on the performance and productivity of public services (Lewin, Reuveni), and the Third Generation in the 1980s involved greater emphasis on the fourth generation of public sector collective bargaining. The 1990s represented the implementation of these principles, with a focus on the role of government and the public sector in providing services to address the needs of citizens. This new environment is different from the one that was characterized by the growth of privatization and the decline of public services. The Fourth Generation of public sector collective bargaining is driven by the need to re-examine the roles of government and the public sector in providing services to citizens.

Robert Herndon
Cornell University

In Transition
Public Sector Dispute Resolution

Chapter 3
Kochan, and Delaney 1988:1). In the current fourth generation of collective bargaining, public employees are increasingly under attack on the related fronts of job security and compensation through privatization and challenges to collective bargaining rights. Public sector dispute resolution procedures are at the center of the assault on public sector bargaining. An important issue, for example, is the extent to which interest arbitration (a dispute resolution procedure adopted when the focus was on prohibiting strikes) is appropriate to the current environment, when the focus is on retrenchment and restructuring.

Dispute resolution in the public sector is adapting to meet the more extreme economic, political, and financial environment of the 1990s. Intensifying fiscal pressures and more conservative political forces have combined to create the apparent need for major cost reductions and/or layoffs in many jurisdictions. Paradoxically, this crisis atmosphere has created a unique opportunity for labor and management to experiment with cooperative approaches to dispute resolution. Experiments in interest-based bargaining abound at federal, state, and local levels of government covering a wide range of occupations from blue-collar municipal employees in Wisconsin to clerical and administrative employees in the federal Department of Labor. In Wisconsin, for example, the Wisconsin Employment Relations Commission (WERC) now offers training to the parties in “consensus bargaining,” a problem-solving approach to negotiations and dispute resolution. The WERC (1992) reported that it trained 25 sets of municipal negotiators (over 525 persons) in this new approach. Interest-based and problem-solving bargaining has also been employed in bargaining at the federal level. The Labor Department and the American Federation of Government Employees (AFGE) recently negotiated two “major agreements” using a win/win approach (McKee 1993:506; Federal Labor Relations Authority 1995:5). Probably the most pervasive changes in collective bargaining are occurring as a result of reform of the nation’s educational system. As teachers become increasingly involved in educational policymaking, more cooperative approaches to bargaining are beginning to appear, although this has not spelled the end of adversarial bargaining (Bacharach, Schedd, and Conley 1988).

While the number of strikes has remained low after the steep decline of the early ‘80s, other forms of conflict such as grievance arbitrations and unfair labor practices have steadily increased in some jurisdictions. To meet this new challenge, public sector agencies have institutionalized new forms of mediation—particularly grievance mediation.

The courts continue to play an inconsistent but important role in shaping dispute resolution procedures as indicated in Maranto and Lund (this volume). The right to strike has recently been extended by decisions of state supreme courts to all public employees in Louisiana (1990) and Colorado (1992) but denied in common law to public employees in West Virginia (1990). Additionally, interest arbitration awards have been reviewed in the supreme courts of Iowa (1992) and New Jersey (1993), and a recent binding interest arbitration law was found to be unconstitutional by Nebraska’s Supreme Court (1991).

The antigovernment mood has placed public sector collective bargaining under severe scrutiny. What appeared just a few years ago as acceptable dispute resolution methods are increasingly under assault from taxpayers, employers, and politicians. For example, the utility of interest arbitration is being questioned in Wisconsin, Iowa, New Jersey, and New York. For both fact-finding and interest arbitration, the debate focuses on the appropriate weight to be attached to the criteria of taxpayer concerns and ability to pay.

This reassessment of dispute resolution procedures comes after two or three decades of experience in many states. To shed light on the continued viability of these procedures, it may be helpful to fully evaluate their strengths and weaknesses based on the current literature. We begin with an examination of some data on industrial conflict in the public and private sectors.

**Strikes and Other Forms of Conflict**

**General Trends**

Since the early 1980s, only major strikes (involving over 1,000 employees) have been recorded by the Bureau of Labor Statistics (BLS). Nevertheless, this relatively small BLS sample is useful given the obvious importance of large strikes and the fact that they tend to be representative of all strikes. This is illustrated in Figure 1 which compares the BLS sample of large strikes with a much larger sample of all strikes reported to the Federal Mediation and Conciliation Service (FMCS). (For our purposes, the FMCS data cannot be used because it does not break out the public sector.) Clearly, both series display similar patterns, particularly the precipitous fall in strikes starting about 1980.

The only available breakdown of the BLS major strike series between public and private sectors is for the period 1983–94. Table 1 shows a decline in major private sector strikes from 306 in the earlier
(1983–88) period, to 208 in the later (1989–94) period. Over the same period, public sector strikes also declined but only slightly (from 46 to 42 between the first and the second half of the period). Thus public sector strikes accounted for a larger proportion of total strikes in the second half of the period (16.8%) than the first half (13.1%). However, in terms of strike rates, these proportions are still well below the public/private union membership ratio in the U.S. population. In 1994, for example, the public sector accounted for 42.5% of all union members, but only 17.8% of major strikes, 12% of days lost, and just 3.8% of days idle. Thus strike rates continue to remain lower in the public sector, reflecting, in part, the laws banning public sector strikes.

While public sector strikes accounted for a slightly larger share of major strikes over the 1983–94 period, they accounted for a declining share of both workers involved (from 14.3% to 11.4%) and days idle (from 6.0% to 3.7%) from the first to the second half of the period (Table 1). This is due to greater public sector declines in the 1989–94 period in
both the size (from 348,100 to 215,500 employees) and duration (from 3,199,000 to 1,513,700 days) than in the private sector. The proportion of days idle in public sector strikes remains very small (5.0%). This is consistent with previous research of public sector strikes that revealed their relatively short duration (Kochan 1979:158).

Table 2 illustrates that school board strikes account for two-thirds of the 78 major public sector strikes, increasing to over 75% when universities are added. Teachers account for over 70% of all major public sector strikes. In part, this reflects the fact that bargaining units in the education sector tend to be larger and, hence, included in the data set of major public sector strikes of over 1,000 employees.

