the Board are appointed by the President with the advice and consent of Congress.

The two remaining members, the Postmaster General and the Deputy Postmaster General, are selected by the Board. The Board also selects its own Chairman. The top executive appointees of the Service are also selected by the Board.[10] A five member Postal Rate Commission was also established by the Act. The function of the Commission is to determine rates and fees for the Postal Service by reviewing reports and recommendations submitted by the Board of Governors.[11] A thirteen member advisory council consisting of representatives from the postal unions, the large mail users and the public-at-large provides advice to the Postal Service.[12]

In addition to an 8% retroactive pay increase for postal employees, the Act also adjusted wage schedules so that the time required to reach the maximum wage rate would be shortened. The concept of pay comparability was stated as a policy goal within the Act.[13]

---

[10] See, generally, 39 USC §201 to §205.

[11] 39 USC §3621 to §3628.

[12] 39 USC §206.

[13] 39 USC §101(c).

From a labor relations standpoint, the Postal Act was very significant. For the first time, a comprehensive federal labor relations program was created by Congressional legislation. The new law was perceived by many union proponents as the first step by the federal government to achieve real collective bargaining for federal employees. The most significant aspect to the new labor relations policy for postal workers is the ability for postal unions to bargain directly for hours, wages and benefits along with other terms and conditions of employment. A second important feature of the new policy is based on the fact that the jurisdiction of the National Labor Relations Board (NLRB) was invoked to determine issues involving unfair labor practices, representational elections and unit determination.[14] The Postal Service is, therefore, the only public agency under the jurisdiction of the NLRB. Third, the Reorganization Act requires that all collective bargaining agreements be at least two years in duration.[15] In regard to negotiated grievance

---

[14] 39 USC §1202 to §1204.

[15] 39 USC §1206(a).

procedures and adverse actions, negotiated procedures replace all other federal appeals procedures.[16] Fourth, the prohibition against a right to strike was maintained. However, sophisticated impasse resolution procedures were created to resolve labor disputes. In situations where an impasse develops, a factfinding panel is established. This panel may issue recommendations to the parties in addition to a factfinding report. If the impasse cannot be resolved through factfinding the parties may resort to interest arbitration. A tripartite arbitration panel is selected by the parties and the decision of the panel is binding on the parties.[17] Thus, compulsory interest arbitration does exist in the federal service. Fifth, the Act also provides for the enforcement of postal agreements in the federal courts.[18] The Law is similar to Section 301 of the Labor-Management Relations Act.

Two of the most significant results of the new postal labor relations policies deal with the issues of wage and benefit determination and grievance

---

[16] 39 USC §1206(b).

[17] 39 USC §1207.

[18] 39 USC §1208.

arbitration. Since the inception of direct bargaining for wages, wage increases for postal employees have been substantial. It is generally agreed that comparability with the private sector has been achieved or exceeded. Wages in the postal service are very favorable when compared to wages received in other areas of federal employment. Wage differences between postal clerks and Classification Act clerks at the GS-5 level was reported to be close to $2,000 in 1974.[19] Fringe benefits, especially in the areas of life and health insurance, were also significantly improved for the postal workers. To an impartial observer, direct collective bargaining has been effective.[20]

Collective bargaining under the new law also produced an advanced approach toward grievance arbitration. Grievances in the postal service are broadly defined in postal agreements to include alleged violations of the contract and any other dispute in regard to the terms and conditions of employment. A substantial number of unresolved grievances arise in

---

[19]John Cramer, "Recent Gains Put Postal Workers in Catbird Seat," Washington Star-News, January 12, 1974, p. A-2.

[20]Ibid.

any given year. The cost and load of arbitration cases, using traditional methods, would be extremely high. To facilitate the arbitration process, disciplinary cases are submitted to an "expedited arbitration" process. Arbitrators are selected from an Expedited Arbitration Panel and hear cases on a rotating basis. The arbitrator must hold a hearing within ten days after the case is referred to him. The arbitration hearing is informal. The rules of evidence are suspended. Briefs and transcripts are not part of the process. The arbitrator is obligated to issue a decision within forty-eight hours of the conclusion of the hearing. His or her decision is final but does not have precedential value. The use of expedited arbitration, a process originating in the steel industry, has been well-received in the postal service. It is likely to continue to develop in the postal service.[21]

---

[21]For a detailed description and analysis of expedited arbitration in the Postal Service see Bernard Cushman "Some Reflections upon the Postal Experience with Expedited Arbitration" Proceedings of the 27th Annual Winter Meeting of the Industrial Relations Research Association, 1974, pp. 332 to 335 and Harvey Letter "Expedited Arbitration in the Postal Service" Proceedings of the 27th Annual Winter Meeting of the Industrial Relations Research Association, 1974, pp. 336 to 341.

Postal employee unions have a very rich tradition. The National Association of Letter Carriers (NALC), founded in 1890, predates most private sector unions. The AFL has had a nationally chartered postal union affiliate since 1906. Postal employee unionism, unlike public unionism as a whole, is not a recent phenomenon. Many significant labor relations reforms in the federal government were, and are, a response to postal union activities.

When postal reform came about in 1970, seven postal unions represented 624,597 employees.[22] Six of these unions were AFL-CIO affiliates. One AFL-CIO affiliate, the United Federation of Postal Clerks (AFPC), represented 301,000 workers as compared to 204,000 employees represented by the NALC, an independent union. Attempts have been made, historically, to unite postal employees into one big union. The creation of the United States Postal Service seems to have stimulated a renewed interest in merger efforts. Recent attempts to merge have been led by the UFPC

---

[22]U.S. Civil Service Commission, Office of Labor-Management Relations, Union Recognition in the Federal Government, Statistical Report and Listings by Agency-November 1970, Washington, June 1971, pp. 36-38.

In 1971 the UFPC merged with the National Postal Union (NPU). These two unions, along with some smaller unions, came together to form the American Postal Workers' Union (APWU). Today, the APWU represents nearly one-half of the total number of postal employees. The APWU and the NALC are the dominant unions in the Postal Service. Merger discussions between the NALC and the APWU have taken place. The NALC, with its long tradition of independence and its large portfolio of assets, has been reluctant to merge with the APWU. However, the idea of merger has not been forgotten. Cooperation between all the postal unions is not unknown. During collective negotiations, a centralized bargaining structure does exist. All postal unions participate as members of a postal employee council. The council bargains on behalf of all its members with the Postal Service.

CHAPTER IX

FEDERAL EMPLOYEE UNIONS

By 1973 the federal government had granted exclusive recognition rights to 114 labor organizations. Ninety-three of these unions had negotiated an agreement with the federal government on behalf of their members.[1] Of the 3,486 units with exclusive recognition, three-quarters of these units were affiliated with three unions. These unions are the American Federation of Government Employees (AFGE), the National Federation of Federal Employees (NFFE) and the National Association of Government Employees (NAGE).[2] AFL-CIO affiliates have organized the vast majority of federal employees.

Table 9A[3]

Union	Wage-Board Employees	G S Employees	Total
AFL-CIO unions	82%	68%	73%
Independent	18%	32%	27%

[1]Figures based on Table B in U.S. Civil Service Commission, Office of Labor-Management Relations, Union Recognition in the Federal Government; Statistical Report and Listings by Agency - November 1973, (Washington, D.C.), 1974, pp. 22 to 23.

[2]Ibid.

[3]Ibid., Table is based on Table J, p. 28.

Table 9A illustrates the dominance of the AFL-CIO unions, especially among wage-board employees. Of the 793,705 employees belonging to AFL-CIO unions, 624,322 of these employees were members of the AFGE. 194,092 of the 292,656 employees belonging to the independent unions were members of either the NFFE or the NAGE.[4] Approximately one-third of the memberships of the AFGE and the NFFE are wage-board employees. The NAGE is almost evenly divided between wage-board employees and General Schedule employees in its membership. Other important unions representing blue-collar employees include the Metal Trades Union (MTU) and the International Association of Machine and Assembly Workers (IAM).[5] With the exception of the AFGE, the National Treasury Employees Union (NTEU), while not as large in aggregate numbers as the NFFE or NAGE, represents more white-collar employees than any other union.

The history of the NAGE is an interesting one.

---

[4]Figures based on Table B in U.S. Civil Service Commission, Office of Labor-Management Relations, Union Recognition in the Federal Government; Statistical Report and Listings by Agency - November 1973, (Washington, D.C.), 1974, pp. 22 to 23.

[5]Both the MTU and the IAM are AFL-CIO affiliates.

The NAGE began as a Veteran's Association protecting veterans' rights and acting as a spokesman for veterans' grievances. As a labor organization the NAGE has adhered to the ideas of union democracy and separation between government unions and private sector unions. The NAGE has successfully competed with both the AFL-CIO affiliates and the NFFE for blue-collar and white-collar employees.

