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Labour relations in the public service: A comparative overview

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Introduction

The question of how to regulate public service labour relations is on the political agenda in a number of countries across the world. Governments are considering how to resolve a series of difficult questions in this sphere, often in discussion with organizations of public service employees, in countries including Chile, Costa Rica, Korea, Malaysia, Paraguay, South Africa, Swaziland and Zimbabwe.

Over the years the ILO has done a considerable amount of comparative research on the main characteristics and trends in public service labour relations both in different groups of countries and worldwide.[1] The earlier studies formed the basis for the adoption of the principal ILO standards on the subject, the Public Service (Labour Relations) Convention (No. 151) and Recommendation (No. 159), adopted by the International Labour Conference by a large consensus in 1978.

In view of the renewal of interest in developing or reforming the law in this respect, this article seeks to analyse the main issues concerned, consider the options facing governments, describe the principles enunciated by the ILO on some of these issues and review the patterns that emerge in different countries. Most examples come from industrialized countries where public service labour relations are most developed, although mention will also be made of experience in less industrialized countries.

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[1] For recent comparative surveys of industrial relations in the public sector, see ILO: *Freedom of association and procedures for determining conditions of employment in the public service*, International Labour Conference, 63rd Session (1977), (Geneva, ILO, 1976); T. Treu et al.: *Public service labour relations: Recent trends and future prospects* (Geneva, ILO, 1987); M. Ozaki: "Labour relations in the public service: 1. Methods of determining employment conditions", in *International Labour Review*, 1987, No. 3, pp. 277-299; and "Labour relations in the public service: 2. Labour disputes and their settlement", in *International Labour Review*, 1987, No. 4, pp. 405-422; M. Ozaki et al.: *Labour relations in the public service: Developing countries* (Geneva, ILO, 1988); ILO: *World Labour Report 1989*, (Geneva), Ch. 5; W. van Ginneken (ed.): *Government and its employers: Case studies of developing countries* (Aldershot, Avebury, 1991); M. Ozaki: "Labour relations in the public service", in R. Blanpain (ed.): *Comparative labour law and industrial relations in industrialized market economies*, 5th ed., Deventer & Boston, Kluwer (forthcoming).

The focus will be on the public service strictly speaking, that is employment in public administration and publicly administered functions such as education, health, the postal service and the police. Public enterprises will not be considered since, although in many countries government may impinge on labour relations processes, these enterprises should in principle be subject to the general rules and procedures governing private sector labour relations; moreover, the recent trend towards privatization of such enterprises is reducing their importance in many countries.

Public service labour relations have grown in importance in most industrialized countries and increasingly in less industrialized countries for several reasons. There has been considerable growth in public service functions and employment over the past 50 years (with some recent levelling off), amounting according to recent statistics to 15-25 per cent of all employment in many industrialized, perhaps 5-10 per cent in many less industrialized countries.[2] Trade union membership in the public service has grown remarkably in many countries during that period, reaching levels higher (often much higher) than in the private sector,[3] alongside increased trade union militancy in this sector in some countries. The importance of government services (notably health, education and other social and protective services) has increased for the general public, with as its corollary a heightened political impact of labour disputes that could disrupt those services. Finally, labour costs are an important part of the state budget, so that decisions thereon have significant consequences for public finances and macro-economic policy.

The major change that has occurred in various ways and to a varying extent in public service labour relations over the last half century in most industrialized and some developing countries has been the decline in the determining force of the idea of government's sovereign power in relations with its employees, and the rise of consensual approaches to decisions on terms and conditions of employment.

Countries now seeking to review their public service labour relations systems so as to regulate them in a more effective and modern way must deal with the following issues: (1) the representation of employees and employers in the public service, particularly the employee's right to organize, but also how the employer side might most effectively be organized for labour relations purposes; (2) methods and procedures of interaction in order to determine public service terms and conditions of employment; (3) the criteria applicable to pay determination; and (4) how to deal with labour disputes in the public service.

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[2] For estimates of government employment as a proportion of total employment and of non-agricultural employment, see ILO: *World Labour Report 1989*, op. cit., p. 49; Andrès Marinakis: *Public sector employment in developing countries: An overview of past and present trends*, Interdepartmental Project on Structural Adjustment, Occasional Paper 3 (ILO, Geneva, 1992), p. 6.

[3] See ILO: *World Labour Report 1989*, op. cit., p. 112.

In tackling these issues, the government inevitably plays several roles and is thus often placed in an ambiguous position. In its role as employer it has the concerns of employers everywhere, namely ensuring appropriate levels of personnel and qualifications, adequate motivation and productivity, proper work discipline, effective work organization and control of costs. In its second role as the authority responsible for national economic policy, it wields the various tools of macro-economic policy for the whole of the economy, including the public sector over which it has most direct control, in order to achieve the particular political and economic goals it sets itself. Finally, in its role as public policy-maker on labour relations, government must promote sound, constructive labour relations principles and procedures throughout the economy, in both private and public sectors. Playing all these roles may pull governments in slightly or sharply different directions, according to the ruling government's priorities in particular economic circumstances. This ambiguity inevitably causes tension in public service labour relations, whose stability is sensitive to changes in a government's political complexion or the economic situation.

I. Representation of public employees and employers for industrial relations purposes

The right to organize

Should government recognize the right of public employees to form and join trade unions and, if so, should any restrictions be placed on this right? ILO standards laid down in Convention No. 87 require that all workers "without distinction whatsoever" be entitled to establish and join organizations of their choosing without prior authorization, the sole exceptions being the armed forces and the police.[4]

In all industrialized countries and in many developing countries, this right has been firmly established in the public service for many years.[5] However, it is still illegal in some countries for public employees to join a trade union, although some *de facto* organizations of public employees have functioned in practice without the employees concerned being penalized. The feasibility of extending the right to organize to public employees is being examined in some of these countries, assimilating them to this extent at least to employees generally.

