

Continuity and Change: The New South Wales Public Sector Under Labor

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This paper analyses recent developments in wage bargaining in the New South Wales public sector under the Labor government. It contrasts the approach taken by the former Coalition government with that of its successor. The discussion is focused on the Memorandum of Understanding between the Labor government and the public sector unions. With the agreement of the unions, the government has reasserted both substantive and procedural control over public sector industrial relations. This has not, however, prevented widespread industrial action in schools, hospitals and public transport and continuing tensions between the principal public service union and the government.

The paper focuses on recent developments in wage bargaining in the New South Wales (NSW) public sector under the Carr Labor government elected in April 1995 and re-elected in March 1999 with a substantially increased majority. The paper reviews the Memorandum of Understanding negotiated between the government, public sector unions and the Labor Council of NSW in March 2000. This provided a 16 percent wage increase to public servants, health sector employees and nurses from January 2000 until July 2003. The Memorandum of Understanding highlights the government's whole-of-government approach to wage bargaining. The negotiation of an agreement between the Labor government and public school teachers is also explored. The paper argues that despite the establishment of a statutory and independent public employment office, and the potential for agencies to negotiate industrial relations arrangements at a local level, substantive control over employment matters have been gradually centralised within the Premier's Department.

The paper also examines the widespread industrial conflict that occurred in the aftermath of the March 1999 election and prior to the negotiation of the Memorandum of Understand-

ing. The government imposed a recruitment freeze soon after being re-elected. Its June 1999 state budget promised spending constraints and job losses and raised the prospect of compulsory competitive tendering in a variety of government agencies. In response to such proposals, the second half of 1999 saw widespread industrial action across the NSW public sector. This paper considers the effect of industrial activism by public sector unions on Labor's public sector reform agenda.

Public Sector Management Under the Former Coalition Government

The Liberal-National Coalition government was in power from 1988 to 1995. Among its first reforms was the abolition of the NSW Public Service Board in June 1988. By abolishing the board, the former government aimed to 'let the managers manage' and provided increased control over personnel issues to heads of government departments. This initiative was enshrined in the Public Sector Management Act 1988 (NSW) which transferred control of recruitment and selection to department heads, including the ability to establish and cut staff

positions (Halligan and Power 1992:137). Under the Act, many of the former powers of the Public Service Board were also transferred to the Office of Public Management (OPM) within the Premier's Department and the Public Employment and Industrial Relations Authority (PEIRA) in the former Department of Industrial Relations, Employment, Training and Further Education. As a result, central responsibility for industrial relations policy and practice became fragmented between a range of central agencies, with PEIRA representing the employer of public service workers and Treasury controlling overall staff numbers (Halligan and Power 1992:143–52). The former government also introduced a Senior Executive Service (SES) comprised of 1400 senior public servants on contracts and market-related remuneration packages (O'Donnell 1998).

Moreover, the former Liberal–National government sought to 'lower the centre of gravity' of industrial relations in NSW with the passage of the Industrial Relations Act 1991 (NSW). In the public sector, this legislative change aimed to devolve increased responsibility to the parties at a workplace level to negotiate industrial matters free from external intervention from central agencies. Nevertheless despite the emphasis on devolution, agency management was expected to keep PEIRA informed throughout the bargaining process and this enabled the Authority to retain a central coordinating role over enterprise agreements. Within the Parks and Gardens of the NSW public sector, for instance, repeated interventions by PEIRA into negotiations between management and unions caused considerable frustration at a workplace level as well as resulting in a considerable cost blow-out in the final enterprise agreement negotiated (O'Donnell 1995).

Labor Governing and Responsibility for Employment Matters in the NSW Public Sector

The Labor government elected in April 1995 outlined its policy for the NSW public sector in a document entitled 'Labor Governing: Reviving and Improving Public Administration in NSW'. Labor maintained that under the former government the traditional independence of the public service had been undermined by an excessive reliance on consultants and the

introduction of a bloated and overpaid SES (ALP NSW Branch 1995:1–2, 10). In place of the former government's emphasis on devolved agency-level bargaining, Labor aimed to establish an independent Public Employment Office (PEO) whose role would be to oversee and monitor employment policies across the NSW public sector. Its role would also involve monitoring the management of the SES, the use of consultants and the appointment of chief executives. The PEO would replace PEIRA (ALP NSW Branch 1995:6–7).

