FEDERAL EMPLOYEE-MANAGEMENT RELATIONS and the CIVIL ENGINEER CORPS

by

Jimmie Gene Marshall

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ABSTRACT

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JIMMIE GENE MARSHALL

Submitted to the Department of Civil Engineering on August 18, 1969 in partial fulfillment of the requirements for the degree of Master of Science.

On January 17, 1962, President John F. Kennedy signed Executive Order 10988, Employee-Management Cooperation in the Federal Service. This Order initiated a new era in the public policy on unionization of federal government workers and collective bargaining in the public service.

The purpose of this study was to trace the history of the policy on labor-management relations in the public service, to assess the effects of the new policy embodied in Executive Order 10988, to indulge in some reasoned conjecture as to the future course of U. S. policy, and to discuss the necessity for the Civil Engineer Corps Officer to acquire some expertise in the field of labor relations.

The conclusions of the study are that the area of labor-management relations in the federal government will be of increasing importance to the federal manager in the future, that the policy of the United States for federal employee-management relations will continue along the liberal path established by Executive Order 10988 with the distinct possibility of statutory recognition of government employee unions and of the government's duty to bargain collectively with the employee organizations, that the government workers may be given a limited right to strike in the not too distant future, and that there is an indisputable necessity for the Civil Engineer Corps Officer to acquire expertise in labor relations if he is to be an effective "Engineer-Manager."

Thesis Supervisor: Douglass Vincent Brown, Ph.D.

Title: Alfred P. Sloan Professor of Management

Professor E. Neil Hartley
Secretary of the Faculty
Massachusetts Institute of Technology
Cambridge, Massachusetts 02139

Dear Professor Hartley:

In accordance with the requirements for graduation, I herewith submit a thesis entitled "Federal Employee-Management Relations and the Civil Engineers Corps."

I should like to express my sincere appreciation and thanks to Professor Douglass Vincent Brown, my thesis supervisor, for his guidance in my study efforts and for his reading and commenting upon the draft of the thesis.

I would also like to express my gratitude to the United States Navy for affording me the opportunity to study here at the Massachusetts Institute of Technology.

Sincerely yours,

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Section 1 - Introduction

On January 17, 1962 a new era dawned in the field of federal employee-management relations. On that day President John F. Kennedy issued Executive Order 10988. The Order represented a drastic departure from past government policy concerning employee-management relations within its own house. The impact of this Order, I believe, has proven to be comparable to the impact of the Wagner Act in the private enterprise economy. The Wagner Act inagurated "industrial democracy" in the United States in 1935 and it is the path our industrial relations policy has followed to this day.

It is strange, therefore, to consider the fact that the principles applied in the private sector were not extended to the government's own employees until President Kennedy acted in early 1962. Why did the United States have a "double standard" for government workers and private workers in the first place? Why did it take so long for the government to change its policies for government workers? What is the present policy? What is the policy likely to be in the future? One purpose of this thesis is to seek the answers to the above questions.

The author is also an officer in the Civil Engineer Corps of the United States Navy. Stemming from this professional connection are two other purposes of this thesis.

One of these purposes is to provide a "mini-text" on federal employee-management relations which can be read quickly by Civil Engineer Corps Officers to give them a general acquaintence with this facet of their professional careers. The second purpose is to look into the

requirement or lack of requirement for training in employee-management relations for Civil Engineer Corps Officers.

I believe the importance of these latter two purposes can be established by considering the personnel environment in which the Civil Engineer Corps Officer works. With the exception of Seabee billets and military staff billets, the Civil Engineer Corps Officer is always involved far more in the management of civilian personnel than he is in the management of military personnel. Today, when many of these civilian employees belong to unions and when union membership of government employees is increasing, it behooves the Civil Engineer Corps Officer to have at least an exposure to the evolution of government employee-management relations policy if he is to effectively discharge his management responsibilities.

Section 2 - Policy Prior to 10988

With the passage of the National Labor Relations Act[1] in 1935, the United States made a revolutionary change in its policy concerning unionization. Prior to this act the national policy was shaped almost entirely by common law. This common law held property rights and the right of contract to be of a higher value than the civil rights of the individual worker and his fellows. Consequently the common law was very much anti-union and unions had very little success in organizing and improving the conditions of the workingman in the United States.

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[1] 49 Stat. 452. Commonly known as the Wagner Act.

The Wagner Act signalled a drastic change in the nation's policy. This act instituted the completely new concept of positively approving and promoting the unionization of the workers. With the implementation of this policy, unionization of employees in the United States began a long period of expansion lasting until the middle fifties. Membership in unions reached a peak of 18.5 million in 1956, then declined steadily until 1964.[1] By 1966 the trend was reversed with the unions registering a gain of a million members over the 1964 figures.[1]

In the light of the philosophy of encouraging unionization and subsequent collective bargaining with the employer in the private sector, the treatment of federal government employees is a most interesting anomaly. Here is the interesting situation where the very agency which has taken the lead (indeed the whip) in bestowing the advantages of collective bargaining in the private sector - the federal government - has, until relatively recently, denied even encouragement to union organization of its own employees. To this day there is only one piece of legislation applying to unionization of federal employees.[2] It is to this anomaly that I wish to address myself in this first part of this thesis.

Why is this dichotomous approach of the federal government to an overall policy on labor-management relations of any importance? I believe it is important because of two primary factors. These factors

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[1]Paul Pigors and Charles A. Myers, Personnel Administration (6th ed.; New York: McGraw-Hill Book Company, 1969), p. 215.

[2]37 Stat. 555. The Lloyd-LaFollette Act of 1912.

are the rapid increase in the number of government employees on the one hand and the increasingly militant assertion of group demands on the other.

Since 1930 the percentage of the work force in the public sector has doubled and in 1962 totaled over nine million people.[1] Although most of this increase was in local government, the federal government has participated heavily in the increase. In 1962 about 25 percent - over two million people - worked in federal agencies.[2] In the years prior to World War II, there was a maximum of about nine hundred thousand federal employees.[3] These figures show the existence of a large and growing source of future union members and given the present trend of more and more federal involvement in an increasing number of programs of social welfare, it is practically inevitable that the number of federal employees will continue to increase.

The second factor of increasingly militant assertion of group demands finds a particular type of outlet in the labor movement. Occupational groups which have traditionally been, at very best, apathetic toward unionization are having second thoughts. Professional groups and public employees are beginning to behave in "... ways which suggest that they

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[1]Russell A. Smith and Doris B. McLaughlin, "Public Employment: A Neglected Area of Research and Training in Labor Relations," Industrial and Labor Relations Review, Vol. 16, No. 1 (October, 1962), p. 30.

[2]Joseph Krislov, "The Independent Public Employee Association: Characteristics and Functions," Industrial and Labor Relations Review, Vol. 15, No. 4 (July, 1962), p. 549.

[3]Minutes of Meeting of the Federal Conference of Employee Relations Officers, April 24, 1956. Cited in Wilson R. Hart, Collective Bargaining in the Federal Civil Service (New York: Harper and Brothers, 1961), p. 215.

may have learned something from other unionists. They have successfully experimented with strikes and work stoppages as an effective way to ensure favorable action on their 'requests'."[1]

Now that the government's ambivalent approach to organization of federal employees has been stated and the reasons given why this approach is important to the consideration of a proper public policy in this area, I think it would be well to examine the existing policy framework and how it developed. In the process of this examination, answers will be sought to the questions asked in the introduction about government industrial relations policy for federal employees.

In sharp contrast to the 34 years of existence of the Wagner Act, it is only within the last 20 years that there has been any serious consideration given to revision of federal government labor relations policies to conform more to that which exists in the private sector. Prior to that time it was generally thought that there were unique factors in government employment which made "industrial democracy" infeasible. Because this "infeasibility" left them no recourse, the government employees attempted to achieve better wages and working conditions by lobbying in Congress.

This high pressure lobbying was regarded with pronounced distaste by Presidents Theodore Roosevelt and William Howard Taft. They reacted by issuing executive orders which prohibited federal employees from petitioning Congress, either individually or collectively, or from

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[1]Pigors and Myers, p. 85. See also Waldo G. Bowman, "Engineers in Public Practice Face the Union Problem," Civil Engineering (April, 1969), pp. 49-51.

providing information to Congress or its committees except through the head of the department or as authorized by him.[1]

These Executive Orders, known as the "gag rules" were in effect until 1912 when Congress invalidated them with the passage of the Lloyd-LaFollette Act. This act provided protection for federal employees from reprisals for joining employee organizations and for their right to petition Congress. The act applied only to postal unions as those were the only government employee unions existing at that time. It has been construed, in practice, to apply to all government employee unions.

The Wagner Act in 1935 and the Taft-Hartley Act[2] in 1947 excluded government employees from coverage by means of the definition of "employee" and "employer." There is nothing in the acts or the legislative history of the acts to indicate that it was intended that federal employees be prohibited from entering into voluntary bargaining relationships with the government. Such action, however, was definitely not encouraged. Section 305 of the Taft-Hartley Act made it unlawful for a federal employee to strike or participate in any strike against the government.[2] This provision was superseded in 1955 by Public Law 330[3] which made striking a felony and added a provision extending the proscription to belong to any organization of government employees which asserted the right to strike.

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[1]Executive Orders of January 31, 1902; January 25, 1906; and November 26, 1909.

[2]61 Stat. 160.

[3]69 Stat. 624.

Before going on to the legislative attempts to extend the benefits of true industrial collective bargaining to government employees, it would be well to examine those "unique" aspects of government employment which were commonly accepted as barring such a policy. After examining these bars and discussing the defenses and criticisms of the government's policy, we will return to a discussion of legislative efforts to change the government policy.

Probably the two most common "unique" aspects of government employment are the concept of the "sovereign immunity" and the doctrine that delegated powers cannot be redelegated.

The "sovereign immunity" holds that the government is the repository of all coercive power and as such is immune to any action taken against it without its consent. This has been used as a justification for the government not bargaining with its own employees. However, in actual practice, the U. S. Government has effectively relinquished its sovereign immunity. The Fifth Amendment to the U. S. Constitution reads "... nor shall private property be taken for public use without just compensation."[1] Nevertheless, the Supreme Court has declined to give the doctrine the final death blow while conceding "... that there is no better reason for the doctrine than 'that it was laid down in the time of Henry IV.'"[2] Thus in the absence of a statute to the contrary, the doctrine prevents any action by employees to <u>compel</u> the government to

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[1]See also 10 Stat. 612 which established the Court of Claims; 60 Stat. 843, the Federal Tort Claims Act of 1946; and 62 Stat. 933, the Tucker Act of 1946. All of these relinquished part of government's sovereign immunity.

[2]Hart, p. 43.

enter into collective bargaining. On the other hand, it does not prevent voluntary collective bargaining.

The doctrine concerning delegation of powers can be succinctly summarized in these words:

> Two general rules are valid guides to judicial decision:
>
> 1. Legislative powers may not be delegated to private groups of persons.
> 2. An executive officer or commission to whom legislative powers have been properly delegated may not delegate those powers to someone else.[1]

Judging by the judicial decisions in this area it

> ... appears that the constitutional rules on delegation and redelegation do not preclude the validity of laws to enable the development of public service collective bargaining relationships. To be valid, however, they should contain procedural systems which safeguard exclusive authority for the executive agent to disapprove rules before they become effective and which retain in the executive agency the legal power not only to decide independently but also to rescind, modify, and supersede the rule unilaterally at any future time.[2]

Aside from these "unique" aspects of government employment, there has been rather sustained criticism of the government's federal employee industrial relations policy. The Hoover Commission commented that

> The Government has lagged behind American Industry in improving employer-employee relations. Federal employees, while given some degree of protection against

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[1] Ibid., p. 48.

