STAFF RELATIONS IN THE CANADIAN FEDERAL CIVIL SERVICE

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Preface

My interest in the problems of unionism in the public service was aroused in 1953 when, together with R.C. Pratt, I undertook a study of staff relations in Canadian municipalities. This research was subsequently published under our joint authorship as Municipal Labour Relations in Canada. The subject proved to be particularly interesting to me because it raised important questions about public administration and constitutional policy which do not come up in ordinary private labour relations. Although these questions seemed to have a special relevance to public personnel policy in the provincial and federal governments, there was no evidence that objective, systematic research was being done in this area. The present work is an attempt to fill part of this gap in Canadian political and constitutional studies.

Chapter IV which deals with the National Joint Council of the Public Service of Canada is based substantially on a paper which I presented at the annual meeting of the Canadian Political Science Association in June, 1956. It was published in the Canadian Journal of Economics and Political Science in November, 1956.

It is a pleasant custom to acknowledge and thank those whose encouragement and cooperation contributed to the completion of this study. First, I would express my appreciation to the Laddie Millen Memorial

Scholarship Fund and the Universities-Labour Department Research Committee for their grants in aid of my research. Professors J. R. Mallory and H. D. Woods of the Department of Economics and Political Science at McGill University carefully read my manuscript in draft form and offered many constructive suggestions. I am indebted to the many officials of the government and the Civil Service Commission who provided information and gave unsparingly of their time to discuss with me the many problems of staff relations. A similar debt is owed to the officers of the major staff associations without whose cooperation my research would have been more difficult and less fruitful.

My special gratitude goes to my wife whose encouragement and patience sustained me throughout the writing of this work. In addition, she helped in editing the manuscript and prepared the final typescript. It is with deep affection that I acknowledge her share in my efforts.

Chapter 1

The State and its Servants

The view that the status of civil servants with respect to trade unionism is significantly different from that of private employees is rarely challenged. To know that a difference exists, however, is not necessarily to know precisely what that difference is either in terms of abstract theory or logical practical application. The question as to whether civil servants may organize themselves into associations for collective action in pursuit of common objectives related to their condition of employment is now largely academic. A large proportion of civil servants in all modern constitutional states is organized in associations whose structure and aims resemble those of trade unions. There is, nevertheless, an extreme degree of variation in the particular activities of civil service organizations and in the nature of formal relations between them and the given state employer. This variation suggests the absence of general and clear cut criteria for determining the limits of trade unionism for civil servants. It implies, also, that the actual state of development in a given country is the result of a pragmatic interplay of regional, historical and institutional factors.

The aim of the present study is to describe and evaluate the experience of the Canadian Federal government

in its relations with the civil service staff associations. The civil servants referred to are mainly those employed in the non-industrial, classified service. The study will not concern itself with the narrower technical problems of individual personnel administration since these are not necessarily related to the phenomenon of trade unionism. Its main focus will be on the staff associations, their organizational development, their changing expectations, the nature of their representations, the response of the government to their pressures, and the evolving machinery of consultation. Although our approach to the subject matter will be largely expository, it is not improbable that a critical examination of the material will have ramifications that go beyond mere description. It may suggest modifications in the present public policy. It may have implications for private labour relations in those areas of economic activity in which the public interest is deeply involved. Finally, it may provide an interesting case study in constitutional development because the emerging pattern of civil service staff relations represents an adjustment of government to the claims of civil servants for some of the civil rights enjoyed by other citizens.

The unionization of civil servants poses three major problems:

1. Have civil servants the right to form associations with trade union objectives? Are there any limitations on the scope of these organizations due to the special nature of the state as employer?

2. Can civil service associations expect the government-employer to enter into consultation with them on a reciprocal basis whenever one or the other side wishes to change the conditions of employment? Can these consultations lead to commitments which may be regarded as binding on the parties? In short, is "collective bargaining" possible when the state is a direct party?

3. Given some degree of consultation, what happens if the claims of organized civil servants are not eventually reconciled? Is there any other recourse open to them? Or, must they ultimately wait for the unilateral judgment of government or legislature? [1]

In dealing with these questions it is our intention to limit theoretical speculation on the assumption that, in constitutional development, practice supersedes theory. To stress the pragmatic aspects, however, is not to overlook the significance of some of the legal and normative arguments that

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1. An amusing illustration of this problem was reported in The New York Times of August 2, 1957, under the heading "Postal Workers Pray for Pay Rise".

> "A prayer for higher pay for postmen was offered yesterday at Third Avenue and Eighty-fourth Street as a bill to grant it approached a vote in Congress.... The national union had called for a nation-wide 'Pause for Prayer' inasmuch as postal employees accept the obligation not to strike for their demands. . .The Rev. William W.S. Hohenschild. . . said in praying for the postmen and their families: 'Bless the President of the United States. May he in his wisdom be so directed by Thy will that he may accede to their request for an increase in their normal pay'".

As a matter of record, Congress passed the bill, but it was vetoed by the President.

are frequently advanced to support official policies and public attitudes. The empirical social scientist may not concern himself with these arguments in abstracto. But, in so far as they may be employed to rationalize action or to persuade opinion which is influential in determining public policy, they are social facts. As such they warrant the critical examination which they have, in fact, received in a number of well-reasoned books.[2] It would also be useful for the purpose of the present study to establish our general position on these theoretical issues before proceeding with a more specific elaboration of the questions raised.

The central theoretical or constitutional problem with respect to the status of civil service associations stems from the difficult, and perhaps artificial, conception of the state as a sovereign employer. Whether the issue raised by the appearance of these associations is organization, or collective bargaining, or the possibility of strike action, official reaction tends to be rationalized in terms of the special nature of the state as the repository of sovereignty and the guardian of the public interest. To use the term "rationalized"

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2. See W. Milne-Bailey, Trade Unions and the State, London, 1934.
M.R. Godine, The Labour Problem in the Public Service, Cambridge, Mass., 1951.
Report of the Committee on Employee Relations in the Public Service of the Civil Service Assembly of the United States and Canada, Chicago, 1942.
S.D. Spero, Government as Employer, New York, 1948.
E.N. Gladden, Civil Service Staff Relations, London, 1943.
H. Finer, Theory and Practice of Modern Government, New York, 1949, Ch. 34.

is not to infer that the argument lacks validity. But its validity is neither simple nor absolute except in a purely abstract and legalistic sense. Indeed, some modern political theorists have argued that the notion of absolute power which sovereignty implies is incompatible with constitutionalism.[3] However, even if we accept the existence of a sovereign authority whose will has the force of law, we must recognize that the formation of that will, in constitutional democratic practice, is the product of a complex process involving individuals and groups, and which may legitimately include civil servants and their associations. It is a process which does not necessarily culminate with the majority or the formal representative of the majority, imposing its will on a minority.

> "It is all very well to claim that parliament or the majority of the people is 'sovereign', but the moment one does so it becomes impossible to maintain the idea of a constitutional system, with its protection for the individual and the minority against arbitrary action of the majority in parliament or out . . .; by definition, a constitutional democracy is one which does not grant <u>all</u> power to the majority."[4]

One need not reject the conception of sovereignty in order to reconcile it with constitutional democratic experience.

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3. "Since under constitutionalism there is not supposed to exist any such concentrated power, sovereignty as a conception is incompatible with constitutionalism." C.J. Friedrich, <u>Constitutional Government and Democracy</u>, Boston, 1950. p. 19.

4. <u>Ibid</u>, p. 17.

In a democracy it is not "parliament or the majority of the people" that is sovereign. The sovereign is something much more amorphous - it is the people as a whole.[5] As sovereign, it is the ultimate authority residing in a state which occupies a given space and its will is enforceable by a monopoly of coercive power. Government is an amalgam of men and institutions through which the sovereign will is supposed to express itself. It is obvious that in a mass society where the people as a whole is the sovereign it would be fatuous to claim a precise knowledge of its will in any particular case. Parliament, as a representative legislature, approaches a majoritarian principle only at election time when its composition is determined. In devising concrete law it is not a majority acting arbitrarily but an institution which responds to its judgment of the sovereign's mood and expectations. The sovereign's mood might well be one of apathy which tolerates action by government that is not in accord with the sovereign's real will. Although the notion of sovereignty sanctions the formal emanations of parliament and government there is no clear index of their conformity with the sovereign will. The degree of obedience to the laws and the marking of ballots at election time provide the nearest approximations of the sovereign will in a democracy. The eighteenth amendment to the Constitution of the United States was ostensibly a very formal expression of sovereignty, but it was clearly at odds with the effective will of the sovereign people.

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5. Technically and formally, of course, the ultimate sovereign in Canada is the Queen in Parliament.

All this is, to be sure, extreme oversimplification of a very complex process. It is sufficient for our present purpose to concede that the idea of sovereignty is useful as a legal fiction. It provides for an ultimate authority within the state which may be invoked under certain conditions. In normal times, however, it is the interplay of individual and group pressure which decisively influences the course of state action and produces the sovereign will.[6] These are fundamental power relationships which "obstinately resist satisfactory treatment in legal terms."[7] Students of society have long known that there exists a close relationship between government, law and public opinion. Their researches suggest the futility of seeking to resolve social problems by means of an abstract logic based on a priori legal assumptions. Sovereignty, in practice, finds expression in the process whereby decisions are made which are regarded as binding on the given community and which are ultimately enforceable. The nature of the process is related to the structure of decision-making power.

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6. This is a broad generalization. Due allowance must of course be made for the relative strength of individuals and groups and the intensity with which they pursue their interests. cf. G. Mosca, The Ruling Class, New York, 1939; H.D. Lasswell, Politics, Who Gets What, When, How, New York, 1936; D.E. Truman, The Governmental Process, New York, 1954; V.O. Key, Jr., Politics, Parties and Pressure Groups, New York, 1948; C. Wright Mills, The Power Elite, New York, 1956; and others.

7. F.M. Watkins, The State as a Concept in Political Science, as quoted in Godine, op. cit., p. 43.

As Dicey has stated it:

> "And here the obvious conclusion suggests itself that the public opinion which governs a country is the opinion of the sovereign, whether the sovereign be a monarch, an aristocracy, or the mass of the people . . . the public opinion which finds expression in legislation is a very complex phenomenon, and often takes the form of a compromise resulting from a conflict between the ideas of the government and the feelings or habits of the governed".[8]

When we approach the problem of public employment we find that the range of viewpoints about its special nature can be very great. Much depends upon the degree of insight and perception one has of such vague terms as "the people's will" and "the public interest". Thus we find the statement:

> "We must appreciate that the people alone may decide what rights or privileges may or may not be granted to public employees by the people's representatives. Individuals have the privilege of serving the people or declining to do so. There is no compulsion. When they assume the task of serving the people, they must accept the responsibilities that go with it, both the advantages and the disadvantages of public employment".[9]

Assuming that the author means the sovereign will when he refers to the "people", the statement is technically correct but quite meaningless as a description of reality. It is neither elaborated nor qualified to take into account

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8. A.V. Dicey, Lectures on the Relations Between Law and Public Opinion in England during the Nineteenth Century, London, 1930, p. 10.

9. H.E. Kaplan, "Concepts of Public Employee Relations," Industrial and Labour Relations Review, I (January, 1948) P. 210.

that the people who "alone may decide" is a most complex and heterogeneous entity which never makes positive decisions. Even the decisive ballot has only an indirect effect. It elects representatives whose positive influence on government and law depends on their relationship to a legislative majority which is itself the product of negotiation and compromise. Just as the "people" may decide the rights and privileges of public employees, it may likewise decide those of private citizens, private corporations and other associations. The people as sovereign may consider itself unsuable, or it may allow itself to be sued. It may permit itself to be bound by "contracts" with private firms, or it may decide not only to ignore the contract but to confiscate the physical and financial resources of the firm. It may hold its civil servants in virtual bondage--recruit them by conscription and maintain them in monastic isolation; or it may grant them the right of association, provide channels for mutual consultation, and even, if it wills, accept as binding the recommendations of a tribunal which owes its existence to the sovereign's caprice. One can pursue the theoretical argument to its logical conclusion, but it becomes a reductio ad absurdum in relation to experience.

The notion of "public interest" is also one which is theoretically important but difficult to define empirically. It even lacks the precision of an idealized legal norm which the concept of sovereignty can claim. The interest of a highly diversified public is not objectively

definable although it may be sensed or anticipated. It is clear, however, that the idea of interest involves subjective factors.[10] The public interest is not a generalized constant but an aggregate of individual interests which varies in structure and intensity with respect to different issues. It may be discovered in the complex of responses of the public to particular experience, or it may become evident in the evolution of public expectations over considerable periods of time. It is most determinate as the public interest when it is most general. Thus we can say that social and political trends in western society since the 1930's reveal a public interest in the maintenance of a stable economy with adequate provision for social security. This is combined with a growing reliance on government to fulfil these expectations. However, when it comes to devising substantive policies to give effect to this general interest, we find that there is a continuous realignment of subjective interests which modifies the public interest. There is no single or homogeneous public interest. During a period of "cold war", for example, there is a general concern about military security. This may imply the imposition of restrictions on access to employment in government agencies on the grounds of political beliefs or associations. But a public's interest in

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10. A distinction should be drawn between "public interest" and "public good". Some theorists will argue that there is an *a priori* knowledge of the public good which imposes obligations on those charged with public policy. This is not in keeping with the experience of constitutionalism. In any case, it is not necessary, for our purposes, to embark on a discussion of values.

maximizing security may be in conflict with its interest in preserving constitutional freedoms of conscience and association. The policy which is finally determined must attempt to reconcile these conflicting aspects. There are circumstances such as war or insurrection when a single overriding public interest subordinates all others, but it is precisely under such conditions that normal constitutionalism is at its weakest. This pragmatic approach to the problem of public interest suggests that, like the notions of law and sovereignty, it is closely related to the phenomenon of effective public opinion.[11]

The public interest is also a relevant consideration in the field of employer-employee relations. A strike which involves a private employer and a group of employees in a small population centre may have little effect on the aggregate of interests which comprises the public interest. In so far as the strike may affect broad interests in the locality other than those of the direct disputants, efforts may be made to intervene within the rather narrow limits of the local jurisdiction. There may be disputes, on the other hand, in which a broad public interest is much more clearly involved. Hospital services, garbage disposal, communications, government services related to security and general welfare, and so on, are functions endowed with a public

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11. The term "effective public opinion" is used to account for the absence of a necessary correlation between the numbers holding an opinion and its influence on policy or legislation.

character. Any actual or anticipated interruption of these functions cannot but generate a public opinion. This will influence the direct parties as well as the political and legislative institutions which must, in a democratic society, be sensitive to the public mood. The actual response of official institutions to the imperatives of the public interest is more a matter of intuitive judgment than of scientific logic. It must take into account the heterogeneity and relative intensity of interests which are subsumed under the public interest. Another illustration will serve to clarify this point. A worker who commutes to his place of employment from a suburban area is inconvenienced by a railway strike. As a trade unionist, he sympathizes with the strikers and regards the strike as a necessary bargaining factor in labour relations. The operator of a fleet of transport trucks derives a net increase in his business as a result of a railway strike. As an employer who might be confronted with similar action by his own employees, he welcomes a curtailment of the bargaining power of the unions. In any given case there are hundreds of such conflicting interests, and their relative weight must always be changing as a function of time.[12]

The point to be stressed is that the public interest

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12. Thus a railway strike which continues for ten days generates a different configuration of public opinion than one which is settled in two days.

(or sovereign will) is not definable *a priori* unless one begins with unprovable assumptions. Legal definition, when possible, is useful in giving formal expression to a particular public interest. But it does not create that interest. If we apply this reasoning to the sphere of government staff relations we can suggest that it is the nature of services performed rather than the juridical status of the employer that is a better index of a public interest. It may well be argued that the very fact that a government is performing a certain service is in itself evidence of considerable public involvement. This may be granted as a probability, but it does not change the assertion that the public interest must exist or be anticipated before there is a formal response to it. H. E. Kaplan misses this point when he declares that "Whatever rights and privileges employees may have had under private ownership must, upon change to public control, yield to the general public interest."[13] The statement might be amended by adding that the change to public control is *ipso facto* a sign of public interest, but it would then become tautologous. In fact, such a tautology is introduced two sentences above the one just quoted: "Where the public interest may demand or require the taking over of a private enterprise for public use, it necessarily changes the employee relationship."[14]

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13. H. E. Kaplan, *op. cit.*, p. 210.

14. *Ibid.*

This modest examination of the problems of sovereignty and public interest does not suggest that these concepts are irrelevant to the development of policies towards civil service unions. It does, however, emphasize their vagueness and flexibility in the framework of constitutional democratic experience. Our discussion allows for the validity of the assertion that the status of civil servants differs from that of private employees. At the same time, it points out that the actual status is a function of a given state of public opinion. We can thus rationalize the many changes that have taken place as consistent with abstract legitimacy. We can also anticipate changes in the future in response to ever-changing opinion.

The question of the right of civil servants to form associations is not a difficult one. Their organization for mutual assistance is a fact which is recognized in official pronouncements and is justified as a fundamental right of citizenship. The two major civil service staff associations made their appearance on the Canadian scene before 1910. A rather strange statement was issued in the Spring of 1920 by Sir George E. Foster, the acting prime minister, in reply to a submission by the executive of the Trades and Labour Congress. This statement was paraphrased in the Labour Gazette as follows:

> "With regard to the right to organize, the Government stated that while this was already recognized as applying to industrial workers, the principle could not be applied to Government employees, who were obviously in a different category."[15]

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15. Canada, Labour Gazette, XX(April, 1920) p. 372.

In view of the fact that there were at that time several civil service associations representing a large number of employees, it would seem that by the term "organization" Sir George had in mind the general scope of trade-union activities, including collective bargaining and strike action. The fresh memories of the Winnipeg general strike in which some postal employees had been involved were perhaps at the root of this confusion of terms.

The present position is clear. In a letter to the Civil Service Federation of Canada in May, 1954, the Secretary of State, the Hon. J.W. Pickersgill, wrote:

> "It seems to me that the right of civil servants to organize and the right of their elected officers to represent their membership with respect to grievances is recognized by the existence of the many staff organizations which are now functioning, and by the representations which are constantly being made by their officers to the Government and to Departments of Government." [16]

A more definitive statement was made by the succeeding Secretary of State, the Hon. Roch Pinard, in a letter to the same Federation on December 22, 1954. In it he affirmed:

> "(1) that Civil Servants have the right to organize and that this right has never been denied;
>
> (2) that affiliates of the Federation and other recognized Associations of Civil Servants have the right to take up grievances with Departmental officers during office hours as may be decided by Deputy Ministers, and

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16. The Civil Service Review, XXVII (June, 1954), p. 204.

(3) that the Deputy Ministers have the right to decide the extent to which, if any, Civil Servants during working hours may
(a) carry on organizing activities, and
(b) issue check-off cards and collect dues."[17]

There are other aspects to the question of organization which are not as clearly defined. One of these is the matter of affiliation with non-governmental employees; another is the extent of recognition of particular associations.

In Britain, prior to 1927, civil service organizations were able to affiliate themselves with the Trades Union Congress and the Labour Party. The General Strike of 1926 in which some of the civil service associations had become involved indirectly led to legislation which modified their status. Clause V of the Trade Disputes and Trade Unions Act, 1927, provided that civil service organizations whose primary purpose was to influence the conditions of employment of their members had to be composed entirely of persons employed by and under the Crown. In addition, they had to be "independent of, and not affiliated to, any such organization as aforesaid the membership of which is not confined to persons employed by or under the Crown of any federation comprising such organizations, that its objects do not include political objects, and that it is not associated directly or indirectly with any political party or organization."[18] This Act was repealed in May, 1946, in response to a general change in the climate of opinion,

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17. Ibid., XXVIII (March, 1955), p. 108.

18. Quoted in L.D. White, Whitley Councils in the British Civil Service, Chicago, 1933, pp. 297-8.

and most of the staff associations re-established their affiliation with the Trades Union Congress and the Labour Party, in due course.

The problem of affiliation has never been a major one in the United States and Canada. (i.e. on the federal government level). In the United States, while there is no explicit restriction on affiliation, precedent and legislation imply some limiting conditions. The Lloyd-LaFollette Act of 1912 recognizes ". . labour organization of postal employees not affiliated with any outside organization imposing an obligation or duty on them to engage in any strike . . . against the United States."[19] This Act has not, however, provided a practical deterrent to affiliation of civil service groups with the large labour federations, since they do not impose "an obligation or duty" to strike . Congressional riders to appropriation bills which attempt to forbid affiliation of civil servants with outside organizations that assert the general right to strike have been consistently defeated. The issue of affiliation in relation to the strike has become even less important since the passage of the Taft-Hartley Labour Management Act of 1947, which positively outlaws strikes in the federal civil service. In Canada there are neither direct nor indirect restrictions on affiliation. Whether or not a staff association chooses to ally itself with the general labour movement depends upon its own judgment of expediency. A later chapter will present

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19. Quoted in Godine, op. cit., p. 65.

specific data on organization and affiliation in Canada.

The absence of strictures on the right to organize and affiliate does not mean, however, that civil service associations in Canada enjoy the organizational scope of ordinary trade unions. There is, for example, the problem of the extent of recognition of particular associations as representative of particular groups of employees. This may become increasingly important as time goes on. Current federal labour legislation which provides for the recognition and certification of bargaining agents for given bargaining units in the sphere of private labour relations[20] explicitly excludes civil servants from its application. The Industrial Relations and Disputes Investigation Act, 1948, after defining the institutions and procedures regulating the relations between employers and trade unions under federal jurisdiction, states in section 55: "Part I of this Act shall not apply to Her Majesty in right of Canada or employees of Her Majesty in right of Canada."[21] The Federal Department of Labour, in its annual statistics of trade-union membership, counts only those who are members of unions affiliated with one of the central labour federations, or of unions that have received certification by a federal or provincial labour relations board. Since there can be no

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20. The Industrial Relations and Disputes Investigation Act, 1948, Rev. Stat. Can. (1952) Ch. 152, sec. 7.

21. Ibid.

certification of civil service staff associations on the federal level, only those civil servants whose associations are affiliated with a central labour federation are numbered amongst the members of trade unions.

The government, while it recognizes the right of civil servants to form associations for their mutual advantage, is under no obligation to distinguish between them on the grounds of their relative numbers. There is nowhere any provision for the formal recognition of staff associations.[22]

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22. The question of recognition was raised in the House of Commons.
"Mr. Knowles:
1. What is a recognized civil service association?
2. Does the civil service commission, the cabinet, the minister at the head of a department, or some official under the minister grant recognition?
3. What conditions or requirements must be met by an organization before recognition is granted?
4. What are the names of all recognized civil service associations?
5. When was each association recognized, and by whom?. . . . . .
Mr. Bradley:
1, 2 and 3. There is no formal definition of 'a recognized civil service association'.
4 and 5. As indicated above, there are no 'recognized civil service associations'. There are known to be over one hundred staff associations or organizations, and it is not possible to compile a complete and accurate list. The following eleven staff organizations have been named by order in council as entitled to direct and separate representation on the national joint council of the public service of Canada: . . . . . .
7 and 8: The government does not interfere in the formation of new associations of civil service employees."

Canada, House of Commons Debates, May 12, 1952, p. 2099. (my italics)

The question of collective bargaining with its implications of reciprocal commitments is a good deal more difficult than that of organization. However, much of the difficulty may be semantic rather than practical. If collective bargaining implies the legal equality of parties with respect to the process of negotiation, then, clearly, it cannot apply when the state is one of the parties. If the bargaining process depends mainly on the play of market factors and the relative economic power of the contending sides, again we must submit that the state does not come under the sway of these forces. Finally, if collective bargaining must culminate in either the submission of one of the parties, or in an agreement which is regarded as binding on both, it is formally impossible for the state to be so involved or committed. Such a view of collective bargaining is incompatible with any legal theory of sovereignty.

The Canadian attitude towards this interpretation was expressed by the Prime Minister in 1951. His statement was in reply to a question in the House of Commons.

> "Mr. Knowles:
> 1. Does the federal government recognize any organizations of its employees as bargaining agents in the terms or spirit of the Industrial Relations and Disputes Investigation Act?
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> . . . . . .
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> Mr. St. Laurent:
> 1. The answer to the question as drafted is no.
>
> The civil service of Canada is carried on under laws enacted by parliament and is supervised by a commission set up by parliament. The commission and the government can

> and do receive representations from organizations of employees, but there is no process of collective bargaining in the sense in which that term is used in industry.
>
> From the very nature of employment in the public service, there can be no bargaining agent for the nation comparable with the employer in industry who has at his disposal funds derived from payments for goods or services. The funds from which salaries are paid in the public service have to be voted by parliament and parliament alone can discharge that responsibility. . . . . ."[23]

However, if the "process of collective bargaining in the sense in which that term is used in industry" is not applicable to civil service staff relations, it does not mean that something akin to it cannot take place. When words acquire a more or less precise legal meaning which makes for rigidity, it is always possible to find new words which mean almost the same thing and yet escape the legalistic strait jacket. The Canadian government accepts the principle of joint consultation with the staff organizations. The government of the United Kingdom does not hesitate to use the term "negotiation" as descriptive of its machinery of staff relations. Whether it is consultation or negotiation, it is impossible for these activities to be meaningful unless there is some reciprocity between the parties. Consultation does not mean that one of the parties is merely informed, no matter how politely, what the other proposes to do. Again, if consultation or negotiation is to be successful, the parties, or their

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23. Canada, House of Commons Debates, Feb. 21, 1951, p. 542.

representatives, must be able to offer arrangements which are likely to be sustained by their principals. These need not be legally enforceable. It is sufficient if they are accepted as having been made in good faith. For example, in consultation between the government and the staff associations the government side may agree that a specific increase in salaries is justified. It is true that only parliament can vote the funds for this increase and that the government cannot commit parliament in advance. But given the resolution of the government to recommend the increase, the rest is largely a matter of formality. When responsible civil service organizations speak of collective bargaining, they do not intend encroachment on the ultimate authority of parliament, but they do imply their dissatisfaction with the existing consultive machinery.

The above may sound like a brief for the staff's point of view that the existing barriers to more effective negotiation should be removed. It should not, however, be misconstrued as an effort artificially to endow the staff organizations with a bargaining power that they do not possess. Constitutional governments operate in a nexus of competing pressures and the strength of staff associations must be perceived as significant before a government feels impelled to respond. The point is that there are no insurmountable legal or constitutional obstacles to a practical adjustment to some of the staff's expectations.

The third major question posed at the beginning of

this chapter referred to a situation of deadlock in the organized relations between the government and the staff organizations. In private labour relations there is usually the right of employees to resort to strike action if the machinery of negotiation and conciliation has failed to produce an acceptable compromise. This generalization refers, of course, to contract negotiations and not to disputes that may arise during the life of an agreement. The parties to the dispute might, alternatively, agree to submit their differences to a tribunal for arbitration. The problem is more difficult in the case of civil servants. We have seen that a strike in government services raises the issue of the public interest. It is also confronted by the legal axiom that a strike against the sovereign is intolerable, and, indeed, impossible by definition. Arbitration, too, is theoretically inapplicable since the will of the sovereign cannot be bound by a subordinate tribunal. Experience nevertheless suggests that there is some room for accommodation in this area as well.

