When Your Boss is the State: The Paradox of Public Sector Labour Relations

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What makes public sector unions different from their private sector counterparts? Of course, for public and private sector workers, the issues negotiated by their unions through collective bargaining are not fundamentally different. Bargaining in both sectors tends to be concerned with the standard issues of wages, benefits, working time, the conditions of employment, health and safety, and job security (Gunderson, Ponak and Taras 2005, 424). Still, this glosses over one rather commanding difference. This is the dual role of the state as employer and as sovereign legislator. This attribute has shaped the contours of labour relations since the very origins of unionization in the public sector. When your boss is the state, the issues and concerns of interest to all workers, both public and private, while alike substantively, exist within a very different context of power relations. As a purchaser of labour power, the state shares with the private capitalist similar interests in controlling the organization and cost of work, but unlike the capitalist owner, the state possesses the authority to write, implement and enforce laws to suit its objectives as employer. In this respect, state power reflects and is related to capital (Camfield 2005, 61).

It is this political dimension of public sector labour relations which is so distinctive. Not that primarily private sector unions/workers and their employers are uninterested in the politics of exploitation but rather, in the case of the public sector, the political aspect of the relationship is direct and linear as opposed to abstract and mediated. Politics and the specific balance of class power is inscribed on the history of public sector unionism. This is explicitly observed from the uncontested emergence of public sector unionization and through 35 years of neoliberal restructuring characterized by increasing degrees of state intervention. State coercion through various legislative assaults, rather than being the exception became the new normal (Panitch and
Swartz 2003). And, for public sector unions, their demands and purposes are framed as serving “public needs” rather than as sectional claims (Johnston 1994, 12).

The “institution-dissolving dynamics of neoliberalism” (Upchurch, Taylor, and Mathers 2009, 15), a central feature shaping the public sector, produced several paradoxes and contradictions which rebalance power relations decidedly in favour of the state and capital. The neoliberal state centralizes political power at the ‘centre’ of government and draws on the executive authority located there to erode the capacities of unions (and the working class generally) to bargain effectively. At the same time, many public sector unions do not negotiate with government directly but rather with para-public organizations. In such circumstances, the state can evade accountability for disputes and deflect accountability to the devolved employer (board of education, hospital board, agency). In addition, governments claim the role of defending public services while simultaneously implementing policies to transform those very services. Increasingly, collective bargaining in the public sector is only free in the formal sense. Ultimately, if necessary, the state will determine the substance of the employment contract by legislative fiat. For public sector unions, the challenge is that while their members deliver popular public services, they, as public sector union members, enjoy rather less popular support. And, while the unions possess sizable memberships, in most cases, there exists little mobilization capacity. The result is that militancy, when it emerges, is immediately limited and invariably defensive. The imbalance in material and ideological capability nearly always ensures that the subsequent struggles with the state tend to be rather one-sided.

**Origins of Canadian Public Sector Unions**

Public sector unions originate in post First World War employee associations. These associations provided a consultative role confined to raising issues relating to wages and working conditions
for the employers’ consideration (Rose 2007, 184). Workers had voice but no mechanism to demand change. Organizationally and politically, the associations were limited in rejecting conflict, lacking formal membership, allowing managers to associate, and avoiding any linkages with the larger trade union movement (Peirce and Bentham 2007, 209). At the conclusion of the Second World War, provincial government employees in every province were represented by such associations (Fryer 1995, 347). Labour relations legislation in every jurisdiction, with the exception of CCF Saskatchewan, excluded public sector workers. Governments contended that granting the trade union freedoms won by private sector unions to public sector workers would result in the disruption of essential public services and undermine public security. For reasons of state sovereignty, governments rejected public sector collective bargaining as an intrusion on their powers. The net effect was to freeze public sector labour relations into the structures and practices which had emerged in 1918 (Peirce and Bentham 2007, 209-10). The adoption of PC 1003 legal framework in 1944 established the bargaining framework for the private sector but public sector workers would wait another 23 years to obtain comparable rights.

