PRISON EMPLOYEE UNIONISM:

The Impact on Correctional Administration and Programs

National Institute of Law Enforcement and Criminal Justice
Law Enforcement Assistance Administration
U. S. Department of Justice

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by
John M. Wynne, Jr.

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MANAGEMENT-EMPLOYEE RELATIONS IN CORRECTIONS PROJECT

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ADVISORY PANEL

Foreword

The management of American prisons has always been one of the most painfully difficult tasks in government. Few political leaders whose duties bring them into either direct or indirect contact with prisons have a very clear understanding of the problems involved. Governors, legislators, prosecutors, and judges are all in positions to influence in the most crucial ways what goes on in these closed institutions. Yet, they often do not understand the full effects of their actions and decisions. This is not to say that the old "hands off" position of the courts should be resurrected or that legislators and chief executives should not be vigilant in reforming the statutes. It is to say, however, that there are a host of outside factors causing prison management to become more and more complex.

Many of these outside factors have reduced the traditional semi-military powers of prison managers. The introduction of merit systems (civil service) into most state systems by the end of the second world war did much to remove the evils of partisan political patronage. Over the past twenty years, a long series of court decisions dealing with the constitutional rights of both prisoners and employees have further eroded the arbitrary powers of the managers.

Another movement of even greater impact is now in the ascendancy--the rise of public employee unionism! Prisoner riots and mutinies are old stories and ever-present possibilities. But the idea of strikes, "sick-outs," and other organized job actions by the personnel which is employed to supervise and control the prisoners is a chilling prospect. When it did happen in Massachusetts in 1973 and later in other states, the American Justice Institute proposed to the National Institute of Law Enforcement and Criminal Justice that a national study be mounted to gather facts and make an appraisal of the impact of prison employee organizations on prison personnel administration and institutional policies and programs. AJI was awarded a grant to carry out such a study and work was begun on April 4, 1975.

The undersigned, in addition to his duties as corporate president of AJI, assumed the responsibility for the general direction of the project on a part-time basis. From the inception of the project, members of the staff and leadership of the Institute of Industrial Relations of the University of California at Los Angeles were involved in a consultive role.

A national advisory panel of distinguished scholars and professional practitioners was recruited. The assistance of this group was invaluable as was that of the numerous other consultants acknowledged elsewhere in this report.

Mr. John M. Wynne, Jr. was recruited as associate director of the project and personally visited most of the 17 jurisdictions studied. Mr. Wynne had had the unique experience of serving as a special assistant to the Secretary of the Executive Office of Human Services and on the staff of the Commissioner of Corrections in Massachusetts during and after the disturbances at Walpole Prison in 1973. He had previously served on the Research Faculty of the Harvard University Graduate School of Business Administration. He is the principal author of this document.

Speaking very generally about our findings, it is clear that the unionization of public employees and collective bargaining are spreading rapidly in the United States and that prison employees are a part of the movement. More importantly, state directors of corrections and prison managers on the whole are singularly unprepared either in technical knowledge or attitude for the role they must learn to play in this new set of relationships.

Richard A. McGee
President, American Justice Institute
Formerly Director of Corrections,
State of California

February 28, 1977

Author's Acknowledgments

I am grateful for the assistance of the many persons who contributed to this study. Certainly it would not have been possible without the cooperation of the correctional administrators, labor relations professionals, and employee organization officials who gave their time for interviews and correspondence. I am especially indebted to them for their assistance.

I also acknowledge with gratitude the assistance of the scholars and authorities who served on the advisory panel to this project: Benjamin Aaron, Professor of Law and former Director, Institute of Industrial Relations, University of California, Los Angeles; Milton Burdman, Deputy Secretary, Department of Social and Health Services, State of Washington; Richard Della Penna, M.D., Medical Director, Rikers Island Health Services, New York; Jiri J. Enomoto, Director, Department of Corrections, California; Peter C. Goldmark, Jr., Director of the Budget, State of New York; Manfred F. R. Kets de Vries, Associate Professor, Graduate School of Management, McGill University; John A. McCart, Executive Director, Public Employees Department, AFL-CIO; James Marshall, Executive Director, Assembly of Government Employees; Jack Stieber, Director, School of Labor and Industrial Relations, Michigan State University; and Anthony P. Travisono, Executive Director, American Correctional Association. The members of the advisory panel provided invaluable criticism and guidance. It should be noted, however, that this report presents the views of the author and does not necessarily reflect either the individual or collective views of the advisory panel members.

Extensive help was received from several consultants during the field research phase of this project. I thank for their excellent work: Donald Becker, Management Consultant, Julian, Becker and Associates, San Juan Capistrano, California; Gene Bell, Labor Relations Consultant, El Dorado Hills, California; William S. Rule, Arbitrator-Factfinder, Redondo Beach, California; Philip Tamoush, Arbitrator-Factfinder, Los Angeles, California; and Douglas Vinzant,

Chief, Office of Juvenile Rehabilitation, Department of Social and Health Services, State of Washington, Olympia, Washington. At the time of their participation in the project, Mr. Tamoush and Mr. Bell were affiliated with the Institute of Industrial Relations, University of California, Los Angeles.

A special acknowledgement should go to the members of the project staff at the American Justice Institute in Sacramento, California. Richard A. McGee, President of the American Justice Institute and director of the project, guided the research with skill and wisdom. Staff members, M. Robert Montilla and Pliny O. Murphy, III, along with Mr. McGee, were involved in all stages of the research effort and critiqued the early drafts of this report. Robert Miles, Associate Professor of English at the California State University, Sacramento, exercising enormous patience, undertook the task of editing the preliminary drafts of this report into its final form. Special thanks should be given to American Justice Institute secretaries Loretta Bates, Jacquie Harris, Jane Scarlett, and Andrea Morse, and to Fay Brett of Key West, Florida, for their efforts in typing preliminary drafts of this report and preparing the final manuscript for reproduction.

And finally I am grateful for the interest, stimulation and guidance that I have received from the project monitor, George H. Bohlinger, III, of the Law Enforcement Assistance Administration, and from Marlene Beckman, of his staff. I thank them for their commitment to this project.

John M. Wynne, Jr.
Sacramento, California
February 28, 1977

Contents

1. Introduction

The emerging activism of unions and associations of prison employees is having a major impact on the operation of state prison systems. Just weeks apart in 1976, four events occurred which dramatized the extent of that impact. These events were but a few of the more public manifestations of the rapidly increasing unionization of correctional personnel across the country.

In New York State, the union representing correctional officers--Council 82 of the American Federation of State, County and Municipal Employees (AFSCME)--initiated suit in federal court requesting either that state officials take action to relieve overcrowding in the state's prison system or that the court order the takeover of the state's 21 prison facilities by the federal government.[1] In addition, AFSCME publicly demanded the hiring of 400 more correctional officers to increase security, the payment of hazardous duty pay to correctional officers working in overcrowded conditions, and the restoration of the $9 million that had been cut from the state's prison budget.

In Ohio, approximately 250 correctional officers at the state's maximum security prison, the Southern Ohio Correctional Facility in Lucasville, went on strike in response to several factors: a hunger strike recently staged by the prisoners, the allegedly dangerous atmosphere caused by overcrowding, and the state's inaction regarding a demand by correctional officers for additional staffing

in the cell blocks.[2] This strike was the third illegal work stoppage at the Southern Ohio Correctional Facility in a three-year period. During a 1975 work stoppage, 21 prisoners attempted to escape. Three were wounded by gunfire, one fatally.

The third incident occurred in California, where the California Correctional Officers Association filed suit against the California Department of Corrections, charging that the department's "affirmative action" policies on hiring and promotion had resulted in reverse discrimination. The suit sought judicial intervention to change those policies.[3]

In New Jersey, over 400 members of Local 105 of the Patrolmen's Benevolent Association, the organization representing correctional officers in that state, failed to show up for work. They wished to publicize their demand for the restoration of $8 million in salary increments and bonuses which had been cut from the state budget as an economy measure.[4] Initially the union had decided to call a strike, but in an effort to protect its members against legal actions or losses in pay, it reduced the protest to a job action in which employees took vacations or called in sick.

Just ten years ago such activities on the part of correctional employees were virtually nonexistent. That correctional officers from New York and California would sue their superiors in federal court over decisions on budgeting, hiring, and promotion is a remarkable development in agencies which have traditionally been paramilitary in their administrative procedures. Even more

remarkable is the increase in job actions by correctional employees in such states as Ohio and New Jersey, where strikes by public employees are illegal. Indeed, as recently as 1970, all organizations of public-safety personnel had constitutional prohibitions against participation in strikes. It was at the 1970 AFSCME convention--reportedly because of pressures from state correctional employees, who had become increasingly prone to strike activities--that the no-strike restriction for public-safety employee locals was first stricken from the constitution of an employee organization.[5]

The impact that correctional employee activism is having, and will continue to have, on correctional agencies should not be underestimated. But activism is only one component in the evolution of labor relations in our state correctional systems.

Another component is the increase in the number of formal collective bargaining agreements entered into by state agencies and correctional employee organizations. These collective bargaining agreements frequently cover wages, hours, and other terms and conditions of employment. Only a handful of agencies operated with collective bargaining agreements in the late 1960s; today our research indicates that approximately half the nation's state correctional agencies are operating under, or are in the process of negotiating, collective bargaining agreements with correctional employees.

Correctional administrators frequently see these collective bargaining agreements as an erosion of managerial prerogatives.

A complaint commonly heard is that the correctional administrator's ability to operate a safe and effective institution has been impaired by a collective bargaining agreement. On the other hand, employee groups stress that collective bargaining has resulted in more equitable payment to correctional personnel for services rendered and in a decrease in the number of arbitrary managerial decisions affecting the lives and careers of correctional employees. Whatever the validity of these assertions, clearly the advent of labor relations, with its attendant collective bargaining, is dramatically changing the operation of state prison systems.

This report is a study of these dramatic changes. It will examine the origin, nature, extent, and impact of correctional employee unionism. Although much research has been done on public employee unionism in general, this study is the first comprehensive view of employee unionism in the nation's state prison systems. As such, the study is particularly important. In the 1970s corrections is undergoing an administrative and programmatic crisis, precipitated by such factors as serious overcrowding in the prisons, public outrage at rising crime rates, the economic recession, and conflicts over philosophies of criminal justice. The unionization of correctional employees has contributed significantly to the pressures on the correctional administrator and has markedly affected the operation of state prison systems. It is hoped that this examination of correctional employee unionism will provide valuable information regarding the impact of this phenomenon and

that it will assist in the development of improved labor relations in our nation's prison systems.

Information for this report was obtained primarily through a field study of sixteen state prison systems and one city system. The prison systems were not chosen at random, but were intended to represent a cross section of various geographic locations, stages of development in correctional employee unionism, and stages of development in collective bargaining. Prior to the selection of the research jurisdictions, a short questionnaire was mailed to the directors of the prison systems in all fifty states, the District of Columbia, and New York City. (New York City was included because it has one of the largest institutional correctional systems in the United States and because it was one of the first units of government to implement collective bargaining for correctional employees.) The questionnaire asked for information regarding the extent of correctional employee unionism and collective bargaining in each of the jurisdictions. As a result of the questionnaire responses and the selection criteria just mentioned, the seventeen jurisdictions delineated in Table 1-1 were selected for field research. The director of the prison system in each of the selected jurisdictions was then consulted and permission to undertake the research was obtained.

For the most part, the field research took place between October 1975 and February 1976. (Ohio was researched in June 1975--

Table 1-1. Prison Systems Researched

State	Agency
California	Department of Corrections
Connecticut	Department of Correction
Florida	Department of Offender Rehabilitation
Illinois	Department of Corrections
Indiana	Department of Correction
Louisiana	Department of Corrections
Massachusetts	Department of Correction
Michigan	Department of Corrections
New Jersey	Division of Correction and Parole
New York	Department of Correctional Services
New York City	Department of Corrections
Ohio	Department of Rehabilitation and Correction
Oregon	Corrections Division
Pennsylvania	Bureau of Correction
Rhode Island	Department of Corrections
Washington	Adult Corrections Division
Wisconsin	Division of Corrections

earlier than had been planned--so that the researchers could view the aftermath of a serious system-wide correctional employee strike in that state.) The jurisdictions were researched for either four or five days each, by teams composed of one specialist in corrections and one specialist in public-sector labor relations. In all, five specialists in corrections and four in public-sector labor relations participated in the field research. The researchers developed extensive field notes and presented their findings at a three-day conference held in March 1976.

The researchers used a variety of methods to gather information. For each jurisdiction, they reviewed pertinent newspaper articles and other published material before beginning their field study. They undertook this preparation so that, before starting their field research in that particular jurisdiction, they would have a general knowledge of its public-sector labor relations and a detailed knowledge of significant events pertaining to its labor relations in the field of corrections.

Interviews approximately an hour in length were the chief method used for gathering information during the field research. In each jurisdiction the researchers tried to interview all state administrators and employee organization officials significantly involved in correctional labor relations. Thus, in a typical state, the research team interviewed the director of the department of corrections and his key central-office staff, the superintendents and staffs of two or three of the state prisons, the

state directors of labor relations, personnel, budget, and civil service, the director of the public employee relations board, the executive directors of the employee organizations representing correctional personnel, and the officials of employee organizations at the various correctional facilities.

The interviews were semi-structured. The research teams used outlines indicating what kinds of information to look for; and after considering an interviewee's position and his knowledge of prison employee unionism, a team would tailor its questions for that particular interviewee. Every effort was made to confirm information received during an interview by cross-checking with other interviewees and by reviewing published materials and department and organization memoranda. During interviews, the researchers would ask the interviewee for any memoranda or other material from the department or organization files which would substantiate the statements made during the interview.

It should be stressed that interviewees were promised anonymity in return for their cooperation. Quotations from interviews are used only if the interviewee has granted permission. In addition, in some examples presented in the text, specific reference to a department or organization has been omitted to protect the confidentiality of a source. In most examples, however, departments and organizations are specifically mentioned. Although the information presented in the following pages comes predominantly from the seventeen research jurisdictions, some of the introductory

material refers to corrections and public-sector labor relations in the nation as a whole and has been gathered from published sources.

Having reviewed the methods of research, we can now examine the information the researchers have gathered and the conclusions they have reached.

Chapter 2 will discuss the current state of American corrections. Prison management has always involved a perplexing mixture of administrative problems and philosophical quandaries. Now, as never before, the entire system is in a state of confusion, if not disarray. The advent of prison employee unionism is but one of the many factors affecting corrections in the 1970s.

Notes

1. "New York AFSCME Prison Guards Sue State; Reopener at Impasse," Government Employee Relations Report, No. 655 (3 May 1976), p. B22.

2. "Inmate Hunger Strike Sparks Corrections Officer Walkout, Unions Have Uncertain Role," Corrections Digest, 5 May 1976, p. 9.

3. California Correctional Officers Association v. California Department of Corrections, Superior Court, County of San Francisco, 30 December 1975.

4. "Jersey Employees Stage Protest Over Budget Cuts," New York Times, 6 January 1976, p. 35.

5. Jack Stieber, Public Employee Unionism: Structure, Growth, Policy (Washington, D.C.: Brookings Institution, 1973), p. 181.

2. Corrections in the 1970s

Corrections is one component of a set of interrelated governmental activities which are collectively referred to as the criminal justice system. Corrections is a subsystem of the criminal justice system, which includes law enforcement and the judicial processes as well. The corrections subsystem is composed of three different types of agencies: probation, institutional, and parole.

Probation agencies are closely tied to the judicial component of the criminal justice system. The main functions of a probation agency are to investigate the background of convicted offenders before final sentencing and to supervise offenders placed on probation, in accordance with conditions imposed by the court. There are three forms of probation service in the United States: juvenile probation, misdemeanant probation, and adult felony probation. The administration of probation agencies varies from state to state and, within states, from county to county. For example, adult probation is administered by local agencies in eleven states, by a combination of local and state agencies in thirteen states, and by state departments of probation in twenty-six states.[1] Probation officers responsible for youthful offenders are usually attached to a local juvenile court.

In the United States, probation is the most common form of sentence for convicted offenders. In some states more than 74 percent of the sentences are probationary. In the federal system

the figure is 54 percent.[2] In recent years a form of sentence that uses partial probation has come increasingly into use. This sentence, probation with the condition that part of the sentence be served in a county jail, emphasizes the complex interdependencies within the criminal justice system.

The second component of the correctional subsystem is the correctional institutions. Adult correctional institutions fall into two categories. The first is the local institution, or jail, which customarily contains suspects awaiting trial, convicted offenders awaiting sentencing, and misdemeanants serving a jail term. The most recent census on jail populations indicates that on 15 March 1970 there were 16,863 people confined in 4,037 local jails in the United States. Roughly half were waiting to appear in court and half were serving sentences.[3] Most jails are operated by elected county sheriffs.

The second type of adult correctional institution is the state prison, penitentiary, or reformatory. For the most part, these institutions contain offenders convicted of felonies and sentenced to a term in a state prison or its equivalent. In 1976, the nation's approximately 600 state correctional institutions contained 225,000 convicted felons.[4] These inmates were under the care, custody, and treatment of approximately 75,000 state employees, of whom between 40 and 60 percent, depending on the jurisdiction, were correctional officers--that is, members of the uniformed security force popularly referred to as guards.

The remaining institutional employees include, but are not limited to, case workers, teachers, medical personnel, culinary employees, clinical staff, psychologists, industrial shop instructors, and clerical employees. State correctional institutions vary markedly in both design and operation. They range from maximum security prisons to community work-release facilities. In all 50 states, state prisons for adults are administered by state governments, whereas local jails, with few exceptions, are operated by cities or counties.

The third component of the correctional subsystem is the parole agency. Parole is a conditional release granted to an inmate after he has served a portion of his sentence in a correctional institution. Parole agencies are responsible for the supervision of offenders conditionally granted release from correctional institutions by a paroling authority or board. In many instances, the paroling authority is separate and distinct from the parole agency charged with supervising the parolee in the community. Parole agencies usually come under the administrative jurisdiction of state governments.

In summary, probation, correctional institution, and parole agencies make up the corrections subsystem of the criminal justice system. The criminal justice system is a loose affiliation of local, state, and federal law enforcement agencies, courts, prosecution and defense agencies, probation and parole departments, and correctional institutions. It has, perhaps correctly, been

labeled the "non-system" of criminal justice.[5]

The public's interest in the criminal justice system has increased as crime rates have risen. In recent years the public has questioned the effectiveness of the system--has questioned whether the prison, parole, and probation agencies are able to reduce crime or rehabilitate criminals. Even as such hard questions are being asked, the institutions' task of rehabilitating offenders is becoming still more difficult to accomplish because of a sudden increase in the number of inmates. In order to understand corrections and prison employee unionism in the 1970s, it is necessary to understand the causes and distressing consequences of this sharp growth in prison populations.

The Increase in Prison Populations

During the three-year period ending 1 January 1976, state prison populations increased from 174,000 to 225,000, a staggering 30 percent increase.[6] In 1975 alone, the total U.S. prison population increased by 11 percent; sixteen states had increases of over 20 percent; and four states--Florida, South Carolina, South Dakota, and Wyoming--had increases in excess of 30 percent. Only one state decreased its prison population in 1975. California's prison population dropped from 24,780 to 20,007, a 20 percent decline. The primary reason for this reduction was that the California Adult Authority began granting paroles in a backlog of cases held in abeyance during the previous two years. This decrease in

California's state prison populations will probably not continue, and the California Department of Corrections is already planning to reopen some of the cell blocks that were closed during the population decrease.

A variety of factors have led to the increase in prison populations. Three factors have been especially important. First, the number of misdemeanor and felony arrests has risen. One reason for this is that law enforcement agencies have increased their arrests, partly because of increasing crime rates and partly in response to the resultant public outrage. The rising number of arrests is also a result of the increasing number of people in the 18-to-30 age group, which produces a disproportionately large percentage of offenders. As Norval Morris, Dean of the University of Chicago Law School, has pointed out: "Both in terms of absolute numbers and as a proportion of the total population the larger wave of the more prison-prone age group sweeps toward us. And further, of determinant significance, that wave is particularly high among the poorer minority males who disproportionately fill our prison cells."[7] It is estimated that the disproportionate growth of this age group will subside no earlier than 1985.

Still another reason for the increased number of arrests has been the persistence of widespread unemployment coupled with severe inflation. Not only do these factors increase the crime rate and therefore the number of arrests, but they also make it

difficult for inmates to leave the correctional institutions. Inmates cannot take advantage of work-release programs unless work is available. In addition, parolees and probationers are more prone to repeat criminal acts if they cannot find jobs.

The second major cause for the rise in prison population is a relative decrease in the use of probation and parole. Anxious because of rising crime rates, the public has demanded a get-tough attitude in criminal justice; and one particular target of criticism has been the use of probation and parole as alternatives to incarceration. Professor Lloyd Ohlin, of Harvard Law School, has stressed the role of changing criminal justice philosophies in the increase of state prison populations: "What we are seeing is a massive counter-attack against programs like probation that allow offenders to remain in the community. The climate has shifted in favor of punishment."[8]

The third factor contributing to the rise in prison populations has been the increased use of the mandatory sentence. State legislatures have recently passed a number of laws that require mandatory sentences for the more serious felonies. For example, in 1975 the California legislature passed a bill prescribing mandatory prison sentences for offenders convicted of crimes in which a dangerous weapon had been used. The law went into effect on 1 January 1976. Apparently it has already caused a sharp increase in the number of offenders sentenced to the California state prisons. Available information shows that between the

beginning of January and the end of April 1976, the rate at which offenders were sentenced to the state prisons increased by 30 percent. Inasmuch as the legislation has not yet had time to show its full impact, one can only guess at how great an increase it will ultimately bring about in the California prison population.

The rise in prison populations has taken place in correctional systems poorly equipped to cope with it. Many facilities within these systems are old, outmoded, and generally inadequate. Many facilities were overcrowded even before the recent sharp increase in prison populations.

To complicate matters even further, in the recent past comparatively few new correctional institutions have been built. This lack of construction has not necessarily resulted from negligence or an unwillingness to spend the necessary funds; to a great extent, it has resulted from a widespread dissatisfaction with traditional penal institutions and a hope that new forms of correction might prove more successful.

In 1971, a National Advisory Commission on Criminal Justice Standards and Goals was appointed by the administrator of the Law Enforcement Assistance Administration of the U.S. Department of Justice. In its report on corrections, the commission indicated that "In view of the bankruptcy of penal institutions, it would be a grave mistake to continue to provide new settings for the traditional approach in corrections. The penitentiary idea must succumb to a new concept: community corrections."[9] The commission

went on to state that there should be a ten-year moratorium on the construction of correctional institutions unless within a specific jurisdiction it became clear that no alternative was possible. The commission hoped that an increase in the use of parole and probation, and the development of community-based correctional facilities, would best serve the needs of our society. Other organizations, such as the National Council on Crime and Delinquency, also stressed the need for a moratorium on prison construction and for a more community-based correctional system.

However laudable this goal, public opinion has shifted toward a different goal: less use of community-based options, more use of prison terms. Although national advisory groups have recommended a temporary halt in the building of correctional facilities, the public has urged that a greater proportion of convicted offenders be sentenced to such facilities. Thus, during the next few years the overcrowding in our correctional institutions will almost certainly grow worse. Even when the decision is made to build a new facility, the planning, design, and construction ordinarily take a minimum of five years.

Prison overcrowding has already become a serious problem. "The State of Florida is putting prisoners into tents and warehouses, and giving our tranquilizers to keep things calm. Louisiana is trying to convert a ship into a floating prison. Georgia has made across-the-board sentence reductions for property offenses. South Carolina is placing two, three, and even four prisoners into

6 x 5-foot cells constructed a century ago."[10] Prisoners in Massachusetts have been housed on mattresses on the infirmary floor and in the corridors of cell blocks. In many states prisoners have been reassigned to already overcrowded city and county jails because state prison systems can no longer handle the increasing populations.

Additional Factors Affecting Corrections

The staggering increase in state prison populations is not the only significant force affecting corrections in the 1970s. There are numerous factors to be taken into account, some of them legacies from the past and some newly evolved as a result of changes in our social, political, and legal institutions.

In 1953, responding to a critical outbreak of prison riots during the early 1950s, the American Prison Association created a special committee to study the causes of these riots and to recommend preventive measures. The committee found several "costly and dramatic symptoms of faulty prison administration."[11] These symptoms, with slight modifications, are still affecting American corrections in the 1970s.

The committee found official and public indifference toward the correctional institutions. It found that the institutions received inadequate financial support. They were staffed with ill-trained, unqualified personnel and lacked professional leadership. In some institutions the administrative policies were shaped by state politics. And in general the institutions were too large,

badly overcrowded, and lacking in adequate programs; the daily routine for prisoners was one of enforced idleness. In addition, the sentencing and parole practices were conceived unwisely.

After the chaos of the 1950s there were widespread efforts to improve the nation's prison systems. "The decade following the riots and related chaotic conditions in American prisons generally saw renewed efforts to repair the aftermath of the disturbances and to reorganize state systems of prison management. Increase in prison populations resulted in substantial efforts to expand physical plants and to improve the overall administrative direction of the correctional systems. Frequent turnover in top management with changes in state governors continued to be a problem, but civil service and training programs for personnel were greatly expanded."[12]

However, despite the findings and recommendations of the American Prison Association's Committee on Riots, in many state systems the necessary changes did not occur, and the early 1970s witnessed another series of prison riots. Riots took place in Massachusetts, Florida, Illinois, and Ohio, to name a few states; but perhaps the most significant riot, and the most widely publicized, was the one that took place at Attica State Prison in New York. The official report of New York State's Special Commission on Attica indicated that "43 citizens of New York State died at Attica Correction Facility between September 9 and 13, 1971. Thirty-nine of that number were killed and more than 80 others were wounded by gunfire during the 15 minutes it took the State

Police to retake the prison on September 13. With the exception of Indian massacres in the late 19th century, the State Police assault which ended the four-day prison uprising was the bloodiest one-day encounter between Americans since the Civil War."[13]

Just months before the Attica incident, the newly appointed commissioner of a reorganized New York State Department of Correctional Services testified before a Congressional committee. His remarks indicated that the problems of the 1950s had been inherited by the 1970s. He testified that he had assumed control of "a department that had been fiscally starved for years; a departmental administration and group of administrators across the state who had met only infrequently in the past ten years to discuss mutual problems and to plan together; line correctional staff of over 4,000 officers whose training and preparation had been grossly neglected; inmates, healthy young men, confined to their cells 16 hours a day; long-standing policies of tremendous impact on the daily lives of inmates that had not been reviewed in years; inadequate, outdated methods of diagnosis, classification and assignment of offenders; and inadequate attention paid to the need to involve the community in the rehabilitative mission of the department."[14] The newly appointed commissioner added that his job was "to give the whole system a new flavor." Correctional systems, however, are difficult to change.

Attempts to improve correctional systems in the 1970s have been influenced not only by inherited problems, such as those

described by the commissioner of the New York Department of Correctional Services, but also by several emerging factors. These new factors have not prevented change; in many instances, they have encouraged and promoted significant changes in our correctional systems, often regardless of the wishes of correctional administrators or employees. These factors, many of them with origins outside the criminal justice system, include: (1) court decisions affecting the administration of state prison systems; (2) federal and state legislation in such areas as affirmative action, occupational health and safety, and fair labor standards; (3) the reorganization of state governments to group departments performing similar or closely related functions under a few cabinet-level secretaries or administrators; (4) the increase in the financial constraints placed on units of government during the current financial crisis; and (5) the increase in inmate activism.

Court Decisions

In the 1970s, the U.S. courts have increasingly become involved in the administration of state correctional institutions. For many years the nation's judiciary had remained neutral toward the prisons, leaving all questions of policy and procedure in the hands of the executive and legislative branches of government, and rarely interfering on behalf of prisoners.

In 1961, however, the U.S. Supreme Court, in the landmark case of Monroe v. Pape,[15] established guidelines by which state

prisoners could seek redress in federal courts for alleged violations of their civil rights by prison officials. This decision was based on the federal Civil Rights Act of 1871, which enabled citizens to file suit against anyone who, acting "under color of any statutes, ordinance, regulation, custom or usage, of any state or territory, subjects, or causes to be subject, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunity secured by the constitution and laws. . . ."[16] The 1961 Supreme Court decision has had a considerable effect on our state correctional systems. It has paved the way for "class action" suits by means of which groups of inmates may seek an injunction of "declaratory relief" to stop correctional practices that violate their constitutional civil rights.

Two other types of suits against correctional administrators and employees have occurred with increasing frequency in the 1970s.[17] The first of these is the suit for personal damages. This kind of suit charges negligence on the part of a correctional employee or administrator in the performance of his official duties. The number of these suits has increased so markedly in recent years that many correctional employee organizations have developed special legal defense funds to pay for the legal representation of correctional employees subjected to suits. The second type of suit on the increase is the writ of habeas corpus. The increase has resulted partly from a change in the use of such writs. They are

currently being used not only to challenge the legality of an inmate's continued confinement but also to challenge the legality of the conditions under which the prisoner is confined.

Court decisions of the 1970s have affected almost every aspect of the operation of state prisons. Courts have dealt with such matters as overcrowding, standards for medical care, and the availability of recreation and rehabilitation programs. Federal courts have issued decisions protecting inmates' rights to due process at prison disciplinary hearings. In the case of Wolff v. McDonnell, the court ruled that an inmate should be given advance notice of disciplinary hearings, a written statement of the evidence, the right to call witnesses and to present documentary evidence, the aid of a "counsel substitute" in complex cases, and an impartial disciplinary board.[18] Decisions similar to this one occurred in several federal courts during the early 1970s and have had a major impact on the operation of correctional institutions.

Correctional employees have resented many of the courts' actions, judging them to be inappropriate intrusions into the operation of correctional institutions. Frequently this resentment has caused the employees to become dissatisfied with, and alienated from, their administrative superiors, who have been charged with implementing court decisions that the employees believe work against their best interests. Employee groups have disliked several of the court-ordered practices in disciplinary hearings, such as the inmate's right to call a correctional officer as a witness, the

need for written disciplinary reports before certain specified deadlines, and the inmate's ability to use an attorney or "attorney substitute" to defend him before a disciplinary board even if the complaining officer has no such legal assistance. According to correctional employees, such decisions have contributed to an increasing breakdown in prison discipline. Whatever the validity of this assertion, correctional staff believe that these court decisions have shifted the balance of power within institutions away from the staff and toward the inmates. This belief has certainly contributed to the recent activism among the employees in correctional institutions.

One reflection of this new activism is that correctional employee organizations have recently assumed a more aggressive posture in the state and federal courts. They have used the courts in attempting to change administrative policies. Two instances of this new, more aggressive use of the courts were cited at the beginning of Chapter 1: the case in New York State in which correctional officers filed suit in federal court against overcrowding in the state prison system, and the case in California in which officers filed suit in federal court against the affirmative action policies of the California Department of Corrections.

