Collective Bargaining for Professional Workers: The Case of the Engineers

Donald Fraser * **and Shirley B. Goldenberg** **

The number of white-collar workers in proportion to the total North American labour force has grown rapidly over the past few decades, with the most marked growth in the professional-technical category comprised mainly of scientists and engineers. With the increase in the number of these professionals employed as wage earners, the traditional independence of the white-collar worker has been eroded by bureaucratic corporate management. This has fragmented his job, reduced his power of independent decision, engendered conflict between his professional ethics and the pecuniary values of the corporation, and generally produced a decline in his status and the overall satisfaction which would normally arise out of his professionalism if he were self-employed.

Collective negotiations in various forms have sought to remedy these problems, with mixed success, since many professional workers see an inherent conflict between the ethics of their profession and the occasionally rough-and-tumble application of economic sanctions found in union activities. Professional engineers, in particular, have been concerned with this conflict, since a majority are employed as supervisors or at some more senior level of management, with a consequent growing identification with hierarchical goals as their careers progress. As a result of this conflict, some professional groups are developing new types of collective negotiations which depend more on joint consultation, final offer selection, and compulsory arbitration than on the more severe sanctions of the picket and the strike. Others, including groups of engineers in Quebec, have chosen traditional unionism with a marked degree of success.

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* Associate Professor, Department of Law, Carleton University. Professor Fraser wishes to acknowledge his indebtedness to the supervisor of his thesis for the degree of Master of Laws, Dean H.W. Arthurs, who provided a number of insights from which aspects of this study were developed.

** Assistant Professor of Industrial Relations, Faculty of Management, McGill University.

Professional Engineers under Labour Legislation

At present, provincial labour relations acts in five provinces (Alberta, British Columbia, Newfoundland, Nova Scotia and Prince Edward Island) exclude professional engineers from collective bargaining in the private sector.[1] In Alberta, the exclusion clause refers to a "member of the engineering... profession... qualified to practise under the laws of the province and employed in his professional capacity".[2] In the four other provinces the exclusion refers simply to a "member of the engineering... profession".[3]

In Manitoba, New Brunswick and Ontario professional engineers may bargain in separate units. However, in each province they may bargain in a unit with other employees if a majority so wishes.[4]

In Quebec an engineer may bargain collectively under the provisions of the Quebec Labour Code if he is an "employee" as defined by the Code[5] and is in a group comprised only of members of his profession.[6] There are no other restrictions on him arising out of his professionalism. He may also join a Professional Syndicate incorporated under the *Professional Syndicates Act*,[7] which qualifies as an "association of employees" under the provision of the Labour Code,[8] and receive the same benefits he would obtain in a union. Finally, he may join a professional syndicate which either does not qualify as an "association of employees" under section 1(a) and 1(m)(1) of the Labour Code because it includes members with managerial status, or which is not entitled to be certified under the provisions of section 20 of the Code because it includes members who are not professional engineers, such as technicians.

In Saskatchewan engineers are neither excluded from the definition of "employee",[9] nor given any special protection in bargaining

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[1] *The Alberta Labour Act*, S.A. 1973, c.33, s.49(1)(h)(ii); *Labour Code of British Columbia Act*, S.B.C. 1973 c.122 s.1(1)(i)(ii); *The Labour Relations Act*, R.S.N. 1952, c.258, s.2(1)(i)(ii); *Trade Union Act*, S.N.S. 1972, c.19, s.1(2)(b); *Prince Edward Island Labour Act*, S.P.E.I. 1971, c.35, s.7(2)(a).

[2] *The Alberta Labour Act, supra*, f.n.1.

[3] *Labour Code of British Columbia Act; The Labour Relations Act* (N.); *Trade Union Act* (N.S.); *Prince Edward Island Labour Act: supra*, f.n.1.

[4] *The Labour Relations Act*, S.M. 1972, c.75, s.29(3); *Industrial Relations Act*, S.N.B. 1971, c.9, s.2(5)(b); *The Labour Relations Act*, R.S.O. 1970, c.232, s.6(3).

[5] *Labour Code*, R.S.Q. 1964, c.141, s.1(m) as am. by S.Q. 1969, c.14, s.18; S.Q. 1969, c.20, s.10; S.Q. 1969, c.47, s.2.

[6] *Ibid.*, s.20.

[7] *Professional Syndicates Act*, R.S.Q. 1964, c.146.

[8] *Supra*, f.n.5, s.1(a).

[9] *The Trade Union Act*, S.S. 1972, c.137, s.2(f).

in a separate unit. Indeed, the Saskatchewan Act is unique in that it permits the board to designate a person as an employee even if he may be held to be an independent contractor for the purpose of vicarious liability in tort.[10]

On the federal scene, recent extensive amendments to the Canada Labour Code[11] have removed professional exclusions, including that of engineers.[12] The definition of professional employee under the Code requires not only the "application of specialized knowledge" but also membership in or eligibility for membership in a "professional organization that is authorized by statute to establish the qualifications for membership".[13] The Code has a separate provision with respect to professional bargaining units.[14] Such units may only be comprised of professional employees and may, in such units, include "employees performing the functions, but lacking the qualifications of a professional employee".[15]

Before leaving the federal scene, it should be noted that collective bargaining is provided for professional employees, including engineers, of the Canadian government under the provisions of the *Public Service Staff Relations Act*.[16] That Act has several unique features, including the concept of a "designated employee",[17] who is so-named because the performance of his duties "is or will be necessary in the interest of the safety or security of the public",[18] and who is accordingly forbidden to strike;[19] and the concept of a pre-bargaining choice between arbitration and a conciliation/strike for the settlement of interest disputes.[20]

As for the provinces, only Ontario and Manitoba still exclude the members of engineering and other professional associations from the bargaining rights accorded to other civil servants.[21] Public service legislation in Quebec and New Brunswick, like the *Public Service Staff Relations Act* at the federal level, provides for separate professional bargaining units (though not necessarily confined

