An Inquiry Into the Evolving Federal Labor Relations System With Emphasis on Private Sector Comparisons and Contrasts.

William Vaughn Rice Jr

Louisiana State University and Agricultural & Mechanical College

Follow this and additional works at: https://digitalcommons.lsu.edu/gradschool_disstheses

Recommended Citation
https://digitalcommons.lsu.edu/gradschool_disstheses/2629
INFORMATION TO USERS

This material was produced from a microfilm copy of the original document. While the most advanced technological means to photograph and reproduce this document have been used, the quality is heavily dependent upon the quality of the original submitted.

The following explanation of techniques is provided to help you understand markings or patterns which may appear on this reproduction.

1. The sign or “target” for pages apparently lacking from the document photographed is “Missing Page(s)”. If it was possible to obtain the missing page(s) or section, they are spliced into the film along with adjacent pages. This may have necessitated cutting thru an image and duplicating adjacent pages to insure you complete continuity.

2. When an image on the film is obliterated with a large round black mark, it is an indication that the photographer suspected that the copy may have moved during exposure and thus cause a blurred image. You will find a good image of the page in the adjacent frame.

3. When a map, drawing or chart, etc., was part of the material being photographed the photographer followed a definite method in “sectioning” the material. It is customary to begin photoing at the upper left hand corner of a large sheet and to continue photoing from left to right in equal sections with a small overlap. If necessary, sectioning is continued again — beginning below the first row and continuing on until complete.

4. The majority of users indicate that the textual content is of greatest value, however, a somewhat higher quality reproduction could be made from “photographs” if essential to the understanding of the dissertation. Silver prints of “photographs” may be ordered at additional charge by writing the Order Department, giving the catalog number, title, author and specific pages you wish reproduced.

5. PLEASE NOTE: Some pages may have indistinct print. Filmed as received.

Xerox University Microfilms
300 North Zeib Road
Ann Arbor, Michigan 48106
AN INQUIRY INTO THE EVOLVING FEDERAL LABOR RELATIONS SYSTEM WITH EMPHASIS ON PRIVATE SECTOR COMPARISONS AND CONTRASTS

A Dissertation

Submitted to the Graduate Faculty of the Louisiana State University and Agricultural and Mechanical College in partial fulfillment of the requirements for the degree of Doctor of Philosophy in The Department of Economics

by

William Vaughn Rice, Jr.
B.S., United States Military Academy, 1949
M.B.A., Air Force Institute of Technology, 1958
May, 1974
EXAMINATION AND THESIS REPORT

Candidate: William Vaughn Rice, Jr.

Major Field: Economics

Title of Thesis: An Inquiry Into the Evolving Federal Labor Relations System with Emphasis on Private Sector Comparisons and Contrasts

Approved:

Robert J. Smith
Major Professor and Chairman

James L. Foye
Dean of the Graduate School

EXAMINING COMMITTEE:

William F. Campbell

James B. Jones

Daniel Johnson

MB Newton Jr.

Date of Examination:

April 18, 1974
ACKNOWLEDGEMENTS

My sincere appreciation goes to my advisory committee: Dr. Robert F. Smith, Dr. Lamar Jones, Dr. William Campbell, Dr. David Johnson and Dr. Milton Newton. Without their extraordinary assistance this study could not have been completed. In particular I am indebted to Professor Robert F. Smith whose encouragement and patience were a source of strength. Many of my colleagues at Air University were most helpful and I am especially grateful to Joseph McGraw, Frank Rush, and Thomas Mackin. A deep debt of gratitude is owed my wife, Claire, who provided much of the impetus to complete the study and made many constructive suggestions for its improvement. I am also grateful to Mrs. Joe Smilie who typed the manuscript.

This study in no way represents official federal policy, views or opinion, nor the views of those who aided in its completion. The author assumes sole responsibility for its accuracy and conclusions.
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>LIST OF TABLES</td>
<td>vii</td>
</tr>
<tr>
<td>LIST OF FIGURES</td>
<td>viii</td>
</tr>
<tr>
<td>I. INTRODUCTION</td>
<td>1</td>
</tr>
<tr>
<td>METHODOLOGY AND ORGANIZATION</td>
<td>5</td>
</tr>
<tr>
<td>SOURCES</td>
<td>7</td>
</tr>
<tr>
<td>LIMITATIONS OF THE STUDY</td>
<td>9</td>
</tr>
<tr>
<td>II. THE DEVELOPMENT OF FEDERAL EMPLOYEE ORGANIZATIONS AND PUBLIC POLICY TOWARD THEM</td>
<td>10</td>
</tr>
<tr>
<td>THE BEGINNINGS: 1790-1870</td>
<td>11</td>
</tr>
<tr>
<td>THE Lean YEARS: 1870-1912</td>
<td>15</td>
</tr>
<tr>
<td>The Postal Unions</td>
<td>15</td>
</tr>
<tr>
<td>The Army Experience</td>
<td>17</td>
</tr>
<tr>
<td>THE CONSOLIDATION ERA: 1912-1945</td>
<td>18</td>
</tr>
<tr>
<td>The National Federation of Federal Employees</td>
<td>20</td>
</tr>
<tr>
<td>The American Federation of Government Employees</td>
<td>22</td>
</tr>
<tr>
<td>The Wagner Act</td>
<td>24</td>
</tr>
<tr>
<td>Public Opinion</td>
<td>24</td>
</tr>
<tr>
<td>PREPARATION FOR TAKE-OFF: 1945-1962</td>
<td>27</td>
</tr>
<tr>
<td>THE PRELUDE TO EXECUTIVE ORDER 10988</td>
<td>34</td>
</tr>
</tbody>
</table>
Chapter Page

THE TASK FORCE .......................................... 38

SUMMARY ................................................ 46

III. UNIONs GAIN A LEGITIMATE ROLE: 
THE EXECUTIVE ORDERS ............................... 47

EXECUTIVE ORDER 10988: A BRIEF 
SECTIONAL ANALYSIS .................................... 49

The Preamble ........................................... 49
Sections 1-2 ........................................... 49
Sections 3-6 ........................................... 50
Sections 7-12 .......................................... 53
Sections 13-16 ......................................... 54
Summary ................................................ 55

EXECUTIVE ORDER 11491: CHANGES IN THE 
EVOLVING FEDERAL LABOR RELATIONS 
SYSTEM .................................................... 56

Prelude .................................................. 56
Changes Embodied in EO 11491 ....................... 57

Centralized Control of Program .................... 57
Types of Recognition .................................. 59
Election Procedures .................................. 61
Supervisors .......................................... 63
Contract Approval .................................... 64
Impasse Settlement .................................. 65
Strike Rights ......................................... 69

EXECUTIVE ORDER 11616: AN EXAMPLE OF 
FINE TUNING .......................................... 72
<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>SUMMARY</td>
<td>76</td>
</tr>
<tr>
<td>IV. THE IMPACT OF THE EXECUTIVE ORDERS ON FEDERAL SECTOR LABOR MANAGEMENT RELATIONS</td>
<td>82</td>
</tr>
<tr>
<td>UNION ACTIVITY</td>
<td>82</td>
</tr>
<tr>
<td>The Private Sector</td>
<td>82</td>
</tr>
<tr>
<td>Union Growth in the Federal Sector</td>
<td>87</td>
</tr>
<tr>
<td>SIGNIFICANT CHANGES IN FEDERAL EMPLOYEE MANAGEMENT RELATIONS</td>
<td>96</td>
</tr>
<tr>
<td>The Sovereignty Doctrine</td>
<td>96</td>
</tr>
<tr>
<td>Unions and the Merit System</td>
<td>100</td>
</tr>
<tr>
<td>Changing Inter and Intra Union Relationships</td>
<td>103</td>
</tr>
<tr>
<td>Professional Organizations</td>
<td>107</td>
</tr>
<tr>
<td>Implications of Unionization on Management’s Right to Manage</td>
<td>111</td>
</tr>
<tr>
<td>SUMMARY</td>
<td>115</td>
</tr>
<tr>
<td>V. STRIKES AND WAGE SETTING: SERIOUS DEVIATIONS FROM PRIVATE SECTOR PRACTICES</td>
<td>118</td>
</tr>
<tr>
<td>THE STRIKE ISSUE</td>
<td>118</td>
</tr>
<tr>
<td>The Private Sector</td>
<td>118</td>
</tr>
<tr>
<td>Strikes in State and Local Governmental Agencies</td>
<td>121</td>
</tr>
<tr>
<td>Strikes in the Federal Sector</td>
<td>126</td>
</tr>
<tr>
<td>Proposed Solutions to Strike Problem in the Federal Sector</td>
<td>130</td>
</tr>
<tr>
<td>FEDERAL SECTOR COMPENSATION TO CIVILIANS</td>
<td>139</td>
</tr>
<tr>
<td>Chapter</td>
<td>Page</td>
</tr>
<tr>
<td>------------------------------------------------------------------------</td>
<td>------</td>
</tr>
<tr>
<td>Wage Setting Under the Coordinated</td>
<td>139</td>
</tr>
<tr>
<td>Federal Wage System</td>
<td></td>
</tr>
<tr>
<td>Salary Determination for General</td>
<td>160</td>
</tr>
<tr>
<td>Schedule Employees</td>
<td></td>
</tr>
<tr>
<td>Fringe Benefits and the Federal</td>
<td>169</td>
</tr>
<tr>
<td>Employee</td>
<td></td>
</tr>
<tr>
<td>SUMMARY</td>
<td>173</td>
</tr>
<tr>
<td>VI. SUMMARY AND CONCLUSIONS</td>
<td>176</td>
</tr>
<tr>
<td>SUMMARY</td>
<td>176</td>
</tr>
<tr>
<td>CONCLUSIONS</td>
<td>178</td>
</tr>
<tr>
<td>BIBLIOGRAPHY</td>
<td>182</td>
</tr>
<tr>
<td>APPENDICES</td>
<td>193</td>
</tr>
<tr>
<td>A. President Kennedy's Memorandum of</td>
<td>194</td>
</tr>
<tr>
<td>June 22, 1961</td>
<td></td>
</tr>
<tr>
<td>B. Executive Order 10988, Employee-Management</td>
<td>196</td>
</tr>
<tr>
<td>Cooperation in the Federal Service</td>
<td></td>
</tr>
<tr>
<td>C. Executive Order 11491, Labor-Management</td>
<td>204</td>
</tr>
<tr>
<td>Relations in the Federal Service</td>
<td></td>
</tr>
<tr>
<td>D. Executive Order 11616, Amending Executive</td>
<td>221</td>
</tr>
<tr>
<td>Order 11491, Relating to Labor-Management</td>
<td></td>
</tr>
<tr>
<td>Relations in the Federal Service</td>
<td></td>
</tr>
<tr>
<td>E. How to Take a Case Before the Federal Service Impasses Panel</td>
<td>225</td>
</tr>
<tr>
<td>F. Fiscal 1974 Increases in General Pay Schedule</td>
<td>226</td>
</tr>
<tr>
<td>Proposed by the Pay Agent and the</td>
<td></td>
</tr>
<tr>
<td>Advisory Committee Majority</td>
<td></td>
</tr>
<tr>
<td>G. Federal General Schedule Pay Increases</td>
<td>227</td>
</tr>
<tr>
<td>Since 1962</td>
<td></td>
</tr>
<tr>
<td>VITA</td>
<td>228</td>
</tr>
</tbody>
</table>
LIST OF TABLES

Table                                      Page

1. Employee Organization Rights According to Type of Recognition, EO 10988 51
5. Federal Employees in Exclusive Bargaining Units, by Union, November 1972 95
6. Work Stoppages, 1946-1972, Selected Years 122
### LIST OF FIGURES

<table>
<thead>
<tr>
<th>Figure</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Percentage of Total Federal Employees (Executive Branch) in Exclusive Bargaining Units</td>
<td>90</td>
</tr>
<tr>
<td>3. Percentage of Total Federal Employees (Executive Branch) Excluding Postal Employees, in Exclusive Bargaining Units</td>
<td>92</td>
</tr>
<tr>
<td>4. Economic Effects of a Labor Union in a Perfectly Competitive Labor Market</td>
<td>147</td>
</tr>
<tr>
<td>5. Economic Effects of a Labor Union in a Monopsonistic Labor Market</td>
<td>149</td>
</tr>
<tr>
<td>6. Supply and Demand for Blue Collar Employees, Initial Wage Survey Conducted by Federal Installation in a Purely Competitive Labor Market</td>
<td>152</td>
</tr>
<tr>
<td>7. Possible Effects of Changes in Supply and Demand for Blue Collar Employees in a Local Labor Market</td>
<td>155</td>
</tr>
<tr>
<td>8. Possible Effects of a Change in Supply of Labor in a Monopsonistic Labor Market</td>
<td>158</td>
</tr>
<tr>
<td>9. Possible Effects of a National GS Salary Schedule on Two Local Labor Markets</td>
<td>166</td>
</tr>
</tbody>
</table>
ABSTRACT

Unionization of federal employees, relatively insignificant prior to 1960, accelerated sharply during the decade of the sixties. In 1974 more than 50 percent of all federal civilian employees are represented by a union. The development of collective bargaining in the federal sector stands in stark contrast to federal personnel policy throughout most of the history of the United States.

This dissertation traces the nature and growth of unions composed of civilian employees of the Executive Branch of the United States Government. The purpose of the study is to compare and contrast the emerging formal industrial relations system in the federal sector with that presently existing in the private sector. The material used to investigate the conditions and consequences of federal employee collective actions covers the ideas, events, institutions, motivations, and practices which have evolved during the approximately 200 years of employee management relations in the federal sector. The basic criterion for assessing the present federal system is: how nearly does this system merge with that of the private sector?

Executive Orders 10988 in 1962, 11491 in 1969 and 11616 in 1971 established a broad set of rules and procedures for employee
management relations in the federal sector. These Executive Orders served as an effective transitional device from the civil service system to an evolving system of collective bargaining patterned after that presently existing in the private sector. But the merging of the two systems at this time is more procedural than substantive. Though private sector industrial relations practices have been adapted to a considerable degree by the federal sector, the real power to make substantive changes in employment relationships still remains with management. This power is illustrated by the limited scope of bargaining on substantive issues (wages, hours, and working conditions); and an almost absolute control of impasse settlement by management through the institutional arrangements incorporated by law and executive order.

The principle of comparability, that is, comparing federal salaries with like salaries in the private sector, has enabled the federal employee to make impressive gains in both blue collar wages and white collar salaries. But the operation of the labor market and of private sector unions transmitted to the federal sector through the institutional arrangements for comparability are of significantly greater importance to the federal employee than the actions of his own union. The federal union serves only to lobby for improved institutional arrangements at the congressional level and to ascertain that these arrangements are complied
with at the local level.

The principal gain for the individual employee from the appearance of the union in the federal sector is that he now has an indirect voice in determining his conditions of employment and methods of wage determination. This dissertation suggests that the voice of the employee, as transmitted through his union, has been effective in procedural areas but is severely limited in areas of real substance. Collective bargaining as practiced in the private sector has not been thoroughly transplanted to the federal civil service.
CHAPTER I
INTRODUCTION

The 1960s have already earned the right to go down in labor relations history as the decade of the public employee... The growth of the public employee unions is the most significant development in the industrial relations field in the last 30 years.1

The two most important developments in government personnel administration in this century are happening simultaneously. Public employment has become the fastest growing sector in the U.S. economy and militant unionism is one of the major issues in public administration.2

Employees in the public sector are one of the last great segments of American labor to become subject to unionization. Historically, American unions have concentrated their efforts in the private sector of the economy. Whether these efforts have been devoted to the achievement of higher wages, shorter hours of work, and better working conditions or to broader social and political issues, the primary focus of action has been in the private sector.

The vast majority of the research on collective bargaining also has been concentrated on unions of employees in the private


sector of the economy. However, the growth of employee organization and collective bargaining in the public sector during the decade 1962-1972 has created a need for greater knowledge and understanding of the organizations, both union and nonunion, that represent public employees, and of the industrial relations systems through which they operate. This study is designed to meet that need, by exploring the evolving formal system of industrial relations in the federal sector and by showing that this system is procedurally approaching that which exists in the private sector.

The relative neglect of the public sector by the labor movement ended in the decade of the sixties. A program of employee-management cooperation in the United States federal civil service began with Executive Order 10988, issued in 1962 by President John F. Kennedy. This Order, which spelled out a government wide policy toward civilian employee organizations, made a great contribution to the changed environment in the public sector.

A decade after the promulgation of this historic Executive Order, an appropriate task of the researcher in labor relations is to analyze the effects of this Order and of Executive Orders 11491 and 11616 on the Executive Branch of the Federal Government. These Executive Orders had wide ranging impacts on all public employees, but this study will be limited to those employees in

---

3 Generally, a public employee is an employee working for a federal, state, county, or municipal government, covered by civil
the Federal Executive Branch.\textsuperscript{4}

The literature in American labor relations prior to 1962 contains excellent works which endeavor to explain the position of labor on almost every issue, both current and historical. There are exhaustive histories of specific unions and union leaders. However, unions of public employees have been mentioned only briefly or ignored entirely; certainly they have not been treated in any great depth. The principal writers who have addressed themselves to the area of public employee unions--primarily Spero, Hart, and Godine\textsuperscript{5}--did most of their work prior to the promulgation of Executive Order 10988. The fact that only these few saw fit to devote their energies to the public sector merely serves to emphasize the relative unimportance of the public sector as a fruitful field of investigation by writers in labor and industrial relations. This lack of interest is partially accounted for by the relatively service or other special regulations established by federal or state agencies, excluding elected officials and political appointees. In some jurisdictions certain positions usually professional in character are "exempted" from provisions of the civil service system.

\textsuperscript{4}In general, this study will be limited to those federal employees covered by the provisions of Executive Orders 10988, 11491, and 11616. Exceptions will be noted, for example, employees of the Postal Corporation are no longer covered by the Executive Orders but by the Postal Reorganization Act of 1970.

recent origin of negotiations between most agencies in the public sector and their employees.

Most of the research in federal sector labor relations since 1962 has been done by advocates of particular points of view: that is, by management officials on the one side and by union officials on the other, or by lawyers taking the "neutral" approach. Labor economists have shown little literary interest in the public sector. One can conjecture, however, that the lack of interest in public sector labor relations by labor economists will soon end: thirty years after the Wagner Act, private sector labor relations no longer seems to be stimulating; and the public sector, the "new frontier," is only now being discovered.

There is little doubt that there are significant differences between labor relations in the private and public sectors. Writers

---


with a management bias generally emphasize these differences whereas writers with a union bias generally deny any differences. One intuitively feels that if a formal industrial relations system is evolving in the federal sector, it should be patterned after that of the private sector. If this contention is true, it should be subject to documentation.

**METHODOLOGY AND ORGANIZATION**

Chapter II traces the historical evolution of federal management-employee dealings prior to the decade of the sixties, in accordance with Dunlop's suggestion that "... the concept of an industrial relations system is used most fruitfully as a tool of analysis when a specific system is examined in its historical context, and changes in the system are studied through time." Was there an industrial relations system developing in the federal sector paralleling that of the private sector? If there are no differences in private and public sector practices, why were federal employees excluded from coverage of both the Wagner and Taft-Hartley Acts? How much voice did organizations of federal employees exert on their conditions of employment? Which employees were attempting to have a voice in the determination of their employment and what methods did they use? Why was Executive Order 10988 promulgated in 1962? What were the interacting factors, including the

---

existing framework of government institutions and policies, the political and executive decision-making processes, and the motivations, attitudes, and ideas, of the various principal "actors," which made possible a major reversal of federal government policy towards federal employee unionism in the sixties?

Chapter III analyzes the three principal Executive Orders. How did Executive Order 10988 change the system of employee-management relations which had evolved over the first 180 years of American government? How did Executive Orders 11491 and 11616 alter the evolving system established by EO 10988? The regulatory basis of the evolving system is discussed in this chapter.

Chapter IV introduces specific evidence of the changing labor-management environment in the federal sector. Have the unions (and associations) of federal employees grown or declined in terms of membership and representation during the decade of the sixties? Have there been discernible impacts on the sovereign concept of government as it related to management-employee relationships? Have there been changes in relations within and among unions and associations? Has the professional association tended to retain its identity or is the association in the federal sector, in general, taking on the trappings of a "labor" organization? Have the events of the decade had any discernible impact on the basically unilateral management system of pre-EO 10988 days? Finally, has the cumulative effect of the events of the decade moved the federal sector system toward or away from the private sector system?
Are all indicators pointing to a merging of private and federal industrial systems in every area? Chapter V investigates the two principal areas in which the apparently evolving federal industrial system varies from that of the private sector: impasse settlement and wage determination. Can basic economic theory be applied to federal sector wage determination as it can in the private sector? Does the rule of the "market place" have relevancy in the federal sector or are wage determinations institutionalized by the political process? What are the significant differences between impasse resolutions in the federal sector and the private sector? Is there a possibility that the federal sector may set standards and innovate ideas which may be adopted by the private sector or is the flow of ideas, information, and innovative practices a one-way channel flowing from the private to the federal sector?

Finally, Chapter VI summarizes the research, reaches conclusions based on this research, and makes recommendations for changes in present practices.

**SOURCES**

The primary sources for the material in this dissertation are both normative and positive. The normative sources incorporate the value judgments of many of the principals involved, both labor leaders and management officials. These judgments were obtained

---

9A partial listing of the names of the persons interviewed appears in the bibliography.
from statements made by these men and from conversations and interviews with them. The documentary research has involved a wide assortment of published and unpublished materials. The most exhaustive and complete documentary source is the *Government Employee Relations Reports*, published weekly by the Bureau of National Affairs, Inc., Washington, D.C. ¹⁰ A prime source of information is contained in current periodicals, such as *The Civil Service Journal*, *The Monthly Labor Review*, *The Labor Law Journal*, and *The Industrial and Labor Relations Review*. The union viewpoint was obtained in some instances from union publications such as *The Government Standard* (American Federation of Government Employees) and *The Federal Employee* (National Federation of Federal Employees). The management viewpoint in several instances was obtained from publications of the Public Personnel Association, Chicago, Illinois. Another significant source of information was the records of hearings held by the President's Task Force on Employee-Management Relations in the Federal Civil Service (The Goldberg Committee), the President's Committee to review the Employee-Management Cooperation in the Federal Civil Service (The Wirtz Committee), the President's Study Committee on Labor-Management Relations in the Federal Service (The Hampton Committee), and the records of hearings held by the various committees and subcommittees of the Congress. Useful information is contained

¹⁰ Hereinafter cited as GER R, Number, Date, and Page.
in the documents, bulletins, reports, and other releases of the Civil Service Commission, the Department of Labor, and other federal departments and agencies. Executive Order 10988, Executive Order 11491, Executive Order 11616, and relevant Air Force Manuals and Regulations were prime data sources.

LIMITATIONS OF THE STUDY

This study is not intended as a theory of federal sector labor relations. The multiplicity of variables considered limits the ability of the study to contribute to the development of a systematic theory. The study is designed to add to the general knowledge of the current status and nature of employee-management relations in the federal sector.

Further, it should be pointed out that this study does not investigate in depth the experience of state and local governments in dealing with their employees. State and local employees are mentioned rarely, and only for comparative purposes.

Finally, the study is limited to the civilian component of the Civil Service of the Executive Branch of the U.S. Government. In effect this means that the study is not concerned with those civilians in the Executive Branch who are elected or appointed or with any employee of the Judicial or Legislative Branches.
CHAPTER II

THE DEVELOPMENT OF FEDERAL EMPLOYEE ORGANIZATIONS
AND PUBLIC POLICY TOWARD THEM

The origins of union activity in the federal service can be found in the early 19th century. Unions existed only at the whim of management and there was insignificant "collective bargaining" as we know it today. The doctrine of sovereign immunity, running deeply through English common law, was used by federal management to stifle any effort of employees to organize effectively in the federal sector. Further, the doctrine of Delegate Potestas non Potest Delegari (constitutional power cannot be delegated) was invoked to discourage collective action by federal employees.¹ The source of this doctrine is the constitutional concept of the federal government consisting of three distinct branches with specified functions and powers, the branches aligned with each other to form an integrated whole through a system of checks and balances. In theory, none of the three branches of the federal government can delegate any of its powers to either of the other branches or to an independent agency. This chapter will document the evolution of unions in the federal sector with emphasis on their attempts to overcome these two very substantial roadblocks.

blocks to existence and growth.

THE BEGINNINGS: 1790-1870

When George Washington became President, there were about 350 federal employees. With this small number of employees, government was almost a family affair. The Civil Service System was unknown; most of the employees were, if not friends of the President, at least friends of friends of the President. But as the number of employees increased to 2,100 at the start of the Jefferson administration, labor problems began to appear. The first recorded instance of labor management difficulties was in 1807, when the Secretary of the Navy dismissed blacksmiths who had complained of their low wages at the Portland Navy Yard. The first recorded strike of federal employees occurred at the Washington Navy Yard in August 1835, when workers struck for a "... change of hours and a general redress of grievances." The general climate of federal employment in the 1830s was described as follows:

---


3 Ibid., p. 2.


... the spoils system, previously deprecated and practiced on a small scale in the national government, became obvious, was openly indulged in and taken for granted. Morale was low; nobody knew when he might be dismissed. Dishonesty went unpunished and good work unrewarded. Payment for jobs became commonplace.⁶

Within such a climate, it is not surprising that the employees of the government would seek, by collective action, to get some of the spoils for themselves. In 1836 workers in the Philadelphia Navy Yard struck for a ten hour day, which prevailed in the private shipyards.⁷ This strike lasted several weeks and was settled only after the workers appealed directly to Congress and petitioned President Andrew Jackson, who responded by establishing a ten hour day at the Philadelphia yard only. No record exists that the other yards achieved the ten hour day until 1840, when President Martin Van Buren issued an order establishing a ten hour day, with no reduction in pay, for all federal employees engaged in public works. This was the first documented use of union political power to influence working conditions in the federal service. Since 1840 was an election year, President Van Buren was accused of trying to "buy" votes of the federal employees. The Navy Department apparently agreed with that view; in 1852 it declared Van Buren's order void and returned its employees to an

⁶Kaplan, op. cit., p. 4.

eleven hour day. In the face of widespread walkouts and strikes, the Navy Department subsequently rescinded the order and restored the ten hour day.8

At the outbreak of the Civil War, the ten hour day was well established in the federal shipyards, but by this time a number of private shipyards were operating on an eight hour day. As a result of the efforts of craft unions in federal employment, Congress enacted the first prevailing wage statute in 1861. This act set a precedent by providing that working hours and wages in Navy yards were to be the same as in private shipyards in the same vicinity.9 As a direct result of this act, the Navy established the first wage board in federal service in 1864.10

In 1868 the first law establishing an eight hour day for federal employees was enacted by Congress. This law was to apply to ". . . all laborers, workmen and mechanics employed by or on behalf of the United States government."11 Since no specific mention of wages was included in the law, the Secretary of the Navy

8Ziskind, loc. cit.


determined that he was allowed a great amount of discretion in wage payments. When he reduced the wages of the affected employees by 20 percent, widespread work stoppages occurred. Congress, by joint resolution, stated that the Secretary's action was contrary to the intent of the law and directed him to pay all workers the same rate of pay for an eight hour day as they had formerly received for a ten hour day.  

Up to this point, the history of labor-management relations in the federal sector was almost solely the story of the Navy experience. Prior to 1930 the Navy employed over 80 percent of all federally employed blue collar workers, excluding postal employees.  

The only recorded unionist activity in any other sector of the federal service was in the Government Printing Office, where, in 1861, employees obtained the eight hour day. In fact, the Government Printing Office adopted a closed shop policy, allowing only union printers to be employed. This policy was followed until 1906, when President Theodore Roosevelt ordered the Office to operate under open shop rules. It is rather ironic that while many of the practices and policies of the federal government during the

---


13Lewis, loc. cit.

latter part of the 19th century were in opposition to trade
unions wherever located, one of its own agencies tolerated a
closed shop for over forty years.

THE LEAN YEARS: 1870-1912

In the years immediately after the Civil War—and particu­
larly in the aftermath of the Panic of 1873—unionism in the
federal sector, as in the private sector, suffered a steady decline.
The most important events during the period 1870-1900 were the
passage of the Pendleton Act (the Civil Service Act) and the organ­
ization of the various postal unions, the forerunners of present
day union organization in the federal sector.15

The Postal Unions

Letter carriers were among the first of the postal groups
to seek the eight hour day. A law passed in 1888 equalized the
workday for letter carriers and shipyard workers. Leaders in the
fight for the eight hour day felt that a continuing organization
would be helpful in their fight for further benefits for the letter
carriers. In 1899 the National Association of Letter Carriers was
formally established as the first national postal union, and
shortly thereafter the United National Association of Post Office

15For the reader who desires a more definitive and
comprehensive treatment of the United States Civil Service, see
Paul P. Van Riper, History of the American Civil Service (New York:
Clerks was formed. The success of the postal unions is indicated by the fact that as of November 1972 they numbered over 600,000 members—over 91 percent of all eligible employees, a record unsurpassed by any other major union.

The postal unions were very much aware of their dependence on the Congress for success in their efforts to better their working conditions. In their eagerness to work closely with the Congress, however, they clashed with their own supervisors, who resented being bypassed. This resentment resulted in a series of so-called "gag rules" promulgated by Presidents Theodore Roosevelt and William H. Taft. These rules were in effect from 1902 until 1912, when they were negated by the passage of the Lloyd-LaFollette Act.

The "gag rules" effectively deprived the postal employees of their right to petition Congress on their own behalf. The pertinent portions of the Executive Orders defining these rules stated:

All officers and employees of the United States of every description, . . . are hereby forbidden, either directly or indirectly, individually or through

---


associations, to solicit an increase in their pay or influence or attempt to influence in their own interests any other legislation whatever either before Congress or its committees, or in any way save through the departments ... in and under which they serve, on penalty of dismissal from the government service.

Nor may any such person respond to any request for information from either House of Congress, or any Member of Congress, except through or as authorized by the head of his department.¹⁸

Many of the benefits which federal employees enjoy today were initiated by the postal unions. Generally, gains secured by postal unions were extended to other federal employees. The postal unions also served as an example and as a source of practical techniques for new unions seeking to establish themselves in the federal sector.

The Army Experience

During the first century of its existence, the United States Army had no serious labor problems. The first recorded dispute over wages and hours occurred at the Watervliet Arsenal, West Troy, New York, in 1893. That incident was followed by a walk-out at the Rock Island Arsenal in 1899.¹⁹ These disputes were settled with minimum difficulty, but by 1904 labor conditions had deteriorated in several Army industrial establishments. This deterioration was due in part to an attempt by several military officers to


¹⁹Ziskind, op. cit., p. 30.
apply Frederick Taylor's new methods of scientific management. The Taylor system was not only a technical innovation; it also upset established roles and familiar patterns of behavior, established new systems of authority and control, and created new sources of insecurity and anxiety—a result common to many innovations. A strike at Watertown Arsenal in August 1911 dramatized labor's hostility to the Taylor system. This strike caused a Congressional investigation with resulting resolutions condemning the Arsenal's use of the Taylor system.

As World War I approached, unionism in the federal service was struggling for survival. There was no legal basis for unions of federal employees; moreover these employees were even prohibited from taking their grievances and pleas for better wages and working conditions to the Congress without the approval of their department head. But the basic organization for the growth of powerful unionism had taken place during this period.