### TABLE 2
Major (over 1000) Public Sector Strikes by Employer and Occupation, 1983-94

<table>
<thead>
<tr>
<th>Employer/Occupation</th>
<th>Number</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>All Employers</td>
<td>78</td>
<td>100.0</td>
</tr>
<tr>
<td>Board of Education</td>
<td>52</td>
<td>66.7</td>
</tr>
<tr>
<td>University</td>
<td>7</td>
<td>9.0</td>
</tr>
<tr>
<td>Utility</td>
<td>6</td>
<td>7.7</td>
</tr>
<tr>
<td>County</td>
<td>4</td>
<td>5.1</td>
</tr>
<tr>
<td>State</td>
<td>4</td>
<td>5.1</td>
</tr>
<tr>
<td>City</td>
<td>3</td>
<td>3.8</td>
</tr>
<tr>
<td>Transit</td>
<td>1</td>
<td>1.3</td>
</tr>
<tr>
<td>Welfare</td>
<td>1</td>
<td>1.3</td>
</tr>
<tr>
<td>Teacher</td>
<td>55</td>
<td>70.5</td>
</tr>
<tr>
<td>Blue collar</td>
<td>14</td>
<td>17.9</td>
</tr>
<tr>
<td>State/comprehensive</td>
<td>3</td>
<td>3.8</td>
</tr>
<tr>
<td>Hospital/comprehensive</td>
<td>2</td>
<td>2.6</td>
</tr>
<tr>
<td>Nurse</td>
<td>1</td>
<td>1.3</td>
</tr>
<tr>
<td>Police and fire</td>
<td>1</td>
<td>1.3</td>
</tr>
<tr>
<td>Social work</td>
<td>1</td>
<td>1.3</td>
</tr>
<tr>
<td>Unknown</td>
<td>1</td>
<td>1.3</td>
</tr>
</tbody>
</table>

**Source:** Bureau of Labor Statistics, Current Wage Developments (Monthly), 1983-94. The analysis was possible for 78 of the 88 strikes identified in the annual data provided by the BLS (shown in Table 1).

Table 3 shows modestly higher mean strike rates (7.7% of the unionized public sector workforce) in states where public sector workers have the right to strike compared to states where strikes are banned (5.3%). It also reveals that 43% of the major public sector strikes were illegal. As expected, these illegal strikes were shorter (8.8 days) than the legal strikes (14.7 days) and accounted for fewer days idle. Table 4 illustrates the distribution of these major public sector strikes by state. Five states (California, Illinois, Michigan, Ohio, and Pennsylvania) accounted for over 60% of the strikes. Interestingly, another five states that have no collective bargaining laws for public employees (Arkansas, Colorado, Louisiana, Missouri, and West Virginia) experienced major strikes. The highest strike rates were recorded in Hawaii and Illinois, both states where public sector workers have the right to strike, but high rates were also recorded in states that ban strikes, including Michigan, Oklahoma, Washington, and West Virginia.

### Strikes and Conflict—Some State Data

Figure 2 reveals a sharp decline in public sector strikes in New York State starting in 1980. This parallels the steep drop shown in the combined public and private data shown above in Figure 1. The dramatic fall in strikes may be explained by such changes in the collective bargaining environment as the fiscal crisis, taxpayer revolts, economic restructuring, the recession, the PATCO strike (1981), and in New York, the passage of the Triborough Amendment (1982). The latter provided a freeze of existing conditions during negotiations but allowed conditions to change if a strike took place. In today's bargaining climate of rollbacks and concessions, this freeze provision of the New York Taylor law (and others like it in other states) has enhanced the ability of unions to resist these changes in negotiations.
TABLE 4
Major Public Sector Strikes by State, 1983-94

<table>
<thead>
<tr>
<th>State</th>
<th># Strikes</th>
<th>%</th>
<th>Type of Law</th>
<th>Right to Strike</th>
<th># Employees</th>
<th>Strike Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alaska</td>
<td>1</td>
<td>1.3</td>
<td>C</td>
<td>Y</td>
<td>2,900</td>
<td>5.71</td>
</tr>
<tr>
<td>Arkansas</td>
<td>1</td>
<td>1.3</td>
<td>N</td>
<td>N</td>
<td>1,750</td>
<td>1.21</td>
</tr>
<tr>
<td>California</td>
<td>11</td>
<td>14.1</td>
<td>C</td>
<td>Y</td>
<td>70,300</td>
<td>4.11</td>
</tr>
<tr>
<td>Colorado</td>
<td>1</td>
<td>1.3</td>
<td>N</td>
<td>Y</td>
<td>3,000</td>
<td>1.30</td>
</tr>
<tr>
<td>Connecticut</td>
<td>1</td>
<td>1.3</td>
<td>C</td>
<td>N</td>
<td>2,400</td>
<td>.68</td>
</tr>
<tr>
<td>Hawaii</td>
<td>1</td>
<td>1.3</td>
<td>C</td>
<td>Y</td>
<td>15,250</td>
<td>20.38</td>
</tr>
<tr>
<td>Illinois</td>
<td>12</td>
<td>15.4</td>
<td>C</td>
<td>Y</td>
<td>162,210</td>
<td>23.57</td>
</tr>
<tr>
<td>Indiana</td>
<td>1</td>
<td>1.3</td>
<td>S</td>
<td>N</td>
<td>2,000</td>
<td>.58</td>
</tr>
<tr>
<td>Louisiana</td>
<td>1</td>
<td>1.3</td>
<td>N</td>
<td>Y</td>
<td>6,000</td>
<td>2.17</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>2</td>
<td>2.6</td>
<td>C</td>
<td>N</td>
<td>10,700</td>
<td>3.35</td>
</tr>
<tr>
<td>Michigan</td>
<td>10</td>
<td>12.8</td>
<td>C</td>
<td>N</td>
<td>46,900</td>
<td>8.10</td>
</tr>
<tr>
<td>Missouri</td>
<td>1</td>
<td>1.3</td>
<td>N</td>
<td>N</td>
<td>1,300</td>
<td>.45</td>
</tr>
<tr>
<td>Montana</td>
<td>1</td>
<td>1.3</td>
<td>C</td>
<td>Y</td>
<td>4,500</td>
<td>6.56</td>
</tr>
<tr>
<td>New Jersey</td>
<td>2</td>
<td>2.6</td>
<td>C</td>
<td>N</td>
<td>5,500</td>
<td>1.17</td>
</tr>
<tr>
<td>New York</td>
<td>6</td>
<td>7.7</td>
<td>C</td>
<td>N</td>
<td>19,600</td>
<td>1.53</td>
</tr>
<tr>
<td>Ohio</td>
<td>7</td>
<td>9.0</td>
<td>C</td>
<td>Y</td>
<td>16,300</td>
<td>2.52</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>1</td>
<td>1.3</td>
<td>S</td>
<td>N</td>
<td>18,000</td>
<td>8.36</td>
</tr>
<tr>
<td>Oregon</td>
<td>2</td>
<td>2.6</td>
<td>C</td>
<td>Y</td>
<td>6,500</td>
<td>3.36</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>7</td>
<td>9.0</td>
<td>C</td>
<td>Y</td>
<td>41,000</td>
<td>7.27</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>3</td>
<td>3.8</td>
<td>C</td>
<td>N</td>
<td>3,400</td>
<td>6.38</td>
</tr>
<tr>
<td>Washington</td>
<td>5</td>
<td>6.4</td>
<td>S</td>
<td>N</td>
<td>39,700</td>
<td>12.75</td>
</tr>
<tr>
<td>West Virginia</td>
<td>1</td>
<td>1.3</td>
<td>N</td>
<td>N</td>
<td>20,000</td>
<td>19.45</td>
</tr>
<tr>
<td>Totals</td>
<td>78</td>
<td>100.0</td>
<td>Mean</td>
<td></td>
<td></td>
<td>6.41</td>
</tr>
</tbody>
</table>