[2] William B. Vosloo, Collective Bargaining in the United States Federal Civil Service (Chicago: Public Personnel Association, 1966), p. 25.

> abuse, discrimination, and unjust treatment, are not provided a positive opportunity to participate in the formulation of policies and practices which affect their welfare. The President should require the heads of departments to provide for employee participation in the formulation and improvement of Federal personnel policies and practices.[1]

The American Bar Association also criticized the government for lagging behind industry when it should be setting an example.[2] The Metal Trades Department of the AFL-CIO called for equity and fair play to give government employees the same rights it had urged on industry.[3]

Noted scholars and writers have also contributed their criticisms.

> ... public employees are more and more experiencing the contagious influence of this [collective bargaining] movement.[4]

Another writer points out that all the legislation has tended toward prohibiting strikes and contends that support and criticisms by employee groups benefit the merit system.[5] Gregory, among others, has often

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[1] The Hoover Commission Report (Washington, D. C.: Government Printing Office, 1949), pp. 125-128.

[2] "ABA 1955 Proceedings of the Section of Labor Relations Law, Second Report of the Committee on Labor Relations of Governmental Employees," pp. 2-5.

[3] James A. Brownlow, President of Metal Trades Department, AFL-CIO in "Hearings on H. R. 6 before the House Committee on Post Office and Civil Service," 85th Cong., 2d Sess., 1958, pp. 157-162. Hereinafter cited as "1958 Hearings."

[4] O. Glenn Stahl, Public Personnel Administration (New York: Harper and Brothers, 1956), pp. 281-282.

[5] William Seal Carpenter, The Unfinished Business of Civil Service Reform (Princeton: Princeton University Press, 1952), pp. 58-78.

criticized Congress for its enactment of Section 305 of the Taft-Hartley Act prohibiting strikes by U. S. Government employees.[1]

New York City arrived at the conclusion that they should adopt collective bargaining for the city employees because

> Human nature is such that paternalism, no matter how bounteous its gifts, may be of less real satisfaction than the process of reasoning together around the family table, no matter how meager the fare.[2]

Basically then, the criticisms of the government's policy can be condensed to four major points: (1) the government's approach has always been negative, (2) the philosophy has been paternalistic, (3) the government should be a model employer and not a laggard, and (4) in the interest of equity the government should at least use the same policies it compels private industry to use.

The nature of the "sovereign immunity" and the delegation of powers concept have already been discussed. They form one line of defense of the government's policy. In addition there were at least three other reasonable arguments for the defense. One popular one was the assertion that management had already voluntarily granted employees the benefits of collective bargaining. Another is that Congress deliberately excluded federal workers from coverage of the National Labor Relations Act and therefore intended to deny collective bargaining to federal workers. The

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[1]Charles O. Gregory, Labor and the Law (New York: Norton & Company, 1958), pp. 521-523.

[2]"Report on a Program of Labor Relations for New York City Employees," (New York: Dept. of Labor, 1957), pp. 83-84.

third argument was that employees' wages, hours and working conditions are all set by legislation and hence the employer (in this case the executive branch) cannot bargain collectively with the employees.

The earlier discussion of judicial views of "sovereign immunity" and delegation of powers has already provided the rebuttal to their use as defenders of the status quo. The unions would not admit the slightest validity in the argument that management had already granted them the benefits of collective bargaining - particularly in the era before Executive Order 10988. Granting that the exclusion of government employees from coverage of the NLRA was consistent with the government's negative approach, it is at least arguable that this was no justification for executives to bury their heads in the sand for another 15 years after the passage of the NLRA. The defense of the executives being powerless to bargain collectively with employees' organizations is partially valid. However, this defense does not allow for the fact that there is considerable leeway for bargaining on these matters within the legislated framework.

The above discussion has pointed out, in general terms, the criticisms and defenses of the government's policy on industrial relations for its own employees. In order to be a little more specific, let's examine the opinions and actions of those very powerful individuals - the Presidents.

None of the four Presidents who preceeded Kennedy - Hoover, Roosevelt, Truman, or Eisenhower - attempted to promote changes in the policy concerning federal employees. Hoover, while campaigning for the presidency in 1928, said the government "... must limit them in the liberty to

bargain for their own wages, for no government employee can strike against his government and thus against the whole people."[1] President Franklin D. Roosevelt, in a letter to the President of the National Federation of Federal Employees, said "All government employees should realize that the process of collective bargaining, as usually understood, cannot be transplanted into the public service."[2]

It is interesting to note here that Hoover changed his mind in the years between his Presidency and 1949 when he delivered his "Hoover Report."[3] Roosevelt, when he was Secretary of the Navy, "urged all government workers to organize for their own betterment and to assist co-ordination with management."[4]

The only action which could be interpreted as being affirmative was taken during the Eisenhower Administration. This was a letter from the Special Assistant to the President for Personnel Management to all agency heads. The letter emphasized the need for good employee-management relations in the federal service and asked that each agency head evaluate this aspect of the agency's operation.[5] This letter marked the first time that an administration had even hinted that the unions might have a

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[1]Sterling D. Spero, Government as Employer (New York: Remsen Press, 1948), p. 6, note 6.

[2]Hart, p. 22. Citing Rosenman, The Public Papers and Addresses of Franklin D. Roosevelt, 1937 Vol. (1941), p. 325.

[3]Page 12 of this paper.

[4]Commander Chantee Lewis, "The Changing Climate in Federal Labor Relations," United States Naval Institute Proceedings (March, 1965), p. 64.

[5]Letter from the White House, June 3, 1958 signed by Rocco C. Siciliano.

role to play in the federal government. This move was apparently made in lieu of issuing a proposed Executive Order drafted in 1954 which would have required government agencies to recognize employee unions and to deal with them.[1]

The Judicial Branch has rendered many decisions relative to public employees and although there is some diversity in the opinions,

> ... there appears to have been sufficient consistency in the decisions to support the conclusion that the following general principles are well settled and applicable to any governmental body, federal, state, or local:
>
> 1. Laws and executive regulations which prohibit governmental employees, upon pain of dismissal from the service, from joining a union or from engaging in any other form of concerted activity such as striking, picketing, and collective bargaining are valid and binding. They do not constitute an unconstitutional infringement upon the civil rights and liberties of the employees concerned.
> 2. In the absence of any prohibitory statute or regulation, public employees may organize or join unions, including unions which are affiliated with national labor organizations such as the AFL-CIO.
> 3. Any type of closed shop, union shop, or other form of union security agreement between a government agency and a union representing its employees is invalid.
> 4. Any agreement that union members will be given preference in hiring, firing, reductions in force, promotion, or other employment benefit or privilege is invalid.
> 5. Any agreement for automatic check-off of union dues, absent a specific written assignment from each individual employee concerned is invalid.[2]

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[1]Hearings on S. 3593 before the Senate Committee on Post Office and Civil Service, 84th Cong., 2d Sess., (1956), p. 281. Hereinafter cited as 1956 Hearings.

[2]Hart, p. 27.

Now that the general climate of attitudes and policy has been examined and the interpretation of the courts summarized, let us return to a discussion of legislative efforts concerning federal employee-management relations.

Beginning in 1949 and continuing until 1961 many attempts were made to give statutory recognition to federal employee unions. Representative George M. Rhodes and Senator Olin D. Johnston submitted bills, in the form of amendments to the Lloyd-LaFollette Act, in each session of Congress attempting to give statutory recognition to the government employee unions. Committee hearings were held in the House in 1952 and in 1956 and in the Senate in 1956. In 1952 and in 1956 the bill was reported out favorably by the committees but neither house of Congress ever voted on the bill.[1] The failure of the bill to pass was probably primarily due to opposition of the administration.

The Rhodes-Johnston bill provided, among other things, for the right of an employee union to represent its members in dealings with a government department or agency. Other essential provisions of the bill are quoted below:

> (2) (A) Within six months after the effective date of this Act, the head of each department and agency shall promulgate regulations specifying that administrative officers shall at the request of officers or representatives of the employees' organizations confer with such officers or representatives on matters of policy affecting working conditions, safety, in-service training, labor-management cooperation, methods of adjusting

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[1] H. R. Report No. 2311, 82d Cong., 2d Sess. (1952) and Senate Report No. 2635, 84th Cong., 2d Sess. (1956).

> grievances, transfers, appeals, granting of leave, promotions, demotions, rates of pay, and reduction in force. Such regulations shall recognize the right of such officers or representatives to carry on any lawful activity, without intimidation, coercion, interference, or reprisal.
>
> (B) Disputes resulting from unresolved grievances or from disagreement between employee organizations and departments or agencies on the policies enumerated in subsection (e) (2) (A) [directly above] shall be referred to an impartial board of arbitration to be composed of one representative of the department or agency, one representative of the employee organization, and one representative appointed by the Secretary of Labor who shall serve as chairman. The findings of the board of arbitration shall be final and conclusive.
>
> (3) Charges involving a violation of this subsection shall be referred to the Civil Service Commission, which shall be charged with making certain that effective grievance machinery is established within each agency, and that unresolved differences are referred promptly to the impartial arbitration board established in subsection (e) (2) (B). The head of the department or agency involved shall take such action as may be necessary to cause the suspension, demotion, or removal of any administrative official found by the board of arbitration to have violated this subsection...[1]

Spokesmen for the administration claimed the Rhodes-Johnston Bill was unnecessary since the agencies had already decreed consultation with employee organizations. They stated that granting union officers the right to "carry on any lawful activity" was too broad a power and could paralyze operations.[2] The Chairman of the Civil Service Commission contended that under a strict interpretation of the statute a cabinet member could be dismissed if he made a ruling on "lawful activity" which

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[1] S. 95, H. R. 6, 86th Cong., 1st Sess. (1959).

[2] "1958 Hearings," p. 289.

was later reversed by an arbitration board.[1] The supporters of the measure did not challenge this contention. The wording of the bill and the testimony by union leaders made it clear that

> Under the Rhodes Bill management would be compelled to confer and, at the discretion of the union - any union that represented any employees in the department - to arbitrate any policy decision. The variety of policy decisions which any union could force to arbitration is infinite.[2]

The unions' general approach on this bill was typified by AFL-CIO President George Meany:

> Federal employee organizations are asking for the assurance that they will enjoy the benefits of a program for cooperating with management. <u>They are not seeking the same kind of collective bargaining in which unions engage in private industry</u>, the objective of which is a bilateral agreement with respect to specific working conditions.[3] [emphasis supplied]

The reader would do well to mentally mark this passage for later recall. It will, when coupled with later statements of Mr. Meany, demonstrate the wisdom of taking labor's protestations with a grain of salt.

In summary of the policy prior to Executive Order 10988, it can be said that it was essentially a negativist and paternalistic approach. There was no positive encouragement of organization by the federal employees and there was no policy except that of voluntary <u>consultation</u>

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[1] 1956 Hearings, p. 138. Statement by Philip Young.

[2] Hart, pp. 146-147.

[3] 1956 Hearings, p. 281.

with the employees. In the absence of any statutory prohibition, employees were free to organize, but there was no way to compel the government to bargain with or even to recognize the employees' organizations.

