GOVERNOR'S COMMITTEE ON
PUBLIC EMPLOYEE RELATIONS

FINAL REPORT

STATE OF NEW YORK
MARCH 31, 1966

March 31, 1966

THE HONORABLE NELSON A. ROCKEFELLER
Governor of the State of New York
Albany, New York

DEAR GOVERNOR ROCKEFELLER:

Your Committee on Public Employee Relations has the honor to submit its unanimous report, including its recommendations for legislative and administrative action.

We desire to express our deep appreciation of the cooperation of the staff assigned to us. We acknowledge particularly the invaluable help rendered by our most competent and conscientious counsel, Sol N. Corbin.

Respectfully yours,

George W. Taylor

E. Wight Bakke

David L. Cole

John T. Dunlop

Frederick H. Harbison

Governor's Committee on Public Employee Relations

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Summary of recommendations

AS MORE FULLY DESCRIBED in this report, the Committee makes the following recommendations:

(1) The Condon-Wadlin Law should be repealed and replaced by a statute which, as more particularly described below and in the relevant parts of this report, would (a) grant to public employees the right of organization and representation, (b) empower the State, local governments and other political subdivisions to recognize, negotiate with, and enter into written agreements with employee organizations representing public employees, (c) create a Public Employment Relations Board to assist in resolving disputes between public employees and public employers, and (d) continue the prohibition against strikes by public employees and provide remedies for violations of such prohibition.

(2) Public employees should be granted the right to join or refrain from joining employee organizations of their own choosing for the purpose of the participation and the negotiation with their public employers of the conditions of their employment.

(3) A Public Employment Relations Board should be created and empowered to establish procedures, in accordance with criteria set forth in the summary section of Part Two of this report, for resolving disputes arising in the departments of the State government with respect to the representative status of an employee organization. In resolving disputes concerning representative status, the Board should act upon petition of either the employee organization or the appropriate State official. The Board should be composed of three public members, appointed by the Governor with the advice and consent of the Senate, and the members' terms should be for six years, with staggered terms for the original members.

(4) The legislative bodies of the local governments should be empowered and encouraged, after consultation with interested parties, to develop procedures, in accordance with the criteria set forth in the summary section of Part Two of this report, for resolving disputes over representation status of employee organizations in such local governments. In the absence of such local government procedures, or upon the election of the local government to adopt the State procedures, the procedures administered by the Public Employment Relations Board shall be available upon the petition of either the employee organization or the appropriate local government official.

(5) Upon the basis of experience under the statute, the Public Employment Relations Board should conduct a study, looking toward legislative action, of the question whether employee organi-

zations should be granted the right of exclusive representation of all employees in a negotiating unit. In the meantime, the public employer and the employee organization should be permitted, by agreement, to provide for exclusive representation.

(6) In line with the Federal policy, for an employee organization to be entitled to recognition and certification, it should be required to establish:

(a) by evidence, that it represents the employees which it claims to represent, and

(b) by affirmation, that the organization does not assert the right to strike against government.

(7) Upon certification, the employee organization should be entitled to the following rights:

(a) the right to represent employees in negotiations and grievance procedures,

(b) the right to check-off of membership dues upon presentation of individual dues deduction authorizations, and

(c) the right to unchallenged representation status for the remainder of the budget year and for the succeeding twelve-month period (or longer, by agreement, but not to exceed 24 months), to begin 120 days before the succeeding budget submission date.

(8) To resolve disputes which reach an impasse in the course of collective negotiations, all written memoranda or agreements between public employees and public employers (State or local) should include procedures, developed by the parties themselves, to invoke in the event of such an impasse in advance of budget submission. Parties to such memoranda or agreements now in effect should be encouraged to incorporate such procedures, and any new collective relationship should incorporate such procedures in any future written memoranda or agreement.

(9) In the event of an impasse which has not been resolved by the parties' own procedures, the Public Employment Relations Board should institute mediation procedures to assist the parties in resolving their dispute. If no settlement is achieved by this step, the Board may appoint a fact-finding board, comprised of public members, with the power to make public recommendations to resolve the dispute. As described in Part Three of this report, the fact-finding board should be appointed from a list of qualified persons maintained by the Board and drawn up after consultation with interested groups. The procedures of the Board may be invoked by petition of either the employee organization or the appropriate government official (State or local), or upon the Board's own motion.

(10) In the event of the rejection of a fact-finding board's recommendations by the employee organization or the public employer, the appropriate State or local legislative body (or committee) should hold a form of "show cause hearing" at which the parties review their positions with respect to the recommendations of the fact-finding board prior to final legislative action on the budget or other enactment.

(11) The statutory prohibition against strikes by public employees should be continued. The term "strike" should be defined as a concerted work stoppage or slowdown by public employees for the purpose of inducing or coercing a change in the conditions of their employment.

(12) Section 751 of the Judiciary Law should be amended to enlarge the court's discretion in enforcing, by criminal contempt, its restraining orders or injunctions issued against strikes by public employees. This should be accomplished by eliminating the $250 per day maximum fine now contained in Section 751. Such proceedings should be promptly instituted by the appropriate State or local chief legal officer.

(13) Insofar as individual public employees are concerned, their participation in a strike should be deemed to be misconduct, within the meaning of Section 75 of the Civil Service Law, under which such employees may be subject to reprimand, fine, demotion, suspension, or dismissal, depending upon the extent of the misconduct.

(14) In the event of a strike, we recommend a procedure patterned after the approach used by the Federal government. The appropriate State or local chief legal officer should also be required to institute summary proceedings before the Public Employment Relations Board to cancel the employee organization's rights to representation, including the privileges (such as check-off) that accompany such rights. The Board would determine (a) whether the organization was responsible for calling the strike or whether it tried to prevent it, (b) whether the organization made or was making good faith efforts to terminate the strike, and (c) whether there were such acts of extreme provocation on the part of the public employer as to detract from the fault of the employee organization in permitting the strike to take place. Upon the basis of all the facts and circumstances, the Board would determine whether the organization's recognition rights and its accompanying privileges should be revoked, and if so, whether indefinitely or for a specified period of time. In the event of such suspension or revocation, the organization should not be permitted to have its recognition rights reinstated without specifically agreeing not to assert the right to strike thereafter.

PART ONE **The basic problems**

IN ESTABLISHING THIS COMMITTEE on Public Employee Relations on January 15, 1966, Governor Rockefeller requested it "to make legislative proposals for protecting the public against the disruption of vital public services by illegal strikes, while at the same time protecting the rights of public employees."

This approach is in marked contrast to that taken in formulating the Condon-Wadlin Act. That legislation simply banned strikes by public employees and specified penalties to be invoked against employees for violation of the ban. There is now a widespread realization that protection of the public from strikes in the public services requires the designation of other ways and means for dealing with claims of public employees for equitable treatment.

Our assignment is thus broad in compass. Bench marks for dealing with it are relatively few. A considerable time could well have been used in the preparation of this report. However, because immediate changes in the Condon-Wadlin Act are so urgently necessary and so widely demanded, as a consequence of the 1966 transit strike in New York City, the Committee has had but limited time at its disposal. Nevertheless, with the assistance of a capable staff, it has been possible to make a thorough analysis of the problem.

We report a unanimous conclusion as respects the immediate legislative action that, we believe, should be taken. Legislation along the lines recommended should provide the basis upon which viable government-employee relationships in New York can be developed. Our report comes at a time of deep public concern about these matters.

The results of recent negotiations in New York City and elsewhere, conducted under strike threat pressures as well as actual resort to the strike, have understandably given rise to a widespread concern about employee-governmental relations and a determination that they should be conducted in a manner which will conserve vital public interests. In consequence, the following questions have been brought into sharp focus: How should collective negotiation in the public service be distinguished from collective bargaining in the private sector? What public policy problems are involved in according to public employees the right to representa-

tives of their own choosing for collective negotiation purposes? Should such right be accorded?

Fundamental questions of employee-governmental relations are dealt with in this report. They include (a) the fragmented vs. the over-all unit for negotiations, (b) the complexities of varied government-employee relations, and (c) problems of effectuating the no-strike policy in public employment. They have come to a head when great increases are occurring both in the number of public employees[1] and in the variety of services provided by the State government and its numerous political subdivisions. This expansion coincides with a growing interest among public employees in participating more fully and more effectively than heretofore in the determination of their conditions of employment.

Fragmented vs. the over-all unit for negotiations

The objectives of all employees in seeking collective negotiations are not identical. Changes are sought in the promulgation and administration of those civil service laws and other legislative enactments which apply uniformly to classified public employees in diverse occupational groups and performing varied functions. At the same time, public employees have been increasingly organizing themselves into unions to represent particular occupational interests—transit employees, school teachers and sanitation workers are but a few examples. The right to this kind of representation has been strongly asserted.

It is the demand for collective bargaining, "as practiced in the private sector of the economy," about these occupational interests which presents the most difficult problems and the greater possibility of conflict with the ability of legislative bodies to perform their constitutional functions, especially as respects the budgeting processes and the levying of taxes.

Employee organization to advance the particular occupational interests through collective negotiation is fundamentally different from the civil service approach under which basic working terms and conditions are specified by state-wide classification of public employees of the State and of its political subdivisions. Many of the most important terms of employment for public employees have long been established through legislative enactment, including laws governing the civil service. This will continue to be the case.

There are many who fear that the development of multi-unit collective bargaining in governmental service would enervate our

[1] From 1955 to 1965, New York State employees increased from 83,738 to 128,322 while local government employees increased from 325,524 to 472,028.

institutions of representative government and undermine the usefulness of a long established and effective civil service policy.[2] The term "collective bargaining" has thus come to connote a type of joint-determination by unions and private management which, for reasons to be detailed hereafter, cannot be transferred literally to the public employment sector. An objective evaluation of the questions before us will be assisted, we believe, by use of the term "collective negotiations" to signify the participation of public employees in the determination of at least some of their conditions of employment on an occupational or functional basis.

Collective negotiations as they have been carried on in New York State have resulted in quite diverse forms of agreement. There have been many informal memoranda of understanding, including agreements subject to validation by the appropriate legislative and administrative bodies. Only a few "full-fledged" collective bargaining agreements have been consummated.

Union representation and collective bargaining has been available to employees of New York City since 1958 under the terms of Executive Order No. 49,[3] issued by Mayor Wagner. Three formal arrangements have been consummated under authority of this Executive Order. As far as we have been able to ascertain, eight formal collective bargaining agreements have been made with public employees outside of the City of New York.

Impact of fragmentation on civil service

Union objectives are quite at variance, especially at the State level, with the objectives of the Civil Service Employees Association. For many years, this organization has worked directly with legislatures and governmental officials in the formulation of changes in civil service statutes as well as in their administration. On behalf of a relatively large membership throughout the State (except in New York City) the officials of the Civil Service Employees Association espouse what they term the "industry-wide" approach to representation of public service employees. They assert that the "fragmentation" of units of representation, implicit in the union approach, is quite contrary to the interests of public service em-

[2] It will be recalled that the civil service approach was undertaken (initially about 75 years ago in New York) to provide job security to public employees and job status based upon merit and ability as a substitute for what was called "the spoils system."

[3] This Executive Order superseded an earlier Executive Order issued in 1954 which established interim collective bargaining procedures.

ployees as a whole and to the continuance of stable governmental-employee relations. They oppose legislation designed to make such fragmentation in collective negotiation possible, but strongly favor legislation increasing the strength of their Association's voice in the formulation and the administration of civil service statutes, including the career and salary plan.

The conflict of employee views involves the role of the Civil Service Commission. It is reasonsible for applying, under legislative authority, a unitary rule system of job classification. Workers belonging to diverse occupational groups and performing quite diverse functions are found together in each job classification. If the employees are organized by occupation or by function the results of negotiation on the multi-unit basis, autonomously for each group, are bound to be diverse. Employment terms will inevitably tend to be responsive to specific circumstances. Some observers have predicted that establishment of a pattern of multiple-unit negotiation in public employment will lead inevitably to a sacrifice of the unitary system established by civil service. They cite the dangers of so-called leap-frogging, i.e., terms negotiated by an occupational group tend to be extended by "compulsive comparison." They are concerned that legislation will be ultimately fashioned by collective negotiation instead of the other way around.

Phrasing the problem in terms of collective negotiations, as previously defined, provides a constructive way, we believe, of getting at the heart of the matter, i.e., protecting the rights of public employees to representatives of their own choosing on an occupational basis without an unacceptable infringement upon the stability and viability of the Civil Service System.

