

Mr. Frank Claydon, Secretary of the Treasury Board of Canada  
and Comptroller General of Canada

As Chairman of the Advisory Committee on Labour Management Relations in the Federal Public Service of Canada, I am very pleased, on behalf of the Committee members, to submit our first report.

The Committee has held six meetings since it was created in October. During this time we have learned a great deal about labour-management relations in the federal public service. We have reviewed its development from the 1967 passage of the *Public Service Staff Relations Act (PSSRA)* to the present.

In the process, we have received excellent input from public sector bargaining agents, representatives of departments and agencies, as well as current and past executives from both unions and management and other leaders from the private and academic sectors.

We are also grateful for the on-going logistical assistance of Treasury Board staff and appreciate the initiatives underway designed to improve the relationships between the government, its employees and their bargaining agents.

This first report describes the events that have led to the current state of labour-management relations in the public service. In this report, we focus primarily on the problems experienced between the federal government and its unions, both at the bargaining table and at the workplace.

The second report, scheduled for early next year, will seek to make a series of recommendations designed to address the problems identified in this first report. The purpose of our recommendations will be to modernize the union-management relationship in the federal public service and thus make it sustainable into the future.

Yours sincerely,

John L. Fryer  
Chair





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## Preface

Federal government employees were granted collective bargaining rights in 1967. In introducing the *Public Service Staff Relations Act (PSSRA)*, Prime Minister Lester B. Pearson cited protection of the public interest as a key objective of the legislation. He stated that Canada had a “civil service unexcelled by any country in the world and equaled by few.” The new legislation aimed “to maintain that proud position,” by ensuring that the public service could meet the changing demands of Canadians.

Another key objective of the legislation was to incorporate Canadian principles of industrial relations law and practice. Thus federal government employees received the right to determine the terms and conditions of their employment jointly with management, a process “rooted in the concept of equity and equality between the government as employer and organizations representing its employees” (*Hansard*, April 25, 1966).

The *PSSRA* marked a pronounced shift, from a traditional human-resource-management model to a labour-management-relations model. In a human-resource-management model, the employer determines terms and conditions of employment unilaterally, after consultation. In a labour-management-relations model, those terms and conditions are determined jointly by the employer and the unions legally certified to represent its employees.

The *PSSRA* did not provide federal government employees with all the rights of their private sector counterparts. However, it did extend to government employees many of those rights. This partial convergence of public and private sector labour regimes occurred throughout Canada as well as internationally. By the mid-1970s, all provincial public services had adopted some kind of collective bargaining system.

The government's goal in introducing collective bargaining in the federal public service was to improve the workplace environment, thereby improving employee morale and service to the public. Public service collective bargaining led to better terms and conditions of employment for federal government employees, particularly during the first decade after passage of the *PSSRA*.

In 1975, concerns about double-digit inflation and high interest rates led the federal government to impose wage and price controls on the economy generally. Similar concerns led to the enactment of a two-year wage control program for the public sector in the early 1980s.

In the mid-1980s, normal bargaining resumed and the parties negotiated collective agreements without legislative intervention. The two largest unions adopted forms of centralized master bargaining and new service-wide employee benefits were negotiated. But in the 1990s, concerned with the deficit and the debt, the government again intervened in the collective bargaining system. In addition to freezing its employees' salaries for six years, it froze increments and used legislation to override existing collective agreements. During this same period, the government also began to redefine its role in Canadian society. Deep reductions in public service employment levels occurred, and many services were devolved to other levels of government or to the private sector.

*“Rooted in the concept of equity and equality between the government as employer and organizations representing its employees.”*

*Hansard, April 25, 1966*

## PREFACE

*Phase II will recommend changes to make the system sustainable in the twenty-first century.*

As salaries remained frozen and the number of federal government employees shrank, workloads increased and real incomes declined. Meanwhile, labour-management conflict escalated. The Public Service Alliance of Canada called its first-ever nation-wide general strike in 1991. For its part, the federal government enacted back-to-work legislation on several occasions and suspended interest arbitration once collective bargaining resumed in 1997.

By the end of the 1990s, with the federal deficit under control and facing new challenges on both the national and international scene, the government launched several initiatives to improve workplace well-being and service to the public.

In the fall of 1999, as one element of the government's human resource effort, the Secretary of the Treasury Board named John Fryer to chair an Advisory Committee on Labour Management Relations in the Federal Public Service. A nine-member Committee was appointed, including experienced managers, union officials and academics.

The Committee's mandate is to review the state of labour-management relations in the federal public service, including federal collective bargaining legislation and that of other Canadian jurisdictions. The Committee will also evaluate how well the system of labour-management relations created by the PSSRA has served Canadians.

The Committee is doing its work in two phases. Phase I reviews the state of labour-management relations in the public service and seeks to identify current problems. Phase II will recommend changes to make the system sustainable in the twenty-first century.

Both phases involve consultations with key stakeholders and a review of literature and relevant statistical material. Phase II will assess federal and provincial public service legislation in Canada and in other industrialized nations.



## Executive Summary

The Advisory Committee on Labour Management Relations in the Federal Public Service was established in October 1999 under the chairmanship of John L. Fryer with an 18-month mandate to review relations between the federal government and the 16 unions representing its employees. This first comprehensive review since the advent of collective bargaining in 1967 will provide the Secretary of the Treasury Board and Comptroller General of Canada with independent advice and recommendations aimed at ensuring that good labour-management relationships are sustainable in the twenty-first century.

In this, the first of two reports, the major difficulties and problems experienced in the relationship are identified, setting the framework for the second report where the challenge will be to find real solutions and make viable recommendations.

### IDENTIFYING KEY EVENTS AND EVALUATING THE STATE OF LABOUR-MANAGEMENT RELATIONS

To track the evolution of the relationship between the Treasury Board of Canada as employer, and the unions, this report presents a concise history of the legislative changes affecting the collective bargaining process and labour-management relations in the federal public service, and explores significant actions by the parties. To evaluate the state of relations between the parties, the Advisory Committee consulted broadly, using a variety of mechanisms:

- All bargaining agents and selected department heads were invited to make presentations before the Committee.
- Template questionnaires were sent to the deputy ministers of all government departments, the heads of all separate agencies, and all certified bargaining agents.
- A number of individuals who had been involved with public service bargaining in its earlier years were interviewed, also using a template form.
- A group brainstorming exercise was conducted, involving union officials and government managers involved in labour-management relations.
- A questionnaire was administered to local union and employer representatives.

### THERE IS A WILLINGNESS TO WORK TOGETHER

Some of the responses to the Advisory Committee's consultations presented a positive image of the state of labour-management relations. There was general agreement that the work of the National Joint Council and the handling of such issues as workforce adjustment and job security has also been positive. The parties call for a more prominent role for the National Joint Council. Both parties also support the re-establishment of the Pay Research Bureau, a source of independent economic data used in collective bargaining, which was disbanded by the government in 1992.

*In this, the first of two reports, the major difficulties and problems experienced in the relationship are identified...*

*“Unilateral government action has eroded confidence in the system.”*

### UNIONS AND MANAGERS AGREE THAT RELATIONS HAVE DETERIORATED

The findings from all these consultations are remarkably consistent. Union and management representatives agree that the level of trust between the parties is low and has deteriorated in recent years. They point to the degree of power the government possesses in its dual role as employer and legislator as leading to a sense of powerlessness and frustration. This power has been used with increasing frequency over the past decade, taking the form of wage freezes, the suspension of collective bargaining and arbitration rights, and back-to-work legislation. The parties suggested that the frequent use of legislation has lessened their own abilities to work out problems jointly. As one Deputy Minister put it, “Unilateral government action has eroded confidence in the system.”

The fact that the deterioration in labour-management relations is recent was underscored by responses to template questionnaires by people who were involved in the process before 1980. They were generally more positive about collective bargaining in the public service than those whose major experience was in the 1990s. Some of the events that led to deteriorating relations include:

- The 1975 three-year program of wage and price controls
- The 1982 second round of controls, applied only to the wages of federal employees
- The 1991 freeze on public service salaries
- The 1994 two-year freeze on salaries, along with cuts in departmental operating funds
- The 1995 budget cuts of 45,000 public service jobs, to be implemented over three years
- The 1996 announcement that salary arbitration would be suspended
- The 1997 legislation restricting compensation increases as collective bargaining resumed
- The delays until 2000 in implementing the pay equity decisions

### LEGISLATION IS TOO RESTRICTIVE

Other common complaints about the labour-management relationship point to the restrictions imposed by legislation such as the *Public Service Staff Relations Act (PSSRA)*. The *PSSRA* restricts the scope of bargaining and the kinds of issues that can be subject to arbitration and therefore limits the number of issues that can be put on the table for discussion and resolution. The restrictions themselves often become the source of friction, as the parties argue about what is and is not negotiable. Both parties suggest that more use be made of mediation, informal problem-solving committees, and other forms of alternative dispute resolution.





## CUTBACKS HAVE INCREASED WORKPLACE STRESS

The Advisory Committee's brainstorming exercise identified a number of major problems, including excessive workloads and inadequate training budgets for employees. These observations coincide with sentiments expressed by public service employees themselves in the 1999 Public Service Employee Survey (PSES). The government's Program Review exercise of the early 1990s resulted in an almost 25% reduction in public service employment, mainly among clerical and operational staff. A significantly higher proportion of public service employees today are doing scientific, professional, administrative and foreign service work. They are working longer hours and with a higher workload than ever before. About one-half consider their workload unreasonable, sometimes resulting in a lesser quality of work. Overtime and long hours are a particular problem for employees with dependents seeking to balance work and family responsibilities. A full 35% of employees feel they cannot claim overtime for the additional hours they work.

The cutbacks, along with a large number of early retirements, have led to an imbalance in the age structure of the public service. The 37,000 employees now aged 50 and over are more than five times the number of employees under 30. The aging of the public service makes it imperative for the government to establish itself as an employer of choice so that it can compete for new employees over the coming years.

Other problems identified in the consultations include the staffing process, low morale, and a lack of accountability. The accumulation of problems contributes to survey results that indicate that only one-third of public service employees are committed to remaining with the federal government, and that three-quarters have thought about leaving the government.

## PROBLEMS WITH THE EMPLOYER AND THE UNIONS

Representatives of the two parties had a number of complaints about one another. At the same time, the parties indicated that rank-and-file workers and managers often agree on issues, contrary to the employer's official position on these issues. The unions said that the Treasury Board had excessive control over labour relations and they lamented the tradition of confrontation in labour-management relations. The unions complained about the lack of training in labour-management relations provided to public service managers. Some management representatives also referred to problems with the Treasury Board. Managers from separate agencies said that they have to negotiate both with the unions and with the Treasury Board, as the Board gives them only a narrow negotiating mandate, ignoring their special needs. Pay equity is also a particular problem for these agencies, which are not covered by the agreements reached to date.

*Overtime and long hours are a particular problem for employees with dependents seeking to balance work and family responsibilities.*

## EXECUTIVE SUMMARY

Public service managers complained about the structure of the Public Service Alliance of Canada and claimed that unions sometimes miscommunicate information to employees during the bargaining process.

### **IMPROVEMENTS ARE ESSENTIAL**

The complexity of federal public service labour relations legislation, the low morale within the public service, and the negative impacts of the use of coercive legislation rather than negotiation, all point to the need to redesign and improve the labour-management relationship in the public service of Canada. The second report will provide recommendations designed to do just that.



## Chapter I: Setting the Stage

### 1.1 LABOUR-MANAGEMENT RELATIONS IN A CHANGING WORKPLACE

The federal government is Canada's biggest employer. More than 186,000 federal public service employees provide Canadians with myriad services at home and abroad. For most of the twentieth century, our public service has been acknowledged to be one of the world's best. But the country's public sector workforce is now an aging and declining group. Changing demographics, the federal government's determination to eliminate its deficit, and a redefinition of the role of government through the "Program Review" exercise (discussed in detail later in this chapter) led to the loss of many public service jobs and the restructuring of others during the 1990s. Those who kept their jobs have found themselves working longer and harder.

While the role of government may have been redefined, to remain internationally competitive Canada will continue to require an effective and efficient public service. The importance of this was underscored by the Strong Committee which in a 1998 report argued:

*"In a world of greater economic insecurity and scarce resources, citizens require more effective social programmes. . . . The corporate sector requires a competitive framework of laws and skilful representation abroad if it is to succeed in global markets. And all of this needs to be accomplished in an*

*efficient way. These challenges will require exceptional leadership, creative thinking, and new operating skills and competencies—whether Public Service employees are negotiating global trade agreements, managing new service delivery mechanisms, or responding to the needs of citizens."*<sup>1</sup>

With the aging of the public service, the government will need to recruit young Canadians. Bringing qualified and competent individuals into the public service may not be easy when public service workers are frustrated and there is a high level of tension between the federal government and its unions.

To attract capable young graduates and retain existing employees in the face of competition from the private sector, the federal government will need to become a more attractive place to work. Among other things, the government will need to improve its relationship with its unions.

This report, together with the one to follow next spring, seeks to answer the questions: What can be done to improve those relations? Has the legislation that governs labour-management relations in the public service kept pace with the needs of the changing federal government workplace and today's more diverse workforce? In this first report, we focus on the historical context and seek to identify the problems between the federal government and its unions at the bargaining table and in the workplace.

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“rightsizing,”  
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## 1.2 THE CHANGING PUBLIC SERVICE ENVIRONMENT

While the work done by federal public service employees has been changing in many important ways, the biggest change has been the reduction in the size of the public service. Since the current government took office in 1993, the public service has shrunk by 54,000, or well over 20% of its 1993 total (see Table 1.1).

“Downsizing,” “rightsizing,” “re-engineering” and “restructuring” have become words heard as frequently in government departments as in private firms. Between 1993-94 and 1997-98, program spending

dropped from \$120 billion to \$106.7 billion—an 11% decline which would be closer to 20% if inflation were taken into account.<sup>ii</sup> At the same time, the compensation paid to federal government employees has dropped about 13%, from \$19 billion in 1993-94 to \$16.6 billion in 1997-98.

But the changes went beyond simple cuts in the numbers of federal public employees. Through the Program Review exercise, the federal government redefined and reduced its role in program delivery. Many of its responsibilities were devolved to the private and voluntary sectors or to other levels of government.

**TABLE 1.1**  
**OVERALL AND FULL-TIME INDETERMINATE (FTI) EMPLOYMENT IN THE FEDERAL PUBLIC SERVICE, 1989-1999**

Year	Total Employment	FTI <sup>1</sup>	FTI as % of total
1989	238,415	188,865	79.2
1990	239,708	189,653	79.1
1991	240,903	192,905	80.1
1992	242,958	192,352	79.2
1993	240,462	195,014	81.1
1994	231,400	192,152	83.0
1995	225,619	187,851	83.3
1996	207,977	172,968	83.2
1997	194,396	158,107	81.3
1998	187,187	150,086	80.2
1999	186,314	146,774	78.8

Source: *Treasury Board of Canada Secretariat  
Employment Statistics for the Federal Public Service*

<sup>1</sup> “FTI” means, to all intents and purposes, permanent.



Program Review resulted in an almost 25% reduction in public service employment, mainly among clerical and operational staff. The result has been that since the early 1990s, the proportion of federal public service employees doing clerical, operational, and technical work has declined significantly, while the proportion doing scientific, professional, administrative and foreign service work has gone up.

