The Public Sector Right to Strike in Canada and the United States: A Comparative Analysis

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I. INTRODUCTION

Canadian public employees\(^1\) have long enjoyed collective bargaining rights comparable in all major respects to those enjoyed by private sector employees.\(^2\) The federal Public Service Staff Relations Act,\(^3\) enacted in 1967, granted public employees\(^4\) such bargaining rights as membership in an employee organization,\(^5\) exclusive representation\(^6\) by their unions in the collective bargaining process\(^7\) and the choice of one of two methods of dispute resolution following an impasse in negotiations.\(^8\) The Public Service Staff Relations Act allows federal employees to strike\(^9\) unless their duties are necessary for the safety and security of the public.\(^10\) As in the private sector, legislation imposes certain obligations on public

\(^1\) "Public employees" will be the term used to designate those who work for the government, whether local, regional or federal. "Public employees" are employed in the public sector, as opposed to "private employees," who are employed in the private sector.


\(^3\) Public Service Staff Relations Act, CAN. REV. STAT. ch. P-35 (1970).

\(^4\) The Act covers all employees in the "Public Service" of Canada, either in the central administration or in one of several autonomous agencies. CAN. REV. STAT. ch. P-35, § 2; Arthurs, supra note 2, at 978-79. "The Public Service of Canada is roughly analogous to the American Civil Service System." Arthurs, supra note 2, at 971 n.1.


\(^6\) A bargaining unit which acts as the sole representative of a group of employees enjoys the right of "exclusive representation." R. Gorman, Labor Law 374 (1976). The employer must bargain with this bargaining unit only. Id. He may not bargain with individual employees or other bargaining units. Id.

\(^7\) CAN. REV. STAT. ch. P-35, § 40(I)(a)(i).

\(^8\) Id. § 60. The two choices are arbitration or conciliation, discussed in § III.C infra. Arbitration is a process for resolution of disputes in which the dispute is submitted to a neutral third-party adjudicator. In Canada, the Arbitration Tribunal renders an arbitral award which is binding on the parties to a dispute. See id. §§ 60(1), 67, 72. Conciliation, like arbitration, involves a neutral third party responsible for helping the parties reach an agreement. The process involves investigation and mediation, and the results are non-binding. Id. § 77. In the Canadian federal public sector, conciliation is conducted by a conciliation board which investigates and conciliates the dispute. Id. § 78.

\(^9\) CAN. REV. STAT. ch. P-35, § 101. The Public Service Staff Relations Act's definition of strike includes a "cessation of work or a refusal to work or to continue to work by employees in combination or in concert or in accordance with a common understanding, or a slowdown or other concerted activity on the part of employees designed to restrict or limit output." Id. § 2. This definition is almost identical with that used in the United States. See Labor Management Relations (Taft-Hartley) Act, 29 U.S.C. § 142 (1976), which includes in its definition "any strike or other concerted stoppage of work by employees ... and any concerted slowdown or other concerted interruption of operations by employees." Id.

employees and their employers in their negotiations, such as the duty to bargain in good faith.11
The extensive nature of collective bargaining rights for Canadian public employees provides a marked contrast to the more limited rights afforded their U.S. counterparts, especially at the federal level. While U.S. federal employees may not strike under any circumstances,12 Canadian federal employees may strike within statutory limits.13 This Comment examines the right to strike in the public sector in Canada, particularly at the federal level, and contrasts the U.S. policy of denying this right to federal, and some state, public employees. In examining the right to strike in Canada, the author focuses on Canada's Public Service Staff Relations Act and discusses the structure which the Act provides for resolving public sector labor disputes. The Comment delineates the statutory restrictions on the right to strike in Canada and analyzes the Canadian government's handling of the postal workers' strike of 1968. In conclusion, the Comment provides a synopsis of the denial of the right to strike in the United States and explores the U.S. government's handling of the recent strike by the Professional Air Traffic Controllers Organization.

II. BACKGROUND OF PUBLIC EMPLOYEE COLLECTIVE BARGAINING RIGHTS IN CANADA

Canada has been relatively tolerant of public employee collective bargaining rights.14 Historically, Canadians have not distinguished between the public and private sectors in granting collective bargaining rights.15 When the government was considering whether to grant or withhold the right to strike early in this century, the determinative factor was not whether employees worked in the public or private sector, but whether "the community had either a direct proprietary interest in or a special concern arising out of the essential nature of the industries affected."16 In fact, in many provinces a single statute often governed labor relations in both the public and private sectors.17 At the federal level,18 legislation governing labor relations was slower to develop.

11. Id. §§ 50, 59.
12. See 5 U.S.C. § 7311 (1975), which prohibits federal public employees from striking. For a quote of this statute, see note 211 infra.
13. Can. Rev. Stat. ch. P-35, § 101. Section 101 prohibits strikes by employees: (1) not included in a bargaining unit represented by a certified bargaining agent; (2) included in a bargaining unit for which the process for resolution of a dispute is by arbitration; or (3) who are designated employees (i.e., those whose duties are necessary in the interest of public safety and security. Id. § 79(b)). Employees may not strike where a collective agreement is in force. Id. § 101(2)(a).
15. Arthurs, supra note 2, at 971-72.
16. Id.
17. Id. at 972.
18. The Canadian federal government is a parliamentary system. The governor general, appointed
Initially, public acceptance of public service collective bargaining rights was evidenced by both the local and provincial levels of government. For example, in 1944 the provincial government of Saskatchewan enacted the first Canadian legislation granting public employees bargaining rights similar to those enjoyed by private employees. The newly elected democratic socialist government, which was committed to extending collective bargaining rights in both the public and private sectors, passed this legislation. The Saskatchewan statute, patterned after the United States’ Wagner Act, applied to both public and private employment relations. Thus, Saskatchewan discarded the notion that a sovereign state should treat its employees differently than private industry does. These extensive bargaining rights remained unchanged until 1966, when a massive strike threatened the operations of the Saskatchewan Power Corporation, the publicly owned electrical distribution system. Prior to the strike, Saskatchewan had not enacted legislation to maintain even essential services in the event of a strike by public employees. The government reacted to the strike by enacting emergency dispute legislation, outlawing all strikes which en-

on the advice of the prime minister, is the representative of the Queen of England. However, the true seat of power lies in the elected House of Commons, where the leader of the majority party is automatically designated by the governor general to form a cabinet and thus to become prime minister. The House may be dissolved and a new election called in the event of legislative defeat or no-confidence vote. The governor general appoints the members of the Senate along both geographical and party lines. The Senate must also approve all legislation but tends to limit itself to the exercise of a secondary, restraining influence.