**PC 1003 Comes to the Public Sector**

The ‘Golden Era’ of public sector labour relations commenced with the passage of the *Public Service Staff Relations Act* (PSSRA) by the Federal government in 1967. This legislation introduced bargaining rights to federal public servants and served as a breakthrough point for public sector collective bargaining more broadly. Indeed all the provinces would follow and extend bargaining rights, including the right to strike, to not just their direct employees but also workers in the broader public sector such as teachers and health care workers including nurses. As a result, and in very rapid progression, public sector unionization went from virtually nothing to encompassing nearly all public employees across Canada by 1975 (Ponak and Thompson...
Public sector union membership grew from 183,000 in 1961 to 1.5 million twenty years later. Within a very compressed time period, public sector unionists came to compose more than 43 percent of total Canadian union members (Rose 1984; Ponak 1982, 343). However, this rapid movement to regularize collective bargaining in the public sector was not the result of an enlightened management. Rather, as is always the case, a struggle by public sector workers forced the political elite to reconsider and reform.

In 1963, the minority Liberal government struck a commission to recommend a new public service labour relations regime. The commission, in 1965, submitted that a “complete system of collective bargaining” covering the federal workforce be adopted. Disputes would go to binding arbitration as there would be no right to strike (Arthurs 1968-69, 977). However, a 17 day illegal strike by postal workers erupted before the report could be acted upon. The strike won public sympathy and a government appointed fact-finding team concluded the strikers had just cause and, in response, the government acceded to demands to extend full union rights. And the minority government’s dependence on NDP support in parliament ensured a welcome reception (Peirce and Bentham 2007, 211-12).

Rapidly, employee associations transformed from entities with little standing as workers’ organizations into full fledged unions. This swift transition was further abetted by the absence of any real employer opposition. Given that direction came from the elected political leadership public sector managers were not about to engage in oppositional tactics. And the expansion of public services through the 1960s drove public employment growth and, consequently, the pool of union members (Rose 2007, 184-5).
Public Sector Labour Relations in the Neoliberal Era

An historical turning point arrived in 1975 as the post-war political consensus wobbled in the face of stagflation. This macro-crisis created the terrain, both political and economic, for neoliberalism to become the prevailing orthodoxy. The need for public sector “reform” or “modernization” has since been linked to “building states better suited to remaking societies” in an era of economic globalization and lean production (Camfield 2007, 288). For public sector unions the central characteristic of this has been the willingness of the state to employ coercive means restricting workers’ ability to engage in bargaining (Panitch and Swartz 2003). For trade unions generally, neoliberal policies have diminished “their capacities … to organize and represent the interests of workers” (Albo and Crow 2005, 12). And, given the overriding capacities of the neoliberal state to re-engineer the production and delivery of public services and re-write, virtually at will, agreements with public sector unions, this is particularly pertinent.

Public sector labour relations in this era is periodized into five stages: 1) 1975 to early 1980s - Wage controls; 2) 1980s – wage controls and public expenditure restraint; 3) 1990s – retrenchment and restructuring; 4) 2000 to 2009 – consolidation and containment (Rose 2004 and 2007); and since 2010, 5) exit strategies from the Great Financial Crisis (Evans and Albo 2011). Each stage is continuous and is marked my an increasing willingness on the part of the state to intervene in the bargaining process.

The first stage, announced on October 13, 1975, proclaimed a three year program of wage and price controls, the Anti-Inflation Program (AIP). Most of the provinces soon joined. Wage increases were capped at 8, 6 and 4 percent in each of the three years (Sargent 2005, 15). Public sector unions responded with unprecedented militancy. Strike action increased significantly reaching nearly 29 percent of all stoppages for the period 1977-81. This contrasts
with the 17 percent rate in 1967-71, and made Canada a world leader workplace conflict (Mikkelsen 1998, 506). The era of company unionism in the public sector was most definitively over.

The second, covering the 1980s, was in its early years, caught in deep recession, the worst since the 1930s. Governments responded with wage controls but now these were firmly aimed at the public sector. The federal government led in 1982 with the imposition of the *Public Sector Compensation Restraint Act* (PSCRA) or “6 and 5” program. The PSCRA extended the terms of existing collective agreements for two years; capped wage increases to 6 and 5 percent in each of the two years; prohibited strikes and access to arbitration; precluded negotiation of even non-monetary issues; and allowed the government to roll back settlements exceeding the 6 and 5 cap (Rose 2004, 237). Six provinces adopted controls modeled on the federal program while the remaining provinces adopted some form of wage restraint (Peirce and Joy 2007, 213). Several responded more aggressively. In Quebec, public sector pay was rolled back by 20 percent and in British Columbia a wage freeze was imposed and government employment was to shrink by 25 percent (Peirce and Bentham 2007, 214).