In our considered judgment, occupational representation should not be denied and can be provided without undermining the Civil Service System. We believe that the right of public employees to representatives of their own choosing for collective negotiation should be recognized. At the same time, public employees have an obligation to recognize that collective negotiations must be conducted within the framework of our democratic political structure out of which the civil service idea has evolved. In fulfilling this obligation careful attention must be given to defining the "appropriate unit" for representation, the subject matter of joint negotiations, and the nature of the negotiated agreement. These questions are dealt with hereafter in Part Two of this report. It is not here suggested that ready answers to these perplexing questions are available. However, answers must be found because the right of employees to multi-unit negotiations cannot equitably be denied.

The critical nature of the differences between the two approaches to public employee participation (on an "industry wide" basis or a "multiple-unit" basis) have to be thoroughly understood before legislation to supersede the Condon-Waldin Act can be effectively fashioned. Both forms of participation now exist in the State of New York, but in many variations.

Who are the public employees and how are their conditions of employment now determined? "State employees" constitute one category which, in the main, comprises employees of 20 state departments. The basic conditions of employment for classified employees in the executive departments (the large majority of employees of the State) are determined by provisions of the Civil Service Law as administered by elected and appointed State officials.[4] Other terms of their employment are specified by other legislation. There are also State employees in the legislative branch, a relatively small number, and in the judicial branch, comprising a larger number of employees. In the judicial branch, both wage and non-wage conditions are determined either by the State Judicial Conference or by a local government. Other "State employees" work for public authorities having more than local but less than state-wide jurisdiction. In many respects, the conditions of employment for these public authority employees differ from other employees in the executive branch although some participate in the New York State Employees' Retirement System and the New York State health insurance program. In still other ways they are treated like "State" employees.[5] Some public authorities provide essentially local services, such as a public housing authority within a city or the Transit Authority in New York City. They have generally been accorded by the legislature a wide latitude as respects the fixing of employment terms.

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[4] An exception is made by Section 220 of the State Labor Law. This Section applies to "laborers, workmen and mechanics" and specifies the payment of "prevailing wages and supplements" not only to employees of contractors engaged in a public works project but, as well, to *unclassified* public works employees of the State, its municipalities and other instrumentalities of the State including public authorities.

[5] Public authorities are engaged in the operation of bridges, highways, transit, water pollution control, parks, ports and hydroelectric power as well as the construction of university facilities and low cost housing. There is a "Statement of Employee Relations Policy, New York State Thruway Authority, Nov. 21, 1960" (re-issued on Jan. 1, 1966) which has been signed by representatives of several employee organizations after collective negotiations. Even in the absence of specifically delegated authority, authorities may engage in collective negotiations when they are deemed by the authority to be necessary for the proper conduct of their business.

Most public service employees in New York are not employed by the State but by political subdivisions of the State. They include not only the employees of counties, towns, villages and cities[6] but also of school districts[7] and other political subdivisions, providing special services, such as water districts, sewer districts and fire districts.[8]

In other words, there are many governmental employers with widely varying degrees of authority. They are also subject to diverse budgeting procedures. No one rigid procedure can be devised to effectuate a policy of according public employees the right to representatives of their own choosing for collective negotiation. Yet, these rights of association and negotiation must be accorded as a necessary counterpart to the prohibition of strikes by public employees.

Inapplicability of strikes

Collective bargaining, including the right to strike, is recognized as an essential democratic right of employees in the private enterprise sector. Private employers have countervailing rights: they may lockout their employees or go out of business entirely. These are not simply private rights; the opposing economic pressures have a function to perform. They exert reciprocal pressures upon the parties to modify their positions to the extent necessary to bring about a private agreement. One objective is to insure a final conclusion without government intervention or dictation. Although both parties in private collective bargaining possess wide latitude of agreement in private negotiations, they are subject to constraints —the pressure of the market place where the consumer's power of choice is exercised. Jobs can be lost and production can be cut back if goods or services are priced out of the market. Whether or not market forces provide adequate restraints in the public interest has often been questioned. The so-called guide-posts for wage and price determination, as enunciated by the Council of Economic Advisers, are central to the current debate. At any event, even in the private sector, doubts have been raised about the compatibility with the public interest of unrestrained use of private economic power in the establishment of wages as well as of prices.

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[6] In New York, there are 62 counties, 932 towns, 553 villages, and 62 cities.

[7] There are 1,199 school districts in the State.

[8] It is estimated that there are about 5,540 of these political subdivisions in the State.

Nor does the right of strike in the private sector prevail without limitation. Under the Taft-Hartley Act special procedures may be invoked in public emergency disputes. Nevertheless, the right to strike remains as an integral part of the collective bargaining process in the private enterprise sector and this will unquestionably continue to be the case. The according of this right to employees must be appraised, however, in the context of the private enterprise sector to which it applies.

In contrast to the private enterprise sector, the right of public employees to strike has never been recognized by the public, legislature, or by governmental authorities in the United States. There are solid reasons for the distinction. Nor can these reasons be epitomized by a simple assertion of the words: the "rights of sovereignty." At any event, this is scarcely an apt term to apply to a system of representative democratic government, such as our own, which is responsive to the electorate. It is more realistic to inquire as to the manner in which public employees can participate in establishing their employment terms within the framework of our political democracy.

Instead of the constraints of the market place on collective bargaining, including the right to strike, which are in the private sector, negotiations in the public sector are subject to the constraints imposed by democratic political processes. A work stoppage in the private sector involves costs primarily to the direct participants. They also undertake considerable risk in fixing the terms of settlement; the volume of sales and opportunities for employment are at stake. On the other hand, a strike of government employees (there can scarcely be a countervailing lockout) introduces an alien force in the legislative processes. With a few exceptions, there are no constraints of the market place. The constraints in the provision of "free services" by government are to be found in the budget allocation and tax decisions which are made by legislators responsive to the public will. To be sure, a legislative body may delegate certain of its powers to subordinate officials and agencies to an extent consistent with the Constitution by which it is bound. As a matter of fact, considerable power has been delegated to public authorities, especially those which charge for services rendered to the public, as well as to executive agencies which are responsible for administering the prevailing wage laws for certain non-classified public works employees.

To a preponderant extent, however, the executive agencies are required to compensate their employees within the limits of the budgets for the State and for its political subdivisions. In New York, these budgets must balance, i.e. taxes must be levied to cover

estimated expenditures. It is the budget, rather than the market place, which constrains collective negotiation in public employment.[9]

It seems evident that orderly collective negotiations in public employment should be related to the budget-making processes of the appropriate legislative body—a legislature, a board of supervisors, a municipal council or a fiscally-independent board of education.

Legislative prohibition of strikes by public employees

For reasons just outlined, "collective negotiation" in the public services is unlike collective bargaining in the private enterprise sector. The strike cannot be a part of the negotiating process. By constitutional interpretations in the courts and by application of the common law, strikes by governmental employees have been declared illegal and made enjoinable in jurisdictions from the federal to the local level. Virtually all representatives of public employees seem to be fully aware of the fact that strikes of public employees have always been enjoinable by the courts. Some insist, however, that there should be neither a legislative prohibition of strikes nor specified "punitive" penalties invocable upon violation. Some union officials believe that the ban on strikes of public employees constitutes the deprivation of a basic right. Many union representatives also express the conviction that a legislative ban on strikes and the prescription of "punitive" measures for violation has encouraged arbitrariness by the employing agencies which is a major source of friction in employee-governmental relations. These agencies, it is

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[9] The New York State Constitution (Article VII, Section 2) requires the Governor to submit annually to the Legislature a budget containing a complete plan of expenditures for the ensuing fiscal year beginning on April 1 and, at the same time, proposed legislation to provide revenue for meeting the proposed expenditures. The Constitution further requires that no money may be paid by the State except in pursuance of an appropriation made by law.

The law governing counties requires a budget officer appointed by the County Board of Supervisors to estimate proposed expenses and anticipated revenue for each fiscal year which begins on January 1. Following a public hearing, a budget must be adopted no later than December 20 by the County Board of Supervisors. A similar budget-making procedure must be followed for village and town budgets. No single general law applies to the cities; each separate city charter determines the budget procedure.

School district budgeting is subject to difference procedures. In the larger cities (over 125,000 population), the tentative school budget proposed by the Board of Education, like other departmental requests, may be modified by the agency or official responsible for preparing the entire municipal budget which is subject to enactment by the legislative body. Once the school budget is adopted, the Board of Education has sole control of expenditures without limitation as to the purpose initially appropriated. In the smaller cities, school districts are fiscally independent. Each school district outside the cities must seek authorization by ballot of the voters of the right to levy taxes sufficient to cover their proposed expenditures.

urged, will not seriously undertake the development of effective substitutes for strike action as long as they can presume that strikes will not occur. Union officials say, in effect, that the best way to protect the public against stoppages of public services is to eliminate the statutory ban on strikes. Only then, they assert, will there be meaningful negotiations.

Even though these union positions have self-serving characteristics, there is evidence that the cloak of "sovereignty" has been used to justify unilateral and sometimes inequitable decisions by governmental administrators. Moreover, legislative bodies, and administrative agencies, are traditionally inclined to retain as much of their rule-making jurisdiction as they can. Life seems to be easier that way. But, decisions which are arbitrary or seem to employees to be arbitrary, can give rise to employee reactions which impair the quality of service rendered and otherwise infringe upon the public interests. Despite the problems in this area, and the frustrations they generate, ways and means other than the strike have to be found for resolving them.

The issue of the "retained rights" of the employer (related in public service to the proper performance of both the legislative and executive functions) is more difficult to deal with in the public sector than in the private sector. In the private sector, certain subjects are dealt with unilaterally by the employer on the assumption that this is essential to the proper performance of the managerial function. There are limitations to the scope of collective bargaining in the private sector which unions recognize. To a greater extent, moreover, the governmental employing agency lacks the power directly to negotiate with its employees or to have effective means for securing necessary consent to an agreement from higher levels of authority (from the executive officers of government and ultimately from the appropriate law-making body). As compared to the private sector, the authority to negotiate is less likely either to be granted in advance or to be promptly obtained when desired. Such restraints are a concomitant of operations in a democratic political context. Unlike the private business organization, government is more directly responsive to the demands of its constituency.

The need for validation of agreement in the administration of public agencies has a degree of comparability with the need for validation in the operation of democratic employee organizations. Negotiating representatives of employees, in the private sector as well as in public employment, usually are limited in the authority they can exercise. Rules established by higher union organizational authority are sometimes an important limitation. The agreement they consumate, moreover, is almost universally subject to the

democratic principle of ratification by the membership. This is not always pro forma. Indeed, retention by the employee membership of the ultimate authority to approve or reject a negotiated agreement can be a factor of considerable importance in fashioning the terms of settlement which are submitted for membership validation.

Governmental employing agencies secure their authority from legislative bodies representing the various public interests and they may have to secure a validation of agreed-upon terms from that body. In other words, the retained rights of government are defined, in the last analysis, by actions of the legislative body and executive officials who are subject to the restraints of the electorate. Employees may dis-elect their representatives and the public may dis-elect theirs. Collective negotiations in the public sector is obviously undertaken in an environment which is quite different, in important respects, from the private sector.

It follows from this analysis that, in order to spur the legislative bodies and the administrative agencies to accord more effective participation rights to public employees, doubts should not be raised about the firmness of the well-established principle that the strike, or the threat to strike, is not available to employees in public service. That might be the effect of legislation replacing the Condon-Wadlin Act if it were silent on this subject. The fact of the matter is that collective bargaining in the private enterprise context is markedly different in many respects, from collective regulation in the governmental context. One difference is in the lack of appropriateness of the strike in the public sector.

We come to this conclusion after a full consideration of the views expressed to us not only by some union representatives but by others that public employees in non-essential governmental services, at least, should have the same right to strike as has been accorded to employees in private industry. We realize, moreover, that the work performed in both sectors is sometimes comparable or identical. Why, then, should an interruption of non-essential governmental services be prohibited?

To begin with, a differentiation between essential and non-essential governmental services would be the subject of such intense and never-ending controversy[8] as to be administratively impossible. There is, however, an even more telling reason. Careful thought about the matter shows conclusively, we believe, that while the

[8] It has been suggested to us that an interruption of the services provided by public school teachers should be permissible because this would not create a public emergency. One can assume that this point-of-view is not widely shared.

right to strike normally performs a useful function in the private enterprise sector (where relative economic power is the final determinant in the making of private agreements), it is not compatible with the orderly functioning of our democratic form of representative government (in which relative political power is the final determinant).

An unequivocal recognition of this fundamental principle by the representatives of public employees, rather than the raising of doubts about it, would, we believe, elicit powerful public support for the stated fundamental objective of most public employee organizations, i.e., the development of substitutes for the strike which will insure adequate considerations of employee claims.