The strike problem, although it has sinister implications, does not figure prominently in the present state of civil service staff relations. The staff associations do not regard the strike as a necessary or desirable instrument of policy. The Taft-Hartley Act in the United States specifically prohibits participation in strikes by "any individual employed by the United States or any agency thereof including wholly owned Government corporations."[24]

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24. Labour Management Act, 1947, (Public Law 101 - 80th Congress) s. 305.

The act merely formalized a position which had been well established since the Lloyd-La Follette Act of 1912. There is no law which forbids the civil servants of the national government to strike in Canada or the United Kingdom.[25] The attitude which has been explicitly expressed in Britain and which would undoubtedly be supported in Canada is that striking would constitute a disciplinary offence subject to corrective measures. The Attorney-General of the United Kingdom declared in 1946: "I take the opportunity of making it quite clear that this Government like any Government as an employer would feel itself perfectly free to take any disciplinary action that any strike situation that might develop demanded."[26]

Despite legal prohibitions and threats of disciplinary action, strikes, albeit limited in scope and duration, have occurred in the three countries mentioned. An exhaustive study of strikes in the American public services suggests that regardless of official restrictions public servants will strike when they perceive that their situation is intolerable and feel that no other avenue of effective action is open to them.[27] It was aptly remarked a long time ago by a French

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25. In Canada, the Province of Quebec forbids strikes of public service employees. Some provinces prohibit strikes of municipal policemen and firefighters. See S.J. Frankel and R.C. Pratt, Municipal Labour Relations in Canada, Montreal, 1954, Ch. II.

26. Quoted in H. M. Treasury, Staff Relations in the Civil Service, London, 1955, p. 17.

27. See David Ziskind, One Thousand Strikes of Government Employees, New York, 1940.

writer on civil service problems that "A strike is not a matter of right, but a brutal and spontaneous fact precipated by events."[28] A similar sentiment was expressed, in a less polished style, by a leading official of a Canadian civil service association in 1937.

> "We feel that any government that would allow conditions in government employ to reach such a pitch as to become intolerable to the workers involved would deserve to have a strike on its hands, and no law prohibiting strikes would prevent one under such circumstances, in the same sense as the prohibition of liquor did not prohibit."[29]

It is possible to develop and discuss at length the theoretical question of the strike in public employment. This, fortunately, will be unnecessary in view of the minor significance of the issue in actual Canadian experience.

Arbitration, however, is a topic which is currently receiving the careful attention of both government and staff organizations in Canada. Some of the major employee groups have gone on record in support of arbitration machinery to resolve issues that cannot be settled through consultation. The legal obstacles to the submission of the sovereign to the awards of a tribunal are, in practice, not insurmountable. This is clearly demonstrated by the experience in the United Kingdom where an agreed system of compulsory arbitration has been in operation since 1925. It requires only the judicious insertion of a saving clause here and there to preserve the legal fiction of sovereignty. The

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28. Quoted in Godine, op. cit., p. 164.

29. Quoted in Report of the Committee on Employee Relations in the Public Service, op. cit., p. 119.

rest is a matter of good faith. Thus the Treasury Circular which announced the Civil Service Arbitration Agreement of 1925 pledged that "Subject to overriding authority of Parliament the Government will give effect to the awards of the Court."[30] It is worth quoting from a recent report on staff relations by the Treasury which gives an official interpretation of this qualifying clause.

> "The qualification is inserted to preserve the constitutional supremacy of Parliament and the possibility of a Government defeat there; the pledge means that the Government will not itself propose to Parliament the rejection of an award, once made." [31]

There are some objections to arbitration which can be made on practical grounds and these will be considered when we examine the entire problem in relation to the Canadian civil service.

In this chapter we have attempted to define the area of our investigation and to point to some of the specific problems which will occupy our attention. If our treatment of legal theory has at times seemed to be cavalier, it was only to emphasize the pragmatic nature of constitutional adaptation to changing opinion. Friedrich and Cole, in their study of the Swiss civil service, suggest an approach to the phenomenon of civil service

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30. H. M. Treasury, op. cit., p. 21.

31. Ibid.

unionism which well expresses the perspective of the present inquiry:

> ". . . every legal order rests upon a fact of nature, a social reality beyond all law, namely, the groups of human beings to which it applies. . . . . To repeat here a fundamental if somewhat platitudinous truth, a group of human beings is not willing, except in certain cases of extreme emergency, to be treated like dumb animals. Whether or not their material 'interests' are taken care of a little better or less well does not matter to them in comparison with whether they feel that they have had a chance to participate in deciding what those material interests are. The civil servants in large public services too wish to become self-respecting fellows in a common enterprise and not cogs in a machine directed by a superimposed government." [32]

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32. C.J. Friedrich and Taylor Cole, Responsible Bureaucracy, Cambridge, Mass., 1932, pp. 86-8.

Chapter II

The Staff Associations

There are well over one hundred associations or organizations of federal civil servants in Canada. They range in membership from four in the National Film Board (Alberta) Civil Service Association to 17,711 in the National Defence Employees' Association. They include the British Columbia Federal Civil Servants Association and the Newfoundland Family Allowance and Old Age Security Association.. The task of examining the extent and form of staff associations is fortunately not as formidable as it might appear. The great majority of organized civil servants is enrolled in a dozen or so major associations. The remaining groups are, in the main, affiliated with the Civil Service Federation of Canada, which as a federation encompasses some 73,000 civil servants.

A brief glance at aggregate figures reveals that a majority of civil servants are now members of the various staff associations. The Dominion Bureau of Statistics bulletin on Federal Government Employment for March 1957 reports 148,000 classified civil servants[1] and 23,309 prevailing rate employees. Although our study is concerned mainly with the classified employees, statistical recognition must be given to the prevailing rate group, since most of the associations include a proportion of this category in their membership. If we project

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1. This figure includes 5,177 uniformed members of the Royal Canadian Mounted Police Force who cannot be properly classified as civilian employees.

these figures to October 1957 on the basis of the rate of growth from March 1956 to March 1957, we have 149,700 classified and 23,183 prevailing rate civil servants for a total of 172,883. The fourteen staff associations which will be examined in this chapter claim a combined membership of more than 100,000.[2] A breakdown of membership into classified and prevailing rate employees was not available at the time of writing. The criterion for choosing the fourteen staff associations which will be described is their membership on the Staff Side of the National Joint Council of the Public Service of Canada.[3] In all but two cases representation on the Council corresponds with a ranking among the twelve associations that have the largest membership. The statistical data that will be presented suffers from a major deficiency in that membership figures do not indicate the distribution of civil servants by classification in the various associations. An effort is now being made by a branch of the Civil Service Commission to collect this data which, as we shall see, are relevant to the problem of staff relations.

The Civil Service Federation of Canada

The Federation comprises 104 separate staff associations with a total membership of 72,901 (October 31, 1957).

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2. All the affiliates of the Civil Service Federation are included in this figure. We have no basis for knowing the membership of the many small groups that are not affiliated with the major organizations, but it is a reasonable guess that they number less than 5,000.

3. See Chapter IV.

Ten of these associations which are national in scope and large enough to be represented on the National Joint Council in their own right account for 63,719 of the total membership figure. They will be examined separately. Ninety-four smaller affiliates, mostly local in character, thus have a combined membership of 9.182 and are represented by the Federation on the national level.

The Civil Service Federation of Canada came into being in the Spring of 1909. The initiative in bringing together the several existing organizations into the framework of a federation was taken by the Civil Service Association of Ottawa which had been founded in 1907. The "Call" to the first convention of the Federation which was held in April 1909 emphasized "the need of a more tangible bond of union between Civil Servants throughout Canada and especially between such portions of the service as have already achieved organization."[4] This remains the primary objective of the Federation. Its present constitution expresses the aim to "Unite into one federated organization all Associations of Federal Public Service employees of Canada, representing all classified and unclassified civil servants." (Sec. 2(a))

Membership in the Civil Service Federation of Canada is indirect. The individual civil servant must be a member

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4. Quoted in V.L. Lawson, "After Forty Years - a Retrospect", The Civil Service Review, XXII (June, 1949), p. 112.

of a national or local association which is affiliated with the federation. A "National Association" is defined as one "having three or more branches in two or more provinces with a potential membership of at least 1,000 and a paid up membership of at least 500." (Sec. 5(a)) While the long-run objective of the Federation is to have as its affiliates large national associations organized on a departmental basis, its constitution provides for the possibility that several associations may be formed in a single department.

> "The Federation may accept for affiliation and charter more than one National Association within a department where the groups involved do not have a community of interest or working conditions, or where geographical conditions, tenure of office and like circumstances would merit direct affiliation. (Sec. 5(b))

A conflict over organizational jurisdiction as between the various affiliates is an ever-present possibility. A dispute on this kind of issue led to the separation of the Civil Service Association of Ottawa from the Federation in 1954. This case will be studied more closely in another part of this chapter. The concept of a federated structure implies that the affiliates should enjoy a measure of autonomy in the conduct of their internal affairs, and this is provided for in the constitution. The Federation as a whole is not affiliated with any of the general trade-union congresses in Canada, but it does not bar its national associations from entering into such an affiliation. The Federation also recognizes the right of national associations to make representations to central authorities such as the Civil Service

Commission, Treasury Board and heads of departments on "departmental matters peculiar to their own National group." (Sec. 5(c)) However, on matters of service-wide interest the Federation is to be the "sole negotiating body." Local associations have a more limited discretion and matters which cannot be settled on a purely local basis must be submitted to the Federation "for any further necessary action". (Sec. 6(d))

The ultimate ruling body of the Federation is its National Convention which is called every three years. Representation at the convention is roughly proportionate to membership, each affiliated organization in good standing being entitled to one delegate for its membership up to 300 and one additional delegate for "each additional 300 members or majority fraction thereof". (Sec. 13(a)) There is an intermediate governing body, the National Council, which has the authority to "determine policy of the Federation between Conventions within the limitations of Convention mandates and the Constitution." (Sec. 9(f)) It comprises the members of the Federation's Executive Committee, the thirteen provincial and territorial vice-presidents, the Federation's representative on the National Joint Council of the Public Service of Canada, representatives of the national associations or associations given the status of a national association and one member representing prevailing rate employees. Representation from the associations is on the basis of per capita fees paid to the Federation, the ratio being one representative for a membership up to 5,000 and one representative for each additional

5,000 members or majority fraction. The Council must meet at least once a year.

Responsibility for the administration of the Federation's affairs rests with the Executive Committee. This body consists of the president, the 1st, 2nd, 3rd and 4th vice-presidents who are elected by the Convention; the General Secretary-Treasurer who is appointed by the National Council; and the immediate past president. The Committee reports in detail on its actions to the meetings of the National Council. Among the powers of the Committee is one "to determine the status of any affiliated Association as a National Association for the purpose of representation on the National Council." (Sec. 10(f)) The General Secretary-Treasurer is a full-time, paid employee whose duties are prescribed by the National Council and are carried out under the general direction of the president. The present salaried staff of the Federation includes, in addition to the Secretary-Treasurer, two full-time stenographers and a part-time organizer for the Ottawa district. Section 18 of the Constitution empowers the National Council to "authorize the payment of a suitable honorarium each calendar year to the President, provided he is not a full-time officer, and to any other elected officer in view of any special circumstances." A per capita fee is paid to the Federation by its affiliated associations. National Associations pay at the rate of 50 cents per member per annum and directly chartered local associations pay $2.00 per annum. The Civil Service Review, a quarterly journal published by the Federation, was founded

in 1928 and has developed into an elaborate and self-sustaining project. Each issue numbers about 130 pages. It contains general articles; technical information on matters of interest to civil servants such as appeal procedures, superannuation, promotion competitions; copies of briefs and other submissions to the government; reports on conventions, meetings of the National Council, and so on. The ten affiliates of the Federation which will now be described will receive only brief, factual treatment.[5] Their constitutions must conform to the over all objectives of the Federation and will not interest us as such. It is also a reasonable hypothesis that the larger associations tend to be more assertive of their status of relative autonomy.

National Defence Employes' Association

The N.D.E.A. which was founded only in 1953 is the largest of the Federation's affiliates. Its membership in October 1957 was 17,711 of which 38% was made up of prevailing rate employees who do not come under the Civil Service Act. The numerical strength of this association must be seen in relation to the Department of National Defence whose civilian establishment is in the neighbourhood of 50,000. The association thus has some distance to go before it can claim to represent the majority of employees of the Department.

A problem which has occupied the attention of the N.D.E.A. is that of possible affiliation with the Canadian Labour Congress. In addition to the view that such an affi-

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5. See Table I, p.47 for a statistical summary.

liation would increase the bargaining power of the association, it has been argued that the N.D.E.A. has a special interest in the general trade-union movement. This is due to the fact that a large proportion of its membership comprises prevailing rate employees whose wages are based on those paid to workers in private industry.

> "Because of the direct dependency of these members upon the progress of outside unions, especially in the vital matter of wages, we owe something to the CLC for the assistance here."[6]

The issue of affiliation will probably be raised at the forthcoming convention of the association. Its constitution requires that an issue of this sort be confirmed by a majority vote of the convention, followed by a referendum vote of the total membership. (Art. 11, sec. 1.)

The N.D.E.A. office in Ottawa is under the direction of its National Secretary-Treasurer, assisted by a full-time staff of three. The association has also recently appointed a Director of Research and Organization. It publishes a monthly News Letter.

Canadian Postal Employees' Association

The association was founded in 1911 under the name of Dominion Postal Clerks Association. Its present constitution defines its organizational objective: "To unite fraternally all employees in the Post Office Department excepting those employed in the Railway Mail Service and Letter Carrier

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6. Editorial in N.D.E.A. News Letter, June, 1956, p. 4.

staffs."(Sec. 5.) The latter two groups come under the jurisdiction of two other associations affiliated with the Federation.

The association comprises 295 branches across the country with a total membership of 8,859. (Oct. 31, 1957). Its national office in Ottawa is under the direction of a General Secretary, a National Secretary and an Assistant National Secretary. In addition to these three executive officers there are two full-time stenographers. Of some interest is the fact that the association is affiliated not only with the Civil Service Federation, but also with the Canadian Labour Congress, the Postal Workers' Brotherhood, and the Postal, Telegraph and Telephone International. A bilingual magazine, The Postal Tribune is published monthly.

Department of Veterans' Affairs Employees' National Association

The D.V.A. Employees' National Association was granted its charter by the Civil Service Federation in January, 1950, and now has branches across Canada. Its membership, which is open to all employees in the Department, totals 8,590. A monthly News Letter is issued from the national office, which is under the direction of a full-time executive secretary.

A novel feature of the association's constitution is a rather elaborate provision for "grievance procedure". The steps in this procedure are very similar to those provided for in many labour-management agreements in private labour relations. The main difference, of course, is that there is no undertaking by the government employer to submit to this machinery. There is also a provision which empowers the

national executive "to negotiate a grievance and/or arbitration procedure with the Department of Veterans' Affairs to cover various matters . . . ." (Art. VIII, Sec. 6.)

Customs and Excise Officers' Association

The association was organized in 1911 and became a national organization in 1917 at which time it became affiliated with the Civil Service Federation. Its membership is restricted to persons employed in the Customs and Excise Division of the Department of National Revenue. It now numbers in its ranks 6,389 civil servants, more than 90% of whom are outside of the Ottawa area. The full-time headquarters staff of the association consists of a National Secretary-Treasurer, an Assistant National Secretary-Treasurer and a stenographer. A magazine, the Customs and Excise Examiner is published quarterly.

National Unemployment Insurance Commission Association

The association was founded in November 1943, and has been affiliated with the Federation since that date. In 1952 it also became affiliated with the Canadian Labour Congress. Membership is limited to employees of the Commission and now numbers 6,254 employees distributed among some 110 branches. The association employs a National Secretary-Treasurer and an Assistant National Secretary-Treasurer. It publishes a monthly Newsletter. Its constitution, too, provides for a unilateral grievance procedure, mainly as a device to regularize the handling of complaints from the branches.

Canadian Taxation Division Staff Association

The association represents employees in the Taxation Division of the Department of National Revenue. It was formed in September 1943 under the name of Dominion Income Tax Staff Association, and adopted its present name in October 1951. Affiliation with the Federation was accomplished immediately after the association's founding convention. There are 5,400 members organized in some 30 branches of the association in various District Taxation Offices across the country. The only full-time employee of the Association is an executive secretary. There is no official publication.

Federated Association of Letter Carriers

This is one of the oldest staff associations. It was organized in 1891 and became affiliated with the Civil Service Federation during the Federation's early years. The association severed its affiliation with the Federation in 1954, but re-established it in 1957. It is also affiliated with the Canadian Congress of Labour, the Postal Workers' Brotherhood and the Postal, Telegraph and Telephone International. There are some 135 branches of this association with a membership of 5,250. Two members of the executive committee serve on a full-time basis and are in charge of administration and organization. There is no official publication.

Treasury Staff Association of Canada

Membership in the Treasury Staff Association is restricted to employees of the Office of the Comptroller of the

Treasury. This organization was founded as a national association affiliated with the Federation in June 1951. Its activities were, until the end of 1953, confined to Treasury employees outside of the Ottawa area, a restriction imposed by the Federation because another one of its affiliates was at that time recruiting Treasury staff in Ottawa and claiming exclusive jurisdiction there. Since 1954, when the jurisdictional issue was settled in favour of the Treasury Staff Association, it has grown quite rapidly and now numbers 3,206 members out of a potential membership of about 4,100. Only 20% of its membership is in the classification above that of Clerk 4. The association publishes a small quarterly journal, The Treasury. It employs a full-time secretary-treasurer and a part-time stenographer.

The Canadian Railway Mail Clerks' Federation

The first convention of the Railway Mail Clerks' Association, a forerunner of the present federation, was held in Ottawa in 1889. A federation of a number of regional associations was achieved in 1917. Membership is open to railway mail clerks and ocean mail officers. The federation comprises 16 division associations with a membership of 795. This is the smallest of the national associations affiliated with the Civil Service Federation. It has been suffering a declining membership due to technological changes in post-office operations.

A unique feature of this federation's constitution is a provision for a special strike vote. Article 17 declares:

> "No strike of the members of this Federation shall be called unless 80% of the total membership have, by ballot, approved thereof . ."

The federation is also affiliated with the Canadian Labour Congress, the Postal Workers' Brotherhood of Canada and the Postal, Telegraph and Telephone International. It maintains a full-time secretary in Ottawa and publishes a bilingual journal, The Railway Mail Clerk.

Canadian Immigration Staff Association

The Canadian Immigration Staff Association acquired the status of a national departmental affiliate of the Federation in the fall of 1951. Its present membership is 1,265. The association did not respond to the questionnaire sent out by the writer, and this is all the specific information available at the time of writing.

This completes our brief survey of the Civil Service Federation of Canada and its major affiliates. We now turn to the other independent staff associations which have representation on the National Joint Council of the Public Service of Canada.

The Civil Service Association of Ottawa (C.S.A.O.)

We have seen that the C.S.A.O. was founded in 1907 and took the initiative in 1909 in bringing the Civil Service Federation of Canada into being. The C.S.A.O. remained an affiliate of the Federation until 1954 when it had its charter revoked as a result of a jurisdictional issue. This dispute will be examined in another context towards the end of this chapter.

The C.S.A.O. represents a different concept of staff organization than does the Civil Service Federation. As its name implies, it confines its recruitment to the Ottawa headquarters staff. But apart from this restriction membership is open to all regardless of department or classification. Its members range from charwomen employed by the Department of Public Works to professional economists and high-level administrators in various departments. Membership in the C.S.A.O. is direct. Any person is eligible who pays a membership fee and abides by the constitution and by-laws.

The association experienced its greatest development in the 1940's. This paralleled the general growth of the civil service in response to the war effort. Membership reached a peak of about 14,000 in the summer of 1948. However, a struggle for leadership prior to the annual meeting of the Association in December 1948 left it in a greatly weakened condition. The group in office was challenged by a faction said to have communist affiliations. The annual meeting which was convened on the evening of December 14 lasted until 5 a.m. The incumbent executive was returned with a good majority, but the bitterness of the struggle had torn the association apart and it suffered a drastic decline in membership. By 1954 membership had slowly risen to the figure of about 5,000, and by the end of 1957 it stood at 13,416. The impending merger between the C.S.A.O. and the Amalgamated Civil Servants of Canada

which will be discussed below makes a detailed examination of these associations largely irrelevant.

The present full-time staff of the C.S.A.O. includes the Executive Secretary, an assistant executive secretary, an office manager and two general clerks. In addition, there are three part-time service organizers and a part-time representative to look after minor grievances and to conduct interviews. The latter four are retired government employees whose maturity and experience has been found very helpful. The association publishes a monthly journal, The Civil Service News.

Amalgamated Civil Servants of Canada

The Amalgamated Civil Servants of Canada is the prototype of the "one big union" in the civil service. The preamble to its constitution states the conviction that "the best interests of all Civil Servants can be conserved and promoted only through a united body representing all Departments, Branches and Grades in the Service." Section II(1) declares the object "To organize the unattached and unite into one organization all Canadian Government employees."

The association was formed in 1920 at a time when the Civil Service Federation of Canada had already achieved a measure of success in organizing a large number of civil servants into its federated departmental affiliates. The Amalgamated justified the creation of a new organization at that time on the grounds that the Civil Service Act,

1918, by standardizing the conditions of work in the civil service made it desirable to have all civil servants speak through a single voice.

Membership in the Amalgamated is direct and articulation is strong. The individual members are formed into sub-sections or sections; these in turn may be linked to departmental groups on the local level; departmental groups may be represented in local councils which are ultimately integrated by a national council. This makes for a highly centralized form of organization. The Amalgamated had a total membership of 10,997 in October 1957. The geographical distribution of this number is of considerable interest. There were only 121 members in the Ottawa area, the rest being divided among departmental branches and district offices outside of Ottawa. This distribution was undoubtedly a factor which made the merger agreement between the Amalgamated and the C.S.A.O. practically feasible.
The Association is at present affiliated with the Canadian Labour Congress. Its full-time staff consists of a Secretary-Treasurer, two assistant National Secretaries, five regional organizers and four headquarters office employees. It publishes a bi-monthly journal, The Canadian Civil Servant.

As already indicated, the Amalgamated and the C.S.A.O. have reached an agreement to unite. The formal merger may well have been consummated by the time this study was completed.

The Professional Institute of the Public Service of Canada

The Institute, as its name implies, does not regard itself as a staff association in the trade-union sense, yet an important part of its activities approximates those of the other staff associations. It differs from other professional associations such as the Engineering Institute of Canada or the Canadian Medical Association in that all of its members are employees of the same employer and it is not restricted to a particular professional group. It has representation on the National Joint Council where, with other staff groups, it consults with government representatives on conditions of employment. It submits briefs, seeks interviews with officials and, like the other associations, is interested in improving negotiating procedure. Indeed, it is sometimes more effective than the others in its dealings with the official side because it represents a more homogeneous group of employees who enjoy a favourable bargaining position.

A civil servant may qualify as a member of the Institute if he "occupies a position . . . where such a member is engaged in a professional capacity such as agricultural, engineering, legal, medical, scientific, or technological work, or in the direction or administration of such work." (By-law 4, 1(b)). Qualifications include graduation from a recognized university and/or corporate membership in a professional association such as the Agricultural Institute of Canada. The practical application

of these criteria has not been simple.

> "The correct and adequate definition of professionalism has been a difficult problem ever since the Institute was first organized. Many elegant and apt definitions have been proposed at various times but the difficulty of applying these still remains a thorny problem."[7]

The Institute includes librarians and entomologists, public relations personnel and topographical engineers. The line between the professional and non-professional civil servants is not clearly drawn and this has often been a contentious issue among the Institute's membership. The membership of the Institute at September 30, 1957 was 3,987, and of this number 1,942 were in the Ottawa area,

The Institute was founded in February 1920. An official history of the organization suggests that one of the reasons for its establishment at that time was the disquiet that had been generated by the activities of the American firms that had been engaged to propose changes in the organization and classification of the civil service. At the first Annual Meeting in November 1920, a rather interesting resolution was passed.

> "That a committee be appointed from the Professional Institute of the Public Service of Canada to prepare a memorandum deprecating the employment of the Chicago firm of

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7. G. M. Ward, "Membership in the Professional Institute", Professional Public Service, 36 (October, 1957), p. 2.

> Griffenhagen and Associates Ltd., for the purpose of reorganizing the Civil Service of Canada, and requesting that the contract with the firm be cancelled and that plans for the reorganization of the Service be made under the direction and supervision of the Civil Service Commission, acting in accordance with the Civil Service Act of 1918."[8]

At the same meeting the Institute also decided not to affiliate with any other organization of civil servants and it has remained independent ever since.

Membership in the Institute is direct. It is divided into groups of not less than ten members each on the following basis:

> "(a) Professional Groups composed of members who, by virtue of training or employment, have common interests,
>
> (b) General Groups composed of various professional callings which individually lack sufficient members to form a distinct professional group." (By-law 13, 1)

This division applies to the Ottawa district. Outside of this area organization is in the form of branches grouped into regions. In August 1957 there were 36 professional groups in the Ottawa area and 23 branches throughout the country. The Institute's office staff consists of two full-time employees under the direction of the Honorary Secretary-Treasurer who serves on a voluntary basis. A magazine, Professional Public Service, is published monthly.

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8. Silver Jubilee History, 1920-1945, Ottawa, 1945, p. 10.

Table I - Membership and Affiliation

Name of Association	Affiliation	Membership	Date	"Check-off"* Sept. 1957.
Amalgamated Civil Servants of Canada	C.L.C.	10,997	Oct. 1957	10,045
Canadian Immigration Staff Association	C.S.F.	1,265	Oct. 1957	**
Canadian Postal Employees Association	C.S.F., C.L.C., P.W.B., P.T.T.I.	8,859	Oct. 1957	8,750
Canadian Railway Mail Clerks Federation	C.S.F., C.L.C., P.W.B., P.T.T.I.	795	Oct. 1957	762
Canadian Taxation Division Staff Association	C.S.F.	5,400	Oct. 1957	4,738
Civil Service Association of Ottawa	---	13,416	Dec. 1957	12,432
Civil Service Federation of Canada (excluding affiliates in N.J.C.)	---	9,182	Oct. 1957	8,540
Customs and Excise Officers Association	C.S.F.	6,389	Oct. 1957	6,367
D.V.A. Employees' National Association	C.S.F.	8,590	Oct. 1957	8,529
Federated Association of Letter Carriers	C.S.F., C.L.C., P.W.B., P.T.T.I.	5,250	Oct. 1957	5,051
National Defence Employees Association	C.S.F.	17,711	Oct. 1957	17,482
National Unemployment Insurance Commission Association	C.S.F., C.L.C.	6,254	Oct. 1957	6,254
Professional Institute of the Public Service of Canada	---	3,987	Sep. 1957	3,501
Treasury Staff Association of Canada	C.S.F.	3,206	Oct. 1957	3,151
Totals		101,301		95,602

Legend

C.S.F. - Civil Service Federation of Canada
C.L.C. - Canadian Labour Congress
P.W.B. - Postal Workers Brotherhood of Canada
P.T.T.I.- Postal Telephone and Telegraph International

Notes

*"Check-off" figures were provided by the Comptroller of the Treasury and the Treasury office of D.N.D.