Source: Bureau of Labor Statistics, Current Wage Developments

* C = comprehensive, S = some workers covered, N = no law

* Y = yes, N = no

* Colorado and Louisiana became right-to-strike states through court decisions in 1992 and 1990, respectively.

Doubt, to the impact of Proposition 13 in 1978 (Johnston 1994:7–8). Based on the California experience, Johnston argues that the shorter duration of strikes in the public sector (10 days) compared to the private sector (25 days), reflects a greater intensity of conflict in the private sector. Some unions in the public sector, given the nature of public sector labor markets, seem to prefer political action (forming coalitions and lobbying) over industrial action and strikes. This preference should not be surprising, given that the political activities of police and firefighters' unions have been shown to be more important than collective bargaining in pay determination (O'Brien 1994).

FIGURE 2
Public Sector Strikes
New York State, 1968-1994


 Strikes and Public Policy

Strike avoidance continues to be the primary motivating force behind public policy with respect to public sector collective bargaining in most states. As indicated above, comprehensive strike data have been unavailable after 1980; nevertheless, a number of conclusions are possible from earlier research and the little strike information that has been obtained from BLS and FMCS sources as presented previously. First, it seems clear that statutory bans on the right to strike cannot eliminate strikes (Kearney 1992:287). As indicated in Table 3, 44% of all major public sector strikes over the period 1983–94 were illegal. Second, most studies have found that right-to-strike laws have no significant effect on strike incidence. On the other hand, there is evidence that poorly enforced penalties in such states as Ohio and permissive strike laws in Pennsylvania increased strikes in those states. In addition, Partridge (1988:257) finds that moderate strike penalties for teachers are more effective in reducing strikes than either permissive or extreme sanctions. Third, most studies have found that the presence of compulsory interest
arbitration reduces strike activity. Finally, laws that provide finality in the form of mediation or fact-finding were found to be insignificantly related to strike activity (Partridge 1990). It should be remembered that the findings of the U.S. studies listed in this section are limited by the lack of data on public sector strikes after 1980 (except for the over 1,000 BLS sample discussed above). Thus some fifteen years of experience after 1980 under these laws are necessarily omitted from much of the analysis.

Other Conflict Forms

The precipitous fall in strikes in the public sector may mask a corresponding rise in other conflict forms. Just as unionized private sector workers are turning away from strikes to other forms of conflict expression such as slowdowns, work-to-rule, and overtime bans (Katz and Kochan 1992:225), conflict may be taking some new directions in the public sector.

Figure 3 illustrates that this appears to be occurring, as evidenced by the increase in individual expressions of conflict (grievance arbitrations in Wisconsin and New York as well as through collective expressions of conflict (unfair labor practices) in New York after 1980—the year when strike activity began to plummet. Unfair labor practices almost doubled in New York from 686 cases in 1980 to 1,126 in 1994. Grievance arbitrations also almost doubled in New York from 396 in 1980 to 635 in 1994 and in Wisconsin from 312 in 1980 to 594 in 1993.

At the federal level there is also evidence of increasing levels of conflict, but this is not a redirection away from strikes since unions have not used the strike in bargaining (except in the postal service in 1970). The Federal Labor Relations Authority reported 9,047 unfair labor practices (ULPs) in 1993. This represents the seventh year in a row of increased ULP filings and a 42% increase since 1989 (FLRA Annual Report 1993; McKee 1993). Some 96% of the filings were by unions and involved such major issues as interference, restraint, or coercion (24.1% of the total), failure to bargain—unilateral change (23.6%), and bad faith bargaining (9.1%) (FLRA Annual Report 1992:58). The preliminary ULP total for the fiscal year 1994–95 indicates a significant drop in filings to 6,839. The reasons for this decline require more research, but a plausible cause is the increase in interest-based and cooperative forms of bargaining recently implemented in the federal government.

In Ontario an “exponential increase” in the percentage of grievances going to arbitration (from 28% in 1989–90 to 45% in the first four months of 1990–91) was cited by the government as one of the reasons for reforming the collective bargaining process (Management Board Secretariat 1992). Such reform ultimately led to legislation providing the right to strike for Ontario provincial employees (Hebdon 1995). Increases in conflict expressions (other than strikes) were also found in jurisdictions with the right to strike. In Pennsylvania, for example, unfair labor practices under the Public Employment Relations Act increased from 347 in 1988 to 477 in 1992 but decreased to 447 in 1993 (PLRB Reports 1992–93). As an indicator of bargaining intensity in the 1990s, the most common reason for filing an ULP against an employer in Pennsylvania was a failure to bargain in good faith (PLRB 1990–92:10).

In summary, while public sector disputes in the form of strikes have decreased since the 1980s, such other conflict expressions as grievance arbitrations and unfair labor practices have increased at least in a number of prominent jurisdictions. Thus a decline or absence of public sector strikes does not imply a lack of conflict. Public sector employees and their unions appear more willing and able to use both collective (ULPs) and individual (grievances) expressions of conflict to express...
Voluntary mediation may play a significant role in assisting the parties in reaching a settlement as perceived by the union. These studies suggest that where mediation is used by the parties, the success rates are higher than in cases where mediation is not used. The evidence suggests that mediation can help the parties in reaching a settlement, and that it is an effective tool in resolving disputes. The studies also indicate that mediation is more successful when it is used early in the dispute resolution process.
It is important to remember that mediation must be evaluated in the context of the legislative scheme available. For example, mediation appears more effective if followed immediately by conventional or final offer selection (FOS) arbitration (Kochan 1979). In Ohio the mandatory nature of mediation (compulsory 45 days before settlement) offers both advantages and disadvantages (Herman and Leftwich 1985). Advantages include assistance for inexperienced negotiators, a narrowing of issues going to fact-finding, and the provision of a face-saving mechanism for making bargaining concessions. Disadvantages include time-limit rigidities, greater expense than voluntary mediation (due to its use in cases with little or no probability of success), misuse as a delay tactic, creation of dependency if used too early, and ineffectiveness when followed by other dispute resolution processes (Herman and Leftwich 1985:316; Kearney 1992:328).

