

THE DIVISION OF PUBLIC EMPLOYEE LABOR RELATIONS,  
Office of Labor-Management Relations Services,  
Labor-Management Services Administration,  
U.S. Department of Labor: A History of the  
Policy Developments Leading to Its Establish-  
ment and An Overview of Its Program Activities, 1969-May, 1974

The establishment of the Division of Public Employee Labor Relations in 1970 for assisting with the labor relations problems of State and local governments represented one of the most significant new Federal program developments undertaken by the Nixon Administration. This development reflected one of the responses which the Department of Labor began under the direction of George P. Shultz, the first Secretary of Labor in the Nixon Administration, to the dynamic changes which had been taking place in public sector labor relations, particularly at the State and local governmental levels.

Background

The decade of the Sixties was a historic watershed in the development of public unionism in the United States. Prior to that period and a striking exception to the other major industrialized countries of the world, the United States had not experienced a significant degree of unionization among public employees at Federal, State or local levels. Public policy provisions, notably legislation and administrative agencies to handle specifically labor relations questions, were virtually non-existent within most governmental structures.

However, beginning in the late Fifties with States like Wisconsin and with the Federal government in the early Sixties, the picture changed dramatically when President John F. Kennedy signed Executive Order 10988 on January 17, 1962. This Presidential Order was more significant for its impact on State and local government than for the bargaining rights granted to Federal employees, which were limited. Executive Order 10988 cracked the barrier of

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sovereignty, which heretofore had been asserted by State and local government as a bar to negotiations on wages, fringe benefits and other working conditions of vital concern to public employees. Once this principle of negotiations was established by the 1962 Executive Order, other branches of government could no longer creditably claim that they were precluded from doing so. During the ensuing years of the decade and continuing in the Seventies, a substantial number of States have passed public sector labor laws. These laws have ranged from the comprehensive statutes found in such States as New York, Michigan, Pennsylvania, and Hawaii to the California statutes, which do little more than empower local agencies, primarily cities and counties, to implement the State law requirement that the public employer "meet and confer" with representatives of its public employees in an effort to reach agreement on matters within the scope of representation.

These legislative developments were evidence of basic changes taking place within the American economy as well as within our governmental structures. As the principal "growth industry" in our economy during recent years, public employment at the State and local levels has been assuming a greater importance than its relative numbers might indicate. With our continuing shift from a "production" to a "service" economy, the nine million plus State and local government workers at the start of the Nixon Administration performed many crucial functions in public safety, education, health, social welfare and other services demanded by the general public which were essential for the American way of life. The climate of public employee-management relations which prevailed in these government services directly affected millions of workers, while indirectly it affected the well-being of virtually everybody in our population.

Along with the continuing growth in public employment has come an increasing tendency for public employees, both blue-collar and professional, to organize for collective bargaining purposes into unions and associations. Recent figures gathered by Professor Jack Stieber of Michigan State University indicate during the decade of the Sixties and the years of the Nixon Administration that organization among employees in State and local government, even excluding the highly organized teachers, has already become proportionately higher than in private industry. Stieber using published data, questionnaires and interviews, has found that more than a third of the State-county-city work force holds membership in unions or employee associations. With teachers added, the percentage is even higher.\* The comparable figure for the industrial sector is less than a fourth of the work force represented in unions.

By the the mid-Sixties and thereafter, the combined effects of the expansion in the public demand for more governmental services, the increased militancy of public employee organizations and the worsening "urban crisis" and riots in many cities had produced severe strains on State and local governments. During this period, there began to be felt a massive stirring of public employees as they began to object to decades of what seemed to them to be paternalistic treatment. as commentators like Arnold Zack have indicated. There were several reasons for this change, / First, expanding

\*The latest U.S. Census data indicates that of the 8.6 million full-time State and local government employees in October 1972, 4.3 million or 50.4 percent, belonged to employee organizations. For the purposes of that study, an employee organization was defined as "any association, organization, or federation which had as a primary purpose the improvement of wages, hours, and conditions of employment for its membership." U.S. Bureau of the Census, Census of Governments, 1972, Public Employment: Management-Labor Relations in State and Local Governments, Volume 3, No. 3 (Washington, D.C.: U.S. Gov. Printing Office, 1974), p. 1.

demand for public services, as we have indicated, brought about a dramatic increase in public employment, but frequently without a comparable rise in tax revenues, causing a lag in public sector wages in comparison to industrial wages. Second, public employees began to question their exclusion from the protections offered private employees by the National Labor Relations Act. Third, a younger, more militant, and more largely male influx of personnel, particularly in education, sought to mobilize the public sector and seek benefits achieved by public sector employees in other countries and by private sector employees in this country.

Fourth, the traditional grants of prevailing wages extended to government-employed construction workers and others under the Federal and State Davis-Bacon type laws stirred the desire of noncovered public employees to achieve wages and working conditions matching those in the private sector. Fifth, private sector trade unions, often with stagnant or dwindling rosters, began to organize State and local employees to increase their numerical and financial strength. In so doing they, and the other exclusively public sector unions who were also becoming more aggressive, stimulated the previously passive National Education Association and its affiliates as well as the various civil service employee groups to new militance of their own. Sixth, as we have previously noted, President Kennedy's Executive Order 10988 of 1962, granting limited collective bargaining rights to Federal workers, was interpreted by State and local government employees as a mandate for protesting their historical denial of such rights at the State and local level. Seventh, a rising civil disobedience in the nation, as demonstrated in the civil rights movements, anti-poverty

activities and war protests, convinced militant public employees that protest against "the establishment" and its laws was fruitful and could be a valued vehicle for bring<sup>ing</sup> about desired change.

Finally, and perhaps most importantly, the demonstrated success of 1969 and early teacher strikes, initial illegal strikes, such as the/New York transit strike/ became strong proof that the power to strike was of far greater relevance than the right to strike. As long as some employees obtained improvements from the strike, others recognized it as a useful vehicle for their protest as well.

These factors culminating in the increasing militancy of public sector employees have been a powerful catalyst for change. They have forced State legislatures into varying responses as such bodies and State and local executive agencies have struggled to deal with this unprecedented outburst of public employee protest. Not the least important consequence, these factors focused national attention and concern on the labor relations problems of public employees at all levels of government.

The Policy Response of the Nixon Administration to the  
Labor Relations Protests of Public Employees

It was against the background of these factors that the Nixon Administration assumed office. As Presidential Advisor, Arthur F. Burns directed his staff in the formulation of a wide series of policy recommendations on politically sensitive issues confronting the new Administration. On February 3, 1969, he sent to the White House his report #X-10 which made the following recommendations concerning disputes involving public employees:

Disputes Involving Public Employees

A national policy with regard to unions of public employees and disputes involving public employees is urgently needed.

It would be desirable to establish, under the guidance of the Secretary of Labor, a special task force to make a searching examination of this problem. The availability and enforcement of state and local laws should be explored as well as the ramifications of a Federal intrusion. Although Federal employee strikes are not a problem today, they could become a problem in the proximate future. Hence, this potential problem area, and particularly the bearing of recent changes in Federal employer-employee relations on it, should also be studied in depth.

You should discuss the vexing problem of public employee disputes with the Secretary of Labor at an early opportunity.

This "vexing problem" prompted a quick White House response and on February 13, 1969, President Nixon sent a memorandum to Secretary of Labor George P. Shultz directing him, in conjunction with Attorney-General John Mitchell and HUD Secretary George Romney, to establish a special task force to make a searching examination of this problem. The report and recommendations of this special task force were to be submitted no later than March 14, 1969.

While the extent of lateral coordination by the Secretaries of Labor, Justice and HUD on this problem is not clear, policy offices within the Department of Labor did make an analysis of possible options and made recommendations in this area. The Labor Management Services Administration, for example, analyzed the problem and made recommendations as follows:

Disputes Involving Public Employees (X-10)

The President's memorandum requests that the Secretary establish a "special task force to make a searching examination of" disputes involving public employees, and to submit a report and recommendations to him by March 14.

Federal Employee Disputes

Issue

The problem of public employee disputes in the Federal service is an integral part of the structure now governed by Executive Order 10988. A comprehensive review of five years of experience under the Order was completed in April 1968.

Options

1. Establish a special task force under the leadership of the Secretary of Labor to review the problem of Federal employee disputes.

The task force should include high level officials from Defense, Housing and Urban Development, Justice, Post Office, Civil Service Commission, Bureau of the Budget and the White House. It would review the findings and recommendations contained in the draft report (unofficial) prepared as a result of the extensive examination of Federal service labor relations in 1967-1968. It would make recommendations as to approaches for preventing and/or resolving employee disputes in the Federal sector, and suggest the enabling device for initiating them (i.e., executive order, legislation).

2. Request the Chairman of the Civil Service Commission to establish a special task force to report to the Secretary of Labor.

The Civil Service Commission Chairman should reconstitute the Commission's newly-formed study group into a special task force to examine only the problem of Federal employee disputes and make a report of findings and recommendations to the Secretary of Labor.

#### LMSA Recommendation

##### Option 1.

This procedure implements the President's instructions to the Secretary of Labor. Its advantage over Option 2 lies in the fact that the Civil Service Commission is the overall agent of the Federal employer and as such represents, at least in the eyes of government unions, only the employer point of view. The Department of Labor is not viewed in this way by agencies or unions.

#### State and Local Employee Disputes

##### Issue

The President requested examination of "public employee disputes," thereby including State and local employees. The sensitive relationship between Federal and State governments requires a delicate approach. Federal intrusion could have adverse implications. There are also legal restrictions. The options outlined below seek to recognize these problems.



Options

1. Establish a special task force under the leadership of the Secretary of Labor.

The task force should include representatives of both Federal and State governments and representatives of public employee organizations. The task force could authorize studies of laws, regulations, policies, practices, and problems, and could make recommendations to the President for the formulation of national policy.

2. National Conference.

In a speech last October, the President supported the idea of a national conference, called by the Secretary of Labor, to examine public employee problems.

Such a conference, through subcommittees, could develop substantive recommendations for future approaches and actions.

3. Legislation.

The Secretary of Labor could prepare a legislative proposal amending the Taft-Hartley Act to include public employees.

4. Nongovernmental approach.

Appoint a commission comprised of a nongovernment group of experts in the field of public employee labor relations to examine the problem in depth. They should consult with government officials, employee organization representatives, and other individual experts in the field, including academicians. A reasonable time should be

allowed for deliberations and the development of recommendations.

5. No action.

The Secretary of Labor could recommend to the President that the Federal government not involve itself actively in State labor relations but instead leave action in this area to the National Governors' Conference or to the individual States. The Department of Labor's role would continue to be consultative, advisory and educational in terms of the program already initiated in the area of state and local government public employer-employee relations.

LMBA Recommendation

Option 2.

This procedure for which the President has already expressed support, would provide the opportunity for in-depth examination of Federal, State and local government labor relations. Further, it could provide the starting point for the development of a national policy on the problem of disputes involving public employees.

Lastly, it would bring before the nation dramatically the urgent need for developing orderly procedures for handling public employee disputes.

Later, these recommendations were incorporated in a memorandum to the Secretary of Labor. (See Appendix B )

The Under Secretary's Task Force on Labor Relations in  
State and Local Public Service

While there were LMSA summary policy recommendations written in May, 1969 and budget provisions made for Fiscal 1970 concerning activities in this area, it was not until Fall, 1969 that Secretary Shultz initiated an internal task force under the direction of Under Secretary James D. Hodgson to continue the Departmental efforts for formulating the role of relations the Federal government in public sector labor at the State and local level.