Canada is divided geographically into ten provinces and two territories. Provincial governments operate much like the federal government. Each province has its own constitution, a lieutenant governor appointed by the governor general and a legislative assembly whose principal leader is the provincial premier. Municipalities are subject to provincial, rather than federal, authority and are governed by elected officials. The Yukon Territory and the Northwest Territories are governed by appointed commissioners with the assistance of elected or appointed council members. Each province has its own judicial system, with a right of appeal to the Supreme Court of Canada. The House may be dissolved and a new election called in the event of legislative defeat or no-confidence vote. The governor general appoints the members of the Senate along both geographical and party lines. The Senate must also approve all legislation but tends to limit itself to the exercise of a secondary, restraining influence.

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19. Arthurs, supra note 2, at 971-72.
22. Arthurs, Public Interest Labor Disputes in Canada: A Legislative Perspective, 17 Buffalo L. Rev. 39, 63 (1968) [hereinafter cited as Public Interest Disputes].
25. Id.
26. Id.
27. Id.
dangered the public interest. Although the government prohibited such strikes by public employees, it left other collective bargaining rights intact.

After World War II, the provinces dominated the legislative labor relations scene by passing or reviving a number of statutes aimed at limiting or prohibiting strikes in essential industries. Despite these limitations, the provinces extended collective bargaining rights to most provincial civil servants. By the mid-1960's, most of the provinces had granted municipal employees collective bargaining rights by statute, prohibiting strikes only by "essential employees." Quebec first granted collective bargaining rights to unions representing provincial governmental employees in 1965. The provincial government allowed its employees to strike unless a strike or threat of a strike would endanger the public health or safety or interfere with students' education. Employees soon took advantage of this new right to strike. New Brunswick followed Quebec's

29. 1966-1967 Sask. Stat. ch. 2, § 10. Following the Saskatchewan Power Corporation strike, the government enacted the Essential Services Emergency Act at a special legislative session, to be invoked immediately. Framed in terms of general and future application, the Act required employees to end their strike and return to work, and threatened to revoke the union's bargaining rights if it continued the strike or failed, in the government's opinion, "to do everything reasonable to end the strike." 1966-1967 Sask. Stat. ch. 2, § 10(1)(a). In addition, while the statute submitted the dispute to arbitration, the validity of the arbitral award was conditional upon the termination of the strike. With the passage of this statute, Saskatchewan joined the ranks of those provinces which made special legislative provision to ensure the maintenance of essential services. The Saskatchewan statute, however, did not treat public employees differently than private employees with respect to their obligations. The statute covered all persons involved in a strike in public utilities or hospitals which created a "state of emergency." Id.


31. Arthurs, supra note 2, at 972. See also Public Interest Disputes, supra note 22, at 43.

32. Arthurs, supra note 2, at 972.

33. Id. at 973. In Ontario, for example, the legislature repealed a provision enabling municipalities to opt out of the Labour Relations Act. See Act of May 18, 1966, ch. 76, § 37, 1966 Ont. Stat. 311.

34. Arthurs, supra note 2, at 973.


Unions representing provincial governmental employees may not strike until they have arranged to maintain "essential services." Certain employees, such as peace officers, prison guards and transportation inspectors, may not strike. 1965 Que. Stat. ch. 14, §§ 69(d), 75. Courts may enjoin a strike which imperils the public health or safety pending investigation by a fact-finding tribunal. Lab. Code, QUE. REV. STAT. ch. 141, § 99 (1964). One of the major flaws of the Quebec statute is that the statute allows disputes over the essentiality of stricter services to be conducted while the strike is in progress. Id.; Public Interest Disputes, supra note 22, at 46.


37. Public Interest Disputes, supra note 22, at 46. Arthurs attributes the large number of strikes to the militancy of the unions in reaction to three factors: (1) the revocation of a statute, the Public Service Employees Disputes Act, QUE. REV. STAT. ch. 169 (1941), which for over 20 years had inhibited the bargaining activities of the public employees; (2) the outpouring of resentment after decades of frustration over lack of collective bargaining rights; and (3) the spirit of Quebec's "quiet revolution," transposed from the political to the economic sphere. Public Interest Disputes, supra note 22, at 46.
lead in granting its employees collective bargaining rights in 1968,\textsuperscript{38} as did Newfoundland in 1970\textsuperscript{39} and British Columbia in 1973.\textsuperscript{40} Newfoundland later amended its legislation in 1972,\textsuperscript{41} placing greater restrictions on the exercise of the right to strike than other jurisdictions did.\textsuperscript{42} The other provinces also granted their employees collective bargaining rights but continued to deny them the legal right to strike.\textsuperscript{43}

\section*{III. The Public Service Staff Relations Act}

The Canadian federal government, following the example of the provinces, granted its employees\textsuperscript{44} extensive collective bargaining rights\textsuperscript{45} by enacting the Public Service Staff Relations Act (the Act) in March, 1967,\textsuperscript{46} after almost three years of preparation.\textsuperscript{47} The Act was designed to provide for the establishment of a collective bargaining system for public employees and for the resolution of disputes arising in the negotiation of collective agreements.\textsuperscript{48} An essential feature of the Act is that it provides a systematic process for resolving public sector labor disputes.\textsuperscript{49}

\subsection*{A. The Administration of the Act}

The Public Service Staff Relations Board (PSSRB) administers the provisions of the Public Service Staff Relations Act.\textsuperscript{50} The PSSRB oversees certification, designations, complaints, questions of law, strike declarations, prosecution of violators of the Act and regulation.\textsuperscript{51} The PSSRB is composed of two neutral heads\textsuperscript{52} and equal representation of the interests of employers and employees.\textsuperscript{53}