Section 3 - Executive Order 10988

Thus it was that prior to 1962, federal employees and managers lacked uniform guidance as to government policy in the area of collective bargaining. President Kennedy, therefore, appointed a President's Task Force to formulate government-wide policy recommendations. The members of the Task Force were:[1]

Arthur Goldberg Secretary of Labor Chairman	David E. Bell, Director Bureau of the Budget
John W. Macy, Jr. Chairman, Civil Service Commission	J. Edward Day Postmaster General
Robert F. McNamara Secretary of Defense	Theodore C. Sorenson Special Counsel to the President

In the process of developing the recommendations for the Executive Order, the Task Force held open hearings in Washington, D. C., Atlanta, Chicago, Dallas, Denver, San Francisco and New York City. In general the employee organization representatives felt that the absence of a positive government policy had made it difficult, if not impossible, for

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[1] A Policy for Employee-Management Cooperation in the Federal Service, Report of the President's Task Force on Employee-Management Relations in the Federal Service (Washington: Government Printing Office, 1961), p. vii. Hereinafter referred to as the Task Force Report.

the executive leadership to infuse into its agencies a cooperative spirit in employee-management relations.[1]

The AFL-CIO wanted recognition limited to "bona fide national unions," exclusive recognition for a majority union, binding arbitration of disputes, and dues check-off.[2] Other unions, such as the National Federation of Federal employees, desired that each organization represent its own members, no exclusive recognition, and no arbitration.[3] Basically the AFL-CIO views and desires prevailed.

One Task Force position was especially important and was to have a nearly disastrous consequence for the NFFE. The Task Force agreed that as a minimum "no management official and no personnel officer should hold office in any employee organization."[4] That consequence will be examined in a later portion of the paper.

The gist of the Task Force findings and the thrust of their recommendations was found in their letter of transmittal.

> At the present time the Federal Government has no Presidential policy on employee-management relations, or at least no policy beyond the barest acknowledgement that such relations ought to exist. Lacking guidance, the various agencies of the government have proceeded on widely varying courses. Some have established extensive relations with employee organizations; most have done little; a number have done

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[1] President's Task Force, Staff Report III, Summary of Testimony, Task Force Hearings (Washington: GPO, October, 1961), pp. 5-8.

[2] Ibid., Appendix pp. 1-10.

[3] Ibid.

[4] Task Force Report, p. 8.

> nothing. The Task Force is firmly of the opinion that in large areas of the government we are yet to take advantage of this means of enlisting the creative energies of government workers in the formulation of policies that shape the conditions of their work.[1]

This passage expresses the heart of the program as it was worked out by the Task Force as they tried to balance the public and private interests.

Reporting on November 30, 1961, the Task Force made a comprehensive set of recommendations which were adopted in their entirety by President Kennedy in the issuance of Executive Order 10988 in January of 1962. It contained none of the objectionable features of the Rhodes-Johnston Bill and it brought the rights of federal employees into line, as much as possible, with the rights of workers and unions in private industry.

The Task Force recommended that the Department of Labor and the Civil Service Commission jointly prepare a "Code of Fair Labor Practices" and a "Standard of Conduct for Employee Organizations" to parallel the standards established for unions and management in private industry.[2] In establishing these guidelines, the President wanted them to assist in the implementation of Executive Order 10988 by stating the responsibilities of unions and management, by giving criteria for the protection of rights, and by establishing uniform procedures for enforcement of the policies.[3]

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[1] Ibid., p. III.

[2] Task Force Report, p. 27. See also Executive Order 10988, Section 13.

[3] Memorandum for the Heads of Executive Departments and Agencies, The White House, Washington, May 21, 1963.

Considering the background which has been discussed in the preceeding pages, the issuance of Executive Order 10988 by President Kennedy establishing a program for recognition of federal employee unions and requiring the development of administrative machinery for dealing with them looked like an extremely precipitous action on his part. Indeed, the Executive Order was a move that

> ... pulled the rug from under the government unions just as they were about to pluck the golden apple. It not only deprived them of the prize but made them like it! It gave them what they said they wanted (recognition) while it deprived them of the windfall they hoped would come with it (a law which would compel all but employees of extraordinary independence to join a union). As a result of the Executive Order, the pressure for the Rhodes Bill - near the bursting point in 1961 - has been completely dissipated.[1]

Both the federal executives and the federal employee unions' leaders objected to the Executive Order. The executives objected because they thought a formal program unnecessary and that any such program required legislative action by Congress. The labor leaders objected because they were not really looking forward to having to do the hard, demanding and expensive work of competing openly at the grass roots level for members and the right to represent the workers in a given unit. They would have been just as happy to have the Rhodes-Johnston Bill and to have continued their negotiations in the friendly halls of Congress.

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[1]Wilson R. Hart, "The U. S. Civil Service Learns to Live with Executive Order 10988: An Interim Appraisal," Industrial Relations Review, Vol. 17, No. 2 (January, 1964), p. 205.

There is little doubt that one consideration in the issuance of the Executive Order was a desire on the part of the administration to forestall the passage of a bill which they considered unwise. Another important factor not to be overlooked, however, was President Kennedy's philosophy in regard to federal employee-management relations. He had stated, while still a Senator, his position in favor of giving statutory recognition to federal employee organizations.[1] Important also was the fact that President Kennedy had a very deep knowledge of labor matters. He had been a member of Senator McClellan's investigative committee which had probed abuses of power by the labor unions and he had 14 years service on House and Senate labor committees. In view of these factors, the issuance of the Order was precipitous only in that the President decided to take the initiative and use the Executive Order as his means.

The catalytic role of President Kennedy's Task Force has been discussed. Their role in the evolution of the government's policy should not be underestimated. They did their work swiftly, unanimously agreed on a sweeping revision in policy and persuaded the President to adopt their proposed program in its entirety. This was all done in, for Washington, the extremely short time of six months, and the Executive Order was issued just a bit over a month later. By his decisive assumption of the initiative, President Kennedy averted seemingly unwise legislation and got the executive branch moving on a new labor policy for government workers much faster than would have happened under

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[1]Statement of Senator John F. Kennedy in 1956 Hearings, p. 36.

legislation. Now we turn to a comparison of the policy for private enterprise and that for government employees.

Section 4 - Comparative Analysis of 10988

In this section of the paper, no attempt will be made to compare the detailed provisions of the Labor-Management Relations Act and Executive Order 10988. Rather, the intent is to compare only the very basic philosophies of the two policies and to make a comment or two about a desirable policy.

Basically, national labor policy in the private sector is founded on three philosophical tenets. These are (1) there should be positive encouragement for workers to organize, (2) there should be exclusive representation based on the majority rule principle, and (3) employers should be required to bargain with employee organizations chosen for that purpose by the employees.

Stemming from these tenets, set forth in the Labor Management Relations Act, a whole body of judicial law and administrative rule has developed over the years to ensure that the philosophy is implemented in an equitable manner. In attempting to achieve their objectives, the unions can use the strike, boycott (but not the secondary boycott), and picketing as bargaining weapons. Private employers are compelled to bargain and the collective agreement is the desired and usual result.

In contrast, the national policy for federal employees prior to Executive Order 10988, as discussed in preceeding pages, was decidedly out of date. Courts had long held that a legislative body could legally prohibit membership in a union by a public employee. In the absence of

such a limitation, membership was lawful.[1] Even where membership was lawful, the employer was not required to bargain. Universally strikes and other forms of economic coercion have been held illegal.

How much has Executive Order 10988 changed this policy? First, the Order falls short of the first tenet of the LMRA. The Order specifies that the employer should be completely neutral with regard to the question of union membership. Secondly, the Order, though it does abide by the second tenet of exclusive representation, allows other forms of recognition for organizations other than the exclusive representative to exist concurrently. Thus, the Order allowed three categories of recognition - exclusive, formal, and informal. Further comment on this feature will be made in a later section. Thirdly, the Order requires collective negotiations between the employer and an exclusive representative. A written agreement is an appropriate result of these negotiations.

Executive Order 10988 thus went a long way toward establishing the same privileges for federal employees as private employees enjoy. The prohibition on strikes and the use of other economic weapons as a bargaining tactic was reaffirmed as appropriate public policy by the Task Force.[2] The matters subject to negotiations are, of course, more severely proscribed by existing legislation than in the private sector. In the next section, we will discuss some of the results of Executive Order 10988.

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[1] Smith and McLaughlin, pp. 34-35.

[2] Task Force Report, p. 17.

Section 5 - Subsequent to 10988

On the part of labor two reactions are extremely interesting. In general, the AFL-CIO, with their long experience in the rough and tumble of industrial relations in private industry, immediately mounted organizing campaigns and wherever possible pushed for exclusive recognition. The American Federation of Government Employees wholeheartedly joined the competition in organizing even though it brought them into conflict with the established craft unions which claimed jurisdiction over their respective craftsmen in the government. This competition has been very evident between the AFGE and District 44 of the International Association of Machinists of the AFL-CIO. District 44 was established in 1944 by the IAM for the specific purpose of organizing federal government craftsmen.[1] Thus, even within the AFL-CIO, the conflict between the industrial union such as AFGE and the craft union exists in the government sphere as it does in the private sphere.

Representing the other extreme was the National Federation of Federal Employees. Here the reader should recall the earlier comment about the nearly disastrous effect the prohibition on supervisors and management personnel holding union office was to have on one government union. Because so many of the NFFE's officers were supervisors and managers, Mr. Vaux Owens, the national president, felt that the conflict of interest provisions of the Order would deprive the union of all its leadership and lead directly to its demise. Accordingly, he resisted

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[1] Lloyd Ulman, ed., Challenges to Collective Bargaining (Inglewood Cliffs, New Jersey: Prentice-Hall, Inc., 1967), p. 67.

the program to the utmost and instructed the local lodges not to attempt to gain exclusive recognition.

The NFFE even petitioned the U. S. District Court in Washington, D. C. to declare Executive Order 10988 invalid and void on the ground that "it was not authorized by any law or statute of the United States and was not within the constitutional authority of the President."[1] This tactic failed and led to the selection of a new president, Mr. Nathan T. Wolkomir, at the 27th Convention of NFFE in September, 1964. Mr. Wolkomir immediately reversed the policy and declared that henceforth they would "use rather than fight" Executive Order 10988.[2]

Willem Vosloo's extensive investigation, by means of a great many interviews of government and labor representatives, determined that

> ... although union-management dealings took place prior to the Executive Order, they found that management officials were more receptive to them than before. As a result union leaders felt that they now had greater status in performance of their representative roles and functions.[3]

Mr. Vosloo's own conclusion was that "On the whole, union officials exhibited an optimistic attitude toward the prospect of the new program."[4]

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[1]"Text of NFFE Complaint in Suit to Invalidate Executive Order 10988," Government Employee Relations Report, No. 40 (June 15, 1964), pp. F1-F9.

[2]Vosloo, pp. 133-145. Quotation from page 133.

[3]Ibid. Quotation from p. 143.

[4]Ibid. Quotation from p. 144.

He found it clear that top management supported the program with very few isolated individuals in opposition.[1]

In general, the unions' primary complaints were expressed in their desire to have an impartial appeals procedure going beyond the head of an agency which is an interested party in a dispute, and a new independent committee or agency to administer the program and to interpret the program provisions. Vosloo concluded that the experience under the Order does not support the need for another bureaucracy to administer the program. He does state, however, that he is in agreement with the need of some kind of arbitration machinery for resolving impasses.[2]

Another author who had previously done an exhaustive study in federal labor relations, writing in 1964, declared that considering the

> ... enthusiastic support of the President, the Cabinet, and most interested members of the public, and at least the tacit approval of the Congress and the federal judiciary ...[3]

the order was an instant success. Others, within the government, have

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[1] Ibid., p. 145.

[2] Ibid., p. 155.