Another change is that those who kept their jobs found themselves working longer and harder than before. The recent Public Service Employee Survey found that about half of federal government employees consider their workload unreasonable. The same proportion said that the quality of their work suffers because of having to do more with less. As in the private sector, overtime and long work hours are a particular problem for employees with dependents seeking to balance work and family responsibilities. Moreover, a full 35% do not feel they can claim overtime for the additional hours they work.

It can be reasonably argued that developments such as those just described are part of a much larger shift in the whole nature of employment in a post-industrial economy. It is contended this shift is being driven by increased globalization, intensified foreign competition, and concern with deficits and debt reduction.<sup>iii</sup> One of its features appears to be a move away from a standard employment model based on regularly scheduled, full-time jobs, toward a “contingent” model featuring greatly reduced job security and far more part-time, temporary, and contractual work.<sup>iv</sup>

The decline in job security and increase in overtime, along with the recent increase in

privatization and the contracting out of services previously performed by government departments, suggest that the contingent model has made inroads in the public service. Another sign that this has occurred is the high proportion (41.3%) of federal government employees under 35 who are employed on a term or casual basis, compared to 18.2% of the public service as a whole (see Table 1.2).

### 1.3 THE PUBLIC SERVICE AT A CROSSROADS

Since the 1990s a number of issues have led to friction between the government and its unions.

Declining job security and increasing workloads are not the only labour-management problems in the federal public service. During the 1990s, federal public service salaries were frozen and collective bargaining was effectively suspended for six years. As in the case of the “6 & 5” controls imposed on wage settlements in the 1980s, increments were affected as well as basic salaries.

When collective bargaining resumed, the government passed legislation preventing “catch-up” increases to compensate for the years of frozen salaries and the legislation restricted pay increases to approximately 2%. Even when strong external market comparators indicated higher compensation increases, rather than increasing the salary grid, the employer introduced lump sum payments or additional increment steps. To ensure that an arbitrator would not award public service employees “catch-up” wage hikes, the

government suspended arbitration of salaries and benefits from 1996 to 2001.

With a strike as the only available alternative, for many bargaining groups with a majority of members designated essential to public safety and therefore prohibited from striking, there has been little choice but to accept the employer's offer.

Another issue that has led to labour-management friction and damaged morale is the delay in settling the pay equity issue.

The largest claim against the Treasury Board was settled in 1999 for close to \$3.5 billion after a Federal Court of Appeal decision favouring the union position. The delays took a significant toll on employee morale. Moreover, the issue remains a "live" one for separate agencies for whom no determination or settlement has been made.

The federal government workforce is aging at a rate considerably faster than the Canadian labour force as a whole.<sup>v</sup> In

**TABLE 1.2**  
**PUBLIC SERVICE EMPLOYMENT STATUS AND AGE BAND 1998 AND 1999**

Employment Status:	March 1998				March 1999			
	Indet. & Seasonal <sup>1</sup>	Term & Casual	Total	% of Indet. & Seasonal	Indet. & Seasonal	Term & Casual	Total	% of Indet. & Seasonal
<b>Age Band</b>								
16-19	3	179	182	1.6	14	239	253 <sup>2</sup>	5.5
20-24	734	2,779	3,513	20.9	827	3,183	4,010 <sup>2</sup>	20.6
25-29	5,921	5,997	11,918	49.7	5,900	5,897	11,797 <sup>2</sup>	50.0
30-34	15,950	5,602	21,552	74.0	14,524	5,653	20,177 <sup>2</sup>	72.0
35-39	27,060	5,464	32,524	83.2	25,115	5,962	31,077	80.8
40-44	34,629	4,746	39,375	87.9	33,262	5,114	38,376	86.7
45-49	36,205	3,272	39,477	91.7	35,677	3,694	39,371	90.6
50-54	22,105	2,009	24,114	91.7	23,902	2,431	26,333	90.8
55-59	9,735	1,008	10,743	90.6	9,942	1,175	11,117	89.4
60-64	2,732	354	3,086	88.5	2,663	412	3,075	86.6
65-69	487	99	586	83.1	500	102	602	83.1
70+	84	33	117	71.8	89	37	126	70.6
<b>PS Total</b>	<b>155,645</b>	<b>31,542</b>	<b>187,187</b>	<b>83.1</b>	<b>152,415</b>	<b>33,899</b>	<b>186,314</b>	<b>81.8</b>
% under 35	14.5%	46.2%	19.9%		14.0%	44.2%	19.4%	

**Source: Treasury Board of Canada Secretariat  
Employment Statistics for the Federal Public Service**

<sup>1</sup> "Indet." stands for indeterminate employment.

<sup>2</sup> In March 1999, 14,972 of the total of 36,237 public service employees under 35 were employed on a term or casual basis, according to the Treasury Board of Canada Secretariat.



1997, about 70% of the federal government workforce was aged 35 to 54, compared to about 50% just a decade earlier. The aging of the workforce<sup>1</sup> resulted in part because of downsizing and a hiring freeze.

Another way of looking at age distribution in the federal public service is to compare the number of employees aged 45 and over with the number of employees under 35. In March 1999, there were more than 72,000 federal public service employees aged 45 and over—more than three times the number under 35. The difference was even more pronounced at the extremes of the age bands: the 37,096 indeterminate and seasonal employees aged 50 and over was more than five times the number of indeterminate and seasonal employees under 30.<sup>vi</sup>

This kind of age distribution suggests that the federal public service could be facing an impending recruitment crisis. Indeed, various government agencies have been aware of the need for renewal of the public service for several years.

As early as 1997, the *Auditor General's Report* noted that programs designed to attract talented young graduates into the public service were not working well. The following year, the report expressed concern at the “loss of experienced professionals and corporate memory.” It identified shortages of skilled and experienced employees in four of the seven departments studied and in eight different occupational groups.<sup>2</sup> In the just-released 2000 report, the Auditor General expressed serious concern at the aging of the public service and at the service's underrepresenten-

tation of workers under 35. The 1999 Throne Speech announced that the government would focus on the “recruitment, retention and continuous learning of a skilled federal workforce.” In at least one area—computer system specialists—it has now launched an intensive recruiting drive in Montreal, Ottawa, Toronto, Calgary and Vancouver.<sup>3</sup>

Recruitment has not been the government's only focus. With an eye to addressing employee morale, it has launched a broad range of human resource (HR) initiatives over the past five years. These have included *La Relève*—the renewal of the federal public service—the Task Force on an Inclusive Public Service, the Visible Minorities Task Force, and the Public Service Employee Survey. Other relevant federal government HR initiatives have included the creation of The Leadership Network and sub-committees of the Committee of Senior Officials (COSO) in the areas of learning and development and workplace well-being.

These human resource initiatives, together with the government's recent emphasis on recruitment and renewal, suggest that it is interested in maintaining a strong and vibrant public service. But years of staff cutbacks preceded by years of intervention in the collective bargaining system and back-to-work legislation, some of which imposed the terms of the employees' collective agreements, have taken their toll. One result has been increased frustration, reduced morale and the kind of labour-management tension and conflict described in more detail in the next two chapters.

***The 1999 Throne Speech announced that the government would focus on the “recruitment, retention and continuous learning of a skilled federal workforce.”***

<sup>1</sup> It must be noted that while the federal government workforce as a whole aged, the proportion of that workforce aged 55 and over also declined significantly between 1987 and 1997, presumably as a result of downsizing and early retirement initiatives.

<sup>2</sup> These groups included financial officers, computer system specialists, mathematicians, statisticians, economists, and policy analysts. See p. 1-29, par. 1-68 of the 1998 report for a complete list.

<sup>3</sup> This information was obtained from the Commission's Web site: [http://jobs.gc.ca/it-ti/cool\\_facts\\_e.htm](http://jobs.gc.ca/it-ti/cool_facts_e.htm).

#### 1.4 WHAT THIS REPORT WILL COVER

In the next chapter, we examine the framework for labour-management relations in the federal public service. This examination will feature a detailed look at the *Public Service Staff Relations Act (PSSRA)*, the legislation that has regulated public service collective bargaining since 1967.

Chapter III deals with the historical background of collective bargaining in the public service and the experience of collective bargaining until the end of the 1980s.

Chapter IV takes us up to the present day. Its focus is primarily on the collective bargaining experience of the 1990s. The chapter closes with a brief look at some of

the problems identified in the Public Service Employee Survey and other recent studies.

In Chapter V, we look at key findings from our questionnaires and personal interviews of key union and management players. The chapter also contains the results of presentations made by bargaining agents and government managers, and some preliminary results of a survey of local level managers and union officials.

In Chapter VI, we draw out the common problems identified through our literature and data review, questionnaires, surveys and interviews. We also start to build links to our second report, which will propose solutions to the problems identified in this first report.

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<sup>i</sup> Laurence Strong (Chair) *First Report of the Advisory Committee on Senior Level Retention and Compensation*. Ottawa: Treasury Board of Canada Secretariat, 1998, p.3.

<sup>ii</sup> Gene Swimmer and Sandra Bach, "Restructuring Federal Public Service Human Resources." In G. Swimmer (Ed.), *Public Service Labour Relations in an Era of Restraint and Restructuring*. Ottawa and London: Canadian Policy Research Networks and Oxford University Press, 2000 (publication pending), Table 7.1.

<sup>iii</sup> For a useful discussion, see Anthony Giles, "Globalization and Industrial Relations," in the *Globalization of the Economy and the Worker: Selected Papers Presented at the 32nd Annual Industrial Relations Conference*. Montreal: Canadian Industrial Relations Association, 1996.

<sup>iv</sup> See, among others, Graham Lowe, Grant Schellenberg, and Katie Davidman, "Re-Thinking Employment Relationships." Ottawa: Canadian Policy Research Networks, 1999, and A. Templer, T. Cawsey, and T. Stone, "The Human Resource Management Challenge of Contingent Workers," in *Workplace Gazette*, 2:3 (Fall, 1999).

<sup>v</sup> Joseph Peters, *An Era of Change: Government Employment Trends in the 1980s and 1990s*. Ottawa: Canadian Policy Research Networks Study #W/03, 1999.

<sup>vi</sup> Treasury Board of Canada Secretariat, *Employment Statistics for the Federal Public Service*. Ottawa: Treasury Board of Canada Secretariat, 1999.





## Chapter II: The Framework for Labour-Management Relations

### 2.1 THE OVERALL FRAMEWORK

The framework for labour-management relations in the federal public service<sup>1</sup> is established in five main Acts of Parliament.

The *Public Service Employment Act (PSEA)* gives the Public Service Commission (PSC) authority over staffing matters such as hiring, promotions and lay-offs, and the protection of the merit system. The *Financial Administration Act (FAA)* gives the Treasury Board responsibility for determining most other terms and conditions of employment. The *Public Service Staff Relations Act (PSSRA)* grants the right to collective bargaining. It gives the Public Service Staff Relations Board the authority to oversee the collective bargaining system and to adjudicate certain grievances. The *Public Service Superannuation Act (PSSA)* governs all aspects of pensions. The *Canadian Human Rights Act (CHRA)* applies to relations between the federal government and its workers, whether unionized or not.

### 2.2 CERTIFICATION OF BARGAINING UNITS—PSSRA

The PSSRA gives the Public Service Staff Relations Board (PSSRB) the power to define bargaining units and to certify bargaining agents as the exclusive representatives of the employees in those units. Seventeen unions<sup>2</sup> are now the certified representatives of employees under the PSSRA. They range in size from the Public Service Alliance of Canada, which represents 122,000 employees, to the Canadian Air Traffic Control Association which, since the devolution of air traffic services

to Nav Canada, represents 11 employees in what remains of the Air Traffic Control (AI) bargaining unit.

Although the PSSRB is given the power to define bargaining units, relevant provisions of the PSSRA and the 1992 *Public Service Reform Act (PSRA)*, have resulted in bargaining units that mirror the employer's classification system. The PSRA required the Treasury Board, before April 1, 1999, to "specify and define groups of employees" in the public service according to their duties. Treasury Board advised the bargaining agents of its desire to reduce the number of bargaining units they represented and sought their agreement on the groups of employees that would form the basis for the new bargaining units. Agreement was reached and, in March 1999, Treasury Board formally reduced the number of bargaining units from 72 to 25.

### 2.3 ARBITRATION, CONCILIATION-STRIKE AND THE DESIGNATION PROCESS

The PSSRA gives a bargaining agent the right to choose either arbitration or the conciliation-strike dispute resolution process to resolve impasses in collective bargaining. In 1996 the government suspended the right of bargaining agents to opt for arbitration for three years. In 1999

- The *Public Service Employment Act (PSEA)* gives the Public Service Commission authority over staffing matters.
- The *Financial Administration Act (FAA)* gives the Treasury Board the responsibility for determining most terms and conditions of employment.
- The *Public Service Staff Relations Act (PSSRA)* regulates collective bargaining.
- The *Public Service Superannuation Act (PSSA)* governs all aspects of pensions.
- The *Canadian Human Rights Act (CHRA)* prohibits discrimination.

<sup>1</sup> The public service is made up of employees for whom the Treasury Board is the employer, and those employed by separate employers such as the Atomic Energy Control Board, the National Film Board and the Office of the Superintendent of Financial Institutions.

<sup>2</sup> The PSSRA does not use the term "union." It refers to an "employee association," defined as an "organization of employees the purposes of which include the regulation of relations between the employer and its employees."

*Specifically, there is no bargaining over criteria for appointments, promotions, lay-offs, job classifications, and technological or organizational change.*

that right was suspended for a further two years, until June 2001.

Not all employees in bargaining units that have chosen the conciliation-strike route are permitted to go on strike once their bargaining unit is in a legal strike position. Employees must remain on the job if the positions they occupy have been designated under the *PSSRA* “as having duties consisting in whole or in part of duties the performance of which... is or will be necessary in the interest of the safety or security of the public.”<sup>i</sup> In 1982, court decisions involving the AI bargaining unit greatly affected the number of employees who could be so designated (see Chapter III). Although amendments were made to the designation process in the 1992 *PSRA*, the criteria for designation did not change, nor did the Board’s role in the process.<sup>ii</sup>

#### **2.4 THE SCOPE OF BARGAINING AND ARBITRATION**

The *PSSRA* limits the issues that are negotiable between the parties. In the event of a dispute it further limits those matters that may be submitted to arbitration.

Under Sec. 57(2) of the *PSSRA*, nothing may be bargained over which parliamentary legislation would be required, except for the appropriation of funds. Specifically, there is no bargaining over criteria for appointments, promotions, lay-offs, job classifications, and technological or organizational change. Federal government employees are also unable to bargain over pensions.<sup>iii</sup> None of the issues mentioned in the previ-

ous paragraph may be the subject of an arbitral award. In addition, staffing, which falls within the purview of the Public Service Commission, and performance appraisals are specifically excluded from the jurisdiction of arbitrators. Sec. 69(3) of the *PSSRA* also prohibits arbitrators from dealing with the organization of the public service, the assignment of duties to employees, and the classification of positions.

The Act also contains a management’s rights clause which states: “Nothing in this Act shall be construed to affect the right or authority of the employer to determine the organization of the Public Service and assign duties and classify positions therein.”<sup>iv</sup> Although the employer has the right voluntarily to cede some of its authority in this regard, it has rarely done so.

