

# THE CRISIS IN PUBLIC-SECTOR BARGAINING IN SASKATCHEWAN

*Saskatchewan's current public-sector labour relations crisis will only be resolved when the province finds a more collaborative approach to collective bargaining. Managers, employees and union representatives all need to participate in decisions about how best to provide public services. The change from traditional top-down management practices won't come easily, however. It will be necessary to make clear to union and management that if public-sector collective bargaining cannot be made to work effectively, changes may occur that are adverse to the interests of the parties involved.*

Dan Cameron

*La crise qui frappe les relations de travail dans le secteur public de la Saskatchewan ne pourra se régler tant que cette province n'aura pas adopté une approche des négociations collectives fondée sur une collaboration accrue. Gestionnaires, employés et représentants syndicaux devront en arriver à participer en concertation aux décisions visant l'amélioration des services publics. Les pratiques actuelles de gestion hiérarchisée seront toutefois difficiles à changer. Mais si l'on échoue à assouplir le fonctionnement des négociations collectives, syndicats comme employeurs devront accepter que certains changements puissent aller à l'encontre de leurs intérêts respectifs.*

In the mid 1940s, Saskatchewan led the way for Canadian governments by permitting public servants to bargain collectively. That public-policy innovation emerged from the economic crisis of the 1930s. After the Saskatchewan government had repeatedly concluded successful collective agreements with the province's public-sector workers in the 1950s and 1960s, thereby demonstrating that public-sector bargaining could work, other provinces and the federal government eventually followed its example. Now Saskatchewan is living through a new labour-relations crisis. If the province is true to its pioneering spirit, this crisis may lead to 21st-century policy innovations that in the end will be taken up elsewhere in Canada.

In the last two years, Saskatchewan has been hit by an apparently unending series of public-sector labour disputes. In 1999, it experienced the most serious public-sector health dispute since the doctors' strike of 1962. That strike by the Saskatchewan Union of Nurses had been preceded by a legislated end to a work stoppage at SaskPower. And it was followed by a work stoppage by the Canadian Union of Public Employees (CUPE) against the Saskatchewan Association of Health Organizations (SAHO). A subsequent agreement between SAHO and the Service Employees

International Union was achieved only after conciliation and a threatened walkout. The Saskatchewan Government and General Employees Union (SGEU) and Cancer Treatment Centres talks resulted in a strike. A subsequent tentative agreement was rejected by the membership. More recently, 14,000 health care workers struck against 18 health care districts. Volunteers, management staff and the relatives of patients tried to maintain essential service. In the end, a conciliator helped SAHO and CUPE reach a tentative collective agreement that exceeded provincial wage guidelines.

And the strife is not over. The Saskatchewan Public Service Commission is currently in conciliation with the SGEU, which represents approximately 10,000 public servants. The SaskPower agreement with the International Brotherhood of Electrical Workers will expire next spring. Members of that union still resent the terms of their last legislated settlement, which later were bested by nurses who contravened similar back-to-work legislation. Finally, the collective agreement with the nurses will be renegotiated in the new year. Given the 28 per cent salary increase granted in Alberta, it is highly unlikely that the government's current mandate of three per cent per year will result in a settlement.

On the basis of the recent record, it seems fair to say that public sector collective bargaining in Saskatchewan is in a state of crisis. In my view, the reasons for this are mainly structural and include the following:

- *The prevalence of traditional management practices.* In spite of much management talk about participation, team-building, partnerships, “employees are our most important resource,” and so on, public-sector organizations in Saskatchewan still predominantly use the traditional top-down management style. This approach, originating at the turn of the last century, is characterized by centralized management direction and limited decision-making by supervisors and employees. The organization and execution of work are treated as separate functions: managers organize, employees work. The relationship between the two groups is arm’s length: Managing is the exclusive prerogative of managers; the union’s primary role is to raise concerns. Moreover, remuneration levels and benefit entitlements are set separately. Employees and management each have their own pay and benefit scales.

This form of union-management relations reached its zenith in North America in the 1960s. Probably not coincidentally, the first serious public-sector strikes in Saskatchewan occurred in the 1970s.

Newer approaches to management operate on different assumptions: that knowledge is to be found throughout the workforce; that organizing and doing work should be the shared responsibility of management, union and employees; that authority should be delegated to where work is done and that the interests of management, union and employees are fundamentally complementary—though conflict obviously is possible. Everyone understands that all have an interest in the success of the organization.

Workplaces organized this way have high employee and union involvement, use employee-management problem-solving teams, delegate authority to employees and supervisors, encourage local problem solving and often have a flat or non-hierarchical management structure. The emphasis on diffusion of authority, greater employee commitment and union participation is intended to provide the enhanced flexibility that will allow prompt and efficient responses to changes in the operating environment. Although conflict can occur the risk of conflict is

reduced by emphasizing trust, openness, problem solving and information sharing among the parties. The Shell refinery in Sarnia, Ontario is organized along these lines, as is the Saturn division of General Motors. Both operations are unionized.