Who Make the Best Mediators?

Mediators who are more proactive in packaging issues, offering solutions, and applying pressure are more likely to achieve success than those who merely passively identify the issues and intervene only if asked to do so (Kochan and Jick 1978; Dilts and Karim 1990; Downie 1992). Thus, in the Ontario education sector, an attempt has been made to recruit and train these “high-intensity” mediators (Downie 1992). In Iowa ad hoc mediators are less effective than either FMCS or PERB mediators (Dilts and Huber 1989). The success of the professional mediator is attributed to their greater experience combined with a wider array of mediation techniques.

In summary, the best mediators are experienced professionals who have an assortment of various strategies and are able to act aggressively to exploit settlement opportunities at critical junctures in negotiations. Mediators are more successful when the parties are under some pressure from the possibility of a strike, the uncertainty of arbitrations, or some environmental factor such as a financial crisis.

Special Mediation: Grievance and Problem-solving Procedures

Given that this chapter has emphasized that it is important to broaden the scope of dispute resolution to include grievance arbitrations and unfair labor practices, it is appropriate that advances in grievance mediation and problem solving or preventative mediation be explored. Public employers have led the way in the use of mediation for both grievances and unfair labor practices (Labor-Management
Fact-Finding may be compulsory (required if at impasse), voluntary (if requested by one or both parties), or at the discretion of the public administration agency (Vallette and Freeman 1995-96).

Each fact-finding procedure must be evaluated within the total dispute resolution context. For example, fact-finding in Iowa has effectively been integrated into a quasi-arbitration procedure, in which the arbitrator must select either the employee's last offer or the public employer's last offer per (Gallagher and Veblen 1990). The law in Iowa also turns the fact-finding process into a quasi-arbitration procedure for different reasons. In Iowa, the parties must vote on the fact-finders' report. Reports routinely become binding when at least three-fifths of the union members or the legislatures vote to reject it within seven days (Herman and Leitch 1998). The more common fact-finding model (e.g., teachers in New York) arises when there are no further sanctions possible under the law after fact-finding.

Fact-finding has been in existence in the public sector for more than twenty years in many jurisdictions. It exists in one form or another in no less than 34 states (Nelson 1992). Its increased use and acceptance in the late 1970s and early 1980s is due to the trend away from fact-finding as an effective tool to resolve disputes and the emerging strong public sector labor movement. The focus of this paper will be on the somewhat conflicting evidence for and against its effectiveness. The focus of this paper will be on the somewhat conflicting evidence for and against its effectiveness.

Why Make the Best Fact-Finder?

Although there are numerous exceptions, public sector fact-finding is a rarely used procedure in which the fact-finder makes a written nonbinding report after a formal hearing. In theory, the process was designed to impose reasonableness on the parties through public pressure.

Was the Best Fact-Finder?

In Iowa it is assumed that the same criteria for arbitrator selection will apply to fact-finders (Dilts, Haher, and Elisea 1990) as Dilts et al. (1990) test two hypotheses concerning the parties' preferences. The in-put, substitutability, and institutional factor for arbitrators' preferences is discussed in detail in Appendix A.
preferences for certain demographic characteristics of arbitrators, with management preferring economists and unions favoring lawyers, and both preferring experience. Regression results support the interchangeability hypothesis, but only for the successful fact-finders. For the unsuccessful ones (less used), they were less likely to be selected if they had more experience and were an attorney. Suggested explanations for these unexpected latter results are the necessity of a fact-finder's track record (hence more experience) before the parties can make an assessment and an over-legalistic approach by attorneys (Dilts et al. 1990).

Evaluations of Fact-Finding

There are four criteria for evaluating fact-finding: (1) the success rate in resolving disputes, (2) the views of the parties, (3) frequency of utilization and impact on collective bargaining, and (4) ability to reduce conflict and prevent strikes (Stern 1966:11).

Success rates. In Iowa, where the fact-finder's recommendation may be chosen by an arbitrator as part of the tri-offer system of arbitration, research indicates a reduced usage of arbitration and an increased reliance by the parties on the fact-finder's recommendations (Gallagher and Veglahn 1990). Since arbitrators consistently choose the fact-finder's position over those of the parties, fact-finding has developed into a form of advisory arbitration. However, its success in gaining the acceptance of the parties is apparently due more to its arbitration properties than its fact-finding properties.

In Ontario about 47% of Ontario teacher disputes were settled at fact-finding and recommendations were accepted in 60% of cases and partly accepted in another 28% (Jackson 1989). This high acceptance rate may be due in part to the high costs of the final step in Ontario—the strike.

There is evidence in support of the fact-finding atrophy hypothesis in New York State (Karper 1994). The previous Table 5 shows a general decline in both the use of the fact-finder report in the settlement of disputes and, more importantly, in the acceptance of reports by the parties. In 1983, fact-finder reports representing 12.7% of all disputes that year were accepted by the parties, but by 1994 acceptance had dropped to only 2.9% of disputes.

Views of the parties. Where the parties to collective bargaining have been asked their views of fact-finding, the results have been at best mixed. School superintendents and teacher association presidents in Kansas, Iowa, and Wisconsin were "universally dissatisfied with their lack of control over the decision-making process" and were opposed to the excessive delays in these dispute processes (Giacobbe 1988:295). Moreover, school superintendents rejected "in principle" both fact-finding and issue arbitration; association presidents, on the other hand, universally accepted third-party procedures (Giacobbe 1988). In Florida, where the fact-finder is called a "special master," hearings were viewed as objective, but the parties disagreed over the weight that should be given to comparability (Helsby, Jennings, Morre, Paulson, and Williamson 1988; Magnuson and Renovitch 1989). Helsby et al. (1988) also found general agreement that the fact-finder reports were not adequately taken into account by the legislative body—the final step in the dispute resolution process. In a survey of Ontario school boards and teacher associations, 46% of the parties believed that the fact-finder's report assisted them in reaching a settlement, but 50% indicated that the report did not cause them to change their position (Downie 1992:237).

