LABOUR RELATIONS IN THE PUBLIC SERVICE

DEVELOPING COUNTRIES

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PREFACE

In 1985 and 1986 the ILO carried out a series of studies on labour relations in the public service in selected developing countries. The studies covered the following 13 countries: Algeria, Argentina, Côte d'Ivoire, India, Malaysia, Mexico, Nigeria, Peru, the Philippines, Sri Lanka, the United Republic of Tanzania, Thailand and Venezuela. This research project formed the second part of an ILO programme aimed at identifying the recent trends in public service labour relations and analysing the main problems confronting the parties today in both industrialised and developing countries. The research project on industrialised market economy countries, which formed the first part of the programme, led to the publication in 1987 by the ILO of a comparative survey of seven industrialised market economy countries (Tiziano Treu et al.: Public service labour relations: Recent trends and future prospects). The present study is a companion volume dealing with developing countries.

For considerations of length, we have had to select six of the 13 country studies for inclusion in this book. In making this selection, we were primarily concerned to ensure an appropriate geographical balance. However, we have also taken into account the degree of development of the public service labour relations systems involved.

The country studies are preceded by an introductory chapter which seeks to place them in a wider perspective by providing an overview of the variety of systems and practices of public service labour relations in the developing world as a whole. Muneto Ozaki, of the Labour Law and Labour Relations Branch of the ILO, who prepared this chapter, was responsible for supervising the execution of the project as a whole.

CONTENTS

CHAPTER I

LABOUR RELATIONS IN THE PUBLIC SERVICE OF DEVELOPING COUNTRIES

by Muneto Ozaki*

Introduction

The systems of labour relations operating today in the public service of developing countries are extremely diverse. Indeed, the variety of systems is so wide and trends often so divergent that it appears very difficult, if not impossible, to draw any general conclusions. At one end of the spectrum, there are those systems in which public servants are totally denied the right to organise, and their pay and conditions of employment are determined unilaterally by the government without any consultation with them. At the other end of the spectrum, there are systems in which public servants are treated practically on an equal footing with private sector workers. Between these two extremes, there is a great variety of intermediate systems, such as those which provide for machinery for joint consultation between public servants and the government, in the absence of the recognition of the former's right to bargain collectively, or those which recognise the right of public servants to take industrial action while withholding the recognition of bargaining rights.

Such diversity is to be expected in so heterogeneous a group of countries - countries from three different geographical regions with widely varying political and economic systems, at very different stages of national and economic development, and with a wide spectrum of cultural traditions. This contrasts with the situation in certain more coherent groups of countries such as the industrialised market economy countries (IMECs). In spite of significant diversities in many respects, it is possible to discern trends and problems that are common to most of them, such as growing militancy among public servants, a growing number of disputes, the spread of collective bargaining or other forms of participation by public servants in the process of determining their employment conditions in the 1960s and 1970s, and increasing government efforts to reduce the scope of such participation and collective bargaining in the 1980s.[1]

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This chapter seeks to provide an overview of the variety of systems and practices in public service labour relations in the developing world. It also serves as an introduction to the six national monographs which follow and places them in a wider setting. In fact, these monographs are not truly representative of public service labour relations systems in the developing world, since, although an effort has been made to ensure some geographic balance, the countries chosen represent on the whole the more sophisticated or advanced labour relations systems. As a result, the picture they present is somewhat brighter (in terms of the degree of participation by public servants in the determination of their employment conditions) than that presented in this chapter.

The present chapter, like the national chapters, deals mainly with problems related to employees in national and local administration, including education and health services, and subsidiarily with postal services, which are administered as public corporations in a number of countries. It does not deal with the problems related to what are commonly referred to as "public enterprises", i.e. the industrial and commercial undertakings owned and operated by the government, including the railways.

Whenever possible, this chapter attempts to highlight the contrasts between the practices prevailing in IMECs and those in the developing world. However, given the extreme diversity in the latter, it is in many cases difficult if not impossible to make such contrasts. In such cases, all that the author has been able to do is contrast the characteristic features of IMECs with those notable in a significant number of developing countries.

This chapter will first briefly note trends in employment and employment conditions in the public service of developing countries, and then proceed to the examination of the main problem areas of public service labour relations, i.e. public servants' organisations (including the right of public servants to organise), methods of determining pay and employment conditions, and labour disputes and their settlement in the public service.

1. Employment and employment conditions in the public service

As in IMECs, employment in the public service in most developing countries appears to have grown constantly over the last few decades. It seems to have been less affected by the current recession than employment in the private sector. Most statistics quoted in this book seem to indicate the continuation of this growth until the most recent year for which statistics are available.

The developing world and the IMECs also appear to share the common trend towards the expansion of employment in education, and in health and welfare services in the 1960s and 1970s. The increase in the number of teachers has been particularly rapid in many developing countries that acceded to independence during this period as a result of government policies placing emphasis on the rapid implementation of compulsory basic schooling.

However, the governments in many developing countries have recently been confronted by worsening trade imbalances and serious deficits in government budgets. Consequently, they have been trying to reduce the size of the public service, often under pressures exerted by the World Bank and the International Monetary Fund in the form of conditions for loans imposed on borrowing governments. The chapter on the United Republic of Tanzania refers to this problem. Although the intervention of these finance agencies in the management of the public service is not unknown in IMECs, their influence on public service employment has often been far greater in developing countries.

So far as employment conditions in the public service are concerned, a notable feature of recent trends in developing countries has been the sharp decline in real wages. The chapter on Peru shows that, between 1980 and 1985, there was a 50 per cent decrease in real pay in the country's public service. In IMECs also, public service pay has recently been declining in comparison with private sector pay, but the extent of the deterioration has been far greater in many developing countries. This is due mainly to the growing financial difficulties confronting governments in developing countries, but also in part to the lack of effective means of participation by public servants in the determination of their employment conditions, as mentioned later.

2. Representation of public servants in labour relations

There is a great diversity among developing countries in the extent to which the right of public servants to organise themselves for the defence of their occupational interests is recognised by the government. Among IMECs, although the denial of this right to particular groups of public servants still sometimes causes controversies and disputes (e.g. fire-fighting staff in Japan and the staff of the Government Communications Headquarters (GCHQ) in the United Kingdom), the right of the bulk of public servants to organise in trade unions has been firmly established and does not seem to be seriously questioned.

On the other hand, a significant number of countries in the developing world still deny this right to their public servants. This is true, for example, of Brazil and such Asian countries as

Indonesia, the Republic of Korea, Nepal, Pakistan and Thailand, as well as most Arab countries. There are also a number of countries where martial laws or other emergency laws have suspended all trade union activity both in the public and the private sectors for several years in the course of the last few decades.

It is worth recalling in this respect that the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), guarantees the basic right to form and join organisations of their own choosing to all workers "without distinction whatsoever", including all public servants, whatever the nature of their functions, the only limitations permitted by the Convention concerning members of the armed forces and the police.

In some developing countries, in the absence of recognition of the right to form trade unions, public servants have formed "associations", "staff associations" or "civil associations" instead of trade unions. These associations are formed under societies laws or civil laws, or outside any regulation. The extent to which such associations can act in the defence of their members' occupational interests varies widely. Associations set up in many sectors of the Indian public service without formal registration under the Indian Trade Union Act of 1926 appear to carry out activities comparable to those of trade unions and to be recognised by the Government for the purpose of discussing employment conditions. In Bangladesh also, since the lifting of martial law in 1986, associations of public servants appear to be allowed to engage in labour relations activities. In Ecuador, in spite of the explicit denial by law of the right of (white-collar) public servants to form trade unions, the statutes of the National Confederation of Public Servants in Ecuador, which were approved by the Government in 1985, contain references to its labour relations functions.

In some other countries, however, associations of public servants are denied the right to represent their members' occupational interests; they are recognised only as welfare associations. A case in point is the Kenya Civil Servants' Welfare Association, created in 1985 after the Government successively cancelled the registration of the Union of Kenya Civil Servants in 1980 and its succcessor, the Kenya Civil Servants' Association in 1983.[2] In some others, even associations are not allowed. In Nepal, for example, the Government reportedly refused the registration of the Nepal National Teachers' Association which had been founded in 1979, and suppressed its first national conference in 1984.[3]

On the other hand, there are also a large number of countries that have recognised the right of public servants to form and join trade unions. In many of them, public servants'

organisations have traditionally formed the backbone of the country's trade union movement. We learn from the chapter on Tanzania that the Tanganyika Civil Servants' Association, formed in 1922, was the first trade union in that country. In many other former British colonies too, public servants were the first professional group to be unionised. To quote only a few examples of early public servants' unions, the Civil Service Union of Nigeria was formed in 1912 and the Fiji Teachers' Union in 1931.

More recently, there have been notable developments in several countries in the direction of formal recognition of public servants' right to form trade unions. In Venezuela, the Administrative Career Act of 1970 granted this recognition, and the new Peruvian Constitution of 1980 did the same. In the Philippines, a 1987 amendment to the Labour Code recognised the right of public servants to form associations. Moreover, in several countries such as Argentina and Bangladesh, where trade union rights had been suspended by the government in both the public and private sectors for several years under martial law or otherwise, these rights have been restored during the past few years.

Even in countries where public servants have the right to form trade unions, however, the structure of their unions may still be subject to special regulation not applicable to other sectors. Such regulations appear to be far more widespread in the developing world than in IMECs. In Malaysia, for example, the law requires that unions in statutory authorities confine their membership to a particular authority, and unions in local authorities confine their membership to local authorities. In a number of other countries such as Mexico, Peru and Venezuela, public servants' unions have to be organised separately from private sector unions, although at least in Venezuela public servants' organisations are in practice affiliated to the central organisations of private sector trade unions.

Today, in many developing countries where public servants have the right to organise, they are highly unionised, and their organisations are among the largest unions in the country. The Fiji Public Service Association and the Public Employees' Association of Papua New Guinea are the largest unions in their respective countries. Although statistics on union membership are not available in many countries, the density of union membership appears to be significantly higher in the public service than in the private sector in a number of them, including Peru and Venezuela.

On the other hand, there are also countries where the rate of unionisation in the public service appears to be significantly lower than in public enterprises and the private sector, although in most cases it is impossible to measure the gap between the different sectors owing to the absence of statistics. The

chapter on Algeria refers to the relatively low density of unionisation among public servants. There are indications that this is also the case in several other African countries.

To conclude this section, we can make several observations of a general nature. First, certain regional characteristics are notable, although there are also variations between different countries within the same region. From the yiewpoint of recognition of the right of public servants to form trade unions, the Arab region and Asia stand out for their restrictiveness. Latin America, on the other hand, has for the last few decades tended to develop a growing gap between the restrictive legal framework and the de facto exercise by public servants of the right to organise; in several countries, such as Peru and Venezuela, this right has now been formally recognised by their governments. African countries (south of the Sahara) have largely maintained the systems they inherited from their former colonial powers (in particular the United Kingdom and France). This means that, at least on the face of the law, public servants enjoy the right to organise in many of them.

Second, in a number of developing countries, particularly (but not solely) in Africa, public servants' organisations are institutionally linked to the political structure of the countries and often act as an instrument for the implementation of the labour policies of the ruling political party. The degree of such political integration of the public sector unions in these countries appears higher than that of private sector unions, and marks a contrast with the high degree of independence from the government which public servants' organisations in IMECs jealously maintain.

Third, at least in countries on which we have information, the density of union membership seems to be roughly proportionate to the degree of participation in the determination of employment conditions that is allowed to public servants in the countries concerned. The chapters on Algeria and Tanzania report a relatively low rate of unionisation among public servants in the context of labour relations systems based on unilateral determination of employment conditions for public servants. A similar situation seems to exist in many African countries. In such countries as India, Fiji, Papua New Guinea, Peru and Venezuela, where public servants can participate in some way in the determination of their employment conditions, the density of union membership in the public service appears significantly higher than in the private sector.

3. Methods of determining conditions of employment

Taken as a whole, the developing world presents a picture of labour relations in which the degree of participation by public

servants in the process of determining their conditions of employment is far lower than that in IMECs. In the latter, the practice of determining pay and other employment conditions through collective bargaining or other forms of negotiation, including effective joint consultation, is fairly well established. True, there has recently been a trend in IMECs towards a stronger assertion of governmental sovereign power in public service labour relations under the circumstances of recession and large deficits in state budgets.[4] However, the denial by government of negotiations or effective joint consultation has mostly been exceptional and temporary, and has not affected the basic systems of determining employment conditions in the public service. It is also true that there are cases in which the degree of participation is much lower than elsewhere. Bargaining rights are, for example, denied to those public servants with a statutory employment relationship (Beamten) in the Federal Republic of Germany, and restricted to limited non-economic issues in most white-collar employment in the United States Federal Government; public servants in Japan do not have the right to enter into collective agreements with the Government. These cases are the exception, however. Moreover, at least so far as the latter two cases are concerned, there are areas in which negotiations or effective consultation can take place.

In a large majority of developing countries, on the other hand, public servants are totally deprived of any means of participating in the determination of their pay and other main employment conditions. This is naturally the case in the countries where public servants are not allowed to form trade unions or associations for the purpose of defending their occupational interests. But even among those countries that have recognised the right of public servants to organise, there are many in which the government unilaterally determines pay and employment conditions in the public service without negotiation or effective consultation. The chapters on Algeria and Tanzania describe this type of system.

Nevertheless, there has recently been a trend towards greater participation by public servants in the determination of their employment conditions in a growing number of developing countries. The trend has been particularly conspicuous in Latin America. In several countries (e.g. Argentina and Peru) governments have recently established machinery for consultation or negotiation between the government and public servants' organisations on pay and/or other employment conditions, while in several others (e.g. Colombia, Venezuela and to a certain extent Uruguay) collective bargaining has recently developed in practice mostly outside any legal framework.

In other regions, developments have been less spectacular. However, there are signs of changes in a few Asian countries

also. It is perhaps too early to foresee future developments in this area in the Philippines, where public servants were only granted the right to form associations in 1987. However, a trend towards greater participation by public servants in the determination of their employment conditions is discernible in Malaysia, as mentioned later.

It is again worth recalling in this respect that Article 7 of the Labour Relations (Public Service) Convention, 1978 (No. 151), provides that:

> Measures appropriate to national conditions shall be taken, when necessary, to encourage and promote the full development and utilisation of machinery for negotiation of terms and conditions of employment between the public authorities concerned and public employees' organisations, or of such other methods as will allow representatives of public employees to participate in the determination of these matters.

The following paragraphs review the variety of forms of participation by public servants in the process of determining their employment conditions, as practised in developing countries today. This is done by grouping similar forms of participation, it being understood that several different forms of participation may coexist in the same country.

3.1 Recommendations made by ad hoc commissions

In such countries as India, Nigeria and Sri Lanka, salaries and some other employment conditions for public servants are determined by government unilaterally, but on the basis of recommendations made by independent pay or salary commissions set up from time to time. This is basically true of Malaysia also although, as mentioned earlier, there have recently been signs of the development of de facto collective bargaining on pay.

In India four Pay Commissions have so far been established (1946-47, 1957-59, 1970-73 and 1983-86) for central government employees. In Malaysia seven Salaries Commissions have been established for the whole or part of the public service since 1967, the latest being appointed in 1977. In Sri Lanka several such commissions have been established for the whole public service since 1953, the most recent in 1978; the Government also appointed a similar committee specifically for teachers in 1985.[5]

In the course of the review proceedings, pay commissions receive representations from unions and associations of public servants, and to that extent it could be said that there are elements of consultation in the system. However, unions can

exert only an indirect influence on pay determination in this system because union views have first to be reflected in the reports of the commissions and then accepted by the government, which retains the final decision-making power.

3.2 Joint consultation

Some countries, while maintaining the principle of unilateral determination by government, have nevertheless established formal machinery for joint consultation between the government and public servants' organisations on pay and other conditions.

Notable early examples of joint consultative machinery in the developing world are the joint consultative councils, modelled after the British Whitley Councils, which were introduced in the former British colonies. Thus, for example, Whitley Councils were introduced in Nigeria in 1948; in Kenya, too, Whitley Councils were introduced before its accession to independence; in India in 1954, following the recommendations of the First Pay Commission (1946-47), the Government established Staff Committees (later renamed "Staff Councils") in the central ministries; in Malaysia, National Joint Councils and Departmental Joint Councils, also modelled after the Whitley Councils, were established in 1973 and revised in 1979 (see the chapter on Malaysia). The chapter on Tanzania reports that the country introduced bodies called Joint Staff Councils into central government in 1962 and local government in 1982, but their functions seem to be significantly different from those of other Whitley Council-type bodies so far mentioned, the Tanzanian ones being aimed mainly at grievance-handling and enhancement of efficiency and productivity.

These joint consultative councils in former British colonies were different from the British Whitley Councils in several respects. The most important difference lay in the nature of the discussions that could take place within them. While the British Whitley Councils were established as forums for consultation and negotiation on pay and other conditions and supported by arbitration if the two sides did not agree, those in the former colonies were either explicitly defined as joint consultative machinery (as was the case in India and Malaysia) or could not in practice function effectively as bargaining forums, at least so far as pay and other main conditions of employment were concerned (as was the case in Nigeria).

These joint councils have undergone significant changes since their inception. The Nigerian Whitley Councils were renamed the National Public Service Negotiating Councils in the early 1970s, but appear to have remained ineffective as bargaining forums at least so far as pay bargaining is concerned.[6] In India, the Staff Councils were abolished after

a Scheme for Joint Consultative Machinery and Compulsory Arbitration was introduced for central government employees in 1966. Under this Scheme, joint consultation covers such issues as conditions of service, working conditions, welfare, and improvements in efficiency and standards of work. The chapter on India considers the operation of this Joint Consultative Machinery to be satisfactory, and reports that on certain issues, collective bargaining does take place. At state government level, however, such consultative machinery seems to be still almost non-existent.

As mentioned earlier, however, in many of the countries with joint consultative machinery modelled after the Whitley Councils, the government has developed a parallel practice of unilaterally determining pay and other main conditions of employment, taking into account recommendations made by ad hoc pay or salary commissions (e.g. India, Malaysia and Nigeria), and this practice has hindered such consultation from developing into collective bargaining. Where such a development has taken place, it appears to have taken place largely outside the consultative machinery, as was the case in Malaysia.

In a number of French-speaking African countries, statutory machinery for joint consultation, patterned after the French model, has been in existence for several decades. The machinery does not normally deal with pay or other main employment conditions as such, but covers individual questions and such other issues as the organisation of services and the elaboration of statutory regulations for groups of staff.

Outside these two groups of countries (i.e. former British and French colonies), joint consultation at a national level has recently been formally introduced into several Latin American countries including Argentina and Peru. In Argentina in 1985, the Government established a National Commission for Joint Consultation on public service pay policy and other matters for the central administration, which is composed of the Secretary of the Public Service, one representative of the Ministry of Economy and two representatives of each of the two main public servants' organisations outside the educational sector.[7] The chapter on Peru reports that, following the promulgation of the new Constitution in 1980, which marked an important shift in governmental labour policy, a 1982 decree introduced a National Commission for Joint Consultation on public service pay.

3.3 Collective bargaining

In contrast with what happens in IMECs, collective bargaining is today practised only to a very limited extent in the public service of countries in the developing world. However, there are signs that the practice is spreading in several countries. In Malaysia, for example, a demand made by

the central organisation of public servants' unions (Congress of Unions of Employees in the Public and Civil Services - CUEPACS) and the staff sides of the five National Joint Councils for an upward revision of pay and other conditions led to negotiations between the Government and these organisations largely outside the formal joint consultative machinery. In India, the Joint Consultative Machinery has developed into a bargaining forum on certain matters, as shown by the fact that both sides negotiated the terms of reference for the Third and Fourth Pay Commissions.

A significant increase in collective bargaining has recently been apparent in several Latin American countries, too. The chapter on Venezuela refers to a remarkable spread in collective bargaining in the public service over the past few decades in the absence of any statutory recognition except for a few groups of employees such as teachers and postal and telegraphic workers. It refers also to the general pay increases granted in the public service on 1 January 1986 that resulted largely from union demands and bipartite negotiations ending with discussions between the central union organisation (the Confederation of Workers of Venezuela - CTV) and the Government. The chapter on Peru reports that the Decree of 1982 which introduced the National Commission for Joint Consultation on public service pay also introduced a system of collective bargaining at the establishment level on working conditions other than pay. Moreover, it refers to de facto collective bargaining that took place between the Intersectoral Confederation of State Workers (CITE) and the Government, resulting in an agreement on a wide range of economic issues affecting public servants. In Colombia, although under the Labour Code public servants (empleados públicos) have only the right to present petitions, in practice they have recently been engaging increasingly in bargaining activities, sometimes leading to the conclusion of written agreements; some of these agreements have been implemented by means of Cabinet decrees. In Uruguay also, since 1985, informal collective bargaining has taken place between central organisations of public servants and the Government with a view to adjusting public servants' pay to increases in the cost of living.[8]

In Nigeria, as mentioned earlier, the National Public Service Negotiating Councils (NPSNC) do not seem to be functioning effectively as bargaining forums for a number of reasons, including the Government's parallel recourse to unilateral determination of the main employment conditions through pay or salary commissions, and the fact that various governmental organs (including the Council of Ministers) can amend or reject the terms of agreement reached at the NPSNC. Under these circumstances, informal bargaining has reportedly developed outside the NPSNC machinery between unions and the relevant government departments.[9]

In Fiji and Papua New Guinea, the public service is covered by the general labour relations machinery of these countries, including conciliation and arbitration, and collective bargaining can take place within such machinery.

3.4 Conclusions

To conclude, two general observations could be made. First, one basic characteristic of pay determination in the public service of developing countries is its ad hoc nature. While in IMECs annual or two-yearly pay increases, either through collective bargaining or otherwise, are a well-established principle (although in exceptional circumstances the government may adopt various pay control measures)[10], public servants' pay in most developing countries is adjusted at irregular, and often long, intervals.

The chapter on Venezuela shows that there were no general pay increases for public servants between 1982 and 1986. In India, pay commissions have been appointed at intervals of more than ten years, although in between pay commissions there is a partial indexation of pay to movements in the cost of living through what is commonly referred to as "dearness allowance". Long and irregular intervals also characterise the operation of pay or salary commissions in such countries as Malaysia, Nigeria and Sri Lanka. The latest commission in Malaysia, for example, was appointed in 1977. It is also reported that public servants in Sri Lanka have not received any pay increases since 1 January 1982.[11]. The chapter on Peru refers to the possibility of annual pay adjustments, but this is very unusual and has perhaps to be seen in the light of the exceptionally high rates of inflation which the country has recently experienced.

Under these circumstances, public servants' organisations in a number of countries have had to exert various types of pressure upon the government from time to time in order to get the procedures for pay revision set in motion.

Second, there are close links between the political context of the countries and the process of determining pay and other conditions in the public service in many developing countries. In a number of them public servants' organisations are integrated, to some degree, into the political structure of the country, and tend sometimes to act through political channels rather than through labour relations machinery. In some other countries, as pointed out for example in the chapter on Venezuela, the process of collective bargaining in the public service tends to be influenced by party political considerations.

More generally, changes in the political orientation of the government may have considerable effects on the methods of determining employment conditions in the public service in many

developing countries. In Argentina, for example, five sectors in the central administration experienced a system of collective bargaining between 1973 and 1975, but all this was stopped with the political change that took place in 1976. After the return of democracy, a national system of joint consultation was introduced in 1985 as mentioned earlier. In Sri Lanka, some informal negotiations took place between the Government and public servants' unions between 1970 and 1976, but since the political change of 1977 there has reportedly been no instance of joint determination of employment conditions in the public service, mainly because the Government has rejected the principle of negotiation in the public service.[12]

4. Labour disputes and their settlement

4.1 Labour disputes

Labour disputes as understood here refer to disagreements between public servants' unions or associations and the government as employer arising out of the determination of employment conditions or other labour relations issues; they also cover conflicts stemming from the refusal of the government to negotiate. This definition excludes individual grievances.

In an employment relationship governed by statutes, in which employment conditions are unilaterally determined by the government (as is the case in the public service of many developing countries), there is very little room for labour disputes as understood in this section; the only types of conflict between public servants and the government for which the law makes provision are conflicts of a legal nature, in particular individual grievances.

This is why, in contrast with what has recently happened in most IMECs, there has not been a general trend in the developing world towards an increase in the number of labour disputes in the public service. There are some countries (particularly in Latin America) where there has recently been a sharp increase in the number of labour disputes, but in others the public service has remained practically without labour disputes because public servants have neither the right to enter such disputes nor any effective means of doing so. In the latter group of countries, given the impossibility of expressing their aspirations collectively, public servants tend to express their collective frustrations in various individualised forms of action, such as absenteeism, indiscipline, negligence and rudeness in dealing with the public, as is well described in the chapter on Tanzania.

What then are the main causes of labour disputes in the public service in developing countries? They appear to be predominantly of an economic nature. Reflecting the narrower

scope of negotiations in the public service than in the private sector, the range of issues leading to disputes seems also to be less in the public service.

Among the economic issues, demands for increases in basic pay undoubtedly constitute the most frequent causes of major disputes, wherever public servants have the right to enter disputes on pay. The chapter on India refers to union demands for the establishment of Pay Commissions and for the implementation of the recommendations of the Commissions as the primary causes of labour disputes. The chapter on Venezuela also points out that union demands for pay increases and the administrative authorities' refusal to negotiate on the demands constitute the main causes of disputes in the public service.

Even in countries where basic pay is determined unilaterally by the government, public servants' organisations have attempted to engage in disputes over various issues that affect their pay directly or indirectly. In Mexico, for example, among the main causes of labour disputes in the public service are union demands for increases in pay supplements such as assignment allowances (sobresueldos) for employees working outside the capital area and year-end bonuses.[13] The chapter on Peru reports that the classification of particular categories of employees in the pay scale is an issue that often gives rise to disputes.

The austerity measures which an increasing number of governments have recently introduced have also given rise to labour disputes. Union opposition to recruitment freezes is reported to have caused disputes in Mexico.[14] Teachers' opposition to the cancellation of fringe benefits (in particular, the provision of housing facilities) also led to one of the few significant strikes in Côte d'Ivoire in recent years.[15] In Nigeria, unilateral government decisions to cancel various fringe benefits in the public service have been the cause of several disputes in recent years.[16] Cuts in the number of jobs in the public service as a result of the introduction of new technology (see the chapter on India) or restructuring of the administration (see the chapter on Venezuela) have also given rise to disputes.

In such countries as India and Sri Lanka, where the trade union movements are divided into a number of rival groups affiliated to different, rival, political parties, the politicisation of labour relations seems to be more prominent in the public service than in the private sector, and labour disputes often break out as a result of political rivalries between different unions.

4.2 Settlement of labour disputes

One of the characteristics of dispute settlement in the public service in the developing world is the total absence of

any established procedure in most countries. This is to some extent a natural consequence of the application by governments in many countries of the sovereignty theory to labour relations and their denial of the possibility of conflict between them and their employees, and even more their unwillingness to accept third party intervention in disputes that do arise. Under these circumstances, public servants' organisations with demands to make do not often have any alternative to starting industrial action with a view to bringing the government to the bargaining table for ad hoc negotiations.

In IMECs, too, the sovereignty theory has not totally disappeared from public service labour relations, but it has been considerably eroded by the growing recognition of the role of government as employer and of the need for adequate dispute settlement procedures, such as conciliation, mediation and arbitration, for the public service.[17]

It is also worth recalling in this respect that Article 8 of the Labour Relations (Public Service) Convention, 1978 (No. 151), provides that:

> The settlement of disputes arising in connection with the determination of terms and conditions of employment shall be sought as may be appropriate to national conditions, through negotiation between the parties or through independent and impartial machinery, such as mediation, conciliation and arbitration, established in such a manner as to ensure the confidence of the parties involved.

In the developing world, as we have seen, few countries have any established procedures for dispute settlement in the public service. Fiji and Papua New Guinea constitute exceptions in this respect with practically identical settlement procedures consisting of conciliation and arbitration applying to both the private sector and the public service. In India, too, the Joint Consultative Machinery set up in 1966 provides for arbitration of unresolved differences between the two sides. The chapter on India reports a significant number of cases so far referred to arbitration under this system, and points out that about 90 per cent of the cases have been settled in favour of the staff side. It also reports that, although the Government has the power to modify arbitration awards with the approval of Parliament, it has done so only in rare cases. Other information available indicates that arbitration has dealt with such issues as productivity-linked bonuses, retirement benefit schemes, the five-day week, and the finalisation of the terms of reference of the Fourth Pay Commission. The scope of arbitration is limited by the fact that the Government customarily resorts to unilateral determination of the main elements of pay and other employment conditions on the basis of recommendations made by ad hoc pay commissions.

In Malaysia also, pay and other main conditions of employment fall outside the scope of arbitration for the same reason. However, complaints may be entered against alleged "anomalies" arising out of the implementation of recommendations of ad hoc pay commissions and they may lead to arbitration by the Public Services Tribunal set up in 1978. In practice, this channel of dispute settlement is often used by groups of public servants as a means of obtaining pay increases in the periods between recommendations by pay commissions. Public servants in Malaysia also have a limited possibility (subject to the consent of the authority concerned) of referring "trade disputes" to arbitration by the Industrial Court. Although, as the chapter on Malaysia points out, such consent is not always forthcoming, a significant number of trade disputes are referred to the Industrial Court each year. As mentioned earlier, pay disputes in 1985 and 1986 were resolved through negotiations between the Government and the public servants' organisation largely outside any established dispute procedures.

In Peru since 1982, the law provides for the settlement of disputes over working conditions (excluding pay) through negotiations within a Joint Committee set up in each establishment. The law requires that the Joint Committee should consult a Technical Committee composed of several government representatives and entrusted with the evaluation of the proposed agreement from the technical, economic and budgetary viewpoints. If the Joint Committee is unable to reach agreement, or if there are unresolved disagreements between the Joint Committee and the Technical Committee, the resulting disputes can be referred for arbitration to an arbitration tribunal set up in each establishment and composed of two representatives each of the majority union and of the management, and chaired by an independent president.

The examples of arbitration machinery so far described are among the most notable operating in the developing world today. What they show is that, even in those developing countries where arbitration is available to public servants as a means of dispute settlement (perhaps with the exception of Fiji and Papua New Guinea), its scope is considerably more restricted than is the case in IMECs such as Canada, the United Kingdom and a number of states in the United States, where pay and other main conditions of employment constitute the principal subjects for arbitration.

Procedures for conciliation or mediation of labour disputes in the public service[18] also seem to be more or less non-existent in the developing world (again with the exception of Fiji and Papua New Guinea).

4.3 Strikes and other forms of industrial action

Strikes normally constitute the ultimate means to which workers can resort if disputes cannot be solved through negotiations or other procedures for dispute settlement. In systems of labour relations that do not provide any established procedure for settling labour disputes, however, the only means available to public servants for solving disputes with the government is industrial action aimed at forcing the government to start negotiations.

As mentioned earlier, a large majority of developing countries today do not have any effective procedure for settlement of labour disputes in their public service, at least as far as disputes on pay or other main employment conditions are concerned. Strikes and other forms of industrial action are therefore particularly important in the public service of developing countries as instruments for ensuring that negotiations do take place with a view to settling labour disputes. Refusing to recognise this fact and denying to public servants both procedures for settling labour disputes and the right to strike tends to lead to the accumulation of frustrations among public servants, which in turn gives rise to various symptoms of individual resistance such as indiscipline, negligence and absenteeism.

4.3.1 The right to strike

Nevertheless, a large number of developing countries still deny public servants the right to strike. In Tanzania, it is apparently illegal both to organise and to take effective part in strikes. The chapter on India tells us that the Civil Service (Conduct) Rules, as amended, prohibit government employees from striking in respect of any matter related to their conditions of employment. In Nigeria, strikes in essential services are prohibited under the Trade Disputes (Essential Services) Act of 1976, and the entire public service is defined as an essential service.[19] And it goes without saying that in those countries where public servants do not have the right to organise, they do not have the right to strike either.

There are also many developing countries where the law is silent on the public servants' right to strike. Such a silence has led to different interpretations in different countries. The chapters on Algeria and Venezuela show that the governments of these countries in practice tolerate strikes in the public service. In Algeria, however, strikes seem to take place rarely in the public service. In Peru, on the other hand, the silence of the law has led to diverging interpretations as regards the legality of strikes in the public service.

In Malaysia the system does in principle give public servants the right to strike. In Mexico, too, public servants have this right. In both countries, however, there are a number of procedural requirements to be met before public servants can lawfully resort to a strike, and in Malaysia at least strikes are prohibited after disputes have been referred to the formal dispute procedures.

4.3.2 Incidence of strikes

What then is the propensity of public servants to resort to strikes or other forms of industrial action in the developing world today? Although the absence of any reliable statistics in most countries prevents us from measuring this precisely, we can nevertheless point out certain variations between the different regions. Indeed, the incidence of strikes in the public service appears to vary very widely from one region to another.

The region that has recently experienced a notable increase in strikes in the public service is Latin America. The chapter on Peru estimates that a strike organised in 1984 by the Intersectoral Confederation of State Workers (CITE) caused a greater loss of work-hours than the total recorded work-hours lost on account of strikes in the entire private sector during that year, and another strike organised in March 1985 by the same organisation caused a loss of 38 million work-hours, about 4.8 times as many as the total recorded in that year in the private sector. The chapter on Venezuela also notes the growing incidence of strikes in the public service of that country, and points out that, during the past two decades, various administrative units have frequently been paralysed for days or weeks by strikes in which thousands of public servants have participated. The strike phenomenon in Venezuela's public service is particularly remarkable because such strikes are basically illegal and there are virtually no strikes in the private sector, where they are legal (provided certain procedural requirements are met).

In several other Latin American countries, too, there has been a clear trend towards an increase in the number of strikes in the public service. This is true of Argentina and Brazil since 1983 and of Uruguay since 1985,[20] and to a certain extent of Colombia. A notable exception is Mexico where, although public servants have the right to strike under specified circumstances, they do not in practice seem ever to exercise this right.[21]

In contrast with Latin America, Asia has not experienced many strikes in the public service. In many Asian countries this is a natural consequence of the denial of not only the right to strike but also the right to form and join trade unions. Without organisations, it is extremely difficult to launch strikes,

although there are cases of strikes organised by public servants who are deprived of the right to organise, as happened in the Philippines in 1983 and 1985 (i.e. before the change of government in 1986), when there were waves of strikes and other forms of industrial action by public school teachers grouped in associations.[22]

Sometimes governments take harsh measures against public servants who go on strike. In Sri Lanka, for example, when public servants called for a general strike in July 1980, the Government promulgated emergency regulations and later dismissed (by declaring that they had voluntarily vacated their posts) 40,000 public servants who went on strike in defiance of the regulations.[23]

5. Concluding remarks

The systems of labour relations in the public service of developing countries vary widely. While in a number of countries there is a growing recognition of the role of government as employer as distinct from its role as sovereign and of the need for developing some mechanisms of collective labour relations with its employees, in many others the relationship between the government and public servants is still governed essentially by administrative law and there is little or no room for collective labour relations.

In spite of this diversity, some characteristics in public service labour relations seem to be found more frequently among developing countries than among IMECs.

First, the influence of political factors on public service labour relations tends to be particularly prominent in some developing countries. Politics also affect public service labour relations in IMECs in that changes in government labour policies have serious repercussions on the climate of labour relations in this sector. In a number of developing countries, however, links between political factors and labour relations tend to become more institutionalised, with public servants' organisations being integrated into the political structure of the country or with rival unions being affiliated to rival political parties.

Second, the right of public servants to form trade unions is more restricted in the developing world than in IMECs. There is a significant number of countries where public servants are generally deprived of this right. There are also countries which, although recognising this right in principle, still provide restrictive regulations concerning the structure of public servants' organisations.

Third, the gap between law and practice tends to be particularly pronounced in public service labour relations in the developing world. There is an increasing incidence of public servants forming trade unions or associations and undertaking negotiations with the government in countries where the law does not recognise such rights. Such gaps exist in IMECs also, but they seem to be considerably wider in developing countries.

Fourth, in spite of the de facto developments just mentioned, the degree of participation by public servants in the determination of their conditions of employment seems to be considerably more limited in the developing world than in IMECs. In particular, collective bargaining takes place in a very limited number of developing countries, while it has become an important means of determining pay and employment conditions in large parts of the public service in IMECs.

Nevertheless, in spite of the limited scope of collective labour relations in the public service of the developing world, as compared with IMECs, there do seem to be signs of development in the direction of recognition of the right of public servants to form trade unions (although the pace of change is very different in different regions), as well as a general trend towards their greater participation in determining their conditions of employment.

Notes

[1] See Tiziano Treu et al.: Public service labour relations: Recent trends and future prospects, a comparative survey of seven industrialised market economy countries (Geneva, ILO, 1987).

[2] Cases Nos. 984 and 1189, examined by the ILO Committee on Freedom of Association in its 208th, 214th and 238th Reports.

[3] Case No. 1337, examined by the ILO Committee on Freedom of Association in its 244th and 251st Reports.

[4] See M. Ozaki: "Labour relations in the public service", in International Labour Review (Geneva, ILO), May-June and July-Aug. 1987.

[5] Gamini Iriyagolle: Labour relations and dispute settlement in the public service in Sri Lanka (Geneva, ILO, 1986; mimeographed), pp. 43-44.

[6] See Ukandi G. Damachi and Tayo Fashoyin: "Labour relations in the Nigerian civil service", in International Industrial Relations Association: Co-operation and conflict in

public service labour relations, 7th World Congress, Hamburg, 1-4 Sep. 1986 (Geneva, ILO, 1986), pp. 167-184.

[7] Mario Eduardo Ackerman: Relaciones laborales y solución de conflictos en el servicio público en la república Argentina (Geneva, ILO, 1986; mimeographed), p. 20; and ILO: Documento de base, Seminario subregional sobre relaciones de trabajo (Montevideo, 21-24 Apr. 1987), pp. 15 and 17.

[8] ILO: Relaciones de trabajo en el Uruguay: Informe de una misión de la Oficina Internacional del Trabajo (Geneva, 1987), pp. 119-120; and idem: Documento de base, op. cit., pp. 17-18.

[9] Damachi and Fashoyin, op. cit., pp. 175-176.

[10] See Ozaki, op. cit., pp. 295-298.

[11] See Iriyagolle, op. cit., p. 51.

[12] ibid., p. 45.

[13] Francisco Zapata: Relaciones laborales y negociación colectiva en el sector público mexicano (Geneva, ILO, 1986; mimeographed), pp. 57-59.

[14] ibid., p. 57.

[15] Adou Jules: Les relations de travail et le règlement des conflits dans le secteur public, le cas de la Côte d'Ivoire (Geneva, ILO, Nov. 1985; mimeographed), p. 106.

[16] Damachi and Fashoyin, op. cit., pp. 178-180.

[17] See Ozaki, op. cit., pp. 407-415, for more details.

[18] ibid., pp.407-409.

[19] Damachi and Fashoyin, op. cit., pp. 177-178.

[20] ILO: Documento de base, op. cit., p. 13.

[21] Zapata, op. cit., p. 70.

[22] Jose C. Gatchalian and Nenita O. Barranco: Labour relations and dispute settlement in the public service in the Philippines (Geneva, ILO, 1986; mimeographed), p. 32.

[23] Iriyagolle, op.cit., pp. 56 and 60.

CHAPTER II

LABOUR RELATIONS IN THE PUBLIC SERVICE IN ALGERIA

by Ali Touhami*

Introduction

By 1966 General Provisions had already been provided for the Algerian public service, by Ordinance No. 66-133 of 2 June 1966. Though these General Provisions were not totally comprehensive, they did at least provide answers to public servants' main questions about their careers, prospects and role in the administration.

In the aftermath of independence, in a situation of instability with a diversity of regulations, the public servants were naturally concerned about their careers and job security. Consequently, the General Provisions quite foreseeably opted for a principle of stability, thus winning acceptance for the concept of a career public service.

The scope of the General Provisions is extremely wide. They cover, in addition to officials in the central public services, the external services that depend on them together with the administrative public offices (with the exception of the magisstrature and armed forces), the administrative employees of public enterprises (offices and enterprises) personnel of local authorities.

In the 1970s, as the Algerian public service and the general labour legislation evolved, there was a constant interaction between the two, with each influencing the other. This culminated in the measures introduced by Act No. 78-12 of 5 August 1978 to make General Provisions for Workers' Conditions of Employment (SGT).

It was the collective agreement between the National Society for Research, Exploitation, Transport, Transformation and Commercialisation of Hydrocarbons - SONATRACH - and its employees, signed in March 1970, which marked the first step in the closing of the gap between public servants and other

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workers. This agreement emphasised the importance of job security, career definition and an adequate welfare provision, as found in the public service. The SONATRACH agreement was to serve as a model and inspiration for a number of collective agreements in public enterprises (see section 3.1.2).

On 16 November 1971, Ordinance No. 71-74 respecting the Socialist Organisation of Enterprises (GSE) was issued, together with Ordinance No. 71-75 respecting Collective Labour Relations in the Private Sector. The Charter of the Socialist Organisation of Enterprises formed a preamble.

The aim of the GSE was to offer workers a mode of participation in the management of public enterprises, which should rub off on to the private sector. In principle, it relates not only to the workers in public enterprises but also to the public service. In practice, however, although it has been progressively applied in public enterprises, it has scarcely had any impact in the public service.

The fact is that its wider application presupposes a restructuring of the legal provisions in this sector. It is nevertheless true that the adoption of this single model of participation will result in a closing of the gap between ordinary workers and public servants. And this has, in fact, been achieved by the SGT of 1978 which applies to workers in all fields of activity: public administration, public and private enterprises, and agricuture.