The Public Sector Management Act 1988 (NSW) was amended in October 1995 to establish the PEO overseen by a Commissioner for Public Employment who represented the employer of public servants for industrial purposes. The new commissioner was perceived by public sector unions as taking an interventionist and directive approach to departmental management over the regulation of employment matters. The PEO also provided increased scrutiny over the operation of the SES. It reduced SES numbers by one-third. Nevertheless, the independent role played by the PEO was ultimately curtailed after the resignation of the Commissioner for Public Employment in 1996. The Labor government abolished the PEO in October 1996 as a statutory agency and transferred its functions to the Premier's Department. It was renamed the Public Sector Management Office (PSMO), with the Director-General of the Premier's Department taking over the role of Commissioner for Public Employment and employer of NSW public service employees for industrial purposes (PSA of NSW 2000). The Employee Relations Division of the PSMO was given responsibility for negotiating whole-of-government wage agreements and workplace reforms with public sector unions, consistent with government fiscal policies. The Employee Relations Division also provided assistance to individual agencies in negotiations over wages and conditions of employment (Premier's Department 1999). Though individual agencies retained the potential to negotiate enterprise-specific awards and agreements, the demise of the PEO and integration of its functions within the Premier's Department points to the gradual concentration of responsibility for sector-wide employment matters in the NSW public sector.

Union Anger over Labor's Cost-Cutting and Contracting-Out Agenda

The relationship between Labor and public sector unions deteriorated markedly in the aftermath of the government's re-election in March 1999. In particular, there was considerable criticism by the unions of the June 1999 state budget. While the budget provided for a surplus of \$214 million, expenditure constraints were imposed on public sector agencies and substantial job cuts occurred (for instance, 600 jobs within Technical and Further Education (NSW) were cut). Unions also protested against staff freezes (in place since March 1999); contracting out (examples included Department of Community Services group houses for the disabled and the Roads and Traffic Authority's (RTA) road maintenance); and the lack of provision for wage increases in the budget. Unions were also concerned that public service pay increases were being contained by the government to offset the escalating costs of the Sydney Olympics (PSA of NSW 2000). In the aftermath of the budget and prior to the Australian Labor Party (ALP) state conference in October 1999, a number of industrial disputes occurred involving public sector unions. Trade unions involved in undertaking industrial action included the NSW Fire Brigades Union, the Nurses' Association, Health and Research Employees' Association of NSW, the NSW Teachers' Federation and public transport unions. A major train strike took place on 29 September 1999, just prior to the ALP state conference.

As Brad Norington noted in *The Sydney Morning Herald* on 29 September:

In one week there is a train strike, a bus strike and industrial action by nurses and Sydney Water staff. Teachers and firefighters are on the warpath ... Now that Carr is comfortably into his second term, he is determined to press ahead with tough cost-cutting across the public service. But he has become locked in a fundamental fight over the Government's direction because he is endorsing measures that are anathema to unions: a freeze on wages, big public sector job cuts and competitive tendering so that government jobs are contracted out to private companies (Norington 1999).

The resentment of public sector unions over the

cost-cutting agenda of the Labor government was evident at the 1999 ALP state conference. The Minister for Transport, Carl Scully, for example, was sharply criticised by public transport unions over plans to cut employment levels in State Rail and to submit the RTA's road maintenance operations to competitive tenders (Robinson 1999). Unions proposed a number of motions at the conference that aimed to prevent the government from contracting out jobs, and to protect the entitlements of those workers whose jobs were in danger of being contracted out. By December 1999, the Minister for Transport, Carl Scully, backed away from these proposals in the face of intense union opposition. The road maintenance work conducted by the RTA and local councils would be benchmarked against nationally determined costings, while the maintenance work on rail tracks would be undertaken in-house. Nevertheless, proposals to submit the operation of the Department of Community Services group houses for the disabled to compulsory competitive tender were not overturned (PSA of NSW 2000). The ability of the ALP state conference to constrain Labor's policy agenda for public sector reform was most graphically demonstrated at the 1997 conference. Proposals by the Treasurer, Michael Egan, to privatise the state's electricity industry were defeated after encountering strong opposition from trade union delegates (Riley and Humphries 1997).

