FINAL OFFER INTEREST ARBITRATION IN WISCONSIN: LEGISLATIVE HISTORY, PARTICIPANT ATTITUDES, FUTURE TRENDS†

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† EDITOR'S NOTE: Since this article was written, the Wisconsin Legislature has acted to maintain final offer interest arbitration for nonuniformed municipal employees. A new sunset clause was added which extends the arbitration provisions until July 1, 1987. 1981 Wis. Laws ch. 20, § 1841m.

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I. INTRODUCTION

On January 1, 1978, new procedures became effective to resolve impasses in collective bargaining between Wisconsin's nonuniformed municipal employees and their employers.[1] Prior to this time, these employees were governed by a more limited statutory process and, in sharp contrast to private sector unionists, they had no legal right to strike. The history of public unions has been brief and rapidly changing, especially in Wisconsin. In 1959, Wisconsin became the first state allowing municipal employees to organize and bargain collectively.[2] Three years later, mediation and factfinding were es-

1. 1977 Wis. Laws ch. 178. The essential provisions of the mediation-arbitration and strike procedures are at WIS. STAT. § 110.70(4)(cm) (1979).

2. 1959 Wis. Laws ch. 509; *see* Weisburger, *The Appropriate Scope Of Bargaining*

tablished.[3] Throughout the sixties, state employment laws were amended many times.[4] Public labor and management groups were progressively given more power to choose their own means for resolving disputes. The 1977 law continued this trend. The new law gave Wisconsin nonuniformed municipal employees a limited strike right previously permitted in only seven other states.[5] Most importantly, the law instituted a system of single package, final offer interest arbitration.

Interest arbitration is a system for resolving impasses in collective bargaining.[6] It is distinguished from grievance arbitration, which is an arbitral system for interpreting the rights of parties under an existing collective agreement.[7] Under single package, final offer interest arbitration, once the parties have bargained and mediated to impasse, they make their "best" final offers to an arbitrator. The arbitrator then must choose the entire contract offered by one side or the other as the binding contract between the parties.

The new law favored labor unions; hence, it is not surprising that the drive for the law was labor's. The testimony of both management and labor representatives before the Wisconsin Legislature during the period preceding the passage of the new law reflected the prolabor nature of the bill.[8] Both parties' perception of this legislative debate was clear: *any* legislation giving public sector unions more "process rights"[9]

In the Public Sector: The Continuing Controversy and the Wisconsin Experience, 1977 WIS. L. REV. 685, 702-09.

3. 1961 Wis. Laws ch. 663.

4. 1967 Wis. Laws ch. 62.

5. Only nine states have given public sector employees even a limited right to strike. They are Alaska, Hawaii, Idaho, Minnesota, Montana, Oregon, Pennsylvania, Vermont, and Wisconsin. *See* [1981] 51 GOV'T EMPL. REL. REP. (BNA) (Reference file 203) 501, 530; Annot. 37 A.L.R.3d 1147, 1163 (1971).

6. F. ELKOURI & E. ELKOURI, HOW ARBITRATION WORKS 47-67 (3d ed. 1973).

7. *Id.*

8. WISCONSIN LEGISLATIVE COUNCIL, SPECIAL COMMITTEE ON COLLECTIVE BARGAINING IMPASSES IN PUBLIC EMPLOYMENT, compilations 1-4 (1973-1975) [hereinafter cited as SPECIAL COMMITTEE].

9. The term "process rights" refers to a procedural claim which a party has by virtue of a specific legislative enactment rather than common law. Process rights can, but need not, be based in the constitutional law of a sovereign power. In this respect, a process right may occasionally emerge through case law and later re-emerge and become routinized through legislative action. For example, the United States District Court in the Eastern District of Wisconsin set forth due process requirements in civil commitment situations in Lessard v. Schmidt, 379 F. Supp. 1376 (E.D. Wis. 1974),

would improve the bargaining position of labor.

This article examines attitudes of labor and management after their first year of experience with the new law to determine if attitudes changed after some experience with the new impasse procedures. Part II explains the rationale for an attitude survey and defines major concepts. Part III sets forth statistically significant and important findings. Part IV is an in-depth analysis and interpretation of the findings. Finally, Part V examines some trends which may affect the attitudes of labor and management in future years. Through an analysis of changing political, social, and legal conditions, questions are raised about the assumption that the new "process rights" will continue to benefit labor.

II. RATIONALE OF THE STUDY AND TERMINOLOGY

A complete assessment of the new law requires examination of both "process efficacy" and "process legitimacy." "Process efficacy" has two dimensions. The first is whether the procedures instituted by the 1977 legislature are an effective deterrent to disruptive public sector strikes. From a "risk management" or "insurance" perspective, providing mediation-arbitration and limited strike power to the unions is a public policy tradeoff ultimately justified only if it effectively minimizes disruption of public order. Cost is the second dimension of "process efficacy." The cost to the public of the new law in wages and other benefits might outweigh the sav-

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vacated on other grounds, 421 U.S. 957 (1975), *on remand*, 413 F. Supp. 1318 (E.D. Wis. 1976). The court concluded that WIS. STAT. §§ 51.02(1), 51.03, and 51.04(1), (2), and (3) were in violation of the due process clause in the fourteenth amendment to the United States Constitution. The court articulated a set of standards and directed the Wisconsin authorities to review their procedures and conform to the decision. After subsequent legal reviews and reaffirmations of the decision, a more stringent civil commitment standard emerged. Zander, *Civil Commitment*, 1976 WIS. L. REV. 503.

In the field of labor law, process rights have, with a few exceptions, facilitated increased "clout" for organized labor. The right to organize protects concerted labor activity and the concept of unfair labor practice, while binding both sides, nonetheless gives unprecedented power to labor to bar certain employer actions under claim of legal right. Thus, it is understandable that "more law" could be thought of as equivalent to "more labor power," especially in public sector labor law in Wisconsin which has never experienced the equivalent of a Taft-Hartley Act or Landrum-Griffin Act, both of which were federal labor laws constraining the activities of unions in the years following World War II.

ings effected by avoidance of strikes.[10]

Other studies have provided useful data on the "process efficacy" of public sector impasse procedures in general.[11] A special study focusing on process efficacy also was mandated for the Wisconsin system by the new law (Section 15: "Legislative Council Study"). This work is continuing under the direction of the Wisconsin Center for Public Policy.

Our purpose is to provide useful data on assessments of "process legitimacy" by management and labor. Process legitimacy refers to subjective, yet ascertainable, beliefs in the validity and propriety of a law.[12] Of course, any law may spawn a variety of responses among various large groups of people. This article's special concern is with the attitudes of labor and management representatives who have had experience with the process. Strong negative attitudes about the legitimacy of the process among the people most directly affected might indicate that the law is undesirable or incapable of survival in future sessions of the legislature.[13] In addition, we believe that key findings in the Wisconsin Center for Public Policy Study

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10. The added procedure must prove its utility from a "cost-spreading insurance" perspective. *See* G. CALABRESI, THE COSTS OF ACCIDENTS, A LEGAL AND ECONOMIC ANALYSIS (1972).

11. *See* WISCONSIN CENTER FOR PUBLIC POLICY, THE EFFECT OF THE SENATE BILL 15 AMENDMENTS TO THE MUNICIPAL EMPLOYMENT RELATIONS ACT [hereinafter cited as WISCONSIN CENTER FOR PUBLIC POLICY] (submitted to the Wisconsin Legislative Council December 1, 1980, pursuant to 1977 Wis. Laws ch. 178 § 15).

12. The line between "insurance" and "extortion" is in some cases drawn by "legitimacy." This is so because "legitimacy" sanctions coercive social control mechanisms under the rationale of "higher good." *See* M. WEBER, ON LAW IN ECONOMY AND SOCIETY 334-39 (1954).

13. A crucial reason for focusing on fairness attitudes in addition to the general overview mentioned above is that the attitudes of persons representing labor and management interests are significant predictors of the intensity with which each group will oppose or support the mediation-arbitration law, in whole or in part, when the law is reviewed in 1981 by the session of the legislature which is charged with the power to reenact the mediation-arbitration law or "let the sun set" on it under 1977 Wis. Laws ch. 178 § 17. Of course, a general rightward turn in the state and political spectrum could effectively quell the law's renewal regardless of beliefs of the specific organized parties. For an interesting subsumption of labor relations into the broader sociology of economic regulation, see James Q. Wilson's mention of organized labor as the prime example of a political case type with a narrow concentration of costs and benefits. In such cases, Wilson argues, there will be a continuous struggle between the "benefited" group and the group that "pays" to renegotiate their operating charter. Ultimately, the weaker group cannot keep any edge without help from the political system. Wilson, *The Politics of Regulation, reprinted in* R. RABIN, PERSPECTIVES ON THE ADMINISTRATIVE PROCESS (1980).

cannot be understood without reference to the role played by legitimacy beliefs.[14]

The political status quo tends to be regarded as legitimate. The political order "changes" via legislative action when a new enactment alters previously established relations. But change is constrained by countervailing claims of legal right. The established order in Wisconsin includes some laws contrary to the new powers of arbitrators. These include the "Home Rule" provision of the Wisconsin Statutes and general powers of municipal autonomy set forth in the statutes.[15] The extent to which a "conflict of laws" problem will arise remains to be seen.

The political order also encompasses changing political norms in Wisconsin, such as a "Proposition 13" mentality. This can limit the scope of the law as implemented, or bring out countervailing claims of right that nullify labor power. The recent Wisconsin Supreme Court decision in *City of Brookfield v. Wisconsin Employment Relations Commission*[16] made the strength of such a shift in norms clear.[17]

The survey used in our study measured process legitimacy in terms of labor and managment attitudes regarding the "fairness" of the new law. Attitudes toward fairness are a significant indicator of process legitimacy. Moreover, fairness attitudes are important in determining the way that participants evaluate specific features of the final offer arbitration law as enacted in Wisconsin.

The logical prediction about the attitudes of management and labor toward the central political tradeoff in the new law is obvious. In light of several nuances in the law passed, however, prediction is not the simple task that it seems at a distance. Prior to the law's passage, mediation-arbitration legislation had been a priority on Wisconsin organized labor's agenda for several years.[18] Nonetheless, analysis of the statu-

14. WISCONSIN CENTER FOR PUBLIC POLICY, *supra* note 11, at 78-129, 200-04.

15. *See* WIS. STAT. §§ 66.01, 62.01-.67; *see also* WIS. CONST. art. I § 22.

16. 87 Wis. 2d 819, 275 N.W.2d 723 (1979).

17. An example of how budget cuts abrogate union rights is in the power to layoff for budget reasons notwithstanding an employee's right to a "just cause" reason for discharge. *See* Roshar & Mulligan, *Severance of the Employment Relationship, in* C. MULCAHY, MUNICIPAL LABOR RELATIONS IN WISCONSIN 126-28 (1979).

18. Prior to 1977, Wisconsin public unions had unsuccessfully lobbied for another

tory provisions in the new law, as implemented, demonstrates sufficient reasons for both labor and management to think that the new law is fair or unfair.[19]

The new law provides a number of advantages to management. During utilization of the impasse procedure, members of bargaining units work under the status quo established in the prior employment contract.[20] Consequently, it is to management's advantage to utilize the delays between stages of the process.[21] On the other hand, the final stage of mediation and final offer arbitration is advantageous to labor, at least in the short run. According to one labor person, the new law provides an edge against a "take it or leave it" attitude by management at the bargaining table.[22] But, if a "pro-management" decision is made, labor is legally bound to follow it.[23] Although Wisconsin's public employees have the rare right to strike, that right is quite limited. Management can foreclose the right simply by not withdrawing their final offer.[24]

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version of the mediation-arbitration law. Assembly Bill 605 in the 1975 Wisconsin Legislative Session proposed to institute a system of final offer arbitration and a limited strike right for nonuniformed municipal employees in Wisconsin.

19. Understanding this discussion requires the reader to make a distinction between common perceptions of labor and management interests in the law, as a whole, and possible parts of the law that, in practice, tend to favor one side or the other.