\begin{thebibliography}{99}
\bibitem{38} Public Service Labour Relations Act, N.B. STAT. ch. 88 (1968).
\bibitem{39} The Labour Relations Act, NFLD. REV. STAT. ch. 191, § 3 (1970).
\bibitem{40} Labour Relations Act, B.C. STAT. ch. 122 (1975).
\bibitem{42} Public Interest Disputes, supra note 22, at 46.
\bibitem{43} Id.
\bibitem{44} "Federal employees" are all employees of the Canadian federal government. Arthurs, supra note 2, at 971.
\bibitem{45} CAN. REV. STAT. ch. P-35 (1970). Collective bargaining rights included in the Act are exclusive representation rights (§ 40(1)(a)) for a certified bargaining agent (§ 34), the right of every employee to be a member of an employee organization and to participate in the lawful activities of that organization (§ 6), and a choice of two methods of dispute resolution (§ 36(1)): arbitration (§ 63) or conciliation (§§ 52, 53). Employees maintain a limited right to strike (§ 101).
\bibitem{46} CAN. REV. STAT. ch. P-35.
\bibitem{47} Anderson & Kochan, Collective Bargaining in the Public Service of Canada, 32 RELATIONS INDUSTRIELLES 234 (1978) [hereinafter cited as Anderson & Kochan].
\bibitem{48} Finkelman, Public Service Staff Relations Act, CANADIAN LABOR, Sept. 1968, at 28.
\bibitem{49} CAN. REV. STAT. ch. P-35, §§ 59-89.
\bibitem{50} Id. § 18.
\bibitem{51} Id. § 19; Gillespie, The Public Service Staff Relations Board, 30 RELATIONS INDUSTRIELLES 628, 650 (1975) [hereinafter cited as Gillespie].
\bibitem{52} CAN. REV. STAT. ch. P-35, § 11(2); Gillespie, supra note 51, at 628.
\bibitem{53} CAN. REV. STAT. ch. P-35, § 11(1).
\end{thebibliography}
all appointed by the Governor in Council. The provisions of the Act grant the members of the PSSRB relatively long terms in office in an effort to ensure their independence from political or other influence. The PSSRB is responsible for the administration of the Arbitration Tribunal, which deals with interest disputes, and a corps of adjudicators, who deal with grievances. In addition, the chairman of the PSSRB has the power to appoint conciliators and expert or technical assistants. These powers further ensure the PSSRB's impartiality and freedom from public employer influence. Such a neutral administration of the Act greatly encourages dispute resolution in the public sector. Since the Act engenders fairness and impartiality in labor relations, Canadian public employees are more likely to trust the decision rendered by the system than if the dispute resolution mechanism were controlled by the government.

In contrast to Canada's impartial system, the typical advisory body in the United States often is created by executive order and exists by the grace of the appointing power. This government-controlled situation may cause public employees to feel that a recommendation by such an advisory body is biased. Thus, Canadian public employees are more likely to trust and respect advisory recommendations than their counterparts in the United States. Such trust and respect encourages better labor relations, since employees and employers in Canada tend to be satisfied with the results of arbitration.

B. Public Sector Bargaining Units in Canada

1. Structure and Function

Pursuant to the Public Service Staff Relations Act, the Public Service Commission has established a new government-wide job classification system. The
Public Service Commission classified seventy-two occupational groups into five occupational categories: operational (blue-collar), administrative support, technical, administrative and foreign service. In recognizing the unique interests of each group, the Act designated each of the seventy-two occupational groups as a bargaining unit and granted them the right to bargain collectively. Employees soon exercised their right to bargain collectively. Union organization has increased rapidly in the Canadian public sector, in large part due to the adoption of collective bargaining rights at the federal and provincial levels.

At the federal level, ninety-five percent of all federal employees negotiate with the Treasury Board through bargaining units. In addition, a few large unions are certified to represent a number of bargaining units. However, even though one union may represent a large number of employees in different bargaining units, the overall structure of collective bargaining remains quite fragmented. This fragmentation is due primarily to the fact that bargaining units usually choose to bargain separately. Bargaining units value their autonomy.
and independence in decision making, primarily because differences in the characteristics of bargaining units can constitute significant sources of bargaining power. Each unit has bargained with the government over previous agreements, and can use provisions won earlier as a basis for future negotiation and leverage. Furthermore, each occupational category bargains for provisions in their collective agreement which are unique to that category.

The standardization of collective agreements across all occupational groups, and particularly within each of the five occupational categories, is attributable to the process of "pattern-bargaining," in which agreements are patterned after those made by other bargaining units. Since the unions and the employer know what benefits have been offered to other units, employers tend to have difficulty "withholding benefits given to one group from other groups working for the same employer in the same work environment." In addition, because the bargaining units negotiate under the same labor relations statute and in the same economic climate, the resulting bargaining agreements generally do not vary substantially.

2. Bargainable Issues

Although wages and a broad range of working conditions constitute proper bargaining subjects in all Canadian jurisdictions, the Act restricts the scope of bargaining issues in the federal public sector. One provision of the Act prohibits negotiations on issues which are covered by other legislation. This provision seriously limits the scope of bargaining issues by prohibiting bargaining of such issues as pensions, promotions, demotions, layoffs and workmen's compensation. Moreover, the employer retains the power to determine organization, 

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79. Anderson, supra note 69, at 237.
80. Significant characteristics of bargaining units include membership, dispersion, and occupational category. Id. at 236.
81. Id.
82. Id. at 237. For example, operational groups have bargained for a number of pay supplements for the type of work performed (e.g., driving duty), while the scientific and professional groups have a series of leave provisions related to education and career development. Anderson & Kochan, supra note 47, at 236.
83. Anderson & Kochan, supra note 47, at 236-37; Anderson, supra note 69, at 236.
84. Anderson, supra note 69, at 236.
85. Id.
87. Anderson, supra note 69, at 236.
88. Lewin & Goldenberg, supra note 72, at 249.
90. Id. § 56(2)(a).
91. Anderson & Kochan, supra note 47, at 238. Note that often these issues are not bargainable in the United States public sector either, although the exclusion of these issues "seems to stem more from management policy than from legal policy." Lewin & Goldenberg, supra note 72, at 251. However, when unions have been insistent, they have managed to include some of these normally excluded issues in
assign duties and classify positions.\textsuperscript{92} Thus, under the Act, many key issues over which private sector employees may negotiate cannot be bargained for in the public sector.\textsuperscript{93}

C. Dispute Resolution: Arbitration v. Conciliation

The Act provides a systematic process for resolving public sector labor disputes.\textsuperscript{94} First, a majority of the employees in a bargaining unit\textsuperscript{95} must select a bargaining agent\textsuperscript{96} to represent them. Then the PSSRB must certify the bargaining agent as the representative of the bargaining unit.\textsuperscript{97} Before facing a possible labor dispute, the agent must choose one of two methods of resolving a dispute, either arbitration\textsuperscript{98} or conciliation.\textsuperscript{99} The method chosen has a significant impact on the outcome of the dispute.