The Task Force, with William J. Kilberg, then a White House Fellow as its Executive Secretary and Bruce Millen, ASPER, constituting its core staff, began its efforts de novo as there was no apparent knowledge or reference to the previous White House interest in this area or the Department's response at that time.

With the Departmental decision to create an exclusively internal task force, the previous recommendation to establish a special task force composed of both Federal and State governments and representatives of public employee organizations was either overlooked or ignored. As this previous recommendation for a special task force had become known to outside participants in public sector labor relations, their lack of effective participation in the Task Force later adversely affected the program of the Division of Public Employee Labor Relations, particularly in its relationships with some of the larger public sector unions.

The Task Force staff by the end of 1969 had energetically consulted through an exchange of notes, by telephone or through direct conversation

a wide variety of governmental officials, Federal, State and local, government associations, public employee organizations and academic experts in the field of public sector labor relations. From all these inputs, the staff prepared a program outline in February, 1970 for the work of the Task Force and assignments were made to appropriate Offices and Bureaus of the Department to undertake the identified tasks. (See Appendix C)

The Task Force devoted its efforts to six main areas and various sections of the Department developed issue papers on: legislative action, training, BLS programs, FMCS legal authority to enter public sector disputes, LMRS programs, and public sector labor relations research.

In regard to the LMRS program recommendations in the Task Force Report, Mrs. Beatrice M. Burgoon, Director, Office of Labor-Management Relations Services in LMSA, outlined the proposed areas of responsibility for her Office in this field as follows: (See Appendix D)

1. Provide policy and procedural advice on problems of unit determination, unfair labor practices, grievance procedures, impasse procedures and legal advice to the parties.

2. Provide policy and procedural advice on drafting State or local legislation.

3. Provide regular reports, covering current and potentially critical dispute situations and special reports and staff support for the use of the Secretary, Under Secretary and Assistant Secretary of LMSA. etc. In short, provide all the services available in private sector disputes through LMRS.

She indicated there were two other principal program areas which should be developed: (1) cooperation in training programs and (2) a continuing analysis of labor-management problems in State and local government. The first area she envisioned as being cooperative programs with other Federal agencies involved with labor relations training and with graduate schools and institutes of industrial relations. The second area, the continuing analysis of labor-management relations in State and local government, was necessary in her judgment because this relatively young field had unique problems different from those in the private sector.

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In concluding its Report in/1970, the Task Force made a series of recommendations within its six study areas for actions which various sections of the Department could undertake in public sector labor relations.

#### The Establishment of the Division of Public Employee Labor Relations

Upon assuming office, Secretary Hodgson continued the progress begun by the Task Force which he had chaired. To provide a Departmental focus for assistance in State and local labor relations, he authorized establishing the Division of Public Employee Labor Relations within the Office of Labor-Management Relations Services in the Labor-Management Services Administration.

In August, 1970, Jerome T. Barrett was appointed Chief of the Division and by the end of the year, he and a staff of three professionals and a small clerical force had begun their program activities.\*

In its program development analysis, the Division staff found that the rapid growth in public employment and government unionism had, indeed, resulted in serious strains on the capacity of State and local governments to respond to the demands which labor management problems were placing on their legal

\* Prior to this appointment, there had been a small set of LMRS personnel concerned with State and local government labor relations. They were transferred, however, to the Office of Federal Labor Management Relations when it is established.

and administrative structures. The staff concluded that State and local governments had at least four major needs which must be met if they were to have the capacity to respond to their labor relations problems:

- 1) more effective public policy frameworks for resolving public employee-management relations problems, i.e. legislation and administrative agencies and procedures to implement public labor relations laws,
- 2) more competently trained personnel on both sides of the bargaining table to negotiate and administer labor agreements, together with a greater availability of third-party neutrals to assist in disputes settlement,
- 3) better information services and statistical data upon which to base their policies and administer their programs, and
- 4) more extensive research: a) to identify and understand the basic causes of public employee labor relations problems, b) to determine the relationship of these problems to public policy and other aspects of government, and c) to suggest alternative solutions for these problems.

Based on this analysis, the major objectives of the program of the Division were: 1) to assist in the development of constructive policy for public employee labor relations at the State and local government levels, and 2) to provide the participants in State and local government labor relations--public management, public employee organizations, and neutrals--with the technical assistance, training and information required for effective labor-management relations. To fulfill these objectives, the Division

staff developed program activities in the areas of: a) direct technical assistance, b) information services, c) training, and d) conferences.

Program Activities of the Division of Public Employee

Labor Relations

In support of these program activities during the period of 1971-1974, the Division had a staff of six budgeted positions and incurred actual obligations of \$86,859 by the end of FY71; by the end of FY72, it had eight positions and had incurred obligations of \$307,015; by FY73, it had ten positions with actual obligations incurred during the year of \$393,032; and by the end of FY74, its staff had remained at ten positions while the actual obligations of the Division for the year were \$376,564.

During the Division's first year, the program areas of information services and conference activities received the greatest initial staff attention. During this period, the primary effort was directed toward completion of a series of publications and to planning and conducting a national conference, the Secretary of Labor's Conference on State and Local Government Labor Relations, November 21-23, 1971. Following the conference, the Division was able to expand its activities and staff to permit a more balanced emphasis on all of its four elements, as will be noted in the following sections.

1. Technical Assistance

In general terms, the technical assistance program has been directed toward assisting State and local jurisdictions in (a) development of labor relations policy and legislation, (b) resolving representation issues in individual jurisdictions, including helping to determine appropriate bargaining units and conducting representation elections where no statutory arrange-

ments existed, and (c) resolving problems which have developed in the early operations of neutral administrative agencies, such as public employment relations boards. Assistance has been provided in response to requests from States and local jurisdictions, not on the Division's own initiative.

The demand for such assistance has closely reflected the current status of public sector labor relations within the respective jurisdictions. In States such as New York, which have had comprehensive laws and fully staffed agencies to administer them, there has been relatively little demand for our help. On the other hand, in States which either have lacked a statutory framework or which have just passed a law, there has been a continuing need for the kinds of support services provided by the technical assistance program.

Many local jurisdictions, for example, lack a statutory framework for the resolution of bargaining unit or representation questions, but may be ready to recognize newly organized groups. When requested by the parties, technical assistance has been given in determinations of appropriate bargaining units, developing an election agreement and, in a few cases, supervising the elections and certifying the election results.

In the earlier phase of its technical assistance activities, the Division staff assisted in such elections in the District of Columbia; Houston, Texas; Denver, Colorado; Albuquerque, New Mexico; and Topeka, Kansas. In conformity with the objective of assisting States and local jurisdictions to develop a capacity to administer their own programs, elections are now directly supervised only as demonstration projects for training local personnel in the procedures for conducting representation elections.



The Division has responded to requests for other types of technical assistance including those from State officials in Kansas, Indiana, Minnesota, Oklahoma, District of Columbia and Montana asking help in drafting rules and regulations for administering their newly passed statutes. For Maine and Nebraska, also, assistance has been provided to the state agencies responsible for implementing their public sector labor relations laws. In addition, consultation on proposed legislation for public employee labor relations was given to Alabama, Colorado, Iowa, Kentucky, New Mexico, West Virginia and Virginia in response to direct requests from officials of those State governments.

Assistance to neutral administrative agencies in Massachusetts, Nebraska and Los Angeles, California has been provided in the establishment and maintenance of a digest and topical index of their respective board decisions.

## 2. Information Services

The Division in its information service activities functions as a center for identifying, collecting, developing and disseminating information on public sector labor relations matters of concern to State and local jurisdictions. The program provides a continuing review of events pertaining to this area, focusing in particular upon proposed bills introduced into State legislatures and upon court decisions which may impact upon State public sector labor relations policy.

The principal program effort in this area has been the Public Sector Labor Relations Information Exchange. This activity has developed and functioned as a clearinghouse for a broad range of information concerning public

sector labor relations. It has prepared and distributed several important publications including a comprehensive bibliography, an analysis of the labor relations situation in each State, a tabular summary of State labor relation legal provisions, three directories (management organizations, public employee organizations, and neutral agencies), and the proceedings of the Secretary's Conference. A calendar of public sector labor relations events is published and distributed quarterly to a mailing list covering all 50 States.

As part of the dissemination efforts, a mailing list of approximately 3,500 individuals and organizations has been developed. It is organized in thirty-two sub-sets for particular groups to permit the most effective and least costly distribution of our publications.

### 3. Training

Through both staff and contract training, a continuing effort has been directed toward improving the quality of public sector collective bargaining and third party neutral involvement in that process. With the appointment of a professional training specialist to the staff in February, 1972, the Division's program efforts continued to expand. They have included training in all the principal problem areas of the labor relations process and have been conducted for and with public management, public employee and neutral organizations in virtually all sections of the country.

In June, 1972, the Division conducted a five-day seminar for new public members of State and local public employee labor relations boards and commissions. Members of these agencies from twelve States, one territory, and from the County and City of Los Angeles, attended the sessions. Seminars for new public members of such agencies have been held annually since then.

In 1972 and again during 1974, similar seminars were conducted for all members of the new public employment relations boards of Kansas, Oklahoma, Montana and the State of Illinois Office of Collective Bargaining.

In July 1972, a training program in contract negotiations was conducted jointly with the City of Los Angeles' Division of Employee Relations and included representatives of both management and employee organizations. In January 1973, a similar program was held for thirty-six management and public employee organization representatives in Maine; and during August 1973 a training seminar using simulated negotiations techniques was conducted in New Hampshire involving the International City Management Association and the International Personnel Management Associations. This training format was also utilized in April 1973 with members of the Associated California Employees(ACE), a state-wide association of county and municipal personnel. During 1974, negotiation skills seminars were conducted for various labor and management groups in such widely separated parts of the country as the University of Mass, Amherst, Lubbock, Texas, Baltimore, Md., Boise, Idaho, and Orlando, Florida.

In February 1973, the staff held another type of training seminar for members of the Washington Metropolitan Council of Governments in which contract administration, including grievance procedures, was stressed. On November 8-10, 1973, a similar program was conducted for the city of Jamestown, New York which included representatives from both public management and employee organizations. During 1974, grievance administration training seminars were held for the State of New Jersey, another in Helena, Montana, for AFSCME councils in Evanston, Ill. and Haverhill, Mass. and for public management and employee organizations in Juneau, Alaska.

Contract Training

In addition to staff conducted training, the program includes training undertaken by contract. Some examples of contract training programs include:

(a) University of California at Berkeley.

This project, first funded in FY72, was designed to increase the number of arbitrators from minority groups--Blacks, Mexican-Americans and women--groups now underrepresented in the arbitration process, and promote their acceptability through training and exposure. Second year funding on this project was made to the American Arbitration Association in San Francisco to develop a follow-up program for its trainees to assist in their more adequate utilization in arbitration activities.

(b) University of California at Los Angeles.

During the first year of its funding in Fiscal Year 1972 the UCLA project was designed to bring more young individuals with labor relations backgrounds into public sector arbitration. It was a three-step program beginning with formal training, progressing to observing actual hearings, and concluded with trainees conducting hearings and issuing awards in carefully structured situations.

Second year funding was granted to UCLA to develop a follow-up program to meet the continuing needs of the individual graduates of the original program and the group as a whole. Since there has been little knowledge as to how to develop new third party neutrals and to gain their acceptability, the project has had a further objective of formally evaluating the training program--its structure, its content, its trainees--and assessing its strengths and weaknesses.

(c) Temple University, Philadelphia, Pa.