A number of countries impose certain restrictions on the right to organize: are these restrictions legitimate or appropriate? Which categories

[4] Article 2 of the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87).

[5] See ILO: *Freedom of association and collective bargaining: General survey by the Committee of Experts on the Application of Conventions and Recommendations*, International Labour Conference, 69th Session (1983), Report III (4B) (Geneva, ILO, 1983), paras. 81-88.

of workers may legitimately be excluded from this right? When the relevant ILO standards were adopted, it was considered that the armed forces and the police might be excluded, and Convention No. 87 allows the discretion to exclude these categories. It was no doubt felt that the discipline required of these categories by their functions could legitimately justify prohibiting them from joining organizations that might conflict with the allegiance owed to the corps to which they belong. A few countries have sought to extend this justification to other disciplined groups, such as fire service and prison staff,[6] but this argument has not been accepted by the ILO bodies responsible for reviewing the implementation of ILO standards [7] which have interpreted the possible exclusions restrictively. Indeed most industrialized countries allow the police to join unions or similar organizations to defend their occupational interests, and in some even the members of the armed forces have equivalent rights. Thus, in most industrialized countries, the mere fact of being a member of a disciplined corps is not deemed incompatible with the basic right to organize to defend occupational interests, although it is true that limitations are usually placed on the kind of action that may be taken in its application, notably the right to strike.

On the right to organize, some countries, mainly in the developing world, treat managerial employees and other employees in positions of confidence in the public service differently from lower-category employees, prohibiting them from unionizing. This is contrary to ILO principles on the right to organize which, as interpreted by ILO supervisory bodies, are held to extend to such workers. However, it is accepted that they can be obliged to join organizations separate from those of lower-level public service employees, as long as the categories of managerial staff and employees in positions of confidence are not so broadly defined that the organizations of other workers in public employment are weakened by depriving them of a substantial proportion of their present or potential membership.[8]

Some countries require public servants to organize in trade unions separate from those of workers outside the public service, to ensure that the interests of the public service are clearly taken into account in union deliberations and are not diluted by broader trade union considerations. This kind of limitation has been accepted by the ILO supervisory bodies, as long as such organizations are entitled to join confederations with trade unions in other sectors.[9]

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[6] Ibid.

[7] The ILO Committee of Experts on the Application of Conventions and Recommendations and the ILO Governing Body Committee on Freedom of Association.

[8] See *Freedom of association and collective bargaining: General survey* (1983), op. cit.

[9] Ibid., para. 126.

Representation of the public service employer

On the employers' side, the legal right to organize in employers' associations for labour relations purposes is not an issue. The question is rather the pragmatic one of how government should most effectively organize for these purposes, particularly for reaching decisions on, or for negotiating, wages and working conditions.

In collective bargaining systems, it is assumed that the two sides will come to the bargaining table each with a relatively well-defined position on the issues before them and some clear idea of how far they can compromise on these positions. In normal private sector collective bargaining, each side generally requires a considerable amount of prior internal discussion. For both management and union, this can be fairly complex even in a single enterprise.

In the public service, organization of the employer for collective bargaining is particularly complicated. The constitutional position may divide aspects of responsibility between legislative and executive branches of government and preclude central control over regional and local government decision-making. Political differences between central and local governments or among the latter may seriously hamper efforts at reaching agreed positions among these various governmental authorities. Differences of function may lead to sharply different wishes in the government departments concerned with effective functioning and in those concerned with budgetary control. That being said, where collective bargaining is practised, government must organize itself internally in order to overcome such divisions and establish an employer position for negotiating purposes, as well as to assign negotiating responsibilities. In central government collective bargaining, responsibility for formulating the government's bargaining position and representing it in negotiations is variously assigned to the Ministry of Finance or the Treasury, the Ministry of the Interior or Home Affairs, a Ministry, Board or Commission responsible for the public service, the Prime Minister's Office, or several ministries jointly.[10] In Canada and the United States the extensive decentralization of the private sector labour relations framework resulting from the operation of bargaining unit determination procedures is largely reproduced in the public service. In the United States this has produced considerable fragmentation of such bargaining at all levels. In Canada, at the federal level, although there are some 78 bargaining units, the Treasury Board has been named as the agency responsible for representing the Government as employer in negotiations in

[10] See ILO: *World Labour Report 1989*, op. cit., p. 106, for a summary of certain of these arrangements; and, for the situation in Great Britain, P. B. Beaumont: *Public sector industrial relations* (London and New York, Routledge, 1992), pp. 68-76; and for the United States, M. Derber: "Management organization for collective bargaining", in B. Aaron; J. M. Najita; and J. L. Stern (eds.): *Public sector bargaining*, second edition (Washington, DC, BNA, 1988), pp. 90-123.

all these units and it is responsible for coordinating with management in each of the departments and agencies concerned, for constituting the negotiating team and for acting as employer spokesperson.

In some countries local government is essentially autonomous in decision-making power on labour relations, while in others decisions on these matters are the province of central government. In the former case, local authorities have sometimes joined together in associations to coordinate industrial relations action (e.g. Australia, Denmark, Germany, Sweden, the United Kingdom), though problems can occur because of differences in the political parties in power in different localities. In the United States, where constitutional arrangements preclude the exercise of central control over the federated States and municipalities within these states, local authorities act independently for the most part, and occasional attempts at organizing a number of such authorities with a view to multi-employer bargaining have not been effective.[11] In the latter category, central government itself is responsible for decisions on terms and conditions of employment, as in France and (for the limited category of employees with the special status of the *Beamte* or civil servant) in Germany.

