TRADE UNIONISM IN THE PUBLIC SERVICE

By T. S. Narayan Rao, M.A.

Department of Political Science

Introduction: It is generally recognised that public employees have problems of compensation, hours and working conditions not unlike those of their counterpart in private industry. As in private service so also in government service the conviction has gained ground among civil servants that they will not be in a position to safeguard and better their interest except through associated effort. However, a great many issues have gathered from time to time round the subject of trade unionism in the public service. More prominent among these issues are: (i) whether public employees should be permitted to form associations; (ii) whether they can have their associations affiliated to outside labour unions; and (iii) whether they have the right to strike against the government. The main purpose of this paper is to examine these issues.

The Right to Associate: For a long time almost all governments including the democracies hesitated to accord recognition to the right of public employees to form associations. The arguments advanced against the unionization of public employees may be summarized as follows: First, the sovereignty of the state which in democratic states means the sovereignty of the people will be impaired by the collective action of the employees through their unions. Secondly, public service is fundamentally different from private service. Private enterprises are run solely for the profit of those who own them, whereas public service is devoted to the promotion of the general welfare of the community. Private enterprise is based on competition and, if an individual firm is closed down as a result of the abstention of workers, the consumers will not suffer much because there are alternative sources of supply. But it is not so in the case of services rendered by government. They have a monopolistic character about them and they cannot be obtained from any other source. Further, they are vital to the very existence of society and the orderly life of the nation. Their operation cannot be interrupted or allowed to cease. As Finer observes, 'In proportion as services are vital to social existence obedience to the state must be unconditional'. Unionization, it is feared, will interfere with the continuity of these services.

In spite of these objections, the agitation on the part of public employees in favour of the right of association grew so strong and so irresistible that it had to be recognised. The issue has now ceased to be

1 The Theory and Practice of Modern Government. (Holt), 1950, p. 899.
controversial. In fact, most modern governments have realized the advantages of public employee unions and are encouraging their establishment and growth. For instance, in Britain all new entrants to the civil service are given the advice: ‘You are not only allowed but encouraged to belong to a staff association. Besides, being a good thing for the individual civil servant to belong to an association, which can support him in his claims and put his point of view before the authorities on all kinds of questions affecting his conditions of service, it is also a good thing for the department and for the civil service as a whole that civil servants should be strongly organized in representative bodies. . . . It is hopeless to try to find out the wishes of a scattered, unorganized body of individual civil servants, each of whom may express a different view. When they get together in representative associations, the collective wish can be democratically determined and passed on to the ‘management’ with real force and argument behind it; the management knows where it stands and can act accordingly’.\(^1\) It is now generally admitted that the unions of public employees have an important place in governmental affairs. In an age when the state is undertaking more and more schemes of social welfare and nationalizing many industries and when there is consequently a phenomenal increase in the number of civil servants, it is easier to carry on negotiations with them through recognized associations than with individuals separately.

**The Right to Affiliate:** On the question of allowing organizations of public employees to affiliate with outside labour organizations there is a considerable body of opinion which holds that such affiliation is improper and should be discouraged or even prohibited. There is a wide variety of arguments advanced in this connection. Only the more important of them may be stated here. In the first place, public employees are the servants of the whole community, and therefore, they should not identify themselves with organized labour which is but a part of the community. Secondly, affiliation with the general labour movement puts too much political power in the hands of public employees which they are likely to employ for their own ends and contrary to the public interest. It is also feared that if there is a strike in some private industry, it may lead to sympathetic strike by public employees. Thirdly, impartiality is an essential requisite of satisfactory public service. Affiliation, it is pointed out, will destroy the impartiality of government servants. It will result in public servants becoming mixed up in controversies of a general character which have little or no connection with their special interests.

Despite these objections, the right of affiliation has been recognized by most governments. In Britain, the issue of affiliation was never

\(^1\) Quoted in Campbell, *The Civil Service in Britain* (Pelican), 1955, at pp. 315-316.
raised until the General Strike of 1926. Many civil service unions were members of the British Trades Union Congress. But after the Strike, the Trade Union Act was passed in 1927 which prohibited affiliation of civil service unions with outside labour organisations. This Act was repealed in 1946 and many of the unions have, since then, returned to affiliation with the Trades Union Congress. In the United States, the right of affiliation is impliedly extended to federal employees while in most states of the American Union it is not denied.