20. We assume that, given employer proclivities, the status quo tends to more closely resemble the employer's ideal settlement than the union's.

21. *See* WIS. STAT. § 111.70(4)(cm) (1979) which provides a number of different stages at which delay can take place. As a matter of course, mediators and arbitrators make tactical use of delay to heighten settlement pressure. Arguably, both labor and management can make selective use of delay as a strategic tactic, *but see* note 20 *supra.*

22. Quoting questionnaire #187 (the questionnaire and responses used in this study are on file in the offices of the Marquette Law Review). The previous law provided factfinding as the final impasse procedure. Its inefficiency is reflected in the statistics quoted in the text accompanying note 45 *infra.*

23. Failure to implement an arbitration decision issued lawfully under WIS. STAT. § 111.70(4)(cm) (1979) is a prohibited practice against both labor and management under WIS. STAT. § 111.70(3) (1979).

24. WIS. STAT. § 111.70(4)(cm)5 (1979) provides: "[i]n addition to the other impasse resolution procedures provided in this paragraph, a municipal employer and labor organization may at any time, as a permissive subject of bargaining, agree in writing to a dispute settlement procedure, including authorization for a strike by municipal employees or binding interest arbitration."

Since this section provides a strike right only if management agrees, management can always avoid a union's legal exercise of this right. WIS. STAT. § 111.70(4)(cm)6c (1979) provides:

> If the parties have failed to reach a voluntary settlement after a reasonable

Balancing individual provisions of the law favoring one side or the other ultimately does not answer the "real question." The presumed goal of the law is to effectively balance interests, that is, to regulate and resolve collective bargaining impasses while guarding the inherent rights of public management.[25] The critical question is whether the "net" gain or loss to each subgroup as a result of the new law's passage is an acceptable change in the political order. This cannot be determined solely by statutory analysis nor by any other form of strictly legal analysis. Instead, the task requires an empirical measurement of attitudes and the reasons for them. The comparative overview in this article is designed to provide such a sociolegal perspective. Analytically, our primary concern is with intensely negative attitudes in the survey, especially those which were not the result of a "planned deterrent" built into the law,[26] but rather were the result of disdain for the essential tradeoff deemed necessary by the 1977 Wisconsin Legislature.

III. METHODOLOGY AND RESULTS

Our methodology for testing attitudes was fairly simple. We sent 300 questionnaires to labor and management parties and negotiators.[27] Respondents answered the following ques-

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period for mediation as determined by the mediator-arbitrator, the mediator-arbitrator shall provide written notification to the parties and the commission of his or her intent to resolve the dispute by final and binding arbitration. Thereafter, either party may, within a time limit established by the mediator-arbitrator, withdraw its final offer . . . . If both parties withdraw their final offer and mutually agreed upon modifications, the labor organization, after giving 10 days written advance notice to the municipal employer and the commission, may strike.

Management can always foreclose the union's legal right to strike under this subsection by not withdrawing its final offer.

25. The "balance of interests" concept has been an essential underlying theme in U.S. labor relations since the thirties. *See* J. GALBRAITH, AMERICAN CAPITALISM: THE CONCEPT OF COUNTERVAILING POWER (1952). However, intellectual themes in the "Conservative New Deal" promised by the Reagan administration raise questions about the implicit validity of this concept. Relations in the public sector will probably be intensely affected by the conceptual paradigm shift which we accept as a real possibility in coming years.

26. Some aspects of the law were intentionally distasteful as a deterrent to unnecessary process utilization. *See* IV.A.3. *infra*.

27. A "labor party" is a labor union member involved in contract negotiations; a "labor negotiator" is generally an attorney or professional labor official. A "manage-

tion: "Do you think that the process of final offer arbitration as it presently exists in Wisconsin is a fair method of resolving an impasse in the collective bargaining process?"

Respondents were given a choice of five answers to the above question: very fair, fair, neither fair nor unfair, unfair, very unfair. A second question asked: "Why [do] you think that the process . . . [is] fair, unfair or neutral?" The third question asked for discussion of "problems . . . you see in the process other than those you may have mentioned in your answer to question 2." Response to the initial question was cross-tabulated with the respondent's role (labor/management; party/negotiator) and experience (won, lost, settled, combination).[28] Answers to the second and third questions were analyzed for content and used to supplement and interpret the forced-choice items.

A. The Basic Dichotomy: Labor vs. Management

Sample results show that attitudes toward the fairness of Wisconsin's new arbitration law are powerfully influenced by the respondent's position in the labor/management dichotomy. Labor thinks the system is fair. Management disagrees. The following three tables provide strong graphic and statistically significant evidence to support this conclusion:[29]

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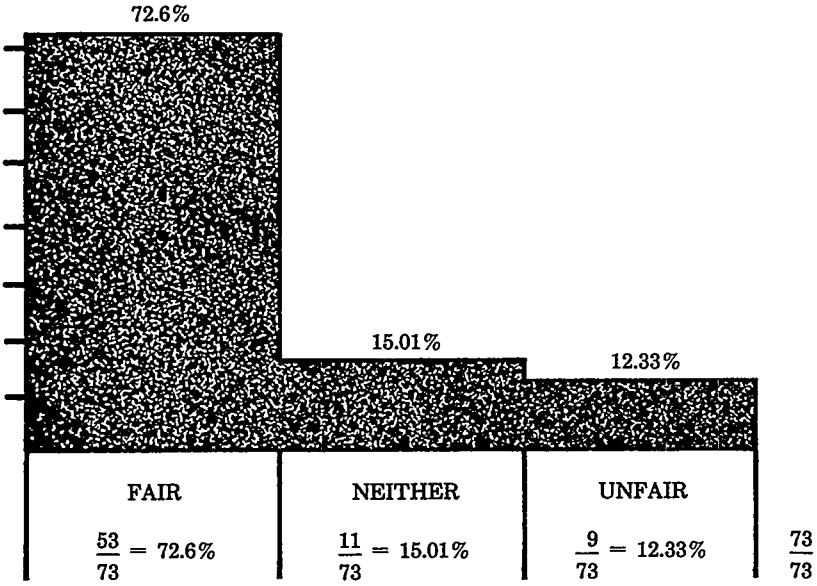
ment negotiator" is a member of the city labor relations office or retained management counsel. "Management parties" are public officials, elected or appointed. Our sample was derived from all cases (135) that were resolved under the new statutory procedures between January 1 and November 11, 1978, the cutoff date of the study. These were derived from a total pool of 258 mediation-arbitration notices filed pursuant to WIS. STAT. § 111.70(4)(cm)6 (1979) (123 filings were pending at the cutoff date). These notices were preceded by a total of 662 dispute notices filed pursuant to WIS. STAT. § 111.70(4)(cm)1 (1979). This breakdown is historically noteworthy in that it gives a rough sense of the dispute resolution percentages at each step of the process.

28. Respondent's role and experience, that is, winning, losing, settling or mixed was obtained through the files of the Wisconsin Employment Relations Commission [hereinafter W.E.R.C.]. Of the 300 questionnaires sent out, 182 (60.7%) were returned. This relatively high response rate probably was due to measures which were adopted with that end in view, that is, a one page questionnaire taking a few minutes to complete and the promise to send each respondent a copy of the statistical summary report. Of the 182 responses, 48 were labor parties, 26 were labor negotiators, 89 were management parties and 19 were management negotiators. Response was somewhat greater among management than labor, and winners responded a bit more than losers.

29. The reformulation of data was done because the data numbers were not great

TABLE 1

BARGRAPH OF ALL LABOR PERSONS' ATTITUDES TOWARD FAIRNESS
(CONDENSED CATEGORIES)



enough to provide cell size for chi square purposes. The reformulation of data does not sacrifice substance. While the fairness indication was changed so as to delete a potential choice for the respondent, we do not believe this per se invalidates the statistical comparison of fair and unfair indications as contrasting polarities. A complete summary of the data is in the Statistical Appendix of this article.

TABLE 2

BARGRAPH OF ALL MANAGEMENT PERSONS' ATTITUDES TOWARD FAIRNESS
(CONDENSED CATEGORIES)

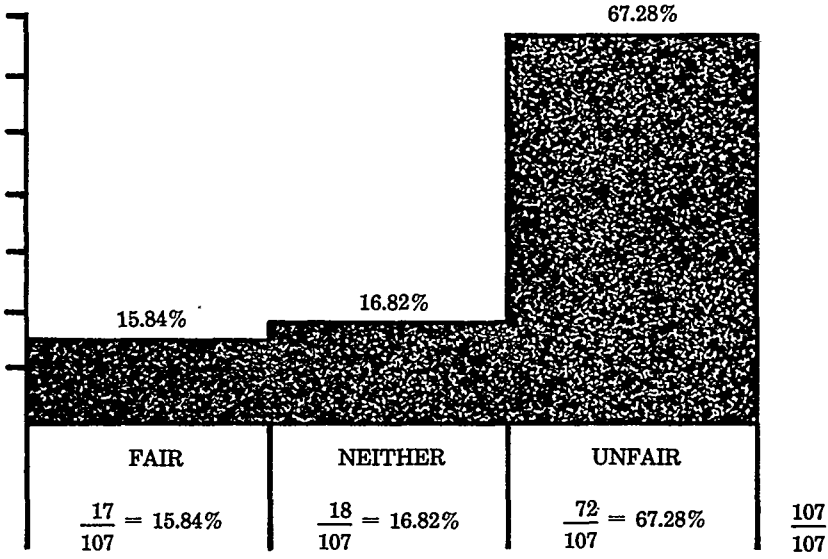


TABLE 3

	FAIR	NEITHER	UNFAIR	TOTAL
LABOR PERSONS	53	11	9	73
MANAGEMENT PERSONS	17	18	73	108
TOTAL	70	29	82	181

$X^2 = 65.84$ significant at the .001 level[30]
(2 degrees of freedom)

B. Absence of Perfect Attitudinal Dichotomy: Indication of Countervailing Tendencies

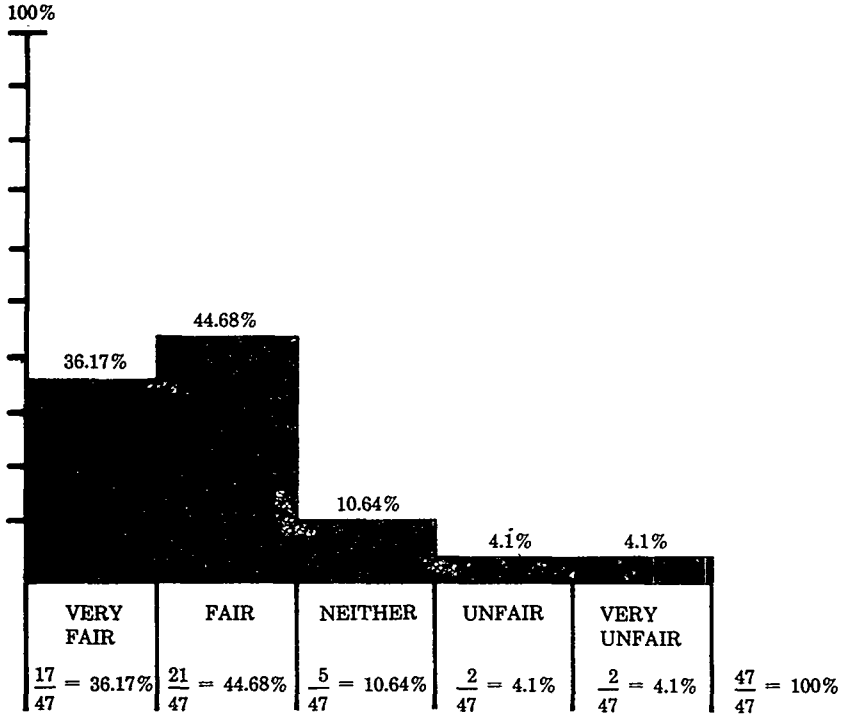
The second notable sample result indicates a "subtrend" within the major trend indicated above. If we assume a per-

30. *Id.* The highest level of significance possible for the chi square statistic is .001. *See* H. BLALOCK, SOCIAL STATISTICS 276-84, 569 (2d ed. 1972).

fect duality of interests, whether the management or labor respondent was a party or negotiator would not make any difference. However, results show that labor parties believe the system to be fair more strongly than other persons sampled. The strong views of labor parties might be explained on the theory that parties have a closer identification with their side's interests. If this were so, we would expect management parties to have the strongest negative indications because they seem to have more actual power to lose from a prolabor bill than do the management negotiators. However, sample results do not bear this out; management negotiators have the greatest dislike for the new law:[31]

TABLE 4A

BARGRAPH OF LABOR PARTIES' ATTITUDE TOWARD FAIRNESS



31. *See* H. BLALOCK, SOCIAL STATISTICS (2d ed. 1972).

