

SPECIAL ISSUE

Papers From The Rutgers: Camden Conference
on Public Sector Collective Negotiations in New Jersey

OVERVIEW AND OBSERVATIONS

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On September 13, 1968, the State of New Jersey passed its first law authorizing collective bargaining for public employees. This was one of the earliest of the public sector labor laws in the United States. The new law, commonly called Chapter 303, was comprehensive in that it covered nearly every branch of state and local government, affected almost every public employee, and influenced almost every aspect of the employer-employee relationship.

Thirty years later, the Schools of Business and Law, and the Graduate Department of Public Policy and Administration on the Camden campus of Rutgers University staged a conference that commemorated the passage of this act. Participating sponsors included the Labor and Employment Law Section of the New Jersey State Bar, the regional branches of the American Arbitration Association and the National Academy of Arbitrators, and the Center for Employment Futures at Drexel University.

The topics covered by the conference were developed by a committee of some twenty leading practitioners and academics in the New Jersey collective bargaining field. The committee put together a program that focused on three topics: the historical development and current status of the New Jersey system of employer-employee relations in the public sector, the scope of negotiations, and impasse resolution. Here we present papers that figured in that conference.

The first paper is an amalgamation of the two historical papers that were presented by James Mastriani and Jeffrey Tener. The authors chaired New Jersey's Public Employment Relations Commission (PERC) for twenty-eight of

its first thirty years. This is followed by a number of graduate and law student papers that grew out of a seminar designed to provide the audience with new insights into the issues relating to scope of negotiations and the impasse problem. Earlier versions of these papers were distributed to the speakers, included in the conference materials, and made the subject of small group presentations. These papers include Christopher Kessler's examination of the continuing influence of the New Jersey courts on the scope of negotiations and Doris Williams' comparison of the scope of negotiations in New Jersey with other states. Anthony Morgan's paper examines the history of teacher strikes in New Jersey and Greg Stokes takes a critical look at the 1996 amendments to the state's interest arbitration statute.

AN OVERVIEW OF THE MATERIAL

As Mastriani and Tener observe, collective bargaining for public employees was not authorized in New Jersey before 1968. The New Jersey Education Association and other employee organizations had been lobbying unsuccessfully for the right to bargain collectively for many years. By the late 1960s, however, public employees within the state and elsewhere began to demonstrate their aversion to the lack of bargaining rights by increasingly intensive lobbying efforts and by engaging in a number of unlawful strikes. The New Jersey legislature, confronted with this turmoil, wanted something that would deal with the strike problem and came to the conclusion it was time to grant the state's public employees the right to negotiate collectively over the terms and conditions of their employment. The result was Chapter 303 of the laws of 1968.

This law, modeled generally on the private sector Labor-Management Relations Act, encouraged the organization of New Jersey public employees. It gave them the right to negotiate and administer contracts that specified their terms and conditions of employment; provided a nonbinding mechanism for resolving contract disputes between public employee organizations and their employers;¹ and established PERC as the agency to enforce the statute.

One of the problems that arose early and often concerned the scope of negotiations—which items brought to the bargaining table must be, may be, or may not be negotiated. Almost anything that deals with terms and conditions of employment is either mandatorily or permissively negotiable in the private sector, while a much more limited scope of negotiations typifies the public sector. Kessler's paper shows how public employee organizations in New Jersey have fought to establish a broad scope of negotiation, usually with support from PERC. Public employers invariably resisted this initiative, and the New Jersey judiciary gener-

¹ As discussed in the Mastriani_Tener paper, the New Jersey courts had effectively imposed a ban on public employee strikes.

ally resolved the conflict by restricting the scope of negotiations. Williams' paper adds the experiences of other jurisdictions to the discussion of scope.

The topic of employee strikes and their resolution is another one of those issues that has arisen early and often in New Jersey. Morgan's paper on strikes in New Jersey public education shows the problem of unlawful strikes rarely reached epic proportions and has lessened considerably over time. Stokes examines the 1977 statute that provided for the arbitration of unresolved contract disputes involving police and firefighters and the changes in the arbitration procedure that took place in 1996. His paper provides an early analysis of the results of this change, concluding generally that the early data suggest the 1996 amendments might have been unnecessary.

SOME OBSERVATIONS FROM THE PAPERS

The System of Public Employer-Employee Relations

The four principal actors involved in day-to-day employer-employee relations in the New Jersey public sector are the representatives of the employees, representatives of the employers, PERC, and the courts. A review of these papers suggests to this author that the New Jersey system of public sector employer-employee relations is one that has been driven by two of these actors. Although we do not intend to imply that public employers and the Public Employment Relations Commission are unimportant, we have concluded that the movers and shakers have been the public employee organizations and the courts.

The public employee organizations have had two objectives. The first was to win the right to represent large groups of public employees, and the second was to negotiate successfully for them over a wide variety of topics. They have won the first battle.² Public employees took advantage of the new rights granted them, and their organizations have won over 90 percent of the representation elections they contested, usually with overwhelming majorities. It is very difficult today to find a single large state or local government body that does not have a collective bargaining arrangement with one or more employee organizations.

However, public employee organizations have been less successful in achieving the second objective. This introduces us to the second major force in New Jersey's system of public sector labor-management relations—the court system. Although the legislature has responded on at least two occasions to Supreme Court decisions that have limited the scope of negotiations, the judiciary has continued to limit the topics that can be addressed at the bargaining table.