Through the 1990s, fiscal policy continued to focus on restraint. The objective of this third phase was to retrench the employer victories of the previous decade. The overarching focus turned to eliminating deficits and reversing the growth in debt by controlling the expenditures. While compensation would continue to be restrained, other strategies would be rolled out including shrinking the size of the public sector, restructuring the production and delivery of public services and redefining the role of government (Warrian 1996; Shields and Evans 1998). With compensation ranging from 65 to 85 percent of total public sector costs (Hebdon and Warrian 1999, 198), restraint through the 1990s tended to be more draconian than previously.
The strategies for doing so were tested given the experience accumulated in the 1980s, however, “unilateral legislative action became the method of choice” (Rose 2004, 274-5).

Provincial deficits more than doubled from 1.4 percent to 3.3 percent of GDP between 1991 and 1993. The recession and decisions by the federal government to reduce or cap transfer payments for social programs effectively downloaded costs onto the provinces (Rose 2007, 186). Of course, growing annual deficits fed debt expansion. While debt levels for individual provinces varied, between 1988 and 1996 aggregate provincial debt grew from 24 percent to 37 percent of GDP (Swimmer 1996, 3).

The political focus switched to containing and eliminating deficit and debt contributed to and reflected an ideological shift created space for serious redefinition of public services delivery with ample opportunity for privatization, public private partnerships, and contracting out (Haiven, Le Queux, Levesque, and Murray 2005, 24-5). The high union density in the Canadian public sector, ranging from a low of 69.5 percent in Ontario to a high of 81.4 percent in Quebec (Labour Force Survey), present a problem for neoliberal restructuring in that unions will resist to the extent possible. Nonetheless, the post-war ‘balance’ of political and economic power had profoundly shifted.

In Canada, one perspective discerned three approaches to public sector wage restraint through the 1990s: 1) legislated controls; 2) hard bargaining; and 3) social contract negotiations (Hebdon and Warrian 1999, 196; Fryer 1995). However, a review of provincial government interventions through the decade, including the Ontario NDPs failed social contract negotiations, suggests that
legislative intervention had become a common default to set public sector collective bargaining outcomes.

Insert Graph 1 here Legislative Interventions

Unilateral government intervention meant that free collective bargaining in the public sector was the exception. In 1991, the Newfoundland government imposed a one year wage freeze and then extended that freeze for an additional 3 years. Nova Scotia adopted similar measures. The PEI government rolled back public sector compensation by 8.5 percent. In Manitoba, wages were frozen for 1 year in 1991. And this was followed in 1993 by legislation that required public sector workers to take 10 unpaid days ‘lay-off’ days in each of the two additional years. In Saskatchewan a five year agreement was reached after a series of rotating strikes by public service unions. Modest wage adjustments were followed by the closure of rural hospitals and back to work legislation for health care workers. Alberta reduced its public expenditures by 20 percent over 1994-1997. Provincial government employees took a 5 percent pay cut through a combination of unpaid days and a wage freeze (Peirce and Bentham 2007, 216-19). Only British Columbia’s NDP government broke the pattern. A ‘social accord’ with health care sector workers was agreed to which avoided job loss by instituting workforce reductions through attrition, early retirement and reductions in working time. The accord further provided a 1.5 percent wage hike, enhanced job security by restricting contracting out, and created space for public sector unions to participate in decision-making affecting work organization. Government public servants also negotiated an accord which did not provide for a wage increase but instead gave unions a voice in redesigning service delivery (Fryer 1995, 361-363).
The case of Ontario in the 1990s provides a study in the extent to which macro-economic, fiscal, and ideological convergence fundamentally reshaped the terrain of political debate and policy. In that decade, social democrats were succeeded by hard Right explicitly neoliberal-populists in government, and in both cases public sector workers and public services were framed, in political terms, as the problem. It is entirely justifiable to situate the NDPs Social Contract and the Conservative’s Common Sense Revolution (and the more contemporary Liberal turn to defending public services by suspending collective bargaining indefinitely) as a coherent and continuous thread of neoliberal restructuring. All express common themes of undermining parliamentary process, suspending free collective bargaining, and public services ‘reform’.