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[10] *Ibid.*, s.2(f)(iii).
[11] *Canada Labour Code*, R.S.C. 1970, c.L-1, as am. by S.C. 1972, c.18.
[12] *Ibid.*, s.107(1).
[13] *Ibid.*
[14] *Ibid.*, s.125(3).
[15] *Ibid.*
[16] *Public Service Staff Relations Act*, R.S.C. 1970, c.P-35.
[17] *Ibid.*, s.2(k).
[18] *Ibid.*, s.79.
[19] *Ibid.*, s.101(1)(c).
[20] *Ibid.*, ss.2 and 36.
[21] *An Act to Provide for Collective Bargaining for Crown Employees*, S.O. 1972, c.67, s.1(1)(g)(iv); *Civil Service Act*, R.S.M. 1970, c.C-110, s.47(4).

to members of a single profession), as does the recent *Public Service Labour Relations Act* in British Columbia.[22] The remaining provinces have no professional exclusions in their public service legislation, but while government engineers in these provinces may thus bargain collectively, there is no provision for separate professional bargaining units.[23]

The changing status of the professional employee and the implications of that change with respect to some approaches to collective bargaining will now be considered.

Professionalism and Unionism

(a) Growth and Professional Values

The white-collar sector (and in particular the professional-technical category of that sector) has shown a remarkable growth for a period of decades. As early as 1954 in the United States, Goldstein, in examining census figures in the professional and technical category, noted a tremendous growth in the number of professionals in salaried positions. In summarising the effect of that growth, he stated that such employees were attaining more and more "the status of members of a large anonymous staff".[24] More recent studies involving a projection to 1975 indicate clearly that this growth and resultant shift in the working force in the United States will continue.[25]

Peter Drucker, in an article entitled "Managing the Educated", reviews this growth and points out: first, that managerial, professional and technical employees are now the largest group in the United States work force; and secondly, that, as a consequence, people with a high degree of education comprise more than one-half of the work force.[26] He notes that managing such people has

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[22] *Civil Service Act*, S.Q. 1965, c.14, ss.71, 72; *Public Service Labour Relations Act*, S.N.B. 1968, c.88, s.24(5); *Public Service Staff Relations Act, supra*, f.n.16, s.32(3); *Public Service Labour Relations Act*, S.B.C. 1973 (2d session), c.144, s.4(b).

[23] *Public Service Act*, R.S.A. 1970, c.298, amended 1971, c.89 and 1972, c.80; *Civil Service Joint Council Act*, R.S.N.S. 1967, c.35; *The Public Service (Collective Bargaining Act)*, S.N. 1973 (not yet proclaimed); P.E.I. O/C 958, 1972; *Amendment to Regulations under authority of Civil Service Act*, S.P.E.I. 1962, c.5, s.8(1). In Saskatchewan, *The Trade Union Act, supra*, f.n.9, applies to government employees on the same basis as to employees in the private sector.

[24] Goldstein, *Unions and the Professional Employee*, (1954) 27 J.Bus. 276, 283.

[25] Woodworth and Peterson (eds.), *Collective Negotiation for Public and Professional Employees* (1969), 3.

[26] Drucker, "Managing the Educated", in *People and Productivity* (1969), 164.

become a major problem of the corporate bureaucracy, and suggests that one difficulty is that one cannot command the specialist, since he is responsible to his professional judgment and knowledge rather than to a superior officer.[27] Drucker concludes that:

> For the new organization of highly educated people, authority and responsibility may well be the wrong principles of organization. It may well be that we will have to learn to organize not a system of authority and responsibility — a system of command — but an information and decision system — a system of judgment, knowledge and expectations.[28]

The same tocsin is sounded in Britain. Kahn-Freund has warned of "far-reaching consequences" arising out of the "very rapid growth" of white-collar workers there.[29] Prandy, in reviewing the problem of professionalism and unionism in Britain in some detail, has noted the reluctance of professional associations, particularly of engineers and scientists, to indulge in union activities. He suggests that a principal reason is their upward mobility into management and a consequent sympathy for it. He proposes the question:

> ... whether these developments are likely to lead to union activity by professional bodies, to professional activity by unions, or to the development of a new form of intermediate organization combining elements of both.[30]

In Canada the same occupational trend is evident. Ostry, in analysing occupational shifts in the Canadian labour market, has noted "a decisive movement toward white-collar jobs"[31] and remarks that this is attributable to "a sustained growth in the professional and technical group".[32] Further, a recent study of the Canada Department of Manpower and Immigration reports that "[i]n all regions the projected growth is greatest for professional and technical occupations: here requirements are projected to more than double by 1975".[33]

The growth noted in all three jurisdictions resulted in the phenomenon of size, which, in its turn, results in a division of labour into small, functionally-defined fragments. This process of

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[27] *Ibid.*, 165.

[28] *Ibid.*, 172.

[29] Kahn-Freund, *Labour Law: Old Traditions and New Developments* (1968), 14.

[30] Prandy, *Professional Organization in Britain* (1965), 67.

[31] Ostry, "The Canadian Labour Market", in Miller & Isbester (eds.), *Canadian Labour in Transition* (1971), 31.

[32] *Ibid.*

[33] Ahamad, *A Projection of Manpower Requirements by Occupation in 1975; Canada and its Regions* (1969, Department of Manpower and Immigration, Canada), 134.

fragmentation or over-functionalization produces an "assembly-line" syndrome, where loss of control and an almost total disappearance of any creative or novel aspect to the job causes a loss of identity and a sense of alienation. Such fragmentation has long been apparent in industry, but it is noteworthy that it now affects the salaried professional and produces new conflicts.

Wilensky, in discussing the clash of complex organization with professionalism in the United States, first considers the problem of non-professional supervision:

> The salaried professional often has neither exclusive nor final responsibility for his work; he must accept the ultimate authority of non-professionals in the assessment of both process and product.[34]

And he comments that this bureaucratic control is aided by fragmentation, giving the following example:

> [This is] epitomized... by the scores of engineering specialties in the Soviet Union where the regime finds it easy to train and control its technicians by continual narrowing and redivision of traditional engineering curriculums.[35]

The same problem arises in Canada. Muir, in a speech to the Western Congress of Engineers on May 21, 1970, commented that almost 90% of the engineering profession were now in paid employment.[36] He said in conclusion that:

> ...the development of specialization within the engineering profession has led to mass training of engineers and the utilization of engineers on almost a production line basis. As a result, many salaried P. Engs. are dissatisfied with being a faceless mass of engineers with little opportunity of self-actualization or reason for incentive. They are thus turning to collective bargaining as a means for asserting themselves.[37]

The sequence of problems resulting from growth (*i.e.*, fragmentation, loss of control, loss of identity, and an inability to communicate in order to resolve the problems) are particularly severe for the professional employee, since his professional training and values have tended to emphasize his independence.