To avert the likelihood of widespread industrial action by a number of public sector unions in October and November 1999, Premier Carr announced the formation of the State Labor Advisory Council (SLAC) at the ALP state conference. It was composed of the Premier, Bob Carr, Deputy Premier, Andrew Refshauge, Treasurer, Michael Egan, and Special Minister of State, John Della Bosca. The State President and General Secretary of the NSW branch of the ALP were also included as were the Secretary and President of the Labor Council of NSW (Robinson 1999). There were four other positions available for public sector unions. The former Minister for Industrial Relations, Jeff Shaw, however, was excluded from this high-level consultative body. Broadly speaking, SLAC was established to deal with macro issues of public sector management though if a particular issue was in dispute it could be examined in a whole-of-government context

(Director, Employee Relations, PSMO, 6 July 2000).

Public Sector Wage Bargaining Under Labor

Labor's approach to public sector wage bargaining contrasted starkly with the approach adopted by the former Coalition government. While a Crown Employees (Public Sector Salaries December 1993) Award was successfully negotiated by the PSA of NSW before the state Industrial Relations Commission, it had been fought 'tooth and nail' by the former Coalition government (interview, Acting General-Secretary, PSA of NSW, June 2000). Instead, the former Coalition government had promoted enterprise agreements overseen by a Commissioner for Enterprise Agreements for individual NSW public sector agencies (Pragnell and O'Donnell 1997).

Wage bargaining in the NSW public sector under Labor involved a return to a sector-wide approach to wage determination, though departments retained the autonomy to negotiate their own individual awards or enterprise agreements (Director, Employee Relations, PSMO, July 2000). Labor introduced the Industrial Relations Act 1996 (NSW) in place of the former government's 1991 Act. The Act restored a collective approach to industrial relations in NSW. The legislation provided recognition for trade unions as the representative of employees; it also restored the central role of awards and the Commission, which was provided with wide-ranging powers to make any award 'setting fair and reasonable conditions of employment for employees' (Shaw 1997:397). The commission was also provided with the powers to vet all enterprise agreements (MacDermott 1997:75).

The Labor government's commitment to returning to a whole-of-government approach to wage bargaining for the NSW public sector was evident soon after it was elected in 1995. The Crown Employees (Public Sector Salaries August 1995) Award was negotiated with public sector unions and provided pay increases of 3 percent from 1 July 1995 and a further 3 percent from 1 July 1996. A second sector-wide Crown Employees (Public Sector Salaries June 1997) Award was negotiated between the government and public sector unions and provided for a 17

percent pay increase in five instalments from 1 January 1997 to 31 December 1999 (PSA of NSW 2000).

On 21 December 1999, as the expiry date for the 1997 Award approached, the PSMO made an offer to the Health and Research Employees' Association of NSW, the NSW Nurses' Association and the Public Service Association of NSW. The offer provided for a 16 percent wage increase from 1 January 2000 to 1 July 2003. The Carr government's motivation for a four and a half year wage deal was to ensure certainty in wage outcomes over an extended period and to continue the process of reform within individual agencies and across the sector as a whole (Director, Employee Relations, PSMO 2000).

The offer was accepted by all three unions by the end of February 2000. For instance, on 28 February members of the PSA of NSW, the main union representing public servants employed in NSW government departments, voted by 75 percent to 25 percent in a postal ballot to accept the offer (PSA of NSW 2000). A Memorandum of Understanding between the NSW government, the three public sector unions and the Labor Council of NSW was signed on 2 March 2000 that provided for the wage increases. While public sector unions agreed to make no extra claims under this agreement, exceptions included claims arising from substantial price inflation arising from the introduction of the GST and the implementation of a new equal remuneration principle by the Commission (Memorandum of Understanding 2000). On 30 June 2000, the Commission found that the wages of women workers in female-dominated industries such as hairdressing and child care could be re-evaluated in comparison with the level of skills and responsibilities evident in male-dominated industries. This would enable women workers to achieve increased pay and conditions if their rate of pay did not represent a proper valuation of the work they undertook arising from factors associated with the sex of those performing the work (Jacobsen 2000).