THE CONSOLIDATION ERA: 1912-1945

This era opened with the Lloyd-LaFollette Act, the only significant Federal statute on union-management relations in the federal service prior to Executive Order 10988. The pertinent section of the Lloyd-LaFollette Act, enacted in 1912, states:

20 Lewis, op. cit., p. 63.
21 Ibid., p. 64.
22 Ibid.
... that membership in any society, club, association, or other form of organization of postal employees not affiliated with an outside organization imposing an obligation or duty upon them to engage in any strike against the United States, having for its object, among other things, improvements in the conditions of labor of its members, including hours of labor and compensation therefor and leave of absence, by any person or groups of persons in said postal service, or the presenting by any such person or group of persons of any grievance or grievances to the Congress or any member thereof shall not constitute or be cause for reduction in rank or compensation or removal of such person or groups of persons from said service. The right of persons employed in the civil service of the United States, either individually or collectively, to petition Congress, or any member thereof or to furnish information to either house of Congress, or to any committee or member thereof, shall not be denied or interfered with. 23

This law was sought by and for the direct benefit of postal workers, since they were the ones on the "firing line" at that particular time; but it should be noted that the part of the law relating to the right of the employees to petition Congress applies only to postal employees. Intuitively, one suspects that the reason for this wording was that in 1912 the only effective federal employee unions were those in the postal service. Despite the fact that members of other unions are not protected by this provision of the Lloyd-LaFollette Act, it has generally been assumed that the spirit of the Act gave all federal employees equal protection. As a matter of record, no administration has ever proceeded against a non-postal employee for union membership on the theory that the Act was inapplicable. 24

23 37 Stat. 555. 24 Hart, op. cit., p. 34.
The Lloyd-LaFollette Act succeeded in its basic purpose. Federal employees have enjoyed the right to petition Congress freely since its passage. They have also been free to join unions which engage in lobbying activities in support of legislation favoring the federal employee. There has not been another attempt at imposing any type of "gag rules" on the federal employee since the passage of Lloyd-LaFollette.

The National Federation of Federal Employees

The first general union of federal employees was organized when legal barriers discouraging federal unionism were removed. This union was the National Federation of Federal Employees (NFPE), organized in September 1917 as an affiliate of the American Federation of Labor. In contrast to the postal unions, which were basically craft unions, the NFPE would accept any federal employee to membership regardless of trade or craft. Its growth was rapid, perhaps because of its open membership policy. Additionally, because of the entry of the United States into World War I, wages rapidly increased and private industry intensified its competition for employees, including those in the federal sector. In order to keep the war effort running smoothly, government agencies declined to test the power of the new union. The NFPE was virtually unopposed by management since President Woodrow Wilson and Samuel Gompers, President of the AFL, had agreed on a "truce" for the duration of World War I. Membership in the NFPE increased from approximately 10,000 members in October 1917 to over 50,000 in
June 1919.  

The NFFE was effective in supporting and strengthening the civil service system, and it strongly supported the enactment of the Civil Service Retirement Act of 1920. It took a strong position in behalf of the Federal Classification System and after passage of the Classification Act of 1923 urged extension of this system across all government levels and to all crafts. The efforts of NFFE were opposed by the other AFL national organizations, who regarded support of the Classification Act as evidence that the NFFE was attempting to expand its jurisdiction by raiding other unions, particularly the building and metal trades unions. 

Following a period of decline in the immediate post World War I period, the NFFE reached a peak membership of just under 64,000 in 1932 prior to its split with the AFL.

The jurisdictional quarrels which were brought on by the chartering of the NFFE did not reach the stage of open hostility until the AFL convention of 1931. If NFFE competition for membership had been the only issue the quarrel might have been resolved.

25Eldon L. Johnson, "General Unions in the Federal Service," The Journal of Politics, Vol. 2 (February 1940), p. 27. Due to the relationship established between President Wilson and Samuel Gompers, the AFL became, at least temporarily, a respected part of the war effort. Thus it was quite natural that government managers would not overtly oppose an AFL affiliate such as NFFE. See Thomas R. Brooks, Toil and Trouble (New York: Delacoste Press, 1964), pp. 132-138.

26Spero, op. cit., p. 189.

27Johnson, loc. cit.
even then. But the basic issue was the deeper one of craft versus industrial unionism. The battle for jurisdictional rights to organize federal employees at the AFL convention of 1931 was the first skirmish of the war which was to erupt within the AFL because of the craft-industrial controversy. Defeat of a constitutional revision supported by NFFE was the occasion, but not the cause, of the split between the NFFE and the AFL. At this convention the NFFE voted to withdraw from the AFL. Johnson describes the consequences in this way:

Thus occurred the most unfortunate blunder in the annals of unionism in the federal service. It is understandable, but none the less unfortunate, because the two opposing sides never really met on common ground at any time. Cast against a tangled background of grievance, suspicion, misunderstanding, and personal feeling, a dispute was sufficient to break ties cemented by fourteen years of successful cooperation and to establish a system of dual unionism from that day to this.\(^{28}\)

The American Federation of Government Employees

The withdrawal of the NFFE from the AFL left the AFL without a union formed and chartered specifically to represent the interests of the federal employee. Between December 1931 and August 1932, efforts were made by the members of the NFFE who desired to remain in the AFL to bring back a portion of the membership into AFL ranks. They formed an organization known as the Joint Conference on Reaffiliation with the AFL. Failing in its efforts to

---

\(^{28}\)Tbid., p. 30.
effect a reunion, this joint conference served as a nucleus for a new national organization, the American Federation of Government Employees, which was given a charter by the AFL on August 15, 1932. 29

Since this was a period of enthusiastic unionism, the new union grew rapidly, reaching a membership of over 34,000 by 1935. The 1936 convention of the AFGE surrendered the jurisdiction over state and local employees—approximately 9,000 members—to the newly formed American Federation of State, County, and Municipal Employees (AFSCME). The struggle between the independent NFFE and the affiliated AFGE, each competing for the same membership base, was soon joined by a third union, the United Federated Workers of America (UFWA). This union was formed by the more militant members of AFGE primarily as a result of the great cleavage in American labor. On June 21, 1937, John L. Lewis of the Congress of Industrial Organizations (CIO) announced the formation of the new union with the full backing of the CIO. 30 However, this union was never an effective force in the federal sector. It was expelled from the CIO in 1950 for Communist leanings. Other unions raided its

29 Materials regarding the founding of the AFGE from an undated leaflet "The American Federation of Government Employees," published by the AFGE, and J. B. Burns, "Government Workers Union is 10 Years Old," American Federationist (August 1942), pp. 20-23.

membership, and today the UFWA is no longer in existence.\(^3\)

**The Wagner Act**

Passage of the National Labor Relations Act (Wagner Act) in 1935 was an important event for private sector unions. However, public employees were specifically exempted from coverage by the Act. There was no specific stated reason for the exclusion of the public employee from provisions of the NLRA. Hart theorizes that since "... the purpose of the Act is to 'diminish the causes of labor disputes burdening or obstructing interstate and foreign commerce' it seems reasonable to surmise that those groups of people who, though employed for wages, do not work in commerce were deliberately excluded so that they would not burden the board and detract from its fulfillment of the purpose of the Act."\(^3\)

This is one logical reason, but another might be that neither the AFGE nor the NFFE was strong enough to make the Congress aware of the needs of the federal employee in this area.

**Public Opinion**

Public opinion of unions in the private sector was becoming more favorable, but not so in the public sector. Presidents Woodrow Wilson, Calvin Coolidge, and Herbert Hoover were of the

---


\(^3\)Hart, op. cit., p. 36.
opinion that public employee unions were of limited benefit to the public. But perhaps the most famous, and certainly the most controversial, statement on the matter by a President was made by President Franklin Roosevelt, in a letter written in 1937 to NFFE President L. C. Steward:

All government employees should realize that the process of collective bargaining, as usually understood, cannot be transplanted into the public service. It has its distinct and insurmountable limitations when applied to public personnel management. The very nature and purposes of government make it impossible for administrative officials to represent fully or to bind the employer in mutual discussions with government employee organizations. The employer is the whole people, who speak by means of laws enacted by their representatives in Congress. Accordingly, administrative officials and employees alike are governed and guided, and in many cases restricted, by laws which establish policies, procedures or rules in personnel matters.

Spero contends that Roosevelt was not abandoning his role as a friend of labor by this letter. He indicates that members of Congress were becoming alarmed by the militant tactics of the

---

33 The comments of Presidents Wilson and Coolidge were made regarding the strike of the Boston police in 1919. Wilson called the strike "... an intolerable crime against civilization." Coolidge, then Governor of Massachusetts, stated, "There is no right to strike against the public safety of anybody, anywhere, at any time." President Hoover stated in 1928, "... the government by stringent civil service rules must debar its employees from their full political rights as free men. It must limit them in the liberty to bargain for their own wages, for no government employee can strike against his government and thus against the whole people." Cited in Spero, op. cit., pp. 6, 279-280.

34 Cited in Hart, op. cit., p. 22.

35 Spero, op. cit., p. 345.
CIO, which was then entering the federal employee field through the UFWA. Congress was preparing to enact legislation outlawing all forms of collective bargaining in the federal service. Such a law not only would have stopped the militant CIO, but also would have threatened the life of the other unions, AFGE and NFFE, which had renounced militant tactics. Roosevelt's letter might have been written to convince the Congress that the administration had no intention of bargaining collectively with government employee unions, thus saving the two less militant unions.

Even during the period of World War II, when unions in the private sector were making gains in both numbers and power, the gains of the unions in the public sector were almost imperceptible. The general attitude of the courts toward unions of public employees is illustrated by the following statement made by a New York Supreme Court Justice:

To tolerate or recognize any combination of civil service employees of the government as a labor organization or union is not only incompatible with the spirit of democracy, but inconsistent with every principle upon which our government is founded. Nothing is more dangerous to public welfare than to admit that hired servants of the state can dictate to the government the hours, the wages, and conditions under which they will carry on essential services vital to the citizen.

The reasons are obvious which forbid acceptance of any such doctrine. Government is formed for the benefit of all persons, and the duty of all to support it is equally clear. Nothing is more certain than the

---

36 For the objectives of these two unions and the methods employed to achieve these objectives, see L. W. Stewart,
The indispensable necessity of government, and it is equally true, that unless the people surrender some of their natural rights to the government it cannot operate. Much as we all recognize the value and the necessity of collective bargaining in industrial and social life, nonetheless, such bargaining is impossible between the government and its employees, by reason of the very nature of government itself. The formidable and familiar weapon in industrial strife and warfare—the strike—is without justification when used against the government. When so used, it is rebellion against constituted authority. 37

At the close of World War II, there were four general unions working primarily in the field of public employment: the AFGE and the AFSCME, affiliated with the AFL; the UFWA, affiliated with the CIO; and the NFFE, an independent.

PREPARATION FOR TAKE-OFF: 1945-1962

This period began with what might be considered a defeat for the public employee unions: the inclusion in the Taft-Hartley Act of a section explicitly prohibiting the federal employee from striking. Strikes by federal employees had been prohibited by inference by the Lloyd-LaFollette Act. The United Public Workers of America (UFWA) was responsible for the inclusion of this section


37 From an opinion by Justice William H. Murray of the New York Supreme Court summarized in "Can Federal Employees Organize Labor Unions?" Personnel Administration, Vol. 6 (March 1944), p. 2.
in the Taft-Hartley Act. \(^{38}\) The UPWA constitution contained a provision on strike procedure, and though union officials denied that the provision applied to chapters or locals of federal employees, Congress began attaching riders to appropriation bills to prohibit payment of salaries to employees belonging to organizations that asserted the right to strike against the Federal Government. The Congressional furor, coupled with the fact that a number of UPWA locals actually did strike against city governments, led to the statement in Taft-Hartley which categorically denied the strike to all federal employees. \(^{39}\)

Section 305 of the Labor Management Relations Act of 1947 (Taft-Hartley) states:

> It shall be unlawful for any individual employed by the United States or any agency thereof including wholly owned Government corporations to participate in any strike. Any such employee who strikes shall be discharged immediately from his employment, and shall forfeit his civil service status, if any, and shall not be eligible for re-employment for three years by the United States or any such agency. \(^{40}\)

This provision was replaced on August 9, 1955, by a provision of law which makes it a felony, punishable by a year's

---

\(^{38}\) The UPWA was formed by combining the United Federal Workers with another CIO union, the State, County, and Municipal Workers of America, in 1946.


imprisonment and a fine of $1,000.00, for a federal employee to strike, to assert the right to strike, or knowingly to maintain membership in an organization asserting that right.\(^4\) Further, the new law required that each new employee sign an affidavit within sixty days of appointment certifying that he was not in violation of the Act.

This period might be designated as the period in which unions unsuccessfully tried to work through Congress, their traditional method of obtaining gain. In each session of Congress from 1949 to 1961, unions of federal employees sought statutory recognition. During this period approximately eighty bills were introduced in Congress on the subject of federal employee union recognition. The most important of these were the companion bills submitted periodically by Representative George M. Rhodes (D) of Pennsylvania and Senator Olin D. Johnson (D) of South Carolina.\(^4\)

Though each bill was altered slightly, the heart of each was as follows:

\[\ldots\] (e) (1) The right of officers of national employee organizations representing employees of a department or agency to present grievances in behalf of their members without restraint, coercion, interference, intimidation, or reprisal is recognized. (2) (A) Within six months after the effective date of this Act, the head of each department and agency shall promulgate regulations specifying that

\(^4\) PL 330 (69 Stat. 624).

administrative officers shall at the request of officers or representatives of an employee organization meet and confer on matters of policy affecting working conditions, safety, in-service training, labor-management cooperation, methods of adjusting grievances, transfers, appeals, granting of leave, promotions, demotions, rates of pay, and reduction in force. Such regulations shall recognize the right of such officers or representatives to carry on any lawful activity without intimidation, coercion, interference, or reprisal.

(B) Disputes resulting from unresolved grievances or from disagreement between employee organizations and departments or agencies on the policies enumerated in subsection (e) (2) (A) shall be referred to an impartial board of arbitration to be composed of one representative of the department or agency, one representative of the employee organization and one representative of the Secretary of Labor who shall serve as chairman. The findings of the board of arbitration shall be final and conclusive.

(3) Charges involving a violation of this subsection shall be referred to the Civil Service Commission which shall be charged with making certain that effective grievance machinery is established within each agency, and that unresolved differences are referred promptly to the impartial arbitration board established in subsection (e) (2) (B). The head of the department or agency involved shall take such action as may be necessary to cause the suspension, demotion, or removal of any administrative official found by the board of arbitration to have violated this subsection.

These bills had the enthusiastic support of organized labor, but with a few minor exceptions, no support from either the Truman or Eisenhower administrations. The spokesmen for both administrations objected to the various Rhodes-Johnson bills in four principal areas.

43 Hart, op. cit., p. 141.

44 This section draws heavily from Hart, op. cit., pp. 143-173.
First, the legislation was considered unnecessary. These spokesmen contended that various government departments had adequate administrative regulations and grievance procedures to effectively guard the rights and privileges of all government employees. Further, the Civil Service Commission had the authority to take whatever action was needed to insure that the administrative regulations proscribing union activity and the grievance procedures were faithfully observed at all levels. One of the significant features of every grievance procedure was the right of the employee to choose anyone he wished to represent him—a right he would lose under the Rhodes-Johnson bill.

Second, the administration spokesmen suggested that the granting of the right to "... carry on any lawful activity ..." (Section 2-A) was such a broad delegation of power to unions that it could have effectively paralyzed the executive branch of government.

Third, the compulsory feature of the bill divorced executive responsibility from executive authority. The manager would no longer have been able to manage but would have been at the mercy of a decision-making process outside his own agency. Further, the provision that the manager must confer with the union on all policy decisions affecting working conditions would have opened a Pandora's box to the union, since almost any decision the manager would make could be construed to affect working conditions.

Fourth, these spokesmen believed that the bill nullified the
laws upon which the power of the Civil Service Commission rested and transferred these powers to the Department of Labor, thus striking at the very heart of the entire civil service system.

The union position was to deny all these allegations and insist that all they wanted was true recognition, not preferential treatment. Hart suggests that this stand was unrealistic and argues that "... they might be well advised to concede that the Rhodes-Johnson bill does give them a preferential status which goes further than accorded other union leaders under the NLRA, and then to argue that such preferential treatment is fully proper and deserved as a fair and just compensation for the willingness of the government worker to relinquish all claim to free workers' normally inherent right to strike, picket, boycott, and to bargain for union security agreements."\(^\text{45}\)

Though these bills were favorably reported by the House and Senate committees in both 1952 and 1956, they were never brought to a vote in either house of Congress. As a preview of things to come, it is well to note the statement submitted by then Senator John F. Kennedy of Massachusetts during the hearings on the 1956 bill:

It has always seemed to me that commonsense requires that, since the Government has authorized organizations of postal and Federal employees, there should be a requirement that the appropriate officers of those organizations--both national and local--should be assured of the opportunity to bring to the government, the grievances

\(^{45}\) Hart, op. cit., p. 168.
of the employees they represent. I am advised that in most instances the appropriate government officials have been more than happy and willing to meet with the representatives of the employee unions. However, this principle of the right to meet should not be left to the chance that reasonable men will occupy the governmental offices in question.\textsuperscript{46}

The Labor-Management Reporting and Disclosure Act of 1959 (Landrum-Griffin Act) also expressly exempted unions of public employees from its provisions.\textsuperscript{47} Perhaps the assumption was, as in the Wagner Act, that public employees were not in industries "... affecting commerce."

This period closed with the unions marking time, consolidating their position, and preparing for the big push of the sixties. Perhaps Richard A. Silver summarized this decade best in 1959 when he said:

The past few years can be termed a transitional period of labor relations in government. The changing concepts of public employee relationships have shown a tendency toward more frequent resort to the courts for relief. The question of collective bargaining and negotiations between public agencies and public employee unions, although not settled, has been answered in the affirmative; that is, such arrangements are at least permissible in order to promote orderly administration of government affairs.

... Greater recognition of the desirability of dealing with employee unions is manifest in the day-to-day relations of public employees with their employers. Less emphasis is being placed on the sovereign employer concept. Public administrators

\textsuperscript{46}Cited in Vosloo, op. cit., pp. 47-48.

are being permitted, authorized or directed to negotiate with their employees in the interest of the public in general without any questions on the legality of such dealings.

Much interest has been evinced not only by the employee unions and the employees but by public administrators themselves. The employee unions have set as their goal a "state of full acceptance" rather than a "state of mere toleration." 48

THE PRELUDE TO EXECUTIVE ORDER 10988

The evidence is overwhelming that both the Truman and Eisenhower Administrations held little sympathy for the unionization of federal employees. The testimony of administration officials in hearings on the various Rhodes-Johnson bills clearly indicates a belief that unions had little to offer the federal employee. 49 The only positive indication from an official of either Administration was a letter published by the White House in


49 Typical of the comments of administration spokesmen was that contained in a letter from the Comptroller General of the United States to the House Post Office and Civil Service Committee, dated March 6, 1952, regarding H. R. 554, one of the earlier bills introduced by Congressman Rhodes. The Comptroller General stated: "Although the ostensible purpose of the bill is to protect employees, whatever 'protection' it might afford would be the wrong kind and for the wrong people. It has been my observation over a long period of years that the honest, capable, and conscientious Government employees--who are in the great majority--need no such protection as the bill would purportedly give. The plain fact of the matter is that the bill well could operate to help keep incompetent and even dishonest employees on the public payroll."
1958, signed by Rocco Sciliano, Special Assistant to the President for Personnel Management, advising all department and agency heads to "... evaluate the personnel management activities of your own agency with respect to employee-management relations, including relations with employee organizations." This letter suggested that there might be some advantages to cooperation between management and organized employees, but it certainly did not indicate a change in official policy towards unions. Further evidence of the attitude of the Eisenhower Administration toward federal unions was President Eisenhower's message to the House of Representatives vetoing a federal employee pay raise bill in June 1960. He made the following observations:

I am informed that the enactment of H. R. 9833 was attended by intensive and unconcealed political pressure exerted flagrantly and in concert on members of Congress by a number of ... employees, particularly their leadership.

I fully respect the right of every Federal employee--indeed all of our citizens--to petition the Government. But the activity of which I have been advised so far exceeds a proper exercise of that right and so grossly abuses it, as to make it a mockery.

That public servants should be so unmindful of the national good as to even entertain thoughts of forcing the Congress to bow to their will would be cause for serious alarm. To have evidence that a number of them, led by a few, have actually sought to do so is, to say the least, shocking.


51 President Eisenhower, message to the House vetoing the Federal Pay Raise Bill, June 30, 1960. Cited in Hart, op. cit., pp. 58-59. This was one of the two vetoes of President Eisenhower
But 1960 was an election year, and a Democratic Congress passed the bill over Eisenhower's veto. Though neither party made an issue of the unionization of federal employees, Senator John F. Kennedy, the Democratic Presidential nominee, wrote a letter to a postal union official giving his support to the principle of federal sector unionism.\(^{52}\)

In their experiences with the Truman and Eisenhower Administrations, the unions had fought a difficult battle against administrations of both major political parties. However, after the election of a Democratic President and a Democratic Congress in 1960, it seemed that continued union pressure, through the traditional means of legislative action, would finally bear fruit. Kennedy's narrow victory led leaders of organized labor immediately—and perhaps correctly—to attribute this victory to the almost universal support of union membership.

After the election of President Kennedy, there came a growing demand by Congress and labor leaders for a statement of policy by the Federal Government regarding its own labor-management relations. The unions' position was that the government had taken the initiative in the area of labor-management relations in the private which were overridden by the Congress. See *Presidential Vetoes 1789–1968* (Washington: Government Printing Office, 1969), pp. 196–198.

sector, but had actively prevented unionization of Government employees and the organization of union shops in Federal agencies. This line of argument was hard to counter. After the election of 1960, the combined labor groups made it clear to the incoming administration that they expected the "Democratic Congress and the Democratic leadership in the White House" to help rather than hinder their efforts to unionize federal employees. The words of candidate Kennedy were not forgotten when he became President Kennedy. Together with the repeal of the hated Section 14-b of the Taft-Hartley Act, high priority was given to bills giving recognition rights to federal employees in the union legislative program. A special committee of the Government Employees Council of the AFL-CIO was established to draft a new bill prior to the first session of Congress.

The "new" Rhodes-Johnson bill was introduced by Congressman Rhodes on the opening day of the First Session of the 87th Congress. But no sooner had the bill been introduced than rumors began to circulate that President Kennedy had expressed a desire to issue an executive order providing for union recognition, thus effectively curbing the interest of Congress in the current Rhodes

---

53 Section 14-b permits states to pass "right to work" laws, outlawing union security agreements.

54 Vosloo, op. cit., p. 59.

55 For a discussion of the "new" Rhodes-Johnson bill, see Vosloo, op. cit., pp. 48-52.
Johnson bill. The rumors proved to be correct, for on June 22, 1961, President Kennedy issued a memorandum, the draft of which originated in the Labor Department, establishing a task force to study the issue of union recognition in the federal service. There were apparently two principal reasons for the proposed study. First, President Kennedy felt that some change was needed in federal employee-management relations, and since he did receive political support from the unions, this would be a way to repay the debt. Second, the pressure on Congress was becoming intense to pass some kind of legislation to codify federal labor-management relations. But the obvious opposition of previous administrations to legislation in federal employee relations inevitably affected the new President. The decision to establish the task force seemed to be a compromise designed to appease unions who had supported the Democratic Party so vigorously, while forestalling legislation which could have greatly restricted managerial decision-making in the federal service.

THE TASK FORCE

The task force established to study the issue of union recognition in the federal service was composed of the following

---

56 Vosloo, loc. cit.

57 Appendix A contains the full text of this memorandum.
members, all top level political appointees:

Chairman: Arthur J. Goldberg  
Secretary of Labor

Vice-Chairman: John W. Macy, Jr.  
Chairman  
U.S. Civil Service Commission

Members:  
David E. Bell  
Director, Bureau of the Budget

J. Edward Day  
Postmaster General

Robert F. McNamara  
Secretary of Defense

Theodore C. Sorenson  
Special Counsel to the President

The Staff Director of the task force was Daniel P. Moynihan.

Hart summarizes the real power structure of the task force—as that  
is, the source of much of the ideological and intellectual  
background for the study—as follows:

The guiding genius and prime mover was the then  
Secretary of Labor, Arthur Goldberg, who not only chaired  
the Task Force with extraordinary adroitness, but recruit­  
ed its key staff members, notably Miss Ida Klaus, former  
NLRB Solicitor General, and more recently Counsel to the  
New York City Department of Labor, who was the working  
genius of the Task Force. There is little doubt that this  
approach to an old problem would not have been adopted if  
two unprecedented administrative procedures had not been  
employed.

1. The work of the Task Force was assigned to political  
appointees at the top level of the government who were not  
specialists in the field. If past precedent had been fol­  
lowed, the task would have been assigned to non-political  
members of the federal personnel fraternity who could have  
been relied upon to reaffirm pre-existing policies as the  
best attainable.
2. For the first time, the Department of Labor assumed the leadership of a program in the field of internal personnel management within the federal government. Heretofore, such programs had been looked upon as the exclusive province of the U.S. Civil Service Commission.\textsuperscript{58}

The only career civil servant on the task force was Mr. Macy, and the alternate members were also relatively new to federal service. It seems clear that the task force was expected to take an objective view of employee-management relations in the federal sector unencumbered by past experiences, because "the Kennedy Administration felt labor-management relations was one aspect of the civil service that was too important to be left to the experts."\textsuperscript{59}

The task force accomplished its mission by surveying present and past practices in federal sector employee-management relations and by holding hearings in seven major cities in the United States. In general, the task force was critical of existing practices in the federal sector:

The word "dealings" rather than "negotiations" most appropriately describes the relationship between employee organizations and management. Only a minority of federal employees belong to organizations, agencies deal with such organizations as they find it convenient, such dealings are not regularly scheduled, and the weight given to the views of employee organizations by management is variable. . . . of the fifty-seven departments and agencies whose personnel practices were studied by the Task


Force, it appears that a relatively large number, twenty-two, do not have any stated labor policy whatever. . . . eleven agencies have the barest minimum of policy, providing simply that employees have the right to join or not to join, legitimate employee organizations . . .

The fifty-seven departments and agencies covered in the report employed approximately 93 percent of the 2.4 million federal employees in mid-1961. The task force found that some 33 percent of all federal employees were members of an employee organization. This compares favorably with the national average of organized employees in non-agricultural establishments, which was 32.4 percent in 1960. This is not a representative figure, however, since some 490,000 of the approximately 760,000 employees who were members of an employee organization were employees of the Post Office Department. Only about 15 percent of the employees of the other departments and agencies were members of an employee organization.

Excepting the Post Office Department, the agencies which had the greatest proportion of their employees as members of an employee organization

---

60 The Task Force Staff Reports were not published, but copies are available in the Department of Labor. These reports were over 1600 pages in length, but the crux of the findings is contained in the Report of the President's Task Force on Employee-Management Cooperation in the Federal Service (Washington: Government Printing Office, November 30, 1961), hereinafter cited as the Task Force Report. A further condensation of the findings and a management translation of them is found in U.S. Civil Service Commission, Personnel Methods Series 15, Employee-Management Cooperation in the Federal Service (Washington: Government Printing Office, August 1962), hereinafter cited as Personnel Methods Series 15.

organization were:

1. The Tennessee Valley Authority 82 percent
2. The St. Lawrence Seaway 80 percent
3. The Panama Canal Company 67 percent
4. The Government Printing Office 54 percent
5. The Treasury Department 46 percent

The Department of the Navy led the Departments within the Department of Defense (DOD) with 29 percent of its employees in employee organizations. This is not surprising since the Navy had long been the leader within DOD in dealing with employee organizations. The Department of the Army had 11 percent of its employees in employee organizations, the Department of Air Force had 9 percent. The latter had approximately 25,000 members out of a civilian work force of 285,000.\(^62\)

Testifying before the task force were representatives of employee organizations, civic groups, and professional organizations as well as management officials and interested citizens, a total of 117 witnesses.\(^63\) There was much commonality in the views expressed by the representatives of employee organizations, though there were sharp divisions on specific issues.

Spokesmen for the AFL-CIO proposed that (1) recognition be limited to bona fide national unions; (2) organizations which discriminate on the basis of race or religion not be recognized;

---

\(^{62}\) The statistics for the various numbers of employees by agency and union membership by agency were extracted from the Task Force Report, pp. 10-11. Comparisons and conclusions drawn from them are those of the researcher.

\(^{63}\) Vosloo, op. cit., p. 63.
(3) all recognized organizations be consulted on personnel policy; and (4) exclusive recognition be given to unions with a majority status in an appropriate unit. The AFL-CIO further recommended that disputes between employee organizations and agency management be referred to a conciliator assigned by the Federal Mediation and Conciliation Service, and if not settled, to binding arbitration by a Government Labor Relations Panel. They also endorsed dues check-off. Generally, affiliated unions endorsed the proposals of the parent group.

Representatives of the NFFE differed from the affiliated groups, especially in opposition to the exclusive recognition proposal. The NFFE spokesmen opposed bringing the patterns and practices of the private sector into the federal sector. Spokesmen for professional engineers and nurses asked for separate recognition for professional employees. Spokesmen for the Civil Service League opposed collective bargaining in the federal sector. Generally, spokesmen for church groups, veterans' organizations, and other diverse elements presented a broad spectrum of views.

64 Personnel Methods Series 15, op. cit., pp. 3.06-3.07.

65 Even after Executive Order 10988 was promulgated, Vaux Owen, President of NFFE, was still unhappy with this provision. He went so far as to say that the Order "... reflects alien ideologies that are repugnant to the American Government." Cited in Hart, "The U.S. Civil Service Learns to Live With Executive Order 10988," op. cit., p. 208. In an interview with the researcher at the National Convention of NFFE in Sacramento, California, in September 1970, Mr. Owen, now the Grand Old Man of NFFE, indicated that he still believed that bringing private sector practices into the federal sector was a terrible mistake.
concerning a federal labor relations policy, stressing the need for a careful consideration of the special requirements of personnel practices in the federal sector.

The surveys conducted by the task force also revealed that there were definite problem areas in the public service from both the union and management viewpoints. The problems reported by the Department of the Air Force were: (1) unions appealed to Congress when immediate satisfaction was not obtained from management; (2) there was a lack of union cooperation; (3) the multiplicity of employee organizations created an administrative burden.66

The thirty employee organizations surveyed in the report listed the following areas as evidence of poor relations on the part of management: (1) excellent national policies are sometimes established, but these are often ignored in the field; (2) existing grievance procedures are inadequate; (3) employee councils are little more than "company unions"; (4) there is reluctance on the part of management in the field to acknowledge the legitimacy of unions; (5) anti-union attitudes are held by some local administrators and supervisors; (6) there is unwillingness by some management officials at all levels to deal fairly and honestly with unions; (7) too much "lip service" and little concrete cooperation is the rule; (8) management goes through the motions of consultation when a

---

prior decision had already been made. 67 One additional complaint
was levied against the Department of Defense, that "... unions experience difficulties with Commanding Officers who have had little past industrial relations experience and unions must have written agreements on all resolved issues, since there is a constant changeover in Commanding Officers with little managerial continuity." 68

The findings and recommendations of the task force were submitted to the President on November 30, 1961. A paragraph from the letter of transmittal indicates the tenor of the recommendations:

At the present time the Federal government has no Presidential policy on employee-management relations, or at least no policy beyond the barest acknowledgement that such relations ought to exist. Lacking guidance, the various agencies of the government have proceeded on widely varying courses. Some have established extensive relations with employee organizations; most have done little; a number have done nothing. The Task Force is firmly of the opinion that in large areas of the government we are yet to take advantage of this means of enlisting the creative energies of government workers in the formation of policies that shape the condition of their work. 69

The executive order promulgated by President Kennedy on January 17, 1962, essentially contained the recommendations of the task force. 70

67 Ibid., pp. 27-29.
68 Ibid., p. 43.
69 Ibid., p. 111.
70 Executive Order 10988 is included in this study as Appendix B.
SUMMARY

This brief summation of the history of federal sector unionism may be divided into several stages. The first stage, that period prior to the passage of the Lloyd-LaFollette Act of 1912, may be designated as the traditional stage. During this period the public and the courts were tradition-bound by our heritage from both the agrarian economy, which was dominant in the early days of the Republic, and by reliance on the inherited English Common Law. This was the stage of the beginnings of organization, of the "gag rules," of public outcry at the mere mention of federal employees banding together for mutual benefit. Because of the politics of the day, the social structure, and societal values, survival of unions in the federal sector was no mean accomplishment.