[3] Hart, "An Interim Appraisal," p. 209. Also see Wilson R. Hart, "The Impasse in Labor Relations in the Federal Civil Service," Industrial and Labor Relations Review, Vol. 19, No. 2 (January, 1966), pp. 175-189.

found essentially the same thing with regard to management and labor representatives' attitudes toward Executive Order 10988.[1]

George Meany, President of the AFL-CIO, indicated that the AFL-CIO had made great progress under the Executive Order. He did, however, complain that the "higher authorities" too often substituted their unilateral judgments for what the bargainers had worked out in their negotiating sessions. Mr. Meany complained about some remaining vestiges of paternalism and stated that some way of resolving negotiation impasses must be found.[2]

A more specific criticism was given by Otto Pragan of the AFL-CIO. He began by stating that

> Collective bargaining in the Federal service, at the present time, differs from that in private industry, principally in these points: 1) Scope of bargaining issues is limited by laws and regulations; 2) The use of the economic weapon of the strike is not allowed; 3) Arbitration is not final and binding; 4) To become effective the local agreement requires approval by the head of the agency; 5) There is no independent governmental board to decide about complaints relating to unfair labor practices.[3]

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[1]Robert E. Darling, "Employee-Management Relations in the Air Force Logistics Command; The Grievance Process" (unpublished Master's thesis, Course XV, Massachusetts Institute of Technology, 1967). Edward Gordon Koepnick, "Employee-Management Cooperation in the Federal Service" (unpublished Master's thesis, Course XV, M. I. T., 1965). Commander Chantee Lewis,USN, "The Changing Climate in Federal Labor Relations," United States Naval Institute Proceedings (March, 1965), pp. 60-69.

[2]Harold S. Roberts, Labor-Management Relations in the Public Service (Honolulu: University of Hawaii, 1968), pp. 704-705.

[3]Otto Pragan, "Panel Discussion: Is Private Sector Industrial Relations the Objective in the Federal Service?" Industrial Relations Research Association, Proceedings of the 1966 Annual Spring Meeting (May 6-7, 1966), p. 138.

Mr. Pragan's article is, in my opinion, a well-reasoned and cogent analysis of the Executive Order effects from the unions' point of view. That he was largely on target with his criticisms, particularly 2), 4), and 5) will be evident in a later section.

From the evidence presented in the above paragraphs, although it is necessarily the briefest of summarizations, I think it can be stated fairly that the general reaction to the Executive Order was favorable with much less opposition from the administrators than would have been expected from the previous history of the attitudes and policies on federal employee unionization and bilateral negotiations.

What about more objective standards with which to measure the effect of the Executive Order on the unions? I think a couple of examples of what has happened to union membership should be sufficient to demonstrate the Order's impact.

> Outside the postal service, however, the growth is keyed to the new era of collective bargaining. By the spring of 1963, 15 months after the presidential order, unions had won exclusive bargaining rights for 94,000 non-postal federal employees. By mid-1965, the number had grown to 300,000. The latest official tally was in August, 1966 and the current figures certainly are higher. But at that time the total had reached 445,000. Of these, 252,000 were blue collar wage board workers and 194,000 were classified salaried employees.[1]

Bringing the statistics up to date we find that unions are still making rapid progress in the government. Unions now represent a majority of

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[1]David L. Perlman, "Public Employees (sic.): An Emerging Force," AFL-CIO American Federationist (July, 1967), p. 17.

the federal workers. Employees in exclusive units totalled 52% of the workforce in November, 1968 compared with 45% in November, 1967. The AFGE made large gains over that year and the postal and shipyard unions stayed on a plateau. Eleven government agencies are now more than 50% organized, compared with 5 agencies in November of 1967.[1] The statistics indicate that in those agencies where unionism had traditionally been strong - Post Office Department and Navy Shipyards - the unions organized swiftly during the early days of Executive Order 10988 and since may have reached the limits of their potential.[2] This may be true or it may just be a pause in these organizations while the unions develop new organizing programs.

The judiciary has rendered two significant decisions concerning 10988 since its promulgation. One of these involved the use of the 60% rule[3] in an election case. The District of Columbia Court of Appeals dismissed the appeal of a Federal Court decision upholding an agency's use of the rule. The court held that the Order's validity did not depend on congressional action and said any disagreement over interpretation of its implementation should be referred to the President.[4] The second case was the NFFE suit previously referred to. In this case the

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[1] Government Employee Relations Report, No. 297 (May 19, 1969), p. 1.

[2] Ibid., p. D-1.

[3] At least 60 percent of the unit employees present and eligible must participate in a representation election in order for the election to be considered valid.

[4] Manhattan-Bronx Postal Union v. Gronouski, 350 F .2d 451 (D.C. Cir. 1965).

District of Columbia Circuit Court found the Order to be a proper exercise of Executive Branch power and indicated controversies should be resolved within the Executive Branch and not in the courts.[1]

Another viewpoint is expressed by Senator Daniel B. Brewster in the Congressional Record, April 5, 1966 on pages 7214-7215. His introductory remarks for his bill (S. 3188) observed that "... A lot of the bloom has been worn off the idealistic rose...." Senator Brewster was particularly critical of the role played by the Civil Service Commission, claiming that it no more served the federal employees than does the National Association of Manufacturers. The Senator took strong exception to the effectiveness of Executive Order 10988 and dedicated himself to securing the passage of legislation which would "... give Federal employees the same 20th-century rights which workers in private industry have been enjoying for 30 years."

I think the words of Professor Rehmus of the University of Michigan comprise an appropriate counterbalance to Senator Brewster's view:

> I am not surprised, however, that this millennium has not been reached in four years. In fact, I would have been astonished if it had. The present imperfect state of private sector industrial relationships is at least 30 years old and much maturation is yet to come. Social institutions do not develop so rapidly, and social progress does not come so fast. In time, however, I do expect that labor relations in the Federal service will

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[1] National Federation of Federal Employees, Civil Action No. 1380-64 (D. C. Cir. 1965).

> come to be more like those in the private sector, although never wholly like them.[1] [emphasis supplied]

In this section of the paper I have tried to give a representative sampling of the views of management, labor, and third parties on the effect of Executive Order 10988. With the exception of Senator Brewster, the general consensus was that the Order has had a pronounced and definitely beneficial effect on government labor-management relations. It is true that the unions along with some third parties such as Wilson R. Hart, feel that the program does not do enough for the unions. However, I think it only fair to recall that in all their history the unions have never been wholly satisfied - either in or out of government - nor are they likely to be in the future. I would now like to address myself to the presently existing situation.

Section 6 - Present Status

President Johnson, in late 1967, appointed a committee to review the application and the results of Executive Order 10988 and to recommend any necessary changes to the Order.[2] The membership of the Review Committee was the same as that of the original Task Force, but with the incumbents of the Johnson Administration replacing those of the Kennedy Administration.

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[1] Charles M. Rehmus, "Panel Discussion: Is Private Sector Industrial Relations the Objective in the Federal Service?" Industrial Relations Research Association, Proceedings of the 1966 Annual Spring Meeting (May 6-7, 1966), pp. 57-58.

[2] Memorandum for the Heads of Executive Departments and Agencies, The White House, September 8, 1967.

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The Review Committee solicited the views of public spokesmen, union and agency officials and was assisted by a panel of experts from outside the government. However, unlike the original Task Force, the Review Committee was unable to agree on the changes to be made. Consequently the committee was not able to make a report with recommendations to President Johnson before the change in administrations. An unofficial draft report[1] was released in January, 1969 for public information by the former Secretary of Labor, W. Williard Wirtz with these words:

> A series of developments (including changes in the membership of the Committee) precluded either final agreement on the Draft Report or any transmittal to the President. This Draft Report is included here as Attachment B. This document has no official status. It is set out because it reflects the serious and responsible contributions of a wide variety of informed people to a subject of vital national concern.[2]

In the background portion of the draft report, the Review Committee concluded that

> The benefits from the program have been many. There has been a marked improvement in the communication between agencies and their employers. Employees now actively participate in the determination of the conditions of their work. This participation has contributed significantly to the conduct of public business. The collective bargaining agreements that have been negotiated have

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[1]Draft Report of the President's Review Committee on Employee-Management Relations in the Federal Service (April, 1968), Attachment B to the 56th Annual Report of the Secretary of Labor (January, 1969).

[2]Department of Labor, "56th Annual Report of the Secretary of Labor," (Washington, D. C.: January, 1969).

given continuity and stability to the labor-management relationship.[1]

The program, as it exists today, is flourishing. There are now 1,238,748 employees in 1,813 units with exclusive recognition, 1,172 with formal recognition, and 1,031 with informal recognition.[2]

The Review Committee made 19 recommendations to the President.[3] Rather than list all the recommendations, I have chosen to list only four of them upon which I wish to comment. The four are not necessarily the most important, but merely those on which I would like to present my views. The four recommendations are quoted below:[4]

A. Central authority for program decisions. A Federal Labor Relations Panel. A three-member Federal Labor Relations Panel, consisting of the Secretary of Labor, Chairman of the Civil Service Commission, and the Chairman of the National Labor Relations Board should be established to oversee the entire Federal Service labor relations program, to make definitive interpretations and rulings on any provisions of the Order, to decide major policy issues, to entertain, at its discretion, appeals from decisions on certain disputed matters, to review and assist in the resolution of negotiation impasses and to report to the President on the state of the program with recommendations.

D. Procedures to be adopted in the event of impasses in negotiations. The Federal Mediation and Conciliation Service should extend its services to the Federal labor relations program. Additional

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[1] Draft Report, p. 2.

[2] Ibid., pp. 1-2.

[3] Ibid., pp. 4-54.

[4] Ibid., pp. 3-10.

procedures for the resolution of impasses should be made available, including fact finding on the merits of a dispute with recommendations forming the basis of further negotiations, or the arbitration of impasses or both. The parties to an impasse should have the right to request the services of the Federal Labor Relations Panel.

F. Status of supervisors. Supervisors should be considered part of management. Formal or exclusive recognition should not be granted to mixed units or to units consisting solely of supervisors.

O. Union security. Agencies and labor organizations holding exclusive recognition may negotiate provisions for voluntary payroll deduction of dues or their equivalent revocable only at twelve-month intervals under specified circumstances. [emphasis supplied]

First, I do not agree that a need has been shown for a new agency to administer and interpret the policy. I think the same thing could be accomplished by realigning some functions of the Civil Service Commission and the Department of Labor[1] and assigning the responsibility for interpreting and administering the program to the Department of Labor. In the case of impasses or appeals from an agency decision where the Department of Labor is an interested party, another agency such as the Civil Service Commission or the NLRB would act in place of Labor. It is

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[1]See Hart, Collective Bargaining in the Federal Civil Service, pp. 242-246 for an excellent discussion of a bill introduced by Senator Clark which would have limited the Civil Service Commission to surveillance of the merit system and processing employee appeals. The Commission's executive functions would have been transferred to an Office of Personnel in the Executive Office of the President. Former members of the Commission were in favor of the bill. Incumbent Commission members were opposed. Unions in general were opposed because they were afraid it would mean a return to the spoils system. Hart points out the irrationality of that fear when he says, "... no self-respecting union, even in the absence of the Civil Service Act, would permit that to happen."

my opinion that the creation of the Federal Labor Relations Panel would simply result in more administrative layering and an additional element of divided authority and responsibility and more wasteful "coordination" effort.

Hart contends that the Civil Service Commission has always been the source of executive policy on personnel matters and the Commission has been subject to very little de facto control by the cabinet or the President.[1] Four years after the promulgation of Executive Order 10988, Hart vehemently denounced the Civil Service Commission for emasculating the substance and frustrating the intent of the Order.[2]

It is not likely, in any case, that the unions will be satisfied very long with a Federal Labor Relations Panel constituted as recommended by the Review Committee. The unions will continue to push for an independent agency like the NLRB.

Recommendation D dealt with procedures to be adopted in the event of impasses in negotiations. My personal opinion is that the extension of the services of the Federal Mediation and Conciliation Service to the federal labor relations program can be very beneficial. The efforts made in this area so far have been well received by both labor and government executives. This area of bargaining impasses is an extremely thorny problem in labor-management relations. Even when an attempt has been made to limit government intervention to "emergency" strikes in

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[1] Ibid., p. 243.