Impact on collective bargaining. Fact-finding can have a positive impact on collective bargaining by assisting the parties with intraorganizational problems (Karper 1994:291). For example, the fact-finding process may be used to adjust the expectations of union or management team members. There is evidence of a positive effect in Ohio particularly in difficult economic times as fact-finders act as "scapegoats" for the bad news (Marmo 1995). In general, there is little evidence in support of a "chilling" or half-life effect (see Downie 1992:239).

Impact on conflict. Partridge (1990) finds that state laws with mediation and/or fact-finding as the final stage in the bargaining process had insignificant effects on work stoppages in the U.S. from 1974–80. As discussed previously, moderate strike penalties were more successful in deterring strikes. But as shown in Figure 3, the 1980s saw increases in such alternative conflict expressions as grievance arbitrations and unfair labor practices in some key jurisdictions.

Summary on Fact-Finding

Fact-finding appears to have found a permanent place as a public sector dispute resolution procedure. It seems to work best where it is followed by the threat of a legal sanction (strike or lockout), arbitration, or legislative determination. Thus for such occupations as teachers in New York State, where fact-finding is the final dispute procedure, its utility in resolving disputes would appear to be declining over time. In
spite of its growth in the public sector as a dispute resolution mechanism, there is some evidence that the parties are becoming dissatisfied with its performance. The rather negative endorsements of fact-finding by the parties can be matters of concern for policymakers but should not be surprising given the judgmental nature of the process and the stresses of bargaining in the '90s.

Firm conclusions about its performance are difficult because much of the research on fact-finding lacks methodological rigor in two important areas. First, there is a lack of interjurisdictional comparisons that take into account contextual differences in fact-finding. For example, factors affecting the performance of fact-finding might be classified into two categories: environmental factors over which the participants exercise little or no control (e.g., economic, political, and financial) and internal factors subject to some control (e.g., timing of intervention, voluntary/mandatory nature, choice of procedures, joint administration, and training of neutrals). Isolating the effects of this latter category of internal factors is important for policymakers because they are more likely within the control of the administrative agency. Second, little attention is given to a key policy question concerning fact-finding—namely, the consequences of replacing it with mediation. Mediation is cheaper, faster, and less intrusive than fact-finding; also, mediators may have more experience in dispute resolution in terms of the range of occupations covered and array of techniques available. Therefore, a question that needs to be addressed is, Could mediation more effectively achieve the same or better results than fact-finding?

**Interest Arbitration**

*What Is Arbitration?*

Conventional arbitration (CA), the most common form of interest arbitration, is the final and binding determination by a single arbitrator or tripartite board of arbitration on all outstanding matters in dispute. Arbitration may be voluntary or compulsory and may be available in conventional (CA) or final offer (FOS) forms. The latter constrains an arbitrator to select either the union or management last offer. In the case of tri-offer, the arbitrator may also select the fact-finder's recommendation (described above for Iowa). FOS may be based on the total package, or it may be broken down by each issue in dispute. The package or issues may be divided into economic and noneconomic matters.

**Developments in Arbitration Theory**

The considerable attention given by researchers to the development of theoretical models of interest arbitration may be attributed, in part, to the burgeoning use of alternative dispute resolution (ADR) procedures outside of labor-management relations. As cheaper and faster alternatives to the courts, mediation and arbitration are now well-established mechanisms for disputes in such diverse fields as workers compensation, family law, the courts, tax, commerce, employment, and international relations. For example, one national data bank reports no less than 1,100 ADR programs under state court jurisdiction (Trevelin 1992; Olson 1994). Thus there is wide interest in questions about the appropriate arbitration mechanism—conventional, final offer, or tri-offer. Experience with public sector dispute resolution procedures provides fertile ground for research.

The role of offers and facts at arbitration. Arbitration research has concentrated on the role that offers and the facts of the case play in models of arbitrator behavior—a critical issue if arbitrators split the difference between union and management offers. Ashenfelter and Bloom (1984) were able to make inferences about the weight given to the parties' offers by arbitrators by utilizing a unique property of the New Jersey arbitration system for police (i.e., if the parties cannot agree to CA, they must use FOS). An alternative method was to ask experienced arbitrators to render decisions in 25 scenarios and then construct a simulation that avoids observability and simultaneity problems (Bazerman and Farber 1985). A major weakness of these experimental studies is the artificial creation of offers that are independent of the facts of the case—a property unlikely to hold at arbitration where the offers, for example, may already take into account settlement patterns that are a component of the facts of the case.

The consensus that appears to emerge from both field and experimental studies is that arbitrators give weight to both the facts of the case and the offers. Experimental research would give greater weight to the facts of the case (Bazerman and Farber 1985), but field studies generally give greater weight to the offers (Bloom 1986). The extent of the methodological problems associated with field and experimental studies has been tested (Olson, Dell'Omo, and Jarley 1992). By comparing arbitrator decisions from the field with experiments using the same arbitrators, arbitrator decision models were found to be the same in each, but only where wages were the only issue (i.e., in 85 out of 208 arbitrations).
A different decision process was found in the more complex multi-issue field cases vis-à-vis the single-issue experimental ones (Olson et al. 1992).

**Impact of arbitration on negotiated settlements.** An early model of arbitration theorizes that differences between negotiated and arbitrated outcomes arise because of uncertainty about the arbitrator’s behavior and differences in the relative bargaining power and risk preferences of the parties (Farber and Katz 1979). An important consequence of this model is that negotiated settlements are a function of the arbitration context and not vice versa (see Farber 1980; Ashenfelter and Bloom 1984). However, recent empirical work casts some doubt on this property. A study of interest arbitration for teachers in Wisconsin found that arbitrators place considerable weight on recent comparable settlements in their awards (Olson and Jarley 1991). A similar finding was obtained under FOS in major league baseball where significant differences between negotiated settlements and arbitration outcomes were discovered (Burgess and Marburger 1993). Arbitration models are also limited by their uniform focus on wages, and they may be inappropriate for package FOS arbitration where the arbitrator’s preferred position on a given issue may not match his/her result (Olson 1992). They may also understate nonwage issues since arbitrators often give equal weight to wage and nonwage issues.