Unfortunately, this high-participation form of work organization, which seemingly is compatible with Saskatchewan’s cooperative and community based traditions, does not exist in any unionized (or for that matter non-unionized) public-sector work setting in the province.

- *Over-dependence on adversarial bargaining.* The way unions and management in the province’s public sector negotiate their collective agreement reflects their day-to-day arm’s-length working relationship. Management’s priority traditionally has been to limit costs and preserve its prerogatives to manage. The union’s priority has been to place restraints on those prerogatives and increase compensation. It is simply assumed that the parties’ needs are in conflict, that what one side loses the other side gains. Bargaining consequently becomes a tactical game. Priorities are concealed and desired bargaining outcomes are exaggerated. Each side uses media appeals to garner public support. Low trust and limited communication are common. The party across the table is often viewed as an adversary, which discourages problem solving during negotiations. This type of bargaining system does not require responsible behaviour since a bargaining breakdown can always be blamed on the “unreasonableness” of the party opposite.

The adversarial relationship inherent in this form of bargaining does not reflect the cooperative give-and-take that is characteristic of the larger Saskatchewan community, and yet it is the standard approach to union-management collective negotiations in Saskatchewan. Indeed, the bargaining parties commonly believe there is no other way to bargain. That is wrong, of course. There *are* different ways to negotiate a collective agreement. Such approaches require a high level of trust and communications between the parties, however. Both sides need to accept that the other has valid problems that must be resolved at the bargaining table. Management has to accept the representational role of the union. The union must accept that management has managerial responsibilities. Bargaining has to focus on problem-solving. Conflict can occur, but only after problem solving has failed. This approach

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to bargaining, while not common in Canada, is becoming more common elsewhere, for example, in the US petro-chemical industry.

- *Limited awareness of new labour relations practices.* There is only a limited awareness or application of new practices in labour relations by union and management. Because of its limited financial resources, the Saskatchewan Department of Labour offers only limited educational programs. Local universities provide similarly limited training for union and management practitioners. Saskatchewan human resource organizations do not include union representatives. While union and management labour-relations spokespersons negotiate together, joint training in how to negotiate is non-existent. In fact, most participants are trained primarily at the bargaining table, with the result that traditional practices are perpetuated. Union and management bargainers are often reluctant to adopt an unfamiliar negotiating process where their possible skill deficiencies might threaten their status and effectiveness. More importantly, the principals directing the negotiators usually will not allow them to adopt innovative processes, given that they are wed to the conventional view that collective bargaining can only be adversarial.

- *Industrial conflict is fostered by law.* In Saskatchewan, the *Trade Union Act* is the primary legislation governing collective bargaining in both the public and private sectors. The *Act* reflects an adversarial legal mindset and assumes and thereby fosters an adversarial union-management relationship. It is replete with dispute settlement mechanisms: arbitration, grievance mediation, expedited arbitration, conciliation, a vote by striking employees on the employer's last offer, and so on. But it contains no substantive provision—for example, the mandatory sharing of economic data preparatory to negotiations—that would prompt the parties to resolve their issues cooperatively and thus avoid the need to use these processes. The Labour Relations Board, which administers the *Act*, has no written guideline that would provide direction to the parties on how to carry out their legal bargaining responsibilities. This predominantly adversarial focus better reflects the 1930s environment that gave birth to the *Act* than today's self-evident need for the parties to cooperate in resolving their problems.

- *Non-inclusive determination of the public sector financial mandate.* At the moment, the financial mandate followed by negotiators in the

public sector—i.e., “three per cent, three per cent and three per cent annually” is primarily developed by the Saskatchewan Department of Finance, based on the government's financial situation and on advice from various sources. Finance officials advise a cabinet committee composed of key government ministers, which in turn provides a mandate recommendation for Cabinet approval. Since the moneys committed in collective bargaining are taxpayers' dollars, this sort of procedure is only to be expected. The typical government strategy is to conclude a first public-sector collective agreement with one group of employees within this mandate and then to attempt to use it as a pattern in other negotiations. One difficulty with this strategy is that a single mandate does not provide the flexibility necessary in a diverse public-sector workforce made up of, for example, health-care providers, revenue-generating commercial Crown corporations, public servants and so on. A further problem is that unions and management have limited to no influence on the development of the mandate. If it is developed in a secretive way, there is no way to test its adequacy in advance. Consequently, Cabinet makes decisions on the “best guess” advice of its advisors. There is no formal mechanism that would permit public-sector management and unions to have any input into what the public sector mandate should be.

It should be clear by now that there are fundamental problems with public-sector collective bargaining in Saskatchewan. While the government claims to support public-sector collective bargaining it is having great difficulty making the current system work effectively. How can it dig itself out of the present crisis? In my view, the following changes would help:

- The government should publicly acknowledge the right of public sector employees to engage in collective bargaining.