The wage increases agreed in the Memorandum of Understanding are for longer than the permissible duration of an award under the Industrial Relations Act 1996 (NSW) of three years. As a result, the agreement will be contained in two awards. The Crown Employees

(Public Sector Salaries January 2000) Award was ratified by the Commission on 21 March 2000. This first award covers the period from 1 January 2000 to 31 December 2001 and provides for a 2 percent wage increase back-dated to 1 January 2000, with a further 2 percent from 1 January 2001. Future award increases agreed by the PSMO and public sector unions involve 3 percent from 1 January 2002, 4 percent from 1 January 2003 and 5 percent from 1 July 2003 (Memorandum of Understanding 2000).

The Premier's Department and the Treasurer, Michael Egan, maintained that only the first 2 percent per annum of the agreed pay rises would be fully funded. The Treasurer required that 6 percent of the overall agreement, essentially all payments above 2 percent per annum, be paid for from efficiencies arising from workplace reforms at an agency level (Premier's Department 2000). The Treasurer was adamant that 'Limiting budget funding of wage increases to no more than 2 percent a year is a corner stone of the government's four-year fiscal strategy' (Egan 2000). The Treasurer calculated that \$450 million in efficiency savings would be required between 2000 and 2003 to meet the extra cost of the agreement. Agencies were required to develop proposals in their budgets for 2001–02 for achieving the level of savings required to meet the cost of the pay rises. Responsibility for undertaking this task was devolved to agency chief executives, with the Treasurer noting that: 'This will be a key requirement that is to be incorporated in each chief executive officer's performance agreement' (Egan 2000).

The PSA noted that the former Crown Employees Award negotiated in 1997 also required that an element of the wage agreement be paid for by way of productivity improvements and efficiency savings. These savings occurred in a global manner, however, from the corporate services reforms that were being implemented across the public service, rather than at the agency level. The union argued that since the corporate services reform process is ongoing under Labor, the \$450 million identified by the Treasurer as the government's efficiency savings target should be met out of these continuing efficiency reviews. The savings generated could then be used to justify the 6 percent unfunded element of the agreement (PSA of NSW 2000).

The Memorandum of Understanding did not include public school teachers. Any settlement

with NSW public employees needed to include an acceptable arrangement with the public school teachers and their union, the NSW Teachers' Federation (NSWTF). The federation had a militant tradition, membership density approaching 90 percent and a capacity to mobilise its members in protest action against governments (O'Brien 1987). The agreement with the three major public service unions set the wage parameters for the teachers. The government, however, wished to make significant changes to work organisation in schools and TAFE colleges. While there had been incremental changes to the work practices of school teachers, the union had been instrumental in maintaining teacher numbers and resisting fundamental changes in work organisation. In the TAFE sector changes had been driven by contingent funding for vocational education, and by the high incidence of casualisation in the sector (Junor 1998). The government was determined to introduce greater 'flexibility' in the schools sector. These flexibilities included: the extension of the teaching day in secondary schools; an increase in face to face teaching in primary schools; the transfer of certain teaching classifications to administrative hours and incremental progression linked to performance assessment (Seymour and Hague 2000).

Before the agreement with the public sector unions, teachers had been offered a 9.62 percent wage increase over four years to commence on 1 January 2000. During 1999 the federation conducted a number of one-day stoppages in protest against the government's proposals. In November 1999 the Department of School Education posted its full agenda in the form of a draft award on its website and sought to appeal to teachers over the head of the union. This led to further industrial action by teachers. The government countered by withdrawing its package altogether, and by referring its draft award to the Commission for arbitration, although the department and the union had narrowed the differences between them on a range of issues (O'Brien 2000). In late 1999 the NSWTF and the Department of School Education agreed to negotiate on the outstanding matters. An agreement was finally reached in May 2000. Some movement on work organisation was achieved. For instance, secondary teachers could 'not unreasonably

refuse' to teach senior classes outside 'normal' teaching hours, a somewhat strengthened performance appraisal system was to be introduced and school teachers could be required to teach in TAFE colleges and TAFE teachers in schools (Seymour and Hague 2000). These provisions were far short of the government's ambit claim made in November 1999. On the other hand, teachers had been limited to a wage outcome broadly in line with the Memorandum of Understanding negotiated by the government with other public sector unions.