**Evaluating Interest Arbitration**

**Arbitration impact on dispute rates.** A central issue about arbitration as a strike substitute is its ability to produce freely negotiated settlements. This may occur because of the lack of bargaining pressure (without the potential of a strike), the fear that a concession made in negotiations would negatively affect the arbitration outcome (e.g., if an arbitrator splits the difference between the parties last offers), or simply because the parties prefer to avoid tough compromises. If conventional arbitration chills negotiations, because arbitrators tend to split the difference between the parties’ offers at arbitration, then FOS ought to avoid this effect by simply preventing this “negative” arbitrator behavior. But forcing an arbitrator to choose between what may be unreasonable positions could create a win/lose outcome adversely affecting the loser’s commitment to the award settlement. A tri-offer system could overcome this criticism by permitting an arbitrator to select the fact-finder’s recommendation, thus avoiding the negative consequences of an extreme outcome.

In theory, therefore, FOS might be expected to induce more settlements than conventional arbitration (CA). However, to the extent that the FOS constraint on arbitrator behavior is relaxed, issue-by-issue FOS and tri-offer FOS may also be expected to have a chilling effect on bargaining.

An experimental study that controls for arbitrator “fair” awards and objective uncertainty faced by arbitrators compared the effect on dispute rates of three alternative arbitration systems—CA, FOS, and tri-offer (Ashenfelter, Currie, Farber, and Spiegel 1992). In general, dispute rates were inversely related to both the monetary and uncertainty costs of disputes, indicating that bargainers are influenced by costs and exhibit risk aversive behavior. As expected, this research shows a significantly lower settlement rate (i.e., a chilling effect) for all three arbitration procedures when compared to the simulated right-to-strike bargaining group. Also, following from our discussion above, there were no significant differences between CA and tri-offer settlement rates. The most surprising result was a significantly lower settlement rate for FOS. The suggested reason for this finding was the ability of the parties under FOS to lower their risk by positioning their final offers—a feature not available under CA.

The tri-offer system may be more difficult to simulate than Ashenfelter et al. (1992) indicate. Because some settlements under tri-offer are based on the acquired knowledge that fact-finder recommendations will be “rubber stamped” by the tri-offer arbitrator, it may be difficult to distinguish between freely negotiated settlements and those as a result of this coercive aspect of the tri-offer system. This may, in effect, be a hidden chilling effect.

Table 6 summarizes settlement rates taken from 17 studies of 38 North American jurisdictions covering a wide range of time periods (from two to twenty-three years), occupations, and dispute resolution mechanisms (strike, CA, FOS—by issue and package, and tri-offer). The results of a number of these studies are discussed next.

In a comprehensive study, Lester (1984) compared settlement rates in eight states. Rates ranged from a low of 71% for firefighters and police in Pennsylvania to a high of 94% for the same occupations in Minnesota. Lester identifies five facilitating conditions contributing to voluntary settlements: (1) joint participation in the development and administration of the law; (2) choice of and participation in the procedures; (3) permitting the arbitrator to mediate; (4) a limited right to strike; and (5) the professionalism of the mediators, fact-finders, and arbitrators.
<table>
<thead>
<tr>
<th>Province</th>
<th>Occupation</th>
<th>Study Type</th>
<th>Years of Experience</th>
<th>Settlement Rate (%)</th>
<th>Strike (%)</th>
<th>AVG (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ontario</td>
<td>Fire</td>
<td>POS-P</td>
<td>1978-82</td>
<td>76</td>
<td>69</td>
<td>56</td>
</tr>
<tr>
<td>Ontario</td>
<td>Police</td>
<td>POS-P</td>
<td>1978-80</td>
<td>69</td>
<td>60</td>
<td>54</td>
</tr>
<tr>
<td>Ontario</td>
<td>Municipal</td>
<td>POS-P</td>
<td>1981-83</td>
<td>72</td>
<td>67</td>
<td>56</td>
</tr>
<tr>
<td>Ontario</td>
<td>Hospital</td>
<td>POS-P</td>
<td>1981-83</td>
<td>90</td>
<td>80</td>
<td>60</td>
</tr>
<tr>
<td>Ontario</td>
<td>Construction</td>
<td>POS-P</td>
<td>1981-83</td>
<td>90</td>
<td>80</td>
<td>60</td>
</tr>
<tr>
<td>Ontario</td>
<td>Teacher</td>
<td>POS-P</td>
<td>1981-83</td>
<td>90</td>
<td>80</td>
<td>60</td>
</tr>
<tr>
<td>Ontario</td>
<td>Labour</td>
<td>POS-P</td>
<td>1983-89</td>
<td>90</td>
<td>80</td>
<td>60</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>Fire Police</td>
<td>POS-P</td>
<td>1978-80</td>
<td>71</td>
<td>67</td>
<td>56</td>
</tr>
<tr>
<td>Ontario</td>
<td>Hospital</td>
<td>POS-P</td>
<td>1979-84</td>
<td>63</td>
<td>60</td>
<td>54</td>
</tr>
<tr>
<td>Ontario</td>
<td>Municipal</td>
<td>POS-P</td>
<td>1979-84</td>
<td>63</td>
<td>60</td>
<td>54</td>
</tr>
<tr>
<td>New York</td>
<td>Police</td>
<td>POS-P</td>
<td>1978-83</td>
<td>76</td>
<td>67</td>
<td>56</td>
</tr>
<tr>
<td>New York</td>
<td>Police</td>
<td>POS-P</td>
<td>1978-83</td>
<td>76</td>
<td>67</td>
<td>56</td>
</tr>
<tr>
<td>New York</td>
<td>Police</td>
<td>POS-P</td>
<td>1978-83</td>
<td>76</td>
<td>67</td>
<td>56</td>
</tr>
</tbody>
</table>

TABLE 6 (Continued)
The second decade of interest arbitration for fire and police in Pennsylvania (1978–87) revealed some evidence of a narcotic effect, but evidence of a reduced chilling effect since settlement rates increased from 71% in the first decade to 88% in the second (Loewenberg and Kleintop 1992).

Another study compared settlement rates for four sectors using interest arbitration (health, crown, firefighters, and police) and two with the right to strike (teachers and all other public and private sectors) in Ontario from 1984 to 1993 (Mazerolle, Hebden, and Hyatt 1995). The substantially higher impasse rates under Ontario’s interest arbitration laws provides stark evidence of the chilling effect of arbitration and the failure of the parties to craft their own solutions to mutual problems. Incredibly, the health care sector (hospitals and nursing homes) had a settlement rate of only 58% indicating a reliance on interest arbitration in 42% of all negotiations over the ten-year period. In contrast, the teachers and school boards who have the right to strike and lockout respectively, were able to freely negotiate settlements 97.4% of the time. It is worth pointing out that not all jurisdictions have experienced low settlement rates under arbitration. In New York, for example, fire and police arbitrations have remained relatively constant from 3.5% of all disputes in 1983 to 3.8% in 1994 (Table 5).