In addition, the Act prevents a collective agreement or arbitral award from altering, eliminating or adding a term or condition of employment that would require the amendment of any legislation. There is a similar prohibition against changes to any term or condition of employment that has been or may be established pursuant to the Government Employees Compensation Act,<sup>3</sup> the *PSEA* and the *PSSA*.

#### **2.5 REDRESS MECHANISMS UNDER THE PSSRA**

The *PSSRA* provides redress mechanisms for what would be called in the private sector “rights arbitration.” There are, however, significant differences between the

<sup>3</sup> The Government Employees Compensation Act sets out the rights of public service employees who are injured by work-related accidents or disabled by employment-related industrial disease.

mechanisms provided under the PSSRA and other rights arbitration mechanisms.

The PSSRA creates a statutory grievance procedure with a limited right to third party determination for all employees, whether unionized or not, concerning any aspect of their employment relationship. Contrary to the practice in the private sector, individuals have the right to submit grievances without the support of their union, unless the grievance concerns the interpretation or application of a collective agreement or arbitral award.

There are only two limitations on these grievances. The first is that what is complained of must affect the employee concerned. This has been interpreted to mean that unions have no right to file policy grievances. The second is that the grievance must be something “in respect of which no administrative procedure for redress is provided in or under an Act of Parliament.” Recently, this section has been held to disallow grievances based on “no discrimination” clauses in collective agreements, on the grounds that the *Canadian Human Rights Act* provides an administrative procedure for redress.<sup>4</sup>

Although the right to grieve is very broad, grievances can be referred to an independent third party for adjudication only if they involve the interpretation or application of collective agreements or arbitral awards, disciplinary action “resulting in suspension or a financial penalty,” or termination or demotion for non-disciplinary reasons. Employees of separate employers have more limited adjudication rights for grievances arising out of non-disciplinary

terminations or demotions.

## 2.6 ROLE OF THE PUBLIC SERVICE COMMISSION

The PSEA confers authority on the Public Service Commission (PSC) for staffing, the protection of the merit principle, and restrictions on political activity for public servants. In practice, the Commission has delegated its staffing authority to the departments.

The Commission does, however, oversee redress mechanisms related to staffing. The Appeals and Investigations Branch handles appeals against appointments, and investigations on any subject, such as staffing, that fall within the PSC’s jurisdiction. Investigations into staffing actions often deal with allegations of harassment, which can also be the subject of grievances under or outside of a collective agreement. The Commission is responsible for the conduct of inquiries concerning employees’ alleged participation in political activities.

## 2.7 THE CANADIAN HUMAN RIGHTS ACT

The CHRA, which bars the employer from discriminating on a prohibited ground, applies to all employees under federal jurisdiction.<sup>5</sup> It has had important impacts on a number of aspects of labour relations.<sup>6</sup>

The first, which is discussed in more detail



*The PSSRA creates a statutory grievance procedure with a limited right to third party determination for all employees...*

<sup>4</sup> Earlier PSSRB jurisprudence had rejected this argument, in part because the complaints procedure under the code was so lengthy and cumbersome that it could not properly be considered an alternate form of redress. See *Yarrow v. TB (Agriculture and Agrifood)* [1996] CPSSRB No. 10 (QL) 166-2-25034. The most recent jurisprudence of the Federal Court is found in *Mohamand v. Canada (Treasury Board)*; *O’Hagan v. Canada (Treasury Board)*; *Boutilier v. Canada (Treasury Board)* (1999), 181 D.L.R. 4th 590 (F.C.A.). Applications for Leave to the Supreme Court of Canada are pending.

<sup>5</sup> These include race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital and family status, disability, and criminal conviction for which a pardon has been issued.

<sup>6</sup> For a useful discussion, see Donald Carter, “The Duty to Accommodate: Its Growing Impact on the Grievance Process,” in *Relations Industrielles*, 52(1), 1997.

in Chapter III, involves pay equity complaints. Section 11 of the *CHRA* bans wage differences based on gender for work of equal value. Bargaining agents and employers try to determine whether compensation paid to employees constitutes a discriminatory practice based on the Act and the Equal Wages Guidelines issued by the Commission. Concerns about the lack of gender neutrality in the employer's multiple classification systems provided the impetus for the development by the employer of the Universal Classification System, originally scheduled to be introduced on April 1, 2000.

The second impact of the *CHRA* on federal labour relations involves employment practices that individuals or their bargaining agents allege are discriminatory. One challenge to the language of a collective agreement was the failure of the Foreign Service Directives to provide same-sex benefits. Another was an attack on the employer's staffing practices, alleging that

the employer's promotion practices in a particular department involved systemic racial discrimination.

## 2.8 THE NATIONAL JOINT COUNCIL

Another important part of the framework of labour relations in the federal Public Service is the National Joint Council (NJC). Chapter III outlines its development. Comprised of an equal number of "Official Side" and "Staff Side" representatives, the NJC consults on a variety of service-wide issues. In addition to the Foreign Service Directives, the NJC has reached agreements on matters such as the Bilingual Bonus, the Workforce Adjustment Directive, the Travel Directive, the Relocation Directive, and the Isolated Posts Directive. The NJC is also involved in health and benefit plans. NJC agreements can be incorporated by reference into collective agreements.

<sup>i</sup> *PSSRA*, s. 78(1)(a).

<sup>ii</sup> *Treasury Board v. PSAC PSSRB* February 7, 1997 (Chodos).

<sup>iii</sup> See *Swimmer* (1995:371-2).

<sup>iv</sup> *PSSRA*, s. 7.



## Chapter III: The Historical Background

### 3.1 PREVIOUS EXPERIENCE: ASSOCIATION-CONSULTATION

The PSSRA's passage ended a lengthy period during which government employees, working through employee associations, had sought to persuade the employer to improve their conditions of employment through consultation. Much more like today's professional associations<sup>1</sup> than trade unions, these employee associations included management up to the most senior levels, did not affiliate with labour federations, and avoided strikes and other kinds of militant action. In choosing the association-consultation approach, government employees were operating under the assumption that if they presented their concerns reasonably, and in a collegial manner, the government would be prepared to address those concerns.

Such consultation marked the limit of permissible government employee action until well after the Second World War, except in Saskatchewan, which in 1944 granted the same collective bargaining rights to its own employees that it gave to private sector employees. Otherwise, governments across Canada used the sovereignty doctrine and the fear of crippling strikes in essential services to justify their opposition to public sector unionization.

The federal government chose instead to establish a formal system of consultation between it and its unions. In 1944, it created the National Joint Council (NJC) to address the concerns of federal public servants. Modelled on the British "Whitley Council"<sup>2</sup> but lacking some of its powers,<sup>1</sup> the NJC comprised representatives of about a dozen staff associations and government officials.

The NJC met regularly to consider concerns regarding such employment-related matters as recruitment, training, hours of work, promotion, discipline, health, welfare, and seniority. The idea was that when the two sides could reach agreement on an issue, recommendations would be sent to Cabinet. Because government officials up to and including deputy ministers were represented on the NJC, it was expected that the government would accept its recommendations. Unfortunately, this did not always happen. While the government usually wound up accepting the NJC's recommendations, it often did so only after delays and amendments.

Another problem was that certain issues, notably wages, were considered to be outside the Council's jurisdiction. In 1952, the staff side's attempt to use the Council's machinery to determine salaries was refused.<sup>ii</sup> As Barnes notes, this was a marked contrast to the Whitley Council, which had always been empowered to consult on salaries. Yet another problem was the lack of any sort of binding dispute settlement mechanism. If the Official Side said "no" on an issue, the Staff Side had no recourse. Again, this was a sharp contrast to the Whitley regime, which had the power to take disputes through to arbitration, although this appears to have been a route the parties seldom chose and were generally reluctant to take.<sup>iii</sup>

During the late 1950s and early 1960s, a combination of factors ranging from the lack of wage increases to the evolution of government departments into large, impersonal bureaucracies pushed most government employees away from association-consultation and toward more conventional trade unionism. Responding to

<sup>1</sup> The purpose of such associations is to promote the professions in question and to advance the interests of their members. They also regulate those professions. In general, they represent self-employed practitioners. Typically they are not legally entitled to bargain collectively with employers, though admittedly some have begun to engage in union-like forms of collective action (i.e., doctors' collective withdrawal of services to protest what they see as inadequate provincial government funding). Examples of professional associations would be the Ontario Bar Association and the Canadian Medical Association.

In connection with professional associations, it is important to note that some groups that are legally certified trade unions continue to call themselves associations; this is quite often the case with university faculty unions.

<sup>2</sup> The Civil Service Whitley Council was launched in Britain in 1919 as part of a broader movement toward joint industrial councils spearheaded by John Henry Whitley, Deputy Speaker of the House of Commons. The idea behind such councils was that effective industrial relations required strong organization on the part of both employers and employees. The British Whitley Councils were to have a broad impact across the industrialized world. Among other things, they were a major influence in the establishment of works councils in Germany in 1923. For a more detailed discussion, see Barnes (1975:7-14).

their members' frustration, and recognizing that consultation simply had not worked, the associations began behaving more and more like unions. Among other things, some of them deleted no-strike clauses from their constitutions, excluded management personnel, and affiliated with labour federations like the Canadian Labour Congress—all of which would have been unthinkable just a few years earlier.

In 1962, Prime Minister John Diefenbaker rejected an NJC-recommended pay increase as inflationary.<sup>3</sup> This action convinced the heads of all three federal civil service associations of the futility of further consultation and led them to issue a joint statement calling for the establishment of a system of negotiation and arbitration. After the minority Conservative government fell and an election was called, the head of the Civil Service Federation, Claude Edwards, wrote to the heads of all four parties contesting the election to ask for the parties' official positions on public service collective bargaining. All four supported the general principle, although only NDP leader Tommy Douglas supported the granting of the right to strike right to federal government employees.<sup>iv</sup>

### 3.2 INTRODUCTION OF THE PSSRA

The newly elected Liberal government promised to grant its employees collective bargaining rights with binding arbitration as the dispute settlement mechanism. Moving quickly to honour this commitment, Prime Minister Pearson struck a Preparatory Committee on Collective Bargaining in the Public Service, chaired

by A.D.P. Heeney, a former chairman of the Civil Service Commission. The Heeney Committee released its report, recommending collective bargaining with arbitration, in 1965.

Soon after the release of the report, an illegal nation-wide postal strike, with which the public generally sympathized, led to a review of its recommendations. Developments in Quebec were also a factor. There, Premier Jean Lesage, in a sudden reversal of his earlier, much-quoted view that “The Queen does not negotiate with her subjects,” granted provincial government employees and other public sector workers the right to bargain collectively and to strike as part of a sweeping 1965 liberalization of the province's labour code.<sup>v</sup>

In April 1966, introducing in the House of Commons the *Public Service Staff Relations Act*, which would grant federal employees collective bargaining rights, Prime Minister Lester B. Pearson said:

“The principle that public servants should have an opportunity to participate in such a system [of collective bargaining] has, I believe, widespread support in the Canadian community. For those who have customarily been [considered] as servants of the Crown, that is, servants of the people, and whose terms and conditions of employment have been determined by Parliament or by the government of the day, this legislation will provide the right to participate in a process of joint determination of the terms and conditions of their employment. This is a process which is rooted in the concept of equity and equality between the government as employer and organizations representing its employees. Such a change will call for major

<sup>3</sup> Three years earlier, Mr. Diefenbaker's Finance Minister, Donald Fleming, had unilaterally overturned the Civil Service Commission's recommendation of a pay increase, which had been supported by Pay Research Bureau (PRB) data. The reasons given for the rejection were the cost of the recommendations and Fleming's lack of confidence in the PRB's data. For more detail, see Barnes (1975:103-4).



adjustments in established processes and procedures and in the traditional attitude of all those who are concerned.”<sup>vi</sup>

Mr. Pearson went on to say that in developing the new legislation, the government had four general objectives in mind. “First, to protect the public interest; second, to respond in an understanding and responsible manner to the aims and aspirations of its organized employees; third, to preserve the capacity of the public service to function efficiently in serving the people of Canada[;] and, fourth, to respect the principles underlying industrial relations law and practice in Canada.”<sup>vii</sup>

The *Public Service Staff Relations Act* was passed by Parliament in 1967. In the words of Robert Armstrong (1968:455), the bill was the culmination of “some ten years of development, adaptation and change in employer-employee relations in the federal public service.”<sup>viii</sup>

Though based on the same U.S. “Wagner Act”<sup>4</sup> model as earlier private sector Canadian legislation had been, the *PSSRA* did differ from that model in several important respects. In addition to the bill’s provision for a choice of procedures for dispute resolution, designed to take the public interest into account, union members designated as necessary to ensure public safety or security were not allowed to strike. As a trade-off for this restriction on the union’s right to strike, the federal employer was not allowed to lock out employees.

With the federal government divided between granting and denying the right to strike, the “choice of procedures” provision was devised as a political compromise, the idea being that government

workers tended to be less militant than traditional blue-collar union members and would be far likelier to choose arbitration than the conciliation-strike route. Mr. Pearson’s statements in introducing the *PSSRA* suggest that the government expected arbitration to be the norm in resolving federal public service disputes.<sup>ix</sup> And for the first decade or so after the bill’s passage, this was indeed the case.

### 3.3 EARLY EXPERIENCE UNDER THE *PSSRA*

Between 1967 and 1976, public service bargaining worked reasonably well. In general, settlements were freely negotiated with little legislative intervention. Public service unions were able to gain not only good monetary settlements but improvements in benefits and working conditions as well. Moreover, as the government had anticipated, most of the unions were happy to use arbitration when bargaining reached an impasse. In 1970, 88% of public service bargaining units, representing 81% of all federal government employees, chose arbitration.<sup>x</sup>

By 1975, however, the country’s economic situation had changed. That year, the federal government imposed a three-year, economy-wide program of wage and price controls. Across Canada, unions responded with a show of militancy. A growing number of public service bargaining units opted for the conciliation-strike route rather than arbitration. In 1975 alone, 14 bargaining units representing some 80,000 workers switched from arbitration to the strike route. By 1984, only 25% of federal government employees were in units that had opted for arbitration.<sup>xi</sup>

*Between 1967 and 1976, public service bargaining worked reasonably well.*

<sup>4</sup> Passed in 1935, the “Wagner Act” (the National Labor Relations Act) granted U.S. private sector workers the right to bargain collectively and to strike. The approach taken by the Act was generally arm’s length and adversarial, featuring a clear separation of the interests of employers and workers. Management personnel were excluded from unions, and “company unions” were specifically forbidden. In recent years, the “Wagner Act” has come in for increasing criticism for failing to do more to promote labour-management cooperation.

*During the latter half of the 1980s, the collective bargaining system again worked reasonably well.*

Even when controls ended, the government continued to pursue more restrictive policies toward its unions. In 1978, it did not wait to let the postal workers negotiate their first contract since the end of controls, but passed legislation extending the contract until after the upcoming federal election.<sup>xii</sup> That same year, the government moved to restrict its employees' rights significantly in a series of amendments to the PSSRA. The amendments included restriction of the right to strike, introduction of the lock out right, extension of managerial exclusions, and the tying of arbitration awards to private sector compensation awards. These amendments were eventually withdrawn, but they did provide an indication of the government's thinking at the time.