Workplace Reforms Contained in the Memorandum of Understanding

On top of the series of wage increases, the Memorandum of Understanding committed the parties to regular discussions of workplace reforms covering five key priority areas:

1. a focus on 'Service Delivery' would review service delivery to rural and regional areas as well as on a whole-of-government basis;
2. a review of the 'Legislative and Employment Framework' envisaged a recasting of the Public Sector Management Act 1988 (NSW). This Act was introduced at a time when the former Coalition government emphasised increasing the prerogatives of workplace managers. This emphasis on largely unconstrained managerial autonomy, however, contrasted with the whole-of-government approach advocated by Labor;
3. the priority to 'Advance NSW as a Digital State' aimed to maximise the benefits arising from a whole-of government approach to the procurement and implementation of information technology;
4. the commitment to 'Continue Corporate Services Reform efficiencies' involved an ongoing search for productivity improvements and efficiency savings in the delivery of corporate services initiated under the Council on the Cost of Government from 1995; and
5. the priority to 'Modernise Structures and Pay Systems' sought to consolidate public sector awards and allowances and discuss the broadbanding of the classification system. This priority area also entailed an examination of various performance reward and recognition schemes in operation across a number of agencies (Memorandum of Understanding 2000).

The PSMO proposed establishing working parties to explore each of the key priority areas. They would comprise representatives from the major public service agencies, PSMO, the Office of the Director of Equal Opportunity in Public Employment and public sector unions. Agency specific agendas would be dealt with by joint consultative committee arrangements at the workplace level. To date this consultative process had yet to be agreed with public sector unions. The PSMO was keen to begin this process as soon as possible so that each priority area, and potential efficiency savings, could be negotiated in an orderly fashion and therefore avoid the pay increases 'becoming an exercise in slash and burn' (Director, Employee Relations, PSMO, 6 July 2000).

Conclusion

The paper has reviewed bargaining outcomes in the NSW public sector under the Labor government, in particular the recently negotiated Memorandum of Understanding between the government, public sector unions and the Labor Council of NSW that provided for a 16 per cent pay increase from January 2000 to July 2003. The return to a whole-of-government approach to the determination of wages and conditions under Labor sought to overcome the fragmentation of responsibility for employment matters evident under the former Coalition government. Nevertheless, the incorporation of the PEO within the Premier's Department points to a growing centralisation of both substantive and procedural control over bargaining arrangements. This development is consistent with previous historical trends. The former NSW Public Service Board maintained highly centralised control over industrial relations matters, with the wages and conditions of most public service employees determined by agreements between the board and public sector unions rather than by arbitral awards (O'Donnell 1998:58). PEIRA, who replaced the board, also ensured a central coordinating role for itself in enterprise bargaining negotiations despite the former Coalition government's promotion of decentralised bargaining 'to let the managers manage'. The negotiation of an agreement between the government and public sector unions and the centralisation of control with the Premier's Department is consistent with the historical

regulation of employment matters in the NSW public service. The conversion of the agreement into an award ratified by the Commission points to Labor's commitment to a collective approach to industrial regulation enshrined in the Industrial Relations Act 1996 (NSW).

Nevertheless, tensions between public sector unions and the Carr Labor government have been evident in recent years. Conflict emerged over the government's agenda to privatise the electricity industry in 1997 and to impose spending constraints, cut jobs and contract out services to the private sector in the 1999 state budget. Public sector unions successfully mobilised to overturn the electricity privatisation proposal at the 1997 ALP state conference. Resolutions were passed at the 1999 conference to protect employee entitlements where jobs were contracted out. The Minister for Transport, Carl Scully, backed away from competitive tendering proposals for road and rail maintenance in the face of vocal criticism from public transport unions. To improve consultation between unions and the government over industrial issues and Labor's whole-of-government approach, the Premier, Bob Carr, established the State Labor Advisory Council in October 1999 composed of representatives from the Labor Council of NSW and other unions, senior government ministers and Labor Party office holders. Widespread industrial action in 1999 in public transport, hospitals and schools, and the successful mobilisation of its political constituency to resist electricity privatisation in 1997, demonstrates the ability of public sector unions in NSW to cause substantial disruption to the delivery of services in opposition to a government's public sector reform agenda.

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