As a rough measure, Table 7 compares average settlement rates of those summarized in Table 6 for the right-to-strike category and various arbitration types. As expected, the settlement rates are highest under the right to strike and lowest under conventional arbitration (i.e., between 94.7% and 75.7%). The range of rates of the mechanisms in between these extremes (final offer by package and by issue, a category combining years under both FOS and conventional, and tri-offer) are not in the expected order. For example, it was anticipated that it would be more difficult for arbitrators to use a split-the-difference approach under final offer by package than under final offer by issue. Nonetheless, a number of tentative conclusions are possible. First, settlement rates are significantly lower under conventional arbitration indicating a chilling effect on negotiations. Second, this chilling effect appears to be somewhat mitigated by various forms of final offer selection arbitration. Third, the size of this moderating effect on the settlement rate does not appear to be significantly affected by the choice of alternative nonconventional procedure.

Arbitration impact on outcomes. It has been hypothesized that interest arbitration will have a leveling effect on wages because over time the comparability criterion will dominate local factors. This proposed effect is expected to assist small units with little bargaining power and is independent of arbitration usage. Some support was found for a reduced salary dispersion for Wisconsin teachers within their own conference of school districts (Jarley 1992). However, on a statewide basis, observed salary dispersion increased after the implementation of interest arbitration. Also, for police officers the research does not support this leveling effect of interest arbitration (Bloom 1981; Feuille, Delaney, and Hendricks 1985).

The evidence of the impact of the availability of arbitration on wages continue to be mixed but generally support a positive but small relationship. Some recent studies illustrate divergent results. Using a unique set of Canadian public sector data from 1964 to 1987, Currie and McConnell (1991:713) find that negotiated wage rates are about 2% higher under interest arbitration than where there is a right to strike. They attribute this difference to the greater weight under arbitration of three factors: (1) wage settlements previously agreed to by bargaining units in the same occupation (i.e., comparability), (2) “catch-up” defined as compensation for prior real wage loss, and (3) less attention to employer ability to pay. On the other hand, Bluestone (1989) finds that interest arbitration had an insignificant effect on higher teacher salaries in Connecticut compared to those in New York, Massachusetts, and New Jersey. The higher teacher salaries in Connecticut were due to additional funding pumped into the system in 1986–87 under the Educational Enhancement Act (Bluestone 1989:16). Another study that compared fact-finding outcomes for teachers in New Jersey with those under compulsory arbitration in Connecticut shows higher salaries and benefits under fact-finding (Ries 1992). While this latter study has several weaknesses, including its failure to control for differences between
unions and managements in New Jersey and Connecticut, it does suggest that previous studies may have failed to adequately take into account the impact of teacher and union political action on the outcomes of collective bargaining (see also O'Brien 1994). Finally, there is some support for better nonwage provisions under arbitration (for example, see Feuille et al. 1985).

Most studies demonstrate that interest arbitration reduces strikes (Olson 1986; Currie and McConnell 1991; Partridge 1992; Rose 1994; Gunderson, Hebden, and Hyatt 1996), although enforcement of strike penalties tends to be more important. While interest arbitration laws may reduce strikes, they may also have the unintended effect of increasing conflict in such other expressions as grievance arbitrations (Hebden 1992; Rose 1994).

Arbitration—Special Topics

Challenges to arbitration. Historically, compulsory binding arbitration has been contested as an illegal delegation of authority. For example, the courts in at least four states (Colorado, Maryland, South Dakota, and Utah) have found it either unconstitutional or illegal (Kearney 1992:340; DiLauro 1989). While several other states have upheld arbitration laws, these laws continue to be challenged, particularly as fiscal pressures intensified through the 1990s. In Iowa, for example, the state government refused to implement an arbitrator’s award on the ground that arbitration awards were subordinate to the appropriation process. The state supreme court ruled in March of 1992 that the state was bound by the terms of the arbitration award (GERR 1992). Wisconsin may be moving toward repealing its interest arbitration law for all occupations except police. Cost-cutting goals are being implemented by means of legislated restrictions on collective bargaining rights including arbitration and/or direct wage freezes.

At the local level, the New Jersey State Appeals Court ruled in 1993 that arbitrators in police and firefighter cases must consider all of the criteria identified in the law and give written reasons for their decisions. The employer representatives alleged that arbitrators had failed to take into account the financial impact on taxpayers and that firefighter and police pay increases in New Jersey exceeded national averages. Arbitration for fire and police came under similar criticism by municipalities in the state of New York in 1995. While the arbitration legislation was renewed for two more years on July 1, 1995, an employer municipal organization actively sought to have it repealed due to a perceived failure by arbitrators to give sufficient weight to taxpayers’ inability to pay and alleged higher-than-average pay awards. Finally, in 1991 the Nebraska Supreme Court found an act providing interest arbitration for all public employees to be unconstitutional because it removes jurisdiction from the courts. Thus in several states, as these examples show, arbitration is once again under critical examination by state legislatures, public employers, and their organizations. In some extreme cases it may be failing the test as a viable dispute resolution technique.

Arbitration criteria. Much of the current wave of criticism of interest arbitration can be attributed to its perceived failure to handle economic issues. The debate would appear to be over the appropriate relative weights to be given to the three major wage determination criteria: comparability, ability to pay, and cost of living (see Samavati, Haber, and Dils 1991; Dils 1994). On the pivotal criterion of ability to pay, there are critical differences in approach between public and private sectors (Pfeffenberger, Laudeman, Haber, and Dils 1992:264). For example, a private sector employer claim of inability to pay must be supported by “credible evidence” or it may be judged to be bargaining in bad faith by the National Labor Relations Board. But in the public sector, since there is no precise method of accounting for tax revenues, ability to pay is inevitably a more obscure concept. Some have suggested that there will be more public sector disputes over ability to pay (in negotiations and at arbitration) because unions are given accounting data showing the results of budget allocations but not how or why those decisions were made (Pfeffenberger et al. 1992).

For a sample of 22 experienced arbitrators in Wisconsin, an experimental study revealed that much greater emphasis was placed on comparability (75%) than ability to pay (18%) (Dell’Omo 1989). Part of the difficulty faced by public employers in making the case for ability to pay was the failure by arbitrators to articulate standards to judge the issue. Arbitrators’ reluctance to accept the concept of ability to pay would appear to be rooted in their belief that major changes in the relationship should only be effected by the parties in direct negotiations. Thus comparability (either internal or external) could be used to apply an ability-to-pay argument only if the comparables have freely negotiated restraint settlements.