The SGT was the culmination of a long period of development. At the same time, it provided a response to the concerns felt at that time, since disputes and work stoppages had risen to a peak in 1977.

One of the prime objectives of the SGT is linked to the wish of the public administration to harmonise salaries by correcting inequalities through the application of the principle of "equal pay for equal work". To this end, the legislation proposed a new wage system based on a single nation-wide method of job classification, two relatively large individual output bonuses or penalties and, finally, participation in the results of the enterprise.

Superficial appearances apart, have the old divisions between public servants and other workers really disappeared? This study will attempt to answer these questions through a comparative analysis of the different sectors which come under the SGT.

1. Employment and employment conditions in the public service

1.1 Employment

The number of persons working in the Algerian public service has risen very rapidly since 1970: between 1969 and 1980, the figure more than doubled from 318,000 to 660,000. Since then, the number employed has risen by 45,000 per year and, as of 1982 (the last year for which statistics are available), the figure had risen to 752,000. Of these, over 250,000, i.e. about a third, were teachers.

This is a quite remarkable rise in view of the fact that a rapid increase had already taken place between 1962 and 1967, following independence. Table II.1 shows the growth of employment in the economy as a whole by sector. As can be seen, the administration grew continuously between 1967 and 1982; it accounted for 17.5 per cent of all employed persons in 1967, and 21.98 per cent in 1982 - not counting military personnel.

As already mentioned, the definition of the public service had been expanded by the General Provisions of 1966 by the incorporation of persons who had not previously figured in this sector, such as those in the local authorities and administrative personnel working in the public establishments. The main reason why these were integrated into the public service was to combat the lack of stability amongst officials attempting to find a more attractive and more flexible wage in the semi-public sector.

This instability was to become acute once again both in the public service as a whole and in the numerous national companies which were set up, starting in 1967, and which were subject almost exclusively to private law. For at least ten years, i.e. up until 1977, the public enterprise sector proved extremely attractive, especially for professional and managerial workers. After this date, the gap between public enterprises and the public service was reduced and the public service tended to make up lost ground.

1.2 Conditions of employment

Conditions of employment in the public service are laid down in article 25 of the Ordinance of 2 June 1966. A person may be appointed to public employment only if he or she is of Algerian nationality, has full civil rights and is of good character. Moreover, he or she is required to meet the age and physical fitness requirements laid down for the exercise of the service. Article 31 of Decree No. 85-89 of 23 March 1985 adds that candidates for recruitment must give proof of the level of skills required by the job and of their national service status.

Table II.1: Overall employment levels by sector of employment, 1967-82 (in thousands)

Sector	1967	1969	1973	1978	1979	1980	1981	1982
Agricuture	874	934	873	970	969	969	963	900
Industry	121	101	245	375	401	411	458	400
Building and civil engineering	71	82	180	390	437	469	504	552
Transport	53	64	85	120	126	137	144	148
Commerce and services	321	334	355	430	470	487	506	542
Administration	306	318	434	565	615	660	705	752
All sectors	1 748	1 893	2 182	2 859	3 018	3 153	3 280	3 422

Source: Ministry of Planning.

The principle of sexual equality was clearly stated in article 5 of the Ordinance of 2 June 1966, with one reservation "concerning physical fitness requirements ... for specific jobs laid down by special provisions".

As far the recruitment procedures themselves are concerned, emphasis is placed on the conventional principle of competition, either by examination or professional tests or by qualifications and certificates. Exceptions may be made where a new organisation is being established. In addition, existing public servants may receive internal promotion.

Article 34 of the Decree of 23 March 1985 has further increased the flexibility of these regulations by the introduction of "direct recruitment". This method concerns candidates who come from specialised training establishments. A second variant relates to "exceptional" recruitment either on the establishment of a new organisation or "to meet the extraordinary or specific needs of a given organisation". The formula is extremely vague, and there is a considerable danger of direct recruitment supplanting the other methods. The legislator recognises this by stating in article 35 that it "may not, under any circumstances, be the sole means of recruitment". This does, however, seem to imply that it might nevertheless be the main recruitment method.

1.2.1 Remuneration

As far as wages are concerned, workers in the public service are subject to the principles and regulations of the SGT of 1978 and, in particular, to the new wage system. In the following paragraphs we will review the main similarities and differences between this system and the system established by the 1966 Ordinance.

When comparing the two systems, it may be seen that the method of fixing wages in the public service remains unchanged. Under article 127 of the SGT, "wage fixing ... shall be a government responsibility". Furthermore, the limited scope that previously existed for workers in public or private enterprises to negotiate - either individually or collectively - has now been suppressed. In the private sector, in particular, the principle by which the employer could depart from the law, but only in the worker's favour, has been eliminated. Now, the employer cannot pay a wage higher than that stipulated by the authorities, even if he wants to.

There is, however, one very pronounced difference between the old and new systems as far as the public service is concerned. The 1966 Ordinance stated that "the wages in the public service shall be aimed at achieving a level of recruitment and the possession of a grade without the type of job and the

actual level of responsibility being taken into account. The decisive factor in the level of wages is the legal status of the public servant, independent of the work that is actually being done" - though, in fact, senior jobs and specific posts did exist.

In contrast to this, the SGT subscribes to the principles "to each according to his work" and "equal pay for equal work". This has meant a system based on the grading of the job and on the quantity and quality of the work done - these being the two major elements in the wage. In principle, each post has a fixed wage, but this wage is variable in order to allow the worker to benefit from increased production and increased productivity. The major innovation of the SGT is thus that wages are now basically variable, linked to output as well as time.

However, the difficulties involved in assessing a public servant's output and the need to provide for a certain degree of wage stability have resulted in the Decree of 23 March 1985, containing Model Regulations for the public service, which takes a step backwards in relation to the initial aims of the SGT. According to the 1985 Decree, public servants receive wages which are basically fixed and are made up of "a main remuneration linked to the job being done" and of bonuses and indemnities provided for under the law. Amongst the latter, however, only the "experience allowances and promotion allowances" which compensate public servants for seniority - and which are provided for under the SGT - have been retained. These allow public servants to advance grade by grade. By their nature these are fixed allowances.

Amongst the significant changes made in working conditions by the 1985 Decree, reference should be made to the "obligations to serve the Party and the State" (article 29 of the Model Regulations), which puts an end to the public servant's relative neutrality.

Of even greater significance is article 132 of the Model Regulations, which stipulates that "termination of an employment relationship resulting in the loss of public servant status, shall be as laid down in the provisions of article 92 of the SGT". Article 92 specifies that one of the reasons for termination of employment is retrenchment of staff. As a result, public servants are theoretically in the same position as workers in public enterprises or in the private sector. The principle of job security and employment stability in the public service is no longer sacrosanct.

2. Representation of employees and employers in labour relations

2.1 Employee representation

Employee representation is reserved exclusively for the General Union of Algerian Workers (UGTA). This is the one-union principle which is linked to the one-party principle that predominates in socialist countries.

Employee representation through the UGTA may take on various forms, however. We will look in turn at public enterprises and the public service.

2.1.1 The public enterprises

In the public enterprises, the UGTA acts through the workers' assembly of the unit or enterprise, which is at the same time the trade union council. This workers' assembly is part of the "Socialist Organisation of Enterprises", introduced by the GSE Ordinance of November 1971, which may be defined as a form of participation in enterprise management.

The objective of the Socialist Organisation of Enterprises is to change the conventional, commercial relationship between the enterprise and its employees, who pledge their labour in return for a wage, by turning the latter into workers involved in the organisation of the enterprise, as so-called "producer-organisers". In this way, workers come to possess a higher level of awareness, which allows them to contribute effectively to economic development.

The public enterprise will operate on the basis of a hierarchical system, according to the principle of "unity of management" - which should not be confused with "a concentration of powers in the hands of a sole person". It comes under close supervision within the framework of controlled planning. The general manager is appointed by decree and assisted by a managing council comprising an "assistant manager" and one or two members elected by the Workers' Assembly.

Participation in management occurs basically through five committees drawn from the Workers' Assembly and dealing with economic and financial matters, social and cultural matters, personnel and training, discipline, and safety and health.

The first three of these committees are composed of members designated by the Workers' Assembly, while the committees dealing with discipline and safety and health are bipartite, with half the committee consisting of representatives of the Workers' Assembly and the other half of representatives designated by the management.

The prerogatives of the Workers' Assembly are defined in articles 28-39 of Ordinance No. 71-74 of 16 November 1971 and may be grouped in three categories:

(a) the Workers' Assembly has consultative powers. It gives opinions and makes recommendations concerning development plans, anticipated earnings and expenditures of the enterprise or unit, and proposes programmes of activities and any important modifications in the structure of the enterprise or unit;

(b) it has powers of decision or co-decision in relation to welfare arrangements, works rules (see section 3.1.3), the allocation of profits, and the distribution of the portion of the profits earmarked for the workers' community;

(c) it has powers which are difficult to define and which invoke a concept of supervision in a less than legal terminology (the Workers' Assembly, it is said, is "associated", "ensures", "passes judgement on", etc.). The prerogatives of the UGTA far exceed the simple defence of the material and moral interests of the workers that a trade union usually assumes. Through the Workers' Assembly, the union takes on a definite management function even if its powers have little weight in comparison with the conventional decision-making powers held by the management.

The workers' community which elects the Workers' Assembly is made up of all the workers in the unit who have completed at least six months of effective service in the enterprise.

The Workers' Assembly for the unit is elected by direct vote by the workers in the unit; the Workers' Assembly for the enterprise is elected, in a second round, by the Workers' Assemblies for the units making up the enterprise. The members of the Workers' Assembly must, in practice, be union militants, and the number of candidates must not exceed twice the number of seats to be filled. The Workers' Assembly comprises between seven and 25 members, although under exceptional circumstances there may be more, depending on the size of the enterprise.

What is the level of unionisation in public enterprises? For lack of more recent and more comprehensive figures, reference may be made to a UGTA source grouping together the Wilaya (district) unions in Algeria's five major towns at the end of 1980. According to this, the level of unionisation is quite high, at around 70 per cent. However, this relatively strong level of membership is somewhat less impressive in view of the fact that new card-holders do not always pay their contributions regularly.

Nevertheless, it may be said, in general, that the GSE Ordinance did result in an increase in interest and consequently a rise in the level of unionisation. One of the factors that has contributed to this increased interest has been the fact that certain workers - in particular those with the lowest level of skills - seek election in order to achieve enhancement of their social status.

2.1.2 The public service

As far as the public service is concerned, data on unionisation are virtually unobtainable and, it seems, unknown even to the union itself. This absence of data scarcely allows any objective estimate of union representation in the public service.

All that can be said is that the level of unionisation is relatively low in comparison with the public enterprise sector; according to the union leaders, it is scarcely more than 25 per cent. Where the union exists, it is present via the base-level cell, which is the union section. The union sections are grouped together to form national unions. Amongst the most important unions are the Post and Telecommunications Union, the Health Union, the Teaching Union and the Finance Union.

Article 21 of the 1966 General Provisions for the Public Service allows public servants to exercise their trade union rights "under the conditions provided for in the legislative texts"; however, these conditions have never been clarified. For numerous reasons, the public service seems to be on the sidelines in the trade union movement.

The institutions representing the personnel do exist none the less, even though they are not run by the trade union. Public servants take part in the Joint Administrative Committees and the Joint Technical Committees - the Higher Council for the Public Service was suppressed by the Model Regulations for workers employed in public institutions and administrations of 23 March 1985. The role of these joint consultative bodies will be dealt with in section 3.2.1.

2.2 Employer representation

Whereas in the private sector the public authorities have recently been reintroducing the concept of trade associations, within the framework of regional Chambers of Commerce, in the public service and the public enterprise sector, the representation of employers is scarcely recognised by the public authorities - unless one considers the senior management of the public service to be a joint employers' organisation, in view of the fact that it co-ordinates the position of various state bodies, especially as far as foreigners are concerned.

3. Methods of determining conditions of employment

3.1 Collective bargaining

Collective bargaining should be looked at mainly in relation to two collective contracts: the internal regulations and the collective agreement.

3.1.1 Collective agreements in the public enterprise sector

In the public enterprise sector, collective agreements have experienced remarkable growth. This is in contrast to the private enterprises, where collective agreements - which may be drawn up in any enterprise employing more than 20 workers - have not become widespread.

The driving force in public enterprises proved to be the SONATRACH collective agreement, signed in Algiers on 26 March 1970 (see Introduction). The SONATRACH agreement is well worth analysing since it gives an early indication of the reduction of the gap between the public service and the public enterprise sector.

According to conventional thinking, a comparison between public service legislation and general labour legislation indicates that what distinguishes the former from the latter is the concept of career and the principle of stability and job security, to which may be added a more attractive system of welfare provision, especially in cases of prolonged sickness.

Yet, on all three of these points, the SONATRACH collective agreement marks a clear reduction of the divide. It reproduces the welfare scheme found in the public service legislation. In the event of prolonged sickness, the worker receives his wage in full for three years; thereafter, he receives half of his wage for a further two years. These periods of three and two years are increased to five and three years respectively if the condition was acquired during the exercise of the worker's functions (article 129).

The second part of the agreement (article 111 ff.) is devoted entirely to the officer's career; this is typical of the public service, with a system of promotion which takes place each year, and retirement provided for at the age of 60, with the possibility of early retirement at age 55. Article 111 lays down the principle of employment stability and job security for the official except in cases where a fault has been committed serious enough to constitute a reason for dismissal.

From the disciplinary point of view, any arbitrary action on the part of the employer is excluded. The principle that the

sanction should be in proportion to the fault committed is maintained and a Disciplinary Council set up to give an opinion on the most severe penalties (article 150).

This agreement was to have a ripple effect, serving as a model or being adopted in full by numerous major enterprises in the public sector.

Starting in the 1970s, there was therefore a remarkable expansion in collective agreements in the public enterprises, encouraged by the relatively contradictory absence of a Labour Code which would provide a uniform definition of individual employment relationships. This growth was to be halted for two basic reasons.

The first is that individual employment relationships were to be replaced by the interplay of collective employment relationships and participation within the framework of the Socialist Organisation of Enterprises. The second is linked with the growing lack of satisfaction with collective agreements which, once they had been negotiated, were never revised and proved unable to meet the workers' demands (in most cases wage demands).

Finally, the Act of 5 August 1978 to make General Provisions for Workers' Conditions of Employment put forward a new definition of individual and wage relationships for workers, no matter the sector of the economy to which they belonged. It was intended that these General Provisions should give rise to model regulations and subsequently to specific regulations. These regulations would override any negotiation or agreements. Moreover, as we have already seen, wage fixing finally became an exclusively governmental prerogative.

Having been deprived of one of its most important objectives, the collective agreement is condemned to become a dead letter and will, doubtlessly, be abandoned by the social partners.

3.1.2 Works rules

Article 12(g) of Ordinance No. 71-75 of 16 November 1971 respecting Collective Labour Relations in the Private Sector stipulates that the trade union board, deriving from the union section, "shall participate in drafting the works rules". The same principle is laid down in the GSE Ordinance. Under the terms of article 33, Workers' Assemblies "can adopt the works rules of the enterprise or unit, in agreement with the management".

The content of the works rules is the same in both sectors and is restricted solely to the technical organisation of the work, discipline, and safety and health.

As regards drawing up and adopting the rules, the General Provisions for Workers' Conditions of Employment of 1978 (SGT) stipulate merely that they shall be determined by the model conditions of employment issued for the sectors of activity and the specific conditions of employment of employers' associations.

Yet these model conditions of employment have been published only for the public service. In the case of the private sector, the Ordinance of 29 April 1975 does, to some extent, serve as model conditions of employment. In the public enterprises the works rules have not been negotiated.

The negotiation of the works rules does in any case fall within narrow margins since the social partners are required to respect the provisions laid down by the legislation

Decree No. 82-302 of 11 September 1982 devotes its Title IV to disciplinary matters. It lays down general rules and establishes the various types of fault that may be committed at work and the scale of corresponding disciplinary penalties, no matter in which sector of the economy the worker is employed. The new disciplinary regulations meet principles of legality and of proportionality between the penalty and the fault committed. They apply both to the public service and to public and private enterprises. Moreover, they confirm, with a few slight variations, the rules on this subject already contained in the SGT. Finally, a conventional disciplinary procedure, which is already well into its stride, operates through a joint disciplinary committee on which workers' and employers' representatives sit in equal numbers.

Decree No. 82-302 classifies penalties into three degrees, by order of seriousness; each of these three degrees matches a certain type of more or less serious fault.

It is interesting to analyse the third-degree faults since they give rise to both downgrading and the most severe penalty, dismissal. A total of 11 faults are listed and specifically defined. Since the listing is not exhaustive, the concept of "serious fault" is added; this is to be clarified by model employment conditions and negotiation between the social partners on specific conditions of employment.

3.1.3 The Model Regulations for the public service

As already mentioned, only the Model Regulations for workers employed in public institutions and administrations (Decree

No. 85-59 of 23 March 1985) have so far been issued. It is interesting to compare the system put forward in this Decree (which must necessarily comply with the overall pattern laid down by Decree No. 82-302) with the scheme contained in the Ordinance of 2 June 1966 making General Provisions for the working conditions of public servants (which, with the exception of a few provisions, has not been repealed by the Model Regulations).

Article 122 of Decree No. 85-59 of 23 March 1985 makes express reference to the application to public servants of articles 61-76 of Decree No. 82-302 of 11 September 1982 relating to faults and penalties. The definition of the faults and, in particular, of the most severe ones, is a definite step forward in comparison with the earlier vague formulae such as "any fault committed by a public servant in the exercise of his duties" or "failing in his professional obligations", which are to be found in the 1966 Ordinance. Moreover, the penalties are classified into three degrees instead of two, which allows them to be better modulated in relation to the fault committed.

Dismissal makes its appearance in the 1985 Decree, whereas two previous sanctions disappear: a demotion of three grades and compulsory retirement. However, dismissal (which replaces the term removal) can no longer result in the suppression of pension rights.

Finally, suspension or temporary exclusion is no longer considered to be a main sanction. In the Model Regulations, it relates only to the hypothesis of penal prosecution of a public servant. Suspension may not last longer than six months, with the possibility of retaining three-quarters of the basic wage, whereas previously remuneration was excluded. As a last guarantee, the Decree specifies that the public servant's situation will be settled only when the court has made its final judgement.

In general, the new system ensures better protection of the public servant than does the old one.

3.2 Joint consultation

3.2.1 The public service

Public servants participate in joint consultation by means of two types of body: the Joint Administrative Committees and the Joint Technical Committees.

The Joint Administrative Committees. The competence, composition and functioning of the Joint Administrative Committees were laid down by article 13 of the SGT, supplemented by the Ordinance of 2 June 1966.

The Joint Administrative Committees are made up of representatives of the public servants and of the administration in equal numbers. Each minister draws up a list of candidates which he submits to the ruling party (Front de la Libération Nationale - FLN); the FLN then has the option of setting some of them aside.

The Joint Administrative Committees may or must be consulted on questions of an individual nature related to recruitment, grading, promotion, posting and discipline. In this latter area, attention should be drawn to a noteworthy provision which places a check on hierarchical authority. This states that the third-degree penalties - in particular dismissal - can be pronounced by the appointed authority only after a Joint Administrative Committee has issued a corresponding opinion (article 127 of the Decree of 23 March 1985). The administration is not only compelled to ask the opinion of the Committee but is also required to comply with it. This guarantee is backed up by the fact that the official is able to bring before an appeals committee any third-degree sanction pronounced against him or her. Exactly the same rules apply in the public and private enterprise sectors.

In addition to the disciplinary aspect, mention should be made of a few examples of the competence of the Joint Administrative Committees given in the Ordinance of 2 June 1966. According to article 33, a Committee may request a new examination of the numerical grading after reading the overall appreciation, while the opinion of the Committee is required respecting the promotion table (article 35), compulsory detachment (article 42), or any movement of the official (articles 51 and 52). In the event of professional incompetence, retirement or dismissal can be pronounced only after consultation with the Joint Administrative Committee (article 68).

The Joint Technical Committees. The composition of the Joint Technical Committees is subject to the same regulations. Staff representatives on these Committees can express their opinion on all questions relating to the organisation and operation of the administration or service to which they belong.

3.2.2 Public enterprises

In this sector workers take part in joint consultation relating to their employment conditions basically through two joint committees dealing with disciplinary and safety and health matters. The powers of the Disciplinary Committees in public enterprises are the same as those of Joint Administrative Committees in the public service.

Of the two, it is certainly the Disciplinary Committees which are the most dynamic. Despite the importance of the role

assigned to them, the Safety and Health Committees have not on the whole achieved a great deal. In particular, they have not managed to prevent an increase in occupational accidents. The main reasons for this include the lack of interest shown in safety activities and the absence of technical facilities and suitable education.

3.3 Unilateral determination by the Government

This method of determining conditions of employment has definitely been increasing in importance.

First, under article 127 of the SGT, wages are now a government prerogative. Though the system in the public service has not changed, in the public enterprise sector we are witnessing the disappearance of the relative power of individual or collective labour negotiations, and the same applied in the private sector. The overall advance in unilateral wage fixing is indicative of the desire of the public authorities to control the play of social forces. However, although it is the Government which takes the final decision, the union is involved in the process leading up to the decision. The same applies to the National Wage Board, which is responsible for "commenting upon wage-fixing machinery" (article 211).

Second, although the union negotiates the collective agreement and the internal regulations, the public authorities reserve the right to impose model regulations or a model collective agreement on the social partners. To our knowledge, however, the public authorities have never actually done this.

4. Labour disputes and their settlement

4.1 Incidence of disputes

Labour disputes in the public service are not widely reported. Although from time to time the newspapers publish statistics from the Ministry of Labour about the public and private enterprise sectors, there is nothing about the public service.

There are two reasons for this. The number of disputes and, consequently, work stoppages is low, and in no way comparable with the figure for public and private enterprises. Public servants continue to be privileged from certain points of view, in spite of the definite rise that has taken place in the status of manual work, especially for workers who have real professional skills. Moreover, the State negotiates rapidly, taking into account the demands of public servants and their

representatives. Disputes are therefore brought to an end speedily and do not "degenerate".

4.2 Causes of disputes

The causes of disputes in the public service are also little known. Consequently, we can merely make a few general comments on three sectors in which strike action has been employed.

First is the Algerian Postal, Telephone and Telegraph Authority. This seems to be the most militant establishment, with a certain tradition of strike action. It seems that workers in this authority have sometimes been able to co-ordinate their action at a national level. Post office workers are very similar to railway workers and urban transport workers, if only because of their permanent contact with the public. Any dispute in these sectors therefore has immediate repercussions. The main demands are related to wages.

Second, we have the health sector, which has experienced some disturbances. This sector is not a homogeneous one. On the one hand, there are the paramedical staff, the poor relations of the health system; they do not have the same worries as the doctors, whose demands in the main relate to the organisation of the profession in the widest meaning of the term. The inevitable constraints brought about by the wish of the public authorities to ensure a medical service which is balanced to meet the needs of different regions is one source of disputes.

Third, we have the teachers, whose numbers are increasing as a result of the remarkable efforts the public authorities have been making in this area. The work stoppages, which have been very localised and very few in number, are linked basically to social demands such as for accommodation. However, this is a national problem, and the teachers are no worse off than other citizens.

4.3 The dispute settlement procedure

This is laid down by Act No. 82-05 of 13 February 1982, respecting the prevention and settlement of collective labour disputes. The Act contains provisions for the public enterprise sector and for the private sector but not for the public service. In principle, however, these provisions do apply to the public service because they relate to any dispute "arising between workers and enterprises covered by Act No. 78-12 of 5 August 1978 to make general provision for workers' conditions of employment".

The procedure involves a major preventive approach. If prevention fails, the collective labour dispute is submitted for consideration, first to an ad hoc communal committee for the

conciliation of collective labour disputes, then to a district (Wilaya) committee, a national committee and, in the last resort, an arbitration authority.

4.3.1 Preventive measures

With the objective of preventing collective labour disputes, an enterprise is required to hold monthly meetings with the workers' elected representatives, for the "joint consideration and settlement of any questions relating to ... the life of the enterprise in general" (article 7).

The local unit of the FLN participates in these meetings. Every enterprise is required to keep a register in which suggestions and grievances put forward by the workers' elected representatives are recorded; this register is then numbered and initialled by the labour inspector.

The enterprise is required to announce what action has been taken on these suggestions and grievances within a period of 15 days. Its replies are recorded in the register. Verbatim copies of the register recording, for the relevant period, suggestions, grievances and replies, are sent by the enterprise within eight days to the local unit of the FLN, the local trade union organisations concerned, and the local labour inspectorate.

In the event of disagreement, any questions that have not been settled are re-examined at a special meeting to be held within a maximum of 15 days.

This is the end of the prevention procedure. If the disagreement continues, there is now, in the terms of the Act, a "collective labour dispute" (article 2).

4.3.2 Conciliation and arbitration

Within eight days, reckoned from the date on which it was registered, the collective labour dispute must be considered by the managing council and the Workers' Assembly (for the public enterprises) and the employer and the trade union section (for the private sector).

An agreement may be reached at this stage between the social partners. Where disagreement persists, four successive phases are provided for in the settlement of the dispute.

In the first phase, the labour inspector convenes an ad hoc communal conciliation committee, which meets under his chairmanship. This committee consists of the labour inspector himself, the parties in question, and representatives of the Party section, the General Union of Algerian Workers (UGTA) and the National Union of Algerian Peasants. Where the parties to

the dispute continue to disagree, the labour inspector draws up a report recording the failure to reach agreement.

The dispute is then referred by the labour inspector to the district (Wilaya) committee, chaired by the prefect (wali). In addition to the representatives of the Party, the UGTA and the National Union of Algerian Peasants, there are also representatives of the District People's Assembly, the director of labour and a magistrate of the court. The committee further includes two representatives of each of the parties to the dispute, the director of the district executive committee and the appropriate local labour inspector.

The committee must reach a decision on the dispute within eight days, either by announcing a settlement or by transmitting the file to the National Committee for the Prevention and Settlement of Collective Labour Disputes. In the event of a settlement, the decisions of the district committee are communicated to the parties, which have eight days to appeal to the National Committee.

The National Committee comprises, in addition to the representatives of the UGTA and the National Union of Algerian Peasants, two representatives of the Party, a magistrate of the Supreme Court, a representative of the Minister of Labour, the minister responsible for the enterprise concerned, and a representative of the employers' association. Where a dispute is settled, the decisions of the National Committee are binding on the parties and are enforceable.

Where no agreement is reached before the National Committee, the dispute is submitted to an arbitration authority which is appointed by decree. The arbitration award, which is made "in law or in equity", is made enforceable by order of the First President of the Supreme Court. It is not subject to appeal.

The four-stage system described above offers definite guarantees for the social partners. Nevertheless, it is quite unwieldy. To overcome this defect, the legislation provides for the possibility that, in extremely serious disputes, the district committee and the National Committee can take cognisance of the case so as to provide a rapid solution to the dispute.

4.4 Strikes and lock-outs

4.4.1 Trends in strikes

Since there are no statistics available, it is virtually impossible to give any figures relating to strikes in the public service. In the public enterprises and private sector, on the other hand, the number of disputes is increasing.

The private sector has a larger number of strikes, but the strikes in the public enterprises are more extensive, involving far larger numbers of lost working days. Eighty per cent of enterprises in the private sector employ fewer than 20 workers, but public enterprises are on average at least ten times larger.

To take an extreme example, the single strike that occurred in the state-owned Rouiba Industrial Vehicle Complex in 1982, which was followed by a lock-out and lasted four days, resulted in 36,000 lost working days and involved 9,000 workers. This is virtually equivalent to the whole private sector going on strike for one day.

4.4.2 Causes of strikes

In around 60 per cent of cases, disputes are linked to salary grievances. It is necessary to make a distinction here between salary grievances as such and the payment procedures which result in delays or, in certain cases, disagreements over the right to a given salary supplement. These payment procedures are essentially of an administrative nature but they are the source of quite important disputes; in certain years they may account for the majority of grievances.

Other significant causes of conflicts are general working conditions, individual or group dismissals, the exercise of trade union rights, and poor relations between management and trade union. Each of these accounts for an average of between 7 and 10 per cent of disputes each year. Individual or group dismissals are rare, as the workers benefit from a remarkably protective disciplinary system.

4.4.3 Other forms of action by employees

Strikes are not the only form of action taken by employees against their employers in Algeria. Absenteeism and changing jobs are defensive actions at an individual level in contrast to striking, which is always a collective reaction. These defensive mechanisms have taken on such proportions that they have become a social phenomenon, fostered by the fact that an Algerian worker with any real qualification is virtually certain of finding another job. The figures speak for themselves: according to the data it has provided, the National Iron and Steel Company had a labour turnover rate of 23.4 per cent in 1977-78. Since its creation ten years previously it has renewed its staff twice over.

At the Rouiba Complex "the personnel services record an average of 1,000 resignations per year (in a period of eight years, the workforce has been renewed three times). Absenteeism is as high as 17 per cent of working days throughout the public sector".[1]

4.4.4 Settlement of strikes

Strikes are not recognised in the public service, but they are not expressly forbidden. The same applies to the public enterprise sector. However, official speeches clearly condemn this type of action.

Although the law does not explicitly recognise or prohibit strikes, article 209 of the General Provisions for Workers' Conditions of Employment could be used against strikers: "any person hampering in any manner whatsoever the freedom tro work, the exercise of the right to organise or the process of production and any person occupying workrooms or immobilising the means of production shall be punished in accordance with the law".

In practice, however, the public authorities have hardly been repressive. First, from the civil point of view and in the absence of prohibition on the part of the legislator, it is not possible to speak of illegality. There has never been any termination of the work contract. Within an enterprise, there has never been - to our knowledge - any disciplinary procedure instituted because of a strike. Finally, the offence of interference with the freedom to work (i.e., using threats or violence against other workers who wish to work) has hardly ever been used by the public authorities to thwart the efforts of strikers.

In the private sector, the right to strike is constitutionally recognised. Nevertheless, implementation of this right is subject to two conditions. First, "strikes may be ordered only after the labour inspector has been informed, with a view to conciliation, and after the trade union officers have approved the decision" (article 15 of Ordinance No. 71-75 of 16 November 1971).

Second, a striker must not hamper anyone else's freedom to work. The legislation states (article 27 of Ordinance No. 75-31 of 29 April 1975) that striking does not terminate employment relations but only suspends them. Moreover, "no dismissal or any other sanction may be instituted as the result of a strike except in the event of a severe fault being committed during the strike, and which has been investigated by the courts". The main exception is the offence of infringement of the freedom to work. This makes it possible to take action to prevent the threats, violence and constraints that workers may use during the course of a strike.

In the public service and the public enterprise sector, and in the private sector to a lesser extent, work stoppages are an effective means, available to workers, of pressing their grievances. In the very large majority of cases, these grievances have been met by the public authorities.

Civil, penal or administrative sanctions are virtually never imposed on strikers.

5. Conclusions

As this study shows, the Algerian public service is a very large sector of the economy since it accounts for 22 per cent of all workers, not counting the armed forces. And there is every likelihood that this percentage will continue to increase, if only in view of the number of teachers required to educate a rapidly growing population with increasing educational needs.

Is the Algerian administrative machine overdeveloped? As early as 1966 Mr. Samir Amin[2] estimated that the administration in Algeria was two to three times larger in proportion to the population than that in Tunisia. This administration has not stopped growing, though it is now balanced by an industrial sector which did not exist at that time.

5.1 Are public servants now just like other workers?

The public service was the first sector to be provided, in 1966, with specifically Algerian legislation. At that time, labour law in general consisted of legislation inherited from French law which was not suitable to Algerian circumstances. However, the 1978 General Provisions for Workers' Conditions of Employment (SGT) apply to all workers, no matter in which sector of the economy they are employed.

Are public servants now just like other workers? Decree No. 85-59 of 23 March 1985 issuing Model Regulations for workers employed in public institutions and administrations suggests that the public service does in fact retain certain specific features, though in many ways it is no different from other sectors of employment.

From the formal point of view, workers employed in the public service will meaningfully be referred to as "public servants". Moreover, a public servant is subject to an "obligation to engage himself in the service of the Party and the State" (article 21 of the Model Regulations). This puts an end to public servants' relative neutrality and raises once again the debate on the relationship between public servants and the administration that employs them.

The system of productivity bonuses or penalties, introduced by the SGT, which meant essentially variable wages, has hardly been applied to public servants. Opting for stability in the matter of wages, the legislator has now defined a fixed main wage related to the job under one of 20 categories, to which are added

fixed experience allowances and promotion allowances linked to seniority. This did not represent any real change in the wage system for public servants, but it does indicate a step backwards in relation to the initial objectives of the SGT.

In three areas, there has been a clear narrowing of the gap between public servants and workers in other sectors.

First, the direct recruitment system, introduced by the Model Regulations, seriously impinges upon the principle of competitive recruitment while at the same time closing the gap between public servants and other workers.

More important, article 132 of the Model Regulations states that a public servant can now be dismissed as "provided by the provisions of article 92 of the Act to make General Provisions for Workers' Conditions of Employment ...". In effect, article 92 stipulates that one reason for terminating employment is retrenchment of staff. The statement that public servants benefit from the principle of job security and employment stability no longer has the same value, therefore. Theoretically, a public servant can now lose his or her job due to a retrenchment of staff, in the same way as any worker in the industrial sector.

Finally, welfare provision in all sectors of the economy is now subject to uniform regulations.

In conclusion, if one leaves aside the question of payment by results, which is in any case difficult to apply to the public service, public servants are tending to become like any other workers.

5.2 Determination of employment conditions

The ways in which employment conditions are laid down indicate a quite pronounced change. Joint consultation is developing through the joint committees. In particular, the Joint Administrative Committees have real decision-making powers in relation to disciplinary matters, it being necessary to obtain their confirmation before a public servant can be dismissed. The same rules apply in public and private enterprises.

Nevertheless, unilateral fixing of conditions of employment still remains the rule in the public service. In particular, wages are now a government prerogative, though this applies equally to other sectors of the economy and is a clear expression of the intention of the public authorities to control the play of social forces.

But even in this area there have been changes in the public service, since staff representatives are now involved in the

decision-making process. For this purpose, article 211 of the SGT has set up a National Wage Board on which the UGTA is represented. This Board is responsible, if so requested by the Government, for studying and commenting upon "wage policy at the national and sectoral levels". Moreover, the union is directly involved at various levels in the fixing of a national framework of standard jobs.

5.3 Unionisation and incidence of strikes

There is a complete lack of statistics about the unionisation of public servants and the disputes that have taken place between public servants and the administration. Nevertheless, it may be said without much likelihood of error that the level of unionisation is relatively low in comparison with the public and private enterprise sectors.

The same applies to labour disputes and work stoppages. Wherever possible, public servants' demands have been met by the State. Labour disputes have scarcely ever resulted in the imposition of sanctions, the public authorities displaying great moderation in this respect.

Notes

[1] Misska: "Algérie, du privilège aux droits", in Le Monde diplomatique, Dec. 1982.

[2] S. Amin, in L'Economie du Maghreb (Paris, Editions de Minuit, 1966).

CHAPTER III

LABOUR RELATIONS IN THE PUBLIC SERVICE IN INDIA

by C.P. Thakur*

Introduction

The public service in India has a long history. It has undergone considerable changes in response to political as well as socio-economic transition in the country. The pre-independence system was primarily concerned with the enforcement of law, the maintenance of order and the collection of revenue. Government was only marginally present in the economic and social spheres. It covered the operation of a modest transport and communication system, the regulation of trade and commerce, and limited education and health services.

Independence brought a radical shift in the role of the Government, both qualitatively and quantitatively. The new system acquired different structural, functional and ideological features. The law and order approach gave way to a welfare orientation. The "framework" administration switched to a "network" type, with multidisciplinary ramifications in terms of goals, perceptions, policy formulation, work performance and problem-solving. The system acquired a growth orientation and a certain degree of creativity. It also became increasingly diversified and complex. Overall, the most marked characteristic has been a transition from a regulatory to a developmental administration.[1]

The public service in India has its origin in the first quarter of the seventeenth century under the East India Company. Subsequently, the colonial government laid the foundations on which its later superstructure developed. Fitness was the key criterion for eligibility for public employment. Competitive examinations were subsequently introduced and later still the Civil Services Commission was set up.

At the time of Independence in 1947, the public service in India had a three-tier formation: (a) all-India services; (b) non-technical services; (c) state services. Independent India, with its own Consitution, its programme of planned

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economic development, and its concern for democratic decentralisation, required a public service system which was less stratified and more capable of implementing a programme of socio-economic transformation. A number of committees and experts examined the various aspects of the public service system in the post-independence period. The 1966 Administrative Reforms Commission was possibly the most significant, apart from the recent Economic Administration Reform body. It was required to give "consideration" to the need to ensure the highest standards of efficiency and integrity in the public service, and to make the public administration "a fair instrument for carrying out social and economic policies" of the Government. In addition, it was to examine ways of achieving social and economic development goals and increasing responsiveness to the public.

As a result of the Commission's recommendations, a separate Department of Personnel was set up in 1970. The earlier Department of Administrative Reforms was then merged with it, and the new Department of Personnel and Administrative Reforms emerged. At the same time the Policy and Planning Wing of the Department was created as the nodal point for the "review and reappraisal of policies". Its functions included recruitment, promotion, moral discipline, staff welfare, redressal of staff grievances, etc. The Policy and Planning Wing has given priority to:

(a) a watchdog role to safeguard integrity in the public service;

(b) simplification of service rules, personnel policies and personnel administrations; and

(c) assessment of manpower requirements in the public service, career and cadre management, human resource development and training.[2]

Harmony in public employee relations is essential in view of the Government's onerous responsibility to promote accelerated developmental activity directly, on its own account, as well as through the designated agencies within its control. It has also to continue to dispense the governmental services expected from citizens and taxpayers in a democracy. Much of the quality, speed and continuity of different public services depend on the state of labour relations.

1. Employment and employment conditions in the public service

1.1 Trends in employment

Employment in the public service has been increasing with the expanding role of the Government at different levels.

As table III.1 indicates, total employment in the public sector increased from 12 million in 1973 to 16.9 million in 1984. The central government alone accounts for 3.3 million employees. With a share of 6.2 million state government employees constitute the largest single category. A total of 5.3 million employees in the quasi-government sector includes a substantial number of industrial employees working in the railways, Posts and Telegraphs, and different civil and defence departments. Railway employees constitute 47 per cent of this subsector, whereas Posts and Telegraphs and civil and defence account for approximately 15 per cent each. The expansion of the railways and communication facilities explains this trend. Local bodies' share of total employment has been relatively stable. Currently they account for 2.1 million employees.

The industrial distribution of public employees is shown in table III.2. This classification provides a detailed breakdown of public employees. As can be seen, almost half are employed in white-collar jobs in community, social and personal services - with nearly 8 million employees. The comparable figure in the private sector is only 1.3 million. The picture is totally reversed if one considers the relative figures for manufacturing. In this category, the private sector accounts for 4.5 million employees compared with only 1.7 million in the public sector. Again, the share of public employees in finance, insurance and real estate is roughly 1 million compared to 2 million in the private sector. These differences reflect the relative activity profile of the public and private sectors.

As far as the structure of employment is concerned, the bulk of employment is in the lower categories. Out of the total of about 10 million employed by the central and state governments, roughly 25 per cent are in the administrative, professional, executive and clerical categories. Production and unskilled workers together account for the remaining 75 per cent.

There is a growing concern to control the cost of the public service. The Third Pay Commission examined the arguments of the employees that resources should be augmented through effective realisation of taxes, proper returns on investment in the public enterprises, a more efficient management of government and a thorough elimination of waste. However, no spectacular improvements were expected from such measures. Besides, the health of the economy had to be ensured. This aspect again finds specific mention in the terms of reference of the Fourth Pay Commission. At one time, a specific Expenditure Commission was appointed. Definite efforts to control the cost of government are currently being made. The ban on fresh recruitment and the creation of new jobs, the review of redundant departments and the identification of surplus staff, currently in progress, are clearly directed towards rationalisation and economy. Improved work practices and technological innovations are being used to

Table III.1: Employment in the public sector, 1973-84
(in thousands)

Branch of public sector	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984
Central govt.	2 918	2 939	2 988	3 047	3 082	3 096	3 134	3 178	3 195	3 249	3 266	3 311
State govts.	4 575	4 700	4 742	4 897	5 020	5 160	5 309	5 478	5 676	5 853	6 038	6 153
Quasi-govt.	2 578	2 912	3 192	3 392	3 675	3 929	4 170	4 343	4 576	4 812	5 040	5 272
Local bodies	1 900	1 928	1 940	1 985	1 989	2 015	2 063	2 080	2 037	2 033	2 111	2 130
Total	11 971	12 480	12 862	13 322	13 766	14 200	14 676	15 078	15 484	15 946	16 456	16 866

Source: Government of India: Economic Survey, 1985-86, table 3.1, p. 142.