**Canadian Immigration Staff Association figures not provided, apparently included in those of the Civil Service Federation.

This brief survey of staff organizations in the civil service points up two related problems which affect the developing process of staff relations. The first is the broad range of civil service classes encompassed by the majority of the associations. The second is the degree of overlapping organization and the consequent redundancy of representation which cannot but be a source of friction between the various groups.

Of the fourteen major associations only the Professional Institute, the three postal groups and the Customs and Excise Officers Association limit their membership to classes of civil servants that are similar in interest and composition. The others are open, without distinction, to all civil servants from the most casual prevailing rate employees to the highest administrative officers. The main difference between them is that the affiliates of the Civil Service Federation confine their organization to the department while the C.S.A.O. and the Amalgamated operate on a service-wide basis. This vertical form of organization makes consultation with the government more difficult and reduces the effectiveness of representation. For while there may be issues which concern all classes in the same way and are therefore amenable to widely-based consultation, most problems affect different categories of employees in different ways and are more easily dealt with in terms of their particular relevance.

The staff associations frequently complain that

when the government considers a general salaries revision it does not consult with them on the detailed application of the revision to the various classes of civil servants. But most of the associations are ill suited for this kind of consultation. They do not represent logical bargaining units which cut across departmental lines and form broad horizontal classes comprising employees engaged in similar work and sharing common interests. In the United Kingdom where staff relations are highly developed the situation is quite different.

> "With few exceptions, Civil Service staff associations cater for particular grades or classes, for the obvious reason that members of grades and classes have greater common interests than other groups of civil servants."[9]

Perhaps the chief reason for the structure of most Canadian staff associations is an external one. The complexity and elaborateness of the system of classification does not lend itself to a more or less logical stratification along the lines of service-wide classes, each containing a limited number of grades. We will, however, leave the problem of bargaining units for a later chapter[10] and turn now to some of the evidence on the membership structure of the staff associations.

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9. H. M. Treasury, Staff Relations in the Civil Service, op. cit., p. 3. See also p. 24 for a list of nationally recognized associations.

10. See Chap. VI, pp. 170 ff.

As we have noted, a newly-established branch of the Civil Service Commission is now gathering statistics on the membership of civil servants in the various associations by class and grade. At the time of writing figures were available for only two departments - the Department of Finance (Comptroller of the Treasury) and the Department of National Defence, and for the Civil Service Commission. These figures, based on returns for September 1957, were prepared by the Office of the Comptroller of the Treasury and the Treasury Office of the Department of National Defence. They are derived from the "check-off" cards signed by civil servants authorizing the deduction from their salaries of membership dues for the various staff associations. Table I has shown a very high correlation between the membership claimed by the associations and the numbers who have authorized the "check-off". The data should therefore be authoritative.

Table II - Department of National Defence

Name of Association	Classified Employees	Prevailing Rate Employees	Ships' Crews	Total
National Defence Employees' Ass'n.	10,249	6,418	301	16,968
Amalgamated Civil Servants of Canada	2,241	1,542		3,783
C.S.A.O.	168	339		507
Civil Service Federation	103			103
Professional Institute	52			52
Totals	12,813	8,299	301	21,413

The 12,813 classified employees are distributed among 99 classes and 208 grades. The members of the Professional Institute, which is the most coherent group, include college professors and librarians, Defence scientific service officers and a graduate nurse. The membership of the N. D. E. A., excluding the prevailing rate employees and ships' crews, ranges over 88 distinct classes. Administrative officers, an architect, assistant technicians, caretakers, clerks, dockyard supervisors, draftsmen, firefighters, gardeners, hospital utility men, maintenance craftsmen, security guards, stenographers, storemen, technical officers, telephone operators and watchmen are all members of this association. The Amalgamated has its members distributed over 24 classes and competes with the N. D. E. A. in a number of them. Thus we have 121 assistant technicians grade 3 in the N. D. E. A. and 58 in the Amalgamated; 112 caretakers grade 2 in the N. D. E. A. and 42 in the Amalgamated; 1340 cleaners and helpers in the N. D. E. A. and 327 in the Amalgamated; 820 firemen labourers in the N. D. E. A. and 230 in the Amalgamated, and so on. The C. S. A. O. is relatively weak in this Department and the small membership of the Civil Service Federation comprises small local affiliates that have not become a part of the N. D. E. A. which is itself an affiliate of the Federation.

Table III - Department of Finance (Comptroller of the Treasury)

Name of Association	Membership
Treasury Staff Association of Canada	3,105
Civil Service Association of Ottawa	1,030
Professional Institute of the Public Service of Canada	23
Amalgamated Civil Servants of Canada	5
Total	4,163

The 1957-58 establishment of the Comptroller of the Treasury is 4,280. Forty-six classes and 111 grades are represented in the four associations. The C. S. A. O. has members in 36 classes and the Treasury Staff Association includes 27 classes. The membership of these two associations overlaps in 22 classes among which are administrative officers up to grade 3, treasury officers up to grade 12, and, at the lower end of the schedule, clerical assistants. The Professional Institute is represented in nine classes. A classic example of overlapping is provided by treasury officers grade 10, two of whom are members of the C. S. A. O., one of the Professional Institute and three of the Treasury Staff Association.

Table IV - Civil Service Commission

Name of Association	Membership
Civil Service Association of Ottawa	70
Civil Service Federation	18
Professional Institute of the Public Service of Canada	15
Total	103

The Civil Service Commission is not a department of government and is not a typical area of staff organization. Only 103 of its employees from an establishment of 621 are members of associations. It would seem that a large proportion of its employees considers membership in a civil service association incompatible with the functions of the Commission as an independent and impartial personnel agency. The organized employees of the Commission are distributed among 22 classes and 41 grades. The membership of the C. S. A. O. ranges over 20 classes including administrative officers, organization and class officers, personnel selection officers, as well as clerical assistants and typists. While there is some overlapping between the three associations, it is not very significant.

The available information thus seems to confirm the general observations about the nature of staff organization in the Canadian civil service. The structure of the individual associations in relation to the classification system is vertical rather than horizontal, with the groups frequently competing for the same membership.

In correspondence with the staff organizations the writer asked the following question: What do you consider to be some of the more important problems currently facing civil service staff associations? All of the replies expressed varying degrees of dissatisfaction with existing negotiating procedure; most of the replies referred to the need of achieving greater unity among the staff organizations.

The problem of negotiation is the main theme of this study and need not be developed here. But the question of "unity" is relevant to our examination of the staff groups and deserves some attention at this point.

There are two divergent attitudes towards the problem of unification. The Civil Service Federation and its affiliates quite naturally consider a federation of national departmental associations as the optimum form of organization. Their objective is to have all civil servants enrolled in departmental associations possessing a high degree of autonomy with respect to matters of a purely departmental nature. Matters of concern to employees in more than one department or to the service as a whole are even now the responsibility of the central Federation on whose highest councils sit representatives of the departmental associations. The C. S. A. O. and the Amalgamated, on the other hand, think in terms of "one big union" representing all civil servants. They would provide for some devolution of authority to departmental, branch or local subdivisions, but effective authority would be centralized on the national level. Neither of these approaches, however, contemplates a reorganization of membership along the lines of horizontal classes and grades. This is understandable when one considers the formidable character of the classification system. The immediate objective of unification as seen from both of these approaches is to consolidate the bargaining power of organized civil servants. The rationalization of this

power might well come after the primary goal has been attained. Unification, however, remains a remote possibility.

An observer in the year 1949 could easily have concluded that unity was not a serious issue for the staff associations. Of the major organizations at that time only the Professional Institute and the Amalgamated were not affiliated with the Federation. The preponderance of membership in the Federation boded well for its future as the established national representative of the non-professional civil servants. However, in early 1950 there appeared signs of a conflict that had been latent almost since the inception of the Federation. This was due to the basic inconsistency between the organizational principles of the departmental affiliates of the Federation and those of the Civil Service Association of Ottawa. It seems paradoxical that the C. S. A. O. which had taken the initiative in bringing the Federation into being should find itself at odds with the tendency of its development, but this was inevitable. As the number of departmental affiliates of the Federation grew, and as they extended their organizational drive from the districts into the Ottawa area, they encountered the competitive presence of the C. S. A. O. The C. S. A. O. on its part found itself threatened by the encroachments of the departmental associations. The question of jurisdiction in the Ottawa-Hull area could not be ignored.

At the Nineteenth Convention of the Civil Service Federation which was held in January, 1950, the C. S. A. O. introduced a resolution on jurisdiction. The essence of the resolution is contained in the following excerpts:

> "Whereas there has always been a gentleman's agreement . . . with respect to the field of recruitment, this roughly being understood to be that the CSAO would refrain from soliciting membership outside the city of Ottawa, and that Headquarters and Administrative staffs located in Ottawa would be solicited for membership in the CSAO, and also that the CSAO would not solicit membership from the Ottawa branch offices of National Organizations; . . .
>
> Therefore be it resolved that, . . . the present agreement as outlined above be respected by all affiliated organizations and form part of the policy of the Federation."[11]

The resolution was referred to a special committee which recommended that it be withdrawn and replaced by a new one calling for the establishment of a continuing committee "consisting of a representative, other than a paid officer, from each National body with headquarters staffs located in the City of Ottawa, to consider the whole broad question of jurisdiction; . . ."[12] The new resolution was adopted unanimously. The committee met several times during 1950 but was unable to reach a conclusion agreeable to all parties. It reported its failure to the Executive of the Federation.

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11. Quoted in V. Johnston, "Which Way Unity?", The Civil Service News, June, 1953, p. 5.

12. Ibid,,p. 4.

The Federation Executive then set up a Sub-Committee on Jurisdiction and Unity on which the C.S.A.O. was represented to continue the study of the problem. A majority report of this committee envisaged "the ultimate organization of the Federation along departmental lines."[13] This was not palatable to the C.S.A.O. and it reacted by setting up a special committee of its own which reported to the Annual Meeting of the association in December 1952. The committee recommended that the C.S.A.O. should be prepared to depart from the existing scheme of organization only if

> "(1) greatly increased financial and constitutional strength be vested in a central national body, with its affiliates in a subordinate role, . . .
>
> (2) the Executive of the central body be as broadly representative as possible, . . .
>
> (3) an organization continue to exist in Ottawa capable of serving the needs of Ottawa civil servants."[14]

The meeting adopted the report and it became clear that if the issue could not be resolved at the June, 1953 Convention of the Federation the C.S.A.O. would seek an independent course of action.

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13. Ibid.

14. Quoted in V. Johnston, "Where do we go after the June Convention?" The Civil Service News, January, 1953, p. 10.

The issue was not resolved. The details leading to the final break need not concern us, but the form in which it occurred is of passing interest. The Convention amended the Federation's constitution to include a definition of jurisdiction in the Ottawa area between national departmental associations and the C.S.A.O. At the same time it adopted a memorandum of agreement providing for a period of six months during which the various associations in the Ottawa district would attempt to agree on the interpretation of the constitutional provisions and negotiate the division of jurisdiction. A negotiating committee was set up in July, 1953. Negotiations seemed to go well until the end of September, when a serious difference of views arose which could not be reconciled. The committee brought its sessions to an end on December 17th. In the meantime, on December 10th, the Annual Meeting of the C.S.A.O. adopted a resolution that the Association cease its per capita payments to the Federation unless certain minimum conditions with respect to jurisdiction were met. The C.S.A.O. felt that its continued survival depended upon the interpretation of its field of operations, and that this had been so narrowly construed by the departmental associations which constituted a majority on the committee that it would result in the gradual disappearance of the C.S.A.O. as an effective organization.

The Executive Council of the Federation which met in Ottawa on December 18th was bound by the Convention

resolution to proclaim the coming into effect of the sections of the amended constitution referring to jurisdiction. This it did; but at the same time in an effort to salvage the situation it passed a motion recommending that the points of dispute be submitted to arbitration. The effort came to naught, and on March 2, 1954, after 45 years of affiliation with the Federation, the charter of the C.S.A.O. was revoked.

An attempt was made to heal the breach, but it did not succeed. The Federation took the initiative in convening a Joint Unity Committee of Civil Service Organizations which began to meet towards the end of 1954. Representatives of the Federation, the C.S.A.O. and the Amalgamated comprised the committee. The Professional Institute had been invited to participate but had declined. The committee met several times during 1955 and there was a flurry of meetings in the spring and early summer of 1956 just prior to the Federation's convention in July. The outcome was a hardening of the differences between the C.S.A.O. and the Amalgamated on the one side, and the Federation on the other. It is difficult to see how the results could have been otherwise when we note that the Federation committee which took part in the joint deliberations was bound by terms of reference laid down by its Executive Council "that the Amalgamated Civil Servants of Canada and the Civil Service Association of Ottawa be invited to join the Civil Service Federation of Canada <u>in accordance with the latter's</u>

constitution."[15] Indeed, in reporting its findings to the Executive Council, this committee recommended under point 14,

> "That the C.S.A.O. and the Amalgamated cease to function as they are presently constituted, and be absorbed into National groups."[16]

The Federation convention passed a resolution which was less harsh in its implications but no more acceptable to the C.S.A.O. and the Amalgamated. It reiterated the invitation to the other associations to join the Federation in accordance with the latter's constitution. It offered them "autonomy" as affiliates of the Federation but insisted that they "relinquish all present or future members eligible for membership in National Associations affiliated with the Civil Service Federation of Canada."[17] The C.S.A.O. and the Amalgamated did not respond to the invitation. They began, instead, to pursue more seriously negotiations with each other with a view to uniting into a single organization. On November 2, 1956, they issued a joint press release announcing that they had prepared a draft agreement which was expected to lead to a merger of the two associations under the name of the Civil Service Association of Canada.

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15. Reported in The Civil Service Review, XXIX (December, 1956), p. 432. (My italics).

16. Unpublished Report No. 3, Civil Service Federation Unity Committee Meeting, June 21, 1956, p. 2.

17. Reported in The Civil Service Review, XXIX (September, 1956,) p. 296.

The preliminary merger agreement which was to serve as the basis for a constitutional merger of the two organizations was approved by the C.S.A.O. on December 5, 1956, and by the Amalgamated on January 31, 1957. The agreement recognized the similarity in structure and outlook of the two associations and considered that this would make for relatively smooth negotiation. A Joint Committee on Unity met regularly during 1957 and produced a draft constitution in time for the Annual Meeting of the C.S.A.O. on December 7, 1957, when it was ratified. It was subsequently adopted by the Amalgamated. The formal union of the two associations and their transformation into the Civil Service Association of Canada will occur at the founding national convention in the Spring of 1958. The new association will have a membership approaching 25,000.

A more comprehensive exposition of the extent and nature of staff organization in the federal civil service is beyond the scope of our study. Our main concern is with the question of relations between the staff groups and the government, and our intention in this chapter was to present enough data on the associations to enhance our appreciation of the problems discussed in the following chapters.

Chapter III

Between the Wars

The rights of federal civil servants to organize staff associations and to make collective representations to the government, the Civil Service Commission, and individual members of parliament has never been seriously questioned. The growth of staff organizations has paralleled the growth of the civil service in general. However, the development of regularized relations on a basis of even limited reciprocity has been slow in maturing. The civil servant has always been reassured of his right to petition the Crown; but the Crown, for a long time, did not consider it necessary to consult with its employees on matters affecting their conditions of employment. While representatives of staff associations were regularly invited to submit evidence before various kinds of committees studying civil service matters, they were not expected to participate in the committees' deliberations nor to be a party to their reports and recommendations. The government has consistently maintained that its responsibility to parliament and the constitutional status of the civil servant in relation to the Crown precluded the kind of employer-employee relationships which obtain in the sphere of private labour relations.

Until 1944 there was very little change in the pattern of communication between staff and government which

had been established early in the history of the associations. There were various ways whereby representations could be made. The most usual approach was to the cabinet as the actual centre of governmental decision. Interviews with the prime minister or with some of his cabinet colleagues were arranged. Briefs setting forth the requests of particular groups of civil servants were presented and were usually followed by polite questioning and discussion. After the proper courtesies had been exchanged, a spokesman for the cabinet might assure the representatives that their claims would receive due consideration. There were, to be sure, variations in this pattern. At times the cabinet could give an immediate and decisive reply. At other times it might advise the staff representatives to prepare a more detailed brief for submission to the Civil Service Commission whose expert opinion guided the decisions of the cabinet or the Treasury Board. But whatever the procedures or formalities, the decisions, in the last resort, expressed the unilateral pleasure of the government. They were not the product of direct and detailed consultation among those whose interests were involved. The position was stated by the president of a staff association when he appeared before a select committee of the House of Commons in March, 1928. When asked about the way his association worked, he answered:"It is working, but it has no powers; it depends only upon the

good graces of the higher authorities."[1]

The traditional tactic of petitioning members of parliament has been frequently resorted to by civil service organizations. Individual members, usually from a group in opposition, have been persuaded to raise questions in the House relating to the interests of civil servants. Speeches have been made in favour of particular civil service objectives and extensive discussion has revolved about these issues, particularly during debates on the estimates of the Postmaster General and the Secretary of State. Telegrams and pamphlets have been showered on M.P.'s, and newspapers in areas of civil service concentration have publicized the actions and demands of the staff associations. However, the net effects of these "lobbying" techniques have been very slight. Pressure group tactics on the parliamentary level are generally ineffectual under a system of cabinet government. An interesting exchange which illustrates this point occurred in the House of Commons in June, 1926. It will be recalled that the Liberal government of the day was in a rather insecure minority position. Yet when a member of the opposition rose with a telegram which he and many other M.P.'s had received from the Amalgamated Civil Servants of Canada and proceeded to read its "demands", Prime Minister Mackenzie King replied:

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1. Canada, House of Commons, Select Standing Committee on Industrial and International Relations, 1928. Minutes of Proceedings and Evidence, March 7, 1928, p. 12.

> "The only statement I would have to make in regard to that particular telegram if it reads as I think I heard it, that certain persons demand certain things be done, is that the government is not inclined to respond to requests preferred in that way."[2]

Although the staff associations have long and consistently pressed for a greater role in determining the conditions of civil service employment, they have been until recently quite moderate in their efforts and modest in their expectations. It is only in the past eight or nine years that the term "collective bargaining" has begun to appear in staff publications and in convention resolutions. The pressure, however, has grown in intensity and the realization of a system of negotiation has emerged as the primary objective of the major civil service organizations. This was the main theme of a "memorandum of Proposals" placed before a group of ministers by the Civil Service Federation of Canada on August 20, 1957.

> "1. The Civil Service Federation of Canada, representing some 75,000 Federal Government employees, in convention assembled in 1953 and 1956, was given a mandate to seek the removal of Section 55 of the Industrial Relations and Disputes Investigation Act.
>
> 2. Convention proceedings make it amply clear that our members were not entirely satisfied with the employer-employee relations which existed in the Government service prior to the recent change in Government. It is also clear that they wish to be placed in the same position relative to negotiating their terms of

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2. Canada, House of Commons Debates, June 9, 1926, p. 4237.

> employment, working conditions, and salaries as are other citizens of Canada."[3]

One may well wonder why this growing demand for collective bargaining has come so late in the history of Canadian civil service unionism. Two reasons suggest themselves. The first is the relative weakness of the staff associations in the period preceding World War II. Whereas the associations had acquired some strength in the 1920's, much of it had been dissipated during the depression years of the 1930's. Civil servants were too anxious to hold on to whatever security their employment offered to allow themselves to become engaged in a struggle with the government over the question of bargaining rights. Towards the end of the second world war, with inflation, a tightening labour market and the general maturation of the Canadian trade-union movement acting as stimuli, the associations grew in strength and began to raise their levels of aspiration. The second reason is the growing disenchantment of organized civil servants with the machinery of joint consultation which had been finally instituted in 1944. Staff relations in the period between 1919 and 1944 were characterized by a moderate but sustained campaign to achieve a "National Civil Service Council" based on the model of the Whitley Councils in the British civil service.

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3. Reported in The Civil Service Review, XXX (September, 1957), p. 272.

This seemed to be a goal which, if realized, would satisfy the reasonable expectation of civil servants to be consulted on matters of direct concern to them. It therefore seemed quite logical for the associations to concentrate their efforts towards the achievement of joint councils. To have introduced the issue of collective baragining during this period would have caused an unwarranted diversion of the limited energies of the staff organizations. However, their experience with the National Joint Council of the Public Service of Canada has apparently disappointed the associations and hence the increasing pressure for a revision of negotiating procedures. The story of the effort to achieve a joint council and a critical review of the council's operation are a necessary prelude to an understanding of current problems in civil service staff relations.

At its Eighth Convention held in March, 1919, the Civil Service Federation of Canada passed a resolution calling for the establishment of a joint council in the Canadian civil service. The Whitley Councils had not yet been set up in the British civil service, although the government was in the process of giving effect to the recommendations of the Whitley Committee. The apparent impatience of Canadian civil servants for a council is, however, understandable. The Civil Service Act of 1918 precipitated a general reform of civil service structure. A firm of experts in business administration was brought in from the United States to advise the government on reclassification. The

civil servants who pinned much of their hopes on the new classification schedules were most anxious for an opportunity to have a say in what was being planned for them. The idea of a council seemed appropriate.

The firm of Arthur Young and Company which prepared the first classification report had also recommended the establishment of some form of employees' advisory council which could be consulted by the government or Civil Service Commission on matters of mutual concern. In August, 1919 the government established a Board of Hearing and Recommendation to hear class and individual appeals with respect to classification. Among the five members of the Board were two named by the Civil Service Federation as representatives of the civil servants. Some staff associations thought that this board might become the forerunner of a joint council with much broader terms of reference. But the board ceased to function as soon as its immediate duties came to an end. "Practically the only encouragement for some five years was the pronouncement of the Right Hon. W. L. M. King who, speaking in Ottawa before the general elections of 1921 and 1926, voiced his well-known convictions regarding cooperation in relations between employer and employee, and referred sympathetically to the question of a Civil Service Council; . . ."[4]

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4. "A National Civil Service Council," The Civil Service Review, II (September, 1928), p. 123.

A committee of deputy ministers which was set up in June, 1922, to consider "matters affecting the Civil Service of Canada" expressed its opposition to the idea of a civil service council.

> "Your Committee . . . has reached the conclusion that the addition of a Whitley Council to the authorities by which the Civil Service is at present regulated and controlled could have no other result than to increase, rather than to diminish, the difficulties under which the Civil Service is labouring at the present time."[5]

The Malcolm Committee of the House of Commons, from whose published proceedings the above quotation is culled, gave the staff associations the opportunity to make a systematic presentation of their views on the subject of joint councils. There was a high degree of consensus among the various groups on the principle of consultation. Some associations had even prepared draft constitutions for the projected council, which were modelled on the Whitley system in Britain. However, the unity of the associations on principles was weakened by the diversity of their views on matters of detail. Although committee members and staff representatives frequently referred to Whitleyism in the British civil service, one is struck by the general ignorance of the day-by-day operations of this institution.

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5. Canada, House of Commons, Proceedings of the Special Committee appointed to inquire into the operation of Chapter 12, 8-9 George V, An Act respecting the Civil Service of Canada, etc., 1923, Exhibit L, pp. 1040-1.

Despite the fact that councils figured so largely in the evidence before the Committee, they were ruled out in its final report.

> "Your Committee, however, is unable, by reason of the diversity of evidence submitted, to recommend the acceptance of any definite plan now in existence as being adaptable to the conditions existing in this country under the present Civil Service Act."[6]

The Malcolm Committee did, however, recommend the establishment of departmental personnel boards, giving equal representation to the department, the Civil Service Commission and departmental employees, "to act in an advisory capacity in matters of classification, promotion, dismissal, salary revision, leave of absence, and other kindred problems affecting the welfare and efficiency of the departmental service."[7] This recommendation was not implemented.

The desire of civil servants for a joint council also found its spokesmen in the House of Commons. The late J. S. Woodsworth became their most consistent protagonist though his representations did not always meet with sympathy.

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6. Ibid., Second and Final Report, p. xi.

7. Ibid. The chief differences between this recommendation and the Whitley scheme were first, its restriction to departments; secondly, the implication of a triangular relationship between departments, Civil Service Commission and employees instead of a clear division between the staff and the official sides; and thirdly, the non-recognition of the staff associations as representative of the staff. In any case, the form of the recommendation was very vague.

Thus in the debate on supply in 1924, when an item for joint industrial councils came up in the estimates of the Department of Labour, Mr. Woodsworth raised the question of Whitley Councils for the civil service. The Hon. James Murdock in his reply referred to the jurisdiction of the Civil Service Commission to determine certain questions affecting wage rates and went on to say: "There is nothing in the law which would specifically say to them: You shall give Civil Servants an opportunity for a voice and a vote in the determination of these questions."[8]

When, after the general election of 1926, it seemed that there would again be no action on a civil service council, the staff organizations proceeded to consolidate their forces for a more intensive campaign. The Civil Service Federation met in convention in October, 1926, and adopted a resolution calling for the early appointment of a committee comprising an equal number of staff and official representatives to draft a constitution for a joint council. This was followed by a conference of all the major civil service associations where an effort was made to harmonize the various viewpoints so that a unified policy might be presented to the government. The conference met in December and, with the exception of the Professional Institute of the Civil Service of Canada, all participating groups agreed upon a policy which the Federation was authorized

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8. Canada, House of Commons Debates, May 20, 1924, p. 2358.

to present on their behalf. The formal presentation was made in February, 1927 in an atmosphere of courtesy and optimism, but nothing concrete was undertaken by the government. On the 24th of February Mr. Woodsworth arose in the House of Commons to introduce a bill to amend the Civil Service Act by providing for the establishment of joint councils. The bill was given first reading but was not heard of again during that session.

The next stage in this development came close to achieving the objectives of the associations. Mr. Woodsworth re-introduced his bill to provide for civil service councils on January 30, 1928. Under the title "Bill No. 4, An Act to amend the Civil Service Act (Councils)," it received first reading. It was read for a second time without debate on February 10th and was referred to the Select Standing Committee on Industrial and International Relations for study. In early March of that year the Civil Service Federation had again approached the cabinet with its request for councils. The Prime Minister expressed his sympathy for the project and recommended, as a practical course of action, that the associations should appear before the committee considering Mr. Woodsworth's bill. He suggested that a well-prepared case could be a factor in influencing the committee to report in favour of the bill.

The committee hearings ranged over a wide area. Except for the reservations of the Professional Institute of the Civil Service of Canada, the associations were agreed

on the desirability of councils as a means for securing the participation of the staff in the formulation of advice to the government on civil service matters. By this time there was more information on the operation of the Whitley Councils in Britain and a greater awareness of the problems of joint consultation in a public service. The Undersecretary of State for External Affairs, who was a close associate of the Prime Minister, introduced the constitutional issue of the government's ultimate responsibility to parliament. He submitted a declaration which had been issued jointly by the Official and Staff Sides of the National Whitley Council in Britain acknowledging that "the Government has not surrendered and cannot surrender its liberty of action in the exercise of its authority, and the discharge of its responsibility in the public interest."[9] This argument was accepted and amplified by the representative of the Civil Service Association of Ottawa.