The federal courts, in their attempts to alleviate problems in correctional systems, have frequently created new problems. A much-publicized example of this was the 1974 ruling by Judge Lasker, of the U.S. District Court for the Southern District of New York,

that the conditions in the Manhattan House of Detention, commonly referred to as the Tombs, were so "dismal" and shocking as to "manifestly violate the constitution."[19] The judge's remedy for the constitutional violations was either a substantial renovation of the jail or the closing of the jail to suspects awaiting trial after 10 August 1974. The city pleaded "physical inability to commit itself to a comprehensive plan to restructure the institution," and appealed the District Court's ruling. The Second Circuit Court affirmed that conditions at the Tombs were unconstitutional and remanded the case to the District Court "for further consideration, in light of this opinion, of the relief to be granted." The Tombs was soon closed, and the pre-trial detainees were moved to New York City's correctional institution at Rikers Island. This move created numerous logistical problems in connection with those inmates who had to be transported between Rikers Island and the court proceedings in downtown New York. And the difficulties involved in traveling from downtown New York to Rikers Island caused considerable inconvenience for attorneys and families who wished to visit the inmates. Nor did the move appreciably improve the inmates' living conditions. They had left the deplorably overcrowded Tombs, but only to enter Rikers Island, where the facilities were unsuitably designed to serve as a pre-trial detention jail and were dangerously overcrowded even before the addition of the new arrivals.

Clearly, adequate legal safeguards are needed for the inmates

in our correctional institutions. In the long run, court decisions on these matters may help to preserve the freedoms in our socieity and to develop more humane correctional institutions. In the short run, however, the decisions, although increasing prisoner rights, have intensified many of the problems in the nation's jails and prisons. They have stirred up resentment between inmates and correctional employees, and have contributed to the alienation of correctional employees from correctional management.

Legislation

A second important factor affecting corrections in the 1970s has been the legislation and executive orders enacted by federal and state governments to deal with affirmative action, occupational safety and health, and fair labor standards. Correctional administrators have been obliged to develop affirmative action programs consistent with the Civil Rights Act of 1964 and with state and federal executive orders regarding affirmative action and nondiscrimination in employment. The task of implementing such programs has been difficult and has often aroused conflict.

Minority-group prisoners constitute a remarkably large percentage of the prison population, much larger than the percentage of minority-group citizens in the society as a whole; and yet the employees in correctional institutions have been predominantly white males. In an October 1969 publication, the Joint Commission on Correctional Manpower and Training set forth a profile of the

line workers within our correctional institutions.[20] The profile indicated that in adult correctional institutions 95 percent of the employees were white and 95 percent were male. Among first-line supervisors and correctional administrators, the dominance of white males was even greater--99 percent among supervisors and 100 percent among administrators. Although all these percentages are changing in some jurisdictions, notably in California, most of our correctional systems have not come close to reaching the goal of hiring enough minority-group employees to reflect the minority-group representation in American society as a whole, not to mention the minority-group representation in the correctional institutions.

Two factors have tended to make the implementation of affirmative action guidelines an especially difficult task. The first is the tight financial squeeze in government. This has caused a slowdown in hiring, and in some places--in New York City, for example--has led to the laying off of correctional personnel. Since the last people hired tend to be the first ones fired, the newly recruited minority employees tend to be laid off in disproportionate numbers. The second factor working against affirmative action has been the opposition of the correctional employee organizations, which are dominated by white males. These groups resist affirmative action not only because of whatever racial prejudices their members may harbor, but also because the enforcement of affirmative action guidelines would inevitably make it

more difficult for white males to be hired and promoted.

Affirmative action programs for women have also complicated the operation of correctional institutions. Facing increased pressure to hire women for positions at male institutions, correctional administrators have tended to place female correctional officers in positions that would not bring them into contact with the male inmates. Male correctional officers, attempting to get away from the dangers of inmate contact, are becoming increasingly resentful over the fact that female correctional officers are frequently given what are considered the best institutional jobs.

The conflict over affirmative action has intensified the hostility between correctional employees and management, thus bringing about greater activism on the part of employee organizations. Here, again, the administration, charged with implementing a judicial or legislative order, has no choice but to act in a way that provokes the resentment of the correctional staff. In California the affirmative action program has become perhaps the greatest source of discontent among correctional employees. It is no wonder, then, that the California Correctional Officers Association has filed suit to change the program.

Another piece of federal legislation that affects correctional institutions is the 1970 Occupational Safety and Health Act, commonly referred to as OSHA, which Congress enacted in an attempt to protect the safety and health of American workers. OSHA currently applies to about three-fourths of the civilian labor force--approximately

60 million employees. In addition, special provisions of the act pertain to 2.7 million civilian employees of the federal government and about 10.4 million state and local employees throughout the nation.[21] Although the act does not establish federal occupational safety and health programs for state employees, it sets forth conditions whereby states may receive federal matching grants for both planning and operating state-administered OSHA programs.

OSHA programs have been established in many states. In both California and Washington, for example, state officials have been called in to inspect state correctional facilities for the violation of OSHA standards with regard to fire protection, means of egress, walking and working surfaces, and the handling of hazardous materials. Correctional employee organizations, concerned about correctional officers' safety, are beginning to understand that OSHA can be useful in the development of safer working conditions. The organizations are likely not only to use OSHA inspectors to maintain safe working conditions of the kinds already mentioned, but also to press for OSHA standards regarding protective clothing, communication devices, renovations increasing prison security, and increased staffing to help protect correctional employees from inmates. In the past, many such improvements in safety standards for the employees led to disadvantages for the prisoners. The prisoners were given less time outside their cells; they were allowed to move to fewer places in the prison; they were permitted fewer visits from their families; during the visits, there was less time for

personal contact between inmates and families; and so on.

A third piece of federal legislation affecting correctional agencies is the 1974 amendment to the Fair Labor Standards Act (FLSA) which applied the act to units in state and local government. One important provision was that criminal justice agencies were required to pay employees for overtime work rather than reward them with special time off. Although the U.S. Supreme Court, in June 1976, ruled the new FLSA amendments unconstitutional, the legislation had already caused many correctional agencies to change administrative procedures and to increase expenditures for wages. In some jurisdictions, collective bargaining agreements have been negotiated which include overtime provisions in conformance with FLSA. Thus, regardless of the Supreme Court decision, the effects of FLSA may continue to be felt in many correctional agencies.

Government Reorganization

Another development affecting corrections in the late 1960s as well as the 1970s has been the reorganization of state governments, particularly the trend toward subordinating corrections to a larger "super-agency." Frequently, in such states as Washington, California, Massachusetts, and Wisconsin, these super-agencies have administrative responsiblity for the departments that provide social, health, and correctional services. In Massachusetts, for example, the newly created Executive Office of Human Services consists of the departments of correction, parole, youth services,

mental health, mental retardation, public health, and welfare, and the state's rehabilitation commission. Under these new circumstances, no longer does the state's director of corrections report directly to the governor. Instead he reports to the head of the new Office of Human Services. Often the administrators of these new agencies know more than the typical correctional administrator about the interrelationships among the various social services. Such administrators see corrections not only as a part of the criminal justice system; they also see its implications in such matters as public health, mental health, education, vocational training, and welfare.

One effect of the new super-agencies, and the closer relations among the various social services, has been fear and resentment on the part of the typical line correctional officer, who senses that the establishment of super-agencies may result in a loss of his prestige and authority. Whereas the correctional institutions were once the domain primarily of correctional officers, the new scheme has brought in greater numbers of teachers, vocational instructors, case workers, doctors, psychologists, and so on. Moreover, the line officer has anticipated greater difficulty in obtaining promotions. In the past, he has competed only with other correctional officers in his efforts to advance from the position of cell-block correctional officer to the custodial supervisory positions and then perhaps to the position of superintendent or commissioner. But in the new super-agencies responsible for

a variety of social services, the more advanced positions may require an education of greater depth and breadth than that which the line officer has received; and in his attempts to reach the advanced positions, he may now have to compete with well-educated professionals from the other social services.

Correctional employees have resented another effect of the new super-agencies. Because of their involvement in a variety of social services, the new agencies have bolstered a trend first evinced in the late 1960s and the early 1970s, the trend toward deinstitutionalization and the development of more community-based services. Examples are the community half-way houses for the mentally regarded; the decriminalization of alcoholism in many states and the development of community detoxification centers; and the establishment of small community correctional facilities and programs that permit inmates to engage in vocational and educational activities in the community. Employees in the correctional institutions, believing this movement away from institutional care to be a threat to their jobs, have become increasingly vociferous in their denunciations of such programs. The American Federation of State, County and Municipal Employees has published a pamphlet attacking deinstitutionalization with the argument that it forces clients into community-based programs that are often inferior to the institutions from which the clients came.[22]

Whatever the merits of deinstitutionalization and the development of a wider range of social services within the state prison

systems, the fact remains that these programs have been yet another cause of the increased alienation of correctional employees from their administrators. The programs have also contributed to the growth of organizations designed to protect correctional employees from what the employees view as threats to their jobs and their chances for promotion. In attempting to guard against such threats, these employee organizations have opposed community-based programs and supported the custodial approach in corrections. Indeed, in some collective bargaining agreements, one finds prohibitions against the development of community-based programs and the use of services from private vendors if these actions might eliminate positions or tasks traditionally allotted to civil service personnel within the institutions.[23]

It should be noted that because of the increased debate over theories of criminal justice and because of the desires of newly elected officials to reorganize their governmental structures into clusters more receptive to their directions, numerous attempts have been made to move correctional institutions out of the new super-agencies responsible for all social services. In Massachusetts, for example, within the last three years several pieces of legislation have been introduced in an effort to create a separate corrections agency reporting directly to the governor or to move corrections into the public safety agency that supervises state police. In Florida, recent legislation has removed correctional institutions from the human services agency and placed them in a

corrections super-agency consisting of all state correctional agencies and reporting directly to the governor. In 1973, Kentucky moved all adult correctional agencies into the state's department of justice, which reports to the attorney general, an elected officer not responsible to the governor.

The Fiscal Crisis in Government

A fourth factor affecting corrections in the 1970s is the fiscal crisis in government. Although inadequate budget allocations have been a problem for correctional administrators for many years, the current fiscal restraints in corrections have not only contributed to the inadequacy of total budgets, but have also intensified the conflicts over program priorities. Since its inception in the late 1960s, the Law Enforcement Assistance Administration has made available to state correctional systems millions of dollars in federal funds to assist in the establishment of innovative correctional programs, with special emphasis on community corrections. These funds, however, are made available for no more than a three-year period, after which time state governments are required to assume the cost of funding the new programs. In the present budgetary crisis, correctional administrators are asked to make hard decisions about whether to terminate or curtail the new community programs or to allocate less money to correctional institutions in a time of rising inmate populations.

Faced with such conflicting demands, one solution for the

correctional administrator has been to reallocate institutional personnel positions to the unfunded programs and to fill the vacated institutional positions through the use of overtime. The use of overtime in this manner can significantly increase correctional officers' take-home pay and yet not necessarily show up in the department's annual budget request. Although most departments of correction submit annual budget requests that include some funds for overtime pay for emergencies such as prisoner escapes and riots, these requests normally do not approach the actual magnitude of today's overtime payments; and supplemental and emergency budgets are often required. The major increase in the payment of overtime to correctional employees has occurred in the 1970s and has resulted from previously mentioned budgetary factors, various collective bargaining provisions, and the Fair Labor Standards Act. Overtime payments in the Pennsylvania Bureau of Correction increased from $1.53 million in fiscal year 1971-72 to $3.99 million in fiscal year 1974-75. In New York City in 1975, overtime payments to correctional employees were running at the rate of $6 million per year out of a total departmental budget of $91 million.

Thus today's correctional administrator has become a public-sector entrepreneur in his attempts to balance the continual pressures for increased expenditures on personnel (particularly correctional officers) and the demands of various other programs. The rise in prison populations, the public's call for a harsher correctional philosophy, and the correctional officers' demands for increased

staffing and wages result in a decrease in resources available for any programs or activities beyond the most rudimentary forms of custody and care.

Inmate Activism

Activism among inmates has increased in the 1970s. It has appeared in the form of hunger strikes, work stoppages, and riots, but has taken more sophisticated forms as well. With increasing frequency, prisoners have sought to use the judicial system to change practices in the correctional institutions. The 1970s have also seen the emergence of prisoner organizations (such as the National Prisoners' Rights Association), which often insist that prisoners should have the right to bargain collectively because prisoners are employees of the state. In Michigan, New York, and Massachusetts, prisoners' "unions" have sought to be recognized as the prisoners' official representatives and to be given all the rights provided by the labor relations laws. In Michigan the public employee relations commission accepted the argument that prisoners are, in fact, public employees, but dismissed the prisoners' petition to be classified as public employees for the purposes of collective bargaining, asserting that as state employees the prisoners come under the jurisdiction of the civil service commission rather than the public employee relations commission.[24]

In both Massachusetts and New York the public employee relations commission dismissed the prisoners' petitions. In 1973,

however, the lieutenant-governor of Massachusetts signed a declaration that the National Prisoners' Rights Association was the official representative for prisoners at the Walpole Correctional Institution, the commonwealth's maximum security prison. Soon afterward, representatives of the prisoners' union, the correctional employees' union, and the commonwealth's department of corrections sat down to negotiate agreements on certain questions regarding living and working conditions.

On the whole, correctional employee organizations as well as correctional administrators have looked with disdain on the "unionization" of prisoners. It is difficult to predict to what extent unionization and collective bargaining for prisoners will become more widespread in the future. However, the development of prisoners' unions and the ensuing bilateral or multilateral collective bargaining would certainly have far-reaching effects on the operation of state prison systems.

A matter related to collective bargaining for inmates is the current experimentation with inmate grievance processes, which, under some proposals, end in binding arbitration. Experiments of this kind are currently taking place in California, Wisconsin, Maryland, and the Federal Bureau of Prisons. In California, where inmate grievance procedures have been instituted in the California Youth Authority, employee organizations have demanded that their own grievance procedures be improved.

It is important to note that the recognition of prisoner organizations and the development of prisoner grievance procedures

are frequently interpreted by correctional employees as an administrative decision shifting the balance of power in the institutions away from the prison employee and toward the prisoner. This belief is yet another source of the dissatisfaction among correctional employees which has been mentioned frequently in this chapter.

Summary

Correctional institutions, then, are going through turbulent changes in the 1970s. They have been scrutinized by the public and sharply questioned as to their effectiveness. Prison populations have increased so abruptly that new overcrowding has been added to old. Court decisions have had a considerable effect on the operation of the institutions. Federal and stage legislation in such matters as affirmative action, occupational safety and health, and fair labor standards has affected the institutions just as strongly. Inmate activism is threatening to complicate institutional operations even further. And all this is taking place in a time of financial crisis and budgetary constriction. Faced with these grievous difficulties, the American correctional system seems dangerously close to losing most of its newer methods of preparing men and women for release and will perhaps revert to its custodial role of doing little else for prisoners besides keeping them imprisoned.

Meanwhile, another factor has entered the situation: new problems in labor relations. The increasing unionization of employees

in the public sector has led to new unionization among correctional employees. And the burgeoning labor movement in corrections is affecting the system in all its parts. In this chapter we have examined the interaction between correctional employees and other forces in the correctional system during the 1970s. In the next chapter we will trace the origins and growth of correctional employee organizations, and will then discuss the form these organizations have most recently taken.

Notes

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4. "U.S. Prison Population Hits All-Time High," Corrections Magazine, 2 (March 1976), 9.

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6. "U.S. Prison Population," p. 10.

7. Norval Morris, "The Prison Boom," Washington Post, 30 May 1976, p. B8.

8. "U.S. Prison Population," p. 9.

9. National Advisory Commission, p. 597.

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12. Carter, McGee, and Nelson, p. 105.

13. New York State Special Commission on Attica, Attica (New York: Bantam Books, 1972), pp. i-ii.

14. New York State Special Commission, p. 20.

15. R. V. Denenberg and Tia Denenberg, "Prison Grievance Procedures," Corrections Magazine, 1 (January-February 1975), 30.

16. 42 U.S.C. 1893 (Federal Civil Rights Act).

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18. Wolff v. McDonnell, 483 F. 2d 1058 (8th Cir. 1973).

19. "Conditions in 'Tombs' Violate Due Process," Prison Law Reporter, 3 (December 1974), 297-99.

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23. Agreement between the State of Washington and the Washington Federation of State Employees concerning the functions of the Department of Social and Health Services Institutions, 1972.

24. "MERC Dismisses Prisoners' Bid for Election Even Though Majority Agrees They Are Public Employees," Government Employee Relations Report, No. 552 (29 April 1974), pp. B13-B16.

3. The Rise of Correctional Employee Unionism

Organizations of correctional employees are not entirely a recent phenomenon. In the early 1900s, for example, there was a Prison Keepers' Association in the New York City Department of Corrections. Its membership consisted of employees who would now be referred to as correctional officers. It was essentially a social and fraternal organization. As such, it was similar to the early police organizations formed between 1890 and 1915, which lobbied with employers for increased wages, provided welfare insurance and death benefits, and offered members the chance to engage in social and fraternal activities.[1] Social and fraternal organizations of correctional employees, which often included supervisory and management personnel as well, were not uncommon in state correctional systems during the first half of this century and during the 1950s and 60s.

Today, however, such anachronistic groups survive mainly in a few Western and Southern states in which collective bargaining for state employees has not yet been achieved. In most states correctional employees belong to, and are represented by, state employee associations, state and national law enforcement organizations, and national labor unions. To achieve what their members demand, these employee groups use a broad spectrum of activities, ranging from collective bargaining to political lobbying to job actions.

This shift from fairly docile social and fraternal organizations to activist labor groups has occurred mainly since the late 1960s. In certain jurisdictions, however, the shift occurred earlier. In the 1930s, in Connecticut, correctional personnel were organized by a national labor union--the American Federation of State, County and Municipal Employees (AFSCME). In other jurisdictions--in New York and Washington, for example--AFSCME made inroads into state agencies and, as early as the mid-1950s, added correctional employees to its membership. But labor unions such as AFSCME did not at that time have the right to represent their members in collective negotiations. Their chief activity was to lobby within the political structure to bring about collective bargaining, civil service systems, and better wages and retirement benefits. In 1960, for example, the Washington Federation of State Employees, an AFSCME state council, helped to draft and pass a ballot initiative calling for a merit system for state employees.

The first correctional employee organization to enter into formal collective negotiations with an employer was the Correction Officers' Benevolent Association, which represented correctional officers in New York City. In the late 1950s this organization represented its membership in negotiations with the city on a broad range of contract issues, including wages. But such occurrences were unusual at the time. The movement toward unionization and collective bargaining for correctional employees did not grow strong until the 1960s. Its increasing strength was a result of

the rapid growth of public-sector unionism in that decade.

The Rise of Unionism in the Public Sector

The rise of public-sector unionism in the 1960s is an important chapter in the history of labor in the United States. Although non-farm workers in the private sector have had the right to organize and bargain collectively since the passage of the National Labor Relations Act in 1935, no public employees were granted that right until the 1950s.

In 1958 Mayor Robert F. Wagner of New York City issued an executive order that permitted public employees to "participate, to the extent allowed by law, through their freely chosen representatives in the determination of the terms and conditions of their employment."[2] The order stated that the city government would "further and promote, insofar as possible, the practice and procedures of collective bargaining in accordance with the patterns prevailing in private labor relations."[3]

Mayor Wagner's executive order was the harbinger of a rash of executive orders and pieces of legislation enacted during the 1960s and 70s to grant public employees the right to bargain collectively. In 1959, Wisconsin became the first state to enact legislation of this kind; it did so by passing a statute requiring municipalities to negotiate with their employees. In 1962 President Kennedy instituted Executive Order 10988, making it federal policy to grant recognition to unions of federal employees

and to permit such unions to engage in collective bargaining. Not only did this order stimulate federal employees to become organized, but it also increased the agitation for collective bargaining for employees of state and local governments.

Between 1960 and 1970, more than twenty states enacted statutes requiring public employers to negotiate with representatives of public employees. The legislation varied markedly from state to state with respect to the employee groups covered and the bargaining rights granted. In some jurisdictions--such as New Jersey, Massachusetts, and Washington--state employees were granted only a partial right to collective bargaining; they were prohibited from bargaining over wages. But the dominant trend has been for states to enact comprehensive labor relations laws covering all groups of public employees--state, county, and municipal--and requiring collective bargaining over such matters as wages, hours, and other conditions of employment.

The proliferation of such legislation during the 1960s acted as a powerful incentive to the unions and associations that were trying to organize public employees. The number of public employees belonging to these groups more than doubled during the 1960s, increasing from little more than 1 million in 1960 to 2.2 million in 1968.[4] And the rapid increase has continued in the 1970s.

In the early 1970s, additional states enacted legislation granting public employees the right to bargain collectively. And several states that had already enacted such legislation introduced

important modifications.

1972. Kansas changed its collective bargaining laws to include state employees. Nebraska did the same, and went even further than Kansas by authorizing collective negotiations regarding wages. Wisconsin passed legislation allowing state employees to bargain over wages. Rhode Island widened the scope of bargaining for state employees by permitting negotiations over wages and by removing the merit system as an impediment to bargaining. Alaska changed its laws to grant public safety employees a limited right to strike and other state employees an unlimited right to strike.

1973. In Illinois a governor's executive order authorized collective bargaining for state employees. Montana granted state and local employees the right to bargain collectively. Massachusetts scrapped its collective bargaining law and passed a new comprehensive law covering all public employees and permitting negotiations over wages. Oregon repealed four separate collective bargaining laws and replaced them with a comprehensive law covering all public employees.

1974. The trend continued. Florida, Connecticut, and Indiana passed comprehensive laws covering public employees. Maine enacted a statute establishing collective bargaining for state employees.

1975. By the end of the year, 50 percent of the states had enacted either legislation or executive orders instituting collective bargaining for state employees. Several other states had established meet-and-confer procedures. Eighteen state governments

had entered into collective bargaining agreements covering correctional employees. And such states as Connecticut, Indiana, Florida, and Maine were implementing legislation that would eventually lead to collective bargaining agreements for correctional personnel.

The trend, however, is not clear. Across the nation, public employee unionism is coming increasingly under attack. Recent government employee strikes have increased public reaction against public-sector collective bargaining. The 1975 strike by police in San Francisco, for example, aroused such public hostility throughout California that a comprehensive collective bargaining law for state, county, and municipal employees will not be enacted in the immediate future.[5] In addition, the economic plight of state and local governments in the mid-1970s has added to a backlash against collective bargaining for public employees. Benjamin Aaron, professor of law and former director of the Institute of Industrial Relations at the University of California, Los Angeles, recently reported that "the current status of collective bargaining in the public sector is uncertain, the immediate future appears bleak." The reason, Aaron says, is "the chill wind of a depressed economy." Nevertheless, he believes that, in the long run, the trend is toward an increase in public-sector collective bargaining.

> Dismal as the overall situation may be . . . it should not be exaggerated or misread. There is no indication of a reversal in the trend toward increasing resort to collective bargaining in

> the public sector, although it may be slowing down in specific areas. . . . What we are witnessing, therefore, is not so much a decline in collective bargaining in the public sector, as a period of hard bargaining in an environment of severe economic restraint and increasing public hostility.[6]

The Causes of Unionization

As we have seen, the 1960s and 70s have brought a proliferation of legislation and executive orders legitimizing the rights of public employees to organize and to engage in collective bargaining. But in most places these changes in the law did not in themselves bring about the unionization and increased activism of public employees. Other factors were at work. Several of these have been cogently set forth by Carl W. Stenberg of the Advisory Commission on Intergovernmental Relations:

> At least eight factors have contributed to this growth and activism of the public employee organizations: (1) the inability of an individual worker in a large bureaucracy to be heard by his employers unless he speaks in a collective voice; (2) a growing sentiment within the less mobile, unskilled, semi-skilled, and clerical labor force that concerted organized action is needed to

increase their earning power and protect their rights; (3) a greater appreciation of public employee organizations of the effectiveness of collective bargaining techniques used in the private sector; (4) an awareness among many unions that their strength in private industry is on the wane, and that the public service represents a virtually untapped field for productive organizational efforts; (5) the financial resources and expertise of national unions in assisting public employee groups to organize and present their demands to management; (6) the aggressiveness of public employee unions which has caused many long-established associations to adopt a more belligerent stance; (7) the spill-over effect in state and local governments of Executive Order 10988 which gave strong support to the principle of the public employees' right to organize; and (8) finally--and perhaps most importantly--the "head in the sand" attitude of many public employers, rooted in the traditional concept of the prerogatives of the sovereign authority and distrust of the economic, political, and social objectives of unions--an attitude which has made the question of whether employee organizations

will be recognized for the purpose of discussing grievances and conditions of work with management the second most frequent cause of strikes.[7]

All these factors have contributed to the growth of unionism and activism among correctional employees. But correctional labor relations have also been molded by factors peculiar to the field of corrections--such as the factors reviewed in Chapter 2: the controversy over philosophies of correction, the rise in prison populations, the court decisions pertaining to correctional institutions, the state and federal legislation regarding affirmative action and the preservation of safety and health, the budgetary restrictions resulting from the fiscal crisis in government, and the increase in inmate activism. An additional factor in correctional labor relations is the nature of the correctional employee's work.

The Work of the Correctional Employee

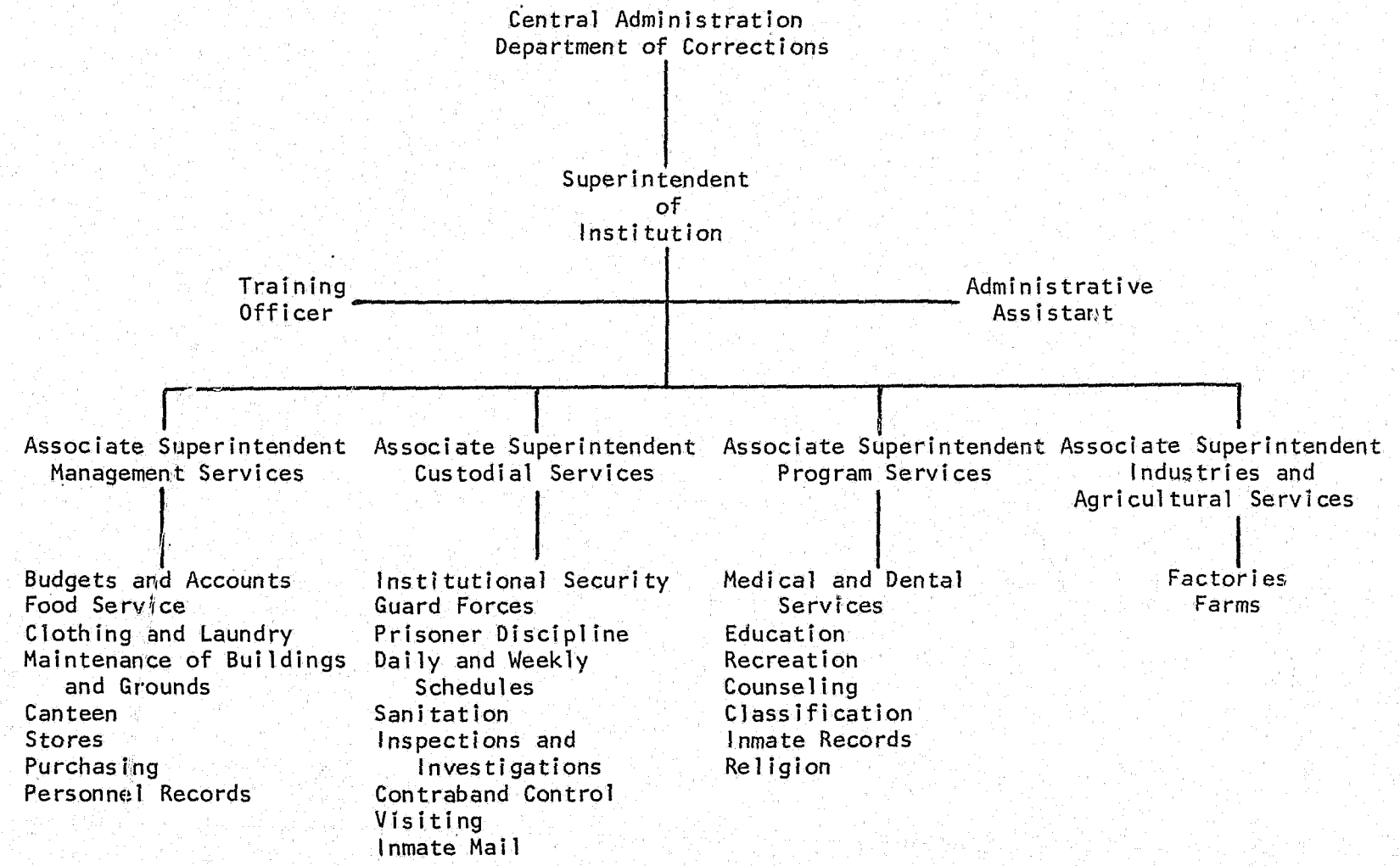
In the United States, most state correctional employees work in large custodial institutions, or prisons, for adults. The prisons, frequently located in rural areas, are small communities that have their own churches, hospitals, schools, industries, laundries, and food services. Prisoners go to work, participate in sports, go to school, and watch television. They have prison-operated bank accounts and can make small purchases at a canteen. The

prison usually has its own source of water, treats its own sewage, operates its own telephone system, generates its own steam and hot water, and perhaps can generate its own electricity. And it often produces much of its own food, particularly vegetables, meat, and milk.

As in other communities, a broad range of occupations and skills is required of those who perform the essential community services. Doctors, cooks, industrial foremen, telephone operators, electricians, plumbers, truck drivers, and police are but some of the skilled workers required to operate a prison effectively. These jobs are usually performed by people who are not themselves incarcerated. It is these employees who are referred to in this report as state correctional employees or personnel. Table 3-1 presents the organization and function chart of a typical state correctional institution.

In most of the jurisdictions studied for this research project, the majority of correctional personnel were employed in the so-called "custody" or "security" branch of corrections. The employees in these cutodial jobs customarily wear uniforms and badges and are referred to by military ranks. The ranking frequently used in custody operations refers to the entry-level correctional officer as a correctional officer, the first-level supervisor as a sergeant, the second-level supervisor as a lieutenant, the third-level as a captain, and the fourth-level as an assistant or deputy superintendent. Many states are moving away from this paramilitary

Table 3-1. Organization and Functions of a Typical State Correctional Institution



(SOURCE: Carter, McGee and Nelson, Corrections in America, 1975)

nomenclature and are referring to the correctional officer ranks in terms such as correctional officer, senior correctional officer, and supervising correctional officer, or correctional officer 1, 2, 3, and 4.

For consistency, this report will use the paramilitary titles still found in most jurisdictions, referring to custodial employees as correctional officers, sergeants, lieutenants, and captains. It must be recognized, however, that not all jurisdictions with this kind of system use precisely the same ranks. For example, the New York City Department of Corrections uses only the two ranks of correction officer and captain; there are no sergeants or lieutenar . On the other hand, Louisiana uses an unusually elaborate system of ranking: correction officer, sergeant, lieutenant, captain, major, and colonel. Thus, when one analyzes the managerial and supervisory duties of personnel in the custodial branch of a corrections system, one must take into account the number of titles in the organizational hierarchy.