The Right to Strike: It is, however, the right to strike that is the most controversial issue. In no country does the law recognise the right of public employees to strike against their government. In Britain, the law is silent on this issue. According to Finer, 'The right to strike has never been officially forbidden. If a civil servant strikes, however, he has thereby refused to perform his duties. For this the punishments rise from reprimand to dismissal with loss of pension'. In the United States, the Taft-Hartley Act of 1947 prohibits strikes by federal employees. Similar anti-strike laws have been passed in many states of America. The trend appears to be to prohibit strikes of public servants by suitable legislation. Nevertheless, at one time or another strikes of public employees have occurred in most European countries. In the United States, David Ziskind has listed and classified over one thousand strikes of government employees which have occurred from time to time in the areas of protection, education, public health, publicly owned utilities and public employment projects. It must be borne in mind that the public employee strike is a measure of desperation. The threat of a strike is always a symptom of a seriously defective public service. In the words of Ziskind, 'The situations that have given rise to government strikes have been common to most strikes. A lag between wages and the cost of living, a trend toward shorter hours, a miscellany of irksome, discriminatory conditions of employment together with an opposition to unionization have been responsible for most of the difficulty'. As Sterling D. Spero has observed, 'no mere denial of the strike will of itself prevent strikes if workers regard their grievances sufficiently great to assume the risks'.

The arguments advanced against the right to strike are more or less the same as those that have been already noted in connection with

---

1 Finer, op. cit., pp. 900-901.
2 Mosher, Kingsley and Stahl, Public Personnel Administration, (Harpers), 1950, p. 351.
4 Mosher, Kingsley and Stahl, op. cit. p. 358.
5 One Thousand Strikes of Government Employees, (New York), 1940.
6 Ibid. p. 192.
7 National Municipal Review, September 1941, p. 528.
the right of association. But two arguments are particularly emphasized. One is the sovereign character of government and the urgency and necessity of its administrative operations. This argument, however, can be applied even to a private enterprise if that enterprise is a public utility concern like electricity or transport. L. D. White has pointed out that 'the inconvenience caused by a public service strike ... is not necessarily so great as that which would be involved in a stoppage in some privately managed undertaking'.

'The true criterion of distinction', he goes on to say, 'should be based on the nature and gravity of the consequences involved in a strike, whether by persons employed by government, by a government corporation, by a public trustee, by a mixed enterprise, by a private corporation affected with a public interest, or by a privately owned and operated industry and enterprise. The rule may be stated in some such terms as these: A strike that would bring direct, immediate, certain and serious danger to a primary interest of the community should be prohibited by law with adequate sanctions, but also with adequate means to secure full public consideration and solution of the issues involved. In other cases the law should remain silent. The criterion of distinction is therefore the consequence of a strike upon the public interest, not the status of the employer'.

The other argument is that the civil servant has a secured status which imposes obligations upon the community as a whole. He is given a fixed pay which is not liable to frequent variation. He has the right to pension. Normally the community undertakes to observe these conditions of service not only in times of prosperity but also of depression. Therefore, he must, in return relinquish the right to secure better terms by a show of force. Arguments of this type, however, disregard the justice of civil servants' claims upon the community. The fact of the matter is that the issue of strike is not so much one of law as it is of ethics and politics. The issue is whether the right to strike can be justified on ethical grounds and grounds of political propriety. The basic issue is not to decide upon the legality or otherwise of strikes of public servants but to devise other methods of settling disputes and redressing the grievances of employees. The conclusion, therefore, is that two conditions have to be satisfied before strikes of public servants can be prohibited by legislation. One is that the society and its spokesman, the government should be keenly alive to their obligations towards their employees and secure to them reasonable emoluments and fair conditions of service. They should also clearly recognise that their authority has moral bounds and that justice must be done to the public employees. The economy of the State should not be regarded as everything. When employees realize that the public service is permeated by just principles the will to strike against the government is very largely

---

1 ' Strikes in the Public Service', Public Personnel Review, January 1949, p. 5.
2 Ibid. p. 6.
absent. Second, there must exist institutions consisting of the representatives of government and employees, in which the employees can obtain a full and proper hearing and in which their legitimate grievances can find redress. It is essential that both sides should have confidence in such institutions. It is indeed difficult to exaggerate the importance of this second condition. In this connection reference may be made to the Whitley Councils in the British Civil Service.