> "It would be quite an unheard of thing that any Civil Service organization should advocate the setting up of a board which would over-rule Parliament. That was so very obvious to us that we did not think it necessary to mention it."[10]

The witness, however, stressed that, in practice, the understanding that the decisions or advice of the council would become operative "was really the crux of the whole

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9. Select Standing Committee on Industrial and International Relations, 1928, Minutes of Proceedings and Evidence, No. 1, p. 4.

10. Ibid., p. 39.

matter, for unless the National Council can give a decision, which for all intents and purposes is final, I do not believe that there would be very much use in setting up councils at all."[11]

A question whose significance will become more apparent when we examine the present experience with joint consultation may be quoted here for its historical interest. Mr. Woodsworth, the sponsor of the bill, asked the president of the Civil Service Federation :

> "Q. Dr. Roche (chairman of the Civil Service Commission) seemed to be afraid that the question of salary would enter into, and be discussed by, the proposed National Board. Was it the idea of your organization that the salary question should be discussed by the National Council? -- A. Yes."[12]

While there were some differences among the associations on points of detail, they wisely refrained from making these into significant issues. They sought the acceptance of the principle and urged the formation of a preliminary joint committee to prepare a draft constitution. The hearings seemed to be going well from the staff's point of view as the committee's sympathy for the objects of the bill became apparent. But a rather innocent technicality whose implications were not fully grasped at times was an important factor in ultimately frustrating the expectations of the civil servants.

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11. Ibid.

12. Ibid., No. 5, p. 76. (See Chap. IV, p. 100 ff.)

The committee had before it a bill which dealt with the matter of national and departmental councils in some detail. The principle of the bill was well received, but there was little readiness on the part of the witnesses to discuss the details. It was felt that the details were better left for consideration by the suggested preliminary committee. The standing committee of the House, however, was faced with the necessity of reporting on the bill in question. The members might have insisted on a clause-by-clause examination of the bill despite their own and the witnesses' reluctance to become so involved. During the course of the hearings it occurred to, or was brought to the attention of, the committee that the general objects of the bill might be achieved without new legislation. The British Whitley Councils had, after all, been established by order in council and there seemed to be no reason why the Canadian government could not do the same under the authority of the existing Civil Service Act. Indeed, this approach suggested a desirable flexibility. The Governor in council could name a preliminary committee to draft a constitution and, when this was completed to the satisfaction of those concerned, could proceed with the establishment of a council. The plan was disarming in its simplicity. It would relieve the committee of a tedious responsibility and yet satisfy the civil servants by giving them a constituent role in defining the scope of the projected council's operations.

There was one difficulty, however, which was ignored by the staff witnesses even after it had been pointed out by Mr. Woodsworth. The committee might propose a course of action to the government and to parliament, but without explicit legislation to that effect, there was no certainty that the government would heed its advice. The matter would be left entirely within the government's discretion. At one point, near the end of the committee's proceedings, this rather interesting exchange took place between Mr. Woodsworth and the president of the Civil Service Federation.

> "Q. Do you think this whole arrangement . . . should be merely a matter of departmental arrangement, or under an Order in Council, or do you think it should not (sic) be arranged by legislation?" -- A. I do not consider that it is material whether a National Civil Service Council is established by amendment of the Act or by Order in Council. The main thing in our view is, to get a National Civil Service Council. We feel that if you would give us that, we will do the rest.
>
> "Q. This is the point I want to get at; you have been good enough to say that it is good of us to bring this into practical politics. That has been my purpose, to get some action. Now that we have a Bill actually before the house, and under consideration by a Committee, it would seem to me that your body is very largely responsible for side-tracking it and postponing any action . . . . I would suggest that you are assuming a fairly heavy responsibility for the Civil Servants, if you refuse either to adopt or so modify this Bill that it will have some chance of passing the House, because it will then be taken out of politics again and sent back to where it was before, in the realm of pious resolutions."[13]

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13. Ibid., pp. 77-78.

Mr. Woodsworth was understandably disappointed with the turn of events; his bill was about to be shelved. But it is strange that the associations did not share his foreboding and were quite ready to go along with the Committee's view that the matter should be left to the discretion of the governor in council.

The committee reported to the House on March 27th. It endorsed the principle of a National Civil Service Council and recommended that the council's constitution be the product of joint consultation between the parties concerned. It called for the establishment of the Council "by the government" immediately upon completion of a mutually acceptable draft constitution. Because the committee felt that the objects of the bill might be attained by a simple order in council, it recommended "that Bill No. 4 be not further proceeded with."[14] The report was approved by the House of Commons on March 29th. Civil servants were elated because their objectives seemed to be so close to realization. Yet by May 9th the staff associations were again petitioning the government -- this time to implement the committee's report at the earliest opportunity. In August, 1928 there was an upsurge of hope when the Minister of Labour invited the major staff organizations to nominate representatives to a "National Civil Service Council Drafting Committee." But nothing concrete followed until May, 1930 when the government stood on the threshhold of another general

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14. Ibid., Second Report, No. 6, p. iv.

election.

Then, at last, the government acted by P.C. 970 of May 7, 1930. The order in council provided for the creation of an interim committee to draft a constitution prior to the actual establishment of a National Civil Service Council. The committee was to be made up of representatives from the major associations, departmental ministers or persons designated by them, and one representative from the Civil Service Commission. The first meeting of the committee was called for October, 1930. But the general election had intervened in the meantime and the government had changed.

While the new Conservative government apparently had little enthusiasm for the council plan, it did not immediately discourage the civil servants. The new Minister of Labour called a conference of civil service associations late in 1930 and again in 1931. There was some discussion as to the advisability of setting up a departmental council in a specific department for a trial period in order to test the workability of the scheme. However, no action followed and the matter was eventually dropped.

An amusing sidelight on the vagaries of politics was the vigour with which former Liberal ministers pressed the new government on its attitude towards civil servants. The government had instituted a general cut in civil service salaries in the early part of 1932. The Hon. Peter Heenan, the former Minister of Labour, deplored the cuts and criti-

cized the government for its failure to consult with the staff organizations before taking such drastic action. He referred generally to the rights of employees to organize themselves and to negotiate with their employers, thereby implying that civil servants should enjoy similar consideration. He reminded the House of its unanimous support of the plan for a civil service council and called attention to the enabling order in council of May 7, 1930. A few days later, the former Prime Minister joined in criticizing the salary cuts for their arbitrariness. He said: "I do think that if the ministry had approached this matter by conference, by consultation and by negotiation . . . the main object might have been attained, but it would have been obtained with good will . . ."[15] He also asked why the National Civil Service Council had not been established in accordance with the order in council.. When, a few weeks later, the Hon. Mr. Heenan again raised the question of implementing P.C. 970 and asked how matters stood, the Right Hon. R.B. Bennet rose to declare: "The matter stands just where it was left by the hon. gentleman. He passed his order in council and stopped. The stop still stands."[16]

The Select Special Committee of the House of Commons on Civil Service and Civil Service Act which was set up in March, 1932 heard a repetition of the claims of civil

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15. Canada, House of Commons Debates, March 4, 1932, p. 810.
16. Ibid., May 25, 1932, p. 3425.

servants for joint councils. On this occasion some of the associations made a clear distinction between the functions of councils and those of appeal boards. Councils, they suggested, might deal with matters affecting classes of employees or the service as a whole, while appeal boards might hear individual grievances regarding promotion, dismissal, classification, and so on. The committee's report completely ignored the question of councils. Among its substantive recommendations, however, was one for the creation of an appeals board to hear individual grievances. This was not implemented in 1932 nor again in 1939 when another special committee of the House made a similar recommendation.

The depression years of the 1930's were a time of general quiescence in the activities of the staff associations. It was during this period that Treasury Board asserted its authority and initiative with regard to departmental establishments and rates of compensation. P.C.44/1367 which was approved by the Governor General in Council on June 14, 1932[17] had the effect of freezing salaries and decreasing staff. A Treasury Board minute of July 18, 1932, amplifying the order in council directed "That the said Order in Council be so interpreted as to attain the greatest reduction possible in the cost of personnel . . ."[18] The Civil Service Commission found its supposed independence to recommend changes in

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17. The text of this order may be found in the Twenty-fourth Annual Report of the Civil Service Commission of Canada for the Year 1932, Ottawa, 1933, Appendix A, p. xix.

18. Ibid., p. xxi.

organization and compensation rigidly curtailed by a series of "Staff Control Regulations" emanating from Treasury Board. A revealing phrase in the Commission's report for 1934 indicates a departure from the role envisaged for it in the Civil Service Act, 1918. The report states that the "Commission has continued to act, during the year, as the investigating agent for the Treasury Board in connection with departmental requests for additional staff."[19]

Although the staff associations continued to petition for reforms in the machinery of staff relations, their efforts during these years lacked a spirit of militancy. Their main preoccupation seemed to be with problems of tenure. During World War II, however, a new aggresiveness became apparent. The war effort required a great expansion of the civil service at a time when labour was in increasingly short supply. This enhanced the bargaining position of the associations. In addition, rising costs due to inflation stimulated successive demands for a re-adjustment of salary scales and working conditions. The government had anticipated both the extraordinary growth of the civil service and the inflation arising out of growing shortages in consumers' goods. A number of orders in council and regulations under the War

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19. Twenty-sixth Annual Report, p. 9, (my italics). The present Civil Service Act nowhere implies that the Commission might act as the agent of the Governor in Council. In calling attention to this development we are not suggesting that it could have been otherwise; but it does raise questions about the status of the Commission. Some of these will be discussed in Chap. VI.

Measures Act designed to maintain a tight rein on expenditures for civil service operations were passed, on the recommendation of Treasury Board, during the Spring of 1940.[20] These granted extensive powers to the Board with respect to salaries and organization within the civil service. The Board exercised its powers with a good deal of zeal and civil servants began to feel restive under its strict regime. Some of their concern was strongly expressed for them in a sharp criticism of the Board by the Liberal M.P. for Ottawa West:

> "Under the guise of controlling expenditures the treasury board has gradually and continuously extended its authority over the personnel of the civil service, and has done this without giving the civil servants any right of appeal, either to the treasury board or from its decisions . . . It seems to me that this control by the treasury board is indirect control without direct responsibility."[21]

The government had actually begun to examine its personnel policies earlier that year. P.C. 2/584, approved by the Governor General in Council on January 23, 1943, provided for the creation of a committee to advise Treasury Board on matters of personnel management "in respect to the Public Service of Canada." The committee's chairman was Mr. H.J. Coon, an executive of The Bank of Nova Scotia. Its other members were two Civil Service Commissioners, a member of the National Harbours Board and an assistant

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20. See, for example, references to P,C. 1/1569 of April 19, 1940, and P.C. 32/1905 of May 10, 1940, in Canadian War Orders and Regulations, 1943, Vol. 1, pp. 230-31.

21. Canada, House of Commons Debates, March 15, 1943, p. 1241.

deputy minister of Finance. The order had not, at first, been tabled in the House and M.P.'s only became aware of its existence when they learned that various individuals and representatives of staff associations had been invited to appear before the committee. Sensing an issue that might embarrass the government, opposition members began to raise questions about the committee and its work. A Conservative member who asked whether civil service organizations had been given representation on the committee was answered rather brusquely by the Minister of Finance: "I have declined and feel that I must decline to recommend that a representative of the civil servants, whose views we know and have before us, should be added to a body such as we have set up for advisory purposes."[22] When members asked whether the committee's report would be tabled, they were informed that it would be regarded as a confidential document since it had to do with internal management only. Under sustained pressure the government agreed, in April, to table the order in council which established the committee. But a formal resolution to table the committee's report was defeated by a vote in the House on June 7, 1943. The report was never made public.

An examination of the terms of reference of the Coon Committee indicates that it was given a great deal of scope. The committee was asked to consider the problems of detail arising from the rapid growth of the civil service.

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22. Ibid., February 22, 1943, p. 574.

It was asked to review the orders of 1940 and 1941 relating to salaries, permanencies and the cost of living bonus, as well as a number of other technical questions. In addition to these specific matters, the committee was requested to deal with more general questions of personnel administration. Paragraph 14 of the order in council states:

> "That it shall be the function of the Committee to enquire and report to the Board in respect of:
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> (a) The features of personnel management referred to specifically herein;
>
> (b) Any other questions which may be referred to it by the Board;
>
> (c) Any related subject to which the Committee desires to draw attention."[23]

The committee made its report to Treasury Board on May 17, 1943. The government's refusal to make the report public was quite justifiable. It was a "housekeeping" document, and to have divulged its specific content would have unnecessarily inhibited the government's freedom of action in matters of administration for which it was ultimately responsible. It was, to some extent, possible to guess at the tenor of the report from some of the substantive adjustments in the conditions of employment which were made after it had been submitted. Bonus payments which had been restricted to those earning less than $2,100. per annum were broadened to include employees in the $2,100. to $3,000. group. Statutory increases for temporary employees were permitted. Limitations on permanent appointments were

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23. Canadian War Orders and Regulations, 1943, Vol. 1, p. 232.

relaxed, and so on. There was, however, nothing definite to suggest that the committee had made any recommendations with respect to "general problems connected with present management and future demobilization . . ." The order in council which set up the Coon Committee was not rescinded until well after the end of the war and one might have expected the committee to continue with its deliberations on the more general problems. If the committee did continue to meet, there is nothing to indicate that it had issued any subsequent reports. It would seem that the committee had become inactive when the government, towards the end of 1943, had finally decided to introduce a scheme for joint consultation.

It was becoming quite evident by December, 1943, that plans for a civil service council were on the government's agenda. The Seventeenth Convention of the Civil Service Federation which met in November passed a resolution which not only urged the government to proceed with the creation of the council, but actually recommended the form of its membership. An editorial in The Civil Service News stated that there were "indications that favourable consideration is being given by the government to the request of the Civil Service Associations for the establishment of a National Civil Service Council."[24] On December 22, the

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24. The Civil Service News, December, 1943, p. 273.

Civil Service Federation of Canada submitted a brief to the "Sub Committee of the Cabinet on Civil Service Problems"[25] calling for the immediate implementation of P.C. 970 of 1930. Two months later the Minister of Finance informed the House of Commons of the government's decision to establish a joint council for the public service of Canada.

> "In conformity with the government's announced policy of promoting employee representation in private industry and the improvement of industrial relations generally, the treasury board has decided to provide for the setting up of an employer-employee council in the public service of Canada . . . . . as it is desirable that the new organization and procedure should evolve as a result of consultation and general discussion rather than being imposed from above in any cut and dried fashion, we are immediately suggesting a tentative constitution. . . . ."[26]

P.C. 3676 of May 16, 1944, formally established the National Joint Council of the Public Service of Canada. The first meeting of the Council was held on June 15th, 1944. It was addressed by the Hon. J.L. Ilsley, Minister of Finance, who outlined the government's view of the Council's projected role as an advisory body.

The staff associations were generally pleased with this development. They had been campaigning for a joint council since 1919 and they now looked forward to

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25. The Civil Service Review, XVII (March, 1944), p. 26.

26. Canada, House of Commons Debates, February 24, 1944, p. 778.

what they hoped it would accomplish for them. But their optimism was tempered with restraint. An article in the journal of the Civil Service Federation which described the first two meetings of the N.J.C. with a good deal of enthusiasm, ended on this note of caution.

> "The Council will not work miracles. It will not solve problems of long standing by magic. It will be only by patient application of sound principles that the Council will be able to show what it can really effect in the way of improvement. In this, Civil Servants must be prepared to lend their hearty and earnest sympathy and support."[27]

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27. The Civil Service Review, XVII, (June, 1944), p. 142.

Chapter IV

Joint Consultation

When the Prime Minister was asked in February, 1951, whether steps were being taken to provide civil servants with the same facilities for collective negotiation as were provided for employees of private corporations, he replied:

> "The answer is that no steps are being taken because it is considered that the appropriate machinery for these purposes was set up by P.C. 3676 of May 16, 1944, which established the national joint council of the public service of Canada and the subsequent treasury board minute of March 8, 1945, approving the constitution of the council."[1]

It seems evident from the survey in the previous chapter that the staff associations, in 1944, believed that the National Joint Council (N.J.C. hereafter) would provide an acceptable alternative to collective bargaining. By 1951, however, civil servants had already begun to evaluate their experience in the N.J.C. and found it wanting. The many concrete accomplishments of the Council before and after 1951 did little to dispel the growing dissatisfaction of the staff associations with its shortcomings as the "appropriate machinery" for negotiation.

The current attitude of the staff was well expressed in an address to the Twenty-first Convention of the Civil Service Federation of Canada by one who would normally be expected to represent the views of the Official Side of the

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1. Canada, House of Commons Debates, February 21, 1951, p. 542.

N.J.C. Speaking on July 9, 1956, Mr. A.J. Boudreau, at that time a member of the Civil Service Commission, declared:

> "It has been taken for granted for a number of years that the National Joint Council of the Public Service of Canada was sufficiently equipped and authorized to act as a negotiating body to take care of all employer - employee relations in the Canadian Government. We are questioning that theory very definitely. (Applause).
>
> "The National Joint Council is a necessary body and it must remain, but let it be recognized as an official discussion group, as a necessary study body, ... but we are not convinced that at the present time it is the right sort of negotiating procedure. (Applause)."[2]

This chapter will examine the structure and operations of the N.J.C. with a view to discovering some of the reasons for its failure to fulfil the expectations of the staff.

A number of points in Mr. Ilsley's statement of February 24, 1944, which announced the government's intention to establish the N.J.C. deserve attention for the light they throw on the subsequent development of the Council's experience. He indicated that the government was favourably disposed towards the British practice.

> "...In working out this policy the treasury board will accept as its general model, with the necessary adaptations to suit Canadian conditions, the pattern which has been evolved in the United Kingdom through the application of the so-called Whitley Councils

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2. Reported in The Civil Service Review, XXIX, (September, 1956), p. 359.

to the British public service."[3]

He also expressed the desirability of extensive staff participation in drafting the Council's constitution, although his statement contained a substantive outline of what was in fact to become the final constitution.

It took rather longer than anticipated to launch the National Joint Council. The Minister of Finance suggested in his statement of May 16, 1944, that the delay was due to differences among the staff associations on the question of representation on the Council. He expressed the belief that, as the joint council scheme was extended to operate on a departmental as well as on the national level, it would be much easier to find agreement on representation.[4]

On May 16, 1944, the government issued P.C. 3676 which formally established the National Joint Council of the Public Service of Canada. Appended to the Order was a draft constitution which was intended to have effect until a final constitution would be approved by Treasury Board following deliberation and consultation within the N.J.C. The staff associations were at first pleased with the provision for their participation in drafting the final constitution, but their enthusiasm proved to be

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3. Canada, House of Commons Debates, February 24, 1944, p. 778.

4. Ibid., May 16, 1944, pp. 2945-6.

premature.[5] One may well wonder whether there could have been any other meaningful joint deliberation after the government had presented its own version in detail. This was in sharp contrast with the British experience. The Whitley Councils in Britain did not begin to function until a National Provisional Joint Committee had agreed on a constitution which differed substantially from the original recommendations of the Heath Committee (a committee set up by the Treasury). The final constitution of the N.J.C. which was approved by a Treasury Board minute on March 8, 1945, differed from the draft constitution only in three minor points. It provided for a change in Staff Side representation, increasing it from eight to ten. There was a more detailed and specific definition of the mode of selection and the duties of officers. And it permitted the Council to make recommendations to the Governor General in Council in addition to Treasury Board and/or Civil Service Commission. These could hardly be called substantive changes, although the associations, at the time, seemed to be reasonably satisfied that the constitution embodied the provisions which they desired.

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5. "The Association also believes that one step taken which augurs well for the success of the Council is that the constitution under which it is to function is to be drawn by its own members, not imposed from above. In this manner the effectiveness and success of the Council in dealing with civil service matters will depend largely upon the constitution decided upon by the Council members." The Civil Service News, March, 1944, p. 65.

The question of composition and membership of the N.J.C. is basically a technical one. Unlike the Whitley Councils, there is no requirement for numerical equality of Staff and Official Sides. Such equality is not important since all recommendations must be preceded by the concurrence of both sides as such. Official Side membership is set at a minimum of eight and must not exceed Staff Side representation which now stands at fourteen. Representatives from the Official Side must be "senior administrative officers in the public service and shall be appointed by the Governor General in Council".[6] The present Official Side includes, among others, a Civil Service Commissioner, the secretary of the Treasury Board, the Deputy-Minister of Labour and the Clerk of the Privy Council.

An interesting aspect of the actual membership on the Official Side is the inclusion of a member of the Civil Service Commission. When the Minister of Finance made his announcement in February, 1944, he said that Treasury Board would nominate "senior civil servants to act as the representatives of the government, included amongst whom will be a representative of the Civil Service Commission."[7] The Chairman of the Commission was appointed to the Council in 1944 and, indeed, served as the chairman

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6. Constitution of the National Joint Council of the Public Service of Canada, sec. 3(b).

7. Canada, House of Commons Debates, February 24, 1944, p. 778.

of the Official Side until his retirement in 1955. While it is possible to argue that the Civil Service Commission is part of the public service, it is rather more difficult to designate a Civil Service Commissioner as a representative of the government. This seems to run counter to the view that the Commission is the impartial administrator of the merit system and the expert advisor on civil service matters. If a member of the Civil Service Commission was to play any role on the N.J.C. this should, perhaps, have been that of an impartial chairman of the Council rather than a member of one of the "sides".

In dealing with the constitution and experience of the N.J.C., occasional reference will be made to the Whitley Council scheme. This should provide a useful critical perspective since the expressed intention of the government was to adapt the British pattern to the Canadian civil service.

The government, from the very start, attempted to define the status of the N.J.C. in precise constitutional terms. The Minister of Finance emphasized its purely advisory role:

> "The National Joint Council will act in an advisory capacity to the Treasury Board in all matters affecting the conditions of work in the public service.....The Council will, of course, have no executive powers which would impair the responsibility of the Cabinet or Treasury Board or Civil Service Commission, or possibly infringe upon

the authority of Parliament."[8]

To soften the implication that the Council would, in fact, have no real power, Mr. Ilsley indicated that if it showed seriousness and responsibility in its operations its recommendations could not but carry great weight with the various decision-making authorities. The position is legally and technically correct and it is formalized in the Council's constitution. Section 6 states - "The duties of the National Joint Council shall be to make recommendations . . ." and section 7(e) specifies that "Decisions of the Council shall be arrived at by agreement between the two sides . . . and shall be reported to the authority deemed appropriate."

This formulation represents an interesting deviation from the constitution of the Whitley Councils. When the Heath Committee had first made its recommendations to the Treasury it, too, stressed the advisory nature of the projected joint councils. The British staff associations, however, reacted strongly against so vague a definition of the councils' role and were able to exact an important concession from the government. The final Whitley Council constitution thus provides that decisions "shall be arrived at by agreement between the two sides, shall be signed by the chairman and the vice-chairman, shall be reported to

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8. Ibid.

the Cabinet, and thereupon shall become operative."[9] This is rather strong language and, indeed, implies more than was meant or is legally feasible. It is clear that a Whitley Council agreement cannot bind the government due to the overriding authority of Parliament. But the phrasing has had a good psychological effect on the operations of the councils.

The issue, in reality, is largely academic. Both sides must agree before any recommendations can be made. The agreement of the Official Side clearly implies the government's approval in advance. Therefore, unless Parliament itself takes the initiative to the contrary, there is no reason why council recommendations should not become operative. This was recognized in the 1931 report of the Royal Commission on the Civil Service in Britain.

> "The members of the Official Side possess no power or authority except what is delegated to them by Ministers..... In fact the position is, and must remain, that, unless the Cabinet through Ministers authorizes the Official Side to agree, no agreement can be reached on the Council."[10]

One would expect the same consideration, with some minor reservations, to hold good for the Canadian experience. The fact that Official Side representatives

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9. Constitution of the National Whitley Council, sec. 16, (my italics).

10. Quoted in H. M. Treasury, Staff Relations in the Civil Service, London, 1955, p. 11.

are men of very senior administrative rank suggests that indirect consultation with the cabinet as a result of the officials' responsibility to their respective ministers must precede their agreement to important recommendations. Indeed, Canadian officials are much less free to commit the government than are their opposite numbers in the United Kingdom. Because ministers in Canada still retain substantial control over details, their senior officials would be even more likely to seek ministerial sanction before they commit the Official Side. Implementation should, therefore, be speedy and complete. This, however, has not always been the case in practice. In a booklet commemorating the tenth anniversary of the N.J.C. we find this interesting statement:

> "Confidence in the National Joint Council's advice and recommendations is shown in the fact that none of its recommendations has been rejected."[11]

While this may be technically true in the long run, a number of experiences suggest that some qualification is necessary.

The provision for deducting membership dues for the various staff associations from salary cheques (the"check-off") was placed on the N.J.C.'s agenda, at the request of the Staff Side, in mid-1950. A general committee was set up to investigate and report on the cost of introducing this procedure. At the same time

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11. The National Joint Council of the Public Service of Canada, 1944-1954, Ottawa, 1954, p. 11.

the general principle of the "check-off" was taken under study by a committee of the Official Side. The committee of the Official side finally reported to its parent body in October, 1951. The matter was discussed at the Council meeting on October 26, and some kind of joint agreement was reached. This was reported to the Treasury Board. At its meeting of February 21, 1952, the N.J.C. was informed that the government had turned down its recommendation. On March 6, the Staff Side, with the approval of the Official Side, addressed a letter to the Prime Minister requesting the reconsideration of the Government's decision in view of the unanimous recommendation of the Council. In his reply, the Prime Minister advised the Staff Side that the decision was not final and irrevocable and that the matter would be dealt with again. On October 30, 1952, the N.J.C. again approved a joint memorandum recommending the "check-off" which was submitted to the cabinet through the Treasury Board. Five months later, on March 24, 1953, the voluntary "check-off" was approved by Treasury Board minute.

In view of this kind of experience one must note a real difference from Whitley procedure and experience. To be sure, the power of the Whitley Councils to reach operative conclusions must be seen in the framework of the close relationship between cabinet and Official Side, but agreement, once reached, tends to be implemented without delay. In a paper delivered to the Institute of

Public Administration of Britain during 1953, Mr. A.J.T. Day, then chairman of the national Staff Side, referring to this question declared:

> "Thus in one way or another, the approval of the government for any agreement is assured in advance, and it can be promulgated as soon as reached . . . The immense importance of the decision to permit Whitley bodies to reach operative conclusions needs no emphasis. Without it their history would have been altogether different. They might, indeed, have had no history at all." [12]

Another instance of uncertainty and delay in N.J.C. deliberations occurred in connection with the introduction of a year-round five-day week for civil servants. The matter was raised in the Council during the Spring of 1951. Each side set up a committee to examine the problem. On January 17, 1952, the Staff Side presented its brief to the whole Council. The Council then agreed that its chairman should prepare a short statement of the issue and address it to the Minister of Finance "asking if the Government is prepared to consider the principle of the year-round five-day week in the not too distant future."[13] At a later date, the Council arranged for a meeting between the Staff Side

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12. Whitley Bulletin, July, 1953; address by Mr. Day separately printed, London, 1953, p. 2.