The NFFE was chartered in 1917 by the AFL. Controversy over industrial unionism created a division between the NFFE and the AFL. In 1931 the NFFE left the AFL. The AFL chartered the AFGE in 1932. The AFGE with its large membership is the dominant union in federal labor relations and one of the largest national unions in the United States. Merger discussions between the various federal unions have taken place. THE AFGE has been especially interested in the "one big union" idea for federal employees.[6] One of the issues which has separated the unions involves the public v. private union concept. The independent unions have supported the position that federal employees should remain

---

[6]See, generally, Donald L. Breneman, "American Federation of Government Employees 23rd Convention," Monthly Labor Review, Vol. 95, No. 11, November, 1972, pp. 51-53.

separate from private sector unions. The AFL-CIO, with its involvement in private unionism, has been suspiciously viewed by the independent unions.

Until 1962 a large number of federal employees did not belong to labor organization. The issuance of Executive Order 10,988 stimulated organizational activity. Union membership substantially increased in the 1960s. For example, the AFGE increased its membership from 59,000 members in 1959 to 624,000 members in 1973.[7]

In 1975 union membership as a percentage of the total work force in the United States was only 20.1%.[8] The proportion of organized federal employees in relation to nonpostal federal employment was 57% in 1974. In that same year 51% of the state and local work force belonged to unions or employee

---

[7]Figures based upon U.S. Department of Labor, Bureau of Labor Statistics, Directory of National and International Unions in the United States, 1959 and U.S. Civil Service Commission, Office of Labor-Management Relations, Union Recognition in the Federal Government, Statistical Report and Listings by Agency - November 1973, (Washington, D.C.) p. 22.

[8]U.S. Department of Labor, Bureau of Labor and Statistics, Directory of National and International Unions in the United States, 1975, Bulletin 1937 (Washington, D.C.) 1976.

associations.[9] The implications of these figures are clear. Proportionately, the rate of organization among federal employees exceeds that of the state and local governments and far exceeds that of the private sector.

Unions in the federal service vary in character. In addition to their functions as grievance and bargaining representatives, unions also maintain insurance plans, health benefits programs and retirement arrangements. The federal government contributes to the cost of these plans. The plans are administered by the unions.

Standards of Conduct

All federal employee unions must comply with the Standards of Conduct. The Standards of Conduct are similar to the requirements of the "Landrum-Griffin" Act of 1959.[10] Section 18 of Executive Order 11,491 enumerates the Standards of Conduct.

The Standards of Conduct establish a Bill of Rights for union members. Union members have equal

---

[9]Federal Mediation and Conciliation Service, 28th Annual Report, 1975, (Washington, D.C.) p. 14. Figures based upon United States Census Bureau information.

[10]Labor-Management Reporting and Disclosure Act of 1959, 29 USC §401 to §531.

rights in union affairs. Freedom of speech and assembly are guaranteed in union affairs. In order to increase union dues and fees a majority vote of the union members is required. A union member also has a protected right to sue his union or union official. Before a member can be disciplined by his union, due process considerations must be applied. Each employee also has a right to receive a copy of the collective bargaining agreement.

Unions must also comply with the requirements for trusteeships. Trusteeships by parent labor organizations over local units may only be established in the following situations: (1) to correct corruption and financial malpractice; (2) to properly execute a collective bargaining agreement or to perform other bargaining duties; (3) to restore democratic procedures in unions and (4) to realize other legitimate objectives of the union. Transfer of a trusteed unions' funds to the parent union is forbidden. An initial report and a semi-annual report must be filed by the parent organization with the Office of Labor-Management and Welfare-Pensions (LMWP) of the Labor Department.

Regularly scheduled elections must follow certain standards. Secret ballots are required. Union members must have a reasonable opportunity to nominate

candidates. Every union member in good standing has the right to be a candidate. A union may not improperly interfere with a member's right to vote. All elections must comply with the union's constitution and by-laws. The candidacy of an individual for union office may not be supported by union funds. Elections must be held every five years in national unions, every four years in regional offices and every three years in local units. Complaints concerning election procedures may be filed with the Department of Labor. Elections may be invalidated by the Assistant Secretary of Labor for Labor-Management Relations (ASLMR). THE ASLMR is responsible for enforcing the rights of union members as well.

A fiduciary duty is imposed on union officials in regard to finances. Every union official handling funds of $5,000 or more must be bonded. A union official may not borrow more than $2,000 from a union fund. Generally, convicted felons may not hold office in a federal employee union within five years of conviction.

Federal employee unions must also file an initial report with the LMWP office. Annual financial reports must be filed within ninety days after the close of a

union's fiscal year. Unions and trusteeships which cease to exist must also file terminal reports. All of these reports are considered public information and are available for inspection by union members and the public-at-large. Other information relating to union activities, such as books and accounts, must be made available to union members upon request.[11]

Employee Attitudes Toward Unions

Most commentators on federal employee unionism have assumed that federal workers join unions for reasons similar to those of their counterparts in the private sector. This belief has been questioned by Louis J. Imundo. Based upon a survey of employees in an AFGE unit at Tinker Air Force Base in Oklahoma, Imundo found evidence to support the position that there was an "almost total absence of social pressure as a reason for joining the union and the close relationship between the psychological and the economic reasons are not present in any of the findings of the

---

[11]E.O. 11,491, Section 18 and 29 CFR §204 provide a detailed account of the rules and procedures applicable to the Standards of Conduct.

studies conducted in the private sector."[12] Imundo found that blue-collar and white-collar employees joined federal unions for similar reasons. Unlike findings in the private sector, social reasons were not the dominant cause for union membership. Federal employees seemed to have economic and psychological motivations. The surveyed employees expressed the view that unionization would lead to increased wage and fringe benefits. The psychological motivations were based on the employees' desire to have their rights protected through union membership. A significant portion of the respondents did not believe that the Civil Service Commission protected their rights.[13] Imundo's survey was restricted to a single unit of the AFGE. It is uncertain whether or not the same attitudes exist throughout the federal service. While the number of organized federal employees has slightly receded in the past few years, one thing appears certain. Federal employee unionism has become an institutionalized phenomenon in the personnel experience of the U.S. government.

---

[12]Louis v. Imundo, Jr., "Why Federal Government Employees Join Unions: A tudy of AFGE Local 916," Public Personnel Management, Vol. 2, No. 1 (Chicago), p. 26.

[13]Ibid.

CHAPTER X

IMPLICATIONS FOR FEDERAL PERSONNEL MANAGEMENT

Personnel management in the public sector has traditionally been characterized by unilateral decision-making on the part of the public employer. The advent of public employee unionism has presented a serious challenge to this tradition.

Sovereignty

The philosophical question of sovereignty arises in any discussion of public sector labor relations. The concept of sovereignty is vested in the belief that there is an ultimate and supreme power which governs any given society. Theoretically, sovereignty in the United States rests with the people. The federal and state governments exercise sovereign power on the people's behalf. Sovereign power is absolute and it dictates in its pure form that the sovereign cannot be restricted and that whatever the sovereign does is in itself legitimate. A strict interpretation of sovereignty prohibits the sharing of this absolute authority.

It has been suggested by at least one commentator that the roots of sovereignty in the United States can be traced to political pragmatism rather than moral values.[1] In order to finance war against England, the individual American states were indebted to private citizens of other states. The federalists, led by Hamilton and Madison, employed the use of the sovereignty concept in order to promote the cause of constitutional ratification among the states. Since sovereignty implies that a sovereign state has supreme authority to determine if a claim can be filed against it, the invocation of the sovereignty concept exempted states from private lawsuit at the state's option. The existence of state sovereign immunity gained increasing legitimacy in the early days of the Republic. In response to the Supreme Court decision of Chisholm v. Georgia, the eleventh amendment to the United States constitution was adopted. This amendment further bolstered the doctrine of sovereign immunity by exempting individual states from lawsuits filed in federal court by citizens of other states.

---

[1]Wilson R. Hart, Collective Bargaining in the Federal Civil Service (New York: Harper and Brothers, 1962), p. 41.

A strict interpretation of the sovereignty doctrine would suggest that the states, and the states alone, have the power to determine the terms and conditions of work for their employees. Private associations, such as unions or employee organizations, would not be permitted a role in this process. While the use of the sovereignty concept may seem extreme, it has been well utilized by opponents of public employee unions on both the federal and state level.

Public employee collective bargaining would be permitted if a broader interpretation of sovereignty were accepted. There are arguments which can be made for this interpretation. The question of legislative delegation of powers is involved in these arguments. A major defeat for the opponents of legislative delegation came about in the Panama Refining[2] and Schecter Poultry[3] cases of the 1930s. Since that time the courts have been extremely lenient in allowing the delegation of sovereign powers from one branch on government to another.[4] Broad executive discretion to use delegated powers has also been permitted. Further, the ability of the executive to subdelegate is very seldom

---

[2]293 U.S. 388 (1935).

[3]295 U.S. 495 (1935).