### 3.4 THE 1980 s: RESTRICTION OF BARGAINING RIGHTS

An oil price crisis in 1979, followed by a renewed wave of inflation in the early 1980s, led the government to introduce controls again in 1982. This time, the controls applied only to wages and only in the public sector. The program began in July 1982 and extended all federal collective agreements for two years, with annual increases of 6% and 5%.<sup>5</sup> Merit, increment, and performance payments were forbidden, and signed contracts with increases above the permissible limits were rolled back.<sup>xiii</sup>

As a result of the controls program, meaningful collective bargaining was effectively suspended for two years, even over non-monetary items. The government agreed that its employees were no more responsible for inflation than anyone else; how-

ever, it believed it was its job to show leadership on restraint and thus set an example for other employers, particularly other public sector jurisdictions.

At the same time as more bargaining units were opting for the conciliation-strike route, the government sought to increase the number of workers deemed "essential" and thus barred from striking. Before 1982, the procedure had been that the Treasury Board drew up a list of designated employees, and any disagreements over the list between the Treasury Board and the union were resolved by the PSSRB. It was assumed that the PSSRB had the authority to determine the level of service required to protect public safety and security.

In 1982, a decision of the Supreme Court of Canada changed this approach. The Court ruled that the government had the unilateral right to determine the level of service to be provided. It also ruled that designated employees were required to perform all their normal duties during a strike, not just essential ones. As a result of the Supreme Court's decision, designation levels were increased significantly.<sup>xiv</sup>

During the latter half of the 1980s, the collective bargaining system again worked reasonably well. For example, coordinated master bargaining arrangements covering both the PSAC and the PIPSC were also negotiated. The period also saw the government and its unions reach agreement on a Workforce Adjustment Policy designed to encourage union cooperation with the government's downsizing policy.

Between 1985 and 1990, following through on a campaign pledge to reduce the size of the public service, the govern-

<sup>5</sup> Ironically, inflation dropped so rapidly that in the second year of the controls program, federal public service employees' 5% increase was well above the average increases received by other private and public sector workers. See Swimmer (1995:384) for details.





ment did cut the number of full-time employees by more than 15,000 (or roughly 6%). Most of the lay-offs were achieved through attrition and many full-time staff were replaced by part-time, term, and casual employees. Thanks to the Workforce Adjustment Agreements, permanent employees enjoyed a greater degree of security than they had before.

Despite the reduction in permanent employees and tax increases, both the deficit and the debt continued to grow. As part of its response to these conditions the government took even stronger measures in the 1990s. These measures, and the union reaction they set in motion, are described in detail in the next chapter.

*Thanks to the Workforce Adjustment Agreements, permanent employees enjoyed a greater degree of security than they had before.*

<sup>i</sup> L.W.C.C. Barnes, *Consult and Advise: A History of the National Joint Council of the Public Service of Canada, 1944-1974*. Kingston: Queen's Industrial Relations Centre, 1975. See also George Sulzner, "The National Joint Council of the Public Service of Canada: A Vehicle for Bargaining and Dispute Resolution," in *Journal of Collective Negotiations*, 27:4 (1998).

<sup>ii</sup> Barnes, 1975.

<sup>iii</sup> L.W.C.S. Barnes, personal interview with Advisory Committee, January 19, 2000.

<sup>iv</sup> Robert Armstrong, "Some Aspects of Policy Determination in the Development of the Collective Bargaining Legislation of the Government of Canada," in *Canadian Public Administration*, 2 (1968).

<sup>v</sup> Gérard Hébert, "Public Sector Bargaining in Quebec: The Rise and Fall of Centralization," in G. Swimmer and M. Thompson, eds., *Public Sector Collective Bargaining in Canada*. Kingston: Queen's Industrial Relations Centre, 1995.

<sup>vi</sup> In *Hansard*, April 25, 1966.

<sup>vii</sup> *Ibid.*

<sup>viii</sup> Armstrong, 1968, p. 455.

<sup>ix</sup> *Ibid.*

<sup>x</sup> Gene Swimmer, "Collective Bargaining in the Federal Public Service of Canada: The Past Twenty Years," in G. Swimmer and M. Thompson, eds., *Public Sector Collective Bargaining in Canada*, op.cit., p. 374.

<sup>xi</sup> *Ibid.*, pp. 374-75.

<sup>xii</sup> *Ibid.*, p. 386.

<sup>xiii</sup> *Ibid.*

<sup>xiv</sup> *Ibid.*, pp. 379-380.

**KEY EVENTS IN THE DEVELOPMENT OF FEDERAL PUBLIC SERVICE COLLECTIVE BARGAINING, 1944-2000**

- 1944** - Private sector workers granted collective bargaining rights through Order-in-Council PC1003
- Saskatchewan government granted all workers, including its own employees, full collective bargaining rights and the right to strike
- National Joint Council (NJC) founded in Ottawa
- 1958** - First Heenev Report proposed consultation over pay in the federal public service
- 1962** - First system of salary consultation in the federal public service went into effect
- Prime Minister John Diefenbaker announced public service salary freeze, overturning an NJC recommendation for a pay increase
- The heads of all three federal civil service associations declared further consultation futile, and called for system of collective bargaining with binding arbitration
- 1963** - Minority Liberal government under Lester B. Pearson elected. Mr. Pearson promised public service bargaining with binding arbitration, created "Preparatory Committee" under Heenev
- 1965** - Postal unions staged illegal nation-wide strike
- Quebec granted public sector workers, including its own employees, full bargaining and strike rights
- Second Heenev Report recommended a system of public service collective bargaining with binding arbitration as dispute-resolution mechanism
- 1967** - *Public Service Staff Relations Act* passed. The bill granted federal government employees collective bargaining rights, established a new dispute-resolution system granting unions the right to choose between binding arbitration and the right to strike
- 1975** - Prime Minister Pierre Trudeau announced a three-year program of wage and price controls, to be applied across the economy
- 1982** - Federal government announced a second round of controls, this time applied only to wages and only to federal public service employees. Over the next few years, every province at some point adopted its own form of public sector wage control program-Supreme Court decision on air traffic controllers' designation levels gave government the unilateral right to determine levels of service to be provided during a work stoppage
- 1984** - Majority Conservative government elected on platform of reducing the size and role of government
- 1984-86** - Start of centralized "master bargaining arrangements" between the government and its two largest unions, the PSAC and the PIPSC
- 1985** - Government and unions negotiated first Workforce Adjustment Agreement
- 1988** - Second Workforce Adjustment Agreement negotiated



- 1990** - "Public Service 2000" initiative launched to promote empowerment of federal government employees, easier mobility of staff between departments
- 1991** - Federal budget effectively froze public service salaries
  - First-ever nation-wide strike by the PSAC (September), ended by legislation
  - Government and the PSAC negotiated new workforce adjustment policy which substantially improved job security for permanent employees
- 1992** - Federal government dissolved Pay Research Bureau, Economic Council of Canada, and 37 other government boards and agencies
  - Existing public service agreements extended for two more years with no salary increase
  - *Public Service Reform Act* took effect. A key provision allowed deployment of employees to other positions at the same level without a formal competition
- 1993** - Majority Liberal government elected
- 1994** - First Liberal budget froze salaries for two more years, and cut defense spending and operating funds for civilian departments
  - Program Review, aimed at reducing and redefining role of government, was launched
- 1995** - Government suspended Workforce Adjustment Agreements in departments most affected by downsizing, substituted various retirement incentives
  - February budget announced cuts of 45,000 public service jobs over the next three years
- 1996** - Government expanded its definition of "reasonable job offer" to include employment with private sector firms at 85% or more of the employee's original salary
  - Government announced that collective bargaining would resume in 1997, but salary arbitration would be suspended until 1999
- 1997** - Government passed legislation restricting public service compensation increases. Public service collective bargaining resumed
- 1998** - Canadian Human Rights Tribunal ordered the government to pay nearly \$4 billion in back salaries to 200,000 current and past employees in female-dominated groups
  - Government appealed pay equity award to the Federal Court of Appeal
- 1999** - After the Federal Court of Appeal upheld the decision of the Canadian Human Rights Tribunal, the government negotiated a pay-equity settlement with the PSAC
  - Strike of operational and correctional groups of the PSAC, ended by legislation
  - government passed legislation appropriating entire pension fund surplus
  - Salary arbitration suspended for two more years
- 2000** - Universal Classification System (UCS) set to take effect





## Chapter IV : Recent Experience

### 4.1 THE EARLY 1990s

In its February 1991 budget, the government declared that for one year no pay increases would be granted unless bargaining agents would agree to a reduction in employment levels. It also stated that salary increases of more than 3% would not be considered for the next three years. The unions and their members reacted negatively to these proposed restrictions.

After the budget, a conciliation board recommended wage increases of 6% for the PSAC's administrative workers for the first year and a somewhat smaller amount for the second. The Treasury Board rejected the recommendations and the PSAC called a nation-wide strike. Meanwhile, the PSSRB ruled that the government had bargained in bad faith by insisting that the PSAC accept, as a precondition to bargaining, the restraint policy announced in the budget.

The government then passed legislation extending all unsettled contracts for two years, including those of administrative employees. The legislation provided salary increases of 0% and 3% and imposed heavy fines should the strike continue.

In late 1991, the government and the PSAC negotiated a new job security Workforce Adjustment Directive (WFAD) for indeterminate employees. This agreement was then adopted by the National Joint Council and applied to all the public service unions.

In the WFAD, in return for the right to contract-out work, the employer agreed to provide any surplus employee who could be trained to do new work, and who was

prepared to move, with a "reasonable job offer." There was salary protection if the offer was for a lower-paying job. As well, employees displaced by contracting out were to receive 12 months' notice and a guaranteed offer of another indeterminate position.

These provisions represented an improvement on earlier workforce adjustment agreements which had given surplus employees six months' notice of lay-off, a year of salary protection, and up to a year of retraining.<sup>1</sup>

The developments on workforce adjustment were soon overshadowed, however, by the government's stance on economic issues. In February 1992, the government dissolved the Pay Research Bureau along with 38 other government boards and agencies. In November 1992, concerns about falling tax revenues caused the government to extend existing agreements for another two years with no salary increase permitted.

At the same time the government further restricted access to collective bargaining in the 1992 *Public Service Reform Act (PSRA)*. The grounds for exclusion from collective bargaining were broadened by allowing the Treasury Board to exclude any employee with "substantial duties and responsibilities in the formulation and determination of any policy or program." Together with the government's increased use of term and casual employees,<sup>1</sup> the new exclusion policy had the potential to reduce the number of unionized employees.

Another important change allowed employees to be "deployed" to positions at the same level as their current positions

*The developments on workforce adjustment were soon overshadowed, however, by the government's stance on economic issues.*

<sup>1</sup> Casual employees and those on term contracts of less than three months are not eligible for union membership.

without competition. This process simplified staffing but reduced the number of competitions and thus limited both promotions and appeal rights. The unions have complained that the deployment process compromises the merit principle.

Many of these changes arose out of PS 2000. The exercise itself contributed to distrust between the employer and the unions. The unions condemned the “unabashedly management-driven” PS 2000 exercise<sup>2</sup> for its failure to involve them. Ultimately the unions were invited to make presentations to the appropriate task forces and had some impact on specific recommendations.<sup>ii</sup>

By 1993, the unions’ disenchantment with the government was total. The presidents of the PSAC and the PIPSC denounced the Conservative government as the worst employer they had ever had. The PSAC initiated a policy of working against the government’s re-election.<sup>iii</sup> The government was ultimately defeated and replaced by a Liberal government that had campaigned on a pledge of restoring free collective bargaining in the public service.

#### 4.2 THE LATE 1990s

In 1994, in its first budget, the new government extended the public service salary freeze for a further two years and also froze merit-based increments. The budget contained cuts of nearly \$500 million in operating funds to civilian departments, with far deeper cuts promised for the two following years, and major cuts in defense spending.<sup>iv</sup> More importantly for the public service, it launched a “Program Review” process designed to shrink the

size of government and reduce or redefine its role in many of the activities in which it would continue to be involved.

While Program Review was never intended solely as a cost-cutting exercise, its most immediate impact was to cost thousands of federal public service employees their jobs. There were post-budget talks between the Treasury Board and the public service unions designed to identify specific cost savings that could potentially be applied toward wage increases or increments. The unions withdrew from this “Efficiency Review” exercise since they were of the view that the employer had no real intention of applying any savings to public service salaries.<sup>v</sup>

In February 1995, the Treasury Board sought union agreement to modify the “Reasonable Job Offer” provision of the Workforce Adjustment Directive (WFAD). When the negotiations failed, the Treasury Board unilaterally suspended the WFAD within the departments most affected by downsizing and substituted buyout incentives designed to induce employees to retire early or otherwise leave the public service voluntarily. Soon thereafter, the Finance Minister delivered his 1995 budget, which announced cuts of 45,000 public service jobs over the following three years.<sup>3</sup>

Most of the public service cuts were achieved through the two main types of buyout package: the Early Departure Incentive and the Early Retirement Incentive (ERI). The former, aimed at younger employees, provided 39 to 90 weeks’ salary plus a training allowance. The latter was aimed at employees over 50 with at least ten years’ service. The ERI involved waiving the usual pension penal-

<sup>2</sup> This description of PS 2000 came not from the unions but from John Edwards, then the Chairman of the Public Service Commission.

<sup>3</sup> Not all of these jobs were actually lost, since a certain number of public service employees were transferred to newly created agencies like Nav Canada.



ty for early retirement, plus cash payments of up to 15 weeks' salary.

As a result of these and other incentive programs, lay-offs were kept to a minimum. The federal government won high marks for handling its downsizing in a humane way.<sup>vi</sup> But in percentage terms the downsizing was the government's largest workforce reduction since the end of World War II, and it was clear that the morale of "surviving" employees had been damaged. In addition, remaining workers had to work harder to cover their own workloads and those of their former colleagues.

As both young and old took advantage of the incentives to leave, commentators began to warn of a remaining public service largely populated by "Baby Boomers" between ages 40 and 50, those who would also have liked to leave but could not afford to. They noted this would leave large numbers of positions to be filled when they all retired.<sup>vii</sup>

The government announced another round of cuts in its 1996 budget. In that year the employer also proposed a number of changes to the WFAD, including expanding the definition of a "reasonable job offer" to include offers of employment with private sector firms at 85% or more of the employee's original salary. In these circumstances, the employee's salary was to be "topped up" for a given length of time. Employees not accepting such offers would be given four months' termination notice.

The employer tried to obtain the unions' consent to these changes. It advised the unions that if they did not consent, it would implement the changes unilaterally.

The PSAC and the SSEA did not agree to the changes. When the employer unilaterally imposed the changes on those two unions, their members received a salary top-up for the shorter period originally proposed by the Treasury Board, instead of the longer top-up received by members of the unions that had agreed to the government's changes.

Later in 1996, the government announced that increment payments and bargaining would resume but that to ensure that government restraint continued, interest arbitration would be suspended for three more years.

When collective bargaining resumed in 1997, the government passed legislation, in the form of an amendment to the *Public Sector Compensation Act*, to ensure that compensation increases were restricted to about 2%. This prevented employees from making up for wage increases lost in the preceding six years. Most agreements negotiated in the initial round of post-freeze bargaining contained annual pay increases of 2 to 2.5%. Where labour shortages dictated a higher pay increase, the Treasury Board generally used additional increments or lump-sum payments rather than increasing base salary. Almost all the groups receiving higher salary increases (executives, the military, and the RCMP) were non-unionized, a fact which did not sit well with the unions.<sup>viii</sup>

Although the current round of public service bargaining is not yet complete, it appears to be following much the same pattern as the previous one. With access to interest arbitration frozen, salary increases have again been in the 2% range, with additional lump sum payments of about 1.5% in many cases.

