

# Comparative Issues in Public Sector Unionism: The United States and the Philippines

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*In the Philippines' search for a viable model of unionism in the public sector, some lessons from the US experience can be drawn despite the wide disparities in economic, political, social, cultural, and historic conditions prevailing in these two countries. Rapid growth of employment in the public sector, the gradual erosion of the distinction between private and public sector employment, and determining what is an essential service in government and who is the public employer, are vital issues that must be addressed to ensure a lasting industrial peace in the public sector.*

## Introduction

Six years ago, the United States was hit by one of the biggest, perhaps the costliest, work stoppage in recent years: that of the Professional Air Traffic Controllers (PATCO). President Ronald Reagan, representing the US Federal government employer, ultimately terminated the services of the striking controllers and in their stead hired new ones. Among the immediate replacements to the dismissed employees were controllers drawn from the US Armed Forces particularly from the Air Force. In order to meet the exigencies, a controller school was opened in order to train potential candidates for the job.<sup>1</sup>

With the above scenario as a take-off point, this essay proposes to describe and analyze several major issues that pertain to the development and present status of trade unionism among government employees in the United States. It traces the sources of irritation between the actors and explains why Americans generally maintain an ambivalent attitude towards labor disputes in the public sector. Finally, this essay elaborates on the impact of public sector unionism on the formation of consensus in a democratic society, the delivery of vital community services, and its implications for developing societies.

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The first section of this essay traces the extent of American public sector unionism. This is followed by a discussion on the role of government employees as public servants, the growth of employment in the government, the relation of bargaining power to essential services, and an analysis of the question related to who is the employer in the public sector. Then the implication of industrial relations to the formation of societal consensus is briefly discussed. Finally, several suggestions on potential lessons from the US experience are presented.

### History and Extent of Unionization

Public sector unionism in the United States has been the most dynamic sector during the last 25 years. Its dynamism is drawn primarily from several developments — rapid expansion in number, militant posture, and overt manifestation of its organizational thrust in various parts of the country including in states which prohibit the right to strike to its employees.

Over all, public sector unionism in the United States has been estimated to be around 60 percent among federal employees, and 40 percent among employees of state, county, city and other local governments. The major labor organizations are the National Education Association (NEA) with some 2.5 million members, the American Federal, State, County, and Municipal Employees (AFSCME) with a million membership, the American Federation of University Professors (AFUP), and the American Federation of Government Employees (AFGE).<sup>2</sup> My local union — the University of Hawaii Professional Assembly — is affiliated with the NEA and up to two years ago with the AFUP. The Hawaii State Teachers Association is also a NEA affiliate, but the white-collar union, Hawaii Government Employees Association with 17,000 members representing several bargaining units in the state and city-county governments, and the blue-collar group, United Public Workers with about 9,000 members, are affiliated with the AFSCME. The firefighters and police unions in Hawaii are affiliated with the International Association of Firefighters and the Fraternal Organization of Police, respectively.

On account of the federal system, legislations governing employment jurisdiction are based on either the federal sector or the appropriate local government jurisdiction, e.g., state, county, city or township. For example, the air traffic controllers, mentioned at the outset, are covered by the US federal government as are the postal employees and mail carriers. But policemen, firefighters, public school teachers, and state university professors fall within the state and/or county-city jurisdiction and, therefore, governed by separate rules and regulations independent of the US government, following the federal setup. For all intents and purposes, therefore, public sector bargaining in the

United States is highly diversified according to the hierarchy and jurisdiction of the employer.