II. Methods of determining terms and conditions of employment

In all public employment, as in the private sector, decisions must be taken on wage structures and classifications, allowances and other benefits, pension matters and other conditions of employment. The natural tendency of many governments has been and remains to decide these matters unilaterally if possible, discussing and negotiating on them if they must. In contrast to the private sector in many countries, where government policy recognized the appropriateness and promoted the development of collective bargaining, most governments submitted to collective bargaining only after significant pressure built up to do so, with the rise of more militant public employee organizations.

The principal trend discernible this century is away from the concept of government as sovereign employer (with its concomitant unilateral approach to determining terms and conditions of employment), to more consensual approaches in which organizations of public employees are allowed a lesser or greater say. An ancillary trend goes from a weaker to a stronger consensual approach (i.e. from consultation to collective bargaining) and a third from informal to more formal or legally organized collective

[11] See P. Feuille; H. Juris; R. Jones; and M. J. Jedel: "Multi-employer bargaining among local governments", in D. Lewin; P. Feuille; T. A. Kochan; and J. T. Delaney: *Public sector labor relations: Analysis and readings*, third edition (Lexington, Mass., and Toronto, Lexington Books, 1988), pp. 162-170.

bargaining. A partial counter-trend discernible over the past ten to 15 years is an effort by government in a number of countries which had accepted the consensual approach to reassert greater control over the outcomes of the negotiation process in the face of economic and budgetary constraints.

ILO standards on the subject have undergone a similar evolution. When adopting in 1949 the main ILO instrument on collective bargaining, Convention No. 98,[12] which provides for the promotion of collective bargaining as the appropriate means for regulating terms and conditions of employment, the ILO Conference decided that it was appropriate to allow for exclusion of public servants engaged in the administration of the State, it being recognized that few countries at the time allowed collective bargaining in their public services and that there would be insufficient support for extending this institution to that sector. This exclusion was challenged by trade unions in ILO for a number of years and finally, in recognition of the evolution that had been occurring in many countries, the ILO Conference adopted, in 1978, Convention No. 151 [13] making provision for the promotion of machinery for negotiation of terms and conditions of employment in the public service or other methods (presumably consultation procedures) that would allow representatives of public employees to participate in determining these matters. Three years later,. in 1981, the Conference adopted a new instrument, Convention No. 154,[14] which sought to elaborate on Convention No. 98 in certain details, extending an obligation to ratifying countries to promote collective bargaining in all branches of economic activity, including the public service.

In analysing the nature of these procedures and how far they are unilateral or consensual, several factors need to be taken into account. First, the distinction between form and substance. Procedures for determining public employees' conditions of employment that seem unilateral in form may in practice have a high consensual content when the parties actually negotiate and then respect what has been agreed. Equally, procedures which in form are negotiation may mask what is in effect unilateral determination of conditions if government does not take them seriously and takes decisions on the matter regardless of them. Secondly, since the decision-making process often occurs in several phases, true negotiations may take place during an initial, consensual phase, while at a later phase effect is given (or not given) through unilateral means to the agreements reached. In such

[12] The Right to Organize and Collective Bargaining Convention, 1949.

[13] The Labour Relations (Public Service) Convention, 1978. Article 7 of this Convention provides: "Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilization of machinery for negotiation of terms and conditions of employment between the public authorities concerned and public employees' organizations, or such other methods as will allow representatives of public employees to participate in the determination of these matters".

[14] The Collective Bargaining Convention, 1981. The Convention recognized, however, that national provisions could be made for special modalities of application.

cases the overall character of the system will depend very much on the extent to which, over time, a government's unilateral action respects negotiated agreements so that it can be relied upon. Thirdly, as regards the scope of terms and conditions of employment, it is possible that certain issues fall to the first procedure while others are relegated to the second. We shall find examples of this in several countries.

Unilateral decisions

Examples of entirely unilateral decisions on terms and conditions of employment in the public service have largely disappeared in industrialized countries and are disappearing in parts of the developing world. They still exist in many countries in Africa and Asia and in some in Latin America, but in many countries where governments insist on maintaining unilateral decision-making authority on the subject, various procedures are followed allowing for at least some consultation of public employee representatives before decisions are taken or for some consultation of advisory bodies.

The establishment of various forms of consultative machinery and advisory boards or commissions were the first steps away from a wholly unilateral approach to this question.

Consultations

While in many cases consultation of public employee organizations no doubt first occurred on an ad hoc basis, many governments have set up formalized joint consultative machinery through which they accept to consult representatives of these organizations more or less regularly. This was the case for many years in France and many French-speaking African countries, with the establishment of statutory joint consultative bodies, although wage and similar questions were not necessarily submitted to them. It was also the case in a number of African and Asian countries influenced by the British Whitley Council pattern; while in the United Kingdom these councils often functioned in a negotiating mode, in some African and Asian countries they operated more as consultative bodies.[15] Joint consultative bodies also existed in other European countries, including Germany (with its public service co-determination procedure, extended from the private sector in a less comprehensive form), Italy, the Netherlands and Spain,[16] as well as in Canada and the United States; however, they generally cover issues not subject to the collective bargaining procedures that have developed in these countries.

[15] See Ozaki et al., op. cit., pp. 9-10.

[16] See Treu et al., op. cit., pp. 19-20, and Ozaki (1987): "Labour relations in the public service: 1. Methods ...", op. cit., pp. 289-290.

Advisory review bodies

Advisory review bodies, whose procedures usually allow public employee organizations the opportunity to present their views, are a frequent means whereby governments let their unilateral powers be subject to outside influence. Whether called pay commissions, commissions of inquiry or pay review boards, they have been used in a number of English-speaking African and Asian countries, for example the Gambia, Kenya, Nigeria, Sierra Leone, and the Sudan, and Bangladesh, India, Malaysia and Sri Lanka, where such bodies have been constituted from time to time to inquire into the state of wages in the public services and make recommendations to governments. Such bodies where constituted in India, in 1946-47, 1957-59, 1970-73 and 1983-86; in Kenya in 1977, 1980 and 1985; in Nigeria in 1959, 1963-64 and 1972-74; in the other countries they were constituted less frequently.[17] In the United Kingdom, where most public employees benefit from collective bargaining procedures, advisory pay review bodies are a regular means of reviewing wage levels for specific categories in the public service, for which bargaining procedures do not apply.[18] Recourse to such bodies is a feature of countries with a public service labour relations background influenced by the United Kingdom.[19] The main problem has been that the boards have met infrequently with the result that, compared to the private sector, public sector employees have suffered excessive income decline in intervening years, and consequently have excessive catch-up requirements, which governments are unable to meet in full because of budgetary considerations.