Peter Drucker, writing in 1952 on the relationship between management and the professional, indicated some clear differences between the basic attitudes of professional employees, and the rest of the business organization. He pointed out the difference between the managerial attitude, which in essence wants to see a job get done, and "professionality", which comes from the professional man's "objectivity, his standards, his refusal to accept

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[34] Wilensky, *The Professionalization of Everyone?*, (1964) 70 Am.J.Sociol. 146.
[35] *Ibid.*, 157.
[36] Muir, *A Trade Union for P. Engs.?*, (1970) 9 Eng.Dig. 39.
[37] *Ibid.*, 42.

uncritically management's definition of a problem, or management's idea of what the result should be".[38] He also noted the need for professional recognition, and suggested that management should encourage such activities as participation in professional societies and part-time teaching.[39]

Gellerman has noted the same desire for independence and control among professionals in discussing what is known as the "Pittsburgh Studies". This was a study of work motivation of some 200 engineers and accountants who worked for eleven different firms in the Pittsburgh area. The principal reasons for the study were the likelihood of professional workers responding to different motivating forces than clerical or blue-collar workers, and a search generally for "clues to what kind of motives we can expect to appear among other workers as we move toward a more technologically-based economy and a more professionalized labour force".[40] Gellerman sums up the result of the studies in the following way:

> ... both the traditional bread and-butter motivators and the more sophisticated "human relations" motivators *didn't* motivate... control of their own work, rather than the tangible rewards of work, was the motivator.[41]

The same professional values have been discussed in *The McGill Report*, a recent, exhaustive study of the professional employee in the Public Service of Canada. The report describes these values as including "autonomy in the work situations, respect, esteem, real participation in decision-making, satisfactory economic situation, etc.",[42] against all of which the phenomena of growth and fragmentation tend to prevail.

Finally, it should be noted that there is a countervailing force, more apparent for salaried engineers than other professionals, which tends to restrain the conflict between professional values and the values of the corporate hierarchy. This is the upward mobility of engineers into supervisory positions which, as has been described by Lipset, makes for "identification with management, and support of the status quo".[43] This mobility is quite extensive. A major survey of

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[38] Drucker, *Management and the Professional Employee*, (1952) 30(3) Harv. Bus. Rev. 84.

[39] *Ibid.*, 86-87.

[40] Gellerman, *Motivation and Productivity* (1963), 48.

[41] *Ibid.*, 50.

[42] *The Professional Employee in the Public Service of Canada*, (1973) 52(2) J.Prof.Inst. 8.

[43] Lipset, "White Collar Workers and Professionals — Their Attitudes and Behaviour towards Unions", in Faunce (ed.), *Readings in Industrial Sociology* (1967), 540.

the Engineers Joint Council in the United States, representing nearly forty-five thousand fully qualified engineers, showed that engineers were indeed largely managers or supervisors, with 64% providing supervision over components ranging from small teams to major organizations.[44]

In summary, a conflict results from the desire of the professional employee, on one hand, to retain some control over his work in order to preserve his professional values and approach; and the tendency of the firm, on the other hand, to close the gap between its treatment of him and of blue-collar workers because of the rapid growth in numbers of professional employees.

(b) Some Particular Benefits

There are several ways in which collective bargaining in its usual form in the private sector may directly benefit the professional engineer. The agreement might provide for economic gains and for certain professional benefits, such as the right to sign or to refuse to sign an engineering report. Engineers might also gain from the regularization and support of economic benefits by a collective bargaining process. Engineers are highly vulnerable to the phenomenon of professional obsolescence, which appears approximately in mid-career for those who have not moved into administrative or at least substantial supervisory functions. This type of obsolescence has been considered by Kuhn, who has observed that as the length of company tenure increases, salaries level, promotion opportunities diminish and a functional obsolescence appears, all of which lower individual bargaining power.[45] Walton considers that unions in the United States have had some palliative effect on this process, noting that they have reversed the narrowing trend in engineers' salary increases, and have tried to offset the situation where the level of hiring rates for incoming engineers rises faster than the general increases in salaries for engineers already in the firm.[46]

The same levelling tendency has been observed in Ontario. The 1970 *Membership Salary Survey* of the Association of Professional Engineers of Ontario shows a median annual salary increase peaking for an engineer of about thirteen years experience and diminishing

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[44] *A Profile of the Engineering Profession* (Report from the 1969 National Engineers Register), 11.

[45] Kuhn, *Success and Failure in Organizing Professional Engineers* (paper presented at the Industrial Relations Research Association Meeting, December 27, 1963), 9.

[46] Walton, *The Impact of the Professional Engineering Union* (1961), 118-119.

rapidly thereafter to a low for an engineer of about twenty-two years experience.

In analysing the data, Hastings suggests that:

> This may indicate that larger industries are continuing to assiduously follow the iniquitous practice of penalizing older engineers who do not have the mobility of younger engineers, or that a large number of engineers are working at a subprofessional level or both.[47]

It might accordingly be expected that collective bargaining might alleviate this problem among professional engineers in Ontario, as it has in the United States.