A bargaining agent is not bound absolutely to the choice of dispute resolution made immediately following certification.\textsuperscript{100} An agent may change dispute resolution procedures before giving notice for negotiations of a subsequent contract.\textsuperscript{101} Once the bargaining agent has chosen a method, the agent may not change this method during the negotiation of that particular contract.\textsuperscript{102} The employer is excluded from the process of choosing a dispute resolution method\textsuperscript{103} and is bound by the bargaining agent's choice.\textsuperscript{104}

1. Arbitration

If the bargaining agent has chosen arbitration as its method of dispute resolution, the parties to a dispute must follow the procedures outlined in the Act. Once the employer and the bargaining agent reach an impasse in bargaining, either party may request that the PSSRB appoint a conciliator to confer with the parties to help reach an agreement.\textsuperscript{105} However, if the parties are still unable to reach an agreement, either party may request that the Arbitration Tribunal\textsuperscript{106}
issue an arbitral award. This request may be made where no collective bargaining agreement is in force or, if there is an agreement, not later than seven days after the parties have entered into that agreement.

In the arbitration process, the arbitral award is the final, binding step. Since arbitral awards are binding on the parties to the dispute, employees may not strike once their bargaining agent has chosen arbitration. Arbitral awards may deal with "rates of pay, hours of work, leave entitlements, standards of discipline, and other terms and conditions of employment related thereto." An arbitral award may not focus on "the standards, procedures or processes governing the appointment, appraisal, promotion, demotion, transfer, lay-off or release of employees." In addition, arbitral awards may only address issues presented by the parties.

The Act provides general guidelines for arbitrators to follow in rendering an arbitral award. It requires arbitrators to consider such factors as conditions in similar occupations in the private sector and the need for qualified employees in public service. The intent of the general arbitration guidelines is to ensure that public employees choosing the arbitration method of dispute resolution enjoy wages and working conditions comparable to their private sector counterparts.

Another governmental body that encourages equalization of wages and working conditions in the public and private sectors is the Pay Research Bureau, a highly regarded organization which generates objective, factual information on wages and working conditions in both the public and private sectors. Although under the administrative aegis of the PSSRB, the Bureau operates independently. In deciding what information it should obtain, the Bureau seeks advice from employers and all certified bargaining agents. By consulting

107. Id. § 65.
108. Id. § 65(1)(a).
109. Id. § 65(b).
110. Id. § 72(1).
111. Id. § 72(1).
112. Id. §§ 72(1), 101(1)(b).
113. Id. § 71.
114. Id. § 70(3).
115. Id.
116. Id. § 68.
117. Id. § 68(b).
118. Id. § 68(a).
119. Arthurs, supra note 2, at 991.
120. See generally Gillespie, supra note 51, at 637-38. The Pay Research Bureau has operated under the administrative aegis of the Chairman of the PSSRB since March 1967. Id. at 637. Note that the United States has no counterpart for the Pay Research Bureau. Id. at 638.
121. Id. at 638.
122. Id.
123. Id.
with both management and labor, the Bureau attempts to remain responsive to
the needs of both the employer and the bargaining agent in collective bargain-
ing.\textsuperscript{124} The Bureau is able to remain neutral since it does not participate in the
negotiation of collective agreements as in setting wages.\textsuperscript{125}

While the Act does not require arbitrators or parties to a dispute to use the
information which the Bureau provides, they often consider it.\textsuperscript{126} In comparing
public and private wages and working conditions, arbitrators rely heavily on the
Bureau's information.\textsuperscript{127} Oftentimes the information has had a significant effect
on the speed with which parties have settled their disputes or whether they have
reached an impasse in negotiations.\textsuperscript{128} The use of objective data on wages and
working conditions generated by a neutral agency encourages faster resolutions
of disputes.\textsuperscript{129}

The Act provides a solid structure for the arbitration process and a set of
guidelines which encourage resolution of disputes in an equitable manner. By
requiring that arbitrators consider conditions in similar occupations in the pri-
ivate sector before rendering an arbitral award, the Act attempts to equalize
wages and working conditions in the public and private sectors. In addition, the
Pay Research Bureau supports the intent of the Act and furthers this goal by
providing objective, factual information on such sectors to arbitrators and par-
ties to the dispute. Thus, the arbitration procedure outlined in the Act promotes
a fair and effective means of dispute resolution.

2. Conciliation

If conciliation is the chosen method of resolving a dispute, the parties follow a
much different set of procedures than they do for arbitration. The first step,
however, is identical to the first step in the arbitration route. Upon reaching an
impasse, either party may request that the PSSRB appoint a conciliator to
facilitate negotiations.\textsuperscript{130} Then either party may request that the Chairman of
the PSSRB establish a conciliation board to investigate and conciliate the dis-
pute.\textsuperscript{131} The Chairman then appoints a conciliation board unless he or she
believes that the establishment of such a board will not help the parties reach
agreement.\textsuperscript{132} The conciliation board reports its findings and recommendations

\textsuperscript{124} Id.
\textsuperscript{125} Id.
\textsuperscript{126} Id.
\textsuperscript{127} Id. Private sector comparable wage data has been the strongest independent predictor of
occupational wage levels.
\textsuperscript{128} Id.
\textsuperscript{129} Id.
\textsuperscript{130} \textsc{can. rev. stat.} ch. P-35, \textsection 52.
\textsuperscript{131} Id. \textsection s 77, 84(1).
\textsuperscript{132} Id. \textsection 78(1).
to the Chairman of the PSSRB, who subsequently sends copies to both parties. A recommendation by the conciliation board is binding only where the parties so agree in writing before the board has made its final report. The report, like an arbitral award, may not contain any recommendation "concerning the standards, procedures or processes governing the appointment, appraisal, promotion, demotion, transfer, lay-off or release of employees." However, unlike an arbitral award, the report may discuss issues not presented by the parties. This feature allows the conciliator to consider a broader spectrum of possible resolutions. The conciliator may make a recommendation involving compromises on issues not presented by the parties, thus helping to resolve the dispute in a more creative and lasting manner than if he was limited to considering a few specified issues. Since the report is not binding, the bargaining agent may reject the report in favor of a strike. Once the Chairman has received the report, the bargaining agent must wait seven days before initiating a strike.