13. C. W. Rump, "Recent Activities of the N.J.C. of the Public Service of Canada", The Civil Service Review, XXV (March, 1952), p. 26

and the Minister of Finance which took place on May 30, and at which time a brief was left with the minister for his consideration. It should be noted that up to this point the Official Side had avoided any kind of commitment, and that the role of the N.J.C. seemed to be that of intermediary between the staff associations and the government. In January, 1953, the Minister of Finance advised the Council of the government's intention to proceed with a limited application of the principle of the five-day week. The Staff Side was not satisfied with the extent of the concession and suggested further modifications. The Official Side, however, refused to agree to any changes and the Staff Side, while accepting what was being offered, continued to press for a wider application of the principle.

On September 8, 1953, the government, by a press release, unilaterally advised the civil service of a further extension of the five-day week. At its meeting of October 22, the N.J.C. recommended the extension of the principle to operating staffs. A letter in reply from the Minister of Finance advised that the government had proposed

> "...to ask the Civil Service Commission to make recommendations to Treasury Board for application of the five-day forty-hour week to the operating services in the same way as it does now for the five-day week as it applies to office staffs."[14]

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14. Ibid., XXVII (March, 1954), p. 52.

The tendency for delay as a result of the sometimes involved procedures of Council deliberations is a complaint which is common to Staff Sides in both the British and Canadian joint councils. These delays are to a real degree quite inevitable, particularly where major questions are under consideration. The Official Sides must be in close consultation with those who are politically responsible. Official views must then be reconciled with staff views. This entails a continuous reference back and forth before a common ground can be found. It would be wrong to conclude that only the Official Side contributes to the delays. Staff Side representatives, too, often lack sufficient discretion to make quick decisions. They must generally seek direction from their respective organizations and then attempt to hammer out a common policy amongst themselves.

The process of delay, however, is more elaborate and drawn-out in Canada than it is in Britain. The lack of a clear-cut policy on reaching operative conclusions has already been dealt with as a factor contributing to postponement of action. A second factor, one that has already been noted in another connection by the Royal Commission on Administrative Classifications in the Public Service, 1946, (Gordon Commission) is the dispersal of authority and responsibility with regards to civil service matters. Where the Whitley Councils recommend only to the appropriate minister or to the cabinet as a

whole (depending on whether it is a departmental or the national council that is recommending), the N.J.C. is required to report to cabinet, Treasury Board or Civil Service Commission. A report to any one of these bodies must usually be followed by consultation among them. Under the Civil Service Act, for example, the Civil Service Commission has the responsibility of recommending on questions of compensation, organization, etc., but has no real authority to decide and must wait on the Treasury Board. On the other hand, Treasury Board may be ready to accept a Council recommendation in principle, but will wait on the Civil Service Commission to examine and work out the details. Both Treasury Board and Commission may in turn have to wait for cabinet approval. It is not difficult to imagine the permutations and combinations of delay that may proceed from this kind of situation.

We turn now to an examination of the scope of the N.J.C.'s functions. The constitution of the Whitley Council, which may serve as a basis of comparison, declares under Section 12 that "all matters which affect the conditions of service of the staff" come within its ambit. Section 13 follows with an enumeration of the kind of specific matters that might be included among the functions of the Council. It seems quite clear that the particular enumerations are inserted, if one may quote from a certain well-known document, "for greater Certainty, but not so as to restrict the Generality" of the previous

section. The constitution of the N.J.C., on the other hand, tends to define the terms of reference in more specific language, and then not without some degree of ambiguity. Most of the clauses outlining the scope of the Canadian joint council's duties are quite innocuous. They deal with such things as seeking means of increasing the participation and responsibility of the staff in determining the conditions of employment; improvement of methods, procedures and organization; review of proposed legislation affecting civil service, and so on. The most important clause is the one under Section 6(ii) which states:

> "The general principles governing conditions of employment in the public service of Canada including among other conditions recruitment, training, hours of work, promotion, discipline, tenure, regular and overtime remuneration, health, welfare and seniority."

A simple reading and construction of this clause would seem to indicate that discussion and recommendation with regards to salaries, even accepting the qualification that they may be confined to "general principles", are legitimate areas of Council action. This has not been the case in practice.

It might be useful to return, for a moment, to the British scene before looking more closely at the evolution of the "salary doctrine" in the N.J.C. Section 13(iii) of the Whitley Council constitution, when it includes within its scope "Determination of the general

principles governing conditions of service, e.g., recruitment, hours, promotion, discipline, tenure, remuneration and superannuation," uses language very similar to that of Section 6(ii) of the N.J.C.'s constitution. But the right of Whitley Councils to deal with salary matters has never been seriously questioned. To be sure, the present practice in the United Kingdom is one of direct negotiations between the staff associations and the Treasury on matters of class or grade remuneration rather than their reference to Whitley Council, but this is not due to any technical or constitutional restriction. The reason for this preference is the decisive fact that the staff associations, in pressing their claims on the government, can have recourse to binding arbitration to resolve a deadlock. The availability of arbitration acts as an incentive to negotiation in good faith. To deal within the Council with problems that are better dealt with outside of its framework by direct negotiation would be redundant.

In Canada, by a strange twist of interpretation, (this seems to be a national propensity) the discussion of "regular remuneration," i.e., salaries, is now generally considered to be excluded from the Council's terms of reference. Just how this interpretation arose has been most difficult to discover. It is possible, however, to trace the development of the current "doctrine" through particular cases.

The Civil Service Review for September, 1944, reported that the first major question of policy dealt with by the Council was that of basic salary rates in the Postal service. The three postal unions were, at that time, making representations to the government and the Civil Service Commission for salary increases. The Minister of Finance referred the question to the N.J.C. The main problem seemed to be that of reconciling the increases, which were apparently warranted, with the government's policy of wage controls. The Council, after an intensive review of the problem, recommended favourably and the adjustment of salaries was consequently authorized. The article in which this was reported, however, did not wish to give the impression that the N.J.C. had acted as a wage negotiating agency.

> "As giving some insight into the action of the Council in regard to further matters, it should be explained that the National Joint Council did not make any recommendations in the form of dollars and cents; the Council recommended only in regard to principles. The Council did report that in its judgment basic increases in the Postal Service would not be inconsistent with the principles of wage control which now apply to industry, and further expressed the view that appropriate authority should recommend suitable increases for Postal employees. The Council stopped at that point. It did not undertake to suggest exactly what the new scale should be."[15]

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15. The Civil Service Review, XVII (September, 1944) p. 334.

The case and the comments furnish us with an interesting precedent. On the one hand, it seemed to establish that salary questions were within the competence of the N.J.C. On the other hand, it indicated a rather uneasy preoccupation with the limiting words "general principles" and the tendency to give them a literal and somewhat unrealistic meaning. Once the Staff Side had conceded on this literal interpretation it found itself in retreat. It was only a matter of time, aided by the relative weakness of the staff associations, for the viewpoint that salary questions were not within the Council's competence to become the prevailing one.

On December 14, 1951, the Prime Minister announced in the House of Commons that a general increase was to be granted the civil service. The general secretary of the N.J.C., in his own quarterly report which appeared in the Civil Service Review for March, 1952, indicated that details of the proposed increase had been outlined at a special meeting of the Staff Side prior to the public announcement. He reported that representatives of Staff Side "were given an opportunity of discussing the principles governing the latest increase and expressed their appreciation to Messrs. Taylor and Bland, in maintaining this procedure with respect to so important an announcement."[16] It should be observed that the opportunity to

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16. Ibid., XXV (March, 1952), p. 24.

discuss in principle had come after the decision of the government had been made. It is difficult to conceive of this as consultation in the sense envisaged in the idea of a joint council.

That the Staff Side was not pleased with this procedure is evidenced in a report submitted by it to the meeting of the N.J.C. on March 27, 1952. This report referred to the fact that regular remuneration was clearly included in the Council's terms of reference in the same way as recruitment, training, etc. It argued that since the Council had already successfully recommended with regard to overtime compensation which was one phase of remuneration, it would seem that the time was "opportune for the N.J.C. to consider the other phase of remuneration termed as 'regular' remuneration."[17] The report included a number of specific recommendations for setting up a special committee of the Council to deal with this problem.

On May 8, the chairman of the N.J.C. presented the formal views of the Official Side in reply to the Staff Side's report. The statement began with an interesting shift of ground - "It should be clearly be recognized that there can be no negotiation of salary or wage rates in or through the Council."[18] It proceeded to quote at length from the Prime Minister's statement of February,

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17. Ibid., XXV (June, 1952), p. 202

18. Ibid., p. 203

1951, and added:

> "The Council's competence is limited to discussing and making recommendations on the general principles governing remuneration... I think the Council should avoid injecting itself into discussions of wage and salary questions where existing machinery is working satisfactorily; that is, discussions in the Council should not overlap or undermine the functions and responsibilities of the various staff associations."[19]

The argument seems to be technically vague, but it would carry weight if it were indeed agreed that the "existing machinery" was working satisfactorily. The staff associations are generally insistent that this is not so. One could hardly speak of meaningful consultation, let alone negotiation, in a procedure which entails the periodic submission of briefs to the government by the various staff associations, highly formal and extremely courteous interviews with the Prime Minister or the Minister of Finance and, then, the long wait for the government's unilateral pleasure. The Staff Side apparently did not accept the chairman's statement without reservation, for the Council finally agreed to invite the Civil Service Commission to prepare a statement outlining the principles of wage and salary structure in the Civil Service. The Staff Side hoped in this way to make a first step towards getting the salary issue onto the Council's agenda.

A statement of "Principles Governing Wage and

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19. Ibid.

Salary Structure in the Civil Service" was prepared by the Civil Service Commission and circulated among the members of the N.J.C. towards the end of November, 1952. It was essentially a summary of relevant sections of the Civil Service Act, 1918, subsequent regulations under the Act, and excerpts from the "Report of Transmission" by the firm of Arthur Young and Company which had devised the classification system for the civil service in 1919. As a general statement of principle the report quoted from an announcement made by the Rt. Hon. Louis St. Laurent in December, 1950.

> "The government's policy on salaries in the public service has long been based on two main principles. First, that they should be sufficient to attract to, and retain in, the civil service persons of the right type and necessary qualifications; and second, that having regard to all relevant factors, salaries for each class of work should be generally in line with those paid for comparable work by good private employers. The other relevant factors include such things as leave privileges, superannuation benefits, differences in regularity and continuity of employment and the greater measure of stability in civil service salaries than has been usual in private employment."[20]

The Staff Side felt that the Commission's statement was too general and insufficient as an explanation of the precise policy used to determine salary scales. They asked that a committee of the Council be set up to examine how the principles and procedures were being implemented. There was some hesitation at this point since it was feared that such a committee might overstep the limits imposed by

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20. Press release from the Office of the Prime Minister, December 14, 1950, as reported in the Civil Service Review, XXIV (March, 1951), p. 111.

the Council's constitution. However, two committees were established in May, 1953 - one to deal with long-service pay and the other with classification and salary structure. The committee on classification and salary structure reported in February, 1956, and the report was referred to both sides of the N.J.C. It seems that after consideration by both sides the report was forwarded to the Civil Service Commission some time in 1957. But by October, 1957, more than five years after the issue had been placed on the Council's agenda, there was still no formal decision or recommendation with respect to the contents of the report.

Correspondence with representatives of the Staff Side indicates that this vagueness on the question of salaries is regarded by them as the greatest weakness in the operations of the N.J.C. To be sure, there is also a lack of precision in the views of many of the representatives. They do not always recognize a distinction between some process of collective bargaining, which is clearly ruled out by the Council's constitution, and the idea of advance consultation on any matter affecting the conditions of employment, including "regular remuneration", which seems to be consistent with the Council's functions. Nevertheless, the experience of the N.J.C. in attempting to clarify its competence to deal with the general principles governing "regular and overtime remuneration" is hardly calculated to support the assertion that the Council provides a reasonable alternative to collective negotiation.

It has already been noted that the constitution of the N.J.C. requires the agreement of both sides, as such, before any decision or recommendation can be communicated to the proper authority. This means that if the sides fail to reach a common ground, they cannot, in the last resort, resolve their differences within the machinery of the Council. One side cannot outvote the other. Thus, in effect, the will of the government can ultimately prevail and be put into force by legislative, executive or administrative action. Consultation and persuasion may carry much weight, but, in the end, the government can have its way.

The Whitley machinery in Britain is subject to the same kind of formal limitation on its own ability to resolve deadlocks between the two sides. There is, however, an important restriction on the implied unilateral power of the government in such an eventuality. Unresolved issues may be taken to arbitration on the initiative of either side. This procedure flows from the provisions of the Civil Service National Whitley Council Arbitration Agreement of 1925. The wording of the Agreement does not specify the Whitley Councils as coming within its ambit; it merely refers to "recognized associations". However, "it is well-established in practice that Staff Sides, both national and departmental may also go to arbitration on matters within their purview and within the terms of

the Agreement."[21] It should be observed that although the initiative for arbitration generally comes from Staff Sides, there have been some instances when the Official Side has taken the initiative. Arbitrable matters include questions of pay and allowances, weekly hours of work, annual leave, and so on. Excluded from the scope of arbitration are numbers and complements of staff and other such matters which might be termed "management prerogatives." The experience with arbitration has apparently been a satisfactory one, and much of the success may be attributed to the ability of the Arbitration Tribunal to win the confidence of the parties by its skill and impartiality.[22]

The major civil service staff associations in Canada, viewing the British experience, tend to favour the introduction of some form of arbitration as a mechanism for resolving important deadlocks both within and without the N.J.C. As the associations do not envisage the strike as an instrument of bargaining policy, they look to the availability of recourse to arbitration as a pressure which would conduce to more meaningful bilateral consultation. There is, of course, a strong legal argument against a government allowing itself to be bound by the award of an

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21. H. M. Treasury, op. cit., p. 18.

22. The process of arbitration raises a number of problems which are examined in Chap. VI, pp. 179 ff.

arbitration tribunal. It suggests an encroachment on the sovereignty of Parliament which could not be legally enforced. This problem was solved by the British in a way which is characteristic of their constitutional development. The Treasury Circular which announced the arbitration agreement stated that "Subject to the overriding authority of Parliament the Government will give effect to the awards of the Court."[23] An authoritative interpretation of this phrase appears in a booklet already referred to:

> "The qualification is inserted to preserve the constitutional supremacy of Parliament and the possibility of a Government defeat there; the pledge means that the Government will not itself propose to Parliament the rejection of an award once made."[24]

In addition to the qualification of parliamentary supremacy, the government also reserves for itself the right to refuse to submit to arbitration in particular cases "on grounds of policy" arising out of its responsibility to parliament for the administration of the public service. In practice, only one case has occurred in which the government of the United Kingdom rejected arbitration on a major policy issue -- that of equal pay for men and women. Thus it appears that the legal obstacles to arbitration of issues that arise in the N.J.C. can be circumvented so long as the government is prepared to accept it in practice. The availability of arbitration

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23. Quoted in H.M. Treasury, op.cit., p. 21.

24. Ibid

might also have an accelerating effect on the Council's deliberations and the implementation of its recommendations.

Some of the staff associations have expressed their dissatisfaction with the degree of secrecy that occasionally surrounds the deliberations of the N.J.C. While it is recognized that secrecy may be necessary at certain stages of consultation, it is felt that, before any final determination of a major issue, the Staff Side representatives should receive the opportunity of referring back to their constituents for instructions. This is the usual procedure. The process of developing agreement is normally so long drawn that there is ample opportunity for deliberation within the associations or their executive bodies. But the degree of secrecy in any given case tends to be determined by the Official Side and this may sometimes be disadvantageous to the staff associations and even to the government itself.

An interesting case in point occurred in connection with a projected amendment to the Civil Service Superannuation Act. In July, 1953, the Council set up a committee on superannuation. In November of that year, the chairman of the committee was advised by the chairman of the Council that the government was contemplating the establishment of a group insurance scheme for the public service, and that the Deputy-Minister of Finance wished to discuss the plan with the committee. It was stipulated

that the subject was to be treated in the strictest confidence and that there was to be no consultation with any individual or group outside of the Council. The superannuation committee reported to the N.J.C. on December 17, and on January 11, 1954 the Council, as a whole, agreed to a report which was forwarded to the Minister of Finance. The letter to the Minister, however, included a paragraph which pointed out that because of the confidential nature of the matter, Staff Side members were unable to communicate even with their own executive committees and thus did not have the benefit of their views "in reaching their own conclusions." On April 30, the chairman of the Staff Side sent a confidential memorandum to Staff Side members of the Council which contained advance information on the proposed legislation and reiterated the theme of secrecy:

> "It is evident that we will not be in a position to discuss any details with our respective organizations or otherwise until the final proposal is tabled in Parliament."[25]

At this stage, of course, the need for secrecy was unquestioned, since the contents of a bill cannot be made public before first reading in parliament.

A resolution to amend the Superannuation Act was tabled in the House of Commons on May 24; the bill was given first reading on May 25 and second reading on

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25. "The New Insurance Plan for the Service," The Civil Service Review, XXVII (June, 1954), p. 117.

May 26. Staff Side members of the N.J.C. received copies of the bill on May 25 and took immediate steps to inform their executive committees and general membership of its content. The negative reaction of a large segment of the civil service was rather unexpected. Many rank and file members of the staff associations took issue with the compulsory aspects of the projected group insurance plan and criticized their leaders' acceptance of it. They were particularly critical of the imposed conditions of secrecy which had precluded their participation in any appraisal of the program before it had reached the legislative stage. The opposition in the House quickly sensed the dissatisfaction of civil servants with the lack of wider consultation and moved to exploit this issue in the debate on the bill. The attack of the opposition prompted the Minister of Finance, during the debate on second reading, to declare

> "I would not wish to imply that every member of the national joint council agrees with every detail of the bill, but I can inform the house that the national joint council has endorsed the broad outlines of the plan as a whole."[26]

The bill was referred to the Standing Committee on Banking and Commerce after second reading. There, again, the opposition members sharply attacked the contents of the bill and the manner in which it was handled. This

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26. Canada, House of Commons Debates, May 26, 1954, p. 5103.

time their arguments were reinforced by written briefs and oral evidence presented by representatives of staff associations. The president of the Civil Service Association of Ottawa criticized what he considered to be unusual procedures and excessive secrecy and argued that this was not in keeping with the Council's function as an employer-employee body. Particularly pointed was the following remark:

> "I have been greatly disturbed by the manner in which the government has apparently used the prestige of the N.J.C. to obtain support for the application of a compulsory tax on civil servants without giving them an opportunity to express their views until this late stage in the legislative process."[27]

The bill was reported out of committee without major change and after another lively debate in Committee of the Whole was read a third time. This, however, was not the end of it. When the bill came to the Senate Banking and Commerce Committee it was amended so as to do away with its compulsory features. The government saw this as a good opportunity to retreat gracefully and notified the Committee that its amendment would be acceptable if certain conditions were met. This was done and the bill was finally passed through both houses in its amended form.

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27. Canada, House of Commons, Standing Committee on Banking and Commerce, Minutes of Proceedings and Evidence, June 3, 1954, p. 1712.

In addition to the obvious moral that may be drawn from this case there is one which may be somewhat more elusive. It would seem that there was a strong element of equivocation in the attitudes of the representatives and leaders of the staff associations. To be sure, the issue of a compulsory insurance plan was one that should have enjoyed wider deliberation among those to be affected. This should have been realized by Staff Side representatives in the first place, and they should have refused to allow themselves to be made a party to the plan without the approval of their associations. But having committed the Staff Side to the plan through their agreement within the Council, it behoved them to support its general terms rather than seek an "out" for themselves by protesting the degree of secrecy. The Staff Side members either enjoyed sufficient discretionary authority to endorse the plan in the name of their constituents, in which case their behaviour should have been consistent with their commitment, or, they lacked this authority and so should not have made the commitment in the first place.

Probably the least successful aspect of the Canadian experience with joint consultation in the public service has been the failure to establish effective departmental joint councils. Most students of Whitleyism in the U.K. agree that the departmental Whitley Councils provide a more useful and effective employer-employee mechanism than the National Council. These departmental bodies bear

no hierarchic relationship to the National Council and remain completely independent with respect to matters of a purely departmental nature. The only restriction placed upon them is that their constitutions must be approved by the National Whitley Council. There is a model departmental constitution which parallels the national constitution in most respects except that the scope is limited to matters within a department. Where the National Council tends to deal with general, and at times, somewhat abstract problems, the departmental councils provide a mechanism for dealing with the many concrete details of day-to-day departmental relationships. These bodies have been especially effective in providing staff members with a departmental perspective, and in setting up manageable grievances and appeals procedures. A useful practice that has grown up is the regular inclusion of the Departmental Establishments Officer on the Official Side of the departmental council.

The constitution of the N.J.C. clearly provides for the creation of departmental councils, but there has been no positive experience in this area. A first attempt to set up such a council was made in 1948 in the Department of Mines and Resources. This was a promising beginning. The department even went so far as to set up regional joint councils for its branches in the field. However, before this experience could mature it came to an end due to the splitting-up and reorganization of the department. A

number of experiments with departmental councils are now either under way or are being planned. There is, however, insufficient experience and information in this area to warrant critical evaluation.

Correspondence with Staff Side representatives indicates that they strongly favour the establishment of departmental councils. They are particularly concerned about the failure of the national body to devise machinery for resolving local grievances, and they feel that this might be more easily done on the departmental level. Why, then, does this area of joint consultation remain so underdeveloped? Several inter-related reasons may be suggested.

It may be stated as a reasonable hypothesis that if the staff associations were sufficiently strong and united in their desire to achieve departmental councils it would be only a matter of time before they were realized. The allegation by some staff representatives that heads of departments are reluctant to share some of their administrative prerogatives with regard to personnel, which joint consultation implies, would quickly lose its validity in the face of sustained pressure from well-organized associations. It is generally recognized that, when confronted with strong employee organization, personnel managers prefer institutionalized procedures to the difficulties and uncertainties of continuous bargaining. In 1931, for example, the government was willing to allow the formation of a joint council in the Post Office Department on an

experimental basis in response to the demands of civil servants that P.C. 970 of May 7, 1930 be implemented. This experiment did not materialize, however, due to the bitter jurisdictional disputes that immediately developed among the several associations of postal employees. It is significant that the National Whitley Council Staff Side comprises only eight staff associations of which three represent scientific, administrative and legal groups, and five represent the rank and file majority of civil servants. The N.J.C. Staff Side, on the other hand, representing a much smaller civil service establishment, comprises fourteen staff associations.

A final problem which may only be touched upon is the absence of a clear division between the Official and Staff Sides in the N.J.C. The representatives of both sides are employees of the same government. Some of the staff associations boast among their membership civil servants who have attained to the rank of deputy-minister. The constitution of the N.J.C. does not draw a line between the sides in terms of rank or administrative function nor does it limit the scope of Council deliberations to matters affecting that part of the civil service which falls below a given classification, grade or salary level. The Whitley Council constitution is also silent on this point and its Staff Side includes representatives from the higher administrative levels (e.g. Association of First Division Civil Servants). However, an understanding has developed in the

United Kingdom that the Staff Sides will "not attempt to discuss by Whitley machinery the pay or grading of the very highest posts in the service."[28] The division between the highest posts and all the others tends to be expressed in terms of salary level, and this would seem to be, at the present time, £1,500 per annum. This distinction between the management and employee sides of the Service in Britain is reinforced by the provision of the Civil Service Arbitration Agreement that "claims in respect of grades carrying flat rate salaries above £1,450 a year . . . will not be referred to the Tribunal without the consent of both parties concerned in the claim."[29] Many senior civil servants in Canada who are concerned with problems of staff relations are of the opinion that it would be useful to establish such a division between the staff side and the management group.

This chapter has been emphasizing some of the difficulties which have arisen in the experience of the N.J.C. It should not obscure the many accomplishments. The Council has improved with age. Writing about the Canadian civil service in 1947, Professor Taylor Cole was rather pessimistic about the prospects of the N.J.C.[30]

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28. H.M. Treasury, op. cit., p. 10.

29. Ibid., Appx. VI, p. 33.

30. Taylor Cole, The Canadian Bureaucracy, Durham, N.C., 1949, p. 125ff.

The Council was in a doldrums at that time. Its first chairman had resigned in August, 1946 and an acting chairman was not appointed in his place until May, 1947. Regular meetings were not being called and important decisions affecting public service employment were made by various governmental authorities without any effort at joint consultation. The Council was revived, however, with the appointment of its new chairman in May, 1947, and has achieved a good deal since then. The government has implemented major policies which were the products of intensive consultation and joint recommendation by the Council in such fields as:

> the incorporation of the war-time cost of living bonus into the basic salary scales;
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> regulations governing the payment for over-time work by operating staffs in the form of cash;
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> establishment of the five-day week on a year-round basis for the majority of civil servants;
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> the introduction of a group hospital-medical plan; and so on.

While recognizing the achievements of the N.J.C., however, the staff associations are not prepared to accept the Prime Minister's assertion, in February, 1951, that the Council provides appropriate machinery for negotiation. The established practice which excludes wage and salary matters from the Council's terms of reference has become a major source of dissatisfaction in the view of most staff associations. This would not be too important an issue if more direct means of negotiation, or even consultation on

questions of this nature were available. But, in the absence of such an alternative, the pressure to extend the Council's functions, or to establish separate collective bargaining facilities has continued to grow. Another aspect of the Council's functioning which worries the staff associations is the absence of machinery for resolving deadlocks between the two sides. This means that, in the last resort, the Official Side can always have its way. The associations, therefore, tend to favour the introduction of arbitration procedures similar to those operating in the U.K.

It has been argued by some that the extension of formal institutional procedures in government staff relations would tend to limit the freedom of action of the employee associations. Those who argue this way point to the traditional pressure group tactics which have been successfully employed by civil servants in the past. It is evident that with the enlargement of scope of formal joint consultation there must be a corresponding limitation on such informal devices as petitions to Parliament or public agitation. Even though, in theory, the N.J.C. is not supposed to supersede other forms of representation, it is clear that, in practice, Council affairs must be kept "within the family". The mutual confidence necessary for joint consultation would soon break down if either side publicly aired issues for which the fullest opportunity of discussion and resolution within the Council

existed. It is true, then, that further institutionalization of staff relations must bring about important changes in the tactics of staff associations. This, however, does not seem to worry the present leadership of organized civil servants. Their experience with formal consultation over the past twelve years has been, on the whole, a happy one. There is no doubt that the staff has acquired an increasing sense of participation in determining some of its important conditions of employment. This marks a tremendous advance over the situation obtaining in 1944. But it is apparently not enough from the viewpoint of the staff organizations. The majority of these groups now hold that the N.J.C. is incapable of dealing with the substantive problems of salaries and conditions of employment in a satisfactory way. This is why they now request the introduction of collective bargaining procedures.

Chapter V

From Consultation to Negotiation

The words "collective bargaining" are gaining wide currency in the context of civil service staff relations in Canada. The term, however, seems to mean different things to different people and its use often seems to cloud the real issues. Thus, if one wishes to resist any basic changes in existing procedures for staff representation the words may be given a strict construction. This suggests collective bargaining as it is carried on in private employment with its implications of union certification, written agreements, conciliation machinery and possible strike action. On the other hand, if one recognizes the shortcomings in present practices, collective bargaining may mean nothing more than a pragmatic adjustment of staff relations in response to growing pressures and in the direction of more meaningful bilateral negotiation. Constitutional government cannot afford to be bound by rigid definitions. It must seek accommodation with the many pressures brought to bear on it in a way which is consistent with the general climate of opinion and expectation. This chapter will consider the development of the civil service staff's attitude to the problem of negotiation and the government's response to it.