TABLE 4B

BARGRAPH OF LABOR NEGOTIATORS' ATTITUDE TOWARD FAIRNESS

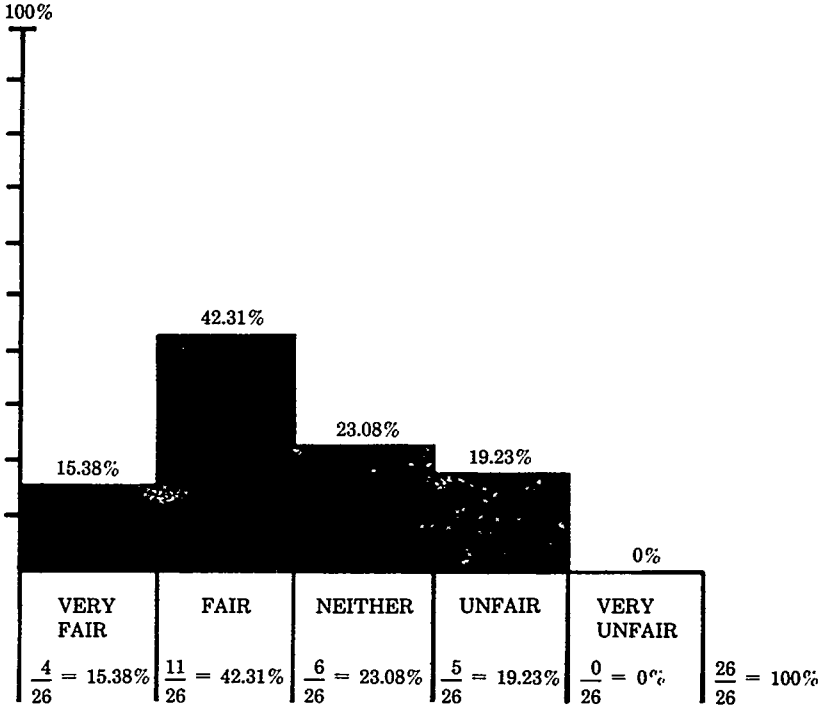


TABLE 4C

BARGRAPH OF MANAGEMENT NEGOTIATORS' ATTITUDE TOWARD FAIRNESS

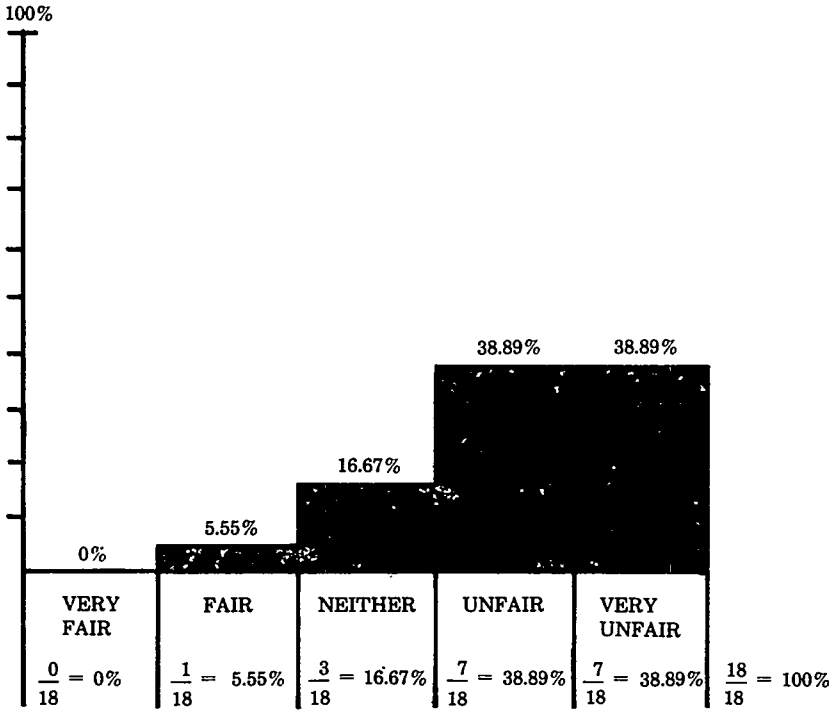
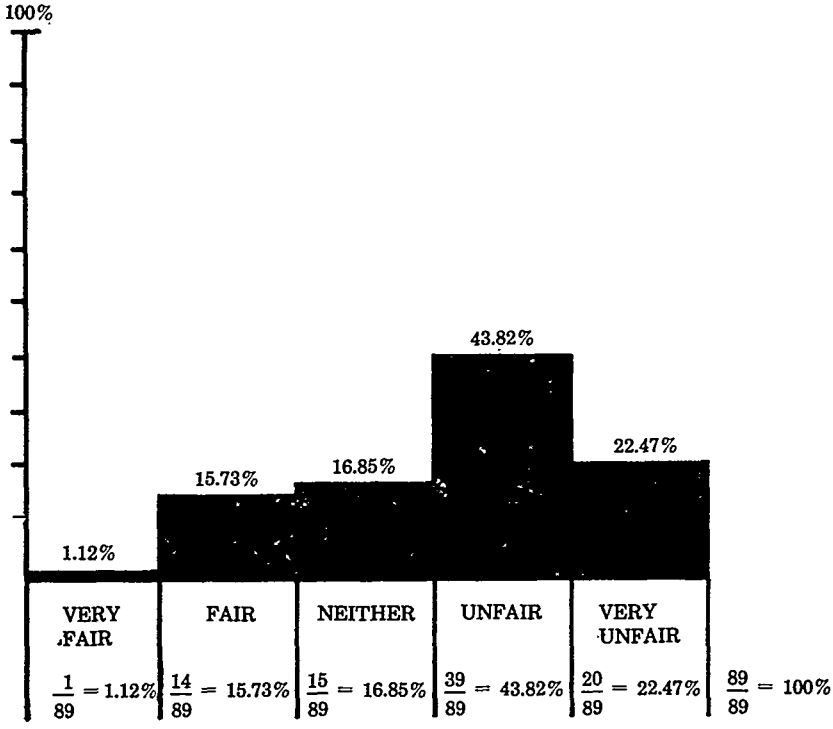


TABLE 4D

BARGRAPH OF MANAGEMENT PARTIES' ATTITUDE TOWARD FAIRNESS



C. *The Effect of Winning, Losing, and Other Results on Attitudes Toward Fairness*

The third significant result is derived from a cross-tabulation of fairness attitudes and experience with the process. Winners tend to favor the mediation-arbitration process while losers tend to disfavor it.[32]

TABLE 5

PROCESS EXPERIENCE AND ATTITUDE TOWARD FAIRNESS—CONTINGENCY TABLE WITH CONDENSED FAIRNESS CATEGORIES AND "NEITHER" CATEGORY DELETED

	FAIR	UNFAIR	TOTAL
WON	12	5	17
ALL COMBINATIONS	6	6	12
SETTLED	48	50	98
LOST	4	16	20
TOTAL	70	77	147

$X^2 = 10.76$ significant at the .05 level
(3 degrees of freedom)

The substantive significance of the *statistically*[33] significant results indicated in Table 5 is questionable because of the dominance of settlements and the long term likelihood of mixed experience with the process. Nonetheless, a statistically significant result cannot be ignored. In Part IV below, the significance of all three sample findings is considered.

IV. EXPLANATION OF THE SAMPLE RESULTS

Understanding the implications of the findings requires an in-depth analysis of the open-ended comments made by respondents as well as inferences about the probable roots of attitudes. There is no simple explanation of attitudes. Even so, a systematic examination of the environment in which

32. *Id.*

33. A statistically significant result can nonetheless be erroneous because of any number of factors which cause a "false positive" indication. Also, a statistically significant result might have insignificant importance when interpreted in light of all information. In the instant case, both the settlement and combinations cells have nearly straight "50/50" breakdowns of attitude, thus indicating that settlement and mixed experience have no effect on attitude. In fact, the most conspicuous fact to emerge from this table is the heavily skewed pattern of experience to settlement.

final offer arbitration functions will, we think, result in the identification of the major interactive patterns.

A. The Basic Labor/Management Dichotomy

We think it clear that a priori perception rather than experience determines the attitude polarity. Analyses of the political background of the law, its legislative history, and the open-ended comments on the questionnaire all support this conclusion.

1. Political Background

Final offer arbitration laws are part of an evolving structure of conditions preferred by labor interests in the United States and Canada. Private sector collective bargaining impasses often result in a legal strike.[34] By contrast, public sector strikes have generally been outlawed as they are thought to threaten the continuation of essential public services.[35] Whether or not union leaders agree with this distinction, they have sought alternative impasse procedures other than strikes to put pressure on management. This is reflected in the earlier use of mediation and factfinding,[36] and later in the emergence of final offer arbitration.[37]

Labor leaders do not want final offer arbitration as an absolute substitute for legal public sector strikes.[38] Nonetheless,

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34. 29 U.S.C. §§ 151-69 (1976).

35. *See* Stevens, *Is Compulsory Arbitration Compatible With Bargaining?* 5 INDUS. REL. 38-52 (1966). For succinct analysis on interest arbitration experience of safety employees in Wisconsin, Michigan, and Pennsylvania, *see* J. STERN, C. RHEMUS, J. LOEWENBERG, H. KASPER & B. DENNIS, FINAL OFFER ARBITRATION: THE EFFECTS ON PUBLIC SAFETY EMPLOYEE BARGAINING 29-33, 69-73, 103-06, 180-89 (1975). For an excellent discussion of the early experience in Eugene, Oregon, *see* Long & Feuille, *Final-Offer Arbitration: 'Sudden Death' in Eugene,* 27 INDUS. & LAB. REL. REV. 186 (1974). A management perspective on the Massachusetts experience is presented in Sommers, *An Evaluation of Final-Offer Arbitration in Massachusetts,* 6 J. COLLECTIVE NEGOTIATIONS No. 3 (1977). *See* T. KOCHAN, R. EHRENBERG, J. BADERSCHNEIDER, & T. JICK, DISPUTE RESOLUTION UNDER FACT-FINDING AND ARBITRATION (1979).