3. Arbitration v. Conciliation

In choosing a method of dispute resolution, the bargaining agent must consider the advantages and disadvantages of each approach. While conciliation offers the bargaining agent the right to strike if a settlement is disagreeable, arbitration is an attractive alternative for several reasons. Both employers and employees tend to trust the Arbitration Tribunal because of its highly competent staffing, and its neutral, equitable decision making process. The Act provides general guidelines for arbitrators to follow in rendering awards which encourage fairness to both parties. In attempting to ensure that the public sector is treated like the private sector, the Act fosters equality in wages and working conditions in both sectors. Arbitral awards often are based on concrete, reliable information regarding wages and working conditions generated by a neutral agency. Thus, parties tend to trust and accept arbitral awards as being fair and equitable. In addition, the fact that the bargaining agent has opted for arbitra-

133. Id. § 86(1).
134. Id. § 87.
135. Id. § 89.
136. A report may not be used as evidence in any Canadian court except for prosecution of perjury. Id. § 88.
137. Id. § 70(3).
138. Id. § 86(3).
139. Id. § 86(4).
140. Id. §§ 89, 101.
141. Id. § 101(2)(b)(1).
142. Id. § 101; see Arthurs, supra note 2, at 987.
143. See generally Gillespie, supra note 51, at 634-35.
144. Arthurs, supra note 2, at 991.
tion, thereby consciously forfeiting the right to strike, indicates to the government that the union is willing to accept the outcome of the process.\textsuperscript{145}

Arbitration is particularly appealing to weaker bargaining units, which lack the financial and social power to strike.\textsuperscript{146} A strike by a weak bargaining unit may have no effect at all on the public, and perhaps only minimal impact on the employer.\textsuperscript{147} Arbitration prevents the employer from making unilateral decisions on wages and working conditions which affect weaker unions.\textsuperscript{148} Stronger bargaining units may also favor arbitration because of the fairness of arbitral awards.\textsuperscript{149} If they do not like the results, however, they can choose to switch to conciliation when negotiating a contract in the future.\textsuperscript{150}

Conciliation has its own distinct advantages. Under this method, the scope of bargaining is much broader because a conciliation board may address issues not presented by the parties.\textsuperscript{151} Conciliation also leaves open the possibility of a strike if the bargaining agent expresses dissatisfaction with the board's report.\textsuperscript{152} The realization that a strike is always a possibility may encourage an employer to resolve the dispute in the early stages of the conciliation process. Thus, bargaining units may opt for conciliation, using the strike option as an additional bargaining chip.

D. The Right to Strike: Statutory Restrictions

The Act does not explicitly grant public employees the right to strike for two reasons.\textsuperscript{153} First, since no Canadian court has clearly held that strikes by public employees are per se illegal,\textsuperscript{154} Parliament did not have to legislate a change to make strikes legal.\textsuperscript{155} Second, although Canadian labor relations statutes seldom expressly granted the right to strike, the courts have determined that such legislation impliedly incorporates the common law right to strike.\textsuperscript{156}

The provisions of the Act do not grant the right to strike to all federal public employees.\textsuperscript{157} In strike situations, the PSSRB functions as the "protector of the
public interest"158 by forbidding certain "designated employees"159 from striking.160 If a bargaining agent chooses the conciliation method of resolving a dispute,161 the PSSRB must determine which employees in a bargaining unit are "designated employees," namely those "whose duties consist in whole or in part of duties the performance of which ... is or will be necessary in the interest of the safety or security of the public."162 Conversely, nondesignated employees may strike,163 even though their absence would adversely affect the public interest, convenience or welfare.164

The employer is responsible for initiating the process for designating employees.165 Within twenty days after receipt of the notice to bargain, the employer must furnish the bargaining agent and the PSSRB with a list of employees whom the employer characterizes as "designated employees."166 If the bargaining agent does not object to the list of employees within a time period prescribed by the PSSRB, the employees become designated employees and, as such, may not strike under any circumstances.168 If the bargaining agent objects to the employer's designation of employees, the PSSRB, after allowing each side to "make representations,"169 determines which employees are designated employees. A determination of designated employees by the PSSRB is final and conclusive,170 allowing employers and the PSSRB to designate "essential employees" has the effect of severely circumscribing the right of public employees to strike.171 In many cases, more than ninety percent of the employees in a bargaining unit are designated.172 Such restrictions on the right to strike have resulted in allowing strikes only by those bargaining units strong enough to impose the greatest costs on the employer and the public and financially secure enough to bear the costs of a strike.173

The status of a collective bargaining agreement also affects the exercise of the

158. Gillespie, supra note 51, at 631.
159. CAN. REV. STAT. ch. P-35, § 79(1).
160. Id. § 101(1)(c).
161. See notes 130-35 and accompanying text supra.
162. CAN. REV. STAT. ch. P-35, § 79(1). "The definition of safety and security of the public is difficult at best. However, designations have not seemed to follow any systematic pattern in the past. ... It is interesting to note that no employees of the post office appear to be considered essential. ..." Anderson & Kochan, supra note 47, at 242 n.15.
164. Arthurs, supra note 2, at 988.
165. CAN. REV. STAT. ch. P-35, § 79(2).
166. Id.
167. Id. § 79(3).
168. Id. § 101(1)(c).
169. Id. § 79(3).
170. Id. § 79(4).
172. Id.
173. Id.
right to strike.\textsuperscript{174} The Act prohibits strikes while a collective agreement is in effect.\textsuperscript{175} If no agreement is in force, and the dispute has gone through the conciliation process, employees must wait for seven days after the Chairman of the PSSRB receives the report of an established conciliation board before they may strike.\textsuperscript{176} In addition, the bargaining agent must have exhausted the conciliation procedure before calling a strike.\textsuperscript{177}

Although the Act provides public employees with extensive collective bargaining rights, it severely circumscribes the public sector's right to strike by restricting the number of employees who may exercise that right.\textsuperscript{178} Public employees may or may not enjoy the right to strike depending on the nature of their job,\textsuperscript{179} their status in the bargaining unit or the status of the dispute\textsuperscript{180} and the collective bargaining agreement.\textsuperscript{181} Designated employees and employees without a certified bargaining agent may not participate in a strike.\textsuperscript{182} As previously discussed, the Act also prohibits striking by employees when their bargaining unit has chosen arbitration as its method of dispute resolution or while a collective bargaining agreement is in effect.\textsuperscript{183} Thus, the government limits and controls the situations in which striking is allowed.