In view of the variety of jurisdictions ranging from that of a city, e.g., Madison, Wisconsin; county, e.g., Milwaukee, Wisconsin; a state, and finally the federal government, the applicable legislation tend to be somewhat confusing especially for foreign observers. Taken together, however, the labor relations model which prevails in the various layers of the governmental structure is not that highly differentiated. In general, the right of government employees to unionize has been recognized although most states still deny their employees the right to strike. Only eight states, namely, Alaska, Hawaii, Minnesota, Montana, Oregon, Pennsylvania, Vermont, and Wisconsin, in the Union have accorded public sector employees the right to strike; in Michigan illegal strikes are not enjoined.<sup>3</sup> Even in states with the right to strike, a series of steps to resolve the impasse have to be exhausted first before a strike or lockout may be declared. For example, the Hawaii Collective Bargaining Law provides that a total of 80 days — equivalent to the Taft-Hartley cooling-off period in a national emergency dispute — have to elapse from the day of impasse before a work stoppage may take effect. The 80 days are broken down as follows: 15 days for mediation, 10 days for fact-finding, 5 days for the parties to either accept or reject the fact-finding recommendation, and 50 days cooling-off period in case neither of the parties opts for arbitration.<sup>4</sup> Because of the required time for notification of the parties and/or organization of the panels, in actuality more than 80 days would elapse altogether. During the cooling-off period, the parties by mutual agreement may decide to resume negotiations and thus break the impasse or even resort to mediation — voluntary arbitration is not immediately resorted to. For firefighter, and now, policemen, final offer-arbitration is available in lieu of the strike.<sup>5</sup>

### *The Government Employee as Public Servant*

If the prevailing public opinion in the Philippines today is somewhat indifferent with respect to the issue of unionism among civil service employees despite the 1986 Constitution's mandate, it is probably because Filipinos, like their American counterparts, have been generally appreciative of the generally accepted view that public service is a privilege and that the people who take up jobs in government do so because of their commitment towards the greatest good. This view has undoubtedly created the notion that a government employee is a public servant whose exemplary dedication to his fellow citizens must be emulated. As a public servant, a government employee is neither expected to think of his selfish interest, his wages, nor his benefits since he has chosen a calling that only a few dared to go into voluntarily.

In the United States, unionization of public sector employees has been of relatively recent vintage. Its major breakthrough came in 1962 when the late President John F. Kennedy, on advice of Labor Secretary Joseph Goldberg, who earlier served as legal counsel of the AFL-CIO, issued Executive Order 10988 allowing federal sector employees to form and join unions for consultation purposes with respect to their working conditions. Subsequent amendments to the Kennedy executive order including those issued by then President Richard Nixon gradually expanded the role and functions of unions in the federal government towards the principles of "meet and confer" and collective bargaining negotiations on some issues otherwise not disallowed as bargaining items. Under President Jimmy Carter, this issue was pursued further and has, since 1978 been included in the U.S. Civil Service Reform Code, thus institutionalizing the process of collective bargaining in the federal government.<sup>6</sup> The latest debate on this issue is whether or not to allow unionization of military personnel who, like Filipino soldiers, have numerous grievances about employment conditions. Because the post-Vietnam soldiery is voluntary, it has been felt that being in the military is actually no different from other types of employment. Hence, for a while, the AFGE had particularly pursued the unionization of military personnel as an expansion of its representation of civilian employees in the US Armed Forces, but the Secretary of National Defense finally stop the movement by declaring a ban on unionization in the military. Incidentally, in some Western European countries military personnel are allowed to and actually join trade unions.

At the local level, several states had legislations for public sector labor relations even before the 1960s, e.g., Wisconsin. Shortly thereafter, some states followed; today over 50 percent of all the states address the issue of public sector unionization in one form or another.

Legislative support for the increased clamor for recognition of the right of public sector employees to unionize was important in breaking the barrier, i.e., the issue related to the concept of sovereignty of the government. The view that the government is sovereign meant that no employee may challenge its decision, and since unionism is a form of challenge to authority, it was not in earlier times looked at with favor at all. Only the gradual recognition that the unionized groups of employees do not necessarily challenge authority but do aspire for sharing of governance and decisionmaking on certain issues, paved the way for unionization.