36. *See* note 3 *supra.*

37. *See* note 1 *supra.*

38. "President George Meany of the AFL-CIO, while expressing strong reservation about the use of arbitration in the private sector for resolving bargaining impasses, has suggested the use of binding arbitration in some circumstances in the public sector. The procedure for binding arbitration of contract terms under the Postal Corporation Act was endorsed by the AFL-CIO." *Quoting* Anderson, *Compulsory*

they support final offer arbitration's use because it increases a public sector union's arsenal of bargaining tools.[39] In the early sixties and seventies, unionists in many jurisdictions began to lobby for laws codifying final offer arbitration.[40]

Wisconsin's public sector unionists strongly lobbied for interest arbitration prior to the passage of chapter 178. The 1977 amendments, "[i]ncluding the binding arbitration provision, came as a result of a drive by the coalition of public sector unions for a major revision of the law."[41] Much of the ferment which surrounded passage of chapter 178 was caused by a very intense public sector teachers' strike in Hortonville, Wisconsin.[42] The strike resulted in the firing of several teachers. The regrettable results of this conflict highlighted the argument for revised impasse procedures. While the Hortonville situation was escalating, a bipartisan effort in the state legislature lead to the establishment of the "Christenson Committee" to study collective bargaining impasses in the public sector.[43] For several years, the committee hosted much of the debate about the need for a new law.[44] A 1974 Wisconsin Legislative Council memo highlighted the escalating frequency of public sector strikes:

> The statistics . . . reveal a significant number and frequency

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Arbitration in Public Sector Settlement — An Affirmative View, in DISPUTE SETTLEMENT IN THE PUBLIC SECTOR 2-3 (T. Gilroy ed. 1972); *see also* Grodin, *Political Aspects of Public Sector Interest Arbitration,* 64 CAL. L. REV. 678, 679 (1976). The Canadian Public Service Staff Relations Act (Can. Stat. ch. 72 (1966-67)) provided for binding collective bargaining agreements enforceable through arbitration and a right to strike which is thought to be more liberal than the strike right provided in the U.S. jurisdictions. *See* Arthurs, *Collective Bargaining in the Public Service of Canada: Bold Experiment or Act of Folly?* 67 MICH. L. REV. 1971-78 (1968).

39. Anderson, *Compulsory Arbitration in Public Sector Settlement — An Affirmative View,* in DISPUTE SETTLEMENT IN THE PUBLIC SECTOR (T. Gilroy ed. 1972).

40. *See* Grodin, *Political Aspects of Public Sector Interest Arbitration,* 64 CAL. L. REV. 678 (1976); Arthurs, *Collective Bargaining in the Public Service of Canada: Bold Experiment or Act of Folly?* 67 MICH. L. REV. 1971 (1968).

41. *Quoting* Stern, *Final Offer Arbitration — Initial Experience in Wisconsin,* 97 MONTHLY LAB. REV. 39 (1974).

42. *See* Hortonville Education Ass'n v. Hortonville Joint School District No. 1, 66 Wis. 2d 469, 225 N.W.2d 658 (1975), *rev'd and remanded,* 426 U.S. 482 (1976), *on remand,* 87 Wis. 2d 347, 274 N.W.2d 697 (1979).

43. The committee's formal name was Special Committee on Collective Bargaining Impasses in Public Employment and it was established pursuant to Joint Resolution 138, Laws of 1974.

44. *See* note 8 *supra.*

> of public employee strikes in Wisconsin over the past 5 years. Of the 105 strikes which have occurred since 1962, only 12 . . . took place between 1962 and 1967 . . . fifty-one strikes have occurred in the last 2½ years . . . [and] the group to strike the most was teachers (44).[45]

This general historic setting is one from which labor and management parties undoubtedly formed preconceived notions of what final offer arbitration was and how it would function in Wisconsin.

2. Legislative History

Management sentiment against both mediation-arbitration and a limited strike right is reflected in the testimony of James Mortier, Negotiator for the City of Milwaukee.[46] He stated that "[c]ompulsory arbitration amounts to a delegation of responsibilities of the officials elected by the people to an outside third party."[47] Numerous management advocates expressed similar sentiments.[48] There was not, in fact, a single management spokesman supporting the type of legislation enacted in chapter 178.

Examples of labor sentiment for mediation-arbitration and a limited strike right can be found in the testimony of Unionist Massman who stated that, under the older law, "[e]mployers are encouraged to be unreasonable and not bargain in good faith knowing that unions can legally do little to compel agreement . . . [f]inal and binding arbitration . . . is an essential mechanism."[49] His sentiments were supported by numerous labor representatives.[50] In the same way that management unanimously decried the legislation, not one labor spokesman opposed the type of legislation enacted in chapter 178.

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45. *Quoting* D. Fernbach, WISCONSIN LEGISLATIVE COUNCIL, INFORMATION MEMORANDUM No. 74-9 at 2 [hereinafter cited as Fernbach].

46. SPECIAL COMMITTEE, compilation 1, *supra* note 8, at 31-38.

47. *Id.* at 33.

48. *Id.* at 53-55, 57-65, 71-72, 73-74, 75-81, 83-85, 87-89, 91, 93-94.

49. *Id.* at 67.

50. SPECIAL COMMITTEE, compilation 1, *supra* note 8, at 25-27, compilation 3 at 37-38, 69, 71-73, 79-80, 81-83, 89, 91, 103, 109.

3. Open-Ended Comments on the Questionnaire

There were four main complaints about the final offer arbitration law as enacted by the Laws of 1977. Virtually everyone criticized the procedures enacted by the bill, especially the time delays and the "single package" approach.[51] However, this is not surprising because these features of the law were planned, in part, to deter unnecessary utilization of the process.

Second, both sides criticized arbitrator bias and the inherent limitations of arbitration as a mechanism of dispute resolution.[52] This criticism came from many labor parties and negotiators notwithstanding their belief in the system's overall fairness. This was also on a list of criticisms made by many management persons. Standing alone, we do not think that this issue crucially determined the polarity.

The third main criticism was the "comparability" standard prescribed by the statute which requires the arbitrator to take account of area norms and norms within a line of employment when making his decision.[53] Many labor respondents felt this standard deterred labor from inserting new, ground-breaking language into an arbitration package and thus helped to maintain a promanagement status quo. By contrast, some management people made the opposite claim, arguing that the comparability standard contributed to a "domino effect" of victories for labor. This effect allegedly came about when labor pushed through a new provision in one contract and subsequent arbitrators adopted the same approach.

The analytical significance of this third criticism is that, tactically, both sides could potentially be favored or disfavored by comparability. This provides proof for the argument that the process favored neither side.

Labor and management joined in the first three criticisms.

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51. Examples of this criticism are found in questionnaire identity numbers 010, 013, 032, 044, 054, 063, 070, 079, 101, 145 & 168.

52. Examples of this criticism are found in questionnaire identity numbers 007, 015, 017, 019, 024, 033, 039, 087 & 112.

53. WIS. STAT. § 111.70(4)(cm)7d (1979) provides that the mediator-arbitrator shall give weight to a "[c]omparison of wages, hours and conditions of employment of municipal employees . . . performing similar services . . . in the same community and in comparable communities and in private employment in the same community and in comparable communities . . . ."

But only management levelled the fourth — that new legislation shifted power. We believe this perceived power shift is the key reason for dichotomies in attitude between the parties.

In the comments of management respondents, the power shifting critique manifested itself in many specific subpoints. Management people felt the new law gave labor too much power,[54] or took away local control,[55] or destroyed the incentive for organized labor to engage in collective bargaining prior to utilizing the process.[56] Conversely, labor thought that the new law was fair because it would equalize power between the sides,[57] provide an efficient dispute resolution mechanism,[58] and make both parties think about the "reasonableness" of their offers.[59]

Quotations revealing the typical opinion of management included claims that the new law "signals the death of collective bargaining,"[60] "transfer[s] a judicial decision role into a controlled economic 'warfare' situation,"[61] or lets "local decisions . . . [be] made by outside parties."[62] Others claimed the new law "has forced employers to concede on issues that they would not otherwise concede to"[63] and that, for management, "all bargaining leverage has been eroded."[64]

The typical labor opinion was reflected in statements claiming that the new law "substitutes comparability for [a] 'take it or leave it' [attitude],"[65] "provides a balance of

54. This is based on questionnaire identity numbers 009, 010, 015, 036, 113, 118, 121 & 126.

55. This is based on questionnaire identity numbers 013, 024, 043, 056, 067, 079, 096, 097, 105, 109, 120, 121, 126, 131, 157, 161, 163 & 182.

56. This is based on questionnaire identity numbers 011, 023, 027, 030, 037, 042, 043, 047, 048, 058, 059, 063, 071, 075, 076, 081, 084, 086, 087, 090, 108, 111, 116, 119, 140, 145, 157, 160, 161, 167, 168, 171 & 182.

57. From questionnaire identity numbers 039, 049, 052, 115, 147, 149, 153, 162, 187 & 189.

58. From questionnaire identity numbers 044, 046, 077, 087, 093, 100, 122, 133, 154, 174 & 177.

59. From questionnaire identity numbers 012, 014, 021, 026, 035, 062, 064, 065, 072, 103, 104, 112, 124, 134, 143, 144, 151, 155 & 173.

60. Questionnaire identity number 145.

61. Questionnaire identity number 152.

62. Questionnaire identity number 163.

63. Questionnaire identity number 169.

64. Questionnaire identity number 171.

65. Questionnaire identity number 187.

power,"[66] "gives smaller units an equal footing with the employer,"[67] "[stimulates] construction of reasonable final offers from both parties"[68] and provides a "way of resolving difficulties when the employer refuses to bargain in good faith."[69]

In summary, analysis of open-ended comments in the questionnaire shows four main complaints about the new law. Three of those complaints were made by both parties but the fourth complaint, the "power shifting" complaint, was made only by management. Also, the power shift that management dislikes is generally approved of by labor, the beneficiary of this shift.

B. The Party/Negotiator Subtrends: Why Were Some More Moderate than Others?

A simplistic perspective would have labor parties and management parties at opposite ends of an attitude spectrum and both parties' negotiators would be basically aligned with their party, but a little more moderate. This assumes that a party's main interest is in "winning" against the other side. It also assumes that a negotiator is a labor relations professional sensitive to the importance of moderation and caution in achieving his party's goals in an environment which is inherently conflict ridden. The attitude indications of labor parties and negotiators seem consistent with this assumption. However, the second notable finding of the sample was that management negotiators had more intense negative attitudes than management parties.[70]

1. Relationship of Fairness Attitudes to Role Demands

Our best theory is that the polarity is not perfect because the law serves some latent functions which make it less distasteful to management parties than to management negotiators. Elucidation of this concept is enhanced with reference to Floyd Hunter's classic work *Community Power Structure*.[71] Hunter theorized that while power is generally thought to

66. Questionnaire identity number 153.
67. Questionnaire identity number 151.
68. Questionnaire identity number 46.
69. Questionnaire identity number 49.
70. *See* Tables 1-4B and accompanying text *supra*.
71. F. HUNTER, COMMUNITY POWER STRUCTURE (1953).

"flow" through a pyramid-shaped command structure, power in the complex community power structure actually flows through many pyramids within a pyramid.[72] Each of the smaller pyramids connotes a specialized work group. It stands to reason that each of the smaller pyramids has its own structure of incentives based upon the nuances of that substructure's functions; from this, it is possible to arrive at a theory of attitude formation. The substantive probability is that subgroup members will adopt that attitude which maximizes the achievement of subgroup goals.[73]

Subgroup work goals can explain the moderation of management parties compared to management negotiators. Management negotiators work in an environment of associational ties which militates against organized labor.[74] Conversely, the associational ties of management parties militate toward a policy of peaceful, expedient accommodation.

Our analysis begins with an examination of the management negotiators. The primary concern of the management negotiator, as regards organized labor, is to maintain a posture that maximizes management interests at the bargaining table. That is the specialized task of a management negotiator. Certainly the role requires a high degree of social grace to deal with organized labor on an ongoing basis: herein lies the need for moderation and caution. Like his labor counterpart, the management negotiator's goal is to make the fewest concessions while avoiding an impasse. But the management negotiator has an advantage over his labor counterpart. As a representative of management, he operates from a posture of inherent management power. He represents the stronger, and more legitimate, party, and can present himself as guardian of the public interest. Management negotiators can thus afford to appear less moderate. Moreover, the less a management negotiator conforms to this ideal, the less successful he will be

72. *Id.* at 60-113.

73. The argument is that there is a type of rationality based on the incentives provided by an individual's particular role rather than the greater goals of the organization within which the individual works.

74. For an example of management negotiator literature reflecting the rational norms mentioned herein, *see* the management institute literature marketed by attorneys of the management firm Seyfarth, Shaw, Fairweather & Geraldson (copy on file in offices of the *Marquette Law Review*).

considered by his peers. Management negotiators have extensive associational ties that reaffirm this "hard ball" perspective.[75] They are hired to be effective advocates, and we fail to see any incentive for these advocates to take anything but a "hard line" in dealing with labor.