Table III.2: Employment in the public sector according to industrial classification, 1975-84 (in thousands)

Item		1975	1976	1977	1978	1979	1980	1981	1982	1983	1984
0.	Agriculture, hunting, etc.	334	359	366	387	408	431	463	457	476	489
1.	Mining and quarrying	694	719	757	758	771	797	818	832	884	927
2. and 3.	Manufacturing	1 019	1 113	1 226	1 355	1 416	1 446	1 502	1 592	1 634	1 717
4.	Electricity, gas and water	507	536	563	599	634	661	683	698	721	732
5.	Construction	956	992	1 009	998	1 032	1 068	1 089	1 112	1 120	1 119
6.	Wholesale and retail trade	53	56	76	83	99	110	117	113	118	124
7.	Transport, storage and communications	2 363	2 418	2 467	2 520	2 597	2 651	2 709	2 781	2 826	2 864
8.	Financing, insurance and real estate	492	490	534	580	647	691	748	815	872	913
9.	Community, social and personal services	6 444	6 639	6 769	6 918	7 071	7 224	7 355	7 547	7 806	7 980
Total		12 862	13 322	13 766	14 200	14 676	15 078	15 484	15 946	16 456	16 866

Source: Government of India: Economic Survey, 1985-86, table 3.1, p. 142.

increase efficiency in the public service. Together, these measures are having a moderating influence on the growth of the public service. In view of the resource constraints contained in the Seventh Five-Year Plan, the pressure for economy in non-plan expenditure, particularly as regards remuneration of government employees, is likely to be much more intense, with all the implications this has for labour relations.

1.2 Conditions of employment

1.2.1 Pay

Public service remuneration[3] is of major significance for the economy for several reasons:

(1) It is essential in determining the quality of public services, both in terms of attracting and retaining efficient personnel and in terms of motivating them to perform well.

(2) Remuneration for a large number of public employees has cost as well as income implications affecting critical economic variables.

(3) It has a cumulative effect through its influence on the level and pattern of compensation, even in the non-government sectors of the economy. Compensation to public employees has become a major reference point in wage and salary negotiations in other segments of the labour market.

The recommendations of Pay Commissions, appointed at periodic intervals by the central and state governments, provide the basis of compensation to government employees. Local bodies, depending largely on grants-in-aid from the Government, invariably follow the government pattern of compensation. Three Pay Commissions have so far examined the wages, salaries and other benefits of central government employees in 1947, 1959 and 1973. The Fourth Pay Commission is currently in session, its terms of reference being:

(a) to examine the present standards of emoluments and services, taking into account the total package of benefits, including death or retirement benefit, in cash or in kind;

(b) to examine the pattern of allowances and benefits, and to suggest rationalisation and simplification to promote efficiency; and

(c) to make recommendations having regard to the prevailing pay structure in public sector undertakings, state government

employment, etc., economic conditions in the country, the resources of central government, and the demands made on it relating to development planning, defence and national security.

Its recommendations are being eagerly awaited[4] in view of:

(a) erosion in the purchasing power of the pay packet of public employees as a result of rises in the cost of living;

(b) distortion in the pay structure; and

(c) the fact that public service remuneration has increasingly fallen behind that of private sector and public enterprise employees over the years. Pay Commissions have also made recommendations from time to time on the remuneration of state government employees.

Dearness allowance. Protection against erosion of the purchasing power of employees' earnings in the form of dearness (cost of living) allowance, its level, the basis of its calcuation, and its periodicity of payment constitute another major issue. All the three previous Pay Commissions and the current Fourth Pay Commission, as well as their counterparts in the states, have had to deliberate over this issue. A separate Dearness Allowance Commission also looked into the matter. Since 1974 the Government, though modifying the Commission's recommendations, has neutralised this erosion of purchasing power at the rate of 3-4 per cent, subject to a minimum and maximum amount depending on the level of pay. This facility has since been extended to all employees irrespective of their pay. This has been welcomed as a major relief for government employees.

State government employees' demand for parity in dearness allowance with central government employees influenced the labour relations climate in India for a long period. Agitations, followed by several Pay Commission recommendations, have resulted in most states responding favourably to such demands. The states in turn have sought greater financial accommodation in devolution of resources from centre to state through the Finance Commission channel. They have often succeeded in this regard. The dearness allowance issue also reached the highest judicial level in 1985. The Supreme Court settled the issue of release of withheld dearness allowance and additional dearness allowance, and the Government has since implemented its decision.

The payment of productivity-linked bonuses has been another major issue. Government employees, particularly in the railways and other industrial categories, had long demanded bonus payments, but the Government continued to resist. Now, finally, all central government employees receive, as bonus, an additional

amount (for a stipulated number of days) calculated on the basis of certain indicators of productivity.

Need-based minimum wages. Financial issues involving wages, bonuses and a variety of other benefits dominate the labour relations arena even in the government sector. Following the report of the Fair Wages Committee and a resolution of the Indian Labour Conference, the issue of need-based minimum wages was considered by the Second Pay Commission. Calculations in this regard were made both by the Second and the Third Pay Commissions. But its feasibility was ruled out in view of:

(a) the additional expenditure involved;

(b) its spill-over effect on state governments and others; and

(c) an obvious paucity of resources.

The Third Pay Commission endorsed the views of a number of witnessess that appeared before it that "even if such resources could be made available either by additional taxation or by economies in non-plan expenditure, they should first be used for the amelioration of the lot of the people who are unemployed or underemployed, rather than for ensuring a minimum wage related to certain norms for a section of the community". It called for realism, keeping in view conditions in the country, and cautioned against setting "premature and unwise minimum standards which the country and the economy can ill afford", for it would be "tantamount to a misdirection of resources".

The principle of comparability. Relativity in wage fixing is a well-known feature of labour market realities. In the case of government employees, "comparability" or "fair relativity" has been a significant basis in the determination of remuneration. The First Pay Commission, in general, respected this consideration and the Second Pay Commission considered its appropriateness under Indian conditions. The principle of "equal pay for equal work" received considerable attention from the Third Pay Commission too. It examined extensive empirical data and observed that "labour in India was able to use its organised strength to improve both money earnings and real earnings and to better its relative position". However, it took note of the inherent difficulties in comparing government and private sector jobs and remuneration, as well as the differences in motivation and personnel policies between the two sectors. But too large a disparity between wages and salaries in the government sector and those in organised trade and industry for broadly comparable work could "affect adversely" the efficiency of public services. The Commission therefore felt that at the start of a career in government service, comparability should be given greater weight, while more divergence could be feasible and acceptable later in one's career. The principle of the Government as a model

employer in terms of its being the highest paymaster was rejected. At the lowest levels the principle of social desirability was advocated, and at the highest levels the principle of social acceptability. At the intermediate levels the usual issues of relativity and differentials were to be given weight. The principle of relativity with particular reference to the prevailing pay structure in the public sector undertakings and in state government employment finds specific mention in the terms of reference of the Fourth Pay Commission. Several Pay Commissions, appointed by different state governments, also found it difficult to accept the principle of comparability for full and detailed application. But "outside rates" could, in their view, serve as the basis for correctives.

1.2.2 Other conditions of employment

Promotion again has always been a major bone of contention.[5] The recent freeze in appointments and ban on the creation of new posts has made it a more explosive issue. But now one time-bound promotion for each employee is a reality, and the struggle for a second one is currently on.

Another major development affecting conditions of employment relates to technological change. This has far-reaching implications for workload, job elimination, retraining, deployment, etc. The Government is pushing for the adoption of modern technology to improve operating efficiency, but there is marked resistance from the unions, particularly from among the older age group. In the final analysis the process of technological innovation in government services is under way, but the pace is still slow. Historically, the slow pace of change and the accompanying expansion of the public services has cushioned the process. But the pace of change is now faster, while expansion is slow, with frequent freezes on recruitment, and this has brought a sharp edge to the issue.[6]

A recent decision of the Supreme Court has added to feelings of insecurity amongst government employees. Under certain conditions, the services of an employee can now be terminated without an inquiry and even without a reason being given. Government clarifications and assurances notwithstanding, a sense of threat has spread among all categories of government employees. Efforts are now being made at all levels to seek added security against this "economic death sentence", as it were - though a new judgement seems, to some extent, to have reversed the position again.

Possibly the most popular change in employment conditions for employees has been the recent decision to switch over to a five-day week for all. But the specific hours of daily work are in the process of adjustment across categories and locations.

The age of retirement has recently emerged as a contentious area. One state government reduced the age from 58 to 55 years, but a judicial intervention has restored the previous position. In another state, the employees are presssing for an upward shift in the age of retirement.

Pensions and other retirement benefits are increasingly engaging the attention of employees and their organisations. This is another of the major items before the Fourth Pay Commission.

2. Representation of employees and employers in labour relations

2.1 Employees' organisations

The pattern of representation is an important structural feature in the institutional arrangements for labour relations. Within the national pattern, sectoral variations have arisen to meet the unique characteristics of certain categories of employees. Historical factors in its evolution also influence the pattern of representation somewhat.

In the public sector, employees in the industrial categories, working for a department, departmental undertaking or public enterprise, have followed the usual industrial and craft union pattern. Typically a union is organised, registered under the Indian Trade Union Act and recognised by employers. It often joins an industrial federation and affiliates to a national centre. But several unions are retaining their independent character, at any rate formally, with an undercurrent of political links in most cases.

Employees in the non-industrial categories, however, particularly the white-collar workers, have followed a new and distinct pattern. Most of them are now unionised. In fact, the level of unionisation in the civil (non-military) employment sector at central, state and local levels is nearly 100 per cent. A fairly large number of these public employee organisations operates as associations, without formal registration under the Indian Trade Union Act, as this facility is not available to them. But this has not affected their pattern of functioning. Their activity, choice of strategy and objectives are those of a typical trade union. Another unique feature of these organisations is the overwhelmingly internal and capable leadership. This is largely because of the high average level of education among employees in this category. Most of the organisations are oriented towards members' interests and are mainly concerned with conditions of service.

The internal functioning of most of these bodies is fairly standard, with provision for election of their office bearers, routine meetings and periodic concerted programmes. Their activities could be categorised as:

(a) organisational, including new membership drives and routine services for members;

(b) bargaining, in whatever forum available or possible, including participation in joint consultative bodies, making representations before Pay Commissions, etc.; and

(c) agitational, including mass demonstrations to highlight major grievances or to draw the attention of the appropriate authority from time to time.

2.1.1 Levels of unionisation

Statistical data on membership is not available on an updated basis, and exaggerated claims are not unknown by rival unions, associations or federations. But the public service unions do give the distinct impression of having an extremely strong membership base.

Central government employees have a long history of unionism, but non-gazetted employees (NGO) at state level have only consolidated their organisation in the last few years. The encouragement has come from the successful organising drive and the consequent gains by employees of the nationalised banks and insurance companies in recent years, the dominant white-collar group. The bargaining gains of unionised blue-collar employees have also given a positive signal to the hitherto lukewarm or indifferent categories of employees of the value of organised strength and action. Erosion in earnings differentials, relative job insecurity, saturation in vertical mobility, etc., have together provided a substantial impetus to their organisation and representation. The deliberations of the Pay Commissions have also encouraged them. Interestingly, the job security of government employment, rather than dampening the propensity to unionism, has further strengthened it. Government employees have increasingly realised the need to build countervailing organisational power and to overcome their hesitation in adopting the familiar trade union posture in furtherance of their interests.

Teachers at all levels are today a highly articulate group. Neglect of their remuneration relative to other groups, growing cost-of-living pressure, and society's higher expectations of their performance have forced them to seek the familiar protective umbrella. Simple value-loaded appeals to teachers are becoming increasingly ineffective. Primary school teachers now

have a strong national federation, with parallel organisations for secondary school teachers and college teachers.[7]

Nurses, doctors and several paramedical categories have also become organised. Their organisations are primarily local, but there are strong federations at state level. To a large extent, the unit of association and the federation of such units are influenced by the employment arrangements and the source of funding.

Police and fire-fighters have their organisations too, but not infrequently they have demonstrated their capacity to protect and promote their interests without trade union organisations. Even the Gram Sewaks, employees of village Panchayats, have strong bodies at state level.

2.2 Employers' organisations

On the employers' side, the organisational picture is not so clear. By and large, central government, state governments and local bodies look after their respective problems through their appropriate departments. The ministry that deals with the particular establishment in question, and the Ministry of Finance, with the overall direction of the Cabinet or a cabinet committee, usually deal with such matters. At central government level, the Department of Personnel and Administrative Reforms is the focal point in all service matters. In the Joint Consultative Machinery (JCM), the employer is represented at all levels through a designated officer of senior rank.

State governments have also on occasion raised the question of inter-state and centre-state parity in remuneration, dearness allowance and other service matters in different forums, particularly at times when Finance Commissions or such other bodies that deal with the sharing and allocation of resources between the centre and the states have actually been deliberating. The association of Mayors of Municipal Corporations has often deliberated on their common problems, primarily on their resource position. The service conditions of their employees have figured only marginally in their terms of reference, however. With growing urbanisation and increasing pressure for extended urban services in the face of a paucity of resources and strong unionism, more such co-ordination is expected. Recently the central government has, through appropriate committees, tried to look into the problem of rationalising the service conditions of certain categories, for example, schoolteachers and college teachers.

The principal locus of power on the employer side is the Finance Ministry, though operationally the Cabinet/relevant ministry is the focal point. Certainly the Cabinet, at the central or state level, gets deeply involved in all major

issues. In the final analysis, decisions with financial implications and major policy aspects, even when being handled formally by autonomous bodies like a university, cannot escape the reference, approval or direction of this ultimate source of government authority. And, of course, the Government is finally accountable to the legislature, both for the financial cost of such decisions and where there is a breakdown in the normal functioning of any of the public services, with high visibility and potential for third-party injury. The pressure is all the more intense because of the obvious political dimensions in the operation of the public service in a multi-party system, with scope for sharing both credit and discredit for good or poor government.

3. Methods of determining conditions of employment

Methods of determining conditions of employment in India have evolved over a long period and have taken a variety of courses. Historical developments, changing patterns of government, changes in public policy and corresponding changes in labour relations policies have influenced both the evolution and the working of these methods. Unilateral determination of conditions of employment has been the basic method historically for all employees, particularly when the countervailing force of trade unionism had not taken shape.

The emergence of a union movement in India, and its nexus with the struggle for independence, brought a political dimension to labour relations. The Sepoy Mutiny of 1857 was a form of employee revolt from within the ranks of the police and military personnel. This later acquired the character of a political struggle for independence.

Until independence in 1947, labour relations in the public service were directed towards developing a body of employees who were dependable and loyal to the colonial government. There were corresponding rewards too, including absolute job security and relatively attractive remuneration. But power rested with the employer. The decision-making process was totally unilateral, with employees enjoying hardly any consultative or bargaining rights.

3.1 Unilateral determination by the employer

The sovereignty principle has always weighed heavily with the Government in dealing with labour relations issues. Its role as an employer can come into conflict with its duties and obligations as the sovereign authority. The Government inherently assumes that the status of public employee is a priviliged one, and that this involves corresponding obligations

on the part of public employees to deliver public services peacefully, without interruption, and in a disciplined way. There is an implicit paternalism in the Government's determining of the conditions of employment and redressal of grievances. It has considered its unilateral decisions in the best interests of its employees, and it has often relied heavily on the effectiveness of its appeals to the conscience of employees in the national interest as well as its ultimate power to resort to coercion. The essential nature of services and the public interest involved in the field of public employment provide a highly persuasive basis for the Government to adopt a grudging attitude towards the sharing of power to determine service conditions with the organised body of its employees.

3.1.1 The Civil Service (Conduct) Rules

The service conditions of government employees are covered under the Civil Service (Conduct) Rules (apart from public employees in the industrial categories, who are governed within the framework of major pieces of legislation like the Industrial Disputes Act and the Indian Trade Union Act, among others). Historically, Fundamental and Supplementary Rules of the Government dealt with service matters. Absolute job security, strict discipline and relatively attractive remuneration, determined as a result of unilateral administrative decisions, constituted the main body of legal and administrative arrangements. Under an amendment in the Civil Service (Conduct) Rules, government employees have no right to strike with regard to any matter pertaining to their conditions of service. Earlier the staff had offered a "no strike" undertaking if the Government accepted binding third-party arbitration in disputes, but the Government rejected this proposition.

3.1.2 The Pay Commissions

The periodic Pay Commissions appointed through an administrative decision are the crucial institution for determining conditions of service. The terms of reference of such commissions are usually general, but they invariably determine the minimum and maximum wages apart from intermediate scales. In the process of rationalisation, each Pay Commission determines a set of pay scales. All positions and categories are fitted into them, with the usual adjustments in individual cases of difficulty. A general trend has been: (a) to reduce the disparity between the minimum and the maximum; and (b) to reduce the total number of scales. The question of dearness allowance, its level and its linkage to the cost-of-living index, also falls within its purview. In fact the entire range of benefits, including leave, holidays, etc., is examined by the Pay Commissions. Their recommendations form the basis of the Government's final decision. This decision is taken unilaterally, but the staff side gets ample opportunity to

present its collective and sectional case in response to questionnaires and through representations. Personal evidence can also be presented to representatives of different employee bodies. Before making its final decision, the Government often consults the staff side on certain key issues.[8] The decisions taken on the recommendations of the Pay Commission are valid for a period of five years under an agreement in the JCM. This brings some stability in service conditions. Of course, the issues relating to implementation continue to remain active during this period.

3.2 Consultation and negotiation

Two problems arise, however, for the system of unilateral determination of conditions of employment. First, the power of the organised body of public employees is a fact to reckon with, and it is growing. This requires adjustment in response to its pressure both for changes in its conditions of employment and for access to structured forums for consultation and negotiation. Second, the democratic framework of the country, particularly as the Government is in the vanguard in promoting industrial democracy in the private sector, puts the Government under constant moral pressure to relent in the face of the demands of organised public employees. A combination of pragmatism and ideological considerations has led to the emergence of the JCM and arbitration machinery, primarily for non-industrial employees, and of certain negotiating machineries for industrial employees. A problem arises, however, from the argument that Parliament has a prerogative over decisions involving budgetary commitments. This has been one of the major factors, apart from the sovereignty argument, behind the Government's rejection of the demand for binding third-party arbitration.

3.2.1 Staff Councils

The first steps towards joint consultation were taken in 1954 with the establishment of Staff Committees, later called Staff Councils, in the central ministries. The Senior Staff Council was to look after the needs of class II and class III employees, while the Junior Staff Council was for class IV employees. Meetings were to be quarterly, with a provision for emergency meetings.

The Staff Councils could deliberate on matters related to:

(a) conditions of work;

(b) broad principles regulating the conditions of service;

(c) the welfare of staff; and

(d) promotion of efficiency and work standards.

These bodies were essentially advisory, however. Even the objectives behind their creation were limited. They were an attempt, in the first place, to provide the Government with a machinery for obtaining the views of its employees on their conditions of service and on ways of improving the standard of work. Second, it was a step towards developing cordial relationships by opening a forum for contact.

Given their limitations, the system of Staff Councils could not have been a successful experiment. They simply served to provide a forum for staff representatives to air their grievances, and to put their views before the Government. Irregularity in the convening of meetings and delays in implementation of decisions reached indicated a lack of firm commitment on the part of the Government to the principle of joint consultation.

3.2.2 Permanent Negotiating Machinery for the Railways

Departments like the Railways, Posts and Telegraphs, and defence establishments took a different route in the labour relations field. These departments have substantial numbers of industrial employees. Following the pattern of other industrial employees, they developed a strong tradition of trade unionism, and their national federations emerged as a powerful force. This generated a different pattern of response from the Government, and gradually negotiating and consultative relationships developed.

This culminated in the setting up of a three-tier Permanent Negotiating Machinery for the Railways. The first tier consisted of each railway zone allowing the recognised unions access to the general manager for dealing with issues not settled at division or district level through a Staff Council. The second tier allowed the National Federation to take up any unresolved issues at the level of the Railway Board. The third tier constituted an ad hoc tribunal consisting of representatives from the employers and the staff and a neutral chairman to settle matters not resolved at the level of the Railway Board. However, the Government still enjoyed the discretion to accept, modify or reject the tribunal awards. This Permanent Negotiating Machinery has been functioning smoothly for decades. It has contributed substantially to the stabilisation of labour relations in the railways.

In Posts and Telegraphs, monthly and bimonthly meetings with the representatives of the National Federation and the federating unions at the appropriate levels have also become a matter of routine. The Minister concerned, himself meets the representatives of the National Federation once every two months. Further, a standing committee headed by the

Director-General follows up the implementation of decisions. Since 1954 a three-tier consultation/negotiation machinery has been in operation in defence establishments too.

The industrial employees of the Government covered by the Indian Trade Union Act and the Industrial Disputes Act have open to them channels for voluntary arbitration as well as compulsory adjudication under certain conditions.

3.2.3 The Joint Consultative Machinery (JCM)

The machinery for negotiation and the settlement of disputes occupied the attention of the Second Pay Commission (1957-59). Keeping in view the inadequacy of the earlier Staff Councils, it recommended the setting up of a Central Joint Council representing both industrial and non-industrial employees for negotiation and the settlement of disputes. A provision for a common Central Joint Council to deal with issues specific to industrial staff, separate from the Departmental Council (see below), was also made. Further, it recommended a complementary arrangement for compulsory arbitration. But this machinery was to be open only to recognised associations. Besides, its scope had to be limited to: (a) pay and allowances; (b) hours of work; and (c) leave. Nor did it cover employees above class II level.

These recommendations formed the basis of prolonged dialogue and sustained consultation with the recognised unions and associations and their federations. The 1960 general strike of central government employees had also highlighted the need for systematic institutional arrangements for labour relations. The final outcome was the 1966 Scheme for Joint Consultative Machinery (JCM) and Compulsory Arbitration through a Declaration of Joint Intent on the British Whitley Council pattern. The three-tier JCM broadened the area of coverage and provided a forum for organised interaction and decision-making on labour relations issues. The scheme sought to:

(a) promote harmonious relations;

(b) secure co-operation between the Government and its employees;

(c) increase the efficiency of the public service; and

(d) allow for a resort to arbitration in the case of unresolved differences.

A spirit of mutual accommodation and a more democratic handling of labour relations through consultation and negotiation is evident here. The scope of the new machinery included:

(a) issues concerning conditions of service;

(b) working conditions;

(c) welfare of employees; and

(d) efficiency and standards of work.

The forum of the JCM is also open for the discussion of general principles relating to recruitment, promotion and discipline. Individual cases are beyond its purview. Within its three-tier structure, the National Council constitutes the top tier, the Departmental Council the intermediate level, and the Office or Regional Council the bottom tier, with each tier functioning independently. Before disputes are sent for arbitration, the higher-level council can of course discuss and deliberate on their merits. These bodies are linked by their chairmen, who represent the relevant ministry or department. The National Council deals with matters affecting central government employees generally such as minimum remuneration, dearness allowance, etc. Each department then has a Departmental Council while the Office or Regional Council deals with local-level issues relating to a region or an office.

This scheme does not, however, cover group A, class I and class II services, managerial, administrative and supervisory personnel in public enterprises, police personnel or railways protection force personnel. It is largely confined to group C services. But as these include over 96 per cent of total central government employees, the scheme therefore emerges as the dominant labour relations institution for the central public service.

There is a provision for two Standing Committees of the National Council, one for the industrial and the other for the non-industrial employees, but only one has been functioning so far. This Committee deliberates before the meeting of the National Council to take stock of the actions taken on the decisions of the previous meeting. Its membership is flexible and varies depending on the item under discussion. There is also a provision for ad hoc committees for any specific purpose.

The decisions taken at the National Council become operative subject to the approval of the Cabinet. But it is expected that the "official side will conclude matters at the meeting of this Council and will not reserve them for later decision by the Government". This has made the JCM an effective instrument for resolving differences and redressing grievances.

Though similar developments have still to take place in the state government sector, the consultation process at the central government level seems, therefore, to be operating fairly

successfully - to the satisfaction of both the Government and the staff side. It has achieved a higher level of effectiveness than its counterparts in the public and private enterprises, and it has even emerged as an effective forum for collective bargaining. The terms of reference of the Third Pay Commission were modified after protracted negotiations in the National Council of the JCM, in particular to include the issue of need-based minimum wages. Even the final report of this Pay Commission was implemented only after mutual consultation in the JCM. The most notable outcome was the "increase in the minimum wages" and "upward revision of the lowest bunch of scales of pay".[9] As their side of the bargain, the staff side gave an undertaking not to demand arbitration over these issues for a period of five years.

3.3 The role of the judiciary

The judiciary also makes significant contribution in the labour relations field in India. There is hardly any area where judicial decisions, through case law and interpretations of the provisions of labour laws and service rules, have not made a substantial impact. At the state level, in any event, individual cases relating to service matters reach the judicial forum under appropriate consitutional provision. In the case of central government employees, administrative tribunals have now been created to deal with service matters in different regions.

As already mentioned, a recent judgement of the Supreme Court relating to article 311 has caused a great deal of tension in labour relations. The power of the Government to dispense with the services of an employee without ostensible cause, under certain conditions, has created a deep sense of job insecurity. Another High Court judgement declared Posts and Telegraphs to be an "industry", while yet another declared a hospital and an educational institution to be "industries". Given the "industry" status, labour relations in such groups then fall within the purview of industrial laws. But at the central government level, neither the staff side nor the Government is anxious to switch over to the industrial pattern.

On the contentious issue of the age of retirement of state government employees in Andhra Pradesh, which had been reduced from 58 to 55 years, the Supreme Court intervened to the benefit of the employees and the status quo was restored. Similarly, the question of the release of dearness allowance withheld by the central government was decided in favour of the employees through a Supreme Court judgement. Even the level of the minimum wage for certain categories of temporary and casual employees received judicial attention in a disputed case, and this again was to the benefit of the employees.

Recently, there have been occasions when JCM decisions to refer matters to the Board of Arbitration have been referred by the Government to the Pay Commission. The staff side is now seeking a judicial intervention in favour of direct reference to the Board of Arbitration rather than routing it through the Pay Commission.

4. Labour disputes and their settlement

4.1 Causes of disputes

4.1.1 Pay

Labour disputes in the public service arise primarily because of demands for major revisions of wages as well as protection of the purchasing power of pay packets. Invariably these have taken the form of demands for the creation of a Pay Commission, and later for implementation of its recommendations. The periodicity of disputes in relation to wages and benefits is around ten years, because that on average has been the time interval between the Pay Commissions. Supplementary disputes arise with regard to implementation of the recommendations of such commissions, particularly when the Government has sought to modify the recommendations. Unlike in the public enterprises, the salaries and wages of public employees are determined on the basis of the recommendations of these commissions rather than through a tripartite wage board or tripartite negotiation.

4.1.2 Technological innovation

The introduction of new technology in different government departments, particularly posts and telegraphs, the railways, government offices, etc., is increasingly being disputed. The search for efficiency and speed encourages the adoption of new technologies. But this generates the threat of job loss, a possible increase in workload, and the possible obsolescence of the skills of present jobholders. For all these reasons, trade unions are taking a critical stand. In fact, unions are now beginning to see the inevitability of incorporating new technologies, but they want suitable protection and relief. There are marked differences between the attitudes of the younger and older members of certain unions towards technological innovation with the younger generation of public employees much more likely to see the value of working with the new technology and its likely rewards. The risk of obsolescence and the difficulties of retraining are relatively much less for them than for their older colleagues.

4.1.3 Disciplinary action

Disciplinary action in the form of suspension, termination of employment or demotion of individuals or groups of employees in response to different forms of protests, including strikes, constitutes perhaps the most sensitive area in labour relations. Such an action will be the result of a government decision to enforce the required discipline among public employees, to discourage agitational postures and to punish trouble-makers. However, each decision on disciplinary action leads to another round of protest and agitation.

4.1.4 Individual grievances

Individual grievances or those of certain categories of employees with regard to settlement of leave, promotion, individual salary levels, overtime and fringe benefits constitute a major factor in explaining labour disputes. The government machinery to redress such grievances has not been speedy or effective. This leads to a lot of personal suffering and the aggrieved employees exert pressure on their union. A large part of union activitiy is devoted to handling grievances of an individual or group nature at different levels.

4.1.5 Political differences

Yet another kind of dispute arises as a result of political considerations. Since the political persuasion of the party forming the central government and the different state governments varies, and employees' unions also have formal or informal political links, labour disputes, too, acquire a political orientation. A party in power often faces different kinds of protests from groups of employees of rival political persuasions. Such disputes are an extension of inter-union rivalry expressed in the form of disputes on different issues.

4.1.6 Frequency of disputes

Since the 1970s, the frequency of labour disputes has been fairly low, particularly in the central government sector. But in the state sector it is on the increase. The rising cost of living and the delay in the revision of salaries, in absolute as well as relative terms, in the state government sector, add to the frequency of disputes. In the central government sector, the impending threat of job losses due to technological changes, the current freeze on fresh recruitment of employees, which affects the promotion prospects of existing employees, are generating disputes.

4.2 Settlement of disputes

The recommendations of the First Pay Commission (1946-47) constitute the beginning of structured thinking on the settlement of disputes in the Indian public service. The best course, in its view, was to prevent differences between the State and its employees developing into a dispute. But if a dispute did arise, it was felt necessary to resolve it without resorting to any external machinery. And if the need for outside help did arise mediation and conciliation were to be preferred rather than adjudication. Finally, if conciliation failed, voluntary or agreed submission to adjudication was to be preferred to compulsory adjudication.

In fact these recommendations were not implemented, and it was not until 1966, following the recommendations of the Second Pay Commission (1957-59), that the Scheme for Joint Consultative Machinery (JMC) was instituted, with its complementary provision for compulsory arbitration where no agreement can be reached between the two parties. This arbitration is confined to: (a) pay and allowances; (b) weekly hours of work; and (c) leave issues affecting a class or grade of employees. Individual cases fall outside its jurisdiction. Unresolved differences can be referred to a three-member Board of Arbitration. The Ministry of Labour determines the composition of the Board. The decisions it makes can be modified by the Government provided it sets before Parliament the reasons for such modification. About 150 cases have so far been referred to the arbitration machinery and about 90 per cent of them have been settled in favour of the staff side. But in rare cases like overtime allowance and hours of work the Government has sought to modify the decision of the Board with the approval of Parliament.

As already indicated, the judiciary also play an important role in settling disputes in the public service. Occasionally fact-finding committees have been set up to generate data for more informed action. Administrative tribunals for handling individual grievances in different regions are a new development and should bring good results.

As we have already seen, under the Civil Service (Conduct) Rules, government employees have no right to strike with regard to any matter pertaining to their conditions of service. This is true even of the industrial employees of the Government, who are covered by the Industrial Disputes Act. This Act treats public utilities and essential services, which largely cover the industrial employees of the Government, as being on a special footing. Disputes are therefore subject to compulsory conciliation provisions and the strike option is ruled out.

It would appear that both the parties are substantially happy with the current mixed arrangement. Neither is anxious to

make any radical changes in the institutions and procedures for dealing with labour disputes.

5. Summary and conclusions

Current labour relations in the public service in India are the product both of tradition and of changes. The tradition of unilateral determination by the employer is still dominant despite the institutional procedures for consultation and bargaining. Most of the decisions taken are formally unilateral and administrative in character. But the Government is showing increasing responsiveness to the employees' concerns and organised strength.

Government employees are now highly organised. At the central government level, their organisational history is longer and their combined power is considerable, though their scattered location does create a problem as regards routine activity. Most central government employees' unions have strong and imaginative higher-level leadership. Despite their different ideological persuasions, they have demonstrated skill and maturity in working for the benefit of their members. Direct actions and agitations have taken place, but their use has been a secondary one. Persuasion, consultation and negotiation have been the preferred instruments, and this has paid dividends in terms of obtaining concessions from the Government.

Financial issues and government resource constraints have lead to a situation of strain. More than that, however, the current stress in public service labour relations is arising out of the new climate of accountability for results on the part of government employees. Directives are being issued, indicators of performance are being identified, and accountability for non-performance is being followed through with its package of rewards and punishments. Technological choices in government services are introducing yet another dimension.

The search for better services to the public has led to some policy changes like the opening of parts of the public service to tender from private contractors as well. This had led to ideologically based protests, on the one hand, and added to the threat of loss of employment or promotional opportunity in the government service, on the other. In the face of mounting pressure from the Government for results, the unions are showing their concern, but there is little evidence of real militancy. An element of realism with regard to changing employers' concerns and the need to live with them on the union side is thus bringing a moderating influence to labour relations in the central government sector.

The picture at the state government level is very different, however. In the first place, in the states, trade unions and their pattern of dealing with the Government have a relatively recent history. Both sides are still going through the process of reaching maturity in their dealings. Even the consultative machinery has still to emerge at the state level. The state-level machinery for resolving individual grievances through administrative tribunals has still to take shape.

5.1 The outlook for labour relations in the public service

(a) Given its commitment to democratic considerations and realism in reckoning with the power of its organised employees, the Government is likely to expand the area of consultation and negotiation further.

(b) Consultative machinery along with arbitration has yielded encouraging results at the central government level. The central government is likely to strengthen this institution with the enthusiastic co-operation of the unions. It is very likely that the state governments will now move to conform to the central pattern in working with such an institution.

(c) The pressure at the state government level from the union side will be to follow the pattern of remuneration and benefits enjoyed by central government employees. In view of resource constraints, however, the resistance from the state governments is likely to continue, leading to strain and tension.

(d) The logic of relativity will encourage a pressure for uniformity in the conditions of employment between states, on the one hand, and between the centre and the states, on the other. One cannot indicate the speed of progress on this path, but this appears to be a likely direction of change.

(e) At the local government level, the problem of resource constraints is very severe because municipal authorities are primarily dependent on grants-in-aid. The quality of services delivered is deteriorating, and public grievances are growing. The co-operation of employees is critical if the legitimate demands of the public are to be met. For this, municipal authorites will have to find ways of establishing peaceful relations with their employees and their unions. This will require imaginative supervisory leadership and support of central and state government through all possible instruments, including subsidies.

(f) Labour relations in the public service will always have high visibility from a public point of view. They will also inevitably have a political character. Together, this will bring complexity and an occasional sharpness to labour-managment interaction in this field.

(g) The sovereignty theory will continue to be a major consideration for the employers in taking budgetary decisions and determining conditions of employment. This will have some moderating influence on the unions, notwithstanding their growing organised power. However, the logic of a pluralistic political system will encourage the expansion of consultative and bargaining processes.

(h) The financial context may well continue to dominate labour relations in this field, with budgetary constraints increased further by the paucity of resources for developmental work. Government reluctance to create the impression of being a better paymaster than the public enterprises therefore seems likely to grow. From the employees' point of view, however, the pressure for better conditions of employment, absolute as well as relative, will continue. Tension will inevitably follow. A strong, imaginative and understanding union leadership could lessen this tension, unless the logic of political rivalry encourages things to move in a different direction.

(i) Public services are certain to remain essential. The demand for such services has always been inelastic. The cost of delivery of such services will grow while resources will be a limiting factor. As a result, public pressure will mount and public employees will increasingly discover their bargaining power. This they could use to their advantage in extracting better terms unless the public employer evolves a pro-active strategy in dealing with them. This would require more organised policy-making, creating multiple forums for interaction with the employees, and encouraging a mutually trusting relationship. There is some evidence to suggest the possibility of progress on this path, but this will not be uniform at different levels and across different categories of employees.

(j) Certain developments do suggest that the pattern of labour relations in the public service may tend to converge with that in the public and private enterprise sectors. But there is enough to suggest that a certain uniqueness as well as differences will remain. In any event, the labour relations scene in the public service is likely to undergo changes in the coming years, and it will require close watching if its stable patterns and features are to be discerned.

Notes

[1] Government of India, Ministry of Home Affairs, published materials on public service personnel relations, various documents.

[2] ibid.

[3] C.P. Thakur and Sushila Thakur: "Public system remuneration and incomes policy", in Economic Times (New Delhi), 21 and 22 Nov. 1980.

[4] In a convention of central government employees held at Bombay by one of the union federations, the Finance Minister declared that the report would be submitted by mid-1986.

[5] The house journals of unions and prolonged discussion with selected union leaders provided useful data on issues of concern and their current status in the labour relations field.

[6] ibid.

[7] A national convention of teachers was recently organised in Delhi. The new education policy currently under debate has provided considerable impetus to union activity.

[8] See the documents of the Confederation of Central Government Employees' Federation.

[9] ibid.

Appendix

Scheme for Joint Consultative Machinery and Compulsory Arbitration for Central Government Employees

With the object of promoting harmonious relations and of securing the greatest measure of co-operation between the Government, in its capacity as employer, and the general body of its employees in matters of common concern, and with the object, further, of increasing the efficiency of the public service, the Government of India has decided to establish a machinery for joint consultations and arbitration of unresolved differences. The essential features of the Scheme for setting up such a machinery are described below:

Constitution and procedure

1. The Scheme will cover all regular civil employees of the central government except:

(a) the class I services;

(b) the class II services, other than the Central Secretariat Services in the headquarters organisations of the Government;

(c) persons in industrial establishments employed mainly in a managerial or administrative capacity and those who being employed in a supervisory capacity draw salary in scales going beyond Rs.900 per mensem;

(d) employees of the Union Territories; and

(e) police personnel.

2. The machinery will supplement, and not replace, the facilities provided to employees to make individual representations, or to associations of employees to make representations on matters concerning their respective constituent service grades, etc.

3. There will be a joint council at the national level, and usually at two lower levels - departmental, regional office.

4. The National Council will deal with matters affecting central government employees generally, such as minimum remuneration, dearness allowance and pay of certain common categories, for instance office clerks, peons, and the lower grades of workshop staff, and matters relating to categories of staff common to two or more departments and not grouped together in a single department will also be dealt with by the National Council. The National Council may have two standing committees;

one to deal with matters relating to non-industrial staffs and the other to deal with those concerning industrial staffs.

5. (i) A Departmental Council will deal only with matters affecting staff employed in the department or departments concerned.

(ii) There will normally be one Departmental Council for each department. For two or more small departments under a Ministry, there may, however, be a single council, especially if the nature of duties in the departments is similar.

(iii) For the Central Secretariat Services, which though providing staff for all the ministries in important matters controlled by the Ministry of Home Affairs, there will be a separate council in that Ministry. Other common categories of office staffs of participating offices may also be included in the same Departmental Council.

6. There will also be Regional and/or Office Councils where the structure of a department permits the setting up of such councils. These Councils will deal only with regional or local questions.

7. (i) The National Council will consist of an official side and a staff side. The official side will be appointed by the Government and may consist of up to 25 members, who will include the Cabinet Secretariat; Secretaries, Ministries of Home Affairs, Labour, Communications and Defence; Secretaries, Ministry of Finance, Departments of Expenditure and Revenue; and one of the Secretaries, Ministry of Railways. The staff side may consist of up to 60 members who will be nominated by the recognised associations, in the manner prescribed in this behalf. The Cabinet Secretary will be the Chairman of the Council and the staff side will elect its own leader. Each side will appoint its own secretary or secretaries.

(ii) The Departmental Councils will also be constituted on the same basis. The official head of the Ministry or department will be included in the official side, and will be the chairman of the council. The membership of the official side may vary from five to ten and of the staff side, which will be nominated by the recognised associations, from 20 to 30 depending on the total strength of the staff and the number of grades and services in the department.

(iii) The Regional and/or Office Councils too will be constituted in the same manner. The strength of a Regional or Office Council will be determined by the size of the staff in a region or office, and the head of the region or office will be its chairman.

(iv) No person who is not an employee or an honorably retired employee of the central government shall be a member of a joint council.[1]

8. The associations will nominate their respective representatives for a term of three years; but there will be no bar to re-nomination. Vacancies caused by death, retirement, resignation, transfer, etc., will be filled for the unexpired term.[2]

Scope and functions

9. The scope of the councils will include all matters relating to conditions of service and work, welfare of the employees, and improvement of efficiency and standards of work, provided, however, that: (i) in regard to recruitment, promotion and discipline, consultation will be limited to matters of general principles; and (ii) individual cases will not be considered.

10. The official side will conclude matters at meetings of the councils and will not reserve them for later decision by the Government.

11. A council may appoint committees to study and report on any matters falling within its scope.

12. Subject to the final authority of the Cabinet, agreements reached between the two sides of a council will become co-operative.

13. If there is no agreement between the two sides, the matter may be transmitted to a committee of the council for further examination and report. But if a final disagreement is recorded, and the matter is one for which compulsory arbitration is provided, it shall be referred to arbitration, if so desired by either side. In other cases, the Government will take action according to its own judgement.

14. A matter disposed of by a council in any manner will not be placed on the agenda during the following 12 months, unless, for any special reason, the chairman of the council directs otherwise.

15. The councils will frame rules for the conduct of their business.

Arbitration

16. Compulsory arbitration shall be limited to: (i) pay and allowances; (ii) weekly hours of work; and (iii) leave of a class or grade of employees.

17. Cases of individuals shall not be subject to compulsory arbitration.

18. A dispute shall not be referred to arbitration unless it has been considered by the National Council or the appropriate Departmental Council, as the case may be, and final disagreement between the two sides has been recorded. If there is a dispute relating to an arbitrable matter in a lower council, it will be placed before the Departmental Council concerned.

19. On a final disagreement being recorded as mentioned in clause 18, the Government shall appoint a Board of Arbitration as soon as possible. The Board will consist of three members, one drawn from a panel of five names submitted by the official side, one from a similar panel submitted by the staff side of the National Council, and a chairman who will be an independent person. The members and the chairman will be selected by the Minister of Labour.

20. (i) In determining a dispute the Board of Arbitration shall examine the merits of the case presented by both the official and staff sides and take into account all other relevant factors, including the principles enunciated in any recent report of a commission of inquiry, etc.

(ii) Matters determined by the Government in accordance with the recommendations of a commission will not be subject to arbitration for a period of five years from the date of the recommendations, after which they will become arbitrable with reference, as far as possible, to the factors referred to in (i) above.

21. Subject to the overriding authority of Parliament, recommendations of the Board of Arbitration will be binding on both sides. If, for reasons to be recorded in writing, the central government is of the opinion that all or any of the recommendations of the Board of Arbitration should on grounds affecting national economy or social justice be modified, the central government shall, as soon as may be, lay before each House of Parliament the report of the Board containing such recommendations together with the modifications proposed and the reasons therefor, and thereupon Parliament may make such modifications in the recommendations as it may deem fit. Modification may extend to the rejection of a recommendation.