The second stage, in which preconditions for take-off were established, might be considered to extend from 1912 through 1961. During this period unions per se were accepted and the banding together of public employees was at least tolerated. It was a period of consolidation for the unions in the federal sector, during which the weaker unions disappeared or were absorbed by the stronger ones. It was a period in which the techniques of pressure tactics and lobbying the Congress were perfected. It was the period of covert collective bargaining in the federal sector. The stage is now set for the take-off period which was initiated by the promulgation of Executive Order 10988.
CHAPTER III

UNIONS GAIN A LEGITIMATE ROLE: THE EXECUTIVE ORDERS

There is a specific reason for the recent growth of government unionism, and this is Executive Order 10988 issued by President John F. Kennedy in January 1962, which encouraged unionism in the federal sector. In its support of public unionism, this Order was as clear and unequivocal as the Wagner Act of 1935 had been in its support for unions and collective bargaining in the private sector.¹

The take-off period begins with a landmark in the history of federal sector labor-management relations, the signing of Executive Order 10988. This Order established a comprehensive federal government-wide policy in labor-management relations. It was hailed by unions as the "Magna Carta" for federal labor relations since it officially acknowledged the legitimate role the federal employees unions should play in the formulation and implementation of personnel policies and practices in the federal government. The first section of this chapter will be devoted to an analysis of this historic document.

Executive Order 10988 was a modest but realistic beginning, considering the general inexperience of both unions and federal management in operating under any kind of industrial relations

system. In 1969 the President's Study Committee on Labor-Management Relations in the Federal Service reported that although substantial progress had been made under EO 10988, the time had come to "... adjust the policies of EO 10988 to changing conditions in the federal labor management relations program." Based on recommendations of this study group, President Richard M. Nixon issued Executive Order 11491 on October 29, 1969. The second section of this chapter analyzes this Executive Order, with emphasis on the significant changes to EO 10988 embodied in the new Executive Order.

When he signed Executive Order 11491, President Nixon directed that a review and assessment of operations under the Order be made after one year. Public hearings for this purpose were held in October 1970. As a result of these hearings Executive Order 11616, amending Executive Order 11491, and a rationale for the new order were issued on August 26, 1971. The third section of this

---


3Executive Order 11491 is included in this study as Appendix C.

chapter will analyze the changes instituted by Executive Order 11616.

EXECUTIVE ORDER 10988: A BRIEF SECTIONAL ANALYSIS

The Preamble

The preamble established the objectives and intent of the Executive Order. Briefly summarized, these were:

a. To provide orderly and constructive employee-management relations.

b. To assure greater employee participation in the formulation of policies and practices affecting their employment.

c. To enunciate a clear statement of the rights of union and management.

Section 1

This section establishes the right of the employee to join and organize employee organizations without fear of reprisal from management. It also reaffirms the right of an employee not to join such organizations. A further provision is for the strict neutrality of management, to avoid either the promotion or discouragement of employee organizations.

Section 2

An employee organization is defined in this section. It must be a lawful organization whose purpose is the improvement of working conditions of federal employees; it must be formed on a voluntary basis by the employees themselves; it must not assert the right to strike; it must not advocate the overthrow of the
government; it must not discriminate in establishing membership on basis of race, color, creed, or national origin; and it must not be subject to corrupt influences or to the influence of any group opposed to democratic principles.

Section 3

(a) This section establishes the three types of recognition (informal, formal, and exclusive) which could be granted an employee organization.

(b) This section establishes, in the case of exclusive recognition, the so-called "twelve month" rule. This rule states that no election for union recognition will be held within a year after a previous determination of exclusive status has been made.5

(c) The right of the individual employee to bring any personal matter to the attention of management is established in this section. It also establishes the right to management to deal with such diverse groups as veterans' organizations, religious, social, fraternal organizations, or other lawful associations in the interest of the federal employee.

Sections 4, 5, and 6

These sections define the rights of employee organizations under the three types of recognition: formal, informal, and exclusive. (Table 1 gives this information in condensed form.)

5In its rules implementing this section, the Civil Service Commission initiated the "60 percent" rule; that is, in order for a union to be granted exclusive recognition, 60 percent of all the eligible voters in the bargaining unit must cast ballots.
<table>
<thead>
<tr>
<th>Membership required in appropriate unit</th>
<th>None</th>
<th>Specified</th>
<th>10%</th>
<th>10%²</th>
</tr>
</thead>
<tbody>
<tr>
<td>Right to be heard on personnel policy</td>
<td>Yes¹</td>
<td>Yes¹</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>Right to be consulted on personnel policy</td>
<td>No</td>
<td>Yes¹</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>Right to negotiate written agreement</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>Right to represent employee in grievances and appeals (if he wishes)</td>
<td>Yes³</td>
<td>Yes³</td>
<td>Yes⁵</td>
<td></td>
</tr>
<tr>
<td>Right to negotiate for advisory arbitration of grievances and appeals</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>Eligible for voluntary dues withholding (if lawful)</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>Department-wide or agency-wide relationships</td>
<td>Yes</td>
<td>Yes⁴</td>
<td>Yes⁵</td>
<td></td>
</tr>
</tbody>
</table>
TABLE 1, Continued

1More than one organization within the same unit may be granted formal recognition. However, when an organization within a unit is granted exclusive recognition, all grants of formal recognition are withdrawn; other organizations concerned revert to informal recognition status.

2But the organization must have majority support whether determined by membership, votes, or other evidence.

3When an employee organization is accorded exclusive recognition, then that organization shall have the right to be present and be consulted in these situations whether or not the employee has designated another organization or person to represent him.

4Formal recognition and its rights may be granted at national level for the whole department when an organization is deemed to have a sufficient number of locals or of total membership within the department. The 10 percent rule does not necessarily apply as either a minimum or maximum.

5The emphasis of the program is on the development of local employee management relations. Exclusive recognition on an agency-wide basis should be avoided and should not be granted unless management is unable to carry on meaningful negotiations on a smaller unit basis.

Section 7

The right of management to direct, hire, promote, transfer, assign, suspend, demote, or discharge employees, and to take other management actions that may be necessary to carry out the mission of the agency is established in this section.

Section 8

This section is primarily concerned with the establishment of grievance procedures for an employee through his organization.

Section 9

This section defines the rights of an employee organization regarding the activities which it can conduct during duty and non-duty hours.

Section 10

The deadline date for implementation of the Executive Order was set as July 1, 1962.

Section 11

The responsibility for unit determination is vested in each agency by this section. It also gives the conditions under which the Secretary of Labor will assist in determining the appropriateness of a unit for exclusive recognition and in conducting and supervising elections.

Section 12

The Civil Service Commission is given the responsibility for establishing and maintaining a program to assist in carrying out the objectives of the Order.
Section 13

The Civil Service Commission and the Department of Labor are given the joint responsibility of preparing standards of conduct for employee organizations and a code of fair labor practices in employee-management relations in the federal service. This section also establishes a temporary committee to handle matters relating to the implementation of the Order.

Section 14

This section gives all employees in the Federal Civil Service the same rights in adverse action cases as are given veterans under Section 14 of the Veterans Preference Act of 1944, as amended.

Section 15

This section allows an agency and any representative of its employees to continue any policy agreed to prior to the Order.

Section 16

The agencies excluded from the provisions of the Order are listed in this section. These are primarily agencies performing investigative, security, and intelligence functions.

---

6 Chapter 711 of the Federal Personnel Manual was revised to conform to the provisions of the Executive Order. Each agency was also required to change its regulations and directives. For example, in the Department of Defense (DOD), DOD Directive 1426.1, first issued in May 1962, provided the basic instructions for the implementation of the Executive Order. DOD Directive 1426.2, first issued in September 1963, provided instructions for implementing both the Standards of Conduct for Employee Organizations and the Fair Labor Practices provisions.
Summary

Compared to the Wagner Act, Executive Order 10988 was indeed a modest beginning, but it seemed to end the long fight of unions for recognition in the federal sector. The official policy of the executive branch of the federal government was now to encourage employee organizations. But the question still remained, was the Executive Order really the "Magna Carta" for federal unions? Or were the unions again finessed out of legislation by the Executive Order? Hart summarized the dilemma of the union leaders in this way:

In some respects the Order achieved instant success. It permitted the Administration to escape a series of political barbs which had been finely honed for years by critics--both in and out of the trade union movement--of the government's labor relations practices. The hooks and snares had been so strategically positioned by the critics that when the new administration took office impairment seemed imminent and inevitable. Before the Administration acted, the government labor movement was on the brink of success in a twelve year campaign to achieve enactment of a bill (the Rhodes-Johnson Union Recognition Bill) which, though aimed essentially at the same broad objectives as the Executive Order, was loaded with boobytraps that could have snarled the machinery of government, even under the most sympathetic administration.

... The Executive Order pulled the rug from under the government unions just as they were about to pluck the golden apple. It not only deprived them of the prize but made them like it! It gave them what they said they wanted (recognition) while it deprived them of the windfall they hoped would come with it (a law which compels all but employees of extra-ordinary independence to join a union).7

7Hart, The U.S. Civil Service Learns to Live with Executive Order 10988, op. cit., pp. 204-205.
However in the Gompers tradition of "More now," the unions quite logically preferred a promulgated executive order to an unpassed bill still languishing in the Congress. Now at least they had some "rule of the game," a system for operation, imperfect though it may have been. The growth of the federal union movement under the "rules" prescribed in Executive Order 10988 will be discussed in a later chapter.

EXECUTIVE ORDER 11491
CHANGES IN THE EVOLVING FEDERAL LABOR RELATIONS SYSTEM

Prelude

Executive Order 11491 was an outgrowth of study and committee work spanning the last two years of the Johnson Administration and the first year of the Nixon Administration. On September 8, 1967, President Lyndon B. Johnson appointed a committee to evaluate the first five years of experience under Executive Order 10988 and to recommend changes in the program if needed. This committee consisted of the Secretary of Defense, the Postmaster General, the Director of the Bureau of the Budget, the Chairman of the Civil Service Commission, and a Special Assistant to the President. Though the committee held extensive hearings, it presented no formal recommendations to President Johnson. The report of the committee, identified as a "draft" report, was made public on January 16, 1969,

8Infra, Chapter IV.
by Labor Secretary Willard Wirtz as an attachment to the 1968 Annual Report of the Department of Labor. According to Wirtz, changes in the composition of the review committee made it impossible to submit a final report to President Johnson. After the Nixon Administration took office in January 1969, the new committee members accomplished additional work on the "draft" report and submitted it to President Nixon in August 1969. This report formed the basis for Executive Order 11491, issued by President Nixon on October 29, 1969.

**Changes Embodied in Executive Order 11491**

Centralized control of program. A primary problem area disclosed by almost eight years of operation under provisions of EO 10988 was that there was no one central point of control for the program. The administration of the program was scattered among many agencies on the supposition that since there was such a wide diversity of labor relations situations in the Executive Branch,


each agency head was the best judge of his own labor relations policies, within the broad framework outlined in the Executive Order. This meant, for all practical purposes, that the agency head became the prosecuting attorney, judge, and jury of all labor disputes within his agency. Unions distrusted a program mandated on the neutrality of the agency head, and the possibility of bias led unions to believe that appeals and unfair labor practice charges were exercises in futility.

In order to overcome this implied weakness in Executive Order 10988, the new Order established "... the Federal Labor Relations Council, consisting of the Chairman of the Civil Service Commission, the Secretary of Labor, an official of the Executive Office of the President, and such other officials of the Executive Branch as the President may designate from time to time."11 It is the responsibility of the council to make interpretations and rulings on any portion of the Order; to decide major policy issues; to entertain, at its discretion, appeals from decisions on certain disputed matters; to issue regulations; and to report to the President on the state of the program with appropriate recommendations.12 Its primary purpose is to focus control of the program

11 Executive Order 11491, Section 4. The Council is presently composed of the Chairman of the Civil Service Commission, the Secretary of Labor, and the Director of the Office of Manpower and Budget.

12 Ibid.
at one point rather than to leave the administration of the program to each individual agency. The two primary functions of the council are overall program direction and appeals of decisions made by certain officials. In the area of program direction, the council decides major policy issues; in the area of appeals, it considers, subject to the Executive Order provisions, certain decisions of the Assistant Secretary of Labor, agency heads and arbitrators. The council is designed to project an aura of impartiality, but a special kind of impartiality. As Civil Service Commission Chairman Robert Hampton explained:

Let me point out that the Council is not intended to be impartial in the sense that its members have no other responsibilities in Government. Rather, the Council is intended to represent the continuing presence of the President of the United States, in the form of three top administration officials to oversee the program, interpret the Order, and make necessary policy decisions. Just as the President is the President of all the people, the Council will be the program administrator for all the parties concerned.13

Types of recognition. The various types of recognition available to the unions posed another problem for both management and the unions as they became more sophisticated in their dealings with each other. For example, the informal level of recognition had been intended to serve as a transitional device which would not disrupt existing relationships in the early developmental stages of

the unionization program. As such, it was successful. By the
time EO 11491 was issued, however, this level had long outlived
its usefulness.

The new Order abolished formal and informal recognitions,
but gave the unions a grace period in which to upgrade their level
of recognition if they so desired and could receive the required
support. Abandonment of informal recognition was no surprise to
anyone familiar with the federal labor scene. Almost a year prior
to the Order, Nathan T. Wolkomir of the NFFE warned his locals that
"... if anything is certain in this uncertain world, it is that
sooner or later the informal category will be dropped ...").14 The
end of the formal recognition option came as more of a surprise.
This move strongly affected independent unions such as the NFFE and
the National Association of Government Employees (NAGE), which had
many locals with formal recognition. Under EO 11491 these locals
had to secure exclusive recognition or lose recognition entirely.

Wolkomir immediately attacked the provision with the charge
that

... eliminating formal recognition places
organizations of federal employees under severe
handicaps. It is surprising that an Administration
which prides itself on standing up for freedom of
choice would thus take an action which will make it
increasingly difficult for federal employees to
exercise freedom of choice in a meaningful way. In
these provisions the Order has played directly into

14 Nathan Wolkomir, President, NFFE, cited in GERR No. 286
the hands of private sector labor bosses who are seeking to get a stranglehold and centralized control of the federal service and its employees.\textsuperscript{15}

But the council stood firm in its enforcement of this provision of the Executive Order. Since July 1, 1971, the only recognition available to unions in the federal sector has been exclusive level; the union must represent all employees in the bargaining unit or it may represent none of them. This provision of the Executive Order conforms very closely to private sector practices.

\textbf{Election procedures.} All elections for union recognition under Executive Order 10988 were covered by the controversial "60 percent rule." In essence this rule stated that for an election to be valid, at least 60 percent of the eligible employees in the bargaining unit must vote. Though not contained specifically in the Executive Order, the rule was issued by the Civil Service Commission under its authority to issue guidelines for election procedures. The rule was the subject of a court case in which a federal appeals court ruled that EO 10988 created no judicially enforceable rights and that courts had no authority to oversee the administration of the Order.\textsuperscript{16}


An example of the effect of the 60 percent rule is the invalidation of an election held in Brooklyn in March 1969. In the Brooklyn District Office of the Internal Revenue Service, the bargaining unit employees voting picked the National Association of Internal Revenue Employees over the AFGE by a 6-1 ratio. The election was invalidated, however, because a "no vote" campaign managed to keep total participation one vote below the 60 percent participation required. An election at Fort Bliss, Texas, in June 1969, in which NAGE received a substantial majority of the votes cast, was invalidated on the same grounds. By not voting, an employee was in effect voting for the status quo, whether it be for the union presently holding recognition or for no union.

Under the provisions of Executive Order 11491, exclusive recognition is determined by a simple majority of employees voting in any specific election. The requirement that a certain percentage of employees must vote in order that an election be "representative" might have been appropriate in the early days of operation under EO 10988; but just as the informal level of recognition, it had outlived its usefulness.


18Interview with Allen Whitney, Executive Vice President, NAGE, October 30, 1969, Montgomery, Alabama.

19Section 6 of EO 11491 mandates the Assistant Secretary of Labor-Management Relations to supervise federal employee representation elections and certify the results. The Secretary reported that in all elections held in 1970, the first year after
Election procedures under EO 11491 have been adapted from the private sector almost in toto, but there is one significant difference. In the federal sector, a union may obtain exclusive representation rights only by winning an election, while in the private sector, under certain specified conditions, the NLRB may grant exclusive recognition rights to a union on the basis of authorization cards.\(^20\)

**Supervisors.** EO 11491 specifically exempts supervisors from its provisions, reasoning that the supervisor is a definite part of management. Although the supervisor may belong to a union, this section removes him from the bargaining unit, approximating private sector practice. This provision had helped to resolve some conflict of interest problems, though difficulties in interpretation of the term "supervisor" have not been completely resolved. For example, Wolkomir contends:

Agency interpretation of the term "supervisor" has been so broad that it is almost literally true that an employee "supervising" one waste basket has been termed a supervisor. The restrictions on holding office are retained and sharpened . . . a device by which management obviously expects to further hamper unions in the selection of qualified leadership.\(^21\)

the 60 percent rule was removed, over 61 percent of all eligible employees voted in representation elections. He further noted that federal employees voted for union representation in 92 percent of the election held. Cited in GERR, No. 405 (June 14, 1971), p. D-1.


The selection and training of qualified union leaders at the local level is a problem separate and distinct from that of conflict of interest situations inherent in bargaining units that contain both employees and their supervisors. Removing the supervisors from the bargaining unit seems to be an improvement, and does bring the federal sector more nearly in line with private sector practice.

**Contract Approval.** Under the provisions of EO 10988, the agency head gave the final approval to any contract affecting any employee in the agency. It was suggested that the agency head could thus "second guess" the contract on substantive issues as well as on issues of law or regulation. The union complaint was that union negotiators came to the bargaining table with full power to act for the union, but management officials had only limited authority. Therefore, while the contract was signed in good faith at the local level, it still was not effective until the agency head approved it. This process resulted in delays while the contract was processed through agency channels. For example, a contract between the Department of Health, Education and Welfare and AFGE Local 2340 took 31 months to negotiate. Negotiations began in August 1966 and the contract was approved in March 1969. 22 This period included several months in which the contract was detained at agency headquarters.

---

It is not uncommon in the private sector for a contract to be reviewed and approved by the national union headquarters and by top company management. Some unions require that the contract be ratified by a vote of the membership, the requirement for contract review by parties other than the negotiating team is not confined to the federal sector. EO 11491 eliminated the prerogative of the agency head to nullify agreements at the local level unless they were in violation of law, regulation, or higher directive. This provision of the new Executive Order has speeded the approval of contracts, since the agency head must now confine himself to the legality of the contract, whether or not it is advantageous for management.

As agencies have become more sophisticated in the negotiating of contracts, these contracts have become easier to review. Some are now second or third generation contracts. For example, because its contracts are easier to review and because there is increasing expertise at all levels, the Air Force has delegated contract approval authority to the first management level above the negotiating parties. But the impetus for change was the provision in EO 11491 which made the local negotiator responsible for the provisions included in the contract if he were legally able to negotiate them.

Impasse settlement. Executive Order 10988 did not outline any specific procedures for the settlement of negotiation impasses. President Kennedy's 1961 task force felt that, in the then embryonic
stage of development of federal employee-management relations, the availability of arbitration could have escalated too many impasses to third party settlement. The methods used to settle a negotiating impasse under EO 10988 included a joint fact-finding committee, referral to higher authority within the agency, mediation by private third parties, and advisory arbitration.

Under EO 11491 there are two key elements in the settlement of disputes and impasses. These are the responsibilities specifically assigned to the Assistant Secretary of Labor for Labor-Management Relations (ASLMR) and those assigned to the newly established Federal Services Impasse Panel (FSIP). The Assistant Secretary was given more definitive authority under the new order. He is required to decide the appropriate unit for exclusive recognition; to supervise elections and certify the results; and to decide unfair labor practice charges against agencies and allegations against unions of violations of the Standards of Conduct for Employee Organizations. He also "... may require an agency or labor organization to cease and desist from violations of this Order and require it to take such affirmative action as he considers appropriate to effectuate the policies of this Order." The rationale of the Hampton Committee was that although the Federal Labor Relations Council would establish overall policy and be the supreme arbiter of disputes, much of the day-to-day administration

---

23 EO 11491, Section 6 (4) (b).
of the program should be handled by the Assistant Secretary. Much of the authority granted agency heads in the area of impasse settlement by EO 10988 would thus be shifted into the hands of the Assistant Secretary. The Hampton Committee reasoned that expanding the role of the Assistant Secretary would benefit both unions and management and "... bring impartiality, order and consistency ..." 24 to the entire process.

The principal means of securing a settlement in a negotiating impasse is through the Federal Services Impasse Panel (FSIP). This panel consists of seven private sector arbitrators appointed by the President in August 1970. The panel operates as a separate agency within the Federal Labor Relations Council, and considers negotiation impasses presented to it by either a federal agency or union. The Order requires the FSIP to "... take any necessary action necessary to settle the impasse ..." 25 including imposing its own settlement on the parties. The panel does not sit fulltime, since its members are employed fulltime in the private sector; but it is available on call to settle disputes as they are submitted. When they are working on an impasse resolution, panel members

24 Hampton Committee Report, op. cit., p. 26. The Assistant Secretary has been very active in pursuing his duties. His first decision was rendered on November 3, 1970. From that time through November 1973, he made 326 separate decisions. These decisions cover the range of his responsibilities from unit determination decisions to decisions in unfair labor practice cases.

25 EO 11491, Section 5.
receive the daily rate of pay of a GS-18 civil service employee ($136.56 in 1973).

During its first three years the FSIP made 14 recommendations for settlement of impasses brought before it; all were accepted by the negotiating parties and signed into agreement. But the cases in which the parties waited for a final decision from the panel constitute only a small part of the work being accomplished by the FSIP. For example, of the more than 120 requests for assistance during this same period, all but 14 were settled by the parties themselves during or prior to the fact finding proceedings of the panel. A sampling of recent FSIP actions indicates the influence the panel exerts on the parties. Three impasses involving the issue of official time for employees representing a union during negotiations were resolved at prehearing conferences which had been ordered by the panel. However, a similar dispute was not resolved in the prehearing conference and will go to fact finding. FSIP told two other contending parties to resume bargaining with the assistance of higher level

26 These were: U.S. Forest Service, Bitterroot National Forest, and NFFE Local 1492 (Case No. 73 FSIP 10, August 9, 1973); U.S. Forest Service, Nezpeice National Forest, and NFFE Local 1436 (Case No. 73 FSIP 13, August 9, 1973); and Bonneville Power Administration and AFGE Columbia Power Annual Employees Council (Case No. 73 FSIP 20, August 9, 1973). Cited in GERR, No. 525 (October 15, 1973), p. A-13.

agency and union representatives. The panel believes that if these higher level representatives entered into the negotiations, the issues might be resolved without further intervention by FSIP.  

Based on the experience of the panel in its first three years of operation, it would seem that it has used great restraint in using its power to impose settlements on conflicting parties. The Hampton Committee was aware that the ready availability of third party procedures for resolution of negotiating impasses could cause an escalation effect. That is, instead of working out their differences by hard, earnest, and serious negotiation, the parties might take their problems to a third party for settlement. This has not been the federal experience in the first three years of FSIP operation, however. To the contrary, it seems that the presence of the panel, with its power to impose a settlement which both parties must accept, has seemed to make the parties negotiate more diligently and compromise more easily. As long as the panel follows its present policy of being the "court of last resort," it will continue to make significant contributions to the federal labor relations program.

**Strike rights.** EO 11491 is even more emphatic than EO 10988 regarding the strike issue in the federal sector. "A labor

---

organization shall not . . . call or engage in a strike, work stoppage or slow-down; picket an agency in a labor-management dispute; or condone any such activity by failing to take affirmative action to prevent or stop it. This is a blanket provision which, in addition to prohibiting strikes, makes the national union responsible for seeing that none of its locals engage in these prohibited practices. The rationale of the Hampton Committee was that since some labor unions had recently dropped the no-strike pledge from their constitutions, the "... strike and picketing prohibitions are needed in order to insure that there is no misunderstanding as to the responsibility which accompanies union recognition." This provision is in direct contrast to private sector practice and will be investigated in more detail in Chapter V.

Executive Order 11491 also provides for financial accounting and disclosure similar to that required of unions in the private sector. Commenting on these rules, Assistant Secretary of Labor Willie J. Usery, who was responsible for their promulgation, said that "... just as those unions representing employees in the private sector are required to do, so will all unions representing federal employees now be required to report their financial

---

29EO 11491, Section 19 (b) (4).

30Hampton Committee Report, op. cit., p. 54.

31EO 11491, Section 18 (a) (4).
transactions, meet bonding requirements, and abide by standards of conduct for election of union officers and the establishment of trusteeships." Unions of federal employees have had an excellent record for honest dealing with their members. This provision has caused no difficulty in the first three years of operation under EO 11491, but only serves as a reminder of the new status federal unions have achieved.

Two other provisions of EO 11491 were apparently taken from comparable rules in the private sector. The first of these is that guards may not be included in a bargaining unit which also includes other employees. The rationale for the inclusion of this provision was specifically that it was private sector practice. The committee stated:

In the private sector, a unit is not considered appropriate for the purposes of collective bargaining if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or the safety of persons on the employers premises . . .

A "grandfather clause" in this section allows units already constituted which contain guards with other employees to retain their identity. In the first three years of operation under the

---


33 Hampton Committee Report, op. cit., p. 20.
new Executive Order, this provision has had little impact since most guards have opted to remain in the bargaining units as originally constituted.

The second of the new provisions was the requirement that "... employees who represent a recognized labor organization shall not be on official time when negotiating an agreement with agency management." The Hampton Committee used the rationale that forcing union negotiators to draft contracts during off-duty hours would speed up the pace of negotiation. Further, employees negotiating for the union were working for the union, not the government, and should not be receiving government pay for doing union work. This provision drew immediate fire from union officials as being unfair to the unions and not in the spirit of the Executive Order. This was changed by Executive Order 11616.

EXECUTIVE ORDER 11616, AN EXAMPLE OF FINE TUNING

Under the provisions of EO 11491, the Federal Labor Relations Council was mandated to continuously review operations under the Order and to make recommendations to the President for

---

34 EO 11491, Section 20.
35 Hampton Committee Report, op. cit., p. 43.
37 Infra, p. 74.
changes. The first review was initiated with public hearings held in October 1970. Interested groups, including federal employees, representatives of labor organizations, and department and agency officials, were invited to present views of their experiences under the Order and to suggest changes for its improvement. These hearings resulted in recommendations made by the council to the President for certain changes in the Order. These changes were incorporated in Executive Order 11616 of August 26, 1971, effective November 24, 1971.

EO 11616 is an example of the advantage of an Executive Order over a law. Areas of discontent may be discussed and remedial action taken easily and simply. Though the council considered many policy issues raised by the various interested parties, it recommended action in four major areas: (1) grievance procedures and arbitration; (2) the processing of unfair labor practice charges; (3) the use of official time for union negotiators; and (4) negotiability of the costs of dues withholding.

Section 13 of EO 11491 was revised to provide that the negotiated agreement between management and the union with exclusive representation rights must include a negotiated grievance procedure. This negotiated procedure is the only procedure available to all employees in the unit for grievances over the interpretation and application of the negotiated agreement.

This change accomplishes two important things: it enlarges the scope of bargaining and it gives new status to the exclusively
recognized union. The individual employee's rights are protected since the negotiated grievance procedure applies only to alleged violations of the contract and not to any statutory rights which the employee might have. The contract cannot contain provisions which violate law or regulation of a higher authority. The union which has earned exclusive representation rights is protected since it may now negotiate any type grievance system it desires and can negotiate without the constraint of having to conform to guidelines promulgated by the Civil Service Commission. This freedom to negotiate a grievance system which is the product of the two parties is another example of the merging of federal procedures with those of the private sector.

The second major change was a change in Section 19 (d) of EO 11491, regarding the processing of unfair labor practice charges. It was basically an administrative change which further clarified the role of the ASLR, giving him exclusive jurisdiction of all unfair labor practice charges.

The third major change eliminated the prohibition on the use of official time by federal employees representing a labor organization in negotiations with management. The amount of time allowed union negotiators who are also federal employees is now a negotiable item. The maximum amount allowed for the negotiation of any one contract, however, is either (1) a maximum of forty hours or (2) one-half the total time spent in negotiations during regular duty hours. The time starts from the first meeting to
establish ground rules and continues until the contract is signed. Though this appeared to be an acceptable compromise between the total time allowed by EO 10988 and the no time allowed by EO 11491, it has not worked well in practice. During the first two years of operation under this provision, there have been instances where over forty hours have been spent negotiating on the amount of time which the union negotiators might have "on the clock." The tendency to spend an inordinate amount of time in negotiating this issue has led the FLRC to prompt both labor and management to spend less time and resources on procedural issues and more on substantive issues. 38

The fourth change eliminated the requirement that labor organizations be charged a flat fee of two cents per dues withholding per person. The fee for the service of dues withholding provided by management is now a negotiable item. As was the case with the previous change, however, this has been an area of much negotiation with little concrete results. The negotiating range for the unions has been between zero and the two cents previously charged. The negotiating range for agency negotiators has been between the alleged cost of withholding the dues and the previously charged two cents. The FLRC has also rebuked both parties for overemphasis on procedural issues in this area.

None of these changes could be considered earthshaking, but they are illustrative of the fine tuning of the system available under an executive order system. The problems these changes attempted to solve were brought to the attention of the President with recommendations for a change, and these changes were implemented immediately. As more experience is gained there will undoubtedly be more changes to refine the system. Apparently, the issues of duty time for union negotiators and the cost of dues deductions are issues which will have to be further adjusted. In a program which is only eleven years old, fine tuning by executive order would seem to be a better, easier method of change than the normal legislative process.

SUMMARY

The contention that the evolving labor relations system in the federal sector is approaching private sector practices can be buttressed by a comparison in eight specific areas. Considering the provisions of the Taft-Hartley Act of 1947 and actual practice, collective bargaining in the private sector is characterized by:39

1. Joint decision making. Management and union officials reach agreement on wages, hours and working conditions. In the federal sector, the principle of

39Industrial characteristics basically from Felix A. Nigro, "Labor Relations in the Public Sector," Personnel Administration (September - October 1970), pp. 34-38. Comparisons are those of the researcher.
required dealings with employee organizations was initiated by EO 10988 and affirmed by EO 11491. The preamble of both Executive Orders establishes that the principles of collective bargaining, bilateral agreement, and employee participation in decision making affecting their working conditions is the policy of the federal Executive Branch.

2. Recognition of an exclusive bargaining agent, representing a majority of the employees in a bargaining unit. EO 10988 permitted three levels of recognition, but the Hampton Committee emphasized that this system of recognition led to fragmentation and instability in labor relations. This is the same reasoning behind the recognition of exclusive bargaining agents in the private sector. Effective July 1, 1971, exclusive recognition is the only recognition available in the federal sector. EO 11491 also adopted the NLRB rule that there need be no set percentage of eligible voters participating in a representation election. A simple majority of those employees in the unit voting is sufficient for representation rights.

3. Union security. Private sector practice allows unions to negotiate union security provisions, except that Section 14 (b) of Taft-Hartley permits the individual states to pass legislation outlawing the union shop. In
this area, there is a divergence from private sector practices. Both Executive Orders affirmed that a union could not negotiate a union security agreement in spite of AFL President George Meany's request for at least an agency shop. This decision to prohibit security agreements was based on the contention that unlike the federal government, private companies do not operate under merit systems which prohibit the use of any appointment or retention criteria which have nothing to do with job qualifications.

4. Broad Scope of negotiation. Although Taft-Hartley speaks only of bargaining over wages, hours, and other terms of employment, NLRB decisions have opened the door to negotiating on such subjects as fringe benefits, sub-contracting, and many other matters. The scope of negotiation is somewhat narrower in the federal sector. Matters determined by legislation such as wages and retirement programs, are not in themselves subject to bargaining. However, matters such as the system of overtime allocation are subject to negotiation. In essence then, it is the weekly pay rather than the wage rate that is being negotiated.