The management party is different. Consider the incentives of an elected or appointed municipal official such as a school board member or superintendent of schools. Ideally, we assume that a rationally acting school board member wants to serve the interests of those whom he or she is elected to serve. Those interests involve complex considerations which cannot be expressed solely in terms of dollars.[76] Especially now, we are all aware that taxpayers do not want increased assessments. But neither do they want their children exposed to social unrest. This is not a direct responsibility for which a management negotiator will be held accountable. As public officers, however, school board members have the formal responsibility for peacekeeping in the schools. As one management respondent party put it: "I don't really approve of binding arbitration, but it is less disruptive to a community than a strike."[77]

Aside from these competing considerations, there is an additional consideration which an elected board member or superintendent must take into account: many teachers are voters and teachers are becoming an increasingly well organized political force. While the management party wants to serve taxpayer interests, he or she must remember that teachers are among the voting, taxpaying population and that an organized political force of teachers must be taken into account.

In sum, the management party's primary responsibilities involve dealing with the public and the unions on many different levels. Because of this, management parties appear somewhat more moderate than their labor counterparts in the intensity of their attitudes.

In addition, management parties are more moderate than management negotiators because the parties, unlike the nego-

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75. *Id.*

76. Weber's ideal types theory is much more useful than the modern econometric model in assessing such a comprehensive scope of utils. *See* M. WEBER, THE THEORY OF SOCIAL AND ECONOMIC ORGANIZATION 109-246 (1954).

77. Questionnaire identity number 22.

tiators, have other incentives to moderation. Final offer arbitration has latent effects which are not, overall, unfavorable to management party interests. As public officers directly accountable to the local electorate, management parties have a great deal at stake in the prompt resolution of public sector labor disputes even if the institutional quid pro quo for such resolutions is final offer arbitration. The management party will not automatically be absolved from political liability if the public at large is displeased with the terms of a particular agreement. However, we assert that final offer arbitration lessens the risk of such liability for a public manager. Furthermore, in cases where a union is powerful, the manager can mitigate losses to his own reputation by shifting responsibility to arbitration.

In this way, final offer arbitration allows public employers to avoid "no-win" situations which ultimately invoke the hostility of the general public and of organized labor.[78] Furthermore, studies of municipalities in Massachussetts, New York, Wisconsin, Michigan, and Pennsylvania show an overall lack of economic effect in the size of wage increases as a result of using final offer arbitration.[79] If this result is borne out by wage increase determinations made under chapter 178, it is difficult to see what net negative effects actually accrue to public managers from working under final offer arbitration.

2. Final Offer Arbitration as a Conflict Regulating Rather than a Dispute Resolving Mechanism

Final offer arbitration serves labor and some management interests at the same time it serves the primary goal of maintaining the public order. Because of these three essential fac-

78. These explanations are proved only in part by corroborating comments. Our reliance is based on their implicit appeal as reasonable explanations to the statistical indication. These explanations involve sensitive matters and the "posturing" of the parties would, in any event, foreclose admission of such reasons as a general matter. Ultimately, what is presented here is a theory which explains the statistics via the ideal type role models and the pressures described on each actor in that discussion.

79. *See* Lipsky & Barocci, *Final-Offer Arbitration and Salaries of Police and Firefighters*, 101 MONTHLY LAB. REV. 34, 34-35 (1978); J. STERN, C. RHEMUS, J. LOEWENBERG, H. KASPER & B. DENNIS, FINAL OFFER ARBITRATION: THE EFFECTS ON PUBLIC SAFETY EMPLOYEE BARGAINING (1975). These were studies of final offer arbitration effects on bargaining relations with uniformed employees; we know of no similar studies done on nonuniformed employees but see no reason not to analogize.

tors, the law will probably survive its statutory "sunset clause" trial period which expires in October, 1981. Judging from our study, the system of final offer arbitration in Wisconsin results in what we term "lame pluralism." It is a system of negative accord which everyone would like to alter but under which most will agree to work. Arguably, "lame pluralism" is the greatest degree of consensus that one can reasonably expect given the implicitly opposed interests of labor and management.

The phrase "dispute settlement" is commonly used to describe mediation and arbitration mechanisms instituted by labor relations statutes.[80] We question the propriety of this term as a descriptor of the reality of municipal labor relations in Wisconsin. There is never just a single dispute to resolve; rather, there is an ongoing conflict of legitimate, yet opposing, interests. To imply that any substantial settlement is possible assumes too much; this is characteristic terminology of naive pluralist theory. In reality, we must judge the capacity of the statutory mechanism to regulate the ongoing conflict between management and labor in an efficient and fair way.

"Conflict regulation" is a concept derived from writings in the field of international affairs.[81] The conflict regulation approach, in Professor Samuel Huntington's words, "focuses on social conflict in a divided society for what it truly is: a political problem."[82] This approach argues that some social conflicts are beyond resolution due to their intensity. They are, instead, regulated through political mechanisms instituted by the government.[83] Used in this sense, conflict regulation can be understood as essentially a dialectic synthesis of "interest group liberalism"[84] and its "conflict model"[85] critique. It is a theory of pluralism which does not presume that the attainment of ultimate consensus is possible or necessary to the maintenance of an orderly, cohesive society.

Interest group liberalism, or pluralism, has been the nor-

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80. *See, e.g.*, DISPUTE SETTLEMENT IN THE PUBLIC SECTOR (T. Gilroy ed. 1972).

81. *See* E. NORDLINGER, CONFLICT REGULATION IN DIVIDED SOCIETIES (1975).

82. Huntington, *Foreword* to E. NORDLINGER, CONFLICT REGULATION IN DIVIDED SOCIETIES (1975).

83. *Id.* at 7-73.

84. *See* note 25 *supra.*

85. *See* for a classic example, C. MILLS, THE NEW MEN IN POWER (1st ed. 1948).

mative theory of political organization in the United States since the Great Depression.[86] In recent years, many have suggested that pluralism invariably will lead to a state of political entropy necessitating a new, and politically rightward, turn in government policy. This has been a constant theme in the writings of "New Right" intellectuals in the years postdating the sixties' Great Society thrust.[87] The election of President Reagan and a more conservative United States Congress in 1980 reflects a popular movement sympathetic to this theme.

The conflict regulation approach suggests some real limits on the possibilities for abandonment of interest group liberalism and its products — such as final offer arbitration. To the extent that the political adjustment initiated by the 1977 legislature successfully emplants a release valve on the more destructive aspects of immutable conflict, one wonders whether the "lame pluralism" achieved by conflict regulation might, realistically, be the only kind of resolution possible.

C. *The Impact of Experience on Attitude Toward the Fairness of Final Offer Arbitration*

Sample statistics show a significant correlation between experience with the process and attitude toward the fairness of the process.[88] Winners tend to like the process and losers tend not to. Given the predominant number of settled and mixed experiences, which apparently have little impact on attitude, we have to question the substantial importance of the statistical correlation.

There would be no significant statistical correlation between experience and attitude if the "won" and "lost" categories were deleted from the chi square table. Conversely, if a chi square were done only of "won" and "lost" experience correlated with fair and unfair attitudes, the result would be a

86. *See, e.g.*, W. LEUCHTENBERG, FRANKLIN D. ROOSEVELT AND THE NEW DEAL 165 (1963); A. HAMBY, BEYOND THE NEW DEAL 277-351 (1973); D. MOYNIHAN, MAXIMUM FEASIBLE MISUNDERSTANDING (1969).

87. *See, e.g.*, T. LOWI, THE END OF LIBERALISM (1969).

88. *See* text accompanying notes 36-42 *supra*.

correlation significant at the .01 level.[89] What this means is that the chi square statistic reported in Table 5A above[90] is the result solely of the won and lost categories. Settlement and mixed experience have no discernible impact on attitude.

This lack of discernible impact must be considered in light of the probabilities of experience with the process. In our sample, most mediation-arbitration cases end in settlement.[91] Most of the settlements result in unchanged labor and management attitudes[92] and most of the mixed experience cases also resulted in unchanged labor and management attitudes.[93] Also, people are likely to have mixed experiences in the long term.

Focusing solely on the winning and losing experiences reported in our sample, the relevant analytical issue is whether management's winning and labor's losing at the final offer arbitration level could have an overall neutralizing impact. Shaping all presumptions in favor of such a possibility, a neutralizing impact "could" exist based on this data. But it is only of marginal importance given the predominance of settlements. The perceptions of a labor or management party who has only one experience with mediation-arbitration could be strongly affected by an unexpected result. It remains to be proven that the apparent potency of rare "pure counterintuitive" experience promises any long run moderation of the labor/management attitude polarization.

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89. *TABLE 5B*

Process Experience and Attitude toward Fairness — Contingency Table with Condensed Fairness Categories for Persons with the Experience of "Won Only" and "Lost Only".

	FAIR	*UNFAIR*	*TOTAL*
WON	12^1	5^2	17
LOST	4^2	16^3	20
	16	21	37

$X^2 = 9.58$ significant at the .01 level with 1 degree of freedom.

90. *See* Table 5A *supra.*

91. Of 179 cases, 120 had settlement experience only (51 of labor and 69 of management).

92. 37 out of 51 labor parties with settlement experience thought the process was fair, 13 out of 16 management parties with mixed experience thought the process was unfair.

93. WISCONSIN CENTER FOR PUBLIC POLICY, *supra* note 11.

D. *Disparity Between Attitudes and Economic Results: Findings of the Wisconsin Center for Public Policy*

1. Introduction

The Wisconsin Legislature provided for a study of the effects of mediation-arbitration pursuant to section 15 of the law. The Wisconsin Center For Public Policy (WCPP) was awarded the contract, conducted the study and submitted its final report to the Legislative Council on December 1, 1980.[94] The study includes analysis of the effects of the law on prevention of strikes, impasse resolution, negotiations and benefits.[95] Since all of these factors are primarily concerned with the "efficacy" of the law, the emphasis of the WCPP study is different from our own. The study does report on attitudes;[96] but it does not cross-analyze attitudes with other factors or otherwise examine the substantive roots of attitudes. The failure to do so has resulted in criticism of the study.[97] Nevertheless, an "objective" approach to attitudinal data is consistent with the scientific function which the study was intended to serve.

A major finding of the WCPP is that "there is very little difference in economic outcomes between negotiations which do not use the mediation-arbitration process and those that use it."[98] This raises questions about the realism and objectivity of the labor-management attitudes that we discovered. If there is little difference on the "bottom line," why the extreme polarization of attitudes? Are both management and labor out of step with reality?

2. Summary of the Basic Findings of the Wisconsin Center for Public Policy

The data show that strikes decreased from the early to the late seventies. Between 1969 and 1978, there were ninety-eight strikes by nonuniformed municipal employees in Wisconsin.[99] This is an average of 10.89 strikes per year. Between the effec-

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94. WISCONSIN CENTER FOR PUBLIC POLICY, *supra* note 11, at 136-40, 200-04.

95. The main subject matter for the study was set by 1977 Wis. Laws ch. 178, § 15.

96. WISCONSIN CENTER FOR PUBLIC POLICY, *supra* note 11, at 136-40, 200-04.

97. *See* note 114 *infra*.