*The federal government won high marks for handling its downsizing in a humane way.*

*...pay equity continues to be a concern, particularly in the growing number of separate agencies.*

### 4.3 CONFLICT OVER PAY EQUITY

Pay equity, a longstanding source of conflict between the employer and its bargaining agents, also became a central issue in labour-management relations in the 1990s.

As early as 1979, the PIPSC filed pay equity complaints against the employer with the Canadian Human Rights Commission. In 1984, the PSAC filed a complaint on behalf of the approximately 50,000-member Clerical & Regulatory Group. Ultimately, the PIPSC and the PSAC filed complaints on behalf of all their female-dominated groups.

The Treasury Board and the unions agreed in 1985 to establish the Joint Union-Management Initiative to study the extent to which a wage gap existed between jobs in male- and female-dominated groups that were assessed as being of equal value. As part of the Joint Initiative, the parties agreed to remedy the wage gap once it was identified.

In 1990, after the agreed-upon sample of positions had been assessed, the Initiative broke down. The employer unilaterally implemented some pay equity wage adjustments, which the complainants said failed to close the gap. The Canadian Human Rights Commission agreed that the payments were insufficient and lengthy hearings began before a Canadian Human Rights Tribunal.

While, in its 1992 budget, the Conservative government had alluded to the possibility of legislation to limit its liability in the complaints retroactively to November 1990,<sup>ix</sup> it never introduced such legislation. In March 1995, the

Treasury Board and the PIPSC settled complaints affecting approximately 1,700 members in three bargaining units. The employees' pay equity adjustments totaled close to \$72 million.

In 1998, the Tribunal ordered the government to pay retroactive adjustments, with interest, to nearly 200,000 current and past employees in the female-dominated groups represented by the PSAC.<sup>x</sup> The government decided to appeal the nearly \$4 billion award.

The decision to appeal sparked outrage among the affected employees. Their protests included a large demonstration on Parliament Hill and a national "Day of Mourning" on which PSAC members were urged to come to work dressed in black.

After the Federal Court of Appeal rejected the government's appeal of the Canadian Human Rights Tribunal's decision, the government decided not to appeal to the Supreme Court. Instead, it negotiated a settlement with the PSAC. Not all federal government employees are covered by the settlement, however. As is discussed in Chapter V, pay equity continues to be a concern, particularly in the growing number of separate agencies.

### 4.4 CONFLICT OVER PENSIONS

Pensions became yet another source of conflict between the employer and its unions in the 1990s. In 1954 the Pension Advisory Committee on the *Public Service Superannuation Act* was created with representation from the employer and the unions. In 1996 a Committee report made recommendations for pension plan





reform, including proposals for future investment of pension funds in capital markets and the creation of the joint Union-Management Board.

In 1998, the Consultation Committee on Public Service Pension Reform was established, with the expectation of reaching a pension deal by the end of the year.<sup>xi</sup> Instead, the Committee came to an impasse on the question of ownership of the current pension fund surplus. In 1999 the government passed legislation appropriating the actuarial surplus to the employer and, contrary to the recommendation of the Consultative Committee, did not establish a joint union-management board. The legislation did, however, create a pension investment board.

#### 4.5 THE CURRENT CLIMATE

Frustration over years of suspended bargaining, salary and arbitration freezes, heavy workloads and employees' perceptions of blocked career development has led to militancy among federal public service unions. This militancy took a variety of forms, including public demonstrations as well as strikes. This frustration also appears to have led many employees to think about leaving the service. A 1999 survey of knowledge workers by Duxbury, Dyke and Lam found only about one-third of all respondents were highly committed to the public service. In the private sector, commitment levels are often found to be double this number. The survey report indicated that about three-quarters had thought about leaving the service.<sup>xii</sup>

In the Duxbury survey, the most frustrating aspects of working in the public ser-

vice were identified as problems in dealing with the bureaucracy, including staff-related issues, the work culture and working atmosphere, political interference, and the perception of a lack of respect from management and the general public.<sup>4</sup>

Similar findings have emerged from other recent studies. For example, the 1999 Public Service Employment Survey found a high level of dissatisfaction with heavy workloads, long work hours, and limited career development possibilities. The results also indicate that many believe the selection, classification, and promotion processes are unfair, that federal government employees have little say in decisions and actions affecting their work, and that senior management will probably not do much to rectify the problems found in the survey.<sup>5</sup>

In a slightly different vein, a study by the Public Policy Forum (PPF)<sup>xiii</sup> found "a growing disconnect" between current labour legislation and the workplace realities of the public service. The PPF study suggested that the PSSRA's prescriptive regulatory emphasis has "eroded its capacity to facilitate effective and productive relations between labour and management." The report recommended a thorough overhaul of the legislative framework for public service labour-management relations, in particular the PSSRA, and stressed the importance of promoting improved trust in the public service labour-management community by fostering and facilitating "ongoing, meaningful consultation between labour and management." In addition, it recommended the development of learning initiatives to increase the skill level of public service labour-management practitioners.

<sup>4</sup> In all, 18% of those promoted and 23% of those not promoted said they were likely to leave the public service within the next year, while 23% of those promoted and 30% of those not promoted felt they were likely to leave their department within the next year. The precise figures were, for high commitment, 36% of those promoted within the past five years, and 28% of those not promoted. Overall, 72% of those promoted had still thought about leaving the public service—a figure only slightly lower than the 77% of those not promoted.

<sup>5</sup> Specifically, 49% of all respondents find their workloads unreasonable, and 48% believe that the quality of their work suffers because they are having to do the same or more work with fewer resources. A full 56% believe they have little say in decisions and actions that affect their work, 45% do not believe that their immediate supervisor does a good job of helping them develop their careers, and 47% don't believe they stand a fair chance of getting a promotion, given their skills and experience. Only 37% believe that senior management will try to resolve the concerns raised in the survey.

*Most recently, the just-released Auditor General's Report for the year 2000 described the public service's human-resource framework as "unduly complex and outdated."*

Most recently, the just-released *Auditor General's Report* for the year 2000 described the public service's human-resource framework as "unduly complex and outdated." The framework, said the Auditor General, is ill-suited to an environment that demands flexibility and adaptability, at a time when the government faces significant recruiting challenges in an increasingly competitive labour market.

On a more positive note, the Treasury Board, bargaining agent members of the NJC and the Federal Superannuates National Association recently concluded a five-year agreement covering the management of the Public Service Health Care Plan (PSHCP). As of April 1, 2000, the PSHCP is being managed through a trust, with trustees to be nominated by the bargaining agents, the pensioners' representa-

tive, and the employer. A key feature of the agreement is that monthly premiums for basic health coverage will not increase during its five-year term.

#### 4.6 CONCLUSION

This chapter, like the two previous ones, has attempted to set the stage for our examination of the current state of labour-management relations in the federal public service by tracing the development of labour-management relations since the start of public service collective bargaining in 1967. The next chapter looks at the results of the Committee's template interviews and questionnaires, hearings, and other evidence from past and current public service labour-relations practitioners representing union and management perspectives.

<sup>i</sup> Gene Swimmer and K. Kinaschuk, "Staff Relations under the Conservative Government: The Singers Change but the Song Remains the Same." In F. Abele, ed., *How Ottawa Spends, 1992-93*. Ottawa: Carleton Univ. Press, 1992.

<sup>ii</sup> Swimmer, 1995, p. 395.

<sup>iii</sup> *Ibid.*, p. 400.

<sup>iv</sup> Swimmer and Bach, 2000.

<sup>v</sup> See Gene Swimmer, "Introduction" and Gilles Paquet and Robert Shepherd, "The Program Review Process: A Deconstruction," both in G. Swimmer (ed.), *How Ottawa Spends, 1996-97: Under the Knife*. Ottawa: Carleton Univ. Press, 1996.

<sup>vi</sup> See, among others, the *Auditor General's Report* for 1998.

<sup>vii</sup> Ian Lee and Clem Hobbs, "Pink Slips and Running Shoes: The Liberal Government's Downsizing of the Public Service," in G. Swimmer, ed., *How Ottawa Spends, 1996-97*, op. cit.

<sup>viii</sup> Swimmer and Bach, 2000.

<sup>ix</sup> *Ibid.*

<sup>x</sup> See, among others, Jack Aubry, "Windfall 'A Long Time Coming' for Underpaid Workers," and Kathryn May, "Two Hundred Thousand Share in Landmark Award," both in *Ottawa Citizen*, July 30, 1998.

<sup>xi</sup> Swimmer and Bach, 2000.

<sup>xii</sup> Linda Duxbury, Lorraine Dyke, and Natalie Lam, *Building a World-Class Workforce: Career Development in the Federal Public Service*. Ottawa: Treasury Board of Canada Secretariat, 1999.

<sup>xiii</sup> PPF, *Labour-Management Relations in the Federal Public Service*. Ottawa: PPF, 1999



## Chapter V : Key Findings

To obtain a clear picture of experience with public service collective bargaining, the Committee sent out template questionnaires to the deputy ministers of all government departments, the heads of all separate agencies, and all certified bargaining agents. A number of individuals who had been involved with public service bargaining in its earlier years were interviewed, also using a template form. Finally, all bargaining agents and selected department heads were invited to make presentations before the Committee. In addition, a group brainstorming exercise was conducted in mid-January. This chapter summarizes the key findings from these various sources.

### 5.1 SUMMARY OF KEY QUESTIONNAIRE FINDINGS

Overall, departments' and agencies' experiences with public service collective bargaining has been more positive than that of bargaining agents.

Nonetheless, as shown below, there are many specific areas of agreement between departments or agencies and bargaining agents as to what is wrong with the collective bargaining system. Overall, there are more areas of agreement than disagreement between the two sides.

#### AREAS OF AGREEMENT

- Departments, agencies and bargaining agents agree that the bargaining process has deteriorated in recent years. Neither side said many positive things about the collective bargaining process, and both also agree that most of the major problems identified continue to exist.

- Both sides are pleased with the benefit packages, particularly family-related benefits that have resulted from public service collective bargaining.
- With respect to the bargaining process, both sides sharply criticized the government for its interference in the bargaining process through suspension of bargaining and arbitration, pay freezes, and the use of back-to-work legislation to end strikes. Both sides cited unilateral government actions of these types as key factors deteriorating labour-management relations in the federal public service.
- Both sides are greatly concerned about the narrow mandate that the Treasury Board provides to government negotiators, and about the inability of particular departments to fashion settlements appropriate for their needs. It should be noted that dealing with the Treasury Board is a particularly serious problem for the separate agencies.
- Both sides praised the work of the Pay Research Bureau and the National Joint Council.

#### AREAS OF DIFFERENCE

- The number of bargaining issues brought to the table and the complexity of bargaining units and classifications appear to be of concern only to employers.
- The scope of bargainable issues appears to be of concern only to bargaining agents.
- Exclusions from the bargaining process and designations are of some concern to

*Both sides praised the work of the Pay Research Bureau and the National Joint Council.*

*...the level of trust between the parties is low and has deteriorated in recent years.*

both sides, but of more concern to bargaining agents. In contrast, pay equity is of concern to both sides, but of more concern to departments and, especially, to agencies, who are disturbed at what they see as the inequitable application of recent pay equity settlements.

## 5.2 SUMMARY OF KEY TEMPLATE INTERVIEW FINDINGS

- There was general agreement that unilateral government action such as pay freezes, the suspension of bargaining and arbitration, back-to-work legislation, the narrow scope of bargainable and arbitrable issues, and the dissolution of the Pay Research Bureau had hurt the public service collective bargaining process.
- There was general agreement that the level of trust between the parties is low and has deteriorated in recent years.
- There was fairly general agreement that collective bargaining has deteriorated since 1980 and that the problems identified in the bargaining system over the years continue to exist.
- “Generational” factors appeared to be more significant than the role the respondent had held. Specifically, people whose major experience with labour-management relations was before 1980 were generally more positive about the public service collective bargaining experience than those whose major experience was in the 1990s.
- There was fairly general agreement that positive features of the bargaining

process included the actual interaction between the parties, the work of the NJC, and the role of collective bargaining in handling workforce adjustment and job security issues.

- Issues of concern only to management included the structure of the PSAC and that union’s apparent inability to ratify deals negotiated at the table.

## 5.3 PRESENT ACTIONS BY MANAGEMENT REPRESENTATIVES AND BARGAINING AGENTS

Four groups representing government managers and executives and ten bargaining agents made presentations to the Committee during the months of February and March 2000. Many of the points made by the bargaining agents were the same as those made earlier in written submissions. The issue of duplication did not arise in the case of the government management groups because the groups that made presentations were not the same as those that had prepared written submissions.

As in the case of the written submissions, there were areas of agreement and disagreement between management and the bargaining agents.

### AREAS OF AGREEMENT

- Both sides were concerned at the lack of trust between the parties.
- Both sides were concerned about the length and complexity of the negotiation process.
- Both sides felt that frequent government intervention had hindered the function-



ing of the public service collective bargaining system.

- Both sides were disturbed at government managers' lack of training in and understanding of labour-management relations, and at the low priority the government seems to be giving to training in this area.
- Representatives of both sides complained that government negotiators often do not understand the issues they are negotiating or the particular environments of individual departments.
- Representatives of both sides suggested that more use be made of mediation, informal problem-solving committees, and other forms of alternative dispute resolution.
- There was support on both sides for the re-establishment of the Pay Research Bureau or some equivalent independent and politically neutral source of economic data.
- Both sides appear to favour a more prominent role for the NJC.

#### AREAS OF DIS AGREEMENT

- The structure of the public service unions (particularly the PSAC) was of concern only to the management groups.
- The number of bargaining units and classifications was of concern only to management groups.
- Bargaining agents feel that the scope of bargaining should be expanded to include staffing, classifications, pensions, and other issues that are current-

ly excluded. Management groups do not agree, particularly in the case of staffing.

- Bargaining agents are concerned that the exclusion and designation processes are overly restrictive and are removing too many people from bargaining units.

#### 5.4 STUDY OF LABOUR-MANAGEMENT RELATIONS AT THE LOCAL LEVEL

With an eye to examining labour-management relations at the workplace level, the Advisory Committee asked the University of Quebec at Hull's Centre d'étude et de recherche sur le syndicalisme et le travail (CEREST) to develop and administer a questionnaire for local union and employer representatives. The purpose of the questionnaire was to gather information on the type of relations between these parties, the quality of the labour relations climate in their workplace, the consultation mechanisms used, the degree of trust in their relations, and their perception of the main problems affecting labour-management relations at the local level.

In all, 1,000 questionnaires were distributed between February 21 and March 20, 2000—500 to employer representatives and 500 to union representatives. Responses were received from 440 individuals, 257 representing the employer and 183 representing the unions. With more being received even as this report is being written, the results presented here should be considered tentative. Final results will be presented in the Advisory Committee's second report. Given the large number of questionnaires received to date, however, the trends and conclusions reported below seem unlikely to change.

Management respondents are somewhat in agreement with the statement that the climate of labour relations is positive at the local level, while labour respondents are neutral on this point. Management respondents were also more likely than union respondents to describe labour-management relations as positive.

Union and management respondents generally agreed that labour-management consultation means taking the opinion of the other party into consideration before making a decision. They also agreed that consultation should occur at every step in the decision-making process, including the beginning.