[4]For example, see Fahey v. Mallonee, 332 U.S. 245 (1947).

challenged. These ideas must be considered in light of the Federal Tort Claims Act of 1946 and the Tucker Act of 1948. These laws represent a self-imposed limit on the Sovereign Immunity doctrine by the federal government. State governments in turn have followed this trend. An argument can be made that these well-established trends would permit the participation of public employee unions in the personnel management area. A broad interpretation of sovereignty allows the state great flexibility. This interpretation would permit collective bargaining so long as the state consented to it. The state could establish a labor relations policy without violating the sovereignty concept. The practical power-relations between public employees and government would provide some assurances that this labor relations policy was followed.

Proponents of public employee bargaining advance several arguments for collective bargaining. Three types of argument are most common. The first argument states that the United States government has historically negotiated and contracted with individuals for personal services. The contract argument justifies collective bargaining on the grounds that it is illogical to contend that contracts for organized groups of employees should be considered as being different from individual contracts. The second argument, commonly expressed by

public employee unions, is that collective bargaining instills greater morale among employees and therefore, better work performance by employees. The public employer, therefore, gains in the collective bargaining process. The third argument can be defined as the interest-group theory argument. Public employees are also American citizens. They should be entitled to the same rights and privileges as other groups of citizens to influence government decision-making. At least one commentator has drawn an analogy between public employee groups and anti-tax lobbying groups. These two groups represent two distinct sides to the same issue.

Today, the federal government has adopted a modified approach to the sovereignty concept. Through the executive orders the government has consented to bargain on certain specified issues. Unlike the labor relations laws which apply to the private sector, there is no public policy which mandates bargaining. The executive orders carefully maintain the sovereignty concept. Strikes are forbidden. Management rights are protected. Wages and hours are beyond the scope of bargaining. Established appeals procedures take priority over negotiated grievance procedures.

Sovereignty prevents the transferability of many private sector labor relations procedures.

Unionism and the Civil Service

The role of public employee unions vis-a-vis the Civil Service Commission is a highly controversial one. Historically, in the area of personnel administration the Civil Service Commission has been associated with the merit system. The primary function of American unions has been to establish and develop collective bargaining methods. Thus, this controversy has often been examined from the standpoint of Collective Bargaining versus the Merit Principle.

Different perspectives have been articulated on the issue of collective bargaining and the merit system. Many critics have charged that collective bargaining is not compatible with the merit principle. These critics believe that there is an underlying conflict between merit concepts and collective bargaining. Unions, through the process of collective bargaining, seem to bargain away merit principles. In essence public employee unions have as their objective the invasion of an area rightfully placed under Civil Service jurisdiction. The Civil Service fulfills the function of

objectively evaluating and promoting public employees according to their deeds. Unions attempt to establish policies concerning seniority and wages. These policies are made on behalf of a particular group of union employees in derogation to the rights of other employees and the public. Terms and conditions of employment are determined by the power relations of the union-management conflict rather than objective criteria. The incompatibility theory is bolstered by the belief and fear that unions gravitate toward political, as well as economic activities. Through campaign contributions, promises for votes and other support, unions try to control politicians. Decisions made by elected public officials will favor certain groups and individuals over others. In regard to personnel matters and labor relations policy, the merit system will be displaced by politics.

The compatibility theory is opposed to the above-mentioned view. Adherents to this theory believe that there is an accomodation between collective bargaining and merit. According to this view, jurisdictional lines will develop between the traditional civil services processes and the proper role of collective bargaining. Some proponents of this view go further.

They perceive the role of unions in a positive light. Unions are third party representatives of public employees removed from partisan politics. Collective bargaining does not undermine the merit principle but rather strengthens it by insisting on the removal of politics from personnel management. This view stands at odds with that of the incompatibility view. Incompatibility theorists point to the seniority principle, and union insistence thereon, to illustrate an explicit conflict with the merit principle. At least one commentator and supporter of the compatibility theory, Charles Feigenbaum, challenges this belief. In Feigenbaum's opinion elements of the seniority principle take place in the public personnel area even where collective bargaining does not exist. Moreover, the seniority principle can be effectively utilized. Advancement criteria which incorporates the seniority concept can be developed by public managers at the insistence of employee unions.[5]

Lewin and Horton, noted authorities on this

---

[5]See Charles Feigenbaum, "Civil Service and Collective Bargaining: Conflict or Compatibility?" Public Personnel Management, Vol. 3, May-June, 1974, pp. 244-252.

issue, have suggested a variable sum or diversity theory which seeks to examine the issue of merit and collective bargaining. This theory is very critical of both the incompatibility and compatibility theories. To Lewin and Horton the advocacy of collective bargaining has very little to do with the dislike of the merit concept or a desire to eliminate merit. Realistically, the key to collective bargaining is self-interest to effect the terms and conditions of employment. Management in its self-interest seeks to protect their discretionary authority in this regard. More Specifically, collective bargaining mechanisms represent an alternative decision-making process to the traditional Civil Service system, especially in regard to dispute resolution.[6] Lewin and Horton note that "The fallout in the form of decisions of labor-management interactions, whether they occur within the context of collective bargaining or other procedures, does not per se weaken merit rules. The impact on merit is not pre-ordained, but instead is highly dependent upon the goals sought by each party and, of course, the balance of power in

---

6. See David Lewin and Raymond D. Horton, "Government Collective Bargaining and the Merit System," Arbitration Journal, Vol. 30, September, 1975, pp. 199-211.

particular collective bargaining relationships."[7] Following this line of thought they conclude that the diversity model "suggests that the impact of collective bargaining on merit rules will produce mixed consequences which are highly dependent upon particular union-management goals and power relationships in collective bargaining."[8] In regard to the effect of collective bargaining on merit the authors of the diversity model predict that a gradual weakening of merit will occur in some areas, such as seniority and merit pay increases. On the other hand, merit will be strengthened as it applies to due process considerations in disciplinary procedures and in the rejection of management discretion in areas which weaken the merit principle.

In reviewing collective bargaining in light of the merit system it is necessary to consider the policy motivations behind the merit principle. The purpose of the Civil Service reforms and the merit system was to create a government employment system that aspired to the twin goals of efficiency and equity. These are

---

[7]See David Lewin and Raymond D. Horton, "Government Collective Bargaining and the Merit System," Arbitration Journal, Vol. 30, September, 1975, pp. 202-203.

[8]Ibid., at p. 205

vague goals and it is difficult to determine what effects, if any, collective bargaining will have on them. It is not easy to factually support the view that collective bargaining detracts from the achievement of these goals. Many proponents of the Civil Service system view its role as a third party simultaneously protecting the public employee and the public interest. Unions, on the other hand, view the Civil Service as management's personnel system. Collective bargaining in the public sector has brought about a reevaluation of traditional roles. Public employee unions have assumed the role of protector of employee rights. By contrast the CSC has been more willing to act as the labor relations and personnel advisor to management. As the labor-management battle lines form, a reexamination of an old concept, merit, will occur.

Productivity and Collective Bargaining Costs

If the federal government is to become more like an employer in the private sector, other concepts which apply to private employment need to be considered. More attention must be focused on the issue of labor productivity and the costs of labor relations policies. Among other characteristics the federal government as

an employer is different from the private sector in the sense that it is much more service (as opposed to goods) oriented. It is difficult to guage productivity when it involves service products. The measurement of labor productivity as it pertains to the federal sector is, therefore, illusive.

Recent attempts to measure labor productivity in the federal service began in 1972 when a joint task force representing the Office of Management and Budget (OMB), the General Accounting Office (GAO) and the CSC was established to collect data with the help of the Bureau of Labor Statistics (BLS). Today, the BLS is responsible for data collection and developing productivity measures. The task of analyzing these measures falls on the Joint Financial Improvement Program, the General Services Administration (GSA) and the CSC.

The type of productivity measures relied upon by the federal government is based on output per man indices. These measures express productivity as the relationship of output to one type of input, such as units of labor. It is important to note that these measures do not guage the specific contribution of the labor factor to productivity but "rather they express

the joint effect of a variety of interrelated influences such as changes in technology, substitution of one factor for another, utilization of capacity, skill levels and the efforts of the work force, and managerial and organizational skills on the use of the factor in the generation of output."[9]

Based upon a sample representing 60% of the total federal civilian labor force as expressed in man-years, the BLS reported that productivity for this sample rose at an average annual rate of 1.6% a year during fiscal 1967 through fiscal year 1973. The aggregate effect of federal employee unions on these figures is, of course, impossible to determine. It would be desirable to have such data. The task of collecting and analyzing it would be extremely combersome and difficult. The use of these productivity measures themselves have been criticized as being "essentially meaningless." It has been the view of at least one critic that these productivity concepts do little to assess the costs of collective bargaining in the

---

[9]Charles Ardolini and Jeffry Hohenstein, "Measuring Productivity in the Federal Government," Monthly Labor Review, Vol. 97, Nov. 1974, p. 14.

federal service.[10] Three types of collective bargaining costs have been identified in the federal sector. They are de facto costs, proviso costs and negative costs.