### *Rise in Governmental Employment*

An important factor in this development is, of course, the consideration that over the years, there has been a very dramatic rise in the size of

employment in the government sector. The US experience suggests that the public's clamor for needed services — more education, more police and fire protection, more health and recreational services — led to the expansion of employment in these areas particularly at the local government level. At the national level, the ratio of government employees to the population has been relatively stable since the end of World War II, and in certain places like the post office, there has been some decline due to automation.

The loci, therefore, of employment growth in the US public sector were the state and local governments. In any case, the emergent issue is clear: if a large proportion of the labor force — now estimated to be nearly 17 percent or 1 out of 6 — work for the government due to the increased need for their services, why should they be treated as second class citizens without any voice determining their remuneration and working conditions? With this basic question in mind, it became inevitable that the barriers to unionization in the public sector such as the very concept of public service and governmental sovereignty, were eroded rather abruptly.

The erosion of the distinction between public sector commitment and private sector employment was further hastened by the inevitable rise of the government as a major employer. This has been the case in the Philippines and other less developed economies from the beginning thus adding a slightly different dimension on the scenario although ultimately the similarities begin to emerge. As an employer, the government has to compete for suitable employees in the labor market. In order to attract the best available employees, the government as an employer is compelled to offer attractive, if not better, compensation and working conditions. Likewise, it must protect its internal labor market to prevent the migration of qualified and highly motivated employees to the private sector. Experience indicates that this is an extremely difficult area; many managerial personnel in government have been pirated by the private sector leaving good, highly qualified rank and file employees with poor, under-qualified supervisors.

### *Bargaining Power and Essential Services*

A key issue in the unionization of public sector employees relates to the question of essential services. To the public mind as well as to the managers of governmental employees, vital community services ought not to be disrupted at any time. Generally referred to as essential services are those of garbage collection, police and fire protection, and nursing and medical services; and so are meat inspection and baby-sitting functions of public school teachers. Clerical employees are considered expendable and, therefore, do not have bargaining power.

The government employees' bargaining power lies in those places of employment which are deemed essential. As such, unions of government employees are not likely to give up the source of their strength. If any compromise is to be made in this area it would be that, as in Hawaii, a skeleton workforce in these crucial departments has to be maintained in case of work stoppage. In most other state jurisdictions, police officers, firefighters, garbage collectors, and health workers are prohibited from engaging in work stoppages. As a consequence of this restraint, the affected government employees resort to what Manila and Pasig school teachers have done recently: go on mass sick-outs. During the last two rounds of public bargaining in Hawaii, the state of Hawaii Organization of Police Officers engaged the sick-out strategy in lieu of having to wait for the exhaustion of the cooling-off period after an impasse was declared. The strategy worked quite effectively although the police union had to make sure that the removal of the warning slip issued to individual police officers by their supervisors was included in the final bargain.

Because of the public's concern on the disruption of vital services, the right to strike has been generally prohibited in big states like California and New York. In New York, for instance, a government employee who participates in a work stoppage is subject to termination. But as you know if the underground trains do not operate and/or that garbage in the city is not picked up during the summer, it becomes extremely difficult for the government to enforce the no-strike policy. Even in Cincinnati — where the firefighters struck and in Atlanta where the mayor threatened to replace striking garbage collectors — the no strike rule could not be enforced. And how does the employer handle the statewide strike of teachers at the opening of school in September?

President Reagan's success in terminating the services of the airtraffic controllers was primarily attributable to several factors such as: public support for the action of a newly elected president, the federal government's willingness to spend huge sums of money — several times over what would have been the final settlement with PATCO — for training of new airtraffic officers, and the miscalculation of the union about its bargaining leverage. Because the total number of the PATCO people is very meager in comparison with that of the mail carriers and postal employees (12,000:500,000), Reagan was able to get away with it.<sup>8</sup> On the other hand, a brewing dispute with the postal unions was settled amicably. Unfortunately, while the airtraffic controllers were replaced and their union busted, the replacements, as of June 1987, formed another union — the National Air Traffic Controllers Association. The new union was organized on the basis of a 2:1 margin vote.<sup>9</sup> Apparently, while Reagan succeeded in eliminating the PATCO in 1981, he failed to correct

a major source of irritation on the job, viz., overworked schedules, ancient equipment, poor management, and job stress.