[2] Hart, "The Impasse...", pp. 175-189.

private industry, the efforts have not been successful. The latest legislative attempt, the Taft-Hartley Act, has not proven to be a satisfactory solution.[1] The tendency for third party governmental intervention to stifle true bargaining has been repeatedly demonstrated. A good example, in an extremely important area, is the atomic energy industry. Secretary of Labor Mitchell had a committee of experts study the AEC and they found less and less was settled by bargaining and more and more by reliance on Atomic Energy Labor-Management Relations Panel.[2]

The procedures recommended by the Review Committee may work because of the fact that the government employees do feel a definite obligation to the public. It remains to be seen, if the recommendations are implemented, whether the recommended procedure will tend to suppress collective bargaining in the government as it has in private industry. If it is to work, the frequency of referral to the Federal Labor Relations Panel will have to be deliberately kept low.

Recommendation F departs, I believe, from one of the basic tenets of the philosophy of labor-management relations. It forbids supervisors to be in mixed units and denies exclusive recognition to units of supervisors. I do think that a line has to be drawn somewhere. I agree that they should not be in mixed units, but I think prohibiting all supervisor units from gaining exclusive recognition is going too far the other way.

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[1] "Emergency Strikes Might be Redefined in New Legislation," Wall Street Journal (March 6, 1969).

[2] David L. Cole, The Quest for Industrial Peace (New York: McGraw-Hill Book Company, 1963), p. 38.

I think this line could be drawn at such a level as to make it more practical. For example, it has been my personal experience that many of the classified employees exhibit a definite change in outlook when they make the change from a GS-11 to a GS-12. This may not be true with all individuals or in the Washington area, and it may be a trickier task with the ungraded supervisors, but it may offer a reasonable indication to a compromise solution to the problem of the individual being free to join an organization and to have it bargain in his behalf. The higher in the authority hierarchy a supervisor is, the more influence he is able to exert on matters bearing on his own situation and therefore has relatively less need of the power of a union to act on his behalf.

That this opinion of mine is not unique can be demonstrated by quoting Representative Morrison, the vice-chairman of the House Post Office and Civil Service Committee.

> There can be no real conflict between the leaders of our government agencies and the leaders of the employee organizations that qualify for recognition.... Differences of opinion can only exist over means; never over ends. The ultimate interest of both must inevitably be the same: to make the United States Goverment the best, the most efficient, and the most honorable in the world.[1]

Representative Morrison has proposed a simple solution to the conflict of interest problem; he proposes that no employee "be placed in a position where he is bargaining with himself."[2] The Morrison Bill codifies

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[1] H. R. 6883, 89th Cong., 1st Sess., March 29, 1965.

[2] Ibid.

Executive Order 10988, repeals the Civil Service Commission amendments and guidelines, and creates a "little NLRB."

Recommendation O concerns union security and involves the unresolvable conflict of individual freedom (not to join a union) and group participation and effectiveness (a financially stable union). The Civil Service System's very reason for being is to insure availability of jobs and advancement based, as nearly as possible, solely on ability and qualifications. Any form of union security abridges that purpose to some extent. I believe that the employees, acting collectively, and bargaining with the employer should be able to agree on some form of union security. In view of the conflicting aims of the Civil Service System and the unions, it would appear to me that a reasonable approach would be some form of agency shop. One stumbling point in agency shop considerations has always been the amount of the "fee" and what it should include. Why not let the unions and the non-union members bargain the fee question with management as a directly concerned third party? Recommendation O, particularly with the wording "dues or their equivalent," appears to be the initial step in authorizing negotiations for an agency shop. I am positive, however, that the unions will continue to push for stronger union security measures.

The new Republican Administration of President Nixon has not yet taken a stand on the recommendations made by the Review Committee. The administration has gone on record as opposing legislation at this time and has said:

> In our view, one of the reasons for the substantial success of E. O. 10988 was its accommodation to the existing varied pattern of union-agency relationships throughout the Government, while making it possible for those relationships to evolve and strengthen as they have done.[1]

It will be interesting to see if traditional Republican position on labor-management relations will be altered, as it has in other policy areas, by the pressures and realities of an incumbent administration. Recommendations were due to be forwarded to President Nixon sometime in June or July of 1969.

The unions seem to be gaining strength in their drive to achieve statutory recognition. In a survey, 210 Senators and Representatives indicated they favored enactment of a statutory labor relations code for government employees.[2] In the current session of Congress, no fewer than eight bills to improve employee-management relations in the postal service have already been introduced.[3]

Section 7 - Possible Future Policy

In establishing my own philosophical position on labor relations, I find myself in complete agreement with the Review Committee when they state:

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[1]Statement of Wilfred V. Gill, Director, Office of Labor-Management Relations, U. S. Civil Service Commission before the House Subcommittee on Postal Operations, April 25, 1969, pp. 1-2.

[2]Government Employee Relations Report, No. 297 (May 19, 1969), p. A9.

[3]Ibid., No. 298 (May 26, 1969), pp. A7-A8.

> It is generally recognized that agreements voluntarily arrived at through a free collective bargaining system are the hallmark of the industrial democracy enjoyed in this country.[1]

One of the most persistent criticisms of this system of industrial democracy is that it causes continuous strife. In the first place, it is generally agreed by most students of industrial relations that the amount of strife, as measured by man-days lost as a percentage of the total man days available, is really rather small in the United States. Even if this were not true, is an absolute absence of strife and conflict (other than violence) to be our ultimate goal? I, for one, do not think it should be.

The contemporary argument over the place of strife and conflict in our society is being waged daily in the news media. In all the discussion about unrest on our university campuses, one would have to dig long and hard to find anyone who condemns the unrest unequivocally. The roll call of those who feel the strife and conflict on our campuses is basically a guide to desirable change would be a veritable "who's who" of government, industry, the clergy, and the academic worlds. They argue about the tactics and the means, but they are for many of the changes and reforms. Why should it be any different in industrial relations?

My purpose in digressing momentarily was to set the stage for the discussion of the removal of some of the final barriers separating the situation of the government and the private workers - those of wages and the strike. The government is very near to eliminating the "double

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[1] Draft Report, p. 5.

standard" in its policy for industrial relations. I think, however, that the government can go further.

Take the area of wage and salary negotiations. Congress directly controls the salary levels of the classified employees and has, on occasion, rebuked the Executive Branch for using "grade escalation" to manipulate the salaries of the classified workers. The wages of non-classified workers are set in accordance with the "area prevailing wage" policy. The setting of budgets for individual government installations is still an inexact process and there is some room for maneuver within a given budget. It might be possible, although it is pretty far-fetched, to negotiate wages and salaries <u>within</u> relatively fixed activity budget allocations. I don't think this idea is very practical, however, because Congress will not give up their power over classified salary levels and the unions would not be willing to accept the consequences of the trade-offs among wages, salaries, number of jobs, amount of required materials, etc. which would result from such an approach. The TVA has had good success with the "area prevailing wage" concept applied to classified workers as well as blue collar workers and that is another possibility if Congress would allow it.

The other area, involving the right to strike, is a most sensitive one for the unions. The prohibition on striking has led the government employee unions to become perhaps the most skilled lobbying groups known in our government. This skilled application of political technique has become a most potent alternative to the strike.

The union spokesmen have long held that "the outright prohibition of the right to strike by public employees is a denial of a fundamental

and inherent right."[1] This policy of prohibiting strikes by public employees has a long and consistent history. It was early and most succinctly enunciated by Calvin Coolidge when he was Govenor of Massachusetts and condemned the Boston policemen's strike thusly: "There is no right to strike against the public safety of anybody, anywhere, at any time."[2] This philosophy, pertaining to policemen, has been extended to government employment in general and is embodied in present legislation in Public Law 330 (69 Stat. 624) which makes striking against the federal government a felony. However,

> ... the more militant unions such as the State, County, and Municipal Employees and the Teachers assert the right to strike and not infrequently practice it.[3]

> ... In public employment, on the other hand, unions and even associations, which in principle reject the strike weapon, have found that it often brings quick and rewarding results. Furthermore, they have learned that risks are not great, despite the severe penalties which may legally be imposed on strikers.[4]

This explains, I think, why despite the public proclamations of union officials (such as George Meany in an earlier part of this paper)

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[1]Arnold S. Zander, AFSCME, "A Union View of Collective Bargaining in the Public Service," Public Administration Review, Vol. XXII, No. 1 (Winter, 1962), p. 8.

[2]"Union Organization and Activities of Public Employees," American Law Reports, 31 A. L. R. 2d., 1953, 1133-1180.

[3]Ulman, p. 77.

[4]Ibid., p. 80.

and constitutions to comply with legal requirements, true union goals are more truthfully contained in this statement of Witte's:

> While organized labor regards the strike as a measure of last resort, to be used only when all other methods fail, it has always been uncompromisingly opposed to any restriction of the right to strike. Unions regard striking as a fundamental right guaranteed by the Constitution, particularly by the thirteenth amendment, which prohibits slavery and involuntary servitude.[1]

Even employees who are very definitely directly connected with the public safety, the firefighters and the policemen, are joining unions in droves and some of them, notably the firefighters, have already deleted no-strike clauses from their constitutions.[2] As another example of how seriously the unions intend to pursue their aims in the public employee arena, consider the proposal by the National Education Association for a "Federal law to require school boards to bargain with unions and give teachers the right to strike."[3] Also consider the fact that the "State, County and Municipal Employees Union is expected to call soon for similar legislation covering all state and local government employees."[4]

The points made in the above discussion are intended to emphasize the fact that unionists regard the right to strike as a fundamental liberty

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[1]Edwin F. Witte, Government in Labor Disputes (New York: McGraw-Hill Book Company, 1932), p. 17.

[2]"Card-Carrying Police?" Newsweek (March 3, 1969), p. 66.

[3]"Public-Employee Unions Start Pushing for Federally Backed Bargaining Rights," Wall Street Journal, April 15, 1969.

[4]Ibid.

and are willing to renounce it only as a result of a collective bargaining agreement. This means two things. First, that one should not take too seriously the protestations of public employee unions that they do not assert the right to strike. They regard adoption of a no-strike clause or position as one of expediency and it is designed to allay governmental and public opposition to unions and to avoid alienating the prospective members who might be put off by strike advocacy.[1] Second, the legitimate aspect of their feelings about their right to strike should not be dismissed lightly.

Consideration should be given to the question of giving the government employees the right to strike. This does not mean that I endorse the unqualified right of all federal government employees to strike. However, the idea that all strikes in the government are strikes which severely threaten the public health and safety is as misconceived as the idea that all strikes in a particular industry seriously threaten the public health and safety. Many authorities

> ... challenge the traditional assumption that the consequences of strikes on the part of public employees are necessarily more detrimental to public welfare than a stoppage in privately managed undertakings because of the critical nature of the services. They argue that the public is often more dependent upon such private utilities as rail and road transportation, coal mines, telecommunications, garbage disposal, and the packing of spring vegetables than upon the services of such categories of public

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[1] Spero, Government as Employer, p. 476.

> employees as filing clerks, statisticians, report writers, and others whose activities are far less vital.[1]

Another authority concludes that "The criterion of distinction is therefore the consequences of a strike upon the public interest, not the status of the employer."[2]

I think it is a mistake to adhere to a policy which tries to decide in advance that strikes in broad categories of employment will not be allowed. The damage to the public in a strike is too much a function of too many circumstances to be arbitrarily and rigidly determined in advance - particularly by legislation. A good case can be made for allowing strikes by government workers, at least in many segments of government employment. Canada has already begun to experiment with legally allowing some government workers to strike.[3] This experiment will be discussed more fully in the next section dealing with other countries' experiences.

This concludes my discussion of the U. S. Government's policy on federal employee-management relations. I have discussed how we got where we are at the present time, the present policy, and what the future official administration position is likely to be. I have also

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[3]George Bain, "Prime Minister Trudeau on Strikes," Canadian Labour, Vol. 13, No. 9 (September, 1968), p. 11.