E. The Application of the Act: The Postal Workers Strike of 1968

Only one year after the enactment of the Public Service Staff Relations Act, Canadian postal workers, who had a long history of militancy,\textsuperscript{184} initiated the first legal strike by federal workers.\textsuperscript{185} Following an unsuccessful attempt at conciliation, the postal workers went on strike from July 18 to August 8, 1968, after the government refused its wage demands.\textsuperscript{186} After resolving several issues through a conciliation board,\textsuperscript{187} the government and the union became dead-

\begin{enumerate}
\item \textsuperscript{174} CAN. REV. STAT. ch. P-35, § 101(2).
\item \textsuperscript{175} Id. § 101(2)(a).
\item \textsuperscript{176} Id. § 101(2)(b)(i).
\item \textsuperscript{177} Id. § 101(2)(b).
\item \textsuperscript{178} Id. § 101.
\item \textsuperscript{179} Id. § 101(1)(c). The nature of an employee's job controls whether that employee is designated as essential.
\item \textsuperscript{180} Id. § 101(1)(a).
\item \textsuperscript{181} Id. § 101(1)(b).
\item \textsuperscript{182} Id. § 101(1)(a), 101(1)(c).
\item \textsuperscript{183} Id. § 101(1)(b).
\item \textsuperscript{184} On a number of occasions, the postal workers, both national and local union groups, had threatened to strike, and in 1965, actually walked out for 17 days. Arthurs, supra note 2, at 992. The postal workers' unions tended to be militant for a number of reasons, including "deep-seated grievances against poor working conditions; departmental management which was understaffed and ill-prepared for collective bargaining; a new union leadership cognizant of the fact that their predecessors had been purged as 'moderates'; and overtones of French Canadian nationalism in the Montreal local union." Id.
\item \textsuperscript{185} Id.
\item \textsuperscript{186} Id.
\item \textsuperscript{187} Id.
locked on the issue of the union's high wage demands. The government, considering the union's wage demands excessive, failed to react to these demands for higher salaries until the strike was imminent. Canadian public reaction to the announcement of the strike was quite mild, and the press initially was supportive of the employees and critical of the government's failure to make an earlier wage offer. Despite the inevitable inconveniences and extra costs which a postal workers' strike entails, the work stoppage did not cause a major communications crisis.

Public sympathy for the strikers waned as the strike progressed, and pressure mounted for legislation to end the walkout. Public pressure to end the strike placed the government in a difficult position. On the one hand, the government did not want to rescind the newly enacted right to strike and hesitated to confront the near certain defiance which a back-to-work order would bring. On the other hand, the government could not realistically capitulate to the union's extreme wage demands. In addition, the government had no guarantee that the militant union members would even accept a recommendation by their negotiating team. The government also feared that its capitulating to the postal union in the conciliation process would disillusion other unions which had chosen the arbitration process for resolving their disputes. The union eventually succumbed to the pressures of threats of special anti-strike legislation and financial burdens on the individual union members, who were receiving no strike pay.

While the postal workers' strike caused some public inconvenience, it did exemplify the positive aspects of the Public Service Staff Relations Act. First, a postal workers' strike may have been inevitable, considering the union's history.

188. Id. Other circumstances had impeded negotiations: a federal election took place during the bargaining; a new Postmaster General took office; critics called for an overhaul of postal services and mail rates; and the government tried to put a cap on inflation by encouraging a policy of wage restraint throughout the economy. Id.
189. The postal workers were asking for wage increases above those which had been accepted by unions subject to arbitration. Id. at 992.
190. Id. at 993.
191. Id.
192. Id.
193. Id. Because the postal workers had previously struck for 17 days in 1965, many businesses were prepared to continue serving customers and collecting accounts during the strike. Id. For example, welfare agencies used alternate devices to serve their clients. Id.
194. Id. at 993.
195. Id.
196. Id.
197. Id.
198. Id.
199. Id.
200. Id.
201. Id.
202. Id.
of labor relations problems.203 Allowing the postal workers to strike within the guidelines of the Act maintained their freedom to bargain collectively and to strike,204 while at the same time forcing the workers to exhaust the conciliation process set out in the Act. These procedures may have prevented both parties from adopting extreme positions from which they could not retreat without a loss of face. In the end, the union accepted the government’s wage offer, indicating that the government retained some leverage over the union even during the strike. The statute precluded the necessity of taking extra measures, such as court injunctions, to enforce its provisions. The postal workers may have ignored these enforcement measures even if they had been imposed. Therefore, the government could avoid the awkward situation of confronting such a blatant violation of the law and the time-consuming enforcement procedures.205 Many factors such as public hostility may have contributed to a faster, more lasting resolution than would have resulted if the parties had proceeded through arbitration or the court system.206 However, these benefits must be weighed against other factors, such as the inconvenience to the public, in determining whether the strike weapon was ultimately successful and beneficial not only for the public employees, but for the public as a whole.207

IV. THE PUBLIC SECTOR’S RIGHT TO STRIKE IN THE UNITED STATES

A. Background of Public Employee Collective Bargaining Rights in the United States

Collective bargaining rights for public employees are substantially more limited in the United States than in Canada.208 While public employees of both nations enjoy the right to organize collectively and to select representatives for the purpose of engaging in collective bargaining,209 public employees in the United States generally do not enjoy the right to strike.210 Pursuant to an

203. Id.
204. Id.
205. Id.
206. Id.
207. Id.
209. See NLRB v. Jones & Laughlin, 301 U.S. 1, 33 (1937), which stated that the right to organize collectively and to select representatives for the purposes of engaging in collective bargaining is a fundamental right protected by the Constitution.
210. See, e.g., 5 U.S.C. § 7311 (1975), prohibiting strikes by federal employees; DEL. CODE ANN. tit. 19, § 1312 (1979), denying all public employees the right to strike. See also IOWA CODE ANN. § 20.12 (West 1978); MASS. ANN. LAWS ch. 150E, § 9A (Michie/Law Co-op 1976); MINN. STAT. ANN. § 179.64 (West Supp. 1980). For a rationale for upholding the constitutional validity of denying public employees the right to strike, see Blount, 325 F. Supp. at 879, discussed in notes 214, 215 infra.
amendment to the Civil Services Act, all federal employees must take an oath not to engage in strike activity. Violation of the oath may subject the employee to immediate dismissal.

Although private employees enjoy the right to strike by statute, public employees generally may not strike absent a specific statutory provision. Twenty-four states have enacted statutes explicitly prohibiting public employee strikes, and fourteen others do not address the issue in legislation.

211. 5 U.S.C. § 7311 (1975). This statute applies to all federal employees. This statute states:

An individual may not accept or hold a position in the Government of the United States . . . if he —

. . . (3) participates in a strike, or asserts the right to strike, against the Government of the United States . . . ; or (4) is a member of an organization of employees of the Government of the United States . . . that he knows asserts the right to strike against the Government of the United States . . . .

The statute does not require automatic dismissal; rather, it gives the government the right to fire the striking employee.