However, while the question of economic benefits will usually appear as a substantial issue in any consideration of large-group unionization, professional or not, the question of professional benefits is by definition of peculiar interest to professional groups. One may therefore expect issues to arise in this area which are relatively new to collective bargaining. Walton has indicated that unionization in the United States has secured some professional benefits for engineers, such as an entitlement as inventor to patent rights, and the right to add one's name as author to engineering reports circulated outside the company.[48] Other closely related professional rights, such as the right to sign one's own work and to refuse to sign a report that one disagrees with for professional reasons, have been incorporated in contracts in Quebec which will be considered later. A somewhat broader view of such rights has been taken by Marc Lapointe, the newly-appointed Chairman of the Canada Labour Relations Board and a lawyer with experience in bargaining for professional engineers in Quebec, in his suggestion that engineers should insist on protection for the "inviolability of a professional decision" being incorporated in a negotiated agreement.[49]

Whatever rights are brought to the bargaining table in the future in this area, it may be expected that management's inherent resistance to change and to erosion of its own rights will severely limit developments in this area. Professional benefits may become the most contentious area of bargaining, as a consequence, and may develop into one of the principal foci of professional unionism.

(c) The Development of a New Type of Collective Relationship

In general, studies of organizational approaches to the management/union/worker relationship tend to suggest that a more har-

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[47] Hastings, *Membership Salary Survey 1970,* (1971) 4 Eng.Dig. 38, 40.

[48] *Supra,* f.n.46, 100.

[49] Lapointe, in a speech to SOHPEA, in Ryan, *Engineers Must Demand Share of Pie,* (1970) Eng.Dig. 11.

monious and possibly more productive work relationship develops out of a "supportive relationship" which "builds and maintains [a] sense of personal worth" and which preserves distinctive identities, interests, and values. Such a relationship, however, is probably valuable in most industrial milieus, whether or not professionals are involved. The essential problem is to see whether there is a sufficient difference in kind between the identity, interests and values of the professional and other workers to suggest a new type of collective relationship. What are the characteristics that might aid in determining that relationship? First, consideration must be given to Drucker's analysis of a new kind of organization for highly educated people, in which a "system of authority and responsibility" is replaced by a "system of judgment, knowledge and expectation".[50] A second characteristic has been identified in the "Pittsburgh Studies" by Gellerman, who noted that the "traditional bread-and-butter motivators" did not work and that the professionals wanted independence in their work.[51] A third characteristic (particularly in the case of engineers) is their identification with management arising from their upward mobility into supervisory and managerial roles, which may produce a distaste for direct economic conflict with management in the form of picketing and striking. A final characteristic is the need for protection of professional benefits. In such areas as control over professional reports and responsibility to professional ethics, this characteristic is close to the second one mentioned above. These characteristics do not lend themselves clearly to a definition of a new type of collective relationship. However, the need for judgment and knowledge rather than authority, the identification with management and the need for more control over work to be yielded up by management tend to suggest that a consultative form of collective relationship may be more beneficial in the long run than the traditional adversary form.

What sort of association is then appropriate for professionals? Kruger, in considering the direction of unionism in Canada, discusses the trend away from self-employment to salaried employment among professional employees, and predicts that where white-collar workers do not have professional organizations that are suitable for collective bargaining:

> It seems unlikely that many Canadian white-collar workers will join existing unions. More likely is the development of associations of white-collar workers at the level of the firm which then may spread to industrial,

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[50] *Supra*, f.n.26.

[51] *Supra*, f.n.40.

> regional and national groupings similar to what is already common among blue-collar workers.[52]

In a similar vein, Wilensky has urged the development of an association separate from both the trade union and the professional association:

> The occupational group of the future will combine elements from both the professional and bureaucratic models; the average professional man will combine professional and non-professional orientations; the typical occupational associations may be neither a trade union nor a professional association.[53]

Although these are both predictions for the future, a development of this nature occurred last year in Ontario, where the Society of Ontario Hydro Professional Engineers and Associates, which was expected to become the first certified engineering union under the amended Ontario legislation, signed a voluntary Master Agreement and Redress Procedure with Ontario Hydro. The agreement will be reviewed below.

There are, of course, a number of other possible kinds of professional negotiations. The Federation of Engineering and Scientific Associations (F.E.S.A.) has recently published a study entitled "Negotiating Options for Professional Staff"[54] which lists five categories of negotiating processes. They are:

1. Individual Negotiation, where the engineer puts his own case to the supervisor.
2. (a) Group Representation, where group representatives will simply submit the engineer's case to management.
   (b) Informal Group Negotiation, where the group representative will, in addition to submitting the case, negotiate informally with management.
3. (a) Regularized Informal Negotiation, where the system of informal group negotiation is regularized by mutual accord by the settlement of such things as regular dates of meeting.
   (b) Negotiation under Voluntary Agreement, where the parties develop regularized informal negotiation to the point where a substantial set of agreed procedures is defined and accepted by both parties in writing.
4. Collective Bargaining as a Certified Group, where a group of engineers obtains certification independently of a trade union and bargains under the terms of pertinent labour legislation.

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[52] Kruger, "The Direction of Unionism in Canada", in Miller & Isbester, *supra*, f.n.31, 106.

[53] *Supra*, f.n.34.

[54] *Negotiating Options for Professional Staff* (1973, F.E.S.A.).

5. Group Bargains as Local of an Existing Union, where a trade union obtains certification as representative of the group under the terms of pertinent labour legislation.[55]

The Federation rejects the first category as ineffective, and suggests that the fifth category would entail such conflict between professional aspirations and "the inevitable associations, policies, precedents and tactics of trade unions, that it is rated unacceptable to employee professionals".[56] The Federation accordingly views categories 2(a), 2(b), 3(a), 3(b) and 4 as the only suitable formats for professional staff.

A consideration of developments in Ontario and Quebec will show varying degrees of experience and success in the more organized categories noted above.

The Quebec Experience: Engineers at the City of Montreal and Hydro-Quebec

Quebec engineers acquired full collective bargaining rights under the Labour Code in 1964.[57] Prior to this, they had been specifically excluded from the coverage of labour legislation, along with the members of other incorporated professions.[58] The engineers' professional association, la Corporation des Ingénieurs du Québec (CIQ), had consistently opposed the idea of collective bargaining for its employee members and made strong representations against removal of the professional exclusions when amendments to the labour legislation were being considered in 1963.[59] A few years earlier (1959), it had passed the following amendment to its Code of Ethics to block attempts by engineers' groups to engage in collective bargaining:

> ARTICLE 3.5. The Engineer shall not be a member of a trade union nor participate as such in any form of trade union activities, since he would then uphold a philosophy and certain methods of negotiation incompatible with true professionalism, such as the use of strikes and the like.