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included my own views on certain aspects of the policy and what I think are two logical and equitable extensions of that policy and ones which I think the unions will pursue vigorously in the future. This part of the paper has traced the evolution of government policy on federal employee-management relations from a concept of complete and absolute negativeness to an attempt to achieve equality of treatment for government workers with those in private industry. While admittedly it has not always done so willingly, the government has nevertheless moved a long way philosophically in a short time.

In the next section I shall turn to a discussion of the experiences of other countries and other U. S. Government agencies to assess the possible applicability of that experience to U. S. policy.

Section 8 - U. S. Agencies and Other Countries

The portion of this paper dealing with other U. S. Agencies will be short. The Tennessee Valley Authority, a government corporation not subject to the civil service regulations, and the Department of the Interior, which is subject to all the civil service and other regulations, are both generally acknowledged to have superior and successful employee-management relations policies. Is there some secret to be discovered in their policies which would greatly benefit other agencies?

Interest in the TVA centers primarily on the alternative to the strike and the negotiations for wages and salaries. The law which established the TVA specified that wages were to be determined by using the prevailing area wage principle. The law further specified that

> In the determination of such prevailing rate or rates, due regard shall be given to those rates which have been secured through collective agreement by representatives of employers and employees.[1]

The fact is that the TVA probably gives more consideration to union rates in an area than do the Defense Department agencies for example. Naturally this makes the unions happier than does a limited consideration of union wage rates in an area.

A former personnel official of the TVA said

> The Council (of labor unions), in fact, protests that the prevailing rate formula is not a good one for a progressive government employer, maintaining that the government should set an example by providing a higher standard of living for its workers than does private industry.[2]

Despite this union rhetoric, the unions and TVA mutually agreed to extend this principle to the salaried workers. Crispo, in comparing the TVA and the Ontario-Hydro Project, concluded that the prevailing wage principle is the best method for salary and wage determination for public employees devised to date.[3] He also stated that the unions probably accept the policy because it is the best possibility they can

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[1]United States Congress, The Tennessee Valley Authority Act, Public Law 17, 73rd Cong., 1st Sess., 1933, as amended to August 30, 1954, Section 3.

[2]Harry L. Case, Personnel Policy in a Public Agency - The TVA Experience (New York: Harper and Brothers, 1955), p. 88.

[3]John Herbert G. Crispo, "Collective Bargaining in the Public Service, TVA-Ontario Hydro" (unpublished Ph.D. dissertation, Course XIV, M. I. T., 1960), pp. 310-312.

hope for considering economics, public interest, and harmony in bargaining.[1]

With regard to an alternative to use of the strike, Crispo concluded that

> This is the essential achievement of union and management in T.V.A.; the creation of an effective collective bargaining relationship in the absence of the right to strike.[2] [emphasis supplied]

However, I was unable to find in any of the references any discussion of how the TVA handled or would handle bargaining impasses. Even the following quotation of Lewis J. Van Mol, General Manager of TVA in 1966, uses the term "impasses" but still seems to deal with existing agreements.

> For the impasse that may occur, our agreements provide for mediation. If mediation fails, there is a provision for voluntary arbitration.[3] [emphasis supplied]

The term "mediation" is most commonly used in connection with bargaining impasses so it is not clear here whether TVA uses voluntary arbitration only for grievances or for both grievances and bargaining impasses.

On the other hand, it is well established that the TVA procedures for handling grievances are extremely effective:

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[1] Ibid., p. 321.

[2] Crispo, p. 305.

[3] Kenneth O. Warner, ed., Collective Bargaining in the Public Service: Theory and Practice (Chicago: Public Personnel Association, 1967), p. 92.

> In the first thirteen years of operation under these collective agreements, only two grievances were taken to arbitration.[1]

Turning now to the Department of the Interior we find that they inaugurated their progressive policies in 1948 and they regard the program as completely successful. Speaking on behalf of the Secretary of the Interior, Newell B. Terry, the Director of Personnel, said:

> We not only have no objection in those areas in which we use it [collective bargaining with employees], sir, but we encourage it and believe that it contributes to better management and employee relationships.[2]

The Department of the Interior program is noteworthy because it

> ... proves that it is feasible for a major governmental department (as opposed to a governmental corporation such as TVA or an independent agency with a highly specialized industrial type function such as GPO) to engage in bona-fide collective bargaining.[3]

The Department of the Interior negotiates two types of agreements. First is the "Basic Agreement" which contains statements of the principles and policies to govern the relationship of the Department and the unions. This agreement must be approved by the Office of the Secretary before becoming effective. Supplementary agreements then

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[1]Case, p. 68.

[2]Hearings on H. R. 6 before the House Committee on Post Office and Civil Service, 85th Cong., 2d Sess., 1958, p. 275.

[3]Hart, Collective Bargaining in the Federal Civil Service, p. 89.

> ... deal with working rules, conditions of employment, wage rates, etc. and are negotiated and signed by the field official who has jurisdiction over the employees in the bargaining unit involved. No approval of the Secretary's office is required for the supplementary agreements.[1]

Another important departure from the usual practice is Interior's policy with regard to supervisor participation in union activities. Prior to Executive Order 10988, Interior's regulations essentially left it up to the individual supervisors as to whether or not they might have a conflict of interest.[2]

On the key item of wages, the Department of the Interior also relies on the prevailing wage principle in setting wage rates. There is full participation by the unions in all the steps of setting the wage rates based on the area prevailing wage scales.[3]

The Department and the employee unions use a three man arbitration board for contract impasses as well as grievances in both the blue collar and classified services. They follow the usual practice of each choosing one arbitrator and then those two pick a third to form the panel. The recommendations of the arbitration panel, particularly in the case of bargaining impasses, must go to the Secretary for final approval.[4] This complies with the requirement for the executive to have complete and

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[1]Newell B. Terry, "Collective Bargaining in the U. S. Department of the Interior," Public Administration Review, Vol. 22, No. 1 (Winter, 1962), p. 21.

[2]Ibid., p. 22.

[3]Ibid., p. 22.

[4]Ibid.

final authority. As practiced by the Department of the Interior, however, it is strictly a formality and the unions accept it as such.

From this discussion on the TVA and the Department of the Interior, both of which are well regarded by employee unions, it can be seen that from a technical standpoint their employee-management relations programs are not too radically different from that of Executive Order 10988. What is it then, which accounts for the difference in the unions' perceptions of these two agencies and the rest of the government agencies?

It is my personal opinion that the difference lies in the fact that for many years - TVA from its inception and Interior from 1948 - these two agencies have taken a definitely positive approach to their dealings with the unions. They have dealt with them as equals and have always given the unions credit for performing a useful and positive function in the management of the agencies. In other words, it is merely a matter of attitudes and experience. It indicates to me that perhaps the government needs to change its attitude from "strict neutrality as to union or no union" to one of a positive attitude on unionism and strict neutrality as to which union if and when the employees decide they wish to be represented by a union.

I would now like to address a few remarks to the experience of other countries. Of the highly industrialized countries, Russia and her satellite countries and Japan have social systems which are so different from that of the U. S. that it is not likely their processes of industrial relations would be accepted in the U. S. in the near future.

In England, in contrast to the United States, the percentage of government workers organized has been higher than the national average

for highly organized private industry.[1] These government unions have not always conformed to the stereotype of the moderate union; they have often taken militant action.[2] As in the U. S., the problem of collective bargaining in the absence of the right to strike is a troublesome question.

> A trade union that cannot strike is like a muzzled dog - however fierce its noises, no one is really afraid.[3]

The pay for the Civil Service is now set in accordance with recommendations of the Priestly Commission. The approach is similar to the prevailing wage system for blue collar workers in the U. S. Government. It is administered by the Civil Service Pay Research Unit composed of representatives of management and the employees.[4]

In dealing with impasses which could lead to strikes, the experiences of the British civil service under the Civil Service National Whitley Council Arbitration Agreement of 1925 suggests that the arbitration process need not be excessively rigid and that it can be adapted to satisfy employee claims while remaining consistent with the constitutional responsibility of the government.[5] From the employer's side at

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[1] Adolf Fox Sturmthal, ed., White-Collar Trade Unions (Urbana, Illinois: University of Illinois Press, 1966), p. 171.

[2] Ibid., p. 165.

[3] Ibid., p. 176.

[4] Ibid., p. 186.

[5] Vosloo, p. 155 footnote citing Saul J. Frankel, "Arbitration in the British Civil Service," Public Administration, Vol. 38 (Autumn, 1960), pp. 197-212.

least, the arbitration awards are binding:

> But it was no use for the Treasury to refuse to grant increases to civil servants if the Civil Service Arbitration Tribunal could reverse their decision....[1]

However, the Labor Party has recently proposed that drastic legislative steps be taken to curb the excesses of British unions. This is due more to the excessive fragmentation with each union representing only its own members and the consequent inability to control wildcat strikes than it is to a failure of the arbitration procedures.

France is also beset by a system that fragments union organization to an extreme. "Nowhere can one find an enterprise, a plant, a government department, or even an office where one union represents all the members of the unit."[2] This splintering of the groups is encouraged and protected by law. This, combined with the peculiar bargaining process, renders the civil service unions "powerful only as a conservative and negative way. ... but they have little success in realizing advances and taking advantage of the opportunities of an economy in expansion."[3] Because of these factors, there does not appear to be anything of benefit to U. S. Government policy in the French experience.

In Sweden, the white-collar workers have traditionally been highly organized.[4] This high degree of organization has included the central

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[1] Sturmthal, p. 194.

[2] Ibid., pp. 117-118.

[3] Ibid., p. 123.

[4] Ibid., p. 261.

government workers. Collective bargaining rights were extended to the central government workers in 1937 by decree.[1] To conduct collective bargaining, a special board consisting of representatives of unions of central government employees, negotiates with the Civil Service Minister - a cabinet post created for this purpose - on salaries and other terms of employment. Prior to 1966 the government workers did not have equal status with those in private industry. In 1966, however, the central and local government workers were given full legal standing in the field of collective bargaining, including the right to strike.[2] The employer may make decisions concerning salaries, etc., and then inform the unions before they become final and early enough for unions to propose negotiations. The agreement is not legally binding on the government. The provisions of the agreement must be embodied in a bill and presented to parliament for enactment to become valid. The parliament has never failed to pass the agreements without change.[3]

Sweden's experience could be useful in the U. S., but the bargaining would have to be decentralized in the U. S. because of the vast difference in size of the Swedish and American Governments. American unions probably would not have the patience to negotiate an agreement and then wait several months for the U. S. Congress to decide whether to accept or reject the agreement. Contracts in the U. S. are also so complicated

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[1] Ibid., p. 271.

[2] Ibid., pp. 279-280.

[3] Ibid.

that it is extremely doubtful that Congress would even consider such a system.

Australia has 63 unions registered with the federal arbitration tribunal which are classed as white-collar. Of these 63, 29 are in private industry and 34 are in federal or state governments.[1] These 29 unions belong to the High Council of Commonwealth Public Service Organization which was formed in 1920 to coordinate bargaining with the Commonwealth Public Service Arbitrators.[2] Compulsory arbitration was introduced in the 1890's as the method of settling bargaining impasses.[3] Government workers are prohibited from striking.[4] A most succinct statement on the Australian experience with outlawing strikes certainly holds a lesson for other countries:

> Despite these efforts to outlaw strikes, and the steps taken at times to break strikes by the use of the army, the general attitude of the community has been tolerant of illegal strikes. As the president of the Queensland Industrial Court said in 1924: "The difficulty of enforcing penalties against strikes is partly political, partly practical. The punishment of large numbers of strikers by prosecution is in practice a difficult matter. The enforcement of the penalties is usually opposed by one or other political party. In practice the deterrent against strikes is the recognition of the fact that since arbitration has been on the whole beneficial to the unions, deprivation of access to the industrial tribunals is a substantial loss, and strikes endanger such access."[5]

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[1] Ibid., p. 3.