Ontario’s 1993 budget stated a negotiated ‘Social Contract’ would “achieve benefits for all Ontarians by initiating long-term reforms that will modernize public services and put them on a more secure financial footing” (Ontario Budget 1993, 12). The savings achieved would contribute to sustaining public services “while making them affordable” (13). The alternative would be the loss of 20,000 to 40,000 public sector jobs. In other words, the new bargain within the public sector was some form of job protection but the price would be an erosion in the quality of those jobs. The New Right argument that the state sector had become too large and expensive was embraced as government negotiators argued compensation consumed too large a proportion of public revenue (Government of Ontario, April 5, 1993, 9). Throughout the 1980s, it was stated, previous governments had created too many new programs without reducing others leaving Ontario’s public services in a “fiscally sustainable” condition (9).
Ultimately a negotiated “social contract” proved elusive and legislation – the Social Contract Act – suspended bargaining for three years and imposed a 5 percent pay cut (Sack, Goldblatt, Mitchell 1993, 3-4). Consequently, and ironically, it was with the social democrats in government that Ontario’s public expenditures shrunk for the first time since 1942 (Ontario Budget 1994, 69).

The subsequent Harris Conservative government marked the denouement of Ontario’s post-war politics of pragmatic centristm. The Common Sense Revolution presented a sweeping agenda to constrain the role of the provincial state. This included an unprecedented attack on attack on Ontario’s public sector through a 30 per cent cut in the tax rate; a 20 per cent reduction in non-priority expenditures; a massive deregulation agenda; reduction in the size of the Ontario Public Service; and a statutory balanced budget requirement. In sum, it was an effort to shift the balance of political power in Ontario towards business by suppressing taxes, wages and the capacity of unions to bargain (Walkom 1995, A19). An exemplary expression of the authoritarian tendency in this government was The Savings and Restructuring Act which amended 43 laws and shifted power away from the legislature and centralized it in cabinet (Crone 1995).

The late 1990s saw a return to ‘free’ negotiations. Unions entered bargaining with an expectation of catching up on the previous decade’s losses. Governments had different objectives. For government, the objective was to consolidate prior victories from which to continue restructuring. Defining characteristics of this stage were “the continued use of hard bargaining and reliance on legislation to restrict collective bargaining rights, preserve gains from the retrenchment years, and…secure additional gains” (Rose 2004, 277). Despite a spike in strike action, public sector unions were unable to make significant improvements (Rose 2007, 187). If
governments are unwilling to consider growing the revenue stream, then compensation restraint must be approached as a permanent feature. In the first decade of the 21st century average public sector wage increases in all Canadian jurisdictions were 2.93 percent. This exceeds the average rate of consumer inflation for the same period of 2.1 percent (Bank of Canada). But that hardly compensates for the previous decades meager average increase of 1.75 percent (See Table 2 below).

Table 2 here Wage Growth

That is well below that decade’s average inflation rate of 2.2 percent (Fortin 2001, 114). Of course, the national average masks the unevenness in the provincial scene where deeper erosion in purchasing power was experienced by public sector workers in the two largest, Ontario (1.60%) and Quebec (1.61%) (See Table 2 above). And once inflation is taken into consideration, the actual increases were less than one percent. And through the first decade of the Millenium, the real increase was 1.5 percent. Workers in eight provinces finished the decade below even this (See Table 3 below).

Table 3 ‘Real’ Wage Growth here

During the 1990s public sector workers faced serious economic and political challenges (Mikkelsen 1998, 531). The data presented in Graph 3 below illustrates that in the early 1990s public sector wages seriously lagged those in the private sector. And later in the 2000s, public sector wages would briefly surpass those in the private sector. However, it appears that had more
to do with imploding private sector compensation rather than exceptionally generous awards in the public sector.

Graph 3 here Comparing Public/Private Wage Growth

In addition to stagnant incomes, public sector workers have been subjected to intensification of work as a result of downsizing. As evidence, between 1991 and 2011, public sector employment, as a percentage of total employment, shrank by nearly 12 percent.

Insert Table 2 here

Consequently, militancy increased in the early part of the decade as the escalating trend in strike action indicates:

Graph 4 Work Stoppages here

The Quebec government dealt with its public sector workers most severely with legislation that imposed a two-year wage freeze and restricted wage increases thereafter to 2 per cent. Moreover, the bill introduced an anti-strike provision ensuring there would be no union resistance and backed this up with a $500 fine for any worker defying the legislation in addition to a penalty
for striking of two days pay for every day on strike. The combined effect of five years of frozen wages followed by increases below the rate of inflation resulted in a decline in real wages of 4 per cent (Mandel 2010).

The sustained fiscal restraint reflected a fundamental shift in how government would pursue its relationship with its workers. The primary objective was with maintaining fiscal stability. This was expressed in efforts to create mechanisms with which to exert greater ‘system’ control over collective bargaining. A tendency in neoliberal public administration to centralize political control in the apex of the state is discernible throughout the period. Second, a return to the status quo ante of short term wage restraint followed by catch-up bargaining was explicitly rejected. Restraint was to be a permanent feature of 21st century public management. And third, for governments, dealing sternly with unions was often good for the polling numbers. And so, for the government-employer, reforming collective bargaining was essential to sustaining an environment where the cost of providing reasonable public services would not require higher taxes. The new normal, the foundations of which had been built over the previous 35 years of neoliberal praxis, would be sustained by one means or another.