22. Orders made by the Government in pursuance of recommendations of the Board of Arbitration shall, unless otherwise specified in those recommendations or modified by mutual agreement, remain in operation for a period of three years.

Notes

[1] The Government may permit an ex-employee to be a member of a joint council after examining the merits of each individual case.

[2] An association may replace on the joint council such of its representatives as have ceased to be its office-bearers at annual elections or by exigencies such as a vote of no confidence.

CHAPTER IV

LABOUR RELATIONS IN THE PUBLIC SECTOR IN MALAYSIA

by Dunston Ayadurai*

Introduction

This chapter describes the labour relations system in the public sector in Malaysia. It also describes how labour disputes in this sector are settled. First, the public sector is defined, and the size of the sector indicated. Second, the parties involved in labour relations in this sector are identified. Third, the machinery designed to determine pay and employment conditions in the public sector is outlined. Finally, the kinds of labour disputes that arise in the public sector are examined, and the methods used to resolve these disputes explained. In its conclusion, the chapter considers the adequacy of the labour relations machinery and its ability to settle labour disputes in the public sector, now and in the future.

1. Employment in the public sector

1.1 Definition of the public sector

As used in this paper, the term "public sector" refers to the public services and the statutory authorities (whether federal or state) and local authorities.

The "public services" are listed in article 132 of the Malaysian Constitution and consist of:

- the armed forces;
- the police force;
- the judicial and legal service;
- the railway service;
- the education service;

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- the federal public service;

- the state public services; and

- joint public services.[1]

A "statutory authority" means a body or authority established, appointed or constituted by a written law, including a local authority.

As used in this chapter, the term "public sector" does not include any public corporation or state enterprise engaged in agricultural, mining, commercial or industrial activities - that is to say the so-called "public enterprises".[2]

1.2 Size of the sector

Table IV.1 shows the total population, working-age population, labour force, and employment and unemployment estimates for the period 1980-90 in Malaysia. The "working-age population" is defined as that part of the total population that is between the ages of 15 and 64. The "labour force" refers to those persons between the ages of 15 and 64 who are either employed or unemployed. The "employed" consists of those persons who work for pay, profit or family gain, and includes the underemployed and those who work less than full time. The "unemployed" comprises those persons who are without work but who are actively looking for work and are capable of accepting jobs, if offered them. The "unemployment rate" refers to that percentage of the labour force that is unemployed. It should be noted that the table does not distinguish between the private sector and the public sector, nor between employers, the self-employed and employees.

As at 31 December 1984, a total of 877,777 persons were employed in the public sector (including the armed forces) in Malaysia, of whom 688,087 persons were employed by the federal and state governments and 189,690 by the statutory and local authorities. All these persons would constitute "employees" for there are, in a manner of speaking, no "employers" or "self-employed" in this sector (unlike in the private sector).

Over the period 1983-85, the Malaysian labour force grew at an average rate of 3 per cent per annum, but employment in the public sector expanded at an average rate of 6 per cent per annum. In 1984 the number of public servants per thousand inhabitants in the country was about 45, excluding the armed forces, and about 60, including the armed forces. These figures are high when compared with the average figures for Asia (30), Africa (20), Latin America (38), and all developing countries (29). In fact, they are more comparable with the figures for developed countries - the OECD (Organisation for Economic

Co-operation and Development) countries, for example, employed an average of 77 public servants per thousand inhabitants in 1984.

Table IV.1: Population, labour force and employment estimates, 1980-90

Item	1980	1985	1990
Total population			
Peninsular Malaysia	11 849 000	13 357 000	15 100 000
East Malaysia	2 412 200	2 822 500	3 043 000
Total	14 261 200	16 179 500	18 143 000
Working-age population			
Peninsular Malaysia	6 811 000	7 812 000	8 680 000
East Malaysia	1 292 900	1 502 200	1 630 000
Total	8 103 900	9 314 200	10 310 000
Labour force			
Peninsular Malaysia	4 512 100	5 244 600	6 050 500
East Malaysia	867 900	1 015 000	1 179 100
Total	5 380 000	6 259 600	7 229 600
Employment			
Peninsular Malaysia	4 264 400	4 984 400	5 857 300
East Malaysia	829 100	969 700	1 144 400
Total	5 093 500	5 954 100	7 001 700
Unemployment			
Peninsular Malaysia	247 700	260 200	193 200
East Malaysia	38 800	45 300	34 700
Total	286 500	305 500	227 900
Unemployment rate (%) (Malaysia)	5.3	4.9	3.2

Source: Fourth Malaysia Plan (1981-85).

The cost of maintaining the public sector in Malaysia is correspondingly high. In 1984 46 per cent of the operating expenditure of the federal Government - M$8.77 billion - was devoted to the public sector. Of this amount, M$6.20 billion was spent on wages and salaries, fixed allowances, overtime payments and other similar benefits; M$1.01 billion on transport allowances, transfer charges and retirement and gratuity benefits; and the remaining M$1.56 billion on service utilities, office supplies and general maintenance.

One worrying consequence of this burgeoning bureaucracy is the spiralling cost of retirement and gratuity benefits. In 1980 there were just over 80,000 pensioners, and their retirement and gratuity benefits amounted to M$408 million; in 1984 pensioners numbered almost 135,000, and their retirement and gratuity benefits cost M$680 million; in 1990 there will be just under 215,000 pensioners, and their retirement and gratuity benefits will cost almost M$1.2 billion. The federal Government is taking steps to contain the size of the public sector, and to reduce the cost of maintaining it. Besides freezing recruitment to the public services, the Government has announced its intention of "privatising" parts of it; scheduled for "privatisation" are the telecommunications, the railways and some port services. The Government is also studying the possibility of converting the pension scheme in the public services to a provident fund scheme; some features of the latter, like employee contributions, could help reduce costs.

The actual distribution of public sector employees by type of agency and salary group in 1984 is shown in tables IV.2, IV.3 and IV.4.

Table IV.2: Employees in the public sector by type of agency, 1984

Type of agency	No. of agencies	No. of employees
Federal ministries and departments	25	419 240[1]
State departments and offices	229	88 759
Subtotal	254	507 999
Federal statutory authorities	68	122 302
State statutory authorities	85	18 047
Local authorities	138	49 341
Subtotal	291	189 690
Total	545	697 689

[1] This figure excludes the armed forces. As at 31 December 1984, the strength of the armed forces was 180,088 (about 155,000 uniformed personnel and about 25,000 civilian staff). If this figure is added to the total in the table, the number of employees in the public sector in 1984 rises to a grand total of 877,777.

Source: Public Services Department.

Table IV.3: Employees in the public sector by salary group, 1984

Salary group[1]	No. of employees	Per cent
A	51 211	7.34
B	38 446	5.51
C	244 313	35.02
D	363 719	52.13
Total	697 689	100.00

[1] The Cabinet Committee Report (CCR) of 1977 (see section 3.1) sets out four basic levels of academic qualifications required for entry into the various public services, as follows:

Salary group	Qualifications for direct entry
A	University degree
B	Diploma and higher school certificate
C	School certificate
D	Qualifications considered lower than the school certificate

Under the four salary groups are the various salary grades, which have been categorised, based on post classification. Salary group A thus contains grades A1 to A30, covering all degree schemes of service. The salary scale with code A1 is the scale for the Chief Secretary to (the federal) Government, and the salary scale with code A30 is the scale for untrained teachers with degrees not up to the level of the pass degree of the University of Malaya, and so on (see CCR, pp. 31 and 33).

Source: Public Services Department.

Table IV.4: Employees in the public sector by type of agency and salary group, 1984

Type of agency	Salary group				Total
	A	B	C	D	
Federal ministries and departments	34 454	26 711	177 443	180 632	419 240
State departments and offices	2 836	2 274	18 679	64 970	88 759
Subtotal	37 290	28 985	196 122	245 602	507 999
Federal statutory authorities	12 191	7 553	37 763	64 795	122 302
State statutory authorities	1 163	1 040	5 701	10 143	18 047
Local authorities	567	868	4 727	43 179	49 341
Subtotal	13 921	9 461	48 191	118 117	189 690
Total	51 211	38 446	244 313	363 719	697 689

Source: Public Services Department.

2. Representation of employees and employers in labour relations

2.1 Trade union rights in Malaysia

The principles governing labour relations in Malaysia are embodied in the Industrial Relations Act of 1967. This Act accords employers as well as workers the following "trade union" rights:

- the right to form or to assist in the formation of trade unions;

- the right to join trade unions; and

- the right to participate in the activities of trade unions.

None of these rights is absolute, however. All are qualified either by the Industrial Relations Act itself or by other laws, such as the Trade Union Act of 1959. The right to form unions is qualified in the sense that employers or workers may form unions only within a particular trade or industry or occupation or within similar trades or industries or occupations ("similar" in the opinion of the Register of Trade Unions). Furthermore, every union which is formed must apply for registration as a trade union within the prescribed period; if it does not do so, or if its application is rejected, the union must immediately be dissolved. Similarly, employers or workers may join only those unions registered in respect of the trade or industry or occupation in which they are engaged or employed and may participate only in those activities which are lawful.

These rights are further qualified in the public sector. Indeed, certain classes or categories of public service employees, that is to say federal or state government employees, are prohibited from joining trade unions, namely:

- members of the armed forces;

- members of the police force;

- members of the prison service;

- those employees engaged in a confidential or security capacity; and

- those employees holding any post in the managerial and professional group (except such classes or categories of government employees in this group as are excluded from this prohibition by a written directive issued by the Chief Secretary to the Federal Government).

The remaining classes or categories of government employees are permitted to join trade unions, but only by virtue of an exemption granted by the King. This exemption is, at least in theory, revocable at any time. Public service employee unions may be organised along ministry, department or occupation lines, and may only join union federations whose members are public service unions.

Employees of statutory authorities (whether federal or state) may likewise join only those trade unions whose membership is confined exclusively to employees of the particular statutory authority concerned. And employees of local authorities may join only those trade unions whose membership is confined exclusively

to employees of one or more local authorities. Union federations are similarly organised along statutory authority/local authority lines. Even then, those employees engaged in a confidential or security capacity are prohibited from joining trade unions, as are employees holding any post in the managerial and professional group (except those excluded from this prohibition by a written directive from the Chief Secretary to the Federal Government).

Two further differences between the public and private sectors are worth mentioning here. First, as the employers in the public sector are the federal and state governments and the statutory and local authorities, there can be no employer unions, let alone union federations. Second, employees in the public sector may join either trade unions or staff associations (the former are registered under the Trade Unions Act, 1959, while the latter are registered under the Societies Act, 1966) and in both cases enjoy some of the privileges associated with "trade unionism". In the private sector, employees must join trade unions if they wish to enjoy any of these privileges.

In both the public and the private sectors, however, trade unions and union federations are required to confine their activities and their membership to Malaya or Sabah or Sarawak - they cannot be pan-Malaysian in scope or membership.

2.1.1 Recognition of trade unions by employers

The Industrial Relations Act requires trade unions to obtain recognition from employers (or their unions) prior to achieving any locus standi with them. Two kinds of recognition are available - general and limited. General recognition entitles a trade union to represent all the employees of an employer, whether members of the union or not, for the purpose of bargaining collectively on the terms and conditions of their service or employment. Limited recognition, on the other hand, entitles a union to represent only those employees who are members of the union, and then only for the purpose of negotiating over any individual grievances they may have.

The sole criterion for determining whether or not recognition - general or limited - ought to be accorded to a union is the "competency" of the union concerned to represent the employees in respect of whom it seeks recognition. The criterion for determining whether general or limited recognition is accorded is the "representativeness" of the union which is as follows: Does the union represent a majority or only a minority of the employees in respect of whom it seeks recognition? If a majority are members of the union, then the union will normally be accorded general recognition; but if only a minority are members, then the union will normally be accorded only limited recognition.

Furthermore, the Act stipulates that a "blue-collar" union may obtain recognition only in respect of "blue-collar" workers, and a "white-collar" union only in respect of "white-collar" workers. Only registered unions can be recognised.

In the public sector an employee union is required to obtain recognition from the relevant employer (federal government/state government/statutory authority/local authority, as the case may be) in exactly the same way as in the private sector. But, unlike in the private sector, the issue of general or limited recognition is not an important one because collective bargaining is not allowed in the public sector (see section 3). Hence, though the competency and nature (whether blue collar or white collar) of the union are equally relevant, the representativeness of the union is not an issue in the public sector.

2.2 The parties

The parties involved in labour relations in Malaysia are:

(a) trade unions;

(b) union federations;

(c) related organisations; and

(d) the federal Government (the Public Services Department being the most important federal agency as far as labour relations are concerned).[3]

2.2.1 Trade unions

As of 31 December 1983, there were 383 registered trade unions in Malaysia. Of these, 361 were employee unions and 22 were employer unions (all private sector unions). Of the 361 employee unions, 209 were public sector unions - 132 government employee unions and 77 statutory body employee unions.

Table IV.5 shows the number, membership and geographical distribution of the various types of trade unions, while table IV.6 lists the membership and assets of the 20 largest employee unions.

2.2.2 Union federations

As of 31 December 1983, there were three registered union federations in the country, two of which were federations of public sector unions. All three were federations of employee unions; to date, there were no registered federations of employer unions.

Table IV.5: Trade unions by type, membership and geographical location, 1983

Type of trade union	No. of trade unions			Membership on register		
	Peninsular Malaysia	East Malaysia	Total	Peninsular Malaysia	East Malaysia	Total
Government employee unions	105	27	132	180 957	29 422	210 379
Statutory body employee unions	59	18	77	85 284	4 611	89 895
Public sector employee unions	164	45	209	266 241	34 033	300 274
Private sector employee unions	109	43	152	302 988	14 269	317 257
Employee unions, total	273	88	361	569 229	48 302	617 531
Employer unions	14	8	22	761	103	864
Total	287	96	383	569 990	48 405	618 395

Source: Registry of Trade Unions.

Table IV.6: The 20 largest employee unions, 1983

Name	Membership on register, 1983	Total assets (Malaysian $) 1983	Sector
1. National Union of Plantation Workers	123 996	9 040 822	Private
2. National Union of the Teaching Profession	30 552	2 131 670	Public
3. Amalgamated National Union of Local Authorities Employees	16 859	3 237 172	Public
4. National Union of Commercial Workers	14 571	1 414 802	Private
5. National Union of Bank Employees	12 922	3 763 756	Private
6. Malay Teachers' Union	10 719	115 502	Public
7. National Union of Telecoms Employees	11 574	835 055	Public
8. National Union of Petroleum and Chemical Industry Workers	9 916	429 694	Private
9. Transport Workers' Union	9 028	7 169 426	Private
10. National Union of College-Trained Teachers	8 715	35 385	Public
11. National Electricity Board Employees' Union	8 449	29 215	Public
12. Malayan Nurses' Union	7 954	461 222	Public
13. Armed Forces Civilian Staff Employees' Union	7 569	367 364	Public
14. Malayan Technical Services Union	7 304	20 267	Public
15. National Mining Workers' Union	5 716	276 637	Private
16. Metal Industry Employees' Union	7 066	325 660	Private
17. Railwaymen's Union of Malaya	6 646	212 294	Public
18. Textile and Clothing Industry Manufacturing Employees' Union	7 734	165 884	Private
19. Timber Workers' Union	6 182	111 855	Private
20. National Union of PWD Employees (IMG)	6 405	52 236	Public

Source: Registry of Trade Unions.

The two registered public sector employee union federations are the Congress of Unions of Employees in the Public and Civil Services (CUEPACS), registered in 1957, and the Congress of Teachers' Unions in the Education Service (CTUES), registed in 1978. At the end of December 1983, 53 unions with a total membership of approximately 115,000 were affiliated to CUEPACS, while CTUES had nine affiliated unions with a total membership of approximately 30,000.

2.2.3 Related organisations

There are a number of organisations in Malaysia which function as trade unions or union federations but cannot be registered as such under the Trade Unions Act and so are registered as societies. Among these organisations, the two most important are the Malaysian Employers' Federation (MEF) and the Malaysian Trades Union Congress (MTUC). Both are pan-Malaysian in scope and membership.

The MEF, established in 1978 and registered under the Societies Act, 1966, serves as a co-ordinating body for private sector employers and their organisations. The MTUC was constituted in 1950 and is also registered under the Societies Act. It serves as a co-ordinating body for both public and private sector employee unions. At the end of December 1983, it had 101 affiliated employee unions (of which 30 were public sector unions), with a total membership of just over 306,000 (just under 50 per cent of the total number of employee union members).

2.2.4 The federal Government

The federal Government is deeply involved in the Malaysian labour relations system. Although, in the private sector, on the other hand, it plays three principal roles - legislator, administrator and "third party" - it sponsors legislation affecting labour relations, such as the Industrial Relations Act and the Trade Unions Act. It also administers such legislation - the agency responsible for enforcing legislation affecting labour relations being the Ministry of Labour. And it is involved as the "third party", the other two parties being employers' and workers' organisations. Perhaps the best example of the federal Government's involvement in labour relations as the "third party" is the National Labour Advisory Council, a tripartite council whose object is "[to] provide a regularly constituted machinery for the Minister of Labour to obtain, through tripartite discussions, advice, views or consensus on matters pertaining to labour".

In the public sector, on the other hand, the federal Government plays one notable role, namely that of employer. The federal Government is far and away from the largest employer in

Malaysia and, together with the state governments and statutory and local authorities (both federal and state), employs a significant proportion of the employed people in the country (about 15 per cent). Furthermore, public sector employees constitute approximately 50 per cent of all employee union members, and public sector unions constitute approximately 60 per cent of all employee unions. As an employer, many of whose employees are unionised, the federal Government is necessarily involved in labour relations, at least in so far as the public sector is concerned.

2.2.5 The Public Services Department

The Public Services Department (PSD) was originally established to service only the federal public services; today, for all intents and purposes, it services the entire public sector (except for the armed forces and, to a certain extent, the police force). As far as industrial relations in the public sector are concerned, it is undoubtedly the most important federal agency, for it serves as the personnel department of the federal Government and much more besides; one of its many functions is to administer the Cabinet Committee Report (CCR - see section 3.1); another is to oversee the operation of the Joint Councils (see section 3.2).

The PSD is organised into divisions:

- the Administration Division;
- the Service Division;
- the Training and Career Development Division;
- the National Institute of Public Administration (INTAN);
- the Establishment Division;
- the Salaries and Allowances Division;
- the Negotiations Division; and
- the Pensions Division.

The Administration Division looks after the in-house administration of the PSD itself - an important function as there are almost 4,600 officers in this department alone.

The Service Division formulates, implements and interprets personnel policies in the public services generally. These policies cover such areas as the recruitment, promotion, transfer, discipline, termination and re-employment of public sector employees. This division also serves as the secretariat

for the "common user" services - a group of services whose officers are common to and transferable between any ministry or department in the country. It also conducts and supervises all examinations in the public sector. Finally, it maintains the Central Staff Records of the federal Government.

The Training and Career Development Division is responsible for the acquisition of the trained professionals required by the public sector. It conducts manpower development surveys and plans manpower development. It also plans and manages in-service training courses. Finally, it awards scholarships and fellowships to public sector employees to undertake various courses in local and foreign institutes of learning.

The National Institute of Public Administration (INTAN) is the foremost public sector training institution in the country. INTAN conducts courses for all levels of public servants, covering a broad spectrum of areas, ranging from basic administration and management development to high-level policy analysis. INTAN also carries out research activities, provides consultancy services to ministries and departments, and serves as a "think-tank" on public sector personnel management policies and issues.

The Establishment Division screens requests or proposals by ministries or departments to create or regrade posts; it also ensures that posts are properly graded and categorised. In addition, it formulates the schemes of service in the public sector; it also evaluates and recognises degrees and diplomas vis-à-vis the public services.

The Salaries and Allowances Division formulates and interprets principles and policies regarding salaries, allowances and other benefits; it advises the federal Cabinet and implements all Cabinet decisions on these matters. It also supervises and oversees the operation of the National Joint Councils and the Departmental Joint Councils (see section 3.2): its officers represent the federal Government in all five National Joint Councils.

The Negotiations Division conducts negotiations with individual public officers or public sector trade unions and staff associations over anomalies allegedly arising from the implementation of the recommendations of various salaries commissions and committees. It also represents the Government in any dispute over an alleged anomaly referred for arbitration to the Public Service Tribunal (see section 4.1).

The Pensions Division is responsible for the formulation and implementation of policies on superannuation benefits and accident and "death-in-service" benefits. It is also responsible

for the disbursement of pensions, and for resolving all related problems.

In short, the role and responsibility of the PSD in initiating and administering personnel policies is all-embracing: the Department looks after public sector employees, from their recruitment right through to their retirement.

3. Methods of determining conditions of employment

Having considered the parties involved in labour relations in the public sector, we should now describe the machinery that has been specially designed for determining employment conditions in this sector. This machinery consists basically of the salaries commissions and committees and the Joint Councils.

Although the Industrial Relations Act encourages trade unions which have obtained general recognition to bargain collectively over the terms and conditions of employment of their members and (where the bargaining is successful) to conclude collective agreements with the employers, no collective bargaining is permitted in the public sector.

3.1 Salaries Commissions and Salaries Committees

In the past, particularly over the last two decades, a number of commissions and committees have been constituted by the federal Government to review salaries and other terms and conditions of service in the public sector. These commissions and committees are appointed on an ad hoc basis, as and when a review is considered necessary: there is no legal obligation on the Government to constitute them, nor to accept their recommendations.

Between 1967 and 1977 seven important commissions or committees were set up. With one exception, the reports they made were accepted by the federal Government and their recommendations implemented soon after, sometimes retrospectively. The sole exception was the Ibrahim Report of 1975, whose recommendations the Government found unacceptable. However, the report of the Cabinet Committee appointed to review the revised Ibrahim Report - commonly referred to as the Cabinet Committee Report (CCR) - was accepted in its entirety, and the recommendations it made were implemented with effect from 1 January 1976. The CCR still governs remuneration and other terms and conditions of service in the public sector.

Besides setting out wage and salary structures and scales for public sector employees, the CCR regulates, among other

things, hours of work and overtime, fringe benefits and allowances, and superannuation (including pensions). It also reclassifies public sector employees.

3.2 The Joint Councils

The National Joint Council (NJC)/Departmental Joint Council (DJC) machinery was introduced by Service Circular No. 5 of 1973 and revised six years later by Service Circular No. 2 of 1979. The NJC/DJC machinery is modelled on the United Kingdom Whitley Councils, with some important modifications. At the higher level, five National Joint Councils have been constituted:

- for employees in the general public service other than employees in the subordinate and manual group;
- for public service employees in the subordinate and manual group;
- for employees in the education service;
- for employees in statutory bodies; and
- for employees in local authorities.

At the lower level, about 350 Departmental Joint Councils have been formed to date at the ministry department/statutory body/local authority level. Both NJCs and DJCs were supposed to exclude the armed forces and police force, but DJCs have in fact been constituted for civilian employees in the armed forces and police force.

The constitutions of the five NJCs - which are essentially identical, differing only in details - and a model constitution for the DJCs were drafted by the Public Services Department, as the department responsible for supervising the operation of the NJC/DJC machinery.

As presently constituted, the NJCs and DJCs are forums for discussion rather than negotiation. Their role is confined to the giving of views, "so as to enable the Government to decide on questions at issue". And even the authority to discuss is limited in its scope. For example, while the NJCs may discuss the principles affecting remuneration and allowances, they cannot discuss the salary structure set out in the Cabinet Committee Report. The lack of any authority to negotiate on salaries and other terms and conditions of service is considered by many a sufficient reason in itself for revising the NJC/DJC machinery as constituted at present, and a review of the machinery is currently under way.

3.2.1 The National Joint Councils

The objectives of the NJCs are:

- to establish communication between the federal Government and the state governments and their various employees so as to enable the employers to benefit from the experience, views and ideas of their employees as regards matters relating to work efficiency and staff welfare; and

- to secure for the employees concerned greater participation in the determination of, and compliance with, the conditions under which their duties are performed.

The functions of the NJCs are:

- to give views on and discuss the principles affecting remuneration, allowances and facilities for employees in the public sector (excluding the existing salary scale structure); and

- to discuss and give views on general terms and conditions of service.

Membership of the NJCs varies from 30 to 40 members per council, divided equally between the Official Side and the Staff Side. The Official Side members must be government officers, and are nominated by the Prime Minister. The Staff Side members must be members of relevant public sector trade unions or staff associations and are elected by delegates of those unions and associations. The Director-General of Public Services chairs all five NJCs. The vice-chairman of each council is elected by the relevant Staff Side from amongst its members. In addition, each side of each NJC is required to appoint, from amongst its members, a joint secretary. The NJCs are required to hold at least one meeting a year. Finally, the NJCs are authorised to appoint one or more committees from among their respective members and other public officers with the necessary qualifications and/or experience.

3.2.2 The Departmental Joint Councils

The objectives of the DJCs are:

- to secure the greatest measure of co-operation between the ministry/department/statutory body/local authority involved and its salaried officers over matters relating to work efficiency and staff welfare;

- to provide the machinery for dealing with issues affecting conditions of work; and

- generally to collate the points of view of the employees concerned with those of the official representatives of the ministry/department/statutory body/local authority.

The functions of the DJCs are:

- to discuss and decide on matters affecting conditions of work which have a bearing on the administration concerned, except any matter affecting individual employees;

- to provide employees with greater opportunities for participation and responsibility as regards matters affecting their work and observance of the conditions under which their duties are performed;

- to encourage employees through participation in discussions to expand their knowledge of the administration of the various departments; and

- to provide the means for the improvement of office machinery and organisation, and the opportunity for the consideration of suggestions and recommendations made by the staff on this subject.

Membership of the DJCs varies a great deal, but whatever the actual number is the membership is usually divided equally between the Official Side and the Staff Side. The two sides, the chairman, the vice-chairman and the joint secretaries are selected as for the NJCs, but the DJCs are required to hold meetings at least once every three months.

Decisions reached by the DJCs must be arrived at by agreement between the two sides. The decision then has to be implemented by the ministry/department/statutory body/local authority concerned, unless it affects other departments or contravenes government policy, in which case it must be referred either to the department(s) concerned or to the Public Services Department.

4. Labour disputes and their settlement

Labour disputes in the public sector may be classified under the following four headings:

(a) disputes over anomalies;

(b) trade disputes;

(c) strikes;

(d) other disputes.

4.1 Disputes over anomalies

According to the Public Service Tribunal Act, an "anomaly" is:

(a) any situation, affecting the remuneration or terms or conditions of service of any public officer or class or group of public officers and arising from the implementation of the recommendations of a Salaries Commission, that constitutes a departure or deviation from the principles underlying the recommendations of the Salaries Commission and which remains a departure or deviation from the principles in the recommendations of the Cabinet Committee; or

(b) any situation, affecting the remuneration or terms or conditions of service of any public officer or class or group of public officers and arising from the implementation of the recommendations of the Cabinet Committee, that constitutes a departure or deviation from the principles underlying the recommendations of the Cabinet Commitee.

A dispute over an alleged anomaly may be referred by the public officer/staff association/trade union affected (the "aggrieved person") to the Negotiations Division of the Public Services Department. If the dispute is not resolved through negotiation, it may then be referred by either party to the Public Service Tribunal for arbitration.

4.1.1 The Public Service Tribunal

The Public Service Tribunal (PST) was established by the Public Service Tribunal Act in 1977 and began operations in 1978. Its sole function is to resolve disputes over anomalies arising in the public sector. It consists of a chairman and a panel of persons "who have experience and knowledge in matters of administration", appointed by the King, and removable from office only by him. For the purpose of performing its functions, the PST is constituted by the chairman and two members selected by him from the panel.

Once a dispute has been referred for negotiation or arbitration, the Public Service Tribunal Act makes it unlawful for any "aggrieved person", or for any member of a trade union or staff association which is an "aggrieved person", to go on strike or to do anything described in the Act as a "proscribed industrial action".

The decision of the Tribunal is "final and conclusive, and shall be binding on the Government and on all parties to the anomaly, and [shall not] be challenged, appealed against,

reviewed, quashed or called in question in any court". Furthermore, the decision is to be implemented as soon as is practicable, and in any case no later than six months from the date on which the decision was delivered.

The PST has considerable powers to summon witnesses to give evidence before the Tribunal or produce documents in their possession, including the power to issue an arrest warrant if any person fails to appear. It can also receive any evidence, written or oral, it thinks necessary or desirable, even if such evidence would be inadmissible in a court of law.

Table IV.7 shows the number of referrals to the PST for the years 1980-83.

Table IV.7: Referrals to the Public Service Tribunal, 1980-83

Year	Cases referred	Cases withdrawn	Cases for hearing	Cases heard	Cases not heard and brought forward
1980	65	8	57	34	31
1981	44	12	32	37	26
1982	34	9	25	40	11
1983	29	2	27	26	10

Source: Public Service Tribunal.

Limitations. In making a decision on any anomaly referred to it for arbitration, the Public Service Tribunal Act requires the Tribunal "to have regard to the national interest, the financial implications and the effect of the decision on the economy of the country". The Act also declares that:

> No public officer shall be liable to produce any document in proceedings before the Tribunal which in the opinion of the Government is not in the public interest to produce; the decision of the Government in this regard shall not be liable to be questioned or reviewed by the Tribunal or any court or any authority.

There are also certain matters which the Act construes as "managerial prerogatives", which cannot "be raised or be made a

subject-matter of negotiation or of reference to the Tribunal by any aggrieved person", namely:

(a) the creation and grading of posts;

(b) the creation and grading of schemes of service;

(c) the promotion of a public officer from a lower grade to a higher grade;

(d) the transfer of a public officer;

(e) the appointment of any person in the event of a vacancy arising in the public service;

(f) the termination of the services of a public officer by reasons of redundancy or reorganisation;

(g) the dismissal and reinstatement of a public officer; and

(h) the assignment or allocation of duties in the public service.

Finally, the PST, like the Industrial Court, is not a court of law and is therefore not the final authority on questions of law. It is therefore subject to the supervisory jurisdiction exercised by the law courts over subordinate courts and tribunals.

4.2 Trade disputes

A "trade dispute" is defined in the Industrial Relations Act as "any dispute between an employer and his workmen which is connected with the employment or the non-employment or the terms of employment or the conditions of work of any such workmen". The Act recognises the following ways of resolving a trade dispute:

Negotiation - not closely regulated by the Act, which wisely leaves it up to the parties involved to use this process (universally acknowledged to be the best means of resolving labour-management disputes) as they think best.

Fact-finding - the Act makes available two agencies for fact-finding: the Committee of Investigation and the Board of Inquiry. Their function is much the same: to investigate the causes and circumstances of any trade dispute or matter referred to them, and to report thereon to the Minister of Labour by the specified date. Both are ad hoc agencies, constituted as and when the need arises and disbanded once they have satisfactorily completed their appointed task.

Conciliation/mediation - carried out by the Conciliation Conference, whose proceedings parties to a trade dispute may be compelled by the Minister of Labour to attend. The Conciliation Conference is also an ad hoc body.

Arbitration - the arbitration agency being the Industrial Court, established in 1967. Trade disputes may be referred to the Industrial Court either on the joint request of the parties to the dispute or by the Minister of Labour on his own initiative. Once a disputed is referred to it, the Industrial Court must hear the case and deliver its decision or award without delay. In making its award, the Industrial Court is required to act according to equity, good conscience and the substantial merits of the case, without regard to technicalities and legal form. However, it is also required to have regard to the public interest, the financial implications, the effect of the award on the national economy and on the industry concerned, and the probable effect of the award on similar or related industries. Awards of the Industrial Court are binding on the parties to the dispute; they are also final and conclusive, and cannot be challenged, appealed against, reviewed, quashed, or called into question in any court of law.

The main differences between the public sector and the private sector as regards the settlement of trade disputes are, first, that the conciliation/mediation process is not available to public sector employees. Second, the arbitration process is less accessible to public sector employees and their trade unions than to their private sector counterparts: before a trade dispute in the public sector can be referred to the Industrial Court for arbitration, the consent of the King or the state authority concerned (as the case may be) must first be obtained - and this consent may not always be forthcoming.

During the years 1980-83 there were several hundred referrals to the Industrial Court each year (197 in 1980, 253 in 1981, 241 in 1982, and 355 in 1983). However, it should be borne in mind that the great majority (about 70 per cent) of the referrals to the Court are not referrals of trade disputes, and that the vast majority (90 per cent plus) of the trade disputes referred to the Court originate in the private sector. In other words, in an average year, referrals of public sector trade disputes constitute less than 3 per cent of the total number of referrals to the Industrial Court.

4.3 Strikes

4.3.1 The right to strike

The Industrial Relations Act defines a "strike" as:

the cessation of work by a body of workmen acting in combination, or a concerted refusal or a refusal under a common understanding of a number of workmen to continue to work or to accept employment, and includes any act or omission by a body of workmen acting in combination or under a common understanding, which is intended to or does result in any limitation, restriction, reduction or cessation of or dilatoriness in the performance or execution of the whole or any part of the duties connected with their employment.

The Act does permit the use of the strike or lock-out to settle trade disputes, but they are tightly regulated. Besides defining "strike" and "lock-out", the Industrial Relations Act:

- declares when a strike or lock-out is deemed illegal;
- prohibits a strike or lock-out in certain specified circumstances;
- restricts a strike or lock-out in the "essential services" (listed in the Schedule to the Act); and
- penalises those who participate in, instigate others to participate in, or even financially support an illegal strike or lock-out.

The Act also protects those who refuse to participate in or to continue to participate in an illegal strike or illegal lock-out.

Once again, the strike weapon is less available to public sector employees and their trade unions, partly because trade unionism is in any case more restricted in the public sector than in the private sector. Furthermore, in the process of calling for a strike, public sector trade unions are liable to greater regulation and to stricter accountability for their actions than are their private sector counterparts.

4.3.2 Incidence of strikes

Strikes are not prevalent in Malaysia in the public or private sectors, nor do they involve a great many workers or the loss of a great many working days. Of the 74 strikes which occurred in the period 1981-83, only seven lasted more than a week; none lasted a month.

In fact, there were no strikes in the public sector over the years 1981-83. Though employees who are permitted to join a trade union do enjoy a legally recognised right to strike, strikes are rare in the public sector. As mentioned above, for a strike to be legal, various requirements have to be met and prescribed procedures adhered to. Moreover, once a dispute over an anomaly is referred to the Public Services Department for

negotiation, or to the Public Service Tribunal for arbitration, a strike becomes illegal. This is also the case once a trade dispute is referred to the Industrial Court. A strike over any decision of the Tribunal or award of the Court is also illegal. And the penalties for illegal strikes are severe.

4.4 Other disputes

Recently some disputes have arisen in the public sector which cannot be resolved through the existing labour relations machinery. An excellent example is the dispute arising from the claims made about a year ago by the Congress of Unions of Employees in the Public and Civil Services (CUEPACS) and the Staff Sides of the five National Joint Councils for an upward revision of the salaries and other terms and conditions of service of all public sector employees. The last such revision was made nearly ten years ago - in January 1976, when the Cabinet Committee Report was implemented. In January 1985 the federal Government established a committee of government officials to study these claims and their implications, and in June 1985 the Government raised the salaries of employees in salary groups C and D and in the lower grades in the armed forces and the police force by 15-35 Malaysian dollars per month. CUEPACS and the Staff Sides, considering this salary rise "too little and too late", staged a nation-wide picket in October 1985, and threatened to call their members out on an "all-out" strike in January 1986. In late October 1985, however, the Prime Minister met representatives from CUEPACS and the five Staff Sides, and it was agreed that:

- the committee set up in January 1985 would be expanded to include representatives from CUEPACS and each of the five Staff Sides, as well as key officials from the Federal Treasury, the Prime Minister's Department, the Economic Planning Unit, and the Public Services Department;

- the committee would be headed by the Chief Secretary to the Federal Government, the most senior official in the civil service hierarchy;

- the committee would serve as the forum for negotiations between the two sides on the claims submitted by CUEPACS and the Staff Sides; and

- the committee would meet every four months to review the ability of the federal Government to meet these claims, in the light of the country's financial and economic position.

There the matter stands to date.

5. Conclusions

At present, the machinery designed to cater for labour relations in the public sector differs from that found in the private sector. This specific machinery consists of:

(a) the Public Services Department;

(b) the Salaries Commissions and Salaries Committees;

(c) the Joint Councils; and

(d) the Public Service Tribunal.

Just how adequate is this machinery now, and what are the prospects for the immediate future? The answer to this question appears to be that there is in fact considerable room for improvement.

5.1 The Public Services Department

A statutory authorities department should be set up to service statutory authorities and local authorities. At present, the Public Services Department services both the public service (excluding the armed forces and the police force) and the statutory and local authorities. This is a heavy burden, and the Department is overstretched. If a statutory authorities department were to be established alongside the Public Services Department, this problem would be overcome. Uniformity and consistency of policy and administration in the public services and the statutory and local authorities could be maintained by means of an interdepartmental committee of officials from the two departments.

5.2 The Salaries Commissions and Salaries Committees

It is time a high-level Salaries Committee was provided for. This committee should be constituted periodically, every five years or so, to review wages and salaries and other terms and conditions of service in the whole of the public sector, and to recommend such revision as it deems appropriate in the light of the state of the national economy, the financial position of the federal Government, any changes in the cost of living, and such other factors as are considered relevant. The committee, comprising senior officials from the Federal Treasury, the Prime Minister's Department, the Public Services Department, etc., as well as representatives from public sector union federations and the Staff Sides of the National Joint Councils, should be required to submit its report to the federal Government by a specified date, say six months from the date of its establishment. Furthermore, the federal Government should

undertake to accept or reject, as a whole, the report of this committee and, in addition, to implement its recommendations within six months of the date of submission of the report, if accepted.

5.3 The Joint Councils

The Staff Sides of the National Joint Councils should be given the right to negotiate the wages and salaries and other terms and conditions of service of the employees covered by these councils - the Staff Sides of the three NJCs in the public services to negotiate with the Public Services Department, and the Staff Sides of the two NJCs in the statutory authorities and local authorities to negotiate with the proposed statutory authorities department. The results of these negotiations should be forwarded, in the form of recommendations, to the Salaries Committee proposed above, for the consideration of this committee. However, these negotiations would have to comply with principles or guide-lines fixed by the federal government or the Salaries Committee (such as those found in the Cabinet Committee Report).

5.4 The Public Service Tribunal

The jurisdiction of the Public Service Tribunal needs to be expanded. At present, the Tribunal is only empowered to resolve disputes over anomalies. The Tribunal should also be empowered to resolve trade disputes in the public sector, if they cannot be resolved by negotiation between the parties involved. The Industrial Court would then no longer have any jurisdiction over labour-management disputes in the public sector: the Public Service Tribunal would be the only agency empowered to arbitrate such disputes.

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There is good reason to believe that if these improvements were made, the adequacy of the machinery designed to cater for labour relations and to settle labour disputes in the public sector in Malaysia would be greatly enhanced - sufficiently to meet not only the problems faced today, but the challenges to be encountered tomorrow.

Notes

[1] i.e. those services "common to the Federation and one or more of the States or [common] to two or more States", vide article 133 of the Constitution.

[2] As at June 1985, there were nearly 1,190 public enterprises, of which 180 were statutory authorities, 55 were

government companies, and the rest were subsidiaries of these. These public enterprises were engaged primarily in land development, housing, banking and manufacture.

[3] Labour relations is the preserve of the federal Government, as opposed to the state governments, because the Malaysian Constitution places "labour and social security" in the Federal Legislative List rather than in the State List or the Concurrent List.

CHAPTER V

LABOUR RELATIONS IN THE PUBLIC SERVICE IN PERU

by Mario Pasco Cosmópolis*

Introduction: The legal framework

The Constitution of Peru distinguishes two sectors of labour: the private sector, which is regulated in its entirety by individual and collective labour legislation; and the public sector, traditionally linked with administrative legislation.

In the private sector, full recognition is given to the constitutional rights of freedom of association, collective bargaining and strike action.

As far as the public service is concerned, article 59 of the Constitution states that "the law regulates the income and the rights and duties of public servants and their remedies against decisions affecting them", while article 60 says that "The remuneration, bonuses and pension of servants of the State are approved by a single system".

As far as trade union rights are concerned, article 61 recognises "the right of public servants to form trade unions and to strike", but this does not apply to "officials of the State with powers of decision or who occupy positions of trust, or to members of the armed forces and the police forces".

The public service comprises all workers in the direct service of the State (legislative, executive and judicial authorities) and those in local government (municipalities) and directly related bodies (public institutions, decentralised bodies, etc.). It does not include state enterprises; these, from the labour relations point of view, are considered as part of the private sector. The same is true of manual workers in the public service, whose legal status is the same as that of manual workers in the private sector.

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The highest post in the public service hierarchy is that of the President of the Republic. The next highest posts are those of senators and representatives, Ministers of State and Justices of the Supreme Court. Officials holding political posts or positions of trust are not included in the administrative career (see section 1.2.2).

Labour relations in Peru are subject to highly formalised and very institutionalised structures. Extensive regulations mean that little is negotiable. There is thus a rigid and narrow legal framework for relations between the social partners. This applies both to the private sector and to the public service, although with greater emphasis in the latter. Nevertheless, the two systems are tending to converge.

The regulations for the public service are statutory and derived from administrative legislation; those for the private sector are contractual and derive from labour legislation. In general, it may be said that everything related to the public service has been legislated, starting with the employee's entry into the public service up until termination of service, including the fixing of wages and general working conditions, the granting of social benefits, etc. The legislation leaves only a limited area in which new conditions can be established by means of bargaining.

In the private sector, though the overall situation is similar, there is greater flexibility - which means that collective bargaining and worker participation in management have a wider impact.