[2] Ibid., p. 6.

[3] Ibid., p. 9.

[4] Ibid., p. 11.

[5] Ibid.

Australia's experience with compulsory arbitration and the outlawing of strikes has not been a very successful one and is a powerful argument against the use of compulsory arbitration in the U. S.[1] A former Secretary of Labor, in speaking on the subject of compulsory arbitration, warned against

> ... setting up procedures which will establish certainty in an area, the area of collective bargaining, part of the strength of which has always been that it does not provide a complete degree of certainty.[2]

Germany, in contrast to the U. S., has no requirement for mandatory collective bargaining. There the procedural phases of bargaining are not regulated as they are in the U. S. However, in the U. S. substance is left to the bargaining parties while in Germany the substance is often regulated by law.[3] It is rare that there is any local plant bargaining in Germany. Whereas in the United States there is a system of day to day "industrial jurisprudence" for enforcement of the agreement, in Germany they look to the works council and labor courts for enforcement.[4] As a result of the different concepts and approaches in the U. S. and Germany, Reich feels that unionism is diminishing in Germany while in the U. S. it

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[1] Ibid.

[2] W. Willard Wirtz, address to AFL-CIO Metal Trades Department Convention, Nov. 11, 1963, Government Employee Relations Report, No. 10 (November 18, 1963), p. A6.

[3] Nathan Reich, "Collective Bargaining: The United States and Germany," Labor Law Journal, Vol. 18, No. 5 (May, 1957), p. 339-345.

[4] Ibid., p. 346.

is a "brawling-vigorous" part of the society.[1] There is some evidence which indicates that the German unions have shed some of their complacency subsequent to 1957. "Bitter metalworkers' dispute presages tougher relations between labor and management. Bonn considers compulsory arbitration to ward off strikes and lockouts."[2] Also from 1958 to 1968 the average hourly wage for German men in the non-agricultural sectors increased by 100 percent, while in the U. S. during the same period the increase was roughly 46 percent.[3] The reader will recall my comment about the role of strife in our industrial relations system in an earlier section of this paper and note the corroboration by another expert observer. Sturmthal says that

> In fact, this procedure [collective bargaining in Germany] may be more correctly described as government mediation combined with a good deal of government pressure in favor of acceptance of government sponsored terms.[4]

He concludes, in summing up his survey of collective bargaining in other countries, that

> In other words, evolution does not seem to lead from collective bargaining to law, but what seems to be

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[1] Ibid., p. 348.

[2] "West German Unions Test Their Strength," Business Week (February 24, 1962), pp. 96-98.

[3] International Labor Office, 1968 Yearbook of Statistics (Geneva: 1968), pp. 518 and 520.

[4] Adolf Fox Sturmthal, Contemporary Collective Bargaining in Seven Countries (Ithaca, N. Y.: Cornell University, 1957), p. 317.

> evolving at present in the countries considered is a system in which three partners - employer, union, government - operate, with changing relationships of strength among them.[1]

This conclusion is basically in agreement with my own thinking about the direction which collective bargaining with public employees is likely to take in the United States. In view of the legislative pressures again building up in Congress, I do think the government unions stand a good chance of obtaining the statutory recognition they have longed for.

Canada, because of recent changes in legislation, is a somewhat different matter. Beginning with the Glassco Commission Report, released in the Fall of 1962, progress toward complete collective bargaining in the civil service has developed rapidly in Canada. It stated that the civil service needed reorganization and proposed that the Civil Service Commission be limited entirely to recruiting and technical aspects of the civil service system.[2] Doesn't that sound a lot like what the Clark Bill proposed in the United States? Next came the Heeney Report in 1965. The Report proposed a method of collective bargaining for the civil service which provided for binding arbitration to settle disputes and recommended that unions be granted the right to strike. Based on the Glassco and Heeney reports, the Canadian Government on March 13, 1967 passed the Public Service Staff Relations Act (PSSR Act). This law, for the first time in North America, gave essentially the same collective

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[1] Ibid., p. 322.

[2] Kenneth O. Warner and Mary L. Hennessy, Public Management at the Bargaining Table (Chicago: Public Personnel Association, 1967), p. 41.

bargaining rights to federal civil service as are enjoyed by employees in private enterprise.[1]

The Act provides two separate and distinct processes for the settlement of disputes. The certified bargaining agent can choose, prior to bargaining, either binding arbitration or referral to a conciliation board. This latter selection allows a strike if no agreement can be reached. The PSSR Act permits strikes by all employees except those who perform duties essential to the safety and security of the public. Therefore, if the conciliation board option is chosen, then management must submit a list of "designated employees" who will remain on the job if bargaining ends in a strike.[2] The PSSR Board will mediate on any disputes concerning the list of "designated employees."

What has been Canada's experience under this new law so far? C. A. Edwards, president of the Public Service Alliance of Canada stated:

> I want to state unequivocally that, in my opinion, it is a good law designed primarily for employees in our federal government. This does not mean I agree with every clause, or that we did not seek changes prior to passage, nor would we not seek changes now. We did and we would, but in general terms, the law has provided a good system of collective bargaining for public employees of our federal government.[3]

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[1] Ibid., p. 336.

[2] Canada Department of Labour, "Labour Relations Legislation 1967 - Part I," Labour Gazette, Vol. LXVII, No. 12 (December, 1967), p. 737.

[3] Government Employee Relations Report, No. 282 (February 3, 1969), p. AA7.

Edward E. Herman, Professor of Economics at the University of Cincinnati, noted that of 64 units which have so far negotiated under the new law, 56 chose the arbitration option and that contrary to the fears of many, all agreements so far have been voluntarily settled short of the terminal point.[1] There was no indication during the San Francisco conference[2] that the "designated employees" provision had caused any real problems so far.

This Canadian law, as modified by experience may very definitely have application in the United States as the government employee unions launch attacks on the no-strike laws.[3]

In this part of the thesis I have touched on the experience of two government agencies with superior labor-management relations programs, and looked - in very gross terms - at the systems of some other countries for possible applicability in the United States. In the next part, I turn to the second main objective of the thesis - to discuss the congruity of the government policy on labor-management relations and how the Civil Engineer Corps is likely to be affected by the union movement among federal employees.

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[1] Ibid.

[2] A conference of public officials, attorneys, and union representatives from the U. S. and Canada to discuss collective bargaining by public employees. Held in San Francisco the week of January 20, 1969.

[3] Government Employee Relations Report, No. 297 (May 19, 1969), p. 2. "NALC President James H. Rademacher also announced that legal assaults on federal no-strike oath, mandated by 1968 convention, will be launched in federal court within six weeks."

Section 9 - Unionization and the Civil Engineer Corps

The Civil Engineer Corps of the United States Navy performs functions in support of the Navy in the following areas: shore facilities planning, design, construction, and maintenance; vehicular transportation; the operation of utilities; and contingency planning and combat construction in the Mobile Construction Battalions (Seabees).

Navy facilities have a $24 billion replacement value, an annual capital investment program requiring approximately $1 billion and annual maintenance costs of approximately $1/2 billion.[1] To perform the assigned support tasks of the above magnitudes, the CEC has 1957 billets.[2] Of those, 388 are Seabee billets leaving 1569 officers to manage the entire program except the Seabees. Assuming that all 559 staff billets are purely military, that leaves 1010 billets in contract administration and public works. In contract administration, the CEC Officer is almost always dealing with unionized contractors and in public works the entire workforce is civilian and usually highly organized. Thus it is certain that a Civil Engineer Corps Officer will manage a unionized workforce if he remains in the Navy for more than one or two duty assignments. This, I feel, is one of the reasons why Civil Engineer Corps Officers should have some background and training in labor-management relations.

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[1] Department of the Navy, Naval Facilities Engineering Command, A Study of Civil Engineer Corps Career Development, Education and Training, (June, 1968), p. 17. Hereinafter referred to as the CEC Career Development Study.

[2] Ibid., p. 45.

> Washington attorney David Barr has written that most federal personnel administrators are totally unfamiliar with labor law and, therefore, "strongly suspect the motives of those who would impose upon them a set of principles which had been formulated without their participation." They feel, he adds, that "the intrusion of 'established' doctrine would necessarily lessen their scope of power." To complete the circle, they argue, according to Barr, that "the Federal service is distinctly different from the private sector.... The 'public service' concept offers the attractive implication that greater resistance to 'outside' interference in the affairs of management is justified than in the private sector."[1]

The federal employees unions have often expressed this sentiment, particularly with regard to the Defense Department and what the unions see as its authoritarian ways. This lack of familiarity with labor law, its evolution in the U. S., and its attitudinal and philosophical implications, is a second reason why I think Civil Engineer Corps Officers should be more knowledgeable in this area.

The third compelling reason, as I see it, for CEC Officers to have knowledge in labor-management relations is one I alluded to in an earlier section of this thesis - that is, the increasing contentiousness of our society. This increasing contentiousness is everywhere, in the black-white relationship, in the active questioning and resistance to present national policies, and of more direct concern to the present subject, the relatively new developments in the labor relations field. That these new developments have a direct pertinence to the Civil Engineer Corps can be easily shown.

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[1]Hart, "The Impasse..." p. 181 citing David Barr, "E. O. 10988; An Experiment in Employee-Management Cooperation in the Federal Service," Georgetown Law Journal, Vol. 52 (Winter, 1964), pp. 420-454.

First, and potentially the most critical, is the increasing militancy of professional personnel such as firemen, policemen, teachers, nurses, and engineers.

The 1968 American Society of Civil Engineers Employment Conditions Survey[1] may have signalled the beginning of a turbulent period for the civil engineering profession. "Frequent reference is made to the effective influence of the trade unions on behalf of skilled and unskilled blue collar workers. Annual wages of $17,000-$20,000 being paid in the skilled construction crafts are cited with much bitterness."[2] The majority of the members still consider themselves to be professionals and are resistive to the trade union approach. This should not lead to complacency, however, because the younger members may, as they are doing in a multitude of other areas, demand and get radical change. The "trade union tag" will not put them off as it does the older practitioners.

That this is not idle speculation is readily evident from the following excerpt from Civil Engineering:

> If other avenues of employee-employer communication fail, engineers in public practice may be justified in turning to a union.
> .....
> Engineers in public practice are properly concerned today with the growth in unionism among public employees, and with the increasing militancy of the unions in promoting their economic demands by means of strikes. These

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[1] "The 1968 ASCE Employment Conditions Survey," Civil Engineering (September, 1968), pp. 48-51.

[2] "ASCE Responsibility for the Economic Welfare of Its Members," Civil Engineering (April, 1969), p. 35.

> engineers wonder whether they are witnessing an inevitable shape of things to come for themselves when they see teachers, who have always claimed to be professionals, flocking into unions and joining in strikes - even strikes that violate court injunctions.[1]

As a way to bring this particular aspect closer to home for the CEC Officer, consider this recent development:

> Society of Professional Naval Engineers, affiliate of National Society's Professional Engineers in Government Section, petitions for exclusive recognition as only way to split 215 professionals out of mixed American Federation of Technical Engineers unit at Norfolk Naval Shipyard.[2]

I am sure that all CEC Officers and civilian management personnel can readily appreciate the possible impact of the "trade union" approach by professionals - engineers, lawyers, accountants, personnel managers, etc. - on the execution of the mission of the Civil Engineer Corps.

This possibility, as critical as it is, is no more crucial than what is happening in the blue-collar area.

> A proposed three-year contract between the striking Carpenters Union and building contractors will be submitted to union membership tomorrow for ratification. Terms granting 10,000 carpenters a $2.85 cent-an-hour wage package boose - from $5.95 to $8.80 - over the period were hammered out early yesterday.[3]

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[1] Waldo G. Bowman, "Engineers in Public Practice Face the Union Problem," Civil Engineering (April, 1969), p. 49.