In summary

Despite many complexities, we believe it is both feasible and desirable to develop a system of effective collective negotiation in the public service. This can be achieved in a manner which is consonant with the orderly functioning of a democratic government. It cannot be achieved by transferring collective bargaining as practiced in the private enterprise sector into the governmental sector. New procedures have to be created. In subsequent sections of this report, recommendations are made as to some of the ways and means by which collective negotiation in the public service can be soundly developed.

PART TWO **Determination of representation status**

IT IS ELEMENTARY JUSTICE to assure public employees, who are estopped from using the strike, that they have the right to negotiate collectively. We have stated in Part One that we believe that right should be provided and that it can be provided within the framework of our democratic institutions and the character of employment relationships in the public sector. But how is this to be done?

Making that right effective requires first of all that adequate procedures be established to provide a dependable representation status for the employee organizations which do the negotiating. Disputes over representation status are as difficult to resolve peacefully as those arising once an employee organization has been recognized. If collective negotiations are to resolve issues in the public employment relationship peacefully, the foundation for that result must be laid in effective procedures to establish representation status for the organizations which conduct the negotiations on behalf of the employees. That foundation has not been laid by statute in New York State.

It is suggested by a number of persons with knowledge of this field, and particularly by leaders of organized labor, that the methods developed since 1935 in the private sector for guaranteeing, certifying, and enforcing the representation status of an employee organization provide a model, and can be applied without essential change to the public sector. This method would involve first of all a declaration of public policy guaranteeing to employees the right to be represented by organizations of their own choosing in negotiating and administering, jointly with their employer, the terms of their employment. In order to effectuate this right, an independent Labor Relations Board would be established with authority to deal with questions of representation the answers to which are not reached by mutual agreement between the employer, the employees, and an employee organization. That Board would have the power to make its answers binding on the parties by (a) determining what group of workers is to be included in the appropriate unit, by (b) examining evidence of employee choice, including holding elections,

and (c) certifying a particular organization as the one chosen by the employees and as exclusive bargaining agent for all in the unit, and by (d) orders to employers and unions to cease and desist from "unfair practices" and to take affirmative corrective action, such orders being enforceable by an appropriate court.

In our view, for reasons expressed elsewhere in this report, the arrangements developed for private industry cannot be literally transferred to the public sector without meeting the special requirements for effective negotiations in the public sector.

Assuring the right to representation

We turn then to the arrangements for assuring representation status to employee organizations in the public sector.

Those arrangements, as we have already stated in Part One, are based on the premise that public employees should have the right to associate with their fellow employees in organizations of their own choosing and, if they desire, to negotiate collectively in the determination and administration of their terms of employment through such organizations. No statutory declaration of these rights for public employees exists in New York State, and no statutory means exists for the resolving of disputes over problems connected with establishing representation status for employee organizations. This situation calls for legislative action, and we so recommend.

Problem areas

Now we move from an acknowledgment of basic rights of employees to collective representation to the specific procedures to effectuate that representation. This involves fundamental problems. The first of these problems is to provide for sufficient flexibility in the light of the variety of arrangements for collective representation which have already developed in New York. That variety has been described in some detail in Part One and elsewhere in this report.[1] Employees have, in the past and present, carried on their collective participation and joint negotiations in a great variety of ways and have chosen various types of employee organizations to represent them. There is no *a priori* reason to assume, therefore, that their future choices would not also be diverse. We cannot assume that employees, if given free choice, would support the development of any *single pattern* of participation or any *single type* of employee organization utilizing any *single model* of collective negotiations. Indeed the opposite assumption would appear more reasonable.

[1] See Part Three and Appendix.

Sufficient flexibility should be provided so that the lessons of experience in this area of public employment, so uncharted in many of its aspects, can be brought to bear upon the pattern of arrangements which ultimately develops. The door should not be closed on any arrangement which may prove effective and mutually acceptable.

We recommend therefore that a Public Employment Relations Board be established and be empowered and required (a) to establish procedures, consistent with the criteria which are discussed below, for resolving disputes arising with respect to the representation status of employee organizations, and (b) to resolve representation disputes arising in the Departments of the State Government.[2] The Board shall act in such cases on the receipt of a request from one or more of the parties to the dispute. The Board shall also be empowered to resolve disputes submitted to it in accordance with the provisions of the following two paragraphs.

We further recommend that the legislative bodies of local governments, after consultation with interested parties, be empowered and encouraged to establish their own procedures, satisfying the criteria set forth below, for dealing with disputes relative to representation status in that local government and the departments and agencies subordinate to it. In the absence of such procedures, such disputes shall be submitted to the Public Employment Relations Board.

State public authorities and their employees shall submit disputes regarding representation status to the Public Employment Relations Board. Local public authorities and school districts and their employees shall submit their representation disputes to the procedures of the local government in which their principal offices are located.

In recommending this approach, we have followed the precedent of the 1963 law establishing grievance procedures for local governments. Under that law the state-mandated procedure applied unless the local government adopted its own grievance procedure.

To judge from experience in handling questions of representation in the private sector, criteria are needed to settle disputes likely to arise between the parties in connection with the following issues:

Determination of the unit of employees considered appropriate to be organized and represented by an employee organization.

Ascertainment of what employee organization, if any, the employees in such a unit desire to have represent them.

Obtaining recognition from the employer. This issue comprehends the matter of certification.

[2] In other parts of this report other functions are proposed for this Board.

Conditions of eligibility of an employee organization for recognition and certification.

Determination of proportion of employees in the unit to be represented and ultimately the issue of exclusivity.

We now proceed to the consideration of the criteria applicable to these problem areas.

Determination of the negotiating unit

The most uncharted and difficult problem area in the development of arrangements for determination of the representation status is that of initial determination of the employee-employer unit identifying the employees to be represented. Criteria for the definition of the term "appropriate" are required which square with the characteristics of the public employment relationship and with the joint responsibility of the employees and administrators for the effective performance of their mission, namely, to serve the public.

A number of factors to be taken into account in formulating criteria for defining the unit are suggested below.

(1) *Consistency of the employee-employer unit with a community of interest among employees included in the unit.*

That community of interest, however, may be claimed along several dimensions, each having its advantages and disadvantages.

(a) *Community of interest of employees with respect to conditions of employment applying particularly to them.* An employee may share a community of interest with (1) a number of employees in an occupational group subject to working rules which apply particularly to them; with (2) the other employees in his department or installation with respect to personnel practices and working environment; with (3) all employees of the political unit (town, city, county or state) or of the functional unit (school board, public authority, fire or police department) for the employees of which a common wage and hour structure, health and accident and retirement benefits, or working rules and personnel policy are provided; with (4) all classified civil service employees in a city or the State for whom common entrance requirements, selection procedures, status and salary grade classification, various welfare benefits, appeals procedures in disciplinary cases, etc. are provided.

Effective collective negotiation with respect to any of these items suggests that the employee unit be defined so as to include those employees subject to terms related to that particular item. An alternative or supplementary course is for organizations representing employees in smaller units to form coalitions or joint councils for negotiation on those terms which apply to all of them.

If this principle of community of interest, i.e. the "common-applicability-of-terms-of-employment" is not used, serious consequences can ensue. An employee organization may seek to negotiate, for the special benefit of its own members, modifications or supplementations to the terms which are supposed to apply to a more comprehensive group of employees such as all employees of the State, or a city, or town, or county. The result is that a crazy quilt of salary and wage and welfare benefits structure can emerge. This creates conflicts over alleged inequities because of the disturbance of relationships among sub-groups of employees. This produces problems for the executive officers who must maintain satisfactory and just employee relations among all groups of employees in the units for whose management they are responsible. It also produces problems for individual employees whose career interest might suggest the desirability of transfer from one job to another within the more comprehensive employing unit. To such transfer, obstacles would be presented by the differential negotiated wages, benefits, seniority, retirement provisions, etc. among the sub-units.

This would seem to indicate, at a minimum, that the employee unit should not be established without consideration of the issues with respect to which an organization proposes to negotiate. Nor should it be established without first exploring the universe of employees in a comprehensive government unit, governed by an authoritative legislative body, who are assumed to be treated equitably by terms established for all of them.

(b) *Community of interest of employees with respect to the continuation of a traditional, workable, and, on the whole, satisfactory negotiating pattern.* The employees of the executive departments of the State government, the fire fighters, the law enforcement officers, the school teachers of specific school districts, and employees of public authorities which are less than state-wide and larger than those organized as units of local governments, would appear to be cases in which this principle of "appropriateness" for a unit has emerged. A presumption exists that, in the absence of compelling evidence to the contrary, these groups, as appropriate units, should not be disturbed.

(c) *Community of interest of employees with respect to specialization of occupation according to a craft or profession.* The degree to which this criterion applies is clear with respect to certain groups of employees as indicated not only by (1) historical development, but by (2) obvious common interests of employees in maintaining the status of these crafts and professions and their personal status within them. Moreover, (3) the performance of their public

services is bound up with the expression, in their work and working relations, of the standards relevant to those crafts and professions. Furthermore (4) their employment relations are often carried on with supervisors and managers, at least on the administrative level, who also consider themselves members of the relevant craft or profession.

The above considerations are those which need to be explored with respect to any group desiring definition as an appropriate unit on these grounds. This guide would, *a priori,* appear applicable at the present time to school teachers, fire-fighters, municipal police, state police, welfare workers, and medical workers.

(d) *Community of interest of employees with respect to the manner of exercising their right of representation.* This criterion is introduced here to indicate the desirability of going slow with respect to getting involved in a matter of unit determination taken for granted in private industry. We refer to the question of whether supervisors and/or professional employees should be segregated out of an employee unit. There are important reasons for going slow in this matter. The effectiveness of the employees' collective influence on the terms of their employment in some areas of public employment may be related more to the community than to the conflict of, interests between employees and their supervisors. In other areas this may not be the case. The application of an arbritrary "no-supervisory-membership-in-the-organization" criterion fails to differentiate between these two situations.

Moreover, as has been indicated earlier in this report, a part of the negotiating process in public employment is the appearance before legislative and executive officials. That is a political process. It is of quite a different character from that involved in the exercise of economic power in traditional collective bargaining in private industry, in connection with which the membership of supervisors in the union is generally, but not always, deemed inappropriate. Decisions about membership in an appropriate unit should not stop employees in a particular situation from *making their own choice* as to the organization by which they choose to be represented in the light of the kind of strategy they deem to be most effective at particular stages of their efforts to modify the terms of their employment.

(2) *Consistency of the terms of employment, the determination of which lies within the discretionary authority of the employing agency, with terms concerning which negotiation is sought.*

Matching the terms over which employees in the employee unit wish to negotiate with those terms concerning which the executives

of the corresponding employer unit can negotiate to a conclusion is no easy task in the public sector. A union in the private sector will normally, unless multi-employer bargaining is involved, find itself across the table from employer representatives to whom broad, authoritative discretion has been delegated to negotiate and to commit the employing organization to all of the terms of employment on which the union desires to negotiate. Even though the negotiators may not be top management, they and top management constitute a closely-knit "team."

This is not the case in public employment. Let us take, for example, the case of an employee unit composed of the professional employees of the welfare agencies of a city. The corresponding employer unit with respect to determining and administering many of the terms of employment is the Welfare Department. The "employer" executives with whom negotiations are carried on are the Superintendents of the several Welfare services and ultimately the Commissioner of Welfare. It is within their authority to negotiate about the working rules, the provision of facilities, services, equipment, and other aspects of the working environment not involving major expenditures with respect to such items. They are also likely to be the "employers" with respect to the administration and supervision of working routines and relationships, the handling of grievances, and the administration of discipline. But another stratum of employer, whose chief executive, the city manager or mayor, holds the administrative authority with respect to an over-all personnel policy for all employees of the city, with respect to the determination of costly city-wide benefits of various sorts, and wages, and concerning decisions as to the distribution of city funds among various uses (buildings, streets, sewers, new schools, payrolls for the several departments, etc.). But even that chief executive can only recommend such a distribution and the budget required to meet the expenditures involved. His budget proposals must be submitted to the next stratum of "employer," the legislative body which is responsible for approving the overall budget and for levying the taxes with which to balance income with expenditures. If the negotiated items include any which have been mandated by state law or if they involve any modification of local or state civil service provisions, there is a further level of decision-makers who must approve the settlement.

Negotiations in public agencies in which the negotiating "employer" is thus limited in the kinds of issues upon which he can make an authoritative decision is of a different character from negotiations in private industry in which discretionary or delegated authority of the negotiating employer extends over practically all

items of mutual concern to the parties. A minimal implication of the problem just discussed is that the expressed desires of an employee organization to represent the employees within a particular employee unit is not likely to lead to satisfactory collective negotiations unless the executives of the corresponding employer unit have the discretion to come to an agreement on, or at least to make meaningful and effective recommendations to higher authority about, the items to be negotiated.