212. Paragraph C of the appointment affidavit required by 5 U.S.C. § 3333 (1975), which all federal employees are required to execute under oath, states (POD Form 61): "I am not participating in any strike against the Government of the United States or any agency thereof, and I will not so participate while an employee of the Government of the United States or any agency thereof."


The court in Blount noted that the right to strike is not implied from the right to associate and bargain collectively, 325 F. Supp. at 883-84. While in the private sector, employees may use the strike to equalize bargaining power, in the public sector strikes only serve "to influence the essentially political decisions of Government in the allocation of its resources." Id at 884. The court claimed that by prohibiting public sector strikes, Congress is upholding its duty to continue the functioning of the federal government at all times without interference. Id.

The court in Almond v. County of Sacramento, 276 Cal. Ct. App. 2d 32, 80 Cal. Rptr. 518 (1969), held that absent legislative authorization, public employees do not have the right to strike or bargain collectively. See also Norwalk Teacher's Assoc. v. Board of Education, 138 Conn. 269, 83 A.2d 482 (1951), where the court held that public employees could not participate in strikes, work stoppages or collective refusals to perform.

216. The 24 states which statutorily prohibit public employee strikes are: Alaska, California, Connecticut, Delaware, Florida, Hawaii, Idaho, Iowa, Maryland, Massachusetts, Minnesota, Missouri, Nevada, New Hampshire, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Texas, Vermont, Virginia,
states grant some public employees the right to strike, although often only in limited circumstances. These statutes generally prohibit strikes which would create a danger or threat to the health, safety or welfare of the public. However, most of these statutes authorize injunctive relief once the employer has proven that a strike would endanger or threaten public health, safety or welfare.

Courts consistently have upheld the validity of statutes prohibiting public sector strikes. Courts have cited several reasons for upholding no strike statutes. Some courts state that governmental functions should not be impeded by public employee strikes. In Gardner v. Broderick, the Supreme Court held that, since a public employee owes his entire loyalty to the city or state employer, public employee strikes should be prohibited. Similarly, a New York court
upheld the Taylor Law's\textsuperscript{225} ban on strikes on the rationale that public sector relations and regulations are constrained by political, rather than economic, conditions.\textsuperscript{226}

Despite the many state prohibitions against public sector strikes, approximately 400 state and local strikes occur each year in the United States.\textsuperscript{227} In a number of disputes, public employees have chosen to strike despite statutory prohibitions, injunctions and penalties.\textsuperscript{228} Thus, a "schizophrenic system"\textsuperscript{229} has emerged, in which private employees enjoy a wide range of collective bargaining rights and the right to strike, while public employees enjoy some collective bargaining rights, and, in a small minority of states, limited strike rights.\textsuperscript{230} This different treatment of public and private sectors has caused public employees to complain that the government is not treating them fairly and consequently encourages them to defy the laws which are inconsistent in their treatment of public and private employees.\textsuperscript{231}

**B. The Violation of Federal Anti-Strike Law: The PATCO Strike**

The strike by the Professional Air Traffic Controllers Organization (PATCO) in August 1981 is an example of public employee reaction to federal no-strike provisions.\textsuperscript{232} The Federal Aviation Administration (FAA) and PATCO had been negotiating a contract for seven months.\textsuperscript{233} At one point, the parties had reached an agreement giving the employees a forty-two month, $40 million increase in wages and benefits,\textsuperscript{234} twice the increase offered to other government employees.\textsuperscript{235} However, the union then increased its demands to $681 million in

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\textsuperscript{225} N.Y. CIV. SERV. LAW § 210 (McKinney Supp. 1979-1980). While the Taylor Law forbids public employee strikes, it does not mandate termination of employment for a violation. The Taylor Law granted public employees rights that they formerly did not possess, namely, the right to be represented by employee organizations, the right to negotiate collectively with public employees and the right to require public employers to negotiate and enter into collective agreements with them. \textit{Id.}


\textsuperscript{227} Feuille & Anderson, supra note 14, at 317, n.8.


\textsuperscript{229} Podgers, supra note 216, quoting Theodore Kheel, a New York City labor lawyer and mediator. \textit{Id.}

\textsuperscript{230} \textit{See} statutes cited in notes 138 and 145 supra.

\textsuperscript{231} Podgers, supra note 216, at 341.


\textsuperscript{233} Air Traffic Controllers Strike — Statement and a Question and Answer session following a Meeting with the Attorney General and the Secretary of Transportation, 17 WEEKLY COMP. PERS. Doc. 845 (Aug. 10, 1981).

\textsuperscript{234} \textit{Id. See also Striking Air Controllers Fired by President Reagan}, 104 MONTHLY LAB. REV., Oct. 1981, at 48 [hereinafter cited as Striking Air Controllers].

\textsuperscript{235} 17 WEEKLY COMP. PERS. Doc. at 846. In recognition of the difficult work performed by the air traffic controllers, the Government granted the requested increase. \textit{Id.}
wages and benefits,\textsuperscript{236} including a thirty-two hour work week.\textsuperscript{237} The Government, however, refused to raise its initial offer of a $40 million package.\textsuperscript{238} PATCO members went on strike on August 3, 1981, after soundly rejecting the government's $40 million package.\textsuperscript{239}

PATCO's strike violated federal law which forbids employees from holding public office if they strike and requires federal employees to take an oath not to strike.\textsuperscript{240} President Reagan responded to PATCO's actions by ordering the firing of all striking air controllers who did not return to work within forty-eight hours of his order.\textsuperscript{241} The President stressed that while he respected the right of private employees to strike, public employees are not in a position to strike.\textsuperscript{242} The government left no doubt of its intention to enforce fully the anti-strike laws.\textsuperscript{243}

Violation of the federal anti-strike law\textsuperscript{244} exacted a heavy toll on the union as well as on its members.\textsuperscript{245} The U.S. District Court for the District of Columbia held both PATCO and its president, Robert Poli, in contempt of court for refusing to obey a temporary restraining order, issued on August 3, 1981.\textsuperscript{246} To effectuate compliance with the injunction, the court ordered an accelerated schedule of fines to be imposed on the union, beginning twenty-four hours from the date and time the court issued its order.\textsuperscript{247}

Despite the legal sanctions and the government's firm stand, only 800 controllers returned to work within the President's forty-eight hour deadline.\textsuperscript{248} The FAA distributed dismissal notices to those who refused to return to work.\textsuperscript{249} Shortly thereafter the government sought back-to-work orders in several federal district courts.\textsuperscript{250} Likewise, the courts assessed several fines on PATCO.\textsuperscript{251} In an unprecedented action, the Federal Labor Relations Authority subsequently decertified the union.\textsuperscript{252}