Correctional officers work at many different posts, ranging from tower guard to cell block officer to mailroom supervisor to visiting room officer to training officer to transportation officer to a myriad of other positions. Sometimes correctional officers substitute as cooks, vocational instructors, and instructors in industrial shops. But most correctional officers work in the cell blocks in direct contact with the inmates. These jobs require round-the-clock coverage--24 hours a day, 7 days a week. As a

result, the correctional officers remain at the institution when other personnel have finished their daily work. This is an important consideration. It means that in most jurisdictions, during the daily 16-hour period when the superintendent, his top administrators, and the civilian workers are absent from the institution, the shift commander in charge of correctional officers (usually a lieutenant) is also in charge of the institution as a whole. To be sure, the institution operates under general orders from the superintendent and his deputies, but the fact remains that despite the centralized authority, and despite the large number of non-cutody personnel in an institution, a custody lieutenant is actually in charge of the institution for 128 of the 168 hours in the week.

The chain of command in the custodial force is further complicated by the fact that not all sergeant and lieutenant positions are truly supervisory. When a sergeant has leadership responsibility, he often assumes the same role as the private sector's "lead workers." The sergeant may be responsible for coordinating the work of his subordinates, but he lacks essential supervisory powers. He usually cannot adjudicate grievances among the employees and he cannot discipline employees or transfer them. Moreover, many sergeants are not even lead workers. Instead, they may be assigned to particularly difficult posts, such as the main entrance, the visiting room, the mail room, or the "vehicle trap" that permits supply trucks to enter and leave.

Lieutenants are also assigned a wide variety of responsibilities. As we have said, a lieutenant is frequently in charge of the institution when the superintendent and his top administrators have left for the day. But some lieutenants have less supervisory responsibility. For example, a lieutenant may become the officer in charge of a "reception unit" cell block or a disciplinary cell block or may become the officer in charge of on-the-job training.

In custodial operations, then, it is difficult to tell which rank corresponds to which kind of work. Within the same rank one may find an employee with no supervisory responsibilities, a lead worker with limited supervisory powers, and a true supervisor. This complex pattern of job classifications and descriptions obviously has implications for certain problems in labor relations--for instance, the question of how to determine which levels of employees are eligible for collective bargaining.

Among correctional employees, the custodial personnel have been most likely to become activist. In the 1960s and 70s, in virtually all the strikes carried out by correctional employees (as opposed to more general strikes by state employees), the actions were instigated primarily by custodial personnel. Frequently these employees are represented by employee organizations separate and distinct from those that represent other correctional employees.

Correctional institutions provide not only for the custody of offenders but also for their care, education, and treatment. Thus the institutions contain a great many employees not engaged

in custodial work. Some of these employees belong to occupations found in other state and local government agencies as well as in the private sector. This is true of employees in clerical, culinary, and maintenance work and those in the various skilled trades. What distinguishes these employees from similar workers in other agencies is that because they work in correctional institutions they must come in contact with inmates and possibly must supervise inmates; therefore they must do their work under the special constraints resulting from the need for security. In most states that permit public-sector collective bargaining, these employees belong to the employee organizations that represent their counterparts in other state agencies. In a few states, however, such as Illinois, most of these employees are included in the same bargaining unit as custodial employees. Later we will discuss the advantages and disadvantages that this arrangement leads to for both management and employees.

Another group of employees in the correctional institutions belong to the "treatment" or "program" staff. These employees are specialists: academic and vocational teachers, case workers, chaplains, and medical and dental personnel. They have clearly had more education than custodial employees. According to a report published in 1969, only 7 percent of custodial correctional employees (excluding supervisory personnel) had graduated from college, whereas 83 percent of the program staff had received baccalaureate or advanced degrees.[8] Program personnel generally belong to

employee organizations that represent their counterparts in other state agencies. Thus, for the purposes of collective bargaining, the teachers in a correctional institution might well belong to an employee organization that represents the teachers employed in all state agencies.

It is interesting that although program staff have typically received much more education than correctional officers (whose educational requirement is almost universally a high school diploma or its equivalent) and must perform tasks that bring them into close contact with inmates, these facts are usually not reflected in institutional pay scales or special early retirement benefits. On the average, program staff have fallen behind custody personnel in pay increases in the 1970s; and in many jurisdictions the take-home pay of teachers, case workers, and counselors is lower than that of correctional officers. In Massachusetts, for example, by lobbying with the legislature, the custodial staff has achieved significant salary increases during the last five years. During that period the starting salary for correctional officers has moved from two "pay grades" below to two "pay grades" above that of institutional case workers, vocational instructors, and teachers.

It is important to stress that custodial staff and program staff are often in conflict. The organizations representing the two types of employees are often in sharp disagreement regarding the basic objectives for correctional institutions and programs. The tension between the two groups arises not only from differences

in education or in theories of correction but also from the keen competition for equipment, space, personnel, and money. In the early 1970s, treatment and education programs received more attention and greater resources than ever before in the history of American corrections. Now, however, for reasons already discussed, this trend seems to have been reversed. A growing disillusionment with treatment and education programs has been one factor in the reversal, but surely another factor has been the increasing power of custodial employees.

The Uniqueness of Correctional Labor Relations

The conflict between custody and program staffs is one feature that makes correctional labor relations different from those in most other government agencies. Although most agencies experience conflicts between management and employees, between professional and non-professional staff, between younger and older workers, and, increasingly, between white male workers and racial-minority and women workers, corrections has an unusually intense competition between the employees in different job classifications. As we have seen, custodial and program staffs frequently disagree, not only about methods but also about objectives. They disagree, for example, about the basic issue of whether the primary purpose of a correctional institution should be to punish or to rehabilitate. Moreover, the two groups compete for funds--especially when funds are scarce. They disagree about which of the two groups should

receive pay increases and special retirement benefits. And sometimes their disputes over money stem from disagreements about priorities and programs. If funds are available, the custody staff might wish to hire more custodial personnel and strengthen security, while the program staff might prefer new hospital equipment or a new vocational program.

None of this means that custodial and program staffs are unable to cooperate. It does mean, however, that between the two groups there is considerable tension, an intraorganizational conflict of a kind rarely found except in correctional labor relations.

Another factor contributing to the uniqueness of correctional labor relations is the fact that most correctional staff have supervisory responsibilities. Even if they are not responsible for the supervision of other state employees, they are often responsible for the supervision of inmates. At times the supervision is simply custodial, but at other times it entails overseeing and directing the inmates while they work. The work may be the upkeep and repair of the institution, or it may take place on the farm, in the kitchen or cafeteria, or in an industrial shop. So frequently do the inmates perform such tasks that, as we have mentioned, groups of inmates have petitioned labor relations boards to be classified as state employees.

Yet another factor adding to the uniqueness of labor relations in correctional institutions is the continual threat of violence. In the close confines of a prison, this threat increases significantly

the anxiety and emotional strain among correctional employees. Their anxiety has been intensified by the rapid changes correctional institutions have undergone in the 1970s. Perhaps the severe emotional stress experienced by correctional employees has caused some of the surprising demands the employees have made at the bargaining table. During a strike at the San Francisco County Jail in 1975, correctional officers insisted that they would not end their strike unless, during working hours, every officer was provided a bulletproof vest. Yet a bulletproof vest would actually do little to protect a correctional officer. Clearly, the best protection against gunfire is to tighten security procedures and bar illicit firearms from the institution. But if the correctional officers at the San Francisco County Jail did not analyze this matter as thoroughly and objectively as they might, perhaps the reason was that their anxieties over the dangers involved in their work made them ready to propose almost any solution that might conceivably ensure their safety. On the other hand, it may also have been an attempt to impress the public with the dangerousness of their jobs. The present research project did not closely study the effects of on-the-job stress on the demands of correctional employee organizations, but the subject deserves to be thoroughly investigated in the future.

Emotional stress affects correctional personnel in other ways as well. It often seems that correctional personnel need more time off for disability than other state employees. In 1975, in

New York State, correctional employees' time off for disability was 300 percent higher than the state average.[9] Some of this time off resulted from on-the-job accidents; but 60 percent of the disability leave in this period resulted from heart, emotional, or drinking problems, all of which are frequently associated with severe emotional stress. In the states researched, the incidence of heart attacks among correctional officers is one of the highest among any group of state employees. In fact, Pennsylvania legislation has recently granted correctional employees special benefits with regard to heart and lung disorders.

Another factor adding to the uniqueness of correctional labor relations is the paramilitary decision-making and authority structure traditionally found in correctional agencies. A paramilitary structure is not unique to corrections (it appears in police agencies as well, for example); but its existence in corrections has made correctional agencies slow to respond to the rapid changes in the field and to the intense emotional strains suffered by correctional officers. One result has been extreme dissatisfaction among correctional officers; but because so many agencies have adhered to their paramilitary authority structure, this dissatisfaction has not led to management-employee discussions or shared decision-making but to an increased activism on the part of employee organizations.

One example of the paramilitary structure in corrections occurred in the early 1970s, when many correctional administrators

acted unilaterally to implement orders regarding the extension of inmates' rights. This occurrence was particularly damaging to management-employee relations, since correctional officers regarded the extension of inmates' rights as an arbitrary decision that threatened the officers' safety. At present, management continues to believe that it needs traditional authority in order to manage the prisons effectively, whereas employees insist that they need a larger role in operating the prisons if they are to protect their careers and their safety.

One additional factor in the uniqueness of correctional labor relations is that the organizations representing correctional officers wield a surprising amount of political power. Employees in adult corrections account for less than 2.5 percent of state employees.[10] But the political power of correctional officer organizations comes not only from their activism but from the fact that in most states corrections has become a much-discussed political issue. In the late 1960s and the 1970s, political candidates and incumbents were increasingly taking public stands on one issue or another connected with corrections. For example, in 1972 and 1973, in Massachusetts, correctional reform was a major political issue; and correctional officers--by means of public announcements and campaign assistance--actively supported those politicians who openly opposed "correctional reform" and the development of community-based programs for offenders. One result was that the correctional officers developed so much political support that

the governor fired a "reform" commissioner of corrections.

The leaders of correctional employee organizations often have direct access to political figures. This frequently results in the bypassing of the director of the department of correction. In New York City, in 1975, after a short-lived riot by inmates and an ensuing strike by correctional officers over an amnesty granted to rioting inmates, the leaders of the Correction Officers Benevolent Association negotiated directly with the mayor of New York rather than with the Department of Corrections or the city's Office of Employee Relations. The mayor agreed to the correctional officers' demands for the right to continue carrying guns while off duty, the hiring of 50 more correctional officers for Rikers Island, and the division into quarters of the 355-foot-long cell blocks in the Rikers jail to facilitate supervision by the correctional officers. The mayor agreed to these conditions, which entailed great expense, even though other city departments were laying off staff and the city was facing bankruptcy.[11]

This kind of direct access to political leaders is an important element in correctional labor relations and will receive further discussion in a later chapter. Indeed, all the factors just reviewed contribute to making labor relations in corrections quite different from those in other branches of state government, and the factors will be referred to repeatedly as we continue our examination of correctional labor relations.

The Organizations Representing Correctional Employees

Correctional employees in the United States are represented by four major types of organizations: the local independent correctional employee association, the state or national law enforcement association, the state employee association, and the national labor union. Data from the states studied reveal that important changes in organizational membership tend to occur after the advent of full-scale collective bargaining. Before the establishment of collective bargaining, correctional employees typically belong to a state employee association or an independent correctional employee organization serving only the correctional employees in a particular state; and a great many employees belong to both kinds of organizations. But in states that have adopted and implemented legislation permitting full-scale collective bargaining, the tendency has been for correctional employees to join national labor unions. Table 3-2 shows the associations and unions that represent correctional personnel in the sixteen states studied for this report.

State correctional personnel are represented by a variety of associations and unions, but the American Federation of State, County and Municipal Employees (AFSCME) has become the predominant force throughout the United States. In all the state systems studied--with the exception of California--AFSCME represents some groups of correctional employees. Moreover, AFSCME is influential not only in the jurisdictions studied for this report.

Table 3-2. Associations and Unions Representing State Correctional Employees in the Research Jurisdictions

STATE / EMPLOYEE UNIONS AND ASSOCIATIONS	AFSCME AFL-CIO	STATE EMPLOYEE ASSOCIATION	CORRECTIONAL OFFICERS ASSOCIATIONS	SEIU AFL-CIO	TEAMSTERS	POLICEMEN'S BENEVOLENT ASSOCIATION	OTHER UNIONS AND ASSOCIATIONS
CALIFORNIA		X	X		X		X
CONNECTICUT	X	X	X				X
FLORIDA	X						
ILLINOIS	X						
INDIANA	X	X					
LOUISIANA	X						
MASSACHUSETTS	X			X			
MICHIGAN	X	X		X			
NEW JERSEY	X	X				X	X
NEW YORK	X	X					
OHIO	X	X	X		X		X
OREGON	X	X					
PENNSYLVANIA	X			X			
RHODE ISLAND	X		X				
WASHINGTON	X						
WISCONSIN	X						X

AFSCME - American Federation of State, County and Municipal Employees

SEIU - Service Employees International Union

Teamsters - International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America

AFSCME represents groups of correctional employees in virtually every state that has enacted some form of collective bargaining legislation. In some states--for example, Massachusetts, Washington, Illinois, Louisiana, and Oregon--AFSCME represents correctional employees engaged in custodial work, program services, clerical services, and the trades; but, nationwide, AFSCME has gained its strength among correctional employees chiefly by enrolling custody personnel--i.e., correctional officers.

As the preceding remark implies, one interesting feature of correctional labor relations is that employees with different job titles frequently belong to different employee organizations. The reason lies in the nature of "bargaining units." A bargaining unit is a group of employees represented by a single employee organization for the purposes of collective bargaining. How the employees are divided into bargaining units varies from state to state. The division tends to result from a combination of historical factors and legislative and administrative decisions. In most states, correctional employees are placed into more than one bargaining unit, and the units tend to cut across state agency lines so that each unit can contain all state employees involved in similar or closely related occupations. In New York State, for instance, if we exclude the bargaining units for state police and university faculty, we find five statewide bargaining units: the security services unit (which contains correctional officers as well as other job classifications related to security), the

administrative services unit, the operational services unit, the institutional services unit, and the professional, scientific and technical services unit. (The security services unit is represented by AFSCME Council 82; the other four units are represented by New York State's Civil Service Employee Association.) Employees are placed in a bargaining unit on the basis of the work they do, not on the basis of which state agency they work for. Clerks, for example, whether they work for the Department of Correctional Services or the Division of Employment, are all placed in the administrative services unit. One result of this scheme is that employees of the Department of Correctional Services do not all belong to the same bargaining unit, but are placed in one or another of the five bargaining units according to the nature of their work.

The nature of bargaining units helps to explain how the correctional employees in a single agency can be represented by more than one employee organization. We should add, however, that the existence of bargaining units is not the only reason for this phenomenon. In states such as California and Michigan, where state employees are not permitted to bargain collectively, and where bargaining units do not exist, correctional employees may choose to join a variety of employee organizations. And in both these states, membership in more than one employee organization is common.

The complex issues arising from these matters of bargaining units and multiple representation will be analyzed at greater

length in Chapter 4. The foregoing brief account of bargaining units is intended merely to clarify certain points in our discussion of the organizations that represent correctional employees--the discussion to which we now return.

As we have indicated, the four major types of organizations representing state correctional employees are the local independent correctional employee association, the state or national law enforcement association, the state employee association, and the national labor union. Jack Stieber, Director of the School of Labor and Industrial Relations at Michigan State University, has discussed the complexity of public employee unionism in the United States:

> The pattern of organization among public employees in the United States is more complex than the single form of organization that is characteristic of the private sector. Public employees belong to unions and associations, which differ from each other organizationally and structurally, as well as in their purposes and policies. These organizations may be further differentiated by the level of government in which they operate, whether membership is general or specialized, and by national affiliation. Some organizations are active at only one governmental level--federal, state, or local--others at two or all three levels. Some

> enroll only public employees, while others include employees in the private sector. Some organizations are open to virtually all government employees, others limited to specific occupations and professional groups. Some unions and associations are affiliated with the national federation, while others are independent.[12]

When referring to labor unions that represent public employees, Stieber makes a distinction between all-public unions, which represent only employees in the public sector, and mixed unions, those national labor unions that draw their membership from both the private and the public sector. The largest all-public union representing state employees in the United States is the AFSCME, an affiliate of the AFL-CIO. The AFSCME membership contains state and local government employees of all kinds, excepting only teachers and fire fighters. In June 1976, AFSCME claimed 750,000 members and reported that its membership was growing at an average of 1,000 employees a week. AFSCME membership currently includes almost 20,000 of the nation's 75,000 state correctional institution personnel.

The mixed union draws its members from both the public and the private sector. The mixed unions most successful in enrolling correctional employees have been the Service Employees International Union (SEIU) and the International Brotherhood of Teamsters,

Chauffeurs, Warehousemen, and Helpers of America. As of 1971, SEIU, an AFL-CIO affiliate, had a total membership of 450,000; approximately one-third of its members were public employees.[13] SEIU has established its strength in the public sector primarily by organizing employees in hospitals, schools, and social service agencies. In corrections, SEIU draws its members primarily from program staff--as opposed to AFSCME, which derives its strength chiefly from custody staff. Although AFSCME and SEIU have competed in some jurisdictions (such as Pennsylvania) for the right to represent correctional personnel, in other jurisdictions (such as Massachusetts) they have formed a coalition in an effort to represent a majority of the bargaining units for state employees.

The other mixed union that has made a major effort to organize correctional employees, the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, is the largest labor organization in the United States. Although the Teamsters has made some progress in organizing correctional employees, particularly in California, Ohio and Minnesota, its chief strength among personnel in the criminal justice system seems to reside in state and local police agencies rather than state correctional systems.

Another type of organization interested in representing correctional personnel is the state employee association. Such associations represented public employees long before labor unions began their efforts in the public sector. Stieber has explained

the original objectives of the state employee organizations, as well as their more recent objectives:

> A major difference between the history of public employee organization and private is the existence of employee organizations before the advent of unions and collective bargaining in the public sector. Most of the state and local associations were organized between 1920 and 1950. They were usually founded in order to start a retirement system; initiate or protect the civil service system; provide such benefits as life insurance, burial funds, or a credit union; or serve as a social club. Many associations had overlapping objectives, and some sought to further all four of these goals. . . . In the late 1950s and 1960s, a number of associations sprang up to stave off organizing efforts by unions. The state associations in Connecticut, Oregon, and Washington represented breakaway movements from AFSCME. Whatever their origin and initial purpose, almost all associations now represent their members in lobbying in state legislatures, city councils, and county boards of supervisors; many process individual grievances; and some

have converted into full-fledged collective bargaining organizations. Many provide low-cost group insurance, which has served as an important attraction to members.

Most state associations are affiliated with the Assembly of Governmental Employees (AGE), a very loose confederation organized in 1952. In 1969, 32 AGE affiliates, plus four other state associations, claimed a total of 618,000 members, about 500,000 of them state employees and the remainder local. During the 1960s, membership in the state associations increased by 47 percent, indicating that they have participated, along with the unions, in the organizational growth among public employees. The associations are a varied lot, some espousing the objectives and tactics of unions, including collective bargaining and strikes, and others continuing to promote the interests of their members in the merit system, relying on lobbying and working through civil service. All associations are united, however, in their opposition to national unions of public employees.[14]

State employee associations attract correctional employees primarily in those jurisdictions that have not yet instituted

comprehensive collective bargaining. In the jurisdictions researched for this report, the exceptions to this generalization are New York State (where the Civil Service Employees' Association represents all correctional personnel other than correctional officers) and Oregon (where the Oregon State Employees' Association represents employees at the Oregon State Correctional Institution). Among the other research jurisdictions, it is only in California, Indiana, Michigan, and Ohio--states in which comprehensive collective bargaining currently is not permitted for state employees--that state employee associations have managed to enroll a significant number of members from among correctional employees. In Ohio, for example, in 1975, the Ohio Civil Service Employees Association was the only employee organization that enlisted more than 30 percent of the correctional personnel in the state.

As more states enact legislation permitting state employees to bargain collectively, and as unions become increasingly active in organizing public employees, state employee associations face a crucial question: To what degree should they engage in new and more activist programs in order to keep their position in the public-sector labor movement? In the field of corrections, new bargaining units will be formed as more states enable correctional employees to bargain collectively. And state employee associations must find ways to attract those new bargaining units if the associations hope to retain correctional employees among their memberships.

Correctional employees also belong to state and national law enforcement associations. Recently, in Connecticut, the International Brotherhood of Correctional Officers, an affiliate of the National Association of Government Employees, attempted to organize correctional personnel in order to represent them under the state's new collective bargaining legislation. The National Association of Government Employees (NAGE) at one time consisted almost exclusively of employees of the federal government, but in recent years it has made considerable efforts to organize employees in state and local law enforcement and correctional agencies. Initially, NAGE tried to organize correctional officers through its police affiliate, the International Brotherhood of Police Officers. But a new NAGE organization, the International Brotherhood of Correctional Officers, has assumed the task and has recruited a number of correctional employees in Connecticut, Ohio, and Rhode Island.

New Jersey is another state in which a law enforcement association has attracted correctional employee membership. For the purpose of collective bargaining, the state's correctional officers are represented by the New Jersey State Policemen's Benevolent Association, an affiliate of the International Conference of Police Associations. It should be noted that the bargaining unit represented by the New Jersey State Policemen's Benevolent Association includes not only correctional officers but also such other state employees as police officers, motor vehicle officers,

and rangers. This bargaining unit, then, is "horizontal" in that it cuts across agency lines. It includes all state law enforcement personnel except the state police.

Another form of organization to be considered is the correctional employee association. Usually a local group not affiliated with any state or national organization, this kind of association tends to be a vestige of the correctional employee benevolent associations that existed primarily before the advent of collective bargaining in the public sector. Correctional employee associations have gained most of their strength in California, Idaho, Iowa, Nebraska, Nevada, and other states that do not permit collective bargaining by state employees. In jurisdictions that permit such bargaining, the two strongest local correctional officer associations exist in New York City and Rhode Island. In New York City, the Correction Officers Benevolent Association has represented cutody personnel in collective bargaining since the late 1950s. In Rhode Island, state correctional officers are represented by the Rhode Island Brotherhood of Correctional Officers, which recently affiliated with NAGE but has retained its local autonomy. Until 1975, a strong independent correctional employee association represented employees at several prisons in Massachusetts, but in a representation election held in that year, the organization lost its representation rights to an alliance of AFSCME and SEIU.

It is questionable whether such independent correctional officer associations can remain active in labor relations in an

era of comprehensive collective bargaining for state employees. Certainly an ever-increasing number of state correctional employees are being represented by national labor unions. Nevertheless, in those jurisdictions in which correctional officers are part of a large bargaining unit and do not feel adequately represented, the officers may start new local organizations, or revive old ones, to engage in various forms of activism outside the formal process of collective bargaining.

One other type of organization represents correctional personnel--namely, the professional organization for teachers or nurses. Professional organizations represent these kinds of correctional personnel in such states as Minnesota, Pennsylvania, Washington, Wisconsin, and Rhode Island. Nationwide, however, this type of professional association represents a minute percentage of correctional employees and appears to have little effect on the operation of state correctional systems or the development of correctional policies and procedures.

Summary

Although organizations of correctional personnel existed even in the early 1900s, the movement toward unionization and activism among correctional employees did not become strong until the late 1960s. With the enactment of legislation permitting collective bargaining for state personnel, correctional employees have shifted their membership from local independent organizations

to state employee associations, state and national law enforcement organizations, and national labor unions. The principal force in the organization of state correctional personnel, particularly correctional officers, has been the American Federation of State, County and Municipal Employees, which already represents more correctional personnel than any other organization and continues to grow rapidly.

Several factors contribute to the uniqueness and complexity of correctional employee labor relations. (1) Prisons are small communities requiring many of the services that any other community would require. Thus correctional employees perform many different kinds of work--policing, teaching, counseling, maintenance, etc. (2) The two largest groups of prison employees--the custodial and program staffs--repeatedly disagree over programs and the allocation of resources. (3) Correctional employees must supervise inmates. (4) The continual threat of violence adds to correctional employees' emotional strain and may contribute to inappropriate collective bargaining demands and group actions. (5) The paramilitary authority structure traditionally found in corrections is being challenged by the rapid changes of the 1970s. (6) Correctional employee organizations are highly politicized and wield more political power than the size of their membership would seem to warrant.

Chapters 2 and 3 have set forth some of the basic conditions affecting correctional labor relations in the 1970s. Chapter 4 will survey the legal developments that pertain to correctional labor relations in the states studied for this report.

Notes

1. Hervey A. Juris and Peter Feuille, The Impact of Police Unions (Washington, D.C.: Law Enforcement Assistance Administration Grant Number NI 70-044, 1972), p. 64.

2. New York City Executive Order No. 49 (1958).

3. Ibid.

4. Lee C. Shaw, "The Development of State and Federal Laws," in Sam Zagoria, ed., Public Workers and Public Unions (Englewood Cliffs, N.J.: Prentice-Hall, 1972), p. 20.

5. Benjamin Aaron, "Reflections on Public Sector Collective Bargaining," Labor Law Journal, 27 (August 1976), 455.

6. Aaron, p. 455.

7. Carl W. Stenberg, "Labor Management Relations in State and Local Government: Progress and Prospects," Public Administration Review, 32 (March-April 1972), 103.

8. Joint Commission on Correctional Manpower and Training, A Time to Act (Washington, D.C.: Joint Commission on Correctional Manpower and Training, 1969), pp. 22-23.

9. New York State, For a More Humane Approach to Employee Disabilities (Albany: State of New York, 1975), p. A2.

10. "Public Employment in 1974," Government Employee Relations Report Reference File, No. RF-105 (14 July 1975), p. 71:2112.

11. "Rikers Island Revolt Leads City to Add 69 Correction Officers," New York Times, 25 November 1975, pp. 1, 37.

12. Jack Stieber, Public Employee Unionism: Structure, Growth, Policy (Washington, D.C.: Brookings Institution, 1973), p. 1.

13. Stieber, p. 3.

14. Stieber, pp. 8-9.

4. The Legal Framework for Correctional Employee Labor Relations

None of the states studied for this report provides a special legal framework for correctional employee labor relations separate from that provided for state employees in general. The type of legal framework varies from state to state and consists of state statutes, executive orders, case law, the policies of civil service commissions, and the opinions stated by attorneys general. Table 4-1 shows the current legal framework for state employee labor relations in the research jurisdictions.

It should be pointed out that when we refer to state employees, we are referring to people employed by state governments and not those employed by counties or municipalities. Further, when we speak of a legal framework for state employee labor relations, we will not pause to indicate whether the applicable statute refers only to state employees or to all state, county, and municipal employees in the jurisdiction.

As Table 4-1 shows, the chief source of the legal frameworks for state employee labor relations has been state legislation. But this is not the case in all the jurisdictions studied. In Michigan, meet-and-confer procedures for state employees have a legal basis in an administrative policy statement issued by the Department of Civil Service in 1971. In Illinois, the legal framework for state employee collective bargaining is an executive order issued by

Table 4-1. Legal Basis for State Employees in the Research States (1976)

STATE / LEGAL BASIS	LEGISLATION	EXECUTIVE ORDERS	ATTORNEY GENERAL OPINION	CIVIL SERVICE OR PERSONNEL BOARD POLICY	CASE LAW
CALIFORNIA	X	X			
CONNECTICUT	X				
FLORIDA	X				
ILLINOIS		X			
INDIANA	X				
LOUISIANA	X		X		X
MASSACHUSETTS	X				
MICHIGAN				X	
NEW JERSEY	X				
NEW YORK	X				
OHIO	X	X			X
OREGON	X				
PENNSYLVANIA	X				
RHODE ISLAND	X				
WASHINGTON	X	X		X	
WISCONSIN	X				

the governor in 1973. It should be pointed out that the Illinois executive order covers only state employees who work for agencies and departments subject to the governor and thus covers only slightly more than half of the 117,000 Illinois state employees. In California, meet-and-confer procedures for state employees are based on legislation, state personnel board rules, and a governor's executive order. Collective bargaining for state employees in Louisiana is based partly on legislation, but also on case law and the opinions of the attorney general. Collective bargaining for state employees in Ohio is regulated by legislation, case law, and directives issued by the Ohio Department of Administrative Services. In Washington, the legal basis for state employee collective bargaining resides in legislation, the rules of a merit system administered by the state personnel board, and a governor's executive order.

There are disadvantages to any legal framework other than legislation. In the case of the governor's executive order in Illinois, for example, there are two significant disadvantages. One is that the executive order applies only to those state employees within the administrative purview of the governor, thus excluding employees under the authority of the attorney general, the secretary of state, the state treasurer, and the state judiciary. A second disadvantage is that the governor's order permits state employees to bargain collectively over wages but the state legislature has not passed laws of a similar nature. Thus the legislature may vote

against the wage increases that result from collective bargaining. This happened in Illinois in 1976. The governor had to ask state agencies to reallocate funds to pay for the wage increases granted through collective bargaining. The Illinois Department of Corrections was asked to find money somewhere in its 1975-76 budget to pay the wage increases granted to correctional employees by the collective bargaining agreement signed in December 1975.

The states we have studied, then, display various forms of legal frameworks for state employee labor relations. Apparently the most effective type of framework is one enacted by the state legislature so that the legislative and executive branches are both responsible for the planning and administration of collective bargaining.

Agencies Responsible for Administering Public-Sector Labor Relations

In most of the research states that have established a legal framework governing labor relations for state employees, the administrative responsibility resides in a special labor relations board. The responsibilities of such boards are judicial in nature; the boards should not be confused with those state agencies that actually negotiate collective bargaining agreements with employee organizations. Instead, the boards perform such tasks as interpreting the relevant laws, determining bargaining units, certifying employee organizations, conducting representation elections, determining unfair labor practices, and facilitating or providing mediation, fact-finding, and,

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sometimes, arbitration. In ten of the states studied for this report, state employee labor relations are administered by such boards. Some of the boards--those in Connecticut, Pennsylvania, Rhode Island, and Wisconsin--are responsible for labor relations in both the public sector and the private. The remaining boards--those in Florida, Indiana, Massachusetts, New Jersey, New York, and Oregon--are responsible only for labor relations in the public sector.

The typical board or commission contains three to seven members who serve staggered terms of four to six years. In most jurisdictions, members are appointed by the governor, subject to the approval of the upper house of the state legislature. The criteria for appointment vary from state to state. In Florida, the only criteria are that members shall represent a cross section of the public, shall be known to possess sound, independent judgment, and shall not be employed by any other agency of the state government or by any employee organization.[1] In New Jersey, however, the commission is composed of seven members--two representing the public employers, two representing the public employee organizations, and three representing the general public.[2] But although state labor relations boards vary in number of members, length of term, and criteria for membership, the conditions pertaining to such boards are usually designed to accomplish two particular goals: the political neutrality of the board and, perhaps even more important, its neutrality with respect to both labor and management.

Table 4-2. Administering Agency for State Employee Labor Relations

California	Governor's Office of Employer-Employee Relations
Connecticut	State Board of Labor Relations
Florida	Public Employees' Relations Commission
Illinois	Office of Collective Bargaining
Indiana	Education Employment Relations Board*
Louisiana	No specific administrative agency
Massachusetts	Labor Relations Commission
Michigan	Department of Civil Service
New Jersey	Public Employment Relations Commission
New York	Public Employment Relations Board
Ohio	No specific administrative agency
Oregon	Employment Relations Board
Pennsylvania	Labor Relations Board
Rhode Island	State Labor Relations Board
Washington	State Personnel Board
Wisconsin	Employment Relations Commission

*In Indiana the Education Employment Relations Board is designated to administer the Indiana Public Employee Labor Relations Act.