The fourth phase began with the 2010 budget cycle. The fiscal and economic context has its origins in the US mortgage market crisis of 2007 which by autumn 2008 descended into a general crisis of the global financial system. By 2009, the crisis was reaching deep into the ‘real’ economy. The ensuing massive ‘rescue strategies’ prevented the collapse of the economic system. However, political elites were floating ‘exit strategies’ even as expansionary measures were being announced. As the crisis unfolded through 2010, a new phase of political contestation emerged over which social groups would pay the price for the crisis. In early 2010, an editorial in The Economist observed that industrial relations, and particularly those of the public sector,
were back at the centre of debate. And unlike previous episodes, this one was concerned with the ‘privilege’ of public sector workers – specifically their superior wages, job security and pensions (The Economist 6 January 2010).

In Canada’s case, this began with the 2010 federal budget. That budget presented a plan for ‘exit’ from deficit financing and a return to balanced budget orthodoxy. For Canada’s provinces the exit path was and is much more uneven. In fiscal year 2009, the ten provinces collectively ran the largest provincial deficit in history at $48.2 billion. This equals 3.2 per cent of provincial GDP (Conference Board of Canada 2010). For some of the provinces, especially Ontario and Quebec, exiting deficit this time would again require reconsideration of how public services are delivered but perhaps in more radical terms.

Provincial exit strategies differed but held in common that the cost of the crisis would be borne by workers via tax shifting, eroding public services and regressive user fees. For example, various new and higher consumption taxes have been introduced in Nova Scotia, Quebec, Manitoba and Saskatchewan. Quebec has further added new user fees and introduced a health ‘premium’. All provinces have presented budgets seeking to keep program expenditure growth at or below 2 per cent per year; cut or freeze operational budgets and constrain public sector compensation. Only Nova Scotia and Ontario, have introduced a tax on high income earners and only Manitoba has indefinitely postponed further corporate tax rate cuts (TD Economics 3 August 2010, 7). The most draconian budget of all the 2010 budgets was Quebec’s. The more regressive measures included user-fees, higher electricity charges, and a 2 per cent increase in the sales tax. For those working for the province directly, a four year pay freeze was announced in addition to an ongoing shrinking of the number of public sector workers by allowing only one
replacement hire for every two retirements/departures; and the closure or amalgamation of 30 public agencies (Quebec Ministry of Finance March 30 2010, Press Release #1).

The Common Sense Revolution had been over for seven years, but with the 2010 budget, Ontario’s Liberals announced a new era of public sector austerity. A 7 year period of austerity, extending to 2017-18, was launched and would end with a return to fiscal balance. The cost of that goal would be a shrinking of Ontario’s public sector from 19.2 per cent of GDP (in 2010) to 15.5 per cent in 2017-18 (TD Economics, March 25 2010, 1). A 20 per cent contraction! Moreover, a massive privatization of public assets was suggested (Evans and Albo 2010, 2).

That budget launched the initial legislative salvo against public sector workers with the introduction of the Public Sector Compensation Restraint to Protect Public Services Act. The argument for a wage freeze, followed by a protracted period of restraint, was situated within the global economic crisis. The government contended that reinvestment in public services and expansion of public sector employment was enabled by strong revenue growth. The economic crisis, however, “opened a significant fiscal gap” causing revenues to decline and expenditures to rise as stimulus spending rolled out (Government of Ontario July 2010). The government position was based on several fiscal claims. First, for the period 2004-09, public sector wages grew at a rate of 18.8 percent compared to 13.7 percent for the private sector. Second, the accumulated cost of interest for public debt was cited as serving to crowd out the capacity to spend on public services. The finance ministry projected that interest on accumulated debt would by 2012-13 require Ontario to pay $12.5 billion in annual interest charges. If a return to budget balance was to be achieved by 2017-18, program expenditure growth could be no more than 1.7 per cent annually until 2013 and no more than 1.9 per cent thereafter. In reality, no more than 0.7 per cent/year remained to finance additional costs including wages. Of course, tax rates, both personal
and corporate were to remain ‘competitive’ or, moiré directly, regressive and inadequate
(Ministry of Finance FAQ 2010, 1; Government of Ontario July 2010). In addition to the wage
freeze for non-union staff, the budget called for a social dialogue with the unions representing 700,000
broader public sector workers with a view to negotiate a 2 year wage freeze (Ontario Ministry of Finance
2010). This process was undertaken but resulted in no outcome (Evans 2011).