Summary on Interest Arbitration

Interest arbitration is coming under increasing scrutiny as financial pressures mount on governments at all levels. The criticism is coming
from public employers and governments, in part, because of a perceived failure by arbitrators to adequately take into account employers' "inability" to pay. Evidence from the field provides inconclusive support for the proposition that interest arbitration has a positive impact on wages. There are signs, however, that arbitrators are having difficulty effecting the kind of tough trade-offs necessary in today's harsh political and economic environment. Thus arbitration may be ill-equipped to fashion such major changes to collective bargaining agreements as wage freezes, layoffs, and rollbacks of medical benefits—these fundamental alterations to the collective bargaining relationship are better left to the parties to work out.

The evidence does show that impasse rates are significantly higher under conventional interest arbitration than if a limited right to strike exists. While FOS may moderate the chilling effect, it may have the negative side effect of a loser's lack of commitment to the imposed solution. More research is needed to test this proposition.

There appears to be ample evidence supporting a widely held belief among practitioners that CA arbitrators more or less split the difference between the offers of the parties. To the outside observer this behavior might be attributed to the arbitrators' desire for acceptability. But this view is too cynical; a more generous view would suggest that arbitrators are engaging in more than just a mathematical exercise. In attempting to replicate the free collective bargaining compromise, arbitrators utilize information from both the offers and the facts of each case to form an implicit moral judgment about what is a fair settlement. At the same time, the parties' offers may already take into account their best guess at the arbitrator's notion of a fair settlement (Farber 1981). Viewed in this light, splitting the difference is a deliberate and often complex strategy designed to accommodate the conflicting interests of management and labor.

The real question, however, is whether this strategy is appropriate or even possible in today's restructuring climate. It may be asking too much of arbitrators to fashion compromise solutions, for example, on trade-offs between layoffs and wage rollbacks. It may be more important than ever before that fundamental decisions affecting the bargaining relationship (such as wage freezes, rollbacks, and layoffs) be left to the parties to work out for themselves.

On the positive side, arbitration does reduce strikes (but may increase other expressions of conflict), and it gives finality to a public sector bargaining process that, in the absence of meaningful strike pressure, can drag on endlessly. This latter point is important because several jurisdictions in the U.S. lack finality in the form of either a strike or arbitration. The frustration of the parties engendered by delays in bargaining can increase conflict and cause lasting damage to the relationship of the parties (see Ries 1992).

Conclusion

U.S. public sector bargaining is conducted under a multitude of collective bargaining schemes at the federal, state, and local levels of government. This decentralized patchwork of more than one hundred laws, executive orders, and local ordinances has profound consequences for public sector bargaining. Unlike many of its European counterparts, U.S. national initiatives and policies of public sector restraint and restructuring have lacked coherence in implementation since they must be filtered through a maze of state and local political systems. This fragmentation has had the unintended consequence of creating a durability for public sector unionism and collective bargaining since any threat is necessarily piecemeal. This diversity of laws and policies also posed unique challenges for a study of trends in public sector bargaining. One result was the necessity of a selective approach—developments in some jurisdictions were ignored in favor of more representative changes in key sectors.

The decline of public sector strikes has been accompanied by the widespread emergence of such new issues of concern as wage freezes, layoffs, restructuring, contingent workers, privatization, and employee benefits. As indicated above, it is not surprising that policymakers are reassessing the necessity of the intrusive public sector procedures of fact-finding and arbitration that focus on avoiding the strike outcomes and not the process for dealing with these new issues. It is entirely possible that these dispute resolution procedures will come under even more scrutiny as their costs and benefits are reevaluated.

At the same time, a transition is taking place to new forms of mediation (grievance, unfair labor practice, and preventative) as shifts occur away from strikes to new forms of conflict expression in the public sector. Finally, the extensive experiments with cooperative forms of bargaining may have profound effects on dispute resolution procedures depending on the durability of these new approaches.

There is insufficient evidence to determine whether there has been a permanent transformation of the current adversarial public sector collective bargaining process. It does seem certain, however, that there will continue to be a substantial evolution of dispute resolution techniques
as the nature of conflict evolves in the public sector and as bargaining continues to focus on restructuring issues.

Acknowledgments

The author acknowledges the contribution of the two prior IRRA chapters on public sector dispute resolution by Kochan (1979) and Olson (1988).

Endnotes

1 Interest or “contract” arbitration involves the establishment of agreement provisions by a third party; grievance or “rights” arbitration deals with matters of contract interpretation during the life of the agreement.

2 Unfair labor practices refer to complaints to a labor relations administrative agency (such as the NLRB) either by a union or employer over such matters as bargaining in bad faith or interference and/or coercion in the organizing process. Grievance mediation represents the application of voluntary mediation techniques to grievance disputes as an intermediate step before formal binding arbitration.

3 These decisions are summarized by Cheryl Maranto and John Lund, “Public Sector Labor Law: An Update,” in this volume.

4 The BLS and FMCS series have a correlation coefficient of .83 (p<.001) after 1960.

5 Similar strike patterns have been observed in Canada. A decline in public sector strikes in the early '80s was followed by a leveling off and modest increase in the late '80s and early '90s. Since private sector strikes steadily declined over this period, the public sector increased its share of total days lost due to strikes (Gunderson and Thompson 1995; and Gunderson and Hyatt in this volume).

6 Strike rates were calculated by dividing the number of employees by the estimated number of state unionized public employees. The source for the number of state unionized public sector employees was the AFL-CIO (1993).

7 Partridge (1990) found the percentage of personal income paid to state and local taxes negatively related to public sector strike activity, indicating that the same factors that cause teacher revolts may reduce strikes.

8 This freeze condition of the New York Taylor law is not found in private sector law but has counterparts in several other state public sector bargaining laws.

9 See, for example, Currie and McConnell (1991:693); Gunderson, Hebdon, and Hyatt (1996); Olson (1986:539); Partridge (1992). Alternatively, Partridge (1990) found a limited right to strike was positively related to strike incidence.

10 See Olson (1986). In Pennsylvania multiple or rotating teacher strikes have been restricted by the passage of Bill 88 in 1992 that, among other restrictions, removes the right to strike automatically if the 180-day instructional period is threatened. As a result of Bill 88, teacher strikes have fallen from 36 in 1991–92 to 17 in 1992–93 and 14 in 1993–94 (Stoltenberg 1995).


Federal Mediation and Conciliation Service. 1960–94. All reported strikes.


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