We have seen that the staff organizations, until 1944, could only make direct representations to the government. These took the form of interviews with

ministers, the presentation of briefs, publicity in the press, enlisting the support of private members of parliament, and so on. Although these methods sometimes produced results, the staff did not have a sense of participation in the final decisions. Indeed, the government's unilateral policy was usually announced by press release without prior notice to the civil servants. The creation of the National Joint Council of the Public Service of Canada in 1944 was regarded with optimism by both government and civil servants. It seemed to provide the most desirable kind of institutional framework for reciprocal consultation between a state and its employees. But the staff's optimism was shortlived. The machinery of the N.J.C. proved to be unwieldy; it lent itself to procedures of postponement and delay. Council recommendations were not made operative immediately. Its terms of reference were interpreted so as to exclude discussion of salary questions. There appeared to be no readiness to find a way of speeding its deliberations or of resolving difficult disagreements between the Official and Staff Sides. The dissatisfaction of the staff associations with this kind of relationship was intensified by contrast with the experience of trade unionism in private labour relations.

In view of these factors, and taking into account the dynamism of the Canadian economy and the internal pressures on the leadership of the staff organizations, it was inevitable that organized civil servants should begin to

seek new ways of dealing with the government. It is interesting to trace the trend and tone of staff representations on this issue. The hesitant and modest suggestions of 1950 have become, in the absence of an encouraging response from the government, the strident demands of 1957.

At the Nineteenth Convention of the Civil Service Federation of Canada in January, 1950, the Victoria and District Council introduced a resolution calling for efforts to secure the right to bargain for the Federation and its affiliates. The Resolutions Committee, however, did not recommend the resolution to the convention on the grounds that "the National Joint Council, being an official agency, now provides the machinery for dealing with such matters."[1] This was also the official viewpoint expressed by the Rt. Hon. Mr. St. Laurent in February, 1951, in answer to a question in the House of Commons.[2] But the comments on the Prime Minister's statement in the journal of the Federation reveal that the association was moving away from the position it had taken in 1950.

> "It is the considered opinion of the writer that much greater use could and should be made of the National Joint Council in this respect and that if necessary the Constitution of the Council should be amended so as

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1. Reported in The Civil Service Review, XXIII, (March, 1950), p. 45.

2. See above, p. 87.

> to allow freedom of negotiation between the Staff and Official Sides with respect to salaries in the public service."[3]

While the official tone of the Civil Service Federation remained moderate, spokesmen for some of its affiliates began to look beyond the framework of the N.J.C. The President of the Canadian Taxation Division Staff Association raised the question of "bargaining rights" in his report to the association's convention in October, 1951. He indicated his reluctance to apply the term "bargaining" to civil service staff relations because of its trade-union connotation, but nevertheless urged that more direct negotiating procedures be introduced. He suggested as possible approaches the reorganization of the Civil Service Commission or the development of departmental joint councils.

A much more militant attitude appeared at the end of 1952 in an article by an official of the Department of Veterans' Affairs Employees' National Association. The editors of the Civil Service Review were careful to note that the views expressed in the article were personal although the writer was at that time the secretary of the Research Committee of the Federation which was studying the problem of negotiation. The article was a comparative study of collective bargaining in the public service. It described the unrestricted trade-union relationship between

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3. T. R. Montgomery, "Parliament and You", The Civil Service Review, XXIV (June, 1951), p. 215.

civil servants and the government of the Province of Saskatchewan under the province's Trade Union Act, 1944, and the Saskatchewan Public Service Act as amended in 1949. The author discussed in some detail the developing experience with negotiations in the British civil service both within the Whitley Council machinery and outside of it. Then, turning to the Canadian federal civil service, he asserted:

> "From the employees' point of view the present system smacks too much of the humble servant coming hat in hand to beg for scraps from the great man's table."[4]

The article did not attempt to offer concrete suggestions that could be adapted to the Canadian experience but ended on this note:

> "It seems to this writer that if the Canadian Federal Government were to extend to its own employees the right of negotiating with their employer on such vital matters, at least, as pay and working conditions, and were to provide some machinery for arbitration, as is provided in the United Kingdom, the associations representing the Canadian Government employees would be perfectly willing to write into any agreement an undertaking not to employ the strike as a weapon in collective bargaining."[5]

The Civil Service Federation's Reaearch Committee on Collective Bargaining reported on November 14, 1952. The report summarized what it considered to be

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4. W. Hewitt-White, "Collective Bargaining in the Public Service - A Comparative Study," The Civil Service Review, XXV (December, 1952), p. 453.

5. Ibid.

the inadequacies of the existing machinery. It noted the increasing pressure from affiliated associations for the reform of that machinery and it made specific recommendations for its accomplishment. The first of its recommendations was

> "(1) that the term 'collective bargaining' not be used in approaching the government on this matter but the terms 'consultation', 'participation' or 'negotiation' be used instead."[6]

The report's main recommendation was that a committee comprising representatives of the Civil Service Commission, Treasury Board and the Civil Service Federation be set up. The committee's purpose should be to provide for consultation and negotiation on matters regarded as beyond the competence of the National Joint Council - particularly questions of salaries. There was no specific request for arbitration machinery - merely mention of the possibility that it might become necessary. The Research Committee recognized that its recommendations were vague on details, but felt that they could provide a useful basis for further discussion with government representatives.

A delegation of the Civil Service Federation met with a group of cabinet ministers headed by the Prime Minister on February 13, 1953. The question of collective bargaining was formally raised at this interview. When the Minister of Finance suggested that the N.J.C. made this

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6. "Collective Bargaining in the Federal Civil Service," The Civil Service Review, XXVI (March, 1953), p. 31.

unnecessary, the president of the Federation pointed to the restriction on salary discussions in the Council and countered with the suggestion that the Council's constitution be amended to include consideration of salaries. The Prime Minister objected to this on the grounds that the government was ultimately responsible to parliament in money matters.[7]

The Civil Service Association of Ottawa, which in 1953 was still affiliated with the Civil Service Federation, raised the question of bargaining procedures in the June issue of its journal.[8] The article was moderate in its criticism of the machinery of staff relations and called for the introduction of a modified form of collective bargaining which did not include the right to strike. The author recognized that the multiplicity of organizations

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7. An interesting exchange took place that afternoon in the House of Commons.

   "On the orders of the day:
   Mr. Stanley Knowles (Winnipeg North Centre): Mr. Speaker, may I address a question to the Prime Minister. Is the Prime Minister in a position to make any statement as to the outcome of the conference he was to have had at noon today with representatives of the civil service regarding rates of pay and hours of work?

   Right Hon. L. S. St. Laurent (Prime Minister): Well, Mr. Speaker, I can report to the house that there were compliments exchanged on both sides.

   Some hon. Members: Oh, oh.

   Canada, House of Commons Debates, February 13, 1953, p. 1906.

8. J. D. Love, "An Appraisal of Collective Bargaining in the Public Service," The Civil Service News, June, 1953, p. 24.

representing civil servants would present a serious obstacle to effective negotiation, but except for voicing the desirability of amalgamating the existing organizations, made no concrete proposals for alleviating this problem. Some of the specific recommendations, however, deserve to be noted.

The first suggestion was that a specified time be set aside each year for negotiations between a small group of staff representatives and an equivalent number of high government officials. Secondly, if the negotiating parties could reach agreement, a written document to that effect, signed by the negotiators for both sides, should be forwarded to the cabinet for ratification and action. Thirdly, in the absence of agreement, some kind of mediation or conciliation board might be appointed to assist in the negotiations. If this failed, the associations might submit an independent report to the cabinet. Finally, whatever the government's decision, it should be given within a month of submission, and the government should be prepared to meet with the staff representatives to clarify its position if they deem it necessary. It is noteworthy that the article did not recommend any machinery for resolving stubborn disagreements so that ultimately the government's will would still prevail.

The Twentieth Convention of the Civil Service Federation meeting in June, 1953, passed a resolution on bargaining rights which radically altered the stand it had

taken in 1950. The resolution is given here in full.

> "Whereas much time and effort has been spent by Civil Service Organizations and particularly by the Civil Service Federation in preparing and presenting employees' requests to the Government in respect to remuneration, conditions of service and other like subjects;
>
> And Whereas there is no adequate machinery within the Federal Civil Service whereby the employees can present their case in the normal and logical manner envisaged by the Government for the conduct of business between employers and their employees as outlined in Federal Labour Legislation;
>
> And Whereas there does not appear to be any equitable reason why Federal Government employees should not be afforded similar advantages to other workers;
>
> And Whereas it is recognized that the exigencies of the public service render undesirable the use of the strike weapon in Collective Bargaining;
>
> And Whereas the Civil Service Federation goes on record as being opposed to the use of the strike as a means of gaining its objective;
>
> Therefore Be It Resolved that strong and specific representations be made to the Government of Canada to legislate for the purpose of providing a means whereby Government employees may bargain with the Crown, under provisions similar to those laid down in the Industrial Relations and Disputes Investigation Act, on such matters as rates of remuneration and working conditions." 9

The resolution did not clarify what it means by "provisions similar to those laid down in the Industrial Relations and Disputes Investigation Act." However, a spokesman for the D.V.A. Employees' Association which had sponsored the resolution emphasized that it did not imply a right to strike.

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9. Reported in The Civil Service Review, XXVI, (September, 1953), p. 285.

> "We in the D.V.A. Employees' Association are fully in accord with the right to bargain. We do not feel - and I want to stress this - that the Civil Service should consider for one minute that they should have the right to strike. I hope that all of us within this room will give that very serious consideration." [10]

An amendment to the resolution calling for the repeal of Section 55 of the Industrial Relations and Disputes Investigation Act which excludes federal civil servants from its application was defeated on the floor.

The issue of collective bargaining remained quiescent between June, 1953, and the late summer of 1955. Several reasons for the lull may be inferred. In the post-convention period and during most of 1954 the major associations were preoccupied with the jurisdictional dispute between the Civil Service Federation and the Civil Service Association of Ottawa.[11] This diverted the energy and attention of their leaders from problems of negotiation with the government to matters of internal organization. A second factor may have been a readiness on the part of the associations to give the N.J.C.'s Committee on Classification and Salary Structure an opportunity to deliberate. The Committee had been established in May, 1953, and the Staff Side of the N.J.C. had hoped that its findings would result in broadening the Council's terms of reference to include negotiations on salaries. A third possible factor was the

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10. Ibid., p. 286

11. See above, pp. 55 ff.

announcement and almost immediate implementation of a general salary increase for the civil service in November, 1953.

A Committee on Negotiating Procedures was set up by the Civil Service Association of Ottawa in late 1954. Its report and recommendations were published in the summer of 1955. The report argued that "the present methods of employee participation do not provide for sufficient recognition and self-expression."[12] It criticized the absence of machinery to deal with staff claims as a whole. The N.J.C. which provided the only regular opportunity for consultation dealt only with particular issues singly.

> "Although some system of priority is undoubtedly worked out, at no time do staff side members and official side members consider the total requests of staff associations, which if settled could presumably apply for a period of time . . Under the present system neither side knows where the other stands on issues as a whole." [13]

The report continued with a systematic review of the shortcomings in the existing procedures of joint consultation and direct representation.

The Committee's recommendations were prefaced by a statement of responsible moderation.

> "Members of civil service organizations are keenly aware that the employer-employee relationship existing in government is not strictly comparable to that existing in private industry. It has, however, become evident to many in this association

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12. Reported in The Civil Service News, June, 1955, p. 7.

13. Ibid., p. 15.

> and to others that large numbers of civil servants favour a negotiating arrangement intermediate to full collective bargaining and the present methods of dealing with staff working conditions." [14]

The specific recommendations were, to a large extent, an elaboration of the ideas expressed in the article of June, 1953 which was referred to above. They called for a joint negotiating committee comprising representatives of government and staff; a fixed period each year for the submission and consideration of staff requests; a full-scale discussion of the issues and a reasoned defence by both sides of the positions taken; provision for a written document setting forth the areas of agreement. The major innovation proposed in the report was that where agreement could not be reached by negotiation the matter should be referred to a neutral board whose recommendations would be accepted as binding on both sides.

The Committee's report was endorsed by the Executive of the Civil Service Association of Ottawa and was adopted as formal policy at the association's annual meeting in November, 1955. The resolution stated in part:

> "That this Association fully supports the study approved by its Council recommending the adoption of a negotiating procedure providing for resort to arbitration where necessary; . . ." [15]

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14. Ibid., Summer Issue, 1955, p. 3.

15. Ibid., January, 1956, p. 9.

It also requested that the government establish a Royal Commission "to inquire into the problems of employer-employee relations in the Federal Civil Service."[16] Although the idea of compulsory arbitration had been receiving the attention of staff representatives for some time, this was the first formal resolution in its favour by a major staff organization.[17]

The Postal Workers' Brotherhood of Canada raised the question of arbitration with respect to a specific request for a salary adjustment in October, 1955. The Prime Minister rejected the idea of setting up a board to arbitrate the matter.

> "Your membership seems to misunderstand the role of 'regular boards of conciliation' and their applicability to the public service. Such boards do not arbitrate any such issues. Secondly, the law providing for them is very clear in stating Parliament's intention that it shall not apply to the Civil Service." [18]

The essence of the Prime Minister's argument in his letter to the Brotherhood was also contained in his reply to a question by a member of the opposition in the House of Commons on February 2, 1956. Mr. Diefenbaker asked whether the

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17. The National Unemployment Insurance Commission Association, an affiliate of the Civil Service Federation, passed a similar resolution at its convention in October, 1955. See The Civil Service Review, (December, 1955), p. 436.

18. Letter from the Office of the Prime Minister, dated November 2, 1955, to H. A. Clarke, Esq., President, Postal Workers' Brotherhood of Canada.

government had given consideration to the setting up of a board of arbitration or commission to hear the representatives of the postal workers. Mr. St. Laurent replied:

> "No; the Prime Minister informed the brotherhood that the Civil Service Act did not provide for arbitration and the law relating to conciliation boards in industrial disputes is clear in stating parliament's intention that it should not apply to the civil service. It was pointed out that the civil service commission is an independent body, established by parliament and not subject to any direction by the government, which has the duty of investigating questions of the kind referred to by the brotherhood, hearing the views of associations and making recommendations upon them. The Prime Minister expressed his view that this full-time tribunal established by parliament and assisted by a large and expert staff, is far better able to give proper consideration to matters of this kind than would some ad hoc conciliation board as proposed by the brotherhood." [19]

The government's categorical stand on the question of negotiating procedures did not, however, discourage the staff associations. Indeed, as staff pressures for reform continued to build up it became apparent that the government was beginning to reconsider its position. An exchange of correspondence between the Prime Minister and the Association of Canadian Postal Employees which was tabled in the House on April 11, 1956, indicated a new, albeit very slight, flexibility in official thinking. The Prime Minister's letter to the Association, dated March 19, 1956, included the following paragraph:

> "This subject [collective bargaining] is a rather fundamental one and I will not endeavour

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19. Canada, House of Commons Debates, February 2, 1956, p. 829.

> at this time to outline the position of the government upon it nor to comment on the various statements made in your letter on related subjects. This detailed exposition of your views, however, will be of use to the government in its consideration of this subject." [20]

The implication that the government was giving consideration to the problem represented a softening of the attitude it had expressed in its letter to the postal brotherhood some months earlier.

The campaign for collective bargaining attained a new level of militancy at the Twenty-first Convention of the Civil Service Federation which took place in Ottawa during the second week of July, 1956. It is remarkable that the mood of the convention was both sensed and stimulated by the speech of an outsider. Mr. A. J. Boudreau, a Civil Service Commissioner, in his guest address to the opening session spoke rather frankly of civil service problems as he saw them. He discussed the difficulties in staff relations due to the lack of "a strong, unified, central personnel agency." He noted the shortcomings of the National Joint Council as a negotiating body. And he raised the question of bargaining and arbitration.

> "Again I do not think that this is the time or place to suggest any definite negotiating arrangements which could and certainly will have to be worked out in the very near future, but I should like to say that the Civil Service Commission is not afraid of arbitration. (Applause).

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20. Quoted in The Civil Service Review, XXIX (June, 1956), p. 155.

> We are carefully studying the possibility of suggesting to the powers that be a form of arbitration." [21]

Mr. Boudreau's remarks were received with much enthusiasm, but the extent to which they represented official thinking is open to question. Since the delivery of his address there has been a complete turnover in Civil Service Commissioners. That his views were not shared by the government became obvious from a speech made a day later by the Hon. Walter E. Harris, the Minister of Finance. During the course of his remarks he said:

> "I noticed that one of the Civil Service Commissioners has been good enough to address himself to you, and I am glad that he did so because it points up the relationship of the Civil Service Commission to the Government. The Commission is a wholly independent body, independent of the Government. The Commissioners have their own views and of course are free to express them. For that reason up to the present time we have felt that the ultimate decision on these matters would of course have to be made by the Government itself because Parliament as you know, is rather jealous of the expenditure of public monies and prefers to do that itself and not have it done by others. That is the thinking which I submit to you at the moment and which I know may not be agreeable to your views in many respects. But I place it before you again for criticism."[22]

The Convention resolution on collective bargaining went a good deal farther than the one passed in 1953. It called

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21. Reported in The Civil Service Review, XXIX (September, 1956), p. 359.

22. Ibid., p. 342.

for the establishment of "Conciliation Machinery through an Arbitration Tribunal" whose awards would be accepted by both sides. It also instructed the Federation to seek

> "the abolition of Section 55 of the Industrial Relations and Disputes Investigation Act and be it further recommended that the Convention approve the principle of collective bargaining for civil servants with the association having the required membership." [23]

The language of the resolution is rather awkward but its meaning is clear. Another resolution urged that the government set up a Royal Commission to investigate the Civil Service Commission, the principles of salary determination and the means of adapting British arbitration experience to the requirements of the Canadian Civil Service.

A deputation of the Civil Service Federation met with the Minister of Finance on September 10, 1956. Among the issues raised was that of arbitration. The Federation submitted a lengthy brief on this subject, the essence of which was that the National Joint Council be charged with the responsibility of drawing up an arbitration agreement similar to the one in effect in the United Kingdom. The Minister said the matter would be taken under advisement and the Federation would be informed of the government's decision in due course. An interesting contretemps over this brief developed at the meeting of the Federation's National Council held at the end of November. A spokesman for one of the more radical affiliates of the Federation

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23. Ibid., p. 319.

questioned the authority of the Executive to ask for an arbitration tribunal without tying it to the broader problem of collective bargaining. He argued that such action was an abuse of the mandate of the convention. The president of the Federation replied that in electing its officials the convention was also prepared to grant some limited discretion.

> "You have faith in us, and you expect us to bring about certain things, but I submit that in the doing of these things you must give us a little leeway in timing, when we realize we are running up against a stone wall. It does not mean that because we have asked for an independent Arbitration Tribunal we have thrown out your mandate of last July . . . . I want Collective Bargaining as well as any of you. As long as I hold office I will strive to get it. You should have faith in the people you elect to conduct your business . . . . ".[24]

The Minister of Finance replied to the Federation's brief on December 10, 1956. His letter implied a criticism of the brief for its vagueness.

> ". . . . there is no indication of the nature and scope of the tribunal you have in mind, the kind of procedures for determining pay and other benefits into which it would fit, nor the principles on which it would be instructed by Parliament to make its decisions." [25]

In any case, the Minister rejected the request for arbitration on the grounds that existing machinery was appropriate and "that any necessary improvements can be made

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24. The Civil Service Review, XXX (March, 1957), p. 43.

25. Ibid., p. 80.

without introducing widespread arbitration, which seems to us quite unnecessary and undesirable."[26] He also refused to be impressed by examples from British practice on the grounds that the needs of the Canadian civil service could best be solved on the basis of its own experience.

A major change in the government's position on its relations with staff associations was presaged in an address by Prime Minister St. Laurent before the Professional Institute of the Public Service of Canada on February 23, 1957. From the day of the Prime Minister's statement of February 21, 1951, there had been little evidence to modify the policy it set forth. The government was certainly aware of the growing sentiment among civil servants for a revision of negotiating procedures and various officials were no doubt giving thought to the problem. But the first public elaboration of the direction of official thinking was presented by the Prime Minister on the occasion noted.

The main theme of Mr. St. Laurent's address was that a satisfactory adjustment of relations between the government and the staff associations could be accomplished by the clarification and, in some cases, the redefinition of the status and functions of the Civil Service Commission. He pointed out that a reorganized Commission, under a new chairman, would be asked to carry out a thorough review of the Civil Service Act in order "to bring it into accord with

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26. Ibid.

modern conditions and with conditions to be expected in the 1960's."[27] He did not consider that the review would indicate the need for radical changes that might involve the removal from the Commission of any of its primary functions. However, he did think that one of the main problems would be "to define properly and most effectively the role that the Commission should play in relations with Civil Service organizations . . . at a time when such organizations are taking a more active part in working out the terms and conditions of employment of Civil Servants."[28]

The representations of the staff in favour of compulsory arbitration had apparently stimulated official thinking, for Mr. St. Laurent developed his argument on this point very carefully.

> "I feel that the proper use and development of the Civil Service Commission offers more hope in securing the fair and effective settlement and revision of the terms of service of Civil Servants than would the creation of some ad hoc arbitration body . . . . before advocating special new machinery for arbitration, we should give serious thought to the proper use of the body already created by Parliament with authority in this field. Here we have, in the Commission a specialized, impartial and experienced tribunal, armed with a detailed law that enjoys a great measure of public support, made up of members who may only be dismissed by Parliament; a body that is not subject to any direction by the government and which is provided with a large and expert staff. This organization is able to understand the views of both the Civil Service and the government and its departments. It has the duty and the qualifications to advise and inform both the government

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27. Ibid., p. 10.

28. Ibid., p. 12.

> as an employer and the Civil Servants as employees. It can mediate effectively between them if it is given an opportunity."[29]

The Prime Minister reiterated the government's intention to study the experience with civil service arbitration in Great Britain, but he expressed his doubts about the desirability of adopting arbitration as a regular feature.

> "Arbitration is not a normal part of Canadian practice in industrial relations . . . . . I have good reason to know that in our country arbitration is accepted, even in real emergencies, only with the greatest reluctance. It does not seem to be a satisfactory substitute for other regular processes of determining pay scales. Wherever it comes to be regarded as the normal pattern of solution, neither side seems disposed to make efforts to meet the views of the other and to achieve a practical solution without arbitration." [30]

The general criticism of arbitration as a substitute for negotiation is well taken and the problems it poses will be examined in the next chapter. However, the whole weight of the argument rests on the assumption that "other regular processes of determining pay scales" are in fact available. It is precisely because the staff organizations do not see a satisfactory alternative to ultimate arbitration, unless it is full bargaining rights under the labour relations legislation, that they regard it as desirable. Since they are prepared to reject the strike weapon they see in arbitration an ultimate safeguard against unilateral action by the government.

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29. Ibid.

30. Ibid. (my italics).

On the question of closer consultation with the staff in determining pay scales, Mr. St. Laurent suggested a number of improvements. He asserted that the principles of pay determination which were accepted by the government - sufficient to attract and retain competent personnel and bearing a fair relationship with comparable work in private employment - were valid. There was, he admitted, room for disagreement on the way these principles were being applied. The government was, therefore, prepared to give representatives of the staff access to the facts and figures used in determining pay policy and to provide an opportunity for consultation on their applicability. The machinery to give effect to this policy is now in the process of formation and will be examined in due course.

The change in government after the general election of June 10, 1957, cut short whatever positive action the Liberal government might have been prepared to initiate. However, it was clear from Mr. St. Laurent's remarks that he expected the Civil Service Commission rather than the government to make the substantive recommendations for the revision of the Civil Service Act and to devise the machinery for making available to the staff the facts on which salary decisions were based. This the Commission is now doing. But the staff organizations while appreciating the value of these measures were not satisfied that they met their basic claim for bargaining rights and arbitration. Thus, it was not surprising that representations were made to the new cabinet as soon as

it was constituted.

The Civil Service Federation wrote to the new Secretary of State on June 28, 1957, setting forth its complaints about "the lack of any form of negotiation." The letter quoted the resolution on collective bargaining which had been passed at the Federation's 1956 convention and requested an early interview with members of the government to discuss the matter. A deputation from the Federation met with the Finance Minister, the Labour Minister and the Secretary of State on August 20th. The chief spokesman for the deputation amplified the contents of the letter which had been sent to the Secretary of State on June 28th. He emphasized his organization's opposition to strikes in the public service and promised a "no strike" commitment if collective bargaining were granted. The interview was a cordial one and the Minister of Finance requested a written submission from the Federation which could be discussed and studied by the cabinet.

A memorandum with a covering letter was sent to the Minister of Finance on August 21st. The letter was careful to emphasize two points. First, that in making the representations the Federation was carrying out the mandate laid down at its 1956 convention. to seek the abolition of Section 55 of the Industrial Relations and Disputes Investigation Act. Secondly, that the specific proposals in the memorandum could only be regarded as tentative since the National Council of

the Federation would have to pass on them. The memorandum itself was both a summary of past efforts to achieve a more comprehensive negotiating machinery for the civil service and a concise restatement of the arguments as to why this was desirable and possible. One paragraph, however, deserves attention for its implications and for some of the repurcussions it has already caused.

> "9. We now come to a consideration of the actual form and method of negotiation envisioned by the Civil Service Federation. We are of the opinion that the only immediate action required by the Government is the removal of Section 55 of the Industrial Relations and Disputes Investigation Act. This will leave the way open for the Civil Service Federation, as representing the majority of Federal government employees, to seek certification as their bargaining agent from the Canada Labour Relations Board. Once this certification is granted, the Civil Service Federation would request the Government to commence collective bargaining with a view to the conclusion of a collective agreement in accordance with Section 12 of the Industrial Relations and Disputes Investigation Act. Presumably the Cabinet would appoint officers to represent them in the negotiations, just as officers of the Federation will be delegated to act on behalf of its members." [31]

The government has not yet replied formally to the memorandum, but a number of important staff associations have reacted strongly to the implications of removing Section 55 from the Industrial Relations and Disputes Investigation Act. It seems clear from the above excerpt that the Federation, as the largest organization of civil servants, anticipates becoming the exclusive bargaining agent for all civil servants under the certification procedures of the Act if

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31. Reported in The Civil Service Review, XXX (September, 1957), p. 274.