De facto costs are those costs which arise from the collective bargaining process per se. They are additional costs to a government agency attributable to the existence of the collective bargaining process rather than costs associated with a specific collective bargaining agreement. These costs include (1) expenses for labor relations training programs, (2) staff support costs to handle labor relations issues and (3) the costs of negotiations for a contract. A related sub-category of costs would include remuneration necessary for the time spent by management to prepare for negotiations. Paid time for management and union participation to collective negotiations would also be included.

Proviso costs are those costs which arise from the provisions of a specific agreement which is the result of the collective bargaining process. Proviso costs can be direct or indirect. Direct proviso costs may include such things as the actual costs to an agency to check-off union dues. An arbitrator's compensation

---

[10] See Preston O. Stanley, "Cost Determination in Federal Collective Bargaining," Public Personnel Management, Vol. 5, October, 1976, pp. 335-342.

would also be an example of a direct proviso cost. Indirect proviso costs are more subtle They arise from the procedural aspects of federal labor relations policy and specific collective bargaining agreements. Indirect proviso costs emanate from the belief of many federal managers that procedural rights detract from the agency's efficiency and employee productivity. Examples of indirect proviso costs are union representation to agency personnel meetings, grievance procedures, equal employment opportunity procedures and other union representational responsibilities.

De facto and proviso costs must be measured against negative costs. Negative costs are benefits arising to an agency out of the collective bargaining process. Negative costs can arise where collective bargaining has led to harmonious personnel relations or an increase in employee satisfaction and productivity. Negotiated grievance procedures, a proviso cost, may be more efficient than previously existing agency procedures. The allocation of manpower and resources in the form of proviso costs in other situations may have previously existed. In other words, certain costs and procedures would be required of an agency even if a collective bargaining agreement did not exist. Until

better procedures are established to measure labor productivity and agency efficiency, it will be impossible to determine the real costs of collective bargaining in the federal sector.

The Future of Collective Bargaining in the Federal Service

The future of employee-management relations in the federal service is an uncertain one. The present system can be significantly altered by the issuance of a single executive order. Although the current system of federal labor relations has been in existence for sixteen years, many unresolved issues still remain. The role played by the essential actors in the process will continue to change.

In terms of real numbers the percentage of organized federal employees seems to have stabilized. What the future holds for union organization is uncertain. It appears likely that the participants in the bargaining process will continue to grow in sophistication in the art and science of negotiation. Whether the scope of permissible bargaining will be expanded to include wage negotiations and other substantive issues is an unanswered and controversial

question. More and more observers of public sector labor relations adhere to the view that public employees in the nonessential services should be permitted to strike. Contrary to this trend is the long-standing tradition and prohibition in the federal service against the strike. The wage negotiation issue and the right to strike will remain the most controversial issues in federal labor relations. The success of unions in achieving their objectives in these areas is dependent upon the political climate of the future. Many observers believe that the political power of American unionism is on the wane. The American citizenry seems to be more sensitive to the burden of taxes and the issue of government efficiency. The phenomenon of consumerism may in the future be directed at government at all levels. An inhospitable environment to strikes and increased wage settlements in the public sector may result. On the other hand, inflation and a tightened federal budget may inspire unions to demand more influence in the wage determination process.

One thing is certain. Federal labor-management relations will receive more, not less, attention. Labor relations will assume prominence in the personnel management area. Government institutions involved in

this process will correspondingly assume greater significance and independence in the executive branch of government. Sweeping changes in the current structure can take place by Congressional action as well as by executive order. For decades Congress has discussed proposals designed to create or supplant a labor relations system. Whether or not Congress will finally and comprehensively deal with this issue is uncertain.

BIBLIOGRAPHY

GOVERNMENT DOCUMENTS, REPORTS AND PUBLICATIONS

U.S. Civil Service Commission, Federal Employee Appeals Authority. Appeals Procedure (Personnel Methods Series Number 16). Washington, January 1977.

U.S. Civil Service Commission, Federal Personnel Manual System.

U.S. Civil Service Commission, Office of Labor-Management Relations. OLMR Management Practices Manual, No. VII, Unfair Labor Practices. Washington, January 1976.

U.S. Civil Service Commission, Office of Labor-Management Relations. Strikes, Picketing and Associated Incidents under Executive Order 10,988, 1962-1968. Washington, 1968.

U.S. Civil Service Commission, Office of Labor-Management Relations. Union Recognition in the Federal Government, 1969. Washington, 1970.

U.S. Civil Service Commission, Office of Labor-Management Relations. Union Recognition in the Federal Government, 1971. Washington, 1972.

U.S. Civil Service Commission, Office of Labor-Management Relations. Union Recognition in the Federal Government, November, 1973. Washington, 1974.

U.S. Department of Labor, Bureau of Labor Statistics. Collective Bargaining Agreements in the Federal Service, Late 1971. Washington, 1973.

U.S. Department of Labor, Bureau of Labor Statistics. Directory of National and International Unions, 1959. Washington, 1960.

U.S. Department of Labor, Bureau of Labor Statistics. Directory of National Unions and Employee Associations, 1971. Washington, 1972.

U.S. Department of Labor, Bureau of Labor Statistics. Directory of National Unions and Employee Associations, 1975. Washington, 1976.

U.S. Department of Labor, Bureau of Labor Statistics. Handbook of Labor Statistics, 1977. Washington, undated.

U.S. Department of Labor, Bureau of Labor Statistics. Negotiation Impasse, Grievance, and Arbitration in Federal Agreements. Washington, 1970.

U.S. Department of Labor, Labor-Management Services Administration. Guide to Standards of Conduct For Federal Employee Unions. Washington, 1973.

U.S. Department of Labor, Labor-Management Service Administration. Understanding Grievance Arbitration in the Public Sector; report submitted to Division of Public Employee Labor Relations, by Arnold Zack. Washington, 1976.

U.S. Federal Labor Relations Council. Decisions and Interpretations of the Federal Labor Relations Council, Volumes 1-3. Washington, 1976.

U.S. Federal Labor Relations Council. Labor-Management Relations in the Federal Service, Executive Order 11,491, as Amended, February 6, 1975, Reports and Recommendations. Washington, 1975.

U.S. Federal Mediation and Conciliation Service. Twenty-Sixth Annual Report Fiscal Year 1973, Federal Mediation and Conciliation Service. Washington, Undated.

U.S. Federal Mediation and Conciliation Service. Twenty-Seventh Annual Report Fiscal Year 1974, Federal Mediation and Conciliation Service. Washington, Undated.

U.S. Federal Mediation and Conciliation Service. Twenty-Eighth Annual Report Fiscal Year 1975, Federal Mediation and Conciliation Service. Washington, Undated.

U.S. Federal Mediation and Conciliation Service. Twenty-Ninth Annual Report Fiscal Year 1976, Federal Mediation and Conciliation Service. Washington, Undated.

U.S. Federal Service Impasse Panel. Report of the Federal Service Impasse Panel, July 1, 1970 - December 31, 1973. Washington, 1974.

_____. Report of the U.S. President's Commission on Postal Organization, Towards Postal Excellence. Washington, 1968.

BOOKS

Chickering, A. Lawrence, ed. Public Employee Unions : A Study in the Crisis in Public Sector Labor Relations. San Francisco, California: Institute for Contemporary Studies, 1976.

Hammermesh, Daniel S., ed. Labor in the Public and Nonprofit Sectors. Princeton, N.J.: Princeton University Press, 1975.

Hart, Wilson R. Collective Bargaining in the Federal Civil Service. New York: Harper & Brothers, 1961.

Lewin, David and others. Public Sector Labor Relations: Analysis and Readings. Thomas Horton and Daughters, 1977.

Lowenberg, J. Joseph and Moskow, Michael H. Collective Bargaining in Government. Englewood Cliffs, N.J.: Prentice-Hall, 1972.

Moskow, Michael H. and others. Collective Bargaining in Public Employment. New York: Random House, 1970.

Nigro, Felix A. and Nigro, Lloyd G. The New Public Personnel Administration. Itasca, Illinois: F.E. Peacock Publishers, Inc., 1976.

Nesbitt, Murray B. Labor Relations in the Federal Government Service. Washington, D.C.: BNA, 1976.

Spero, Sterling D. Government as Employer. New York: Remsen Press, 1948.

Stern, James L. and others. Final-Offer Arbitration. Lexington, Massachusetts: D.C. Heath and Co., 1975.

Stieber, Jack. Public Employee Unionism: Structure, Growth, Policy. Washington, D.C.: The Brookings Institution, 1973.

Warner, Kenneth, ed. Collective Bargaining in the Public Service: Theory and Practice. Chicago, Illinois: Public Personnel Association, 1967.