Wage determination in the public service in Japan is organized similarly but more systematically. In Japan, the National Personnel Authority, established in 1948 as an independent agency, with which public employee organizations have consultation rights, makes yearly recommendations to government on pay revision.[20]

Collective bargaining

In most industrialized and in ever more developing countries, many or all terms and conditions of employment are determined as a result of

[17] See Ozaki et al., op. cit., pp. 8-9; D. Robinson: *Civil service pay in Africa* (Geneva, ILO, 1990), pp. 126-127; D. C. E. Chew: *Civil service pay in South Asia* (Geneva, ILO, 1992), p. 68; T. Fashoyin: *Industrial relations in Nigeria*, second edition (Longman Nigeria, 1992), pp. 156-160.

[18] These include, traditionally, doctors and dentists, judges, senior civil servants and senior officers in the armed forces, the armed services, and, more recently, nurses, midwives, and other professions allied to medicine; teachers' pay is now subject to consultation and a report from an advisory committee. See Beaumont, op. cit., p. 103.

[19] Robinson, op. cit., p. 127.

[20] See Ozaki, (1987): "Labour relations in the public service: 1. Methods ...", op cit., p. 288.

collective bargaining, whether occurring *de facto* as a result of government ceding to union pressure, or on a more systematically organized basis. The major trend here has been for governments first to be pressured into ad hoc negotiations with public employee unions (sometimes as a result of disruptive labour disputes), then to acquire the habit of negotiating with these unions over time and finally to institutionalize the procedure through the adoption of legislation.

In advancing on this path, governments have been influenced not only by union pressure, but by also the perception that they should project themselves to their employees and to the public at large as "good" or "model" employers, which usually entails a favourable attitude toward trade unionism in the public service, an opening towards negotiating terms and conditions of employment, and personnel policies including employment security, acceptable wage levels, and good pensions.[21]

The first countries to institutionalize collective bargaining in the public service were Australia, where collective bargaining was recognized within the context of a statutory arbitration system in the public sector established in 1911,[22] and the United Kingdom, where collective bargaining began to develop for major sections of the public service shortly after the First World War through national joint industrial councils,[23] known as Whitley Councils. In other countries, this development occurred after the Second World War, in the (then) Federal Republic of Germany with the adoption of the Federal Civil Servants Act of 1952; in the United States with the adoption of an executive order in 1962 at the federal level preceded by laws in a few States and followed by laws in nearly 40 others;[24] in Canada with legislation at the federal level and in Quebec in 1967, then in the other provinces; in Belgium with 1974 legislation (brought into force only in 1985); in France and Italy by legislation in 1983 (following the development of ad hoc collective bargaining after the social disturbances of 1968, with major reforms in Italy in 1993); in Spain with 1987 legislation; and in Venezuela and Argentina with 1991 and 1992 legislation respectively. In a number of other countries, including Colombia, Netherlands, Peru and Uruguay, public service collective bargaining has not yet been legally institutionalized and is still carried out on an ad hoc basis.

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[21] Cf. Beaumont, op. cit., pp. 78-80.

[22] S. Deery and D. Plowman: *Australian industrial relations*, second edition (New York, McGraw Hill, 1985), p. 118.

[23] P. B. Beaumont, op. cit., pp. 103-105.

[24] The federal rules were consolidated in the Civil Service Reform Act of 1978. E. H. Conant and G. Hundley: "The status of public sector bargaining law," in A. S. Sethi; N. Metzger; and S. J. Dimmock (eds.): *Advances in industrial and labor relations: A research annual. Suppl. 1: Collective bargaining in the public sector in the United States: A time of change* (Greenwich, Conn. and London, JAI Press, 1990), pp. 37-65; R. B. Freeman; C. Ichniowski: *When public sector workers unionize* (Chicago and London, University of Chicago Press, 1988), pp. 404-405.

While these collective bargaining systems generally cover most public service employees and a broad range of subject matters, some exclude certain categories of employees (such as *Beamte* in Germany), while others exclude certain subjects.

Four particularly important questions need to be addressed for collective bargaining to be regulated in the public service: the recognition of public employee organizations for collective bargaining purposes, bargaining structure, the range of bargaining issues and the legal effect of agreements reached.

Recognition

Recognition of public employee organizations for collective bargaining purposes is quite different from recognition of the legality of such organizations. A state may recognize the legal existence of public employee unions without accepting to negotiate with them, and many countries (particularly in the developing world) are in this position. In some countries this is because governments refuse to negotiate such questions. However, where governments do accept to negotiate with public employee unions, it is normal for a government to require the union wishing to claim negotiation rights to show that it is indeed representative of the public employees it claims to represent; where several unions claim to represent the same category of employees, government must assess their representativity.

This issue is usually dealt with in the same or a similar way as in the private sector. In Canada and the United States procedures laid down by law largely replicate those in the private sector and entail administrative definitions of bargaining units within public employment (based on an assessment of community of interests of the employees concerned), and administrative determination of a union as an exclusive bargaining agent for each unit on the basis of majority support for the union concerned. In European countries the concept of exclusive bargaining agent is not used and governments bargain with the trade unions determined to be most representative of the employees concerned on the basis of established criteria, sometimes subject to appeal to the courts. In France, for example, the criteria include the strength of support, usually based on membership but sometimes other evidence, together with such criteria as independence from the employer, experience and length of existence. In Belgium, legislation restricting recognition to national level organizations, excluding specialized and local organizations, has been criticized by the ILO for having excluded from collective bargaining trade unions most representative of a given category of employee but not active on a broader basis.[25]

[25] See, for example, 241st Report of the Committee on Freedom of Association, in ILO: *Official Bulletin*, 1985, Series B, No. 3, para. 644.