In 1963 the legal counsel of the CNTU, Jean-Paul Geoffroy, advised a pro-union group of engineers at the City of Montreal that Article 3.5 was illegal. The Corporation also received a legal opinion from Guy Favreau, Q.C. that the article would be *ultra vires* the powers of the CIQ if extended to apply to professional syndicates. The CIQ did

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[55] *Ibid.*, 3.
[56] *Ibid.*, 5.
[57] *Supra*, f.n.5.
[58] See *Labour Relations Act*, S.Q. 1944, c.30, s.2(a)(3).
[59] CIQ Brief to Industrial Relations Committee of the Legislature (1963).

not act on this advice when it was received. However it repealed Article 3.5 in August 1964, after the Labour Code had granted bargaining rights to professional engineers. There could be no doubt at that point that the article was illegal.

We have already noted that the Quebec Labour Code requires professional bargaining units to be limited to members of the same profession and that there are no other restrictions with respect to professional employees.[60] However, professional engineers have been reluctant to use the Code as an instrument for determining their bargaining units, fearing that a disproportionate number of managerial exclusions would result. This problem is illustrated by the experience of the engineers at the City of Montreal and Hydro-Québec. Incorporated under the *Professional Syndicates Act*,[61] and affiliated with the CNTU, they chose to rely on power relationships to define their bargaining units rather than submit to the provisions of the Code and risk a narrow interpretation of employee status (and consequently, a high proportion of managerial exclusions) by the Labour Relations Board.

(a) The City of Montreal

Le Syndicat professionnel des ingénieurs de la Ville de Montréal (SPIVM) was formed on October 9, 1963. Having succeeded in enrolling 225 out of a possible 290 City engineers, SPIVM applied to the Provincial Secretary for incorporation under the *Professional Syndicates Act*. Strong opposition from the CIQ resulted in the application being put in abeyance. But the City insisted that it would not negotiate until the Syndicate was legally incorporated. Impatient with the delay, SPIVM decided to side-step the incorporation issue and force the City to recognize it. On July 15, 1964 the members voted for a work stoppage within 36 hours if the Syndicate was not recognized. The City administration capitulated the next day, recognizing the Syndicate and agreeing to bargain with it. Official incorporation came in the fall of 1964.

After protracted negotiations and conciliation, it took a strike threat to produce the first collective agreement, signed on May 26, 1965. There had been two principal issues in the negotiations: union jurisdiction (the area of the bargaining unit) and salary levels. In addition, the engineers were determined to achieve certain "professional guarantees". The agreement embodied the recommendations of the conciliator in the key matter of the jurisdiction of the syndicate, which recommendations were virtually identical to the orig-

[60] *Supra*, f.n.5.
[61] *Supra*, f.n.7.

inal union position. The bargaining unit, as finally defined, did not conform to the requirement of the Labour Code to exclude all persons exercising supervisory authority. Instead it excluded only those engineers exercising hiring and firing authority over other engineers or employed in a confidential capacity. The contract also contained substantial salary increases and some innovative "professional" clauses. These included Article 16.01, providing the right for an engineer to sign his own reports and plans; article 16.02, providing the right to refuse to sign a report as a matter of professional conscience; and article 22.03, which provided that engineers would be assigned "to positions whose nature demands the technical knowledge of an engineer".

(b) Hydro-Quebec

The professional engineers at Hydro-Quebec also decided to force "voluntary" recognition on their employer. However, it took two recognition strikes before their first collective agreement was signed. Only one matter was settled more easily at Hydro than at the City of Montreal. As a result of the precedent established by SPIVM, le Syndicat professionnel des ingénieurs de l'Hydro-Québec (SPIHQ) had no problem in being incorporated.

SPIHQ approached the Hydro Commission for recognition on January 22, 1965, demanding a broad "professional" bargaining unit on the pattern established by SPIVM. Hydro, on the other hand, insisted that the bargaining unit be based on the provisions of the Labour Code and wanted the Labour Relations Board to determine the managerial exclusions.

The first recognition strike began on May 10, 1965 and lasted for five weeks. A noted expert on professional bargaining has commented on the results as follows:

> Of the 555 engineers employed at Québec Hydro, 440 were finally recognized as being acceptable for representation through the syndicate, whereas, if certification under the Code had been required, only about 280 would have been in fact covered by the eventual agreement. This was a true victory for "cadre" (supervisory) unionism.[62]

A letter of agreement defining the bargaining unit (June 14, 1965) was followed by contract negotiations. But the bargaining broke down when Hydro implemented administrative changes that had the effect of increasing the number of managerial exclusions from the bargaining unit. This led to a second recognition strike beginning

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[62] Jean-Réal Cardin, "Collective Bargaining and the Professional Employee in Quebec", in *Collective Bargaining and the Professional Employee* (Conference Proceedings, Centre for Industrial Relations, Dec. 15-17, 1965), 81, 92.

on April 15, 1966 and lasting for eleven weeks. This strike resulted in a new settlement which respected the principle established in the first agreement, namely the exclusion from the bargaining unit of any engineer whose position carried authority over the *career* of other engineers or professionals. In the case of positions established or filled after June 15, 1966, the following criteria for managerial exclusions would apply:

(1) Authority of a superior over an engineer or other professional. An engineer is considered in authority if he has influence on the career of another engineer or professional in all the following respects; promotion, salary, report on his work and recommendations on disciplinary matters

and/or

(2) Responsibility of directing the activities of a district as principal representative of Hydro Québec.[63]

The Hydro engineers achieved substantial salary increases and professional benefits in their first collective agreement. In addition to clauses on signing rights, on the pattern of the Montreal agreement, Hydro engineers established the principle of professional seniority, rather than company seniority, as the basis for length of vacation; the number of weeks allowed for vacation were to be related to the number of years since graduation. The agreement also provided for a committee of five (two union and three management representatives) to make recommendations for vacant positions. Questions of merit could at least be raised in this committee although the ultimate decision on promotion remained the prerogative of the employer.