While it seems that the parties generally have an open attitude to consultation, based on their responses to the questionnaire, the reality of their relations is entirely different. The findings (see Table 5.1) suggest that union and management respondents have quite different perceptions as to the amount and quality of workplace consultation taking place. It can be concluded that management perceives that it consults but gives little consideration to the union's point of view. The union's perception appears to be that management does not consult but is content with sharing information. Whichever point of view one adopts, there does not appear to be much meaningful consulta-

tion in federal workplaces.

Another important finding has to do with grievances. In the view of union representatives, employees fear reprisal if they file a grievance. Management representatives do not appear to share this view.<sup>1</sup> As for other issues, both union and management representatives believe that poor communications, bad faith bargaining at the national level, the Universal Classification System, stress

**TABLE 5.1  
EMPLOYER AND UNION VIEWS ON THE EXTENT OF WORKPLACE  
CONSULTATION IN THE PUBLIC SERVICE**

Subject of Consultation	Employer <sup>2</sup> (Average score)	Union (Average score)
Staffing of positions	2.43	1.96
Distribution of duties	2.47	1.93
Physical and material layout	3.13	2.38
Application of the collective agreement	3.70	2.75
Program and service changes	3.00	2.11
Manpower training	2.93	2.28
Budget cuts	2.92	1.84
Restructuring of the work	3.25	2.11
Work descriptions	3.22	2.29

Source: Survey by CEREST (University of Quebec at Hull)

<sup>1</sup> The average score for union representatives on this question was 4.0 on a 5-point scale. For management representatives, the average score was 2.4.

<sup>2</sup> Respondents were required to choose one of the following 5 choices for each of the 9 subjects of consultation: 1 = No labour-management interaction; 2 = Information exchange; 3 = Consultation but little consideration given to the union's point of view in the decision; 4 = Consultation with average consideration given to the union's point of view in the decision; 5 = Consultation with a great deal of consideration given to the union's point of view in the decision.



related to constant change, and the perceived incompetence of the other party's representatives, are issues that have negative impacts on workplace relations. A lack of transparency, openness, respect or consideration were concerns identified primarily by union representatives.<sup>3</sup>

In general, these tentative survey results appear to confirm many of the findings reported earlier in this chapter. Of particular concern to the Advisory Committee are the apparent lack of consultation reported by both sides, and the lack of respect and consideration reported by union representatives.

### 5.5 BRAINSTORMING EXERCISE

As part of the input process, a group brainstorming exercise using the "Rice Storm" technique was conducted at the January 18, 2000 meeting of the National Joint Career Transition Committee in Ottawa. In all, about 40 participants were involved in the exercise, which was facilitated by Advisory Committee member Linda Duxbury, a professor in Carleton University's School of Business.

Participants, all of whom were either union officials or government managers actively involved in public service union-management relations, were asked to identify key issues around union-management relations in the federal public service. Each was given a number of index cards. On the cards they were asked to write: a) a challenge that the federal public service faces with respect to union-management relations; b) a reality of union-management relations; and c) a union-management problem faced by those in the federal public service.

The facilitator led a process of grouping like issues and naming the challenges, problems, and realities identified by the participants.

The exercise yielded findings quite similar to those generated from the questionnaires and template interviews. The single most important finding was a lack of trust on both sides. Some of the other major problems identified included the government's ability to use legislation to bypass the bargaining process, a lack of management commitment to joint processes, management's lack of respect for unions, a lack of resources leading to excessive workloads and inadequate training budgets, the Treasury Board's excessive control over labour relations, and a tradition of confrontation in public service labour-management relations.

Other problems included staffing, low morale, a lack of accountability, an inadequate scope for bargaining and dispute resolution, and union leaders' perceived inability to deliver on their promises. Some participants complained that, all too often, the unions and management tend to forget whom they represent and to focus on personal agendas rather than on the needs of their constituents.

While there were many more negative than positive comments overall, some participants noted that rank-and-file workers and management often agree on issues, contrary to the employer's official position on those issues. Others cited a long tradition of working together, effective working relationships on some committees, and good personal relationships between certain union and management representatives.

<sup>3</sup> The specific survey question asked respondents to identify the three or four key issues having the greatest negative impact on workplace labour-management relations.

*...in the first 10 to 15 years of public service collective bargaining, participants were generally positive about it. However, with the passage of time... the parties have become more pessimistic about the bargaining system's ability to resolve problems.*

## 5.6 CONCLUSION

The findings from our various data sources suggest that in the first 10 to 15 years of public service collective bargaining, participants were generally positive about it. However, with the passage of time and an increase in the extent of unilateral government interventions such as pay freezes and the suspension of bargaining and arbitration, the parties have become more pessimistic about the bargaining system's ability to resolve problems. The lack of trust associated with long periods of unilateral government action was probably the single most serious concern of union and management representatives alike.

The complexity of the current collective bargaining system was of particular con-

cern to management representatives, while union representatives were disturbed by what they perceived as management's lack of respect for them.

For unions, other issues such as the narrow scope of bargaining, the continuing high level of designations, the use of back-to-work legislation and the exclusion of many from the right to join unions remain major concerns. Management remains concerned with the length and complexity of the bargaining process and the structure of the PSAC. Both sides complained about the lack of an independent Pay Research Bureau and about the Treasury Board's inability to meet the needs of individual departments and occupational groups because of its "one size fits all" approach to collective bargaining.





## Chapter VI: Facing Up to the Problems

### 6.1 IDENTIFYING THE ISSUES

The Committee's findings, as reported in Chapter V, have revealed many problems with the public service labour-management relationship and collective bargaining system. In many cases, labour and management agree on those problems. In others, only one side sees the problem. In still others, both sides see a problem but for different reasons.

The issues discussed below are those we see as key. It is important to recognize that the issues are not mutually exclusive, that is, there may well be some overlap between particular issues. Nonetheless, the following discussion should at least be a useful starting point for further analysis.

### 6.2 THE GOVERNMENT'S DUAL ROLE

The concern most frequently cited—by both sides—is the degree of power the government possesses in its dual role as employer and legislator. This power, which is more than any private sector employer possesses, has been used on many occasions and has taken such varied forms as the suspension of bargaining and arbitration, pay freezes, and the passing of back-to-work legislation.

It is this imbalance of power which seems to be the root cause of much of the feeling of powerlessness and frustration described in Chapter V. A related finding is that frequent legislative intervention has eroded confidence in the system and trust between the parties. Another, equally serious consequence is that the players in the public service labour-management system can become so used to government inter-

vention that they lose the ability to work out problems for themselves.<sup>1</sup> The imbalance of power also politicizes the system and has led some bargaining agents to attempt various types of direct political action.

Frequent legislative intervention does have the positive consequence that politicians must take direct responsibility for the intervention themselves instead of handing it over to a labour relations board or some other form of administrative tribunal. But in our view, this potential benefit must be weighed against the many negative consequences of government intervention.

### 6.3 RESTRICTIVE LEGISLATIVE FRAMEWORK

This imbalance of power also seems to be reflected in the legislative framework within which federal public service collective bargaining is carried out. This framework, particularly in the PSSRA, is significantly more restrictive than that under which private sector bargaining is carried out, and more restrictive even than that found in most other public sector regimes.<sup>1</sup> The restrictive legislative framework was criticized both by management and union representatives, though more often by the latter.

#### 6.3.1 SCOPE OF BARGAINING

One serious limitation in the current legislative framework is the restriction it places on the scope of bargainable and arbitrable issues. As was noted in Chapter II,

*The concern most frequently cited—by both sides—is the degree of power the government possesses in its dual role as employer and legislator.*

<sup>1</sup> In the industrial relations literature, this phenomenon is commonly referred to as the "narcotic" effect.

*The PSSRA's restrictions on the scope of bargaining affect public service labour-management relations in a number of ways.*

the PSSRA does not allow bargaining over any issue, except for the appropriation of funds, that would require parliamentary legislation. Among the issues that cannot be bargained are: the criteria for appointments, promotions, lay-offs, job classifications, pensions, and technological and organizational change.

The PSSRA's restrictions on the scope of bargaining affect public service labour-management relations in a number of ways. First, they hinder the bargaining process because many of the issues of concern to employees can never be "put on the table" for discussion and resolution. Second, the restrictions themselves can become a source of increased conflict, causing the parties to waste time and energy arguing about what can and cannot be bargained rather than engaging in productive negotiations. The restrictions also reduce the ability of the bargaining system to work out problems between the parties, thereby pushing the "restricted" issues into other forums and contributing to the bargaining system's politicization.

### 6.3.2 DETERMINATION OF BARGAINING UNITS

Another important limitation of the public service bargaining system is the way in which bargaining units are determined. In the private sector, bargaining units normally are determined by labour-relations boards, generally with considerable input from the parties. In determining the appropriate bargaining unit, labour boards put primary emphasis on creating a "com-

munity of interest" likely to result in reasonably harmonious relations between the parties.<sup>ii</sup>

In contrast, under the PSSRA, as under most Canadian public service bargaining regimes, bargaining units are determined legislatively. The legislative determination of bargaining units often prevents an appropriate "community of interest" from emerging and may well make bargaining more difficult. The complexity of the federal public service bargaining unit structure was a concern raised by a number of management representatives.

### 6.3.3 REDRESS MECHANISMS

The question of which issues may be taken to arbitration or adjudication under public service labour legislation was of concern to both management and union representatives.

In some cases, an aggrieved employee has a number of different avenues of redress. Those whose grievances deal with disciplinary matters may go to their union or, alternatively, may carry the matter forward without reference to the union. On the other hand, for some issues such as performance appraisals there is no meaningful third-party redress mechanism. A federal government employee cannot grieve a negative performance appraisal through to adjudication because the issue of performance appraisals is not contained in federal government collective agreements. The reason performance appraisals are not contained in collective agreements is that



the issue of performance is one of those items prohibited from being arbitrated pursuant to Section 69 of the PSSRA.

The absence of meaningful and straightforward avenues of redress for some issues heightens frustration among employees and their unions. At the same time, the existence of multiple avenues of redress for other issues slows down the process of dispute resolution, tends to render the system unduly complex and difficult to understand, and leads to costs for the employer and the unions.

The PSSRA's ban on policy grievances is also of concern. Under the Act, only an individual worker may file a grievance and take it through to adjudication. The ban on anything other than individual grievances prevents issues of more general applicability from being heard in an appropriate and timely fashion. It can also lead to "system overload" in cases where a large number of employees decide to file grievances on the same issue at the same time.

#### 6.3.4. MANAGERIAL EXCLUSIONS

One final restriction is that of exclusions. This issue was of concern to both sides, but for different reasons. To the unions, the issue is one of fairness. In their view, the exclusion process results in too many employees being excluded from bargaining units. This in turn means that the individuals in question go unrepresented and the unions lose potential members and dues. For management, exclusions are a process issue. Their view is that the

process is unnecessarily long and cumbersome, and should therefore be simplified.

#### 6.4 DISPUTE RESOLUTION MECHANISMS

Shortly after it came into effect, the industrial-relations community praised as innovative the choice of procedures (COP) mechanism allowing the bargaining agent to choose between arbitration and the traditional conciliation-strike route. COP, which was copied in a number of Canadian and U.S. jurisdictions during the 1970s,<sup>iii</sup> drew praise from union and management respondents in written submissions to the Committee.

Throughout the 1990s, however, neither COP nor any other form of dispute resolution mechanism was allowed to operate, as the government suspended first collective bargaining, then interest arbitration. Our findings show that the lack of an effective dispute resolution mechanism is of concern to both management and union representatives, though it appears to be a more serious concern to the latter.

#### 6.5 ESSENTIAL SERVICES & DESIGNATION

Both sides cited as a concern the issue of providing essential services during public service strikes through the designation of certain workers or positions, but they did so for different reasons.

As was noted in Chapter V, the unions believe that too many workers are desig-

*Our findings show that the lack of an effective dispute resolution mechanism is of concern to both management and union representatives, though it appears to be a more serious concern to the latter.*

<sup>2</sup> In 1993, the PSSRA was amended to provide for the designation of positions rather than employees. As the PSSRB notes in Part III of its Main Estimates (p. 8), it had been anticipated that after the first round of bargaining under the amended process, the issue of designated employees for all subsequent rounds of bargaining would be limited to the review of a position which either had not been designated but which the employer feels should be designated, or which had been designated but which the bargaining agent felt should no longer be. In practice, however, this has not been the case. As the PSSRB notes, the amended provisions are “ambiguous, cumbersome and incomplete.” In fact, the Treasury Board and the PSAC consider the provisions so inadequate that they have found it necessary, with the PSSRB’s acquiescence, to come up with a process totally outside the provisions of the PSSRA. The process which the parties have come up with involves not only compiling a new list of designated positions, but also providing another notice to all employees, include those whose positions continue to be designated.

nated and that they have little say in the designation process. The unions’ frustration over the designation process has been heightened by the government’s recent suspension of interest arbitration. That has left bargaining units that have high designation levels—who would therefore find it difficult to mount an effective strike—subject to unilateral government determination of the terms and conditions of their employment. For their part, government managers believe that the designation process is cumbersome and takes too long.

The findings discussed in Chapter V suggest that this issue is a source of increased friction between the parties and will likely continue to be a significant irritant.<sup>2</sup>

### 6.6 LACK OF AN INDEPENDENT PAY RESEARCH BUREAU

As was noted in Chapter IV, both sides spoke favourably of the role played by the former Pay Research Bureau (PRB) as an independent and neutral source of economic data to be used in collective bargaining. The lack of a PRB or some similar, politically neutral mechanism has served to make salary bargaining more difficult. All parties appear to believe that restoring the PRB could improve the public service bargaining process and facilitate new alternative dispute resolution mechanisms, most of which require a mutually acceptable fact base as a starting point.

### 6.7 PROBLEMS OF THE SEPARATE AGENCIES

Bargaining agents and the agencies themselves both raised concerns about special conditions governing labour-management relations in the separate agencies. Bargaining agents were critical of the Treasury Board for not providing the agencies with a sufficiently broad negotiating mandate to allow collective bargaining to meet the agencies’ special needs. Another concern is that under the PSSRA,<sup>iv</sup> employees of separate agencies have fewer grounds for referring grievances to adjudication than do employees of departments. The agencies themselves were concerned about the degree of control exercised by the Treasury Board and the lack of flexibility for separate employers to determine their own negotiating mandates.

Pay equity has been a particular problem for the separate agencies, which are not covered by the agreements reached between the employer and the PSAC or the PIPSC. One agency complained that since the pay equity agreement increased the salaries of clerks and secretaries in the federal government, it has found it difficult to recruit and retain such workers in the Ottawa area.

### 6.8 LACK OF TRUST

In submissions to the Committee, both sides referred to a lack of trust between the



parties. This lack of trust seems to have resulted in large measure from the restrictiveness of the current legislative regime and the federal government's frequent interventions in that regime. The lack of trust has made it harder for the parties to work out problems in the workplace and at the bargaining table. It has also contributed to the politicization of the system.

One reason for the lack of trust may be a lack of labour relations training among executives and managers, and a general lack of understanding of the difference between a labour-management relations approach and a human-resource-management approach to dealing with workplace problems. Our findings suggest that this failure to understand the distinction between the two approaches has sometimes led the government to marginalize

the unions or to bypass them, dealing instead with employees individually, even on matters covered by collective agreements.