This project was designed to test the feasibility of having third party neutrals assist the parties in collective bargaining throughout the year and not just during periods of active negotiations. The project was intended to promote a better understanding of the bargaining process, its opportunities and limitations, and to avoid errors which frequently damage a bargaining relationship, particularly during the initial phases. While the project is still in progress, its results to date are mixed and in its final report, a particular effort will be made to distinguish the set of factors which seem to enhance the successful use of third party neutrals as compared to those which have been involved in the failure of such neutrals to affect their respective situations.

#### 4. Conferences

The Division's program has also included a number of conference activities which it has planned and conducted, as well as those which it sponsored through contracts.

In November 1971, the Secretary held a special conference on State and local government labor relations which was attended by representatives from forty-five States, three Territories, and the District of Columbia. It was the first time the Federal government had provided a forum for public management to discuss State and local government labor relations, and gave the participants the opportunity to identify needs and problems and to exchange information about their respective experiences.

A year later, representatives of some twenty public employee organizations met in a union conference with the Assistant Secretary for Labor-Management Relations. The purposes of that meeting were: (1) to assist

the Department in identifying the problems and needs of employee organizations in the public sector, (2) to acquaint those labor organizations with the resources and programs of LMSA's Division of Public Employee Labor Relations, and (3) to explore ways in which the Department could more effectively assist public employee organizations in the areas of technical assistance, information and training.

In addition to its own staff conducted conferences, the Division also sponsored an extensive series of conferences under contracts with various organizations involved with public sector labor relations. Under contract with the National Center for Dispute Settlement, the Division sponsored a series of regional and individual State conferences in New England during the fall of 1972 and the first half of 1973. Later that year and during the first part of 1974, NCDS undertook a second project similar to the New England conference series to conduct State seminars on impasse resolution in public sector labor relations for emerging neutrals in the five West Coast States-- Alaska, Washington, Oregon, Nevada and California. Directed at labor relations practitioners, the purpose of these conferences has been to acquaint them with the existing legal frameworks for collective bargaining in their respective States and to discuss procedural and substantive problems, especially in the area of impasse resolution.

In February 1973, a Midwest Regional Conference was conducted, under contract, by the University of Iowa for "policy makers" in the Midwestern states with no comprehensive public sector labor relations legislation. It brought State legislators, personnel officials and neutrals together for discussions centering on the experience of neighboring States with legislation, along with a national overview of the situation in other States and

the study of the various alternatives available for their own States. Similar regional conferences for policy makers from both public management and employee organizations were held in the fall of 1973 and the winter of 1974 at the University of Texas, Austin with representative from Texas, Louisiana and Arkansas; at Georgia State University with State and local Government officials, union representatives and academic personnel from Georgia, Alabama, Tennessee, Florida and North and South Carolina; and at the University of Kansas with attendees from Kansas, Oklahoma, Missouri and Nebraska.

Under a training program contract, the New York State Public Employment Relations Board conducted a conference in the spring of 1973 to develop mediation and factfinding skills for ad hoc neutrals from Vermont, Maine and Massachusetts.

In an attempt to develop relationships with councils of governments and other types of regional agencies, the Division sponsored a conference conducted by the National Association of Regional Councils in February, 1974 to identify and encourage regional council awareness of public sector labor-management relations.

Another aspect of the Division's conference program has been staff participation, either as speakers or attendees, in conferences sponsored by other public sector or related organizations. Frequently, the Division has also served as a resource for other conference sponsors for informal advice and information. During 1973, for example, the staff participated in the planning of the regional meetings of the American Assembly in its discussion of the policy issues of public unionism. In May, 1974, a staff member played a major role in planning and conducting a National Symposium on Public Policy and State Education Agency Roles in Teacher Labor Relations, hosted by the Office of the Superintendent of Public Instruction, State of Ill.

Organizational Relationships of the Division of Public

Employee Labor Relations

In the program activities just described, the Division has had a "client" relationship, unique within LMSA, with a wide variety of organizations. In its nearly four years of operations, it has provided services to executive and legislative bodies of State and local governments, to school and other special purpose districts, and their respective national organizations, to various types of public employee organizations, to professional associations in the field, to universities and other institutions with research and training programs, and to public interest groups which have been concerned with public policy and practice in State and local government labor relations.

These client relationships and the services rendered through them, however, could not have occurred had the Division not also developed an extensive series of collaborative, functional relationships, to be described below, with many other organizations within the governmental and industrial relations "communities." Establishing these relationships, both formally and informally, has been a vital and continuing aspect of the program development efforts of the Division. These relationships, in their administrative and substantive aspects, have provided/much of the policy direction and program content for the support and growth of the Division's activities.

Without regard to any strict chronology or priority of their importance in the evolution of the Division's infrastructure, these relationships may be described as: 1) those involving other Federal agencies, a) within the Department of Labor, and b) non-D/L Federal agencies; 2) State and local



governmental agencies; and 3) a potpourri of associations of governmental bodies and agencies, professional associations of governmental/industrial relations personnel, and non-governmental institutions and organizations, public and private. The Division's relationships with groups in the second and third categories have tended to be more complex and less easily defined than those with its Federal counterparts. This has occurred because such groups may simultaneously be both "clients" and collaborators in one or more of the Division's four program areas.

1. Federal Relationships

a. Within the Department of Labor

The Division was established within the Office of Labor-Management Relations Services, LMSA and it has been responsible to that Office for its policy direction and supervision.

In its technical assistance and training activities in various parts of the country, the Division has benefited from the local knowledge and competence of LMSA's regional office staffs. Likewise, in its information and publications activities, the Information Officer of LMSA has been of substantial assistance.

An area in which a major amount of Division staff effort has been expanded has been public sector labor relations research. While the Division has never had any budgeted positions for research, it has collaborated with the Division of Research and Analysis in the Office of Labor-Management Policy of research priorities and potential contractors, as well as in the Development, LMSA in the identification/ formulation and administration of research projects in public sector labor relations.

At various times, the Division has been involved with the Office of Research, ASPER in both the planning and coordination of public sector research

and in the joint administration of research projects. The Division, accordingly, functioned for some time as a member of the Public Sector Research Planning Group, chaired by the Director of Research, ASPER and it was the Government's Technical Representative on the Nassau County Productivity Project, jointly funded by LMSA, ASPER and the National Commission on Productivity.

As part of its program development efforts to obtain the public sector data necessary for its clients at the State and local governmental levels to function adequately, the Division has expended considerable time seeking to expand and improve the limited amount of such data provided in the programs of the Bureau of Labor Statistics. The first effort in this direction took place during the Secretary of Labor's Conference on State and Local Government Labor Relations in November, 1971. The Division functioned there as a "broker" between BLS and the newly organized National Public Employer Labor Relations Association. Members of the Association at several meetings during the conference tried to persuade the Department to respond to their needs for better data in municipal collective bargaining. On two subsequent occasions, the Division participated in meetings with NPELRA and governmental statistical agencies on public sector data needs, but these meetings resulted in few significant program improvements in this area. On this issue, within LMSA, the Division made an extended analysis of BLS activities in the public sector which was sent to the Director of the Office of Labor-Management Policy Development with recommendations concerning continuing the LMSA funding of BLS programs.

In a more fruitful and positive internal relationship, the Division has continued to exchange information and counsel with the Division of State Employment Standards, Employment Standards Administration. The generosity of that Division's staff in sharing their knowledge and long experience with state labor agencies and the problems in this field greatly assisted a new staff just learning its way around.

At a policy level, the Division provided significant staff support in 1972 to the Secretary's Office as it formulated the Administration's response to the invitation from the Special Subcommittee on Labor, Committee on Education and Labor, House of Representatives to testify on H.R. 12532, H.R. 7684 and H.R. 9329, all relating to State and local government labor relations. (See Appendix  E )

In more strictly functional relationships, the Division benefited from the assistance received from the Division of Procurement, OAS in the processing of various research and training contracts. Likewise, the counsel and technical help given by the Division of Printing Management, OAS made possible a much more effective publications program with the limited resources available to the Division.

b. Relationships with Non-Department of Labor Federal Agencies

In the course of developing its own program activities in State and local government labor relations, the Division interacted with many other Federal agencies which were also concerned with this area.

In particular, the Division has worked closely with the Government's Division, U.S. Bureau of the Census as that Division continued to develop more extensive and sophisticated data on labor relations within State and

local governmental jurisdictions. With the publication of Volume 3, Number 3 of the 1972 Census of Governments, for example, we will have benchmark labor relations data for the first time on every State and local jurisdiction concerning:

1) Number of governments which engage in collective negotiations and/or meet and confer discussions.

2) Data on number of contracts and number of memoranda of understanding in effect at the end of October 1972 as well as the number of each which became effective during the year ending October 1972.

3) Number of organized full-time employees as of October 1972 --totals and for selected governmental functions.

4) Number of work stoppages during the year--totals and for selected functions.

5) Number of full-time employees involved in work stoppages during the year--totals and for selected functions.

6) Number of workdays idled because of work stoppages during the year--totals and for selected functions.

7) Number of man-days idles because of work stoppages during the year--totals and for selected functions.

In its working relationship with the Bureau of the Census, the Division of Public Employee Labor Relations obtained LMSA research funds to support the replication of the 1972 Census of Governments data on labor relations in the Census Bureau's Annual Survey of Public Employment. The availability of these data will make possible a two year comparison period for the determination of potentially significant trends in State and local government labor relations.

Another key Federal agency with whom the Division has had continuing contact has been the U.S. Civil Service Commission. While the primary responsibility of the Civil Service Commission concerns the personnel policies and practices of Federal employees, it has been given administrative duties for some Federal programs which directly and indirectly impact upon State and local government labor relations. It has the responsibility, for example, of monitoring the enforcement of merit principle standards in the mandated Federal grant programs to State and local jurisdictions. With the passage of the Intergovernmental Personnel Act of 1970, the Civil Service Commission established the Bureau of Intergovernmental Personnel Programs (BIPP) to administer an extensive program of technical assistance and grants for the improvement of public personnel management at State and local levels, including labor relations.

In addition to working informally with BIPP in the selection process for some of its grant projects, the Division analyzed and made recommendations to the Assistant Secretary for LMSA that Departmental action be taken to encourage the Civil Service Commission to change its policy and allow greater participation of employee organizations in the labor relations programs undertaken with IPA funds. High level interagency discussions between the Department and the Civil Service Commission were held, but no appreciable policy changes were made.

The Division also collaborated with the Civil Service Commission's Office of Labor-Management Relations and its Office of Policy and Standards at various times concerning the Nixon Administration's policy position regarding Federal legislation on State and local government labor relations. The principal occasion for such joint action occurred at the time of

Secretary Hodgson's letter to the Thompson Subcommittee, noted above.

The Division also participated in the joint exchange of information and training materials with the Labor Relations Training Center in CSC's Bureau of Training.

In a more informal manner, the Division also shared its concern for the problems of mediation and arbitration in public sector labor relations with the Federal Mediation and Conciliation Service, particularly in the area of training for increasing the availability of arbitrators in the public sector.

With over 50% of State and local employees being in educational institutions and with work stoppages being greater in this governmental function than in any other, the Division spent considerable effort in attempting to locate officials within the U.S. Office of Education who were responsive to the labor relations problems in this field. These efforts met with limited success and it was only in the Office of State Agency Cooperation in the Bureau of Elementary and Secondary Education that any recognition and slight program action was found regarding these problems. Within that program area, the Division staff was invited to participate in an internal staff training seminar on educational collective bargaining and later a Division staff member helped plan and participated in a National Symposium on Public Policy and State Education Agency Roles in Teacher Labor Relations, funded with U.S. Department of Education support.