1. Employment and employment conditions in the public service

1.1 Employment trends since 1970

Between 1970 and 1975, during the "first phase" of the Military Government, whose policy was markedly state-oriented, the State in Peru suddenly began to grow, and radically increased its involvement in the country's economic life. This increase occurred largely through the recently created state enterprises - created in certain cases by expropriation, in others more by administrative redistribution. During this period, the number of state enterprises grew by more than 28 per cent. Many of them - such as, for example, the petroleum, energy, major minerals, fishing and banking enterprises - were of enormous significance in national production. At the same time, the State adopted an interventionist policy - by the control of foreign trade and the foreign exchange market, etc. - which was reflected in the growth of the size of the administration. Between 1975 and 1980 (the second phase of the Military Government), the first effects of

the world economic crisis began to be felt. The State abandoned its interventionist policy and attempted, although without any ostensible success, to reduce the burden of bureaucracy. Between 1977 and 1978, the Government offered a financial incentive to public servants who voluntarily left their jobs, and in certain cases carried out direct dismissals. All who left the service were paid an indemnity equivalent to eight months' salary. It is estimated that there were 30,000 dismissals, a figure which, to a large extent, relates to public enterprises. In spite of this, and solely as a result of internal growth, the number of public employees increased by around 19 per cent, mainly in the area of education.

Between 1980 and 1985, with the arrival of a democratic government, the number of public employees increased by around 27 per cent (table V.1).

Table V.1: Growth of employment in the public service, 1970-85

Year	No. employed
1970	268 790
1971	282 230
1972	285 052
1973	305 005
1974	326 356
1975	345 937
1976	352 856
1977	366 970
1978	381 649
1979	396 915
1980	412 791
1981	433 431
1982	455 103
1983	477 858
1984	501 752
1985	526 838

Note: These figures relate to public servants in the salaried workers' category; they do not include manual workers.

Source: Compiled by Jorge Pando.

While table V.1 shows the growth of employment in the public service, table V.2 shows the growth of employment in general, including the private and public sectors.

Table V.2: Growth in employment, 1972-85

Year	Working population ('000s)	Salaried working population ('000s)	Salaried workers as pecentage of the working population (%)	Growth rate of salaried working popula-tion
1972	4 401.7	1 760.7	40.0	0
1973	4 534.3	1 842.7	40.6	4.7
1974	4 672.9	1 914.9	41.0	3.9
1975	4 817.5	1 973.6	41.0	3.1
1976	4 968.0	2 024.9	40.8	2.6
1977	5 124.7	2 048.1	40.0	1.1
1978	5 238.4	2 058.4	39.0	0.6
1979	5 441.9	2 037.4	38.1	0.7
1980	5 605.2	2 107.6	37.6	1.6
1981	5 779.0	2 126.7	36.8	0.9
1982	5 958.0	2 150.8	36.1	1.1
1983	6 136.7	2 174.5[2]	35.4	1.1
1984	6 333.1[1]	2 198.2[2]	34.7	1.1
1985	6 535.7[1]	2 222.4[2]	34.0	1.1

[1] Figures estimated on the basis of a 3.25 per cent growth in the working population.

[2] Figures estimated on the basis of a 1.1 per cent growth rate in the salaried working population.

Source: Ministry of Labour; Yépez; CAES; Jorge Pando.

Taking these two tables together, it can be seen that the State, directly or through the state enterprises, has significantly increased its involvement as an employer, while the private sector has decreased. The fundamental reason for this decrease is the economic crisis which, since 1976, has made itself felt in all fields of life in Peru.

Peruvian legislation on the public service distinguishes between public servants (servidores) as such, and public officials (funcionarios) who, under article 59 of the Constitution, are those who hold political posts or positions of trust. This distinction is not mirrored in the statistics.

Table V.3 gives an overall picture of the breakdown of public employees by sector into central government, state authorities, public institutions and local government. The central government is, in turn, broken down into ministries

(excluding the armed forces and police), the armed forces and auxiliary forces, directly dependent bodies and decentralised bodies. The state authorities include the Legislative Power (including senators and deputies), the Judicial Power, the Public Prosecutor's Office and the National Election Jury. The public institutions include the Peruvian Social Security Institute, the public utilities and the universities. The local governments comprise the provincial and district municipalities, including that of Metropolitan Lima.

Table V.3: Breakdown of public employees: Three sample years

	1970	1981	1984
Central government	198 822	319 330	364 722
Judicial power	2 249	3 627	4 199
National election jury	0	845	1 316
Legislative power	0	815	944
Decentralised public institutions	12 558	12 373	12 995
Universities	8 383	22 168	45 356
Peruvian Social Security Institute	22 325	36 000	28 960
Public utilities	5 126	7 723	8 940
Local governments	19 327	29 646	34 319
Total	268 790	433 431	501 752

Source: INAP: compiled by Jorge Pando.

1.2 Conditions of employment

1.2.1 Wage trends since 1970

Table V.4 shows the trends in real wages and prices between 1970 and 1985. In all sectors, real wages grew appreciably between 1970 and 1973, the year in which they reached their highest level. From then on there was a progressive decline, which became more marked in 1978. Following a short upturn between 1980 and 1982, there has been a dramatic acceleration in the decline over the past few years.

The fall in real wages is directly linked with inflation and currency devaluation. Between 1970 and 1975, the exchange rate of the sol (the Peruvian currency - S) against the United States dollar remained stable at a fixed rate of S43.40. In view of the high percentage of imported materials in national production, and the country's dependence on traditional exports (minerals,

agriculture, fishing, etc.), a fixed exchange rate created the illusion of a non-inflationary economy. At the same time, foreign debt was increasing geometrically, a large part of this being destined for arms purchases, the direct subsidisation of food, and investment in public works of doubtful return and zero recovery.

Table V.4: Growth in real wages, 1970-85

Year	Average nominal wage[1]		Consumer price index (1979=100)	Average real wage[2]	
	Private	Public		Private	Public
1970	7 106		11.3	62 885	
1971	8 092		12.1	66 876	
1972	9 341		13.0	71 854	
1973	10 427		14.2	73 430	
1974	11 663		16.6	70 259	
1975	13 954		20.5	68 068	
1976	16 021		27.4	58 471	
1977	19 231		37.8	50 876	
1978	20 065		59.6	33 666	
1979	39 926		100.0	39 926	
1980	68 237		159.2	42 862	34 799
1981	121 736	92 700	279.2	43 602	33 202
1982	216 019	136 100	459.2	47 042	29 639
1983	391 119	209 600	969.5	40 342	21 619
Aug. 1984	822 777	534 800	2 194.9	37 486	24 366
Feb. 1985	1 100 000[3]	615 400	3 480.7	31 603	17 680

[1] In June and July of each year.

[2] Constant only from 1979.

[3] Estimate.

Source: Cuadernos Laborales; compiled by Jorge Pando.

The system of illusory stability came to a crisis in 1976 when the new Government adopted economic improvement measures. The break with a fixed exchange rate, the fall in the price of minerals and other exports, a drop in agricultural production, and the effect of certain political developments over the previous five years brought about the onset of acute inflation.

Between 1978 and 1980, the Government applied stringent measures to salaries in both the public service and the private

sector: it set maximum levels for wage increases in collective agreements; froze the rise in salaries paid to public servants and public officials; restricted and even prohibited the recruitment of new staff, and dismissed around 30,000 employees, as mentioned above.

Inflation reached its highest level between 1981 and 1984, reaching 125.1 per cent in 1983 and 111.5 per cent in 1984. The forecast inflation rate for 1985 was 280 per cent, but this was radically slowed dowm from August as the result of a new policy of price control which has reduced the annual inflation rate as measured by the consumer index to only 3 per cent, with a downward trend.

The anti-inflation policy was based, until July 1985, on reduction of the budget deficit. Part of this stemmed from a slackening in the pace of public investment, but the major part was due to a reduction in administrative costs, a reduction in the working population, and a cutback in real wages. This last factor has, without any doubt, been the one applied most radically: the real wages of public servants fell by 50 per cent between 1980 and 1985.

In the case of the public service, the basic and virtually sole factor in wage fixing is the availability of funds from the public treasury. Wages are fixed unilaterally and universally for all public servants in the Annual Budget Act. Only in the public enterprises - even those that are in deficit - have real wages actually risen, as a result of the widespread practice of drawing up agreements containing wage-indexing clauses which, in many cases, adjust lower-level salaries above the increases in the consumer price indices used to measure inflation in Peru.

One major difference between the public and private sectors as far as wages are concerned is worth mentioning here. In the private sector, including the state enterprises, there is no legal provision except the fixing of a minimum living wage. This results in a very wide wage range, not only from one activity to another or from one enterprise to another but also within each enterprise, which regulates wages in line with its internal policies, the labour market, its finances, etc - tempered by collective bargaining where this occurs. The public service, by contrast, comes under a rigorous and comprehensive single system.

1.2.2 Other conditions of employment

The 1984 Act on the Administrative Career and the Unifed System of Remuneration (Legislative Decree No. 276) was the first major change in the public employment system since the 1950s. From that time the public service had been governed by General Regulations (Act No. 11377) of which the main features were:

Entry and advancement by competition - this requirement was never met.

Job security - once a public servant had completed a probationary period, he or she could not be dismissed unless he or she committed one of the faults referred to in the relevant legislation and following an administrative procedure.

Paid leave - 30 consecutive calendar days per year, either divided up into two periods of 15 days or converted into 60 half-days.

Sickness leave - for up to 60 days per year with full pay, and for up to one year wqith an allowance from the Social Security Scheme.

Maternity leave - for 45 days before and 45 days after delivery, with full pay.

Bonus for long service - 5 per cent for each five years, up to a total of 30 per cent for 30 years of service.

Severance pay - half a month's salary for each year of service up to 15; public servants with more than 15 years' service receive one month's salary for each year. The wage on which calculations are made is the last wage received.

Pensions - public servants who had been in public service since before 12 July 1962 received a pension consisting of the retirement pension and the old-age pension, and a survivors' pension, for an amount proportional to their years of service, starting from the seventh, at a rate of one-thirtieth of the wage per year of service.

Persons entering the public service at a later date were integrated into the Social Security National Pension Scheme which grants disability, old-age and death pensions based on age and the number of contributions made; however, there is no relationship with the length of service.

The 1984 Act on the Administrative Career did not substantially modify the previous General Regulations. The fundamental principles of the "administrative career" are specified as equality of opportunity, job security, guarantee of the level reached, and just and equitable pay regulated by an approved unified system. Public servants are basically structured into three occupational groups: professional, technical and auxiliary, and divided into a number of grades, each of which is related to a level of pay and a combination of responsibilities compatible with it, within the organisational structure of each unit.

The Act stresses that the rights of public servants recognised by the legislation are not alienable. Their exercise is guaranteed by the Constitution. Any agreement to the contrary is null and void.

2. Representation of employees and employers in labour relations

2.1 Employee representation

The new Constitution of 28 July 1980 expressly recognised the right of public servants to form trade unions and to go on strike. The Constitution also ratified the Labour Relations (Public Service) Convention, 1978 (No. 151) which concerned protection of the right to organise and procedure for determining conditions of employment in the public service.

The previous Constitution of 1933 contained no such provisions. The General Regulations and Scale for the Civil Service and Pensions had unequivocally prohibited the formation of trade unions and the resort to strike action: "associations are prohibited from taking on the name and organisational structure of a trade union, from adopting the means of action employed by these organisations, from exercising concerted action in their petitions and from resorting to strike". Only the association of public servants for cultural, sporting, mutual aid and co-operative purposes was authorised.

Any examination of workers' representdation in labour relations should therefore be carried out for two distinct phases: the phase preceding and the phase succeeding the promulgation of the current Constitution.

2.1.1 Representation before the new Constitution

Before 28 July 1980 public servants did not have organisations for direct or indirect representation. The main exceptions were the United Union of Public Education Workers and the Peruvian Medical Federation, two large public servants' associations set up as de facto, non-recognised trade unions, which, on many occasions, pursued strikes with enormous social and political repercussions. Workers in the Peruvian Social Security Institute (now known under a different name) were also, exceptionally, grouped in trade unions, bargained collectively, and had recourse to strikes.

In the same way, there were blue-collar trade unions, the most important being that of the public cleaning service workers of Lima - but the regulations of common labour legislation had always applied to such workers.

The Intersectoral Confederation of State Workers (CITE) was set up de facto in 1978, as a result of the Government's adoption of measures to reduce the size of state employment. It claimed to operate as the sole representative of public servants at a national level, and as a trade union group in the various public sectors. Until 1980, however, its significance was in the political field as a pressure group rather than as an organisation carrying out direct action with specific labour relations objectives; it was not possible to count objectively the number of its members.

2.1.2 Representation through trade unions

Since 28 July 1980, the situation has been regulated by the new Constitution and by the specific regulations on the freedom of association of public servants issued shortly afterwards (Presidential Decrees 003-82-PCM and 026-82-JUS of 22 January 1982 and 13 April 1982).

The State now recognises the right to freedom of association, i.e. the right of public servants to set up and join trade unions and take part in their organisation, administration and activities. It is also stated that no public servant shall be compelled to join a trade union or prevented from doing so, nor can his or her employment be subject to becoming a member or ceasing to be a member of a trade union.

There are exceptions, however. The right to associate in trade unions is not recognised for magistrates of the Judicial Power, members of the Public Prosecutor's Office, officials with powers of decision-making or occupying positions of trust, or military or civil personnel who form part of the armed forces or the police force.

Trade union independence is guaranteed. The public authorities must abstain from any act which would tend to restrict or obstruct the exercise of the right of association, or from intervening in the establishment, organisation and administration of trade unions. As trade unions must enjoy complete independence from the public authorities, they cannot form part of the administrative structure.

One or more trade unions may be set up in each establishment provided that they are joined by at least 20 per cent of all the public servants with a right to become trade union members in the establishments in question, with a minimum number of 20 members. In those establishments with a total of more than five and less than 20 public servants, a delegate shall be elected to represent the public servants vis-à-vis the relevant authorities.

Trade union organisations must be entered in a register at the National Public Administration Institute (INAP). This

registration will grant the trade union organisation juridical status for all its legal members.

Trade unions have the right to set up federations, and federations may set up confederations. A minimum of ten public servants' trade unions is required in order to constitute the federation, and a minimum of five federations to form a confederation. Only trade unions of public servants may join federations or confederations of public servants.

Trade unions, federations and confederations cannot be dissolved or suspended by administrative means, but only with the agreement of their members, as stipulated by their statutes, or by a resolution of the Supreme Court of Justice.

Comparison with the private sector. The form of representation for workers in the public service is broadly similar to that in the private sector. There are, however, two differences worth mentioning. First, three types of trade union are accepted in the private sector: for an enterprise or establishment (plant); for an industry or branch of the economy; and for a profession. In the public service, virtually the only possible organisation is by establishment (department) which, in the regulations, is called a "sector". But the difference is purely theoretical: in Peru, the trade unions of private sector workers are almost all enterprise based.

The other difference relates to union plurality. In the private sector, half plus one of the workers must join a trade union for an enterprise. This stipulation imposes the single trade union concept. In the public sector, the figure specified is only 20 per cent, which allows the coexistence of a number of trade unions in one establishment.

Trends in unionisation. In view of the fact that the right of public servants to join trade unions has been recognised only since 1980, it is not possible to refer to earlier trends, except in the case of the doctors and the teachers, workers in the Peruvian Social Security Institute, and the CITE. Between 1982 and 1985, 114 public servants' trade unions were officially registered. The number of members is 189,302.

In the private sector, on the other hand, the major developments in unionisation took place between 1970 and 1975, during the first phase of the Military Government. During this period the number of registered trade unions increased from 2,441 to 4,389; the Government gave its recognition to the General Confederation of Workers of Peru (CGTP), which is today Peru's largest union confederation; and three major new confederations were set up. Between 1976 and 1980, by contrast, only 303 new trade unions were established. Currently (as of April 1985), the number of workers' trade unions officially registered for private

and state enterprises has reached a figure of 4,795, with 671,450 members. Table V.5 gives a comprison of the two sectors in 1985.

Table V.5: Trade unionism in the public service and the private sector, 1985

	No. of registered trade unions	No. of members	No. of federations	No. of confederations
Public service	114	189 302	1	1[1]
Private sector	4 795	671 450[2]	111	4

[1] CITE has still not registered officially.

[2] Estimated by Isabel Yépez del Castillo and Jorge Bernedo Alvarez: La sindicalización en el Perú (Lima, 1985).

Structural and functional characteristics of the trade unions. The structure, the organisation and, in general, the operation of the public servants' trade unions have been laid down by statutory instruments; this conditions - and even predetermines - the degree of autonomy that the trade unions have in this respect.

According to the statutory provisions, trade unions shall be organised by sector (i.e. by establishment); no provision is made for any other form such as, for example, a trade union for a whole subsector (branch of activity).

In practice, in view of the excessive centralisation of state employment, a trade union in an establishment located in Lima will be as large as one for the whole or the major part of the relevant subsector. Thus a trade union set up in the central office of the Ministry of Economics and Finance will be equivalent, in practice, to a trade union for the whole of the economics and finance subsector, since more than 50 per cent of all the workers in this subsector are employed in the central office in Lima.

Presidential Decree 003-82-PCM of 22 January 1982 specifies that the supreme body of trade union organisation is the General Assembly, the functions and attributions of which should be laid down by the statutes. The governing body is the executive committee, which has to be elected by a compulsory and secret general vote in accordance with the provisions laid down by the electoral committee and the statutes.

In establishing themselves, the trade unions must submit to the INAP a copy of the act of constitution attested by a notary public, the title of the trade union, the names of the members of the provisional executive committee, the names of the members, the statutes of the trade union, and a certificate from the establishment indicating the number of public servants working there that are entitled to become trade union members.

In view of the highly formalised procedure for setting up and organising trade unions in Peru - in both the public and private sectors - the structural, organisational and functional characteristics of trade unions are basically the same in both sectors.

2.2 Employer representation

A distinction should first be made between grievances and complaints, on the one hand, and petitions and bargaining of a financial nature or on conditions of employment, on the other.

2.2.1 Dealing with grievances and complaints

As far as grievances and complaints relating to the rights of public servants are concerned, the head of the personnel office in each establishment is responsible for everything relating to appointments, dismissals, leave of absence, holidays, sanctions and other related matters. The grievances and complaints are passed through a multi-level procedure. In disciplinary matters, the more severe sanctions can be applied only after the affair has been dealt with by a committee (the Administrative Procedures Commission), which must be set up within each establishment.

In addition to the internal procedures for dealing with grievances and complaints, there is an external mechanism which acts as the final review body; this system is manned by the Regional Councils of the Civil Service and the Civil Service Tribunal (see section 4.2.1).

2.2.2 In consultations and negotiations

In consultations on wage questions, which are carried out on a centralised basis for the whole of the public administration, the State as employer is represented by a high-level ad hoc committee called the National Commission for Joint Consultation, on which sit two representatives from the INAP, two from the Ministry of Economics and Finance and two from the Ministry of Labour and Social Welfare.

The Ministry of Economics and Finance has responsibility for the political orientation of the National Consultative Committee

in its consultations with the public servants' unions and, obviously, for the inclusion of its recommendations in the Budget draft.

In negotiations on conditions of employment, which are organised at the level of each establishment, the employer is represented in the relevant Joint Committee by four officials, and by the chairman of the said committee, all of which are appointed by the chief of the establishment.

3. Methods of determining conditions of employment

The Peruvian Constitution recognises the rights of both workers in the private sector and public servants to form trade unions and to go on strike. However, the right to collective bargaining is recognised only for workers in the private sector. This does not mean that public servants are denied this right; simply that it is not recognised constitutionally.

On the other hand, the Constitution does stipulate that the remuneration of servants of the State is to be determined within a single system, which means that all public servants should receive equal remuneration in accordance with their level, grade or responsibilities, totally independent of the establishment in which they work. In other words, equal pay for equal responsibilities, whether in the central government, the state authority, the local governments or the autonomous institutes.

On the basis of these constitutional premises, Presidential Decree 026-82-JUS of 13 April 1982 established the rights of public servants' trade unions to collective bargaining, but only on general conditions of work and not on remuneration. Article 44 of the Act on the Administrative Career states as follows:

> The public authorities are prohibited from negotiating with their servants, either directly or through their trade union organisations, conditions of employment or benefits which imply increases in remuneration or which modify the Single System of Remuneration which is established by the present Act, in harmony with the provisions of article 60 of the Constitution of Peru. Any stipulation to the contrary shall be null and void.

The traditional manner of determining both conditions of employment and pay has in fact been unilateral and legislative. Recently, as a result of the new Constitution and the subsequent need to provide a channel for the collective rights of public servants which it institutes, new mechanisms have appeared. These include consultation on pay matters and collective bargaining and arbitration on all other conditions of employment.

3.1 Unilateral determination by the employer

Even in the private sector and the public enterprises the Government reserves - or attempts to reserve - some direct role for itself in the fixing of remuneration. In the private sector the Government can intervene by means of the existing collective bargaining system, which authorises the Ministry of Economics and Finance to intervene in solving a dispute - a type of compulsory arbitration by means of which it can apply restrictive policies which would be very difficult in a highly decentralised structure.

In the public enterprises where, as we have seen, real wages have actually risen because of the widespread practice of including wage-indexing clauses in collective agreements, an attempt has been made to correct this situation by means of an organisation called the National Development Corporation (CONADE), which acts as a "holding" company for all the public enterprises and has been entrusted with standard-setting authority in this field. By means of guide-lines and circulars, CONADE is supposed to lay down uniform policies on labour matters, which all the state enterprises must comply with; it must also give prior approval to the offers and proposals that each public enterprise brings to the table during bargaining. The mechanism has proved inoperable, however, in particular when faced with the existence of automatic wage adjustment or indexing (or super-indexing) clauses, which continue to operate in numerous enterprises.

In the public service, on the other hand, the fixing of remuneration is a subject which the State reserves entirely for itself. The 1980 Constitution specifies a single system of determining remuneration for the whole public service. The concept of a single remuneration system has always existed in Peru, but the efforts made to institute it in the 1970s were impeded by the de facto appearance of trade union mechanisms, negotiations and strikes. Those sectors more able to exert pressure - for example, teachers and doctors - then rapidly managed to obtain advantages over other sectors.

It was under these circumstances that the current Constitution was debated. One of the very clear objectives of those who drew it up was to put an end to such disparities in wage levels, and this was done, basically, by the institution of the "single system".

This system has two salient features: prior and strict indication of the salary components (which are restricted to the basic wage and the personal and long-service bonuses - familial, on the basis of the worker's dependants, and differential, to compensate a post with managerial responsibilities or working conditions which are exceptional in relation to normal service);

and the determination for all workers of the exact amount of each of these components. This is done in such a way that the salary range is identical for all public servants at the same level no matter the sector in which they work.

The existence of this system explains, moreover, why collective bargaining is not included among the rights of public servants. Instead, wage fixing and financial control as a whole form part of the Annual Budget Act, drawn up by the Ministry of Economics and Finance, which Parliament approves by 15 December each year and which covers all public employees for the succeeding year.

The Annual Budget Act contains not only forecasts of funds, but also rules on appointments, individual and collective wage increases and, in general, anything that may have an impact on budgetary expenditure. In recent years, without exception, these Acts have contained drastic prohibitions regarding the appointment of new public servants and various restrictions on the vertical mobility of the personnel and levels of pay.

Budget stringencies unfortunately proved powerless to tackle the inflationary phenomenon which was unleashed in 1976 and which, over recent years, has reached three-figure levels. Faced with this situation, the Government found itself compelled to grant general wage rises at increasingly short intervals and for increasingly large amounts; however, as was seen in section 1, these rises were always below the inflation rate and the overall result was a sharp fall in real wages.

Although this system of wage determination has been maintained in basically the same fashion over the last five years (1980-85), an opening has been made for the participation of workers through the adoption of consultation and collective bargaining mechanisms.

3.2 Consultation

Under Presidential Decree 003-82-PCM of 24 January 1982, a mechanism of consultation of public servants was instituted for the first time; article 22 of this Decree stipuates that the executive power should establish a consultation procedure which would involve duly registered trade union organisations in the determination of public service pay and conditions. To this end, and in order to co-ordinate consultation, a National Commission for Joint Consultation was set up. This comprises two representatives of the National Institute of Public Administration (INAP), one of whom chairs the Commission, two representatives of the Ministry of Economics and Finance and two from the Ministry of Labour and Social Welfare.

The mechanism has, as far as we know, never been properly applied, and appears to be largely inoperative.

3.3 Collective bargaining

Collective bargaining in the public service is authorised solely for conditions of employment not related to wages; obviously, in practice, this reduces its significance and effectiveness to a minimum.

The negotiation procedure is a highly complex one, the first stage of which involves the presentation of a dossier of requests. Since there are usually a number of trade unions, the majority trade union in the establishment is entitled to present, once a year, in writing, a dossier of requests relating to working conditions (excluding remuneration).

After receiving the dossier, the head of the establishment is required to convene a Joint Committee comprising four representdatives of the majority trade union, four representatives of the establishment, and one representative of the head of the establishment, who chairs the committee.

The Joint Committee should, within a period of ten days, study the dossier and attempt to arrive at a settlement formula. This is then submitted to the Technical Committee for a prior favourable opinion. The Technical Committee has to be organised by the INAP each year; it is made up of two representatives of the Ministry of Economics and Finance, two representatives of the Ministry of Justice, and two from the INAP itself.

If the Technical Committee gives a favourable opinion, the settlement formula is consolidated, and the head of the establishment is required to send the corresponding approval decision, with which the procedure is concluded. If it does not approve the settlement formula, the Technical Committee must produce, within a maximum period of 30 working days, a report on the legal, technical and possible budget aspects of the requests and draw up its recommendatdions and suggestions. The Joint Committee can then take the matter up again, proceeding in the same manner. However, if the suggestions are not accepted, the case goes to arbitration. The ad hoc Arbitration Tribunals are described in section 4.2.2

Arbitration in Peru is subject to the same limitations as bargaining: it can only decide on matters which are not related to remuneration. As far as we know, up until the present, no single arbitration judgement has been pronounced in the four years in which this system has been in existence.

3.4 Evaluation

As things stand, the State holds a majority position in the Joint Committees, the Technical Committees, which have a virtually definitive power of judgement, are exclusively governmental, and the Arbitration Tribunals have to take these judgements into account. Consequently, it will be appreciated that the margin for negotiation in the public service is narrow, if not virtually non-existent. In the end, it is the decision of the Government which will prevail.

Public servants have widely criticised the restrictions on collective bargaining as being contrary to trade union freedom. The Federation of Municipal Workers has in fact placed before the Freedom of Association Committee of the Governing Body of the ILO a complaint about Presidential Decrees 003-82-PCM and 026-82-JUS, which is obviously aimed at the exclusion of wages from the field of bargaining.

3.4.1 Exclusion of wages from bargaining

The most restricting factor in collective bargaining in the public service is undoubtedly the legal barrier on dealing with remuneration.

Collective bargaining for workers in the private sector has existed in Peru since the start of the century, and has been institutionalised and legally regdulated since the 1930s. It may be said that the system is extensive and widespread even though it covers only the more recent sector of the formal economy. However, the basic subject of collective bargaining in the private sector is wages: Peruvian collective agreements are virtually exclusively wage-related; their use for the determination of social welfare or other clauses is almost non-existent.

In view of this, and the national tradition in this field, it is clear that if collective bargaining is deprived of its wage content, it becomes virtually pointless. This is what has happened in the public service: bargaining has become superfluous, lacking in content and impact. The full development of negotiating mechanisms will occur only when trade unions are authorised to negotiate on any matter, and on wages in particular.

3.4.2 Level of unionisation

Another limiting factor is the low level of unionisation, which is also in an embryonic phase in the public service; in addition, there is limited expertise, and a lack of preparation and experience, among the trade union leaders. A further problem is the markedly conflict-oriented tone in which grievances are handled - a reflection of the extreme positions that have

currently been adopted by the majority of trade union organisations in Peru.

3.4.3 The different roles of the State

A criticism that has been repeatedly made relates to the lack of differentiation in the roles of the State as "a regulating agency of society, charged with guarding the rights recognised by the Constitution, for which it exercises, inter alia, the legislative and executive functions through the various powers which are institutionalised" and "its role as an employer which makes it an interested party in disputes and bargaining". Its intervention in the first role should occur "only, when it precedes bargaining, in order to indicate procedures for the peaceful settlement of labour conflicts, i.e. only to point out the channels which have been taken by the bargaining and not to substitute them, nor abridge them or, even less, cancel them".[1]

3.4.4 Artificial delimitation of consultation and bargaining

The very clear-cut structure which defines what can be the subject of consultation and what can be the subject of collective bargaining is to some extent an illusion. In fact, the division breaks down on occasions: in 1984, and even more so in March 1985, the CITE ran prolonged strikes on the basis of demands which were of an out-and-out financial nature.

In 1984 the dispute was settled by means of governmental decrees granting wage increases. In 1985, on the other hand, the parties arrived at a bilateral agreement with a basically financial content but which also included other compromises (studies to be made by joint commissions on reform of the Single System of Remuneration, the approval of wage scales, percentage adjustment of supplementary pay, appointment of personnel under contract, revision of the provisions on union membership, etc.).

However, with attachment to form and counter to reality, the Government institutes the agreements by means of administrative decrees, thus burying the bargaining aspect of the truth under the appearance of unilateral action.

3.4.5 Future of collective bargaining

Despite the various limitations on collective bargaining already mentioned, there are a number of factors which should be seen as favourable to the development of collective bargaining. First, there is the tendency of the public service to follow the private sector, where bargaining is widespread and where the more important collective agreements receive wide publicity. Second, the increasing unionisation of public servants, which has

proceeded at a significant rate over recent years, should provide a stimulus.

Finally, among the demands made by the CITE which lay behind the strike of 1985, there was the revision of the statutory provisions on the rights of public servants' trade unions - including tacitly that of collective bargaining. As a result, an agreement was drawn up with the Government on the establishment of a multisectoral commission comprising representatives of the competent sectors and an equal number of representatives from the trade unions in order to develop proposals for change.

4. Labour disputes and their settlement

4.1 Types of dispute

Labour disputes in the public service have the same features and stem, in general, from the same causes as labour disputes in the private sector. There may be legal disputes of an individual or collective nature, or collective disputes of interests or regarding financial matters.

Traditionally, in the public service, the only disputes that have occurred have been of an individual nature relating to predefined rights (individual legal matters), in view of the statutory system which regulates the public service and lays down a rigid framework of rights.

The only sectors that have escaped from this regulation are those of education and health, which are dependent on the central government, and those of the public servants in the Peruvian Institute of Social Security, an autonomous public institute; for many years now these have de facto submitted collective demands relating to conflicts of interest. These conflicts of interest have been handled by informal procedures on the fringe of or even contrary to legal provisions. The practical effectiveness of these disputes has significantly undermined the legal status quo.

This situation is in the process of rapid change since the Constitution has recognised the rights of public servants to form trade unions and to take strike action, and regulations have been drawn up in this direction over the last five years.

4.1.1 Individual disputes

Individual disputes usually result from complaints and grievances which public servants table in an attempt to gain the recognition of rights or in order to combat decisions taken prejudicial to them.

Most such disputes concern determination of length of service for pension purposes, category fixing, and appeals against disciplinary measures taken by the administration.

4.1.2 Collective disputes

Collective disputes may be of different types and their causes are difficult to categorise. They may range from legalistic disputes to defend legally established rights, to disputes over clearly political issues, channeled through demands for measures which may directly or indirectly affect labour relations. They may also derive from grievances based on a financial conflict of interests.

There are no statistics on the number or incidence of collective disputes in which no strike has been declared; the statistics record only the strikes (see section 4.3.1). On the basis of the strike statistics, it may be concluded that the issues which most commonly lead to collective disputes are as follows:

Grievances or demands for improved conditions of employment - which account for around one-third of the total. The main demands have been centralised through the CITE and the outcome has been very long and widespread strikes. This means that demands such as these are of far greater significance than would be indicated by the actual number of disputes involved.

Approval - i.e. the post classification procedure contained in the Single System of Remuneration. Individual categories are defined for each sector, and any classification that is not correctly carried out is likely to result in a lower salary scale.

Appointment of contract personnel - only persons appointed on long-term contracts can enter the administrative career; a person under a fixed-term contract does not have this option. As a result of an abuse of the system, which the Act on the Administrative Career attempted to control, indiscriminate use has been made of fixed-term contracts; they have been renewed many times over and the employees in question have been kept in a state of insecurity. The demands here are aimed at achieving access to the administrative career for persons under fixed-term contracts.

Increased pensions - these have been demanded by the universities, backed up by the workers there, in order to obtain a better budget provision.

Release of prisoners - a political demand resulting from the imprisonment of a number of public servants, usually accused of involvement in terrorist acts.

Ethics - demand for the dismissal of public servants accused of administrative corruption.

In the private sector, on the whole, there are three major causes of dispute. For the individual, the most common cause of disputes is arbitrary dismissal, which leads to claims for reinstatement of the employee. For collective disputes of a legal nature, claims relating to the non-performance or violation of pacts or agreements are the most common cause. Finally, an immense number of disputes are related to pay or conflicts of interests due to the fact that, in Peru, collective bargaining is carried out at the level of the enterprise; this means that bargaining is carried out independently in virtually every enterprise employing more than 20 people.

4.2 Procedures for settling disputes

4.2.1 Individual disputes

There are two procedures for settling individual disputes in the public service; one takes place inside the sector and the other outside it.

As far as the internal procedure is concerned, the law requires that each Department of State should have an Administrative Procedures Commission responsible for receiving, transmitting and settling grievances and claims which public servants may present, whether to obtain recognition of rights or to refute decisions that are prejudicial to them. An appeal may then be made against internal decisions to the Civil Service Tribunal or the Regional Councils of the Civil Council, depending on the circumstances.

4.2.2 Collective disputes

The law provides for two types of collective dispute and specifies ad hoc procedures.

Complaints on points of law must be presented and substantiated in the corresponding sector. An appeal for a rehearing before the Civil Service Tribunal can be made against a decision taken within the department. This tribunal receives, as the final administrative agency, all the appeals presented by duly registered public servants' trade unions against decisions taken on grievances. These may concern the non-implementation or interpretation of legal provisions, administrative decisions or arbitration awards.

Disputes arising from conflicts of interest or financial matters: the procedure here is highly complex and passes through various stages. As described in section 3.3, if the Joint Committee and the Technical Committee fail to agree on a

settlement formula, the matter is passed for a decision to an Arbitration Tribunal set up in each establishment. This comprises two arbitrators nominated by the majority trade union, two nominated by the establishment, and a chairman that these elect by common accord or, where no agreement is achieved, appointed by the Upper Court of the corresponding Court District, at the request of the head of the establishment.

The Tribunal is required to study the dossier and make an award within the space of three days. The award must take into consideration the report of the Technical Committee. Acceptance of the award is compulsory.

4.2.3 Evaluation of the dispute settlement system in the public service

The statutory procedures for settling legal disputes seem to be reasonable and in accordance with established practice and custom: the Civil Service Tribunal was a good substitute for the old National Civil Service Council because its members are better informed and more dedicated and also because of its intrinsic technical qualities. Similarly, the creation of the Regional Councils has permitted geographical decentralisation.

The same cannot be said for conflicts of interests. As has already been stressed, the exclusion of salary matters from the scope of bargaining reduces bargaining to a very low level. In addition, the State has maintained its hold on the decisive instruments in the process of negotiation and dispute settlement both by its majority present in the Joint Committees (which, for this reason, are in the strictest sense not joint at all), and by its absolute control of the Technical Committees, whose judgement is a factor conditioning any settlement, be it negotiated or arbitrated.

4.3 Strikes and lock-outs and their regulation

Whereas in the private sector the right to strike has been a legal reality since the beginning of the century, public servants have only had the right to strike since the new Constitution of 28 July 1980 gave it explicit recognition. Previously, not only was the right not recognised but it was in fact expressly prohibited. In spite of this, there were numerous disputes which did lead to strikes, although these were almost exclusively located in the education and health sectors.

In the 1970s, the most important strikes in any sector were those pursued by the United Union of Public Education Workers (SUTEP) in 1978 and 1979, and by the Peruvian Medical Federation in 1979 and 1980. Although these strikes were openly outside the law and without any recognition, they did lead to agreements with the Government. In 1984 and 1985, it was once again the public

service - this time in its totality and represented by the CITE - that underwent the most spectacular strike action.

4.3.1 Number and length of strikes

Official statistics on strikes in the public service started in 1983. As table V.6 shows, there was a total of 37 strikes in 1983 and 17 in 1984. Table V.7 gives the corresponding figures for the private sector (including public enterprises).

Official statistics do not record the number of days lost due to strikes in the public service. However, an unofficial analysis of strikes made by the CITE in 1984 estimates that 200,000 workers were involved for 15 working days. This means around 24 million hours lost, which is far higher than the figure of 13,697,000, which represents the total recorded for the private sector in that same year.

The strike of March 1985 lasted 24 working days, and it may be estimated that more than 38 million hours were lost; this once again far exceeds the figure for the private sector, which is only 7,827,104, and sets an all-time record.

Table V.6: Strikes in the public service (1983-84)

Public service category	No. of strikes	
	1983	1984
Central government		
General level (CITE)	2	3
Ministry of Agriculture	4	-
Ministry of Health	7	3
Ministry of Education	5	2
Ministry of Transport	2	-
Ministry of Economics and Finance	2	-
(Directorate General of Customs)	2	-
Ministry of Justice	-	2
Police forces[1]	1	-
Judicial power	1	-
Universities	4	1
Local governments (municipalities)	7	6
Total	37	17

[1] In spite of the legal barrier.

Table V.7: Strikes in the private sector, 1970-84

1970-75		First phase of the Military Government: 501 strikes per year on average
1970	345	
1971	377	
1972	409	
1973	788	
1974	570	
1975 (Jan.-Aug.)	(519)	
1975-80		Second phase of the Military Government: 469 strikes per year on average; 3 national stoppages
1975 (Sep.-Dec.)	(260)	
1976	440	
1977	234	
1978	364	
1979	577	
1980 (Jan.-July)	(431)	
1980-84		Democratic Government of F. Belaúde T.: 628 strikes per year on average; 2 national stoppages
1980 (Aug.-Dec.)	(308)	
1981	871	
1982	809	
1983	643	
1984	509	

4.3.2 Relative incidence of legal and illegal strikes

In Peru, strikes - recognised as a right by the Constitution - shall be exercised "in the form laid down in the law": article 55 of the Constitution thus passes to subsequent legislation the responsibility for laying down the basic conditions and form for exercising the right to strike.

Yet the necessary regulations under the Act have still not been issued. Various pieces of draft legislation have been presented to Parliament but none of them has so far received approval. As a result, strikes continue to be tolerated by the law but not fully accepted.

Since the basic requirements and form for strikes by public servants have not yet been specified, it is the head of each

establishment who, at his own discretion, assesses the causes of the dispute, its scope and other factors, and who, by an act of authority, declares at a given moment the illegality of the stoppage.

The system is illogical: since the roles of employer and public authority are intermixed, one of the parties to the dispute is issuing decisions to the prejudice of the other party. The declaration of illegality is so lacking in significance that, in many cases, when faced with a situation which has previously led to a general strike - such as those held by the CITE in 1984 and 1985 - certain establishments will declare the strike illegal immediately whereas others will never make this move.

In the private sector, it is the Ministry of Labour who declares that a strike is illegal; however, the statistics do not indicate how often this has been done.

4.3.3 Causes of strikes

As has been stated in the influential journal Análisis Laboral:[2]

> The basic reason behind demands continues to be inflation and its erosive effect on remuneration in the public sector. The agreements on wage increases are useful only over the short term ... however, a major part of the difficulty lies in the lack of official channels for effective dialogue, which would help prevent conflicts or contribute to their rapid settlement when they do occur.

On the basis of the terminology used by the INAP, the causes of strikes in the public service during 1983 and 1984 can be seen from table V.8.

In the public service, conflicts of interest (dossiers of demands) are relatively less common (18 per cent in 1983; 9 per cent in 1984) than in the private sector (39 per cent in 1983; 43 per cent in 1984). This is because wage bargaining is excluded in the public service and disputes on this matter are totally centralised in comparison with the decentralisation in the private sector. The reinstatement of dismissed workers is also less common as a cause of strikes in the public service than in the private sector: 5 per cent in 1983 and 9 per cent in 1984 as against a weighted figure of over 10 per cent.

Certain specific causes of strikes in the public service do not occur in the private sector, such as disputes over approval and claims for increased pensions. Conversely, disputes due to the closure of enterprises, or workforce reductions, and reasons

related to employers' policies, are to be found only in the private sector.

Table V.8: Strikes in the public service broken down by cause,[1] 1983 and 1984

Cause	1983	1984
Stability/reinstatement of dismissed workers	3	2
Dossiers of grievances or demands	11	2
Working conditions	8	2
Recognition of trade unions	2	1
Wages	9	3
Approval	4	2
Appointment of contract personnel	3	2
Better pensions (universities)	2	-
Repeal of legislation or regulations	5	2
Non-implementation of pacts	3	-
Moral issues	1	-
Solidarity	1	-
Others	4	1
Non-specified	4	-

[1] In certain cases, a strike may have a number of causes; in this table, these causes are recorded separately.

4.3.4 Characteristic features of dispute action

In general, disputes in the public service have been carried out openly, i.e. in the form of a typical strike. In some cases, however, and as an exception, they have taken the form of "downing of tools".

Wildcat strikes, downing of tools, go-slows and other methods described as irregular are not usually accepted as valid, a declaration of their illegdality occurring virtually automatically. In spite of this, they are tending to occur ever more frequently both in the public service and in the private sector.