Zagoria, Sam, ed. Public Workers and Public Unions. Englewood Cliffs, N.J.: Prentice-Hall, 1972.

ARTICLES

Ardolini, Charles and Hohenstein, Jeffrey, "Measuring Productivity in the Federal Government," Monthly Labor Review, Vol. 97 (November 1974), pp. 13-20.

Berger, Harriet F., "The Old Order Giveth Way to the New: E.O. 10,988 and E.O. 11,491," Labor Law Journal, Vol 21 (February 1970), pp. 79-87.

Breneman, Donald L., "AFGE 23d Convention," Monthly Labor Review, Vol. 95 (November, 1972), pp. 51-53.

Brookshire, Michael L., "Bargaining Structure in the Public Sector: The TVA 'Model'," Journal of Collective Negotiations, Vol. 5 (Spring 1976), pp. 257-275.

Cohen, David M., "Grievance Arbitration in the United States Postal Service," Arbitration Journal, Vol. 28 (September, 1973), pp. 258-267.

Cohen, Frederick C., "Labor Features of the Postal Reorganization Act," Labor Law Journal, Vol. 22 (January, 1971), pp. 44-50.

Cramer, John, "Recent Gains Put Postal Workers in Catbird Seat," Washington Star News (January 12, 1974), p. A-2.

Cushman, Bernard, "Some Reflections Upon the Postal Experience with Expedited Arbitration," Proceedings of the 27th Annual Winter Meeting of the Industrial Relations Research Association (December 28-19, 1974), pp. 332-335.

Donoian, Harry A., "Recent Changes in Federal Service Labor-Management Relations," Labor Law Journal, Vol. 23 (March, 1972), pp. 131-139.

Fasser, Paul J., Jr., "The Right to Union Representation under E.O. 11,491," Labor Law Journal, Vol. 25 (September, 1974), pp. 531-539.

Federal Bar Association, Council on Labor Law and Labor Relations, "Federal Bar Association Task Force I Report - E.O. 11,616," Labor Law Journal, Vol. 23 (July, 1972), pp. 414-424.

Federal Bar Council, The Committee on Labor Law, "Federal Public Employee Relations: The Lessons to be Learned From the New York and New Jersey Experience," Labor Law Journal, Vol. 22 (March, 1971), pp. 173-185.

Feigenbaum, Charles, "Civil Service and Collective Bargaining: Conflict or Compatibility?" Public Personnel Management, Vol. 3 (May-June, 1974), pp. 244-252.

Feigenbaum, Charles, Editor, "Federal Labor Relations: Problems and Prospects," Public Personnel Management, Vol. 4 (November-December, 1975), pp. 347-377.

Frazier, Henry, "Labor Arbitration in the Federal Service," George Washington Law Review, Vol. 45 (May, 1977), pp. 712-756.

Gitlow, Abraham L., "Public Employee Unionism in the United States: Growth and Outlook," Labor Law Journal, Vol. 21 (December, 1970), pp. 766-778.

Granof, Eugene B. and Moe, Stephen A., "Grievance Arbitration: The Postal Service View," Arbitration Journal, Vol. 29 (March, 1974), pp. 1-4.

Hart, Wilson R., "The U.S. Civil Service Learns to Live with Executive Order 10,988: An Interim Appraisal," Industrial and Labor Relations Review, Vol. 17 (January, 1964), pp. 203-220.

Hayford, Stephen L., "An Empirical Investigation of the Public Sector Supervisory Bargaining Rights Issue," Labor Law Journal, Vol. 26 (October, 1975), pp. 641-653.

Imundo, Louis V., Jr., "Federal Government Sovereignty and Its Effect on Labor-Management Relations," Labor Law Journal, Vol. 26 (October, 1975), pp. 146-151.

Imundo, Louis V., Jr., "Why Federal Government Employees Join Unions: A Study of AFGE Local 916," Public Personnel Management, Vol. 2 (January-February, 1973), pp. 23-28.

Imundo, Louis V., Jr., "Attitudes of Non-Union White-Collar Federal Government Employees Toward Unions," Public Personnel Management, Vol. 3 (January-February, 1974), pp. 87-92.

Kheel, Theodore W., "How to Prevent Strikes by Public Employees," Proceedings of the 21st Annual Conference of Labor, (1969).

Koczak, Stephen A., "Collective Bargaining and Comparability in the Federal Service," Proceedings of the 28th Annual Winter Meeting of the Industrial Relations Research Association, (December 28-30, 1975), pp. 197-204.

Letter, Harvey, "Expedited Arbitration in the Postal Service," Proceedings of the 27th Annual Winter Meeting of the Industrial Relations Research Association, (December 28-29, 1974), pp. 336-339.

Levine, Marvine J., "National Exclusive Recognition Under E.O. 11,491: The PATCO Case," Labor Law Journal, Vol. 22 (February, 1971), pp. 106-113.

Lewin, David and Horton, Raymond D., "Government Collective Bargaining and the Merit System," Arbitration Journal, Vol. 30 (September, 1975), pp. 199-211.

Madden, John V., "To Strike or Not to Strike: Does the Government Already Have an Alternative," Labor Law Journal, Vol. 21 (May, 1970), pp. 310-318.

Martin, James E., "Union-Management Problems in the Federal Government: An Exploratory Analysis," Public Personnel Management, Vol. 5 (September-October, 1976), pp. 353-362.

Martin, Philip L., "Bilateralism: The New Trend in Federal Labor-Management Relations," Labor Law Journal, Vol. 25 (March, 1974), pp. 155-160.

Merrill, Richard A., "Procedure for Adverse Actions Against Federal Employees," Virginia Law Review, Vol. 59 (1973), pp. 196-278.

Misrendino, C. Richard, "Arbitration in the Federal Service," Arbitration Journal, Vol. 30 (June, 1975) pp. 129-145.

Ross, Jerome H., "Federal Mediation in the Public Sector," Monthly Labor Review, Vol. 99 (February, 1976), pp. 41-45.

Sebris, Robert, Jr., "Formal or Informal: What are the Union's Rights?" Public Personnel Management, Vol. 6 (May-June, 1977), pp. 156-165.

Smith, Ralph R., "Using Programmed Instruction in Federal Labor Relations," Public Personnel Management, Vol. 5 (May-June, 1976), pp. 181-185.

Stanley, Preston O., "Cost Determination in Federal Collective Bargaining," Public Personnel Management, Vol. 5 (October, 1976), pp. 335-342.

Thompson, Arthur and Weinstock, Irwin, "White Collar Employees and the Unions at TVA," Personnel Journal, Vol. 46 (January, 1967), pp. 14-21.

APPENDIX I

EXECUTIVE ORDER 11491, LABOR-MANAGEMENT RELATIONS IN THE FEDERAL SERVICE, AS AMENDED BY EXECUTIVE ORDERS 11616, 11636 and 11838

WHEREAS the public interest requires high standards of employee performance and the continual development and implementation of modern and progressive work practices to facilitate improved employee performance and efficiency; and

WHEREAS the well-being of employees and efficient administration of the Government are benefited by providing employees an opportunity to participate in the formulation and implementation of personnel policies and practices affecting the conditions of their employment; and

WHEREAS the participation of employees should be improved through the maintenance of constructive and cooperative relationships between labor organizations and management officials; and

WHEREAS subject to law and the paramount requirements of public service, effective labor-management relations within the Federal service require a clear statement of the respective rights and obligations of labor organizations and agency management:

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and statutes of the United States, including sections 3301 and 7301 of title 5 of the United States Code, and as President of the United States, I hereby direct that the following policies shall govern officers and agencies of the executive branch of the Government in all dealings with Federal employees and organizations representing such employees.

GENERAL PROVISIONS

Section 1. Policy. (a) Each employee of the executive branch of the Federal Government has the right, freely and without fear of penalty or reprisal, to form, join, and assist a labor organization or to refrain

from any such activity, and each employee shall be protected in the exercise of this right. Except as otherwise expressly provided in this Order, the right to assist a labor organization extends to participation in the management of the organization and acting for the organization in the capacity of an organization representative, including presentation of its views to officials of the executive branch, the Congress, or other appropriate authority. The head of each agency shall take the action required to assure that employees in the agency are apprised of their rights under this section, and that no interference, restraint, coercion, or discrimination is practiced within his agency to encourage or discourage membership in a labor organization.

(b) Paragragh (a) of this section does not authorize participation in the management of a labor organization or acting as a representative of such an organization by a supervisor, except as provided in section 24 of this Order, or by an employee when the participation or activity would result in a conflict or apparent conflict of interest or otherwise be incompatible with law or with the official duties of the employee.