98. WISCONSIN CENTER FOR PUBLIC POLICY, *supra* note 11, at 15.

99. *Id.* at 185.

tive date of the new law in 1978 and the end of the WCPP study in October, 1980, there were six strikes, an average of two per year.[100] The cause of the decrease in strikes is not analyzed in the WCPP study, except through the reporting of labor and management attitudes.[101] Some management people thought that labor was "holding off" until after the sunset clause deliberations were concluded and the statute was reenacted in some form;[102] but many management and labor parties disagreed with this assessment.[103]

In a wage analysis of a sample of mediation-arbitration awards, the Center found that "if . . . median figures are used, union 8-9% [wage increase] 'winners' have been selected over employer 7-8% [wage increase] 'losers.' Employer 8% 'winners' have been selected over union 9-10% 'losers.'"[104] Hence, on the average, the same wage increase seems to prevail regardless of which side offers it. Of course, there are variations around the median but the measures of dispersion reaffirm the prevalence of an "average" wage increase.[105] Also, a small percentage difference can mean a considerable difference in actual dollars. Nonetheless, the mediation-arbitration process has not enabled the unions to transcend a rather confined range of economic normalcy. The same general point applies to cases which were settled. The WCPP reports that "[t]he 8-9% median awards compare to the 8.5% negotiated settlements."[106] Against the backdrop of inflation, these increases were not large: "During the calendar year 1978 the Consumer Price Index rose 9.4 percent. During calendar year 1979 the CPI rose 14 percent. . . . Thus, on average, the winning final offers have been below the rate at which the CPI has been rising."[107]

3. Reservations About the Finding of Very Little Difference

One plausible explanation for the small difference shown

100. *Id.* at 180-185.
101. *Id.* at 180.
102. *Id.*
103. *Id.*
104. *Id.* at 89.
105. *Id.* at 89-90.
106. *Id.* at 89.
107. *Id.*

in the sample, consistent with an economic advantage for labor, is that smaller cities with wages under the norm, have been "catching up" in the initial period. Even large gains by those near the bottom would not affect the overall median. However true the "catchup" phenomenon may be elsewhere, in Wisconsin there is reason to be skeptical. The WCPP reports that "it appears that unions and employers in large cities initiated the mediation-arbitration procedures more often than was the case in smaller cities. Of the 38 largest cities, 12 (31.6%) did not use the procedures while of the 149 smallest cities, 136 (91%) did not use the procedures."[108]

Another factor which must qualify any research is the short time that the new law has been in effect. The WCPP properly conceded: "conclusions drawn from one or at most two rounds of bargaining must be viewed as premature."[109] However, there are no obvious contingencies which could lead to a significant change in the current results of mediation-arbitration awards. If, as a few parties have argued, the unions are "holding off" until after the sunset clause resolution, there is no reason to assume that the arbitrators will be responsive to the unionists' efforts when making decisions. Indeed, there is no empirical evidence of arbitrator bias.[110] Notwithstanding all reservations, we are inclined to conclude that the new law has not been economically advantageous to labor.

The WCPP reports that some management parties feel they have made unattractive settlements in order to avoid taking their dispute to mediation-arbitration; and many union parties apparently believe that they got better settlements.[111] This curious disparity between statistical results and the attitudes of both labor and management is strongly corroborated by our own findings.

4. Conclusion: Will Attitudes Change?

Assuming that the WCPP study is methodologically valid, explanation of attitudinal polarization could lie in noneconomic factors. Most petitions for mediation-arbitration were

108. *Id.* at 34-35.

109. *Id.* at 78.

110. The common suspicion is the exact opposite, that is, that arbitrators make decisions with reference to an ideal "50/50" decision record.

111. WISCONSIN CENTER FOR PUBLIC POLICY, *supra* note 11, at 82.

initiated by labor parties.[112] Perhaps labor prefers mediation-arbitration because it can reach an acceptable result with less effort.

There are also plausible reasons for management disapproval. As previously noted, some management people believe that unions are "holding back" their most promising cases until after the sunset clause period. Notwithstanding a lack of economic impact in the past two years, management parties do have less control over future collective bargaining proceedings. Furthermore, they do not believe the new law is a legitimate exercise of state authority over local governments. Even in the absence of dollar disparities, management may see the state law as having undermined the inherent superior bargaining power of the municipal government over the municipal union. Final offer arbitration reduces the control that the municipality has over the total process. This may be a significant loss in the eyes of management parties.

While there are plausible reasons to justify the polarization of attitudes, it is equally possible that both parties were responding based upon preconceived notions about the economic impact of the new law. Mediation-arbitration laws historically have been perceived as "prolabor." It will be interesting to see if widespread appreciation of the unexciting economic impacts results in a moderation of attitudes. It is remotely possible, given the modest return to labor, that the parties would change attitudinal sides. If a major change of attitudes does develop, it would be a tribute to the efficaciousness of a social scientific study, such as the WCPP's. If attitudes do not change, and the economic trend continues, we would have to conclude that management is irrational, is responding to symbolism, or puts a much higher priority on political autonomy in and of itself than previously suspected. Continuing labor enthusiasm likewise might be irrational or simply reflect the increased serenity of the new system.

E. Summary and Conclusion

The sample results give no particular reason for great optimism about the effects of the first year of operation of the law on process legitimacy. It is clear that mediation-arbitration

112. *Id.* at 12.

does not solely serve the interests of labor. The law helps to preserve the public order and relieves public managers of a no-win bind between unions and taxpayers.[113] Also there is solid statistical data and other evidence in support of the argument that one year's operation under the new law has not further polarized labor and management. If anything, the operation of the law has contributed to neutralization of attitudes, but not in a significant degree. Whether the level of neutralization will significantly change in future years will depend on a variety of factors not the least of which is the possibility that the original law will be amended in 1981 after the sunset provision expires.

A balance of labor and management interests is in fact achieved through the new law. The balance is achieved through an accommodation of interests which requires consideration of competing fairness claims. How the past accommodation will survive in the current, rightward turning political climate is open to doubt.

V. Future Trends

Three possible developments may affect the attitudes of participants toward final offer arbitration in the future. The "sunset" clause in the law becomes effective October, 1981. At that point, final offer practice must again pass muster before the legislature. Labor and management have both proposed changes and the law may not emerge unscathed. A second and related development is a management drive toward "legalization" of the final offer process in both legislative and judicial arenas. Judicial review of arbitrator and agency actions, for example, could radically shift power back to management. Third, the underlying orientations of the groups may diverge. Labor may decide that, like factfinding before it, final offer arbitration is an ineffective strike substitute. Conversely, management could decide that arbitration cannot be sufficiently sensitive to the need for fiscal constraint, and thus intensify efforts to repeal the law. In the final sections each of these possible developments is considered.

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113. *Id.* at 180.

A. The Sunset Clause

Pursuant to section 15 of chapter 178, 1977 Laws of Wisconsin, final offer arbitration will expire on October 31, 1981. The law faces review in a political atmosphere which is more conservative than in the seventies, sixties, and, potentially, even the fifties. The budgetary crunch, the Proposition 13 mentality and the President's promise of a rollback of the liberalism of the sixties do not suggest an environment in which public employees will gain more power easily. On the other hand, at the moment, there does not seem to be much chance of labor losing ground already gained.

The legislative debate on the law's future has just begun.[114] The first public hearing of the Legislative Council committee studying the operation of the law was held on February 9, 1981. Analysis of written statements submitted at the hearing reveals a variety of management and labor positions regarding actions which the legislature should take during the "sunset period." Management representatives recommend that the sun set on the new law in 1981, but their submissions seem obligatory, ritualistic and halfhearted. Typically, management representatives preface their suggestions with comments like this: "recognizing that complete repeal of S.B. 15 (Ch. 178, Wis. Laws of 1977) at this time is unlikely, we would like to present the following suggestions for modification."[115] Therein follow a number of suggested amendments to the original laws passed in 1977. The most often mentioned amendments are provisions calling for separation of the mediation and arbitration functions,[116] increased constraints on the arbitrator,[117] court review of the arbitrator's

114. The Wisconsin Center for Public Policy submitted its report to the Wisconsin Legislative Council on December 1, 1980. The first hearing before the Wisconsin Legislative Council Special Committee on Municipal Collective Bargaining occurred on February 9, 1981.

115. *Wisconsin Legislative Council, Special Committee on Municipal Collective Bargaining,* hearing on February 9, 1981 [hereinafter cited as *Special Committee Hearing*] (written statement submitted by K. McNeight, Administrative Assistant, Ashwaubenon Public Schools).

116. *Id.* (written statement submitted by Dr. R. B. Curtis of the Wisconsin Association of School Boards).

117. *Id.* (written statement submitted by J. R. Grossman, City Manager of the City of Two Rivers, Wisconsin; also, statement of F. D. O'Brien, Personnel Director of the Milwaukee Metropolitan Sewerage District).

decision,[118] establishment of some local mechanism for ratifying final offer proposals[119] and a requirement that initial contract proposals be submitted two weeks prior to labor's and management's first meeting under the impasse procedure.[120] Also, as discussed below, some management representatives want to increase union power to strike as an alternative to final offer arbitration.[121]

The general approach of management advocates is quite different than that articulated just seven years ago.[122] Whether it be acquiescence to the new law or a perception that the new law has its good points, management is not devoting much of its efforts to a repeal campaign at this stage of the hearings. Since the new law will probably be reenacted in some form within six months of the above mentioned first hearing of the Wisconsin Legislative Council, we doubt that a major repeal effort will be made. Instead, management's approach is to deal pragmatically with the reality of the law and seek incremental changes in it which will tend to shift power back to management.

Labor submissions are principally directed at preventing lapse or erosion of the existing law. Much reliance is placed on the drastic reduction in the number of strikes which the law seems to have produced during its initial period.[123] Proposals from labor focus on extending binding arbitration to other labor disputes during the term of a contract and on liberalization of the right to strike.[124] Overall, the effort seems a somewhat half-hearted adaptation made in the face of realistic possibilities.[125]

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118. *Id.* (written statement submitted by J. R. Grossman).

119. *Id.* (written statement submitted by P. L. Willis, City Attorney of Manitowoc, Wisconsin).

120. *Id.* (written statement submitted by O. Berge, Executive Director of the Wisconsin Association of School District Administrators).

121. *Id.* (written statement submitted by F. D. O'Brien and P. L. Willis).

122. *See* notes 43-50 and accompanying text *supra.*

123. During a two and one-half year period in the early seventies, there were 51 strikes. Fernbach, *supra* note 45. During the two years of mediation-arbitration, only 4 strikes occurred. WISCONSIN CENTER FOR PUBLIC POLICY, *supra* note 11.

124. *See, e.g., Special Committee Hearing, supra* note 115 (written statement submitted by C. Stout, President of the Wisconsin Education Association Council).

125. *Id.*

B. *The "Legalization" of Final Offer Arbitration*

Management seems to favor transforming the arbitration process into a proceeding resembling a judicial trial.[126] This indicates a management drive to legalize or formalize the process. The unstructured, flexible characteristics of mediation-arbitration, which arguably make it more efficacious, are viewed by management as violative of due process and fundamental fairness.[127] In connection with this thrust, many of the management advocates would like the roles of mediator and arbitrator separated.[128] Also, they want more constraint on the "ex parte" communications inevitably created by mediation. Because management lawyers want the chance to rebut any information presented to the arbitrator, they would like formal presentation of evidence at the arbitration stage, as in a judicial trial. In addition, they would like judicial review of arbitrator actions.[129]

Through institution of the various legalizing measures, the arbitration system would become more oriented to rule and precedent, to following the orders of courts, and less to the equities and idiosyncrasies of individual cases. Such a change would require more labor and management time in court. Moreover, increased judicial review could change the substantive law or rules applicable in arbitration proceedings decidedly in favor of management.

The various legalizing moves may be part of an overall strategy designed to bring arbitration under the control of decision makers who will apply substantive rules more favorable to management. Increased formality at the trial facilitates appellate review, especially for lawyers who are used to the more formal environment. To demonstrate how the apparently procedural device of judicial review may have substantive significance requires a brief overview of legal developments in the

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126. WISCONSIN CENTER FOR PUBLIC POLICY, *supra* note 11, at 89; *Special Committee Hearing, supra* note 115 (written statement submitted by O. Berge).

127. *Special Committee Hearing, supra* note 115 (written statement submitted by J.R. Grossman).

128. WISCONSIN CENTER FOR PUBLIC POLICY, *supra* note 11, at 89.

129. *Special Committee Hearing, supra* note 115 (written statement submitted by J. Boettcher, representing Merrill Area Public School District, J.R. Grossman, City Manager of City of Two Rivers, and K. McNeight, representing Ashwaubenon Public Schools).

Wisconsin courts.