Bargaining structure

As to bargaining structure, the question here is at what levels best to organize collective bargaining. This results from a combination of the views of the employing authorities on the kind of structure that most suits their interests with how public employees have structured their organizations, and their views on the levels at which they would like to negotiate. In North America this is subordinate to the determination made in the last instance by an administrative authority on the appropriate bargaining unit. It is likely that in most countries the government's views on the matter tend to prevail, because of their power over the process.

In most countries other than North America, central government collective bargaining is highly centralized (on wage questions at least). This is often a consequence of the largely unified wage structures existing across the public service (which is sometimes also the case in regional and local government). The very concept of a unified wage structure seems to require centralized collective bargaining on any changes to wage levels or to the structure itself, for example, in France, Italy and the United Kingdom. This does not prevent negotiations on non-wage aspects of working conditions from being centralized too, although there may be scope for decentralizing such questions to particular employing agencies. In Nigeria, for example, where wages are excluded from collective bargaining (which applies to other conditions of employment), the bargaining structures are nevertheless highly centralized. Centralization of collective bargaining does not imply that all categories of employees must be dealt with in a single bargaining structure. In the United Kingdom, for example, since 1982 there has been some movement from central unified negotiations covering a number of categories and occupations to separate central negotiations for different services, categories or occupations.[26] In Nigeria there are national public service negotiating councils at federal, State and departmental levels; the first and second each have separate councils for different categories of employee and the last negotiates at ministerial and departmental level.[27]

Where collective bargaining in local government employment is also centralized (sometimes through associations of local government employers), this may constitute a separate bargaining unit which may itself be divided into different categories. In the United Kingdom, for example, local government bargaining has been divided into units respectively covering manual workers, managerial staff, administration, technical and professional staff, fire services and the police.[28] Whereas in recent years the

[26] See D. Marsden: "Les salaires dans la fonction publique en Grande-Bretagne", in J. J. Sylvestre; F. Eyrau (eds.): *La regulation des salaires dans le secteur public: essai de comparaison internationale: France, Grande-Bretagne, Italie*, (Geneva, ILO, forthcoming), pp. 78-82. (English translation forthcoming).

[27] Fashoyin, op. cit., pp. 162-164.

[28] Beaumont, op. cit., p. 102.

British Government has been seeking to decentralize collective bargaining to some extent, to take advantage of more localized labour market pressures, little decentralization has taken place in practice partly because of overriding government policy to control wage costs, partly because of trade union attachment to central bargaining and partly because central bargaining facilitates geographical mobility.[29] However, difficulties of recruitment have led some localities in south-east England to break away from national bargaining structures.[30]

The situation is quite different in the United States, where a highly decentralized collective bargaining structure prevails because bargaining units are determined on the basis of rather narrow views of employees' community of interests. The resulting fragmentation of bargaining applies at federal, state and municipal levels.

Range of issues subject to bargaining

The two main questions here are the extent to which wages and other economic questions are covered and how far management prerogatives (issues on which management cannot be obliged to negotiate) are defined and excluded from coverage.[31] In some countries, where the whole system is a matter of practice, for example the United Kingdom, there are no legislative provisions prescribing which questions must be covered and which excluded, the parties themselves deciding what is subject to collective bargaining. In a few countries wages and other economic benefits are excluded, for example under the statute governing federal collective bargaining in the United States and in practice in Nigeria. This exclusion of the most important question for workers has been a source of frustration for public service unions and their members. In France, to the contrary, wages are the only question covered, other issues being left to consultation procedures. In most other countries, collective bargaining extends to both wage questions, other economic benefits and other conditions of employment (such as hours of work and paid leave).

Some questions may be excluded as coming under management prerogative. This is sometimes laid down in detail in the legislation or it emerges in practice when the employer side in collective bargaining refuses to negotiate on the questions concerned. The conception of management prerogative varies from country to country, showing that there is no absolute concept of what cannot be negotiated by the nature of government

[29] See N. Millward; M. Stevens; D. Smart; and W. R. Hawes: *Workplace industrial relations in transition: The ED/ESRC/PSI/ACAS surveys* (Aldershot, Dartmouth, 1992), pp. 231-234; and Marsden, op. cit., pp. 79-82.

[30] Beaumont, op. cit., pp. 113-114.

[31] For a good comparative review of how this question is resolved, see Ozaki, (1987): "Labour relations in the public service: 1. Methods . . .", op. cit., pp. 295-298.

employment. Such questions as recruitment, discipline, dismissal, lay-off, size of the public service, organization of services, job classification, promotion, transfer, training, and pensions are variously excluded from negotiation in particular countries; many, however, are included in others. In Nigeria the general principles governing some of these questions are subject to negotiation, but their application is not. In Sweden, the scope of bargaining is particularly broad, and only proposals that would constitute an infringement of political democracy, as determined by a joint committee, are excluded.

Legal effect of agreements

Establishing the legal effect of agreements resulting from collective bargaining is not as straightforward as in the private sector in most countries, where collective agreements have the legal status of binding contracts (other than the United Kingdom and some of those countries whose labour relations systems were influenced by it, where they have the status of "gentlemen's agreements" in both sectors). In the public service, many countries which have made provision for collective bargaining have established some limitation on how far agreements legally bind the government and the legislature, particularly as regards budgetary consequences. These limitations are justified largely on two grounds. First, owing to the complexity of representation on the employer side of collective bargaining, it is difficult for the government as principal to have clear control over its side in the negotiating process and it must reserve the right to look at and approve or disapprove, particularly where agreements violate budgetary, legal or other policy constraints. Second, because of the established system of separation of powers and/or the established legal framework for regulating these matters, certain kinds of decisions resulting from collective bargaining need to be given legal effect through legislative statute.