Section 55 is repealed. In the absence of real progress towards the unification of the major groups this cannot but pose a serious threat to the existence of the smaller associations. The Federation may not have intended such a threat but it is implicit in the memorandum signed by its leading officers. The executives of the Civil Service Association of Ottawa and the Amalgamated Civil Servants of Canada sent a joint letter on this issue to the Secretary of State on August 23, 1957. While expressing agreement that there was a pressing need to improve the system of negotiation, the letter declared:

> "However, our Associations are unalterably opposed to the suggestion that a satisfactory negotiating procedure can be achieved simply by repealing Section 55 of the Industrial Relations and Disputes Investigation Act. Because of the peculiar relationship between civil servants and their employer, the CSAO and ACSC believe that a special procedure must be developed for bargaining between the Crown and its servants . . . . . we are confident that, before reaching a decision, you will wish to hear the views of representatives of the 30,000 organized civil servants not represented by the Civil Service Federation." [32]

The Professional Institute of the Public Service of Canada likewise took a strong stand against the Federation's approach. An editorial in the Institute's journal pointed out that many incongruities might develop "should machinery administered by civil servants, [i.e. under federal labour legislation] but designed for non-civil servants, be set in

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32. Reported in The Civil Service News, September, 1957, p. 3.

motion on behalf of civil servants."[33] The editorial went on to say:

> " Not least to be considered is the matter of bargaining agents, and bargaining units. At the present time we are watching the new procedures being established by the Civil Service Commission. We do not propose to take a stand that might in any way jeopardise these developments, which to date have been promising. In our view, the compulsory certification of bargaining units of civil servants would raise very serious questions for professional personnel, and might well have adverse effects on the attempts to create more adequate salary investigation machinery." [34]

This is where matters stand at the present time. The intensity of interest in the machinery of negotiation and consultation remains very high, but there has as yet been no fundamental change in the general official policy. The whole problem of the kind of adjustments in existing negotiating procedures that might be made, the institutional framework that would have to be adapted to these changes and the difficulties that would be encountered will be examined at length in the next chapter.

Before concluding this chapter, however, it would be useful to describe the one substantive innovation in the institutions of staff relations which may have far reaching consequences. Mr. St. Laurent, in his address of February 23, 1957, indicated a readiness to allow the staff

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33. Professional Public Service, 36 (October, 1957), p. 1.

34. Ibid.

organizations access to the factual material on which the Civil Service Commission based its salary recommendations. This had been a contentious issue for a long time and the staff felt that any move in the direction of negotiation would require as a first step the collection of objective data available to both sides upon which to base discussions. The Civil Service News in its issue for December, 1956 proposed that this might be accomplished by setting up an independent "pay research unit" located within the Department of Labour. On March 8, 1957 this proposal was incorporated into the joint salaries brief presented to the Minister of Finance by representatives of the Civil Service Federation, the Civil Service Association of Ottawa, the Amalgamated Civil Servants of Canada and the Federated Association of Letter Carriers. The spokesman for the group on this proposal concluded his remarks as follows:

> " I cannot overemphasize, Sir, that the Salary Research Unit we are recommending must be strictly a fact-finding body, not one that would make recommendations to the Government. Nor should it attempt to evaluate differences in the duties of the jobs which are being compared, it should just describe and define the similarities and differences in these jobs, and state what pay and conditions of service are attached to them.
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> . . . . . .
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> " And finally, this independent, objective Research Unit must make its findings equally available to the Staff Organizations and the Government. Only in this way can employee representatives have an effective voice in the

determination of salary levels."[35]

A press release from the Civil Service Commission on September 4, 1957, announced the establishment of a Bureau of Pay Research which would provide objective information on salaries and working conditions.

> " The Commission is responsible, under the Civil Service Act, for recommending to the Government of Canada salary rates for all classified civil servants. The information upon which the Commission's recommendations are based will now be centralized in the new Bureau, which will form an integral part of the Commission's organization.
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> . . . . . .
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> " The Commission will establish an advisory committee to advise and assist in the work of the Bureau. The members of this committee will include representatives of Government Departments and staff organizations." [36]

The staff associations reacted favourably to this announcement. It seemed to some to be the first step for which they had been waiting.

> "We have hopes that the creation of the Pay Research Unit may herald the beginning of a new attitude on the part of the Government regarding not only methods of salary determination, but also of negotiating procedures in the public service." [37]

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35. Reported in The Civil Service News, May, 1957, p. 3.

36. The text of the press release may be found in Professional Public Service, 36 (October, 1957), p. 13.

37. The Civil Service News, September, 1957, p. 2.

It is too early to evaluate the work of the new Bureau. It took several months to organize its staff and set up its working place. The technical problems of collecting and organizing factual data will undoubtedly be solved. But the selection of relevant data and their practical interpretation and application may encounter difficulties more stubborn than the purely technical ones. What may prove to be the most significant innovation is the advisory committee comprising official and staff representatives which was created to assist in the work of the Bureau. This committee, in so far as it deals with problems of relevance and interpretation, may become a kind of negotiating body whose importance would grow with experience.

It is remarkable that the staff groups did not question the location of the Bureau in the Civil Service Commission even though they had asked in their brief that it be set up as an independent unit within the Department of Labour. It seems to the writer that having the Bureau "form an integral part of the Commission's organization" may ultimately raise the question of its effectiveness unless the relationship between the Commission and the government is redefined. This will be one of the problems discussed in the next chapter.

Chapter VI

Problems and Prospects

Lord Haldane once said in rendering judgment for the Judicial Committee of the Privy Council in a Canadian constitutional case: "No authority other than the central government is in a position to deal with a problem which is essentially one of statesmanship."[1] The student of public policy might be tempted by this dictum to refrain from pressing his research beyond a critical description of what is and what was. If the description is adequate and the criticism valid, it can provide a useful perspective for the public authority which must devise policies. The actual decisions must ultimately be made by those charged with political responsibility, and on the basis of their political judgment.

Our study thus far has attempted to develop a critical understanding of the problems of staff relations in the Canadian civil service. We have examined the nature of the state as an employer and have suggested that, in the framework of constitutional politics, there is wide latitude for pragmatic adaptation. We have surveyed the extent of staff organization and have acquired an appreciation of its strength and weakness. We have traced and evaluated the development of procedures and institutions in response to the representations of the staff associations. We have

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1. Fort Frances Pulp and Power Co. Ltd. v. Manitoba Free Co. Ltd., (1923) A.C. 695 at p. 706.

noted the growing dissatisfaction of staff groups with existing machinery of consultation and the pressures for reform which this dissatisfaction is generating. It might be argued that this is as far as an objective study should go; what to do in the future is, as Lord Haldane suggests, "a problem which is essentially one of statesmanship." The soundness of this argument, however, rests on two assumptions. The first is that the description and presentation of the problem up to this point was in fact adequate. The second is that no useful purpose is served in raising practical questions with respect to a hypothetical case - for example, should the government want to change its policy on negotiation, what concrete problems would it have to face? Neither of these assumptions is strictly valid for the present study. On the one hand, several important aspects of the experience with staff relations have not yet been sufficiently dealt with. On the other hand, it seems to the writer that a useful method of dealing with these aspects would be to examine how they would affect or be affected by a given hypothetical situation. It is not unreasonable to assume that the machinery of staff consultation will continue to change and that the change will be in the direction of meeting some of the expectations of civil servants for more meaningful negotiation. With this modest assumption as a point of departure we will attempt to examine some of the more obvious problems that are likely to arise and to consider how they might be dealt with realis-

tically.

If some form of more direct negotiation is to be contemplated a first question must be: who negotiates with whom? In private labour relations the issue is clear cut. Representatives of management meet with the representatives of the unions. Each of the sides represented can make authoritative and binding commitments; the relationship between them is truly bilateral. Under certain conditions a third party may intervene in the role of mediator or conciliator; but he in no way detracts from the power and responsibility of the two sides to reach authoritative conclusions. This kind of employer-employee relationship is also well established in the public service of the United Kingdom where negotiations between civil servants and the government are highly developed. The staff associations deal directly with the Treasury on matters concerning salaries and conditions of work which affect the staff in more than one department - "the role of the employer is taken by the Treasury."[2] Where the matter refers to one department alone, it is "negotiated by that Department with a departmentally recognised association."[3] A necessary distinction between the British practice and private labour

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2. H. M. Treasury, Staff Relations in the Civil Service, London, 1955, p. 4.

3. Ibid.

relations is that it is carried on in the framework of cabinet responsibility and is subject to the overriding authority of parliament. This is a formal constitutional rather than a functional distinction.

The essential conditions for effective bilateral negotiation in civil service staff relations are lacking in Canada at the present time. The division and overlapping of responsibility and authority on the management side is complicated further by the multiplicity and redundancy of staff organizations. We will examine the management side first.

Under the Civil Service Act, 1918, the responsibility for central direction and control of the civil service is divided between the Civil Service Commission and the Governor in Council. The Commission is charged with the administration of the merit principle with respect to recruitment and promotion, and with the detailed operation of the classification system. To perform this function impartially and free from political interference, the Commission was given an independent status, its sole responsibility being to parliament. In addition to its technical task the Commission also has important responsibilities with regard to departmental organization and rates of compensation. These are, however, subject to the authority of the Governor in Council which, in practice, means the Treasury Board. Thus, section 11 of the Act states:

> (1) "The Commission shall, from time to time, as may be necessary, recommend rates of compensation for any new classes that may be established hereunder, and may propose changes in the rates of compensation for existing classes.
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> . . . . . .
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> (3) Proposed rates of compensation shall become operative only upon their approval by the Governor in Council, and, where any increased expenditure will result therefrom, when Parliament has provided the money required for such increased expenditure."[4]

This division of authority and responsibility between the Civil Service Commission and Treasury Board has been thoroughly examined by the Royal Commission on Administrative Classifications in the Public Service, 1946, (hereinafter the Gordon Commission). One of its most important conclusions was:

> "This division of duties is the outstanding weakness in the central direction and control of the service and must be eliminated. Central financial control there must be. Otherwise, there will be uneconomical use of public money. Financial control without the direct and simultaneous duty to determine requirements and to provide the necessary means for effective operation leads to delay, frustration and inefficiency." [5]

There is no need to go over the ground that was covered so well by the Gordon Commission, but the implications of this problem for staff relations need to be recognized.

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4. Rev. Stat. Can., 1952, c. 48, s. 11.

5. Canada, Report of the Royal Commission on Administrative Classifications in the Public Service, Ottawa, 1946, p. 17.

We have seen that during the 1930's Treasury Board assumed increasing authority and control over questions of organization and pay in the public service. It did not, however, create the internal machinery to translate this authority into concrete and detailed measures. This remains the task of the Civil Service Commission. Thus, if the Commission takes the initiative in recommending adjustments in pay or organization it is expected to work out its proposals in detail and also to indicate the total costs involved. Treasury Board is not equipped to evaluate the details, but reacts to the recommendations in terms of general financial policy. On the other hand, Treasury Board, either on its own initiative or on the instructions of the government, might ask the Commission to recommend in detail either a revision of establishment or of salary scales, or both, in order to give effect to a general policy of increasing or decreasing the expenditures on the civil service. The Commission's recommendations are, in turn, submitted to Treasury Board for approval. It should be noted that although the Commission is responsible to parliament, its substantive recommendations are made to the Governor in Council and treated as confidential.

The administrative awkwardness of this procedure is self evident, and it was effectively criticized by the Gordon Commission. The situation which it implies would be serious indeed if the somewhat artificial division of functions

between the independent Commission and the politically responsible Board were rigidly maintained in practice. There is evidence, however, that informal practices have grown up which have circumvented some of the administrative difficulties, although as we shall see they pose problems for the development of negotiating procedures with the staff groups.

A very informative paper presented by a senior official of Treasury Board to the Seventh Annual Conference of the Institute of Public Administration of Canada describes some of these practices.[6]

> "One committee is established for each department. It consists of a representative of the Civil Service Commission, the Treasury Board and the department concerned. The Civil Service Commission member is the Chairman. These committees sit throughout August and the early part of September and review completely once a year the establishments of the departments. . . . . By bringing together the three organizations around the table it is possible for the responsibilities of the department, the Treasury Board and the Civil Service Commission to be discharged in one motion." [7]

Thus what was intended by the Civil Service Act to be an initiative of the Commission in consultation with departmental officers has become a subject for regular joint consultation to which Treasury Board is a party. This is

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6. G. W. Stead, "The Treasury Board of Canada", Proceedings of the Seventh Annual Conference of the Institute of Public Administration of Canada, Toronto, 1955, pp. 79 ff.

7. Ibid., p. 88.

a logical response which recognizes that Treasury Board, as the centre of financial control, should be privy to the deliberations upon which its decisions must be based. It also precludes a source of delay and possible friction which could result if the formal separation between the Commission and the Board envisaged by the Act were too strictly maintained.

There is less clear-cut evidence of prior joint deliberation on questions of compensation, but there are indications that it takes place informally. This, too, from an administrative point of view, would seem to be desirable. In theory, the Civil Service Commission proposes changes in rates of compensation "as may be necessary" and the Governor in Council disposes. The Commission ostensibly accepts as given the principles of civil service salary determination which have been enunciated by the government from time to time. Its knowledge of the results of recruitment and of personnel turnover provide a basis for judging whether the pay scales are sufficient to attract and retain in the service persons with the requisite qualifications. Its machinery for collecting and interpreting data on the conditions of employment and scales of pay which are maintained by "good" private employers for classes of work similar to those performed in the civil service should endow the Commission's recommendations with an aura of expert objectivity. If the Commission is regarded as independent and impartial, and the principles of pay on which

it bases its recommendations as authoritative, it follows that these recommendations should be made operative. Constitutional legality may require the approval of the Governor in Council or parliament, but this should be purely formal. Experience, however, suggests that this has not been the case in actuality.

It may be technically correct that "As a matter of fact, the Treasury Board 'rubber stamps' the recommendations of the Civil Service Commission in all except occasional cases,"[8] but this may be because the Commission makes its recommendations only after it is reasonably certain that they will be acceptable. The paper on the Treasury Board referred to above describes the Personnel Policy Section which prepares for presentation to the Board problems relating to wages, salaries, hours of work and so on. This section receives specific proposals from departments or the Commission and "then relates them to the programs of the departments and studies the financial implications."[9] If it is true that on matters of compensation "the Commission makes its recommendations, and the Treasury Board can accept or reject, but cannot amend them,"[10] it is

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8. Taylor Cole, The Canadian Bureaucracy, Durham, N.C., 1949, p. 31.

9. G. W. Stead, loc. cit., p. 85.

10. R. MacGregor Dawson, The Government of Canada, Toronto, 1954, p. 308.

highly improbable that there should not be preliminary consultation. Without such consultation there would tend to be delay and frustration which is hardly compatible with efficient financial coordination. While there is no documentary evidence of such consultation between the Commission and Treasury Board on salary questions, the suggestion that it does take place was never seriously challenged in the many conversations between the writer and officials of the Commission, the staff associations and Treasury Board. The development of this informal liaison between the two bodies would appear to be administratively sound, but it casts a doubt on the notion that the Commission is truly autonomous except in the sphere of recruitment, promotion and classification.

We return now to our original question: Suppose that there is some accommodation to the requests of the staff for negotiations, with whom will they negotiate? At the present time there is a triangular relationship between Civil Service Commission, Treasury Board and staff organizations. The associations make representations both to the Governor in Council and the Civil Service Commission on questions of compensation. How can this become a basis for bilateral negotiation? British experience suggests what appears to be a simple and straightforward answer. Since the real authority in matters involving expenditures is located in Treasury Board, why not designate it as the representative of the employer for the purpose of

negotiations with representatives of the employees? But here the difficulty is that Treasury Board lacks the internal administrative machinery to serve it if it assumes the role of negotiator.

Meaningful negotiation depends upon an intimate knowledge of all aspects of staff problems and this knowledge, in Canada, is centred in the Civil Service Commission. It might be argued that Treasury Board is competent to negotiate on broad general policy and that the details should be left to the Commission. For example, the Board could agree to an over all percentage increase in civil service pay which is consistent with general financial policy and then request the Commission to recommend the distribution of the increase among the various classes. This would not, however, satisfy the associations. They are not only interested in general adjustments but in their particular application as well. If this means that they must negotiate first with Treasury Board and then with the Commission, they would become involved in a protracted and complicated process. In any event, the agreements reached between the associations and the Commission would take the form of recommendations to Treasury Board, and there is no established convention that the Board will accept these proposals as definitive.

An alternative approach might be to provide for negotiations between the staff and the Civil Service Commission. The agreements would then be conveyed to Treasury Board in the form of recommendations which spell

out both the details and the total financial implications. To be sure, the Board would still retain its final authority to accept or reject the proposals, but coming from the Commission after lengthy negotiation they could not but carry weight. This approach raises a number of fundamental questions. The first is that it does not provide for direct negotiation. The associations would, in effect, be held at arms length from the centre of decision-making authority. The Commission, in turn, would be influenced by the logic of the situation to seek informal guidance from the Board so that the gap between what it wishes to recommend and what the government is prepared to accept is kept as narrow as possible. This implies, again, a protracted and potentially frustrating process, although from the staff's viewpoint a probable improvement over the present practice.

The second problem inherent in this approach seems to be of more decisive importance. If the Civil Service Commission should become the negotiating agent for the government side, its status as an impartial and independent body would become untenable. This status is being seriously questioned even now. It would break down completely if the Commission came to act overtly as the representative of the employer. This might appear to some to be a desirable development, for it could clear the way for a redefinition of the respective functions and authority of the Civil Service Commission and Treasury Board along the

lines recommended by the Gordon Commission - a recognition that the Commission can only be independent with respect to recruitment and promotion. However desirable this may seem, it does not appear to be politically feasible at the present time. Indeed, the official viewpoint now seems to be that the neutral status of the Commission should be enhanced and that this would provide a basis for adjustment to some of the claims of the staff without changing the government's position on negotiations and arbitration.

We have already referred to the speech made by the former Prime Minister in February, 1957. At that time he suggested that the Civil Service Commission was "a specialized, impartial and experienced tribunal" which could mediate effectively between the government as employer and the civil servants as employees if given the opportunity. We will discuss the implications of this when we deal with the question of conciliation and arbitration. The Prime Minister also expressed the government's readiness to "have its officials along with those of the Civil Service Commission consult with representatives of Civil Service organizations on the facts and figures involved in the application of salary policy."[11] The creation of the Bureau of Pay Research in the Civil Service Commission seems to be directly related to this statement of policy. It is significant that the Treasury Board of the new government which took office

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11. Reported in The Civil Service Review, XXX (March, 1957), p. 14.

in June, 1957, authorized the funds for the Bureau's administration. The Bureau's terms of reference make it clear that it is to be an impartial agency which provides the objective information upon which the Commission bases its recommendations to Treasury Board in accordance with the established principles of pay determination. Given the agreement of the staff with the principles of pay determination and the objectivity and correctness of the Bureau's data, there would seem to be little room left for negotiation.

It was, however, easily forseen that there could be disagreement on the nature of the data selected and its interpretation. In making the information available equally to the staff associations and the government, the Bureau of Pay Research anticipated a process of consultation. The establishment of an advisory committee made up of representatives of the staff and government departments represents an attempt to institutionalize this process. The idea of a joint committee to advise and assist the Bureau in its work suggests interesting practical possibilities. If the Civil Service Commission is to base its recommendations on the findings of the Bureau, and if the Bureau, in turn, will be guided by the advice of this joint committee, we will have, for the first time, the means for regular staff participation in the determination of salary questions. This would hardly satisfy the claims for collective bargaining and would only provide for the most indirect kind of

negotiation, but the experiment promises to be an important step forward in the development of staff relations.

It is not necessary for our purpose to detail the administrative organization of the Bureau and it is too early to evaluate its experience. But one major problem which may affect its long-run prospects may be raised at this point. It stems from the relationship between the Civil Service Commission and Treasury Board. In the first place, assuming that a representative of the Commission will participate in the deliberations of the joint advisory committee, what will his role be? Will he act as the neutral chairman or will he be identified with the government side? The Rt. Hon. Mr. St. Laurent's speech implied that officials of the government and the Commission would be on one side in their consultations with the staff associations.

> "Our officials will, no doubt, wish to furnish yours with detailed supporting material for many of the figures that are necessarily involved in determining pay scales." [12]

This statement was made before the creation of the Bureau and one would hope that the Commission will avoid becoming identified with the government in the consultations within the advisory committee, unless the committee develops into a real negotiating body.

In the second place, even if the Commission remains neutral vis à vis the Pay Research Bureau, much of

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12. Ibid.

the Bureau's value will be lost if the Commission's recommendations to Treasury Board continue to be confidential and the product of informal consultation with the Board. The idea of creating a bureau to gather, organize and make available to the interested parties the facts on which recommendations are to be based is a sound one. The problem of applying general facts to particular cases is a proper subject for consultation, and the advisory committee seems to provide for that. But the purpose of the Bureau as a limited response to the claims of civil servants for more meaningful consultation on salaries would, it seems, break down if the Commission continues to make its recommendations to only one of the parties, and that in a confidential form. The Pay Research Bureau, as we have noted, forms "an integral part of the Commission's organization." There is a basic incompatibility between the Commission's function as an objective fact-finding agency and its role, in effect, of a confidential adviser to the government. It is noteworthy that the Civil Service Pay Research Bureau which is operative in Britain and which is undoubtedly a prototype for the Canadian experiment was set up under the control of a joint Whitley Committee. Its function is

> "to collect information about jobs and rate of pay for them outside the Civil Service for the purpose of applying the principle of 'fair comparisons' between the public service and private employment. Information gathered by this Research Bureau is to be made available to both sides of Whitley Councils . . . . . <u>who need it for negotiations</u> on pay and other

conditions of service." [13]

The Bureau in Britain is thus a joint fact-finding body which is in no way inconsistent with the process of direct negotiation that takes place between the government and the staff groups.[14]

The more one examines the development of organized staff relations in the Canadian civil service, the more evident it seems that, in the long run, it will be necessary for Treasury Board to assume more direct responsibilities. The notion that the claims of staff groups for more improved negotiating procedures can be met by adjustments in the machinery of the Civil Service Commission without a corresponding revision of its authority is unrealistic. If the imperatives of financial control and political responsibility make it impracticable for the Commission to become the effective representative of the government employer in its relations with the civil service associations, and if such a representative is deemed necessary, then that role should logically be assumed by Treasury Board. In any event, until such a time, if it is

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13. Douglas Houghton, "Whitley Councils in the British Civil Service," The Civil Service News, May, 1957, pp. 38-39. (my italics).

14. Of course, if the advisory committee to the Bureau of Pay Research in Canada is restricted to purely technical advice, it adds nothing to the existing machinery of negotiation. The Bureau merely becomes a device for improving one of the technical functions of the Civil Service Commission.

desirable that the Commission should be perceived by the staff as an impartial, expert personnel agency, its recommendations to the government, particularly on matters of compensation, should be made independently and publicly. The government may retain the authority to accept or reject, but the Commission must either assert its right to make independent recommendations "from time to time, as may be necessary," or accept the implication that in salary matters it is little more than a specialized arm of Treasury Board.

The question of who negotiates with whom is also pertinent when directed at the staff associations. We have seen that the government does not have a definite policy for recognizing a particular staff organization as representative of a given group of its employees. Any organized group of civil servants may make representations on behalf of its members. The nearest approach to a status of official recognition is in membership on the Staff Side of the National Joint Council of the Public Service of Canada. The Council now includes the fourteen associations which claim the largest membership and/or are national in scope (e.g. the National Departmental Associations affiliated with the Civil Service Federation). It is noteworthy that in the United Kingdom where the principle of negotiation is fully accepted there is also a clear concept of recognition.

> "Those which have a right to negotiate are known as recognised associations; the term has the same significance throughout the sphere of trade union affairs and implies that the association is accepted by the

> employing authority as a responsible body fully representative of a given category of staff. . . . . Recognition is a formal act and gives the association certain definite rights - the right to be brought into consultation by the employing authority on proposals affecting the category of staff for which the recognition is granted, the right to be a party to any formal agreements made on their conditions of service, and the right to go to arbitration, ... ".[15]

If we examine the list of recognized national associations in the United Kingdom, we find that they correspond to general classes or grades that are common to the service as a whole. Manipulative classes such as cleaners, messengers and paperkeepers are represented by the Civil Service Union; clerical assistants and typists by the Civil Service Alliance; clerical officers and higher clerical officers by the Civil Service Clerical Association and the Society of Civil Servants; scientific and professional classes by the Institution of Professional Civil Servants ; legal staff by the Civil Service Legal Society; and the Administrative class by the Association of First Division Civil Servants.

British experience thus suggests that the appropriate bargaining units for civil service staff relations are broad, horizontal classes of employees performing work of a similar nature. This seems to be logical for an organization as large and complex as a modern civil

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15. H. M. Treasury, op. cit., p. 4.

service. For while there may be a few issues that can be dealt with by negotiation between the government and the service as a whole, most problems have a special relevance to particular classes and are best settled on that level. There is some force to the argument that a single association representing all employees could exert a greater pressure on the employer. But this would seem to carry more weight in the area of private labour relations where bargaining pressures may ultimately be transformed into strike action. In a public service, where the staff associations deny themselves the strike weapon, effectiveness of negotiation depends less on the use of threats and more on the good faith of the parties and the coherence of the issues that have to be resolved.

This discussion, however, seems to be somewhat academic in the context of the present situation in Canada. The fact is that the great majority of organized civil servants are members of associations that include almost all classes of employees, and the prevailing tendency seems to be towards the principle of "one big union."[16] Although the Civil Service Federation of Canada and the emerging Civil Service Association of Canada make much of the different principles of organization on which they are based, the

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16. The exceptions are the Professional Institute of the Civil Service of Canada, the three associations of postal employees and the Customs and Excise Officers Association. However, the "class" character of the latter four is somewhat dissipated in the context of their affiliation with the Civil Service Federation.

difference seems to be more apparent than real. For, most substantive questions that require representation before the government cut across departmental lines and on such questions the central Federation reserves to itself the right to speak for its departmental affiliates. On the other hand, the projected constitution of the C.S.A.C. provides a degree of autonomy to its sections, groups, local councils and regions with respect to problems entirely within their purview. There is no doubt that the C.S.A.C. tends to a more centralized form of organization, but this is not the main issue between it and the Federation. The real issue is one of jurisdiction over recruitment.

It would be unrealistic to suggest that the present structure of the staff associations be dissolved and reconstituted along horizontal class lines. In the first place, the staff associations and their leaders are too well established to risk the uncertainties of a reorganization. In the second place, there would have to be a drastic reform of the classification system before one could speak of broad service-wide classes in the Canadian civil service. Since neither of these courses seems to be in prospect for the time being, the problem of recognized bargaining units on the employees' side would have to be resolved on the present basis of staff organization.

The Professional Institute, of all the staff groups, presents the least difficulty because it represents a more or less coherent category of employees. It has,

indeed, enjoyed considerable success on its consultations with the government side on various points of detail both with respect to working conditions and salary scales. This has been due not only to its structure but to the favourable bargaining position of professional and technical personnel. In any event, because of its relatively small membership, the Institute will neither seriously affect nor be affected by changes in negotiating procedures.

The problem is more complex, however, when we consider the other large staff associations which represent the great majority of organized civil servants. We have already suggested that there will in fact be only two large associations concerned with the really significant issues of staff relations - the Civil Service Federation of Canada and the Civil Service Association of Canada. Both are open to civil servants in all departments from all classes, and are therefore competing with each other for membership. If we assume that the government is prepared to enter into more meaningful negotiations with the associations, it would seem that the problem of recognition becomes more important. As long as the government was merely receiving submissions from the various staff groups, there was no need to discriminate among them. But if there is to be a bargaining relationship with a possible provision for arbitration, it would seem desirable to know who the bargaining agents are and whom they represent. If this is so, the alternatives may be to recognize only one of the two major associations, or to give them

joint recognition.