Subsequent collective agreements have increased the financial and professional benefits for City and Hydro engineers. However, their first round of bargaining was clearly the most significant. Firstly, the agreement established that all engineers exercising management functions need not be excluded from the bargaining unit. The experience of these engineers' unions shows that a workable policy of exclusion need only affect those with authority over engineers or other professionals with respect to promotion, salary, work assessment and disciplinary matters. It is interesting to note that the bargaining units that were established on this basis by "voluntary" recognition were subsequently recognized in the law. Special amendments to the Labour Code recognized as certified

[63] Translation from *Convention collective de travail entre la Commission Hydro-électrique de Québec et le Syndicat professionel des ingénieurs de l'Hydro-Québec (CSN)*, 25 juillet 1966 - 31 décembre 1967, Annexe A, 32-33.

associations the unions that signed the engineers' agreements at the City of Montreal and Hydro-Québec.[64] Secondly, it was shown that professional status may be advanced rather than harmed by collective bargaining, since such things as protection of professional rights, professional seniority and advancement by merit may be specifically provided for in the collective agreement. Finally, the Quebec experience proved that some engineers could become militant enough to engage in fairly protracted and effective strikes, without any apparent lasting harm to their professional status.

The Situation in Ontario

The Ontario *Labour Relations Act* of 1948 specifically excluded engineers from its coverage, along with members of other professional associations.[65] By 1971, an amended Act gave bargaining rights to the engineers while retaining the other professional exclusions.[66] This ended a protracted struggle between employee engineers who were demanding legal bargaining rights and the Association of Professional Engineers of Ontario (APEO), which, like the CIQ in Quebec, was adamantly — and actively — opposed to such rights. The Society of Ontario Hydro Professional Engineers and Associates (SOHPEA) took the lead in the battle for bargaining rights, supported in due course by other groups of employee engineers. While space restrictions preclude a detailed historical account of the struggle, some of its highlights will be described in the next few pages.

(a) Controversy over Bargaining Rights

In 1956 APEO established an Employee Members' Committee (EMC), formed of representatives of Company groups, for the purpose of "maintaining communications" with employers rather than bargaining collectively. SOHPEA presented in 1958 the first of a series of briefs to the government, as well as to APEO, in favour of including professional engineers in the coverage of the *Labour Relations Act*. APEO reacted with a counter-brief supporting the retention of the exclusion clause on the ground that compulsory bargaining under labour legislation was against the best interests of the profession.

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[64] R.S.Q. 1964, s.20; replaced by S.Q. 1969, c.47, s.9; as amended by S.Q. 1969, c.48, s.9; S.Q. 1970, c.33, s.1; S.Q. 1971, c.44, s.1.

[65] R.S.O. 1960, c.202, s.1(3)(a)(b).

[66] *Supra*, f.n.4 (proclaimed 1971).

After a number of unsuccessful attempts to influence the government and the professional association on its own, SOHPEA decided that it should broaden the base of support for its position. Early in 1960 it formed a Committee for the Advancement of Professional Engineers (CAPE) with representatives of a number of company groups outside Ontario Hydro. In April 1960 CAPE tried a new approach, suggesting to the Council of APEO that the *Professional Engineers' Act*[67] be amended to provide for the certification of engineers' units for the purpose of collective bargaining. The Council turned down the proposal. Further attempts to amend the *Labour Relations Act* or the *Professional Engineers' Act* were all to no avail. Finally, in 1963 the proponents of legalized bargaining rights decided that separate legislation for professional negotiations might be the only answer.

In August 1963 SOHPEA (whose membership included engineers and scientists) presented a submission for "New Legislation for the Professional Engineer and Scientist in Ontario" to the Premier and the leaders of the Opposition parties. Less than a year later, SOHPEA's horizons took in all the professions. In April 1964 it addressed a draft brief to all major professional associations in Ontario on the "Need for a Professional Employees Act". By July 1964 the Steering Committee on Negotiation Rights for Professional Staffs was formed at a special EMC group conference. By November 1964 the Steering Committee, supported by seven EMC groups, sent a brief on "Negotiation Rights for Professional Staffs" to the major professional associations as well as to the Ontario government. This brief proposed special legislation for professional negotiations. APEO's position did not change at this point but Premier Robarts acknowledged the problem raised in the brief in his answer to the Chairman of the Steering Committee. He even hinted at an eventual review of the *Labour Relations Act*:

> It may be necessary for the government to examine in some more formal way the question of actual need and the best means for individual professional persons to be able to combine to represent their interests to employers in a way which is not inconsistent with individual professional status and responsibility. This in time may require some review of the Labour Relations Act and other statutes. It is too serious a subject, however, to be considered without a thorough examination of the public interest as well as the interests of the many professional groups.[68]

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[67] *The Professional Engineers Act*, R.S.O. 1960, c.309, later replaced by the *Professional Engineers Act*, R.S.O. 1970, c.366.

[68] Letter to E.G. Phillips, Chairman of the Steering Committee on Negotiation Rights for Professional Staffs, February 5, 1965.

In April 1966 the Steering Committee submitted a Draft Professional Negotiations Act to the government. The proposed Act incorporated the main premises of the earlier brief on Negotiation Rights for Professional Staffs. However, this time the submission was endorsed by an impressive list of 18 professional groups and associations, including administrators, nurses, librarians and municipal recreation directors. Still, the majority of the sponsoring bodies were groups of engineers, and SOHPEA was clearly the driving force behind them.

The Steering Committee argued that existing labour legislation, even with modifications, would be inappropriate as a vehicle for professional bargaining. It noted, for example, that:

> The definition of employee which is used by the certification boards is so restrictive that if it were applied to professional employee bargaining groups, their membership would be held down to an unworkable minimum.[69]

The proposed Professional Negotiations Act, on the other hand, would provide a sufficiently flexible definition of employee status to take into account the responsible nature of professional functions and duties. Salaried professionals exercising supervisory authority over other categories of workers (*i.e.*, non-professionals) would be eligible for professional bargaining units.