The situation here under discussion presents both the employee organizations and the executives of government with temptations. Yielding to those temptations will complicate not only unit determination but the negotiating process itself. The temptation faced by the employee organization is to claim unit boundaries solely on the basis of what will give it an immediate pragmatic advantage in organizing efforts. The executive's temptation is to refuse to negotiate on the grounds that certain items are "off limits" for him. A frank discussion at the time of recognition proceedings between the parties (a) on unit determination in the light of employer unit area of authority, (b) on specifying the appropriate subjects for negotiations, (c) on the development of procedures for carrying their joint agreement further to the employer level where effective decisions (short of appropriations to implement them) can be made, is desirable. Such discussion will reduce the chances for disputes on unit determination which would have to be settled by means other than by agreement of the parties.

(3) *Compatability of the employee-employer unit with the joint duty of administrators and employees to carry out their fundamental mission, i.e. service to public.*

The definition of the group or groups of employees with respect to whose terms of employment an executive of a government unit is expected to negotiate affects his administrative tasks in many ways. It affects the number of employee organizations with which he must deal. It affects his problem of giving equitable treatment to all the employees under his management. It affects the variety of negotiating results that he must somehow integrate into a pattern of terms of employment and their budgetary implications that makes sense for his whole unit. It determines how many chances there are that negotiated terms for one group will result in a sense of injustice or inequity to another. For dealing with all of these matters he must make organizational arrangements for administration.

Those administrative arrangements, however, are not merely for his own convenience. Nor are they merely devices for directing and regulating the work of his employees, though they do serve that purpose. But in a larger sense they create the operational frame-

work within which every participant in the agency does his work. Their opportunity to perform their work well or poorly is greatly affected by the character of that framework.

Both administrators and employees in public employment are under equal obligation to perform their service to the public efficiently and in a way satisfactory to the public. Both have an equal interest therefore in seeing to it that the impact of the unit determination upon the administrative arrangements which affect the quality of that service is not disadvantageous.

The normal criteria used in determining the unit for representation are those relevant to the community of interests of employees, which we have discussed above. This is very appropriate because it is the employees who are being represented. It is not suggested that these criteria be replaced by those related to the administrative convenience, orderliness and effectiveness. We suggest only that these latter be given due consideration when the boundaries of the appropriate employee-employer unit are being determined. In the interest of discharging their constitutionally imposed duties and of maintaining political acceptance from the public electorate, the administrators of government agencies cannot ignore this criterion of appropriateness. Nor, in the interest of discharging efficiently their equal duties to the public, can public employees ignore it. Public employee organizations can no more ignore this principle than private-employee organizations can ignore the compulsion on private employers to have the kind of administrative structure that contributes to their profit-making mission.

Ascertainment of employee choice

Once a decision is made concerning the employee-employer unit considered appropriate for collective representation and negotiations, the next problem with respect to which a representation dispute may arise is associated with the determination of what employee organizational representation, if any, the employees in that unit desire.

The resolution of this issue, like the resolution of the other issues involved in the determination of representation status for an employee organization, will, in most circumstances, be by agreement of the parties themselves. The normal procedures used in that case are the presentation of signed petitions, the presentation of membership cards, or dues deduction authorizations. These processes can be invoked if the parties are unable to agree on whether the employees in a particular employee-employer unit wish a particular organization to represent them. In the case of such a dispute another process, that of an election, is then frequently employed.

In all dispute cases, whatever method is used for ascertainment of the employees' choice, consideration should be given to the disadvantages of relying on the employing agency itself to evaluate the evidence and to decide the issue.

Our recommendation with regard to the resolving of disputes on this issue, as in the case of all other disputes concerning representation status, is set forth on pages 30 through 32 of this report.

Exclusive representation

A question which is bound to arise early in the handling of disputes with respect to the representation status of an employee organization is that of whether a particular organization is to be recognized as negotiating agent for its members only or to have exclusive representation rights for all employees in the unit. We regard another alternative, in cases in which more than one organization is seeking negotiating rights, namely proportional representation, as an alternative filled with operational complexities sufficient to make its recommendation questionable at this time. To our knowledge only one state (California) has adopted such a solution, and that one with reference to teachers only. That law was enacted so recently that no exhaustive analysis of experience is available at this time.

Historically in the private sector we have moved from the representation-for-members-only principle to the exclusive-representation principle in most cases. A number of problems were deemed to be better solved through the exclusivity principle. Some of these were evidently connected with the desire of employers to give less than permanent status to their obligation to bargain. Some were associated with interunion rivalries and competition for jurisdiction. We find a number of advantages in the use of the principle of recognizing a majority organization as exclusive representative for all employees in the unit. There are advantages in the elimination of the possibility that the executives of an agency will play one group of employees or one employee organization off against another. There are advantages in the elimination, for a period, of interorganizational rivalries. There are advantages in discouraging the "splitting off" of functional groups in the employee organization in order to "go it on their own." There are advantages in simplifying and systematizing the administration of employee and personnel relations. There are advantages in an organization's ability to serve all the employees in the unit. Moreover, effectuation of the no-strike policy, which must be achieved in the public interest, is closely related to placing major responsibilities on an employee organization for the conduct of all employees in the unit.

These advantages assume a rational and workable *prior solution of the unit problem.* We do not believe that problem is sufficiently clarified in the public sector at this time, nor has there been sufficient experience in solving it to permit wise legislation on this matter at this time.

The Public Employment Relations Board should make the problem of exclusivity as well as unit determination the focus of continuing study looking toward recommendations for legislation. In the meantime, it is probably wise to leave the matter of exclusivity to agreement between the parties and to fact-finding boards.

Recognition and certification

The term "certification" has come into use to describe the action of an independent national or state labor board which has been called upon to decide questions of representation. But an employee organization can be "recognized" by an employer without formal certification. The term "certification" is appropriately applied to the act of an agency or Board set up outside of the normal administrative organization of any State or Local Government to resolve disputes over the matter of recognition. In the succeeding section we suggest that the eligibility requirements for recognition and certification be identical.

Eligibility requirements for recognition and certification

In other parts of this report we make recommendations with respect to the duties and conduct of employee organizations. If the right to recognition and the right to engage in collective negotiations is to be accorded an employee organization, it is not unreasonable that that organization should fulfill certain requirements for eligibility to recognition and certification which conform to those duties and that conduct.

We set forth below the eligibility requirements we recommend be fulfilled by an employee organization as a condition of its recognition and certification.

(1) The presentation of evidence that the organization represents that group of employees it claims to represent.

(2) The affirmation by the employee organization that it does not assert the right to strike against the government nor to assist or participate in any such strike nor to impose an obligation to conduct, assist or participate in such a strike.

Rights accompanying recognition and certification

With recognition or certification the employee organization

should be accorded these rights:

(1) To represent the employees in negotiations, and in the settlement of grievances.

(2) To check-off upon presentation by individual employees of dues deduction authorization cards.

(3) To unchallenged representation status for the remainder of the budget year and for a twelve month period or a longer period if by agreement (but not to exceed 24 months), the period to begin 120 days before the succeeding budget submission date.

Summary of recommendations

(1) That a statutory declaration of public policy be made that (a) public employees have the right to join or refrain from joining employee organizations of their own choosing for purposes of collectively negotiating the terms of their employment, and (b) the State, local governments and other political subdivisions have the power to recognize, negotiate with, and enter into written agreements with employee organizations representing public employees.

(2) That a State Public Employment Relations Board be created and (a) empowered to establish procedures, consistent with criteria discussed below, for resolving disputes arising with respect to representation status of an employee organization, and (b) to resolve such disputes arising in the agencies of the State Government and (c) to resolve disputes submitted in accordance with the provisions of recommendations (3) and (4) below. The Board should consider and resolve disputes upon petition from either party or both parties.

The representation status issues with respect to which procedures are to be developed by the Board include:

(a) Definition of the employee-employer negotiating unit.

(b) The ascertainment of the employees' choice of an employee organization as their representative.

(c) Certification of the employee organization.

(3) That the legislative bodies of the local governments, after consultation with interested parties, be empowered and encouraged (a) to develop procedures, satisfying the criteria set forth below, for resolving disputes over representation status of an employee organization in that local government and the departments and agencies subordinate to it, and (b) to resolve such disputes. The procedures to be established include those listed for the Public Employment Relations Board in Recommendation (2) above and shall conform with the criteria listed below in Paragraph (5). In the absence of local government procedures, the procedures ad-

ministered by the State Public Employment Relations Board shall be used.

(4) That State public authorities and their employees submit disputes regarding representation status to the Public Employment Relations Board. That local public authorities and school districts and their employees shall submit their representation disputes to the procedures of the local government in which their principal offices are located, if such procedures are in force.

(5) In defining an appropriate employee-employer unit, the following statutory criteria shall be taken into account:

(a) That the definition of the unit corresponds with a community of interest among the employees to be included in the unit.

(b) That the conditions of employment upon which the employees desire to negotiate are those with respect to which the agency has discretion to determine or recommend to other administrative authority or the legislative body.

(c) That the unit is compatible with the effective fulfillment by administrators and employees of their joint responsibilities to serve the public.

(6) That the according of exclusivity in representation status to an employee organization be permitted, but left, for the time being, to agreement between the parties and fact-finding boards. We further recommend that the Public Employment Relations Board give continuing study to this matter looking toward legislative action.

(7) That elegibility requirements for recognition and certification of an employee organization be established as follows:

The presentation of evidence that the organization represents that group of employees it claims to represent.

The affirmation by the employee organization that it does not assert the right to strike against the government nor to assist or participate in any such strike nor to impose an obligation to conduct, assist or participate in such a strike.

(8) That rights accompanying certification and/or recognition should include:

The right to represent employees in negotiations and in the settlement of grievances.

The right to check-off of dues upon presentation of individual dues deduction authorizations.

The right to unchallenged representation status for the remainder of the budget year and for a twelve-month period (or longer, by agreement, but not to exceed 24 months), the period to begin 120 days before the succeeding budget submission date.

PART THREE **The resolution of deadlocks in collective negotiations**[1]

THE AVOIDANCE OF THE STRIKE is substantially the perfection of procedures and policies to provide an effective alternative to conflict. Part Two of this report proposed procedures to settle the difficult disputes and rivalries involved in issues of representation. Part Five is concerned with various suggestions to improve the quality of negotiations and to avoid an impasse; it is also concerned with the present procedures for the settlement of grievances. The present part focuses upon the critical questions of the most appropriate alternatives to conflict in the event that collective negotiations appear to have reached an impasse. What then?

The design of dispute settlement procedures must constantly avoid at least two serious pitfalls. The first is that impasse procedures often tend to be overused; they may become too accessible, and as a consequence, the responsibility and problem-solving virtues of constructive negotiations are lost. Dispute settlement procedures can become habit-forming, and then negotiations become only a ritual. The second pitfall is that a standardized dispute settlement procedure is not ideally suited to all parties and to all disputes. Procedures work best which have been mutually designed, are mutually administered, and have been mutually shaped to the particular problem at hand.

Collective negotiations in government employment need to be closely coordinated with the calendar of the legislative and budget year. Indeed, an impasse is typically identified by the failure to have achieved an understanding or agreement before the approach of budgeting deadlines established by law. It is a fundamental principle in government employment that collective negotiations and the resort to procedures to resolve an impasse be appropriately related to the legislative and budget making process. An impasse may be defined in terms of the failure to achieve agreement sixty

[1] The procedures considered in this part of the report do not apply to grievances of individual employees or groups of employees nor to disputes over representation, but relate rather to disputes over the terms and conditions of employment generally which have reached an impasse in negotiations.

days, or some longer period, prior to the budget submission date established by law for the agency or unit of government.

Part One of this report described the wide variety of types of collective relations that now exist in public employment in the State of New York: (a) In some cases more than one employee organization is recognized in a single unit, while in others one employee organization has the right exclusively to represent all employees. (b) In some cases wages and conditions of employment are prescribed by the agency after discussions with employee organizations; in other cases they are set forth in memoranda or agreements signed by employee organizations after joint discussions but with final prescription by the government agency; in still other cases, agreements are formally negotiated by employee organizations and the agency and signed by both. (c) In some cases the range of subjects discussed with employee organizations is very narrow since many of the conditions of employment are mandated by legislation or administrative regulation, while in other cases the subjects discussed range as widely as in private industry. (d) In some cases wages and conditions of employment for non-classified employees are determined under legislative authority by reference or equivalence to the wages and conditions prevailing for other designated employees, while in other cases no such formula or principle has been authorized. (e) In some situations the budget available to the government agency is determined in advance and is fixed for the purposes of any collective discussions, while in other cases it is understood that the agency undertakes to seek the necessary funds; in still other situations discussions over wages and sources of funds proceed simultaneously. (f) In some cases the conditions of employment are determined for a single budgetary year, while in others these terms are fixed across two or more budget years.