4.3.5 Legal framework for strikes

As has been pointed out, there are no specific regulations governing strikes in Peru. However, the various pieces of draft legislation presented both by the Government and by the opposition parties do have certain general features in common (though they obviously diverge in other aspects). This allows

one to predict that, in the legislation that is finally passed, the following items of agreement will predominate:

Application to the public service: In all the drafts, there is separate legislation for the public service and the private sector; the differences, however, are superficial ones. The reason for this duality is purely formal: since the Constitution deals with strikes by private sector workers (article 55) separately from those of public service workers (article 61), the legislator feels himself compelled to maintain this distinction. There is no basic reason to justify it.

Special application to specific sectors: All the drafts also agree on reserving special treatment for strikes in the essential public services; this is not of a prohibitive character, but more a restriction on the exercise of the right to strike. However, the list of essential public service includes, without distinction, services administered directly by the State (cleaning and hygiene, for example) or via state enterprises (water and sewage, light and electrical power), or by private systems (hospitals, clinics, etc., which also, of course, include the state establishments).

Special application to certain types of strikes: The discussion centres basically around two specific types of strike - solidarity strikes and political strikes. As far as the former are concerned, the majority opinion is to give them recognition; however, there are more profound disagreements concerning the latter. It must be accepted that, since 1977, when the first national deadlock occurred, political strikes have become a reality in Peru.

Sanctions for illegal strikes: The sanction for illegal strikes is a strictly labour relations one (and not penal or civil) and is taken on an individual (rather than a collective) basis. It comprises dismissal of the worker who does not return to work three days after a strike has finally been declared illegal. The term "abandonment of the workplace" (unjustified absence for more than three consecutive days) is a serious fault specified in the legislation, which justifies termination of work relationships in the case of both private workers and public servants.

4.3.6 "Lock-outs" in the public service

The lock-out is a situation which is not dealt with in Peruvian legislation; there is no mention of it for either the private sector or the public service.

The closure of a work centre may occur only for a reason specified in the law and following administrative authorisation. It is not allowed, under any circumstances, as a means of direct

action or as a form of employer pressure. Consequently, there are no actual antecedents for this type of dispute.

5. Conclusions

5.1 Prospects for the second half of the 1980s

The five years that have passed since the adoption of the new Constitution have led to the establishment of a large number of public servants' trade unions, the creation of union federations, and the consolidation of a confederation which brings together all public servants at a national level.

The CITE, although still not officially registered - owing to discrepancies of substance and form with the established registration system - is taking on an increasingly active and tangible position in the life of the nation. The approach it has adopted since its creation in 1978 has been one of permanent confrontation, similar to the most radical sectors of private sector trade unionism. The strike movements of 1984 and, in particular, those of 1985, brought about greater losses in working hours than all those in the private sector put together, in spite of the fact that the private sector employs more workers.

Today, however, the economic and political situation has changed. On 28 July 1985, the social democrat government of President Alan Garciá Pérez came to power. His party has a large trade union base and should, in general, be considered closer to workers than to employers.

Amongst its initial measures has been the imposition of controls on the prices of goods and services in an attempt to combat inflation; it did not, however, limit wage increases, since the Government recognises the workers' need to catch up on real wages and restore their purchasing power. The new Government has shown itself to be openly critical of the bureaucracy and even hostile to many of the defects endemic in it.

The trend that can be foreseen for the immediate future is one in which greater attention is devoted to the economic problems of public servants, accompanied by a stricter control on benefits, discipline and productivity.

Nevertheless, in view of the line adopted by the CITE, and once the real effect of the recently instituted shock economic programme is known, what can be foreseen is an increase in and an intensification of disputes in the public service - the first symptoms of which have just started to appear.

5.2 Foreseeable adjustments in the labour relations system in the public service

As far as legal disputes are concerned, the most important change - which has already been provided for in the legislation - is the proper establishment of the Civil Service Tribunal and the Regional Councils. The process of implementing the regulations establishing these bodies has been unnecessarily and unjustifiably slow. The completion of this process will constitute a decisive step towards the decentralisation and regionalisation of decisions in this type of dispute.

As far as disputes over conflicts of interest or economic matters are concerned, the major question is how effective the consultation mechanism will actually be in practice. The reply to this question is shrouded in scepticism: the Government is unlikely to be much influenced by the results of the consultations and will therefore continue to act unilaterally in determining wages and working conditions. Consequently, the consultation mechanism will prove to be inoperative or superfluous.

The major change - and one which is inevitable and called for from many sources - will probably occur in the bargaining system, which will have to be extended fundamentally in order to embrace wage matters. This is not only a clear demand on the part of CITE; it is virtually the key item of its platform.

For these reasons, the system of labour relations will have to undergo a radical upheaval which will result in the following:

- disappearance of the consultation mechanism;
- institution of a system of centralised bargaining for the periodical review of wage matters;
- development of a widely decentralised bargaining system for the determination of non-wage-related working conditions in each department.

5.3 Convergence and divergence with the private sector

It is to be expected that the major difference between the two sectors will relate to wage bargaining, decentralised in the private sector, centralised in the public service. This difference is so important and the effects so far-reaching that the public and private structures will probably continue to move even further apart in wage matters than they are today.

As far as collective bargaining on working conditions is concerned, on the other hand, it is to be expected that there

will be a convergence in the methods used, and a feature of this will be decentralisation in both sectors.

Finally, the process of basic convergence of the two systems is likely to continue as the public service shakes itself loose from the old publicist concept of a statutory relationship regulated by administrative law and moves into the more universal field of labour law.

The significance in this respect of the entry of the CITE on to the scene has been described by an outstanding specialist, Dr. Jorge Bernedo Alvarado, as:

> a change in the national labour scene, the de facto death of the labour relations system of the old administrative legislation. In the system as it was previously, the basic rights of workers in the public administration (the administrative career) were taken for granted and defended by the State itself. Acceptable incomes and job stability reduced the need for defence mechanisms such as: union membership, strikes, collective bargaining. Administrative legislation was virtually innocuous, or it prohibited what was not necessary. In the new situation, the labour relations structure has been turned upside down: the right to a just income and job security have disappeared and the need to exercise the right to union membership, strikes and negotiation has taken its place. Public employees find themselves in the same situation with the same unmet needs as the national proletariat and consequently in urgent need of similar structures of organisation, defence and demands.[3]

To summarise:

1. The gap that divides the legal structures for public servants from those of private sector workers will continue to close, and there will be a tendency for them to come together completely.

2. The methods and content of collective bargaining on working conditions will also be very much the same in both sectors.

3. Bargaining on wage matters, on the other hand, will have a different institutional framework: completely centralised in the public service, widely diversified in the private sector.

Notes

[1] Gladys Camacho: "Ley de bases de la carrera administrativa y de remuneraciones del sector público", in Cuadernos Laborales (Lima), Dec. 1983-Mar. 1984, pp. 9-15.

[2] Análisis Laboral, June 1985.

[3] Jorge Bernedo Alvarado: "Movimiento estatal más allá de la huelga", in Cuadernos Laborales, May 1985, p. 17.

CHAPTER VI

LABOUR RELATIONS IN THE PUBLIC SERVICE IN THE UNITED REPUBLIC OF TANZANIA

by Paschal B. Mihyo*

Introduction

Although the civil service in many countries has been attacked both by politicians and by intellectuals for its arrogance, corruption or incompetence, neither has attempted to study in detail the living and working conditions and environment of civil servants. Nor has the alleged chronic inefficiency of the civil service been analysed in terms of its root causes and possible solutions. Instead, the civil service has been considered in isolation from the society to which it belongs and which it serves. It is a theme of this chapter that the civil service and its characteristics are part of society in general and should be studied as such.

A better understanding of the civil service can only be achieved through an analysis centred on the civil servants themselves, because the quality of any administration is usually a reflection of the quality of its personnel. As has been argued, "No system of administrative structures and procedures can perform at its best unless it recruits and retains appropriately skilled and motivated men and women".[1] It is a further theme of this chapter that an unmotivated group of civil servants cannot be relied upon to perform well. In many Third World countries civil service administrative structures and personnel policies have been inherited from colonial regimes and retained without major reforms. Civil servants are therefore subjected to overcrowded offices, a lack of proper residential accommodation, very low incomes, Draconian codes of conduct and expenditure, poor health and welfare conditions, and related neglect. The results of such neglect are corruption, negligence, absenteeism, and sometimes obstructive behaviour towards the public. This chapter will therefore examine the organisation, working conditions, and representative and consultative structures and machinery for handling disputes in the public service of the United Republic of Tanzania.

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Section 1 looks at the structure and trends of employment in Tanzania's public service and the possible variables that may have had some bearing on these trends. It will also examine the terms and conditions of employment in the civil service. Section 2 covers the representation of employees, and section 3 examines the statutory and other mechanisms used to fix terms and conditions of employment. Finally, section 4 describes the resolution of individual and collective industrial conflicts, and the incidence, causes and frequency of collective disputes, including strikes, lock-outs and related industrial action. Where possible or necessary, a comparison with the private and parastatal sectors are made, suggestions for change put forward, and future trends predicted.

1. Employment and conditions of employment in the public service

1.1 The sources of data

It was initially intended in this section to cover the period between 1970 and, if possible, 1985. Unfortunately, we have had to rely almost exclusively on the Annual Manpower Reports to the President, the earliest available being the one for 1977 and the most recent 1982. Even these do not give a true picture of employment because they are submitted by the Ministry of Manpower Development to the President on the basis of unverified manpower reports supplied voluntarily by employers. As employers are not obliged to submit manpower reports, some do not take the trouble to do so.

One reason for this may be a lack of understanding of the importance of submitting such reports. Fears about the consequences of truthful disclosure may be another influencing factor, especially in the private sector. The threat of nationalisation may also have influenced many Asian-owned firms, or employers may fear that disclosure of the existence of a large labour force could lead to changes in the industrial relations machinery, such as the establishment of works councils or trade union branches where they do not exist. The Ministry of Manpower Development itself has also contributed to the problem, in that it has never attempted to use the legal powers that are available under the Labour Utilisation Ordinance to compel employers to submit manpower reports.

Incompleteness apart, the Ministry of Manpower Development has itself expressed doubt about some of the figures submitted to it. The figures used in this chapter should therefore be taken to represent a rough picture of the employment structure in Tanzania's public service. "Public service" for the purpose of this chapter includes all government and local government services on Tanzania's mainland and excludes public enterprise employees.

1.2 Government contribution to employment growth

The population of the Tanzanian mainland was estimated to be 11,959,000 after the 1967 census. In 1978 it was estimated to be 17,048,000. Out of that number, 511,310 people, or 2.99 per cent, were in wage employment. In 1986 it is expected that the total population will have reached the figure of 21,090,700 and the total number in wage employment will have increased by 3.08 per cent per annum to about 650,000 people. Proportionally this means that wage employment is declining because the average population growth rate between 1964 and 1981 was estimated to be 3.3 per cent per annum.[2]

Estimated to employ 168,350 people or 35.51 per cent of the total labour force in 1977, in 1982 the public service was estimated to employ 281,254, or 41.56 per cent of the total labour force, having fallen from 362,615 in 1981. As cautioned earlier, however, the available figures are not very accurate and some variations in employment trends in the public service are not easy explainable. It is not easily to explain, for example, how the employment figure for the Exchequer and Audit Department could have fallen from 2,821 in 1977 to 342 in 1978, never to rise to over 400 until 1982. It is also unlikely that the number of workers in the Ministry of Health declined from 13,230 in 1978 to 3,722 in 1980, rose to 6,163 in 1981 but fell again to 5,885 in 1982, especially given the fact that in 1980 the Ministry of Health opened new directorates of research and preventive medicine. Nor are nurses, medical auxiliaries, health orderlies, medical assistants and qualified doctors in government hospitals included in any of the figures - although they are all civil servants. The same goes for the figures for the Ministry of National Education (9,979 in 1981), which are too low to have accommodated primary and secondary school teachers who, as we shall see later, numbered not less than 85,000 the same year. Notwithstanding these problems, the figures must be used as they are for lack of any alternative guide.

1.3 Structure of employment in the public service

Employment has expanded greatly in the upper and middle grades of the public service, while in the lower sections it seems to have declined. Between 1969 and 1974 employment opportunities for the upper and middle groups increased from 47,990 to 144,802 - an increase of 201.7 per cent, as opposed to an increase of 43.2 per cent for the previous five years.

The decentralisation programme launched in 1972 was one of the major factors responsible for this increase in employment opportunities because it involved the reproduction of central government structures at regional and district levels. Most of

the new functions were administrative and skill-intensive, e.g. finance and personnel administration, accounting and auditing, agriculture, veterinary science and forestry. Naturally, openings were in the middle and upper echelons of the public service. In fact, many of these new positions were filled by transferring existing top and middle central government civil servants from their positions to local government, and their places in central government than had to be filled.

Public service employment was further increased in 1975 by the Tanzanian Government's decision to accelerate rural development by attaching a trained village manager to every registered village and agricultural extension officers to every ward - a ward being a group of about five villages. Eight thousand villages were registered by 1977, and these created further demand for skilled labour. Additional staff included veterinary officers, rural medical staff and nurses. The strengthening of the Customs and Excise Department and the Meteorological and Civil Aviation Departments also meant an increase in the pace of recruitment.

Another policy decision which increased the demand for labour during the period 1974-80 was the famous Musoma Resolution, which directed that all school-age children should be registered in primary schools. This increased primary school pupil enrolment by 101.7 per cent between 1974, when standard I enrolment was 231,350, and 1975, immediately after the Resolution, when it rose to 466,745.

In 1975, therefore, the Government began to recruit a great many primary, and subsequently, secondary school teachers. Between 1977 and 1979 alone, the number of primary school teachers rose from 46,274 to 77,090, an increase of 66.6 per cent. In subsequent years primary school teacher enrolment increased at the same rate as the number of pupils and sufficiently to cope with the increasing number of schools. By 1982 the number of primary school teachers had reached 88,370.

There was also, during this period, a relative increase in the recruitment and retraining of teachers in public secondary schools and in colleges of national education, as well as in non-secondary, post-primary training institutions set up to absorb primary-school leavers.

1.3.1 The lack of in-service training

As already pointed out, vacancies in the civil service have increased more in the middle and top echelons than at the bottom. The manpower policy direction, as we have seen, has been towards recruitment of new employees in these groups, either to fill new vacancies or to replace those diverted to local administration or the manning of public authorities and

corporations (253 public corporations were formed between 1967 and 1974, drawing their manpower largely from the civil service, and more new corporations were set up after the collapse of the East African Community in 1975). The question is why the Government relied almost entirely on recruiting new employees at the higher levels instead of promoting at least some of its existing staff in the lower grades.

A rapid survey of manpower policies in the public service indicates a serious lack of concerted manpower development policies. Since the colonial period, pre-service training has been the basis of manpower recruitment and placement within the government hierarchy. New recruits are usually put into the training categories, on a supernumerary scale, and are always treated as being on probation until they are confirmed. Confirmation may come after up to two years, and if the probationers are not confirmed they can be dismissed. In Tanzania's public service there is usually no training after confirmation, which inaugurates the beginning of permanent tenure and sometimes also a decline in performance. Only in 1974, alarmed by the level of ignorance in its own ranks, did the Government issue a directive on the need for in-service training in parastatals and government departments. A department of workers' education was set up within the Ministry of Labour, and directorates of training and manpower development were established; a year later the Ministry of Manpower Development was formed.[3]

The impact of the new Ministry has yet to be properly studied, but as long as it is left to individual departments to initiate training programmes, their impact is likely to remain minimal. What is clear is that the lack of manpower development programmes has made it difficult for many civil servants to cross job categories and this has made upward mobility very limited, thus creating an artificial gap or demand in the upper sections of the civil service. Hence deskilling has been taking place in the lower sections, as shown by the failure of many secondary-school graduates in the civil service to perform well in the university mature-entry examinations. Their performance has been much inferior to that of workers in the parastatal sector. Very few civil servants were even able to reach the pass mark of 50 per cent qualifying them for entry, and most of these were teachers.

Indeed, very few civil servants have been undergoing training of any sort, even since the formation of the Ministry of Manpower Development. In 1977, out of 168,350 civil servants, only 3,046 or 3.6 per cent were attending courses, and in 1979 the number had fallen to only 1,362 or 0.61 per cent. By 1982 only 0.3 per cent were receiving in-service training. The economic crisis faced by Tanzania after 1979 was of course an important factor in this decline. It has also been suggested

that higher-level professionals saw it as against their interests to provide education for junior civil servants beyond functional literacy. At any rate, by the 1980s workers' education programmes had collapsed in most government departments.

In all the five ministries visited during the course of research, a claim was made that workers' education programmes had succeeded. What this meant was that everyone was literate in terms of ability to read and write. This apart, it was discovered that very few people could do their jobs well. Worse still, many civil servants exhibited extremely poor public relations skills and even in some cases withheld information and deliberately misinformed members of the public. All these shortcomings could be remedied by proper orientation and education programmes. Lack of in-service training has thus created an artificial market for skilled manpower, leading to continuous recruitment from outside the ranks of the civil service. Even the present manpower policies are still based on the hope of recruiting new staff rather than upgrading the skills of the existing staff and absorbing new staff only where necessary.

1.3.2 Overemployment in the civil service

The issue of overemployment in the civil service was first raised by the World Bank in 1980 and later by the International Monetary Fund (IMF) when considering funding requests from the Tanzanian Government. Although the Government at first dismissed the allegation as unfounded, it later accepted it as a fact and in 1983 a Presidential Commission was formed to study the staffing position in government departments and parastatal organisations. The Commission recommended that at least 27,000 employees should be laid off in the public service, and the process started in March 1985. Unfortunately, the guide-lines to the ministries on the type of people to be laid off were unclear. As a result, most of those laid off were not told why and in some cases the directive on lay-offs was used to settle old scores or get rid of rivals.

Although it is too early to comment at this stage, a few points can be raised. First, for a country with few resources it is obviously wasteful to lay off highly skilled manpower. Second, the Government could have considered the possibility of reallocating some of its skilled staff to other departments: in fact, people were laid off in some departments while others had staff shortages. Third, those seconded to other departments should have been given the opportunity to return to their permanent jobs. Fourth, those laid off should not have been barred from taking up other employment in non-governmental institutions, as is now the case - a former government agronomist, for example, could still work elsewhere in the economy. One thing worth bearing in mind is that as long as

upward or horizontal mobility remains difficult for lack of training programmes, the process of recruitment from outside will continue and the process of reducing manpower will necessarily be a periodic exercise of this sort.

1.4 Conditions of employment

The colonial division of the civil service, formerly based on a three-tier system, was inherited in many African countries including Tanzania. The executive class includes highly placed professionals, politicians and some expatriates. The majority of the professionals fall into a second category of skilled technical and administrative staff and the mass of civil servants occupy the lower stratum of underpaid semi-skilled and unskilled workers. The structure in many countries resembles a pyramid, and the higher the position the better the terms of employment and working conditions.

All civil servants in Tanzania derive two types of benefit from their employment: first, benefits arising out of their position as employees, e.g. sick leave, maternity leave, security of tenure, pensions, leave without pay, hardship leave, severance allowance, sickness allowance and so on; and, second, benefits which go with responsibility and performance, e.g. salary scales, promotion, increments and responsibility allowance.

In Tanzania's civil service, the first category of benefits are almost uniform and accrue to all confirmed staff. Each employee is entitled to annual paid leave of 28 days every 12 months, and a return ticket home once every 24 months. Married and single women have the right to an 84-day maternity leave every 36 months, and pension rights depend on salary scale and length of service. There is very little difference between public employees in the civil service and those in the parastatal sector as regards these derived rights.

It is when it comes to the second category of benefits that differences between various grades of the civil service, and between the civil service and other parts of the public sector begin to emerge. These differences appear mainly in the salary levels, salary scales, salary increases, occupational structures, career paths, performance assessment procedures and possibilities of upward mobility.

The lowest paid workers are paid the statutory minimum wage, with a small annual increment. Changes in the minimum wage of this category of employees, many of whom are women, have been very slow, and largely in response to general rises in the minimum wage at national level. The salary scales for the intermediate level bear a larger increment and are slightly more competitive in structure.

The salary scales for the higher administrative and professional level are less rigid, which makes it easy for performance to be rewarded without necessarily involving a change of status. This contrasts substantially with the scales characteristic of the first two categories: because these lead to automatic (unless withheld) increments, they do not stimulate competition for outstanding performance or promotion. Self-advancement is encouraged by the more competitive scales that are typical of the upper category of civil servants, and it is mainly within this category that staff are involved in educational activities outside their work.

At the apex of the pyramid are the highest officials. At this level the salaries are fixed for each category; the increments are meaningless in monetary terms, but each scale carries with it particular benefits, responsibilities and status.

1.4.1 Comparison between the civil service and other sectors of employment

Civil servants in Tanzania are materially very far behind their counterparts in the private and parastatal sectors. The lack of attractive remuneration has naturally led to some job instability in the civil service, and to lack of job satisfaction. Among a survey of 100 government employees employed in the professional category, 15 were very happy with their jobs and said they would not be easily tempted to change, 42 were ready to move at any time an opportunity arose, and 33 had applied for jobs elsewhere (23 without the knowledge and ten with the knowledge of their heads of department). Turnover was noted to be very high, especially among young professionals.

As far as fringe benefits are concerned, civil servants are very badly off compared with their counterparts in the parastatals and the private sector. A rapid comparison of four parastatals in Dar es Salaam and four government ministries showed that all the parastatals provided subsidised meals, whereas none of the ministries did; with regard to health care, clinics or dispensaries staffed by doctors and nurses were available at the parastatals, while employees of the ministries had to rely on public hospitals; subsidised housing and transport were available to a sizeable proportion of employees of the parastatals, but only to a few senior staff of the ministries. These items, which together account for a large part of employees' subsistence, represent a considerable subsidy to workers in the parastals. No civil servants of any grade (except for a very few at the top) enjoy such benefits, with detrimental effects on motivation and efficiency in the civil service. Workers' participation in decision-making, joint consultation on crucial matters, and policies of continuous collective bargaining can be extremely successful in increasing productivity levels, and it is through bargaining that work targets can be set and

evaluated, and results measured. As we shall see later, such mechanisms, which are capable of raising declining morale, have not yet been adopted by the public service.[4]

1.4.2 The need for professionalism in the civil service

Another point worth making is that the civil service has not been run on scientific management principles: public administration is not regarded as a profession; it is not supported by research and evaluation, and no efforts have been made to study the behaviour of civil servants and link it with their working environment, let alone examine the existing problems and find solutions to them. Because no study of this kind has been initiated, no moves have been made towards the motivation and retention of staff.

Movement within the hierarchy of the civil service is rarely related to the nature of work specialisation. In most cases a static yardstick is used for promotion, and that is whether a vacancy exists in the establishment - irrespective of merit or performance. Hence separation rates - vacancies arising as a result of death, retirement, transfer or dismissal - rather than growth rates influence promotion and related opportunities.

The problems of Tanzania's civil service are further aggravated by the lack of a dynamic policy of occupational restructuring. The parastatal sector, where individual corporations have reviewed their staff structures from time to time, is better off in this respect. However, no major change has taken place over the past ten years in the occupational structure of any government department except the police force and the army. This lack of restructuring has hit hardest the lower categories of employee, who have ended up stagnating for many years before retirement. There is a need for the Government to give autonomy to its departments to review their occupational structures without waiting for a general review. This will give incentives for training and stimulate competition for promotion.

Equally important is the fact that the occupational structure should be based on accepted job ladders or career paths, with clear indications of possible vertical or horizontal progressions for individuals and the criteria for such progress. Most of the parastatal organisations in Tanzania have already developed promotion criteria and well-charted job ladders. Methods of assessing individual performance are well defined and procedures for promotion and demotion, penalties for inefficiency, dismissal for bad performance and appeals against adverse decisions are clear. In the civil service staff assessment is determined from the top down and reasons for positive or negative action are rarely communicated. Upward

mobility becomes a privilege, and this in most cases breeds inefficiency and apathy.

All these factors have a bearing on labour relations in the public service in Tanzania.

2. Representation of employees in labour relations

2.1 Civil servants and the trade union movement

Civil servants have played a very active role in the trade union movement. The Tanganyika Civil Servants Association stands out as the oldest trade union movement on record in Tanzania's history, having been formed as far back as 1922.[5] Between the two world wars, the association played a very significant role in demanding equal rights for African and Asian public servants. In the late 1940s, the colonial government became increasingly opposed to civil servants organising within a trade union. Most of its leaders gave up and decided to play a more active role in the Tanganyika African Association, which later became the Tanganyika African National Union (TANU) in 1954. When trade unions began to be registered in 1948, the Civil Servants' Association was not recognised. Those that were recognised formed the Tanganyika Federation of Labour (TFL) in 1956.[6]

Between 1957 and 1960 the civil service did not have an organisation of its own. Civil servants were mainly protected by the nationalist movement. During the general boycott of bottled beer and public transport in 1958, they were organised by TANU, the strongest nationalist movement at that time.[7] Between 1960 and 1964 the civil service had no direct spokesman but its cause was advanced by the TFL. The crucial matters touching civil service interests raised during that time were citizenship and Africanisation. The TFL advanced a programme of racial citizenship - for Black Africans only - and demanded immediate Africanisation of the civil service. The ruling party, TANU, rejected this programme and advanced the alternative of citizenship based on loyalty rather than colour and Africanisation of the civil service based on existing local capabilities to fill positions held by foreigners. These two issues brought the two movements into bitter conflict in Parliament.[8] In 1964 the army staged a mutiny demanding immediate Africanisation. Several trade union leaders who were thought to have been behind the mutiny were arrested and detained, and the TFL was dissolved.

The TFL was replaced by the government-sponsored National Union of Tanganyika Workers (NUTA), affiliated to the ruling party. Under the Establishing Act of 1964, NUTA became open to

all employees but no other union could be formed. For the first time civil servants of all categories had the right openly to join a trade union movement. Instead of craft-based unions, the new structure comprised craft-based departments. Civil servants were put under the department for government and health workers. The same structure was retained after NUTA was replaced by a new national union, the Jumuiya ya Wafanyakazi Tanzania (JUWATA) in 1978.

The problem with a union organised like JUWATA at national level is that it tends to become a huge mass without an intermediate structure. The bottom level consists of scattered and uncoordinated field branches. Trade union consciousness can arise only out of organisational linkages among the working people. A compartmentalised structure confines a trade union movement to enterprise consciousness and, as we shall see, JUWATA is no exception.

2.2 Workers' representative bodies in the civil service

Under the JUWATA Establishment Act of 1979, all trade union activities in both the public and the private sectors can only be carried out through the sole trade union, JUWATA. The Act provides for the establishment of union branches at all levels of private or public enterprises where ten or more workers are employed. Membership of these branches is voluntary, but non-members may be called upon to pay a union service charge at any place where the union has 50 or more employees. The representation of all the workers, whether members or not, has to be through the union branch or, where no branch exists, through the labour officer. Workers' representatives on bodies other than those of the union, therefore, must be vetted by the union, and in most cases they have to be union members before they can stand for election. There is therefore a dual system of representation through the union - representation on union bodies and through the union on non-union bodies. The union bodies include the executive committee, the implementation committee, the disciplinary committee and the planning and productivity committee. Non-union bodies at plant level are few. Only works councils are common in government departments. However, a survey of five departments showed that their works councils did not meet at all between 1980 and 1982.

2.2.1 Executive committees

Under the JUWATA Act, 1979, executive committees are supposed to comprise between five and 20 members of the union branch, depending upon the total number of union members at the enterprise. With the exception of the Ministry of Justice, executive committees in the five ministries studied met on average four times a year.

The functions of the executive committees under the JUWATA regulations are:

(a) to mobilise workers to increase efficiency and productivity;

(b) to prepare and implement workers' education programmes;

(c) to evaluate enterprise targets and to monitor compliance with them;

(d) to consolidate the union at the place of work;

(e) to foster good relations between workers and their employers and among workers themselves; and

(f) to plan and protect workers' incomes at their place of work.

These are important functions and require a lot of time, energy and expertise. However, the general feeling arising out of the research was that many branch leaders do not take these functions very seriously. There are various reasons for this.

The first is that the workers are taken too much for granted in the regulations. It is assumed that they have an interest in preserving good relations between themselves and the administration and that they are eager to increase efficiency. On the contrary, workers are not necessarily interested in industrial peace or increased productivity unless they are persuaded that it will benefit them. The best way for committees of this kind to mobilise workers in order to increase efficiency would be to consult the workers about their work problems, expectations, aspirations and suggestions as to how to attain organisational goals. Such consultations can only be made through general meetings of all workers or departmental meetings, questionnaires, news-letters, suggestion boxes or wall literature. Such meetings are very rare and other communication mechanisms such as the ones suggested above do not exist. Hence consultation and feedback, and thus mobilisation for increased efficiency, are absent.

A second way of mobilising workers, even if they are not formally consulted, would be to work out a performance evaluation scheme and efficiency or productivity packages and present them to the employer for negotiation. In fact, none of the five committees had at any point in time taken pains to study ways of motivating and rewarding workers as a group. Productivity bargaining does not feature on the committees' agenda. Every year each ministry chooses the best workers of that year, but the criteria, which are very controversial, are based on:

(a) willingness to work;

(b) lack of bad disciplinary record;

(c) co-operation with fellow workers; and

(d) length of service.

Most of these factors have some bearing on work but do not necessarily denote efficiency or productivity.

Although neither production targets nor performance evaluation are mentioned in the previous minutes of the executive committees, the committees have reported from time to time that negligence and absenteeism are major problems in work performance. In spite of the fact that this problem is widespread, none of the committees seems to have conducted an inquiry into its root causes and possible solutions. In fact, the increase in individual action manifested through indiscipline, destruction of property, negligence and related acts could be seen as a reflection of the failure of the unions to organise for advanced forms of industrial action, e.g. collective bargaining, strikes, sit-ins and stoppages. It is the lack of trade union consciousness that perpetuates individual forms of resistance such as rudeness and absenteeism. What is needed is working class and trade union discipline with cessation of work only in times of industrial action - rather than a situation of perpetual disguised strike action.

2.2.2 Disciplinary committees

The union disciplinary committees play an important part in the procedures for imposition of sanctions by the employers on their employees for disciplinary breaches (see section 4.1 - "Individual disputes" - for details). On the whole, the disciplinary committees have been the most active of all the union branch committees. Because of their functions they meet very regularly. One thing that emerged during the research was that most members of these committees see themselves as part of the administration. Some are even regarded as such by their fellow workers. Allegations of corruption were made during interviews but no evidence was given to substantiate them. These allegations cannot, however, submerge the importance of the committees, which constitute an effective check on the employers' discretionary power.

2.2.3 Planning committees

Under the JUWATA regulations, the planning committees are expected to be the central think-tanks of the union branches, carrying out thorough research in order to advise the executive committees on trends in incomes, productivity and industrial

relations in general. Normally such committees would be expected to hold their meetings just before the meetings of the executive committee, but the planning committees of the branches visited did not seem to be playing any effective role in the running of union affairs. Almost invariably they had been meeting less than three times a year and had not discussed crucial matters such as wages and productivity but trivial matters such as festivals and cultural events. Another item that appears very regularly in their minutes is requests for financial support.

Very little has been done by these committees to establish means of raising independent revenue. Matters like workers' education, through in-plant training and sponsored training in institutes of higher learning, have been left to the discretion of the employers. Incomes, wages, benefits, overtime payments and related emoluments could easily be studied and discussed, and recommendations made. But they do not feature on the agenda of many planning committees nor, consequently, of many executive committees.

2.2.4 Works councils

According to Presidential Directive No. 1 of 1970, works councils are supposed to be established in every public enterprise employing ten or more people. The directive was addressed to public enterprises and not to government departments, but by convention works councils have been formed in all government ministries. Their composition is supposed to be as follows:

(a) party branch chairman;

(b) general manager or manager;

(c) all heads of department;

(d) all members of the union branch executive committee;

(e) elected workers' representatives who, combined with the branch executive members, should not exceed 75 per cent of the total membership of the council;

(f) other members as may be agreed upon by both the union and the management.

It was directed that heads of institutions would be the first chairmen of the councils and that the subsequent chairmen would be elected by the councils. Because government departments were not covered by the directive, in most ministries workers have been reluctant to choose chairmen from lower ranks because of the reverence they accord to their ministers. This has to some extent interfered with the democratic process in many

ministries. Another problem is that the functions of the councils as spelt out in the directive are much more suited to profit-making production units than to the public service. They include advice to the management on:

(a) the implementation of government wage policies;

(b) the marketing of products;

(c) the quality and quantity of products;

(d) the expansion plans of the enterprise;

(e) efficiency and productivity;

(f) the balance sheet.

Apart from the revenue authorities, which collect money on behalf of many departments, very few government departments provide anything apart from services. None of them compiles independent financial statements either. Furthermore, works councils were intended to advise boards of directors. In the government administrative structure such institutions do not exist.

Nevertheless, works councils have been formed in all government ministries and independent departments. By 1980 there was a total of 24 works councils in government establishments. Notwithstanding this welcome development, however, works councils have failed to become a dynamic industrial relations institution in the public service. In public enterprises, by contrast, they have been very successful. A detailed study of the National Bank of Commerce and the Friendship Textile Mill in 1983 disclosed that the formation of works councils had relaxed a lot of tensions, facilitated better understanding, replaced traditional bargaining systems and approaches, eliminated industrial conflict and increased productivity.[9] These trends are not discernible in the public service. Various factors seem to have contributed to this situation.

The first factor seems to be tradition. The civil service is run on the basis of standing orders and regulations, and these rules give very little room for discussion or shared decision-making. Second, even in the case of the public enterprises, production-oriented enterprises have greater scope for decision-making - on raw materials, machinery, inputs, products, techniques, innovation, marketing, pricing, distribution, surpluses, bonuses, benefits, wages, etc. In government service there is more room for discussion with the public but very few matters for internal discussion. Third, while both workers and management in the public enterprises, being ordinary citizens, may easily regard shared decision-making

as everyone's right, in the public service the heads of ministries - who are usually politicians or aspiring politicians - consider decision-making as their exclusive right and the workers are reluctant to question this.

2.2.5 General weaknesses of the representative institutions

In a brief evaluation of the workers' representative bodies, a few comments can be made. First, the representative nature of these institutions is questionable. As noted earlier, for any person to represent workers on any body, union or non-union, that person has to be a union member. Union members in all cases comprise less than 30 per cent of workers and it would not be fair to say that the remaining 70 per cent can effectively be represented by the rest. Furthermore, the exclusion of the majority from the democratic process is a denial of the constitutional right to organise and participate in the administration of one's affairs.

There are several reasons why union branches have failed to mobilise workers to join them. In the current economic crisis, workers have become more reluctant to join any organisation which involves making a subscription.

Another factor worth noting is the lack of trade union consciousness among workers in the civil service. Workers tend to act individually and fall back on the union only when they are in trouble. As already mentioned, individual action is manifested in forms of protest such as absenteeism, rudeness, negligence, insubordination and misuse of property. Because the union at the centre is weak and has no roots among the workers, the highest form of consciousness that could facilitate collective action is at the enterprise level. But the union branches are not adequately organised to instil even this very rudimentary form of consciousness, hence the prevalence of individual rather than collective action.

A third problem noted at the five ministries studied is the absence of a link between the various committees and the workers. Although the JUWATA Act calls upon union branches to organise general meetings of all workers at least twice a year, no such meetings are held. Nor are general meetings of union branches held as regularly as they should be. Members are called upon only for elections. This lack of a general forum deprives them of the chance to air their views, get feedback, identify potential leaders and so on. The lack of other means of communication such as news-letters, hand-outs, wall posters, etc., further compounds the communication problem.

The fact that very few members of the union know their rights is a further problem. The branches have not educated the

workers in this respect. The workers take the rights of the administration for granted and treat the union leaders as part of the administration. This reduces their ability to regulate the conduct of their leaders.

Finally, the union branches are financially dependent on the administration. The branches must find ways of raising money independently, e.g. by running co-operative shops or forming cultural groups. As long as they remain dependent on the employer for funds, they will be unable to bargain with the latter independently.

3. Methods of determining conditions of employment

3.1 The legal framework

The best way to guarantee the provision and continuity of adequate conditions of employment is through legislation. In Tanzania the first such legislation appeared in 1953 when the Minimum Wages (Terms and Conditions of Employment) Ordinance, Cap. 300, was passed. The object of this legislation, which came into operation in 1955, was to protect labour from exploitation by employers. Cap. 300 has since been supplemented by the Employment Ordinance, Cap. 366, passed at around the same time. While Cap. 300 sets up machinery for joint determination of minimum employment conditions, Cap. 366 seeks to protect wages and benefits by ensuring that they are paid and, where so stipulated, that they are paid in cash. It also seeks to establish the minimum welfare standards that are expected of employers.

These very important pieces of legislation were adopted by the Tanzanian Government after Independence. In addition, the Government immediately ratified several international labour Conventions on minimum wage fixing. The first were Conventions Nos. 26 and 99, the former relating to minimum wage fixing generally and the latter to minimum wage fixing for agricultural labour. The two Conventions require member States to provide adequate machinery for fixing minimum wage rates. They leave it to the member States to determine the appropriate structures, but some guide-lines have been provided, the main one being that governments should consult the representatives of both workers and employers.

In 1970 the issue of consultation was further stressed in Convention No. 131, which was ratified by the Tanzanian Government. This very important Convention seeks to deal with minimum wage fixing in developing countries; in particular, it requires member States to ensure that workers and employers participate equally, either directly or through their representative institutions, in the wage-fixing machinery. In

addition, it requires that independent persons should be appointed to participate alongside the representatives of employers and workers.

The Tanzanian legislation complies for the most part with these Conventions. Cap. 300 provides for the establishment by the minister in charge of labour affairs of Minimum Wage Advisory Boards, which could if required by the Minister inquire into the wage structure of any department, enterprise or district and recommend minimum wages and other terms of employment. Each Board must consist of an equal number of representatives of employers and workers, not exceeding four on each side. The representatives must be chosen by the employers and workers through their representative institutions and are joined by not more than four independent members chosen by the Minister for Labour. Each Board is temporary, pending completion of its task, and can only act within specific terms of reference. After it has made an inquiry, it is supposed to submit a report to the Minister for Labour recommending a minimum wage and ways of regulating wages and other conditions of employment.

Until 1967, all the Minister then had to do was consider the recommendation, make the appropriate decision and announce it in the government gazette. Since 1967, when the Permanent Labour Tribunal was established, the Minister for Labour may either accept the recommendations and forward them to the Tribunal for consideration or refer the report back to the Board for further inquiry. Where he is satisfied with the report, he has to attach his views on whether the recommended rise is likely to affect employment, production techniques, production levels, exports or expansion plans. The Chairman of the Tribunal or his deputy sits with an equal number of assessors chosen by the Minister for Labour from panels of names submitted to him by the workers' and employers' organisations. The Tribunal reaches a decision, which is registered as the award of the Tribunal. After the award is made, the Minister for Labour can announce the new wage and/or other terms of employment.

3.2 The actual practice

The legal framework therefore provides for a comprehensive procedure to be followed in minimum wage fixing, thus complying with the requirements of the international labour Conventions mentioned above. In spite of this, the legislation has not been used much in Tanzania's history. It was used in 1962 when the general wage levels were raised by about 30 per cent and in 1966 when they were raised again by about 15 per cent. In 1962 the aim was to raise wages from the very low levels left by colonial wage policies in 1961. In 1966 the objective was to raise civil servants' incomes to the minimum levels prevalent in the private and parastatal sectors. On both occasions the Ordinance was

used, Minimum Wage Advisory Boards were established and recommendations were made by the Boards.

After 1967 two developments occurred. First, the Government passed a national wages and incomes policy which established certain principles to be followed in raising wage levels or giving bonuses. Among other things, workers would need to give a commitment that if an increase were given they would improve productivity, and wage increases were only to be allowed where they would not adversely affect productivity, employment, expansion plans, and production plans and techniques. Second, as we have seen, the Permanent Labour Tribunal was set up to consider general and specific enterprise recommendations for wage increases and to adjudicate in conflicts involving wages and other terms and conditions of employment.

These two developments in effect created a new minimum wage fixing structure. Since 1967 minimum wages and wage increases have been enterprise issues. Each group of workers was left to bargain with its employer with the help of the central union and to carry out substantial negotiations for wage rises on its own behalf. As a result of these individual wage-fixing efforts, it was no longer imperative for the Minister to initiate an inquiry into wage structures. Under the Permanent Labour Tribunal Act the Minister still retained wide powers of inquiry, but ministers were reluctant to use these powers because under the new law they were no longer the final decision-makers. They had to submit their recommendations to the Permanent Labour Tribunal, and their recommendations could be rejected.

This factor was very important in shaping the direction of the Government in wage determination after 1967. Between 1967 and 1974 no Minister for Labour carried out an inquiry into the wages of any group or district. During this period the President became the only government official involved in fixing new minimum wages for the whole country. From 1969 workers either bargained for wage increases at enterprise level or waited for new minimum wage rates to be announced in the presidential May Day speech. This trend continued up to 1974. Neither the Minister for Labour nor the Permanent Labour Tribunal ever participated in the process, the Minister because he never instituted any inquiry and the Tribunal because no recommendation was forwarded to it. This development diminished the role of the trade union movement and the employers' organisations in the fixing of general minimum wages.