## 6.9 CONCLUSION

This report has pointed out some of the most significant manifestations of a power imbalance between the government and the unions representing its employees. We invite feedback from readers as input to our second report, where we will propose solutions for the problems outlined here, and for the issues identified in our deliberations. It is our view that unless these problems are addressed, the federal public service labour-management-relations system as currently constituted will likely not be sustainable in the twenty-first century.

*We invite feedback from readers as input to our second report, where we will propose solutions for the problems outlined here...*

<sup>i</sup> Swimmer, 1995, and John Fryer, "Provincial Public Sector Labour Relations," in G. Swimmer and M. Thompson, eds., *Public Sector Collective Bargaining in Canada*, op. cit.

<sup>ii</sup> Robert Rogow, "The Structure of Collective Bargaining in Canada," in A. Sethi, Ed., *Collective Bargaining in Canada*. Scarborough: Nelson, 1989.

<sup>iii</sup> Allen Ponak and Mark Thompson, "Public Sector Collective Bargaining," in J. Anderson, M. Gunderson, and A. Ponak (eds.), *Union-Management Relations in Canada*. 2nd edition. Don Mills: Addison-Wesley, 1989.

<sup>iv</sup> See Sec. 92(1) of the *PSSRA* for further details on this point.





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## Appendix 1: Details of Key Findings

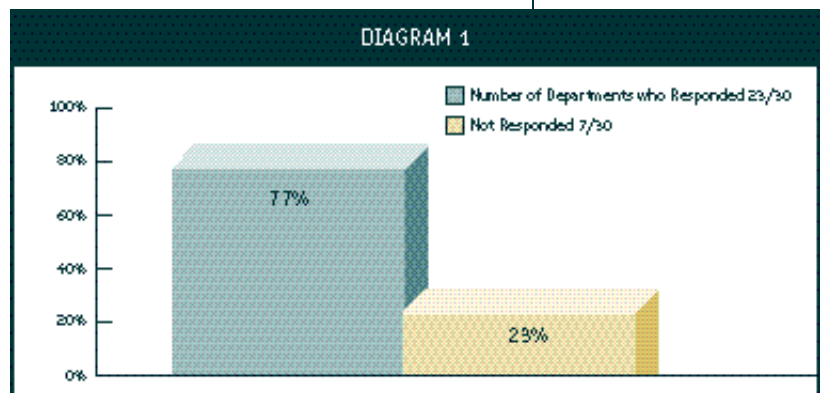
The purpose of this appendix is to offer a more detailed look at the findings summarized in Chapter V. In this appendix, we discuss the results of our department, agency, and bargaining agent questionnaires. We also consider the results of 12 template interviews of individuals with significant federal public service collective bargaining experience.

### DEPARTMENT QUESTIONNAIRES

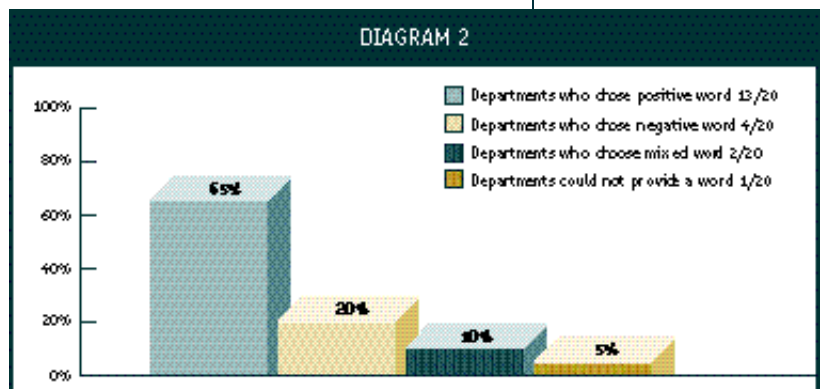
Of 30 department heads to whom questionnaires were sent, 23 responded, for a response rate of 77% (see Diagram 1). Overall, it would appear that the departments' experience with collective bargaining has been fairly positive—certainly much more so than that of the bargaining agents. But it should also be noted that the experience has been more negative over the past decade and that a number of problems continue to exist.

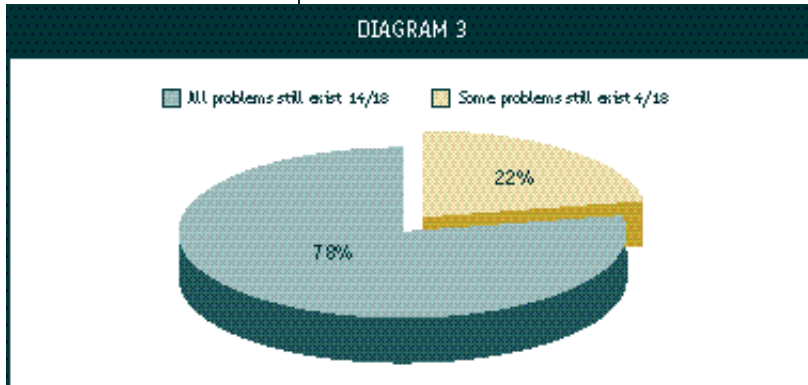
Asked for an overall evaluation of how well public service collective bargaining has worked, ten department heads were generally positive and four were generally negative, while seven had a mixed response or were not sure, and two noted that no collective bargaining as such was conducted in their departments. But eleven of the department heads, including six of those whose view was positive overall, said that the experience had worsened in recent years, owing to suspension of bargaining, government-imposed wage freezes, several major strikes, and back-to-work legislation. "Unilateral government action has eroded confidence in the system," replied one deputy minister, whose view appeared to reflect those of many of his colleagues on this point.

Asked to use a single word or phrase to describe public service labour relations during the period of their departments' involvement, most department heads were again relatively positive. Thirteen chose a



positive word or phrase compared to only four who chose a negative one (see Diagram 2). The response of two department heads was mixed, and two felt they could not summarize the collective bargaining experience in a single word. Two department heads did not answer the question. Those who felt positive about the bargaining experience described it as "generally good," "excellent," "professional," "open and frank," or characterized by a "partnership approach." Those whose experiences had been more negative





described the bargaining experience as “challenging,” “frustrating,” or “tense and reactive.”

Asked what had worked best about the collective bargaining system, three praised the PSSRA’s dispute resolution provisions, while two spoke highly of the workforce adjustment process under Program Review. Also drawing praise were the work of the Pay Research Bureau and the continuing cooperation between the parties at the National Joint Council (NJC).

Overall, department heads had more to say about the negative than about the positive aspects of the collective bargaining system. The suspension of bargaining, pay equity, salary freezes and financial restraints and the government’s repeated use of back-to-work legislation were all problems cited by three or more department heads. Three department heads also complained about the number of issues brought to the bargaining table, one suggesting that the number be limited statutorily to ten. Three also complained about the existence of too many different bargaining agents and Treasury Board’s failure to give government negotiators a broad enough mandate to allow them to do their job effectively.

Other identified problems included the length of the bargaining process and the suspension of arbitration rights. One deputy minister complained that there was not enough focus on departments’ particular needs. A related criticism was that it is difficult to convince managers that they have a say in the bargaining process “because they think everything is predetermined.”

Of department heads who responded directly to the question about continuing problems, fourteen said that the problems they had identified still exist; four said that some of the problems still exist (see Diagram 3).

When asked for additional comments, respondents made a number of calls for the introduction of alternative-dispute-resolution and interest-based-bargaining systems. Several seemed concerned by the rigidity of the current bargaining system. One deputy minister complained of the existence of too many avenues for recourse for employees with problems, while another insisted that issues such as staffing, classification, and pensions should remain non-negotiable.

**AGENCY QUESTIONNAIRES**

In all, 13 of 25 separate agencies responded to the questionnaire, for a response rate of 52% (see Diagram 4). Two of the agencies responding do not engage in collective bargaining and so could not provide substantive responses.

In general, agency responses were fairly similar to those of departments, in that more characterized their overall bargain-

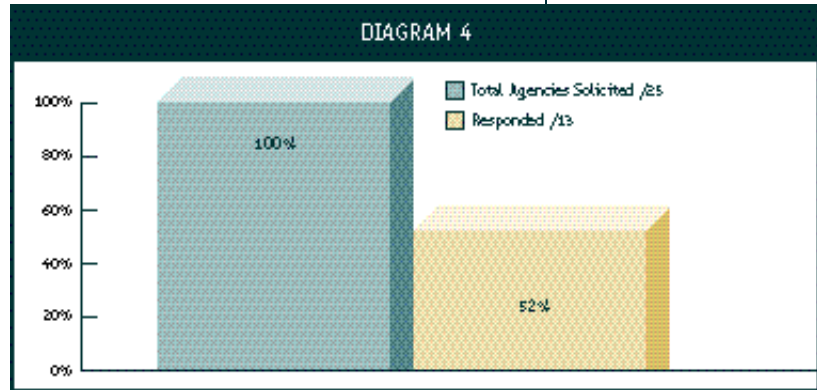


ing experience as positive than negative. It should be noted, however, that lack of an adequate negotiating mandate and conflict with Treasury Board are problems which appear to be more severe for separate agencies than for departments.

Of the eleven agencies with significant bargaining experience to report, six were generally positive and two were generally negative, while two others were mixed. It was not possible to determine the eleventh agency's feelings about the experience from its response. Three of the six generally positive respondents noted a recent deterioration, one attributing it specifically to the Treasury Board's process for separate employers.

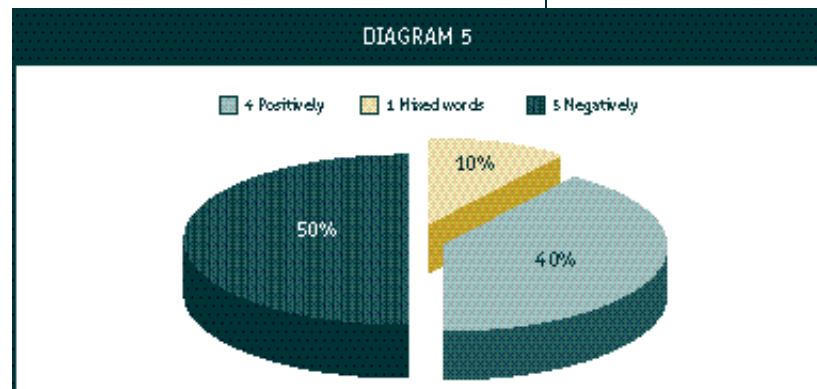
Ten of the agencies that engage in collective bargaining provided a word or phrase summarizing their collective bargaining experience. The four positive respondents used such words as "realistic and reasonable," "highly collaborative," and "challenging yet reasonably positive." The five negative ones spoke of the process as "negative," "restrictive," "difficult," and "frustrating" (see Diagram 5 ). The tenth agency's response might best be characterized as mixed.

Asked what they liked best about public service collective bargaining, one agency head said "everything," another praised the positive and constructive relationship with the union, and a third cited the "open and honest exchange of views at the table." Mediation, conciliation, and the role of the NJC and PSSRB also drew favourable comment, as did "the research and legwork undertaken by Treasury Board."



Like the departments, the agencies made more negative than positive comments overall. The most serious problem, identified by six of the eleven agencies responding to this question, was the relationship between agencies and Treasury Board. Here, one agency summed things up by suggesting that agencies' collective bargaining "raises the issue of establishment. Are separate employers truly independent in the collective bargaining process or is Treasury Board control so great that they are really part of the TB establishment?"

Five other agencies complained, to varying degrees and in different ways, about the lack of room for manoeuvre given separate agencies in negotiation. The most



critical of them described the relationship with TB as adversarial—often more so than its relationship with the union.

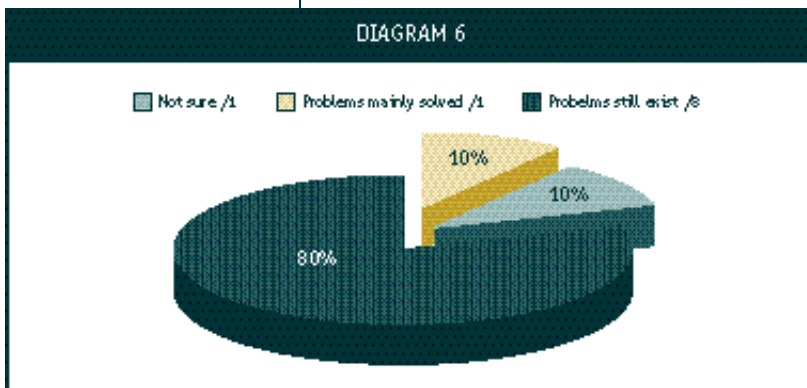
Four agencies were critical of government intervention in the bargaining system through such actions as suspension of bargaining and arbitration, salary freezes, and the issuing of back-to-work legislation. On other issues, three agencies complained about various aspects of pay equity and about what they see as an overly complex bargaining unit and classification system. Other issues that drew negative comments included the length of the bargaining process, the introduction of alternative modes of service delivery, the effects of government reorganization and program review, the PSSRA's excessive complexity, and the miscommunication of information by unions to employees during the bargaining process.

ments again pointed to the difficult relationship between agencies and Treasury Board, one agency head noting that "Separate employers are faced with double the obstacles when it comes to collective bargaining," since they must negotiate with both Treasury Board and the bargaining agent. Another noted that the recent pay equity settlement did not extend to separate employers, with the result that agency employees doing the same work as department employees are receiving "unfair and inconsistent treatment." Yet another suggested the creation of an employers' council to address the issue of how strategic collective bargaining objectives should be established in the future for all public service organizations.

### QUESTIONNAIRES FROM BARGAINING AGENTS

Of 17 bargaining agents, 12 (71%) responded to the questionnaire (see Diagram 7). In general, the bargaining agents' responses were far more negative than those from departments or separate agencies. Few thought that the bargaining process has worked at all well, while none provided a positive word or phrase to describe the experience. A criticism common to most of the bargaining agents was that unilateral government intervention in the collective bargaining system had led to cynicism, frustration, and a loss of morale and trust.

None of the ten bargaining agents responding to the question was willing to characterize the overall bargaining experience as positive.<sup>1</sup> The Federal Government Dockyards Trades and



When asked whether the problems identified in the previous question still applied, eight agency heads said they did, one said that for the most part the problems have been solved, and another was not sure (see Diagram 6). The eleventh agency did not respond to this question. Additional com-

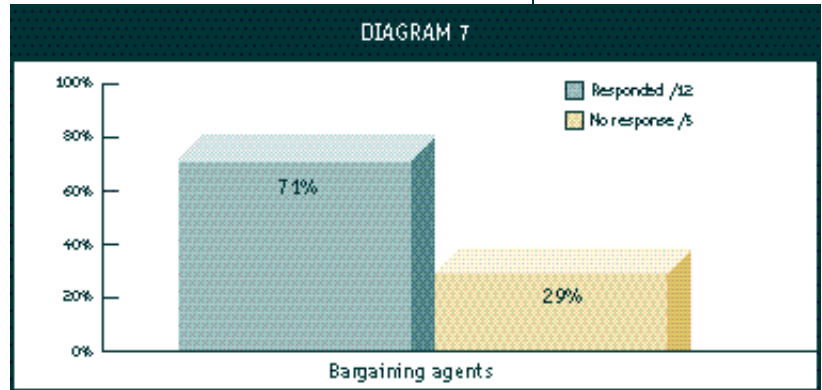
<sup>1</sup> Note that not all bargaining agents responding to the questionnaire answered every question.