Six of the states studied for this report did not have labor relations boards but put some other government agency in charge of labor relations for state employees. In two of the states the task of administration has been given to boards responsible for civil service systems: in Michigan, to the Department of Civil Service, and in Washington, to the State Personnel Board. The use of a civil service board to administer state labor relations is problematic in that civil service systems and public-sector labor relations are often considered to be in conflict. A 1974 publication of the California State Personnel Board indicated that comprehensive collective bargaining for state employees would conflict with the state's merit system, particularly in such matters as examinations, certification, appointments, the allocation of positions, and the establishment or abolishment of classes or positions.[3] Labor organizations believe that civil service commissions are hostile to the very idea that collective bargaining is an appropriate mechanism for establishing terms of employment, especially wage rates. In addition, labor organizations often believe that civil service commissions are biased in favor of management. Jerry Wurf, President of the American Federation of State, County and Municipal Employees, has voiced this opinion: "The role of the civil service commission is not regarded by the workers as a third, impartial party; to most of them, the commission is felt to represent the employer."[4]

Although labor representatives consider civil service commissions

to be pro-management, the commissions are usually free from political intrusions to the same extent as labor relations boards. The criteria for choosing commission members, as well as the lengths of their terms, tend to protect the commissions from being motivated by political concerns.

In two of our research jurisdictions, however, the agency responsible for administering public-sector labor relations can guarantee neither political neutrality nor neutrality in considering the interests of labor and management. The California Office of Employer-Employee Relations and the Illinois Office of Collective Bargaining report directly to the governor. The officials of these agencies serve at the governor's pleasure and do not require legislative confirmation. A situation of this kind has several disadvantages. (1) It can lead to instability in labor relations, since agency membership can change as quickly as the governor's whims. (2) It tends to work against the sharing of responsibility for labor relations by both the executive and the legislative branches of government. (3) It can allow the agency to become vulnerable to political pressures or to the influence of labor or management.

In Louisiana and Ohio, no one agency has been designated to administer labor relations among state employees. In Ohio, the rules governing such matters as representation rights and the determination of bargaining units are formulated by the Department of Administrative Services.

Thus, labor relations for state personnel are administered by

various types of state agencies. The most common practice, and the most advantageous, is to establish an independent labor relations board through an act of the state legislature, and to control the selection and tenure of members in a way that will minimize the board's vulnerability to influences from politics, labor, or management.

The Scope of Collective Bargaining

The term "scope," when used in connection with collective bargaining, refers to the range of issues open to employer-employee collective negotiations. As far as "scope" is concerned, the research states can be divided into two categories: those that permit "non-wage" collective bargaining and those that permit "comprehensive" collective bargaining. "Non-wage" bargaining can deal with most matters except rates of compensation. It can deal with certain economic matters, however, such as policies regarding overtime payments. "Comprehensive" bargaining can deal with almost all matters pertaining to employment, including wages.

Two of the states studied--California and Michigan--do not permit collective bargaining for state employees but do have a meet-and-confer process. In California the process takes place at several levels of state government. For example, a 1971 governor's executive order indicates that "a representative of the governor will meet and confer in good faith with representatives of employee organizations to arrive, if possible, at a mutual understanding on

Table 4-3. Scope of Collective Bargaining for State Correctional Employees

STATE	NO COLLECTIVE BARGAINING	NON-WAGE COLLECTIVE BARGAINING	COMPREHENSIVE COLLECTIVE BARGAINING
CALIFORNIA	X		
CONNECTICUT			X
FLORIDA			X
ILLINOIS			X
INDIANA			X
LOUISIANA		X	
MASSACHUSETTS			X
MICHIGAN	X		
NEW JERSEY			X
NEW YORK			X
OHIO		X	
OREGON			X
PENNSYLVANIA			X
RHODE ISLAND			X
WASHINGTON		X	
WISCONSIN			X

the following matters: (1) the need for and amount of a general salary adjustment; (2) the total amount of any special inequity salary adjustments; and (3) general employee benefits."[5] The order also states that if the meet-and-confer process enables the representatives of the governor and the employees to reach a mutual understanding, then a written memorandum of understanding will be prepared and the governor will urge the legislature to accept the recommendations expressed therein. The 1971 executive order also favors meet-and-confer sessions in the various state agencies for the purpose of discussing conditions of employment and relations between employer and employee. In the California Department of Corrections, the result has been, at the department level, semi-annual meetings between the director and the spokesmen for the major organizations representing correctional employees and, at the institutional level, periodic meet-and-confer sessions between the superintendent of the institution and the representatives of the employee organizations. It should be noted that in both California and Michigan, despite the existence of meet-and-confer procedures, the state employer is not required by law to negotiate with employee organizations.

Other states studied for this report--Louisiana, Ohio, and Washington--permit non-wage collective bargaining over most conditions of employment for state employees. Although in these three jurisdictions collective bargaining may not deal with wage rates for specific job classifications, the bargaining may deal with other

economic matters that can have an indirect but definite effect on wages. A typical example is the contract provision that, when overtime pay is calculated, all authorized leave with pay, such as sick leave, shall be considered as time on the job. Such a provision appears in the basic agreement covering institutional employees of the Washington State Adult Corrections Division.[6] It means that if, in a given week, a correctional officer calls in sick for one of his five shifts, works the other four shifts, and then takes on an extra-duty shift of eight hours, he will be entitled to overtime pay for those eight hours.

The important point is that wage rates are not the only measure of compensation. Jurisdictions that exclude wages from collective bargaining do permit bargaining over other economic matters which affect not only take-home pay but also the total package of economic benefits. Provisions regarding paid leave, reimbursement for the cost of uniforms, and shift differentials all affect each employee's total package of economic benefits and also the total cost of the collective bargaining agreement.

In Louisiana, Ohio, and Washington--the three research jurisdictions that exclude wage issues from the collective bargaining process--the bargaining with correctional personnel takes place at the agency or department level. Collective negotiations with correctional employees are carried out in Louisiana by representatives of the Department of Corrections, in Ohio by representatives of the Department of Rehabilitation and Corrections, and in

Washington by the secretary of the Department of Social and Health Services. In contrast, in the states that permit comprehensive collective bargaining, the responsibility for all collective bargaining with all state agencies and departments usually rests with a central executive agency such as the state's department of administration.

Comprehensive collective bargaining deals with almost all issues involving wages, hours, and other terms and conditions of employment. Eleven of the sixteen research states provide for negotiation over wages as well as over other issues, but the extent to which negotiations are limited by other state laws varies among these eleven states. Oregon, for example, provides that parties may bargain over all "employment relations," and defines that term so broadly as to include, but not be limited to, working hours, vacations, sick leave, grievance procedures, other conditions of employment, and all matters involving direct or indirect monetary benefits.[7] The Wisconsin statute, however, specifically excludes from collective bargaining all policies and procedures of the civil service merit system regarding initial appointments, promotions, and job evaluation.[8]

The rules and regulations of civil service systems are not the only factor limiting the scope of negotiations in state employee labor relations. The legal frameworks for such labor relations often include provisions regarding the rights of management. In Pennsylvania, for example, the relevant legislation states that "public employers shall not be required to bargain over matters of

inherent managerial policy, that shall include but shall not be limited to such areas of discretion or policy as the functions and programs of the public employer, standards of services, its overall budget, utilization of technology, the organizational structure and selection and direction of personnel. Public employers, however, shall be required to meet and discuss on policy matters affecting wages, hours and terms and conditions of employment as well as the impact thereon upon request by public employee representatives."[9]

Although many states have inserted such provisions in the legal frameworks for public-sector labor relations, collective bargaining in those states frequently enters into matters that might be thought to belong to the special purview of management. The extent to which provisions granting special rights to management can limit the scope of collective bargaining is currently an open question, one that is being answered by state labor relations boards and court decisions. Apparently clauses providing special rights to management have the greatest impact when they are reinforced by another statutory provision explicitly prohibiting the public employer from negotiating an agreement affecting particular terms or conditions of employment.

The research jurisdictions, then, vary in the range of matters they submit to collective bargaining. California and Michigan limit state employee labor relations to a meet-and-confer process. Louisiana, Ohio, and Washington permit collective bargaining over almost all issues other than wages, but even though the bargaining is prohibited from dealing with wages, it does not necessarily

exclude negotiations over other monetary issues. In the eleven other states studied, there is comprehensive collective bargaining over wages, hours, and other terms and conditions of employment, including, but not limited to, such matters as vacations, insurance benefits, holidays, leaves of absence, shift pay differentials, overtime pay, supplemental pay, seniority, transfer policies, job classifications, health and safety measures, evaluation processes, procedures for reducing staff, inservice training, deduction of dues, standards of performance and productivity, grievance procedures, and provisions for union security.

Even when a jurisdiction permits non-wage or comprehensive collective bargaining, however, the scope of negotiations may be limited by the rules and procedures of civil service systems, by clauses guaranteeing certain rights to management, and by various other laws. But, in general, public-sector labor relations appears to be heading in the direction of fewer rather than more restrictions on the scope of negotiations.

Bargaining Units

Aside from the scope of negotiations, perhaps the critical legal and administrative matter affecting labor relations among state employees is the method for determining bargaining units. A bargaining unit, we should repeat, is a group of employees that the state or local jurisdiction has deemed an appropriate group to be represented by a single employee organization for the purpose

of collective bargaining. Most state statutes regarding collective bargaining either determine the state employee bargaining units within the statute itself or establish criteria for the determination of bargaining units and delegate the responsibility to an administrative agency such as a public employee relations board.

The criteria for determining bargaining units vary among the research states. In Massachusetts, the legislation pertaining to labor relations for state employees indicates that bargaining units "shall be consistent with the purposes providing for stable and continuing labor relations, giving due regard to such criteria as community of interest, efficiency of operations and effective dealings, and to safeguarding the rights of employees to effective representation."[10] The law further states that no unit shall include both professional and non-professional employees unless the professionals, by a majority vote, choose to be included. Thus Massachusetts sets forth four primary criteria: community of interest, efficiency of operation, effective representation, and the separation of professionals from non-professionals.

A "community of interest" is usually determined by similarities in such matters as vocational skills, educational requirements, working conditions, or work sites. The difficulty of applying the concept of community of interest appears in the case of teachers who work in correctional institutions. Does a teacher with such work belong in the same community of interest as teachers working in other branches of state government, or does he belong with

non-teachers who work in the same correctional institution? The research jurisdictions handle this problem in a great variety of ways. In Washington, for example, teachers employed in correctional institutions belong to a bargaining unit for institutional employees; in New York they belong to a statewide unit for professionals; and in Pennsylvania, to a unit for teachers employed by the state.

The criterion of "efficiency of operation" means that the determination of bargaining units should not place an excessive burden on the employer who must oversee contract negotiation and administration. For example, if the employees in a department of corrections were represented by fifteen different bargaining units, the resulting work for the administrators of the department would be excessively complex and time-consuming. They might have to be involved in the negotiation of fifteen separate contracts with the fifteen different bargaining units. In addition, the department might have to implement and administer fifteen separate collective bargaining agreements, each with its own unique provisions. "Fragmentation" is the word commonly used to refer to this kind of situation.

Another criterion mentioned above is "effective representation." This term refers to an employee's right to belong to a bargaining unit that will adequately represent his concerns in both the negotiation and the administration of the contract. Recently, in Washington, the 280 state probation and parole officers, the officers for both juveniles and adults, petitioned for a bargaining unit

of their own, arguing that they had not been adequately represented in the 4,500-member public assistance bargaining unit. The petition was granted by the state personnel board, which, in determining bargaining units, observes the following four criteria: (1) the duties, skills, and working conditions of the employees, (2) the history of collective bargaining engaged in by employees and their representatives, (3) the extent of employee organization, and (4) the desires of the employees.[11] Unlike some jurisdictions, the State of Washington--by virtue of both the philosophy of the administering agency and the state's criteria for determining bargaining units--permits a continual revision of bargaining units.

In different jurisdictions, then, administrative agencies and legislative bodies use different criteria for determining bargaining units. The criteria seem to come from among the following: community of interest, efficiency of operation, effective representation, separation of professional from non-professional employees, the history of collective bargaining among the employees, the extent of employee organization, and the desires of the employees.

The jurisdictions studied for this report have divided their employees into bargaining units in a variety of ways. In New York State, for example, if we exclude university faculty and state police, we find only five bargaining units for approximately 160,000 state employees; but in Washington there are 50 bargaining units for 22,000 employees (and the smallest unit, which represents employees in the Lands Division of the Department of Natural Resources, contains only twelve employees).

Although it is interesting to consider the various types of bargaining units the research jurisdictions have created for state employees, for the purposes of this report it is of primary importance to consider the bargaining units created for the employees of state departments of correction. Table 4-4 indicates what kinds of bargaining units have been established for state correctional employees in the sixteen research states.

In California and Michigan, which continue to use meet-and-confer procedures, the determination of bargaining units has not yet taken place. Both states, however, have established rules to decide whether a particular employee organization will be permitted to engage in the meet-and-confer process. In Michigan at this time, approximately 50 percent of the state classified employees are organized by six employee organizations on a departmental or institutional basis. In addition, the recognition of employee organizations is based on a policy of multiple rather than exclusive representation rights. California has a similar criterion for recognition and also has multiple representation.

In three of the states we have studied--Connecticut, Florida, and Indiana--bargaining units for correctional employees are currently being determined. Florida is trying to institute six statewide bargaining units: law enforcement, human services, clerical, administrative, professional, and supervisory. The human services unit, which would contain approximately 13,000 employees statewide,

Table 4-4 Bargaining Units for State Correctional Employees in the States Researched

California	No bargaining units
Connecticut	Currently being established
Florida	Currently being established
Illinois	Agency bargaining unit--employees of Department of Corrections
Indiana	Currently being established
Louisiana	Agency bargaining unit--employees of Department of Corrections
Massachusetts	Statewide bargaining units
Michigan	No bargaining units
New Jersey	Statewide bargaining units
New York	Statewide bargaining units
Ohio	Agency bargaining units--employees of Department of Rehabilitation and Correction
Oregon	Institutional bargaining units--employees at each institution within the Division of Corrections form a bargaining unit.
Pennsylvania	Statewide bargaining units
Rhode Island	Agency bargaining units--employees of Department of Corrections; and statewide bargaining units.
Washington	Agency bargaining units--institutional employees of Department of Social and Health Services
Wisconsin	Statewide bargaining units

would include the correctional officers from the Department of Offender Rehabilitation. Although in February 1976 this unit was agreed upon, through a "consent agreement," by both the American Federation of State, County and Municipal Employees (AFSCME) and the state's Department of Administration (the employer's representative) and although the agreement was approved by the Public Employees' Relations Commission, no election has yet been held. The election has been delayed pending the disposition of a petition by the Laborers' Union, which contends that it has sufficient membership among employees in the human services unit to be placed on the ballot alongside AFSCME.

In Connecticut, the state's Board of Labor Relations is attempting to establish statewide bargaining units but, as of mid-1976, had not yet established them for all kinds of employees. But despite its goal of instituting statewide units, Connecticut has established a unit especially for correctional employees. It consists of those employees who are responsible for the direct supervision of inmates--namely, correctional officers, industrial shop instructors, and food service employees. A representation election for this unit, held in the late spring of 1976, was won by AFSCME. In Indiana, the determination of bargaining units for correctional employees has been suspended pending a decision as to the constitutionality of legislation regarding collective bargaining for state employees. The 1975 Indiana Public Employee Labor Relations Act was declared unconstitutional by the Benton

County Circuit Court in early February 1976.[12]

Among the eleven research jurisdictions that have established bargaining units for correctional employees, some jurisdictions have statewide bargaining units, others have bargaining units divided according to agency, and still others have a combination of statewide units and agency units. In Louisiana, Ohio, and Illinois, virtually all employees of state correctional institutions belong to a single department-of-corrections bargaining unit. In Illinois, in fact, clerks working in the department of corrections have been reclassified as "prison clerks" so that they can belong to the departmental bargaining unit rather than a statewide unit for clerical personnel. In Ohio, administrative regulations set forth in 1975 determined that all correctional personnel would belong to a single departmental bargaining unit.[13] Before 1975, a separate bargaining unit existed at each correctional institution. A unique feature of Ohio's bargaining unit for correctional personnel is that, under the current administrative orders, several different employee organizations may represent the employees in that one bargaining unit. Any employee organization that has enrolled 30 percent or more of the employees in the correctional department bargaining unit may represent its members in grievance procedures and may enter into collective bargaining agreements with the Department of Rehabilitation and Correction.

Rhode Island contains both statewide bargaining units and departmental units. There are two departmental units for correctional

personnel--one for employees and one for supervisors--both of which are represented by the Rhode Island Brotherhood of Correctional Officers. The unit for employees includes a wide range of workers from the Rhode Island Department of Corrections, from accountants to correctional officers to clerk-typists to woodworking instructors. Other statewide bargaining units exist for professional employees such as nurses.

The State of Washington has an unusual kind of bargaining unit for correctional employees. The state's Adult Corrections Division is part of the larger Department of Social and Health Services, which administers the divisions of mental health and public assistance as well as corrections. There is an agency-wide bargaining unit within the Department of Social and Health Services which includes all eligible employees in the mental health and correctional institutions.

In the remaining research jurisdictions--Massachusetts, New Jersey, New York, Pennsylvania, and Wisconsin--state employees belong to statewide bargaining units. In Massachusetts, apart from state police, there are ten statewide units, eight of which include correctional employees. The bargaining unit with the largest number of correctional personnel is the institutional security unit, which contains not only correctional officers but also other state employees "whose primary function is the protection of the property of the employer, protection of persons on the employer's premises, and enforcement of rules and regulations of the employer against

other employees."[14] Correctional officers, however, constitute a majority of this bargaining unit.

In New York, correctional employees are represented in five bargaining units: the security services unit, the operational services unit, the institutional services unit, the administrative services unit, and the professional, scientific, and technical services unit. Correctional officers constitute a majority in the security service unit, which also contains other security personnel such as park rangers, vault guards, and museum caretakers.

In Pennsylvania, correctional employees are represented in several statewide bargaining units, including the social and rehabilitative services unit, the maintenance and trade unit, the clerical, administrative and fiscal unit, the human services unit, and the corrections officer and psychiatric security aid unit. That last unit is composed primarily of correctional officers who work in the state correctional institutions. Although it is a statewide unit like Pennsylvania's other units, a majority of the job classifications contained in this unit are found only in the Pennsylvania Bureau of Correction.

In New Jersey and Wisconsin, two other jurisdictions with statewide bargaining units, the units that contain correctional officers--the "law enforcement" unit in New Jersey and the "security and public safety" unit in Wisconsin--contain also a wide variety of law-enforcement and public-safety employees; but in both these units the correctional officers form a large and influential group.

The structure of bargaining units is important for two reasons. First, the nature of a bargaining unit may determine whether a particular group of employees belonging to that unit can effectively promote their demands. In Florida, for example, the 15,000-member "social service" bargaining unit contains only 3,000 correctional officers, so that the officers have much less influence on the process of collective bargaining than they would if they constituted a majority of the members. Secondly, the structure of bargaining units helps to determine which employee unions and associations win the right to represent correctional employees.

In states that do not specify the bargaining units in the enabling legislation, employee organizations do much to determine bargaining units by means of lobbying and filing petitions with public employee relations commissions. The employee organizations work toward the establishment of bargaining units in which they would be likely to win rights of representation. To use an over-simplified illustration, an organization for correctional officers might press for a bargaining unit containing only correctional officers, whereas a state employees' association might press for one statewide bargaining unit containing all state employees.

In those jurisdictions in which an agency bargaining unit exists for employees of the department of correction, the unit is usually controlled by correctional officers. This happens primarily because correctional officers outnumber the other employee groups in correctional agencies and because the officers occupy a position

of greater influence within correctional institutions. Correctional officers prefer to have a bargaining unit of their own or to be part of a unit limited to the employees of a department of corrections. If neither goal can be achieved, the officers may try to develop a bargaining unit with other state law-enforcement personnel. In California, for instance, the California Correctional Officers Association is currently attempting to develop an association containing all state law-enforcement employees (except the highway patrol). The reason is clear. California may soon enact legislation permitting state employees to bargain collectively, and leaders among the state's correctional officers, perceiving that statewide bargaining units are likely to be formed, wish to set the precedent, and establish the history, of a statewide law-enforcement unit, so that, in California, correctional officers will not be placed in a "human services" bargaining unit with other employees of "human service" agencies.

The determination of bargaining units is significant for still another reason: the nature of the bargaining units can influence the very process of negotiations. Centralized bargaining with statewide units often leads to the standardization of state employees' economic benefits and conditions of employment. But in a situation like that which recently existed in Massachusetts, in which a separate bargaining unit was formed for the correctional employees at each institution, the various institutional contracts exhibited important differences. One result is that correctional

employees at different institutions may receive different benefits and rights. Another is that the differences among the contracts significantly complicate the task of the correctional managers who must administer the various contracts.

But even if a state has statewide bargaining units, and even if collective bargaining occurs at a higher level of government than the correctional agency, contracts often provide that issues regarding local working conditions may be negotiated at the departmental or institutional level. A situation of this kind exists in New York, where provisions in the contracts for the Civil Service Employees' Association call for departmental and institutional negotiations over local issues. This process, referred to as "multi-tier bargaining," will be discussed in detail in a later chapter.

Oregon exhibits even greater complexities with respect to bargaining units and their role in collective bargaining. A separate bargaining unit exists for the correctional personnel at each institution, and issues regarding local working conditions are negotiated at the institutional level. But wage negotiations are held under the auspices of the statewide Executive Department of Employee Relations. For these statewide negotiations over wages, the correctional units form a coalition--a coalition involving two different employee organizations, since the Oregon State Employees' Association represents the bargaining unit at the Oregon State Prison and AFSCME represents the bargaining units at the other state correctional institutions.

One further impact of the determination of bargaining units remains to be discussed--namely, the effect on conflicts among employee groups in correctional agencies, and specifically the conflict between custody staff and program staff. In states with statewide bargaining units, custody and program staff frequently belong to different bargaining units and are represented by different employee organizations. In Pennsylvania, for example, correctional officers are represented by AFSCME, while social workers and correctional counselors belong to the social and rehabilitative services unit, which is represented by the Service Employees' International Union (SEIU). In the State of New York, correctional officers belong to the security services unit, which is represented by AFSCME, while program staff working in the institutions of the Department of Correctional Services are represented by the Civil Service Employees' Association. And in New Jersey, correctional officers belong to the law enforcement unit, which is represented by the New Jersey State Policemen's Benevolent Association, while most treatment staff belong to the health, care and rehabilitation services unit, which is represented by AFSCME. In situations such as these, the tension between custody and program staff is often intensified by competition between their employee organizations.

A great deal more might be said about the implications of the process by which bargaining units are determined, particularly

about the legal and political maneuvering that takes place during the process of determining units. Our brief discussion has tried merely to indicate the differences among bargaining units for correctional personnel in the research jurisdictions and to show some of the effects that different kinds of bargaining units may have on agency administration, the choice of employee organizations, and the process of collective bargaining.

One problem connected with bargaining units has scarcely been mentioned--that is, the problem of deciding which particular groups of employees belong to a bargaining unit once the general nature of the unit has been determined. Certain jobs seem particularly difficult to categorize. For instance, should a vocational training instructor working in a correctional facility become a member of a law enforcement unit or a rehabilitative services unit? Valid arguments could be offered in favor of either alternative. Issues of this kind are usually resolved by a process of hearings involving the state employer, the public employee relations commission, and the organizations attempting to represent the bargaining units in question.

In addition, the legal frameworks provided in most states exclude certain groups of employees from participating in collective bargaining. The following pages will discuss the implications of excluding certain personnel from collective bargaining and the impact of this phenomenon on the administration of correctional agencies.

Managerial, Confidential, and Supervisory Personnel

Within the jurisdictions studied, legal frameworks for state employee collective bargaining have set forth criteria for excluding managerial and "confidential" employees from collective bargaining and, in some cases, for limiting the collective bargaining rights of supervisory employees and requiring that supervisory employees be placed in bargaining units different from those that contain the employees they supervise. The definitions of managerial, confidential, and supervisory employees vary among the jurisdictions.

In legal frameworks, public-employer management is commonly defined in terms similar to those found in the Wisconsin statute: ". . . management includes those personnel engaged predominantly in executive and managerial functions, including such officials as division administrators, bureau directors, institutional heads and employees exercising similar functions and responsibilities as determined by the Employment Relations Commission."[15] In Wisconsin, as in most of the other states studied, the public employee relations commission is delegated the authority to rule on which state positions are managerial and, as a result, are excluded from collective bargaining.

In many states, during the early stages of public-sector labor relations, public administrators did not recognize the implications of including what might be considered management personnel in the bargaining units. In New York, for example, during the 1967 hearings before the state's public employment

relations board on the question of which correctional employees would be excluded from the security services bargaining unit, the counsel for the state argued that New York considered "the whole department as a bargaining unit" and that "wardens are employees like everyone else. They are not managerial help." After further discussion the hearing officer paraphrased the state's position: "Everybody in the Department of Correction would be in the general unit except the Commissioner of Correction, his deputies, counsel to the Department of Correction and the Director of Personnel and any deputy that he may have of that department; that they would be the only ones excluded as managerial employees."[16] In later hearings the commissioner of the Department of Correction (now Department of Correctional Services) asserted that more employees should be classified as managerial, but the earlier hearing demonstrated the kind of confusion that has often surrounded such questions as how management personnel in corrections should be defined and whether such personnel should be included in collective bargaining.

Most state legislation excludes confidential employees from collective bargaining. The definition of a confidential employee is usually similar to the one found in the Oregon statute, in which a confidential employee is "one who assists or acts in a confidential capacity to a person who formulates, determines and effectuates management policies in the area of collective bargaining."[17] Again, it is the public employee relations commission

that rules on which state employees are classified as confidential and are excluded from collective bargaining.

The legal frameworks in many states have used the private-sector definition of a supervisory employee in defining public-sector supervisors. The private-sector definition, as stated in the Taft-Hartley Act amendments to the National Labor Relations Act (NLRA), characterizes a supervisor as "any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay-off, recall, promote, discharge, assign, reward, or discipline other employees or responsibility to direct them or to adjust their grievances or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment."[18] Under the National Labor Relations Act, supervisors are neither granted protected collective bargaining rights nor prohibited from exercising such rights. Thus, private-sector management is not required to bargain collectively with organizations representing supervisors, although it may legally do so.[19]

A difficulty arises, however, when one applies the private-sector definition of "supervisor" to public employees. As Wellington and Winter have pointed out, many employees in the public sector who are classified as supervisory under the NLRA definition do not actually perform supervisory duties since their authority is often limited by civil service regulations and other

statutory restrictions.[20] For instance, in a prison, a sergeant, although he may have supervisory authority over other employees, is more of a lead worker than a supervisor. The sergeant, for example, has little authority even to "effectively recommend" the hiring, firing, rewarding, or disciplining of employees.

In California, the final report of the Assembly Advisory Council on Public Employee Relations, chaired by Professor Benjamin Aaron, offered recommendations regarding the difficult questions of what constitutes a supervisory employee in the public sector and what should be the collective bargaining rights of a supervisory employee. The report advocated a stringent definition of the supervisor, such as exists in the State of Washington, which "identifies those who actually supervise, as distinguished from those who carry the title but do not perform supervisory duties."[21] The report also recommended that the collective bargaining status of public-sector supervisors should be the same as it is under the NLRA and the Wisconsin State Employment Labor Relations Act.[22] Those statutes provide that supervisors are not given protected collective bargaining rights but, on the other hand, are not prohibited from collective bargaining. In addition, the report suggests that supervisors should have their own bargaining units separate from those that contain the employees they supervise.

Our research jurisdictions have dealt with the issues surrounding supervisory employees' collective bargaining rights in a variety of ways. Some jurisdictions, such as Pennsylvania,

exclude supervisory personnel from collective bargaining and allow such personnel only to engage in meet-and-confer procedures and to enter into memoranda of understanding with their employers. Pennsylvania does not include sergeants among supervisory personnel, but it does include lieutenants.

In Massachusetts, however, supervisory personnel are not excluded from collective bargaining or from being members of the same bargaining unit as the employees they supervise. Thus not only correction officers but also "senior" correction officers (i.e. sergeants) and "supervising" correction officers (i.e. lieutenants) all belong to the "institutional security" bargaining unit and may all engage in collective bargaining.

Nevertheless, although Massachusetts and Pennsylvania differ markedly as to which correctional personnel are labeled supervisory and which are barred from collective bargaining, the actual number of employees excluded from collective bargaining does not vary much from one state to the other. In Pennsylvania a correctional institution employing two hundred custody personnel would exclude approximately sixteen of them from collective bargaining: eight lieutenants, five captains, one major, the deputy superintendent for operations, and the superintendent. In Massachusetts an institution of the same size would exclude approximately seven employees: five assistant deputy superintendents, the deputy superintendent, and the superintendent.

In Florida, the determination of bargaining units is currently

under way. Recent proposals favor placing correctional officers and sergeants in a social services unit and lieutenants and perhaps captains in a statewide supervisory unit. Thus, again, only a handful of custody personnel would not belong to a bargaining unit.

In Illinois, correctional officers and sergeants are included in the departmental bargaining unit; lieutenants and those with higher ranks are not. Rhode Island has two bargaining units containing custody personnel: one for correctional officers and sergeants, and a supervisory unit for lieutenants, captains, and even deputy superintendents. In New Jersey, correctional officers and senior correctional officers (i.e. sergeants) belong to the law enforcement unit, whereas lieutenants, who have the right to join a statewide supervisory unit, are not yet represented. A similar situation exists in Wisconsin, where lieutenants recently have been granted limited rights to collective bargaining but have not yet been placed in a supervisory bargaining unit. In Washington, lieutenants, together with correctional officers and sergeants, belong to the institutional bargaining unit of the Department of Social and Health Services.

Thus, in our research jurisdictions virtually all custody personnel belong to employee bargaining units. This fact has significant implications for the operation of the prison systems in those jurisdictions. In the event of a strike or other job action, the institution is left with almost no personnel to ensure continued operation. As a result, during strikes by correctional

officers, state police or the national guard are often called in to man the prisons.

Another fact with far-reaching implications is that, as we have seen, correctional supervisors at several levels are likely to be included in bargaining units with those that they supervise. As a result, grievance procedures may be rendered unjust by a conflict of interest, since the procedures may include first- and second-stage review by supervisors belonging to the same bargaining unit and represented by the same employee organization as the aggrieved correctional officer. In the State of New York, although correctional officers, sergeants, and lieutenants all belong to the security services bargaining unit, the employee representative, AFSCME, has created a special local that contains sergeants and lieutenants from all correctional institutions and thus excludes them from institutional locals for correctional officers. AFSCME recognized that conflict might arise among members of its own bargaining unit, and therefore restructured the unit to remove the source of conflict. Although this might eliminate some conflict of interest among the members, it does not necessarily eliminate possible conflict between the obligations of sergeants and lieutenants to management and the pressures imposed upon them by the larger group of non-supervisory AFSCME employees. Although the locals do have different officials, representatives of the locals bargain jointly with management.

The inclusion of correctional supervisory personnel in bargaining units tends to weaken, or at least complicate, the chain of command within correctional institutions. If a lieutenant belongs to the same union local as correctional officers and sergeants, he may find himself caught between conflicting demands from the superintendent of the institution and the president of the union local. Not only does this put the lieutenant in a difficult position, but situations of this kind contribute to the shifting of power and authority which is occurring in correctional institutions as a result of labor relations among correctional employees.