Consequently, some countries require approval by the head of the employing authority or a central authority (Italy, the United Kingdom, the United States), sometimes with a limit of time imposed for such approval. Such reservation of approval may be likened to that of the right of ratification of a collective agreement by trade union members or by the employer, sometimes to be found in the private sector.[32] Agreements can be made subject to the authority of parliament on matters requiring monetary expenditure (as in Canadian federal jurisdiction). In France such agreements seem not to be given full legal force, but must, according to prevailing law, be given such force by unilateral government act (by law or decree); the Government is deemed to be under no more than a political or moral

[32] See on the question of the authority of negotiators and ratification requirements, J. P. Windmuller et al.: *Collective bargaining in industrialised market economies: A reappraisal* (Geneva, ILO, 1987), pp. 68-74.

obligation to do so.[33] In Italy 1993 legislation assimilates public service collective agreements to these in the private sector, together with public sector employment relationships; however, cost implications must be approved by the Government and the Court of Accounts before agreements are signed.

While the question of the legal effect of public service collective agreements is certainly a significant one, the essence of collective bargaining is the attitudes of the parties and the spirit in which they carry it out. Thus, statutory provision giving binding effect to agreements is of no avail if one of the parties refuses to conclude an agreement or to respect it once it has been agreed. Likewise, the lack of clear legal force will not destroy the effectiveness of the process if both sides enter into the relationship with seriousness and an intention to develop it into a solid, long-lasting one in which commitments can be respected.

III. Criteria for pay determination

Together with strikes, pay determination is the aspect of public service labour relations attracting most attention. Irrespective of whether pay is determined through unilateral decision, on the basis of pay review body reports or through collective bargaining, the main issue concern the principles and criteria that should govern the setting of wages. In discussing these principles and criteria, it should be understood that they inform decisions but do not determine them. In practice, the most objective and logical principles can be displaced by more pressing political and economic considerations.

Pay systems in the public service should perform several important functions. They should attract a sufficient number of employees with the necessary qualifications and capacities to perform the tasks needed by an efficient public service. Their structure and dynamics should enable the public service to retain such persons and to motivate them to work efficiently. The performance of these functions should not entail costs exceeding the government's capacity to pay, bearing in mind the general economic and financial situation and policy of the state.

Some governments have sought to formulate clear criteria to help fulfil these objectives. One important criterion is pay comparability or parity with the private sector. If properly achieved, this should ensure the public service can compete for competent personnel with the private sector. It should also ensure that public service pay levels are kept within reasonable bounds in the absence of constraining market forces. The general idea that there should be some balance between pay in the public service and in the private

[33] See M. Basex: "Labour relations in the public service in France", in Treu et al., op. cit, p. 95.

sector is explicitly or implicitly accepted in many countries. However, it has not been accepted everywhere; in some countries alternative principles have been put forward, whereas sometimes decisions have been taken without enunciating the principles on which they were based.

In South Asia, certain past pay commissions have concluded that public service pay should be lower than in the private sector, as the latter sector should attract the more capable personnel.[34] Such statements may have reflected the concern of post-colonial governments to develop as rapidly as possible a dynamic private industrial sector by providing incentives including an appropriate pay differential with the traditional government employer. Some of these countries have adopted the alternative principle of a "living wage" for the lowest categories of public service employees in pay structures characterized by wages for higher categories with narrower differentials than in the private sector, in application of egalitarian principles.[35] The situation is similar in a number of African countries, where public service wage levels have been severely depressed and differentials limited, although there is rarely much evidence of the criteria applied in wage revisions.[36] It has been suggested that government's refusal to align public sector wages on those of the private sector may result partly from the realization that public services wages were so seriously behind those in the private sector that any explicit recognition of the appropriateness of parity (having regard in particular to the often excessive staffing levels found in some of the countries) would simply cost the government more than it could realistically afford.[37] This refusal may also result from the inadequate statistical information on pay levels in some of the countries concerned, together with difficulties in making realistic comparisons between ill-defined jobs, even where adequate statistics do exist.

Comparability with private sector pay as a criterion has been recognized as the main operative principle in a number of industrialized countries;[38] in some of them, an attempt was made to apply it systematically within the wage structure, in others it was applied in a more general way. To be applied systematically several conditions must be met. First, comparable jobs or occupations must be identified in both sectors. While this is not too difficult for some jobs, it is more problematic for others and it is generally agreed that certain jobs in the public service have no clear comparator in the private sector. In Canada, for example, 70 per cent of jobs were deemed to be comparable and 30 per cent not. This problem may be resolved by identifying the comparable jobs at different points in a job classification scheme and extrapolating through the play of internal public service

[34] See quotations in Chew, op. cit., pp. 69-70.

[35] See Chew, op. cit., pp. 70-71.

[36] See Robinson, op. cit., generally and p. 155.

[37] Chew, op. cit., p. 70.

[38] See, in general, ILO: *World labour report 1989*, op. cit., pp. 86-90.

relativities for the others. On the other hand, in some countries, the content of many jobs is undefined and it is not possible to make comparisons simply from job titles. In such cases, before any comparability surveys can be instituted, government must proceed to a systematic evaluation of jobs. Obtaining and analyzing the statistics of pay in the private sector presents another problem, notably as regards definition of the universe of enterprises from which to obtain statistics and the proper level within the resulting wage dispersion at which to fix the parity wage. Small enterprises are often excluded as a practical matter, enabling some to argue that this leads to an upward bias. A third problem concerns the range of benefits which should be compared: should it be limited to base pay, to pay plus allowances, or should it take into account a wider range of benefits (such as hours of work, job security and pensions), where public employees are often considered to be at an advantage over their private sector counterparts? And, if so, how should these benefits be evaluated? The fourth problem derives from the retroactive nature of most comparability exercises, that is, the process whereby the wages of public employees tend to fall behind those in the private sector and then have to catch up, sometimes by sizeable amounts, which may create budgetary difficulties for governments and have significant economic effects, with the result that government sometimes finds it difficult to respect this process.