Further, as a result of the postal strike, the fact is that a precedent has been established for bargaining on wages and other items heretofore negotiable only in the private sector. In addition to these provisions, EO 11491 eliminated a management technique of abolishing provisions negotiated in a contract by adopting new agency regulations which took precedence. The provisions of the collective bargaining agreement will now have precedence for the term of the contract.

5. Impartial third party machinery. The NLRB has authority to decide disputes over such questions as definition of the bargaining unit; determination of which union, if any, is entitled to be the exclusively recognized bargaining agent; and the scope of bargaining. It also investigates charges, by either management or the union, of unfair labor practices, and has the authority to issue cease and desist orders enforceable through the federal courts. Though there is no one board in the federal sector comparable to the NLRB, all comparable functions are accomplished by the machinery established by EO 11491. The Assistant Secretary of Labor makes final decisions on bargaining units, supervises and validates elections to determine the exclusive bargaining agent, and handles complaints of alleged unfair labor practices and alleged violations of the Standards of
Conduct for Unions. The Federal Services Impasses Panel has authority to take any action it deems necessary to settle a negotiating impasse. The Federal Labor Relations Council oversees the entire program and is the court of last resort for decisions made by the Assistant Secretary or the FSIP.

6. Sharp demarcation of management and supervisory employees on the one hand and workers on the other. Supervisors usually are excluded from the bargaining unit. EO 11491 has taken the Taft-Hartley definition of supervisor almost verbatim. Since the ASLFR decides bargaining unit disputes, his definition of supervisor determines the similarity to the private sector. The adoption of the private sector definition of supervisor and the elimination from EO 11491 coverage of units containing only supervisors suggest that the line between supervisor and employee will be more sharply drawn. 41

7. Grievance arbitration. In the private sector a grievance is usually decided by an arbitrator, acceptable to both parties. The same provisions may now be negotiated in the federal sector under the amendment

provided by EO 11616.

8. Right to strike. Private sector employees are given this right to insure that bargaining takes place between equals, since management retains the right to lock out the employees. Federal sector practice varies from private sector practice in this area. Strikes (and lockouts) are still prohibited in the federal sector.\(^{42}\)

While some significant differences between collective bargaining in the private sector and in the federal sector remain, the changes in the evolving federal system embodied in EO 11491, as amended, seem to be narrowing the gap between federal and private sector practices. The following chapter will investigate areas in which this gap is narrowing. Chapter V will investigate the two principal divergencies of the federal system from that of the private sector: wage setting and impasse settlement.

\(^{42}\)See infra, 126-139.
CHAPTER IV

THE IMPACT OF THE EXECUTIVE ORDERS ON FEDERAL SECTOR LABOR-MANAGEMENT RELATIONS

The cumulative thrust of this chapter will show that the series of Executive Orders initiated in the decade of the sixties drastically changed employee-management relations in the federal sector. If the purpose of this study is to be fulfilled, there should be data to support this purpose in terms of federal union activity paralleling that of private sector unions. The first part of this chapter will contrast union growth in the private sector with that in the federal sector. The second part will be devoted to an examination of specific behaviors which have been changed or tempered by the growing body of agreements and operating procedures initiated since January 1962.

UNION ACTIVITY

The Private Sector

With the merger of the AFL and CIO in 1955, some observers of the American labor scene believed that the labor movement was on the verge of an era of growth in both number and influence. This growth did not occur; in fact, the labor movement suffered a decline in membership. While it is difficult to assess the many
factors contributing to the drop in membership in the years immediately following the merger, losses may be attributed primarily to the changing employment patterns. Employment was increasing in the white collar and service areas of employment (that is, among employees traditionally difficult to unionize) and decreasing in traditionally union oriented industries such as railroads, textiles, and shoe manufacturing. ¹

One observer of the American labor scene described the labor movement as "facing a series of crises."² From 1957 through 1961, unions in the private sector suffered an absolute decline of approximately 1.2 million members and a relative decline from 33.4 percent to 30.2 percent of the nonagricultural work force.³ This decline seems to have been dampened in the decade of the sixties by the addition to union ranks of public sector employees.⁴


²Solomon Barkin, The Decline of the Labor Movement and What Can be Done About It (Santa Barbara, Cal.: Center for Study of Democratic Institutions, 1961), p. 1. Barkin gave several reasons for this decline. Among them was that unions had failed to enroll workers in government because of the basically anti-union attitude of the majority of government administrators.


⁴"Public Sector" employees includes federal, state, and local governmental employees.
For example, in 1970 union membership in absolute terms had increased to over 19 million and seems to have stabilized at approximately 28 percent of the nonagricultural work force. Table 2 shows the ebb and flow of union membership from 1956 through 1970.

The growing activity of organizations of professional and public employees was recognized by the Bureau of Labor Statistics of the Department of Labor in 1965, when the Bureau for the first time included a small number of employee associations with exclusive representation rights in its Directory. The 1969 Directory contained a separate section for professional and public employee associations, though their membership was not included in the total membership statistics.

As evidence of the growing importance of public sector unions and associations, they were listed in the 1971 Directory and were also included in the membership statistics for the first time. These statistics are included as Table 3. The inclusion of public employee unions and associations slowed the numerical

---


### TABLE 2
NATIONAL UNION MEMBERSHIP AS A PROPORTION OF THE LABOR FORCE, 1956-1970

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Union Membership</th>
<th>Total Labor Force</th>
<th>Nonagricultural Establishments</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number</td>
<td>Per Cent</td>
<td>Number</td>
</tr>
<tr>
<td>1956</td>
<td>17,490b</td>
<td>69,409</td>
<td>25.2</td>
</tr>
<tr>
<td>1957</td>
<td>17,369</td>
<td>69,729</td>
<td>24.9</td>
</tr>
<tr>
<td>1958</td>
<td>17,029</td>
<td>70,275</td>
<td>24.2</td>
</tr>
<tr>
<td>1959</td>
<td>17,117</td>
<td>70,921</td>
<td>24.1</td>
</tr>
<tr>
<td>1960</td>
<td>17,049</td>
<td>72,142</td>
<td>23.6</td>
</tr>
<tr>
<td>1961</td>
<td>16,303</td>
<td>72,031</td>
<td>22.3</td>
</tr>
<tr>
<td>1962</td>
<td>16,586</td>
<td>73,442</td>
<td>22.6</td>
</tr>
<tr>
<td>1963</td>
<td>16,524</td>
<td>74,571</td>
<td>22.2</td>
</tr>
<tr>
<td>1964</td>
<td>16,841</td>
<td>75,830</td>
<td>22.2</td>
</tr>
<tr>
<td>1965</td>
<td>17,299</td>
<td>77,178</td>
<td>22.4</td>
</tr>
<tr>
<td>1966</td>
<td>17,940</td>
<td>78,893</td>
<td>22.7</td>
</tr>
<tr>
<td>1967</td>
<td>18,367</td>
<td>80,793</td>
<td>22.7</td>
</tr>
<tr>
<td>1968</td>
<td>18,916</td>
<td>82,272</td>
<td>23.0</td>
</tr>
<tr>
<td>1969</td>
<td>19,036c</td>
<td>84,240</td>
<td>22.6</td>
</tr>
<tr>
<td>1970</td>
<td>19,381</td>
<td>85,903</td>
<td>22.6</td>
</tr>
</tbody>
</table>

*aExcludes Canadian membership and members of single-firm unions, includes members of directly affiliated local unions, membership in thousands.


TABLE 3


<table>
<thead>
<tr>
<th>Year</th>
<th>Membership Unions and Associations Number</th>
<th>Membership as a Per Cent of Total Labor Force Number</th>
<th>Membership as a Per Cent of Nonagricultural Establishments Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>1968</td>
<td>20,721</td>
<td>82,272</td>
<td>67,915</td>
</tr>
<tr>
<td></td>
<td></td>
<td>25.2</td>
<td>30.5</td>
</tr>
<tr>
<td>1969</td>
<td>20,776</td>
<td>84,240</td>
<td>70,274</td>
</tr>
<tr>
<td></td>
<td></td>
<td>24.7</td>
<td>29.6</td>
</tr>
<tr>
<td>1970</td>
<td>21,248</td>
<td>85,903</td>
<td>70,644</td>
</tr>
<tr>
<td></td>
<td></td>
<td>24.7</td>
<td>30.1</td>
</tr>
</tbody>
</table>

*aExcludes Canadian membership and members of single-firm unions, includes members of directly affiliated local unions, membership in thousands.

decline of the labor movement. Union and association membership as a percentage of the nonsgricultural work force seems to have stabilized at approximately 30 percent.

**Union Growth in the Federal Sector**

No union of federal employees reported a membership of over 100,000 in 1960. Ten years later, both AFGE and NFFE had exceeded or equaled this number and were included in the select group of 48 unions reporting a membership of 100,000 or more to the Bureau of Labor Statistics. ⁸

Until the promulgation of EO 10988, no machinery existed in the federal sector for union recognition as an exclusive bargaining agent. There was no method of establishing bargaining units, nor was there a definitive description of union rights and responsibilities. EO 10988 outlined a system for union recognition and for the establishment of bargaining units. Figure 1 illustrates the growth of these bargaining units since 1962. The 26 bargaining units in existence in 1962 were in two units composed of employees of the Tennessee Valley Authority and 24 units

---

⁸Ibid., p. 108. AFGE reported a membership of 325,000 ranking 17th in membership among all unions, NFFE reported a membership of 100,000 ranking 47th. Among other public employee associations and unions was the National Education Association, reporting a membership of 1,100,000, which would have ranked 4th had it been included as a union; AFSCME, reporting 444,000 members ranking 11th; and the American Federation of Teachers, reporting 205,000 members, ranking 27th. It should be further noted that AFGE and NFFE accept only federal employees for membership.
Figure 1. Growth in exclusive bargaining units in the federal sector, excluding the postal service, 1962-1972.

composed of employees of the Department of Interior. These units were established under particular laws governing specific governmental corporations such as the Tennessee Valley Authority, the Bonneville Power Administration, and the Alaska Railroad. Procedures for these bargaining units were peculiar to the individual agencies and did not apply government wide.

Not only have unions of federal employees progressed in terms of numbers of bargaining units but also in terms of numbers of employees represented. Figure 2 illustrates the numerical growth of employees included in bargaining units in which a union is their exclusive representative in all personnel matters. Figure 2 includes postal employees. These employees are now covered by the Postal Reorganization Act of 1970 (Public Law 91-375) and are no longer governed in labor relations matters by the provisions of EO 11491. Prior to the promulgation of EO 10988, 84 percent of the approximately 600,000 postal employees were union members, while in November 1972, 91 percent of the approximately 665,000 postal employees were represented by a union.

---

9 Personnel Methods Series 15, op. cit., p. 3.05.

10 Ibid., p. 3.02.

Figure 2. Percentage of total federal employees (Executive Branch) in exclusive bargaining units (data for 1962-1966 as of mid-year, 1968-1972 as of November).

Since there has been a high incidence of unionism among postal employees for many years, EO 10988 cannot be considered the immediate cause of union activity in the postal service. EO 10988 did give the postal employees additional advantages, such as a defined system within which to operate, but they had perfected their lobbying activity with the Congress to such an extent that postal unions could show a record of legislative achievement. Most postal employees were already union members when EO 10988 was issued. The increase in postal union representation was brought about by increased employment in the postal service more than by an increase in union activity. A more significant measure of union growth than the postal service figures would be the growth of union representation in the federal executive branch, excluding postal employees. This growth is illustrated in Figure 3.

Another indication of the tendency of federal sector labor management relations to approach that of the private sector is the fact that a majority of organized federal employees have chosen unions affiliated with the AFL-CIO to represent them in negotiations with management. For example in November 1972, 73 percent of all federal employees in exclusive bargaining units were represented by unions affiliated with the AFL-CIO. 12

Figure 3. Percentage of total federal employees (Executive Branch) excluding postal employees in exclusive bargaining units (data for 1962-1966 as of mid-year, 1968-1972 as of November.)

Independent unions--that is, those not affiliated with AFL-CIO--represented 26 percent of all federal employees in bargaining units, while only 1 percent were represented by local independent unions.\(^{13}\)

Of the 1,082,587 federal employees represented exclusively by unions, 427,089 are wage board (blue collar) employees and 655,498 are General Schedule (white collar) employees.\(^{14}\) Unions represent 83 percent of total employment in the blue collar sector and 46 percent of all federal white collar employees.\(^{15}\) Table 4 illustrates the number of employees in exclusive bargaining units by agency. The majority of the non-postal employees represented by a union work in the Department of Defense. Table 5 illustrates the principal unions which represent these employees.

While the private sector union movement was in decline, the preceding data suggest that the federal sector union movement was rapidly increasing, whether measured by numbers of employees represented or by new bargaining units established. Though a majority of federal employees opted for unions which represent only federal employees, the unions affiliated with the AFL-CIO also received majority support. In the first 10 years of operation under the

---


\(^{14}\) Ibid., p. 18.

\(^{15}\) Ibid.
### TABLE 4

**FEDERAL EMPLOYEES IN EXCLUSIVE BARGAINING UNITS**  
**BY AGENCY, NOVEMBER 1972**

<table>
<thead>
<tr>
<th>Agency</th>
<th>Number</th>
<th>Per Cent of Total Agency Employment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Army</td>
<td>195,412</td>
<td>58%</td>
</tr>
<tr>
<td>Navy</td>
<td>192,659</td>
<td>60%</td>
</tr>
<tr>
<td>Air Force</td>
<td>181,632</td>
<td>76%</td>
</tr>
<tr>
<td>Veterans Administration</td>
<td>120,344</td>
<td>63%</td>
</tr>
<tr>
<td>Treasury</td>
<td>64,327</td>
<td>61%</td>
</tr>
<tr>
<td>Health Education and Welfare</td>
<td>59,503</td>
<td>52%</td>
</tr>
<tr>
<td>All Other Agencies</td>
<td>268,710</td>
<td>41%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>1,082,587</td>
<td>55%</td>
</tr>
</tbody>
</table>

TABLE 5

FEDERAL EMPLOYEES IN EXCLUSIVE BARGAINING UNITS,
BY UNION, NOVEMBER 1972

<table>
<thead>
<tr>
<th>Union</th>
<th>Number of Employees</th>
<th>Per Cent of Employees</th>
</tr>
</thead>
<tbody>
<tr>
<td>American Federation of</td>
<td>620,744</td>
<td>58%</td>
</tr>
<tr>
<td>Government Employees, AFL-CIO</td>
<td></td>
<td></td>
</tr>
<tr>
<td>National Federation of</td>
<td>114,420</td>
<td>11%</td>
</tr>
<tr>
<td>Federal Employees</td>
<td></td>
<td></td>
</tr>
<tr>
<td>National Association of</td>
<td>82,187</td>
<td>7%</td>
</tr>
<tr>
<td>Government Employees</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Metal Trades Council AFL-CIO</td>
<td>57,038</td>
<td>5%</td>
</tr>
<tr>
<td>National Association of</td>
<td>46,522</td>
<td>4%</td>
</tr>
<tr>
<td>Internal Revenue Employees</td>
<td></td>
<td></td>
</tr>
<tr>
<td>International Association of</td>
<td>30,585</td>
<td>3%</td>
</tr>
<tr>
<td>Machinists and Aerospace</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Workers AFL-CIO</td>
<td></td>
<td></td>
</tr>
<tr>
<td>All Other Unions</td>
<td>131,091</td>
<td>12%</td>
</tr>
<tr>
<td>Total</td>
<td>1,082,587</td>
<td>100%</td>
</tr>
</tbody>
</table>

*The National Association of Internal Revenue Employees changed its name to The National Treasury Employees Union at its August 1973 Convention.

Executive Orders, unions obtained representation rights for a majority of federal civilian employees.

The data suggest that there is a formal industrial system emerging in the federal sector. At least there is a system emerging whereby unions may secure exclusive bargaining rights for groups of employees. If these union gains are of consequence, it follows that there should be definite and discernible impacts on the traditional system of federal manager-employee relations. The remainder of this chapter will be devoted to a discussion of selected significant changes.

SIGNIFICANT CHANGES IN FEDERAL EMPLOYEE-MANAGEMENT RELATIONS

The Sovereignty Doctrine

Any discussion of federal civilian labor relations would be incomplete without reference to the vague and highly abstract question of bargaining with the sovereign employer. Historically this concept has been used to discourage unionism in the federal sector. The American heritage from English common law dictated that the sovereignty doctrine would be reflected in decisions of American courts. What is the sovereignty doctrine? "All the characteristics of sovereignty are contained in this, to have power to give laws to each and everyone of his subjects and receive none from them."16 Briefly stated, as it applies to

employee management relations in the federal sector, the sovereignty doctrine dictates that federal government cannot be required to enter involuntarily into collective bargaining relationships.

The important consideration is that the doctrine does not preclude the enactment of legislation specifically authorizing the federal government to enter into collective bargaining relationships with its employees. Employee organizations have sought such legislation and have applied pressure to the legislative branch for it consistently during the past thirty years. The various Rhodes-Johnson bills previously noted were manifestations (originally published in 1921), p. 17. Laski gives an excellent historical review of the sovereignty concept in his Chapter 1, pp. 1-29. Vosloo, op. cit., also gives an excellent summation of this historical development (pp. 195-196). He states:

"Sovereignty describes a condition of supremacy: the ultimate and final legal authority and political power in a state. It is generally agreed that this doctrine was introduced in political thought by Jean Bodin and Thomas Hobbes. . . . since the days of the "absolute monarch" of Bodin and Hobbes the doctrine has undergone many interpretations. The most important of which are Rousseau's concept of sovereignty as the exercise of the "general will" the transcendental view of the absolute state as a supreme judicial personification of the collective will of the people expounded by the German idealists (Hegel, Treitschke, Jellinek) as well as by English idealists (Green and Bosanquet); the utilitarian view of sovereignty as based on "habitual obedience" created by a determined agent of government acting in the public interest expounded by Bentham, the Mills and Austin; and finally, the attack on the monistic concept of sovereignty by such leading exponents of pluralism as J. N. Figgis, F. W. Maitland, Harold J. Laski, A. D. Lindsey, G. D. H. Cole, Otto Gierke, Hans Krabb, and Leon Duquit, on the grounds that the state does not, in fact, exercise the type of authority described as "sovereign" because there are other sub-groups in society which have wills as well as the state's."
of this pressure.

Lacking such legislation, the best alternative was an executive order which would voluntarily limit the power of the government to make unilateral decisions in the area of personnel policy and permit employee participation in these decisions. An executive order would not have the force of law, but it would be an expression of public policy and would therefore carry considerable moral force. The fact that an executive order would not affect employees in the legislative and judicial branches of government was of minor importance to the federal unions since the executive branch employs over 98 percent of the total federal work force.

The decision to voluntarily limit the power of the "sovereign" was made by President Kennedy when he issued EO 10988, and reaffirmed by President Nixon through Executive Orders 11491 and 11616. The decision as enunciated in the Executive Order to establish collective bargaining procedures is in itself a sovereign act. It should be emphasized that the Executive Orders did not constitute an abrogation of sovereign authority, since each contained provisions for management action during emergencies. "Emergency" was not defined, however, and as a last resort these Executive Orders could be "repealed" by another executive order.

Thus it is apparent that the concept of sovereignty remains valid as a device for legitimizing an ultimate source of authority in the American political system to be used to settle
conflicting claims between competing individuals and sub-groups. The "sovereign" employer still retains the right to change, repudiate, or even ignore, in certain circumstances, any collective bargaining agreement. The Executive Orders did not change in any way the legal status of the sovereignty doctrine.

The relevant question in comparing the emerging federal sector system to that of the private sector is: how did the Executive Orders change the practical application of the sovereignty doctrine in the day-to-day activities of employees and managers in the federal sector? From a practical standpoint, the Executive Orders ended the doctrine as a pragmatic concept in the federal sector. In the framework of the American democratic system, strict legality is tempered by specific power relationships within the political system. In this system, the authority of the federal government comes from below, from the people who make up that government, not from above. Though there must be a final, sovereign, decision making process in matters such as national security, the Executive Orders seem to say that it is not necessary to extend this finality of decision making to the conditions of employment of federal employees. Nigro states:

As to sovereignty, I do not think we have lost it; we simply have redefined it . . . the concept of sovereignty is essential as a means of legitimizing governments' possession of supreme power but democracies respect the wishes of the people and consequently accept many obligations they legally could not be compelled to accept . . . the sovereignty issue really is dead, because
recent statutes and judicial decisions prove that government can legally enter into collective negotiations.\(^17\)

In summary, it would not be precise to state that the Executive Orders were the sole or even the major cause of the demise of the sovereignty doctrine at the practical level. The decision to allow collective bargaining in the federal sector was itself a sovereign decision. The special status of the federal government as an employer affects only the degree and limitations of the collective bargaining process; this special status as a sovereign employer no longer precludes the process.

**Unions and the Merit System**

Employment in the federal sector has not proceeded as in the private sector. Since the passage of the Pendleton Act in 1883, all federal civilian employees are dealt with under one system expressing the merit principle. Simply stated, the merit principle is a concept whereby all federal civilian employees are selected, promoted, assigned, discharged, or retired solely on the individual merit of the employee. Federal unions in general do not oppose the merit principle, but they do suggest that the employee, through his union, should have a greater voice

in the determination of the system through which this principle is applied.\textsuperscript{18}

Management officials seem to be more worried than union officials about the loss of the merit system. When discussing the compatibility of a collective bargaining relationship and the merit system, a management official states:

The decision is not where to draw the line. The decision is about two different kinds of personnel systems. Which are we going to have? They are different. They employ different principles, and they have different principles, and they have different concerns. We can no longer believe that we can be half collective bargaining and half merit system.\textsuperscript{19}

But the experience in the federal sector in the first decade of operation under the Executive Orders has been more of an accommodation of the two systems and a redefinition of roles than a replacement of one system by the other. For example, the role of the civilian personnel officer in the federal sector has undergone a rather drastic change. Under the pre-1962 personnel system, the personnel officer in the federal sector performed the dual function of interpreting and representing employee interests to management while at the same time serving

\textsuperscript{18}For example, see three books written by Hubert F. Hollander, Research Director of NFFE. These are: Spoils (Silver Springs, Md.: Cornelius Publishing Company, 1936); \textit{Crisis in the Civil Service} (Washington: Current Publications, Inc., 1968); and \textit{Quest for Excellence} Washington: Current Publications, Inc., 1968).

\textsuperscript{19}Muriel M. Morse, "Shall We Bargain Away the Merit System?" \textit{Public Personnel Review}, Vol. 24 (October 1963), p. 243.
as advisor to management in all personnel matters. To accomplish the function of employee protection "... either from rapacious management or tainted spoilsme, the personnel function, many thought, should be shielded by the armor of an independent personnel board or Civil Service Commission." With the coming of the union to the federal sector, the employee protection function has been taken over by the union. The federal personnel officer is no longer the "honest broker" between management and the employee, but now is an advisor to management alone.

An indicator of any weakening of the civil service system would be the changes in the Pendleton Act, which would then be reflected in changes in the Federal Personnel Manual. The Act has not been changed and the Federal Personnel Manual has only been revised in relatively minor ways, primarily to conform to changing conditions of employment in areas other than labor relations.

Another indicator of a faltering civil service system would be sequential provisions of the Executive Orders, each removing power from the Civil Service Commission. Though each Executive Order has enlarged the scope of bargaining (for instance, charges for dues withholding and the extent of paid time for union negotiators engaged in collective bargaining are now

negotiable), the basic power of the Civil Service Commission is still intact. Perhaps this power is nowhere more evident than in the composition of the Federal Labor Relations Council. The chairman of the Civil Service Commission also serves as chairman of the FLRC.

In summary, if the first decade of operation under the Executive Order program may serve as a guide, the federal Civil Service Merit System and the emerging formal industrial relations system seem to have reached an accommodation. The Civil Service Commission has the dual role of interpreting and putting into effect Civil Service laws, but the individual employee has a voice through his union in this interpretation. Further, again through his union, the employee is assured a hearing on any interpretation which adversely affects him. It would seem that the unions will continue to press for an enlarged scope of bargaining within the discretionary rules imposed by the Civil Service Commission. At least for the foreseeable future, it would appear that the two systems will continue to seek accommodation as each adapts to the ever-changing federal sector personnel environment.

Changing Inter and Intra Union Relationships

Relationships within and between unions are constantly undergoing change. The craft union-industrial union controversy was the cause of the formation of the AFGE upon the withdrawal
of the NFFE from the AFL in 1932. Hart predicted soon after
EO 10988 was promulgated that there would be strong union rival­
ries, with new unions appearing and old ones disappearing as a
result of the "Darwinian imperatives" of the Order. This
prediction proved to be correct. For example, the National Asso­
ciation of Government Employees (NAGE), by 1973 the third largest
federal union, was formed in 1961, just in time to take advantage
of the new rights and responsibilities of the new federal program.
District 44 of International Association of Machinists was
replaced by a Government Employee Department whose organization
was more nearly attuned to the privileges to be attained under
the new Executive Order.

A direct effect of Executive Order 10988 on the intra
union organization was in the type of leadership needed under the
new conditions. Soon after the EO 10988 was issued, a change in
leadership took place in the two largest unions operating in the
federal sector, AFGE and NFFE. The NFFE will be used to illus­
trate the significance of this changed union attitude toward the
union leadership.

The NFFE, under the leadership of Vaux Owen, initially
adopted a wait-and-see attitude toward the Executive Order. As

---

21 Wilson R. Hart, "The U.S. Civil Service Learns to Live
with Executive Order 10988: An Interim Appraisal," op. cit.,
p. 217.

22 Machinists and Aerospace Workers, International Association
of, Proceedings, 27th Grand Lodge Convention, Chicago, September
3-13, 1968, pp. 136-137.
an independent organization not affiliated with the AFL-CIO, it viewed with some alarm, the introduction of collective bargaining into the federal sector. This feeling is exemplified by the policy of NFFE as stated by Owen:

The NFFE will not engage in the "conflict of interest" practice of "collective bargaining." The NFFE will not affiliate with any organization having members outside the federal service who engage in "collective bargaining" . . .23

In the face of severe losses in membership by the NFFE, this policy toward the new program had to be modified. The change in policy was introduced with the defeat of Owen as President of NFFE by Nathan T. Wolkomir at the federation's 57th Convention in September 1964. Wolkomir's new policy was to work within the framework of the Executive Order. He stated, "We are a pressure group, a labor lobby registered with Congress to represent civil servants . . ."24

Wolkomir did continue the court action initiated by his predecessor to declare the Executive Order invalid, but this was a losing battle. The courts dismissed the case, concluding that " . . . in case of dispute, each branch of the government is to remain in its proper sphere and appeal is to be made to the agency


head or the Chief Executive, not the courts." Illustrative of the change in strategy under the new leadership, the Executive Council of NFFE in March 1968 urged all its locals to participate in organizing campaigns "... with special emphasis on the securing of exclusive recognition under the Executive Order." This is a complete change in tactics from the days of Owen.

To add further to the confusion, the battle lines are not drawn clearly between the independents, such as NFFE, and unions affiliated with the AFL-CIO, such as AFGE. In fact, these two unions have their basic industrial union organizational structure as a common feature. Some of the hardest fought battles have been between members of the Government Employees' Council, AFL-CIO. This council was formed in 1945 as a planning organization for those AFL-CIO affiliates having members in the government service. It is presently composed of 31 unions having members in the federal sector and in the state and local sector. These unions not only raid each other's locals for members, they also fail to present a united front on such basic issues as lobbying with the Congress over legislation concerning federal employees.

25 For a full text of this decision, see GERR, No. 109 (October 11, 1965), pp. E-1 to E-5.
In the federal sector, the traditional struggle between the craft and industrial concepts of unionism has been transposed from the private sector; but the power struggle for membership crosses craft-industrial lines. In the first decade of operation under the Executive Order program, each union, regardless of affiliation, attempted to reap the potential membership gain facilitated by this new program.

Professional organizations. In addition to the family fight between unions for power and expanded influence, the professional organizations within the federal sector were faced with a dilemma: whether to retain their status as professional organizations or to seek recognition as unions. None of the Executive Orders contained a definition of the term "professional employee," so the Civil Service Commission developed a definition which was used in the program from 1962 until 1972. Assistant Secretary of Labor W. J. Usery, not satisfied with this definition, developed another which is presently being used in unit determination cases. This definition is as follows:

(A) Any employee engaged in the performance of work; (1) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from knowledge acquired by a general academic education, or from an apprenticeship, or from training in the performance of routine mental, manual, or physical processes; (2) requiring the consistent exercise of discretion and judgement in its performance; (3) which is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical or physical work);
and (4) which is of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; or

(B) Any employee who has completed the courses of specialized intellectual instruction and study in (A) above and in performing related work under the direction or guidance of a professional person to qualify himself to become a professional employee as defined in clause (A) above.28

The advantages and basic rights which flow from recognition as a union are delineated in the Executive Orders. There are also certain disadvantages to the professional organization when it acquires union recognition. First, the neutrality of a federal agency toward its employees is compromised. It is common practice for an agency to encourage its professional employees to belong to and actively participate in professional associations and to support this participation by allowing the employee to attend meetings and conferences as an official duty. This privilege could no longer be extended to the associations if they gained recognition under terms of the Executive Order. Second, difficulties are posed by the Executive Order requirement that members of an agency management cannot participate in the management of the union or act as its representative. Traditionally, professional organizations have had supervisory officials serving in leadership positions. Even membership in the association by management officials

could give the impression of a "company union" and could make
the agency subject to an unfair labor practice charge by a
competing union.

The Hampton Committee recognized the dilemma facing profes­
sional organizations: if they did not seek recognition and
function as a labor organization, they faced loss of membership
to unions which were actively organizing; should they obtain
recognition, they were required to remove supervisors and managers
from any active leadership role and forfeit privileges they had
long enjoyed. The Committee Report stated:

In some instances, agencies may be overly fearful
of violating the rights of recognized labor organizations
and unnecessarily refrain from proper dealings with
professional associations on purely professional matters.
To maintain such communications and to avoid further
misunderstandings, we recommend that "professional" be
explicitly included among the types of associations
listed in section 7 (d) (3) . . . .29

After two years of operating under this amendment, exact
procedures still have not been completely worked out by management
and the professional organizations, the amendment offers a
reasonable option for the federal professionals and management.
Before taking that option, the federal professionals can await
the outcome of the activities of professional associations at the
state and local levels of government, specifically such profes­
sional groups as the National Education Association (NEA) and
the American Association of University Professors (AAUP). These

29 Hampton Committee Report, op. cit., p. 27.
professional groups are now establishing bargaining units, holding elections, and negotiating contracts. In all likelihood the federal professional association will go the same route as the associations at the state and local levels.

The activities of the employees in the Internal Revenue Service could also be used to illustrate the metamorphosis of a relatively quiet society of high level professionals into a labor union whose jurisdiction encompasses all employees, both professional and non-professional including many lower grade clerks. This metamorphosis began with the election in 1967 of Vincent Connery to the presidency of what was at that time the National Association of Internal Revenue Employees (NAIRE). The year Connery took office, a new organization constitution which he supported changed the presidency into a full-time, paid office with greatly expanded powers, and changed the major functions of the organization from social activities to collective bargaining and servicing of grievances. Since 1967 the jurisdiction of NAIRE has been expanded, new vice presidencies representing the lower level constituencies at IRS Service Centers have been added to the governing body, and a second full-time national office has been created. Two new collective bargaining agreements have been negotiated, covering a total of 54,000 employees in IRS District Offices and Service Centers where the organization holds exclusive recognition. The metamorphosis was completed at the NAIRE convention in August 1973. At this
convention the official name of NAIRE was changed to the National Treasury Employees Union (NTEU) to reflect the expansion of its jurisdiction from IRS to the entire Treasury Department, including the Bureau of Customs and the Mint. Connery argued for the name change on the basis that the "association" was "now a union." The vote for the new name followed the defeat of a resolution designed to keep the word "association" in the organization name. 30

Thus, we have two examples indicating a drift of employee groups toward "union" status: the NFFE, not interested in "collective bargaining" until a loss of membership forced it to seek the benefits offered in the Executive Orders; and NTEU, which changed from an "association" to a "union." The example of the NEA and AAUP at the state and local levels further substantiates this tendency.