Summary

This chapter has sketched several features of the legal and administrative frameworks that govern labor relations among state correctional employees. We have considered the particular forms of those frameworks, the nature of the administrative agencies, the scope of negotiations, the issues involved in the determination of bargaining units, and the problems surrounding the inclusion of supervisory personnel in employee bargaining units. Now that we have examined these matters, our next chapter can focus on the structure of the actual process of collective bargaining as it occurs in correctional labor relations.

Notes

1. Florida Acts, Ch. 74-100 § 447.003 (1).

2. New Jersey Legislation: N.J.S.A. Ch. 123, L. 1974.

3. California State Personnel Board, A Perspective on Collective Bargaining in the State and Service (Sacramento: California State Personnel Board, December 1974), p. 5.

4. Public Personnel Review, January 1966, p. 52.

5. Governor's Executive Order 71-3, Policy on State Employer-Employee Labor Relations, State of California, 21 February 1971, p. 2.

6. Agreement between the State of Washington and the Washington Federation of State Employees concerning the functions of the Department of Social and Health Services Institutions, 1972.

7. Oregon Legislation: ORS § 243.630 (7) (1975).

8. Wisconsin Legislation: WSA Ch. 212 § 111.91 (1)(c) (1974).

9. Pennsylvania Act 195, Article VII, § 702 (1970).

10. Massachusetts Legislation: M.L.G.A. Ch. 150E § 3 (1973).

11. Washington State Department of Personnel, Merit System Rules, July 1974, § 356-42-020 (4).

12. Benton Community School Corporation v. Indiana Education Employment Relations Board: Cause No. C75-141.

13. Ohio Department of Administrative Services Policy, 9 May 1975.

14. John A. Brennan, Jr. and James E. Samels, eds., A Guide to the Massachusetts Public Employee Collective Bargaining Law (Boston: Institute for Governmental Services-Institute for Labor Affairs, 1975), p. 49.

15. Wisconsin Legislation: WSA §§ 111.80-111.97 (1966), as amended.

16. New York State Public Employment Relations Board, Stenographic Record (Albany: Public Employment Relations Board, December 1967), p. 182.

17. Oregon Legislation: ORS §§ 243.650-243.782 (1963), as amended.

18. National Labor Relations Act (Taft-Hartley Act), §§ 2(3), 2(11), U.S.C. §§ 152(3), 152(11) (1970).

19. Benjamin Aaron et al., Final Report of the Assembly Advisory Council on Public Employee Relations (Sacramento: California State Assembly, 15 March 1973), p. 97.

20. Harry H. Wellington and Ralph K. Winter Jr., The Unions and the Cities (Washington, D.C.: Brookings Institution, 1971), pp. 113-14.

21. Aaron, Final Report, pp. 95-97.

22. Wisconsin Legislation: WSA §§ 111.80-111.97 (1966), as amended.

5. Collective Bargaining for Correctional Employees

The enactment of statutes, the determination of bargaining units, and the election of employee representatives are essential steps in the development of a formal structure for public-sector labor relations. But the purpose of these activities, and the most important element in labor relations, is the actual process of collective bargaining, the process by which the representatives of employee and employer negotiate a contract covering wages, hours, and other conditions of employment. In the public sector, collective bargaining is a particularly complex phenomenon.

This chapter will discuss public-sector collective bargaining as it appears in state correctional agencies. We will discuss the differences between collective bargaining in the public sector and in the private sector, with emphasis on the special complexities--political and otherwise--that enter into public-sector bargaining. Further, we will consider the extent to which collective bargaining is reducing the authority of the correctional administrator.

Collective Bargaining in the Private Sector

Private-sector collective bargaining differs from public-sector bargaining in significant ways.

Private-sector bargaining has traditionally been "bilateral," in the sense that it usually involves only two parties: the union and the management. Union and management representatives not only

negotiate but also, subject to the approval of the groups they represent, may enter into binding agreements. The representatives of the two parties are entrusted with the power to make decisions. The power is not distributed among a great many members of the two parties, nor is it entrusted to any additional parties. This is not to say that no other parties influence the bargaining. The courts, the National Labor Relations Board, and the Federal Mediation and Conciliation Service are but three government agencies that may participate as third parties in resolving bargaining disputes. In addition, agencies of the executive branch have established an increasing number of guidelines and restrictions affecting private-sector collective bargaining. For example, the federal wage and price guidelines set forth in the early 1970s clearly tended to limit employees' demands for wages and other economic benefits. Nevertheless, despite the existence of such third-party restraints on private-sector collective bargaining, the process remains essentially bilateral.

Obviously, private-sector collective bargaining is influenced by economic circumstances. Firms know they cannot make profitable decisions regarding production and marketing unless the cost of labor, as well as other costs, is kept under control. And unions know that their wage demands must take into account not only conditions in the labor market but also the economic well-being of the firms with which they are negotiating. Both labor and management know that the cost of labor can determine whether a firm succeeds or fails.

And both labor and management know that their chief power in the bargaining process resides in their ability to impose economic penalties. Labor can impose economic penalties on management by striking. Management can inflict economic penalties on employees by discontinuing operations. Chamberlain and Kuhn have suggested that bargaining power consists in one party's ability to increase the economic costs that the other party will incur by disagreeing, or to decrease the costs that the other party will incur by agreeing.[1] For example, if management remains in disagreement, the employees can threaten to increase the pressures on management by striking. Faced with the prospect of a strike, management must reassess the cost of the employees' demands and compare it with the probable cost of the strike itself and of the contractual terms that would probably be agreed on after the strike.

We mention this theory regarding bargaining power not to introduce a thorough disquisition on this most complex subject, but rather to set the stage for a discussion of the differences between collective bargaining in the private sector and in the public sector.

Collective Bargaining in the Public Sector

Juris and Feuille, in Police Unionism,[2] point out three crucial factors in private-sector collective bargaining: "(1) The union-management relationship is shaped by the constraints imposed by

economic markets; (2) for each bargaining unit a bilateral relationship exists between a single representative of the employee interest and a single, relatively monolithic organization of managers; and (3) the union's bargaining power, expressed in terms of the cost of agreement and disagreement, consists primarily of the ability to impose economic cost on management."[3] Having delineated this private-sector model, Juris and Feuille consider its applicability to the public sector in light of their research regarding police unions. In this way they develop an extremely helpful analytical model of public-sector collective bargaining.

They conclude that public-sector bargaining differs from private-sector bargaining in each of the three factors just mentioned. In public-sector bargaining, (1) the chief influences on the union-management relationship are political rather than economic; (2) the union-management relationship tends to be multilateral rather than bilateral; and (3) bargaining power depends on the imposition of political rather than economic costs.[4]

The political influences on public-sector labor relations are readily understood. The agencies of state governments are operated by elected officials and their appointees, people who must be acutely aware of the political context in which they work. More specifically, state correctional systems are usually administered by people appointed by the governor. Although administrative ability may be one of the criteria used in selecting the director of a department of corrections, political philosophy and political

sophistication are also important criteria.

A second reason for the importance of the political context is that government agencies typically do not sell their goods or services in a competitive market. Correctional agencies do not sell their services to inmates or to the inmates' victims; instead, the agencies are financed by general tax revenues. And obviously decisions regarding tax rates and the allocation of tax revenues are highly political.

Because political influences are so important in public-sector labor relations, the power of employee groups lies in their ability to impose political costs on government administrators and elected officials. Political costs can take many forms: lack of support during an election campaign, opposition to programs supported by unfriendly politicians, and so forth.

Even though political issues are so important in public-sector labor relations, economic issues should not be ignored. In public-sector collective bargaining, employee organizations seek to increase their members' economic benefits, while management tries to increase the efficiency and effectiveness of government programs. Nevertheless, it remains true that for elected officials and their appointees, the chief issues are political rather than economic. In the words of Juris and Feuille, "The union-management relationship in the public sector is shaped immediately by the constraints imposed by political markets rather than economic markets. . . . Thus, the union's bargaining power in the public sector consists

of its ability primarily to manipulate the political costs of agreement and disagreement of the various managers rather than the economic cost manipulation that characterizes union power in the private sector."[5]

As we have said in previous chapters, state correctional employee organizations seem to have an inordinate amount of power for organizations of their size. Perhaps one explanation for this is that correctional employee organizations can impose high political costs on elected officials and correctional management. Corrections has been highly politicized in the 1970s. State and local political candidates feel obligated to assert platform positions regarding law enforcement and criminal justice. Whether a candidate does or does not receive support from correctional employee organizations can markedly influence the outcome of an election. During the early 1970s in Massachusetts, adult and juvenile corrections was one of the most widely debated political issues. Correctional employee groups opposed the governor's correctional programs, and this opposition became one of the chief reasons for the governor's failure to gain reelection.

The imposition of political costs can also take place in the internal workings of both union and management. Consider, for example, how easily political costs can be imposed on union leaders. As elected officials, union leaders must answer to their constituency. Therefore, management can impose political costs on the leaders by damaging their relations with their constituency. Management can

do this by failing to respond to the leaders' proposals and by informally entering into understandings with opposing factions within the employee organization.

On the other hand, employee organizations can impose political costs on management. For example, public employee organizations are increasing their efforts to influence the appointment of correctional administrators and to remove administrators not sympathetic to employees' concerns. Employee organizations have engaged in such political activities in several of the jurisdictions studied for this report. In Massachusetts, in 1973, employee organizations successfully demanded the firing of a commissioner of corrections who wanted the department to emphasize community-based rather than institution-based programs. And in Pennsylvania, in 1975, a national public employee organization attempted, unsuccessfully, to dissuade the governor from appointing a liberal reformer to head the state's correctional programs for juvenile offenders.

One difference, then, between private-sector and public-sector collective bargaining is that in the public sector the political context becomes vastly important. Another difference noted by Juris and Feuille is that public-sector bargaining is multilateral rather than bilateral. Numerous researchers have pointed out that public-sector bargaining involves more than two groups. In 1968, McLennan and Moskow emphasized that community interest groups will often act as the third party in public-sector negotiations.[6] Juris

and Feuille refined the theory of multilateral negotiations by indicating that the union-management bargaining process might be affected not only by citizens' groups but also by various elected and appointed officials not officially responsible for labor relations. In the cities studied for their report, Juris and Feuille found that public-sector multilateral bargaining occurs "because of union exploitation of the divided managerial authority structure and the 'political' nature of holding municipal office."[7]

Although Juris and Feuille's research was concerned with municipal labor relations with police unions, our research on state correctional labor relations has indicated that there, too, multilateral bargaining is the general rule. Of course, state governments differ from municipal ones in both structure and procedure. For example, state legislatures differ in membership and operating practices from the city councils found in most municipalities. In addition, there is a greater separation of power between the state executive and the state legislature than exists between the executive and legislative branches of municipal governments. Such differences, however, in no way contradict the fact that collective bargaining for state employees in multilateral.

But in order to describe collective bargaining in state correctional agencies, we must add a few complexities to the multilateral model developed by Juris and Feuille. Juris and Feuille postulate that "for each bargaining unit in the public sector, there tends to exist a multilateral relationship between a single

representative of the employees and a multi-faceted or fragmented organization of managers representing diverse interest groups."[8] This may be the case for collective bargaining that involves municipal police, but our research indicates that in collective bargaining in state corrections, one is likely to find "multi-faceted" or "fragmented" representation on the employees' side as well as the management's. Frequently contracts must be negotiated with several bargaining units, perhaps units that must compete among themselves for contractual benefits. Sometimes a single contract must be negotiated with a coalition of employee representatives, and occasionally the representatives are involved in an interorganizational rivalry.

The important point here is that public-sector collective bargaining cannot be viewed as a series of discrete interactions between a single employee bargaining unit and a multi-faceted management. Instead we find a complex process in which coalitions of bargaining units and coalitions of employee representatives negotiate for their common and differing interests with a multi-faceted management. Even if negotiations involve only a single bargaining unit, those negotiations will be influenced by other negotiations with other bargaining units.

Thus it becomes extremely complicated to negotiate agreements that will cover all the employees in a state department of corrections. Because the employees tend to belong to more than one bargaining unit and more than one employee organization, management

often must negotiate with more than one unit and more than one organization. Moreover, as we have seen, a complex group sits on the employer's side of the bargaining table as well as the employee's. Hence we must use the term "multilateral" rather than "bilateral" in referring to collective bargaining for correctional employees.

And even more parties are involved than we have mentioned. Other frequent participants in the process are the courts, the labor relations neutrals, the public employee relations boards, and the general public. We must now consider the roles these parties can play in the collective bargaining process.

The Employer in Collective Bargaining

In all the research jurisdictions that have enacted comprehensive collective bargaining for state employees, a specific department or division has been given the responsibility of negotiating with state employee organizations. In most of the research jurisdictions, though not in all of them, this entity is referred to as the "office of employee relations." The exact position this office occupies in the government hierarchy varies from one state to another, but there are two predominant patterns. In Florida, Indiana, Massachusetts, Pennsylvania, Rhode Island, and Wisconsin, the office of employee relations is a division of the department of administration. Customarily, a state department of administration reports to the governor and has the responsibility for making policy, seeking compliance, and reviewing activities

in the budgetary and personnel matters of the executive branch. In the second pattern found in the research states, the office of employee relations reports directly to the governor. In Illinois, New York, New Jersey, and Oregon, the office of employee relations is a part of the governor's executive office.

In the states referred to in the previous paragraph, the office of employee relations (under whatever title it has been given) is charged with negotiating all labor agreements with state employee bargaining units. In doing so, the office represents all the various state departments and acts as chief negotiator for contracts covering their employees. It is important to note that, given the trend toward statewide bargaining units rather than agency units, offices of employee relations usually negotiate collective bargaining agreements that cover the employees of more than one agency. For example, a contract negotiated by the New York State Office of Employee Relations and the state's "administrative services" bargaining unit would apply to clerical employees throughout the state government, no matter which agency they worked for.

In the three research states that do not allow state employees to bargain collectively over wages, the responsibility for collective bargaining is handled quite differently. In these states--Louisiana, Ohio, and Washington--in which bargaining units are generally divided according to agency, the chief responsibility for bargaining with correctional employees rests with the agency

director and his appointed representatives. In Louisiana, in the spring of 1975, the director of the Department of Corrections, with two of his subordinates, negotiated the department's first contract with correctional employees. In Ohio, representatives of the director of the Department of Rehabilitation and Correction negotiate collective bargaining agreements with correctional personnel, subject to the director's approval. And in the state of Washington, representatives of the secretary of the Department of Social and Health Services negotiate agreements covering all personnel employed at the 24 state institutions under the secretary's jurisdiction.

It is important to consider precisely how management handles its role in collective bargaining. In the eleven research states that permit comprehensive collective bargaining for state employees, the chief negotiator for management is part of the state's office of employee relations. Such offices, as we have said, report either to the office of the governor or to the state's department of administration. Thus, the chief negotiator for management--the person responsible for negotiating with correctional personnel--has no formal responsibility for operations in the state's correctional agency, nor is he responsible to the director of that agency.

The state's chief negotiator must try to achieve the greatest possible benefits--both political and programmatic--for his ultimate employer, the governor. In addition, the government negotiator works closely with other professionals in the field of labor relations; he relies on these fellow professionals for their help

on the job, and possibly for their help in gaining advancement in the rapidly growing field of public-sector negotiations. The state negotiator's ties with the governor and with his fellow professionals are extremely important. As a result of those ties, when the state's negotiator deals with issues pertaining to correctional employees, he may have guidelines and goals different from those that would be deemed important by the director of a department of corrections. The state's negotiator may enter into collectively bargained agreements that satisfy the governor's desires regarding labor relations but do serious damage to the governor's correctional programs.

Other factors, too, may cause contract negotiations to be harmful to the operation of correctional agencies. First, we have found that, generally speaking, state negotiators do not understand the unique features in the workings of such agencies. Second, although attempts are sometimes made to let correctional administrators contribute their information and ideas to the bargaining process, communications tend to break down during the intense final stages of negotiations. At that time, the state's negotiator pays less attention to the thoughts contributed by agency administrators and more attention to the wishes of his supervisors.

In the research states we have seen numerous situations in which the state negotiator has bargained with employee groups regarding specific operations of the state's correctional facilities and yet has carried on the bargaining without the knowledge, or even against the wishes, of the state's correctional administrator.

Three illustrations will be particularly helpful in clarifying this point.

In early 1971, just months before the tragic riot at Attica State Prison in New York, the new director of the state's Department of Correctional Services was faced with an employee organization's demand that all assignments for correctional officers, both shift assignments and specific post assignments, be based on a seniority bidding system. The director, believing that such a contract provision would prevent him and his superintendents from satisfactorily administering the state's prisons, informed the state's chief negotiator--the director of the governor's office of employee relations--that he would rather undergo a strike than agree to such a demand. Then he implemented a strike contingency plan and notified his superintendents that a strike by correctional officers was imminent. During the evening before the strike was scheduled to begin, the director was called to the bargaining table by the state's chief negotiator. The director was unable to resolve the disagreement with the union, and he reports that after leaving the negotiations he notified his staff that the strike would begin in the morning. It has been reported that in the early morning hours, the state's chief negotiator discussed the situation with the governor and then agreed to a contract with the union--a contract that contained the disputed seniority bidding system for determining post and shift assignments. This action was taken without the approval, and even without the knowledge, of the director of

corrections. The director awoke in the morning to be told that the seniority bidding system had been agreed to, a system that would significantly reduce management's ability to put particular correctional officers on the posts and shifts that most needed their particular skills. The chief criterion for job assignments was now seniority.

In 1973, in Pennsylvania, the Bureau of Labor Relations, a division of the Department of Administration, entered into a contract covering ten bargaining units represented by the American Federation of State, County and Municipal Employees. One of the ten bargaining units was composed of correctional officers and psychiatric security aides. A certain section of the multi-unit agreement created a tangle of difficulties. The section stated that "all employees' work schedules shall provide for a fifteen-minute paid rest period during each one half work shift. The rest period shall be scheduled whenever possible at the middle of such one half shift. The employer, however, shall be able to vary the scheduling of such period when, in its opinion, the demands of work require such variance."[9] Administrators of the Pennsylvania Bureau of Correction indicated that they had had no previous knowledge of this troublesome provision and certainly no part in developing it. It seems that for most state agencies the establishment of fifteen-minute rest periods twice a day for every employee did not create intolerable economic burdens or scheduling difficulties; but the consequences were quite different for the Pennsylvania Bureau of Correction. It found that

it had neither the manpower nor the financial resources to release correctional officers from such posts as the cell blocks or the perimeter towers for two fifteen-minute rest periods in every shift. As a result of the bureau's inability to comply with this contract provision, AFSCME filed a grievance that eventually was submitted to arbitration. The arbitrator found for the employees, requiring that the state provide two fifteen-minute rest periods in the daily schedule of every correctional officer. Moreover, those officers who had been required to remain on duty without rest periods were to be reimbursed at the appropriate rate of overtime pay--such payment to be applied retroactively to all suspended rest periods since the date of the initial grievances. Because financial and scheduling difficulties still prevented the bureau from complying with the contract provision, the Commonwealth of Pennsylvania negotiated an agreement with the union to the effect that, in lieu of reimbursement for the suspended rest periods, correctional employees would be raised one step on the state's salary scale. The initial cost to the Bureau of Correction in fiscal year 1973-74 was $1.4 million. (This amount was not paid out until fiscal year 1974-75, when it came from the bureau's annual operating budget of $48 million.) And, of course, because all correctional employees had been raised one step on the pay scale, the bureau incurred additional costs in every year thereafter.

Two important observations can be made on the basis of this example. The first is that a state negotiator, without

consulting correctional administrators, can agree to contractual provisions that might profoundly affect the operation of a correctional system. The issue here is not whether correctional employees need or deserve a fifteen-minute rest period. Instead, the issue is whether a chief negotiator should be able to agree to such a provision without consulting the appropriate correctional administrators. In Pennsylvania, the state negotiators had no idea how great an impact that one contract provision could have on the programs and budgets of the Bureau of Correction.

A second important observation is that the Bureau of Correction, in its efforts to pay for the contract provision in question, received no financial assistance from either the executive branch or the legislature--no money to increase the number of employees (and thereby permit fifteen-minute rest periods) and no money to offset the additional salary expenses that were finally required. Operating with extremely tight budgets, and faced with the costs of housing an increasing number of prisoners, the bureau was nevertheless forced to pay the required $1.4 million out of its 1974-75 operating budget, with the result that the bureau had to reduce program activities, hire fewer employees than were needed and budgeted for, and bring in its employees for overtime when the reduction in staff became critical. Thus the one contract provision regarding rest periods created enormous problems. The director of the Bureau of Correction was eventually fired, reportedly for his inability to manage finances.

Another illustration will shed additional light on these issues. In Illinois, in December 1975, the state's chief labor relations negotiator, acting for the governor, met with AFSCME to negotiate a collective bargaining agreement covering employees in the state's department of corrections. In addition to other economic provisions, the contract called for a 7-percent wage increase, on the average, for all state correctional personnel. Estimates of the total cost of the contract ran as high as $4.5 million. On the day after the contract was signed, the governor's office sent word to the director of corrections that apparently the legislature would not provide funds for the wage increases and that any additional costs resulting from the new contract would have to be paid by the department of corrections out of its current operating budget.

Admittedly, the situation in Illinois was complicated by a number of extenuating circumstances. (1) The governor, facing a primary election that he eventually lost, was seeking the support of organized labor. (2) The legal framework for collective bargaining had not resulted from legislative action but from a governor's executive order. The legislature had not approved collective bargaining for state employees. (3) The signing of the collective bargaining agreement was out of step with the normal budgetary procedures. The contract was signed in the middle of the fiscal year and was to become effective immediately. In any case, however, the signing of the contract, and the legislature's refusal to provide funds to honor the contract, had dire effects on the department

of corrections. To pay for the contract provisions, the director of corrections and his appointed superintendents were forced to curtail or eliminate valuable programs and services. Faced with staggering population increases, antiquated facilities, and inadequate educational, health, and rehabilitative programs for prisoners, the department was nonetheless forced to tighten its belt even further.

The three illustrations just given are not necessarily meant to imply that New York's new procedures for assigning jobs are untenable, or that Pennsylvania's correctional employees should not receive fifteen-minute rest periods, or that Illinois's correctional employees did not need or deserve their 7-percent increase in wages. Instead, the point to be made here has to do with the very nature of the process of collective bargaining, and particularly with one apparent result of the process--namely, its tendency to shift a measure of decision- and policy-making authority from the state's chief correctional administrator to the state's chief negotiator.

As we have pointed out, the states studied for this report have tended to develop statewide bargaining units and to place the responsibility for negotiations in a single office of employee relations. Given the development of statewide units that cut across agency divisions, the reliance on only one office, or one person, to handle negotiations for the state would seem to be appropriate. Certainly, this centralization of the responsibility for negotiations helps in the development and implementation of

a single statewide strategy for collective bargaining. Nevertheless, the pattern does tend to create the problems we have been examining. And to avoid these problems, state administrations must take preventive measures--three measures in particular.

First, it is critical that the state negotiator and the directors of the various state agencies establish channels of communication. The negotiator and the directors must meet and confer at appropriate times, especially just before negotiations begin and while they are in progress. A director of corrections must be able to offer his thoughts about all features of the negotiations, from general policies to specific contract clauses. (We might add that there is also need for labor relations conferences between the director of corrections and his institutional superintendents, so that he and the superintendents can readily discuss the impact which proposed contract provisions might have on the correctional institutions.)

Second, a remedy must be found for the diffusion of authority that currently tends to exist between the agency director and the negotiator. If the director and the negotiator disagree over a proposed contract provision, which party is to have the final authority? Our own recommendation is that the ultimate authority should rest with neither of the two parties. Instead, we recommend that a procedure be established for resolving such managerial disputes. And the procedure should include a process of appeal, so that any unsolved conflicts could be taken to a designee of the governor or to the governor himself, who would then act as the ultimate determiner of policy.

Third, before a contract is signed, the cost of its provisions must be carefully estimated. The agency administrator should be told which costs would be assumed by the current operating budget and which ones would be covered by additional appropriations. This analysis might take the form of an operational and fiscal "impact statement." If a statement were deemed unsatisfactory by an agency administrator, the questionable points could be submitted to the procedure for resolving managerial disputes.

These measures would serve three important functions. First, they would meet the critical need for adequate two-way communication between state agencies and the state negotiator, and would establish a formal channel for the flow of information. Second, the measures would allow for the fact that conflicts may exist between the negotiator and an agency director. The procedure for resolving management disputes would systematically permit the presentation of conflicting proposals to an appropriate higher authority. Third, the measures would answer the need for an assessment of the impact that contract provisions would have on both individual agencies and the state structure as a whole. To require impact statements would serve as an impetus for both the realistic analysis of the costs of collective bargaining agreements and for the development of financial and operational relief for affected agencies.

The Role of Employee Organizations

The previous sections of this chapter have reviewed the organizational structure by which management handles public-sector collective bargaining in our research states. We will now turn to the means by which employee organizations handle such bargaining.

The nature of the bargaining units for correctional personnel was discussed in an earlier chapter. Of the research states that have determined bargaining units, five have agency or institutional bargaining units, five have statewide units, and one--Rhode Island--places correctional personnel in both agency and statewide units. Three states--Connecticut, Florida, and Indiana--are in the process of determining bargaining units as this report is being written. California and Michigan, as we have said, have not permitted employee representatives to engage in collective bargaining but only in meet-and-confer procedures.

Once bargaining units have been determined, the process of selecting employee organizations begins. Most states that enable state employees to bargain collectively give exclusive rights of representation to the employee organization chosen by a majority of the employees in a particular bargaining unit. This means that once an organization has been chosen, it has the exclusive right to represent all the employees in a bargaining unit for the purposes of collective bargaining and the administration of contracts. The employer has both a positive duty to bargain collectively with the exclusive bargaining representative and also a negative duty

not to bargain with anyone else, including not only minority unions but also individuals and groups of employees within the bargaining unit. Usually state statutes provide that once an organization has been certified as the exclusive agent of a bargaining unit, its status cannot be challenged by another organization until at least a year has passed or if a collective bargaining agreement is in effect. (Collective bargaining agreements are usually limited by state law to a term of not more than three years.)

There are two ways in which an employee organization can gain the right to be the exclusive representative for a bargaining unit. First, an organization can submit evidence that it represents a majority of the employees in the unit and can request voluntary recognition by the employer. Second, if there are questions as to which organization is entitled to represent the unit, a public employee relations board, or its equivalent, can conduct a secret election to determine which organization the employees prefer.

In the research states, a state or national union or association usually wins the right to represent bargaining units that include state correctional employees. The state leadership of the state or national union or association then becomes responsible for negotiating contracts, but it receives advice from regional and local organizations, and it usually must seek contract ratification from the rank-and-file membership.

Different employee organizations develop their state, regional, and local associations in different ways. And any one organization

is likely to take different forms in different states. AFSCME, which represents more correctional officers than any other employee organization, tends to establish institutional locals for correctional personnel. The locals are then responsible to the AFSCME state council, either directly or through a regional organization. In New York, the institutional locals for correctional officers report directly to the state AFSCME council, whereas in Pennsylvania the institutional locals report to the state council through a regional organization.

In all the research states in which AFSCME represents correctional employees, it is the state council of the AFSCME that handles negotiations with the representative of the employer. AFSCME state councils vary both in the number of employees they represent and in the types of bargaining units they represent. In New York State, the AFSCME state council--Council 82--represents only the security bargaining unit, which contains approximately 10,000 employees. On the other hand, in Pennsylvania the AFSCME state council represents ten bargaining units and approximately 76,000 employees. But in both states, despite these differences, negotiations on behalf of state employees are the responsibility of the AFSCME state councils. And in the other research states, as well as in organizations other than AFSCME, the situation tends to be the same: state employees tend to be represented at the bargaining table by the leaders in the state office of the employee organization.

Even so, the relationships between employee organizations and bargaining units can become quite complex. In Massachusetts an alliance of AFSCME and SEIU (Service Employees International Union) won the right to represent a majority of the state's eleven bargaining units. Now these AFL-CIO unions both sit at the bargaining table to negotiate jointly for the employees they represent. In Pennsylvania the AFSCME state council negotiates for ten statewide bargaining units through a process known as "multi-unit bargaining." The Pennsylvania AFSCME state council negotiates a master collective bargaining agreement for all the employees it represents and, in addition, negotiates appendices containing special provisions suited to the different kinds of employees in the different bargaining units. Such multi-unit bargaining is not uncommon. The AFSCME-SEIU alliance in Massachusetts engages in multi-unit bargaining. And in New York State, although each of the Civil Service Employees Association bargaining units has a separate contract, the contracts are virtually identical, as a result of multi-unit bargaining.

Another complex form of negotiations is known as "coalition bargaining." This is a process by which employee organizations that represent separate bargaining units engage jointly in negotiating a collective bargaining agreement. The AFSCME-SEIU alliance in Massachusetts cannot, in the strictest sense, be considered coalition bargaining, because the two employee organizations formed an alliance before winning the right to represent several bargaining units. Oregon is the only research state in which we have observed

formal coalition bargaining. In the field of corrections, a coalition of the Oregon State Employees Association (representing employees of the Oregon State Prison) and AFSCME (which represents the bargaining units at the other state correctional facilities) negotiate jointly when they bargain with the state negotiator over wages and other economic benefits.

The coalition bargaining in Oregon, in fact, applies only to wages and other economic benefits. Each separate institutional bargaining unit deals with other issues at the local level, by negotiating with each institutional administration (whose decisions are subject to the approval of the director of corrections). Thus negotiations take place at two distinct levels of the management hierarchy. This sort of bargaining, in which different kinds of issues are negotiated at different levels of management, is referred to as "multi-tiered bargaining." The complex negotiations that take place in Oregon might therefore be labeled "coalition, multi-tiered, multi-unit bargaining."

Multi-tiered bargaining occurs in other jurisdictions besides Oregon. It has been written into the contract for four bargaining units in New York State, although it has not yet been effectively implemented. The contracts negotiated by the New York State Civil Service Employees Association for its four bargaining units state that, in addition to statewide collective bargaining over issues concerning employees in general, there shall be departmental and institutional bargaining over issues that concern only the employees in a particular locale.

Multi-tiered bargaining has both advantages and disadvantages. If important economic issues are settled through negotiations at the state level, then the correctional administrator who handles only the departmental negotiation of local employment issues is severely restricted in bargaining power. On the other hand, once the correctional administrator is made responsible for local negotiations, he has greater control over the formulation of managerial priorities. Conceivably, there would be less likelihood that a contract clause would be negotiated without the negotiators fully understanding its potential impact on correctional operations. From the employees' point of view, multi-tiered bargaining has an extra advantage in that it gives the employees a second chance to achieve demands that were not achieved through negotiations at the state level.

In three of the research states--Washington, Louisiana, and Ohio--collective bargaining occurs at the agency level alone. In all three states, employee organizations are not permitted to bargain collectively over wages; instead, the organizations lobby in the state legislature and the governor's office for increased economic benefits.