Setting a more threatening tone, the 2011 budget announced the striking of the Commission on
Reform of Public Services to be headed by TD Bank economist Don Drummond. The report, delivered in
early 2012, recommended a wide-range of market-driven prescriptions, including massive privation and
significantly expanded use of contracting, to rationalize public services (Nesbitt and Steven 2012).
However, the Liberals have shifted their deficit reduction strategy to more clearly focus on wage controls
and establishing a ‘pause’ in collective bargaining.

With rating agencies threatening to lower Ontario’s credit worthiness, the Ontario
government has returned to legislative intervention. It was in the later of years of the Common
Sense Revolution the last time this occurred. The first intervenes with teachers’ bargaining. Bill
115, the Putting Students First Act 2012, passed on September 11, 2012, stipulates that where
agreements are not concluded by December 31st, 2012, the minister and cabinet may impose
local agreements and further outlaws strike action. Local agreements that are reached must be
submitted to the minister for approval, and cabinet can unilaterally impose or remove terms in
agreements, or send the parties back to the table. The legislation establishes “required terms” for
inclusion in agreements including: a two-year wage freeze (0% increases in 2012 and 2013),
three unpaid days in 2014 (equal to about1.5% of salary), a delay of 97 days for increments, a 50
percent reduction of annual paid sick days, and ending accumulation of unused days, as well as
the freezing of retirement pay-outs and their abolition for new hires.
The centralization of power in cabinet is among the most interesting aspects of this legislation and continues a pattern observed previously. The Legislature is shunted aside in the process respecting such matters as terminating strikes and lockouts directly rather than requiring back to work legislation debated and passed by the legislature. The education minister is provided new powers to approve and change collective agreements and limits recourse to the Ontario Labour Relations Board, the Ontario Human Rights Commission or the courts.

The Protecting Public Services Act 2012 is more comprehensive as it mandates a minimum two-year freeze in wages and benefits in the broader public sector. The most interesting aspect is the now familiar tendency to empower ministers to set the terms of collective bargaining, unilaterally disallow agreements, and extend the new regime indefinitely into the future. Indeed, the only limit on the extension of the legislation’s reach is that point when the provincial deficit has been eliminated. The bill goes further by empowering cabinet to roll-back wages and to change or eliminate benefits. Theses powers have been likened to those historically seen where “a state of emergency or apprehended insurrection warranting invocation of the War Measures Act” was viewed necessary (Sack Goldblatt Mitchell 2012, 1).

The history of public sector labour relations in the neoliberal era is stamped by the state’s sustained assault on its workers. Economists and consultants have encouraged this new war on public sector workers. For example, KPMG presented a strategy urging the fiscal crisis be used as a stage to re-write the public sector employment contract across the globe. The report identified labour as an expendable resource and recommend a turn to non-public sector forms of delivery (KPMG International 2009, 15). And another study suggested public sector compensation be lowered to better match that found in the private sector (Mowat Centre/KPMG 2010, 22).
What Makes Working for the State Different?

What makes working for the state different from working for a privately-owned transnational corporation? The foregoing historical narrative tells the essential story. Public sector unions and their members as state workers, have their collective rights and capacities regulated directly by the state. And, in the contemporary era, that state is neoliberal in role and purpose. The canvassing of history here illustrates, whether at the height of Keynesianism or through neoliberalism, “public sector unions have been shaped by the form of that state power” (Camfield 2005, 64). And so, the most obvious answer is that state work, unlike that in the private sector, takes place within a context where the economic and political spheres are unified. As such, the state embodies the material capability necessary to appropriate the labour power of its workforce (through its role as employer) and to deploy coercive instruments including legislation, enforcement and prosecution, to achieve its objectives. From this meta theme all other distinctions between private and public labour relations are derived.