Implication of unionization on management's right to manage. Closely related to the sovereignty doctrine is the issue of "management's rights to manage." This issue has been the subject of agonizing negotiation in the private sector, and with the additional impediment of the sovereignty doctrine in the federal sector, there is little reason to believe that a solution acceptable to both labor and federal management will be easily attained there.

Management-reserved rights are contained in EO 11491 in Section 12. The concept of reserving these rights followed accepted practice in the private sector, though some observers see this practice as compromised in the private sector by the NLRB. Loomis and Herman describe the private sector's reserved right approach as follows:

Until recently the prevailing approach to post-contractual labor management relations in the United States has been the reserved rights theory, under which an employer retains all rights to manage the enterprise except for those specifically surrendered in the collective bargaining agreement. Since the rights are "reserved" under this theory, an employer does not look to a collective agreement to ascertain its rights; it looks to the agreement only to ascertain the extent to which it has ceded away or agreed to share its rights and powers. 31

The strong management rights provisions of EO 10988 was an expression of concern on the part of President Kennedy's task force, which was introducing a form of collective bargaining into the federal sector for the first time. If followed literally, these provisions left few areas for bargaining, as unions soon discovered. Bargaining became a process of redefining and eroding the managements' rights language.

When both the Wirtz Committee and the Hampton Committee were considering revisions to EO 10988, unions advocated that bargaining should be permitted on any subject not prohibited by

law. President Meany of the AFL-CIO testifying before the Wirtz Committee, stated:

We urge deletion from the Executive Order of the references to management rights contained in Section 7 (2). Most of the six items listed in this section are governed by law or regulation. There is no reason why these matters cannot be subject to negotiation within the framework of existing laws.32

If this advice had been followed it would have made Civil Service Commission and agency regulations susceptible to change by collective bargaining. The Hampton Committee was apparently not persuaded by the union argument, since the reserved rights section was retained in EO 11491 and was not amended by EO 11616. Local negotiators must still bargain within the framework of provisions of the Federal Personnel Manual and agency regulations. Since the Civil Service Commission had had ninety years to develop personnel regulations to cover almost any eventuality, there is little of real substance to negotiate at the local level. Further, detailed agency regulations impede the development of the bargaining process at lower levels of the federal agency, especially at the local installation.

From a review of over sixty contracts signed by unions and federal agency management in 1971 and 1972, it is apparent that the agreements are more procedural than substantive. These

32George Meany, testimony before the Wirtz Committee, October 23, 1967, Washington, cited in CERR, No. 215, (October 23, 1967) In Executive Order 10988, Managements Reserved rights were contained in Section 7 (2).
agreements were mostly concerned with qualifying or implementing procedures on subjects still within the exclusive jurisdiction of management. For example, though a reduction in force (RIF) would be accomplished in accordance with Civil Service Regulations, the union would be notified concurrently with management that a RIF was to be effected. Management retained the right to require overtime work, but the union was given a voice in determining who would perform the overtime work. Though the installation reserved the right to implement an installation-wide parking plan, the union was given a voice in determining specific parking spaces.

The scope of bargaining in the federal sector during the first ten years after the promulgation of EO 10988 did not approach that of the private sector, but this does not mean that the bargaining program had no impact on management. The very act of consultation with unions on personnel policies and actions, begun by EO 10988 and expanded by EO 11491 and decisions of the ASLMR, tempered managements' right to manage. No longer could the federal manager retire to the sanctuary of his office and make unilateral decisions without input from the unions. In addition to those contractual relationships established at the bargaining table, the union is always available to see that management follows the dictates of the Executive Order. This is especially true at the local level, where the majority of contracts are negotiated.

No figures are available to indicate the cost of the total program; however, the Air Force alone invested $142,958 in
negotiating 64 contracts during 1972. This figure covers only the hours spent at the bargaining table; it does not cover costs of management officials and union negotiators who are Air Force employees during the time they were preparing to go to the bargaining table. Assuming the Air Force's costs to be relatively standard throughout the federal sector, the 1,694 contracts now in being cost approximately $3.8 million for time spent at the bargaining table alone.

SUMMARY

This chapter has indicated some significant impacts of the federal sector industrial relations program. The first significant change was in the rapid growth of unions in the federal sector in terms both of membership and of employees represented. The membership in AFGE increased sixfold in the decade following the promulgation of EO 10988, and the employees represented exclusively by AFGE increased over twelvefold. It is also significant that three out of every four federal employees who opted for union representation selected a union affiliated with AFL-CIO. Naturally this fact suggests that these affiliated unions would influence the emerging system in the federal sector toward that of the private sector.

33 Statistics on costs of negotiation from Department of the Air Force, Labor and Employee Relations Division, Directorate of Civilian Personnel. Conclusions are those of the researcher.
The first decade of the emerging federal system saw the death of the sovereignty doctrine as a viable concept. The policy decision to establish collective bargaining procedures in the federal sector was in itself a sovereign act. The special status of the federal government as an employer affects the limit and degree of the collective bargaining process, but can no longer be used to preclude that process.

The first decade of the evolving federal program also saw the unions attempting to have a greater voice in federal personnel relations through the merit "system" while still retaining the merit "principle." The merit principle presumes that federal employment requires the hiring, use, and separation of employees on the basis of qualification, without improper discrimination and in accordance with substantive and procedural equity. The merit system is a particular set of laws, regulations, and organizational structures designed to gain the goals of the merit principle. The main thrust of union activity has been toward securing a voice in establishing the rules by which the "principle" is effected, particularly through consultation on Civil Service Commission and agency regulations.

Perhaps the area in which the unions have had the least success is in enlarging the scope of bargaining. A strong management rights section in each of the Executive Orders has greatly circumscribed critical issues which the union would like to settle at the bargaining table. This is an area in which the unions have
much to accomplish in the decade of the seventies.

The first decade after EO 10988 also saw the unions themselves vying for positions of power and influence under the "Darwinian imperatives" of the new program. It was a decade of organizational effort. Professional employees had to make, and are still having to make, decisions on the advantages of remaining as a professional association or becoming a union in terms of the advantages to be obtained under the Executive Orders.

Although many questions remain to be answered concerning the nature and activities of public employees unions in the federal sector, the rapid increase in union representation and the outline of "rules" developed following the promulgation of EO 10988 justify calling this decade the period of the "take-off". Whether the decade of the seventies will bring the "drive to maturity" by federal sector unions remains to be seen. The following chapter will examine the principal divergence of the federal sector system from private sector practice: the areas of impasse settlement and wage determination.
CHAPTER V

STRIKES AND WAGE SETTING: SERIOUS DEVIATIONS FROM PRIVATE SECTOR PRACTICE

The cumulative thrust of preceding chapters indicates that the emerging federal sector industrial relations system is merging with that of the private sector in many procedural areas. Significant areas where this merging has not taken place in the first decade after the promulgation of EO 10988, are in strikes and in other job actions and in wage determination.

Chapter V analyzes these divergencies. The first part of the chapter compares and contrasts present practices in the federal and private sectors relating to the strike question. The latter part of the chapter is concerned with the institutional arrangements presently in effect in the federal sector in the area of wage determination. By the use of basic economic analysis, the impact of these institutional arrangements will be discussed in order to illustrate that in these two important substantive areas, federal unions have only an advisory role.

THE STRIKE ISSUE

The Private Sector

Historically, strikes in the private sector have resulted from impasses between union and management in the following areas:
organizational disputes, recognition disputes, interest disputes and grievance disputes. Organizational disputes are those in which the employer actively opposes the unionization of his employees. This type of strike has become relatively rare in recent years because of the significant percentage of union organization already achieved in industry, the relative slowing of union growth in the private sector, and the existence of more peaceful methods of unit determination and election of a collective bargaining representative under state and federal law.

Recognition disputes are those in which employers refuse to agree to procedures for establishing union claims to bargaining recognition or in which they refuse to recognize and bargain with duly certified unions or other employee representatives. In this latter category of strikes is the jurisdictional strike, a strike because of union rivalries over jobs and membership. Jurisdictional strikes involve either a dispute between unions as to which group of employees will perform a particular piece of work or a contest in which rival unions seek to compel the employer to recognize the one rather than the other as the exclusive bargaining agent of a group of employees. This type of strike continues to exist even though the AFL-CIO and the NLRB have established machinery to prevent these strikes from occurring, or to settle them if they should occur. However, jurisdictional strikes in this category are relatively unimportant, constituting less than
6 percent of all strikes in labor-management disputes each year.¹

Interest disputes are those in which unions and management are unable to directly and bilaterally reach agreement on all of the terms of a collective bargaining contract. These are disputes over the "bread and butter" issues such as wages, hours and working conditions and cause the vast majority of all strikes each year.²

The fourth type of dispute is the grievance dispute. In these disputes the parties to a collective bargaining agreement, not being able to directly and bilaterally resolve a dispute over the implementation or interpretation of a provision of the agreement, have no procedures for some binding resolution of the dispute. In recent years this type of dispute has also led to few strikes since over 90 percent of all contracts negotiated have a grievance procedure which ends in binding arbitrations.³ Because it allows a peaceful settlement of disputes which, lacking a grievance system, could lead to a strike, the grievance procedure is perhaps the most important provision of a negotiated contract. Though unions and management are extremely reluctant to allow third parties to negotiate the contract for them, they seem willing to allow a neutral third party to settle disputes over the


²Ibid., p. 213.

³Ibid., p. 124.
interpretation and implementation of the contract.

The words "union" and "strike" are viewed by some as being nearly synonymous. Strikes are often viewed as the primary purpose for union organization. Yet as a percentage of total man days available in any one year, strikes cause a loss of less than one percent of this total in the non-farm economy. Table 6 illustrates the record of work stoppages since World War II. The year in which the greatest percentage of working time was lost, 1946, represented only one percent of available time.

The strike right has not been abandoned in the private sector but there is continuing discussion of viable alternatives. Though innovative thinking is being done to derive alternatives, there is no evidence that the strike will be eliminated from the private sector in the immediate future.

**Strikes in State and Local Governmental Agencies**

Although this study is directed toward analysis of the industrial labor relations system at the federal level of government, this system is not evolving in a vacuum and is related to events in state and local government. The activities of employees at the state and local levels in the area of work stoppages are especially noteworthy both as an indicator of increased activity

---

^4See a special section in the *Monthly Labor Review*, Vol. 96, Number 9 (September 1973), pp. 33-67, in which alternatives to the strike are explored by Theodore W. Kheel, David L. Cole, I. W. Abel and other practitioners in the field of collective bargaining.
<table>
<thead>
<tr>
<th>Year</th>
<th>Number of Stoppages Beginning in Year</th>
<th>Workers Involved (Thousands)</th>
<th>Man-days Idle</th>
<th>Number (Thousands)</th>
<th>Percentage of total Working Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>1946</td>
<td>4985</td>
<td>4,600</td>
<td></td>
<td>116,000</td>
<td>1.04</td>
</tr>
<tr>
<td>1948</td>
<td>3419</td>
<td>1,960</td>
<td></td>
<td>34,100</td>
<td>.30</td>
</tr>
<tr>
<td>1950</td>
<td>4853</td>
<td>2,410</td>
<td></td>
<td>38,800</td>
<td>.33</td>
</tr>
<tr>
<td>1952</td>
<td>5117</td>
<td>3,540</td>
<td></td>
<td>59,100</td>
<td>.48</td>
</tr>
<tr>
<td>1954</td>
<td>3464</td>
<td>1,530</td>
<td></td>
<td>22,600</td>
<td>.18</td>
</tr>
<tr>
<td>1956</td>
<td>3825</td>
<td>1,900</td>
<td></td>
<td>33,100</td>
<td>.24</td>
</tr>
<tr>
<td>1958</td>
<td>3654</td>
<td>2,060</td>
<td></td>
<td>23,900</td>
<td>.18</td>
</tr>
<tr>
<td>1960</td>
<td>3333</td>
<td>1,320</td>
<td></td>
<td>19,100</td>
<td>.14</td>
</tr>
<tr>
<td>1962</td>
<td>3614</td>
<td>1,230</td>
<td></td>
<td>18,600</td>
<td>.13</td>
</tr>
<tr>
<td>1964</td>
<td>3655</td>
<td>1,640</td>
<td></td>
<td>22,900</td>
<td>.15</td>
</tr>
<tr>
<td>1966</td>
<td>4405</td>
<td>1,960</td>
<td></td>
<td>25,400</td>
<td>.15</td>
</tr>
<tr>
<td>1968</td>
<td>5045</td>
<td>2,649</td>
<td></td>
<td>49,018</td>
<td>.28</td>
</tr>
<tr>
<td>1970</td>
<td>5716</td>
<td>3,305</td>
<td></td>
<td>66,414</td>
<td>.37</td>
</tr>
<tr>
<td>1972</td>
<td>5100</td>
<td>1,700</td>
<td></td>
<td>26,000</td>
<td>.14</td>
</tr>
</tbody>
</table>

The data include all known strikes or lockouts including 6 workers or more and lasting a full day or shift or longer. Figures on workers involved and man-days idle for as long as 1 shift in establishments directly involved in a stoppage. They do not measure the indirect or secondary effects on other establishments or industries whose employees were made idle as a result of material or service shortages.

Preliminary data.

in the public sector and as a portent of coming events in the federal sector.

The most exhaustive study of strikes in the public sector was the one accomplished by the Bureau of Labor Statistics of the Labor Department covering the years 1958-1968. The number of strikes against a governmental unit rose from 15 in 1958 to 254 in 1968; workers involved increased from 1,700 to 202,000; and man-days of idleness jumped from 7,500 to 2.5 million. This trend is illustrated in Table 7. The leading types of government services affected were education and sanitation services. For example, in the last three years of the study, work stoppages in public schools and libraries constituted over 44 percent of all governmental stoppages and strikes by sanitation department employees constituted over 41 percent of the stoppages.

Issues that prompted work stoppages in the public sector were generally the same as those which caused private sector employees to strike. In the last three years of the study, 61 percent of the strikes in government arose because the parties were unable to agree on wage and fringe benefits. Seventy three percent of all workers involved in governmental work stoppages and 83 percent of the resulting idleness was due to wage disputes.

Though no such exhaustive study has been made since 1968, the evidence suggests that there has been no slackening of the

TABLE 7
WORK STOPPAGES IN GOVERNMENT, 1958-1968

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of Stoppages</th>
<th>Total Employees Involved</th>
<th>Total Man-Days Idle</th>
<th>Percentage of total Working Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>1958</td>
<td>15</td>
<td>1,720</td>
<td>7,510</td>
<td>.022</td>
</tr>
<tr>
<td>1959</td>
<td>26</td>
<td>2,240</td>
<td>11,500</td>
<td>.028</td>
</tr>
<tr>
<td>1960</td>
<td>36</td>
<td>28,600</td>
<td>58,400</td>
<td>.340</td>
</tr>
<tr>
<td>1961</td>
<td>28b</td>
<td>6,610</td>
<td>15,300</td>
<td>.077</td>
</tr>
<tr>
<td>1962</td>
<td>28c</td>
<td>31,100</td>
<td>79,100</td>
<td>.350</td>
</tr>
<tr>
<td>1963</td>
<td>28b</td>
<td>4,840</td>
<td>15,400</td>
<td>.052</td>
</tr>
<tr>
<td>1964</td>
<td>41</td>
<td>22,700</td>
<td>70,800</td>
<td>.240</td>
</tr>
<tr>
<td>1965</td>
<td>42</td>
<td>11,900</td>
<td>146,000</td>
<td>.120</td>
</tr>
<tr>
<td>1966</td>
<td>142</td>
<td>105,000</td>
<td>455,000</td>
<td>.970</td>
</tr>
<tr>
<td>1967</td>
<td>181</td>
<td>132,000</td>
<td>1,250,000</td>
<td>1.140</td>
</tr>
<tr>
<td>1968</td>
<td>254</td>
<td>201,800</td>
<td>2,545,000</td>
<td>1.650</td>
</tr>
</tbody>
</table>

*Includes stoppages lasting a full day or shift or longer and including 6 workers or more. Data on stoppages and workers involved refer to all stoppages beginning in the year; man-days idle refers to all stoppages in effect during the year.

*Includes five stoppages of federal employees, affecting 4,190 workers and resulting in 33,800 man-days of idleness.

Includes three stoppages of federal employees, affecting 1,680 workers and resulting in 9,600 man-days of idleness.

pace of work stoppages in government. For example, in September 1973, over 52,000 public school teachers were on strike. As has been the cause of previous strikes, the salary issue was foremost, but class size, supplies, and preparation time were also in dispute.

Three states have recently enacted laws allowing state employees a limited right to strike. Though it is too recent an occurrence to draw any conclusion from the enactment of these laws, one intuitively feels that there will be a greater incidence of strikes in these jurisdictions as public employees experiment with new rights.

From this very brief description of activity at the state and local levels, it is logical to conclude that the strike is becoming a union weapon in impasse resolution attempts. The BLS

---


7 These states are: Alaska, 1972. Strikes are prohibited for essential employees, limited right to strike for semi-essential employees and allowed for non-essential employees. Any employee in a category not specifically covered by the law will be placed in a category by the State Personnel Board; Hawaii, 1971. All employees granted limited right to strike. Strikes endangering public health and safety are unlawful. Hawaii Public Employment Relations Board (PERB) decides the legality of a strike. PERB may petition court for injunction against illegal strike; Pennsylvania, 1970. Limited right to strike unless strike creates a clear and present danger or threat to the health, safety or welfare of the public. Court determines whether such strike is a danger. Cited in "Summary of State Labor Laws," *Government Employees Relations Report Reference File 2* (Washington: Bureau of National Affairs, April 1973), Section 51: 501.
study indicates a marked change in state and local collective bargaining incidence in the decade between 1958-68 and there is evidence to indicate that the trend toward collective bargaining at this level is continuing. The strike right for state employees has been granted by legislative act in three states. Though work stoppages in government still cause a loss of a relatively small portion of total man-days available, any strike or other job action by government employees would have called for drastic action in earlier times. At the state and local levels of government, the strike seems to be becoming an accepted employee action if accomplished within legal constraints of the individual jurisdictions.

Strikes in the Federal Sector

As indicated previously in this study, strikes are illegal in the federal sector. The few strikes which have occurred in the federal sector have generally been resolved in a short time and without resort to the discharge of employees. Two recent strikes of federal employees, and the actions of federal management in coping with these strikes, illustrate the need for more

---

8 Supra, Chapter II.

9 Supra, p. 70.

10 The strikes in the federal sector listed in the BLS study previously cited were in the Tennessee Valley Authority (TVA), the longest of which lasted 11 days. This strike involved 2,500 TVA construction workers and was a jurisdictional strike.
research into the entire strike question in the federal sector.

The first of these strikes was the strike of postal employees in March 1970. The strike began on March 18 in the New York City boroughs of the Bronx and Manhattan and before it was settled on March 25, over 208,000 postal employees were either striking or honoring picket lines.\textsuperscript{11} There was never any question that the employees were engaged in an illegal strike. As a result of the strike, no postal employee was suspended, fired or punished in any way. On the contrary in the Memorandum of Agreement between the Postal Department and the various postal unions, the Postal Department agreed to support legislation to secure a 6 percent wage increase for all postal employees retroactive from the date of the agreement, April 3, 1970, to December 27, 1969. The Postal Department also agreed to support legislation to establish a Postal Corporation with another 8 percent wage increase effective with the passage of this enabling legislation.

In brief, the unions got what they wanted, an immediate and substantial wage increase; the federal Executive Branch got what it wanted, a Postal Corporation. The provisions of the Memorandum of Agreement were carried out, the employees got the wage raise and the Postal Corporation was established by the Postal Reorganization Act of 1970 (Public Law 91-375) signed by

President Nixon on August 12, 1970.\textsuperscript{12}

At the same time the postal employees were on strike members of the Professional Air Traffic Controllers Organization (PATCO) were engaged in a "sickout" against the Federal Aviation Administration (FAA). Absenteeism at the 21 major air traffic control centers reached about 13 percent at its highest point on March 30. The "sickout" was started in protest over the involuntary transfer of three air traffic controllers from the airport tower in Baton Rouge, La., an action PATCO charged was an attempt by FAA to break up "... a bastion of PATCO strength."\textsuperscript{13} The "sickout" was not effective nationwide but did cause delays in air traffic at such high density facilities as New York, Chicago, Denver, Oakland, and Kansas City. The "sickout" was ended on April 11 when a federal judge ordered PATCO leaders to direct a back-to-work movement or furnish medical proof of controllers' illnesses.

PATCO was charged by the FAA with violating the provisions of EO 11491 by conducting an illegal strike. Hearings were held before a Department of Labor hearing examiner. The official serving as trial examiner for the Labor Department was the chief trial examiner of the National Labor Relations Board (NLRB) on

\textsuperscript{12}For a concise summation of this law see GERR No. 362 (August 17, 1970), pp. G-1 through G-3.

loan to the Labor Department for this case. This is a further illustration of the merging of the private and public sectors, since for precedent setting cases, NLRB experts are brought in to rule on federal sector cases. The trial examiner ruled that PATCO did engage in an unlawful strike against the FAA. However, he classified this action as an unfair labor practice and required PATCO to post notice for 60 days that they would cease and desist from calling or engaging in a strike or failing to take affirmative action to stop a strike if one should occur.

In ASLMR Decision 10, Assistant Secretary Usery generally agreed with the hearing examiner's findings. PATCO was in effect suspended from any activity for 60 days, any pending election petitions were invalidated and dues withholding agreements cancelled. Though not nearly as severe as the FAA desired, the penalty against PATCO was at least an acknowledgement that there had been a violation of EO 11491.

In neither of these strikes were the penalties available under law mentioned as a possible management action. In the postal strike, neither the FLRC nor the ASLMR were even brought into the negotiations. In the controllers strike the provisions of EO 11491 were brought into operation but the strike was called an unfair labor practice. The actions of the federal executive branch in these two instances raises grave questions as to the determination of the federal government to enforce the law prohibiting federal employees from striking. It would appear
that this law, like the prohibition laws, is honored in the breach. Further, does the Executive Order provision only apply to small unions and not those with political power? These two examples seem to indicate an uneven application of Executive Order provisions with the no strike law being completely ignored.

Proposed Solutions to Strike Problem in the Federal Sector

The strike, or the threat of a strike, is one of the major economic weapons for employees in the private sector. The classic model of the private sector strike is that a group of employees withholds its labor in order to get certain concessions from the employer. The employer loses the revenue from the goods and services which these employees would have produced and the employees give up their wages during this time period. Since the private sector strike inflicts damages on both parties, each should then exhibit some degree of reasonableness essential to continued and realistic collective bargaining. The right to strike following this model has been recognized in the National Labor Relations Act and its prohibition has been an important political issue. As noted previously, although the strike weapon is available it is employed in only a small number of cases. 14

No such strike right exists in the federal sector. The constitutional question of whether federal employees have the strike right was settled for the immediate future by a 1971 court

14 Supra, p. 122.
decision. The court in sustaining the constitutionality of the strike prohibition stated:

At common law no employee, whether public or private, had a constitutional right to strike in concert with his fellow worker. Indeed, such collective action on the part of the employees was often held to be a conspiracy. When the right of private employees to strike finally received full protection, it was by statute . . . It seems clear that public employees stand on no stronger footing in this regard than private employees and that in the absence of a statute, they too do not possess the right to strike . . . 15

This decision does not preclude the passage of an amendment to the NLRA specifically including federal employees under its coverage or the passage of a separate law extending the strike right to federal employees. But assuming no such law is passed in the immediate future, what are some of the possible alternatives in the federal sector? If the postal strike, the PATCO "sickout" and the experience at the state and local levels can be used as examples, a law which simply precludes strikes without an alternative for impasse settlement can be legally difficult, politically dangerous and on the whole, counter productive to collective bargaining. If public policy is to dictate a strike ban on the one hand and allow "collective bargaining" on the other, there should be some method of resolving impasses other than unilateral determination by federal management.

There have been several proposals for eliminating the strike as an economic weapon. All of these proposals envisioned that employees would continue to work and that the employer would lose some production of goods or services. Most of the proposals also involved a reduction in pay to the employee between the declaration of the "nonstoppage" and the settlement.

There have also been many strike substitute proposals relating to the public sector. Though each has its own

---

16 A selected list of these proposals would include:

peculiarities, each assumes that there must be something comparable to the strike in the public sector. One example of the proposals is that of Bernstein, who would combine the non-stoppage strike with the graduated strike.\textsuperscript{18} In general terms this is the Bernstein proposal:

In a nonstoppage strike, operations would continue as usual, but both the employees and employer would pay to a special fund an amount equal to a specified percentage of total cash wages. Thus while both parties would be under pressure to settle, there would be no disruption of service. In a graduated strike, employees would stop working during a portion of their usual work week and would suffer comparable reduction in wages. Hence, there would be pressure not only on employees and employer but also on the community; however, the decrease in public service would not be as sudden or complete as in the conventional strike.\textsuperscript{19}

Bernstein suggests that the "non-stoppage" strike and the "graduated" strike would work in tandem. That is, the unions should be required to try the non-stoppage strike for a period of time then if no settlement is reached, they would be permitted to institute a graduated strike. If the services are absolutely essential, such as fire and police protection, the union would be limited to the non-stoppage strike.

The underlying assumption of each of these proposals is that the strike or a strike substitute is necessary to insure


\textsuperscript{19}Ibid., p. 470.
collective bargaining. If this assumption is removed, then an entire new area of investigation is opened. If there must be a finality in collective bargaining, there must be ways other than the strike for reaching this finality. This study suggests that this finality should be obtained in the federal sector through compulsory arbitration. In spite of the emotional appeals of many writers, there is nothing inherently sacred about the strike right per se. It is not an end in itself but only a means to the end of reaching agreement between the employer and the employee on terms of employment.

For at least four decades collective bargaining has been the central feature of public regulation of private sector labor management relations and the strike right has been thought essential to making collective bargaining work. The decade of the sixties has seen collective bargaining become increasingly important as a feature of employee management relations in the federal sector, but without the strike right.

This study suggests that the strike right for federal employees should not be granted but these employees should have the right to settle negotiating impasses through compulsory arbitration. The principal argument against compulsory arbitration

---

as a means of settling interest disputes centers on the necessity that the two parties involved should be able to determine the precise nature of their final relationship as signed into contract. If a third party is available to impose its will on the bargaining parties, neither will engage in productive "bargaining" but will hold to an arbitrary position on each issue, since to change would place that side at a disadvantage in arbitration. The availability of compulsory arbitration thus tends to freeze the parties in their respective initial positions and no meaningful collective bargaining can take place.

Compulsory arbitration of negotiating impasses also permits each party to escape responsibility for the final terms of the agreement. If the award is unpopular with the union membership on the one hand or with the higher level federal managers on the other, each negotiator can blame the arbitrator. Since neither side is committed to the solution, neither party will feel a commitment to honor the administration of contract terms which it had no hand in determining.

Yet even in the private sector, certain types of compulsory arbitration have been institutionalized. Compulsory arbitration is in effect and considered desirable in grievance procedures and in the unfair labor practice cases within the jurisdiction of the NLRB. But the existence of compulsory arbitration procedures in the area of contract administration has not always resulted in the use of this procedure. Most cases are still resolved by the
parties, though sometimes with the assistance of mediators such as those employed by the Federal Mediation and Conciliation Service (FMCS). Further, some cases have been referred to arbitrators for political and strategic reasons as face saving measures. The arbitrator thereby fulfills a mediation role, allowing management or union to "lose" gracefully.

The Canadian experience may also be used as an example of the use of compulsory arbitration at the federal level. Canada's Public Service Staff Relations Act of 1967 allows the employees' bargaining agent to choose whether any dispute resulting from negotiation will be settled by strike or the arbitration process. In the first four years under this Act the overwhelming majority of employees had selected arbitration yet only three agreements had been decided by arbitration. At least in Canada, the availability of compulsory arbitration does not seem to have had a dampening effect on the bargaining process.

In the United States federal sector, the presence of the FSIP also does not seem to have had a dampening effect on

---


collective bargaining. Perhaps it is time that the traditional argument that compulsory arbitration and collective bargaining are incompatible be questioned. This is an area where the federal sector can perhaps lead the private sector instead of adapting, without innovation, the private sector practices. Since impasse settlement still has not been institutionalized in the federal sector, there is opportunity for experimentation. For example, the present Executive Order could be amended to provide for a permanent Impasse Panel consisting of five members, who are full time panel members. Competent neutrals could be found to fill these positions for a specific term appointment. Though there is an admitted lack of experienced neutrals with federal sector expertise, this is a part of shaping the evolving federal system.

If an impasse occurs between the union and agency management, the parties would be required to seek assistance from the FMCS. If settlement is not reached the Panel conducts fact finding hearings. These hearings would be conducted by a staff member of the Panel who would make recommendations for settlement. If the recommendations are not accepted, then and only then, could

24 Supra, pp. 67-69.

the impasse be taken to the Panel. The Panel would have the right to impose a final and binding settlement.

Since the scope of bargaining in the federal sector does not include subjects covered by law, the actions of the Panel would not constitute an illegal delegation of power by the legislative branch. Wage settling is also done in accordance with congressional action, so the Panel would be acting primarily in the area of working conditions and conditions of contractual employment. Civil Service Regulations mandated by law and wage determinations would be outside the license of the panel. Would this proposal absolutely remove the strike threat from the federal sector? The answer to this question is obviously that it would not. "Wildcat" strikes still occur in the private sector even in the face of no-strike clauses in negotiated contracts. And if the experience of the postal strike and the air controllers strike is meaningful, it suggests that if working conditions are unacceptable to a group of employees and no one within the bureaucracy will listen to these real or imagined grievances, work stoppages will occur in spite of laws prohibiting such action. But the impasse panel removes many obstacles to a neutral environment, and gives both the agency and the union a "court of last resort" in which grievances may be aired.

26 See infra, pp. 139-169 for a discussion of wage determination in the federal sector.
Though compulsory arbitration is not the solution to every impasse which might arise, it has possibilities for uses, in the areas previously described, as an alternative to the strike. Since the federal system is still evolving and impasse settlement has not been institutionalized, there is no true conventional wisdom in the federal sector. Compulsory arbitration on a trial basis under the present executive order system would be a worthwhile experiment.

FEDERAL SECTOR COMPENSATION TO CIVILIAN EMPLOYEES

The wages and salaries of federal civilian employees are determined through two separate and distinct systems. These are the Coordinated Federal Wage System (CFWS), which is used to set wages for blue collar employees and the General Schedule system (GS) which is used to determine salaries of white collar employees. The cornerstone of each system is the principle of comparability, which seeks to relate federal sector compensation to private sector remuneration for the same levels of work. Each of these systems will be analyzed in turn.

Wage Setting Under the Coordinated Federal Wage System

The purpose of the CFWS is to fix the wage rates of: .

. . . federal employees in recognized trades or crafts, or other skilled mechanical crafts, or in unskilled, semi-skilled, or skilled manual labor occupations, and other employees involving foremen
and supervisors in positions having trade, craft or laboring experience and knowledge as the paramount requirement.27

In short, the CFWS is designed to set the wages of all federal blue collar employees. Though the principle of comparing federal blue collar wages with those of like skills in the private sector occurred at various times prior to 1861, it was in this year that a system was formally established to gather wage data and set rates "in conformance with those of private establishments in the immediate vicinity."28 The first "wage boards" to collect and evaluate this comparative data were established by the Department of the Navy, but other agencies soon followed the Navy example. However, each agency established its own job standards for classifying positions and since there was wide variation in the scope of the jobs classified, wide divergencies developed in the hourly rates of pay for similar jobs in different agencies in the same geographic area. There was not one federal wage system but a great many different systems by agency.

Not only were there discrepancies between agencies, but also within agencies. Each agency developed wage-setting procedures which were utilized on a regular basis. For example, the


defense establishment, which by 1966 had evolved into the Department of Defense (DOD) and employed 500,000 of the 800,000 federal blue collar employees, had two separate boards for setting the wages of its employees. These were the Army-Air Force Wage Board and the Navy Wage Board. The procedures of these two boards resulted in discrepancies even within DOD itself.