Along somewhat similar lines, the Division engaged in discussions with program officials in both the U.S. Department of Transportation and

the U.S. Department of Housing and Urban Development concerning the impact of their program policies and administrative procedures upon the labor relations practices of their "clients", most of whom were employers of State or local government personnel. While some of these officials recognized the importance of labor relations problems and their potential impact on the effectiveness of Federal programs within their respective areas, the Division was never able to generate any sustained momentum for the development of Federal guidelines in this area.

2. Relationships with State and Local Governmental Bodies  
and Agencies

As previously indicated, the Division's relationships with non-Federal bodies and agencies tended to be less easily defined as they were frequently simultaneously both "client" and functional, collaborative relationships. While the Division provided many services to such groups, it could not have developed the content of its programs in the areas of information services, training, technical assistance and conferences without their active cooperation and assistance. The Division constantly drew upon such groups for validated information for its publications, for expert personnel in staffing training programs and conferences and for policy advice in the general development of its programs. Given the complexities of State and local government labor relations with its diversity of legal and administrative structures in our fifty States and territories, it simply was not possible to develop a realistic program from Washington without an extensive network of willing and often

critically-minded colleagues in the field to keep us "reality-bound."

In particular, the Division benefited from the generous assistance of many of the staffs of public employment relations boards and commissions throughout the country who were willing to share many hours of their time in response to our needs. State offices of labor relations, departments of labor and boards of mediation also lent the Division active help within their respective spheres of operations. Likewise at the local level, municipal officials in various functions made possible and actively participated in many Division programs.

3. Relationships with Associations of Governments, Professional Societies of Governmental/Industrial Relations Personnel, and Non-Governmental Groups, Public and Private

One of the characteristics of American society is that beyond its formal governmental structure is a large network of associations of governments, professional societies of governmental officials and scholars, public service organizations and public interest groups which share a common concern for the quality and effectiveness of governmental activities.

With its focus on public sector labor relations, one of the program development needs of the Division was to identify within the above mentioned network which of its members had a specific concern for the problems relating to the mission of the Division. One major segment of this network was identified in the Division's Directory of Public Management Organizations which listed the principal governmental groups that have manifested a continuing interest in public sector labor relations. While the extent of the Division's individual relationship with these organizations varied substantially, each



was a potential resource for facilitating the Division's programs within their respective areas and many were active participants.

Among the non-governmental groups with which the Division had a working relationship, the Directory of Public Employee Organizations, issued by the Division, identified twenty-six such organizations which were active on a national scale in public sector labor relations. Again, as with the public management organizations, the extent of the Division's individual contact with them varied significantly, but many were actively involved in the exchange of information and participated frequently in Division training and conference programs.

The Division also has worked closely with many of the industrial relations institutes associated with the principal universities throughout the country. These institutes have played a significant role in the LMSA research program in public sector labor relations and have assisted the Division in various ways in its training and conference programs. Institute staff members have also given freely of their time in critiquing Division publications and making valuable suggestions for their improvement.

While not directly a part of the Division's activities, individual staff members played a significant role within the professional societies relating to their specialized interests of industrial relations research, training, and mediation and arbitration activities. Staff members, for example, were actively involved in the formation of the Society for Professionals in Disputes Resolution, a new professional society for individuals involved in the field of mediation and arbitration.

Summary

The establishment of the Division of Public Employee Labor Relations in 1970 was an organizational response arising from the political recognition that a new set of labor relations problems within State and local governments had reached national proportions and that some appropriate means were needed to deal with them.

Within the range of policy and program options sketched in the original LMSA analysis and in the subsequent work of the Under Secretary's Task Force on Labor Relations in State and Local Public Service, the Department's response in setting up the Division was the most minimal of the alternatives, although probably the only one possible within the political climate of the time.

Given a limited policy mandate and modest resources, the Division plunged into the uncharted seas of Federal relationships within State and local government labor relations. Based upon its analysis of the priority needs of State and local governments in this area, the Division began program efforts to develop: 1) more effective public policy frameworks for resolving public sector labor-management problems, 2) more competently trained personnel on both sides of the bargaining table to negotiate and administer labor agreements, 3) better information services and statistical data in public sector labor relations, and 4) more extensive research to identify and understand the basic causes of public sector labor relations problems and to suggest alternative solutions for these problems.

While the objective accomplishments of the Division's programs have been modest relative to the ever expanding needs in State and local government labor relations, the Division has established a Federal presence with

a generally favorable response from "clients" in a politically sensitive policy area where little constructive effort had previously been undertaken. A beginning of a national effort has been made and in a program area where substantial Federal policy changes will probably be made shortly, the accumulated experience of the Division may enable it to make a significant contribution in the future.

Appendix A: White House Memoranda

THE WHITE HOUSE

WASHINGTON

February 13, 1969

MEMORANDUM FOR

Honorable George P. Shultz  
Secretary of Labor

We need to develop a basic policy with regard to disputes involving public employees. I request that you, in conjunction with Mr. Mitchell and Mr. Romney, establish a special task force to make a searching examination of this problem. (See Item X-10 in the report from Arthur Burns' group)

Your report and recommendations should be submitted to me no later than March 14.

When you submit your report to me, please send a copy to Arthur Burns.



ADMINISTRATIVE

Time: 9:30 A.M.

THE WHITE HOUSE

WASHINGTON

# 1449

OFFICE OF SECRETARY OF LABOR  
RECEIVED  
FOR ACTION: Sec. George P. Shultz  
FEB 14 1959  
PH  
3.9.101112.123.43.0

cc (for information): Vice President  
Sec. George Romney  
A.G. John Mitchell  
B. Harlow  
M. Anderson  
H. Klein  
J. Frey  
L. Huebner  
R. Ziegler

FROM THE STAFF SECRETARY

SUBJECT (see attached): Development of a Policy with regard to Disputes  
Involving Public Employees

ACTION AND REMARKS:

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> For Necessary Action | <input type="checkbox"/> Draft Reply          |
| <input type="checkbox"/> Prepare Agenda and Brief        | <input type="checkbox"/> Draft Remarks        |
| <input type="checkbox"/> For Your Comments               | <input type="checkbox"/> For Your Information |
| <input type="checkbox"/> For Your Recommendations        |   |

Other:


To expedite lateral coordination, please make copies of Dr. Burns' report # X-10, Public Employee Disputes, available to Secretary George Romney and Attorney General John Mitchell.

DVE Date: March 14, 1959

Time: 2:00 P.M.

Please attach this copy to material submitted.

If you have any questions or if you anticipate a delay in submitting the requested material, please telephone the Staff Secretary immediately.

  
K. R. COME, JR.  
For the President

Appendix B: LMSA Policy Recommendations

3/18/69

MEMORANDUM FOR THE SECRETARY

SUBJECT: Public Employees Labor-Management  
Relations

The President's directive cites the need to develop a basic policy on disputes involving public employees. He requests the Secretary of Labor to establish a special task force to make a searching examination of this problem.

The matter should be explored separately at the Federal level and at the State and local level. This approach is warranted primarily because (1) the Federal system, although decentralized, is governed by a single executive order, (2) there is no comparable coordinated program or system among the State and local governments, and (3) only a handful of States and municipalities have enacted comprehensive and progressive legislation covering public employee labor relations, while a number of State and local governments have ignored the matter completely.

A. Federal Employee Labor Relations

I. THE ISSUE

There is need for a revised national policy that will improve the current system of Federal employee-management relations.



Background

On January 17, 1962, President Kennedy, pursuant to recommendations of a Presidential Task Force under the Chairmanship of the Secretary of Labor, issued Executive Order 10988.

On September 8, 1967, President Johnson established a special Review Committee to examine the five years of experience under the Order, to determine the program's accomplishments as well as its deficiencies, and to consider "any adjustments needed now to ensure its continued vitality in the public interest." The Secretary of Labor was appointed Chairman.

At public hearings held in Washington October 23-27, 1967, more than 50 agency and labor organization representatives and individuals appeared before the Committee. In addition, more than 50 others submitted written statements.

Most agency and union representatives during the hearings urged the establishment of a central authority for administration of the program, procedures for the resolution of negotiation impasses, and provisions for impartial third-party decisions on certain disputed matters.

A series of developments (including changes in membership of the Committee) precluded either final agreement on a Draft Report or any transmittal to the President. The Draft Report was included as "Attachment B" of the Fifty-sixth Annual Report of the Secretary of Labor but was specifically designated as a document having no official status.

The Draft Report found that Federal labor-management relations have made dramatic progress under Executive Order 10988. It found a demonstrated need for establishing a central authority for program decisions; for improving grievance, appeals and arbitration procedures; for providing techniques to assist in the resolution of negotiation impasses; for the Department of Labor to provide impartial third-party decisions on disputed matters as well as a need for clarifying and improving other areas of the executive order program.

In March 1969 the Chairman of the U. S. Civil Service Commission formed a study-group of representatives of selected agencies to review the Federal employee-management cooperation program established by E. O. 10988 and to make recommendations for its improvement. This review process is now in progress.

#### Employee Militancy

There has been an obvious worsening in the climate of Federal employee-management relations within the past year and a sharp increase in employee organization militancy. Talk of strikes, deletion of "no-strike" pledges from constitutions of unions of Federal employees, picketing and demonstrations have been on the increase. So far, the Federal service has been virtually free of strikes and illegal picketing. Since the Executive Order was issued only one "real" strike has occurred--at TVA in 1962. However, the strike issue was posed in 1967 and 1968 by several "incidents."

These incidents reveal a restlessness and heightened militancy among Federal employees which can burst into strike action at any time. This will severely test the current no-strike law. This militancy appears to have increased, due in part, to an over-expectancy on the part of Federal employees as to changes in the current system of Federal employee labor relations.

## II. THE GOAL RECOMMENDED

Revise the current system of Federal employee-management relations established seven years ago. The system should be strengthened to achieve realistic bilateralism and so structured as to provide orderly procedures for prevention of disputes by establishing effective methods for the resolution of negotiation impasses and handling grievances and unfair labor practices.

To accomplish the goal the Department of Labor should participate in the Civil Service Commission study group currently reviewing the Federal program. The report of the study group, including suggested changes, should be transmitted to the Secretary of Labor. The Secretary of Labor, in conjunction with the Attorney General, the Secretary of Housing and Urban Development and other appropriate officials should review the study group report and make recommendations to the President.

An alternative approach would be for the Secretary of Labor to establish a special task force to examine in depth the present Federal employee-management cooperation program, assess its strengths and weaknesses, identify areas for adjustment, and recommend revisions.

This approach is rejected because it would virtually duplicate the work of the on-going Civil Service Commission study group.

### III. BASIC FEATURES OF PROPOSAL RECOMMENDED TO CARRY OUT GOAL

The in-depth review of the Federal program established by E. O. 10988 was completed by the 1967-1968 Review Committee. Nothing of additional significance could be learned by repeating such review at this time.

The Civil Service Commission study group is now examining the findings and recommendations of the 1967-1968 review for the purpose of developing suggested revisions in the present program. The study group's suggested changes should be incorporated into a report to the Secretary of Labor.

In conjunction with a group of Cabinet officers, the Secretary of Labor would examine the study group report and use it as a basis for making recommendations to the President.

The advantage in this course of action is that it is non-duplicative, is time-saving, and most importantly gives the final review function the Cabinet-level prestige and authority warranted.

### IV. LEGISLATIVE IMPLICATIONS IN III AND COSTS

If the executive order route is decided upon as the enabling device for revising the current Federal employee-management relations system, the legal basis for such action is found in the authority vested in the President of the United States by the Constitution by 5 U.S.C. § 3301, 7301.