In 1976 the economy began to face difficulties. While voluntary negotiations for wages and other terms of employment continued, and the Permanent Labour Tribunal continued to register individual enterprise agreements, the benefits of the wage negotiation process continued to flow to those establishments that could easily satisfy the rigid yardstick set

out in the wages policy, especially production units which could show that they had productivity packages or that their wage increases would not affect their production and expansion plans or potential. The Government began to be more cautious about May Day wage increases. The centre of action shifted from the President's office to the Treasury, and the minimum wage became a budget affair. In 1977 and 1980 the changes in the minimum wage were announced in the new financial year budget. Neither the Ministry for Labour, nor the union, nor the employers' organisation, nor the Permanent Labour Tribunal played any open role in the exercise. New minimum wage-fixing machinery seemed to be in the offing, but neither JUWATA nor the employers complained - the union because it was too weak to fight and the employers because they were the beneficiaries of the confusion.

In 1983 JUWATA, under a new Secretary-General, began to complain about the disregard of the statutory procedure for fixing minimum wages. In 1984 the disregard almost brought the Government and the union to a head-on collision. Before 12 June of that year, the minimum wage stood at Shs.600 per month, that is, about £30. The Minister for Finance wanted to raise it to Shs.800. He consulted the Minister for Labour and requested him to set up a Minimum Wage Advisory Board. This was unusual because no such board had been set up for over 20 years. This time the Treasury wanted to involve the union because the increase was going to be lower than the rate of inflation and less than the workers expected. However, the members from the union and from the employers' organisation were not selected by the bodies themselves, as laid down in Cap. 300. Nor were the union and the employers' organisation consulted on the selection of the independent members, as required by law. Notwithstanding these shortcomings, the Board met, but it failed to agree and could not therefore make a recommendation. Because very few days were left before the budget speech and the Treasury was pressing for action, the Minister for Labour decided to go ahead without a mutual recommendation. He therefore made his own recommendation to the Permanent Labour Tribunal, which declined to act on a unilateral recommendation by the Government. At the same time, the Treasury went ahead with its plans and announced the new minimum wage of Shs.800. The union protested vehemently and threatened legal action, but because the budget speech is a finance Bill it becomes law after it has been approved by Parliament. When Parliament went ahead and approved the Bill, the union lost the impetus to keep up the fight.[10] This episode clearly brought to light the attitude of the Tanzanian Government towards legislation that binds government itself and the weakness of the union in confronting government.

3.3 Implications for the civil service

This systematic avoidance of the statutory process and the consequent preference for unilateral wage determination or, in

its absence, individualised enterprise wage negotiation has very much affected the income levels of civil servants. Civil servants are basically service oriented, and it is very difficult to establish or determine productivity rates in government departments. Nor is it easy to determine the impact of work performance on government plans for expansion, employment policies or the nature of government services. Hence it is very difficult for government workers at departmental or other levels to make a case for wage increases within the guide-lines of the national wage policy. This has meant that the civil service has to wait for an initiative from its employer, i.e. the Government. Unfortunately, the Government as an employer has not taken much interest either in inquiring into the working conditions of its employees or in initiating joint action. Civil servants have therefore had to wait for new minimum rates to be announced for everybody.

The major effect of this policy as far as civil servants are concerned is therefore that their minimum wage has remained the real statutory minimum while workers in parastatal organisations and the private sector have managed to negotiate minimum rates far above the statutory minimum. As a result, the government minimum has remained at around 85 per cent of the average minimum in the private and parastatal sectors. A second effect is that the salary scales for government workers have remained uniform for most departments irrespective of differences in specialisation, the nature of the work involved, and related questions. At the same time salary scales in the other sectors have tended to differ according to the nature of the work, levels of productivity, production techniques, bargaining capabilities, cost of living indices, etc. These issues can only be raised and negotiated through a bargaining process, but collective bargaining is not yet practised in the civil service in Tanzania.

If the statutory minimum wage fixing machinery were being invoked, the working conditions of the civil service would have been given adequate attention and issues like health, pension rates, transport and other welfare matters could have been reserved for the alternative system of negotiation at departmental level. But the Government has opted to use non-statutory procedures, including unilateral action and the Presidential Commission system. In 1981, when the plight of teachers of all grades became an issue in Parliament, a Presidential Commission was quickly set up to investigate and recommend to the President ways of improving teachers' conditions of employment. This Commission was, however, charged also with the task of evaluating education as a whole and suggesting how it could be improved. This other part of its terms of reference somehow diluted the component relating to working conditions. In February 1982 the Commission presented its report to the President recommending, among other things, a new service scheme, adequate housing, transport, fringe benefits, established job

ladders, clear evaluation and promotion procedures, etc. In June 1985 none of the recommendations on the improvement of working conditions had been implemented by the Government. When asked why this was the case, the Minister for National Education, who was the Chairman of the Commission, answered that the Commission's recommendations did not deal with working conditions only and were being implemented slowly.[11] It was also stated that as soon as money was available the recommendations would be implemented.

3.4 Evaluation

Although the Government may be refraining from constant review of the conditions of employment of civil servants because, given present economic constraints, substantial improvement in working conditions would entail a reduction in the workforce, it should be borne in mind that this cannot justify the employment of a large but dissatisfied and impoverished workforce, nor disregard for legislation and statutory procedures. Nor is it advisable to keep workers under control by suppressing collective bargaining. The bargaining process provides an opportunity for both parties to express to each other their goals and expectations, their capabilities and limitations, their motivation and reservations and problems. It creates room for self-assertion and self-actualisation, joint action and common agreement, and makes industrial relations conducive to peace, prosperity and job satisfaction.

Public administration must be seen as a scientific management function. There is no need for government to claim congruence of interests with its workers. Workers may be patriotic and devoted to their work, their workplace and their leaders, but the demand for advancement and change may nevertheless affect their outlook. It is only through consultation and the bargaining process that the Government as an employer can discover what motivates its employees. In the absence of active unionism, occasional collective bargaining is likely to be healthy for the Government in that it may stimulate increases in efficiency and productivity which, if not measured and evaluated, tend to decline.

This neglect of collective bargaining and negotiation in the Tanzanian public service may therefore be disadvantageous to the Government itself. Though the processes of negotiation give an appearance of conflict and tension, they represent the highest stage of labour relations. It is due to a policy of constant bargaining that the private sector in Tanzania, unsupported by government subsidies, preferential import allocations, tax subsidies and exemptions, or any other fiscal concessions, has survived the grimmest economic crisis. Research has shown that it was productivity and other forms of bargaining that saved the private sector from closures, labour cuts, wage freezes and

related problems, which were much more pronounced in the government enterprises although these were protected by direct government action.[12] It can be argued that the government as an employer could easily benefit from abiding by statutory provisions and encouraging discussion, negotiations and bargaining.

4. Labour disputes and their settlement

4.1 Individual disputes

Labour disputes can be divided into individual and collective disputes. Individual disputes arise when an individual employee is accused of committing a breach of disciplinary regulations, is subjected to disciplinary action and wishes to appeal.

The handling of disputes arising out of the employers' imposition of disciplinary sanctions is broadly covered under the Security of Employment Act of 1964. This governs all employees, whether in the public or private sector, who are not involved in the management of their employers' business. Those in the administrative or managerial categories are governed by their terms of contract in the non-governmental sector and by the civil service regulations of 1970 in the public service. The civil service regulations also cover junior or non-administrative employees in the public service. The Security of Employment Act covers the civil service except as regards the powers of the President. The Act has therefore to be applied together with the Civil Service Regulations.

Sections 21-23 of the Security of Employment Act lay down a certain procedure for imposing disciplinary sanctions. Where a union branch exists, the employer is required to inform the affected employee of the offence and the penalty to be imposed. He has also to inform the chairman of the union branch, or his deputy. He must then allow 72 hours to elapse before he imposes the sanction. If within the 72 hours, the disciplinary committee of the union has any representations to make against the intended penalty, a meeting can be arranged between the employer and the committee. The employer may then agree not to proceed with the penalty or, where he disagrees with the committee, he may proceed to impose the penalty and wait for the employee to appeal. In the case of summary dismissal he has to wait another 14 days, and if after that period the employee involved has not appealed to the Conciliation Board, then he may go ahead and dismiss the employee. Where no union branch exists, the role of the union is played by the Labour Officer. In cases of appeal to the Conciliation Board against summary dismissal or lesser penalties, the union branch may decide to support the employee concerned.

The Civil Service Regulations provide both for formal and for summary proceedings. Formal proceedings involve a breach likely to lead to dismissal, reduction in rank or reduction in salary. Where the alleged offender gives no explanation in answer to the charge, the disciplinary authority may conduct an inquiry into the matter or appoint one or two or more inquiry officers to hold an inquiry. The inquiry officer submits a report to the disciplinary authority, but the appropriate penalty is decided upon by the latter. In the case of summary proceedings the process is much shorter. No inquiry is conducted. The disciplinary authority simply calls the officer and allows him or her to make a defence. He carries out his own investigation, forms an opinion as to whether there has been a breach, and decides on the appropriate penalty.

In normal circumstances, in cases where the officers involved do not earn more than Shs.43,740 per annum, the disciplinary authority must inform the disciplinary committee of his decision after the formal or summary proceedings have been completed. A common practice noted in the five ministries visited, and especially in the Ministry of National Education, is the immediate involvement of the disciplinary committee in the inquiry or summary proceedings. This helps to secure agreement about the intended penalties; due to this thorough involvement of union branches in the disciplinary machinery, the branch committees tend to agree with the ultimate decisions of the disciplinary authorities. The employees affected have also tended to accept their decisions. Between 1980 and 1985, for example, no appeal went from any of the five ministries to the Conciliation Board. One factor that differentiates these disputes from collective disputes is that the Conciliation Boards are basically administrative, quasi-judicial organs; the decisions they make are final, the only appeal being to the Minister for Labour. Collective disputes, on the other hand, go to the Industrial Court (Permanent Labour Tribunal), which is for all intents and purposes a judicial institution.

4.2 Collective disputes

Collective disputes are governed both by the Civil Service Negotiation Machinery Act, 1962, and by the Local Government Negotiation Machinery Act, 1982. These two Acts attempt to ensure order in the public service without stifling all freedom to take industrial action. The function of reconciling discipline and freedom in industrial relations is a very delicate one. Indeed, this inherent conflict between individual and collective interests is as old as civil society.

Both the Civil Service and Local Government Negotiation Machinery Acts establish joint staff councils comprising chairmen and secretaries appointed by the respective government ministers, and vice-chairmen and deputy secretaries from names submitted to

them by the central union, JUWATA. Of the other members, half are nominated by the union and half by either the Civil Service Commission or the Local Government Service Commission (half of these are chosen on behalf of the association of local government authorities in the case of local government). The statutory duties of the councils are mainly to promote smooth industrial relations in the public service. They are empowered to act in times of peace by negotiating agreements with workers and forwarding them for consideration to the two commissions. They may also carry out independent inquiries and advise their respective commissions. They are, however, precluded from investigating or making recommendations on matters touching the appointment or disciplinary control of any employee. The two joint staff councils are essentially bipartite, but the Government has the upper hand because both the chairman and the secretary of each of the councils are government representatives, though they may be civil servants.

The councils can only act in a dispute when it has been duly referred to them by their respective ministers. The preliminary process involves the initiation of a negotiated agreement which if reached has to be signed by the chairman or any person authorised by the commission, and the vice-chairman or any person authorised by the union. After it has been signed it is forwarded to the appropriate minister, who has a duty to transmit it to the Permanent Labour Tribunal together with any comments he may want to make. Where an agreement has been reached, the minister cannot refer the matter back to the council if he disagrees with the content of the agreement. But where the council fails to agree and the minister discovers that this may be because it overlooked a material fact, took into consideration irrelevant matters, did not have certain information or overemphasised certain matters, he may refer the dispute back to the council. In all cases the dispute has to be either referred back to the council or referred to the Permanent Labour Tribunal within 21 days of the council's referring the matter to the minister. The Tribunal has powers to determine the matter and make an award thereon. As mentioned earlier, it draws its assessors from names submitted to the Minister for Labour by both the union and the employers' organisation. Its award becomes binding on each of the parties as part of their contract and cannot form the basis of any adjudication until a period of 12 months has expired.

The two pieces of legislation create not only effective avenues and procedures for avoiding strikes but also a legal framework that should totally eliminate them. In fact under both Acts and under the Permanent Labour Tribunal Act, it is illegal for public servants both to organise and to take effective part in strike action.

This dispute settlement procedure is not devoid of shortcomings, however. First, the two Acts put too much emphasis on negotiation and adjudication outside the enterprise. The local negotiation machinery - usually the local union branch and the management/administration - do not feature in the Acts. The dispute is channelled away from the enterprise to the joint staff councils, even though the members of the councils may not be acceptable to all parties in the dispute. Outside the government service the Labour Commissioner is required to make use of the local machinery, and if such machinery does not exist the Minister for Labour is empowered to establish it.

Connected with this is the fact that no duty is imposed on the union branch or the administration at the place of dispute to report the dispute to the Minister. In the case of the private sector and the parastatals, though this is not obligatory, the union branch and the management are officially empowered to initiate the settlement of disputes by reporting their existence or the threat that they will break out. In the two Acts under examination, it is simply assumed that the local leadership will report such disputes.

In the same vein, the duty to act either properly or at all is not spelt out in relation to the councils. As a result the joint staff council in the civil service has failed to operate because of failure to achieve a quorum and no action has been or can be taken against the councillors under the Act.[13] Another shortcoming worth mentioning is the lack of time-limits in the early stages of a dispute. Reference of disputes between the Minister and the council can take months or even years, nor is there any limit on the time the Tribunal can take to settle a dispute. Given the fact that there is only one Tribunal based in Dar es Salaam, there is always the possibility of delay at this level.

4.3 Strikes

Because of the long procedure, the rigidity of the law and the nature of the civil service, strikes or lock-outs in the public service in Tanzania are very uncommon. Individual disputes revolving around individual acts of disobedience and indiscipline, and employers' reactions to them, have tended to dominate the industrial relations scene. As explained earlier, the predominance of such individual acts is a sign of the predominance of individual consciousness and the lack of union solidarity and working-class discipline.

This absence of collective industrial action is not confined to Tanzania. It is a common phenomenon in many countries, for various reasons. First is the general weakness of the union. As mentioned earlier, JUWATA, the workers' union in Tanzania, is only active at the grass-roots level. Beyond the enterprise

there are few linkages between union branches, and the linkages between the branches and the centre are very weak. When the centre is unconnected with the periphery there is a natural tendency for the periphery to act unilaterally, hence the prevalence of enterprise rather than union consciousness, and individual rather than union discipline or action.

The second factor inhibiting workers from going beyond individual action is the lack of interdepartmental communication, despite the fact that government offices are usually very close to one another. Such communication helps workers to learn from one another how to respond to work problems and the management, and how to act together instead of launching prolonged individual struggles.

The situation is further aggravated by the division between "officers" and auxiliary staff which is based more on decision-taking than on material gains. Once a public servant has exceeded junior rank, he or she starts considering himself as an administrator. This is the group which could organise workers and instil some union consciousness into them, but the officers are very much removed from the other workers.

Having the Government as an employer is a third factor that inhibits co-ordinated industrial action in the public service. First, in the absence of a strong democratic tradition, a simple union demand supported by a simple stoppage, or even a threat of a stoppage, can easily be interpreted as a challenge to the Government, as a conspiracy inspired by a pressure group or a foreign power, or as disguised political opposition. As a result neither the Government nor its employees have any faith in the strike weapon. Both of them have their fears and reservations about it - the public servants mainly because the Government fears it. Second, in Tanzania, as in many other countries, the Government does not only wield power over the structures, finances and choice of union leadership, but it can easily abolish or suspend the union.

A fourth general factor is the claim of public interest. In many countries, including Tanzania, the public service comes to represent the public interest. Both arbitrators and governments themselves have been instrumental in popularising this image of the public service. The ideological impact of this attitude has been to alienate public service employees from their right to take industrial action. Both the public servants themselves and the public have come to believe that in the public interest public servants should refrain from demanding this right. Since 1974 the Tanzanian Government has openly condemned strike action.[14] It is therefore clear to the public servants that arrests and dismissals are not unlikely if they engage in any industrial dispute.

Fifth, it is worth noting that a strike can only succeed if it attracts sympathy or inflicts direct financial loss, thus compelling the employer to give in. Apart from water, fire, health and refuse collection services, only in a very few public services would strike action lead to a public outcry or immediate loss to the employer.

It is not surprising that in Tanzania public servants do not view the strike weapon as effective.

5. Conclusions

No sensible and lasting judgement can be made about the Tanzanian civil service and its conditions of employment unless a fully-fledged independent commission of inquiry endowed with wider powers of research investigates all departments in all regions. This might be headed by a Member of Parliament unconnected with the public service.

As far as personnel policy is concerned, the Government would do well to review its personnel policies and establish a system of data storage and proper documentation, preferably decentralised. In recruiting new personnel, it should look among its own ranks before bringing in fresh untrained people. The problems caused by continuous recruitment from outside were outlined in section 1. New directions in personnel policy could include emphasis on in-service training, not only in the form of apprenticeships but also through classroom training after work, as is done in various public enterprises. This would lead to the generation and accumulation of skills within the public service, make it easier to cross job categories, and most likely motivate the workers to learn more and increase job satisfaction. Further exposure to new techniques should be encouraged for top officials through research seminars, seminar discussions, study tours, government-sponsored membership of professional associations, competitions, etc.

Furthermore, the Government could benefit from regular reviewing of its recruitment, promotion and disciplinary procedures. Most of these procedures are outmoded and are likely to become more so. Methods of staff assessment should also be re-examined. Assessment is a quasi-judicial function requiring an adequate and well-manned system which can easily facilitate merit advancement, work motivation and accountability for performance or non-performance. A decentralised system of assessment based on joint consultation could be useful in a society where the public service is scattered and data processing and communication problematic. A uniform, centralised assessment system is not only frustrating but also unfair. Heads of institutions should be allowed some leeway in assessing their subordinates, and as long as checks and balances such as

consultation and criteria for action are provided for, their decisions should be final.

As indicated in this chapter, salaries and other terms and conditions in the public service are not at all attractive. In many countries governments are trying to bring the remuneration of civil servants up to the levels applicable in the private and public enterprise sectors. The low wages of civil servants are more easily understood in countries where public service is regarded as a vocation based on family roots and traditions. In Tanzania the public service is employment like any other; hence fair remuneration should be paid for the work performed. The Government would do well to ensure that it observes the laws governing wage fixing, so that it may extract promises and commitments from its employees to raise performance levels. The failure of the joint staff councils to operate successfully deserves special investigation. It could be because they are poorly constituted, poorly manned or poorly run.

Consultation at departmental level needs re-examination. Departmental consultation councils could be instituted by statute with powers to discuss matters of general interest, especially recruitment, work performance, redundancies, expansion, etc. Membership could be drawn from the management/administration and the workers - drawing in both non-unionised and unionised workers. A participatory management structure appropriate for the public service should not be difficult to find.

The question of how to strengthen the union and the employers' organisation in order to bring about a dynamic tripartite industrial relations system is very controversial, and can really be settled only through more specialised inquiry. It can be noted, however, that the linkages between union branches and the central union structure, on the one hand, and that between the departmental administration and the employers' organisation, on the other, are very weak. If the unions and the management are to be dynamic, these links must be strengthened.

Many other areas require immediate attention. Perhaps the last recommendation that could be made at this point is that the government administration should begin laying the groundwork for fundamental reforms. The first major reform should relate to the infrastructure required to bring about the necessary changes. It should be noted that in the parastatal sector reforms are being introduced because of the existence of the Tanzania Association of Parastatal Organisations (TAPO) and the Standing Committee on Parastatal Organisations (SCOPO), which in the last four years have organised a series of seminars and workshops involving parastatal managers to disseminate new ideas about manpower management, data processing, information dissemination, use of computers, purchasing techniques and negotiating with multinationals. It is not too late for the Government to attempt

the same, and the best way might be to set up the necessary institutions for reform along the lines of those established for the parastatals.

Notes

[1] Report of the Australian Royal Commission on Australian Government Administration (Canberra, Australian Government Publishing Service, 1976), p. 165.

[2] Ministry of Manpower Development: Uchunguzi Wa Mahitaji ya Wafanyakazi wa Daraja La Juu Na La Kati (High-level manpower survey) (Dar es Salaam, Government Printer, Jan. 1984), pp. 1-2.

[3] For detailed analysis, see G.J. Makusi: Workers' education in Tanzania (University of Dar es Salaam, 1980; unpublished BA dissertation); D.M.K. Senyoui: Workers' education in Tanzania: A case study of UFI, SIDO and University of Dar es Salaam (University of Dar es Salaam, 1979; unpublished LLB dissertation).

[4] See P.B. Mihyo: The forgotten proletarians: Civil servants kept out of industrial civilization, paper presented at an International Roundtable on Workers' Participation in Tanzania, Dar es Salaam, June 1978 (unpublished).

[5] G.P. Mpangala: "The rise of trade unions before 1964", in H. Othman and P.B. Mihyo: The role of trade unions in building socialism in Tanzania (forthcoming).

[6] See W. Friedland: Vuta Kamba; A. Tandau: The history of the TFL and the rise of NUTA (Mwananchi Publishers, 1969, translated by F. Kaunda).

[7] See Edward Barongo: Mkiki Mkiki wa Siasa (Mwanandu Publishers, 1966).

[8] For details see P.B. Mihyo: Industrial conflict and change in Tanzania (Dar es Salaam, Tanzania Publishing House, 1983), Ch. II.

[9] P.B. Mihyo et al.: "National report on workers' participation as a factor of economic development and social change in Tanzania", in ICPE: Workers' participation and self-management as factors of social change and economic development (Ljubljana, forthcoming).

[10] See Daily News, 13 June 1985; Sunday News, 14 June 1985; Mfanyakazi, 13 and 20 June 1985; and Sunday News, 21 June 1985.

[11] Hansard, 23 June 1985.

[12] For details and a comparative study of the two sectors see P.B. Mihyo: Collective bargaining and productivity management in Tanzania: Trends and tendencies in the public and private sectors (forthcoming), Ch. III.

[13] This happened twice in 1984. The joint staff council failed to meet in Shinyanga and Tanga for lack of a quorum.

[14] See P.B. Mihyo: Industrial conflict and change in Tanzania (Dar es Salaam, Tanzania Publishing House, 1983), Ch. IV.

CHAPTER VII

LABOUR RELATIONS IN THE PUBLIC SERVICE IN VENEZUELA

by Enrique Marín Quijada*

Introduction

The public sector comes under both the labour legislation structures that exist in Venezuela. The Labour Act, and the special regulations which supplement it, not only lay down provisions for workers in all undertakings in the private sector but also apply to public enterprises, to blue-collar workers in ministries, autonomous institutes, state and municipal governments, etc., and, exceptionally, to certain sectors of the public service. The regulations covering the public service, on the other hand, govern the situation and working conditions of public servants, salaried employees bound to the administration by a statutory relationship. Both structures have a framework of constitutional provisions and, more particularly, of social rights relating to work and social security.

Discussion of industrial relations and the settlement of labour disputes in the public service is, in itself, a novelty. Imbued with the principles of public equity, the public service was traditionally maintained as a world apart, organised on the basis of state commissions without taking into account the needs and rights of the personnel. For a long time, it seemed to remain apart from the social and legal developments that were taking place in labour relations in other spheres.

As from 1958, however, with the re-establishment of a democratic system of government, a profound change began to take place, with shape being given to the idea of modernising and increasing the efficiency of the public administration. As a part of this objective, it was felt necessary to draw up regulations for the public service since the legal structure covering it was limited to a few isolated regulations. The year 1970 marked a fundamental turning-point with the adoption of the first major piece of legislation, the Administrative Career Act, intended for the vast majority of public servants in the national public administration. This piece of legislation was followed by

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other similar texts applying to various categories of staff in the national, state or municipal administrations. Taken together, these pieces of legislation form a complex of rights, obligations, responsibilities and guarantees for the public servant and set up the legislative basis for the personnel administration systems. The Administrative Career Act also established a special jurisdictional route and procedure which have allowed public servants to express, in a suitable way, their differences with the administration. Unfortunately, having an independent system of personnel administration, with its own rules and criteria, has tended to reinforce the isolation of the public service.

During the same period, public servants began to organise themselves and to carry out a number of significant experiments in collective bargaining. This was a reflection of the inevitable influence of the social changes that had occurred elsewhere in the labour relations world, and in particular the development of trade unions and a marked trend towards collective bargaining.

These trends toward the organisation and participation of labour, which often developed in an environment of widespread conflict, have, in turn, brought about far-reaching changes in the public service. The public service can no longer be described by reference to remote doctrinal concepts, for the letter of the law has been drastically modified by the impact of social reality. As a result there has come into being a special pattern of labour relations which, to the extent that it relates to the national public administration, will be described in general terms in the following pages.

1. Employment and employment conditions in the public service

The public service grew rapidly from the 1960s up until 1982, roughly in line with the considerable expansion of the role of the State in society. Conditions of employment have been diversified and have also undergone certain major improvements, even though considerable deficiencies continue to exist, and a clearly defined personnel policy is still lacking.

1.1 Employment

1.1.1 Number of employees in the national public administration

In 1985, the public sector employed around 1,021,179 persons, i.e. 17.5 per cent of the labour force and 20.3 per cent of the working population. Table VII.1 shows the growth in employment overall and in the public sector over the last 15 years.

Table VII.1: Total labour force and employment in the public sector, 1970-85

Year	Labour force	Working population		
		Total (1)	Public sector (2)	(2) as % of (1)
1970	3 034 500	2 883 300	549 800	19.4
1974	3 356 800	3 148 800	526 200	16.7
1980	3 208 200	2 999 100	873 500	29.1
1981	4 634 500	4 177 700	1 110 800	26.5
1984	5 517 200	4 831 700	1 045 600	21.6
1985	5 827 600	5 011 000	1 021 100	20.3

Source: OCEI: Labour force indicators (formerly Sample Household Survey) and XIth General Census of the Population and Households (1981).

Public servants account for only a part of the public sector, but they are not counted separately in any accurate manner. In 1985, they were approximately 645,179 in number,[1] and thus accounted for some 63 per cent of the total number employed in the public sector. The present study will deal mainly with the situation of public servants in the national public administration (central offices, ministries and autonomous institutes), and for these more comprehensive statistics have been drawn up by the Central Personnel Office (OCP). In any case, these form the largest group of public servants, and their conditions of employment are necessarily a reference point for all the others. Table VII.2 shows the number of public servants in the national public administration and the way in which this number has increased since 1970 in comparison with other workers in the public sector.

1.1.2 Distribution of public servants in the national public administration

The OCP's statistics for 1984 reflect fairly accurately the employment situation in the national public administration, except that they are not related to persons actually employed but rather to posts provided, and do not include a number of major categories such as the teaching personnel under the Ministry of Education.

Table VII.2: Employment in the public sector as a whole and in the national public administration

Year	Public sector	National public administration	%
1970	549 800	148 500	27.0
1974	526 200	227 100[1]	43.1
1980	873 500	146 400	16.7
1981	1 110 800	153 300	13.8
1984	1 045 600	188 200	17.9

[1] This figure probably includes teachers from the Ministry of Education.

Source: OCEI: Labour force indicators (formerly Sample Household Survey) and XIth General Census of the Population and Households (1981); OCP: statistical data for various years; statistical report, 1984.

In 1984, 52 per cent of the posts in the national public administration were located in three main areas (out of 23), i.e. in the Federal District (the seat of the national public administration) and the states of Miranda and Zulia; the first two of these, which are neighbouring areas, account for 44 per cent of the posts, including all the most important ones. The territorial distribution of the posts demonstrates the pronounced administrative centralisation in Venezuela - a factor which is to be felt at all levels and which has a special impact on employment and decision-making in the public service.

Approximately 89 per cent of national public servants hold "fixed" posts, in contrast with the supernumerary officials and personnel under contract who account for 11 per cent of the total.

Under the Administrative Career Act, public servants can be divided into career public servants and high-level officials or officials in positions of trust. The first, who are intended to have long-term careers in the administration, enjoy stability of employment. The second can usually be freely removed from their posts. There are, in addition, a number of temporary officials who, after a certain period of time, usually become career officials.[2] According to OCP figures, the high-level posts account for no more than 1.23 per cent of the total; in practice, however, the percentage of non-established officials is higher if one takes into account those who are in positions of trust even though they are not in high-level posts; in spite of this, they account for only a very small minority. The remainder

of the posts in the administration are professional specialists (25.96 per cent), administrators, technicians and semi-professionals (31.17 per cent) or lower-level administrators (41.64 per cent). Bearing in mind these figures and this legal classification of public servants, we will now look at the main conditions of employment.

1.2 Conditions of employment

Conditions of employment in the national public administration, as they now stand, were laid down in 1970 by the Administrative Career Act. These conditions relate to the organisation of employment and the official's hours of work and pay.

The basic principle behind this law, as far as public employment is concerned, was to create a merit system by which it would be possible to control access to permanent employment in the administration in such a way as to allow public servants to make a true career of it. The Act provides for entry by competition, a structure of promotions and transfers, paid and unpaid leave, and retirement only for precisely defined reasons. The most important omission in the application of the law's provisions in this respect has probably been the failure to establish competitive examinations. The working week for day-time work is a maximum of 44 hours; for night-time work, it is 40 hours, and for mixed work 42 hours over five days. The hours are laid down by the President of the Republic on the advice of the OCP. One of the most interesting developments in this context over recent years has been the experiments with continuous working hours - of around 7 1/2 hours per day with half an hour break for lunch.[3]

The duration and remuneration for public servants' annual leave are progressive, depending on the number of years of service.[4] The end-year bonus to which officials are entitled is also progressive.[5]

On retirement, officials receive a sum of money calculated on the basis of one month's salary for each year or part of a year exceeding eight months of service. The origin of this major benefit is to be found in the Labour Act; as from 1975, this became an "acquired right", in that it is payable irrespective of the cause of termination of the employment relationship, even in the event of a severe fault on the part of the official.

This benefit is added to the old-age pension administered by the Social Insurance Institute of Venezuela, which the Government decided, in 1985, to extend to all employees in the public sector. Women are entitled to this pension at the age of 55 and men at the age of 60 after 25 years of service; persons with 35 years of service are entitled no matter what their age. They are

in principle required to contribute to the financing of this pension, but so far this requirement has not been implemented.

Remuneration is laid down by law and is based on a system approved by the President of the Republic and issued by decree; remuneration comprises wages, efficiency and long-service allowances, an allowance for travel expenses, etc.

The percentage distribution of posts by monthly wage levels shows that, for 1984, 90.69 per cent of the posts were at wage levels of no more than Bs.5,000, 67.04 per cent had no more than Bs.3,000, and 40.21 per cent of posts were at wage levels between Bs.1,000 and Bs.2,000 - the minimum wage being Bs.1,500.[6] As from 1 January 1986, there was a general increase in wages (which had remained unchanged since 1982),[7] and a new wage scale.[8] These increases partially compensated for the loss in the purchasing power of wages; however, they have probably not significantly modified the wage distribution in the public service. Wage conditions have, in fact, remained much the same for many years now, as can be appreciated from table VII.3.[9]

Table VII.3: Distribution of posts by monthly wage levels, 1980-84

Monthly wage levels (Bs.)	1980	%	1982	%	1984	%
1 000-2 000	64 410	41.94	56 158	35.76	75 449	40.21
2 001-3 000	39 686	27.10	45 998	29.29	50 348	26.83
3 001-4 000	19 007	12.98	21 387	13.61	23 177	12.35
4 001-5 000	14 157	9.66	17 251	10.98	21 164	11.28
5 001-6 000	6 143	4.19	8 723	5.55	9 954	5.30
6 001-7 000	2 518	1.71	3 509	2.23	3 742	1.99
7 001-8 000	849	0.57	1 145	0.72	1 277	0.68
Total	146 410	99.95	157 032	99.96	187 605	99.96

Note: This table excludes posts with wages lower than Bs.1,000 per month.

Source: OCP: Statistical Report, 1984, table 11.

1.3 Trends

It is perhaps dangerous to speak of trends in the public service since we are dealing with such a wide and diverse subject; moreover, major events may occur and modify the situation.

One clear phenomenon has been the constant growth in the number of officials since the 1960s, in line with the expansion of the Government's presence in all areas of activity. With the onset of the present economic crisis, which was to be seen dramatically in the currency devaluation of 1983, there was talk of a freeze on public employment and, moreover, a massive reduction in staffing; so far, however, the figures do not seem to show any significant changes in this direction.

The Administrative Career Act of 1970 was announced as a major step in the modernisation of the administration. The management of the public service was entrusted to a presidential office, the OCP. Currently, reorganisation of the administration is taking place and new technologies are being introduced, in particular computer equipment; work is also being carried out on training and raising the skills of the personnel. Conditions of employment are expressly formulated in the legislation. The major benefit since 1970 has been the right to absolute job security and the payment of social benefits. The special jurisdiction for officials covered by the Basic Law Governing the Administrative Career is a new and important reality. Officials have become accustomed to appealing against illegal action taken by the administration, especially in relation to dismissal; in many cases, they obtain satisfaction, although the effectiveness of such action is hindered by congestion in the courts and the obstacles that the administration raises in the execution of the judgements.

On the other hand, the major shortcoming perhaps derives from the absence of a systematic personnel policy. This makes itself felt, for example, in the improvised approach to recruitment (which takes place without competition), the lack of incentives, the lack of certainty about promotion, the rigidity in personnel movements and, finally, the lack of clear procedures for providing a rapid response to the staff's legitimate grievances.

The most unfortunate counterpart of security of employment is the traditional low level of remuneration. The recent general increase in wages and salaries indicates a recognition of the inflationary elements in the economy. This will probably bring about a more dynamic wage policy in order, at least, to maintain the real purchasing power of wages.

For a number of reasons, the public service provides a means of training and economic support for a large number of people, in particular young professionals with a university education and medium-level technicians who, having acquired experience, tend to move on to more attractive positions in public or private enterprises, or to practise their profession as a self-employed person, or even to combine this new activity with public employment, which gives them a basic income. This clearly

demonstrates the inability of the administration to keep for any length of time, or at least for a lifetime, any highly skilled person that it has trained.[10]

Collective bargaining and the outbreak of collective disputes are a growing characteristic of labour relations in the public service. These are, of course, phenomena of limited extent, but they have produced real benefits for many officials.

Finally, there has been the gradual development of trade unions amongst public servants - even before this was permitted by the law.

2. Representation of employees and employers in labour relations

The trade unionisation of public servants is, with few exceptions, a recent development; previously, the hierarchical structure of the administration and the statutory concept of the public service ruled out any association of the staff which might oppose itself to the interests of the public service. Since the large-scale development of the trade union movement, the administration has had to adapt itself to the trade union presence, even if the dialogue with the unions usually gives it the maximum administrative authority over the affair in question.

2.1 Employees' organisations

The Administrative Career Act recognises the public servant's right to form trade unions.[11] However, since the early 1970s, associations of public servants, with typical trade union characteristics, began to spring up. Moreover, during the same period, a number of professional colleges, especially of physicians, similarly adopted a clear trade union approach in pursuit of a response to their grievances, and partially transformed themselves into a type of trade union outside the mainstream of development. It would be useful to review the three forms of organisation which coexist in the public service.

2.1.1 Trade unions

The code of conduct for public servants' trade unions is contained in the 1971 Regulations respecting Civil Service Unions, in which are laid down the aims which the organisation should have, the requirements it must meet, and rules for its organisation, operation and winding up. According to these Regulations, the civil service union should both protect the rights of its members and collaborate with the public administration, at the latter's request, to achieve a more efficient performance of its duties. At least 10 per cent of the total staff of the body concerned must come together in order to

constitute a valid union; furthermore, a union cannot be validly constituted unless it has a membership of at least 100. These unions may form federations of civil service unions and these may in turn form confederations. In order to obtain juridical status, it is necessary to draw up a fundamental document (deed of constitution, rules or by-laws, and a list of members)[12] and register the union with the Central Personnel Office (OCP).

Currently, there are 84 trade unions[13] and one federation of trade unions, the National United Federation of Public Employees (FEDEUNEP),[14] registered with the OCP. The exact rate of unionisation is not known; however, it seems to be much higher than the average rate of unionisation throughout the country which, in 1973, was estimated at 33 per cent.[15]

The Regulations reflect the ambiguity which surrounds the inclusion of the right of assembly in the Administrative Career Act: on the one hand, the Act tends to highlight the differences between the civil servants' unions and other trade unions and restrict their action; on the other hand, it is fully supported by the provisions of the Labour Act and its regulations. The legality of the instrument as such is in any case debatable since the matter is legally reserved and has a much wider framework in the Constitution and in the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), which was ratified by Venezuela in 1982.

In practice, it is clear to all that the application of the Regulations suffers from serious limitations. For example, the Regulations provide for a trade union structure parallel to that envisaged in the Labour Act, but FEDEUNEP is affiliated to the Venezuelan Confederation of Labour (CTV) and not to a confederation of public employees' unions. Finally, it is not necessary to be a regular trade union in order to represent the personnel - as is shown by the existence of other types of trade union organisations which are operative in the public service.

2.1.2 Associations

The associations come under the provisions of the Civil Code concerning civil associations. In general, they have an elementary organisational structure with little room for participation on the part of their members. Nevertheless, some of them achieve a high level of mobilisation. The membership rate for these associations or for the corresponding professional category is usually considerably higher than the average national rate of unionisation.[16]

A number of associations come into existence with definite trade union objectives whereas others acquire these objectives over the years, following a profound change in the formulation of their action programmes and even in their language, which is not

always easily understood by their members and even less by public opinion. In many cases, this development has culminated in a change in the association's statutes so that it can become a normal trade union, or has even given rise to a dual personality of association and trade union.

The Venezuelan Federation of Teachers provides a good example of such a change. It was founded in 1936 from two associations of schoolmasters and teachers and, as from 1958, started to assimilate trade union ideas - some of which had already been expressed as early as 1946.[17] In 1969 it went so far as to organise a strike and negotiations with the Government, and it subsequently adapted its structures to the legal trade union framework.

2.1.3 Professional colleges

The development of professional colleges, especially that of the physicians, dates back to the 1950s. Professional colleges are corporations under the Civil Code, to which persons practising the profession in question are required to belong.[18] They have very varied and important tasks which range from monitoring good professional practice, both in order to protect society and to expand their client base, to the defence and protection of the professional, economic, social and corporate interests of their members. It is this variety and complexity of tasks that seems to differentiate the professional college and the trade union. The liberal professions, for their part, although they are increasingly adopting a corporate approach, feel themselves, in some ways, to be trade union militants. Employment difficulties and the realisation that they are basically salaried employees have brought about major changes in their thinking on trade union questions.

The Venezuelan Medical Federation and the medical colleges which are grouped together in it are constantly putting forward demands relating to health questions, and they issue regular reports on these matters. The new legislation on medical practice has provided ample grounds for this aggressive approach.[19] The College of Bio-analysts, which has little in the way of tradition and clout, but which has major employment problems to deal with, is adopting a similar approach; in December 1985, for example, it was involved in a serious dispute with the Federal District Government.

2.1.4 Common factors

The trade union movement in the public service is gradually taking shape but it is still developing. With the reservations that this changing situation necessarily imposes, it is possible to itemise the main features which have recurred over the years.

The first of these features is, as already mentioned, diversity, which is promoted by the lack of adequate legal provisions for regulating trade union activity. An element of flexibility thus exists in the legal situation vis-à-vis trade unions in Venezuela, which allows public servants to organise themselves imaginatively without necessarily having to adopt rigid and formalistic procedural structures.

Public servants' organisations also tend to have a large number of members, in view of the corresponding size of the organisations in which they operate. The membership rate is high too, greater than the average rate of trade union membership throughout the country. In the professional colleges, membership is, for the time being, compulsory.

In view of the size of the membership and, perhaps, the subsidies obtained, in particular through collective bargaining, these organisations usually have significant assets[20] and an appreciable administrative structure, including permament staff. A number of organisations have demanded, and obtained, from their employers facilities for carrying out their activities in addition to those laid down by the Administrative Career Act. There may be rival parallel organisations (except in the case of the professional colleges); in this case, what usually happens is that the power in a given organisation is distributed between the different factions in line with the principle of proportional representation of minorities.

As far as trade union activity is concerned, it may be said that the associations and professional colleges have generally displayed, at least superficially, a more dynamic approach than the public officials' trade unions as such.

2.2 Employers' representation

The Venezuelan administration is traditionally extremely hierarchical. Moreover, the State is highly centralised and the government regime is presidential with a clear party influence. This means that the majority of important decisions, including those on labour relations, are made in the capital by the relevant ministry or the president of an autonomous institute and endorsed by the President of the Republic and the Council of Ministers.

There have been no general changes in the administration as far as the dialogue with the trade unions is concerned; commonly, the dialogue takes place at the highest administrative level. There are different scenarios, however. It may happen that the discussions are taken up directly by the ministry concerned; it is also possible, at least at certain stages, for them to be entrusted to a legal consulting office or a consultant lawyer outside the administration.

In certain sectors, definite changes have been instituted in order to handle relations with the employee organisations. The Ministry of Education, for example, has set up a Corporate Affairs Office for this purpose, and this has resulted in an agreement with these organisations. In some situations, particularly where there are wide-ranging disputes, various ministries, and in particular the Ministry of Finance, have intervened in the discussions with the employee organisations.

On the other hand, it is interesting to note that the Central Personnel Office (OCP) apparently does not intervene in labour relations in the public service in spite of the fact that it has the responsibility for managing public service personnel.[21] The OCP thus appears to be carrying out its functions imbued with the old idea of a public service which is disciplined and administered unilaterally as though the trade union organisations did not exist and the staff had no involvement in determining their conditions of employment. On the other hand, the authorities who are actually confronted with staff participation have had to resort to informal procedures for dealing with the trade unions. This separation of functions and focus within the administration is probably an expression of its lack of decisiveness when confronted with these new phenomena of employee organisations in the public service.