With such a hodge-podge of "systems" Congress, with the help and insistence of the federal unions, sought to rationalize the wage board systems. In October 1967, the Senate passed a bill creating a new coordinated system, but before Congress had completed action, Chairman Macy of the Civil Service Commission announced that President Johnson had approved:

... a new Coordinated Federal Wage System which will cover the government's 800,000 wage board employees in trade, craft and laboring occupations beginning in July 1968. The new system, when operational, will replace the many separate wage board systems now maintained by the individual departments and agencies.29

The CFWS as devised by the Civil Service Commission was in effect from July 1968 through July 1972. The CFWS system was legalized in August 1972 by PL 92-392.30 This law made only minor adjustments to the administratively developed system. In summary, prior to 1861, there was no federal service-wide system for wage setting of federal blue collar employees. The Navy instituted

---


30 PL 92-392; 86 Stat 564.
a wage board system whose central premise was that federal blue collar employees would be paid at the same rates as their private sector counterparts. Other agencies followed suit but with no federal government-wide policy. In 1968, the CFWS established a single regular wage schedule for each local geographic area eliminating differences in wage rates for the same job paid by different federal agencies. This system, with minor modifications was legalized by PL 92-392 in 1972.

The present system will be briefly described in general terms. The top policy making body in the CFWS is the National Wage Policy Committee (NWPC). The NWPC consists of eleven members appointed by the Chairman of the Civil Service Commission. Five of the members are from the ranks of agency management, four are from unions affiliated with the AFL-CIO having members in the federal sector, one is from a national independent (not affiliated with the AFL-CIO) union, and the chairman of the NWPC is a neutral from outside the federal sector. The primary function of the NWPC is to review and recommend basic policies which govern the system.

The Civil Service Commission has the responsibility of designating geographical survey areas, the "wage survey" for all federal employees must be confined to that specific geographic

31 For the reader interested in a more detailed description of the system see, United States Civil Service Commission, Federal Personnel Manual (Washington: Government Printing Office, 1968), Section 532-1, as amended. Especially see Appendices A-K which cover wage survey areas, survey job descriptions, instructions for data collectors, computing a trend line, a sample wage schedule and description of key ranking jobs.
area. The survey is accomplished by a survey team which makes an on site survey every two years, that is, the team visits selected industrial establishments within the survey area to make job comparisons and compare wages. The teams are comprised of two representatives of management and one representative of the union which has the greatest number of wage employees in the survey area.

Just as in wage bargaining in the private sector, the survey team does not survey each individual job and rate but surveys key rates in various job clusters. A job cluster is defined as a stable group of job classifications or work assignments within a firm which are so linked by technology, the administrative organization of the production process, or social custom that they have common wage making characteristics. Each cluster may be viewed as consisting of a key rate and associated rates. Once these key rates are established, the associated rates fall into line.

When the survey team has completed its survey, the data is referred to the "lead agency," the agency with the majority of wage employees in the area, for analysis and establishment of the new wage rate. New wage schedules go into effect at the start

---


33Specific survey team instructions and "lead agency" computation methodology is outlined in the Federal Personnel Manual, op. cit., Supplement 532-1.
of the first pay period that begins 45 days after the start of the wage survey.

At the present time wage grade employees are divided into three categories: regular non-supervisory employees (WG), regular leaders (WL) and regular supervisors (WS). There are fifteen grades within the WG and WL categories and nineteen grades within the WS category. Further, each grade has five steps. Steps four and five were added to the structure by PL 92-392. Under this law entry-grade employees (step 1) receive 96 percent of the prevailing local wage rate; employees at the second step receive the prevailing local wage rate; employees at the third step receive 104 percent of the prevailing rate; at the fourth step 108 percent of the prevailing rate; and at the fifth step 112 percent of the prevailing rate. The minimum time requirement in each step is: eighteen months each in steps 1 & 2, and two years each in steps 3 & 4. The employee is eligible for promotion to these succeeding steps after serving the specified time period if he is performing his job satisfactorily.

The unions representing federal wage grade employees are able to influence wage setting in two principal ways: by the presence of union representatives on the NWPC and by the presence of a union representative on the local wage survey team. The influence of the union member on the local survey team is limited to ascertaining that the institutionalized procedures are carried out. The potential influence of the union members on the NWPC is
significant since they can make proposals regarding the scope of the wage survey, the geographic boundaries of the survey areas, the job cluster to which the new wage schedule will apply and the way in which each pay line is computed. But their impact is limited to persuasion and there is no significant evidence indicating that they have had any impact since the NWPC was established in 1968 and its duties amplified in 1972. The unions do now have a voice at the policy making level, something which they did not have as a right prior to PL 92-392. At the present time the activities of private sector unions in changing the prevailing rate is of much greater significance than the activities of federal sector unions. But the institutional arrangement for federal sector wage setting causes an upward spiral of wages in areas where there are significant numbers of federal employees. First, examples will be given showing how private sector unions may have significant impacts on wage determination, then the local area upward spiral caused by wage setting will be examined.

Local markets can be classified in many different ways but take as examples the perfectly competitive labor market and the monopsonistic labor market. The perfectly competitive labor market will be considered first. Assume the labor market has a

34 For example, in Montgomery, Alabama and Columbus, Georgia, federal wage setting has a significant impact. In Atlanta, Georgia, or Houston, Texas the federal manager would see his supply curve of labor as perfectly elastic at the going rate.
positively sloped supply curve, that is, at higher wage rates more workers will enter the labor market. Assume a negatively sloped demand curve, that is, a greater number of workers will be employed at a lesser wage rate. This labor market is depicted in Figure 4 where D and S are the demand for and supply of labor respectively. In the absence of a union, Q units of labor would be supplied at wage W. Now assume the labor market is organized. If the union, and the worker are satisfied, the wage and employment situation could remain the same. The coming of the union could be for reasons other than wage bargaining, i.e., to establish a grievance system or simply to give the employee a voice in his conditions of employment. But assume the union does attempt to raise wages and is successful in bargaining the wage rate to \( W_1 \) in Figure 4. The union supply curve for labor is now \( W_1S_1S \) and \( Q_1 \) units of labor are now employed. The result of the unionizing of the labor market is a rise in wages but a decline in employment. In the perfectly competitive labor market, unions may benefit their membership but only at a cost as illustrated above. There is usually a trade off between higher wages and unemployment for a portion of the membership. The trade off will be determined by the goals of the particular union at that particular time.\(^{35}\)

Figure 4. Economic Effects of a Labor Union in a Perfectly Competitive Labor Market.
In monopsonistic markets, however, unions will benefit their members if they employ rational policies. Consider the monopsonistic labor market depicted in Figure 5. In Figure 5, units of labor hired are indicated along the X axis, while the cost of labor and its productivity in terms of money wages are indicated along the Y axis. The supply curve of labor S is again assumed to be rising in this labor market. Each point on this supply curve indicates the wage which will have to be paid to attract the amount of labor indicated along the X axis. The wage paid and the average cost of labor are therefore identical. However, since the average cost of labor is rising, the marginal cost (M) will be greater since the marginal cost curve considers not only the higher wage paid to the last employee hired, but the addition to total wage costs resulting from a higher wage rate to all employees already hired in the labor market. Without unionization, and assuming employers who desire to maximize profits, the amount of labor hired will be that where the marginal cost of labor is equated to its marginal revenue product, point a in Figure 5, where 0 Q₁ units of labor will be hired at a money wage of O W₁.

Now assume the labor market is unionized. The union has several options open to it in terms of wage bargaining depending on its relative strength compared to that of management, and its

---

Figure 5. Economic Effects of a Labor Union in a Monopsonistic Labor Market.
own desires. One alternative is to maintain the present level of employment and secure a significant wage rate increase. To accomplish this goal, it could bargain the supply curve of labor to $W_2bS$, the corresponding marginal curve would then be $W_2bcM$. Since marginal revenue product is equal to marginal cost of labor at point $a$, equilibrium employment remains at $0Q_1$, while money wages have increased from $0W_1$ to $0W_2$. It should be noted that $0W_2$ is the maximum money wage rate attainable without a reduction of employment.

At the other extreme the union goal could be maximum employment of the labor force. In this instance it would bargain for a supply curve of labor $W_3dS$, the associated marginal curve would then be $W_3dem$ in Figure 5. Marginal revenue product now equals the marginal cost of labor at point $d$, the union has now increased employment from $0Q_1$ to $0Q_2$ and also increased wages from $0W_1$ to $0W_3$. This is the point which would obtain under perfectly competitive labor market conditions. Between the two polar positions $0W_1$ and $0W_2$, maximum employment or maximum wage increase, the union has other alternatives and trade offs between employment and wage increases.

From this brief analysis of two possible labor markets and the impact of a union in each it is demonstrated that unions have various impacts on private sector wages and employment. It is not necessary to show all impacts that the union may have, for as in most institutions, union motivations may not be purely or
even primarily economic. But it is required that the strength of these motives be measurable by the price system. The previous examples reveal options available to the union regardless of motivation.

Federal sector wage setting will now be examined; first, at a federal installation in a perfectly competitive local labor market and second, in a local labor market containing a monopsonistic employer. Assume the establishment of a federal installation in a local labor market without private sector unions and where perfectly competitive conditions exist. The assumption of perfect competition incorporates the basic assumptions of rationality, mobility, and knowledge. Assume further that unions of federal employees have no strike right but do play a role in wage setting through participation in the wage survey team. Wage setting in the federal wage grade categories has a built-in one year lag. A full scale survey is made every other year to establish rates for all wage grade employees. A wage change survey is a more limited survey conducted in the year following the full scale survey to ascertain any changes made in the pay rates for the previously surveyed jobs. This survey is usually taken by telephone. This procedure sets wages on a basis of the wage patterns of the private sector in the preceding year.

Assume also that the new federal installation employs a negligible portion of the labor market supply. This market is illustrated in Figure 6. The initial wage survey would show OA,
Figure 6. Supply and Demand for Blue Collar Employees, Initial Wage Survey Conducted by Federal Installation in Purely Competitive Local Labor Market.
the equilibrium wage rate in the market, to be the "prevailing" wage rate for a particular occupation and skill level. Since it is assumed that the federal installation is a relatively small employer in this labor market, the federal manager sees the relevant supply curve as perfectly elastic at the prevailing rate.

Assume that a union now enters this labor market. If the union negotiated rate is equivalent to the equilibrium rate, there will be no change in employment conditions. But assume that the union now negotiates a wage above the equilibrium wage as in Figure 4. During the first time period the federal installation would still be able to hire at the old prevailing rate OW, for now there is a pool of employees, QQ\(_1\), who are still willing to work at wage OW. But when the next wage survey is made, the new prevailing wage would now be OW\(_1\), so that in effect all federal employees would get a wage increase of WW\(_1\). This would occur because of the negotiated rate in the private sector, not because of the efforts of the federal union. That is, if the organized market rate is above the equilibrium rate, federal wages will also be above the equilibrium rate because of the institutional procedures of the comparability doctrine. Negotiating power of private sector unions is transmitted to the federal employee through the wage survey.

Drop the assumption that the federal installation has no impact on the local labor market. Some possible impacts of a large federal installation being established in the local labor
market are illustrated in Figure 7. These impacts may be seen as both the demand for and the supply of labor in the labor market. The demand for labor will be affected, not only by the workers demanded by the federal installation, but also by changes resulting from increases in demand for products and services produced in the private sector. The supply of labor may be affected through the effects of the installation in attracting workers to the area in expectation of the increased demand for labor. If the establishment of the installation causes a change in demand equal to the supply response, wage OA will remain the "prevailing" wage and \( N_{N_1} \) additional workers will be employed. If the change in demand is greater than the supply response, \( N_{N_2} \) additional workers will be employed but at an equilibrium wage of OC. If the change in demand is less than the supply response, \( N_{N_3} \) additional workers will be employed but at a wage of OD which is less than the prevailing wage OA in effect prior to the establishment of the federal installation. With the assumption of a perfectly competitive market, absent a private sector union, the relationship between increased demand and supply response will determine both the wage rate and the number of employees.

Assume that a private sector union has been able to negotiate a wage rate above equilibrium prior to the establishment of the federal installation, such as wage OB in Figure 7. At this wage, \( N_{N_4}N_5 \) additional employees would be hired and since the prevailing rate would now be OB, federal employees would receive the
Figure 7. Possible Effects of Changes in Supply and Demand of Blue Collar Employees in a Local Labor Market.
benefit of the private sector negotiated rate. Further, if the
union is able to maintain a differential between the new equilib-
rium wage rate (OB with \( N_4 \) employees) and the negotiated wage
rate, federal wages will again follow (with a one year lag). The
important point is that the principle of prevailing rates and
comparability with private sector wage rates makes the federal
employee dependent on the private sector union for wage adjust-
ments, not on the union of which he is a member. The primary
role of the federal sector union is to ascertain that the insti-
tutional procedures, both at the local level and at the national
level, are followed.

In a monopsonistic private market, again assuming that
the federal installation is so small that its demand for labor
does not appreciably affect labor demand in the market, the fed-
eral employee is dependent on the private sector union. In Fig-
ure 5 when there is no private sector union, the initial survey
would indicate a wage of \( OW_1 \) so the imperfection in the market
would be transmitted to the federal sector by way of the wage
survey. With the coming of a private sector union to this market,
the federal employee is again dependent on the private sector for
a wage change. The federal employee would see his wages raised
in the range \( W_1 W_2 \) according to the option exercised by the private
sector union; the federal employees' wage rate will follow with a
one year lag.
If the federal installation becomes a large user in this market, the monopsonistic market changes to an oligopsonistic market. The analytical principle is the same however, since now there are two significant buyers of labor services instead of one. Since the two buyers of labor do not compete in the product market, the MRP of the private sector firm would not change. The demand for labor for the newly established public sector firm can be considered to be perfectly inelastic since labor is hired with a fixed budget and a given number of budgeted positions. Therefore, although the demand for labor in the labor market becomes more inelastic, the oligopsonistic private sector firm sees no change in the demand for labor. The private sector firm will, however, see a change in the supply of labor to his firm as the public sector firm hires a significant part of the available labor force in the area.

Assume that the new competition for workers moves the supply schedule for the private sector firm in Figure 8 to $S_1$ and the corresponding Marginal Expense of Input schedule for the private sector employer to $M_1$. The wage rate would change from $OW_1$ at employment $Q_1$ to a wage rate of $OW_2$ at employment $Q_2$. The effects of union organization in the private sector could be the same as shown above for a monopsonistic market when the federal installation is relatively small. Just as in the case shown in Figure 7, however, the monopsonistic private sector market could be affected by increases in the demand and supply of labor.
Figure 8. Possible Effects of a Change in Supply of Labor in a Monopsonistic Labor Market.
resulting from the establishment of the federal installation.\textsuperscript{37}

Again, however, as explained above, the effects of such changes would be transmitted to the public sector firm after a one year lag.\textsuperscript{38}

The two new steps added to the blue collar system by PL 92-392 could tend to exaggerate the upward spiraling effects of the interrelationships between private and federal sector wage setting. This provision of PL 92-392 has been in effect for such a short time that no specific evidence exists as to its impact. However, since one of the most important arguments in private sector wage negotiations is comparison with like jobs, private sector unions cannot avoid considering these two new steps when negotiating for new private sector wage rates.\textsuperscript{39}

In summary, though every possible labor market was not analyzed, an analysis of two markets strongly indicates that federal sector wage rates are dependent on market forces in the absence of private sector unions or on private sector negotiated rates. The primary functions of federal unions in the wage setting area are to insure that institutional arrangements for comparative wage setting are carried out, and to lobby at the Congressional level to change the institutional procedures to

\textsuperscript{37}Supra, p. 154.

\textsuperscript{38}Supra, p. 156.

\textsuperscript{39}See Bloom and Northrup, op. cit., pp. 318-324.
the benefit of the employees they represent.

The inability of federal unions to directly benefit their constituency by bargaining with management over wages is a significant departure from private sector practice. As long as federal unions are limited to a vigilant guardian role, the actions of unions in the private sector are the key to wage changes in the federal blue collar sector.

It should be noted that the wage surveys address only money wages and do not take into account fringe benefits such as vacations and security of employment. The question of comparability of the federal sector and the private sector in the area of fringe benefits will be presented later in this chapter.

**Salary Determination for General Schedule Employees**

The second large group of federal employees encompasses employees whose salaries and related benefits are determined directly by an act of Congress. This group of "white collar" employees contains those paid under the Classification Act of 1949, as amended. The Classification Act covers virtually the entire spectrum of white collar employment, from jobs involving routine clerical tasks to the highest level of professional and administrative work.

The Classification Act provides for a national salary schedule applicable to 18 grades or work levels. Each grade, except the top grade (GS-18) contains a range of rates. In effect, positions under the Act are placed in the appropriate
grade on the basis of job evaluation. Each grade typically contains a great variety of positions, all of which, in theory at least, are considered equivalent in terms of responsibility, level of difficulty, and qualifications required. Grades 16-18 (the so-called "super grades") were added to the structure by the 1949 Act to provide a measure of upward mobility in the Civil Service. Congress, however, has placed specific limitations on the number of positions which can be placed in these three grades.

The principle of comparability of federal white collar salaries to those in the private sector is a relatively new concept, first embodied in the Federal Salary Reform Act of 1962 (PL 87-793).

Prior to the Salary Reform Act of 1962, there was no clearly established framework within which salary legislation could be considered. Prior to 1962 when some form of salary adjustment was indicated a wide variety of bills would be introduced in the Congress. Hearings would be held before the appropriate committees of the House and Senate and eventually some new pay legislation would emerge. Though data would be introduced at the hearings to reflect trends in the cost of living, productivity, and wages in the private economy, no organized body of data on salaries by occupation in the private sector was used as a comparison with the federal salary structure as a whole.

---

40This "indication" usually took the form of lobbying by the postal unions.
The Federal Salary Reform Act of 1962 remedied this deficiency by stating as a matter of law that "Federal Salary rates shall be comparable with private enterprise salary rates for the same levels of work." The Act also established elaborate machinery and a systematic procedure for review of federal pay by the Executive Branch and for policy recommendations to the Congress.

Although Federal employee unions were not initially given an official voice in salary determination in the 1962 Act, this omission was changed by the Federal Pay Comparability Act of 1970, PL 91-656. The latter Act retains the 1962 declaration of Congressional policy that federal salaries will be comparable to private sector rates for the same or similar jobs and that the device used to make changes in white collar salaries would be the Professional Administrative and Technical Survey (PATS) conducted by the Bureau of Labor Statistics (BLS). The Act further provided that, beginning in 1972, the President will, in October of each year, make the comparability adjustment indicated by the BLS survey. To make this adjustment, he will be assisted by an agent of his own choosing plus the Advisory Committee on Federal Pay and the Federal Employees Pay Council.

Briefly, the system is projected to work in the following manner. The agent of the President will make recommendations

---

41PL 87-793, Section 502.
concerning adjustments for the current year based on the PATS survey. This report is forwarded to the Advisory Committee where a panel of three individuals known for their expertise in labor relations and pay policy and who will not otherwise be employed by the government prepares a report based on its own findings and recommendations, as well as those forwarded to it by unions, agency management and others.

The Pay Council consists of five representatives of employee organizations which represent employees paid under the Classification Act schedule. The members are appointed by the Agent of the President but no more than three at any one time may be from a single union or federation. The Pay Council makes recommendations concerning such matters as the coverage of the BLS survey, methods of making comparisons with private sector positions, and the size of the adjustments needed. The final report and recommendations of the Agent, the Committee and the Council is submitted to the President in one document. The President will then adjust salaries with no Congressional action required.

If the President determines that due to adverse economic conditions or a national emergency no adjustment should be made,

---

42 The "Agent" of the President during the first three years under PL 91-656 was the Chairman of the Civil Service Commission and the Director of the Office of Management and Budget.

43 The present composition of the Committee is Jerome M. Rostow, Chairman, Robert B. McKersie and Frederick R. Livingston.
he must then prepare an alternate proposal which will go into effect unless either the House or the Senate disapproves. If the President's proposal is disapproved, then the comparability adjustment must be made.

The General Schedule (GS) employees are paid salaries based on the BLS survey nationwide. There are 18 grades in the schedule with 10 "steps" per grade (with the exception of GS-18 which has only one step). A GS-4, step 2 employee would be paid the same wage whether he worked in Washington, D.C., or Elko, Nevada.

The institutional arrangement for wage setting in the federal white collar area requires a different analysis than that required in the wage board area. The pure application of the comparability doctrine on the national level may lead to severe distortions in the local labor market. The local labor market for General Schedule employees is defined as all job opportunities within commuting distance of the federal installation. This definition is in contrast to the geographic wage survey area used to establish comparable wage rates for Wage Board employees. Cartter and Marshall state: "The relevant market concept depends primarily on two factors: (1) the propensity of the typical worker to respond to opportunities at various distances from his home and (2) knowledge of job opportunities." They also contend

---

that within commuting distance of the work site, the worker is more likely to be responsive to another job opportunity, since it does not involve a movement of his abode, and he is more likely to have access to better information on available positions.

Consider two local labor markets such as those in Figure 9. These two markets could be Montgomery, Alabama and Washington, D.C., for example. Assume that labor market M is at the national average wage rate for GS 4s and that all the required GS 4s may be hired at salary OA, that is, the Demand for GS 4s is something less than ON₁. In market W, the federal manager will either have to hire less qualified employees, perhaps GS 3s, to fill the GS 4 positions; or hire fewer qualified GS 4s, a shortage of N₂N₃; or rewrite the job description to require a GS 5 at salary OB so that the position may be filled. Any of the available options distorts the theoretical national system. The difficulty is that there is not a national market for the lower GS grades. Labor markets for the lower GS grades are local and should be so treated.

One further suggestion can be made regarding the determination of federal white collar salaries, assuming that a match can at least be approximated by the BLS surveyed jobs and federal comparable positions. The suggestion is that the PAT survey be

---

This is a heroic assumption but an orderly attempt is made at comparability. The fourth step of each grade is used as the reference point for comparison of private sector pay and federal pay. Each grade is compared in turn then an average is taken of the 18 comparisons. See Appendix F for an example of the proposed Fiscal Year 1974 increase as proposed by the President's Agent and the Advisory Committee.
Figure 9. The Possible Effect of a National GS Salary Schedule on Two Local Labor Markets.
broadened to include job data from nonprofit organizations, state and local governments, and health care organizations. It would seem that these organizations are surely in competition for the same employees that the federal government would seek to hire. Provision should be made to incorporate data from this area into any system designed to make the federal white collar salaries competitive with those of the institutions, both private and public, with which the federal government is competing for employees.

The record of pay increases since the first law incorporating the "comparability principle" was passed in 1962 is illustrated in Appendix G. Since the passage of PL 91-656, there have been salary negotiations between the unions on the Federal Employees Pay Council, the Advisory Committee on Federal Pay and the President's Agent, the three bodies charged with making a recommendation for pay change. Further, this "negotiation" has been carried to the Congress after the President has acted. A resume of the three years experience under PL 91-656 will give insight into the process now being used to determine federal GS salaries.

In 1971, the President recommended to the Congress that no routine federal salary adjustment be made on October 1, 1971, in spite of contrary law, but any such raise should be postponed until July 1972 because of the newly instituted wage and price

---

46See Appendix F for an example of conflicting recommendations given to the President.
control program. Neither House of Congress overrode the President's suggested alternative but did give all federal GS employees a 5.5 percent pay raise effective January 1, 1972 in line with the suggested guidelines for salary increases in the private sector.

In 1972, the President again proposed that the increase in salary be postponed from October 1972, to January 1, 1973, on the grounds that federal employees had received a pay increase only nine months previously. Neither House of Congress overrode this alternative plan and the increase of 5.1 percent went into effect on January 1, 1973.

In 1973, the President proposed that the increase in salary be postponed from October 1, 1973 to December 1, 1973. But in this instance the Senate, by a 72-16 vote, overruled the President's proposed 60 day postponement and required that the 4.77 percent increase by effective on October 1, 1973.

It should be noted that in each instance, the President followed the recommendation of his Agent as to the amount of the increase. The Congress did not change the amount, only the effective date. The policy of the President in following the recommendation of his Agent regarding the amount of the increase would seem to indicate a weak "bargaining" position of both the Federal Employees Pay Council and the Advisory Committee. But the ability of the union to lobby the Congress to change the effective date of the increase would seem to indicate that
"bargaining" with the Congress is still more effective than "bargaining" with the Executive Branch.

Fringe Benefits and the Federal Employee

The previous analysis of federal sector wage setting was in terms of money wages and did not take into consideration so-called fringe benefits. Fringe benefits include those costs to the employer added to the regular money wages of the employee. A complete description of all fringe benefits negotiated in the private sector is beyond the scope of this study but they are usually found in these areas: government required insurance benefits, employee comfort and protection, employment security, employee recreational benefits, and employee financial extras.

A study made of comparative benefits by Donald Herzog indicated that in general, the federal employee was in the better position in the first three enumerated areas while the private employee was in the better position in the latter two. Specifically Herzog found that the federal employee fares better than the industrial employee in the areas of job security, unemployment compensation, protection from disabling accidents and work-connected illnesses, and retirement. The private sector employee fares better in the area of recreational activities, profit sharing plans, stock option plans, low cost meals and other

company sponsored facilities, and in low cost company loans. However, all things considered, Herzog concludes that the federal employee profits more from the overall fringe benefit package than does his counterpart in private industry. 48

The Comptroller General of the United States, Elmer B. Staats, also believes that federal fringe benefits outweigh those of the private sector. 49 In the judgement of Staats, the federal government gives more benefits to its employees in the area of leave and retirement but private sector employers lead in expenditures for medical and insurance programs, unemployment compensation and bonuses related to promotions. 50

Whether or not federal employment does lead in the area of fringe benefits, the federal employees themselves do not seem to be convinced that this is so. Constantly under attack as having the best of all worlds, they have turned to the union in ever increasing numbers. 51 One recently conducted study shows that the primary reason for joining a union was not because of social pressure or for psychological reasons but because the federal employee

48 Ibid., p. 99.


50 Ibid., Staats has initiated a study of comparative fringe benefits by the General Accounting Office to be completed by March 1975.

51 For example, see E. S. Savas and Sigmund G. Ginsburg, "The Civil Service--A Meritless System?" The Public Interest, No. 32 (Summer 1973), pp. 70-86.
"... believed that membership in the union was the best way to get wage and fringe benefit increases."\(^{52}\)

Public employees, and especially federal employees, have traditionally enjoyed significantly greater job security than have their counterparts in the private sector. At least prior to the decade of the sixties, the lower salaries paid the public employees were accepted by employee and employer alike as an equitable trade-off for the virtual guarantee of continuing employment. However, a recent study concludes that public employees are no longer convinced that public employment guarantees tenure, even assuming a "satisfactory" performance level.\(^{53}\) Weisberger predicts that this issue will become an even more significant item for public sector negotiators in the future.\(^{54}\)

A study by a psychologist further indicates that public employees are not impressed by the traditional benefits of public employment.\(^{55}\) Using Herzberg's two factor theory of motivation,


\(^{54}\)Ibid., pp. 83-85.

\(^{55}\)Lance W. Seberhagen, "What Motivates Civil Service Employees?" *Public Personnel Review*, Vol. XXXI, No. 1 (January 1970), pp. 48-51. This was a study of municipal employees in a large Southwestern city, but the results also hold some validity for federal employees.
Seberhagen found that civil service employees have basically the same motivations as their counterparts in private industry. Seberhagen selected eleven job factors and asked low job level employees, middle level employees, and high job level employees to rank these factors in terms of job satisfaction. Security of employment is sometimes assumed as one of the prime attractions of civil service employment, yet in the Seberhagen study, low level employees ranked security sixth, middle level employees ranked it eighth, and higher level employees ranked it ninth.  

Both the wage surveys for wage grade employees and BLS survey upon which GS salary changes are based, consider only money wages and do not consider fringe benefits. Behavioral reasons for job seeking and job satisfaction are difficult to quantify. If a fringe benefit is too great or too small in specific areas of federal employment as compared with the benefit in private sector employment, this noncomparability should be corrected at the congressional level through changes in the law specifically directed at that fringe benefit. A wage survey

56 Ibid., p. 51.

57 The costs of fringe benefits to the employer in the private sector after years of negotiating are still difficult to quantify. A cursory search of the literature reveals that estimates of the cost of fringe benefits as a percent of payroll varied from 25 to 38 percent, a rather wide range indeed.

58 An example of a change in a fringe benefit for federal employees is recent legislation to increase government contributions to employee health insurance benefit programs from 40 percent to 50 percent in 1974 and to 60 percent in 1975. Cited
is complex enough in itself without adding the burden of additional "factors" seeking to relate the survey, or the PATS, to fringe benefit comparability. Just as money wages are compared, so should each individual fringe benefit be compared.

SUMMARY

This chapter has examined two areas in which the evolving federal industrial relations system has not converged with that of the private sector. Impasse settlement is still largely in the hands of federal management through the composition of the FLRC. The strike as the ultimate union weapon is still illegal in the federal sector and compared to the recent experience of state and local government or the private sector during the organizing drives of the thirties, the strike avoidance record of the federal government is outstanding. Yet if the postal strike and the air traffic controllers "sickout" are any indication, the mandatory penalties of dismissals, fines, and jail sentences for striking federal employees now provided by law are unrealistic and seemingly unenforceable. Further, the continuing increase is strikes at the state and local levels must put pressure on federal union leaders for similar actions unless a method of impasse settlement is found. This study suggests that an appropriate method of impasse

in GERP No. 544 (March 4, 1974), p. D-1. It should be noted that this change in fringe benefits does not change in any way the wage survey or the PATS for a projected salary increase for October 1, 1974.
settlement in the federal sector should be binding arbitration of disputes by a panel of neutrals whose only employment is as a panel member. The decisions of this panel should be enforceable through the courts and appealable through the courts. Presently the FSIP has no enforcement power other than moral suasion and the only appeal from decisions of the FSIP is to a higher level of federal management, the FLRC. The argument against compulsory arbitration in the private sector, that it has a chilling effect on bargaining, is not persuasive for the federal sector. This is an area where experimentation could be carried on in the federal sector much as limited strike right experimentation is being accomplished in some state and local jurisdictions.

The wage and salary picture changed dramatically for the better for federal employees in the decade of the sixties. Unions have been given a significant, though presently not fully utilized, role in federal pay setting through the Federal Pay Comparability Act of 1970 and the Coordinated Federal Wage System Act of 1972. Unions have not, as yet, taken full advantage of the powers to negotiate granted them by these two laws. Though there may be a cause and effect relationship between a union negotiated wage increase and a tax increase at the local level, this same relationship does not necessarily exist at the federal level. In a $300 billion budget a 5 percent increase in wages for federal employees is not immediately related to increased tax liability of the individual tax payer. Therefore, bargaining should take place
with the Congress who, in effect, establishes the institutional procedures for changing the federal pay system. The institutional procedures, newly evolved, have areas for improvement but this is where the federal unions can serve both their membership and the taxpayer, by "bargaining" with the Congress to assure true comparability in both the GS and wage grade categories.

This study has further shown that private sector unions can have positive effects on raising money wages and this effect is transmitted to the federal sector through the "prevailing rate" in the case of wage grade employees and the PATS in the case of GS employees. The new provisions of PL 92-392 for setting blue collar wages are projected to have an upward bias because of the two additional steps above the "prevailing rate."

In contrast to private sector unions, federal unions have little impact on two of the most critical issues in collective bargaining, impasse settlement and wage and salary negotiation. Market forces and private sector wage settlements are crucial to the federal employee, not what his own union secures for him in these areas.
CHAPTER VI

SUMMARY AND CONCLUSIONS

SUMMARY

This study has traced the nature and growth of unions composed of civilian employees of the Executive Branch of the United States Government. The purpose of the study was to compare and contrast the emerging formal industrial relations system in the federal sector with that presently in being in the private sector. The material used to investigate the conditions and consequences of federal employee collective actions covers the ideas, events, institutions, motivations, and practices which have evolved over approximately 200 years of employee management relations in the federal sector. The basic criterion for assessing the present federal system was, how nearly does this system merge with that of the private sector?