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By 1991, 60.4 percent of New Jersey's public employees belonged to employee organizations, and 64.9 percent were covered by collectively negotiated contracts [1].

Scope Reconsidered

The papers written by Mastriani and Tener, Kessler, and Williams have all considered aspects of the scope issue. As the scope doctrine has developed in this state, neither of the parties are permitted to bargain over anything that touches seriously on the ability of management to make and implement policy decisions. However, all of the papers that dealt with this issue have questioned the wisdom of a restricted scope of negotiations and have suggested that a number of hidden costs are associated with a narrow scope.

Preventing negotiations over what the courts have considered to be managerial prerogatives, prevents management from “giving away the store entirely.” And when one considers that many managers in the smaller towns and boroughs are part-time officials, often unpaid, one can see a rationale for the courts providing them with protection against themselves. However, we wonder whether the same degree of protection is needed today as might have been needed thirty years ago, when collective negotiations were new and the unions were better prepared for bargaining than their employer counterparts were. We also wonder whether the state and the citizenry suffer because of this narrow scope concept, particularly when it prohibits qualified professional employees from bringing valid professional concerns and insights to the bargaining table, as indicated by Mastriani and Tener, and when it denies employees “voice,” as suggested by Williams? Is it time for legislative reconsideration of the scope issue?

Impasse Resolution

One of the objectives of the 1968 law was to stop strikes of public employees. The original public policy had two elements. The first was that the state would not provide public employee with dispositive third-party assistance in settling contract disputes. If the parties were unable to agree on a contract, they could go to mediation or to nonbinding factfinding, but if those interventions failed, their only resort was to return to the bargaining table. The second element in public policy was fashioned by the courts, which had made it clear that New Jersey public employees would not be permitted to strike. If they did strike, the courts would, when requested, issue restraining orders and if the strike continued, the miscreants would be punished severely. The policy changed in 1977 when the legislature provided a dispositive means of settling intractable contract disputes involving police and firefighters. As discussed by Mastriani, Tener, and Stokes, the 1977 law provided for the arbitration of these contract disputes.

The fact is that we do not have very many public sector strikes in New Jersey. We seem to have none in public safety, where interest arbitration is available, and Morgan’s data on strikes in education suggests that the problem was never extremely severe, and strikes in education are quite rare today. We will probably never be able to answer the question about whether this relative absence of

strikes results from the courts' harsh approach to the subject or from experience and maturity in the bargaining process.

However, we can express a certain regret that the blanket prohibition placed by the courts on employee work stoppages has not allowed us to determine whether the existing situation would have come about through the maturation of the collective negotiations systems alone.

In 1996, after almost twenty years where the default step in the interest arbitration process was a decision made between the final positions of the parties, the state changed to a system of conventional arbitration that enables the arbitrator to order compromise solutions. As discussed in Stokes' paper, this change came about because of judicial and legislative disenchantment with the awards that came from the final-offer processes. The courts launched the first blow by insisting that arbitrators adopt a broader conceptual framework in evaluating the parties' final offers. Then the legislature decided to scrap final-offer arbitration (FOA) as the default form of arbitration and adopt conventional arbitration. Stoke's data, while thin and imperfect, suggests the legislature may have acted hastily.

CLOSING THOUGHTS ON THE APPLICATION OF THESE PAPERS

These papers provide a detailed picture of one of the oldest systems of public sector labor relations in the country. They describe where this state's system of public sector labor relations was, where it is, possibly where it is going, and two significant unresolved problems. We believe the information contained in these papers has implications that stretch far beyond the boundaries of New Jersey.

The historical information presented in these papers provides other jurisdictions with a basis for reflecting upon their own experiences. What we have done in New Jersey, what we have learned, what we have changed, and what we have left unchanged can provide an analytical jumping-off point for other jurisdictions considering either new legislation or legislative change. Furthermore, the two substantive issues addressed in these papers—what we bargain about, and what we do when we cannot reach agreement—are surely the two most hotly debated topics in public sector employer-employee relations throughout the nation. By analyzing the New Jersey approach to these problems, the papers offer insights that may be applicable not only to this state but to other public jurisdictions.

These papers, therefore, have a particular value to scholars and to those entrusted with the formulation of public policy because they provide a basis for comparing one jurisdiction with another in a field where comparative data are sorely lacking. New Jersey has one of the oldest formal systems of public sector labor relations in this country. The way that this system has changed and developed and the approaches it has taken to its problems provide a valuable reference point for other jurisdictions seeking to understand their own systems

and their particular problems. For these reasons we believe the New Jersey experience, as reflected in these papers, has significance as a learning tool for the rest of the nation.

The Rutgers conference did not exhaust the field. Two highly significant problems received scant attention. One pertained to the approach to employee discipline that has been developed by the courts and the legislature. Today only minor disciplinary matters can become the subject of arbitration. The second pertained to an overall reconsideration of the strike issue. Is it time to consider relaxing the ban on public employee strikes, as several other states have done either through legislation or court decisions?³ Perhaps these topics will be the focus of some future conference—which we hope will take place much sooner than thirty years from now.

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REFERENCE

1. B. Hirsch and D. MacPherson, *Union Membership and Earnings Data Book*, Bureau of National Affairs, Washington, D.C., 1997.

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³ Legislatures in the following states have provided limited rights to strike to specified groups of public employees: Alaska, Hawaii, Illinois, Minnesota, Montana, Ohio, Oregon, Pennsylvania, and Vermont. A few other states, including California, have provided similar rights through court decisions.