The proposed Act departed from the *Labour Relations Act* in a number of other important respects. For example, it provided for purely voluntary participation in collective bargaining. No professional employee would be forced to join a professional association or to be subject to the provisions of a collective agreement against his will. But all professional employees who wished to bargain collectively would be able to do so since majority representation was not to be a prerequisite for recognition of a professional staff association. The Act also provided for individual contracts to supplement a collective agreement. This provision, unknown in general labour legislation, was meant to assuage the fear of some professional workers that collective bargaining would submerge individual differences and discourage personal initiative. And finally, the Steering Committee made it clear that it considered trade union affiliation and strike action unacceptable for professional workers. The draft Act provided for an innovative method of arbitration, final

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[69] Brief presented by the Steering Committee on Negotiation Rights for Professional Staffs (1966), 3. It will be remembered that the Quebec engineers' unions repudiated the Labour Code for the same reason.

offer selection,[69a] as the final step in the settlement of interest disputes.

The Draft Professional Negotiations Act received cautious approval from APEO. A statement by the Council of APEO that it would not actively oppose the Act marked a watershed in its position.[70] While still opposed in principle to the idea of collective bargaining, the professional association admitted that a legal right to bargain might eventually have to be made available to the employee engineers who desired it. If this were to be the case, APEO preferred the Draft Professional Negotiations Act, with some modifications, to removal of the engineering exclusion from the *Labour Relations Act.* It remained adamantly opposed to having professional engineers subject to general labour legislation.

The issue came to a head three years later. In late 1969 the provincial Department of Labour was reviewing possible amendments to the *Labour Relations Act* and queried APEO on its current attitude toward collective bargaining. Convinced by this time that some form of collective bargaining legislation for engineers had become inevitable, APEO decided to concentrate its efforts on the question of professional safeguards: the protection against arbitrary absorption into existing bargaining agencies; the homogeneity of the professional bargaining unit; the freedom for the professionals involved to decide whether to engage in collective bargaining and to select their bargaining agent by a majority vote; the inclusion of supervisory employees in professional bargaining units; and finally, compulsory arbitration procedures for settling unresolved disputes. APEO left no doubt that special legislation was the only way in which these safeguards could be assured.[71] The Steering Committee, on the other hand. though committed to its Draft Professional Negotiations Act, seemed to prefer half a loaf to none at all. It did not oppose the removal of the engineering exclusion from the *Labour Relations Act,* once that seemed to be the only way collective bargaining rights could be achieved.

(b) Amendments to the Ontario Labour Relations Act (1971)

The Ontario government clearly repudiated the principle of separate legislation for professional negotiations when it removed

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[69a] Under this system, the arbitrator would have to decide in favour of the entire package of proposals by one side or the other with no discretion to propose a compromise solution of his own, the purpose being to avoid irresponsible proposals by either party.

[70] Association of Professional Engineers of the Province of Ontario, Council Statement, December 8, 1966.

[71] Minutes of the APEO Council, January 23, 1970, 30.

the engineering exclusion from the *Labour Relations Act*. It also showed that it was not ready to extend professional bargaining rights beyond the engineering group, by not making any change in the other professional exclusions. Moreover, while it had finally given in to the pressure for bargaining rights for professional engineers, it did not grant them the special professional clauses they desired. Section 6(3) was the only clause in the amended *Labour Relations Act* which made special provision for professional engineers; it permits them to be certified in separate bargaining units although it also permits them to be certified in a unit with other employees should this be the wish of the majority of the engineers concerned.

There is some evidence that Ontario engineers, like the engineers in Quebec, may be reluctant to use the labour legislation as a vehicle for collective bargaining unless it is amended to provide minimum guarantees for particular professional needs. The experience of SOHPEA is a significant illustration of this point.

(c) The Master Agreement between SOHPEA and Ontario Hydro

SOHPEA was considered the group most likely to make the first application for certification after the removal of the engineering exclusion from the *Labour Relations Act*. But this did not occur. On January 4, 1973 SOHPEA signed a voluntary Master Agreement and Redress Procedure with its employer rather than ask the Labour Relations Board for certification under the Act.

SOHPEA already had a form of voluntary collective agreement with Ontario Hydro by virtue of a Letter of Understanding signed on September 28, 1961. This Letter contained a recognition clause and a system of joint consultation on working conditions through the medium of a Joint Society-Management Committee. However, it differed from a standard collective agreement in providing for continuous negotiations and in lacking a termination date. It also covered employees performing supervisory functions apart from those employed in a confidential capacity.

Although SOHPEA had not been certified, it applied to the Labour Relations Board under Section 13(3) of the *Labour Relations Act* for conciliation of a dispute arising out of the joint consultation system. The Board refused to grant conciliation services, noting that SOHPEA did not meet the definition of a trade union because of its managerial members. SOHPEA then proceeded to negotiate the Master Agreement and Redress Procedure noted above.

The Master Agreement, like the Letter of Understanding, is not a collective labour agreement as the term is generally understood. In effect it is a voluntary agreement on the procedure to be followed

in arriving at a form of collective agreement in the future. In addition it deals with the composition of the bargaining unit, the recognition of SOHPEA as the bargaining agent, union security, the term of the agreement and a Redress Procedure for rights disputes culminating in final and binding arbitration by a three-man board.

The Master Agreement satisfied two important desires of SOHPEA that could not have been achieved through the provisions of the *Labour Relations Act*. First, it was able to gain voluntary recognition for a bargaining unit containing a large number of managerial employees; second, it was able to substitute a mediation and arbitration mechanism for strikes and lockouts.

The inclusion of managerial employees was crucial for SOHPEA, whose membership of some 1,400 is drawn from Ontario Hydro management and professional grades, including about 75 on the highest executive payroll. As the Act specifically excludes both those exercising managerial functions and those employed in a confidential capacity in labour matters, several hundred SOHPEA members could have been deprived of bargaining rights under regular certification procedures.[72] The Master Agreement only excluded those employed in a confidential capacity;[73] in practice this resulted in no exclusions whatsoever.[74] The substitution of arbitration/mediation schemes for strikes and lockouts reflected the position that SOHPEA had supported since it took the initiative in establishing the Steering Committee on Negotiation Rights for Professional Staff in 1964.