Although federal sector unionism is as old as unionism in the private sector, federal union leaders found that they had greater success in lobbying for legislation from the Congress, or seeking assistance from a sympathetic President, than through the collective bargaining process. Prior to the promulgation of Executive Order 10988 by President John F. Kennedy in 1962,
Congress had traditionally been more favorably disposed than the Executive Branch toward federal unions. Executive orders initiated prior to EO 10988 were generally aimed at restricting union activity. In spite of the generally favorable attitude of the Congress toward the unionization of federal employees, legislation in this area was extremely limited. The Lloyd-LaFollette Act of 1912 was the only law which directly addressed the problem of unionization in the federal sector. Prior to the promulgation of EO 10988, federal unions served primarily as lobbying organizations with none of the privileges and responsibilities of collective bargaining.

EO 10988 created a broad set of rules and procedures for employee-management relations in the federal sector. The basic concepts of the Executive Order included the right of a federal employee to join or refrain from joining a union. It established, for the first time, forms of union recognition and procedures for unions to follow in order to acquire recognition. It limited recognition to bona fide labor organizations which met specific criteria. It provided a basic structure for employee-management relations but still allowed a great deal of flexibility in the administration of the program within federal agencies during the transitional stages.

EO 10988 was hailed by a majority of federal union leaders as the beginning of a new era in federal labor management relations. The decade of the sixties was a period of significant union growth
in terms both of membership and number of employees represented. New unions of federal employees were formed, some older unions disappeared, others merged, and some professional associations took on the trappings of unions as the "Darwinian imperatives" of the Executive Order affected unions as well as management.

EO 10988 was replaced by EO 11491 in 1969. The latter Executive Order was modified by EO 11616 in 1971. These Executive Order changes represent an attempt to fine tune the existing system based on the experience gained through a decade of operation under Presidential executive orders. These modifications were basically procedural in nature and did not mark significant changes in substantive areas.

CONCLUSIONS

The following conclusions may be drawn from this study of recent policy declarations as contained in the series of Executive Orders. Executive Order 10988 fulfilled a need for a definitive system of employee-management relations in the entire federal executive branch. It served as an effective transitional device from the management dominated civil service system to an evolving system of collective bargaining patterned after the system presently existing in the private sector. But the merging of the two systems is more procedural than substantive. Though private sector industrial relations procedures have been adopted en masse by the federal sector, the real power to make substantive changes
in the employment relationships in the federal sector still remains with management. This power is illustrated by the limited scope of bargaining on substantive issues (in the private sector, these are wages, hours and working conditions); and an almost absolute control of impasse settlement by management through the institutional arrangements incorporated by law and executive order.

The principle of comparability has enabled the federal employee to make impressive gains in both blue collar wages and white collar salaries. But the operation of the labor market and of private sector unions transmitted to the federal sector through the institutional arrangements for comparability are of significantly greater importance to the federal employee than are the actions of his own union. The federal union serves only to lobby for improved institutional arrangements at the congressional level and to ascertain that these arrangements are complied with at the local level.

Experience at the federal, state, and local levels has indicated that a law prohibiting strikes is ineffective without a viable means of impasse settlement. This study suggests that binding arbitration of disputes in the federal sector is a viable alternative to the strike right. As experimentation with the limited strike right is being carried out in some state and local jurisdictions, so could experimentation with a form of binding arbitration by a full time impartial panel be implemented in the
federal sector. The very nature of labor-management relations causes real or imagined conflicts of interest. These disputes should be kept outside the range of direct action, not because of the sovereign employer-employee relationship but because direct action is not an end in itself. It is only a means of reaching ultimate agreement. Binding arbitration would be a logical extension of the evolving federal labor relations system.

The evidence presented in this study suggests that the Executive Orders have caused a substantial amount of negotiation and consultation between federal management and federal unions. Federal managers no longer have a completely unilateral decision making power, concerned only with the legality of the action or its conformity to appropriate regulations. The decade of the sixties was a time of union organization when both unions and management were concerned with evolving rules and procedures for this new relationship. If the evolving industrial relations system in the federal sector is to approach that of the private sector, federal unions must become less concerned with procedural and rule making issues. These unions are now well established in the federal sector and should be able to move beyond rules of the game to the issues with real substance. There are two principal avenues through which the unions may accomplish this goal. The first is to press for a complete revision of the Federal Personnel Manual in order that the scope of bargaining may be enlarged at the local level. The second is to press for more extensive
bargaining units—agency wide for example—thereby moving the locus of bargaining closer to focus of real management decision making.

The principal gain for the individual employee from the appearance of the union in the federal sector is that now he has a voice, muted though it may be, in determining his conditions of employment. This study has suggested that the voice of the employee, as heard through his union, has been effective in procedural areas but is severely limited in areas of real substance. Collective bargaining as practiced in the private sector has not been thoroughly transplanted to the federal civil service.
BIBLIOGRAPHY

BOOKS


**PERIODICALS**


"CIO to Organize 800,000 Government Employees," *Commercial and Financial Chronicle,* Vol. 144 (June 26, 1937), p. 4270.


Morse, Muriel M. "Shall We Bargain Away the Merit System?" Public Personnel Review, Vol. 24 (October 1963), pp. 239-244.


"Unionizing Public Service Employees," Human Events XXVIII (July 20, 1968), pp. 4-6.


GOVERNMENT DOCUMENTS


Directory of National and International Labor Unions in the 

Directory of National and International Labor Unions in the 

Directory of National Unions and Employee Associations, 

U.S. Department of Labor. Fifty-Sixth Annual Report of the 
Secretary of Labor.  Washington: Government Printing 

Work Stoppages in Government, 1958-68.  Washington: 

U.S. Department of the Navy, Office of Naval Industrial 
Relations. Important Events in American Labor History. 

U.S. Federal Mediation and Conciliation Service. Twenty-Fifth 

U.S. Office of the President. Report of the President's Task 
Force on Employee-Management Cooperation in the Federal 


OTHER SOURCES

Bureau of National Affairs. Government Employee Relations 
Reports (GERR).  Washington: Bureau of National Affairs, 
Inc., No. 60 (November 2, 1964); No. 99 (August 2, 1965); 
No. 109 (October 11, 1965); No. 138 (May 2, 1966); 
No. 154 (August 22, 1966); No. 197 (June 19, 1967); 
No. 215 (October 23, 1967); No. 235 (March 11, 1968); 
No. 286 (March 3, 1969); No. 287 (March 10, 1969);
No. 289 (March 24, 1969); No. 333 (January 26, 1970);
No. 341 (March 23, 1970); No. 342 (March 30, 1970);
No. 343 (April 6, 1970); No. 362 (August 17, 1970);
No. 405 (June 14, 1971); No. 461 (July 17, 1972);
No. 473 (March 5, 1973); No. 495 (March 19, 1973);
No. 519 (September 3, 1973); No. 520 (September 10, 1973);
No. 525 (October 15, 1973); No. 544 (March 4, 1974).

Machinists and Aerospace Workers, International Association of.
Proceedings, 27th Grand Lodge Convention, Chicago,
September 3-13, 1968.

"Summary of State Labor Laws," Government Employees Relations
Report Reference File II. Washington: Bureau of National

INTERVIEWS

Berman, Leonard G. Chief, Employees Programs Division,
Directorate of Civilian Personnel, Headquarters,

Blaylock, Kenneth T. National Vice President, Fifth District,

Kane, Arthur F. Director of Education, American Federation

Malloy, Raymond J. Associate Staff Counsel, American

McCarr, John M. Operations Director, Government Employees'

McLain, Robert T. Chief, Employees Programs Division,
Directorate of Civilian Personnel, Headquarters,

Neuman, Elmer E. Chief Counsel, American Federation of
Government Employees. September 6, 1968.


Sims, Royal. National Vice President, Third District,
American Federation of Government Employees.


APPENDICES
APPENDIX A

THE WHITE HOUSE

Following is the text of a Memorandum from the President addressed to heads of departments and agencies on the subject of Employee-Management Relations in the Federal Service, June 22, 1961.

The right of all employees of the federal government to join and participate in the activities of employee organizations, and to seek to improve working conditions and the resolution of grievances should be recognized by management officials at all levels in all departments and agencies. The participation of federal employees in the formulation and implementation of employee policies and procedures affecting them contributes to the effective conduct of public business. I believe this participation should include consultation by responsible officials with representatives of employees and federal employees organizations.

In view of existing policy relating to equal employment opportunity, management officials will maintain relationships only with those employee organizations which are free of restrictions or practices denying membership because of race, color, religion, or national origin. Further, such officials shall refrain from consultation or relationships with organizations which assert the right to strike against or advocate the overthrow of the government of the United States.

Further steps should be explored fully and promptly. We need to improve practices which will assure the rights and obligations of employees, employee organizations and the Executive Branch in pursuing the objective of effective labor-management cooperation in the public service. I know this is not a simple task. The diversity of federal programs, the variety of occupations and skills represented in federal employment, the different organizational patterns of federal departments and agencies, and the special obligations of public service complicate the task of formulating government-wide policy guidance. Nevertheless, this important subject requires prompt attention by the Executive Branch. With that objective in mind, I am designating a special task force to review and advise me on employee-management relations in the federal service, composed of the following officials:
The Secretary of Defense
The Postmaster General
The Secretary of Labor
The Director of the Bureau of the Budget
The Chairman of the Civil Service Commission
The Special Counsel to the President

The Secretary of Labor will serve as Chairman of this task force. This study will cover the broad range of issues relating to federal employee-management relations, including but not limited to definition of appropriate employee organizations, standards for recognition of such organizations, matters upon which employee organizations may be appropriately consulted, and the participation of employees and employee representatives in grievances and appeals. In the course of this study employees and employee organizations representatives, department and agency officials, consultants in labor-management relations, and interested groups and citizens shall be given an opportunity to present their views for the consideration of the task force. In view of the need for decisions of this important issue at a reasonably early date, I am asking the task force to report their findings and recommendations to me not later than November 30, 1961.

All department and agency heads and their staffs are directed to cooperate fully with the task force in the accomplishment of this study.
APPENDIX B

THE WHITE HOUSE

EXECUTIVE ORDER 10988, EMPLOYEE-MANAGEMENT COOPERATION IN THE FEDERAL SERVICE

WHEREAS participation of employees in the formulation and implementation of personnel policies affecting them contributes to effective conduct of public business; and

WHEREAS the efficient administration of the Government and the well-being of employee require that orderly and constructive relationships be maintained between employee organizations and management officials; and

WHEREAS subject to the law and the paramount requirements of public service, employee-management relations within the Federal service should be improved by providing employees an opportunity for greater participation in the formulation and implementation of policies and procedures affecting the conditions of their employment; and

WHEREAS effective employee-management cooperation in the public service requires a clear statement of the respective rights and obligations of employee organizations and agency management:

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution of the United States, by section 1753 of the Revised Statutes (5 U.S.C. 631), and as President of the United States, I hereby direct that the following policies shall govern officers and agencies of the executive branch of the Government in all dealings with Federal employees and organizations representing such employees.

Section 1. (a) Employees of the Federal Government shall have, and shall be protected in the exercise of, the right, freely and without fear of penalty or reprisal, to form, to join and assist any employee organization or to refrain from any such activity. Except as hereinafter expressly provided, the freedom of such employees to assist any employee organization shall be recognized as extending to participation in the management of the organization and acting for the organization in the capacity of an organization representative, including presentation of its views to officials of the executive branch, the Congress or other appropriate authority. The head of each executive department and
agency (hereinafter referred to as "agency") shall take such action, consistent with law, as may be required in order to assure that employees in the agency are appraised of the rights described in this section, and that no interference, restraint, coercion or discrimination is practiced within such agency to encourage or discourage membership in any employee organization.

(b) The rights described in this section do not extend to participation in the management of an employee organization, or acting as a representative of any such organization, where such participation or activity would result in a conflict of interest or otherwise be incompatible with law or with the official duties of an employee.

Section 2. When used in this order, the term "employee organization" means any lawful association, labor organization, federation, council, or brotherhood having as a primary purpose the improvement of working conditions among Federal employees, or any craft, trade or industrial union whose membership includes both Federal employees and employees of private organizations; but such term shall not include any organization (1) which asserts the right to strike against the Government of the United States or any agency thereof, or to assist or participate in any such strike, or which imposes a duty or obligation to conduct, assist or participate in any such strike, or (2) which advocates the overthrow of the constitutional form of Government in the United States, or (3) which discriminates with regard to the terms or conditions of membership because of race, color, creed or national origin.

Section 3. (a) Agencies shall accord informal, formal or exclusive recognition to employee organizations which requests such recognition in conformity with the requirements specified in sections 4, 5, and 6 of this order, except that no recognition shall be accorded to any employee organization which the head of the agency considers to be so subject to corrupt influences or influences opposed to basic democratic principles and recognition would be inconsistent with the objectives of this order.

(b) Recognition of an employee organization shall continue so long as such organization satisfies the criteria of this order applicable to such recognition; but nothing in this section shall require any agency to determine whether an organization should become or continue to be recognized as exclusive representative of the employees in any unit within 12 months after a prior determination of exclusive status with respect to such unit has been made pursuant to the provisions of this order.

(c) Recognition, in whatever form accorded, shall not--
(1) preclude any employee, regardless of employee organization membership, from bringing matters of personal concern to the attention of appropriate officials in accordance with applicable
law, rule, regulation, or established agency policy, or from choosing his own representative in a grievance or appellate action; or

(2) preclude or restrict consultations and dealings between an agency and any veterans organization with respect to matters of particular interest to employees with veterans preference; or

(3) preclude an agency from consulting or dealing with any religious, social, fraternal or other lawful association, not qualified as an employee organization, with respect to matters or policies which involve individual members of the association or are of particular applicability to it or its members, when such consultations or dealings are duly limited so as not to assume the character of formal consultation on matters of general employee-management policy or to extend to areas where recognition of the interests of one employee group may result in discrimination against or injury to the interest of other employees.

Section 4. (a) An agency shall accord an employee organization, which does not qualify for exclusive or formal recognition, informal recognition as representative of its member employees without regard to whether any other employee organization has been accorded formal or exclusive recognition as representative of some or all employees in any unit.

(b) When an employee organization has been informally recognized, it shall, to the extent consistent with the efficient and orderly conduct of the public business, be permitted to present to appropriate officials its views on matters of concern to its members. The agency need not however, consult with an employee organization so recognized in the formulation of personnel or other policies with respect to such matters.

Section 5. (a) An agency shall accord an employee organization formal recognition as the representative of its members in a unit as defined by the agency when (1) no other employee organization is qualified for exclusive recognition as representative of employees in the unit, (2) it is determined by the agency that the employee organization has a substantial and stable membership of no less than 10 per centum of the employees in the unit, and (3) the employee organization has submitted to the agency a roster of its officers and representatives, a copy of its constitution and by-laws, and a statement of objectives. When, in the opinion of the head of any agency, an employee organization has a sufficient number of local organizations or a sufficient total membership within such agency, such organization may be accorded formal recognition at the national level, but such recognition shall not preclude the agency from dealing at the national level with any other employee organization on matters affecting its
members.

(b) When an employee organization has been formally recognized, the agency, through appropriate officials, shall consult with such organization from time to time in the formulation and implementation of personnel policies and practices, and matters affecting working conditions that are of concern to its members. Any such organization shall be entitled from time to time to raise such matters for discussion with appropriate officials and at all times to present its views thereon in writing. In no case, however, shall an agency be required to consult with an employee organization which has been formally recognized with respect to any matter which, if the employee organization were one entitled to exclusive recognition, would not be included within the obligation to meet and confer, as described in section 6 (b) of this order.

Section 6. (a) An agency shall recognize an employee organization as the exclusive representative of the employees in an appropriate unit when such organization is eligible for formal recognition pursuant to section 5 of this order, and has been designated or selected by a majority of the employees of such unit as the representative of such employees in such unit. Units may be established on any plant or installation, craft, functional or other basis which will ensure a clear and identifiable community or interest among the employees concerned, but no unit shall be established solely on the basis of the extent to which employees in the proposed unit have organized. Except where otherwise required by established practice, prior agreement, or special circumstances, no unit shall be established for purposes of exclusive recognition which includes (1) any managerial executive (2) any employee engaged in Federal personnel work in other than a purely clerical capacity, (3) both supervisors who officially evaluate the performance of employees and the employees whom they supervise, or (4) both professional employees and non professional employees unless a majority of such professional employees vote for inclusion in such unit.

(b) When an employee organization has been recognized as the exclusive representative of employees of an appropriate unit it shall be entitled to act for and to negotiate agreements covering all employees in the unit and shall be responsible for representing the interests of all such employees without discrimination and without regard to employee organization membership. Such employee organization shall be given the opportunity to be represented at discussions between management and employees or employee representatives concerning grievances, personnel policies and practices, or other matters affecting general working conditions of employees in the unit. The agency and such employee organization, through appropriate officials and representatives, shall meet at reasonable times and confer with respect to personnel policy and practices and matters affecting working conditions,
so far as may be appropriate subject to law and policy requirements. This extends to the negotiation of an agreement, or any question arising thereunder, the determination of appropriate techniques, consistent with the terms and purposes of this order, to assist in such negotiation, and the execution of a written memorandum of agreement or understanding incorporating any agreement reached by the parties. In exercising authority to make rules and regulations relating to personnel policies and practices and working conditions, agencies shall have due regard for the obligation imposed by this section, but such obligation shall not be construed to extend to such areas of discretion and policy as the mission of an agency, its budget, its organization and the assignment of its personnel, or the technology of performing its work.

Section 7. Any basic or initial agreement entered into with an employee organization as the exclusive representative of employees in a unit must be approved by the head of the agency or any official designated by him. All agreements with such employee organizations shall also be subject to the following requirements, which shall be expressly stated in the initial or basic agreement and shall be applicable to all supplemental, implementing, subsidiary or informal agreements between the agency and the organization:

(1) In the administration of all matters covered by the agreement officials and employees are governed by the provisions of any existing or future laws and regulations, including policies set forth in the Federal Personnel Manual and agency regulations, which may be applicable, and the agreement shall at all times be applied subject to such laws, regulations and policies:

(2) Management officials of the agency retain the right, in accordance with applicable laws and regulations, (a) to direct employees of the agency, (b) to hire, promote, transfer, assign, and retain employees in positions within the agency, and to suspend, demote, discharge, or take disciplinary action against employees, (c) to relieve employees from duties because of lack of work or for other legitimate reasons, (d) to maintain the efficiency of the Government operations entrusted to them (3) to determine the methods, means and personnel by which such operations are to be conducted; and (f) to take whatever actions may be necessary to carry out the mission of the agency in situations of emergency.

Section 8. (a) Agreements entered into or negotiated in accordance with this order with an employee organization which is the exclusive representative of employees in an appropriate unit may contain provisions, applicable only to employees in the unit, concerning procedures for consideration of grievances. Such procedures (1) shall conform to standards issued by the Civil Service Commission, and (2) may not in any manner diminish or impair any rights which would otherwise be available to any employee in the absence of an agreement providing for such
procedures.

(b) Procedures established by an agreement which are otherwise in conformity with this section may include provisions for the arbitration of grievances. Such arbitration (1) shall be advisory in nature with any decisions or recommendations subject to the approval of the agency head; (2) shall extend only to the interpretation or application of agreements or agency policy and not to changes in or proposed changes in agreements or agency policy; and (3) shall be invoked only with the approval of the individual employee or employees concerned.

Section 9. Solicitation of memberships, dues, or other internal employee organization business shall be conducted during the non-duty hours of the employees concerned: Officially requested or approved consultations and meetings between management officials and representatives of recognized employee organizations shall, whenever practicable, be conducted on official time, but any agency may require that negotiations with an employee organization which has been accorded exclusive recognition be conducted during the non-duty hours of the employee organization representatives involved in such negotiations.

Section 10. No later than July 1, 1962, the head of each agency shall issue appropriate policies, rules and regulations for the implementation of this order, including: A clear statement of the rights of its employees under the order; policies and procedures with respect to recognition of employee organizations; procedures for determining appropriate employee units, policies and practices regarding consultation with representatives of employee organizations, other organizations and individual employees; and policies with respect to the use of agency facilities by employee organizations. Insofar as may be practicable and appropriate, agencies shall consult with representatives of employee organizations in the formulation of these policies, rules and regulations.

Section 11. Each agency shall be responsible for determining in accordance with this order whether a unit is appropriate for purposes of exclusive recognition and, by an election or other appropriate means, whether an employee organization represents a majority of the employees in such a unit so as to be entitled to such recognition. Upon the request of any agency, or of any employee organization which is seeking exclusive recognition and which qualifies for or has been accorded formal recognition, the Secretary of Labor, subject to such necessary rules as he may prescribe, shall nominate from the National Panel of Arbitrators maintained by the Federal Mediation and Conciliation Service one or more qualified arbitrators who will be available for employment by the agency concerned for either or both of the following purposes, as may be required: (1) to investigate the facts and issue
an advisory decision as to the appropriateness of a unit for purposes of exclusive recognition and as to related issues submitted for consideration; (2) to conduct or supervise an election or otherwise determine by such means as may be appropriate, and on an advisory basis, whether an employee organization represents the majority of the employees in a unit. Consonant with the law, the Secretary of Labor shall render such assistance as may be appropriate in connection with advisory decisions or determinations under this section, but the necessary costs of such assistance shall be paid by the agency to which it relates. In the event questions as to the appropriateness of a unit or the majority status of an employee organization shall arise in the Department of Labor, the duties prescribed in this section which would otherwise be the responsibility of the Secretary of Labor shall be performed by the Civil Service Commission.

Section 12. The Civil Service Commission shall establish and maintain a program to assist in carrying out the objectives of this order. The Commission shall develop a program for the guidance of agencies in employee-management relations in the Federal Service; provide technical advice to the agencies on employee-management programs; assist in the development of programs for training agency personnel in the principles and procedures of consultation, negotiation and the settlement of disputes in the Federal service, and for the training of management officials in the discharge of their employee-management relations responsibilities in the public interest; provide for continuous study and review of the Federal employee-management relations program and, from time to time, make recommendations to the President for its improvement.

Section 13. (a) The Civil Service Commission and the Department of Labor shall jointly prepare (1) proposed standards of conduct for employee organizations and (2) a proposed code of fair labor practices in employee-management relations in the Federal service appropriate to assist in securing the uniform and effective implementation of the policies, rights and responsibilities described in this order.

(b) There is hereby established the President's Temporary Committee on the Implementation of the Federal Employee-Management Relations Program. The Committee shall consist of the Secretary of Labor, who shall be chairman of the Committee, the Secretary of Defense, the Postmaster General, and the Chairman of the Civil Service Commission. In addition to such other matters relating to the implementation of this order as may be referred to it by the President, the Committee shall advise the President with respect to any problems arising out of completion of agreements pursuant to sections 6 and 7, and shall receive the proposed standards of conduct for employee organizations and proposed code of fair labor practices in the Federal service as described in this
section, and report thereon to the President with such recommenda-
tions or amendments as it may deem appropriate. Consonant with
law, the departments and agencies represented on the Committee
shall as may be necessary for the effectuation of this section,
furnish assistance to the Committee in accordance with section 214
otherwise directed by the President, the Committee shall cease to
exist 30 days after the date on which it submits its report to the
President pursuant to this section.

Section 14. The head of each agency, in accordance with
the provisions of this order and regulations prescribed by the
Civil Service Commission, shall extend to all employees in the
competitive civil service rights identical in adverse action
cases to those provided preference eligibles under section 14 of
the Veterans’ Preference Act of 1944, as amended. Each employee
in the competitive service shall have the right to appeal to the
Civil Service Commission from an adverse decision of the adminis-
trative officer so acting, such appeal to be processed in an
identical manner to that provided for appeals under section 14 of
the Veterans’ Preference Act. Any recommendation by the Civil
Service Commission submitted to the head of an agency on the basis
of an appeal by an employee in the competitive service shall be
complied with by the head of the agency. This section shall become
effective as to all adverse actions commenced by issuance of a
notification of proposed action on or after July 1, 1962.

Section 15. Nothing in this order shall be construed to
annul or modify, or to preclude the renewal or continuation of,
yany lawful agreement heretofore entered into between any agency
and any representative of its employees. Nor shall this order
preclude any agency from continuing to consult or deal with any
representative of its employees or other organization prior to the
time that the status and representation rights of such representa-
tive or organization are determined in conformity with this order.

Section 16. This order (except section 14) shall not apply
to the Federal Bureau of Investigation, the Central Intelligence
Agency, or any other agency, or to any office, bureau or entity
within an agency, primarily performing intelligence, investigative,
or security functions if the head of the agency determines that
the provisions of this order cannot be applied in a manner con-
sistent with national security requirements and considerations.
When he deems it necessary in the national interest, and subject
to such conditions as he may prescribe, the head of any agency may
suspend any provision of this order (except section 14) with
respect to any agency installation or activity which is located
outside of the United States.

JOHN F. KENNEDY

THE WHITE HOUSE
January 17, 1962
WHEREAS the public interest requires high standards of employee performance and the continual development and implementation of modern and progressive work practices to facilitate improved employee performance and efficiency; and
WHEREAS the well-being of employees and efficient administration of the Government are benefited by providing employees an opportunity to participate in the formulations and implementation of personnel policies and practices affecting the conditions of their employment; and
WHEREAS the participation of employees should be improved through the maintenance of constructive and cooperative relationships between labor organizations and management officials; and
WHEREAS subject to law and the paramount requirements of public service, effective labor-management relations within the Federal service require a clear statement of the respective rights and obligations of labor organizations and agency management:
NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and statutes of the United States, including sections 3301 and 7301 of title 5 of the United States Code, and as President of the United States, I hereby direct that the following policies govern officers and agencies of the executive branch of the Government in all dealings with Federal employees and organizations representing such employees.

GENERAL PROVISIONS

Section 1. Policy. (a) Each employee of the executive branch of the Federal Government has the right, freely and without fear of penalty or reprisal, to form, join, and assist a labor organization or to refrain from any such activity, and each employee shall be protected in the exercise of this right. Except as otherwise expressly provided in this Order, the right to assist a labor organization extends to participation in the management of the organization and acting for the organization in the capacity of an organization representative, including presentation of its views to officials of the executive branch, the Congress, or other appropriate authority. The head of each agency shall take the
action required to assure that employees in the agency are apprised of their rights under this section, and that no interference, restraint, coercion, or discrimination is practiced within his agency to encourage or discourage membership in a labor organization.

(b) Paragraph (a) of this section does not authorize participation in the management of a labor organization or acting as a representative of such an organization by a supervisor, except as provided in section 24 of this Order, or by an employee when the participation or activity would result in a conflict or apparent conflict of interest or otherwise be incompatible with law or with the official duties of the employee.

Sec. 2. Definitions. When used in this Order, the term --

(a) "Agency" means executive department, a Government corporation, and an independent establishment as defined in section 104 of title 5, United States Code, except the General Accounting Office;

(b) "Employee" means an employee of an agency and employee of a nonappropriated fund instrumentality of the United States but does not include, for the purpose of formal or exclusive recognition or national consultation rights, a supervisor, except as provided in section 24 of this order;

(c) "Supervisor" means an employee having authority, in the interest of an agency, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to evaluate their performance, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of authority is not of a merely routine or clerical nature, but requires the use of independent judgment;

(d) "Guard" means an employee assigned to enforce against employees and other persons rules to protect agency property or the safety of persons on agency premises, or to maintain law and order in areas or facilities under Government control;

(e) "Labor organization" means a lawful organization of any kind in which employees participate and which exists for the purpose, in whole or in part, of dealing with agencies concerning grievances, personnel policies and practices, or other matters affecting the working conditions of their employees; but does not include an organization which--

(1) consists of management officials or supervisors, except as provided in section 24 of this order;
(2) asserts the right to strike against the Government of the United States or any agency thereof, or to assist or participate in such a strike, or imposes a duty or obligation to conduct, assist or participate in such a strike;

(3) advocates the overthrow of the constitutional form of government in the United States; or

(4) discriminates with regard to the terms or conditions of membership because of race, color, creed, sex, age, or national origin;

(5) "Agency management" means the agency head and all management officials, supervisors, and other representatives of management having authority to act for the agency on any matters relating to the implementation of the agency labor-management relations program established under this Order;

(g) "Council" means the Federal Labor Relations Council established by this Order;

(h) "Panel" means the Federal Service Impasses Panel established by this Order; and

(i) "Assistant Secretary" means the Assistant Secretary of Labor for Labor-Management Relations.

Sec. 3 Application (a) This Order applies to all employees and agencies in the executive branch, except as provided in paragraphs (b), (c) and (d) of this section.

(b) This Order (except section 22) does not apply to--

(1) the Federal Bureau of Investigation;

(2) the Central Intelligence Agency;

(3) any other agency, or office, bureau, or entity within an agency, which has as a primary function intelligence, investigative, or security work, when the head of the agency determines, in his sole judgment, that the Order cannot be applied in a manner consistent with national security requirements and considerations; or

(4) any office, bureau of entity within an agency which has as a primary function investigation or audit of the conduct or work of officials or employees of the agency for the purpose of ensuring honesty and integrity in the discharge of their official duties, when the head of the agency determines, in his sole judgment, that the Order cannot be applied in a manner consistent
with the internal security of the agency.

(c) The head of an agency may, in his sole judgment, suspend any provision of this Order (except section 22) with respect to any agency installation or activity located outside the United States, when he determines that this is necessary in the national interest, subject to the conditions he prescribes.

(d) Employees engaged in administering a labor-management relations law or this Order shall not be represented by a labor organization which also represents other groups of employees under the law of this Order, or which is affiliated directly or indirectly with an organization which represents such a group of employees.

ADMINISTRATION

Sec. 4. Federal Labor Relations Council. (a) There is hereby established the Federal Labor Relations Council, which consists of the Chairman of the Civil Service Commission, who shall be chairman of the Council, the Secretary of Labor, an official of the Executive Office of the President, and such other officials of the executive branch as the President may designate from time to time. The Civil Service Commission shall provide services and staff assistance to the Council to the extent authorized by law.

(b) The Council shall administer and interpret this Order, decide major policy issues, prescribe regulations, and from time to time, report and make recommendations to the President.

(c) The Council may consider, subject to its regulations--

(1) appeals from decisions of the Assistant Secretary issued pursuant to section 6 of this Order;

(2) appeals on negotiability issues as provided in section 11 (c) of this Order;

(3) exceptions to arbitration awards; and

(4) other matters it deems appropriate to assure the effectuation of the purposes of this Order.

Sec. 5. Federal Service Impasses Panel. (a) There is hereby established the Federal Service Impasses Panel as an agency within the Council. The Panel consists of at least three members appointed by the President, one of whom he designates as chairman. The Council shall provide the services and staff assistance needed by the Panel.
(b) The Panel may consider negotiation impasses as provided in section 17 of this Order and may take any action it considers necessary to settle an impasse.

(c) The Panel shall prescribe regulations needed to administer its function under this Order.

Sec. 6. Assistant Secretary of Labor-Management Relations. (a) The Assistant Secretary shall--

(1) decide questions as to the appropriate unit for the purpose of exclusive recognition and related issues submitted for his consideration;

(2) supervise elections to determine whether a labor organization is the choice of a majority of the employees in an appropriate unit as their exclusive representative, and certify the results;

(3) decide questions as to the eligibility of labor organizations for national consultation rights under criteria prescribed by the Council; and

(4) except as provided in section 19 (d) of this Order, decide complaints of alleged unfair labor practices and alleged violations of the standards of conduct for labor organizations.

(b) In any matters arising under paragraph (a) of this section, the Assistant Secretary may require an agency or a labor organization to cease and desist from violations of this Order and require it to take such affirmative action as he considers appropriate to effectuate the policies of this Order.

(c) In performing the duties imposed on him by this section, the Assistant Secretary may request and use the services and assistance of employees of other agencies in accordance with section 1 of the Act of March 4, 1915, (38 Stat. 1084, as amended; 31 U.S.C. 686).

(d) The Assistant Secretary shall prescribe regulations needed to administer his functions under this Order.