Systematic application of the comparability principle in pay determination has been the general approach for some years in Japan, the United Kingdom and, at the federal level, Canada and the United States. In each of these countries an elaborate system was set up to collect and analyse pay data, with a view to establishing comparability indicators. In each, under economic and financial difficulties of recent years, governments have often sought to dilute the impact of comparability considerations by accepting increases lower than comparability would justify, or to adapt the application of the criteria to ensure lower levels of wage increase, partly because of the perceived need for budgetary restraint and partly because they believed the methodology produced higher pay levels than were warranted.[39] This has frequently been the cause of dispute with public service unions. In several of these countries, government dissatisfaction with the results of comparability surveys has even induced it to disband the bodies established to carry them out (Canada, the United Kingdom), if not to renounce the principle.

[39] See for Great Britain, Beaumont: op. cit., pp. 142-147; for Japan, K. Koshiro: "Labour relations in the public service in Japan," in Treu et al., op. cit, pp. 159-160, and "Public sector industrial relations in Japan: Historical lessons and incumbent problems", in P. Young-bum Park and C. Noriel (eds.): *Public sector industrial relations in selected countries, with special reference to Korea's reform policies* (Seoul, Korea Labor Institute, 1993), pp. 109-113; for the United States, A. Krueger: "Are public sector workers paid more than their alternative wage? Evidence from longitudinal data and job queues", in Freeman and Ichniowski (eds.), op. cit., p. 219; P. Way: "The changing environment of public sector pay determination" in Sethi, Metzger and Dimmock, op. cit., pp. 141-142; and, for Canada, documentation from the Canadian Treasury Board.

In other systems, as in France and Italy, although no system for determining comparable wages across the wage structure has been established, a kind of comparability principle is in operation since much of the negotiation concerns the percentage of pay increase and here comparisons are typically made with the private sector. In France, government policies of budgetary restraint in recent years, which have entailed limitations on the growth of the total wage bill, have resulted in a decline in the relative position of public service wages. In Italy, public sector wages have sometimes fallen behind the private sector, sometimes moved ahead.

Where comparability is an operative principle, it will tend to respond to cost-of-living rises occurring in the interval between negotiations, to the extent that wages in the private sector also take into account price rises. It does not preclude inclusion in agreements or pay systems of indexation-type mechanisms to ensure that in the interval rises in the cost of living are reflected at least partially in pay. In some countries which do not apply the comparability principle, the pay package in the public service includes a cost-of-living component. In several countries such mechanisms of indexation have been eliminated recently (France, Italy) as part of the fight against inflation; the resulting loss of purchasing power has become an important argument in pay negotiations.

Another recent development in wage systems in several countries has been the effort to introduce elements of pay related to performance or merit, in order to enhance public service efficiency. This has occurred, for example, in Canada, Sweden, the United Kingdom and the United States, with mixed results. These countries have found it easier to introduce merit pay for higher categories of public servants, but much more difficult for lower categories. There is no agreement that these systems are effective even where they do apply, partly because of difficulty in establishing objective criteria and rigorous systems of performance appraisal as a basis for awarding merit pay. One criticism of these systems is that awards are made on a subjective basis or for reasons other than performance. In Sweden, for example, the possibility of individualizing pay to stimulate performance has been used more to expand wage differentials among occupational groups and to facilitate recruitment and maintenance of scarce personnel.[40] In the United States, it has sometimes been used to increase salary rather than to reward merit in the context of a decline in public service wage levels compared with the private sector.[41] Failure to apply performance pay impartially and objectively can lead to a demotivated staff and lower productivity, rather than what was intended.

[40] L. R. Wise: "Whither solidarity? Transitions in Swedish public-sector pay policy", in *British Journal of Industrial Relations* (London), Vol. 31, No. 1, Mar. 1993, pp. 83-84.

[41] L. M. Holley: "United States of America: Federal government salary system". Paper prepared for an ILO national symposium on civil service pay in China, 1989.

IV. Labour disputes and their settlement

In recent times, labour disputes have been a fairly frequent occurrence in the public service in many countries, sometimes rising relative to private sector disputes in recessionary times when governments impose rigorous budgetary restraint. While in some developing countries governments still view such conflicts (particularly work stoppages) as affronts to their sovereign power, in most industrialized and in many developing countries they have come to be experienced as an inevitable, if unwelcome, part of the public sector labour relations scene needing to be regulated and resolved somehow.

The right to strike

A key issue is whether to recognize the right to strike, a question on which there is no agreement among nations. While there is no explicit international standard, ILO supervisory bodies have recognized that, although the right to strike is one of the essential means available to workers and their organizations generally for the promotion and protection of their economic and social interests, prohibition of the right to strike in the public service is not an infringement of international freedom of association principles, to the extent that such a prohibition is limited to public employees in their capacity as agents of the public authority or in essential services properly defined (i.e. services whose interruption would endanger the life, personal safety or health of the whole or part of the population) – as long as appropriate compensatory guarantees are provided.[42]

In most countries, there is no right to strike over so-called rights or grievance disputes, since these disputes can be resolved by the application of statutory or contractual rules through machinery established for the purpose (internal grievance procedures, appeals bodies and courts or tribunals).