A constitutional challenge has been made in the Wisconsin courts.[130] The focus of the constitutional challenge in Wisconsin and other states centers on a theory of unlawful delegation in violation of due process rights.[131] The potential impact of such a theory has to be taken seriously, especially in a period when arbitrator and agency review concepts are moving toward increased reviewability.[132] Reviewability is likely to increase because of the compulsory nature of the interest arbitration process.

In Wisconsin, the general rule during review of an administrative decision is to defer to the interpretation of a statute adopted by the administrative body charged with applying the statute.[133] This suggests that the agency can issue procedures, as permitted by the statute, which further define the arbitrator's functions. However, in the landmark Wisconsin labor case of *Libby, McNeill & Libby v. Wisconsin Employment Relations Commission,*[134] the Wisconsin Supreme Court held that a legal question that has not been construed in past decisions is not entitled to customary deference.[135] Moreover, in an area affecting municipal budgets, a real argument can be made that the "home rule" provisions in the Wisconsin Laws are being affected by an agency whose legislative grant does not permit the overriding of municipal powers granted under chapter 62.[136] Several Wisconsin labor law cases have noted that different parts of the statutes may need to be harmonized. In this context, the Wisconsin Supreme Court stated that "the relation of sec. 111.70 to other statutory provisions is a question of law and . . . although the decision of the

130. The constitutional challenge to the final offer interest arbitration law was made in Maple-Dale Indian Educ. Ass'n v. Fox Point School Dist. No. 8, No. 80-595 (Wis. Ct. App. Dec. 19, 1980).

131. *Id.*

132. The "golden era" of arbitration signaled in the early sixties by the U.S. Steel "Trilogy" cases (Steelworkers v. American Mfg. Co., 363 U.S. 564 (1960); Steelworkers v. Warrior Gulf Navigation Co., 363 U.S. 574 (1960); Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960)) is increasingly challenged, especially in the public sector. *See* note 127 *supra.*

133. Transport Oil, Inc. v. Cummings, 54 Wis. 2d 256, 195 N.W.2d 649 (1972).

134. 48 Wis. 2d 272, 179 N.W.2d 805 (1970).

135. *Id.; see* Beloit Educ. Ass'n v. WERC, 73 Wis. 2d 43, 67-68, 242 N.W.2d 231, 242-43 (1976).

136. Brookfield v. WERC, 87 Wis. 2d 819, 275 N.W.2d 723 (1979).

WERC would be accorded due weight, the issue is within the special competence of the court."[137] The statutory harmonization principles raised in these labor cases suggest that judicial review could greatly alter the current arbitration mechanism.

Another aspect of judicial review, possibly favorable to management, is increased judicial scrutiny of the arbitrator's central function, that is, his or her findings on which party's final offer is better. The right to judicial review in Wisconsin courts is based primarily on the Wisconsin Administrative Procedure Act set forth in chapter 227.[138] For many years, public sector labor decisions in Wisconsin have relied on the statutory interpretation of the state Administrative Procedure Act set forth in the *Muskego-Norway*[139] decision: "It is well established that under sec. 227.20(1)(d), *Stats.*, judicial review of the WER[C] findings is to determine whether or not the questioned finding is supported 'by substantial evidence in view of the entire record.' "[140]

The current import of the *Muskego-Norway* language is open to question in light of subsequent amendments to chapter 227.[141] Section 23, chapter 414, Wisconsin Laws of 1975 repeals the old 227.20(1) and section 25 creates 227.20(1)-(9).[142] The new provisions indicate a legislative intent to supersede the unqualified terminology "substantial evidence in light of the entire record" with a more exacting statutory scheme. This scheme provides for a two-tiered approach. First a "rational basis" test is employed, which is, in effect, the older standard. Thereafter, an "analytical approach" is used, entailing closer scrutiny.[143] The crux of the newly articulated analytical standard is contained in section 227.20(8): "The court shall reverse and remand the case to the agency if it finds that the agency's exercise of discretion is outside the range of discretion delegated to the agency by law . . . or is otherwise in violation of a constitutional or statutory provi-

137. McEwen v. Pierce County, 90 Wis. 2d 256, 273, 279 N.W.2d 469, 476 (1979).

138. WIS. STAT. ch. 227 (1979).

139. Muskego-Norway C.S.J.S.D. No. 9 v. W.E.R.B., 35 Wis. 2d 540, 151 N.W.2d 617 (1967).

140. *Id.* at 558, 151 N.W.2d at 626.

141. WIS. STAT. § 227.20 (1979).

142. *See* 1975 Wis. Laws ch. 414 §§ 23, 25.

143. *See* WIS. STAT. § 227.20 (1979).

sion . . . ."[144] These changes in chapter 227 in 1975 increase the likelihood that a final offer decision will be subject to scrutiny of a reviewing court.

The pertinent question about the trend toward judicial review concerns the impact that such a trend could have on the attitudes of labor and management. We suspect that such increased judicial review applied to final offer arbitration decisions will generally favor management interests. This inference is not based on any endorsement of management claims of arbitrator bias. Rather, it is because labor's advantage is based exclusively in chapter 111. Management's legal power is based on a variety of laws. Increased review will facilitate closer scrutiny over other laws as countervailing claims of legal right in courts and arbitration proceedings. Ultimately, the final offer process could facilitate an extreme restriction on labor's power. For the past thirty years, judicial review has often been viewed as the harbinger of progressive social change and redistribution of power. Judicial review of protective and remedial legislation in a period of shrinking public budgets may tend in the opposite direction.

The enthusiasm of management for legalization might spring simply from the greater use and access of management to "high powered" lawyers as representatives. Judicial review also gives management a "second bite" at the arbitrator's decision. Although labor may also seek judicial review, it is management people who perceive a practical advantage in review.[145] In the final analysis, the issue here is really the applicable substantive law. Once departing from the law of arbitration, unions have left their "home turf."

C. Shifting Union and Management Strategies

The third development which may affect the future of final offer arbitration is a fundamental shift in the underlying attitudes and strategies of labor and management. There is some evidence of change by both management and labor.[146] If reviewability standards expand to encompass greater review of

144. WIS. STAT. § 227.20(8) (1979).

145. This empirical fact is reflected in the written testimony mentioned. *See* notes 105-17 *supra*. Also, seeking judicial review is part of management strategy pursued in many jurisdictions; *see* Annot., 84 A.L.R.3d 242 (1978).

146. Annot., 84 A.L.R.3d 242 (1978).

arbitration decisions and WERC procedures, labor's reasons for favoring the law might be lost. Even at this date, labor questionnaire comments leave the impression that many public sector unionists want the right to strike and plan to push for it.[147] This is also indicated in the written statements submitted at the recent hearing of the Wisconsin Legislative Council.[148] Moreover, the possible contraction of labor's newfound power via review may mean that illegal strikes will once more become a default strategy pursued by labor.

Management strategies also seem to be shifting. Some public sector negotiators have advocated increased legalization of the right to strike at the Legislative Council hearing.[149] This may have been a tactical claim intended to show the extent of management's discontent with interest arbitration. A more likely explanation is that management negotiators want to have the power to lock out. In a labor dispute in the private sector, management has the legal power to lock out employees and, after a time, to hire temporary and even permanent replacements. No comparable power exists in the public sector. One Wisconsin municipal spokesman complains: "If General Motors wants to refuse a final offer by one of its unions, it has the power to tell that union to go on strike. Municipalities in the state of Wisconsin have been stripped [of] this power."[150]

To anyone who has followed the history of the debate regarding the right to strike in the public sector, the above position by management will suggest that a fundamental shift in perceptions has occurred. If management perceives a strike as easier to deal with than the effects of binding interest arbitration, then we may see the strike instituted as an arbitration substitute! In a period of shrinking public budgets, this state of affairs might not be as outlandish as it sounds initially.

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147. This is based on questionnaire Identity Numbers 005, 014, 038, 083 and 139. *See also Special Committee Hearing, supra* note 115 (statements made by labor representatives).

148. *Special Committee Hearing, supra* note 115.

149. WISCONSIN CENTER FOR PUBLIC POLICY, *supra* note 11, at 89-90. *See also, e.g., Special Committee Hearing, supra* note 115 (testimony of F. D. O'Brien, Personnel Director of the Milwaukee Metropolitan Sewerage District; J. R. Grossman, City Manager of Two Rivers, Wisconsin; P. L. Willis, City Attorney of Manitowoc, Wisconsin).

150. *Special Committee Hearing, supra* note 115 (testimony of P. L. Willis).

In summary, there are signs that both management and labor are flirting with the idea of abandoning interest arbitration in favor of "economic warfare." Whether the frail compromise of binding arbitration is shifted toward the interests of one party or another by judicial or legislative action, it seems always in danger of coming apart at the seams.

D. Conclusion

The future legislative debate on final offer arbitration in Wisconsin will focus not on whether to extend the law but rather on what incremental changes to make in the law. In doing so, the legislature must carefully consider the conditions under which conflict regulation can successfully occur. "Lame pluralism" as a paradigm for social consensus is less than satisfying but a viable alternative does not seem to exist. Proposition 13 and all else aside, organized labor has become a powerful force and the past forty-five years have done a great deal to legitimate the claims of labor organizations. Management objections to a "shift in power" are not new; they have been around as long as employees have attempted to organize. The right to organize was never recognized on a large scale in the United States until the thirties.[151] Then, the federal government pursued an agenda of permitting labor to organize as one of many countervailing measures implemented pursuant to Roosevelt's "Neo-Keynesian" fiscal policy.[152] A major question in the current political climate is whether "lame pluralism" is really worthwhile. If the source of concerns is excessive gains made by labor, one would do well to consider that "liberal" labor laws were originally planned to serve ends that were quite traditional. Society consists of different economic classes with different interests. As long as these conditions persist, it is unlikely that anything but a very uneasy consensus between groups will ever be possible.

The original and primary motivation for interest arbitration in Wisconsin was avoidance of economic warfare in the public sector — strikes, lockouts, replacements and all the concomitant disruptions. That objective should remain preeminent.

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151. 29 U.S.C. §§ 151-69 (1935).

152. *See* note 86 and accompanying text *supra*.

STATISTICAL APPENDIX

TABLE A

DISPUTE NOTICES IN 1978: NUMBER, SOURCE, AND SEASONALITY

	Villages, Towns, and Sewers	Counties	Cities	School Districts
January, February	6	17	16	286
March, April, and May	1	11	13	122
June, July, and August	10	76	53	21
September, October, and November	1	6	17	6
	18	110	99	435

Total Dispute Notices received as of 11/1/78: 662

TABLE B

FREQUENCY DISTRIBUTION OF TIME BETWEEN FILING OF MEDIATION-ARBITRATION NOTICE AND ARBITRATION AWARD

Length of Time (in months)	Number of Awards
10	1
9	1
8 1/2	1
8	1
7 1/2	1
7	4
6	6
5 1/2	3
5	3
4 1/2	4
4	1
3	1

TABLE C

FREQUENCY DISTRIBUTION OF MULTIPLE CASES PER NEGOTIATOR

Name	Number of Dispute Notices	Number of Different Municipal Units	Type of Municipal Units*
James L. Koch	24	12	Cnty. P.D., Cty. Shf., S.D.
James Miller	22	11	Cnty., Cty. P.D., S.D., Vlg. Shf.
Michael Wilson	21	10	Cnty., Cty.
Malcom Einerson	19	11	Cnty., Vlg., Cty.
Alan Manson	17	10	S.D.
Richard Abelson	16	5	Cnty. P.D.
Robert Lyons	15	6	Cnty., Cty., Vlg.
Le Nore J. Hamrick	15	9	S.D., Cnty., Cty.
Leonard Schoonover	13	9	Cnty. P.D., Cty. F.F., S.D.
Darold O. Lowe	13	9	Cnty., Cty. P.D.
Glen Tarkowski	10	3	Twn., Cnty., Cty.
James Peterson	10	4	Cnty., Vlg., Cty.
Merle Baker	10	9	Cty., Cnty., S.D.
Robert Schlieve	9	1	Cty.
Guido Cecchini	9	4	Twn., Cty., Cnty.
Robert Chybowski	9	10	Cnty., Cty. P.D.
Jack Bernfeld	8	5	Cnty.
Joseph Robison	7	4	Cnty., Cty.
Walter Klopp	7	2	Cnty., Cty.
Gene Degner	6	2	S.D.
James Gibson	6	3	S.D.
Merlin Gorzylancyk	5	2	Cnty., Cty.
Robert West	4	2	S.D.
James Guckenberg	4	1	S.D.
Dennis Herrling	4	4	Cty., Cnty.
Napoleon Pryor	4	3	Cty., S.D., Vlg.
Thomas Parins	3	3	Cnty., Cty. F.F. & P.D., Shf.
Charles Schwanke	2	2	Cty., Vlg.
Michael Spencer	2	2	Cty.
Candace Owley	2	1	—
Michael Enea	2	1	Cty.