Sec. 2. Definitions. When used in this Order, the term -

(a) "Agency" means an executive department, a Government corporation, and an independent establishment as defined in section 104 of title 5, United States Code, except the General Accounting Office;

(b) "Employee" means an employee of agency and an employee of a nonappropriated fund instrumentality of the United States but does not include, for the purpose of exclusive recognition or national consultation rights, a supervisor, except as provided in section 24 of this Order;

(c) "Supervisor" means an employee having authority, in the interest of an agency, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of

authority is not of a merely routine or clerical nature, but requires the use of independent judgement;

(d) (Revoked)

(e) "Labor organization" means a lawful organization of any kind in which employees participate and which exists for the purpose, in whole or in part, of dealing with agencies concerning grievances, personnel policies and practices, or other matters affecting the working conditions of their employees; but does not include an organization which -

(1) consists of management officials or supervisors, except as provided in section 24 of this Order;

(2) assists or participates in a strike against the Government of the United States or any agency thereof or imposes a duty or obligation to conduct, assist, or participate in such a strike;

(3) advocates the overthrow of the constitutional form of government in the United States; or

(4) discriminates with regard to the terms or conditions of membership because of race, color, creed, sex, age, or national origin;

(f) "Agency management" means the agency head and all management officials, supervisors, and other representatives of management having authority to act for the agency on any matters relating to the implementation of the agency labor-management relations program established under this Order;

(g) "Council" means the Federal Labor Relations Council established by this Order;

(h) "Panel" means the Federal Service Impasses Panel established by this Order; and

(i) "Assistant Secretary" means the Assistant Secretary of Labor for Labor-Management Relations.

Sec. 3. Application. (a) This Order applies to all employees and agencies in the executive branch, except as provided in paragraphs (b), (c) and (d) of this section.

(b) This Order (except section 22) does not apply to -

(1) the Federal Bureau of Investigation;

(2) the Central Intelligence Agency;
(3) any other agency, or office, bureau, or entity within an agency, which has as a primary function intelligency, investigative, or security work, when the head of the agency determines, in his sole judgment, that the Order cannot be applied in a manner consistent with national security requirements and consideration;
(4) any office, bureau or entity within an agency which has as a primary function investigation or audit of the conduct or work of officials or employees of the agency for the purpose of ensuring honesty and integrity in the discharge of their official duties, when the head of the agency determines, in his sole judgment, that the Order cannot be applied in a manner consistent with the internal security of the agency; or
(5) The Foreign Service of the United States: Department of State, United States Information Agency and Agency for International Development and its successor agency or agencies.

(c) The head of an agency may, in his sole judgment, suspend any provision of this Order (except section 22) with respect to any agency installation or activity located outside the United States, when he determines that this is necessary in the national interest, subject to the conditions he prescribes.

(d) Employees engaged in administering a labor-management relations law or this Order shall not be represented by a labor organization which also represents other groups of employees under the law or this Order, or which is affiliated directly or indirectly with an organization which represents such a group of employees.

ADMINISTRATION

Sec. 4. Federal Labor Relations Council. (a) There is hereby established the Federal Labor Relations Council, which consists of the Chairman of the Civil Service Commission, who shall be chairman of the Council, the Secretary of Labor, the Director of the Office of Management and Budget, and such other officials of the executive branch as the President may designate from time to time. The Civil Service Commission shall provide administrative support and services to the Council to the extent authorized by law.

(b) The Council shall administer and interpret this Order, decide major policy issues, prescribe regulations, and from time to time, report and make recommendations to the President.

(c) The Council may consider, subject to its regulations -

(1) appeals from decisions of the Assistant Secretary issued pursuant to section 6 of this Order, except where, in carrying out his authority under section 11(d), he mades a negotiability determination, in which instance the party adversely affected shall have a right of appeal;

(2) appeals on negotiability issues as provided in section 11(c) of this Order;

(3) exceptions to arbitration awards; and

(4) other matters it deems appropriate to assure the effectuation of the purposes of this Order.

Sec. 5. Federal Service Impasses Panel. (a) There is hereby established the Federal Service Impasses Panel as an agency within the Council. The Panel consists of at least three members appointed by the President, one of whom he designates as chairman. The Council shall provide the services and staff assistance needed by the Panel.

(b) The Panel may consider negotiation impasses as provided in section 17 of this Order and may take any action it considers necessary to settle an impasse.

(c) The Panel shall prescribe regulations needed to administer its function under this Order.

Sec. 6. Assistant Secretary of Labor for Labor-Management Relations. (a) The Assistant Secretary shall -

(1) decide questions as to the appropriate unit for the purpose of exclusive recognition and related issued submitted for his consideration;

(2) supervise elections to determine whether a labor organization is the choice of a majority of the employees in an appropriate unit as their exclusive representative, and certify the results;

(3) decide questions as to the eligibility of labor organizations for national consultation rights under criteria prescribed by the Council;

(4) decide unfair labor practice complaints

(including those where an alleged unilateral act by one of the parties requires an initial negotiability determination) and alleged violations of the standards of conduct for labor organizations; and

(5) decide questions as to whether a grievance is subject to a negotiated grievance procedure or subject to arbitration under an agreement as provided in section 13(d) of this Order.

(b) In any matters arising under paragraph (a) of this section, the Assistant Secretary may require an agency or a labor organization to cease and desist from violations of this Order and require it to take such affirmative action as he considers appropriate to effectuate the policies of this Order.

(c) In performing the duties imposed on him by this section, the Assistant Secretary may request and use the services and assistance of employees of other agencies in accordance with section 1 of the Act of March 4, 1915, (38 Stat. 1084, as amended; 31 U.S.C. §686).

(d) The Assistant Secretary shall prescribe regulations needed to administer his functions under this Order.

(e) If any matters arising under paragraph (a) of this section involve the Department of Labor, the duties of the Assistant Secretary described in paragraphs (a) and (b) of thissection shall be performed by a member of the Civil Service Commission designated by the Chairman of the Commission.

RECOGNITION

Sec. 7. Recognition in general. (a) An agency shall accord exclusive recognition or national consultation rights at the request of a labor organization which meets the requirements for the recognition or consultation rights under this Order.

(b) A labor organization seeking recognition shall submit to the agency a roster of its officers and representatives, a copy of its constitution and by-laws, and a statement of its objectives.

(c) When recognition of a labor organization has been accorded, the recognition continues as long as the organization continues to meet the requirements of this Order applicable to that recognition, except that this section does not require an election to determine whether an organization should become, or continue to be recognized as, exclusive representative of the employees in any unit or subdivision thereof within 12 months after a prior valid election with respect to such unit.

(d) Recognition of a labor organization does not -

(1) preclude an employee, regardless of whether he is in a unit of exclusive recognition, from exercising grievance or appellate rights established by law or regulation, or from choosing his own representative in a grievance or appellate action, except when the grievance is covered under a negotiated procedure as proveded in section 13;

(2) preclude or restrict consultations and dealings between an agency and a veterans organization with respect to matters of particular interest to employees with veterans preference; or

(3) preclude an agency from consulting or dealing with a religious, social, fraternal, professional or other lawful association, not qualified as a labor organization, with respect to matters or policies which involve individual members of the association or are of particular applicability to it or its members.

Consultations and dealings under subparagraph (3) of this paragraph shall be so limited that they do not assume the character of formal consultation on matters of general employee-management policy covering employees in that unit, or extend to areas where recognition of the interests of one employee group may result in discrimination against or injury to the interest of other employees.

(e) (Revoked)

(f) Informal recognition or formal recognition shall not be accorded.

Sec. 8. (Revoked)

Sec. 9. National consultation rights. (a) An agency shall accord national consultation rights to a labor

organization which qualifies under criteria established by the Federal Labor Relations Council as the representative of a substantial number of employees of the agency. National consultation rights shall not be accorded for any unit where a labor organization already holds exclusive recognition at the national level for that unit. The granting of national consultation rights does not preclude an agency from appropriate dealings at the national level with other organizations on matters affecting their members. An agency shall terminate national consultation rights when the labor organization ceases to qualify under the established criteria.

(b) When a labor organization has been accorded national consultation rights, the agency, through appropriate officials, shall notify representatives of the organization of proposed substantive changes in personnel policies that affect employees it represents and provide an opportunity for the organization to comment on the proposed changes. The labor organization may suggest changes in the agency's personnel policies and have its views carefully considered. It may consult in person at reasonable times, on request, with appropriate officials on personnel policy matters, and at all times present its views thereon in writing. As agency is not required to consult with a labor organization on any matter on which it would not be required to meet and confer if the organization were entitled to exclusive recognition.

(c) Questions as to the eligibility of labor organizations for national consultation rights may be referred to the Assistant Secretary for decision.

Sec. 10. Exclusive recognition. (a) An agency shall accord exclusive recognition to a labor organization when the organization has been selected, in a secret ballot election, by a majority of the employees in an appropriate unit as their representative; provided that this section shall not preclude an agency from according exclusive recognition to a labor organization, without an election, where the appropriate unit it established through the consolidation of existing exclusively recognized units represented by that organization.