In concluding this discussion of the manner in which employee organizations bargain collectively on behalf of correctional personnel, we should stress several important factors. First, in most states, correctional personnel belong to several different

bargaining units. Correctional officers may belong to one unit, professional employees to another, clerical and administrative employees to a third, trade employees to a fourth, and so on. Second, generally speaking, correctional personnel are represented by more than one employee organization. For example, the bargaining unit that contains correctional officers may be represented by AFSCME, while the unit containing teachers from correctional institutions may be represented by a state employees association. Third, although coalition and multi-tiered collective bargaining do occur in some jurisdictions, the much more typical situation is that one employee representative negotiates an agreement for one unit at a time or engages in multi-unit bargaining. Typically, too, the negotiations will involve an employee organization's state council on the one hand and the state's employer representative on the other.

The research states, then, tend to adhere to a similar pattern for formal collective bargaining for correctional employees. The pattern is not without its problems for both sides of the bargaining table. The management side is characterized by fragmented authority and by the possibility of internal idsputes over labor relations policies, correctional programs, and political goals. On the other side of the table, the employee organization state council, which frequently must represent more than one bargaining unit, is faced with the task of balancing the needs of its various employee groups and also the task of competing against the other employee organizations

that represent state personnel. An employee organization is never free from the threat that it may lose its exclusive bargaining rights for a particular unit because the employees become dissatisfied.

But formal bargaining between the representatives of employee and employer is not all that is involved in the actual process of public-sector collective bargaining. As we have seen, the process is multilateral; it involves other interested parties. In the next two sections, we will consider the two other parties that become most important in collective bargaining for state correctional employees.

State Legislatures

Aside from the various interested parties in the employee organization and the executive branch of government, perhaps the most important party that becomes involved in collective bargaining for state employees is the state legislature. Not only have the legislatures passed collective bargaining legislation in a majority of our research states, but they are also responsible for enacting any legislation or appropriations necessary for implementing a collective bargaining agreement. In none of the research states has the legislature permitted the executive branch to assume power over appropriations in order to enter into collective bargaining agreements. Even in the states that have enacted legislation permitting comprehensive collective bargaining for state employees, the power to appropriate funds to meet the provisions of collective

bargaining agreements still rests with the state legislature.

Although the ultimate power of appropriation rests with state legislatures, in our research states we have found differences in the extent to which legislatures become involved in ratifying collective bargaining agreements. In Pennsylvania, collective bargaining legislation requires that any provisions of a collective bargaining contract that depend on legislative action will become effective only if such legislation is enacted. This stipulation applies not only to budgetary appropriations, but also to all other matters requiring legislative approval. In Massachusetts, collective bargaining legislation indicates that the state employer must ask the appropriate legislative body for any appropriations necessary to pay the costs involved in a collective bargaining agreement. If the legislative body rejects the request, the relevant contract items must be sent back for further bargaining. In Florida, upon the execution of a collective bargaining agreement, the chief executive must ask the legislature to appropriate enough money to fund the provisions of the agreement. If less than the requested amount is appropriated, the chief executive must administer the agreement with whatever funds the legislature has made available. Unfunded or partly funded contract provisions are not sent back for further bargaining; they remain in effect at the level of funding authorized by the legislature.

In Wisconsin, a collective bargaining agreement between the executive branch and any certified labor organization is considered

tentative until it has gone through an elaborate legislative process. The tentative agreement is submitted to a joint legislative committee on employment relations. The committee is then required to hold a public hearing before deciding whether to approve or disapprove the tentative agreement. If either the joint committee or the legislature as a whole fails to approve the required legislation, the tentative agreement is returned to the bargaining table for renegotiation. Under the terms of the relevant Wisconsin statute, no part of a collective bargaining agreement can become effective until the entire agreement is put into effect.

State legislatures, then, play an important role in collective bargaining for state employees, although legislative procedures, and the extent to which legislative approval is required, vary from state to state. Once a collective bargaining agreement has been negotiated with the state employer's representative, employee organizations and employer representatives often lobby with the legislature to ensure approval of those contract provisions that require legislative action.

Labor Relations "Neutrals"

Another party with an important role in public-sector collective bargaining is the group commonly referred to as "third-party neutrals." These labor relations professionals, who stress their neutrality toward both management and labor, frequently act as fact-finders or assume a quasi-judicial role in settling employer-employee disputes.

In the private sector, they have served primarily in the settlement of "rights disputes," or grievances, which usually involve the interpretation or application of an existing collective bargaining agreement. In the public sector, however, neutrals are increasingly becoming involved in the resolution of "interest disputes"--disputes over the provisions of a collective bargaining agreement in the process of being negotiated. Procedures for resolving public-sector interest disputes have been established partly in an attempt to find an alternative to public employee strikes.

The techniques for resolving interest disputes range from third-party mediation to fact-finding to voluntary or compulsory arbitration, to combinations of mediation, fact-finding, and arbitration. Most of the research states have established some kind of procedure for resolving impasses in interest disputes involving state employees. Virtually all jurisdictions provide for some form of mediation and then some kind of fact-finding. Connecticut and New Jersey provide for voluntary arbitration. In Washington, the state's personnel board has binding authority over collective bargaining disputes concerned with matters other than wages. In New York and Florida, after mediation and fact-finding have taken place, the state legislature becomes the final arbitrator for impasses in the negotiation of contracts for state employees.

Of particular interest are the provisions for arbitration in Oregon, Pennsylvania, and Rhode Island. Rhode Island legislation provides for binding arbitration over all interest disputes, except

that with respect to wage disputes the arbitration decisions are only advisory. In Oregon and Pennsylvania, the labor relations legislation contains special provisions for public-safety employees, including correctional officers. The provisions call for compulsory arbitration over all bargaining impasses involving correctional officers, subject to legislative approval. In Pennsylvania, in 1976, AFSCME separated the bargaining unit containing correctional officers from its multi-unit bargaining so that the correctional officers' demands could be taken to arbitration.

One issue related to compulsory arbitration is the question of whether legislative and executive departments should be permitted to delegate their authority to private individuals. In no state in our sample has the state legislature agreed to be bound by an arbitration decision; however, state legislatures have passed laws binding local units of government to fund and implement arbitration decisions. Court challenges on this matter--in Michigan, Pennsylvania, Rhode Island, and Wyoming--have been rejected on the grounds that "the arbitrators constitute public agents or state officers when carrying out their arbitration function, or that the presence of standards and the statute for the guidance of the arbitrators is sufficient to overcome the delegation argument."[10]

Nevertheless, the procedures for resolving third-party disputes further weaken the authority of the correctional administrator. Particularly when the arbitration is compulsory, the administrator is legally required to operate his agency according to the provisions

of a collective bargaining provision formulated by a neutral third party that does not have to face the practical consequences of the contract provisions and may not understand the operation of correctional institutions.

Is binding arbitration an appropriate procedure for resolving impasses in public-sector contract negotiations? This question has been hotly debated. Not only do managers and employees disagree about this issue, but there is also disagreement within the two groups. In essence, the issue boils down to two questions: whether public employees should have right to strike, and whether arbitration is preferable to job actions on the part of public employees. Most states, as we have already noted, prohibit strikes by state employees. In our sample, the states that grant a limited right to strike to most state employees prohibit strikes by correctional officers. As a legislative compromise, correctional officers denied the right to strike are given arbitration.

But it should be stressed that strikes by correctional officers are not necessarily stopped by prohibitions against strikes or by the development of other mechanisms for resolving disputes. In Pennsylvania, in 1975 alone, correctional officers engaged in two separate strikes despite provisions for arbitration.

Labor relations professionals, employers and employees, legislative bodies, and the general public are all searching for more effective procedures for resolving the disputes that occur in public-sector collective bargaining. A number of experiments are under way.

One such experiment is taking place in Massachusetts, where compulsory "final-offer arbitration" is being used to settle interest disputes affecting police and fire-fighters. In the form it has taken in Massachusetts, final-offer arbitration requires that an arbitration panel choose, in its entirety, either the final contract offer made by the employer or the final offer made by the employees. This procedure will encourage conflicting parties to resolve their differences, but it may also lead to some very expensive and/or ill-conceived contract provisions that could damage the operation of a public-safety agency or ignore the needs and rights of employees.

An interesting side-effect of using labor relations neutrals in fact-finding, arbitration, and the framing of contracts is the reduction of political costs to both management and the leaders of employee organizations. An elected official who wants to increase public employees' wages in a time of tight budgets might thereby receive unfavorable publicity; thus he may readily agree to fact-finding or arbitration proceedings in which a third party--a labor relations neutral--can take the brunt of public outrage.

Summary

The state correctional administrator's ability to carry out his traditional administrative responsibilities is being dimished and diffused by the labor relations process. In the 1970s, as correctional problems become more severe as a result of rising prison populations

and tightened budgets, and as the public become more concerned about the effectiveness of correctional programs, the administrator's ability to solve major operational problems and policy issues is being reduced by the fragmentation of his authority and the increased complexity of administration. Increasingly, the courts, federal and state regulatory agencies, and labor relations professionals are making decisions affecting the policies and operations of correctional institutions. To be sure, this fragmentation of authority has brought about many favorable changes in program and policy, but it has also created many problems. And problems are bound to exist when managers are rapidly given added administrative responsibilities without adequate training or resources and are increasingly deprived of authority.

This chapter has shown how the negotiation of public-sector labor contracts has led to a diffusion of authority. The next chapter will consider the impact of public-sector contracts, specifically the impact on the operation of state correctional systems.

Notes

1. Neil Chamberlain and James Kuhn, Collective Bargaining, 2nd ed. (New York: McGraw-Hill, 1975), Chapter 7.

2. Hervey A. Juris and Peter Feuille, Police Unionism: Power and Impact in Public-Sector Bargaining (Lexington, Mass.: Lexington Books, 1973), pp. 41-52.

3. Juris and Feuille, Police Unionism, p. 44.

4. Juris and Feuille, Police Unionism, p. 44.

5. Juris and Feuille, Police Unionism, p. 51.

6. Kenneth McLennan and Michael H. Moskow, "Multilateral Bargaining in the Public Sector," Proceedings of the Twenty-First Annual Winter Meeting of the Industrial Relations Research Association (Madison: Industrial Relations Research Association, 1969), pp. 31-40.

7. Juris and Feuille, Police Unionism, p. 47.

8. Juris and Feuille, Police Unionism, p. 51.

9. American Federation of State, County and Municipal Employees, AFL-CIO, Locals No. 467, 2495 and 2496 v. Commonwealth of Pennsylvania, Arbitration Opinion and Award on Grievances 73-744, 73-767, and 73-768. Hearings held 4 February 1974.

10. Benjamin Aaron et al., Final Report of the Assembly Advisory Council on Public Employee Relations (Sacramento: California State Assembly, 15 March 1973), p. 216.

6. The Impact of Contract Provisions

The chief product of collective bargaining is a contract that specifies terms and conditions of employment and is agreed to by representatives of both employee and employer. In some instances contract provisions merely confirm existing policies and practices of employment, but in others the provisions significantly change the conditions of employment. This chapter will review the impact that certain widespread contract provisions are having on both the employee's working conditions and the administrator's ability to manage a state correctional system.

For the purposes of analysis, it is useful to divide contract provisions into four categories, according to whether the provisions affect (1) economics, (2) operations, (3) policies, or (4) employee organizations. Some provisions will affect more than one category. For example, a provision calling for a greater number of correctional officers in cell blocks would clearly affect operations, but would also affect economics (by requiring an increase in wage expenditures) and policies (by implying a shift in priorities: money spent on institutional staffing cannot be used for educational or therapeutic programs, or for community correctional facilities.) In thoroughly analyzing any contract provision, then, one must consider all possible effects and side-effects. Nevertheless, our present analysis will be most fruitful if we focus on the primary effect of each provision and thereby divide provisions into the four categories just mentioned.

Provisions Affecting Employee Organizations

Some provisions have to do with the security and the business concerns of the employee organization involved in negotiations. These provisions deal with such matters as time off to permit organization officials to conduct the business of the organization; the development of vehicles of communication, such as organizational bulletin boards at work sites; the deduction of organization dues from pay checks; and the development of an agency shop or some other means of ensuring the organization's security.

The provision for an agency shop usually requires that any employee not belonging to the organization certified as his exclusive bargaining representative cannot keep his job unless he pays the organization an amount equal to its fees and dues. This arrangement is sometimes referred to as a "fair-share agreement."

The research states vary as to whether or not their legislative framework for public-sector collective bargaining permits the agency shop. Certain states--such as Massachusetts, Oregon, and Washington--have passed legislation specifically providing that agency shops are legal and may legitimately result from collective negotiations. Rhode Island legislation goes even further and indicates that an agency shop shall exist as soon as a bargaining unit has gained a certified exclusive representative. Other states, such as New Jersey and New York, have legal prohibitions against provisions

calling for agency shops. But even though New York prohibits agency shops, employee organizations have obtained contract provisions that would permit them to reopen negotiations and bargain for an agency-shop provision if the legal prohibition against agency shops is removed.[1]

The establishment of agency shops and the automatic deduction of dues are particularly important to any employee organization because the funds for negotiating and administering contracts, and for enlarging the organization, are drawn primarily from initiation fees and membership dues. In states that permit negotiations over provisions for union security, such provisions are of singular interest to employee organizations.

Most collective bargaining agreements contain provisions pertaining to the functions and finances of employee representatives. And most provisions of this kind not only affect employee organizations but also have an indirect effect on the other three matters cited earlier--i.e. economics, operations, and policies. For example, most contracts contain provisions granting time off, with pay, to the officials of employee organizations for the purpose of conducting organization business, and such provisions obviously affect both the economics and the operations of correctional agencies. It should be noted, however, that some of the collective bargaining agreements reviewed for this report contain provisions for retrieving a percentage of the money expended on the time used for conducting union business.

Provisions Affecting Economics

Virtually all contract provisions affect economics. Significant costs are involved if, for example, the provision requires additional staffing in the cell blocks or releases the officers of an employee organization to conduct organization business during working hours. But the most expensive provisions are those dealing with salaries and fringe benefits.

Interestingly enough, although salaries account for well over 50 percent of the operating budget of the typical department of corrections, salary increases resulting from collective bargaining generally do not harm the department's economic health. The reason is that salary and fringe-benefit increases for correctional personnel are generally linked to some form of across-the-board pay increase for all state employees, and as a result salary increases approved by the state legislature lead to increased appropriations for all state agencies.

Exceptions do take place, of course. An incident cited in the previous chapter is a case in point. The salary increase granted correctional employees by the governor of Illinois in 1975 was not approved by the legislature and, as a result, was paid for during the first contract year out of the agency's already-appropriated operating budget. This way of paying the increase reduced the amount of money available for funded programs and worsened the financial plight of an agency already in need of money.

Although salary and fringe-benefit increases usually do not

reduce funds already appropriated, they might possibly reduce the funds available in the future for other parts of the agency's budget. Despite expanding prison populations and an increased need for expenditures on programs, the limited additional funds allocated to a department of corrections in any one year might have to be used to pay the increased salaries rather than to improve institutional operations or programs.

Most of the fringe benefits for correctional personnel are also part of a salary-and-benefit package for all state employees. Thus such benefits as holidays and vacations; days off for sickness, personal leave, or bereavement; and medical, hospital, disability, and life insurance do not result in a cost to a department of correction, except in the sense that such expenditures reduce the state funds available for other parts of the budget. Sometimes, however, the executive and legislative branches do not adequately fund certain increases in fringe benefits, such as increases in paid leave; and then it becomes necessary to pay the agency's increased personnel expenses by curtailing expenditures in other segments of the budget.

Although contract provisions for fringe benefits may not threaten the financial well-being of a department of corrections, the abuse of such benefits will damage the operation of a correctional system. In many of the correctional agencies visited for this report, a significant abuse of sick-leave benefits was causing a substantial increase in operating expenses. When employees

abuse sick leave, managers must either leave some positions vacant or must fill the positions by using additional personnel paid at overtime rates. Thus, in November 1975, a memorandum from the New York State Department of Correctional Services indicated that the abuse of sick leave and workman's compensation leave at one of the department's facilities had robbed the day-to-day pool of available security staff and had contributed to excessive expenditures for overtime.[2] Overtime payments at this facility had added an average of $3,888 to the salary of each correctional officer--approximately a 30-percent increase over the average annual salary of $12,850.

It should be added that the abuse of fringe benefits was not the only cause of excessive overtime at this facility. The memorandum states that another cause was "the department's practice of initiating new or modified programs without additional staff to cover these programs." This practice is by no means confined to New York. As we have seen in previous chapters, in virtually every department of correction studied for this report, the management operates unfunded new or revised programs by shifting personnel from funded positions and using overtime pay to cover salary expenditures not included in the budget. This use of overtime pay must be carefully studied by state control agencies and state legislatures, so that its implications for public policy can be assessed. Unfunded programs operated with overtime pay circumvent the normal processes of executive and legislative authorization and tend to escape public scrutiny.

The bypassing of the normal appropriation procedures--either to operate unfunded programs or to pay for the abuse of fringe benefits--is a serious problem in most of the states studied. Another serious problem is the granting of economic benefits largely "hidden" from public review. Cost-of-living and salary increases are generally not hidden from public examination. Such increases require legislative approval and receive much publicity. But other types of economic settlements are less "visible"--i.e. receive less public attention. Some of these require direct legislative approval; others do not.

One benefit requiring direct approval is early public-safety retirement. The legislatures in many of the research states have recently given correctional officers the right to early public-safety retirement, a significant economic gain because it means that correctional officers can retire at age 55 with full retirement benefits. This kind of change in retirement provisions, though it usually does not result from an explicit contract clause, nevertheless does require that an employee group negotiate and lobby with the executive and legislative branches of government.

The tendency to grant correctional officers early public-safety retirement is an interesting affirmation of the power of correctional officer organizations. Many kinds of employees besides correctional officers come into direct contact with the inmates of correctional institutions. Such other employees as

teachers, medical personnel, and industrial shop instructors also must supervise inmates, but seldom are such groups included in the provisions for early retirement.

In addition to the less "visible" economic benefits that require direct legislative approval, there are others that require only indirect approval. A recent instance occurred in New Jersey, where, in lieu of a salary increase that would have been closely scrutinized by both the legislature and the public, correctional officers were granted a contract provision requiring that they be paid at the time-and-a-half overtime rate for an 18-minute "shift overlap." A shift overlap is the period of time that correctional personnel are required to be at the correctional institution prior to the beginning of their shift to change into uniforms and receive instructions and assignments. In any event, in New Jersey the added few minutes of work each day, paid at the overtime rate, led to a pay increase approximately equal to the salary increase the correctional officers had initially demanded; but because the pay increase resulted from shift overlaps and overtime expenditures, it did not require direct legislative approval and was not widely publicized.

The very integrity of the bargaining process is at issue here. Such actions as increasing salary by changing a work rule and then disguising the salary increase as an increase in overtime pay clearly corrupt the system of checks and balances found in most legal frameworks for public-sector collective bargaining.

Unfortunately, public-sector managers often consider this kind of manipulation to be good management. They do their managerial work under difficult conditions, in a political situation filled with conflicts not only between departments in the executive branch but also between the executive branch and the legislature. Hence the pragmatic public manager often tries to reach his programmatic and political goals by using whatever legal or administrative loopholes he can find. The apparent increase in this tendency in the 1970s--the increasing interest in implementing a program rather than preserving the integrity of a process--needs a most searching examination in the literature of political science and public administration.

In terms of basic salaries and fringe benefits won through collective bargaining, correctional officers in New York City have done better than correctional officers in any of the other research jurisdictions. Indeed, the package of salaries and fringe benefits is larger than that of any other group of correctional officers in the United States. The Correction Officers Benevolent Association has done a remarkably effective job of negotiating for economic benefits. And, according to an executive of the association, the reason for this achievement is that most of the economic benefits have not been visible to the public.

The basic annual salary for a correctional officer in New York City is impressive in itself. A contract endorsed in July 1975 set the basic annual salary at $17,458.[3] But the contract also calls

for an automatic cost-of-living increase each time there is an increase of four-tenths of a percentage point in the U. S. Department of Labor price index for urban wage earners and clerical workers. In addition, for each five years of service, up to a maximum of twenty years, correctional officers receive an annual "longevity adjustment" of $100. Correctional officers also receive eleven paid holidays and one personal-leave day each year; unlimited sick leave for any illness, injury, or mental or physical defect, whether or not it was caused during working hours; four paid leave days if there is a death in the family; 30 paid days for military leave, if necessary; and 27 paid vacation days every year, after the first three years of service. The city also provides each employee with a fully paid, self-chosen insurance plan for health and hospitalization, and pays $400 per employee per year to the Correction Officers Benevolent Association to provide additional benefits such as legal services, life insurance, a dental plan, a prescription drug plan, and supplementary benefits providing a hospital emergency room when necessary. Furthermore, for each correctional officer the city puts a dollar a day, up to $261 annually, into a personal annuity fund, so that the officer will receive an annuity when he retires or a lump sum if his employment is terminated before retirement, no matter what the reason for the termination. Finally, at the time of our research in New York, the city was also paying the full cost of all "employee contributions" to the retirement fund.

An interesting dispute regarding working hours and overtime pay occurred in New York City in the early 1970s. During contract negotiations, the Correction Officers Benevolent Association demanded a work shift of eight and a half hours, rather than the existing one of eight hours. The officers argued that they were entitled to the longer shift because police officers had recently negotiated for a shift of the same length and because the city had agreed to keep the benefits for correctional officers on a par with those of police officers. The director of the city's department of corrections opposed the eight-and-a-half-hour shift because it would entail the hiring of 6.25 percent more employees to cover the same number of job assignments. But the correctional officers recognized that the longer shift would result in an extra sixteen days off each year at the same annual salary, and that if they wished, they could choose to work during some or all of those sixteen days at the overtime rate. The officers insisted that the city honor its agreement to keep correctional officers on a par with police officers. Ultimately the city agreed to the correctional officers' demand, but without granting any budgetary relief to the department of correction. The result was that in order to maintain the same level of staffing, the department significantly increased its expenditures on overtime.

Some of the collective bargaining agreements we have reviewed contain provisions regarding "shift differentials"--i.e. different rates of pay for different shifts. One example is the July 1973

agreement between the Commonwealth of Pennsylvania and the bargaining units represented by AFSCME, an agreement providing that a shift differential of fifteen cents an hour would be paid for any regular shift of seven and a half or eight hours that began either before six a.m. or at any time at or after noon.[4] Although such a provision might have little effect on the operation of most state agencies, it has had a marked effect on the Pennsylvania Bureau of Correction because approximately two-thirds of its correctional officers are eligible for the shift differentials. It is interesting that under such a system, correctional officers who work the late night shift and have absolutely no contact with inmates receive a higher rate of pay than officers who work during the day hours, when contact with inmates is most extensive. This pay scheme seems to conflict with correctional management's efforts to prevent experienced personnel from avoiding jobs that entail contact with inmates.

The New York State Department of Correctional Services has recognized that experienced officers have been trying to avoid jobs involving exposure to inmates. Thus, in bargaining with the employee organization representing correctional officers, the department has negotiated a contract provision requiring the bi-lateral establishment of a program for career development.[5] Union representatives on the labor-management committee recommended that jobs for correctional officers be divided into two groups according to whether or not the jobs involved exposure to inmates, and that the jobs involving such exposure receive a higher rate

of pay. Jobs not incurring exposure--work in the perimeter towers, for instance--would be paid at regular wage rates, whereas a correctional officer working in contact with inmates would receive a raise of one or two steps on the state pay scale.

Interestingly enough, the need for incentive plans to encourage experienced officers to request jobs involving contact with inmates has resulted from contract provisions stipulating that when bidding for a position takes place, the position will be filled by the eligible employee with most seniority. When correctional managers can make job assignments without considering seniority, they can give personnel the jobs in which their experience can be used most effectively. A plan such as that proposed by the New York union--i.e. a seniority system for assigning jobs, coupled with an economic incentive plan--permits correctional officers with seniority to choose to work in demanding positions for extra pay. But since most of the jobs done by correctional officers involve some contact with inmates, the net result of such a scheme would be to increase the salary of the typical correctional officer by a significant amount.

As the foregoing discussion has shown, when correctional personnel are involved in collective bargaining, a great variety of wage and fringe benefits can come up for consideration. If the economic benefits are clearly indicated, and are submitted for the approval of the appropriate legislative body, the effects on the operation of the correctional system will ordinarily be kept to

a minimum. And even if increased expenditures for correctional employees (most of whom are correctional officers) reduces the amount of state monies available for other parts of the correctional budget, at least the decision as to how to spend the money will have gone through the checks and balances of our political system.

But even if contract provisions regarding economic benefits have been agreed to by the executive branch of government and approved by the legislative branch, the provisions may still be unclear to the general public. Sometimes an elected official contributes to the public's lack of understanding. Perhaps the official stresses that the state has resisted a salary increase for its employees but neglects to mention that the state has granted an indirect pay increase by agreeing to pay retirement-plan contributions that had previously been paid by the employees. This indirect kind of pay increase may escape public scrutiny, and its full effect on rates of taxation may not be felt for years.

Provisions Affecting Operations

Contract provisions affecting the operation of state correctional systems take a variety of forms. Some deal with working hours--specifically with such matters as rest breaks, dinner hours, roll-call periods, overtime, call time, holidays, and leaves. Other provisions set forth personnel policies regarding such matters as firings and promotions, disciplinary actions, job assignments,

and grievance procedures. Still other provisions affect still other aspects of the operation of correctional facilities; such provisions deal with such diverse matters as seniority, employee safety, contracting for services, the use of volunteers, and the framework for meetings between labor and management.

Although the collective bargaining agreements in our research jurisdictions differ significantly as to the provisions affecting department operations, the agreements generally contain provisions dealing with three important matters: seniority, grievance procedures, and labor-management meetings. These three kinds of provisions are so significant that each will be discussed at length.

Provisions regarding seniority often affect such matters as choice of vacation periods, eligibility for overtime assignments, position on furlough or layoff lists, selection of post and shift assignments, and, in some cases, eligibility for promotion.

Generally speaking, seniority is determined by one of three criteria--either (1) time in the state service, (2) time in a particular department or agency, or (3) time at a single institution. Usually seniority is based only on how long the employee has worked in a particular job classification, but sometimes it is based on how long he has worked for the state, regardless of the particular jobs he has held.

Correctional administrators interviewed during our research charge that the provisions requiring that assignments and promotions

be based on seniority have done more to disrupt the operation of correctional institutions than any other kind of provision. Correctional institutions contain a wide variety of posts, many of which require special skills and traits of character; and the administrators we have interviewed believe that seniority provisions make it exceedingly difficult to fill the various posts with employees well qualified to handle them. On the other hand, correctional employee organizations argue that seniority provisions have not led to any great number of unsuitable job assignments and, further, that senior employees should have a right to the more desirable jobs and should not have to depend solely on managerial decisions, which the organizations contend are often arbitrary and sometimes punitive.

The 1974-75 agreement between the State of New York and the Security Unit Employees, Council 82, AFSCME, contains a provision that defines seniority in such a way that the seniority of correctional officers is based on their length of service in a particular job classification in the Department of Correctional Services.[6] The contract further states that "the employer shall have the right to make any job or shift assignment necessary to maintain the services of the department or agency involved. However, job assignments and shift selection shall be made in accordance with seniority provided the employee has the ability to properly perform the work involved."

The wording of this provision seems to indicate that management can remove an employee who is not qualified for the particular job

he has requested, but in reality this managerial prerogative is rarely exercised. One reason is that grievances regarding the bidding for job or shift assignments can move to the fourth step of the grievance procedure--namely, a review by the state's Director of Employee Relations. Secondly, even if management prevents an unsuitable employee from obtaining a particular job, management will not necessarily be able to assign that job to the employee deemed most suitable. The bidding for job assignments will still depend on seniority, and therefore management will not be able to determine which employee next becomes eligible for the job in question.

A different kind of provision regarding seniority and bidding appears in the collective bargaining agreement signed in February 1972 by the Massachusetts Department of Correction and by AFSCME, Local 451, representing employees at the state prison in Walpole, Massachusetts. The contract states that "seniority for the purpose of shift assignments, job assignments, days off and overtime for the custodial group shall be counted from the day the employee is first appointed at the Massachusetts Correctional Institution, Walpole, as a uniformed officer and shall include any period of assignment to the Department of Correction Training Academy."[7] The contract further states that when an employee is promoted to the rank of senior (i.e. sergeant) or supervising (i.e. lieutenant) correctional officer at Walpole, seniority within that classification will begin on the date of promotion. As for the question of whether

management can prevent an employee from working on a particular job, the contract states that "in the custodial group, job assignments shall be posted as they are vacated. The senior man who bids shall be assigned." Thus, management has no right to remove an employee from a job except as a disciplinary action.

An important stipulation in the Walpole contract is that seniority is institutional. An employee transferred from another correctional institution in the Massachusetts Department of Correction would begin work at Walpole State Prison with no seniority in his class. Needless to say, an employee who moves to a different institution is at a disadvantage because of provisions pertaining to institutional seniority, and thus it is difficult for the department administrator to move employees from one institution to another. Moreover, an employee who moves to a new institution receives no compensation for the costs involved in relocating. For all these reasons, transfers occur in Massachusetts only in extraordinary cases in which the employee receives special benefits to offset the cost of moving and the loss of seniority. As a result, the typical correctional employee becomes familiar with only one institution, and the Massachusetts institutions have become isolated units rather than interrelated parts of a coherent correctional system.

The Pennsylvania contract for correctional officers also contains a provision regarding institutional seniority. In the bargaining unit for correctional officers and psychiatric security

aides, seniority is defined as institutional seniority within a particular series of job classifications.[8] But the contract indicates that in order to ensure the efficient operation of an institution, management may fill a job with an officer whose seniority, by itself, would not qualify him for the job. However, the bidding officer with most seniority must be told, in writing, the reasons for his not being approved for the job, and he may then file a grievance which can advance to the fourth step in the grievance process--the Secretary of Administration. As in New York, then, a correctional employee in Pennsylvania can grieve a managerial decision regarding an institutional job assignment not only to the director of the department of correction but also to the administrator in charge of labor relations for state employees.

Although this kind of grievance is not submitted to binding arbitration, it takes the decision regarding job assignments out of the hands of the correctional administrator and the civil service system and permits a labor-relations professional to decide whether a particular employee is qualified to perform a particular job. Perhaps such procedures are necessary to ensure the impartiality and fairness of hearings, but they are another instance of the way in which state labor-relations systems transfer authority without transferring the responsibility for operations. The procedures do permit outside review of decisions that have traditionally been regarded as the internal affairs of correctional systems, but nevertheless they contribute to the diffusion and fragmentation

of authority which has been so prominent a feature of correctional administration in the 1970s.

The Pennsylvania contract does more than indicate how seniority will affect post and shift assignments. It also indicates what effect seniority will have on promotions.[9] In the case of promotions based on examination, the contract indicates that the promotion will not go to the employee who achieves the highest score but that the senior employee at an institution who comes within five points of the highest score recorded at that institution will be promoted. Since the scores on promotional exams for custodial positions tend to cluster together, seniority is likely to determine who will be promoted.

In Ohio, too, contract provisions make seniority an important factor in promotions.[10] The basis for promotion is a score based on six components: seniority, examination score, attendance record, evaluation of performance, proficiency in handling duties related to the job, and ability to capitalize on opportunities for career development. Seniority counts as much as all the other factors added together. Seniority determines 50 percent of the total score; the other factors are worth 10 percent each. The employee with the highest total score automatically receives the promotion.