With respect to pending legislation, about twenty-two bills have been introduced in the 91st Congress on the matter of Federal employee-management relations. No hearings have yet been held on these bills. No administration bill has been introduced to date.

An estimated cost must await determination of the scope of revisions recommended. Based upon the recommendations of the 1967-1968 Review Committee, the estimated cost for implementing the revisions was \$2 million annually. New authorizations would be necessary.

B. STATE AND LOCAL EMPLOYEE LABOR RELATIONS

I. THE ISSUE

There is need to direct national attention on the urgency for development by state and local governments of comprehensive and progressive legislation to provide orderly procedures for handling public employee-management relations.

Background

State and local public employment has more than doubled in the past two decades. This trend is expected to continue.

Employee-management relations in state and local governments have been subjected to tremendous pressures which are not expected to diminish in the next decade. A major upheaval in traditional practices is in prospect. Strike volume may rise alarmingly as collective bargaining assumes a more central role in establishing wages, salaries and working conditions.

There has been a lack of comprehensive guidelines on which state and local officials and lawmakers could base their policy decisions. An attempt to fill this gap was made in the 1967 Report of the Task Force on State and Local Labor Relations to the Executive Committee of the National Governors' Conference.

The Department of Labor has undertaken a program intended to make available in the public sector labor-relations, information

similar to that which has been available in the private sector labor relations for many years. To a limited extent the Department has been engaged in an "on request" consultative, advisory and educational role to state and local governments.

## II. THE GOAL RECOMMENDED

Focus national attention on the need for state and local governments to develop progressive and orderly procedures for handling public employee-management relations. Public employees at the state and local government level are increasingly demanding the right as well as the means to participate with management in decisions concerning the conditions under which they work.

To accomplish the goal the Secretary of Labor should pursue concurrent courses of action. He should establish a special task force composed of representatives of both Federal and State governments and representatives of public employee organizations to explore thoroughly (1) the need for developing orderly procedures for handling public employee-management relations, (2) approaches for motivating State and local governments and to assume progressive leadership in such development, and (3) the kind of information and technical assistance needed by states and municipalities for making policy decisions.

Concurrently, the Department of Labor should expand its capacity to provide information and technical assistance to parties interested in State and local employee-management relations.

### III. BASIC FEATURES OF PROPOSAL RECOMMENDED TO CARRY OUT GOAL

It has been demonstrated that labor-management problems and disputes respond favorably to mediation, factfinding, and technical assistance. Many states and local governments lack the capacity to resolve problems without assistance. There should be available to governments, employee organizations and factfinding boards a source of assistance readily available to meet their needs.

A special task force of Federal and State officials and representatives of employee organizations could authorize studies of State and local government laws, regulations, policies, practices and problems. The findings of such studies would identify needs and recommend methods for meeting them. The Secretary of Labor would make recommendations to the President for appropriate action.

Concurrently, the Department of Labor would expand research programs and develop various types of technical assistance programs to provide to the public sector services equivalent to those provided to the private sector.

### IV. LEGISLATIVE IMPLICATIONS OF PROPOSAL IN III AND COSTS

No new authority is sought. There is no legislation pending on this matter.

Pending decision as to the composition of the task force no estimate of cost has been made.

The estimated cost for providing information and technical assistance is \$300,000 annually.



Appendix C: Program Outline of the Under  
Secretary Task Force on Labor Relations  
in State and Local Public Service

Program Outline

The Role of the Federal Government In Public Sector  
Bargaining at the State and Local Level

I. Introduction

The following program outline is posited on the fact that the federal government should, and can, play a more constructive role in assisting state and local governments in resolving problems arising out of unionization of public sector employees. In fact, it is not inaccurate to state that the Department has been laggard in its responsibilities, and to suggest that had an action program been undertaken earlier many painful experiences at the local level might have been avoided.

Possible areas of Federal activity are as follows: 1) research, 2) supportive services, 3) assistance in training, 4) education of the general public on the issues involved, and 5) possible adoption of a legislative stance either in the form of Federal legislation (or action taken by Executive Order), or recommendations for certain provisions which would be advisable to be included in state legislation.

Concurrent with the attempt to move into an action program in the above fields, however, the Department must develop an answer, or range of answers, to certain key questions and issues which have

2.

plagued public management, unions and public opinion from the earliest days of public employee unionism. Many of these issues have stood in the way of organization and the growth of genuine collective bargaining in the past; today, attitudes are changing--partly in response to the rise of growing militancy among public employees. Our task, then, is not to duplicate all research done in this area but rather to pull the available research together and to develop some policy positions for the Department.

The question is no longer whether public employees have the right to organize or the right to bargain, or the right to strike. Between 1958 and 1968, for example, the number of government employee strikes per year rose <sup>from</sup> 15 to 254 and the man-days of idleness jumped from 7,500 to 2.5 million. At issue today is the vital need to develop a rational pattern of labor relations whereby the rights of employees are protected and inconvenience to the body politic is held to a minimum.

Conversations held over the past few weeks with public officials charged with responsibilities to administer legislation in the area of collective bargaining reveal an eagerness on their part to establish a Federal-State relationship which will provide supportive assistance

in the fields enumerated above because of the complexity of the tasks facing them and because of the magnitude of the burden imposed. In addition, most of them are concerned about the dangers which exist in those states where there is no legislation and no administrative mechanism to resolve collective bargaining problems and are fearful of more Memphis or Charleston--like situations which will present problems of social order often with a racial base. Therefore, they are looking to Washington for assistance in solving their own problems and leadership in heading off disruptive disputes elsewhere.

## II. Proposal for Basic Document

It is proposed that the Department take immediate steps to produce an in-house basic document synthesizing research already done in the field focusing on the issues identified below. This paper, structured somewhat on the order of the Secretary's 1965 report, "The Older American Worker" (but not so lengthy), would sum up the nature of the issues and offer a range of possible solutions to problems. This document, then, would provide the Departmental position and thereby justify the need to provide services and carry on certain functions; in addition, it would provide the basis for additional budgetary support when and if required. Consideration should also be given to making the document public -- after certain modifications -- as an educational instrument.

1. INTRODUCTION 4.  
LMSA

Issues to be Analyzed

1. Employee Rights

LMSA/ETC

- The principle of governmental sovereignty vs. the right to organize, be recognized and bargain collectively.

2. Structure of the System Devised to Administer Bargaining L

- Establish a new, independent neutral agency or expand the role of an established department to carry out new functions.
- Use of completely public administrative board as New York State's PERB vs. tripartite structure as in New York City under the Office of Collective Bargaining.
- Method of Determination of Bargaining Units.
  - Administrative mechanism,
  - size and type of units desired to facilitate bargaining process,
  - method of determining supervisors and/or others to be excluded from bargaining unit.

3. Locus of Decision-Making and Power to Bargain

*LMSA*  
*Con*

-- Delegation of authority by elected officials and legislators to public managers to bargain realistically and in good faith; concurrently, public agency negotiators so empowered must be protected from union efforts to win through political pressures what they cannot win at the bargaining table.

-- Reconciliation of the collective bargaining mechanism with the budget making process and its subsequent treatment at the legislative level -- city, county or state.

-- Reconciliation of the collective bargaining practice with the protection of the merit system (where it exists).

*RECONCILIATION  
OF UNION DS.  
VS. PAST PRACTICE  
PERSONNEL M.*

4. The Scope of Negotiations

*BLS/  
LMSA*

-- Management prerogatives, governmental personnel regulations, and past practices vs. union demands for change and modification.

*J  
RFL*

5. The Right to Strike vs. the Fact of Strikes

- Selective strikes or partial strikes vs. total ban.
- Use of injunctions in specific instances as opposed to blanket prohibition of strikes by law.
- Automatic set legal penalties for violations of law vs. ad hoc penalties when required under specific circumstances.

6. Dispute Settlement

- Mediation.
- Factfinding, with or without recommendations.
- Arbitration, voluntary, compulsory, "advisory."

7. Stance of Federal Government Toward Legislative or Administrative Action

- Federal legislation requiring legislation in States not covered by adequate State legislation.
- Strong recommendations for States to enact legislation embodying certain principles.
- Tying of grants in aid to principle that workers being paid in full or in part by Federal funds must have right to organize.

In addition to the above itemized issues, study should be devoted to four additional areas which are pertinent to the questions raised and will provide additional background information and/or partial guidelines to our efforts. They are as follows:

- Experience of Western and Northern European countries with public sector bargaining. A 132
- A concise record of the present state of legislation at the state and local level. ↓ L 848 S
- An analysis of State and local salary scales as a root cause of conflict. ( ELS
- An appraisal of the impact on the total trade union movement of the absolute growth in numbers and the growth in relative strength of public employee unionism. PLS/211

III. Functions and Services

There are several functions which the Department can perform in order to provide services to public administrators of existing public employee boards, personnel administrators, trade unions and third party neutrals. The general areas of activity are sketched out below, along with indications of where some work is in progress.



A. Research

- ' -- Bibliography to accompany original in-house document. (Already prepared by Department Library; needs review.)
- Identify areas for original research not now filled and not covered by issues listed earlier in this paper, e. g., case studies, the role of union-like associations, the problem of parity pay for police and firemen; studies on the historical evolution of present pay structures within key cities. (LMPD has a draft study prepared but no completion date set.)

B. Data and Statistical Collection

- Review material which is now available, evaluate its relevance and prepare plans for improvements and expansion. Wage comparison data is vital in this field as the "orbit of compulsive comparison" plays a major role in wage demands and determination. Similarly, the affect of the "prevailing wage" concept in the private sector as a basis for determining public sector wages is often distorted. Fringe benefit studies are needed as well as work in the field of contract analysis.

(BLS as well as LMSA have requests for budget increases in both FY '70 and '71. BLS, despite the lack of money, is moving to fulfill certain needs. Pilot wage studies are planned in 8 cities within the next few months. It is printing material on union membership in the public sector and work stoppages. It has just released a report on membership in public employee associations, many of which are beginning to function in the manner of trade unions.)

- Give consideration to the establishment of a tripartite Research Advisory Committee to work out the information needs of the public managers and the unions and to establish priorities of future steps as money becomes available.

#### C. Training

- Develop plans to train mediators, factfinders, public administrators, union leaders and those engaged in the legislative function through a two-tiered approach:

1. Intensify the present training efforts of FMCS, turning the program slightly away from the present informal, ad hoc approach to a more structured program designed to target in on the broader and more numerous clientel required to be served.

The FMCS target group will include negotiators on both sides of the bargaining table as has been done under its preventive mediation program, and third party neutrals.

Thought should be given to evolving from that which is described above to a formal "institute" or "center" after a period of experimentation.

Under such an arrangement FMCS would second working mediators to the "center" for periodic teaching assignments. Under such circumstances, courses could also be devised to serve the needs of those administering the Federal Executive Order governing labor-management relations.

2. Develop a grant program primarily to support the efforts of approximately 12 universities with a proven capacity in the field to permit them to add on to their present campus and extension programs heretofore directed toward private sector activities. Some less experienced schools should also be included in order to build expertise in areas where no law exists and public and official attitudes are hostile to collective bargaining, because it is in just such areas where serious social disruptions can take place which are exacerbated because of a lack of knowledgeable intermediaries.

(A working paper on this subject has been developed by AS/P, E&R. FMCS is at present reviewing and reworking the paper. Telephone conversations have been held with several industrial relations centers and UCLA has submitted some ideas in writing. The New York PERB has also submitted its ideas on a training program.)