### *Who is the Employer in the Public Sector?*

Finally, the question of who is the employer in public sector labor relations is an important issue to address. Unlike in the private sector, the employer in government is extremely difficult to pinpoint unless one is in a situation of martial law where the dictator acts as the executive, the legislative, and judicial official, all rolled into one. In a democratic system of government that is founded on the checks and balances principle and on the consideration that the governors derive their power from the governed, the intricacy of determining who wields the ultimate say in the wage bargain is evident.

The conflict in this issue is presented by differences in viewpoints between politicians, on the one hand, and fiscal officers, on the other. Likewise, the competition between the executive and legislative branches of government affects the decision making system hopefully in the direction of positive settlement. However, to the extent that legislative branches do not normally find ease in delegating their authority to appropriate funds, the public sector management is faced with the problem of how far it could commit itself in collective bargaining negotiations. Ultimately, the members of Congress would have to face the electorates as taxpayers whose unwillingness to sustain political decisions might be reflected in the polls. Furthermore, since union members are also taxpayers, they have to place themselves in two different pairs of shoes!

This issue has already emerged in the Philippines in the current discussions about labor's demand for a ₱10-across-the-board wage increase. While President Cory Aquino has recommended ₱8/₱6 adjustment to the minimum wage rate, some members of the Congress passed a higher minimum wage adjustment without taking into consideration that they are playing with the funds of private business. If there is consensus on a wage bargain such as the recent adjustment in the pay level of Philippine military personnel, there would be no problem. But the military pay question is perhaps an exception in view of the prevailing national problem. Thus far, Filipino taxpayers today have not reacted overtly to this legislation.

### **Impact on Consensus-Making**

Industrial relations as an art of negotiations and compromise is essentially a manifestation of consensus-making. In the process, various forms

and degrees of disagreements occur. Some leading towards strike and/or lockout. Nevertheless, the proportion of collective bargaining negotiations that lead to consensus far outnumbers those that produce confrontation.

The US public sector is acknowledged to have a higher ratio of labor disputes than that of its counterparts in the private sector. The reasons for this may be found in the relative lack of experience of many actors in the public sector particularly in management; the conflict between fiscal officers who tend to be very conservative and the elected officials of the various jurisdiction whose political needs lead them to overestimate the employer's financial capacity; the overlap between the role of government as employer and its role as adjudicator of labor disputes; and finally, the inevitable politicalization of the wage bargain. For as long as demand for government services is inelastic, labor tends to be aggressive. On the other hand, management tends to shrug its shoulders cashing in on the savings to be generated in case of work stoppage. As long as taxes are collected in advance and are not refunded despite the inability of government to deliver services, some fiscal officers could not care less.

The political aspect, however, of public sector labor relations can fuel the eventual getting together of the parties. Hence, although consensus proves elusive sometimes, the mechanisms of a democratic society and the vigilance and militancy of a public, as consumers of government services, work together to strengthen dialogue and finally compromise. In the end, society benefits greatly.

### Lessons From the US Experience

If the experience of the United States provides any lesson for any country at the throes of developing a viable policy in public sector labor relations, it may be derived from several considerations. These are as follows:

First, less developed countries like the Philippines may have to examine the parameters of labor disputes — their sources, potential solutions, and mechanisms for conflict resolution. The rationale for this lies in the mounting evidence that tends to negate the value of prohibiting strikes for government employees. The data clearly indicate that strike prohibition does not provide any viable assurance that work stoppages by public employees will not occur. The US experience indicates that while strikes in the private sector have been consistently declining, strikes in the public sector have been increasing despite existing prohibitions in most jurisdictions.