- At the same time, it should appoint a commission to study existing public-sector collective bargaining arrangements in Saskatchewan and make recommendations for improvement. The commission would address the following questions: 1. How can union-management relationships be improved? 2. How can settlements that are fair both to the bargaining parties and to the public be achieved more readily? 3. How can threats to public safety and security be reduced while preserving the right to bargain collectively? 4. How can human

capital be more effectively used in public-sector workplaces?

The commission would hold public hearings and receive submissions from the public, unions, management and interest groups. It would commission research and visit innovative work sites and it would be required to complete its work in six to nine months.

If such a commission were to be established, what might some of its findings and recommendations be? It seems reasonable to assume that the commission would find that the troublesome industrial relations events that prompted its creation are a product of the environment in which they occur. The dependence on traditional management practices, where managers plan, direct and control, where employees follow orders and where the unions raise concerns is out of touch with the needs and abilities of today's skilled employees and it frustrates the efficient and effective delivery of public services. This approach to managing, with its primary emphasis on organizational goals and limited employee and union input, produces employee resistance, union-management conflict and sub-optimal service delivery. The current practice of adversarial bargaining, which is simply an extension of this management process, deteriorates into a struggle over extending or restraining management prerogatives and apportioning limited financial resources.

In response, the commission might recommend a more collaborative form of union-management relations that could contain some or all of the following elements:

- that the negotiation of collective agreements place greater emphasis on problem-solving;
- that collective agreements be continuously rather than intermittently negotiated;
- that a range of dispute resolution mechanisms be available to the bargaining parties, so that strike action will be a final resort, not the only option;
- that employee-union-management problem-solving teams be used in work planning and to resolve workplace issues at all organizational levels;
- that a variety of responses be available to resolve disputes over the application of the collective agreement, among them grievance mediation and expedited arbitration;
- that processes to ensure public safety in the event of strike or lockout be formalized; and

- that mechanisms be developed to permit union and management input into the development of the public-sector financial mandate.

These arrangements are typical of the industrial relations practices that are used when a more collaborative management process is adopted in a unionized setting and they have proved effective in many applications. On their own, however, they are unlikely to be enough.

The adoption of processes that emphasize high employee-union participation is usually prompted by an organizational crisis that forces union, management and employees to work together. Alternately, such a process may be prompted by the setting of organizational goals that can only be achieved via a collaborative partnership of the parties. To function effectively, these participative systems require a high degree of workplace decision-making. Because ministers are responsible for agency activity and answerable during the daily question period in the legislature senior management in the Saskatchewan public sector has traditionally resisted such delegation.

Traditional attitudes can be changed, however. The government could force a change in the behaviour of the bargaining parties by publicly establishing very high performance goals for public agencies and spelling out the consequences for failure to perform to management, union and employees alike. In particular, it could make clear that the public values the efficient, effective, continuous and economic delivery of services and will force government to look to the private sector if the public sector cannot deliver these results. It could also suggest that continued interruptions in public services will result in demands by the public that all wage disputes be subject to binding arbitration. Public-sector management and unions would be held accountable for operational successes and failures. Public-sector entrepreneurialism would be supported; the development of services not currently available would be encouraged; a "customer" focus would be promoted and public-service systems and employee skills marketed to the public and private sectors. These goals and consequences would have to be sufficiently beyond the delivery capacity of traditional management processes that they would require all the parties involved to collaborate in their common enterprise.

Once an environment that required collaboration was created, union and management rep-

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representatives in government agencies would then have to decide how to meet the new challenges. This might be dealt with through a facilitated dialogue where the parties addressed a number of fundamental questions:

- What is the present relationship and what is the relationship we desire?
- What behaviour by the parties would characterize that desired relationship?
- What are the environmental forces that are affecting and will affect the organization?
- What are the opportunities and challenges provided by these forces?
- What action can we take to respond proactively to these opportunities and challenges?

If its importance were sufficiently emphasized by the government, this joint determination of a new work relationship would provide the necessary foundation for the adoption of collaborative work processes. In the past, Saskatchewan has introduced nationally recognized innovative public policies. The province has strong community-based co-operative traditions. There is little social distance between people. And the province is not so rich that it can

afford inefficient practices. Such reforms could also suggest a future direction for public-sector collective bargaining in Canada.

It would be a mistake to believe the present difficulties in Saskatchewan public-sector bargaining are temporary and can be resolved with a few negotiated collective agreements. The present difficulties are symptomatic of more deeply-rooted problems. Until they are addressed, they will recur repeatedly, and public health, safety and convenience will continually be placed at risk. In the confrontational pursuit of their separate interests, individual union and management actors are undermining community acceptance of public-sector collective bargaining. Their activities do not reflect Saskatchewan's community-based tradition of reconciliation.

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