Care must be exercised to avoid duplication of efforts in the training field. Preliminary investigation reveals, however, that the demand for training far outstrips the supply of programs

available, although there are a number of such programs. Dr. Helsby of the NY PERB estimates, for example, that from 10 to 15 percent of the panel members available in his state are lost through attrition alone each year.

Programs sponsored by the Public Personnel Association are directed at public administrators; The Conference of Mayors intends to concentrate on policy makers and personnel administrators; the AAA Disputes Center group is concentrating on training those who will be involved more in social problem disputes (many within a union framework to be sure). As indicated, FMCS will train factfinders and mediators and participants. The target area under the university grants program mentioned above would do research and take on the training function on an across the board approach. Cornell is fairly far advanced and has established a close working relationship with PERB which includes maintaining all official records. Both the university of Wisconsin and UCLA are beginning programs but are hampered by a shortage of funds.

D. Supportive Services

- Provide a formal mandate for FMCS to enter public sector cases when the Service determines it can play a constructive role. This could most likely be done by Executive Order and would require a slight increase in FMCS staffing.

Technical Assistance Services

- Provide policy and procedural advice on problems of unit determination, unfair labor practices, grievance procedures, impasse procedures and legal advice to the parties.
- Provide policy and procedural advice on drafting local or state legislation.
- Provide regular reports covering current and potentially critical dispute situations and special reports and staff support for the use of the Secretary, Under Secretary and Assistant Secretary of LMSA, etc. In short, provide all the services now available in private sector disputes through LMRS.

- The Training Grant program administered through LMRS. (LMRS already has such a plan covering the first three proposals under consideration; it should be implemented as quickly as possible.)

IV. Procedural Steps

1. Work should begin immediately on the preparation of the in-house document referred to earlier. After preliminary discussion with representatives of LMSA, FMCS and BLS, the Under Secretary should issue detailed instructions as to work assignments and the precise nature of the product expected. Each paper should include conclusions and recommendations of the individual authors concerning the issues treated by them. These will then be considered for possible inclusion in the final section of the document dealing with conclusions and policy recommendations.
  
2. Assistant Secretary Weber has agreed to arrange for the principal authors of the Brookings Institution study on this subject (who are to come to Washington in March) to extend their stay for a day for a discussion with key representatives of the Department involved in developing this program.

3. Those offices responsible for carrying out the "Functions and Services" program should prepare a working paper describing how they intend to approach their task, investigate if any resources can be shifted to the new function, as BLS apparently already has done in part, indicate specifically what use they will make of the additional funds asked for in the FY '70 and '71 budget, and finally, estimate how much above and beyond the requested increase would be required over what time span in order to cope with the problem efficiently. (This is not a request which assumes that utopia can be achieved, but certainly each Administrator can project to the point of knowing at what level a job is being well done.)

4. Successive steps, such as holding a Secretary's Conference, etc. can be considered after progress has been made in the proposals advanced at this point.

Millen/Kilberg  
February 1970

Attachment



The following people were consulted through exchange of notes,  
by telephone or through direct conversation in the preparation of  
this paper:

The Under Secretary  
Assistant Secretary Arnold Weber  
Assistant Secretary Jerome Rosow

Harry Cohany                    BLS  
Tom Gavet

John Shinn  
Joseph Bloch                    LMSA  
Beatrice Burgoon

King Carr  
Charles Skopic                   AS/P, E & R  
Philip Oliver

Sam Zagoria  
John Grimes                    Conference of Mayors/League of Cities  
John Fields

Lowell McGinnis  
Ken Moffett                    FMCS  
Larry Schultz

Robert Helsby                   N. Y. State Public Employment Relations Board  
Joseph Crowley

Members or directors of state labor relations commissions of  
Vermont, Wisconsin, New Jersey, Connecticut, Pennsylvania  
and Michigan.

Arvid Anderson, Director, N. Y. City Office of Collective Bargaining

Professor Russel Smith                    University of Michigan

Professor Everett Kassalow                    University of Wisconsin  
Professor Gerald Somers

Professor Ben Aaron                    UCLA

Appendix D: LMRS Response to Task Force

U.S. DEPARTMENT OF LABOR  
LABOR-MANAGEMENT SERVICES ADMINISTRATION  
OFFICE OF LABOR-MANAGEMENT RELATIONS SERVICES  
WASHINGTON, D.C. 20210

February 18, 1970

MEMORANDUM FOR MR. WILLIAM J. KILBERG

Subject: LMPS Program for State and Local Public  
Sector Labor Relations

This is in reply to your memorandum of February 13, 1970, in which you asked for my comments on proposed areas of responsibility for this office in the State and local government labor-relations program. As you know, we have been preparing a program in this field which is generally along the lines indicated on page 13 of the task force's program outline. My specific comments with respect to the services you have outlined are as follows:

1. Provide policy and procedural advice on problems of unit determination, unfair labor practices, grievance procedures, impasse procedures and legal advice to the parties.

We anticipate being able to provide advice on the above matters as soon as staff can be employed for this function. The only two people currently in the office who possess the knowledge necessary for this function are being transferred to the Federal Employee Labor-Management program within a very short time. We plan to provide technical assistance in all of these areas with the possible exception of legal advice, unless we have a staff person qualified for it.

2. Provide policy and procedural advice on drafting State or local legislation.

We plan to maintain a full file of State and local legislation on labor-management relations. This has been started but needs updating, which would probably require three to six months. We will

then develop a codification of the various terms and reproduce them in a format which will be most useful to the parties requesting advice. At a later date model legislation could be developed.

3. Provide regular reports covering current and potentially critical dispute situations and special reports and staff support for the use of the Secretary, Under Secretary and Assistant Secretary of LMSA, etc. In short, provide all the services now available in private sector disputes through LMRS.

Reports of the type outlined in Item 3 could be prepared immediately. Coverage would be limited in the beginning to those situations known to FMCS or which have attracted national attention. However, broader coverage could be developed fairly rapidly.

The two other principal program areas I would like to see developed are: (1), cooperation in training programs and (2), a continuing analysis of labor-management problems in State and local government. The first I would visualize as being a cooperative program with FMCS and with graduate Schools of Industrial Relations. The second perhaps needs a little more explanation. This relatively young field of public labor-management relations has problems which differ from the private sector. As one example, the need to coordinate collective bargaining with budget decisions creates a special situation not met in the private sector. I believe that this Office should examine the procedures now in existence in the various cities and States, review their relative success and develop possible alternatives which can provide guide material for situations where there have been difficulties. This approach would be applied to each public sector problem with priorities based on the degree to which the problem causes disputes or other crises.

There are other thoughts that I have in the way of guide materials on a procedural level that would be of use, particularly where both parties to the negotiating process have limited labor relations background. There are also other problems which require consideration; for example, should we proffer our services to non-profit hospitals where there have been some serious labor-management relations problems, even though the workers are not usually public.

employees? What should we do about others who are excluded from the Taft-Hartley Act such as agricultural workers? I have in mind particularly the California grape workers' problem.

You asked for specific comments about staffing, budget and the services that could be provided immediately and those which will require increased staffing and budget.

As I indicated above, we have no staff at the present time. We are, however, in the process of posting the vacancy as Director of this public labor relations Division and hope to find a well qualified person who will be able to initiate the program within the next six weeks. We will fill two professional staff positions as soon thereafter as possible. In the meantime it probably would be possible for us to assign the reporting system (Item 3) to a staff member from another Division if there is a need to initiate it within the next six weeks. The 1970 budget provides for a Division Director, two professional staff members and one clerical employee. As soon as these four people could be brought on board we could begin establishing the necessary liaison with FMCS, State and local governments, public employee organizations, and others concerned with developing and maintaining successful labor-management relations in the public sector. We could update and complete our file of State and local legislation and initiate the codification procedure (Item 2). In my view, the development of guide materials to give advice on labor-management problems (Item 1) should be delayed until the professional employees have become a functioning unit with a substantial background of information on the special problems associated with State and local government labor relations and have acquired real knowledge of existing procedures with respect to all matters listed in Item 1. I estimate that such guide materials could be produced after about six months. In the 1971 budget request, there is provision for one additional professional staff person and one additional clerical position for this Division. By the end of Fiscal 1971 the staff should be in a position to provide all of the services listed with the possible exception of the "analysis of problems" which I proposed above. Since I believe that function to be an essential service, I think the staff should be further augmented in Fiscal 1972, or at least by Fiscal 1973, to total seven professional and three clerical employees.

A continuing review of the program would be required to determine whether its objectives can be accomplished successfully only with a substantial amount of personal contact in the various States. If that condition develops, the staff size probably would need to be further increased and existing field offices utilized to carry out the program.

*Beatrice M. Burgoon*

Beatrice M. Burgoon  
Director

Appendix E: Secretary Hodgson's Letter to the  
Special Subcommittee on Labor (the Thompson  
Committee)

have had no difficulty whatsoever in having public employee bargaining as part of an evolving merit system.

This is providing no difficulty for us whatever. Of course, the similarities between private and public institutions are increasing all the time in higher education, so we see no difficulty there at all.

Mr. CLAY. May I ask this short question? Do you see any reason why public employees should be prohibited from the right to strike?

Mr. HORTON. No, sir. I think it is essential that to a limited extent, subject to safeguards with regard to the public safety and health, that the right to strike be there. I want to emphasize this with all of the force I can gather.

Mr. CLAY. Thank you.

Mr. THOMPSON. Your comment respecting the merit system interests me. How is it affected when one achieves tenure?

Mr. HORTON. In the university you mean?

Mr. THOMPSON. Yes.

Mr. HORTON. That is not an entirely straightforward matter, but let me give you an example. In our last contract our money, the money we negotiated, was not spread across the board by any means. A certain fraction of the money was spread across the board, but a large fraction, \$700,000 in fact, was used in the form of merit increments given at the levels of full professor, associate professor, assistant professor, and the question of whether you had tenure or not really had nothing to do with it, it was more or less equally distributed.

Mr. THOMPSON. Was the decision to dispose of that money made within the various departments of the university?

Mr. HORTON. Yes. It was agreed by the bargaining unit that there shall be a merit fund. Thereupon, the allocation of these funds was left to the university, normal university process through departmental nominations and appointments and promotions committees through the deans, and so forth through the administration. The bargaining unit, in fact, had no part in distribution of money but agreeing to the principle of there being a merit fund.

Mr. THOMPSON. Did it work out well?

Mr. HORTON. I think it is an essential aspect to achieve excellence in an institution of higher education. It has worked out very well.

Mr. THOMPSON. Thank you.

Of course, I have discussed your situation with your counsel, Mr. Sterns, who is unable to be here today.

The subcommittee will adjourn to meet tomorrow in room 2261 on the same subject at 10 a.m.

Without objection, at this point in the record I will insert a statement by the Secretary of Labor setting forth the administration's views on this subject.

(The documents referred to follows:)

U.S. DEPARTMENT OF LABOR,  
OFFICE OF THE SECRETARY,  
Washington, March 22, 1972.

Hon. FRANK THOMPSON, JR.,  
Chairman, Special Subcommittee on Labor, Committee on Education and Labor,  
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Attached is my statement on the advisability of Federal legislation in the area of State and local public sector labor relations. I regret that I was unable to appear in person before the Special Subcommittee on Labor,



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but I believe the attached statement fully articulates the views of the Department of Labor on this subject.

If the Department can be of further assistance to the Subcommittee in this regard, we will be happy to do so.

The Office of Management and Budget advises that there is no objection to the presentation of this statement.

Sincerely,

J. D. HODGSON, *Secretary of Labor.*

Attachment.