Looking to the future, the administration should take steps to adapt itself to the presence of trade union organisations and to benefit from a dialogue with them. Three experiments which have taken place inside the administration itself could be useful in this respect. First, each body could have an office such as that found in the Ministry of Education, to advise the administration, negotiate with the organisations, carry out studies and keep files on the organisations, collective bargaining, disputes, etc.

Second, the Directorate of the OCP, headed by an Executive Director with a representative from the National Legislative Chambers and one from the workers, could be a suitable venue for tripartite discussions at the highest level. Under the guidance and co-ordination of this Directorate, dialogue could be promoted throughout the administration, and extensive use could be made of joint working groups. This would necessitate a political decision and a major effort since, from the beginning, the Directorate's functions have been somewhat symbolic, and it is the Executive Director who carries all the weight.

Finally, for situations in which a number of different organisations are required to enter into negotiations with the trade unions, it would be desirable to try out a scheme of co-ordinating the official bodies and CTV participation, similar to that which currently exists in the public enterprise sector for the negotiation of collective agreements.

3. Methods of determining conditions of employment

3.1 History

Conditions of employment in the public service have traditionally been imposed by the Government by means of legislative or administrative instruments. The conventional view was that there was no question of discussing labour relations or disputes, since employment conditions derived from unilateral decisions and officials were, vis-à-vis the administration, in an individual situation in which they were required to accept, in a disciplined way, the working conditions that existed; any possible contradiction of interest between the administration and its servants was ignored.

Even before the legislation relating to the public service had come into being, large sectors of the public service had begun to participate in determining their conditions of employment.[22] This participation, both in the ministries and in the autonomous institutes, primarily took the form of informal negotiations. In certain sectors, therefore, two different styles of personnel administration are now being used: one purely unilateral and traditional, the other combining dialogue and negotiation.

Both styles of personnel administration are the response to significant pressures. Until 1970, public servants had no right to job security. They had no option but submit to the instructions of their superiors and the conditions of employment that had been imposed. Moreover, this attitude of submission fitted in with the dominant thinking about the public service, according to which the interests of the administration and those of public servants were, by definition, the same, and any conflict between them unthinkable. There was a widespread idea that public servants were not workers; instead, their responsibilities as representatives of the administration conferred on them a dignity which should provide the greatest satisfaction.

The political and social developments that Venezuela has experienced since 1958 have necessarily brought about a major change in these ideas about the public service. Since then, as we have seen, the blue-collar workers employed by the State, together with workers in the public enterprises, have started to organise themselves into powerful trade unions and to negotiate major collective agreements. This situation could hardly have passed unnoticed in the public service; on the contrary, it has exterted a decisive influence. In recognising themselves to be ordinary, everyday workers, public servants have organised themselves and have become aware of their conditions of employment; they have started to submit their grievances to the administration and, in contrast to what would have been possible

in previous years, they have entered into discussions and agreements, usually with major economic and social implications. The most remarkable example is the teachers' agreement.[23]

It may be said that unilateral decision-making and collective bargaining coexist in partly different areas. The General Regulations regulate entry into the administration, the official's career and termination of service, and lay down the overall framework of conditions of employment. Bargaining tends to lead to additional benefits, to the improvement or expansion of rights under the General Regulations, to the settlement of specific matters, or merely to intervention in the way in which the administration deals with its employees and, in the final analysis, to bringing about a dialogue between administration and trade union organisations. Wages, for example, are determined on the basis of scales that are unilaterally approved by the President of the Republic; however, the recent increases can, without any doubt, be traced back to the demands made by the workers' organisations and, specifically, to the final discussions that the CTV had with the President and a number of his ministers (see section 3.2.2). In June 1985, court employees entered into a wide-ranging dispute aimed primarily at achieving better wages; in the end they negotiated and reached agreements which supplemented the existing provisions.[24] In one Public Registry Office, the employees went on strike in protest at the behaviour of the head of the Office and called for his dismissal.[25] Finally, everything relating to the unionisation of public servants and the opening of dialogue with the employee organisations came about as the result of discussions between the parties involved and not as a result of statutory provisions.

3.2 The development of collective bargaining

3.2.1 Forms of bargaining

The same circumstances that led to the piece-meal introduction of bargaining in the public service - in particular the lack of a suitable legal structure and the weight of legal tradition - have compelled the parties to enter into various different forms of bargaining, especially as regards the formal result aimed at. A number of discussions have resulted in the unilateral establishment of settlement agreements, whereas others have resulted in joint declarations. Most agreements are written but others may be purely verbal understandings.

The formula of turning an agreement into a unilateral text has been used primarily by the central administration. The recent increase in wages brought about by decree could be cited as an example of this. The same could be said of the settlement texts negotiated by the physicians, bio-analysts, radiologists and nurses with the Ministry of Health; the texts providing for

job security for teaching staff under the Ministry of Education dating from 1973, and the wage provisions adopted in 1970 by the Ministry of Internal Affairs in relation to the staff of the Directorate of Foreign Nationals. In January 1986, the Minister of Transport and Communications informed its officials that, in accordance with an agreement reached with a trade union organisation, it was prepared to increase the contribution made by the Ministry to the savings bank. Finally, the regulations laid down for merchant sailors by the Pipeline Institute resulted directly from discussions with the trade union organisation.

The issuing of joint agreements is to be found mainly in the autonomous institutes, although it has occurred both in the Ministry of Health, with the physicians, and in the Ministry of Education. The majority of agreements of this nature have been given specific names (pacts, Acts of agreement, final Acts, Conventions on working conditions), as though endeavouring to circumvent the debate on their legality, since they are of necessity negotiated without reference to any legal framework.

Other agreements have been negotiated as collective work contracts by the exceptional application of the Labour Act. In a number of sectors of the administration, there has been a tendency to resort to the Labour Act, in particular so as to negotiate collective labour contracts. In certain cases, this was done surreptitiously, stretching the interpretation of the legal provisions which acknowledge that officials in certain specific autonomous institutes are entitled to "the benefits" of this Act;[26] it was then claimed that this interpretation implied recognition of the right to negotiate collective labour contracts. More recent legislation refers more explicitly and more extensively to the Labour Act.[27]

Special attention is drawn to these negotiation procedures that have taken place outside any legislative framework, in view of their flexibility and originality and the way they have been adapted to the public service environment.

Many agreements reached in this way give rise to imperfect obligations, the implementation of which necessitates unilateral measures on the part of the authorities, such as a ministerial resolution or the legislative approval of budget funds. It is interesting to note that this difficulty has not proved an obstacle in the application of these agreements.

3.2.2 Level of bargaining

The bargaining is usually instituted within a specific organisation, either directly with the top management or through representatives. This may be attributed to the discretion with which it is necessary to shroud such necessarily informal discussions. This method of bargaining by organisation is in

some ways similar to the bargaining at the level of the enterprise which is so common in Venezuela.

Some negotiations have nevertheless required the intervention of the authorities from various sectors and even the intervention of the President of the Republic, in view of the scope and complexity of the questions under discussion. This occurred, for example, in 1983 during the negotiations between the unions and an inter-ministerial commission with a view to ending the national teachers' dispute.[28] In 1985 similar interventions took place in relation to the disputes involving the university professors and the administrative employees of the courts;[29] in both cases, the Minister of Finance was among the parties involved.

The CTV-government agreements have constituted an important form of inter-ministerial participation. A very high-level committee, on which sat various ministers and the Attorney General of the Republic, together with representatives of the CTV, laid down guide-lines for all bargaining in the public sector. These guide-lines concern primarily workers in the administration and personnel of public enterprises; however, they are also of interest to those public servants who are covered by collective agreements discussed under the provisions of the Labour Act.

3.2.3 Scope of bargaining

In Venezuela, the scope of bargaining within the public service tends to be fairly extensive. It is rare that an agreement will contain less than 30 clauses. This wide scope may be explained in part by the vacuum which the agreements have to fill in the public service: it should not be forgotten that the first agreements actually preceded the 1970 legislation, before which only isolated legal provisions existed. Bargaining therefore involved a forward-looking role in dealing with various subjects relating to the terms and conditions of employment of public servants, trade union status, and the relationships of corporate organisations with the administration.

Terms and conditions of employment. From the point of view of terms and conditions of employment, bargaining has taken place on the organisation of the public service career and, in particular, on the right to job security, promotion, training and retirement pensions. Bargaining has also taken place on environmental conditions at the workplace, holidays, and paid and unpaid leave.

One extremely important matter, especially in a period of economic crisis and inflation, is what might be called the "social wage", i.e. medical facilities, medicines, meals, insurance, books, loans, etc., which may account for a real

increase in incomes and may be more certain in its value over the long term than are wage rises as such.

Wages have been a subject of prime concern in most bargaining rounds, whether with a view to achieving an increase, a new wage scale, or supplementary benefits such as allowances for children, accommodation, transport, travelling expenses, compensation for night work, etc.

Trade union status. Bargaining may also centre on trade union matters - clear evidence of the consolidation of the dialogue in the public service. Clauses relating to trade unions have commonly occurred in certain agreements - to such an extent as to establish in them a type of "trade union code", laying down the conditions under which trade union activity should be carried out. Such clauses deal with premises, notice-boards, facilities for collecting individual trade union contributions, payment of trade union officials, financial contributions, leave of absence and other aspects which are common in collective bargaining under the Labour Act. Furthermore, there are clauses which specifically regulate trade union representation and the relations between the trade union and the administration - for example, clauses which acknowledge the trade union as a valid party to discussions, for the purpose of defending the professional interests of its members, or to committees and joint working groups - all of which contributes to making personnel management a less authoritarian and more democratic and negotiated affair.

3.2.4 Evaluation and proposals

Collective bargaining in Venezuela's public service has developed in a spontaneous and improvised manner without any legislative basis. For this reason, discussions have often proved ambiguous and roundabout in order to avoid contradictions with the established legal order. Those involved have established a sound practice and have shown imagination in solving complex questions of representation, procedure and substance. At the same time, these achievements have demonstrated the shortcomings in the way the administration manages its personnel and its inability to respond rapidly to the legitimate demands of its officials. The bargaining has also revealed a marked party political influence in the attitude of the trade union organisations, not always in line with the apparent interests of their members or with the position of the administration.

In the private sector, in public enterprises and in the case of the blue-collar workers in the administration, by contrast, collective bargaining is subject to legal requirements and regulations, and this has resulted, with the involvement of the Ministry of Labour, in a common procedure in comparative law.

This type of bargaining is relatively rigid and normally leads to the establishment of written collective labour contracts drawn up for a specific period of time; these are registered with the Ministry of Labour and may extensively improve on the working conditions laid down by the Labour Act or individual contracts.

In the public sector (with the exclusion of the public service), the majority of bargaining rounds take place within a framework laid down in a Presidential Instruction and in accordance with basic clauses contained in the CTV-government agreements. The contracts have to be discussed in the presence of a representative of the Attorney General of the Republic, and before they can be signed they have to be subjected to a technical study to ensure that their cost lies within the Government's forecasts. Disagreements during the discussions may be put before a mixed committee similar to that which negotiated the CTV-government agreements, although this has not so far proved necessary.

It is hazardous to forecast the influence that bargaining under the Labour Act may have on what happens in the public service. Currently, this Act has a real "charisma". Moreover, from the very beginning the Labour Act and the practice which it has given rise to have had a clear influence on the approach taken to negotiation in the public service. Conversely, it should not be overlooked that the experience acquired in the public service exerts its influence over other sectors too. In particular, it influences bargaining between blue-collar workers and the administration.

Normally, discussions in the public service are organised around a draft drawn up by the trade union organisation without significant participation on the part of the public servants. The list of demands contained in the draft is formulated without reference to technical criteria and includes as many different demands as possible, though it is known that many of them will never be met. This approach has propaganda implications with respect to public opinion as a whole and, in particular, with respect to the staff in question. The result is therefore often an artificially expanded draft which will inevitably undergo severe pruning when confronted with the positions adopted by the administration, leading to a much more sober final text. During the discussions, each clause will be reviewed, although not necessarily in the order laid down in the draft since, in particular, the clauses with financial implications are always the last to be studied - often in the hope of last-minute instructions from the Government.

Having reached this stage, Venezuela should now be in a position to draw up a system of bargaining for the public service on the basis of the practical experience achieved so far. Until now, however, all the administration has done has been to react

to events, without taking any initiative. In order to bring to an end the uncertainty over public servants' bargaining rights, the trade unions are calling for the ratification of the Labour Relations (Public Service) Convention, 1978 (No. 151). At the moment, this solution seems to be unnecessary and even debatable, in view of the de facto recognition of national bargaining practice, the increasing acceptance of bargaining displayed by the courts,[30] and the fact that Venezuela has ratified Convention No. 98. This latter Convention refers expressly to bargaining procedures whereas Convention No. 151 also accepts "such other methods as will allow representatives of public employees to participate in the determination of these matters [conditions of employment]".

There has also been talk of the possibility of extending the application of the Labour Act to all public servants; they would then benefit from the right to conduct collective bargaining and take strike action which is conferred by this Act, as previously occurred in the case of teaching staff and the Postal and Telegraphic Institute and in part with the physicians. The preliminary Bill for the Labour Act of 1985 makes provision for its application to the liberal professions which offer educational, health and other similar services, provided they do not undertake any hierarchical management or administrative functions. Such an extension could entail more disadvantages than advantages since it is clear that much of the text of the preliminary Bill is not adaptable to the public service, and the collective contract which the Bill regulates is less flexible than the agreements arrived at in the public service. Perhaps the most appropriate course would be for the administration and trade unions to make a joint effort to lay down the basis for a rational system of collective bargaining which would take into account the interests of the sectors in question and serve as a framework for effective negotiations, without causing any major upsets in the operation of the administration. This would entail, on the part of the administration, a definite willingness to bargain openly and, on the part of the trade union organisations, an effort to increase the participation of their members and to proceed on the basis of their members' demands rather than political positions.

The experience that has been acquired in the negotiation of collective labour contracts in accordance with the guide-lines contained in Presidential Instruction No. 11 could be extremely useful in the public service, where bodies such as the Office of the Attorney General of the Republic, the Central Personnel Office or the Ministry of Labour could carry out a co-ordinating and support function for the promotion of effective bargaining undertaken in good faith. This approach would, of course, encounter some serious problems, for which adequate solutions would need to be found. On the part of the administration itself, difficulties might arise due to conflicts of power

between the co-ordinating bodies and the authorities for a specific department. Such conflicts could be especially serious in respect of the state departments and especially the municipalities, owing to the autonomy that they have under the Constitution. As far as public servants' organisations are concerned, the difficulty in accepting this co-ordination function would lie in the undeniable fact that the Government would inevitably have a considerable influence on the co-ordinating bodies unless suitable guarantees of impartiality and objectivity were provided, including the participation of representatives of the public servants' organisations.

Bargaining at various levels will continue to be necessary, but it may also be essential to regulate it in order to prevent it degenerating into chaos. The CTV-government agreements could be useful for the whole administration; the recent general increase in wages shows that it is possible to have productive discussions at the highest level. But the national, state and municipal structure of the administration will also make the continuation of bargaining by organisation (ministry, institute, etc.) inevitable. Finally, the existence of the professional colleges will, as in the past, lead to bargaining by profession on a common basis for all the departments of the administration in which that organisation has a presence. This is what has happened in the case of the organisations representing teaching and research staff, physicians, bio-analysts, radiologists, nurses, etc.

Up till now, the sectors involved in a round of bargaining have given guide-lines to be followed during the discussions and covering, for example, the form of representation, the venue, the timetable and the agenda for the discussions. In specifying the duration of an agreement, the parties have, in effect, forecast the period of time before they will have to come together again to review it; some agreements have included the designation of joint committees to work during the life of the agreement and help facilitate its implementation. Even in such cases, however, the bargaining can be slowed down until a dispute or the national economic situation places the employees' organisations involved in a position of power and the administration can no longer avoid the dialogue.

It would be necessary to include in any concerted plan the concept of programmed bargaining, especially in the case of rounds of bargaining which tend to be held periodically and are likely to entail budgetary expenditure. This latter aspect will probably lead to the recommendation that mechanisms should be provided which will leave untouched the competence of the legislative bodies but will, at the same time, take them into account and even take for granted their assistance when commitments for new expenditure are being assumed.

4. Labour disputes and their settlement

Public service disputes are of extraordinary significance in Venezuela because they occur in a hierarchical and disciplined working environment regulated by the relevant provisions of the Civil Code and imbued with the doctrine of public service. Over the past two decades, various departments of the administration have frequently been paralysed by their public servants as a result of a difference of opinion on working conditions. Many of the strikes, without the intervention of a conciliation procedure or the regulation provided by any legislative framework, have been supported by thousands of people and have lasted for days or weeks, costing the economy millions and having serious social and political implications.

In those sectors which come under the Labour Act, on the other hand, where there is an ad hoc institutional procedure for settling disputes, and particularly in the private sector, the disputes paradoxically virtually never break out into public view. For a number of reasons,[31] there is an extraordinarily limited tendency to go on strike in these sectors. Consequently, the number of strikes that have been declared legal is very low, as can be seen from table VII.4.

Although they have attracted widespread attention, the disputes in the public service have not been well understood. The very fact that they occurred outside the personnel administration system and are not provided for in the legislation means that they are not officially registered and no agency has any responsibility for dealing with them. Consequently, it is necessary to turn to what are obviously fragmentary and partial sources, such as the press and statements by people involved in disputes, in order to obtain some idea of what actually occurred.

The most outstanding disputes, and the ones that have received the widest publicity, are those which have resulted in strikes. The information available provides only a superficial and incomplete insight into the minor disputes between the administration and its officials. Lock-outs by the administration are virtually unknown in Venezuela. The most that may happen is that, when faced with a strike order, the authorities prevent access to the workplace; this has, for example, occurred in universities and other teaching establishments, hospitals, etc. However, this is usually a means of preventing disturbances or stopping the strike movement developing; it does not have the true characteristics of a lock-out.

4.1 Causes of labour disputes

Many strikes in the public service have been organised mainly for financial reasons - in attempts to obtain increases in

direct or indirect remuneration. Disagreements on material working conditions, or where staff cut-backs have been made during the reorganisation of certain departments, have also caused disputes.

Table VII.4: Labour disputes, 1958-84

Year	Dispute files presented	Legal strikes	Illegal stoppages
1958	78	15	7
1959	63	10	5
1960	91	8	28
1961	40	5	9
1962	40	8	11
1963	24	5	4
1964	45	7	20
1965	52	4	20
1966	28	1	11
1967	59	5	29
1968	78	4	9
1969	113	3	83
1970	173	2	64
1971	287	5	228
1972	287	7	172
1973	274	4	250
1974	236	3	116
1975	195	3	100
1976	210	1	171
1977	183	0	214
1978	112	0	140
1979	182	2	145
1980	192	4	185
1981	199	3	129
1982	158	2	102
1983	174	0	200
1984	150	0	39

Source: Ministry of Labour.

Another important cause of disputes has been the administration's resistance to negotiating with the public servants, or differences which have arisen during the bargaining. Virtually all large-scale bargaining, for example, with the personnel of the Ministry of Education, the physicians, the bio-analysts, the university personnel and, more recently, the administrative personnel of the courts, has passed through a strike phase.

A number of disputes have arisen where an agreement has not been implemented. A highly significant example of this was the schoolteachers' strike of 1974, which occurred because the "declaration of agreement on working conditions" of 1972 had not been put into effect. The outcome of this dispute was the signing of a new agreement on the means to be adopted for the implementation of the preceding declaration.

The implementation of an agreement may be complicated by differing interpretations. In 1978, the administrative employees of the Central University of Venezuela stopped work in an attempt to enforce the introduction of a new wage scale that, in their opinion, had been approved during the previous bargaining; the University, on the other hand, considered that there had been only an agreement of principle which required new bargaining. In 1985, the Government refused to provide extraordinary funds to finance a wage adjustment for teachers at the same university alleging that, unlike the other universities, the Central University had not reached a formal agreement with its teachers on this point and, consequently, there was no justification for the adjustment.[32] The resulting strike forced the Government to back-track and agree to provide half the amount in question while the University, for its part, undertook to bear the remaining costs from ordinary budgetary funds.

In those sectors regulated by the Labour Act, disputes have occurred only infrequently and, of course, the right to collective bargaining has not been at stake; nevertheless, chronic states of tension have arisen as a result of difficulties in getting the employer to sit down at the negotiating table. In particular, public sector personnel (blue-collar workers in the ministries and autonomous institutes and all employees in the public enterprises) have experienced persistent delays in this respect. Private firms frequently use delaying tactics of a procedural nature, for example refusal to recognise the unions' right of representation, which means that time has to be set aside for the production of evidence and for the carrying out of minor administrative procedures. As for the rest, the reasons for disputes are similar to those in the public service: disagreements during discussions, non-implementation of a given clause, massive dismissals, transfer of the company to another locality. In a number of firms which have become insolvent, disputes have occurred in an attempt to safeguard wages and job rights.

4.2 Characteristics of strikes

4.2.1 Absence of a legal framework

The most significant feature of strikes in the public service is that they occur outside any legal or regulatory procedure. What happens is simply that, at a given moment,

tensions lead to a strike as the final means of bringing pressure to bear; even when the strike can be publicly announced in advance, there is no formal warning nor any official agency which authorises it. Workers who come under the Labour Act, by contrast, cannot come out on strike without going through the specified legal procedures, including a compulsory conciliation phase. These procedures and delays certainly act as a deterrent factor for any strike. Nor can a strike proceed if it is not related to what the authorities consider to be "working conditions". A strike which takes place without the stipulated procedure having been followed, or which a labour inspector has declared not to be in conformity with requirements, is illegal.

From this point of view, any strike in the public service may be considered illegal. In the cases of those public servants who come under the Labour Act, they have to adapt their actions to the Act's requirements, especially when declaring a strike. Physicians and the teaching staff of the Ministry of Education recently took this course, though with variations in the procedures. In May 1983, for example, the teachers submitted their list of grievances; however, even though the 120 hours required for the declaration of a strike had run out in June, the strike did not become effective until October of the same year.

The lack of legal procedures, combined with the concept of the essential continuity of the public service, and the Penal Code provision for the arrest of anybody unduly abandoning public functions,[33] have placed a cloak of ambiguity over the legality of strikes in the public service and have encouraged some authorities simply to regard them as illegal. But none of this has prevented strikes from breaking out and proving effective. Nor should it be forgotten that the Constitution gives its blessing in ample terms to the right to strike,[34] and a key decision by the Supreme Court of Justice in October 1983 recognised the effectiveness of the constitutional provisions even though these have not been the subject of regulations. It should also be borne in mind that ratification of Convention No. 87 extends legal protection to trade union organisations without distinction, including making use of the right to strike.

4.2.2 Stoppage of work

Usually, strikes result in a collective stoppage of work by all the personnel of an organisation, or by certain categories of public servants. The strikes of physicians, radiologists, teachers and, more recently, the police in one state, have come into this category. The recent strike by bio-analysts in the Federal District took the form of a collective resignation by the personnel; this was also the approach taken by the pilots of a public enterprise in 1984.

The stoppage of work need not be total. In hospitals, for example, emergency services are maintained. In universities, it has happened that research work has continued to some extent during a dispute whereas the teaching has been totally interrupted.

4.2.3 Abandonment of the workplace

In Venezuela, a strike in any sector traditionally entails abandonment of the workplace. The situation in the public service is no exception; however, it is more fluid and may include other initiatives. In certain cases, the strikers have "taken over" the workplace. On other occasions, the strikers have allowed free access to the workplace so as to organise meetings and other activities linked with the dispute.

4.2.4 Mobilisation and participation

Strikes are usually backed up by mobilisation of the staff and public opinion, in some cases involving widespread paid publicity. This does not necessarily entail the active participation of those involved. On the contrary, the strike may be decided on and carried out by a small group of leaders without widespread consultation, and more in response to directives from the political parties than anything else. This was the case in the schoolteachers' dispute with the Ministry of Education. In the teachers' strike at the Central University in 1985, on the other hand, basic decisions were taken during a series of well-attended, dynamic and democratic meetings.

4.2.5 Strike pay

A regular feature in the bargaining at the end of a dispute in Venezuela is the "payment-of-lost-wages" clause, i.e. the remuneration that has not been received during the strike. It is this factor, and the prolongation of the previous agreement up until the signing of the new one - together with the retroactive nature of some of the new clauses - which to some extent explain the slowness of many negotiations and the long duration of some disputes in the public service. The fact is that the trade union organisations feel that the risks are relatively under control. Naturally, it often happens that the employer threatens not to pay wages for the period of the strike and carries out his threat at least in part. It has even been suggested that paying wages during a strike is illegal. This argument has been used by the Zulia University and the Central University against its striking employees. However, the Central University adopted a different approach to its teachers in 1985 and paid them the wages for the period of the strike in spite of the formal memorandum drawn up by the inspection body which stated that such a payment was illegal.[35]

4.3 Settlement of labour disputes

Confrontation between determined parties to a dispute where there are no agencies which can impose solutions and where the personnel are not usually intimidated by the threat of reprisals - in part because the authorities know that they will probably not be effective - may bring the dispute to a deadlock, and this does, in fact, frequently occur. In most cases, however, a series of factors which, although apparently unforeseeable, tend to occur repeatedly, have resulted in the appearance of a means of settlement. It is possible that, in this way, road is being paved to effective dispute settlement procedures, or at least to a pattern of regular and effective actions for bringing them to a conclusion.

In the current phase of development in Venezuela, the end of a dispute presupposes an informal settlement or, more rarely, the total rout of the striking officials. There is no institutionalised provision for conducting the dispute in any other way; traditional thinking did not even foresee the possibility of a conflict of interests in the public service. The dispute is always unexpected and the solutions are always improvised.

The circumstances in which discussions are set up between the parties in dispute deserve some consideration. At first sight, it might seem that there is no way out of the dispute in view of the highly entrenched positions adopted by both sides. As the dispute sets in and positions tend to harden, however, breaches may appear in the administration's position. At this point, discussions may be set up, either directly between the parties involved or through intermediaries, either in public or surrounded by the greatest secrecy. Discussions take place when the strike has become intolerable and when, at the same time, an influential force intervenes, be it professional, trade union, political, parliamentary or governmental.

It may sometimes be that there is a convergence of views between the personnel and authorities involved in a dispute but the latter do not have the competence or the necessary funds to agree to the plans that have been drawn up. This has occurred in departments and agencies not directly under governmental control such as, for example, the Court Council, an autonomous institute. In such a case, the dispute apparently involves direct conflict between employer and employees; in reality, however, it is the national government that is the target. This triangular relationship can only make the discussions more complicated.

The best example of trade union influence in the settlement of public service disputes has come from the CTV. Usually, it has intervened late in the day, after the dispute has set in, and

this intervention has been of key importance. Curiously, its efforts have not been limited to disputes involving its member organisations (under the regulations respecting civil service unions, the CTV cannot in any case accept the affiliation of public servants' unions). This demonstrates clearly the multipurpose social role of the CTV, which extends far beyond the purely trade union sphere.

In the teachers' dispute at the Venezuelan Central University in 1985, the factor that allowed a breakthrough to take place in the discussions was the appointment of a mediation committee made up of ex-rectors of the University, all persons of national renown. The work done by this committee was kept constantly in the public eye by means of sober press releases, which contributed not only to a softening of the Government's position but also to turning a part of public opinion in favour of the teachers' movement.

The political parties tend to make public statements about public servants' disputes on the basis of criteria which are influenced by whether they do or do not support the Government. Political leaders, especially members of Parliament, may also act as intermediaries in setting up discussions, and this did, for example, occur in the schoolteachers' dispute. In the strike of teachers at the Venezuelan Central University already referred to, the situation moved into a decisive phase after the teachers were heard by the finance committees and when the chairmen of these committees - both members of the Democratic Action Party - intervened at the highest level by instituting discussions which ended in a meeting with the President of the Republic.[36] This meeting led to the granting of measures which the teachers could accept and which were, within the following hours, approved by the Council of Ministers.

Although labour disputes have come to be a standard part of labour relations, there are thus still no formal strategies for dealing with them. The official attitude continues to be a defensive one - refusal to discuss until the last moment and then negotiation under pressure. Bargaining under pressure, heated conflict and the urgent need to bring about a conclusion all gives the impression that the dispute is one in which the stakes are high. The observer may well be perplexed when, on the one hand, after 30 days of work stoppage, agreement is reached on a payment which previously would have been termed illegal or financially impossible; or, on the other hand, the trade union leaders decide that the administration's position is acceptable after their demands have been turned into a point of honour for the profession (as was the case for the teachers in 1984). The improvised settlement, which is often contrary to the initial plans of the parties involved, and decided upon without adequate involvement on the part of the workers in question, could be put down to objective signs of the erosion of the authority of the

partners in the discussion. In the same way, though the effectiveness of political influence in achieving these settlements might be seen as a natural element in the political system, it necessarily introduces an element of doubt as to the intrinsic vigour of the trade union movement.

4.4 General review

Disputes in the public service are, above all, a reality and should be analysed as such. Moreover, given the experience obtained so far by large sectors of public servants, and the normal conflict of interests between the administration and its personnel - which has tended to become more acute with the economic crisis which the country is facing - it is highly probable that strikes will continue to occur. Significant factors may, of course, neutralise current trends, such as, for example, trade union self-control, which has been so effective in the private sector; however, there still seems to be a significant likelihood that tensions will lead to strikes.

The fact that public servants can express their demands, even by means of open disputes, may actually have very positive features, and can rightly be considered a major sign of democratisation. Taking into account the restrictions contained in the Labour Act and reinforced by administrative practice, it is curious but interesting that the State is adopting a more tolerant attitude towards its own public servants than to other workers in the public sector and, in particular, to workers in the private sector.

The considerable wastage that these conflicts produce does, however, call for some reflection. In the realisation that strikes do occur and that they will probably continue to do so in the future, the sectors involved should make every effort to rationalise labour relations and establish an adequate framework for regulating their confrontations. A strike should be seen by the trade union organisations as the ultimate recourse, and the administration should not run the risk of strikes being called simply as a result of its own negligence.

5. Future prospects

5.1 Employment in the public sector

The present and the immediate future of Venezuela, like that of the rest of Latin America, are fraught with economic and social difficulties - a crushing external debt, which has the effect of reducing the foreign currency income; the flight of capital; marked economic inequalities amongst the population, and high levels of unemployment and underemployment. As demographic growth continues its rapid pace, some 200,000

individuals, with very different educational backgrounds, join the labour market each year. We will therefore continue to require both greater job opportunities and improved working conditions - objectives which are being powerfully undermined by the effects of rising prices and urban change.

These factors will necessarily have an impact on governmental action, especially in the State's role as a major employer in the public sector. There certainly seems to be a trend towards a reduction in expenditure; this will have implications for employment in the public service and may even involve privatisation. On the other hand, there remains the indispensable governmental task of directly specifying levels of employment and wages as instruments for stimulating economic activity, especially when private initiative continues to be inhibited.

5.2 Labour relations in the public service

The public service will, over the coming years, be conditioned by a series of constraints resulting from the growing complexity of state action, technological change, the training of personnel - which has become imperative - and financial stringency. In view of the increasingly restricted margin of manoeuvre open to it, the administration will have to show imagination. As far as personnel management is concerned, it cannot escape the need to draw up and implement a policy with clear and realistic objectives; it will also require systematic action to ensure improvements both in its services and in the conditions of employment of its public servants.

Experience leads us to suppose that there will be a consolidation of the major trade union organisations such as the FEDEUNEP, the teachers' federations and the Medical Federation, probably within the diversity that has existed so far, between trade unions, associations and professional colleges. It will be interesting to observe in this context the development of often contradictory trends concerning the participation of members, political party control of the trade union organisation, and the tendency of the leaders to perpetuate their positions and strengthen the power of the central organisation.

The proliferation of bargaining in the public service for over two decades points to a basic trend for the future. Social and economic difficulties and the existence of large public servants' organisations will doubtless stimulate their participation in the determination of working conditions by means of bargaining. The administration for its part should think carefully about the potential that this participation offers as an effective instrument in its personnel policy. Various definitions and guarantees will be essential, however. The size

of the public service, the wide range of interests and situations that characterise it, the important part it plays in state activity, and the legal and budgetary constraints, make it indispensable and urgent to institute a minimum of co-ordination as regards official action and a basic understanding with the staff representatives with a view to creating a climate of mutual confidence based on the recognition of mutual interests.

Once the administration has assimilated the concept of participation as a normal factor in labour relations, it will tend to adapt its structures so as to maintain institutional dialogue with the public servants' organisations, as has been attempted in the Ministry of Education, and promote the negotiation of collective labour contracts. Any form of participation requires a certain degree of discipline among those involved, and the necessary technical support. Disputes will probably continue to be a significant factor in the dynamics of labour relations in the public service, especially so long as they are the most effective method of fostering collective bargaining and of enforcing its implementation. The objective conditions that have led to tension, far from disappearing, will tend to become more pronounced with the social and economic difficulties and the increasing strength of the trade union organisations. On the other hand, the disinclination to disputes now apparent in the private sector could rub off on to the public service, particularly if the lack of job security is extended to the public service and a policy of moderate demands comes to be adopted by the trade union organisations in question.

Comparisons will certainly continue to be made between the public sector and the private sector. Moreover, since public servants will undoubtedly continue to aim at full recognition of their rights of association, collective bargaining and strike, in accordance with the Constitution and the international labour Conventions that Venezuela has ratified, it is possible that their experience in organisation and participation will eventually bring about a debate on the inadequacies of the system of labour relations in private enterprises.

Notes

[1] This figure is reached by subtracting from the total number of persons working in the public sector in 1985 (1,021,279) the number of workers in this sector who are in possession of collective labour contracts, with the exception of the teachers of the Ministry of Education, i.e. some 376,000 persons.

[2] These are "provisional" public servants who can be appointed for up to six months, and "interim" officials who should be appointed for no more than one month.

[3] Starting on 1 February 1986, hours of work have been adjusted, with a trend towards dividing up the working day by a longer lunch break (one hour).

[4] Administrative Career Act, article 20:

Years of service	Lawful days of leave	Days of pay
1-5	15	18
6-10	18	21
11-15	21	25
16 and more	25	30

[5] Administrative Career Act, article 21: between three months and six years' service, five days' pay; six to nine years' service, ten days' pay; more than nine years' service, 15 days' pay.

[6] The official rate of exchange was US$0.07 per bolivar (0.23 up until February 1983); for February 1986, however, the exchange rate was US$0.05.

[7] Decree No. 959 of 26 December 1985 lays down a 20 per cent increase for wages of up to Bs.2,000; 15 per cent for wages of Bs.2,001-4,000; 10 per cent for Bs.4,001-6,000; for wages over Bs.6,000, incentives will be fixed at a later date.

[8] The new scale contains 32 grades ranging from Bs.1,500 to Bs.16,600, resulting in an average wage increase of 22.5 per cent. The cost of the increase will be 2,100 million bolivars (El Universal, 17 Jan. 1986).

[9] In 1980, it was found that state workers received, on average, a higher level of income than did workers in private firms; this was attributed to the predominant job structure in the state sector, the average level of formal education and institutional factors, and the State's income policy in relation to its staff. See D. Maza Zavala et al.: La estrategia del mercado de trabajo con un sector petrolero diferenciado: El caso venezolano, VI Congreso Mundial de Economía, Mexico, 1980, p. 50.

[10] ibid.

[11] Article 23: "Public servants subject to this Act may organise themselves in trade unions for the defence and protection of the rights that are conferred upon them by this Act and regulations made under it."

Paragraph 1: "In each organisation of the public administration employing public servants to which the present Act applies, the trade union leaders of the public employees in the service of the same shall have the right to be granted paid leave

for the accomplishment of their leadership functions, in conformity with the Regulations."

[12] This document is highly formal, very similar to that for any trade union regulated by the Labour Act, and is repeated without major differences from one organisation to another.

[13] The registration of state, federal territory and municipal trade unions has been accepted, even though these are clearly not subject to the Administrative Career Act and, for this reason, did not come within the competence of the Registration Office. Of the 84 trade unions that have been registered, 11 are state or federal territory unions, 11 are municipal, and one groups together national, state and municipal public servants. No trade union has been legally recognised since 1982 when the Registration Office was transferred from the Ministry of Labour to the Central Personnel Office.

[14] Set up in 1958, FEDEUNEP, in 1976, had 24 member organisations, including a civil association, a state union and a municipal union. In 1985 it announced the affiliation of 27 new organisations, including two similar associations and six state unions.

[15] John G. Simmons: "Tendencias de la contratación colectiva en Venezuela", in ILO: La negociación colectiva en America Latina (Geneva, 1978), p. 71.

[16] For example, the seven large teachers' organisations have around 97,000 members working in the Ministry of Education; this is a membership rate of over 60 per cent.

[17] See José Miguel Monagas: La sindicalización del magisterio (Mérida, Venezuela, 1964; mimeographed), pp. 1, 10 and 15.

[18] A number of "professional colleges", such as for example that of the nurses, are, in fact, associations.

[19] Of 19 August 1982 (Gaceta Oficial, No. 3,002 Ext., of 23 Aug. 1982).

[20] As at 31 December 1984, the balance sheet of FEDEUNEP showed assets of Bs.3,771,823, which includes a building that the Federation uses as its headquarters. Trade union members pay monthly dues, usually deducted from wages by the administration. However, dependence on a subsidy from the employer and on the employer deducting dues does introduce an element of vulnerability in the union's finances. At the SNEP-SAS assembly on 9 May 1985, for example, it was alleged that the level of funds had fallen because the ministry had withdrawn its subsidy (though it had maintained that it had paid to the union

affiliated to the FEDEUNEP/SUNEP-SAS) and refused to deduct the membership dues (SNEP-SAS is apparently controlled by a movement opposed to the Government).

[21] In 1979, however, the press reported the establishment, in the OCP, of a joint commission for minimum wage fixing and a tabulator for engineers, architects and related professionals (El Nacional, 31 May 1979).

[22] For a more detailed explanation of this, see Enrique Marín Quijada: La negociación colectiva en la función pública (Bogotá, Editorial Temis, 1978).

[23] The teachers' agreement benefited some 158,000 teachers - according to information given by the Government and the unions. Teachers of all levels, from the most elementary to the universities, together with the physicians, have been the most heavily involved in bargaining.

[24] See El Nacional, 21 June 1985.

[25] ibid., 5 Jan. 1985.

[26] For example, the Agricultural Reform Act (article 207) relating to the public servants of the National Agricultural Institute, and the Act relating to the National Nutrition Institute (article 14).

[27] The Education Act of 26 July 1980, article 86, and the Act which set up the Postal and Telegraphic Institute of Venezuela of 22 December 1977.

[28] See El Nacional, 27 Oct. 1983.

[29] ibid., 21 June and 6 Nov. 1985.

[30] On 25 October 1984, the First Court of Administrative Disputes, while acknowledging that collective bargaining is possible only by virtue of specific legal entitlement and that this did not exist in the public service, stated that "... the non-conformity with the law of collective bargaining in the public service nevertheless appears to be an artificial formula which disregards the real world and overlooks ... that the law must be in perfect conformity with the facts that go to support it and always be in close contact with reality; this leads us to point out that even prior to the prohibition and even prior to the lack of specific legal entitlement, the administration had been in the practice of signing collective agreements with public servants". The Court henceforth recognised that, in those areas in which there was no real contradiction with the provisions of the Administrative Career Act, it was possible to make good gaps

or voids in the said Act by means of collective agreements, in particular, to regulate the rights recognised by the said Act.

On 10 December 1984, the same Court found that the agreements drawn up in the public service, based on a legal reference to the Labour Act, were a valid special instrument, of mixed character, to which legal coverage had been given by the ratification of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

[31] Hernandez Alvarez and Lucena point out that the increase in the number of strikes between 1958 and 1960 may be attributed to the economic difficulties and the liberalisation of the political structure (a dictatorship existed from 1948 to 1958). Between 1961 and 1964, under an agreement between employers and workers, the workers had behaved very cautiously in order to avoid disputes which might have a politically destabilising effect. From 1969, on the other hand, once the political system had been consolidated, the trade union movement became bold enough to launch into disputes to achieve its demands.

The increase in the number of disputes since 1969 may also be explained by the relations between the trade unions and the political parties: the break-up of Democratic Action (which holds the majority in trade union circles) in 1968, and its withdrawal from the Government from 1969 to 1973 and from 1979 to 1983, contributed to the increase in the number of disputes during these periods. See Oscar Hernandez Alvarez and Hector Lucena: "Condicionantes políticos y económicos de la negociación colectiva en Venezuela", in International Labour Review, Apr.-June 1985, pp. 251, 257, 259 and 260. At least since 1958, the party influence in the marked self-control that the trade unions have shown in their demands, and especially in their tendency to enter into disputes, seems to be a clear factor in Venezuela - as is also the tendency of the trade unions to come to a negotiated agreement with the employers, and the restrictive concept of the right to strike contained in the legislation and administrative practice.

[32] El Nacional of 28 and 30 Oct. 1985. The Government's position, as expressed by the Ministry of Education, curiously implies recognition of the validity of collective agreements in the public service.

[33] Penal Code, article 209: "Public servants who, being three or more in number and having previously agreed thereto, unduly abandon their functions, shall be punished by a fine of two hundred to one thousand bolivars and suspension from their employment for a period of one to two years."

[34] Article 92: "Workers shall have the right to strike, under conditions laid down by the Act. In the public services, this right shall be exercised in cases which the Act shall specify."

[35] See El Nacional, 30 Oct. 1985.

[36] ibid., 6 Nov. 1985.