The situation is quite different with respect to interest disputes (which concern changes sought in the rights and obligations of the parties). On these questions, most industrialized countries and a number of developing countries now recognize public employees' right to strike: for example, Canada (federal jurisdiction and half the provinces), France, Germany (except for *Beamte*), Italy, the Netherlands, Norway, Portugal, Spain, Sweden, the United Kingdom (in the form of a freedom to strike), and a few states in the United States, as well as Argentina, Brazil, Costa Rica, Paraguay, Peru, Uruguay and Venezuela. It is prohibited in half the provinces of Canada, Germany (for *Beamte*), Japan, Switzerland and the

[42] Such compensatory guarantees should consist of adequate, impartial and speedy conciliation and arbitration procedures in which the parties concerned can take part at every stage and in which the awards should in all cases be binding on both parties and, once rendered, be rapidly and fully implemented. ILO: *Freedom of association and collective bargaining: General survey*, op. cit., paras. 200, 214.

United States (federal jurisdiction and most states), as well as in most developing countries.

Where recognized, the right to strike is often subject to rules or limitations: a requirement of advance notice, to ensure that appropriate disputes settlement procedures are brought to bear in due time and that the public authority can organize whatever measures may be needed to deal with the needs of the public (e.g. Canada, France, Italy, Sweden); prior approval by a given majority of employees, to ensure that the public is not inconvenienced without a clear show of significant support for the action by the employees concerned (e.g. Sweden, the United Kingdom); exhaustion of settlement procedures, to ensure that they are given their chance before a work stoppage (e.g. Canada, Sweden); exceptions variously for the armed forces, police, prison officers, fire-fighters, air traffic controllers, hospital workers, the judiciary and managerial staff in different countries. In some countries, there is a requirement to maintain a minimum service during any strike (Belgium, Canada, France, Italy, Norway), an approach which seems to be gaining ground as an appropriate balance of interests between public employees and public need.

Settlement procedures

Rights disputes will normally be dealt with through grievance procedures, appeals boards and appeals to courts or tribunals. Interest disputes should be dealt with by conciliation, mediation or arbitration, which should be independent, impartial, and established so as to ensure the confidence of the parties concerned, as provided by Article 8 of Convention No. 151. Without such procedures, the resolution of disputes is left to a power struggle between government and unions, controlled only by the relative power of the parties, the pressures built up by any interruption of particular services and the threat of sanctions, but without the third party assistance that could otherwise have been provided to find an acceptable solution at less cost to the parties concerned and the public.

Most countries have established some kind of dispute settlement machinery available in the case of private sector labour disputes.[43] In the public service, a number of countries (e.g. France, Italy) have made no particular provision for settlement procedures, leaving disputes to be resolved by negotiation between the parties with the possibility of ad hoc mediation by particular ministries or political authorities and the eventuality of final unilateral decision by the government. Other countries have established formal dispute settlement procedures. Examples include Germany, where a mediation board has been set up by agreement for salaried employees and wage-earners; Sweden, where disputes are submitted

[43] See, in general, ILO: *Conciliation and arbitration procedures in labour disputes: A comparative study* (Geneva, ILO, 1980).

to an individual conciliator or a conciliation board; the United Kingdom, where the Advisory, Conciliation and Arbitration Service provides conciliation, mediation and voluntary arbitration service on request; and the United States, where conciliation services are provided by the Federal Mediation and Conciliation Service and, if unsuccessful, disputes go to the Federal Service Impasses Panel. In Australia, the legislation makes provision for conciliation and binding arbitration of public service labour disputes, and in the Canadian federal jurisdiction the public service union is given the option of choosing between a right to strike following a conciliation procedure and an arbitration procedure without the right to strike. Arbitration is also provided for in many developing countries, for example India, Malaysia, Nigeria, Peru and Trinidad and Tobago although, in some, pay questions fall outside the range of issues that may be referred to arbitration and the consent of government is sometimes required.

Conclusions

A number of useful conclusions may be drawn for countries currently considering the reform of the labour relations systems operating in their public services or the introduction of such systems.

There is now a rich fund of experience on how best to organize such a system in this sector – an experience which seems increasingly to follow the relevant basic ILO principles.

In the political, social and economic conditions prevailing at the end of the twentieth century, governments appear to have reached the conclusion that they cannot ensure an efficient public service based on an adequate and motivated staff without providing that staff with the means to defend their interests and to have a say in decisions on the terms and conditions of their employment. This requires, firstly, that public employees have the right to organize. It requires, secondly, that public employee organizations be entitled to negotiate their members' terms and conditions of employment; any procedure short of negotiation will generally end in frustration and not accomplish the intended purpose. On the other hand, experience shows that the provision of collective bargaining rights can be reconciled with the strict application of government budgetary policy, with regard to the macro-economic implications of wage settlements. However, to do so, governments must ensure that they are properly organized for the purpose of negotiations; they may also deem it necessary to retain final oversight of the outcome, but overturning negotiated settlements in this way must be resorted to only rarely, or the process will be undermined.

In the absence of product market constraints, recourse to certain agreed principles, such as comparability with the private sector, can help to inform, guide and control the negotiation process. If government allows public service wage levels to fall excessively behind those in the private sector, it

will inevitably undermine its capacity to recruit and maintain a sufficient body of competent staff, to motivate its employees and to ensure the effective public service that the citizens of each country have come to expect.

Whether or not the right to strike is recognized in the public service – and the fact that it is recognized in many countries suggests that recognition is not so unthinkable in principle and that in practice the public interest can be adequately safeguarded – effective procedures to assist the parties to resolve their disputes are essential: efficient conciliation and mediation procedures, organized to attract the confidence of the parties in their impartiality; and arbitration, if felt by the parties to be appropriate in view of national labour relations traditions.

Clearly, the elaboration of an acceptable system of labour relations for the public service is a prime condition for an effective public service catering efficiently to the many and diverse needs of the public. The importance countries give to providing high-quality, efficient services will help determine the priority they accord to developing a sound and constructive labour relations system in this sector of the economy.