STATEMENT OF JAMES D. HODGSON, SECRETARY OF LABOR

Mr. Chairman and members of the Sub-Committee on Labor, I appreciate the opportunity to present the views of the Department of Labor on the advisability of enacting Federal legislation at the present time to regulate labor relations in the public sector at the state and local level. The Department of Labor has been giving careful consideration to the question of the proper role for the Federal Government to play in the developing area of labor relations in State and local government units. Under the present circumstances, we have concluded that the body of knowledge and experience in State and local government labor relations is inadequate to justify Federal legislation in this area. We believe that it is important for State and local governments to develop their own mechanisms for peaceful settlement of labor disputes among public employees, because it is the States and localities that can best assess their local needs and create frameworks for public sector bargaining that are responsive to those needs. As the States develop new and innovative laws regulating labor relations in the public sector, the proper role for the Federal Government will become clearer. The following four reasons have led us to conclude that Federal legislation under the current circumstances would be inappropriate:

1. The relative lack of experience at all levels of government in public sector labor relations.
2. The differences in economic, social and political considerations bearing on collective bargaining in the public sector, as distinguished from those in private sector.
3. The diversity of approach in dealing with this subject that we find in current state laws, and
4. The inability of acknowledged experts to agree as to the wisest course of action in this area, especially with respect to the extent if any, that the Federal Government should intrude upon State and local public sector labor relations.

I will elaborate on these factors and then suggest what I consider to be the proper role for the Federal Government to play in this formative stage of public sector labor relations at the State and local levels.

LACK OF EXPERIENCE IN PUBLIC EMPLOYEE-MANAGEMENT RELATIONS

The first reason that I consider it important not to enact Federal legislation at the present time is the relative lack of experience in public sector labor relations. Although the first State statute dealing with public employee bargaining appeared in the late 1950's, the bulk of State legislation did not come until after 1965. As I will point out later, this State legislation has been extremely diverse in its provisions and coverage.

The important point, however, is the very short period of time that both the Federal Government and State governments have had to build experience in public sector labor relations. This lack of experience makes it impossible to adequately evaluate the efficiency and effect of various statutory provisions upon the governmental unit, public employees, and the public interest. Without additional experience and an evaluation of that experience it would be short-sighted and ill-advised to try to draft a comprehensive Federal statute covering labor management relations at the State and local level. Even at the Federal level the first Executive Order establishing bargaining in the Federal Service was not signed until 1962. Since 1962 clarification of federal employee bargaining rights has been in the developing stages. During these 10 years, four study groups and three Executive Orders have focused on Federal labor-management relations and there is a continuing need for further delineation of the rights and responsibilities of Federal employees. The Federal Labor Relations Council, established

by Executive Order 11491, is attempting to build a body of case precedent and experience in Federal public sector bargaining, but the area is clearly still in the formative stages. This Federal experience emphasizes the importance of allowing State and local governments to more fully develop their own public sector labor relations policies.

The need for Federal legislation would be more compelling if such legislation were as urgently needed today in the public sector as the Wagner Act was needed in the private sector in 1935. But, there is clearly no such urgency at the present time. Federal labor legislation in the private sector was passed at a time when it was clear that a balancing mechanism was necessary to protect labor from the power and anti-union bias of private employers.

State legislation could not adequately deal with this issue because of the interstate nature of the market in which businesses compete in the sale of their products. Varying State practices would have disrupted competition and limited the effectiveness of laws encouraging collective bargaining. There is no such pressure in the public sector. Public employers do not compete in an interstate product market that would require immediate uniformity in State labor-management relations policies.

The States are taking advantage of this opportunity to adapt various public sector labor relations models to their local needs. The past six years has been a period of great activity in public sector labor relations at the State level. Not only have States developed various initial approaches to public sector labor relations, but they are refining and perfecting these approaches on the basis of their experience. For example, Wisconsin and New York have both amended their comprehensive statutes. Minnesota has replaced two "meet and confer" laws with one collective bargaining statute. Connecticut is involved in a major legislative study of possible revision of its law. Thus, the States are not neglecting the problems of labor and management in the public sector. Rather than being detrimental as in the private sector, experimentation on a State-by-State basis in the public sector takes into account important State differences and contributes substantially to our understanding of the issues in public sector labor relations. This process of development should not be interrupted when there is no urgency for Federal legislation. Under these circumstances, variation rather than uniformity among the States is the more valuable pattern for policy development.

#### TRANSFER OF EXPERIENCE FROM PRIVATE SECTOR TO PUBLIC SECTOR

Sufficient information is not available about public sector bargaining to demonstrate what concepts and mechanisms of private sector bargaining can be adapted to the public sector. Labor and management in the private sector have been developing experience in labor relations since 1935. Beginning at that time with the Wagner Act, a sophisticated set of mechanisms has evolved for handling labor negotiations and disputes in the private sector. Case precedent, legislation, and structural evolutions have refined the efficiency of labor-management relations in the private sector.

It would be convenient if this wealth of experience in the private sector could be transferred to the public sector, but given the unique problems encountered in public sector, labor relations, it is not at all clear to what extent such a transfer is possible or desirable. Various mechanisms and concepts including those that are applied in the private sector should be experimented with in the public sector at the State level before any determination is made regarding the feasibility or provisions of Federal legislation. Certainly there are some obvious and important differences between private and public sector bargaining. Bargaining in the private sector is based on an interplay between capital and labor. In the public sector "capital" as such and the quantitatively measurable profits derived therefrom are absent. There is certainly management in the public sector, but there is not the entrepreneurial thrust associated with capital and the corresponding competitive pressures with their own unique force of influence and discipline.

An even more important difference is that private sector bargaining does not deal with such broad issues as public budget priorities and public policy decisions that often cannot be best framed by the adversary process of collective bargaining. Other differences include the often overriding political influences in the public sector, the importance of many public services to the public welfare, the controlling and limiting effect of statutory or constitutional law, and the division of managerial power between legislative and executive branches. Adaptation of

experience in the private sector to public sector bargaining would require some adaptation of mechanisms to meet the special needs of public employment.

Before any proposals for Federal legislation are considered, the individual states should have an opportunity to develop their own variations and adaptations of private sector techniques in labor relations. For example, the important right to strike question might be better dealt with several years from now after the experience of Hawaii and Pennsylvania in granting a limited right to strike to public employees can be evaluated. After some experience is accumulated on the extent to which State and local governments are able to transfer private sector experience to the public sector, the question of Federal legislation can be examined on the basis of systematic analysis of state experience. Any Federal attempt to transfer the principles and mechanisms of the National Labor Relations Act to the Public Sector would be premature at this time.

Another question for which an adequate response cannot be developed because of the lack of experience in State and local government labor relations is whether a Federal law could be drafted that would be sufficiently flexible to adequately handle peculiarly local labor problems or whether the States should be left to regulate public sector bargaining at the local level. Federal legislation would impose uniform law and rules on diverse State and local governments. Professor Harry Wellington, one of the foremost experts in the field of public sector bargaining, objects to Federal legislation on this ground. Any Federal legislation would require an enforcement tribunal which would involve at least some minimal intrusions into sensitive matters of local government. Complex fiscal structures, local budgetary practices, charter limits on taxes, statutes concerning the type and mode of provision of services, and other uniquely local matters could be involved in the bargaining process without regard to whether this is appropriate in each situation. Federal legislation governing this process could lead to the establishment of uniform rules for the structure of local government. Even Federal legislation which allows local administration of the system would be an intrusion into local government to some extent. The Federally-imposed structure is inherently an intrusion. In labor relations policy the structure of bargaining relationships and the definition of terms are often determinative of substantive issues regardless of Federal or local administration of the system. The need for diversity and local regulation requires that the question of state or Federal regulation of public employee labor relations be determined only after the sufficient State experience in uniquely local needs has been developed.

#### WIDE VARIATION IN STATE APPROACHES

The third reason that Federal legislation should not be enacted is the lack of any common pattern in current State legislation dealing with public employee bargaining. No model system has emerged. A haphazard mixture of statutes, local executive orders, resolutions, ordinances, court decisions, and civil service statutes and procedures has developed in the States. By the end of 1970, approximately 40 States had legislation authorizing some form of formalized employee relations for public employees, eight had no legislation, and two prohibited such activity. Mandatory negotiations, in either the "meet and confer" or traditional collective bargaining form, were required in 25 States. The remainder of the States divided between statutes permitting bargaining or conferring and statutes merely permitting the presentation of proposals. Including the statutes enacted by Pennsylvania and Hawaii in 1970, and by Minnesota in 1971, 17 States now have mandatory collective bargaining laws.

The following issue analysis of State policies graphically demonstrates the lack of consensus among the states on the critical issues in public sector labor relations:

##### 1. Coverage of classes of public employees

a. 7 State statutes cover all State and local employees. 8 State statutes cover all public employees except specified occupations such as teachers, fire fighter, or policemen. In 2 States total coverage is contingent upon local option.

b. 6 States have statutes covering State employees only, one State includes local teachers.

c. 5 States have statutes which apply only to all local employees.

d. 7 State statutes apply to fire fighter only.

e. 1 State statute applies to police only and 4 others apply to police and fire fighters jointly.

f. 16 State statutes apply to teachers only.

**2. Scope of bargaining**

- a. 30 State statutes permit bargaining on wages, hours and other conditions of employment. In two States, such bargaining is allowed at the local level but not at the State level.
- b. 2 State statutes covering teachers indicate that bargaining can be done on matters of employment and fulfillment of professional duties.
- c. In one State, bargaining for State employees is limited to "all matters on which the appointing authority may exercise discretion," while in that same State bargaining at the local level was allowed on wages, hours and conditions of employment.
- d. In two States, bargaining was allowed at the State level on grievance procedures and other conditions of employment.

**3. Administrative machinery**

- a. 15 States utilize existing Administrative Agency (includes State departments of labor and private sector employment relations boards).
- b. 8 States and the District of Columbia have created a new agency specifically charged with the administration of the public employee-management relationship.
- c. 10 States utilize existing specialized agencies such as State Boards of Education for teachers and State Boards of Health for nurses.

**4. Codes of fair labor practices**

- a. 16 States have such codes. 15 of these codes include both employers and employee organizations. One State includes employers only.

**5. Guidelines for appropriate bargaining units, i.e., unit determination:**

- a. in 19 States, a separate State agency makes the determination of appropriate units.
- b. in 7 States the local employer makes the determination.

**6. Strike Policy**

- a. 38 States have explicitly prohibited public sector strikes.
- b. 4 States have a limited right to strike: Pennsylvania, Hawaii, Vermont and Montana.

**7. Variations in impasse procedures**

- a. 22 States provide mediation services.
- b. 15 States use fact-finding procedures.
- c. Arbitration:
  - I. Voluntary arbitration is used within 7 States.
  - II. Binding arbitration is used by 7 States.
  - III. Compulsory arbitration is used by 4 States, primarily in the area of policemen and firefighter impasses.

**8. Grievance Procedures**

- a. In 9 States grievance procedures may be negotiated by parties.
- b. In 3 States parties may establish procedures for handling arbitration of grievances.
- c. In 3 States parties must establish mediation procedures for grievances in the contract.
- d. Upon request of both parties, State mediation agency services are available in 3 States for grievance cases.
- e. In 4 States, the State Agency establishes procedures for grievance resolution if not determined by agreement, with binding decisions.
- f. In 5 States, the State agency hears and rules on grievances.