This variety in the patterns of collective relations between government agencies and employee organizations in New York State, and the early stage of many of these relations, has led this Committee to conclude that every opportunity and encouragement should be afforded each collective relationship to develop its own procedures and dispute-settling machinery. No single procedure or style of dispute settlement is likely to prove equally acceptable or effective. Moreover, parties may wish to experiment and to revise procedures in the light of experience. No procedure should be imposed by law without first affording the governmental agencies and employee organizations involved in collective relations the opportunity to develop directly their own procedures for resolving an impasse. It would be unwise to freeze so early in the development of collective relations in government employment a single

pattern of dispute settlement and to deprive the future of a more varied and perceptive experience from which to choose.

The time to develop procedures to resolve an impasse is when there is no crisis. The processes of joint discussion and negotiations in each collective relation should be devoted to the development of procedures to resolve disputes and to avoid an impasse. Such procedures, designed to meet the needs of the particular parties and the public interest, should be regarded as a priority subject for collective negotiations. These agreed-upon procedures should be reviewed and perfected from time to time in collective negotiations in the light of experience.

This Committee proposes the principle and policy that every collective relationship between a governmental agency and an employee organization, which is reduced to writing, should incorporate a specific procedure which the parties agree to use to resolve disputes over conditions of employment in advance of budget submission or legislative deadlines. Where the collective relationship involves no written agreement or memorandum, the parties should nonetheless adopt such a procedure which they may elect to reduce to writing.

This Committee recommends that every existing collective relationship between a governmental agency and employee organization promptly undertake discussions seeking to establish a mutually agreeable procedure to be followed in a future dispute over employment conditions. This obligation to search for agreed-upon procedures should apply regardless of any specified term of current conditions or existing memoranda or agreement, but any agreed-upon procedure need become operative, if necessary, only with the expiration of the present term. Among the types of procedures which the parties may wish to consider are the following. They may alter or combine these procedures in a variety of ways. Their resourcefulness and imagination may be expected to create still others more appropriate to their particular situation. The list which follows is identified without preferment or ranking. Any procedure must, of course, conform to provisions of law.

(a) The advance commitment to submit a dispute to arbitration. Specific standards may or may not be designated.

(b) The determination to resolve a question according to a formula specifying that the wages, benefits or other conditions of employment in the locality and type of work in question shall be governed by those prevailing in private or public employment in other designated localities and types of work.

(c) The advance agreement to refer a dispute to fact-finding with recommendations, with or without the advance commitment

by one or both parties to accept the recommendations. The procedures may provide a number of variants. The negotiators may jointly agree in advance to accept the recommendations of the fact-finders and to urge their acceptance upon their principals. They may jointly agree in advance to take the recommendations to the appropriate legislative body to advocate jointly the requisite appropriation or change in regulations, recognizing the authority of such legislative body. The procedures to select the fact-finding and recommending body may also take a variety of forms.

(d) The advance agreement to establish one or more study committees to review together complex or difficult problems, such as wage relations among classifications, which may not be amenable to simple and immediate solution. Such joint study committees should be expected to achieve mutually agreeable recommendations to their principals prior to the next budget submission or legislative deadline. Joint study committees have proven to be constructive in many private and public relationships. The study committees could well include several employee organizations depending on the scope of the issue.

(e) The advance commitment to utilize mediation procedures and to designate individuals or agencies, public or private, as the mediators.

Some of the parties to a current collective relationship may be unable to reach agreement on the procedures which they are to follow in the event of an impasse in collective negotiations. In such event, the Committee recommends that the following procedures be required to be utilized if an impasse exists not less than sixty days before the date required for the submission of the budget. These procedures may be invoked by the government agency, by the employee organization, or by the Public Employment Relations Board on its own motion.

(a) The Public Employment Relations Board shall first ascertain whether an impasse exists, the issues in controversy, the status of the collective negotiations and the steps which the parties have taken to resolve the dispute. The Board shall seek to resolve the dispute by further mediation, including the search for mutually agreeable procedures to resolve any remaining differences between the parties.

(b) If an impasse continues, the Public Employment Relations Board shall appoint a fact-finding board, ordinarily of three members, each of whom is to be representative of the public, with power to make public recommendations. The fact-finding board shall be appointed from a list of recognized experts maintained by the Board and drawn up after consultation with representatives of

employee organizations, state and local government administrators, and agencies with industrial relations and personnel functions. The Public Employment Relations Board may also appoint non-voting advisors to the fact-finding board from each of the parties, in appropriate cases.

(c) The fact-finding board shall hear the contending parties to the dispute. It may request statistical data and reports on its own initiative in addition to the data regularly maintained by the Public Employment Relations Board. A majority of the members of the fact-finding board shall make a recommendation to resolve the issues in dispute no later than fifteen days prior to the submission of the budget or legislative deadline. The recommendations of the fact-finding board shall be used to facilitate agreement prior to the budgetary or legislative deadline; however, they shall not be binding on either the governmental agency or the employee organization, unless they so agree.

(d) In the event that a fact-finding report with recommendations issued by a board established under procedure adopted by the parties, no further fact-finding board with power to make recommendations, as provided in paragraph (b) above, shall be appointed. However, the Public Employment Relations Board shall have the power to take whatever steps it deems appropriate to resolve the dispute, including the making of recommendations after giving due consideration to the recommendations and facts found by the first body.

This Committee has recommended the above impasse procedures and those incorporated below, because it has concluded that these are most appropriate and most generally applicable to public employment. Fact-finding requires the parties to gather objective information and to present arguments with references to these data. An unsubstantiated or extreme demand from either party tends to lose its force and status in this forum. The fact-finding report and recommendations provide a basis to inform and to crystallize thoughtful public opinion and news media comment. Such reports and recommendations have a special relevance when the public's business is involved. The public has a special right to be informed on the issues, contentions and merits of disputes involving public employees.

The Committee has rejected the proposal for compulsory arbitration not merely because there may be serious questions as to its legality but because of the conviction that impasse disputes may arise less frequently and be settled more equitably by the procedures outlined in this report. In our judgment, the requirement for binding arbitration would likely reduce the prospects of settle-

ment at earlier stages closer to the problems, the employees and the agency; it would tend to frustrate the participation of employees in the determination of compensation and conditions of employment and tend to encourage arbitrary and extreme positions on both sides. Moreover, the procedures here proposed, we believe, are more effective in encouraging proposals which are likely to prove to be mutually acceptable and enforceable. They better preserve the autonomy and authority of the legislative process while achieving a balance between the rights of public employees and the public interest.

A collective relationship between a governmental agency and one or more employee organizations now applies to only a minority of government employees in New York. This Committee recommends that any collective relationship, which results in a written understanding or agreement in the future, incorporate in any such memorandum or agreement a procedure to be followed by the parties in the event of an impasse in negotiations. The parties should preferably design their own procedures, but they may elect to adopt the Public Employment Relations Board procedures outlined above.

This Committee recommends that the Public Employment Relations Board maintain and make available to employee organizations and government agencies, as well as to mediators and fact-finding boards, statistical data relating to wages, benefits and employment practices in public and private employment applicable to various localities and occupations. The Board should also provide data for joint study committees established by government agencies and employee organizations and assist them to resolve complex issues in their negotiations.

The Committee is of the view that the procedures outlined above, providing for the maximum participation by government agencies and employee organizations in the design and administration of the procedures to resolve an impasse, will make a major contribution to the orderly resolution of disputes. As either party is left the alternative to reject the recommendations of a fact-finding board, it is essential to state the views of this Committee as to appropriate procedures in that event.

In public employment, responsibiliy for the final resolution of any dispute, which has not been settled by the procedures outlined above, lies with the local or state legislative body. The rejection by the employee organization of the recommendations of the fact-finding board does not make a strike legitimate or appropriate. The rejection by a government agency of such recommendations does not constitute a final disposition of the dispute.

Economic coercion involving work stoppages is not to be applied in our society against government. The proper course for the employee organization to take any further complaint, after review and recommendations by a fact-finding board, is the legislative and political arena representing all the people.

Similarly, if the government agency should reject the recommendations, as it too should have the right to do, the employee organization and the administrators should take the remaining controversy to the legislative and political arena rather than to the streets. In the ordinary course, the legislature reviews and evaluates contending views in budget making and in the specification of conditions of work for public employees.

This committee recommends that in the event of the rejection of a fact-finding recommendation, the legislative body or committee hold a form of "show cause hearing" at which the parties review their positions which respect to the recommendations of the fact-finding board. The appropriate budgetary allotment or other regulations are then to be enacted by the legislative body.

It is ultimately the legislature and the political process which has to balance the interests of public employees with the rest of the community, to relate the compensation of public employees to the tax rate, and to appraise the extent and quality of public services and the efficiency of their performance to the aspirations of public employees. The methods of persuasion and political activity, rather than the strike, comport with our institutions and traditions as means to resolve such conflicts of interest. It is these methods, moreover, that have been utilized by the wide variety of employee organizations which are indigenous to public employment.

In summary, four basic principles stand out in the design of machinery to resolve disputes which reach a deadlock in collective negotiations:

(a) Collective negotiations need to be closely coordinated with the budget and legislative year; indeed, an impasse is to be defined by reference to failure to achieve an agreement not less than sixty days prior to the final date of the budgetary submission.

(b) All written memoranda or agreements should include procedures which the parties develop themselves to invoke in the event of an impasse. Parties to such memoranda or agreements now in effect should be encouraged to incorporate such procedures.

(c) In the event of an impasse which has not been resolved, the Public Employment Relations Board should appoint a public fact-finding board, ordinarily of three members, to make recommendations.

(d) In the event of the rejection of a fact-finding recommendation by the employee organization or the governmental agency, the appropriate legislative body or committee should hold a form of "show cause hearing" at which the parties review their positions with respect to the recommendations of the fact-finding board prior to final legislative action on the budget or other enactment.

PART FOUR **Legal considerations**

IN THE THREE PRECEDING PARTS of this report, certain conclusions, suggestions and recommendations are reached with respect to the public interest and to the improvement of relationships in the public employment sector. This part of the report will pull together a number of these conclusions and recommendations, with particular attention to the legal implications.

The discussion in this part relates to the subject of strikes in public employment and concentrates on measures designed to diminish the need to rely on such strikes and to deter those who undertake to engage in economic strife.

The subject of strikes or strike threats by public employees is controversial in a deeply emotional sense. Such strikes have been regarded as challenges to government or attacks on its sovereignty, and as a form of socially irresponsible conduct. On the other hand, the denial of the right to strike has been strongly protested as a discriminatory and unfair rejection of a basic privilege of citizenship.

Our assessment of public opinion is that it unmistakably disapproves of strikes against government. In New York State and throughout the country such strikes have been outlawed whether by specific legislation or by the common law as interpreted by the courts. The federal government requires all employees to swear in affidavits that they do not belong to organizations which assert the right to strike against the government and that they will not participate in any such strike. A violation is made a felony, and any organization which engages in such a strike loses its right to be recognized or to represent government employees. In 16 states which have legislated on this subject, including those which have the most liberal provisions for the protection of the collective representation rights of employees, strikes against government agencies are prohibited.

The attitude is different toward strikes in private industry, even as to those which may constitute substantial interferences with interstate commerce or threats to public health or safety. The federal law provides for relief from these for only a limited period of time, and then only at the discretion of the President; public employee strikes on the other hand are absolutely prohibited, and

where sanctions are specified they are usually automatically applicable.

Still, strikes of public employees have occurred, as is well known. In New York such strikes have been in direct violation of the Condon-Wadlin Law. Such strikes in New York and elsewhere have often been caused by a feeling of futility on the part of public employees because of the absence of other means by which they could participate in the determination of the terms and conditions of their employment. In some instances their inability to form or join organizations which are assured of standing as recognized representatives has contributed to this sense of futility and has led them into strike action.

The Condon-Wadlin approach has not been successful, as is well known. We therefore recommend that the Condon-Wadlin Law be repealed and that it be replaced by the legislative measures which are set forth in this report. We believe that the approach we recommend will far better serve the public interest and the interests of the employees and the employing governmental agencies. Improvements or modifications may turn out to be necessary in the future. Experimentation and change are always in order in the field of employee relations to meet conditions as they arise or change.