The Master Agreement has separate provisions for dealing with disputes over salary schedule adjustments and "other matters in dispute". All bargaining is done through the medium of a joint society-management committee. In the event of failure to reach agreement on salary schedule adjustments, the Agreement provides for an arbitration hearing on the application of either party, with the arbitrator's decision to be final and binding on both parties. In the event of the failure of the Committee to agree on "other matters in dispute", the matter may be referred to a mediator who must attempt to bring about a "voluntary" settlement. If the mediator fails to resolve the dispute, he is required to recommend a settlement which in turn must be considered by the parties. But Hydro retains the power to impose a settlement in the case of disagreement over the mediator's recommendations. SOHPEA seems to have shown

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[72] *Labour Relations Act*, R.S.O. 1970, c.232, s.1(3).

[73] Master Agreement and Redress Procedure between the Society of Ontario Hydro Professional Engineers and Associates, and Ontario Hydro (signed January 4, 1973), art. 1.

[74] Interview with executive secretary of SOHPEA, Augnst 21, 1973.

uncharacteristic weakness in agreeing to give the employer the final decision over "other matters in dispute". However, this was probably the compromise it had to make to achieve the management inclusions discussed above.

The redress procedure under the Master Agreement appears to have a rather interesting potential. It has some similiarity to traditional grievance procedures for rights disputes in that there are a number of steps in the procedure, culminating in binding arbitration by a tripartite board. However, the redress procedure is not intended to interpret or apply a collective agreement. Rather, it must deal with "any complaint of a SOHPEA member who feels he has a grievance which has not been resolved" as well as with "such matters of interpretation, application and administration of policy and practice as are specifically referred to it", with "power to settle or decide such matters". If the redress procedure is read together with the mediation procedure for "other matters in dispute", it would appear that while SOHPEA relinquishes the final right to decide a jointly-negotiated issue (other than salary) to Ontario Hydro, any SOHPEA member, by way of complaint, may subject Ontario Hydro to a binding arbitral decision on management policy and practice. In other words, it is conceivable that SOHPEA may be better advised to grieve (through a member) than to negotiate if it wishes to change a working condition.

The Hydro engineers do not see any alternative to this voluntary form of procedural agreement until there are further amendments to the law to provide a more satisfactory basis for professional bargaining. It is suggested that a more flexible definition of employee status under the *Labour Relations Act*, corresponding to the realities of professional employment, could do much to relieve the current anxiety with respect to managerial exclusions. Such an amendment, with some mechanism for the voluntary arbitration of interest disputes as an alternative to a strike, might make collective bargaining under the law realistically possible for Ontario engineers. The question of an appropriate bargaining agent would then have to be resolved.

(d) The Bargaining Agent for Professional Engineers

There seems to be general agreement that a professional association such as APEO, with licensing and disciplinary powers, should not act as a bargaining agent for its employee members. The major arguments against using existing professional bodies as bargaining agents have been summarized as follows by Arthurs. First, there is the danger to the public that entry to the profession might be restricted,

not to maintain professional excellence, but "to enhance economic opportunities for those in practice". Second, problems might flow from the ideological differences of opinion within the professional body on the question of collective bargaining. Third, collective bargaining assumes a measure of membership democracy and decentralized decision-making which may not exist within a professional body. Finally, existing professional associations do not meet the definition of a "trade union" under labour legislation by virtue of the fact that they include managerial personnel in their membership.[75]

It is interesting to note that the Task Force on Labour Relations recommended that the bargaining agent for professionals be separate from the licensing body "to avoid a temptation to employ licensing as a restrictive device to reduce entry and control market supply".[76] So too did one of the authors of this article in a study commissioned by the Task Force.[77]

While APEO and its employee member groups seem to be in agreement that a professional association will not act as a bargaining agent, there has been much controversy between them on how the "welfare function" should be handled. SOHPEA and other employee groups organized a Special Committee of Employee Engineers (SCOPE) in 1968 with the primary purpose of forcing APEO to divest itself of all interest in the "welfare" field, notably collective bargaining. By 1970 they decided to set up a separate service organization, the Federation of Engineers, Scientists, and Associates (FESA), in anticipation of legal bargaining rights. FESA was formally established on November 18, 1970 to implement the principle of the separation of licensing and economic functions.

The APEO Council indicated its support for FESA at the outset and laid the groundwork for financial assistance at a special meeting on December 19, 1970. Within a month, however, it reversed its position, after receiving considerable protest from other elements of its membership. On January 29, 1971 the Council of APEO passed a special resolution directing its officers to terminate its discussions with SCOPE and FESA "in favour of discussions with other bodies" more "in harmony with the overall aims of APEO".

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[75] Arthurs, "Problems and Pitfalls from the Legal Point of View", in *Collective Bargaining and the Professional Employee, supra,* f.n.62, 101-102.

[76] *Canadian Industrial Relations* (1968, Report of the Task Force on Labour Relations), 139.

[77] Goldenberg, *Professional Workers and Collective Bargaining* (Task Force Study No. 2), 98.

After withdrawing its support from FESA, APEO endorsed the Canadian Council of Professional Engineers (CCPE) as a collective bargaining advisory service and gave practical effect to this endorsement by a fifty-cent per capita grant. The CCPE is a coordinating body for provincial engineering licensing bodies. The SCOPE/FESA supporters complain that APEO has become illegally involved in membership self-interests in its relationship with CCPE but the Association's own solicitors have advised it that it is acting within its legal powers.

As no professional bargaining units have yet applied for certification, the question of the advisory service organization that will eventually be used remains academic. However, the evidence to date indicates that employee engineers in Ontario will not, and cannot, bargain through their professional association as such. Nor are they likely to follow the path of trade union affiliation on the pattern of their French Canadian confreres. On the other hand, it is evident that they are in full agreement with the Quebec engineers on the need for amending the law. In both provinces the managerial exclusions in labour legislation are seen as a serious restriction on professional bargaining rights.