(e) If any matters arising under paragraph (a) of this section involve the Department of Labor, the duties of the Assistant Secretary described in paragraphs (a) and (b) of this section shall be, performed by a member of the Civil Service Commission designated by the Chairman of the Commission.

Sec. 7. Recognition in general. (a) An agency shall accord exclusive recognition or national consultation rights at
the request of a labor organization which meets the requirements for the recognition or consultation rights under this Order.

(b) A labor organization seeking recognition shall submit to the agency a roster of its officers and representatives, a copy of its constitution and by-laws, and a statement of its objectives.

(c) When recognition of a labor organization has been accorded, the recognition continues as long as the organization continues to meet the requirements of this Order applicable to that recognition, except that this section does not require an election to determine whether an organization should become, or continue to be recognized as, exclusive representative of the employees in any unit or subdivision thereof within 12 months after a prior valid election with respect to such unit.

(d) Recognition, in whatever form accorded, does not--

(1) preclude an employee, regardless of whether he is a member of a labor organization from bringing matters of personal concern to the attention of appropriate officials under applicable law, rule, regulations, or established agency policy; or from choosing his own representative in a grievance or appellate action;

(2) preclude or restrict consultations and dealings between an agency and a veterans organization with respect to matters of particular interest to employees with veterans preference; or

(3) preclude an agency from consulting or dealing with a religious, social, fraternal, or other lawful association, not qualified as a labor organization, with respect to matters or policies which involve individual members of the association or are of particular applicability to it or its members.

Consultations and dealings under subparagraph (3) of this paragraph shall be so limited that they do not assume the character of formal consultation on matters of general employee-management policy, except as provided in paragraph (e) of this section, or extend to areas where recognition of the interests of one employee group may result in discrimination against or injury to the interests of other employees.

(e) An agency shall establish a system for intra-management communication and consultation with its supervisors or associations of supervisors. The communications and consultations shall have as their purposes the improvement of agency operations, the improvement of working conditions of supervisors, the exchange of information, the improvement of managerial effectiveness, and the establishment of policies that best serve the public interest in
accomplishing the mission of the agency.

(f) Informal recognition shall not be accorded after the date of this Order.

Sec. 8 Formal Recognition. (a) Formal recognition, including formal recognition at the national level, shall not be accorded after the date of this Order.

(b) An agency shall continue any formal recognition, including formal recognition at the national level, accorded a labor organization before the date of this Order until--

(1) the labor organization ceases to be eligible under this Order for formal recognition so accorded;

(2) a labor organization is accorded exclusive recognition as representative of employees in the unit to which the formal recognition applies; or

(3) the formal recognition is terminated under regulations prescribed by the Federal Labor Relations Council.

(c) When a labor organization holds formal recognition, it is the representative of its members in a unit as defined by the agency when recognition was accorded. The agency, through appropriate officials, shall consult with representatives of the organization from time to time in the formulation and implementation of personnel policies and practices, and matters affecting working conditions that affect members of the organization in the unit to which the formal recognition applies. The organization is entitled from time to time to raise such matters for discussion with appropriate officials and at all times to present its views thereon in writing. The agency is not required to consult with the labor organization on any matter on which it would not be required to meet and confer if the labor organization were entitled to exclusive recognition.

Sec. 9. National consultation rights. (a) An Agency shall accord national consultation rights to a labor organization which qualifies under criteria established by the Federal Labor Relations Council as the representative of a substantial number of employees of the agency. National consultation rights shall not be accorded for any unit where a labor organization already holds exclusive recognition at the national level for that unit. The granting of national consultation rights does not preclude an agency from appropriate dealings at the national level with other organizations on matters affecting their members. An agency shall terminate national consultation rights when the labor organization
ceases to qualify under the established criteria.

(b) When a labor organization has been accorded national consultation rights, the agency, through appropriate officials, shall notify representatives of the organization of proposed substantive changes in personnel policies that affect employees it represents and provide an opportunity for the organization to comment on the proposed changes. The labor organization may suggest changes in the agency's personnel policies and have its views carefully considered. It may confer in person at reasonable times, on request, with appropriate officials on personnel policy matters, and at all times present its views thereon in writing. An agency is not required to consult with a labor organization on any matter on which it would not be required to meet and confer if the organization were entitled to exclusive recognition.

(c) Questions as to the eligibility of labor organizations for national consultation rights may be referred to the Assistant Secretary for decision.

Sec. 10. Exclusive recognition. (a) An agency shall accord exclusive recognition to a labor organization when the organization has been selected, in a secret ballot election, by a majority of the employees in an appropriate unit as their representative.

(b) A unit may be established on a plant or installation, craft, functional, or other basis which will ensure a clear and identifiable community of interest among the employees concerned and will promote effective dealings and efficiency of agency operations. A unit shall not be established solely on the basis of the extent to which employees in the proposed unit have organized, nor shall a unit be established if it includes--

(1) any management official or supervisor, except as provided in section 24;

(2) an employee engaged in Federal personnel work in other than a purely clerical capacity;

(3) any guard together with other employees, or

(4) both professional and nonprofessional employees, unless a majority of the professional employees vote for inclusion in the unit.

Questions as to the appropriate unit and related issues may be referred to the Assistant-Secretary for decision.

(c) An agency shall not accord exclusive recognition to a labor organization as the representative of employees in a unit of guards if the organization admits to membership, or is
affiliated directly or indirectly with an organization which admits to membership, employees other than guards.

(d) All elections shall be conducted under the supervision of the Assistant Secretary, of persons designated by him, and shall be by secret ballot. Each employee eligible to vote shall be provided the opportunity to choose the labor organization he wishes to represent him, from among those on the ballot, or "no union." Elections may be held to determine whether—

(1) a labor organization should be recognized as the exclusive representative of employees in a unit

(2) a labor organization should replace another labor organization as the exclusive representative, or

(3) a labor organization should cease to be the exclusive representative.

(e) When a labor organization has been accorded exclusive recognition, it is the exclusive representative of employees in the unit and is entitled to act for and negotiate agreements covering all employees in the unit. It is responsible for representing the interests of all employees in the unit without discrimination and without regard to labor organization membership. The labor organization shall be given the opportunity to be represented at formal discussions between management and employees or employee representatives concerning grievances, personnel policies and practices, or other matters affecting general working conditions of employees in the unit.

AGREEMENTS

Sec. 11. Negotiation of agreements. (a) An agency and a labor organization that has been accorded exclusive recognition, through appropriate representatives, shall meet at reasonable times and confer in good faith with respect to personnel policies and practices and matters affecting working conditions, so far as may be appropriate under applicable laws and regulations, including policies set forth in the Federal Personnel Manual, published agency policies and regulations, a national or other controlling agreement at a higher level in the agency, and this Order. They may negotiate an agreement, or any question arising thereunder; determine appropriate techniques, consistent with section 17 of this Order, to assist in such negotiation; and execute a written agreement or memorandum of understanding.

(b) In prescribing regulations relating to personnel policies and practices and working conditions, an agency shall
have due regard for the obligation imposed by paragraph (a) of this section. However, the obligation to meet and confer does not include matters with respect to the mission of an agency; its budget; its organization; the number of employees; and the numbers, types, and grades of positions or employees assigned to an organizational unit, work project or tour of duty; the technology of performing its work; or its internal security practices. This does not preclude the parties from negotiating agreements providing appropriate arrangements for employees adversely affected by the impact of realignment of work forces or technological change.

(c) If, in connection with negotiations, an issue develops as to whether a proposal is contrary to law, regulation, controlling agreement, or this Order and therefore not negotiable, it shall be resolved as follows:

(1) An issue which involves interpretation of a controlling agreement at a higher agency level is resolved under the procedures of the controlling agreement, or, if none, under agency regulations;

(2) An issue other than as described in subparagraph (1) of this paragraph which arises at a local level may be referred by either party to the head of the agency for determination;

(3) An agency head's determination as to the interpretation of the agency's regulations with respect to a proposal is final;

(4) A labor organization may appeal to the Council for a decision when--

(i) it disagrees with an agency head's determination that a proposal would violate applicable law, regulation of appropriate authority outside the agency, or this Order, or

(ii) it believes that an agency's regulations, as interpreted by the agency head, violate applicable law, regulation of appropriate authority outside the agency, or this Order.

Sec. 12. Basic provisions of agreements. Each agreement between an agency and a labor organization is subject to the following requirements--

(a) in the administration of all matters covered by the agreement, officials and employees are governed by existing or future laws and the regulations of appropriate authorities, including policies set forth in the Federal Personnel Manual; by published agency policies and regulations in existence at the time the agreement was approved; and by subsequently published agency policies and regulations required by law or by the regulations of appropriate authorities, or authorized by the terms of a controlling agreement at a higher agency level;
(b) management officials of the agency retain the right, in accordance with applicable laws and regulations--

(1) to direct employees of the agency;

(2) to hire, promote, transfer, assign, and retain employees in positions within the agency, and to suspend, demote, discharge, or take other disciplinary action against employees;

(3) to relieve employees from duties because of lack of work or for other; legitimate reasons;

(4) to maintain the efficiency of the Government operations entrusted to them;

(5) to determine the methods, means, and personnel by which such operations are to be conducted; and

(6) to take whatever actions may be necessary to carry out the mission of the agency in situations of emergency; and

(c) nothing in the agreement shall require an employee to become or to remain a member of a labor organization, or to pay money to the organization except pursuant to a voluntary, written authorization by a member for the payment of dues through payroll deductions. The requirements of this section shall be expressly stated in the initial or basic agreement and apply to all supplemental, implementing, subsidiary, or informal agreements between the agency and the organization.

Sec. 13. Grievance procedures. An agreement with a labor organization which is the exclusive representative of employees in an appropriate unit may provide procedures, applicable only to employees in the unit, for the consideration of employee grievances and of disputes over the interpretation and application of agreements. The procedure for consideration of employee grievances shall meet the requirements for negotiated grievance procedures established by the Civil Service Commission. A negotiated employee grievance procedure which conforms to this section, to applicable laws, and to regulations of the Civil Service Commission and the agency is the exclusive procedure available to employees in the unit when the agreement so provides.

Sec. 14. Arbitration of grievances. (a) Negotiated procedures may provide for the arbitration of employee grievances and of disputes over the interpretation or application of existing agreements. Negotiated procedures may not extend arbitration to changes or proposed changes in agreements or agency policy. Such procedures shall provide for the invoking of arbitration only with the approval of the labor organization that has exclusive
recognized and, in the case of an employee grievance, only with the approval of the employee. The costs of the arbitrator shall be shared equally by the parties.

(b) Either party may file exceptions to an arbitrator's award with the Council, under regulations prescribed by the Council.

Sec. 15. Approval of agreements. An agreement with a labor organization as the exclusive representative of employees in a unit is subject to the approval of the head of the agency or an official designated by him. An agreement shall be approved if it conforms to applicable laws, existing published agency policies and regulations (unless the agency has granted an exception to a policy or regulation) and regulations of other appropriate authorities. A local agreement subject to a national or other controlling agreement at a higher level shall be approved under the procedures of the controlling agreement, or, if none, under agency regulations.

NEGOTIATION DISPUTES AND IMPASSES

Sec. 16. Negotiation disputes. The federal Mediation and Conciliation Service shall provide services and assistance to Federal agencies and labor organizations in the resolution of negotiation disputes. The Service shall determine under what circumstances and in what manner it shall proffer its services.

Sec. 17. Negotiation impasses. When voluntary arrangements, including the services of the Federal Mediation and Conciliation Service or other third party mediation, fail to resolve a negotiation impasse, either party may request the Federal Service Impasses Panel to consider the matter. The Panel, in its discretion and under the regulations it prescribes, may consider the matter and may recommend procedures to the parties for the resolution of the impasse or may settle the impasse by appropriate action. Arbitration or third-party fact finding with recommendations to assist in the resolution of an impasse may be used by the parties only when authorized or directed by the Panel.

CONDUCT OF LABOR ORGANIZATIONS AND MANAGEMENT

Sec. 18. Standards of conduct for labor organizations.

(a) An agency shall accord recognition only to a labor organization that is free from corrupt influences and influences opposed to basic democratic principles. Except as provided in paragraph (b) of this section, an organization is not required
to prove that it has the required freedom when it is subject to governing requirements adopted by the organization or by a national or international labor organization or federation of labor organizations with which it is affiliated or in which it participates, containing explicit and detailed provisions to which it subscribes calling for—

(1) the maintenance of democratic procedures and practices, including provisions for periodic elections to be conducted subject to recognized safeguards and provisions defining and securing the right of individual members to participation in the affairs of the organization, to fair and equal treatment under the governing rules of the organization, and to fair process in disciplinary proceedings;

(2) the exclusion from office in the organization of persons affiliated with Communist or other totalitarian movements and persons identified with corrupt influences;

(3) the prohibition of business or financial interests on the part of organization officers and agents which conflict with their duty to the organization and its members; and

(4) the maintenance of fiscal integrity in the conduct of the affairs of the organization, including provision for accounting and financial controls and regular financial reports or summaries to be made available to members.

(b) Notwithstanding the fact that a labor organization has adopted or subscribed to standards of conduct as provided in paragraph (a) of this section, the organization is required to furnish evidence of its freedom from corrupt influences or influences opposed to basic democratic principles when there is reasonable cause to believe that—

(1) the organization has been suspended or expelled from or is subject to other sanction by a parent labor organization or federation of organizations with which it had been affiliated because it has demonstrated an unwillingness or inability to comply with governing requirements comparable in purpose to those required by paragraph (a) of this section; or

(2) the organization is in fact subject to influences that would preclude recognition under this Order.

(c) A labor organization which has or seeks recognition as a representative of employees under this Order shall file financial and other reports, provide for bonding of officials and employees of the organization, and comply with trusteeship and election standards.
(d) The Assistant Secretary shall the regulations needed to effectuate this section. Complaints of violations of this section shall be filed with the Assistant Secretary.

Sec. 19. Unfair labor practices. (a) Agency management shall not--

(1) interfere with, restrain, or coerce an employee in the exercise of the rights assured by this Order;

(2) encourage or discourage membership in a labor organization by discrimination in regard to hiring, tenure, promotion, or other conditions of employment;

(3) sponsor, control, or otherwise assist a labor organization, except that an agency may furnish customary and routine services and facilities under section 23 of this Order when consistent with the best interests of the agency, its employees, and the organization, and when the services and facilities are furnished, if requested, on an impartial basis to organizations having equivalent status:

(4) discipline or otherwise discriminate against an employee because he has filed a complaint or given testimony under this Order;

(5) refuse to accord appropriate recognition to a labor organization qualified for such recognition; or

(6) refuse to consult, confer, or negotiate with a labor organization as required by this Order.

(b) A labor organization shall not--

(1) interfere with, restrain, or coerce an employee in the exercise of his rights assured by this Order;

(2) attempt to induce agency management to coerce an employee in the exercise of his rights under this Order;

(3) coerce, attempt to coerce, or discipline, fine, or take other economic sanction against a member of the organization as punishment or reprisal for, or for the purpose of hindering or impeding his work performance, his productivity, or the discharge of his duties owed as an officer or employee of the United States;

(4) call or engage in a strike, work stoppage, or slowdown; picket an agency in a labor-management dispute; or condone any such activity be failing to take affirmative action to prevent or stop it;
(5) discriminate against an employee with regard to the terms or conditions of membership because of race, color, creed, sex, age, or national origin; or

(6) refuse to consult, confer, or negotiate with an agency as required by this Order.

(c) A labor organization which is accorded exclusive recognition shall not deny membership to any employee in the appropriate unit except for failure to meet reasonable occupational standards uniformly required for admission, or for failure to tender initiation fees and dues uniformly required as a condition of acquiring and retaining membership. This paragraph does not preclude a labor organization from enforcing discipline in accordance with procedures under its constitution or by-laws which conform to the requirements of this Order.

(d) When the issue in a complaint of an alleged violation of paragraph (a) (1), (2), or (4) of this section is subject to an established grievance or appeals procedure, that procedure is the exclusive procedure for resolving the complaint. All other complaints of alleged violations of this section initiated by an employee, an agency, or a labor organization, that cannot be resolved by the parties, shall be filed with the Assistant Secretary.

MISCELLANEOUS PROVISIONS

Sec. 20. Use of official time. Solicitation of membership or dues, and other internal business of a labor organization, shall be conducted during the non duty hours of the employees concerned. Employees who represent a recognized labor organization shall not be on official time when negotiating an agreement with agency management.

Sec. 21. Allotment of dues. (a) When a labor organization holds formal or exclusive recognition, and the agency and the organization agree in writing to this course of action, an agency may deduct the regular and periodic dues of the organization from the pay of members of the organization in the unit of recognition who make a voluntary allotment for that purpose, and shall recover the costs of making the deductions. Such an allotment is subject to the regulations of the Civil Service Commission, which shall include provision for the employee to revoke his authorization at stated six month intervals. Such an allotment terminates when--

(1) the dues withholding agreement between the agency and the labor organization is terminated or ceases to be applicable to the employee, or
(2) the employee has been suspended or expelled from the labor organization.

(b) An agency may deduct the regular and periodic dues of an association of management officials or supervisors from the pay of members of the association who make a voluntary allotment for that purpose, and shall recover the costs of making the deductions, when the agency and the association agree in writing to this course of action. Such an allotment is subject to the regulations of the Civil Service Commission.

Sec. 22. Adverse action appeals. The head of each agency, in accordance with the provisions of this Order and regulations prescribed by the Civil Service Commission, shall extend to all employees in the competitive civil service rights identical in adverse action cases to those provided preference eligibles under sections 7511-7512 of title 5 of the United States Code. Each employee in the competitive service shall have the right to appeal to the Civil Service Commission from an adverse decision of the administrative officer so acting, such appeal to be processed in an identical manner to that provided for appeals under section 7701 of title 5 of the United States Code. Any recommendation by the Civil Service Commission submitted to the head of an agency on the basis of an appeal by an employee in the competitive service shall be complied with by the head of the agency.

Sec. 23. Agency implementation. No later than April 1, 1970, each agency shall issue appropriate policies and regulations consistent with this Order for its implementation. This includes but is not limited to a clear statement of the rights of its employees under this Order; procedures with respect to recognition of labor organizations, determination of appropriate units, consultation and negotiation with labor organizations, approval of agreements, mediation, and impasse resolution; policies with respect to the use of agency facilities by labor organizations; and policies and practices regarding consultation with other organizations and associations and individual employees. Insofar as practicable, agencies shall consult with representatives of labor organizations in the formulation of these policies and regulations, other than those for the implementation of section 7 (e) of this Order.

Sec. 24. Savings clauses. (a) This Order does not preclude--

(1) the renewal or continuation of a lawful agreement between an agency and a representative of its employees entered into before the effective date of Executive Order No. 10988 (January 17, 1962); or
(2) the renewal, continuation, or initial according to recognition for units of management officials or supervisors represented by labor organizations which historically or traditionally represent the management officials or supervisors in private industry and which hold exclusive recognition for units of such officials or supervisors in any agency on the date of this Order.

(b) All grants of informal recognition under Executive Order No. 10988 terminate on July 1, 1970

(c) All grants of formal recognition under Executive Order No. 10988 terminate under regulations which the Federal Labor Relations Council shall issue before October 1, 1970.

(d) By not later than December 31, 1970, all supervisors shall be excluded from units of formal and exclusive recognition and from coverage by negotiated agreements, except as provided in paragraph (a) of this section.

Sec. 25. Guidance, training, review and information.

(a) The Civil Service Commission shall establish and maintain a program for the guidance of agencies on labor-management relations in the Federal Service; provide technical advice and information to agencies; assist in the development of programs for training agency personnel and management officials in labor-management relations; continuously review the operation of the Federal labor-management relations program to assist in assuring adherence to its provisions and merit system requirements; and, from time to time, report to the Council on the state of the program with any recommendations for its improvement.

(b) The Department of Labor and Civil Service Commission shall develop programs for the collection and dissemination of information appropriate to the needs of agencies, organizations and the public.

Sec. 26. Effective date. This Order is effective on January 1, 1970 except sections 7 (f) and 8 which are effective immediately. Effective January 1, 1970, Executive Order No. 10988 and the President's Memorandum of May 21, 1963, entitled Standards of Conduct for Employee Organizations and Code of Fair Labor Practices, are revoked.

RICHARD NIXON

THE WHITE HOUSE
October 29, 1969
APPENDIX D

EXECUTIVE ORDER 11616
AMENDING EXECUTIVE ORDER NO. 11491, RELATING TO
LABOR-MANAGEMENT RELATIONS IN THE FEDERAL SERVICE

By virtue of the authority vested in me by the Constitution
and statutes of the United States, including sections 3301 and
7301 of title 5 of the United States Code, and as President of the
United States, Executive Order No. 11491 of October 29, 1969,
relating to labor-management relations in the Federal service, is
amended as follows:

1. Section 2(b) is amended by deleting the words "formal
or".

2. Paragraph (2) section 2(e) is amended to read as
follows:
"(2) assists or participates in a strike against the
Government of the United States or any agency thereof, or imposes
a duty of obligation to conduct, assist, or participate in such a
strike;"

3. Section 4(a) is amended to read as follows:
"(a) There is hereby established the Federal Labor
Relations Council, which consists of the Chairman of the Civil
Service Commission, who shall be chairman of the Council, the
Secretary of Labor, the Director of the Office of Management and
Budget, and such other officials of the executive branch as the
President may designate from time to time. The Civil Service
Commission shall provide administrative support and services to
the Council to the extent authorized by law."

4. Section 6(a) is amended--
(a) by deleting the word "and" at the end of
paragraph (3).
(b) by substituting for paragraph (4) the following:
"(4) decide unfair labor practice complaints and alleged
violations of the standards of conduct for labor organizations;
and"
(c) by adding at the end thereof the following:
"(5) decide questions as to whether a grievance is subject
to a negotiated grievance procedure or subject to arbitration
under an agreement."
5. Section 7(d) is amended to read as follows:
"(d) Recognition of a labor organization does not--
"(1) preclude an employee, regardless of whether he is in a unit of exclusive recognition, from exercising grievance or appellee rights established by law or regulations; or from choosing his own representative in a grievance or appellee action, except when presenting a grievance under a negotiated procedure as provided in section 13;
"(2) preclude or restrict consultations and dealings between an agency and a veterans organization with respect to matters of particular interest to employees with veterans preference; or
"(3) preclude an agency from consulting or dealing with a religious, social, fraternal, professional or other lawful association, not qualified as a labor organization, with respect to matters or policies which involve individual members of the association or are of particular applicability to it or its members.
"Consultations and dealings under subparagraph (3) of this paragraph shall be so limited that they do not assume the character of formal consultation on matters of general employee-management policy, except as provided in paragraph (e) of this section, or extend to areas where recognition of the interests of one employee group may result in discrimination against or injury to the interests of other employees."

6. Section 7(f) is amended to read as follows:
"(f) Informal recognition or formal recognition shall not be accorded."

7. Section 8 is revoked.

8. Section 13 is amended to read as follows:
"Sec. 13. Grievance and arbitration procedures.
"(a) An agreement between an agency and a labor organization shall provide a procedure, applicable only to the unit, for the consideration of grievances over the interpretation or application of the agreement. A negotiated grievance procedure may not cover any other matters, including matters for which statutory appeals procedures exist, and shall be the exclusive procedure available to the parties and the employees in the unit for resolving such grievances. However, any employee or group of employees in the unit may present such grievances to the agency and have them adjusted, without the intervention of the exclusive representative, as long as the adjustment is not inconsistent with the terms of the agreement and the exclusive representative has been given opportunity to be present at the adjustment.
"(b) A negotiated procedure may provide for the arbitration of grievances over the interpretation or application of the
agreement, but not over any other matters. Arbitration may be invoked only by the agency or the exclusive representative. Either party may file exceptions to an arbitrator's award with the Council, under regulations prescribed by the Council.

"(c) Grievances initiated by an employee or group of employees in the unit on matters other than the interpretation or application of an existing agreement may be presented under any procedure available for the purpose.

"(d) Questions that cannot be resolved by the parties as to whether or not a grievance is on a matter subject to the grievance procedure in an existing agreement, or is subject to arbitration under that agreement, may be referred to the Assistant Secretary for decision.

"(e) No agreement may be established, extended, or renewed after the effective date of this Order which does not conform to this section. However, this section is not applicable to agreements entered into before the effective date of this Order."

9. Section 14 is revoked.

10. Section 19(d) is amended to read as follows:

"(d) Issues which can properly be raised under an appeals procedure may not be raised under this section. Issues which can be raised under a grievance procedure may in the direction of the aggrieved party, be raised under that procedure or the complaint procedure under this section, but not under both procedures. Appeals or grievance decisions shall not be construed as unfair labor practice decisions under this Order nor as precedent for such decisions. All complaints under this section that cannot be resolved by the parties shall be filed with the Assistant Secretary."

11. Section 20 is amended to read as follows:

"Sec. 20. Use of official time. Solicitation of membership or dues, and other internal business of a labor organization, shall be conducted during the non-duty hours of the employees concerned. Employees who represent a recognized labor organization shall not be on official time when negotiating an agreement with agency management, except to the extent that the negotiating parties agree to other arrangements which may provide that the agency will either authorize official time for up to 40 hours or authorize up to one-half the time spent in negotiations during regular working hours, for a reasonable number of employees, which number normally shall not exceed the number of management representatives."

12. Section 21 is amended to read as follows:

"Sec. 21. Allotment of dues. (a) When a labor
organization holds exclusive recognition and the agency and the
organization agree in writing to this course of action, an agency
may deduct the regular and periodic dues of the organization from
the pay of members of the organization in the unit of recognition
who make a voluntary allotment for that purpose. Such an allotment
is subject to the Civil Service Commission, which shall include
provision for the employee to revoke his authorization at states
six-month intervals. Such an allotment terminates when—

"(1) the dues withholding agreement between the agency
and the labor organization is terminated or ceases to be
applicable to the employee; or

"(2) the employee has been suspended or expelled from
the labor organization.

"(b) An agency may deduct the regular and periodic dues
of an association of management officials or supervisors from
the pay of members of the association who make a voluntary
allotment for that purpose, when the agency and the association
agree in writing to this course of action. Such an allotment
is subject to the regulations of the Civil Service Commission."

13. Section 24 is amended by deleting "(a)" after the
section heading; and by deleting subsections (b), (c), and (d).

14. Section 25(a) is amended to read as follows:
"(a) The Civil Service Commission, in conjunction with
the Office of Management and Budget, shall establish and maintain
a program for the policy guidance of agencies on labor-management
relations in the Federal service and periodically review the
implementation of these policies. The Civil Service Commission
shall continuously review the operation of the Federal labor-
management relations program to assist in assuring adherence
to its provisions and merit system requirements; implement tech­
nical advice and information programs for the agencies; assist in
the development of programs for training agency personnel and
management officials in labor-management relations; and from time
to time, report to the Council on the state of the program with
any recommendations for its improvement."

The amendments made by this Order shall become effective
ninety days from this date. Each agency shall issue appropriate
policies and regulations consistent with the Order for its
implementation.

RICHARD NIXON

THE WHITE HOUSE
August 26, 1971
APPENDIX E

HOW TO TAKE A CASE BEFORE
THE FEDERAL SERVICE IMPASSES PANEL

[Diagram of the process flow for taking a case before the Federal Service Impasses Panel]
APPENDIX F

Fiscal 1974 Increases in General Pay Schedule Proposed by the Pay Agent and the Advisory Committee Majority

<table>
<thead>
<tr>
<th>GS Grade</th>
<th>Percent Increase Proposed by Pay Agent</th>
<th>Percent Increase Proposed by the Advisory Committee Majority</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>4.55</td>
<td>5.50</td>
</tr>
<tr>
<td>2</td>
<td>4.59</td>
<td>5.52</td>
</tr>
<tr>
<td>3</td>
<td>4.60</td>
<td>5.51</td>
</tr>
<tr>
<td>4</td>
<td>4.61</td>
<td>5.49</td>
</tr>
<tr>
<td>5</td>
<td>4.65</td>
<td>5.51</td>
</tr>
<tr>
<td>6</td>
<td>4.71</td>
<td>5.52</td>
</tr>
<tr>
<td>7</td>
<td>4.72</td>
<td>5.51</td>
</tr>
<tr>
<td>8</td>
<td>4.77</td>
<td>5.53</td>
</tr>
<tr>
<td>9</td>
<td>4.77</td>
<td>5.51</td>
</tr>
<tr>
<td>10</td>
<td>4.72</td>
<td>5.43</td>
</tr>
<tr>
<td>11</td>
<td>4.83</td>
<td>5.51</td>
</tr>
<tr>
<td>12</td>
<td>4.88</td>
<td>5.51</td>
</tr>
<tr>
<td>13</td>
<td>4.95</td>
<td>5.51</td>
</tr>
<tr>
<td>14</td>
<td>5.01</td>
<td>5.51</td>
</tr>
<tr>
<td>15</td>
<td>5.07</td>
<td>5.51</td>
</tr>
<tr>
<td>16</td>
<td>5.13&lt;sup&gt;a&lt;/sup&gt;</td>
<td>5.51&lt;sup&gt;a&lt;/sup&gt;</td>
</tr>
<tr>
<td>17</td>
<td>5.19&lt;sup&gt;a&lt;/sup&gt;</td>
<td>5.51&lt;sup&gt;a&lt;/sup&gt;</td>
</tr>
<tr>
<td>18</td>
<td>5.25&lt;sup&gt;a&lt;/sup&gt;</td>
<td>5.51&lt;sup&gt;a&lt;/sup&gt;</td>
</tr>
<tr>
<td>Average Increase</td>
<td>4.77</td>
<td>5.47</td>
</tr>
</tbody>
</table>

<sup>a</sup>These increases cannot be put into effect unless the present $36,000 ceiling is changed.

### APPENDIX G

**Federal General Schedule Pay Increases Since 1962**

<table>
<thead>
<tr>
<th>Effective Date</th>
<th>Percentage Increase</th>
</tr>
</thead>
<tbody>
<tr>
<td>September 14, 1962</td>
<td>5.5</td>
</tr>
<tr>
<td>January 5, 1964</td>
<td>4.1</td>
</tr>
<tr>
<td>July 1, 1964</td>
<td>4.1</td>
</tr>
<tr>
<td>October 1, 1965</td>
<td>3.6</td>
</tr>
<tr>
<td>July 1, 1966</td>
<td>2.9</td>
</tr>
<tr>
<td>October 1, 1967</td>
<td>4.5</td>
</tr>
<tr>
<td>July 1, 1968</td>
<td>4.9</td>
</tr>
<tr>
<td>July 1, 1969</td>
<td>9.1</td>
</tr>
<tr>
<td>January 1, 1970</td>
<td>6.0</td>
</tr>
<tr>
<td>January 1, 1971</td>
<td>6.0</td>
</tr>
<tr>
<td>January 1, 1972</td>
<td>5.5</td>
</tr>
<tr>
<td>January 1, 1973</td>
<td>5.1</td>
</tr>
<tr>
<td>October 1, 1973</td>
<td>4.77</td>
</tr>
</tbody>
</table>

VITA

William Vaughn Rice, Jr. was born in Hiawassee, Georgia in 1926 and attended public schools there. He received his B.S. degree from the United States Military Academy, West Point, New York in 1949, and started a 25 year career in the U.S. Air Force. His early career was spent as a crew member on various USAF aircraft. He received his M.B.A. degree in 1958 from the Air Force Institute of Technology, Dayton, Ohio and became an Air Force teacher in various positions: first as Advisor to the Commandant, Republic of Korea Air Force Academy, Seoul, Korea; then as Assistant Professor of Aerospace Studies, Louisiana State University; then as Senior Instructor, Academic Instructor School, Air University, Maxwell Air Force Base Alabama.

He was a graduate student at Louisiana State University in 1968-69, returning to Air University to become Chief, Labor-Management Relations Division. In this position he was responsible for all labor relations instruction in Air University.

After receiving the degree of Doctor of Philosophy in Economics from Louisiana State University, he accepted a position as Assistant Professor of Economics and Management at the University of Houston in Clear Lake City, Texas, effective January 1, 1975 following his retirement from the Air Force.