When the Federation, in its brief of August, 1957, requested the repeal of section 55 of the Industrial Relations and Disputes Investigation Act, it also implied that it expected to be certified as the "recognized bargaining agent for Federal Government employees."[17] The strong negative reaction of the C.S.A.O. and the Amalgamated Civil Servants of Canada to this suggestion was understandable. They were justifiably averse to being excluded from the process of negotiation since they were old, established associations and represented a sizable proportion of organized civil servants. A policy of exclusive recognition at the present time would only exacerbate relations among the staff groups. This would both weaken staff representations and complicate rather than simplify relations between the government and its employees. Indeed, one would guess that the Federation's brief was presented in somewhat extreme terms in order to goad the government rather than to prejudice the status of the other associations. There is little doubt that the major groups would accept the principle of joint recognition if only the government would concede them a degree of collective bargaining. Having in mind the structure of staff organization on the one hand, and the unclear relationship between the government and the Civil Service Commission on the other, the question is, in what way might more effective negotiation be brought about?

It is a commonplace of constitutional experience

that significant innovations are usually more readily achieved by the gradual transformation of existing institutions and procedures than by devising entirely new ones. It seems to the writer that the National Joint Council of the Public Service of Canada provides a ready framework for adapting new negotiating procedures to the peculiar needs of the Canadian public service. This is not to say that the Council should become the definitive institution for negotiations with the staff. It may well be by-passed or superseded in due course by other machinery. But it can facilitate the transition from existing practices to new ones that might be considered more appropriate. If the Council, however, is to perform this role, it must be permitted to broaden its terms of reference and develop a number of new procedures. It is not our purpose to spell out in detail how the Council might carry out this task; this is better left to the parties directly involved. But a number of general observations along broad lines would seem to be in order.

An obvious first step that must be taken if the N.J.C. is to provide a basis for wider negotiation is to eliminate the artificial exclusion of salary questions from its deliberations. Section 6(ii) of the Council's constitution which authorizes it to make recommendations on the "general principles governing conditions of employment . . . . including among other conditions . . . . regular and overtime remuneration . . . ." can be re-interpreted and amplified. Once the principle of joint consultation on

salaries is granted it should be possible for the N.J.C. to devise procedures for the periodic and systematic review of salary scales both for the service as a whole and for particular classes and grades. Indeed, the framework provided by the Council might be able to overcome some of the difficulties posed by the vertical structure of the staff associations. Thus a series of sub-committees could be set up, each of which corresponds to a number of classes and grades with more or less common characteristics and problems. One such sub-committee could deal with the lower clerical classes; another with the higher clerical and executive classes; another still, with semi-technical categories such as draftsmen and maintenance supervisors; and so on.[18] To be sure, the present classification system will not easily lend itself to this kind of horizontal stratification. But if this could be worked out even partially, it might, in addition to providing logical units for negotiation, set in motion a much needed simplification of the classification system itself.

Assuming that the N.J.C. can agree on the general machinery of consultation on salaries, there is still the question of effective procedures. We have seen that the

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18. In setting up such a sub-committee, it might be useful to establish a division between the "management" side and the staff side. The British approach of drawing such a line in terms of a salary level suggests a practical course. It should be noted that such a division does not prevent higher civil servants in the United Kingdom from negotiating with the government. It merely excludes their negotiations from the framework of the Whitley Council and the Civil Service Arbitration Agreement.

tendency for the Council to become involved in lengthy deliberations is regarded as one of its principal weaknesses. Clearly, if the pattern of postponement and delay were to become a feature of consultation on salary issues it would only serve to make things even worse than they are from the staff's point of view. The Council would therefore have to find a way to expedite this process. A possible device might be to require the sub-committee to report at a given time each year so that the Council might, in turn, make an annual recommendation on salaries to the Governor in Council and/or the Civil Service Commission. A necessary presumption is that the recommendations resulting from this procedure will in fact be made operative by the government with the least possible delay. This should not seem impossible when it is realized that negotiations in the sub-committee would involve representatives of the staff associations on one side and government representatives, including, inevitably, high officials of Treasury Board on the other.[19] It is a reasonable assumption that concurrence of the government side in the report of the sub-committees and the recommendations of the Council as a

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19. If such a procedure should be adopted, it would seem advisable that the Civil Service Commission avoid being identified with the government side. This might be a good opportunity for the Commission to assume the role of impartial chairman between two sides.

whole presuppose the advance agreement of Cabinet and Treasury Board in the stand taken by the Official Side.

A pertinent question at this point, and one which is fundamental to the whole experience of staff relations in a public service is: what if the government and the staff associations fail to reach agreement on these various levels of consultation and negotiation? Whether the framework of the N.J.C. is to be used, or whether more direct negotiations between the government and the associations are contemplated, the problem of resolving deadlocks will have to be faced. Although the staff organizations are prepared to give an undertaking that they will not resort to strike action in order to enforce their demands, they are not inclined to leave the ultimate decisions affecting their conditions of work to the unilateral discretion of the government. What they seek is some form of arbitration to determine issues that cannot be settled otherwise. It would be short sighted to delay indefinitely a decision on this question on the grounds that the staff will not, in any event, act irresponsibly. Experience suggests that strike action, as a desperate possibility, cannot be ruled out. The debates in the House of Commons during the second half of June, 1924, provide interesting reading on this point. A strike situation involving postal employees provoked sharp debates which are very revealing. Although the strike itself was a failure, there is no doubt that the mere threat of a strike stimulated an attempt at

real negotiations between the government and the Civil Service Commission on the one hand, and the Dominion Federation of Postal Employees, on the other. The government at one stage passed an order in council requesting the Civil Service Commission to consider revisions of postal salaries before those of other civil servants.[20] When the Leader of the Opposition pressed the acting Postmaster General on the government's attitude towards the threatened strike, he received this reply:

> "I do not think this is the place to commit ourselves in face of the difficulties which confront us; but it seems to me, that policemen and civil servants are in a different category altogether from people engaged in industrial disputes; they are servants of the Crown. It is rather a serious thing for these men to resort to a strike. On the other hand, one cannot say that they should be denied the right to protect themselves."[21]

A recent provincial case also suggests that the threat of a strike can produce a responsiveness which months of discussion cannot.[22]

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20. A member of the House of Commons asked the acting Postmaster General at one stage: "Why was it the government desired the commission to take up the postal employees' salaries first? Was it on account of the threatened strike? He replied: "Naturally that was part of the reason." Canada, House of Commons Debates, June 6, 1924, p. 2884.

21. Ibid.

22. This reference is to the threatened strike of provincial civil servants in British Columbia in July, 1957. The strike was averted when the government offered an immediate increase in salaries and agreed with the staff association to the setting up of a "board of reference" whose recommendations on future negotiating procedures would be accepted by both sides.

To argue that some form of compulsory arbitration in civil service staff relations is justifiable is not to overlook the difficulties inherent in the process.[23] The former Prime Minister was correct in asserting that arbitration was not a normal practice in industrial relations, and that "in our country arbitration is accepted, even in real emergencies, only with the greatest reluctance."[24] It is true that in an area where there is unrestricted collective bargaining, the introduction of compulaory arbitration would tend to inhibit negotiations in good faith. Arbitration, however, seems to offer the only alternative to unilateral determination when strike action is precluded. The real issue, it would seem, is to devise the kind of arbitration machinery which would best serve the interests of the public service. The experience of the British civil service under the Civil Service National Whitley Council Arbitration Agreement of 1925 should be studied very closely in this connection. It suggests that the arbitration process need not be excessively rigid and that it can be adapted to satisfy the claims of the staff while remaining consistent

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23. For a discussion of the general problems posed by the availability of compulsory arbitration in the staff relations of municipalities, see S.J. Frankel and R.C. Pratt, Municipal Labour Relations in Canada, Montreal, 1954, Ch. IV.

24. Address to the Professional Institute of the Civil Service of Canada, reported in The Civil Service Review, XXX (March, 1957), p. 12.

with the constitutional responsibility of the government. Difficulties may continue to arise, but they are not insurmountable.

While a detailed study of arbitration problems and procedures is beyond our present purpose, there are a number of points relevant to the Canadian situation worth discussing. In February, 1956, a member of the opposition questioned the Prime Minister about a submission by a staff association asking for the arbitration of its request for a salary increase. The Prime Minister replied that the Civil Service Act did not provide for such procedures and that civil servants were clearly excluded from the application of the Industrial Relations and Disputes Investigation Act.

> "The Prime Minister expressed his view that this full-time tribunal [the Civil Service Commission] established by parliament and assisted by a large and expert staff, is far better able to give proper consideration to matters of this kind than would some ad hoc conciliation board as proposed by the brotherhood." [25]

A similar viewpoint was expressed again by Mr. St. Laurent in his address before the Professional Institute of the Civil Service of Canada on February 23, 1957.[26] It seems obvious from our examination of the role of the Civil Service Commission and its relationship to Treasury Board that the Commission cannot be regarded as an adequate substitute

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25. Canada, House of Commons Debates, February 2, 1956, p. 829.

26. See above, pp. 142-145.

for an arbitration tribunal. The government may have good reason for resisting the introduction of arbitration machinery; but to argue that such machinery is unnecessary because the Commission, as a "full-time tribunal" is better able to fulfill this function, is to miss the essence of the problem. For, the Commission is not perceived by the staff associations as an independent and impartial tribunal; nor can it, under the present Act, make public recommendations which would be accepted by the government as binding.

The development of new procedures for negotiation and arbitration in civil service staff relations does not necessarily imply that civil servants should be brought under the authority of the Industrial Relations and Disputes Investigation Act. Some officials have expressed concern that if this were to happen, the government, through the Department of Labour, would find itself mediating in disputes to which it was itself a party. This is not a serious matter since provision for the civil service can be made by direct administrative action or by special legislation. If an arbitration tribunal is decided upon, it might be set up on a permanent basis and its personnel drawn from a panel of names agreed upon by both sides. There are undoubtedly many technical details of this sort which can be worked out by consultation so long as there is agreement on the generality.

Arbitration, however, is not a substitute for negotiation. It is a truism in the field of employer-employee relations that the way in which an agreement or decision

is reached is as important as the substantive content of the final arrangements. Experience with compulsory arbitration suggests that it sometimes restricts the process of direct negotiation to the detriment of staff relations in general. One would hope that if some form of arbitration is devised for the Canadian civil service, it would have the effect of improving negotiating procedures. Indeed, a measure of its success might well be the infrequency of its use. It is conceivable that the availability of arbitration would act as a pressure on the deliberations of the N.J.C. and thus expedite the process of reaching agreement. It could also lend an air of urgency to representations made by the staff associations to the government, and this would make for a more satisfactory relationship between them. British experience in this area could provide some useful direction. For example, the Civil Service Arbitration Tribunal, if it feels that the parties have not exhausted the possibilities of negotiation, may advise them "to go away and negotiate further."[27] Similarly, as the Tomlin Commission argued in 1931, "the power to conciliate is inherent in every tribunal."[28] This may mean that the tribunal, "having indicated the general lines of settlement which

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27. H.M. Treasury, op. cit., p. 21.

28. Report of the Royal Commission on the Civil Service, 1929-31, Cmd. 3909, London, 1931, p. 147.

commend themselves to it, may with advantage suggest that the details should be the subject of further negotiation between the parties before any award is made."[29] To be sure, to allow an arbitration tribunal such a degree of discretion implies a great measure of confidence in its competence and impartiality. This underlines both the importance and difficulty of finding suitable arbitrators. The success of any experiment with arbitration may well depend on it.

A final consideration in our study of civil service staff relations refers to the question of the proper criteria for negotiations and arbitration. This is particularly relevant to the problem of salary determination which is, after all, the main issue between the government and the staff groups. The need for such standards or principles of pay arises from the peculiar non-economic status of the civil service. Civil servants do not confront their government employer in the framework of a competitive market in which the area of bargaining is limited by calculations of profit and loss. One might argue that "the only theoretical limit which could be set in the long run on the wages and working conditions of civil servants is the taxation capacity of the particular government involved."[30] It is

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29. Ibid.

30. W.R. Dymond, "The Role of the Union in the Public Service as opposed to its Role in Private Business," Proceedings of the Fifth Annual Conference of the Institute of Public Administration of Canada, Toronto, 1954, p. 62.

clear that a set of practical and mutually acceptable principles of pay and working conditions would provide both a useful basis for negotiation and a frame of reference in the case of arbitration. Indeed, it is difficult to see how there can be a regularized relationship between the government and the staff associations without such criteria.

We have already seen that the N.J.C. has concerned itself with the problem of the "principles governing wage and salary structure."[31] It would seem that the policy enunciated by Prime Minister St. Laurent in December, 1950, remains the one in effect at the present time. He stated two main principles. The first was that salaries "should be sufficient to attract to, and retain in, the civil service persons of the right type and necessary qualifications." The second was that "salaries for each class of work should be generally in line with those paid for comparable work by good private employers." The staff associations have apparently accepted these principles, although they have at times questioned their application. There are, nevertheless, a number of objections that can be raised.

The principles of "recruitment/retention" and "fair comparison" which are currently applied in the Canadian civil service are similar to those put forward by the British Royal Commission on the Civil Service, 1929-1931, (the Tomlin Commission). Paragraph 307 of its report connects the two principles with the statement:

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31. See above, pp. 106-107.

> "If there is such a fair relativity . . . between the class of civil servants under review and comparable outside rates, it may be assumed that a satisfactory staff will be recruited and retained." [32]

The same paragraph contains the qualification that the principle of recruitment/retention "does not necessarily provide a basis on which to form an immediate judgment as to the appropriateness of a particular rate of remuneration."[33] The Royal Commission on the Civil Service, 1953-1955 (the Priestley Commission), however, argues against the implication that these two principles are reciprocally related and insists on a single primary principle, that of fair comparison.

The argument of the Priestley Commission deserves to be quoted at length.

> "We believe that the State is under a categorical obligation to remunerate its employees fairly, and that any statement of end which does not explicitly recognize this is not adequate. It may be held that if rates of pay are such as to recruit and retain an efficient staff they must be fair or even that this is what is meant by calling them fair. We do not agree. Such a contention seems to us neither capable of logical demonstration nor to be supported by contemporary facts. We believe that it is true in a general way that if rates of pay for the Civil Service are what we should call fair they will probably, over a period of time and in most classes, enable the Service to recruit and retain an efficient staff, though

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32. Cmd. 3909, op. cit., p. 85.

33. Ibid.

> in conditions of near-full employment all or most employers are likely to be conscious of a recurring, if not a chronic, shortage of labour. The converse of this cannot, however, be logically inferred. The proposition that the Civil Service is recruiting and retaining an efficient staff does not necessarily prove the proposition that the rates of pay are fair." [34]

The Report then suggests a number of factors in support of its argument.[35] First, that financial considerations are not the only, "or even always the principal, incentive which attracts recruits to the Civil Service;" that civil service employment appeals strongly to a "sense of vocation". Secondly, that wastage is not "a reliable indicator of the fairness or unfairness of rates of pay." The Commission makes the point that the "validity of the wastage test must be affected by outside demand for particular skills." Thus the greater turnover of technical personnel than of administrative officials whose skills are not as marketable is not necessarily a proof that the rates of the former are less fair than those of the latter. Thirdly, it is dangerous to assume that things are in a healthy state because civil servants seem to be doing their jobs efficiently. "The process of deterioration arising from a sense of grievance on the part of the staff may be a very slow one, . . . by

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34. Report of the Royal Commission on the Civil Service, 1953-55, Cmd. 9613, London, 1955, p. 23.

35. All the quotations in this paragraph are from pp. 23-24 of Cmd. 9613, op. cit.

the time the tendency manifests itself irreparable damage may have been done." The Commission concludes that the end served by principles of pay should be "the maintenance of a Civil Service recognized as efficient and staffed by members whose remuneration and conditions of service are thought fair both by themselves and the community they serve."

The argument for the single principle of fair comparison seems to have particular validity in the Canadian situation. If the Priestley Commission is correct in denying a necessary reciprocal relationship between"recruitment/retention" and "fair comparison", there is the danger that if such a relationship is assumed, one of these principles will distort the application of the other. For example, it is much more difficult to amass and interpret the data on wages paid by good private employers for comparable work than it is to judge statistics on the turnover of staff. The normal human inclination must be to opt for the simpler method if it is considered to be the reciprocal of the more complex. This is the principle of "Occam's razor." The staff associations have frequently complained that their carefully prepared briefs which present comparative data on salaries tend to be treated cavalierly. They have also expressed the feeling that recommendations on salaries made by the Civil Service Commission on the basis of wage and job comparisons tend to be revised by Treasury Board in terms of its estimate of their effect on the

recruitment and retention of staff. The problem would be less serious from the staff's point of view if there were more meaningful negotiations with the government on salary matters. For then both sides would find themselves under the necessity of supporting their claims on the basis of standards which are accepted as fair and reasonable. The case for a single criterion of fair comparison becomes even stronger if the introduction of arbitration procedures is contemplated.

The Priestley Commission also considered methods of applying the principle of fair comparison.

> "We must stress that, unless methods can be devised which will commend themselves as fair to staff representatives and which can be effectively used, we doubt if the principle will be more than an empty formula." [36]

We have seen that a beginning has been made in Canada in setting up the kind of fact-finding machinery which could make for effective application of the fair comparison standard. The Bureau of Pay Research which was established in September, 1957, is still in the process of development. There may be some question about the Bureau's location in the Civil Service Commission so long as the Commission continues to make confidential recommendations to the Governor in Council. Time and experience, however, have a way of overcoming technical difficulties of this sort, provided that there is a flexibility of attitude.

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36. Ibid., p. 35.

It might still be argued that the associations are not strong enough to extract from the government a significant departure from its present policy. This may be so for the time being. But it would seem short-sighted not to anticipate the continuing growth of the staff groups and not to plan accordingly. We have suggested that if the further development of staff relations were in the direction of more realistic negotiations there would be a number of difficult problems to consider. The question of who negotiates with whom can be directed equally to the government and the associations. The former would have to clarify the relationship between the Civil Service Commission and Treasury Board; the latter would have to settle their jurisdictional differences and face up to the problem of providing logical bargaining units. If negotiations fail to produce agreements there might have to be some form of arbitration. Arbitration, however, is not a simple process for resolving disputes and, unless it is carefully contrived, may limit the effectiveness of negotiation. Finally, in the absence of normal economic forces to delimit the area of negotiation and arbitration, it would be useful to have agreement on some clear and unambiguous principles of remuneration. A corollary of this last point would be the need to develop fact-finding machinery which would be regarded as impartial and competent by both sides.

Conclusion

Reader. It seems to me that the essence of your thesis may be stated in the form of two propositions. The first is that there is no legal or constitutional ground for denying civil servants a degree of collective bargaining approaching that enjoyed by private employees. The second is that staff relations in the Canadian civil service have now developed to the point where a significant change in the government's attitude to negotiating procedures is indicated.

Author. That is substantially correct; but I would warn against any assumption that there is a necessary connection between the two propositions. I am not suggesting that because the first is true, therefore the second must follow. The main intent of my argument in the first chapter was to show that the concepts of "sovereignty" and "public interest" are neither rigid nor static. They are sufficiently flexible to allow for either an extension or restriction of unionism among civil servants.

Reader. I can accept this as a generalization, but surely there must be some way of determining limits for civil service unionism. You make it quite clear that even the staff associations aceept the fact that the civil service differs from private employment both because of its relationship to the Crown and because its functions are endowed with a high degree of public interest.

Author. Yes, there is general agreement that the differences between public and private employment call for differences in the machinery of staff relations. The problem, of course, is how to devise the policy and the particular machinery which would take them into account. My contention is that theories of sovereignty and of the rights of parliament contribute little to the solution of the practical problems of staff relations. Legal theories may be useful for rationalizing policies in acceptable constitutional terms, but they do not provide an a priori basis for choosing the policies. When a government makes a decision and takes the necessary steps to implement it, it is not applying an abstract formula but is responding to a complex of factors on the basis of its political judgment. I would therefore suggest that the limits of civil service unionism cannot be defined in advance, but must be discovered by experience in a given situation.

Reader. I am not altogether convinced by your reasoning; it seems to lead into a cul de sac. Let us take as a practical example the subject of your study. You suggest that the present policy on staff relations is based on the government's judgment of many interrelated factors. If we assume that this judgment is reasonably good, and that there are no practical objective criteria for testing the policy in advance, we must also assume that it is the right policy for the present time. You are, it seems, positing a

kind of pragmatic conservatism which implies that the right policy is always immanent in the constitutional process of negotiation and accommodation. If this is so, the ground of your second proposition, that a significant change of policy is indicated, becomes rather shaky. For, do you not imply that the government itself is most competent to judge when a policy needs revision? This point was brought out very strongly by a high official when he remarked to me that the government could, with impunity, refuse to make any concessions to the staff associations at the present time.

Author. Perhaps I should have qualified that second proposition even more than I did. I would suggest that given the evidence of the growth and increasing pressures of the staff associations, and having in mind the general acceptance of trade unionism by the community at large, a government possessing normal political foresight would be considering a revision of its personnel policies. Indeed, this is now being done in Canada. The key assumption in your argument as in mine, is the soundness of the government's judgment. While I believe that policies, in the long run, tend to correspond with the aggregate of expectations which we call public opinion, there is, in the short run, the continual danger of misjudgment and miscalculation.

Reader. Very well, let us say that I accept your assertions about the scope of unionism in the civil

service and that I agree with your judgment that a significant change in government policy is now feasible. I am, however, dubious about some of your practical conclusions. You suggest, for example, that the National Joint Council might provide a preliminary framework for developing negotiating procedures. It seems to me that the experience with joint consultation in Canada is hardly conducive to optimism about its adaptability to salary negotiations. The inclusion of salary matters in the Council's terms of reference may only add to the delays and frustrations already experienced. Why not follow the lead of the United Kingdom and provide for direct negotiations between the government and the staff associations?

Author. Let me restate my position. First, I would stress that my conclusions are merely tentative. I believe that, given the readiness of the government to enlarge the scope of negotiations with the staff, the details can best be worked out by mutual agreement. Secondly, the reason why I look to the N.J.C. is that it already exists as a going institution and that it would be simpler, at first, to adapt its procedures to the peculiarities of the Canadian civil service than it would be to start afresh. In any case, I do not preclude the ultimate development of direct negotiations. I did suggest that the Council's deliberations on salaries could be made more effective by such devices as requiring it to make its recommendations by a specified date each year. This could lead to a pattern of consultation

similar to that followed by Treasury Board in its discussions with departmental officials on the estimates at a set time of the year. I also believe that if an arbitration scheme were introduced it would have a beneficent effect on the operations of the N.J.C.

Reader. Granted that the N.J.C. can become more effective, I still do not see why we cannot, at the same time, have more direct negotiations.

Author. I was coming to that. If you examine the experience of the United Kingdom you notice a number of conditions that have contributed to its relative success. First, the Treasury, as the single agency responsible for the organization and remuneration of the civil service, is the sole representative of the government employer in negotiations with the staff. Secondly, the staff associations, conforming to the relatively simple classification structure of the British civil service, provide logical units for recognition and bargaining. Thirdly, a highly developed system of arbitration is available to resolve deadlocks. Not one of these conditions is present in Canada. To the extent that these are necessary conditions for successful negotiations, nothing short of a major reform of the Canadian civil service would bring them into being simultaneously. The ambiguous relationship between Treasury Board and the Civil Service Commission cannot be transformed overnight; and the organizational problems and rivalries of the staff associations will not be resolved without extensive deliberations and adjustments. This is why I consider it realistic

to begin with the N.J.C. At least it provides a framework in which Treasury Board, Civil Service Commission and staff groups are already represented.

Reader. I wonder if you are not exaggerating the importance of arbitration as a factor making for satisfactory staff relations in a civil service. In fact, experience seems to show that where compulsory arbitration is available in labour relations, it tends to curtail the process of consultation and negotiation. Is it not a truism that, in this area, arbitration is not a substitute for collective bargaining in good faith?

Author. I would certainly agree that arbitration is not a substitute for negotiations, but this is not really the issue. The problem in civil service unionism is to find a substitute for the strike. In a society which recognizes the right of organized workers to strike under certain circumstances, it seems reasonable and fair that groups of employees who are denied, or deny themselves, the use of the strike should be allowed an alternative method of resolving disputes, a method which would be regarded as impartial and adequate. Some form of arbitration seems to be the only acceptable alternative. However, because the arbitration process is beset with difficulties and sometimes yields deplorable results, it is especially important to construct the machinery very carefully before it is put into operation. It should be possible, nevertheless, to initiate

a number of substantive changes in negotiating procedures even while the problem of arbitration is being studied.

Reader. I have one final point to raise. I have heard it argued by a number of responsible officials on the government side that the demands now being made by the staff associations do not represent the feelings and expectations of the rank-and-file civil servants. They suggest that civil servants consider themselves fairly treated and are not actively dissatisfied with the existing procedures of consultation. They claim that the pressure for change originates with the leadership of the associations and that this militancy is not shared by the majority of their members. If this is so, is it not a strong argument for the retention of the status quo?

Author. I do not think that this argument is tenable. It is probably true that the majority of the civil servants who are members of staff groups do not feel as strongly as their leaders do on these issues. But the passivity and relative indifference of majorities, whether they are members of private associations or of democratic political communities, is one of the facts of life. Leadership is inherent in all forms of organized activity. We do not condemn a government because it undertakes important policies towards which the majority of the electorate seems indifferent. Nor do we expect our political leaders to refrain from taking forceful action on significant issues until they are prodded by their constituents. Indeed, we

look to the government for vigorous leadership and are critical if this is not given. We assume, of course, that at the proper time there will be an opportunity to express our overall judgment of the government's stewardship. I think that it would be unwise to judge the leadership of lesser associations by different standards. If the membership claimed by a staff association can be verified, and if its leadership is subject to periodic election, we must assume that the leaders are competent to speak for the association. As for the particular question of negotiating procedures, it should be noted that the present policy of the associations has been laid down at their respective conventions.

Reader. May I draw the conclusion that you strongly recommend a new approach to the problems of staff relations in the Canadian civil service?

Author. Yes. However, I would like to stress that my main purpose was not to make specific suggestions for changes but to argue for an attitude which recognizes the need for flexible adaptation to changing facts. Burke, in his speech on conciliation with the American colonies, stated the issue boldly:

> "The question now, on all this accumulated matter, is:- whether you will choose to abide by a profitable experience, or a mischievous theory; whether you choose to build on imagination or fact; whether you prefer enjoyment or hope; satisfaction in your subjects, or discontent."

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* The Civil Service News and The Civil Service Review are included among the primary sources because of the invaluable source material which they publish. They contain copies of briefs presented by the associations, addresses delivered by ministers and high government officials, texts of correspondence with ministers, convention resolutions and proceedings, reports of committees and executive bodies, and so on. In so far as general articles in these journals have been found relevant they are referred to in part III of this bibliography.

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Note: The writer was given access to a number of official files and documents to which no direct reference could be made. These often provided valuable insights into the problems studied.

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