Pennsylvania and Ohio differ from the other research states in the importance they attach to seniority in determining promotions. Although other jurisdictions use seniority as the basis for job and shift assignments, opportunities for overtime work, and

opportunities for time off, the jurisdictions do not, as a rule, have contract provisions that designate seniority to be the basis for promotions. A promotion process based on seniority clearly conflicts with the traditional notion of civil service or merit systems, according to which promotions are based chiefly on competitive comparison of expertise and other qualifications. It is difficult to estimate whether, in the future, seniority will become the predominant factor in the promotion of correctional employees. It should be noted, however, that the use of seniority to determine promotions and job assignments has already become a source of conflict between collective bargaining procedures and civil service systems.

Employee grievance procedures are presented in all collective bargaining agreements for correctional personnel. But the research states differ as to the nature of their grievance procedures and the kinds of disputes that can legitimately become a matter for grievance. In virtually every state, however, any grievance or dispute regarding the meaning or application of the collective bargaining agreement is eligible for resolution through grievance procedures.

The grievance process commonly found in the research states contains five stages, the last of which is arbitration. In the first stage the grievance is presented orally to the employee's immediate supervisor. The second step is an appeal in writing to the superintendent of the institution (if the employee works for an institution) or to the administrator of whichever other organizational unit the

employee works for. If the resolution proposed at step two is unsatisfactory, the third step is an appeal to the department or agency head. The fourth step is an appeal to the state director of employee relations (or his equivalent). And the fifth step is arbitration by a third-party neutral.

Five-step grievance procedures of this kind have been put into effect in New York, Pennsylvania, and Rhode Island.[11] It should be noted that in such procedures the final two steps take place outside the administrative jurisdiction of the department of correction. At the hearing that occurs at the fourth step, the employee and his representative, and representatives of the department of correction, present their cases to the state's chief labor-relations administrator (or his designee). And at the fifth step the parties appeal to a third-party neutral appointed by an agreement between the two contending parties.

But not all grievance procedures for correctional employees follow the five steps just mentioned. In Massachusetts, New Jersey, and Wisconsin, the procedure omits the fourth step: the review by a state labor-relations official.[12] In those three states an appeal to the agency director is followed, if necessary, by binding arbitration with a third-party neutral.

The grievance procedure used in Illinois, though it resembles the four-step system used in Massachusetts, New Jersey, and Wisconsin, has an unusual final step. If the grievance is not satisfactorily resolved through a hearing before the agency director, a meeting

takes place in which representatives of both the union and the employer decide whether the grievance raises a "substantial issue"--i.e. an issue whose outcome might set an important precedent. If the issue raised is deemed substantial, the grievance is submitted to an independent arbitrator. If the issue is not deemed substantial, the grievance is resolved through a less formal mechanism; the resolution is determined by a grievance panel composed of three persons who are appointed by the director but not from among state employees. Thus the fourth step in the procedure can take either of two forms; but in either case the director is bound by the decision that emerges from the fourth step.

Not all jurisdictions have a grievance process that ends in arbitration. In Louisiana and Ohio, two states that have no comprehensive legislative framework regarding public-sector labor relations, the final step in the grievance process for correctional employees is a hearing before the director of the state corrections agency.[14] In the State of Washington, where bargaining over wages is not permitted and the state personnel board acts as the administrative agency that sets rules and regulations for public-sector collective bargaining, the state merit-system rules indicate that the final step in the grievance procedure is a hearing before the state personnel board.[15]

Often an aggrieved employee can avail himself of more than one method for resolving the grievance. For example, an employee who believes that he or she has been mistreated because of his or

her race or sex can either seek redress through the customary grievance procedures or submit the grievance to a state or federal court, a state human relations commission, or the review process of the state's civil service or merit system. Conceivably, an employee might try several kinds of appeal simultaneously.

Some collective bargaining agreements provide for the use of several kinds of grievance appeal. A July 1973 agreement between Pennsylvania and AFSCME specifies that an aggrieved civil-service employee may use either the ordinary grievance procedure or the civil-service appeal procedure.[16] The employee is entitled to use only one or the other procedure, not both; but the contract does not prohibit the employee from using some other legal means--such as the courts--if he is not satisfied with the resolution offered by the grievance procedure or the civil-service appeal procedure.

Grievance procedures clearly guard against the improper use of managerial authority and help to develop and maintain equitable conditions of employment; nevertheless, grievance procedures can be abused. One such abuse is that employees can clog the process by filing a great many grievances. In New York State, during the first ten months of 1975, the 11,000 employees of the Department of Correctional Services filed roughly 375 grievances. We might add that during the same period the employees of the New York Department of Mental Hygiene--approximately 65,000 employees--filed only 70 grievances.

A possible explanation for the flood of grievances was that

during this period management was taking a harder stand regarding disciplinary matters and contract interpretation and that employees were filing a great many grievances in order to reverse the tendency. According to New York's labor-relations officials, however, the union was flooding the grievance process because the problem might become a bargaining point in the upcoming contract negotiations and also because contract provisions gave aggrieved employees and their representatives paid leave time to attend hearings. Whatever the actual causes behind the high rate of grievance in New York's Department of Correctional Services, the financial and operational impact has been enormous. The department's labor-relations employees spend virtually all their time handling grievances; institutional and departmental administrators are tied up for hours hearing disciplinary appeals; and employees and their union representatives--permitted to leave their posts, with pay, to attend the hearings--must be replaced with either reassigned employees or regular employees working overtime.

Grievance procedures, then, can be expensive to operate. Since correctional systems are already in need of money and manpower, the cost of operating a grievance procedure must be estimated, and necessary funds and positions must be included in the agency's operating budget. To do less is to foster the kind of budgetary manipulation which, as we have seen, leads to the excessive use of overtime.

The flood of grievances in New York State is not unique among correctional systems. In Pennsylvania, during the first six months

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of 1975, 174 grievances were filed against the Bureau of Correction. In Massachusetts, few grievances have gone through the formal steps set forth in the contract; in five years only one grievance has been taken to arbitration; but numerous grievances--on the part of groups as well as individuals--have gone through an informal process of resolution not delineated in the contract. Union officials regularly seek meetings with superintendents to resolve employee grievances; and if the officials are dissatisfied with the results of the meetings--as frequently happens--then they appeal to the Commissioner of the Department of Correction and sometimes even to the governor. Before the 1975 Massachusetts elections to determine bargaining unit representatives, the officials of an employee organization at one of the correctional facilities publicly sent ten grievances to the governor for resolution, indicating that the officials could get no satisfaction either from the superintendent of the facility of from the Commissioner of the Department of Correction.

Disregard for formal grievance procedures, and reliance instead on an informal political process, is a phenomenon almost unique to Massachusetts; we have found little evidence of its occurrence in other states. What we have observed, however, is that institutional employees in many states have taken group grievances to the press. The states in which this has happened include Massachusetts, New York, New Jersey, Pennsylvania, Rhode Island, Ohio, California, and Washington. We will examine this matter further when we discuss employee job actions.

Most of the collective bargaining contracts reviewed during our research provide for the establishment of labor-management committees. For example, the April 1972 contract pertaining to correctional employees in the State of Washington sets forth procedures for establishing a union-management committee containing no more than ten members, including the secretary of the Department of Social and Health Services, management representatives from the Division of Corrections, the executive director of the Washington Federation of State Employees, AFSCME, and additional union representatives. The contract states that "the disposition of matters covered in the union-management meeting shall not contradict, add to, or otherwise modify the terms and conditions of this basic agreement. Agreements reached through this process shall be supported by the parties."[17]

In addition to the union-management meeting at the agency level, the contract calls for timely open discussions between the local union and the local management regarding matters affecting employer-employee relations. Again, the contract expressly states that proposals emerging from such labor-management meetings shall not contradict, add to, or otherwise modify the terms and conditions set forth in the contract.

In New York State, the March 1974 contract for employees in the security unit calls for the development of labor-management committees at the departmental and local levels to discuss the implementation of the collective bargaining agreement as well as other matters of mutual interest.[18] The December 1975 agreement

between Illinois and AFSCME specifically states that the head of each correctional facility shall conduct monthly labor-management meetings and that additional meetings may be held at the request of either the union or the employer.[19] Other collective bargaining contracts in the research jurisdictions either have similar provisions for labor-management meetings or specifically indicate that labor-management committees shall be formed to deal with such issues as safe working conditions, the review of job classifications, and the development of training programs.

A statewide labor-management meeting held in one of the research states in October 1975 showed the range of issues likely to be discussed at such meetings. One topic for discussion was the equipment needed by correctional officers; the agenda requested information on an increase in the number of lockers and on the issuance of new uniforms, winter coats and hats, and communication devices such as walkie-talkies. When discussion turned to agency operations, management was asked to comment further on the use of deadly force in escape attempts; correctional officers requested additional personnel and the equalization of overtime payments; and both employees and management discussed security problems resulting from overcrowding. In addition, several policy issues were discussed: the curtailment of programs for inmates and the continued operation of a particular correctional facility.

Our research indicates that labor-management meetings, at both the local and the agency level, are extremely helpful in developing

cooperative and productive labor relations. We have found, however, that correctional managers are often reluctant to enter into such meetings. The paramilitary authority structure that has existed for many years in correctional institutions is, in many ways, contrary to the open give and take between labor and management that is required at these joint meetings. But correctional administrators should recognize that once they begin operating under a collective bargaining agreement, the old authority structure is no longer appropriate. The very existence of a collectively negotiated agreement implies that management must become less authoritarian and more cooperative in its dealings with employees. And in these new circumstances, labor-management meetings, rather than disrupting institutional operations, have proved to be a great benefit.

Provisions Affecting Policy

The development of department policies is one of the chief responsibilities of the director of a correctional system. But correctional employees can have an influence on policy. The typical collective bargaining agreement for correctional employees contains two kinds of provisions that affect policy.

The first kind has a direct effect. One instance is the sort of provision that limits management's ability to enter into contracts, or sub-contracts, for work to be done. In the 1970s, administrators in correctional agencies, and in other agencies providing "human services," have tried to enter into sub-contracts with private

organizations that could provide services to community-based programs. Employee groups, however, have negotiated for provisions that would limit an administrator's ability to enter into such contracts if one result might be the elimination of institutional jobs. Provisions of this kind severely limit the administrator's ability to develop a correctional system with a diversity of programs, including privately operated community-based programs. To be sure, job security is the legitimate concern of any employee group; but to prevent management from entering into contracts for services is not a satisfactory way of protecting jobs. Other solutions to the problem should be tried. For instance, if job security is threatened in a particular institution or job classification, retraining programs could be developed and employees could compete for other positions, either in the department of correction or in another state agency.

Other contract provisions have a more indirect effect on correctional policy. Some of these provisions arise from correctional officers' concern for on-the-job safety. In order to protect the safety of correctional officers, employee groups advocate increases in institutional staffing. Some collective bargaining contracts call for labor-management study committees to determine whether additional staff is needed. In Ohio, as a result of negotiations in the early 1970s, labor and management entered into an agreement which required that two correctional officers, rather than one, be placed in each cell block.[20]

Such agreements affect policy indirectly by severely limiting

the funds available for other purposes. If the number of correctional officers in a cell block were increased from one to two, an institution with twelve cell blocks (and, of course, round-the-clock staffing) would need approximately 60 additional officers. In the typical department of correction, the added cost in salaries, even if we omit fringe benefits, would come to approximately $600,000 a year. And this would be the added cost for only a single medium-sized institution. One can readily see that a labor-management agreement calling for such increases in custodial staffing would hamper management's efforts to allocate money for the improvement of training and treatment programs for inmates.

Most employee demands that directly affect policy--such as demands opposing deinstitutionalization, "contracting out" for services, the use of volunteers, the establishment of "due process" for inmates, and the shift in emphasis from custody to programs--are not settled through collective bargaining but through labor-management meetings or job actions such as strikes. One reason is that most legislative frameworks for public-sector labor relations prohibit bargaining over policy. The legislative framework in Pennsylvania, for example, states that "public employers shall not be required to bargain over matters of inherent managerial policy, which shall include but shall not be limited to such areas of discretion or policy as the functions and programs of the public employer, standards of services, its overall budget, utilization of technology, the organizational structure and selection and

direction of personnel."[21]

Another reason why correctional employees use methods other than collective bargaining to influence policy is that collective negotiations are usually handled by union officials who represent other groups besides correctional employees. Issues of concern to state employees in general--issues such as wages, benefits, retirement, and grievance procedures--become the chief concerns in statewide negotiations; and correctional personnel must find other means of influencing correctional policies.

Summary

This chapter has discussed the effect that certain kinds of contract provisions have had on the working conditions of correctional employees and the managerial problems of correctional administrators. Generally speaking, each provision deals primarily with one of the following four topics.

(1) Employee organizations. One important kind of provision pertains to the security of employee organizations and to the organizations' ability to conduct their business. Obviously the organizations are keenly interested in such provisions, especially in those having to do with the automatic deduction of dues and the establishment of agency shops.

(2) Economics. Almost all provisions affect economics directly or indirectly, but the most expensive economic provisions are those dealing with salaries and fringe benefits. Salary and fringe-benefit

increases usually do not reduce funds already appropriated, but they are likely to reduce future departmental allocations for other parts of the budget. And if fringe benefits are abused, the abuse can severely damage the operation of a correctional system by leading to vacant positions or to the use of overtime pay to staff programs. Another problem connected with economic provisions is that some do not require direct legislative approval and are "hidden" from public scrutiny. The use of such provisions can undermine the integrity of the bargaining process and the system of checks and balances embodied in most legal frameworks for public-sector collective bargaining.

(3) Operations. Perhaps the most controversial of the provisions affecting operations are the ones that make seniority the basis for assignments and promotions. Correctional administrators interviewed for this report believe that such provisions have been more detrimental to the operation of correctional institutions than any other kind of provision. Such provisions, the administrators argue, make it exceedingly difficult to fill posts with employees well qualified to handle them. Employee organizations, on the other hand, argue that seniority provisions have not caused a great many inappropriate job assignments, that senior employees should have the right to the most desirable jobs, and that if job assignments are left entirely to management, the assignments will often be arbitrary or punitive.

Provisions regarding grievance procedures also raise certain problems. Perhaps the most serious is that many of the grievance procedures reviewed have not been adequately staffed or funded,

thereby adding to the complexity of management and decreasing the effectiveness of the grievance system. Since correctional systems are already in need of money and manpower, the cost of operating a grievance procedure must be estimated realistically, and necessary funds and positions must be included in the agency's operating budget.

Collective bargaining agreements often provide for the establishment of labor-management meetings, but many correctional administrators, accustomed to the centralized authority structure often found in corrections, have resisted the establishment of such committees. These administrators should recognize (1) that the very existence of collective bargaining requires management to engage in more interchange with employees and (2) that labor-management meetings have proved highly beneficial in the development of harmonious and productive labor relations.

(4) Policies. One kind of policy provision limits an administrator's ability to enter into contracts with private organizations if such arrangements might lead to the elimination of institutional jobs. But because this kind of provision hinders the administrator's attempts to develop new and more effective programs, both management and employee organizations should seek other solutions to the problem of job security.

Usually the employee demands that directly affect policy cannot be dealt with through collective bargaining; therefore correctional

employees find other methods to influence policy. The following chapter will discuss some of the methods they have used.

Notes

1. Agreement between the State of New York and Security Unit Employees, Council 82, American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO, 1972-74, Article 5.

2. Internal Memorandum of the State of New York, Department of Correctional Services, regarding overtime at Fishkill Correctional Facility, 3 November 1975.

3. Agreement between the City of New York and the Correction Officers Benevolent Association, 14 October 1975.

4. Agreement between the Commonwealth of Pennsylvania and AFSCME, AFL-CIO, 1 July 1973 to 30 June 1976, Article 21.

5. Agreement between the State of New York and Security Unit Employees, Council 82, AFSCME, AFL-CIO, Term of Agreement 1972-74, Article 14.

6. Agreement between the State of New York and Security Unit Employees, Council 82, AFSCME, AFL-CIO, 29 March 1974, Article 25.

7. Agreement between the Massachusetts Department of Correction and AFSCME, AFL-CIO, State Council 41, Local 451, Massachusetts Correctional Institution, Walpole, Massachusetts, 15 February 1973, Article 7.

8. Agreement between the Commonwealth of Pennsylvania and AFSCME, AFL-CIO, 30 August 1973, Appendix F (p. 132) and Article 29.

9. Ibid., Article 29, Section 17.

10. Agreement between the State of Ohio, Department of Rehabilitation and Correction, and the Ohio Civil Service Employees Association, 8 November 1973, Article 15, Section 4.

11. Agreement between the State of New York and Security Unit Employees, Council 82, AFSCME, AFL-CIO, 29 March 1974, Article 7. Agreement between the Commonwealth of Pennsylvania and AFSCME, AFL-CIO, 30 August 1973, Article 37. Agreement between the State of Rhode Island and the Rhode Island Brotherhood of Correctional Officers, 25 June 1975, Article 17.

12. Agreement between the Massachusetts Department of Correction and AFSCME, AFL-CIO, State Council 41, Local 451, Massachusetts Correctional Institution, Walpole, Massachusetts, 15 February 1973, Article 4. Agreement between the State of Wisconsin and AFSCME, Council 24, Wisconsin State Employees Union, AFL-CIO, 12 May 1973, Article 4.

13. Agreement between the State of Illinois, Department of Personnel and Department of Corrections, and AFSCME, 1 December 1975, Article 5.

14. Agreement between the State of Louisiana, Department of Corrections, and AFSCME, AFL-CIO, Local 1641, 30 May 1975, Article 5. Agreement between the State of Ohio, Department of Rehabilitation and Correction, and the Ohio Civil Service Employees Association, 8 November 1973, Article 10.

15. Agreement between the State of Washington, Department of Social and Health Services, and the Washington Federation of State Employees, AFSCME, AFL-CIO, Council 28, 7 September 1973, Article 25.

16. Agreement between the Commonwealth of Pennsylvania and AFSCME, AFL-CIO, 30 August 1973, Article 21.

17. Agreement between the State of Washington, Department of Social and Health Services, and the Washington Federation of State Employees, AFSCME, AFL-CIO, Council 28, 7 September 1973, Articles 6 and 7.

18. Agreement between the State of New York and Security Unit Employees, Council 82, AFSCME, AFL-CIO, 29 March 1974, Article 26.

19. Agreement between the State of Illinois, Department of Personnel and Department of Corrections, and AFSCME, 1 December 1975, Article 5.

20. Agreement between the State of Ohio, Department of Rehabilitation and Correction, and the Ohio Civil Service Employees Association, 8 November 1973, Article 4.

21. Pennsylvania Act 195, Article VII, § 702 (1970).

7. Correctional Employee Activism

Correctional employee organizations use a variety of means to increase their bargaining power and to achieve the demands of their members. They use such tactics as lobbying, publicity, lawsuits, and job actions--not only to influence formal negotiations and the resulting contracts, but also to influence administrators and legislators when they make their decisions on matters not broached at the collective bargaining table.

State labor-relations legislation often prevents certain subjects from being dealt with during formal negotiations. Moreover, statewide multi-unit bargaining, which is prevalent in the research jurisdictions, tends to stress concerns common to all the employees in the several units. For both reasons, issues of concern to correctional employees may not be satisfactorily resolved during formal negotiations. And thus correctional employees often press administrators and legislators for favorable decisions on such issues regardless of the procedures and schedules of formal collective bargaining.

This chapter will discuss the kinds of activities by which correctional employee organizations seek to increase their influence and their ability to win their demands at the bargaining table and in the larger political arena.

Lobbying

Of course, lobbying is not unique to employee organizations. Governors and agency directors continually lobby with state legislatures. Private individuals and groups lobby with both the executive and legislative branches.

The lobbying by employee organizations is concerned with a wide variety of issues, ranging from salaries to the location of new facilities to the revision of the criminal code to the introduction of collective bargaining legislation more favorable to employee organizations. Lobbying occurs before state labor-relations legislation has been put into effect, so that the lobbyists can influence the way in which the legislation is implemented. Lobbying occurs during collective bargaining, when the lobbyists try to exert pressure on the state's labor-relations negotiator and to ensure that the legislature will supply funds for contract provisions. And lobbying occurs during the intervals between formal negotiating sessions; during these periods the lobbyists try to increase the benefits for correctional officers and to achieve demands not won at the bargaining table.

Sometimes correctional administrators form a united front with the officials of employee organizations to lobby with the executive and legislative branches regarding matters of joint concern--for example, higher wages, early retirement for correctional personnel, and increases in staffing. In the 1970s, however, administrators and organizations have frequently lobbied at cross-purposes. While

the administrator is likely to lobby for increased funding for community programs, employee organizations are likely to lobby against community programs and for additional funds for staffing and security.

The lobbying power of correctional organizations has increased considerably in recent years, partly because of the dramatic increase in the size of public-sector unions. Hundreds of thousands of state employees now belong to the public-sector organizations. When these organizations support political candidates--by providing votes, campaign workers, campaign funds and favorable publicity--they can affect the outcome of elections. It is no wonder, then, that public employees are having an increasing influence on our nation's political process.

An example of the political involvement of public-sector unions appeared in a July 1975 article in the Trenton Times, which reported statements made by employee organizations when negotiations over wages had stalled. The American Federation of State, County and Municipal Employees (AFSCME) vowed to use political influence to gain employee benefits. The executive director of AFSCME in New Jersey "Promised to make public a 'legislative enemies list' and criticized (New Jersey Governor) Byrne, who got $17,000 from AFSCME when he ran for governor." The article also reported that the State Employees Association coalition had decided to set up a political action committee and that the president of a local branch of the Service Employees International Union had declared, "If we have to, we're going to elect our own governor."[1]

We did not study in detail the impact of the lobbying and

other political activities of correctional management and employee organizations, but we did gather enough information to recognize that lobbying by these parties has become widespread. Indeed, lobbying has helped management to develop, finance, and implement its programs, and has helped employee organizations to achieve their members' demands. Employee organizations now use lobbying to influence not only collective bargaining but all government activities that might affect state employees.

Publicity

Correctional employee groups use several kinds of publicity to sway public opinion. Public support for the goals of an employee organization puts pressure on state administrators and elected officials to accede to the organization's demands. The more the public supports the organization's demands, the higher become the political costs to government officials who dispute the demands.

One means by which the typical employee organization publicizes its views is a monthly or bimonthly newspaper. The primary audience is the group's own members, but the paper is likely to be read by members of other employee organizations and by other interested parties, including politicians and their appointees. The newspaper offers information of interest to members of the employee organiz ation--such information as the latest developments in disciplinary cases or collective bargaining--but it also offers policy statements. For example, the September 1975 edition of the Washington State

Employee--the official publication of the Washington Federation of State Employees, AFL-CIO, and one that is widely distributed among state employees and politicians--offered a special report on what it viewed as major weaknesses in the state's adult correctional system. The report discussed specific problems at each of the state's correctional institutions and offered the union's recommendations for action.[2]

Organization publications sometimes encourage lobbying. The May 1975 issue of 82 Review--the official publication of Council 82, AFSCME, in the State of New York--urged all members of AFSCME locals to travel to Albany, the state capital, "in order to press their respective members of the legislature for passage of the Heart Bill and the twenty-year retirement bill. Active participation of our people is vital to assure passage of these measures so important to our welfare, this year."[3]

Employee organizations use not only their own publications but also the public media to set forth their positions. They have made considerable use of press conferences. For example, in New York State in the spring of 1975, the executive director of AFSCME Council 82 for employees in the security unit held a press conference to protest the governor's plan to close the Adirondack Correctional Treatment and Evaluation Center and to transfer the inmates to other facilities. The director of Council 82 told a roomful of newspaper, radio, and television reporters that "the prison system today is in an explosive state. The transfer of these 380 inmates to already

overcrowded prisons can only add fuel to the fire. Council 82 warned Governor Carey of the situation last December. We also informed the Governor that we would cooperate in whatever way possible in the area of fiscal responsibility. The announced closing, transfer of inmates, and the proposed layoffs of employees represent total fiscal irresponsibility and this union will not be a party to it."[4]

Before this press conference, the head of the AFSCME local at the Adirondack institution said that the employees would not do the work necessary for the transfer of inmates and, should the employees' places be taken by "scabs," the union would prevent the inmates from being transferred.[5] As a result of this pressure from the union, the governor ordered that the Adirondack institution not be closed.

Another interesting use of the public media occurred in December 1975 in New York City. The leaders of the Correction Officers Benevolent Association called a news conference to announce that they had sent an urgent telegram to the governor; the telegram said that the latest riot on Rikers Island had caused "millions of dollars in damages and placed the lives of five officers in dire jeopardy," and called on the governor to "investigate the riot and to provide guidelines." Leaders of the Benevolent Association announced to the news media that "our men will not risk their lives in a criminal justice system that is all too quick to make a correction officer a victim and let the inmate go unpunished." Furthermore, the union leaders asserted that department policy should prohibit all negotiations with inmates during a riot.[6]

Correctional employee organizations also use such strategies as marches and picketing to increase media coverage and thus to increase the public's awareness of their concerns. In 1973 in Massachusetts, the wives of the commonwealth's correctional officers marched on the governor's office to protest against the commissioner of correction and the allegedly dangerous conditions in which their husbands worked. Because a march of this kind will surely appear in the media, it can win public support for the employees' demands and can exert strong political pressure on public officials.

The media are used in these ways not only during formal contract negotiations. The examples just cited show that, during the periods between negotiating sessions, the media can be used to achieve demands not gained at the last bargaining session, or to publicize issues likely to be presented at the next session.

Obviously, correctional employee organizations are not the only groups that use the media to influence public opinion. Correctional administrators, state labor-relations officials, and other elected and appointed government figures routinely use the media to announce their programs and policies and to solicit public support. It is only natural that employee organizations would also use the media to achieve their goals. In the 1970s, press conferences by prison employees and their representatives are the rule rather than the exception; the process has become an integral part of correctional employee labor relations.

Legal Actions

During the 1970s one of the more significant developments in the field of corrections has been the increased use of municipal, state, and federal courts by correctional employee organizations. We should cite at least two representative instances of such legal action.

In 1975, New York City's Correction Officers Benevolent Association sought a preliminary injunction in the New York State Supreme Court to prevent the city from firing 300 correctional officers. At a press conference regarding the suit, the president of the Benevolent Association proclaimed that New York City's financial crisis "will be replaced with a security crisis in the institutions which will inevitably cost the City money, property, and even lives" if more correctional officers were not hired.[7]

And in the same year--1975--AFSCME Council 82, representing correctional officers, authorized its legal counsel, under the Freedom of Information Act, to seek from the Department of Correctional Services information regarding (1) the number of correctional officers who had been injured since the Attica riot on 1971; (2) the number of inmates who had been injured by other inmates; (3) the number of critical posts, such as wall-tower posts, that were being vacated as a result of budget cuts; (4) the number of riots that had taken place since Attica; (5) the number of escapes since Attica; (6) the details of the department's budget; and (7) the salaries and fringe benefits received by administrators. The union planned

to use this information to sue the Department of Correctional Services and thereby force the department to improve the state's correctional system. "Citing the $6.5 million paid out by the Department of Correctional Services in forced overtime in the last fiscal year as representing the need for 600 additional officers in the system" AFSCME Council 82 "lashed out at policies leading to dangerous deterioration of morale and discipline in the State's prison setup" and asked its local union officials to procure documented proof that such policies had been instituted, proof that could be used in a lawsuit against the department.[8]

The organization of correctional employees into unions and associations has permitted accumulation of the funds needed to support both group and individual legal actions. Before the 1970s, correctional personnel had rarely brought suit against a department of correction. The recent proliferation of such suits is but one more difficulty to be faced by correctional administrators in the 1970s. And in addition to initiating legal actions to change correctional conditions and policies, correctional employee organizations are also using legal processes to assist their members in disciplinary hearings, to argue against court injunctions prohibiting job actions by correctional employees, and to fight suits that inmates have brought against correctional personnel.

Strikes and Other Job Actions

Although correctional employees have significantly influenced

state correctional systems by means of lobbying, publicity, and legal actions, these methods have customarily been legitimate and legal. This has not been the case when correctional employees have participated in strikes or such other job actions as "sick-outs," "lock-ins," or "slowdowns." In no state except Hawaii are correctional officers permitted to engage in such activities. In some jurisdictions, correctional employees other than officers have been granted a limited right to strike, but among the research states, only Oregon and Pennsylvania have granted this right.

Despite the prohibitions against striking, correctional officers have engaged in strikes or similar job actions in approximately half the research states. And in some of the research states--Ohio, New Jersey, Massachusetts, Rhode Island, New York, and Pennsylvania--correctional officers have engaged in more than one job action since 1970. Ohio has had more strike activities by correctional employees than any other state. Indeed, during the years 1971-75, strikes and/or sick-outs occurred in Ohio every year.

In 1975, Ohio suffered a system-wide strike by correctional employees, and Pennsylvania was the setting for two strikes--one involving only the Western Pennsylvania Correctional Institution, the other involving all correctional facilities. And in the same year, New York City's correctional officers engaged in a strike at Rikers Island, New York State's officers held a strike at the Fishkill Correctional Facility, and additional strikes were threatened in Rhode Island, New Jersey, and Michigan.

Although strikes by correctional officers typically last only a few days, some have lasted for more than three weeks. Of the strikes that occurred in 1975, only one--the May 1975 strike in Ohio--lasted longer than a week. That strike, which was concerned with the representation rights of employee organizations, continued for seventeen days.[9]

Departments of correction usually try to obtain an injunction against striking employees and their organization. Such injunctions produce mixed results, however. Often, by the time an injunction has been obtained, the employees are ready to return to work, believing that they have made their point. In other instances, the employees refuse to return to work despite the injunction. In 1975, during one of the strikes in Pennsylvania, the striking officers stayed off the job for four days in defiance of a court order, even though the state council of their union had asked them to return to work.[10]

The penalties for violating injunctions against strikes may include fines for the employee organization and jail terms for its leaders. And in some states--New York, for instance--public labor-relations commissions are beginning to impose additional penalties. For example, the striking organization may now lose the privilege of automatically deducting its dues from the employees' paychecks. Although the use of sanctions against striking employees and organizations seems to be increasing, the most typical response to strikes in the 1970s has been the imposition of minor disciplinary penalties. For example, correctional employees who struck in

Pennsylvania in 1975 were penalized with one- or two-day suspensions.[11]

But some departments of correction have fired striking employees. In Massachusetts in 1973, the commissioner of the department of correction fired striking correctional officers at Walpole State Prison. However, the officers were reinstated by the governor after the president of AFSCME Council 21, which represented correctional officers, threatened to declare a strike by all state employees and announced that "If they fire one employee, there will be a new day in Massachusetts for public employees."[12] In 1975, the Ohio Personnel Board of Review upheld the firing of 30 of the 123 correctional officers who had been discharged by the Department of Rehabilitation and Correction for participating in the May 1975 strike. This was the first time any correctional officers in Ohio had been fired for strike activities although numerous strikes had occurred during 1970-75.[13]

A strike is a straightforward job action. The employees assert that they will withhold their labor until their demands have been met. But correctional employees can also make use of less agressive job actions. One is the "sick-out," in which the employees stay home from work and use a fabricated illness as the excuse.