We are convinced that the strike must not be used in the field of government service. Our program is based on this premise.

This is by no means a new doctrine either in New York or elsewhere. There are currently some 800,000 public employees in New York State, including the services of the federal, state and local governments. Of these, almost 200,000 work for the federal government, and they are by law explicitly prohibited from striking. Strikes by state and local government employees have also been legally forbidden. The question therefore is not whether these public employees should give up the right to strike; they have never had this right. Rather, we are urging that other means be made available to achieve the ends at which the illegal strike has been directed. We are convinced that this will be more likely to lead to the development of a constructive and responsible public employment relationship, because it will give due weight to the public interest and will consequently be politically viable.

It must be emphasized that our purpose is not merely to outlaw strikes and provide severe penalties in order to make the prohibition effective. We prefer to believe that public employees and their organizations will realize that their legitimate purposes may be promoted without resort to the strike. In other words, we are seeking appreciation of the reasons for the no-strike doctrine and respect for the law.

It would be unrealistic, however, to believe that there may not be some temptation to follow the old course and test the law and those who administer it. This temptation could be restrained even though the Condon-Wadlin penalties are repealed. There are now two deterrents available in the law, and we suggest borrowing a third from the federal government's practice. Before discussing these deterrents we should make it clear that we intend to treat as a strike any concerted work stoppage or slowdown by public employees for the purpose of inducing or coercing a change in the terms or conditions of their employment,—in other words, that the definition be broad enough to include any concerted interferences with service for the purpose indicated.

The first deterrent is the injunctive power of the courts. This has been a potent force throughout our history, and could be most effectively employed in preventing or terminating strikes in public employment. One of its virtues is the flexibility which flows from the discretionary power of the court. The Committee recommends that this area of discretion be enlarged by eliminating the $250 per day maximum fine in criminal contempt proceedings set forth in Section 751 of the Judiciary Law with respect to the enforcement of restraining orders or injunctions issued against strikes of public employees. We are confining this recommended change in the Judiciary Law to criminal contempt because we believe this should be sufficient to accomplish the purpose of preventing public employment strikes or of terminating them quickly. We think it wise expressly to discourage public employing agencies from waiving or negotiating away their right to have such strikes enjoined by the courts or their right to have the court command respect for and compliance with its order or decree through the contempt proceedings mentioned above. To this end we recommend that it be made obligatory by law for specified law officers to initiate court action for injunctive relief before any such strike breaks out and as soon as it can be proven that it is about to occur, and if the resulting order or decree of the court is violated to institute a criminal contempt proceeding promptly. The legal officer chargeable with these duties would be the chief legal officer of the State in respect to State employees, and of the county or municipality in which the employing agency has its principal office in the case of county or municipal employees or the employees of a public authority or school district.

The second deterrent lies in the existing provisions of the Civil Service Law relating to the disciplining of employees for misconduct. Participation in a strike, slowdown or work stoppage would certainly be misconduct within the meaning of Section 75 of this

Law for which employees may be subjected to reprimand, fine, demotion, suspension, or dismissal, depending on the extent of the misconduct.

The third deterrent, in use in the federal government, is related to the fact that employee organizations which seek recognition must agree not to assert the right to strike against the government or any of its agencies nor to assist or participate in any such strike nor to impose a duty or obligation to conduct, assist or participate in such a strike. The denial or revocation of recognition for violation of this restriction is provided for in a variety of ways. These are in a statute, in the definition of an employee organization eligible for recognition in Executive Order 10988, and in two documents prescribed by the President on May 21, 1963,—the Standards of Conduct for Employee Organizations and the Code of Fair Labor Practices in the Federal Service. We recommend that the principles of these federal regulations or laws in this respect be adopted and incorporated into New York law.

Any employee organization already recognized by the State or any of its political subdivisions would continue to have its existing representation rights and the perquisites or privileges that accompany such rights, including checkoff. The outbreak of a strike in its representation unit would not automatically cancel the organizations rights, but these rights would be subject to cancellation by the Public Employment Relations Board, in a summary show cause proceeding which would be initiated by a complaint filed with this Board by the chief legal official of the State or of the city, county or other political subdivision as specified above, or on the Board's own motion.

Again, some area of discretion would be left open. The Board would determine whether the organization was responsible for calling the strike or whether it tried to prevent it. The Board would also ascertain whether the organization made or was making good faith efforts to terminate the strike. The Board would also be authorized to determine, if it is so charged by the employee organization, whether the employing agency or its representatives have engaged in such acts of extreme provocation as to detract from the fault of the employee organization or its officers in permitting the strike to take place. Based upon the facts and circumstances it ascertains, the Board would decide whether the organization's recognition and its accompanying privileges should be revoked and if so whether indefinitely or for a specified period of time. In any event, the organization in question would not be permitted to have its recognition rights reinstated without specifically agreeing not to assert the right to strike in substantially the same form as is now

required of employee organizations by the federal government, and as would hereafter be required of all employee organizations seeking recognition as the representative of public employees in New York State or in any of its political subdivisions.

We strongly encourage at all governmental levels that the representatives of the employing agency and the employees work out their own procedures for the handling of grievances including terminal arbitration on a case-by-case basis. We suggest this ad hoc basis because of the doubt expressed by some that a provision for binding arbitration applicable to all future disputes would be legal.

We would also strongly encourage these representatives to develop and use agreed-upon procedures for resolving the disputes that will periodically arise in the negotiation of the terms and conditions of employment, including the means or steps to be taken jointly to effectuate whatever they agree upon, as set forth in Part Three in this report. This encouragement would be declared a matter of State policy and would be further reflected in a statutory provision that such agreed-upon procedures would be permitted in all instances to function without regard to the dispute-settling provisions in the State law. Only if they failed would the dispute-settling provisions of the State law be brought into play.

When the State procedures are introduced or superimposed on those of the city, county or other subdivision, if there has already been a report of some panel, commission, board or individual which includes a finding of facts or recommendations, such report should be given due consideration in the State procedure and the proceedings leading to it not necessarily duplicated or repeated. The purpose would be to prevent avoidable delay and also to minimize the likelihood that either party may be tempted to shop around among the available forums seeking some advantage thereby.

The declared policy of the State would be to develop effective collective negotiation and to encourage the parties to reach their own agreements as to both substantive matters and procedures for resolving disagreements. To clear up any doubt as to the legality thereof, the State and all local governments and other political subdivisions should be empowered by law to recognize, negotiate with, and enter into written agreements with employee organizations. There is the possibility that some public employing agency will improperly refuse to negotiate with a duly recognized employee organization on the ground that the subjects under consideration are within the exclusive control of the legislative body and hence not negotiable. To discourage this practice, it is suggested that there be clarification by statute as to which subjects are open to negotia-

tion in whole or in part, which require legislative approval of modifications agreed upon by the parties, and which are for determination solely by the legislative body.

The more serious disputes in terms of possible disruption of service will be those over compensation and other conditions of work which will arise at the time of negotiations. We are recommending in Part Three that for the purpose of assisting the parties in avoiding needless controversies over facts concerning comparable and relevant conditions steps be taken by the Public Employment Relations Board to collect and collate data and make it readily available to the parties. The policy should also indicate the need in a well functioning dispute-settling procedure of giving serious attention to the recommendations of the third parties who will be called in by the parties or by the Public Employment Relations Board, as discussed in Part Three of this report.

Compulsory arbitration is not recommended. There is serious doubt whether it would be legal because of the obligation of the designated executive heads of government departments or agencies not to delegate certain fiscal and other duties. Moreover, it is our opinion that such a course would be detrimental to the cause of developing effective collective negotiations. The temptation in such situations is simply to disagree and let the arbitrator decide.

Voluntary arbitration on an ad hoc basis is a desirable course, on the other hand, although it also leads to binding decisions. This is an acknowledged and accepted means by which reasonable people may resolve their honest differences, and is certainly preferable to the use of the strike, or any other form of similar economic warfare.

We are rejecting for the reasons set forth in Part One the suggestion that the provisions of the law restricting strikes should not apply to so-called non-essential public services.

When recommendations of the fact-finding board specified in Part Three are not accepted by either party, and a show cause proceeding is instituted by the legislative authority in the jurisdiction involved, the legislature, council or other legislative body should have this proceeding conducted by itself in banc or by such committee or subcommittee it may designate, setting by resolution or regulation the type of procedure it deems appropriate.

The Public Employment Relations Board should, by way of review, perform or have charge of the following functions: it shall supervise or conduct all activities pertaining to the right of employee organizations to be recognized and to act as the representative of employees, including questions relating to the determination of the negotiating unit; it shall see that employee organizations

meet the conditions stipulated in the law for eligibility before they are accorded recognition; it shall determine when a strike occurs whether the given employee organization should lose its recognition and the privileges related thereto and whether for an indefinite or a specified period; it shall supervise and regulate the reinstatements of recognition after an employee organization has had its recognition suspended or withdrawn; it shall establish, after consulting representatives of public employee organizations and administrators of public services, panels of qualified people to be available to serve as mediators or members of fact-finding boards in connection with the dispute settling procedures set forth in Part Three hereof, and it shall supervise and administer these procedures in accordance with the statutory provisions relating thereto; it shall also make arrangements to obtain and make available data and other information that will be of assistance to public employing agencies and employee organizations in connection with the negotiation of the terms and conditions of employment; and it shall have authority generally to conduct such activities and make such regulations as will advance and effectuate the foregoing functions and matters directly related thereto.

The Public Employment Relations Board should consist of three public members named by the Governor with the advice and consent of the Senate; their terms of office should be six years, except that the first appointees should have staggered terms.

Other recommendations set forth in other Parts of this report with respect to the recognition of employee organizations and their representation status and as to procedures for the settlement of disputes relating to the terms and conditions of employment or grievances, while not repeated here, should be embodied either in statutory provisions or legislative declarations of policy.

PART FIVE **Organization for collective negotiations**

IN TERMS OF EMPLOYMENT, the nation's leading "growth industries" are education, health, and other services provided by state and local governments. Between now and 1975, for example, employment in state and local governments in the nation is expected to expand from about 7 million to over 12 million persons. This projected increase of nearly 70 percent exceeds that of any other activity.[1] The national trend will, of course, be reflected in the State of New York. In the last decade, public employment in the State rose from 409,000 to over 600,000, and if this trend continues, it may top the one million mark in the latter half of the 1970's. Even today, the City of New York alone has more employees than U. S. Steel, General Electric, or Standard Oil Company of New Jersey. As a direct employer, the State itself would rank among the 15 largest enterprises of the nation. And many of New York's larger municipalities have more employees and higher payrolls than most industrial enterprises in the country. By any standard, therefore, state and local governments in New York are large-scale enterprises, and they are growing in size relative to commercial and business establishments.

Formal collective negotiations between governmental bodies and employee organizations are still the exception rather than the rule throughout the nation and the State. But employee interest in determining terms and conditions of employment is rising as employee organizations gain strength and prestige. For example, the State, County and Municipal Employees Union has been growing rapidly throughout the country. Its membership in New York City has doubled within the last six years. At the same time, the Civil Service Employees Association in New York State has grown steadily and its membership has doubled in the last decade. The American Federation of Teachers has had a rapid increase in membership, as has the State Teachers Association.

These employee organizations are now pressing for an exten-

[1] See Report of the U. S. National Commission on Technology, Automation and Economic Progress—draft report, 1966, p. 43.

sion of their rights to participate in establishing terms and conditions of employment for the people they represent. As far as we have been able to determine there are still only about eleven formal collective agreements in the State.

Collective relationships between governments and their employees are expanding in various parts of the country and the rights of employees to representation is being increasingly provided for by legislation. In 1965 alone nine states enacted laws governing collective relations between governments and employee organizations, and many others, including New Jersey, are actively considering legislation at this time. Many States and municipalities are facing the task of building the kind of relationships that will best serve the interests of governments, their employees, and the public.

We feel that the machinery which we have proposed for New York for determination of recognition status, for resolution of deadlocked negotiations, and for deterrence of strike activity can make a positive contribution. More basic measures beyond the enactment of legislation are required, however, to create constructive employee relations in the public service. These are:

(1) *the building of effective organization* within government and employee institutions for dealing with employee relations problems;

(2) *the development of expertise* in the processes of joint consultation and negotiation;

(3) *the extension of knowledge* related to the conditions and trends of public employment; and

(4) *the broadening of areas of communication* between government administrators, employees and their representatives.