298 Mediation-Arbitration Dispute Notices were handled by 31 representatives out of 662 total Mediation-Arbitration Dispute Notices filed.

*Cnty. = County, Cty. = City, F.F. = Firefighters, P.D. = Police Department, Shf. = Sheriff, S.D. = School District, Vlg. = Village, Twn. = Town

TABLE D

ATTITUDE REGARDING FAIRNESS—BASIC DISTRIBUTION

	ABSOLUTE FREQ	RELATIVE FREQ (PCT)	CUM FREQ (PCT)
VERY FAIR	22	7.3	7.3
FAIR	48	16.0	23.3
NEITHER FAIR NOR UNFAIR	29	9.7	33.0
UNFAIR	52	17.3	50.3
VERY UNFAIR	30	10.0	60.3
NONANSWERED	7	2.3	62.6
UNANSWERED	112	37.3	99.9
TOTAL	300	99.9	

TABLE E

COMPARING PERSONS' ROLE IN THE MEDIATION-ARBITRATION PROCESS WITH THEIR ATTITUDE REGARDING THE FAIRNESS OF THE PROCESS

COUNT / ROW PCT / COL PCT / TOT PCT	VERY FAIR 1.	FAIR 2.	NEITHER FAIR NOR UNFAIR 3.	UNFAIR 4.	VERY UNF. 5.	NON ANS. 6.	ROW TOTAL
1.	17	21	5	2	2	2	4
	34.7	42.9	10.2	4.1	4.1	4.1	26.1
LABOR PARTY	77.3	43.8	17.2	3.8	6.7	28.6	
	9.0	11.2	2.7	1.0	1.1	1.1	
2.	4	11	6	5	0	3	29
	13.8	37.9	20.7	17.2	.0	10 3	15.4
LABOR NEGOTIATOR	18.2	22.9	20.7	9.6	.0	42.9	
	2.1	5.9	3.2	2.7	.0	1.6	
3.	0	2	3	6	8	1	20
	.0	10.0	15.0	30.0	40.0	5.0	10.6
MANAGEMENT NEGOT	.0	4.2	10.3	11.5	26.7	14.3	
	.0	1.1	1.6	3.2	4.3	.5	
4.	1	14	15	39	20	1	90
	1.1	15.6	16.7	43 3	22.2	1.1	47.9
MANAGEMENT PRTY	4.5	29.2	51.7	75.0	66.7	14.3	
	.5	7.4	8.0	20.7	10.6	.5	
COLUMN	22	48	29	52	30	7	188
TOTAL	11.7	25.5	15.4	27.7	16.0	3.7	100.0

TABLE F

DID PERSON RESPOND?

	ABSOLUTE FREQ	RELATIVE FREQ (PCT)	CUM FREQ (PCT)
YES	182	60.7	60.7
RETURN NONANSWERED	7	2.3	63.0
NO	111	37.0	100.0
TOTAL	300	100.0	

TABLE G

*RESPONSE RATE AMONG PROCESS ROLES**

	YES	NO	
LABOR PARTY	1 48 −14% (55.47) −7.47 55.80 1.01	2 41 +22% (33.53) 7.47 55.80 1.66	89
LABOR NEGOT	3 26 −11% (29.29) 3.29 10.82 .37	4 21 +19% (17.71) 3.29 10.82 .61	47
MANAG'T NEGOT	5 19 + 5% (18.08) .92 .85 .05	6 10 − 9% (10.93) −.90 .85 .08	29
MANAG'T PARTY	7 89 +12% (79.16) 9.84 96.83 1.22	8 38 −19% (47.84) 9.84 96.83 2.02	127
	182	110	= 292

CELL KEY

0 = observed number of cases in cell

Percent above or below expected number

(E = expected number of cases in cell)

(O−E)
$(O-E)^2$
$(O-E)^2 \div E$

$X^2 = 7.02$ SIGNIFICANT AT THE .10 LEVEL DEGREES OF FREEDOM = 3 (N.S.)
CRAMER'S V = .155

* deletes middle column (returned nonanswered)

TABLE H

EXPERIENCE WITH PROCESS—
BASIC FREQUENCY DISTRIBUTION

EXPERIENCE WITH PROCESS

	ABSOLUTE FREQ	RELATIVE FREQ (PCT)	CUM FREQ (PCT)
WON ONLY	19	6.3	6.3
WON, SETTLED	12	4.0	10.3
WON, SETTLED, LOST	3	1.0	11.3
WON, LOST	2	.7	12.0
SETTLED	124	41.3	53.3
SETTLED, LOST	9	3.0	56.3
LOST ONLY	15	5.0	61.3
NONANSWERED	2	.7	62.0
UNANSWERED	114	38.0	100.0
TOTAL	300	100.0	100.0

TABLE I

EXPERIENCE IN THE MEDIATION-ARBITRATION PROCESS AND ATTITUDE REGARDING THE FAIRNESS OF THE PROCESS

COUNT ROW PCT COL PCT TOT PCT	VERY FAIR 1.	FAIR 2.	NEITHER FAIR NOR UNFAIR 3.	UNFAIR 4.	VERY UNFAIR 5.	NON ANS. 6.	ROW TOTAL
1.	4	8	2	5	0	0	19
	21.1	42.2	10 5	26.3	.0	.0	10 2
WON ONLY	18.2	16.7	6.9	9.6	.0	.0	
	2.2	4.3	1.1	2.7	.0	.0	
2.	1	5	0	1	4	1	12
	8 3	41.7	.0	8.3	33.3	8.3	6.5
WON, SETTLED	4.5	10.4	.0	1.9	13.3	20.0	
	.5	2.7	.0	.5	2.2	.5	
3.	0	0	0	2	1	0	3
	.0	.0	.0	67.7	33.3	.0	1.6
WON, SETTLED, LOST	.0	.0	.0	3.8	3.3	.0	
	.0	.0	.0	1.1	.5	.0	
4.	0	0	0	1	1	0	2
	.0	.0	.0	50.0	50 0	.0	1.1
WON, LOST	.0	.0	.0	1.9	3.3	.0	
	.0	.0	.0	.5	.5	.0	
5.	17	31	22	33	17	4	124
	13.7	25.0	17.7	26.6	13.7	3.2	66.7
SETTLED	77.3	64.0	75.9	63 5	56.7	80.0	
	9.1	16.7	11.8	17.7	9.1	2.2	
6.	0	2	2	3	2	0	9
	.0	22.2	22.2	33.3	22.2	.0	4 0
SETTLED, LOST	.0	4.2	6.9	5.8	6.7	.0	
	.0	1.1	1.1	1.6	1.1	.0	
7.	0	2	2	6	5	0	15
	.0	13.3	13.3	40 0	33.3	.0	8.1
LOST ONLY	.0	4.2	6.9	11.5	16.7	.0	
	.0	1.1	1.1	3.2	2.7	.0	
8.	0	0	1	1	0	0	2
	.0	.0	50.0	50.0	.0	.0	1.0
NONANSWERED	.0	.0	3.4	1.9	.0	.0	
	.0	.0	.5	.5	.0	.0	
COLUMN TOTAL	22 11.8	48 25.8	29 15.6	52 28.0	30 16.1	5 2.7	186 100.0

TABLE J

*RESPONSE BY PROCESS EXPERIENCE**

(CELL KEY: See Table G)

	YES		NO		
WON	19	1	3	2	22
	+39%		−64%		
	(13.65)		(8.35)		
	5.35		−5.35		
	28.62		28.65		
	2.10		3.43		
ALL COMBINATIONS	25	3	18	4	43
	−6%		+18%		
	(26.68)		(16.31)		
	−1.68		1.69		
	2.82		2.86		
	.11		.18		
SETTLED	121	5	81	6	202
	−4%		+6%		
	(125.37)		(76.62)		
	−4.37		4.38		
	19.10		19.18		
	.15		.25		
LOST	15	7	8	8	23
	+5%		−8%		
	(14.27)		(8.72)		
	.73		−.72		
	.5329		.5184		
	.04		.06		
		180		110	290

$X^2 = 6.32$ Significant at the .10 level with 3 degrees of freedom (N.S.)
Cramer's V = .148
* Deletes 2 cases in missing values category

TABLE K
PROCESS EXPERIENCE AND ATTITUDE TOWARD FAIRNESS—PERCENTAGE BREAKDOWN WITH CONDENSED FAIRNESS CATEGORIES

CELL KEY
actual number
row percent
column percent
total percent

	FAIR	NEITHER	UNFAIR	
WON	12 63.15% 17.14% 6.7%	2 10.53% 6.25% 2.23%	5 26.34% 6.45% 2.79%	19
ALL COMBINATIONS	6 37.75% 8.6% 3.35%	4 25% 12.5% 6.78%	6 37.75% 7.79% 3.35%	16
SETTLED	48 40% 68.57% 26.82%	22 18.33% 68.75% 12.25%	50 41.67% 64.94% 27.93%	120
LOST	4 16.67% 5.7% 2.23%	4 16.67% 12.5% 2.23%	16 66.67% 20.78% 8.94%	24
	70	32	77	179

TABLE L

PROCESS ROLE AND PROCESS EXPERIENCE—PERCENTAGE BREAKDOWN

COUNT / ROW PCT / COL PCT / TOT PCT	WON ONLY 1	WON, SETTLED 2	WON, SETTLED, LOS 3	WON, LOST 4	SETTLED 5	SETTLED, LOST 6	LOST ONLY 7	8	ROW TOTAL
1	7	2	0	0	74	1	6	0	90
LABOR PARTY	7.8	2.2	0	0	82.2	1.1	6.7	.0	30.0
	31.8	10.0	0	.0	35.9	5.9	27.3	.0	
	2.3	.7	0	0	24.7	.3	2.0	.0	
2	5	11	3	1	23	7	0	0	50
LABOR NEGOTIATOR	10.0	22.0	6.0	2.0	46.0	14.0	.0	.0	16.7
	22.7	55.0	50.0	33.3	11.2	41.2	.0	.0	
	1.7	3.7	1.0	.3	7.7	2.3	0	.0	
3	0	5	3	1	15	4	1	1	30
MANAGEMENT NEGOT.	0	16.7	10.0	3.3	50.0	13.3	3.3	3.3	10.0
	.0	25.0	50.0	33.3	7.3	23.5	4.5	25.0	
	.0	1.7	1.0	.3	5.0	1.3	.3	.3	
4	10	2	0	1	94	5	15	1	128
MANAGEMENT PARTY	7.8	1.6	.0	.8	73.4	3.9	11.7	.8	42.7
	45.5	10.0	0	33.3	45.6	29.4	68.2	25.0	
	3.3	.7	.0	.3	31.3	1.7	5.0	.3	
5	0	0	0	0	0	0	0	2	2
	0	0	0	0	0	.0	.0	100.0	.7
	0	.0	0	0	0	.0	.0	50.0	
	.0	.0	0	0	.0	.0	.0	.7	
COLUMN TOTAL	22	20	6	3	206	17	22	4	300
	7.3	6.7	2.0	1.0	68.7	5.7	7.3	1.3	100.0