The Whitley Councils in the British Civil Service: A case study

Conditions during the first World War brought to the British Trade Union movement a new recognition at the hands of the government. Trade Union leaders took part in government under the successive coalitions responsible for the prosecution of the war. They were also admitted to a share in many of the control schemes which were set up for industry. Trade Unions thought of themselves as having a share in the control of industry and began to urge for making the control permanent. As an answer to the demand for workers’ control a Committee was set up under the Chairmanship of J. H. Whitley to devise a plan for improving the relations between employers and workers. The Committee proposed an elaborate plan of joint industrial councils. In 1917, joint councils (popularly known as Whitley Council after the Chairman, J. H. Whitley) were set up in private industries. In 1919 the principles of Whitleyism were accepted for the civil service. The story of the establishment of Whitleyism in the civil service is narrated in Cole’s symposium on ‘British Trade Unions Today’ (1939) as follows:

‘Civil servants’ trade unionism outside the post office and the industrial grades remained in a very rudimentary condition—where it existed at all—right up to 1914. Up to the Great War, there was no negotiating machinery between the Staff Associations as such and the Departments. So far as it was organized at all, the service was organized in a multitude of small and ineffective bodies, highly respectable, careful to dissociate themselves from the general scheme of trade unionism and limited to two methods of agitation, namely, petition and stating a case before a Royal Commission. The Great War and its aftermath made civil servants’ trade unionism an effective force. Many members of the Civil Service Association had served in the Army and after the war they came back with a broader outlook and a strengthened determination. That Association allied itself with the Labour Party and the Trade Union Congress till the Act of 1927 made it illegal for civil servants to affiliate with outside political or industrial organizations. War and post-war conditions altered the machinery for dealing with service disputes. Hence the introduction of the Arbitration Board. The Government’s commendation of the Whitley system to employers generally led to a claim by the Service Associations that the Government should apply to its own employees the principles and practices which
it commended to others. Thus was Government compelled to agree to the establishment of Whitleyism in the civil service. Only after much agitation did the civil service succeed in obtaining a Whitley Council in which was vested authority to deal with most of the subjects which affected the staff as a whole.

For the non-industrial civil servants in the Central government there is a National Whitley Council, Departmental Councils, and in some departments also office Whitley Committees. Each of these councils or committees has an official side and a staff side, usually equal or roughly equal in numbers. The National Whitley Council has twenty-seven members on each side. The members of the official side are appointed by the Government and according to the Constitution of the Council, ‘shall be persons of standing (who may or may not be civil servants) and shall include at least one representative of the Treasury and one representative of the Ministry of Labour’. The members of the official side are appointed yearly by the Permanent Secretary of the Treasury, and they are in the main heads, deputy heads or principal establishment officers of important departments. The Staff side representatives are appointed by the civil service groups or associations. The Constitution of the Council provides that the Chairman shall be chosen from the official side and the Vice-Chairman from the Staff side.

The Whitley Councils deal with the problems of civil servants of the classes and grades up to a salary of £1,000. The administrative class is thus excluded. The industrial staffs have special industrial councils.

The functions of the Whitley Councils include (1) provision of the best means for utilizing the ideas and experience of the staff; (2) securing the staff a greater share of responsibility for the determination and observance of the conditions under which they work, and the determination of the general provisions governing recruitment, hours, tenure, and remuneration; (3) encouragement of further education of civil servants and their training in higher administration and organization; (4) the improvement of office machinery and organization, and the provision of opportunities for the full consideration of suggestions by the staff on this subject; and (5) proposed legislation so far as it has a bearing upon the position of civil servants in relation to their employment.

The Constitution does not make the Council merely advisory. It says that ‘the decisions of the Council shall be arrived at by agreement between the two sides, shall be signed by the Chairman and the Vice-Chairman, shall be reported to the Cabinet, and thereupon shall become operative’. The Government’s control over the decisions taken is increased by the fact that the members of the official side would not

---

1 P. 483.
2 E. N. Gladden Civil Service Staff Relationships (London) 1943, Appendix I.
3 Finer, op. cit. p. 908.
be likely to agree to a decision without authority from ministers. Nevertheless, the power of the Council to take operative decisions makes its proceedings a reality.