In the private sector, industrial relations have moved in the past 40 years through three successive stages of emphasis: first on *procedures*, later on *policies*, and finally on *organization*. In the decade of the twenties, when emphasis was on procedures, private employers concentrated on unilaterally-developed or instituted procedural devices, ranging all the way from training techniques to wage incentives and wage classification systems and bonus plans. But employers soon discovered that no package of unilaterally-developed procedures, no matter how good in detail, could be effective in satisfying the employees' desire for participation in the determination of their working conditions. It then became necessary to develop a well-integrated *policy* which would take into account the employee demand for participation. It was soon found, however, that even the best procedures and the most carefully developed policy fail to achieve results in the absence of effective

organization within the human structure of the enterprise. Thus, *organization* of management and employees, in addition to concern with policy, has become a central focus in modern industrial relations.

In comparison, the preoccupation of state and local governments is still largely with procedures. Over the years the civil service movement has made employee security and compensation a matter of right under law, rather than dependent upon ad hoc political considerations. Implicit in this form of protection for employees is the limitation on the responsibility and authority of employing agencies over pay scales and many other working conditions. To be sure, in many government organizations much more attention is being given to statements of policy on employee relations questions beyond the scope of civil service regulations. But, with few exceptions, little thought has been given to the organization needed to engage effectively in collective relations.

There is as yet no counterpart in state and local government to the Vice-President of Industrial Relations in private industry. In modern corporations, the chief industrial relations executive plays two essential roles—that of employee relations *advisor* to the president and the chief operating officials and that of *assistant* to the line executives in implementing policy. In effect, he is responsible for both development and implementation of a carefully thought-out policy of employee relations. He is concerned with coordination of employee relations activities of many department heads and division managers. This process of advising and assisting the managerial organization in employee relations is a full-time job not only for the vice president himself but for a sizeable staff of subordinates as well.

Management in private industry has become well aware that unions are by their very nature pressure-generating organizations. Their recognized function is to regulate the exercise of managerial authority, and they press hard for major improvements in the pay and status of the workers they represent. This is the way to represent employee interests. For the most part, union pressure has forced enterprises to improve their managerial organization and to select and develop more competent managerial personnel. Private industry has found that reliance on rules, regulations and stated managerial prerogatives is no substitute for improvement of managerial organization up and down the line. Union pressure, therefore, has been to a significant degree a positive force for management improvement.

In municipal and state governments, chief executives, budget directors, department heads, and hard-pressed school boards nor-

mally must manage as best they can without competent full-time staff advice and assistance in employee relations. Thus, when suddenly faced with demands from an employee organization, they must improvise measures to deal with crisis situations. Often they are uncertain of their authority, unaware of precedents established in other departments or agencies, and unable to call in qualified advisors to help them formulate sound positions. In other words, the organization for effective employee relations is usually underdeveloped in the government service. The building of more effective organization is thus absolutely essential in order to cope with the mounting pressure of employee organizations for a voice in determining their wages and other conditions of employment.

Skilled and knowledgeable people, also, are necessary to create effective organization. As our report demonstrates, employee relations problems in the public service are unusually complicated. The determination of appropriate representation units and the appropriate scope of issues for negotiation is much more difficult than in private enterprise. The resort to mediation with recommendations in deadlocked negotiations also calls for a high level of skill, knowledge and sophistication on the part of negotiators and the mediators themselves. There is also a unique requirement that such persons have knowledge of and experience with the legislative process, and how to adapt collective negotiations to that process.

We recommend, therefore, that the State, local governments, and public authorities establish effective organization for public employee relations. We also recommend that such governments, as well as the organizations representing public employees, consider the establishment of training programs in public employee relations. These might be conducted by the various organizations, possibly with the cooperation and assistance of schools of public administration and labor relations throughout the State. We also recommend that the educational institutions preparing persons for careers in public administration intensify their programs in public employee relations and collective negotiations.

At the same time, it will be necessary to recruit persons who, by virtue of experience and knowledge, are qualified to serve as mediators and fact-finders. This will be particularly difficult, but critically important because of the newness of collective negotiations in public employment. Here again, the schools of labor relations and public administration, as well as the American Arbitration Association and federal and state mediation agencies, could perform a vital service by sponsoring seminars and conferences to enable persons in this field to exchange experience and to become better informed about the complex conditions of public employ-

ment. In this respect, the State of New York is particularly well endowed with organizations capable of carrying on programs of this kind.

The extension of knowledge about terms and conditions of public employment in comparison with the private sector is also of crucial importance. There is need for better comparative statistics on salaries, pensions and other fringe benefits of public employees not only in New York State but in other areas of the country as well. And these need to be compared with prevailing levels and practices in the private sector of the economy. These data should be analyzed in order that they maye serve a useful purpose in resolving the manifold issues which arise in collective negotiations. We recommend, therefore, that the Public Employment Relations Board, either by itself or through contract with a research organization, take measures to have information of this kind collected on a continuing basis.

Fortunately, there is growing interest throughout the country in research on the broader aspects of collective relations in public employment. Such research deserves encouragement and support. In particular, we applaud the work currently in progress at the New York State School of Industrial and Labor Relations at Cornell and the Labor-Management Institute of the American Arbitration Association. The extension of knowledge in this field is essential for developing the skill and judgment of employee representatives and government officials as well as mediators and fact-finders.

A final step is the building of broader avenues of communication between government and employee representatives. The area in which practices are normally most highly developed is that of grievance handling. This is basically a most important area.

Grievance procedures have been prescribed by Executive Order of the Governor as to State employees since 1950 (revised in 1957 and 1963), by Executive Order of the Mayor of New York City since 1954, and by state statute since 1963 as to employees of local governments. In discipline cases other procedures are provided by law, with a series of statutory steps to safeguard the regularity of the system.

While we have no direct evidence that these various grievance programs are not working well, there have been criticisms over the possible bias of some of those who pass on employee complaints because they are appointed by, or are subject to control or influence by, executive or administrative heads of departments, agencies or other political entities in the field of public employment.

We express no opinion as to the validity of these criticisms, and we make no recommendation for specific changes at this time in

any of these programs which in the aggregate serve as a public employment grievance procedure. We do emphasize, however, the need to check continually on the efficacy of these procedures with the view to seeing that they are meeting the essential requirements of helping to promote harmony by doing justice in an informal and expeditious manner.

Collective relations should be more than the making and administering of formal agreements. Such agreements are not self-effectuating. With proper organization and attitudes on both sides, collective negotiation can develop into a creative process of joint consultation, fact-finding and research. There are several examples of experimentation in this area in the private sector—The Human Relations Committee in the basic steel industry, The Jet Study Committee in United Airlines, as well as the so-called "Scanlon Plans." In some cases, third parties have been brought in to assist in the joint consultation and negotiation process, as in the case of the Long Range Committee in Kaiser Steel Company.[2] The purpose of such arrangements is to enable the parties to study and resolve issues in the absence of a crisis situation and thus to avoid critical impasses and strikes.

The joint fact-finding or research approach may be particularly appropriate in public employment. Since strikes are illegal, there is greater incentive for the parties to work out effective substitute arrangements. There is greater public concern with the outcome of negotiations. Also, there is a wide range of issues which do not fit easily into the allowable terms of a negotiated agreement but which are quite appropriate for joint fact-finding and research. In the field of education, for example, teachers are deeply concerned about such things as instructional policies, curriculum content, pupil grouping and the elimination of all possible detractions to good teaching. With a keen sense of responsibility for the educational welfare of their communities, teachers and the organization representing them are becoming more militant in demanding greater participation in formulating educational policies and practices. Joint consultation at the conference table may be an effective means of broadening the teachers' role in the decision-making process and building the responsibility of teachers' organizations.

Perhaps the most fruitful area for joint consultation is consideration of the appropriate procedures to govern negotiations. Procedures evolved by the parties themselves are far superior to those prescribed by law. In this report, we have recognized the need for

[2] For a description of these and other similar arrangements, see J. A. Henderson and J. J. Healy, *Creative Collective Bargaining*, Prentice-Hall, Inc., 1965.

flexibility in determining negotiation procedures and stressed the importance of incentives for the parties to work out their own arrangements for dealing with deadlocked negotiations through mediation, fact-finding or voluntary arbitration. In large measure the success of employee relations throughout the State may depend upon the initiative, imagination and creative attitudes of the parties in undertaking this task.

We conclude this part of the report, therefore, with the thought that new legislation is necessary but not all-sufficient for building constructive employee relations. Laws will not be effective unless there is a desire by most people to comply with them. Penalties may be useful as deterrents to illegal action, but they provide little incentive to build a mutually satisfactory relationship. In public employment, the road to success lies in building positive and creative collective relations through better organization of the parties, more skill in negotiation, greater knowledge of the conditions of public employment, and broader, continuous communication between representatives of employees and their respective employers. We have suggested some concrete measures for building such relationships.

As stressed repeatedly throughout this report, strikes are neither permissible nor appropriate in the public service. But collective negotiations between employee representatives and their employers are not only appropriate but highly desirable. Employees and their organizations, quite rightly, are becoming more militant in their demand for a greater voice in determining not only their conditions of employment but also the standards and goals of their professions. Pressure generated by employee organizations is a force which can and should result in better public administration.

As we have noted in other parts of this report, substitutes for the strike must be developed. In this connection we have proposed, among other things, fact-finding boards having the power to make public recommendations. Under our proposal, these recommendations may be referred ultimately to the legislature in the event they are not mutually accepted. At this stage, administrative authorities as well as employee organizations will face the necessity for accounting for the manner in which they have exercised their authority and carried out their responsibilities.

APPENDIX **Patterns of collective negotiations**

THERE ARE AT LEAST 8600 governmental employing entities in the State of New York the employees of which might conceivably desire to exercise the right of association for the purpose of negotiating collectively the terms of their employment and the handling of their grievances. These include 20 State Departments, the State University, 62 cities, 62 counties, 932 towns, 553 villages, 1199 school districts, 53 public authorities, 84 housing authorities, 5540 special districts, an unknown but large number of city departments, and 21 urban renewal agencies. Moreover, many of these entities run special installations (such as hospitals, prisons, etc.) the employees of which have a plausible community of interest in collective representation.

To assume that a single mode of collective participation for the employees of all of these entities can or should be established by state law would exceed the limits of common sense. As a matter of fact, an extensive range of arrangements for that collective participation has developed out of experience in satisfying the interests of not only employees, but also employee organizations, government agency executives, and legislative bodies.

Two models

It is widely considered, however, that there are basically two models characterizing those arrangements, sometimes referred to as the *Union* model and the *Association* model. There are reported to be 909 locals of employee organizations of all sorts in New York State. Of these, 251 would be assumed to be of the Union type primarily because they are affiliated (with one exception) with national unions. The remaining 658 would be assumed to be of the Association type primarily because the word "association" or "society" or "guild" appears in their title and because in only one case are the locals affiliated with a broader than statewide organization.

The differences between these two models can be painted with a broad brush. Leaders of particular employee organizations do identify themselves with one or the other model. And when their organizations are competitors with each other for members among

the same group of employees, their recruiting appeal frequently stresses the advantages of the type which they represent. Yet, the problem to which they must adapt their activity in representing public employees is, in many essentials, the same for all employee organizations. It is not surprising, therefore, that over time it becomes harder to distinguish between unions and associations and that each tends to adopt successful practices of the other.

The differences between the two models are normally considered to be related to the following six dimensions:

A. The character of the claimed employee-employer unit.

In the Union model the unit desired is subject to pragmatic determination at the moment, not only in accordance with a community of interests of employees in regard to their sharing of the same conditions of work, the same grievances, the same "boss", the same locality, or the same craft skills, but with regard to a favorable opportunity for organizing them and thus for extending the membership of the organizing union. There is thus a tendency for fragmentized units to appear originally in a number of cases. It is pragmatic opportunity rather than a policy of occupational oriented organizing, however, which predominantly governs their practice.

The unit claimed by those organized on the Association model is also subject to pragmatic organizing strategy considerations, but there is a traditional policy of seeking to represent the employees of more comprehensive units defined by reference to employment in a common-employer unit.

That this is an oversimplification can be seen by comparing the 138 locals of the American Federation of State, County, and Municipal Employees (clearly identified with the Union model) and the 210 chapters of the Civil Service Employees Association (clearly identified with the Association model) as to the employee-employer units which, it appears from their names,[1] they have organized.

Organization	District Councils and Conferences	Political Entities	Installation Units	Department Units	Craft in a Dept.	Craft across Depts.	Authorities
SCME	4	22	47 (10 NYC)	29 (22 NYC)	14	12	13 (5 NYC)
CSEA	5	65	70 (27 State)	48	13	0	14

[1] Appearances may of course be incorrect, but more adequate information is not immediately available.