Although there seems to be little difference between an announced strike and a sick-out, the sick-out has generally been regarded as a less serious job action than a strike and has incurred less severe legal sanctions. Thus in New Jersey in 1976, the union representing correctional officers initially wanted to call a strike

to gain its wage demands; but, in an effort to avoid legal actions and losses in pay, the union changed the protest to a job action in which employees called in sick or took vacations.[14]

If a department of correction wishes to impose disciplinary penalties on employees who participate in a sick-out, the department usually must first prove that the employees were actually not ill. In the research states, the usual response to a sick-out is to penalize individual employees not able to prove that they have been ill. But if the employee can provide a statement signed by a doctor and indicating that the employee has been ill or has merely visited the doctor, the employee will customarily receive regular sick-leave wages and will avoid all formal disciplinary actions.

For a short-term job action, then, the sick-out has been an effective strategy. Employees who can verify that they have visited a doctor are usually not disciplined. The sick-out does not violate anti-strike statutes as flagrantly as a strike does, and therefore the sick-out tends to avoid legal action against employees and their organization. In short, the sick-out is a subtle form of job action in which small numbers of employees, with little risk to themselves, can achieve a minor but bothersome disruption in operations.

Another type of job action commonly used by correctional officers is the "lock-in" of prisoners: after assuming their posts in the cell blocks, the officers refuse to let the prisoners out of their cells. Correctional officers often cite dangerous working conditions as the reason for their lock-in, and they use this form of job action

to force the administrator of the institution to improve working conditions. Ironically, the administrator might well regard the lock-in itself as dangerous. It is cruel to the prisoners; it increases the tension between prisoners and officers; and thus it tends to increase the danger in the working conditions. It is exceedingly important to recognize that job actions by correctional employees have a direct effect on the lives of the inmates. When the media report the job actions that occur in correctional institutions, they rarely report the effect on the inmates.

Another kind of job action available to correctional employees is the "slowdown." In private industry, a slowdown occurs when workers perform their tasks at a slower rate than usual. In correctional institutions, however, slowdowns are frequently more complex. One kind of slowdown, for example, is the slow count. When correctional officers finish their work shift, they must count all prisoners to ensure that none have escaped. In order to institute a slowdown, the officers can simply delay the count, or go through several miscounts, and receive overtime pay for working past the end of the shift.

Correctional employees can find many other ways to slow down the activities of the inmates. They can delay telling prisoners about visits, or they can slow down the preliminary work that will enable a prisoner to take a furlough in the community. Furthermore, they can increase or decrease the number of citations incurred by inmates for infractions of institutional rules. In Massachusetts,

in 1973, correctional officers were outraged over the new disciplinary procedures for inmates because the procedures allowed inmates to call officers as witnesses; therefore the officers reduced the number of formal disciplinary actions against inmates and used informal methods to deal with infractions. On the other hand, the officers can undertake a "speed-up" in issuing disciplinary citations, and thus can so anger the inmates that the management may have to accede to the employees' demands in order to keep the inmates from rioting or stopping their work.

Another form of job action available to correctional employees is to flood the channels through which employee grievances and disciplinary appeals must go. As we mentioned earlier, this strategy ties up the appeal process, increases the number of employees who must leave their positions to attend hearings, and substantially increases the amount of time administrators must devote to considering appeals.

Thus the chief kinds of job actions used by correctional employees are strikes, sick-outs, lock-ins, slowdowns, and speed-ups. In the following sections of this chapter, we will discuss the factors that precipitate such job actions.

Economic Job Actions

In the late 1960s, during the early stages of correctional labor relations, economic issues were of utmost importance in precipitating activism and job actions on the part of correctional

employees. In 1968 and 1969, in New Jersey, Rhode Island, and Ohio, several notable job actions occurred over issues that were primarily economic. In 1968 in New Jersey, correctional officers engaged in a sick-out because of salaries. The correctional officers' demand for an annual salary of $10,058 after three years of service would have raised the existing $7,886 annual salary by $2,200 a year.[15] In 1969 in Rhode Island, correctional officers voted to postpone a strike, but rejected the state's offer of a $10-a-week pay increase. The starting salary for correctional officers was $4,940 per year, and the officers' union, AFSCME Local 114, was pushing for a salary increase of $20 a week and the adoption of a retirement plan being considered by the state's general assembly.[16] In the same year correctional officers at the Ohio Penitentiary engaged in a strike to increase their annual salaries by $1,500. The starting salary for a correctional officer was $5,240 a year at the Ohio Penitentiary and $4,900 at the other state institutions.[17]

It is not surprising that the first job actions by correctional employees were undertaken to achieve higher wages. Economic benefits have traditionally been a primary goal for employee organizations. Moreover, in the 1960s correctional employees in most jurisdictions received extremely low salaries. In 1969 a final report by the Joint Commission on Correctional Manpower and Training stated that "the salaries of correctional employees provide an index to the retarded development of personnel policies in corrections. Position-by-position salaries in this field are generally lower than those in the private

sector or in other governmental occupations requiring comparable educational preparation and job responsibilities."[18]

Wages, however, are not the only form of compensation received by correctional officers. Early public-safety retirement, disability pay, and sick leave are but three of the traditional economic benefits for correctional employees. Some of the employees have received no-cost or low-cost housing on institutional grounds, although this benefit is being discontinued in many states. In addition, the employees frequently receive low-cost meals at institution cafeterias and such other benefits as free or inexpensive laundry service, dry cleaning, shoe shines, and haircuts.

Nevertheless, correctional employees were underpaid in the 1960s, and continue to be underpaid in comparison with other employees in the fields of law enforcement and criminal justice. Low pay has thus been a primary factor in the organization and increasing activism of correctional employees, and has been the chief cause for the rising number of job actions in corrections. But the desire for greater economic benefits is not the only reason for the increasing number of strikes.

Conflict Over Labor-Relations Regulations

Job actions by correctional employees have sometimes resulted from disputes over the legal and administrative framework for labor relations among state employees. In 1975 a noteworthy strike occurred when the Ohio Department of Rehabilitation and Correction announced

that it would negotiate new contracts only with unions that could prove they represented 30 percent of the department's employees.[19] At that time the employees at each correctional facility in Ohio were represented by five separate unions and associations. For instance, the guards at the Southern Ohio Correctional Facility in Lucasville were represented by the International Brotherhood of Correctional Officers, the Ohio Civil Service Employees Association, the Communication Workers of America, the American Federation of State, County and Municipal Employees (AFSCME), and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Many employees belonged to more than one of these organizations. The new ruling by the Department of Rehabilitation and Correction would have prevented correctional personnel from being represented by more than three employee organizations. And the organizations saw this ruling as management's attempt to weaken several of the organizations and to develop labor relations procedures more advantageous to management.

Administrative manipulations of this kind are clearly possible in jurisdictions such as Ohio which have not passed legislation for comprehensive collective bargaining. But even in states like New York, where such legislation has been in effect for several years, the administration can change the procedures for collective bargaining. In 1975, as a result of the state's fiscal crisis, New York officials publicly announced that that year's collective bargaining sessions should not include negotiations over wages.[20]

Employee organizations responded by threatening that suspension of wage negotiations would lead to a strike, regardless of the state's rigid prohibitions against strikes. Eventually the state relented and permitted wages to be one of the subjects dealt with in that year's negotiations.

Competition among Organizations

A third factor contributing to job actions by correctional employees is competition among employee organizations. Job actions of this kind usually occur in states such as Ohio which have not required exclusive representation for bargaining units.

A case in point occurred in 1973 at the new Southern Ohio Correctional Facility in Lucasville.[21] The issue was whether, in transferring staff to the new facility, the department of corrections would honor the seniority provisions negotiated with AFSCME or those negotiated with the Teamsters, Local 413. The first officers transferred to the new facility had come from the Ohio State Penitentiary, where most employees were represented by the Teamsters. Understandably, then, the Teamsters argued that seniority at the new Lucasville facility should be institutional--should be based on length of employment at the new facility. And the Teamsters insisted that they had been promised institutional seniority. AFSCME, on the other hand, represented employees who in general had been transferred to Lucasville later than the employees represented by the Teamsters. To protect the interests of its members, AFSCME attempted to have

appointments at the new facility based on seniority in the department rather than the institution. Like the Teamsters, AFSCME asserted that the department of corrections had promised that the kind of seniority the organization preferred would be instituted at the new facility. The quarrels that arose from this disagreement resulted in two short strikes.

In this situation two organizations drew their members from the same group of employees--i.e. correctional officers. But conflict can also occur between organizations that represent different groups of correctional employees. In Pennsylvania for instance, AFSCME represented most kinds of employees in the commonwealth's correctional facilities; the Pennsylvania Social Service Union, SEIU, represented the staffs in certain institutional programs. Both organizations went out on strike in June 1975 over stalled contract negotiations.[22] But AFSCME stayed on strike for only three days, whereas the Pennsylvania Social Service Union (PSSU) stayed out for three weeks. Although there were complex reasons for the relative briefness of the AFSCME strike and the three-week duration of the PSSU strike, one factor behind PSSU's extended hold-out in the face of court injunctions was that PSSU was engaged in active competition with AFSCME.

Safety and Security

Aside from economic matters, the most prevalent cause of job actions among correctional employees is concern over employee safety

and institutional security. In October 1973, for example, under the pressure of a strike deadline, the Michigan State Department of Corrections agreed to five employee "safety and security" demands: (1) a pledge to add 30 employees at one institution immediately; (2) the transfer of difficult prisoners to a new center for intensive programs; (3) an end to such procedures as unsupervised work details for inmates; (4) the appointment of a second woman corrections officer to search women visitors for contraband; and (5) the speedier prosecution of inmates who committed felonies against employees. The strike threat and the ensuing negotiations came about because an inmate had killed a guard at the Marquette institution.[23]

In Rhode Island in 1974, guards at the adult correctional institution went on strike over problems with safety and security. The strike began after a prisoner allegedly fought with a guard and was then confined to his cell until the disciplinary board could hold a hearing. "Guards contended that this violated a policy which called for placing such prisoners in a segregation unit for 30 days." When the guards refused to report for work, state police and national guardsmen were sent to the institution.[24]

In May 1975, correctional officers at the Western Pennsylvania Correctional Institution engaged in a sick-out to protest the closing of the prison's "behavioral adjustment" unit, which housed "incorrigible" inmates. The officers said that closing the unit would make their work considerably more dangerous and would reduce security in the institution.[25]

In New Jersey in September 1973, a two-day sick-out over security problems at Leesburg State Prison was ended when the administration agreed to four major demands made by the correctional officers: (1) the installation of metal detectors, (2) the procurement of police radios for prison guards, (3) an increase in the number of guards, and (4) the adoption of new measures to ensure internal security.[26]

In March 1973, correctional officers at the maximum-security state prison at Walpole, Massachusetts, went on strike over policy changes instituted by the commissioner of corrections. After five days the officers returned to work in compliance with a court order. One policy change that led to the strike was the commissioner's order that some "twenty prisoners in the maximum-security section be released into the general prison population." The officers contended that releasing the prisoners from the maximum-security section would intensify the volatile atmosphere in the institution and lead to greater danger to correctional officers.[27]

It must be recognized that correctional officers' concern over safety and security is often linked to other concerns. In the 1970s, institutional personnel have increasingly become concerned over (1) the significant increase in prison populations; (2) the increase in prisoners' rights regarding "due process," movement within the institution, and educational treatment programs; and (3) the possible reduction in institutional jobs as a result of the development of community programs and the cutbacks necessitated by the fiscal crisis in government. Correctional officers' concern over these matters

is frequently expressed as dissatisfaction over problems of safety and security.

Although there is no hard evidence that the three kinds of changes just mentioned have significantly added to the number of assaults on correctional officers, the officers themselves certainly believe that the changes have increased the likelihood of assaults. In the past, inmates were locked in their cells for most of the day, except during specified activity periods. Today most of the nation's institutions give inmates considerable freedom of movement during the day and early evening. Inmates can move freely within their cell blocks and, with an appropriate pass, can move to other parts of the institution. To correctional officers, the new freedom seems to entail a much greater threat of physical danger. Thus the officers demand additional staffing, new security devices, and severe punishment and long-term separate confinement for any troublemakers in the prison population. And sometimes the officers demand pay increases for especially hazardous work. At Indiana's maximum-security prison in Michigan City, correctional officers assigned to the maximum-security cell block walked out and picketed to demand a special increase in wages for such dangerous assignments.

To hire additional correctional officers is a very expensive way to improve safety and security. Perhaps the addition of one or two officers to a cell block relieves the anxiety of the officers already there, but because the typical cell block houses between 100 and 400 inmates, so slight an increase in staffing actually does

little to reduce the dangers. And the cost of adding enough officers to effect a significant reduction in danger would be so great that the measure is not likely to be recommended by an executive branch or approved by a legislature. What employee organizations hope to achieve, then, is a slow but steady increase in staffing, to be gained by the transfer of funds from other correctional programs or by a general increase in the correctional budget.

Other employee demands related to safety and security call for the purchase of such devices as metal detectors and walkie-talkies and for certain structural changes in the institution's buildings. Correctional administrators often sympathize with such demands. The problem is one of priorities. Funds for such structural changes and equipment must be included in the department's annual or biannual budget request and must then be approved and funded by the state legislature. Therefore, whatever job actions correctional employees undertake to obtain safety equipment and security renovations are as much attempts to apply pressure to state legislatures as they are protests against unresponsive management.

Demands related to safety and security become more problematic when correctional organizations advance them in order to influence correctional philosophy or to retaliate against what the organizations deem to be improper behavior by inmates. Correctional organizations have found the public and the politicians receptive to demands for less "permissiveness" and more "punishment." In Massachusetts, Rhode Island, Pennsylvania, Ohio, and other jurisdictions,

employee organization lobbying, publicity, lawsuits, and job actions pertaining to safety and security have often been attempts to counteract progressive correctional programs such as community-based facilities and to reestablish an emphasis on custody. Another feature of this campaign is that correctional unions have advocated longer prison terms and more stringent parole policies--for example, an increase in the minimum term an inmate must serve before he can become eligible for parole. Because contract negotiations are usually prohibited from dealing with such policy matters, correctional organizations work for changes in policy through other methods than collective bargaining.

Other Strike Issues

Many other issues pertaining to operations and policies have led to demands by correctional employees and sometimes have precipitated job actions. In March 1972, at the Ohio Penitentiary, correctional officers went on strike in an effort to achieve the following demands: (1) retirement after twenty years, with a raise in pension payments; (2) the state's acceptance of responsibility for all legal actions arising from suits that inmates might bring against guards; (3) an increase in pay for hazardous duty; (4) an improved sick-leave program; (5) the abolition of an inmate council; (6) trials outside the institution for inmates charged with felonies while in prison; and (7) standardization of the penalties imposed on inmates by the institution's disciplinary board.[28]

In April 1974, at the Ohio State Reformatory in Mansfield, correctional officers struck for four days in trying to achieve a shorter work week, tuition for additional schooling, seniority rights, and uniform dress allowances. The strike reportedly began "after a citizen's prison advisory committee read a list of inmate complaints against guards, including alleged brutality."[29]

Thus, a variety of different issues can precipitate job actions by correctional employees. Although strikes do occur over the legal framework governing labor relations and over competition among employee organizations, these two issues have not been the chief causes for the job actions undertaken by correctional employees in the late 1960s and the 1970s. The chief causes appear to be (1) economic issues and (2) issues pertaining to safety and security, a matter made particularly complex by the presence of covert motives.

The Impact of a Strike

Although it is important to understand the reasons behind correctional job actions, it is equally important to consider what effects such job actions can have on a correctional institution. Most strikes by government employees--for example, strikes by police, fire fighters, and transit workers--have a direct effect on the public; but, as a general rule, the public knows little about the impact of strikes by correctional employees.

Obviously, correctional management is inconvenienced by such strikes, striking employees suffer a loss of pay and other economic

benefits, and the safety of nonstriking workers and the general public is somewhat diminished; but the chief effects of correctional strikes are felt by the prisoners.

Correctional employees engage in many types of strike activities to disrupt the operations of correctional institutions. In Ohio in 1975, for example, striking correctional officers picketed to stop delivery trucks from entering the institutions; the department of corrections had to use national guard helicopters to send in necessary supplies. Furthermore, the telephone lines to the Southern Ohio Correctional Facility were cut, so that the institution's administrators had difficulty communicating with the central office, and nonstriking employees had difficulty communicating with their families. The faulty lines were not repaired until after the strike, because the telephone repairmen, members of the Communication Workers of America, refused to cross the picket lines. In addition, some of the pickets at the Southern Ohio Facility interfered with supervisory personnel as they entered the institution; the pickets not only uttered threats but even engaged in acts of violence which led to criminal convictions.[30]

During a strike, correctional administrators can keep inmates locked in their cells and use non-union supervisory staff and selected prisoners to continue necessary activities: purchasing, medical treatment, food preparation, delivery of supplies, operation of the power plant, and protection of internal security. If manpower has been significantly reduced, the state police, state highway patrol, or national guard may be called in to man perimeter towers, to

patrol the grounds, and even to do security work in the cell blocks. In addition, during an emergency correctional administrators in many states have the legal right to keep employees on the job for as long as necessary, after their regular shift is over. By declaring a state of emergency at the beginning of a strike, an administrator can keep a considerable number of correctional officers inside the institution--officers who, if they were allowed to leave, would participate in the strike.

If inmates are kept locked in their cells during a job action by correctional employees, an institution can operate with a small crew of personnel. In the 1970s, however, correctional administrators are not likely to adopt a "lock and feed" procedure during strikes. Even though the schedule of activities and programs must be reduced, many administrators try to keep the schedule as close to normal as possible. There are several reasons for this. One is that administrators are reluctant to punish the inmates for acts performed by the employees. Secondly, administrators wish to avoid increasing the tension that may already exist between inmates and employees as a result of the strike. Thirdly, administrators are responding to public pressures for fair and humane treatment of inmates during a strike.

In the research states, correctional administrators have operated their institutions in several different ways during strikes. Some have resorted to "lock and feed" procedures; others have locked the inmates in their cells but then have gradually released selected

groups of inmates for a limited schedule of activities; and still others have tried to keep operations as close to normal as possible. An unusual situation occurred in Massachusetts in 1973, during a strike by correctional officers at the state prison.[31] Supervisory staff from the department of correction carried on the tasks involved in running the institution, such as supervising the inmates, maintaining internal security, and overseeing dinners, recreation, and maintenance work. In addition, leaders among the inmates assumed the responsibility for keeping order, while inmates were permitted considerable freedom of movement and a great many of their usual activities. Volunteers from the general public were allowed to enter the institution to monitor operations and to help in meeting the inmates' needs. Conflicting reports have appeared as to the effectiveness of this experiment; but it should be noted that although the strike was a lengthy one, there was no inmate rioting and no significant destruction. Nor is this phenomenon surprising. Across the nation, inmates have tended to stay on good behavior during strikes by correctional officers, perhaps in order to show that they can function quite satisfactorily without the guards, or perhaps to demonstrate their sympathy with the guards' demands or with <u>any</u> action against the establishment.

The decision as to precisely how to deal with inmates during a strike by correctional employees is extremely complex. The correctional administrator must weigh a variety of factors; he must ensure the fair treatment of inmates, the safety and security of

both the inmates and the public, and the eventual orderly return to normal operations. But in order to keep the administrator's job during a strike from becoming any more difficult than it must be, departments of correction should undertake three preparatory measures. They should develop strike contingency plans, they should be sure that supervisory personnel are trained to operate a correctional institution during a strike, and they should urge employee organizations to agree that, in the event of a strike, essential work will still be performed.

No matter how an administrator handles institutional activities during a strike, inmates will still be badly inconvenienced by their inability to participate in activities outside the institution. An inmate scheduled to stand trial or to act as a witness is often unable to appear in court, so that the case must be postponed or must proceed without that witness. Inmates customarily released for educational purposes are unable to attend classes. Inmates customarily released for work in the community must be absent from their jobs. Inmates needing special medical care available only outside the institution are often unable to obtain it. And in states that have developed community furlough programs for inmates, such programs are often suspended during any job action by correctional employees.

Unlike the usual job action, a strike by correctional employees has its major impact on people who cannot significantly affect the resolution of the strike. In most strikes in the public sector,

the outrage over the resulting inconvenience to the public helps to bring about an early settlement. But in strikes by correctional employees, the inmates, who have virtually no constituency, must suffer the effects without having any political power to influence the outcome.

It is interesting, too, that correctional management often has little influence on the outcome. This is particularly true with regard to strikes over economic benefits. Such benefits are recommended by the executive branch of the state government and approved by the legislative branch; the benefits are usually not within the purview of the correctional administrator. In Ohio in 1974, correctional employees went on strike over wages; and a correctional administrator in that state remarked that "it is very frustrating to deal with a strike about an issue over which the department has no control."

Summary

In the 1970s, correctional employees have tried to win their demands through formal collective bargaining, through informal departmental and institutional negotiations, and through political activities in state governments. And the employee organizations have used a variety of tactics to achieve their demands. The four basic kinds of activities have been lobbying, publicity, lawsuits, and strikes.

Strikes and other job actions are illegal for most correctional

employees; they are illegal for state correctional officers in all states except Hawaii. But the illegality of job actions has not stopped them from occurring. Indeed, their occurrence seems to be on the rise.

Although many causes contribute to job actions by correctional employees, the most frequent causes have been economic issues and issues pertaining to "safety and security." Because the director of a department of corrections has little control over the availability of additional funds, he usually has little influence over whether or not funds will be allocated to grant his employees' economic demands or to pay for the demanded improvements in safety and security. An added complication is that the demands for greater safety and security are often a disguised attack on progressive correctional philosophies and programs.

The worst effects of correctional job actions are suffered by the public, who pay the financial costs, and by the inmates. Although the inmates suffer the immediate effects of the strike, they can do little to influence the outcome. This is one of the unusual features of state correctional labor relations and is another instance of the complex interrelationships in that field.

Notes

1. "Will Jersey Wait Out Strike?" Trenton Times, 20 July 1975.

2. "Special Report--Adult Corrections: A M*A*S*H Production (Minus the Laugh Track)," Washington State Employee, September 1975. This periodical is an official publication of the Washington Federation of State Employees, AFL-CIO.

3. "Action Waged on Two Bills," 82 Review, May 1975, p. 2. This periodical is an official publication of the New York State AFSCME, Council 82, AFL-CIO.

4. "'Hell No, They Won't Go!'--AFSCME Members Planning to Bar Transfer of Inmates," 82 Review, May 1975, pp. 1-2.

5. "'Hell No,'" p. 1.

6. "New York City Officers Strike for Overtime Pay," Corrections Digest, 10 December 1975, pp. 1-2.

7. "Correction Officers Sue to Halt Firings," COBA News, July 1975, p. 1. This periodical is an official publication of the New York City Correction Officers Benevolent Association.

8. "Data Sought to Confront Department," 82 Review, May 1975, pp. 1-2.

9. "Two Prison Employee Strikes in Ohio Over, One Continues," Government Employee Relations Report, No. 609 (9 June 1975), p. B17. Hereafter this publication will be referred to as GERR.

10. "Striking Pen Guards Defy Court," Pittsburgh Press, May 24, 1975, p. 1.

11. "Western Pen Guards Resume Jobs After Court Compromise," GERR, No. 609 (9 June 1975), p. B19.

12. "Walpole (Mass.) State Prison Guards End Five-Day Walkout," GERR, No. 496 (26 March 1973), p. B18.

13. Letter to the author from the Labor Relations Officer, Ohio Department of Rehabilitation and Correction, 28 August 1975.

14. "Jersey Employees Stage Protest Over Budget Cuts," New York Times, 6 January 1976, p. 35.

15. "Sick Call Afflicts New Jersey Prison," GERR, No. 252 (8 July 1968), p. B9.

16. "Rhode Island Institutions Guards Reject Offer, but Postpone Strike," GERR, No. 293 (21 April 1969), p. B11.

17. "Ohio Prison Guards End Two-Day Work Stoppage," GERR, No. 295 (5 May 1969), p. B12.

18. Joint Commission on Correctional Manpower and Training, A Time to Act (Washington, D.C.: Joint Commission on Correctional Manpower and Training, 1969), p. 20.

19. "Guard Strike at Lucasville, Ohio, Prison Continues, Two Settled," GERR, No. 607 (26 May 1975), p. B16.

20. "State Demanding More Work Hours," New York Times, 25 November 1975, p. 29.

21. "Prison Guards in Five Penitentiaries Call in Sick over Working Conditions," GERR, No. 488 (29 January 1973), p. B17.

22. "AFSCME Reaches Tentative Pact with Pennsylvania and Ends Largest Strike Ever by State Employees," GERR, No. 613 (7 July 1975), p. B19.

23. "Marquette (Mich.) Prison Employees Accept Agreement, End Strike Threat," GERR, No. 526 (22 October 1973), p. B21.

24. "Prison Guards in Rhode Island End Strike, Agreement Reached with Governor," GERR, No. 565 (29 July 1974), p. B18.

25. "Western Pen Guards Resume Jobs," p. B19.

26. Sam Earle, "Guards End 'Sick-Out' at Leesburg Prison," Trentonian, 28 September 1973.

27. "Walpole (Mass.) State Prison Guards," p. B18.

28. "Disciplinary Action Follows Return of Ohio Penitentiary Guards to Job," GERR, No. 446 (3 April 1972), p. B17.

29. "Ohio Guards End Four-Day Walkout, Agree to Suspension Without Pay," GERR, No. 552 (29 April 1974), p. B19.

30. "Guard Strike at Lucasville, Ohio," p. B16.

31. "Walpole (Mass.) State Prison Guards," p. B18.

8. Conclusion

The unionization of public employees and the enactment of legislation permitting the employees to bargain collectively have greatly affected our state prison systems. The increasing influence of public employee organizations has led to much-needed improvements in the employees' economic benefits and working conditions. But not all the changes brought about by the employee organizations have contributed to the efficient operation of state correctional systems or to the effectiveness of correctional programs. Indeed, the employee groups--especially the groups composed of correctional officers--have sometimes used their power in ways that have hindered the improvement of correctional programs.

As we have seen, some correctional employee groups believe that the development of certain kinds of correctional programs is opposed to their best interests. Prison personnel, especially correctional officers, have generally resisted the development of community-based correctional programs--programs that might conceivably reduce the number of employees in correctional institutions or lead to the closing of some institutions. They regard such programs as a threat to their jobs, particularly now that economic constraints are causing governments to lay off employees.

Although the National Advisory Commission on Criminal Justice Standards and Goals has recommended the shift of correctional emphasis from institutions to community programs,[1] labor organizations

representing prison employees have responded to their members' anxieties over job security by resisting this change. And these organizations have also opposed the development of programs in which some correctional services are performed by unpaid volunteers, private organizations, or non-correctional government agencies. At its 1976 convention, AFSCME, which represents more U. S. state prison personnel than any other employee organization, passed a resolution opposing the "contracting out" to private organizations of any public work that has traditionally been performed by public employees.[2] Elsewhere, AFSCME has gone on record opposing deinstitutionalization and the development of community-based programs.[3]

Organizations representing prison employees have also hindered the development of improved inmate programs within the correctional institutions themselves. Prison employees--again, the correctional officers in particular--have resisted efforts to give prisoners adequate due process rights in disciplinary and classification matters, and have opposed increased community and family involvement in institutional programs. Furthermore, the employees have sometimes opposed programs that would grant community furloughs to prisoners or release prisoners temporarily to let them work or engage in educational activities in the outside world.

Correctional officers have opposed all these reforms with the argument that they lead to severe problems within the institutions: a greater amount of contraband smuggled in, a breakdown in authority, and thus an increased threat to the safety of the employees. Perhaps

this argument has merit when applied to poorly administered institutions manned by ill-trained staff; but, in well-run institutions, it is by no means inevitable that progressive programs of the kinds just mentioned will lead to the difficulties and dangers portrayed by correctional officers. Nevertheless, as we discussed in Chapter 7, prison employees have often engaged in various kinds of activism and job actions to compel management to emphasize the traditional custodial function of the correctional institutions and thus to delay or halt the development of new rehabilitative programs.

It should also be mentioned that prison employees, through their local organizations, have often fought against the affirmative action programs by which some correctional managements have tried to bring an appropriate number of minority employees into the institutions. In the research states, correctional officers opposing affirmative action have sometimes come into conflict with the state and national offices of their employee organizations over this issue.

Activism is not the only means by which prison employee organizations have influenced correctional operations. Certain contract provisions resulting from collective bargaining have had an even greater influence. Many such provisions have had valuable results: an improvement in the wages and working conditions of prison employees, a reduction in the number of arbitrary actions on the part of management, and a greater opportunity for employees and managers to exchange views and work together in solving problems.

But these improvements have not been achieved without harmful side-effects: losses in managerial authority and increases in the constraints and complexities that make it so difficult to manage correctional systems. And Chapter 6 has discussed other contract provisions that have had harmful effects on correctional operations--for example, the provisions that make seniority the chief basis for promotions and job assignments.

But the difficulties created by collective bargaining are surely not all to be blamed on the correctional employee organizations. As previous chapters have shown, the managerial response to collective bargaining has caused a great many difficulties. For example, correctional administrators have sometimes resisted the implementation of contract provisions; executive and legislative branches have provided no funds or insufficient funds for the implementation of contracts; management negotiators have agreed to contract provisions without the knowledge of the director of corrections; and management has failed to develop adequate channels of communication and adequate procedures for resolving internal disputes.

As our research has repeatedly and emphatically shown, correctional managers are ill-equipped to handle the new demands made upon them by prison employee unionism and collective bargaining. One reason is that the managers often lack the necessary training and experience. Another is that correctional managers, most of whom have worked their way up through the ranks, are sometimes too quick to sympathize with employee demands. And yet another is that

decisions pertaining to labor relations for correctional employees are often made by governmental figures neither responsible to the director of corrections nor accountable for the operation of correctional programs.

Correctional managers, however, are not the only public managers who have had difficulty coping with the changes in public-sector labor relations. As a recent report of the National Commission on Productivity and the Quality of Working Life has stated, "many units of government lack administrators with adequate skills, training, and experience in labor relations. In addition, collective bargaining is often new and quite fragmented and many public service unions have less experience than their counterparts in the private sector. Therefore . . . opportunities to improve labor-management procedures and to expand the skill levels of those responsible for labor relations, should be vigorously pursued."[4]

Collective bargaining for prison employees is in its infancy, and many of the problems documented in this report are likely to be solved, or greatly alleviated, when the parties involved have gained more experience with collective negotiations. Legislators will improve the legal frameworks for public-sector labor relations; the procedures for handling negotiations and contract administration will become more efficient and effective; and unions and management will become more skillful at working within those procedures. The optimistic view must be that in the years ahead labor and management

will recognize that the enlightened self-interest of both groups requires that they work cooperatively through the labor relations process to improve the quality of the nation's correctional programs.

Notes

1. National Advisory Commission on Criminal Justice Standards and Goals, Corrections (Washington, D.C.: U.S. Department of Justice, 1973), pp. 609-14.

2. "AFSCME Resolves," LMRS Newsletter, 7 (September 1976), 1. This periodical is published by the Labor-Management Relations Service of the National League of Cities, United States Conference of Mayors, and National Association of Counties, Washington, D.C.

3. Henry Santiestevan, Deinstitutionalization: Out of Their Beds and into the Streets (Washington, D.C.: American Federation of State, County and Municipal Employees, 1975).

4. "Productivity Center Created by Law," LMRS Newsletter, 7 (January 1976), 5.

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