(b) A unit may be established on a plant or

installation, craft, functional, or other basis which will ensure a clear and identifiable community of interest among the employees concerned and will promote effective dealings and efficiency of agency operations. A unit shall not be established solely on the basis of the extent to which employees in the proposed unit have organized, nor shall a unit be established if it includes -

(1) any management official or supervisor, except as provided in section 24;

(2) an employee engaged in Federal personnel work in other than a purely clerical capacity; or

(3) (Revoked)

(4) both professional and nonprofessional employees, unless a majority of the professional employees vote for inclusion in the unit.

Questions as to the appropriate unit and related issues may be referred to the Assistant Secretary for decision.

(c) (Revoked)

(d) All elections shall be conducted under the supervision of the Assistant Secretary, or persons designated by him, and shall be by secret ballot. Each employee eligible to vote shall be provided the opportunity to choose the labor organization he wishes to represent him, from among those on the abllot, or "no union", except as provided in subparagraph (4) of this paragraph. Elections may be held to determine whether -

(1) a labor organization should be recognized as the exclusive representative of employees in a unit;

(2) a labor organization should replace another labor organization as the exclusive representative;

(3) a labor organization should cease to be the exclusive representative; or

(4) a labor organization should be recognized as the exclusive representative of employees in a unit composed of employees in units currently represented by that labor organization or continue to recognized in the existing separate units.

(e) When a labor organization has been accorded exclusive recognition, it is the exclusive representative of employees in the unit and is entitled to act for and negotiate agreements covering all employees in the unit. It is responsible for representing the interests

of all employees in the unit without discrimination and without regard to labor organization membership. The labor organization shall be given the opportunity to be represented at formal discussions between management and employees or employee representatives concerning grievances, personnel policies and practices, or other matters affecting general working conditions of employees in the unit.

AGREEMENTS

Sec. 11. Negotiation of agreements. (a) An agency and a labor organization that has been accorded exclusive recognition, through appropriate representatives, shall meet at reasonable times and confer in good faith with respect to personnel policies and practices and matters affecting working conditions, so far as may be appropriate under applicable laws and regulations, including policies set forth in the Federal Personnel Manual; published agency policies and regulations for which a compelling need exists under criteria established by the Federal Labor Relations Council and which are issued at the agency headquarters level or at the level of a primary national subdivision; a national or other controlling agreement at a higher level in the agency; and this Order. They may negotiate an agreement, or any question arising thereunder; determine appropriate techniques, consistent with section 17 of this Order, to assist in such negotiation; and execute a written agreement or memorandum of understanding.

(b) In prescribing regulations relating to personnel policies and practices and working conditions, an agency shall have due regard for the obligation imposed by paragraph (a) of this section. However, the obligation to meet and confer does not include matters with respect to the mission of an agency; its budget; its organization; the number of employees; and the numbers, types, and grades of positions or employees assigned to an organizational unit, work project or tour of duty; the technology of performing its work; or its internal security practices. This does not preclude the parties from negotiating agreements providing appropriate arrangements for employees adversely affected by the impact of realignment of work forces or technological changes.

(c) If, in connection with negotiations, an issue develops as to whether a proposal is contrary to law, regulation, controlling agreement, or this Order and therefore not negotiable, it shall be resolved as follows:

(1) An issue which involves interpretation of a controlling agreement at a higher agency level is resolved under the procedures of the controlling agreement, or, if none, under agency regulations;

(2) An issue other than as described in subparagraph (1) of this paragraph which arises at a local level may be referred by either party to the head of the agency for determination;

(3) An agency head's determination as to the interpretation of the agency's regulations with respect to a proposal is final;

(4) A labor organization may appeal to the Council for a decision when -

(i) it disagrees with an agency head's determination that a proposal would violate applicable law, regulation of appropriate authority outside the agency, or this Order, or

(ii) it believes that an agency's regulations, as interpreted by the agency head, violate applicable law, regulation of appropriate authority outside the agency, or this Order, or are not otherwise applicable to bar negotiations under paragraph (a) of this section.

(d) If, as the result of an alleged unilateral change in, or addition to, personnel policies and practices or matters affecting working conditions, the acting party is charged with a refusal to consult, confer or negotiate as required under this Order, the Assistant Secretary may, in the exercise of his authority under section 6(a)(4) of the Order, make those determinations of negotiability as may be necessary to resolve the merits of the alleged unfair labor practice. In such cases the party subject to an adverse ruling may appeal the Assistant Secretary's negotiability determination to the Council.

Sec. 12. Basic provisions of agreements. Each agreement between an agency and a labor organization is subject to the following requirements -

(a) in the administration of all matters covered by the agreement, officials and employees are governed by existing or future laws and the regulations of

appropriate authorities, including policies set forth in the Federal Personnel Manual; by published agency policies and regulations in existence at the time the agreement was approved; and by subsequently published agency policies and regulations required by law or by the regulations of appropriate authorities, or authorized by the terms of a controlling agreement at a higher agency level;

(b) management cfficials of the agency retain the right, in accordance with applicable laws and regulations -

(1) to direct employees of the agency;

(2) to hire, promote, transfer, assign, and retain employees in positions within the agency, and to suspend, demote, discharge, or take other disciplinary action against employees;

(3) to relieve employees from duties because of lack of work or for other legitimate reasons;

(4) to maintain the efficiency of the Government operations entrusted to them;

(5) to determine the methods, means, and personnel by which such operations are to be conducted; and

(6) to take whatever actions may be necessary to carry out the mission of the agency in situations of emergency; and

(c) nothing in the agreement shall require an employee to become or to remain a member of a labor organization, or to pay money to the organization except pursuant to a voluntary, written authorization by a member for the payment of dues through payroll deductions.

The requirements of this section shall be expressly stated in the initial or basic agreement and apply to all supplemental, implementing, subsidiary, or informal agreements between the agency and the organization.

Sec. 13. Grievance and arbitration procedures. (a) An agreement between an agency and a labor organization shall provide a procedure, applicable only to the unit, for the consideration of grievances. The coverage and scope of the procedure shall be negotiated by the parties to the agreement with the exception that it may not cover matters for which a statutory appeal procedure exists and so long as it does not otherwise conflict with statute or this Order. It shall be the exclusive

procedure available to the parties and the employees in the unit for resolving grievances which fall within its coverage. However, any employee or group of employees in the unit may present such grievances to the agency and have them adjusted, without the intervention of the exclusive representative, as long as the adjustment is not inconsistent with the terms of the agreement and the exclusive representative has been given opportunity to be present at the adjustment.

(b) A negotiated procedure may provide for arbitration of grievances. Arbitration may be invoked only by the agency or the exclusive representative. Either party may file exceptions to an arbitrator's award with the Council, under regulations prescribed by the Council.

(c) (Revoked)

(d) Questions that cannot be resolved by the parties as to whether or not a grievance is on a matter for which a statutory appeal procedure exists, shall be referred to the Assistant Secretary for decision. Other questions as to whether or not a grievance is on a matter subject to the grievance procedure in an existing agreement, or is subject to arbitration under that agreement, may by agreement of the parties be submitted to arbitration or may be referred to the Assistant Secretary for decision.

(e) (Revoked)

Sec. 14. (Revoked)

Sec. 15. Approval of agreements. An agreement with a labor organization as the exclusive representative of employees in a unit is subject to the approval of the head of the agency or an official designated by him. An agreement shall be approved within forty-five days from the date of its execution if it conforms to applicable laws, the Order, existing published agency policies and regulations (unless the agency has granted an exception to a policy or regulation) and regulations of other appropriate authorities. An agreement which has not been approved or disapproved within forty-five days from the date of its execution shall go into effect without the required approval of the agency head and

shall be binding on the parties subject to the provisions of law, the Order and the regulations of appropriate authorities outside the agency. A local agreement subject to a national or other controlling agreement at a higher level shall be approved under the procedures of the controlling agreement, or, if none, under agency regulations.

NEGOTIATION DISPUTES AND IMPASSES

Sec. 16. Negotiation disputes. The Federal Mediation and Conciliation Service shall provide services and assistance to Federal agencies and labor organizations in the resolution of negotiation disputes. The Service shall determine under what circumstances and in what manner it shall proffer its services.

Sec. 17. Negotiation impasses. When voluntary arrangements, including the services of the Federal Mediation and Conciliation Service or other third-party mediation, fail to resolve a negotiation impasse, either party may request the Federal Service Impasses Panel to consider the matter. The Panel, in its discretion and under the regulations it prescribes, may consider the matter and may recommend procedures to the parties for the resolution of the impasse or may settle the impasse by appropriate action. Arbitration or third-party fact finding with recommendations to assist in the resolution of an impasse may be used by the parties only when authorized or directed by the Panel.