Labour Council of Esquimalt characterized the process as “collective begging,” while the Aircraft Operations Group Association spoke of a “continual fight to be recognized for our worth.” The Social Science Employees Association (SSEA) said the system has worked poorly, and IBEW Local 2228 said it has not worked at all in the past ten years. For its part, the PIPSC allowed as how the benefits of a collective bargaining relationship have materialized—on the few occasions when bargaining rights have been allowed to apply.

Asked to describe their experience with public service labour-management relations in a single word or phrase, nine bargaining agents were totally negative while one response was mixed (see Diagram 8). The most positive response was that of the Canadian Merchant Service Guild, which said that labour-management relations had been good with respect to consultation and the grievance process, but totally inadequate with respect to collective bargaining. Other bargaining agents were much more negative, four describing themselves as “frustrated” and one saying it felt “victimized and discriminated against” by the Treasury Board. The Federal Government Dockyard Chargehands Association noted that while many words and phrases come to mind, none are printable.

Asked to say what had worked best about public service collective bargaining, four of the bargaining agents responding to the question either did not answer or had nothing positive to say about the process. PSAC said it had been able to negotiate a Master Agreement to the benefit of all when left to its own devices, but otherwise did not identify any specific positive

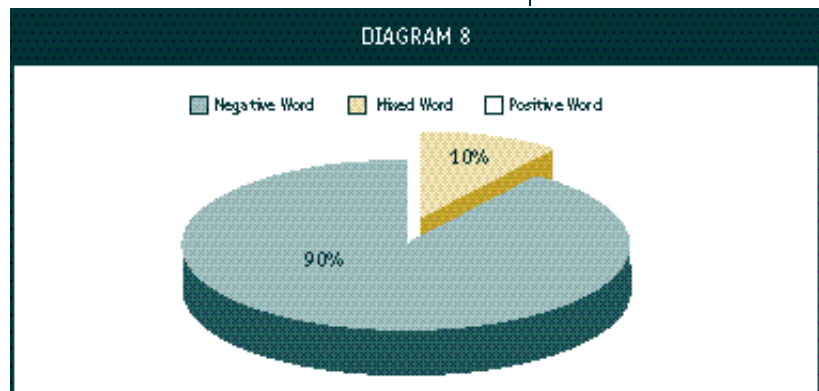


aspect of the process. Likewise, the PIPSC said it had found no specific features of the process that stood out as having worked best, though it cited the negotiation of complex family benefit and career development issues as a positive achievement of collective bargaining.

Arbitration was the aspect of the collective bargaining system that drew the most praise, being cited by four of the eleven respondents.<sup>2</sup> The work of the NJC was cited by two, the PAFSO praising its approach as being “one of ‘problem solving,’ and less adversarial than collective bargaining.”

In general, the bargaining agents had far more to say about the problems they had

<sup>2</sup> One bargaining agent did not respond to this question.



had with collective bargaining than about its benefits. The government came in for harsh criticism for its tendency toward unilateral legislative action, in the form of suspension of bargaining and arbitration rights, salary freezes, and back-to-work legislation. The PSAC appeared to speak for most of the unions when it said: “Collective bargaining must always be conducted in an atmosphere where the threat of having your rights removed is a constant consideration.” The designation process, removal of the Pay Research Bureau, and the inability to negotiate such issues as classification, staffing, and pensions also drew sharp criticism from the bargaining agents.

Other unions complained about a “lack of meaningful dialogue at the table” and a lack of communication with senior decision makers in Treasury Board. The Canadian Association of Professional Radio Operators was upset by the government’s “theft” of the public service pension surplus, inequitable compensation for certain groups, and an apparent lack of concern for groups in which all members are designated.

Asked whether the problems identified above continue to exist, all eleven bargaining agents responding to the question said ‘yes,’ although two of them noted that there have recently been a few encouraging signs coming from the Treasury Board. The PIPSC suggested that the problems may be becoming more severe as the government creates more separate employers, prepares to introduce UCS, and suspends arbitration until 2001. The PIPSC concludes that “These problems are mostly systemic, and will continue to exist until there are statutory changes.”

Additional comments included a suggestion from the Canadian Merchant Service Guild that current public service legislation be scrapped and replaced with something like the *Canada Labour Code*. Two unions, including the Merchant Service Guild, suggested that the National Joint Council be given a larger role in the public service collective bargaining process. The PIPSC referred to the additional problems faced by separate employers, and the Dockyard Chargehands Association said that if the federal government expects to be seen as an employer of choice, it should start acting like one, and not pass legislation in response to difficult situations.

### TEMPLATE INTERVIEW RESULTS

The Committee also conducted 12 template interviews with individuals with substantial experience in public service collective bargaining (see Appendix 6). Those interviewed included five whose current or most recent positions had been as management representatives, two whose most recent positions had been as union representatives,<sup>3</sup> and five whose current or most recent experience was as third-party neutrals.

Those “present at the creation” generally see public service bargaining as having worked fairly well for its first 10 or 12 years, deteriorating from the late 1970s onward as the result of wage controls and other government interventions in the process. Those still involved or whose heaviest involvement was in the 1990s suggest that the system has worked poorly or not at all, one saying that in his experience perhaps 5% of the issues were resolved through collective bargaining.

<sup>3</sup> Both union representatives interviewed are retired.





When interviewees were asked to sum up their experience with public service bargaining in a word or phrase, the responses were mixed. A former government manager described the process as “businesslike,” while a former union official described it as “constructive—until disillusionment set in.” Those who were more negative referred to the process as ‘difficult,’ “strained,” “conflictual,” or lacking in trust.

Asked what had worked best about public service bargaining, four cited the bargaining experience itself and the mutual respect shown on both sides, at least most of the time. The same number cited the work done by the National Joint Council on service-wide issues. Another said that things other than salaries and allowances have worked best, particularly “whatever has transpired outside the open, visible, collective bargaining milieu—outside the public eye.”

Like the questionnaire respondents, those interviewed had many more negative than positive things to say about public service bargaining. Unilateral government actions such as the suspension of bargaining, pay freezes, and back-to-work legislation were a serious problem for seven of the twelve interviewees. Three cited the narrow scope of arbitrable issues, the dissolution of the Pay Research Bureau, and the structure of the union side (especially the PSAC). There was also significant concern about the PSAC’s decision-making process.

Other concerns included the designation process, the narrow scope of bargainable issues, the general imbalance of power between the parties, the structure of the Treasury Board as an employer, and the lack of meaningful union-management interaction at the workplace level. One

management interviewee suggested that the areas of management authority are often unclear. Sometimes, he said, it is not clear whether a problem such as harassment should be resolved by the department, by the government as a whole, by the Public Service Staff Relations Board, or by an external body such as the Canadian Human Rights Commission.

Asked whether the problems continued to exist, eleven of the twelve interviewees said they did, while the twelfth said that some of the problems had been solved. One management representative said that the problems seemed to be getting worse, while another said, “They wouldn’t have asked you to do this review if the problems weren’t still here.”

The additional comments revealed a broad range of concerns and some interesting suggestions for how to go about addressing them. One management representative said he is not convinced that there is any future in bargaining public service salaries, while a current neutral said that, given government’s continuing abuse of the designation process, the right to strike appears to be of little value.

Two of the neutrals were critical of the Treasury Board for its severe downsizing of its negotiation branch and for the inadequate training of those who remained after the downsizing. One of the two expressed concern that the people bargaining in the field have no statutory authority, while two of the former union officials bemoaned the loss of a bargaining system formerly based on trust and close personal relationships and mutual respect between union and management negotiators. A management representative warned, “Until we stop beating up on our people, we’re going to have troubles.”

## Appendix 2: Departments and Agencies Consulted

### DEPARTMENTS

Agriculture and Agri-Food Canada  
 Atlantic Canada Opportunities Agency  
 Canada Economic Development  
 Canadian Centre for Management Development  
 Canadian Heritage  
 Canadian International Development Agency  
 Citizenship and Immigration Canada  
 Department of Finance Canada  
 Department of Foreign Affairs and International Trade  
 Department of Indian and Northern Affairs  
 Department of Justice Canada  
 Environment Canada  
 Fisheries and Oceans  
 Health Canada  
 Human Resources Development Canada  
 Industry Canada  
 National Defence

Natural Resources Canada  
 Privy Council Office  
 Public Service Commission of Canada  
 Public Works and Government Services Canada  
 Solicitor General of Canada  
 Statistics Canada  
 Transport Canada  
 Treasury Board of Canada Secretariat  
 Veterans Affairs Canada  
 Western Economic Diversification Canada

### AGENCIES

Atomic Energy Control Board  
 Canada Customs and Revenue Agency  
 Canada Investment and Savings  
 Canadian Food Inspection Agency  
 Canadian Polar Commission  
 Canadian Security Intelligence Service

Indian Oil and Gas Canada  
 Medical Research Council  
 National Capital Commission  
 National Energy Board  
 National Film Board of Canada  
 National Research Council Canada  
 National Round Table on the Environment and the Economy  
 Natural Sciences and Engineering Research Council of Canada  
 Northern Pipeline Agency Canada  
 Office of the Auditor General of Canada  
 Office of the Communications Security Establishment Commissioner  
 Office of the Correctional Investigator  
 Office of the Superintendent of Financial Institutions Canada  
 Parks Canada Agency  
 Public Service Staff Relations Board  
 Security Intelligence Review Committee  
 Social Sciences and Humanities Research Council of Canada



## Appendix 3: Bargaining Agents Consulted

Aircraft Operations Group Association  
Association of Public Service Financial Administrators  
Canadian Air Traffic Control Association  
Canadian Association of Professional Radio Operators  
Canadian Merchant Service Guild  
Canadian Military Colleges Faculty Association  
Canadian Union of Professional and Technical Employees  
Council of Graphic Arts Unions of the Public Service of Canada  
Federal Government Dockyard Chargehands Association  
Federal Government Dockyard Trades and Labour Council (East)  
Federal Government Dockyard Trades and Labour Council (West)  
Local 2228, International Brotherhood of Electrical Workers  
Professional Association of Foreign Service Officers  
Professional Institute of the Public Service of Canada  
Public Service Alliance of Canada  
Research Council Employees' Association  
The Social Science Employees Association

# Appendix 4: Hearings with Management Representatives

## ASSISTANT DEPUTY MINISTERS AND DIRECTORS GENERAL, HUMAN RESOURCES

- Cardinal, Michel, Public Works and Government Services Canada
- Gosselin, Denis, Secretary to HR Council
- Pelletier, Jacques, Correctional Services Canada
- Plante, Monique, Human Resources Development Canada
- Roberts, Richard, Canadian Radio-Television and Telecommunications Commission
- Siegel, Shirley, Canadian Food Inspection Agency

## DIRECTORS OF STAFF RELATIONS

- Désilets, Robert, Correctional Services Canada
- Fennessy, Barry, Human Resources Development Canada
- Lahay, Audrey, Agriculture and Agri-Food Canada
- Leduc, Janet, Fisheries and Oceans Canada
- Rumstein, Ilan, Health Canada
- Sullivan, Rick, National Defence

## APEX REPRESENT ATIVES

- Bradet, Lucien, Industry Canada
- Emond, Bob, National Defence
- Frith, Rosaline, Citizenship and Immigration Canada
- Graham, Andrew, Agriculture and Agri-Food Canada (APEX's President)
- Maidens, Warren, Public Works and Government Services Canada

## TREASURY BOARD OFFICIALS

- Berlin, Frank
- Duggan, Dennis
- Gagnon, Marc
- Gillespie, Gray
- Graham, Don
- Harder, V. Peter
- Langevin, Daniel
- Laurendeau, Hélène
- Nannini, Richard
- Wilder Patterson, Kathryn



## Appendix 5: Hearings with Bargaining Agents

Association of Public Service Financial Administrators  
Canadian Air Traffic Control Association  
Canadian Association of Professional Radio Operators  
Canadian Union of Professional and Technical Employees  
Federal Government Dockyard Trades and Labour Council (West)  
Local 2228, International Brotherhood of Electrical Workers  
Professional Association of Foreign Service Officers  
Professional Institute of the Public Service of Canada  
Public Service Alliance of Canada  
The Social Science Employees Association

## Appendix 6: Template Interviewees

Template interviews were conducted with the following persons between January 2, 2000 and March 31, 2000.

Barnes, L.W.C.S.	Former President	Professional Institute of the Public Service of Canada
Bernstein, Norman (deceased)	Director, Mediation Services	Public Service Staff Relations Board
Davidge, Des	Former General Secretary	National Joint Council
Dodge, David	Deputy Minister Former Deputy Minister	Health Canada Department of Finance Canada
Edwards, Claude	Former National President	Public Service Alliance of Canada
Flcury, Jean-Guy	Assistant Secretary to Cabinet (MPSP) Former Deputy Secretary Human Resources Branch	Privy Council Office Treasury Board of Canada Secretariat
Giroux, Bob	Former Secretary	Treasury Board of Canada Secretariat
Jolicoeur, Alain	Deputy Commissioner Former Chief Human Resources Officer	Canada Customs and Revenue Agency Treasury Board of Canada Secretariat
Lalonde, Fernand	General Secretary	National Joint Council
Quail, Ranald	Deputy Minister	Public Works and Government Services Canada
Tarte, Yvon	Chairperson	Public Service Staff Relations Board
Tenace, Lou	Former Vice-Chairperson Former Deputy Secretary Labour Relations	Public Service Staff Relations Board Treasury Board of Canada Secretariat



## Appendix 7: Bargaining Agent Membership

	Approximate Number of Employees in Bargaining Units
Aircraft Operations Group Association (AOGA)	423
Association of Public Service Financial Administrators (APSFA)	2,071
Canadian Air Traffic Control Association (CATCA)	11
Canadian Association of Professional Radio Operators (CAPRO)	338
Canadian Merchant Service Guild (CMSG)	823
Canadian Military Colleges Faculty Association (CMCFA)	124
Canadian Union of Professional and Technical Employees (CUPTÉ)	854
Council of Graphic Arts Unions of the Public Service of Canada (CGAU)	111
Federal Government Dockyard Chargehands Association (FGDCA)	70
Federal Government Dockyard Trades and Labour Council (West) (FGDTLC)	530
Federal Government Dockyard, Trades and Labour Council (East) (FGDTLC)	610
International Brotherhood of Electrical Workers (IBEW)	1,126
Professional Association of Foreign Service Officers (PAFSO)	998
Professional Institute of the Public Service of Canada (PIPSC)	32,539
Public Service Alliance of Canada (PSAC)	122,248
Research Council Employees' Association (RCEA)	1,824
Social Science Employees Association (SSEA)	5,874
<b>Total</b>	<b>170,574</b>

Source: PSSRB 32nd Annual Report 1998-99/Data from TB at March 31, 1999

# Appendix 8: Committee Members and Staff

<b>Fryer, John L. (Chair)</b>	<b>MEMBERS:</b>	<b>COMMITTEE SECRETARIAT</b>
	Baker, Ercel	Driscoll, Penelope
	Bean, Daryl T.	Desrochers, Francine
	Bouchard, Jean-Claude	Fawcett, Deborah (University of Victoria)
	Duxbury, Linda	Peirce, Jon
	Hynna, Martha	
	Lewis, Dave	
	MacLean, Catherine	
	Paquet, Renaud	
	Thompson, Mark	