In the Departmental Councils which are ninety or so in number similar principles are embodied. They also possess the power to make operative decisions. They too are composed of members representing the official and the staff sides. The Departmental Councils are autonomous; but they cannot adopt decisions or principles inconsistent with those of the National Council. There is no appeal from the departmental councils to the National Council. The Office Committees are found in those departments with staffs scattered in offices over the country such as the Post Office and the Ministry of Labour. These are very small Committees with 3 or 4 members on the official side drawn from the management of the office, and about the same number drawn from the branches of the staff associations. Thus in the non-industrial civil service committees to negotiate, consisting of interested parties only, are empowered to discuss almost all matters of common concern and to take decisions, where appropriate upon all important matters that affect their conditions of service. If they fail to agree on some matters affecting emoluments they may be referred to a specially constituted Civil Service Arbitration Tribunal for arbitration. The Tribunal consists of one member acceptable to the staff, another acceptable to the employers—in effect, the Treasury—and a Chairman appointed by the Minister of Labour as independent. Arbitration is a safeguard to the Treasury which if criticised can take refuge behind the decisions of the court. To the staff, the tribunal is a guarantee that they will not be at the mercy of the Treasury. Thus the staff associations, once so strongly opposed, are now admitted into close partnership by the Treasury and the departments. The machinery of Whitley Councils is based on the wholesome principle that no one should be the sole judge in one's case and that government should not be the sole judge when the grievances of its employees have to be redressed. Their representatives must also be heard.

Opinions have differed as to the extent of success achieved by the Whitley Councils between 1919 and 1939. According to one writer, 'only with the Second World War did Whitleyism take its place as a vital part of civil service organization.' Finer observes that 'in preparations for the tasks of reconstruction after World War II, the Whitley Council played a central and magnificent role: no single step was taken without its advice and report'. Even those who minimize the achievements of Whitleyism in Britain admit that these councils have served to change the old 'conservative aloofness' of state officials

---

1 See Report of the Tomlin Commission 1929-31, Paras 490 and 491 and Chapters II and III of Gladden, Civil Service Staff Relationships.
2 G. A. Campbell, op. cit. p. 313.
3 Finer, op. cit. p. 909.
by bringing them into close contact with their subordinates to an extent that would have been thought impossible before. Something very important has been gained psychologically. A new spirit of friendliness has been generated. In the frank discussions among officers and Committee members there has been an informal exchange of ideas and points of view that has greatly facilitated the settlement of difficulties and moderated the attitude of both sides. Since their establishment the Whitley Councils have ripened into vehicles of genuine collaboration. The Councils have firmly established in government spheres the recognition of trade unionism and the appreciation of the value of collective bargaining. Dr. White has listed a number of gains from the standpoint of both the official and staff sides. 'There can be no doubt,' he says, 'that by and large the members of the Civil Service regard the Whitley Councils as an extremely valuable asset, the abolition of which they would view with profound concern. The Councils have enabled them materially to improve their economic position, have aided them in the defence of their gains, and have done something to put them at least in the status of junior members of the firm.'

Thus the establishment and use of negotiation machinery will remove to a considerable extent conditions that may lead to strikes. Such machinery will induce in the minds of the employees a contented frame of mind and enable them to participate effectively in the process of making decisions which affect their interests. Roethlisberger in his Hawthorne studies at the Western Electric Company in the United States has shown that employee participation in decision-making will lead to better relations and increased production. Stuart Chase, with accounts dealing with relationships of men to their jobs with examples from both industrial and governmental situations, has shown that as employees participate in making decisions which affect them, their personal satisfactions in doing their jobs increase, and they join with management in developing more effective methods of work and as a direct result production soars. Chase believes that this result will occur regardless of the situation in which the participation takes place, whether in government or in industry. The three essential steps he emphasizes are: recognition of labour organizations as representative of employees; establishment of genuine collective bargaining procedures; and the establishment of labour-management Councils. All this, in effect, means democratization of Employer-Employee relationships. There is no doubt that this democratic method in public administration is a fruitful one.

---

2 Whitley Councils in the British Civil Service (Chicago) 1932, Chapter 18.
3 Ibid. p. 346. 4 Management and the Worker (Cambridge), 1939.
5 Men at Work (New York), 1945.