[2] Government Employee Relations Report, No. 281 (January 27, 1969), p. 2.

[3] Charles Leveroni, "$114 Pay Hike for Carpenters," Boston Herald Traveler (Wednesday, July 11, 1969), p. 1.

It requires no great imagination to see what effect an annual salary of $17,600 plus a fully paid two-week vacation in the private sector will have on the costs of operating and maintaining the Navy facilities because of the "area prevailing rate" method of wage determination used by the federal government. From experience, we know that most of the funds to pay for the increases which will surely come will be obtained by reducing personnel and materials to pay for the higher pay scales. This means that the quality of maintenance of the shore establishment facilities will tend to slip once again. One can also foresee what effect this may have on our professional employees and the possible effect it may have on the morale and retention capabilities of the Civil Engineer Officer Corps.

My primary purpose here, however, is not to discuss the economics or the rightness of the course of events, but rather to use the examples as levers for my hypothesis that the time has come when the Civil Engineer Corps Officer should have some background in labor-management relations. I feel it is a necessary pre-requisite if the CEC Officer is to continue to efficiently perform his function as an "engineer-manager."[1]

As a check on the viability of my hypothesis, I sent a questionnaire to various Navy activities covering all areas of the United States and encompassing shipyards, public works centers, naval stations, air stations, ammunition depots, supply centers and naval bases. The questionnaire was intended primarily to find out if other Navy Officers and civilians

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[1] CEC Career Development Study, p. 51.

involved in the management of civilian personnel felt that Navy Officers should have some formal training in labor-management relations. The questionnaire was sent to three groups of managers at the activities; line officers in command, CEC Officers attached to the activity as PWO, staff, or as C. O. at public works centers, and civilian industrial relations officers. This was done to ascertain whether or not there were different views among these three groups.

Fifty individual questionnaires were sent out and replies were received from 42 individuals, 17 of them civilians and 25 military. The questionnaire, a copy of which is attached as Appendix 1, consisted of 12 questions. The first four were intended to establish the extent of union organization at the activities surveyed and to determine if training in labor-management relations for supervisors had been provided. Every activity had an exclusive agreement, either in force, or in process of being approved by a higher authority. Every activity had accomplished or was accomplishing a training program for supervisors.

The training ranged from simple lectures on the negotiated agreement to seminar type sessions with members of the negotiating team from both labor and management participating as panel members. The intensity of training ranged from single sessions of about two hours to several hours of thorough examination and discussion of the application of the negotiated agreement. The most cogent statement of the important role of training in the application and operation of a labor-management agreement was contained in a forwarding letter accompanying one of the returned questionnaires. The letter was written by the Executive Officer at one of the Navy's Public Works Centers.

> As I touched on previously, training in the scope, meaning, extent, interpretation of the previous agreement (sweetheart or not) was not sufficient. While many of the grievances generated were not valid, the union did put management's feet to the fire on several occasions for its failures to live up to its part of the agreement. More first and second level supervisor training should have been done. While this might not have fended off the situation we are now in the midst of, it might have lessened its impact.

The remaining eight questions were intended to find out to what extent Navy Officers were involved in labor-management relations and what the future holds in the opinions of both the civilians and the military officers.

Question five established that of the 17 civilians, 10 were involved to a "great degree," 6 to a "moderate degree," and 1 to a "small degree." For the 25 Navy Officers the answers were 15 to a "great degree," and 10 to a "moderate degree." The significant thing about the answers is that they establish the fact that the Navy Officers are as directly involved in labor-management relations as their civilian industrial relations officers. This is not the usual case with top management, and though the evaluations are extremely subjective, I think the implication for the Civil Engineer Corps Officer is clear.

Question six was intended to gauge roughly the present level of formal training in the labor-relations field. Of the 25 officer replies, only six officers had had any college courses in labor relations. Most of their training had been in Navy training courses, seminars, and workshops. The level of formal training among the 17 civilians was higher, with nine of the 17 having had college courses. This finding

was not unexpected since the civilians perform the role of professional personnel specialists.

Question seven concerned the future importance of labor-management relations in the federal government. Here, the opinions were almost unanimous. All 17 of the civilians and 23 of the 25 officers felt that the subject would be more important in the future. Coupled with this opinion was the virtually unanimous reply to question eight's query as to the future degree of militancy of the government unions. All 25 officers and 16 of the 17 civilians felt that the unions would definitely be more militant in the future. Again, the implications for the CEC Officer are quite clear.

Questions nine and ten dealt with the question of strikes by federal employees. In replying to question nine, 21 of 25 of the Officers felt that the unions would advocate the right to strike for federal workers. Of the civilians, 15 felt the same way. Question ten asked the respondents if they thought the federal employees should have the right to strike. Twelve of the 17 civilians said "not at all" and 5 said "in some agencies and departments." Of the Officers, 20 said "not at all," three said "in some departments and agencies" and two indicated "in the Defense Department agencies." There are two significant features to these answers. One is that the civilians are only about 10% more liberal than the military on this question. This is contrary to my own expectation that they would have been much more liberal than the military. The second, and most important feature, is the head-on collision indicated by the answers to questions seven, eight, nine and

ten. The future need of more expertise in the labor-management relations on the part of both civilian personnel specialists and the Civil Engineer Corps Officer is, I believe, incontrovertible.

Questions eleven and twelve were designed to elicit a subjective evaluation of the adequacy of the individual's training in labor-management relations and an expression of opinion as to whether or not Navy Officers should have some formal training in college in labor-management relations. Fifty-two percent of the military and fifty-nine percent of the civilians felt that their training had been sufficient. That still leaves a sizable portion in each category who think their training was not sufficient. All 17 of the civilians and 20 out of 25 of the military thought Navy Officers should have some formal training in college in employee-management relations.

In my opinion, the questionnaire replies quite adequately substantiate my hypothesis that the criticality of labor-management relations as an element in the professional skills of the Civil Engineer Corps Officer will increase in the future and the corollary necessity for some college training in this field will also increase.

Section 10 - Summary, Conclusions and Recommendations

In writing this thesis, I started with the hypothesis that in the future the area of labor-management relations in the government may very well be the most volatile in the continuing evolution of the labor movement in the United States. This hypothesis was then narrowed to the federal government arena and projected by implication to the professional training of the Civil Engineer Corps Officer.

As my means of investigating the validity of my hypothesis, I chose to trace the evolution of the union movement in the federal government up to the present time and then, by means of a questionnaire, to project a reasonable conception of the part labor-management relations will play in the future of the Civil Engineer Corps "Engineer-Manager."

Necessarily, if I were not to write a book, I have had to resort to a great deal of subjective editing. I have not attempted to discuss the details of labor-management relations in the federal government, nor even in the Department of the Navy since the advent of Executive Order 10988. I have not dealt with the Navy's experience with the initial unit determination arbitration decisions, with an analysis of agreements negotiated, or with an analysis of the experience of Navy activities with the federal employee-management cooperation policy because that was not my purpose.

My purpose was to summarize the development of the federal government's policy on labor relations with its own employees, to catch a glimpse of some of the union and management attitudes which influenced and will influence that policy so that the reader could develop a "feel" for this element in the management of the government workforce. As a part of that purpose I attempted to show the direct relevance of labor-management relations to the career of the Civil Engineer Corps Officer.

I think it is clear that after a late start in 1962 with Executive Order 10988, the national policy on federal employee unionization has undergone a rapid liberalization and that the trend is likely to continue. It is also clear from the present legal status, particularly with regard to the right to strike, and the positions of union leaders

and management explored in this thesis, that the future years will not be smooth ones. It will be to any manager's future benefit to be as knowledgeable as possible in the field of labor-management relations.

The federal personnel manager, including the Navy Civil Engineer Corps Officer, should not make the mistake of thinking that collective bargaining is a one-sided affair with the unions reaping all the benefits. Indeed, the manager may find that as a result of true and effective bargaining he has more latitude in managing than ever before. As one of the foremost students of public personnel administration stated it:

> The degree to which collective bargaining is fostered may well be the degree to which legislative bodies will release control over the details of personnel administration.[1]

I recommend, therefore, that the Naval Facilities Engineering Command reproduce and distribute copies of this thesis to all CEC Officers on active duty to be used as an extremely short course on the history and evolution of the national policy on labor-management relations in the federal government.[2] It could be used, along with "Employee-Management Relations in the Public Service," a bibliography published by the U. S. Department of Labor in September, 1967, as the basis for a brief course in the Public Works Curriculum of the Basic Course at the

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[1] O. Glenn Stahl, Public Personnel Administration (5th ed., New York: Harper and Brothers, 1962), p. 248.

[2] For those who are interested in more depth I would recommend the books of Hart, Vosloo, and Roberts as excellent sources and Lewis' Naval Institute Proceedings article for some interesting early Navy history.

Civil Engineer Corps Officers' School to acquaint newly commissioned CEC Officers with this area.

I believe that the answers to the questionnaire, coupled with the goals of educating "100 percent of the Regular Officers in each year group to the Master's level"[1] and "a prescribed number of management courses should be included in technical postgraduate programs"[1] provide ample justification for another recommendation. That recommendation is that one of the management electives in the postgraduate program be a course in labor-management relations. A course such as 15.312 - Labor Management Relations - at M. I. T., while not dealing specifically with federal employees, does provide an understanding of the "structure and functioning of management and unions in handling of industrial relations; union policies; problems likely to arise; reconciliation of union and management policies; and Public policy in labor-management relations."[2] A course similar to this one would provide the CEC Officer with an understanding of the union philosophy and unionism's goals and would better equip him to adequately cope with the personnel and labor-management problems which he will inevitably encounter.

As one senior Civil Engineer Corps Officer, in responding to the questionnaire, put it:

> To me, it looks like the next fifty years are going to be a "lot of fun" ... for a lot of people in management as they learn to accommodate their actions and attitudes to the reactions of the union employees.

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[1] CEC Career Development Study, p. 55.

[2] "Massachusetts Institute of Technology Bulletin 68/69," (Cambridge, Mass., July, 1968), p. 317.

There is no guarantee that extending full collective bargaining to government workers will increase the efficiency of the public service and the personal satisfaction of the government worker, but the promise lies in the fact that it might. If the CEC Officer is not to be frustrated by this movement, he must at least know about it and understand it. For the U. S. labor movement in the future, the government - local, state, and federal - is most likely to be "where the action is."

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Appendix 1

QUESTIONNAIRE

1. Does your activity have a formal or exclusive recognition agreement with a union(s)?
   Yes____ Exclusive____ Formal____
   No____

2. Has a formal agreement been signed? Yes____ No____

3. If an agreement has been signed, have first and middle level supervisors received training in the interpretation and administration of the agreement? Yes____ No____

4. How was the training accomplished and how thorough was it?

5. Are you involved with labor/industrial relations to a?
   Small degree____ Moderate degree____ Great degree____

6. Have you had formal labor/industrial relations training?
   None____ Seminars or workshops____ Navy or other training course___
   College courses____ Correspondence courses____

7. In the near future and in relation to the present, do you think labor/industrial relations in the Navy will be?
   Of the same importance____ Less important____ More important____

8. Do you think federal government employees in unions will become?
   Less militant____ More militant____ No change____

9. Do you think federal government employees will ever advocate their right to strike? Yes____ No____

10. Do you think they should have the right to strike?
    Not at all____ In some agencies and departments____
    In the Defense Department agencies____

11. Do you feel that your training in labor/industrial relations has been sufficient? Yes____ No____

12. Should Navy officers have some formal training in college in labor/industrial relations? Yes____ No____

Please feel free to make any additional narrative comments you wish on the reverse side.