Another dimension of the unit problem has to do with the status level of the members eligible to join the organization. In the Union model supervisors and professional and confidential employees are normally excluded. In the Association model they are normally included.

B. Formality of recognition and for what, and for whom.

The recognition sought ultimately by organizations identified with the Union model is for exclusive representation of all employees of a bargaining unit where the union has been chosen as representative by a majority of the employees. Representation for members only is considered an undesirable second best to be accepted only until the union has sufficient strength to demand exclusive representation. Documentary evidence on this point is scanty, because there are few formal agreements on record, and even in some of these the phrase "exclusive representation for members" is ambiguous. The recognition status of the rest of the other 251 unions with respect to exclusivity is unclear.

The Associations do not differ from the Unions in their predisposition to desire exclusive representation.

The terms of employment about which the two models of organizations negotiate are determined not so much by the policies of the organizations as by the willingness of the executives of the government agencies to negotiate on certain issues. Different executives have different ideas about the scope of issues concerning which they have the discretion to negotiate to a conclusion.

In the case of both Union and Association, however, the kind of representative action for which recognition is sought includes the process of grievance settlement. The expectations of both Associations and Unions concerning what they can negotiate about are limited by the fact that certain terms of employment are mandated by legislative enactment. These terms include hire and tenure procedures, trial period, promotions, seniority in layoffs, discipline, general standards of compensation, minimum and maximum salaries and increment schedules, process for changes in individual salaries and wages, hours and overtime, fringes such as insurance, pensions, vacations, holidays, sick leave, etc. These terms are mandated for all State and many municipal employees by the State and/or municipal Civil Service Commissions. This circumstance reduces for those employees in the State[2] and in the local[3] governments

[2] 105,850 out of a total of 128,320.
[3] 407,750 out of a total of 407,750.

who are classified under Civil Service law, the range and aspects of subjects about which negotiations can take place freely and without reference to other executive or legislative decision-makers.

Moreover, both the Union and the Association model organizations are subject to the restriction that "nothing in conflict with law and Civil Service rules or benefits" shall be negotiated or made part of a grievance settlement. The tendency of both models, however, is to take the mandated terms as minima, and to negotiate from there. Also, one gets the impression that the Union model organizations stress the amplification of those minima through direct negotiation, and that the Association model organizations have a greater tendency to seek direct legislative modification of the minima.

As experience grows, it is possible that the differences in the two models in regard to the type of recognition sought, for whom, and for what, will be even less significant than in the present. Such predispositions are, after all, not so much a function of what organization leaders want, as a function of what they can expect in view of the possibilities they experience. Those possibilities are constrained by many of the same factors for both of them.

C. The checkoff.

Both the Unions and the Associations are interested in and strive to obtain the check off.

D. Character of participating activity.

The phrase "collective bargaining with management" is frequently used to describe the kind of collective participating activity in which organizations oriented toward the Union model engage. The Association model organization is popularly supposed to accept a more informal type of participation in relations with "management" and to emphasize achievement of results through influencing legislative action. Let us set down several concepts of participating activity in order to see what the reality is at the moment.

1. Discussion of and consultation between the parties followed by ultimately unilateral decision by the executives or the legislative body of the governmental entity involved.
2. Joint study of and negotiation of terms with both parties assuming the desirability of a consensus and mutual agreement.
3. Negotiation of terms on the assumption of the necessity for a joint commitment of the negotiating parties to the terms, but with the necessity to seek approval and the appropriations to implement any agreement from a legislative body.
4. Direct political action before a legislative body in order to acquire statutory confirmation of desired terms.

5. Efforts to obtain a "prevailing rate" arrangement by which legislative authority (and private agreement) is sought to gear wages and benefits to the wages and benefits enjoyed by comparative and relevant groups of employees in private industry.
6. Bargaining with government executives to a mutually acceptable agreement, binding on both parties, both of whom have authoritative discretion to come to such a final and binding agreement, and both of whom have economic power to sustain their veto of any terms to which they do not agree.

A widely-held concept of the two models places the emphasis in the Union model on a demand for the last type of collective participation on the assumption that, in the minds of union leaders, this is the only *real* kind of collective bargaining, as indeed it is considered to be in private industry where the Unions have their longest tradition. The concept of the Association model places the emphasis on the fourth type of collective participation.

These concepts do not correspond with the emphasis which employee organizations actually find it practicable to make in New York State at the present time. Neither is really satisfied with the first type of participation, that is, discussion and consultation before unilateral employer decision. Partly because this is the only kind of collective participation with their "employers" envisioned in public policy proclaimed for State employees and for most local public employees outside of New York City, and partly because of the resistance of public employers to anything but this discussion-and-consultation type participation, many locals both of the Union and the Association type find themselves able to go no further than this. That they go no further arises not from their character or fixed policies, but from the constraints of necessity.

Organizations of both types prefer the second type of negotiations to the first. The second type is distinguished from the first primarily because it involves the assumption that both parties desire to come to a mutually satisfactory consensus.

Practically speaking, the closest approach to "collective bargaining" in the traditional sense that either model of organization can come to in the case of political entities is the third type of collective participation. This, of course, is due to the fact that legislative or Civil Service Commission approval must be obtained for negotiated terms related to those legislatively mandated and in which legislative appropriations must be obtained to implement money terms. Both types of organizations in the public sector can be expected to perfect their strategies and tactics along these lines as long as they are negotiating with the agents of legislatively-governed and tax-

supported governmental entities or their subagencies.

The first stage in the "prevailing rate" type of bargaining (type 5) is normally essentially a political process. It involves convincing a legislature to authorize the setting of certain terms of employment for public employees which shall be equitable in relation to terms prevailing for other comparable groups of employees. Once such authorization is given, the succeeding stage consists of convincing whoever is charged with the responsibility for determining what, in fact, the prevailing rate is that certain comparisons are more relevant than others. There is a sense in which this approach to the determination of terms places in the hands of negotiators beyond the organization representing the employees involved the power to determine what the terms for public employees shall be.

This method can be used only by employee organizations representing employees (usually in the "labor" occupations) whose terms are not mandated by Civil Service regulations. In fact, Section 220 of the Labor Law uses this approach. Such employees are usually, but not universally, represented by a union-type organization. The method is thought of, therefore, as characteristic of the union model.

The nearest possibility for the exercise of the kind of collective bargaining envisaged in point 6 is in negotiating with certain Public Authorities (thruway, bridges, transit and publicly-owned utilities), whose governing boards are not only responsible for operating the services but have the authority to meet their needs by revenues from prices charged, from taxes, or from the sale of bonds. The Public Authorities, it should be noted, are the closest approximation to private enterprise which exists in the public sector. Even in these cases, however, such revenues are frequently supplemented by appropriations from the public treasury or are constrained by public policy with respect to the level of prices or taxes which legislatures permit (the New York City Transit Authority is a case in point). The negotiating process must, therefore, be modified to deal with others than the agency in question. Both Unions and Associations have recognized this and have sought political access to those "others".

Neither Unions nor Associations can move, however, to the sixth type of allegedly *real* collective bargaining with the executives of political entities only if the public, through the action of its legislatures is ready to delegate to a bargaining "team" composed of the executives of government agencies and the negotiators for employee organizations the virtual determination of its budget, the allocation of public revenues to alternative uses, and the setting of the tax rate necessary to balance that budget. The delegation of those

powers is not likely in the foreseeable future. The public, the leaders of employee organizations, and prospective recruits for these organizations would be wise to recognize this and modify their expectations accordingly as to what "collective bargaining" in the public sector can be expected to accomplish unless recognition is given to the practical limitations on public employers to commit themselves unconditionally to a bargain.

The Associations have a long experience in the use of the fourth method, that involving direct political action for terms of employment beneficial to the employees they represent. This mode of collective activity is certainly characteristic of the Association model. Yet, some of the most successful of the employee organizations which, by virtue of their affiliation with the AFL-CIO, are considered to be "unions", e.g. The Firefighters and Postal Clerks, are well known for their traditional *primary* utilization of this method.

E. Type of pressure used.

The concept of "collective bargaining" used to describe the mode of collective participation characterizing the Union model employee organization involves at least two other elements in addition to the kind of activity involved. The first of these elements has to do with the kind of pressure employed to achieve the objective of a joint decision. The Union model pressure is frequently described as economic, and the ultimate actualization of that pressure is the threat of or the actual slowdown or the strike. There is little question that the history and tradition of unions supports this description. The present public insistence by many labor leaders that public as well as private sector employees should not be denied the right to strike gives evidence that their position, at least their strategic public position, is that collective bargaining without the right to apply realistically the strike threat pressure is a contradiction in terms.

The position of Association model organizations on the other hand is widely assumed to have been that economic pressure, including the threat of or an actual strike, is not only illegitimate but irrelevant for organizations of public employees. They are assumed to place greater reliance on political pressure brought upon elected political executives and legislators either in support before a legislative body of proposals mutually agreed to by agency executives and employee representatives or in direct pursuit of legislative action, or in appeals directly to the public.

This differentiation, as indicating traditional emphasis in the two models respectively, is accurate, although association types of organization have employed economic pressure and tactics, and

locals of union types of organization have renounced the right to employ the kind of economic power actualized in the strike weapon.

Decision making by executives of government agencies and their calculations of the cost to them of agreement or disagreement on terms desired by employees is often influenced by public or political considerations. Any organization representing public employees knows that from experience. They are also fully aware of the fact that there are normally strata of "employers", including ultimately a legislature, to whom any agreements made with negotiating executives must be referred for approval and financial implementation. They are also aware that sometimes the most dependable process is to work directly for legislation favorable to their members, which legislation will be binding on the government agencies whose employees they represent. It is to be expected that any successful employee organization, whether of the Union or Association type, will understand and utilize the strategy and tactics associated with political activity as a major re-enforcement of, and, on occasion, as a substitute for, the strategy and tactics associated with skill in negotiating with government agency executives.

As both the Union and the Association model organizations adapt their strategies of action and power to the realities of public employment relationships, they may be expected to gear that adaptation to the peculiarities of that type of relationship.

F. Evidence of agreement.

When an agreement is concluded, whatever the mode of collective participation employed, some evidence, usually written, is desired by the parties for future reference to what was agreed to. These range from (a) an exchange of letters, through (b) signed memoranda of understanding, through (c) announcement of personnel policy, (d) to formal and, often time, exhaustive collective agreements signed by the agents of both parties, and (e) to statutes, ordinances, or regulations having the force of law. The latter might be termed "public contracts".

Union model organizations clearly are satisfied with nothing short of the formal, signed collective agreement setting forth the terms to which both parties are committed for the period covered by the agreement. In the tradition of the AFL and un-affiliated unions since the last quarter of the 19th Century, the collective agreement has been the strong focus both as an end and means of a viable union organization, even to the extent of relegating to a position of secondary importance the "public contracts". As a dominant focus this was realistic in the private sector as long as the primary party to satisfying the employees' demands was the private employer. But the most successful unions affiliated with the Fed-

eration who organized public employees, realizing "where the money comes from", were not slow to seek "public contracts" even to the extent of relegating the trade agreement to a position of secondary importance. They recognized that the employer was the government, and that evidence of government agreements is appropriately a commitment reduced to a statute, an ordinance, an appropriation act, or an executive order.

The Association type organizations on the other hand have been more inclined to accept evidence of executive agreement of the less formal types and to seek further verification when necessary in the form of legislative enactments.

It is interesting to note that although there are 251 locals on the Union model listed for New York State as engaging in some form of collective representation of the employees interests, few of them have reduced their agreements with employing agencies to written collective agreements of the traditional type. This should not be taken as evidence that the Unions with no signed collective agreements are satisfied with that result. But before the contention is uncritically accepted that the reason for this, either in the case of unions or associations, is that "this is all they can get in the light of the employers' refusal to formalize their commitments in this way", another possibility should be taken into account.

It may be true under some of the varied circumstances of public employment relationships that the less formal evidence of agreement accepted, or, if not fully accepted, at least tolerated, by an employee organization provides an effective and satisfactory verification of an agreement. Evidence of agreement such as (a) an exchange of letters certifying, say, an agreement to apply the prevailing rate of wages and benefits to certain categories of workers, or (b) a memorandum of understanding that certain changes will be made in conditions of work, or (c) a commitment from an agency head to join with the employee organization in seeking a reclassification of certain occupations in accordance with the Civil Service schedules, or the (d) publication of a personnel policy which has been worked out in consultation with employer representatives, or (e) a legislative enactment providing benefits such as pensions, health insurance or other "fringe" benefits or a new wage scale, may under certain circumstances and in the light of the character and structure of governmental decision making and employment relations, be not only a harmonious but an effective evidence of a workable agreement.