CONDUCT OF LABOR ORGANIZATIONS AND MANAGEMENT

Sec. 18. Standards of conduct for labor organizations. (a) An agency shall accord recognition only to a labor organization that is free from corrupt influences and influences opposed to basic democratic principles. Except as provided in paragraph (b) of this section, an organization is not required to prove that it has the required freedom when it is subject to governing requirements adopted by the organization or by a national or international labor organization or federation of labor organizations with which it is affiliated or in which it participates, containing explicit and detailed provisions to which it subscribes calling for -

(1) the maintenance of democratic procedures and practices, including provisions for periodic elections

to be conducted subject to recognized safeguards and provisions defining and securing the right of individual members to participation in the affairs of the organization, to fair and equal treatment under the governing rules of the organization, and to fair process in disciplinary proceedings;

(2) the exclusion from office in the organization of persons affiliated with Communist or other totalitarian movements and persons identified with corrupt influences;

(3) the prohibition of business or financial interests on the part of organization officers and agents which conflict with their duty to the organization and its members; and

(4) the maintenance of fiscal integrity in the conduct of the affairs of the organization, including the provision for accounting and financial controls and regular financial reports or summaries to be made available to members.

(b) Notwithstanding the fact that a labor organization has adopted or subscribed to standards of conduct as provided in paragraph (a) of this section, the organization is required to furnish evidence of its freedom from corrupt influences or influences opposed to basic democratic principles when there is reasonable cause to believe that -

(1) the organization has bwen suspended or expelled from or is subject to other sanction by a parent labor organization or federation of organizations with which it had been affiliated because it has demonstrated an unwillingness or inability to comply with governing requirements comparable in purpose to those required by paragraph (a) of this section ; or

(2) the organization is in fact subject to influences that would preclude recognition under this Order.

(c) A labor organization which has or seeks recognition as a representative of employees under this Order shall file financial and other reports, provide for bonding of officials and employees of the organization, and comply with trusteeship and election standards.

(d) The Assistant Secretary shall prescribe the regulations needed to effectuate this section. These regulations shall conform generally to the principles

applied to unions in the private sector. Complaints of violations of this section shall be filed with the Assistant Secretary.

Sec. 19. Unfair labor practices. (a) Agency management shall not -

(1) interfere with, restrain, or coerce an employee in the exercise of the rights assured by this Order;

(2) encourage or discourage membership in a labor organization by discrimination in regard to hiring, tenure, promotion, or other conditions of employment;

(3) sponsor, control, or otherwise assist a labor organization, except that an agency may furnish customary and routine services and facilities under section 23 of this Order when consistent with the best interests of the agency, its employees, and the organization, and when the services and facilities are furnished, if requested, on an impartial basis to organizations having equivalent status;

(4) discipline or otherwise discriminate against an employee because he has filed a complaint or given testimony under this Order;

(5) refuse to accord appropriate recognition to a labor organization qualified for such recognition; or

(6) refuse to consult, confer, or negotiate with a labor organization as required by this Order.

(b) A labor organization shall not -

(1) interfere with, restrain, or coerce an employee in the exercise of his rights assured by this Order;

(2) attempt to induce agency management to corece an employee in the exercise of his rights under this Order;

(3) coerce, attempt to coerce, or discipline, fine, or take other economic sanction against a member of the organization as punishment or reprisal for, or for the purpose of hindering or impeding his work performance, his productivity, or the discharge of his duties owed as an officer or employee of the United States;

(4) call or engage in a strike, work stoppage, or slowdown; picket an agency in a labor-management dispute; or condone any such activity by failing to take affirmative action to prevent or stop it;

(5) discriminate against an employee with regard

to the terms or conditions of membership because of race, color, creed, sex, age, or national origin; or

(6) refuse to consult, confer, or negotiate with an agency as required by this Order.

(c) A labor organization which is accorded exclusive recognition shall not deny membership to any employee in the appropriate unit except for failure to meet reasonable occupational standards uniformly required for admission, or for failure to tender initiation fees and dues uniformly required as a condition of acquiring and retaining membership. This paragraph does not preclude a labor organization from enforcing discipline in accordance with procedures under its constitution or by-laws which conform to the requirements of this Order.

(d) Issues which can properly be raised under an appeals procedure may not be raised under this section. Issues which can be raised under a grievance procedure may, in the discretion of the aggrieved party, be raised under that procedure or the complaint procedure under this section, but not under both procedures. Appeals or grievance decisions shall not be construed as unfair labor practice decisions under this Order nor as precedent for such decisions. All complaints under this section that cannot be resolved by the parties shall be filed with the Assistant Secretary.

MISCELLANEOUS PROVISIONS

Sec. 20. Use of official time. Solicitation of membership or dues, and other internal business of a labor organization, shall be conducted furing the non-duty hours of the employees concerned. Employees who represent a recognized labor organization shall not be on official time when negotiating an agreement with agency management, except to the extent that the negotiating parties agree to other arrangements which may provide that the agency will either authorize official time for up to 40 hours or authorize up to one-half the time spent in negotiations during regular working hours, for a reasonable number of employees, which number normally shall not exceed the number of management representatives.

Sec. 21. Allotment of dues. (a) When a labor organization holds exclusive recognition, and the agency and the organization agree in writing to this course of action, an agency may deduct the regular and periodic dues of the organization from the pay of members of the organization in the unit of recognition who make a voluntary allotment for that purpose. Such an allotment is subject to the regulations of the Civil Service Commission, which shall include provision for the employee to revoke his authorization at stated six-month intervals. Such an allotment terminates when -

(1) the dues withholding agreement between the agency and the labor organization is terminated or ceases to be applicable to the employee; or

(2) the employee has been suspended or expelled from the labor organization.

(b) (Revoked)

Sec. 22. Adverse action appeals. The head of each agency, in accordance with the provisions of this Order and regulations prescribed by the Civil Service Commission, shall extend to all employees in the competitive civil service rights identical in adverse action cases to those provided preference eligibles under sections 7511-7512 of title 5 of the United States Code. Each employee in the competitive service shall have the right to appeal to the Civil Service Commission from an adverse decision of the administrative officer so acting, such appeal to be processed in an identical manner to that provided for appeals under section 7701 of title 5 of the United States Code. Any recommendation by the Civil Service Commission submitted to the head of an agency on the basis of an appeal by an employee in the competitive service shall be complied with by the head of the agency.

Sec. 23. Agency implementation. No later than April 1, 1970, each agency shall issue appropriate policies and regulations consistent with this Order for its implementation. This includes but is not limited to a clear statement of the rights of its employees under this Order; procedures with respect to recognition of labor organizations, determination of appropriate units, consultation and negotiation with labor organizations, approval of agreements, mediation, and impasse resolution; policies with respect to the use of agency

facilities by labor organizations; and policies and practices regarding consultation with other organizations and associations and individual employees. Insofar as practicable, agencies shall consult with representatives of labor organizations in the formulation of these policies and regulations.

Sec. 24. Savings clauses. This Order does not include -

(1) the renewal or continuation of a lawful agreement between an agency and a representative of its employees entered into before the effective date of Executive Order No. 10988 (January 17, 1962); or

(2) the renewal, continuation, or initial according of recognition for units of management officials or supervisors represented by labor organizations which historically or traditionally represent the management officials or supervisors in private industry and which hold exclusive recognition for units of such officials or supervisors in any agency on the date of this Order.

Sec. 25. Guidance, training, review and information. (a) The Civil Service Commission, in conjunction with the Office of Management and Budget, shall establish and maintain a program for the policy guidance of agencies on labor-management relations in the Federal service and periodically review the implementation of these policies. The Civil Service Commission shall continuously review the operation of the Federal labor-management relations program to assist in assuring adherence to its provisions and merit system requirements; implement technical advice and information programs for the agencies; assist in the development of programs for training agency personnel and management officials in labor-management relations; and, from time to time, report to the Council on the state of the program with any recommendations for its improvement.

(b) The Department of Labor and the Civil Service Commission shall develop programs for the collection and dissemination of information appropriate to the needs of agencies, organizations and the public.

Sec. 26. Effective date. This Order is effective on January 1, 1970, except sections 7(f) and 8 which are effective immediately. Effective January 1, 1970, Executive Order No. 10988 and the President's Memorandum of May 21, 1963, entitled Standards of Conduct for Employee Organizations and Code of Fair Labor Practices are revoked.

RICHARD NIXON

THE WHITE HOUSE
October 29, 1969

VITA

Name:	James J. Ravelle, Esquire
Date of Birth:	July 22, 1952
Place of Birth:	East Orange, New Jersey
Permanent Address:	15 Roosevelt Boulevard North Caldwell, New Jersey 07006
Parents:	Jacob M. Ravelle Marian G. Ravelle
Education:	B.A., Political Science, Villanova University, 1973. J.D., University of South Carolina, School of Law, 1976.
Experience:	Licensed to Practice Law Before the Supreme Court of Pennsylvania, the Supreme Court of New Jersey, the Federal Courts of New Jersey. Carnegie Fellow, Department of Government, Lehigh University, 1976-1978. Instructor, Department of Economics and Business, Moravian College, Bethlehem, Penna., 1978.-