This duality within capitalism is described as “the two moments of capitalist exploitation – appropriation and coercion”, which are “allocated separately to a private appropriating class and … the state: on the one hand, the ‘relatively’ autonomous state has a monopoly of coercive force; on the other hand, that force sustains a private ‘economic’ power which invests capitalist property with an authority to organize production itself” (Wood 1995, 30). But this duality is integrated into the state where it is also the buyer of labour. The state as boss uniquely embodies the economic power of the appropriator simultaneously with its unrivalled coercive capacity to enforce that role as appropriator. In more conventional terms the state possesses the political power to make laws governing not only labour relations in the market sector but for the public sector as well. Notwithstanding the liberal democratic image of the state as neutral arbitrator, the
reality is that the state has an interest in establishing policies which serve the interests of capital as well as its own (Godard 2005, 248).

A second determinant of the state’s distinctiveness is found in the 1940s origins of the Canadian labour relations regime. The bargaining regime set out with PC 1003 and replicated in provincial labour relations legislation applied only to private sector employers but would have consequences later for public sector unionization. The essence of the model was that unions were legally limited to bargaining with only one local employer over local workplace conditions. This further meant that disputes and any actions stemming from such were to be confined to that local workplace. In other words, the dispute could not spill over into secondary pickets or solidarity strikes and thus impinge on the business of other employers. Any strike action would be required to singularly target the local employer. And the strike was to be confined to the settlement of workplace economic issues and could not to be used to achieve political objectives. For public sector unions the legal and ideological implications would be significant. The 1940s legal framework constructed unions as organizations to represent the narrow economic interests of their immediate members and were prohibited from making demands of a fundamentally political type. Given the foregoing, “collective economic power is not to be used in such a way as to affect the allocation and raising of funds” for public services (Glassbeek 2005, 13). In the public sector, this ideological feature of the labour relations regime, provides the basis upon which to circumscribe the parameters of specifically public sector collective bargaining in a variety of ways. The political executive solely claims legitimacy to act in the interest of all citizens and to authoritatively exercise their role as the monopolistic public policy decision-maker. Conversely, unions do not possess such political legitimacy and are instead rhetorically, ideologically and legally defined as an economic special interest. And the economic demands of
public sector unions, for these reasons, can be understood, or spun, as political demands. And thus, public sector labour relations can be framed as a conflict between the sectional demands of the unions against the policy-making role of government in the broad public interest (Swimmer and Thompson 1995, 2-3). The counterpoint for public workers’ is there capacity to build (or not) strategic alliances with citizen-consumers of public services and other political actors, and by framing their demands in the public interest. Doing so “places a potent political edge” on the claims made by those who produce and deliver public services (Johnston 1994, 11).

In addition, the late 1960s opening of collective bargaining rights to public sector workers, and its evolution since, has built additional limitations. Governments deem various public services as essential where such workers are prevented from participating in strike action. In addition, the propensity for governments to suspend collective bargaining and unilaterally determine the terms of employment is well documented (Glassbeek 2005, 13-14). It is this dual role of the state, as sovereign legislator and employer, which distinguishes it explicitly from a private employer.

A third dimension is the state’s relative autonomy from market-based forces. When a private employer confronts a strike, it is possible they must contend with loss of market share as competitors move in to fill a production gap and, stemming from this, a loss of revenue as sales, in the absence of a stock pile, diminish. For the state directly, and for most broader public sector employers, these factors do not exist or are minimal. Moreover, from a financial perspective, a strike may in fact be a positive outcome for a state employer as workers are not paid and savings accrue to the state (Peirce and Bentham 2007, 224).

And fourth, canvassed broadly above, is that those employed by the public sector, the services it delivers, its political and economic purposes, have all been subject to an increasingly
intense challenge and assault of a vituperative ideological nature. While it has always been true that politics has been the defining characteristic of public sector labour relations, that relationship, in the context of an uncontested neoliberalism, is unequivocally an “exercise in political, not economic, power” (Swimmer and Thompson 1995, 2).

In summary, the distinctions between bargaining with the state and bargaining with a private entity can be stated briefly by specifying a few cogent points. Public sector labour relations are distinct in that bargaining entails a range of legal restrictions on what can be bargained; the bargaining agent my named in legislation and from the beginning worker choice of which organization would represent them may be limited; in a strike, a large number of workers are prohibited from striking; and compensation has often been set by legislation (Gunderson, Ponak and Taras 2005, 429).

Public Sector Unions and the Politics of Anti-Neoliberalism

The politics of class relations become most conspicuous through the process of labour relations and episodes of industrial conflict. Given the intensely political nature of public sector labour relations specifically, notwithstanding the state’s ability to disguise its role as the reification of particular political and economic interests, the potential to challenge neoliberalism in a strategic way, is to be found in public sector struggles. The immense contradictions, let alone hypocrisy, of state actions to defend public services by eroding the employment contract of public sector workers presents this window as recent events in Ontario suggest.