Second, a redefinition of the role of government employees is in order. While it is not advocated that the original concept of "public servant working

for the public good" be revived, it cannot be denied that the work attitudes of Filipino government employees require substantial change in the direction of enhancing the delivery of social services to the clientele. Unless some positive indicators are seen with respect to increased productivity — however measured — it would be extremely difficult to persuade the taxpayers that even unionized public sector employees deserve increase in pay and benefits. Corollary to this is the thinking that pay at any level is a measure of service contribution and that no employer, including the government, in his right mind would pay an employee more than what he contributes!

Finally, because ultimately the government budget is a public burden to which public sector employees contribute, moderation in wage-benefit package proposals will contribute towards stability of the government and the enhancement of the much-desired industrial peace. In a sense, public sector employees are co-employers and, therefore, not immuned from feeling the pinch of any tax increase.

Is anything from the above issues transferable to the Philippines as she gropes for a viable model of unionism in the public sector? To answer this question, one must not ignore the difficulties related to the transferability of social systems given the wide inter-country differences in history, economic growth, and political stability. The economic framework and political democracy model provided by the United States to the Philippines serve as a fertile ground for the transplantation of the American system of public sector trade unionism. However, to the extent that the public sector employment in the Philippines is made up of two distinct categories, i.e., corporate agencies and civil service, the American experience differs widely and therefore inappropriate as model because it is concentrated in civil service related functions and the public school system. Even in the public school system, the US model is quite different since, unlike the Philippines, the US federal government is not involved in the school system at all. The states, cities and quite often, school districts manage the school program and therefore serves as the employer of militant teachers.

Notwithstanding these structural differences, the issues involved in public sector labor relations are not that different. The appropriate governmental agencies in both the Philippines and the United States still need to address the issues that relate to employee militancy, fiscal problems, wage comparability between public and private sector employment, and the essentiality of certain services. Thus, potential lessons from the US experience are not unduly minimized.

### Conclusion

The US experience demonstrated that several key factors influenced the rise of trade unionism in the government. Among these are the rapid growth of employment in the public sector and the gradual erosion of the distinction between private and public employment. The perplexity of what is an essential service in the government and who the public employer is confounds the search for industrial peace in the public sector. It has also been shown that although the issue of the right to strike is a major concern for policymakers, the evidence suggests that the presence or absence of any restraint does not affect the occurrence of work stoppages. Certainly, Third World countries like the Philippines may be able to learn some lessons from this experience.

### Endnotes

<sup>1</sup>Herbert R. Northrup, "The Rise and Demise of PATCO," *Industrial and Labor Relations Review*, Vol. 37, No. 2 (January 1984), pp. 167-184; Ray Marshall, Alan G. King & Vernon M. Briggs, Jr., *Labor Economics: Wages, Employment, Trade Unionism, and Public Policy* (Homewood, Illinois, 1984), p. 125.

<sup>2</sup>John F. Burton, Jr. "The Extent of Collective Bargaining in the Public Sector," in *Public Sector Bargaining* ed. by B. Aaron, J. R. Grodin & J. L. Stern, IRRA Series (Washington, D.C.: The Bureau of National Affairs, 1979), pp. 1-43; and James L. Stern, "Unionism in the Public Sector," in *ibid.*, pp. 44-79.

<sup>3</sup>Thomas A. Kochan, "Dynamics of Dispute Resolution," in *ibid.*, pp. 154-155.

<sup>4</sup>Section 89-11 (a) & (b) (1) to (3), Collective Bargaining in Public Employment, Chapter 89, Hawaii Revised Statutes.

<sup>5</sup>Section 89-11 (c), *ibid.*

<sup>6</sup>Marshall *et. al.*, *op. cit.*, pp. 124-125.

<sup>7</sup>*Ibid.*, p. 124.

<sup>8</sup>*Ibid.*, p. 125.

<sup>9</sup>Newsletter, Industrial Relations Center, University of Hawaii at Manoa, July-August 1987, p. 2441; *Honolulu Star Bulletin*, June 11, 1987, pp. A1 & A6.