Not only do the States' methods of handling public sector labor relations vary significantly, but the types of public employee organizations with which the States deal also vary significantly from one local area to another. The 2.6 million organized employees at the State and local levels belong to essentially four different types of organizations. Each of these organizations has its own history, traditions, methods of organizations, and operating strategies. These four types of organizations are: (1) unions, of which some have public sector members only, while others accept both public and private sector members, and some are organized on a "craft" basis, while others follow an "industrial" union model; (2) professional associations; (3) fraternal orders in particular occupations; and (4) civil service employee organizations. The nature of the

public employee organization is an important factor in determining the appropriate labor relations policies and mechanisms.

Thus, the States are clearly involved in developing a wide variety of models for public sector labor relations. As was previously pointed out, to impose Federal uniformity would prematurely halt this healthy process and would deprive us of the experience that is being derived through an infinite number of variations in approaches. The Federal Government should take advantage of the unique opportunity to study and evaluate the impact of these variations at the state level.

#### DIVERGENT EXPERT OPINION

The question of Federal legislation dealing with State and local government labor relations has sparked heated controversy among scholars and experts in the field of public sector labor relations. This controversy focuses both on the issue of whether Federal legislation should be enacted at all, and, if so, what features it should include. Several groups have considered these questions. In April 1970, the Twentieth Century Fund Task Force on Labor Disputes in Public Employment issued its report *Pickets at City Hall* in which it recommended collective bargaining and execution of written agreements, provision for final settlement of grievances including binding arbitration, and establishment of an impartial administrative agency responsible for public employee-management relations policies. On the other hand, the Advisory Commission on Intergovernmental Relations in its March 1970 report *Labor Management Policies for State and Local Governments* endorsed enactment of "meet and confer" statutes by States rather than the collective bargaining approach of Twentieth Century Fund. On the right to strike question, the Twentieth Century Task Force opposed a complete ban on the right for all public employees under all circumstances but would ban strikes during the course of impasse procedures and strikes by policemen and fire fighters. ACIR endorsed an absolute prohibition on strikes by public employees. The American Assembly on Collective Bargaining in American Government in 1971 endorsed a limited right to strike by public employees after procedures have been exhausted. The ACIR specifically opposed Federal legislation regulating State and local government labor relations.

Several individual scholars of labor relations disagree on the appropriate framework for State and local government labor relations. Most notably, Theodore Kheel, well-known mediator and arbitrator, and Dr. George W. Taylor, a foremost expert in public sector labor relations, in a continuing dialogue on this subject, have taken opposing views on such key issues as the right to strike and appropriate impasse procedures.

Thus, even the experts do not agree on how to deal with the burgeoning area of public employment labor relations. In light of this divergent expert opinion, and the lack of experience, substantial variations in State practices, and philosophical and practical differences between private and public sector labor relations noted above, we believe that the firm foundation upon which Federal legislation must be based does not exist.

#### PROPER ROLE FOR THE FEDERAL GOVERNMENT AT THE PRESENT TIME

Because of the need for further State experience and careful analysis of that experience, the Federal Government can serve most usefully as a source of information and technical assistance. By working in close cooperation with State and local governments in the effort to develop some sound principles and mechanisms for handling public sector labor relations, the agencies of the Federal Government can be instrumental in continuing to build the base of information necessary to adequately determine whether Federal legislation should be enacted at some time in the future or, if so, what features that legislation should include. The Department of Labor and the Civil Service Commission have recently become increasingly involved in providing assistance in labor-management relations to state and local governments.

By continuing the programs that have been initiated, the Federal Government will be contributing significantly to the systematic development of public sector labor relations at the state and local levels. I will briefly outline for you the Federal Government programs that are currently planned or in operation.

Within the Labor-Management Services Administration of the Department of Labor we have established the Division of Public Employee Labor Relations. This Division provides State and local government management and employee organizations with the technical assistance, advice, training, information and data

required for effective employee-management relations; and assists in the development of constructive public policy for public employee labor relations at the State and local levels. Division activities include direct technical assistance measures for the development of viable frameworks for the conduct of public sector labor relations within the States, assistance in resolving problems which develop in the administration of new labor relations statutes, aiding States and municipalities in the drafting of statutes, ordinances, executive orders or guidelines for public sector labor relations, and, upon request, providing sample contract clauses and analyses. The Division also assists local jurisdictions which lack a statutory framework for the resolution of bargaining unit or representation questions by assisting in determining bargaining units, developing election agreements and, in some cases, supervising elections and certifying the election results. Recently, the Division added a program for training State and local personnel in the procedures for conducting representation elections.

The Department's Division of Public Employee Labor Relations is actively involved in information and research activities. The staff identifies, collects, evaluates, and exchanges useful information on all facets of public sector labor relations. The Division has developed several useful publications. For the record, a selected list of these publications has been included in Appendix A.

The Division is also developing a reporting and indexing system for decisions of State and local government agencies administering public sector labor relations statutes and establishing training programs for third party neutrals and for members of public employee relations boards.

I hosted a conference last November in which representatives from State and local governments across the country were invited to discuss their local experience with public sector labor relations. The purpose of that conference was three fold:

- (1) to review the State and local government labor relations experience, with and without legislative guidelines;
- (2) to provide an opportunity for State and local officials to express their viewpoints on this experience and to make recommendations for future courses of action, and
- (3) to facilitate the discussion among State, county, municipal and Federal officials concerning the role, or roles, which the Federal Government might play in State and local government labor relations. (A copy of the Proceedings of the Conference is enclosed.)

The Bureau of Labor Statistics is also involved with public sector labor relations. The BLS engages in various statistical data services crucial for negotiations in the public sector. In 1970, BLS initiated a series of studies in municipal governments which provide information on the wages of incumbents in a wide variety of occupations, including such groups as office clerical, maintenance and trades social work, sanitation, and protective services. BLS has also recently completed compensation chronologies for the cities of Milwaukee and Philadelphia which trace the major changes in salary and fringe benefits over time for municipal employees. The Bureau reports current wage developments in monthly publications for each of the 50 States and the 10 largest cities in the country and publishes annual indices for salaries of police and fire fighters and for teachers. BLS is also involved with projects specifically related to industrial relations. These projects include a study of union membership among government employees and work stoppage data for State and local employees. The Bureau maintains a file of collective bargaining agreements in effect at all levels of government. Within their capabilities, requests for "sample" clauses of these contracts are provided. The representatives at the Secretary's Conference stressed the need for timely, accurate wage and salary and fringe data for the public sector. The need for more and better service from BLS was strongly demanded by State and local personnel who must negotiate, relying, in many cases, on BLS data to determine and then support their position at the negotiating table.

The Manpower Administration is also involved in public sector labor relations. It has specifically financed two major projects in this area. The first project is a study of private industry pay rates for purposes of comparison with State and local government salaries. This is an important step in providing public negotiators and public sector unions with reliable comparability data to use as a guide in establishing public sector wage rates. The second project being undertaken is a study of employment characteristics of State and local employees. This study is designed to provide unique data on employment by age, race, sex, occupation, governmental function, training and education, length of time on the job, civil service status, earnings, hours of work and the employee's assessment of

the official practices used in classifying, recruiting and promoting in his agency.

The Federal Mediation and Conciliation Service has been providing mediation assistance in certain State and local disputes. FMCS entered the field of State and local government labor relations in 1965. The following policy was developed at that time in response to the need for skilled mediators to handle the increasing activity in public employee unions at the State and local level. This policy is still in force today. The policy has five major elements:

1. Requests for FMCS assistance must be screened at the agency's Washington Office and the ultimate decision to intervene is made at that level. Local government officials and union leaders can inquire about FMCS assistance in the agency's regional office, but formal requests are sent to Washington.

2. Formal requests for assistance must be made jointly by both parties in the dispute.

3. To be considered, the dispute must be at an impasse and both parties must certify that a deadlock has developed after genuine bargaining efforts have been made.

4. Both parties must agree to allow the FMCS to designate and assign a mediator to their dispute.

5. Mediators are assigned for only a limited time or a limited number of joint meetings as determined in each dispute.

The FMCS feels that this program has been effective and has provided an appropriate method of filling the mediation needs in the States in which it has been utilized. The mediation service is now in the process of developing a computerized list of arbitrators which have had experience in the public sector. Such a system should facilitate effective selection of arbitrators who are appropriately prepared for the public sector and agreeable to the parties.

A Federal legislative initiative in personnel administration which can affect State and local government labor relations was provided by the passage of the 1970 Intergovernmental Personnel Act. Under this law, the Civil Service Commission is authorized to provide financial and technical assistance to those State and local governments which request help in improving personnel administration, which could include assistance in the area of labor management relations.

This summary of activities currently underway in the Federal Government gives you an overview of the work that is being done in the field of State and local labor relations.

We can play an important role in the continuing development of this area at the local level but the focus at the Federal level should be on encouraging and strengthening State efforts to develop a variety of approaches to public sector labor relations rather than arresting that development prematurely with the imposition of a standardized Federal structure. The States are learning; they are experimenting; and they are contributing to our understanding of public sector labor relations. The Federal Government can assist them by providing adequate statistical data and other relevant information, by training mediators, negotiators, and arbitrators, and by supplying technical assistance in such areas as unit determination and elections. Perhaps even more important, the Federal Government can monitor State activity and evaluate the effectiveness of the various State models that evolve. We are really in the "research and development" stage in public bargaining and perhaps the best approach has not even been discovered yet. With each Federal agency contributing its own specialized competence, the support services provided to State and local governments will strengthen their efforts and allow them the flexibility to experiment in developing an enlightened and stabilizing policy in public employee-management relations.

#### APPENDIX A

##### DEPARTMENT OF LABOR—DIVISION OF EMPLOYEE LABOR RELATIONS

###### 1. *Calendar of events in public sector labor relations.*

Includes a listing of conferences, conventions, seminars, and training functions that are of interest to public sector management and public employee organizations. The Calendar covers a six month period and is issued on a quarterly basis.

###### 2. *Current references and information services for policy decision-making in State and local government labor relations: a selected bibliography.*

This bibliography includes a range of subjects related to the needs of public policy decision-making. It contains a section on various study committee reports published during the last few years and a section on various "model laws" which have been proposed.

**3. Directory series**

a. *Directory of Public Employee Organizations.*—This publication identifies major public employee organizations, the officials who head them, their organizational structure, the type of staff available, the general purpose of the organization and their general mode of operation.

b. *Directory of Public Management Organizations.*—Covers national organizations of State and local governments and professional associations of public officials that have a substantial concern with public sector labor relations.

c. *Directory of Public Employment Relations Boards and Agencies.*—Provides a listing of the various public employment relations boards and agencies which have responsibility for the administration of public sector statutes in those states where such statutes have been enacted. Describes the various patterns of administrative machinery employed in the various states.

**4. Summary of State policy regulations for public sector labor relations: Statutes, attorney generals' opinions, and selected court decisions**

Summarizes the legal framework for the conduct of public sector labor relations within the fifty states and the District of Columbia in a comprehensive, categorical manner utilizing a chart format.

**5. A complementary publication, State profiles**

Current Status of Public Sector Labor Relations explores the actual setting for, the variety and actual extent of labor relations activity within each of the fifty states, as well as prospects for passage or revision of legislation within each jurisdiction. Each State analysis is accompanied by a statistical information briefing on those factors bearing on the nature of public sector labor relations.

**6. State-of-the-art studies**

*Collective Bargaining in Public Employment and the Merit System, Disputes Settlement in the Public Sector: The State-of-the-Art, the scope of bargaining in the Public Sector—Concepts and Problems: The State-of-the-Art, Unit Determination in Public Employment: The State-of-the-Art, The Division expects to continue such activity in FY 1972 to the extent feasible given resource constraints.*