Four axioms of a state theory of public sector labour relations serve as a starting point in suggesting the potential to position public sector struggles as a critical point in challenging neoliberal restructuring more generally. First, the state, in adopting hard bargaining and coercion, is not acting as the neutral defender of the public interest. Second, as the state expands its
involvement in labour relations, as a result of its role as employer and policy maker, it exposes itself to entanglement in an expanding field of conflict. Third, the state possesses a degree of relative autonomy and this is especially so at times of economic crisis. This is important in recognizing that while capital may well be dominant, it does not exercise total control over the state at all times. And fourth, state strategies affecting public sector work, whether privatization, marketization, contracting out/in, wage controls, public expenditure controls or cuts as a function of fiscal policy, are not policy choices taken to address labour relations in isolation from other factors (Beaumont 1992, 15-16). In total, this terrain, if accurate, actually provides a tremendous amount of potential to build anti-neoliberal politics and coalitions around and through public sector struggles. This would require public sector unions to build on and extend various strategies which start to do this.

Several examples provide insights to how these axioms present political space to defend and public services and challenge neoliberal policies. In the mid-1990s, the Ontario Days of Action brought together trade unions and social movements to confront the Common Sense Revolution and its agenda of cuts to public services and labour protections. This entailed series of one-day general strikes across Ontario. The Canadian Union of Public Employees, worked with the Ontario Coalition Against Poverty in popularizing the relationship between the special diet allowance cut and health outcomes. In the educational sector, CUPE education workers in Toronto, hired eight full-time organizers to mobilize the broader community against school closures. The campaign raised larger issues respecting the preservation of public spaces for community use and social development. And, particularly notable, is the effort of Canadian Union of Postal Workers, who during an early 1990s strike, continued to deliver benefit cheques. The government intervened to end this ‘work’ and instead forced recipients to queue up at
designated locations. The union responded by providing water and seating for those standing in lines (Hurley and Gindin 2011, 10-12).

These cases illustrate creative anti-austerity tactics and strategies. Public sector unions can move the debate away from questions of compensation and reframe this on how to improve and democratize public services (Gindin and Hurley 2010). CUPEs Ontario hospital sector unions, for example, proposed an alternative fiscal strategy that included the cancellation of corporate income tax reductions, a financial transactions tax, and the establishment of a new top personal income tax threshold that would raise an estimated $2 billion in new revenue alone (McCarthy, Sanger, Stanford and Weir 2010, 23-26). In October 2010, OPSEU launched a membership mobilization campaign: “Invest in Ontario – Stop the Corporate Tax Cuts”, that urged members to lobby MPPs to reconsider corporate tax cuts at the expense of public services. But a cross-union and popular alliance has yet to emerge.

Bibliography


Conference Board of Canada, Summer 2010, Canadian Outlook, available at http://www.conferenceboard.ca/temp/9e6cbdc6-81e8-4a33-b0c1-c33bf33dc455/11-022_CO-Summer10-OTLK_WEB.pdf


Tables and Graphs

Table 1

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SOURCE: Calculated from the Labour Force Survey.
Graph 1

Legislative Interventions - All Jurisdictions

![Bar Chart]

- Y-axis: Number of Legislative Interventions
- X-axis: Year (1982 to 2012)

Legend
- Blue bars represent legislative interventions across all jurisdictions from 1982 to 2012.
Graph 2

Laws Restricting Collective Bargaining and Union Rights, by Type, 1982-May 2012

- Back-to-Work - Imposed Arbitration (19%)
- Back-to-Work - Imposed Settlement (25%)
- Suspension of Bargaining Rights (22%)
- Certification or Joining Restriction (7%)
- Restriction on Bargaining Scope or Other Activities (27%)
### Table 2: Public sector employees as % of total labour force, 1991 - 2011

|----------|------|------|----------------------|------|----------------------|------|----------------------|------|----------------------|----------------------|

**Source:** Calculated from CANSIM v135015, v3404703.

### Table 3: Nominal Public Sector Base Wage Settlements (Percent) by Jurisdiction

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SOURCE: Calculated from CANSIM Table 2780008.

Graph 3

![Graph 3: Base Wage Settlements in Public and Private Sectors, Canada, 1991-2011](image)

Graph 4
Table 3


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SOURCE: Calculated from CANSIM Table 2780008 and v36393. “Real” wage settlements are calculated by subtracting average inflation measured by the Consumer Price Index from average nominal wage settlements.