\textsuperscript{236} Id.
\textsuperscript{237} Striking Air Controllers, supra note 234.
\textsuperscript{238} 17 WEEKLY COMP. PRES. DOC. 846 (Aug. 10, 1981).
\textsuperscript{239} Id.
\textsuperscript{240} See notes 214, 215 and accompanying text supra.
\textsuperscript{241} 17 WEEKLY COMP. PRES. DOC. 846 (Aug. 10, 1981).
\textsuperscript{242} Id.
\textsuperscript{243} Id.
\textsuperscript{244} 5 U.S.C. § 7311 (1975).
\textsuperscript{245} See PATCO and its President Fined for Contempt by U.S. District Court, PUB. EMPLOYEE BARGAINING REP. (CCH) No. 97 (Aug. 6, 1981).
\textsuperscript{246} Id.
\textsuperscript{247} Id.
\textsuperscript{248} Wall St. J., Oct. 23, 1981, at 4, col. 1. Approximately 1500 striking air traffic controllers eventually resumed their jobs. Id.
\textsuperscript{249} Striking Air Controllers, supra note 234.
\textsuperscript{250} Id.
\textsuperscript{251} Id.
\textsuperscript{252} Id. Following the 1970 strike, PATCO temporarily lost its labor union status for five months. Wall St. J., Oct. 23, 1981, at 4, col. 1. Decertification means a union can no longer represent its
The impact of the PATCO strike and its ramifications on public labor relations remain to be seen.\textsuperscript{253} The Reagan Administration has stressed that it intends to take a strong stand against violators of anti-strike laws\textsuperscript{254} in an effort to curb public employee strikes.\textsuperscript{255} However, on the state level, such an unbending approach has proven ineffective.\textsuperscript{256} Even in the face of a multitude of penalties,\textsuperscript{257} public employees continue to strike in large numbers.\textsuperscript{258}

C. \textit{A Comparison of the Canadian Postal Workers' Strike in 1968 and the U.S. PATCO Strike in 1981}

A comparison of the postal workers' strike in Canada and the PATCO strike in the United States reveals major differences in the public labor relations systems of the two nations.\textsuperscript{259} In Canada, the postal workers' strike was legal, and the government let the strike run its course. While the Canadian government had to deal with pressures from the public, the union faced the same public hostility, which aided in the resolution of the dispute. The union eventually capitulated, and the parties reached a satisfactory agreement. Although the public was certainly inconvenienced by the strike, it suffered no permanent or lasting injury.\textsuperscript{260}

In contrast, the PATCO strike had significant legal ramifications. Since the strike was illegal, the U.S. government had the power to impose a number of sanctions on the union and its striking members.\textsuperscript{261} Ultimately, these sanctions had profound effects on air traffic services, which were severely disrupted by the strike. By firing the striking employees, the government precluded any form of settlement with the majority of the federal air traffic controllers, and, in effect, aggravated the very situation it sought to remedy. The government's antipathy toward public employee strikes is supposedly on behalf of the public interest. Ironically, the public suffered from the effects of firing the air traffic controllers. If the government had allowed the air traffic controllers to strike, the parties may have reached a settlement, as occurred in Canada in the aftermath of the postal workers' strike.

\begin{itemize}
\item The results of the PATCO strike may affect federal, state and local unions which are considering striking. On April 16, 1982, transit workers struck in Boston, MA. Boston Globe, Apr. 16, 1982, col. 1, at 1. Union officials called off the strike within 24 hours, after the Governor threatened to fire all striking employees. \textit{Id.}
\item \textit{Id.} Other major unions, wary of participating in an illegal walkout, did not support the PATCO strike. Many labor officials privately criticized the union's actions. \textit{Id.}
\item See notes 241 and 243 and accompanying text \textit{supra.}
\item \textit{Id.}
\item See notes 227 and 228 and accompanying text \textit{supra.}
\item See notes 213 and 221 and accompanying text \textit{supra.}
\item See note 228 and accompanying text \textit{supra.}
\item See generally \textit{Public Interest Disputes, supra} note 22, at 45.
\item See note 138 and accompanying text \textit{supra.}
\item See notes 241 through 247 and accompanying text \textit{supra.}
\end{itemize}
By following the Canadian model, the United States could greatly improve labor relations in the public sector. Currently, tremendous inequities exist between public and private sector labor relations. Public employees have reacted by striking in violation of the law. One feasible solution to the problem of granting public employees more collective bargaining rights while protecting the public interest would be to adopt a system like Canada's, in which all essential employees would be "designated" by an impartial board and would not be able to strike as would non-essential employees. Many federal employees engage in duties which are not "necessary for the health, safety and welfare of the public." Allowing such employees to strike would put them on an equal footing with private employees, while preventing strikes injurious to the public.

The Canadian model could have been applied on the federal level to avert the PATCO strike. If an impartial board had designated essential air traffic controllers, minimum air operations could have continued, while nonessential employees struck. Eventually an agreement could have been reached. Instead, the President unilaterally fired all striking controllers almost immediately. This mass firing had long-term effects on air traffic control, since controllers could not be replaced quickly. Thus, adopting legislation such as Canada's, granting limited rights to strike to public employees, could improve public sector labor relations greatly.

V. Conclusion

The Canadian system of collective bargaining for federal public employees differs from the United States' system in substance, procedure and intent. Canadian public employees have had a history of extensive collective bargaining rights, and the vast majority of jurisdictions now allow some form of public sector striking. Public employees in the United States face a policy of traditional governmental resistance to granting its employees collective bargaining rights, in particular the right to strike. While eight states granted some of their public employees limited strike rights during the 1970-1980 period, this slow trend does not seem to be gaining widespread acceptance. Certainly the response to the PATCO strike reaffirms the federal government's commitment to enforcing current anti-strike legislation. At present there is no sign of a reverse trend.

Although governmental policy towards public sector strikes in the two countries is vastly different, the actual strike practices in the two countries are more similar than official public policy differences would suggest. The United States policy of prohibiting public sector strikes is rooted in fears that such strikes would disrupt the sovereign governmental system and adversely affect the public interest. Canada does not share these fears, since many of its public employees have enjoyed a long history of collective bargaining rights.

Canada has managed simultaneously to grant its employees collective bargaining rights and to protect the public interest through the Public Service Staff
Relations Act. In allowing public employees to strike within statutory limits, and prohibiting designated employees from striking, the Act grants federal employees rights comparable to private employees, while still maintaining services essential to the public. This result truly serves the public interest.

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